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„Farewell state by-passing, hello national government!“ The preferred lobbying strategy of legislative regions in Germany and the United Kingdom in EU Competition, EU Environment and EU Education policies

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List of abbreviations

BL	Basic Law
CA	Cooperation Agreement between the Federation and the Länder
CLWP	Commission's Legislative and Work Program
CoR	Committee of the Regions
CSO	Civil society organization
DG	Directorate-General
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
GDP	Gross domestic product
IA	Impact Assessment
IAB	Impact Assessment Board
IASG	Impact Assessment Steering Group
IIP	Intergovernmental institutionalized procedures
JMC (E)	Joint Ministerial Committee Europe
LoC	Law on cooperation between the federal government and the Länder in matters concerning the European Union
LPC	Legal political competences
MEP	Member of the European Parliament
MLG	Multi-Level Governance
MoU	Memorandum of Understanding
NGO	Non-governmental organization
OLP	Ordinary legislative procedure
QMV	Qualified majority voting

REGLEG	Conference of European Regions with Legislative Power
SLP	Special legislative procedure
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom

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1 Regions in the European Union

What is the role of regions within the EU's complex multi-level system? What options does a region have to promote its interests upwards in the European institutions? Does the EU pose a threat or an opportunity for legislative regions? Has the central government lost its gate-keeper role in EU politics? Do regions by-pass their central government in order to pursue their own objectives? These questions have been addressed by theorists and practitioners alike for some time now. Some argue that regions do have the possibility to defend their regional interests on their own whereas others strongly reject that claim. As this puzzle is still unsolved, this study raises the question of which is the preferred lobbying strategy of legislative regions in Germany and the United Kingdom in order to generate new empirical data about the actual role of legislative regions in the EU. It will be argued that the legal and constitutional situation of the EU and the Member State constitutes the key factor which impacts on the respective lobbying strategy.

The European Union has been and continues to be an interesting but also controversial subject for study which raises many exciting questions that are of practical and theoretical relevance. Undeniably, the EU has an immense impact on our daily lives in almost all circumstances; people can travel freely since frontiers have been removed, tourists can pay with the same currency since the Euro has been introduced, students can easily spend a semester abroad since the EU has started the Bologna process, cities in different Member States have increasingly established partnerships since the EU has set up financial programs and so forth. All of these examples provide evidence that the EU has made life more convenient for most citizens.

Yet, where there is light, there is also shadow. One should not overlook that the EU also renders policy-making more complicated, that many citizens simply do not understand the various mechanisms happening behind closed doors, that voters feel alienated from their representatives in the European Parliament, that people do not trust EU institutions due to package-deals and horse-trading among political leaders in the Council, or that citizens gain the impression that the Commission is a 'bureaucratic octopus' trying to harmonize every sphere of their lives.

European integration has not only have a huge impact on the daily lives of EU citizens but also on the political system of the Member States. Before the latter decided to delegate more national legal competences upwards to the European level in the late 1980s, the respective national context constituted the fundamental domain in which legislation was initiated as well as adopted. This has changed significantly as the following figures demonstrate: during the German Bundestag's 15th electoral period (2002-2005), 385 laws were passed, of which 139 (36%) had emanated from European decisions (Moore and Eppler 2008: 497). To be more precise, in environmental policy 81% of national law stemmed from the EU. With regard to agricultural policy, 75% of domestic policy originated from the EU arena. In further areas such as economic policy (40%), transport (40%), family policy and health (37%), figures were lower, but still considerable (Töller 2006: 7). In the UK, the Minister of State in the Cabinet Office stated in 2004 that "about half of all measures that imposed non-negligible costs on business, charities and the voluntary sector originated from the European Union" (UK Cabinet 2004). Moreover, in the case of Scotland, the Scottish Government as well as academics stress that over three-quarters of the work of the Government and the Parliament is, to some extent, influenced by decisions taken in Brussels (Scottish Executive 2010; MacPhail 2008: 19).

As it will be demonstrated later, the political evolution of the European Union also affected legislative regions to a large extent. Before the next chapter turns to the common concerns of citizens, politicians and experts about the EU's increased competences, it is necessary to clarify the term 'region' in general and 'legislative region' in particular. Depending on the respective subject, a region can be understood in a variety of ways. The academic literature differentiates between:

1. economic regions
2. historical/ethnic regions
3. administrative/planning regions
4. political regions (Keating and Loughlin 1997: 2-5).

According to these scholars, the first term relates to economic criteria only such as industrialized/de-industrialized, and urban/rural, or it refers to sectors like car-building or defense-industry. Historical/ethnic regions, on the contrary, solely include territories which exhibit strong cultural and linguistic characteristics that differ from the rest of the nation state. The third category, administrative/planning regions, is considered somewhat artificial because

that territory was only created in order to acquire EU regional funds. Political regions, however, possess an elected parliament which is capable of passing laws that have a direct impact on the public goods and services provided to citizens in the specific territory. Nowadays, these kinds of regions are also called legislative or constitutional regions. In this regard, Jeffery states that the term 'legislative' was added in order to distinguish those regions that have a special interest in European integration from other kinds of regional and local authority across the EU (Jeffery 2005: 180). Legislative regions enjoy more political power than administrative regions, and therefore they probably see European integration in a different light. On the one hand, European integration could be considered negatively because it takes regional competences from the legislative regions away, but on the other hand, these regions have more instruments at their disposal to influence European policy-making, so that they have the possibility to participate in establishing something unique.

1.1 Common concerns about the EU's competences

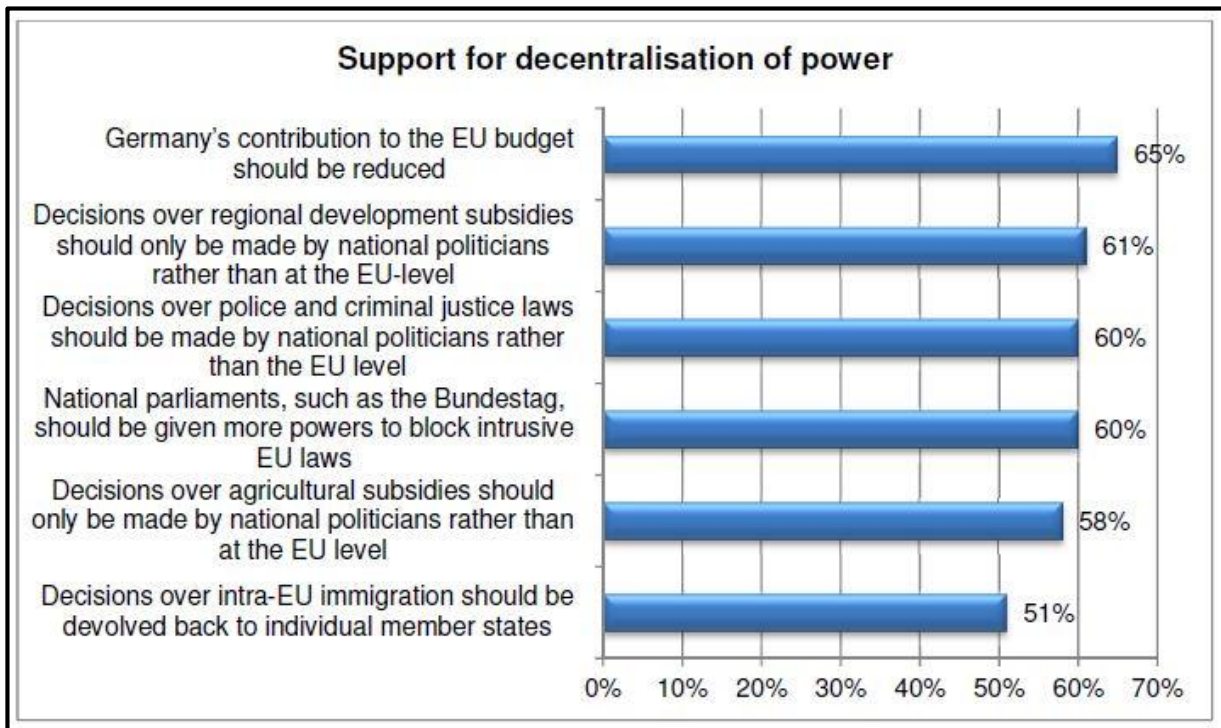
Since the enforcement of the Single European Act in the late 1980s, several legislative regions have not been very enthusiastic about European integration, because they have lost some of their political competences to the European level (Eppler 2009: 195-197; Schmuck 2009: 489). In particular many German Länder did not welcome this development at all and attempted to prevent future competence transfers by using a variety of strategies (Sturm 2006: 42; Bauer and Börzel 2010: 257). But not only the Länder started to grumble about these inconvenient consequences; politicians and citizens in the EU alike raised concerns about democratic legitimacy. They felt that they had no say in European policy-making because many projects are worked out in the backrooms of the national government and EU institutions without their inclusion (Urban 2011: 78). Against this backdrop, the Commission introduced initiatives and published White Papers with the objective to explain its intention and projects better to the wider public:

“The White Paper proposes opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved. This should help people to see how Member States, by acting together within the Union, are able to tackle their concerns more effectively” (European Commission 2001: 3)

Yet, a short while ago a survey of the European Commission (2008b) provided evidence that, apparently, this goal has not been reached. About 59% of 27.000 interviewees stated that their local and regional authorities are not sufficiently included into the European decision-making process. Additionally, Open Europe, an influential think tank located in Brussels, London and Berlin, has recently published an article which reveals that German voters have little faith in the European Parliament and the European Commission, which are only trusted by 33% and 30% respectively. In contrast, the German government, the Bundestag and Landtag are trusted by 44%, 45% and 48% respectively.¹ On top of that, there is strong support for devolving political competences from the EU to the Member State in Germany. About 50% of the interviewees claim that the German government should back the efforts by some European politicians to decentralize powers from the EU to the national, regional or local level (Open Europe 2013). Figure 1 provides an overview of some areas and cases in which German citizens’ call for less EU involvement. Bearing the regional focus of this research project in mind, it is interesting to note that 61% of the voters state that decision over regional development subsidies should only be made by national politicians rather than at the EU-level.

¹ The latest Standard Eurobarometer in 2014 (82.3) has generated similar results: only 34% have trust in the EU as a whole whereas 48% and 49% of the German interviewees have trust in the national government and national parliament, respectively.

Figure 1: Support for decentralization of power by German voters



Source 1: Open Europe 2013

This is not a pure German phenomenon, though. Citizens and leading political figures in other EU Member States sympathize with that attitude also. In Great Britain, Prime Minister David Cameron has recently started the debate about Britain's membership in the EU. In his speech on 23 January 2013, he claimed that the EU is supposed to undergo seven major changes including the possibility that power can "flow back to the member states" because "[C]ountries are different. They make different choices. We cannot harmonise everything. For example, it is neither right nor necessary to claim that the integrity of the single market, or full membership of the European Union requires the working hours of British hospital doctors to be set in Brussels [...]" (Cameron 2013).

On top of that, not only 'normal' citizens or politicians but also very prominent experts attack the EU. The former Federal President of Germany Roman Herzog, criticized the *sachwidrige Zentralisierung* ('improper centralization') of the EU since civil servants in the Commission, Council members and the European Court of Justice have continued to enhance the EU's competences in various policy fields although European legislation was considered unnecessary in many cases. Perhaps even more interestingly, he stated that the institutional structures of the EU constitute a *de facto* abolition of checks and balances and, because of this situation Herzog raises the question

of whether the Federal Republic of Germany can be called a parliamentary democracy at all (Herzog and Gerken 2007). In similar vein, Günther Verheugen, who served as European Commissioner for Enlargement from 1999 to 2004 and then as Commissioner for Enterprise and Industry from 2004 to 2010, stated that “Cameron has said what many people think in Europe. The EU is not perceived by the vast majority of citizens as a helpful benevolent partner, but as an insatiable competence-octopus...” (Ross 2013: 3; own translation).

Bearing these facts and ‘heavy weights’ opinions in mind, it does not come as a surprise that many journalists (Gammelin 2013: 18; Pérez 2013: 14; Assheuer 2013: 42), political scholars (Paskalev 2009: 4; Nassehi 2013: 2; Heidbreder 2013: 2; Grabbe 2013: 2) and even MEPs such as Gianni Pittella (Accardo 2012) or Daniel Hannan (2012) have repeatedly reported or claimed that the EU suffers a democratic deficit. Although this expression has been used very often, a single definition does not exist. One reason for this relates to the fact that there is not just one notion of democracy either: “the notions of democracy differ largely on what they stand for positively and are variously presented as core ideas, preconditions, elements, indicators, factors or outcomes of it. Some notions are value-related, such as ‘freedom’, ‘tolerance’, and ‘legitimacy’, while others are process-related, such as ‘elections’, ‘majority rule’ and ‘responsiveness’” (van Schendelen 2010: 321). Despite these various notions, it is still possible to identify some general aspects about the democratic deficit that not only exist in academic papers but also in newspaper articles.

First, the executive has been strengthened whereas national parliaments have experienced a loss in control (Follesdal and Hix 2006: 534) and as a consequence some describe the system of the EU as executive federalism (Dann 2003; Habermas 2014: 90). Because of this development some commentators have even warned against the “post-democratic way” (Crouch 2008) which stands for private bi- or trilateral agreements made by a few national leaders of economic powerful Member States behind closed doors. Habermas states that for a democratic Europe, a concentration of power in an intergovernmental committee of the Heads of State or Government, who force their will upon national parliaments, is the wrong way (Habermas 2011a). Second, the European Parliament is too weak compared to the Council and needs more rights (Habermas 2013; Barroso 2012: 9). Although each EU Treaty – particularly the Treaty of Lisbon – has continuously enhanced the EP’s rights, it still does not possess the same political competences in every policy field. Moreover, some experts have stressed that especially since the EU’s sovereign

debt crisis the institutional balance has shifted to the European Central Bank, an institution which is not elected or controlled by the people. In particular (but not only) citizens in the Southern part of Europe cannot avoid the impression that it is not their elected politicians but technocrats who determine the welfare and future of their country (Sauga, Schult and Seith 2013: 66-69; Zydra 2013: 21). Third, the EU is simply 'too distant' from voters (European Commission 2001: 1; Follesdal and Hix 2006: 536) which means that many citizens are of the opinion that the European Commission and the European Parliament are not aware of the problems in peoples' everyday lives. Even the Commission itself has acknowledged this issue and admits that "The Union is often seen as remote and at the same time too intrusive" (European Commission 2001: 1) so that it becomes clear that some form of action is necessary. Organizations such as the Assembly of European Regions particularly refer to the last mentioned aspect of the democratic deficit when they argue that people would place more trust in the EU institutions if regions were more involved in the EU's decision-making processes (Assembly of European Regions 2006).

Bearing the citizens' and experts' opinions about the EU's competence as well as the overall impact of European legislation in mind, scholars have raised the question of how far legislative regions are able to participate in the EU's decision-making processes since they constitute an integral part of the EU Member State's political system. Not only that they have to implement EU legislation but, as it will be shown below, they are of utmost importance for citizens for a variety of reasons. With regard to the regions' participation possibilities, scholarship has already set out the diverse official and unofficial channels through which regions are capable of voicing their concerns and representing their interests. However, the vast majority of studies have focused on EU Cohesion and Structural policy solely which means that it is not known which lobbying strategy appears to be most promising in other policy fields. Do regions primarily cooperate with other non-governmental actors to put pressure on the decision-makers in EU Competition policy? Do regions merely work through their central government in order to influence legislation in EU Environmental policy? Do regions regularly act on their own behind their government's back in EU Education policy? Since researchers have not come up with empirical evidence in this regard, this study examines the preferred lobbying strategy of German and UK legislative regions in EU Competition, Environment and Education policies. This puzzle sets the theoretical frame for political scholars to theorize and argue about the functioning of the European Union.

1.2 Different perspectives on the functioning of the European Union

Most prominently, the functioning of the EU is distinguished between state-centered and actor-centered perspectives. The first view is taken by liberal intergovernmentalists whereas the latter is adopted by multi-level governance proponents. Depending on the theoretical lens, the potential influence of legislative regions differ significantly. To be more specific, the EU might constitute a “threat” or an “opportunity” (Jeffery and Rowe 2012: 749) which means that either regions do not have a say in EU politics or that they are capable of promoting their interests within the EU institutions autonomously.

Most importantly, liberal intergovernmentalists stress that states are rational actors whose national preferences are primarily determined by weighing the economic costs and benefits - actors who “calculate the utility of alternative courses of action and choose the one that maximizes (or satisfies) their utility under the circumstances” (Moravcsik and Schimmelfennig 2009: 68). With regard to EU day-to-day politics, Moravcsik disaggregates international negotiation into a causal sequence of three phases: national preference formation, interstate bargaining and institutional creation (Moravcsik 1993: 482).²

The liberal theory of national preference formation emphasizes that many different interest groups compete at the national level for getting their interests accommodated and that the respective Member State’s political system and the balance of power between the competing organizations determine which actors are capable of making their voice heard. In contrast to realist approaches, the state is not perceived as a ‘block-box’ with fixed preferences, but “foreign policy goals of national governments are viewed as varying in response to shifting pressure from domestic social groups, whose preferences are aggregated through political institutions” (Moravcsik 1993: 481). According to Marcur Olson’s logic of collective action (1965), liberal intergovernmentalists believe that particularly small organizations with very specific interests are more likely to mobilize their members and bring pressure to the national government compared to large organization with diffuse interests (Steinhilber 2012: 148).

² With his third identified phase ‘institutional creation’, Moravcsik also explained why national governments delegated power to supranational institutions. Since this research project concentrates on daily EU politics and on the functioning of the EU, this aspect will be left out.

As soon as the stage of interstate bargaining begins, it is assumed that preferences are stable and that power has been explicitly or implicitly delegated to the national government (Moravcsik 1995: 625). Consequently, the central government is treated as a unitary actor and inner-state organizations are not able to change the government's position anymore (Moravcsik 1998: 22). For that reason, liberal intergovernmentalists state that the national government acts as a gate-keeper between the domestic and the international level. Especially, the assumptions for this stage make clear that "governments are the most fundamental actors" (Moravcsik 1995: 613) in the EU decision-making process and that the influence of autonomous actions by legislative regions vis-à-vis European decision-makers is considered negligible or marginal at best.

Yet, Multi-Level Governance proponents adopt a different understanding as regards the functioning of EU: "we are seeing the emergence of multilevel governance, a system of continuous negotiation among nested governments at several territorial tiers - supranational, national, regional, and local - as the result of a broad process of institutional creating and decision reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level" (Marks 1993: 392). This statement illustrates that MLG neglects the state-centered perspective of liberal intergovernmentalists and adopts an actor-centered view instead which aims to take the complex processes of European decision-making into account.

Although those scholars do not dispute the national government's importance in EU politics, they stress that the Member State no longer monopolizes European-level policy making, because "policy-making in the EU is characterized by mutual dependence, complementary functions and overlapping competencies" (Marks et al. 1996: 372). To put it differently, political competences are shared between various levels of government so that they cannot be exercised by the Member State alone. Transport or environmental policy, for example, are dealt with by the local, regional, national as well as a European level. Since competencies in most other policy fields are not distributed perfectly either among these various levels, one can detect a lack of institutional hierarchy.

In contrast to liberal intergovernmentalism, the European Commission is not regarded as an agent of the Member States but it constitutes an independent actor who possesses the monopoly to initiate European legislation: "Regulatory initiative at the European level is demand driven rather than the product of autonomous supranational action, but the demands come not only

from governmental leaders. A significant number of initiatives originate in the European Parliament, the Economic and Social Committee, regional governments, and various private and public-interest groups” (Marks et al. 1996: 357). Furthermore, regional actors are in the position to create direct relations with European institutions, especially the European Commission with the consequence that they might even act behind the back of the national government (Hooghe and Marks 1996). Evidently, some regions are very active at the European level, invest many resources and engage in EU decision-making so that scholars argue that regional governments do have the possibility to get their regional interests accommodated and do by-pass their central government (Tatham 2008: 493). Finally, the latest EU treaties have significantly increased the legal power of the European Parliament and several scholars consider it a real co-legislator vis-à-vis the Council in most policy fields (see chapter 2). As a consequence, the Member State has lost its veto-player position in EU politics for the vast majority of areas.

To sum up, liberal intergovernmentalism illustrates that regional governments’ can only affect EU decision-making by working through the Member State. The EU strengthens the national government in comparison to its legislative regions, because it possesses a gatekeeper role in international negotiations in general and in EU politics in particular. Although liberal intergovernmentalists accept that there is a multitude of actors at the European level which may even act independently, those theorists underline that “member states are ‘masters of the treaty’ and continue to enjoy pre-eminent decision-making powers” (Moravcsik and Schimmelfennig 2009: 68). Applying the initial ‘threat/opportunity’ distinction from a liberal intergovernmentalist’s perspective, one can only conclude that the EU poses a threat since the national government is the ‘pre-eminent decision-maker’ and autonomous lobbying activities by regional governments are not effective. MLG, however, concludes that “state executive dominance is eroded in the decision-making process [...]” (Marks et al. 1996: 361) and grants subnational authorities room for independent, efficient lobbying activities to influence policy-making at the European level. Consequently, the EU would constitute an opportunity for regions.

This chapter has demonstrated that this project is of theoretical significance for political scholars. If we want to better understand the functioning of the European Union, more research has to be carried out. Additionally, this work is also valuable for practitioners and the general audience because it will provide new insights of the daily work of German and UK regions’ representation offices in Brussels, thereby revealing the real role of legislative regions in the EU

decision-making processes in EU Competition, Environment and Education policy. As it has been shown above, many people express severe concerns about the functioning of the EU and have the impression that their region is not sufficiently included in the EU machinery. The following chapter is going to highlight the increasing importance of regions so that one better understands the rationale why research in this area has still not come to an end.

1.3 The increasing importance of regions within the European Union

Irrespective of the theoretical lens, this chapter provides political, cultural and economic arguments that will depict the crucial role of regions in the EU today. Politically, regions have experienced an upgrade by the European Commission through structural and cohesion policy; they constitute a level of government which remains close to citizens, and they are entities with high political responsibility which have to implement EU legislation. Culturally, they are the bastion of regional identity providing guidance and orientation in an increasing globalized world. Economically, only this level is able to offer products or services that meet the local and regional demand of consumers (Thiele 2006: 35). The remainder will elaborate on these arguments and show that especially because of globalization and European integration, topical research is not supposed to focus on the Member State solely but on the regional level as well.

1.3.1 Political significance

First and foremost, the majority of regions have been strengthened by the Commission's structural and cohesion policy because it allowed regional governments to establish direct contacts with European actors, thereby by-passing the national level. Scholars note that the Commission was not only willing to include regions in this policy field but that it was also ambitious to strengthen the regional level by creating a system of multi-level governance (Hooghe and Marks 2001: 90; Greenwood 2011: 182). In this regard, the Commission initiated and financed various regional cooperation programs that aimed to reduce administrative, legal and physical barriers, to create mutual trust and understanding for local-regional issues and to establish EU-wide regional networks for spreading best practice in administrative and economic modernization. It should be emphasized, however, that this argument refers specifically to

administrative regions. In comparison to legislative regions, which used to have more policy competences and political participation rights before the Treaty of Maastricht came into force, administrative regions had little to lose if political competences were delegated to the European level. In fact, some Member States such as Greece and Ireland did not even have a regional level before the EU decided to set up structural and cohesion policy programs in the mid-1980s. But in order to be eligible and apply for regional funding, these Member States started to create a regional level of government in the late 1980s and early 1990s (Hooghe and Marks 2001: 196; Quinn 2010: 244-245). The bottom line is that administrative regions experienced an upgrade through the evolution of the European Union whereas many legislative regions perceived this development negatively (Börzel 2002: 53).

A second political argument, which exemplifies the increased role of regions, relates closely to the EU's previously mentioned remoteness: the proximity to citizens. Because regions are much closer to people than the national or European level, these entities are portrayed as the bridge that communicates Europe to and reconnects it with its citizens (Bourne 2006: 2). Regions are not only familiar with the citizens' regional needs but they also maintain a direct relationship with them so that an inclusion of regions in the EU decision-making process would help to formulate a more appropriate agenda for meeting regional specific issues. Although the European Commission is aware of the fact that it needs to better explain its policies and objectives to the European audience and provide more readable and legally clear texts (European Commission 2006), it lacks the financial resources and appropriate channels to do so. Also in this context, regions can be seen as a key to overcome this issue.

On top of that, regions are also authorities with a high degree of political responsibility because they are expected to implement EU legislation. Especially those regions with law-making power are considered to play a crucial role in this regard: not only are they a democratic elected institution enjoying a high level of legitimacy, but they also possess far reaching expertise in many policy fields which affect the EU citizens' daily lives to a large extent. Therefore, not including regions in EU decision-making processes could cause feasibility problems which places the EU in poor light.

1.3.2 Regional identity

Scholars stress that Europe experienced a wave of regionalization since the 1980s because in times of globalization and European integration, the nation state has lost its political power and people feel a strong attachment to their region (Wirsching 2012: 299-308). As a result regional identities became more important: “European integration, by partly dismantling the nation states, encourages individuals to cease believing that they live in nation states, and accepting that they are Bretons, Lombards, or Bavarians” (Kirsch 1995: 67). As a consequence, both phenomena gave regionalist and separatist parties across Europe a boost; typical examples include *Convergència i Unió* (Convergence and Union) in Catalonia and the *Euzko Alderdi Jeltzalea* (Basque Nationalist Party) in the Basque Country in Spain, the Scottish National Party in the UK as well as *Partido Sardo d’Azione* (Sardinian Party of Action) in Sardinia. These parties attempted to use the EU as a means for promoting their regional profile and some even hoped to find an ally in the European Commission for their separatist ambitions (Hepburn 2010).

Spain provides several inner-state examples that demonstrate the increasing significance of regional identity. After Franco’s death in 1975, Spain drew up a new constitution with decentralized elements which granted political competences to the *Comunidades Autónomas* (autonomous communities) and for most of the Spanish regions these newly granted powers were fundamentally important for establishing institutional stability and democracy. The Basque Country, however, was not satisfied with this status. Uncompromisingly, Basque public opinion stated that their identity is Basque not Spanish and referred to their antique history and language which is not linked to the Roman culture. Although the central government was willing to confer special autonomy concessions to the Basque Country, radical left parties strove for independence and claimed that the Basques were ‘persecuted more than before’ so that “ETA’s actions were considered not only justified but necessary”(Conversi 1997: 149).

Additionally, one could also detect a strong sensation for secession in Catalonia which, however, is not only based on cultural-historic and political reasons but also on economic disadvantages. Between 1939 and 1975, General Francisco Franco prohibited Catalan and other regional cultural traditions in order to “annihilate or assimilate” (Zelik 2014: 22; own translation) Basque and Catalan cultural communities. Due to these and other historic suppressions, many Catalans started to fight for an autonomous region with far-reaching political-economic rights and some even for an independent state. However, neither the conservative *Partido Popular* nor the

socialist party *Partido Socialista Obrero Español* were willing to support them and when the Spanish national government cut Catalonia's budget in light of the financial crisis in 2008, the regionalist left-party *Convergència i Unió* began to mobilize Catalan citizens for independence (Zelik 2014).

Since regionalist and separatist parties usually do not enjoy the support of the national government, they may "use" (Hepburn 2010) Europe to project their demands upwards to the European level. If, for example, an ethnic or linguistic minority feels disadvantaged or even oppressed, it may use the EU to attract international media attention; thereby putting pressure on the national government. In case a regionalist party forms a government with its national party, the latter may be compelled to accommodate some of the regional demands. The bottom line is that due to the increasing importance of regionalist and separatist parties, the national party is challenged more often so that the chances of meeting regional interests are likely to be higher.

1.3.3 Satisfying local and regional demands

Although some experts in the 1980s such as Theodore Levitt (1983) believed that consumers would mainly purchase globally-standardized products in the future - thereby making local and regional particularities superfluous - the opposite has become true. Indeed, sociologists have recently clarified that globalization does not necessarily override locality (Robertson 1995: 26) and that one can detect a regionalization of economic relations (Thiele 2006: 37).

Nowadays, consumers get quickly fed up with standardized products of international companies and demand special quality which suits their local and regional desires (Crocoll et al. 2013: 26). Scientists have invented the term 'Glocalization' to describe that phenomenon. Robertson defines glocalization as "the tailoring and advertising of goods and services on a global or near-global basis to increasingly differentiated local and particular markets" (Robertson 1995: 28). Consequently, as glocalized products or services valorize locality, large as well as small- and medium-sized companies are able to maximize their profit. To put in simple words: companies have to 'think global, but act local'.

This slogan goes hand in hand with the 'new regionalism' literature which not only emphasizes the increasing importance of local production systems but also the "social construction of the region as a key element in success or failure" (Keating 2003: 52). In this regard,

regions in the EU constitute crucial spaces or entities with particular demands. Some regions possess a very strong identity and culture so that every business man needs to be aware of local and regional differences. People outside of Germany, for example, usually think of ‘Lederhosen’, the ‘October-Fest’ or ‘BMW’s’ when they are asked about German culture or products, not knowing that all these associations are only rooted in one Southern German region.

A further argument strengthening the economic importance of regions is a recent phenomenon called ‘cluster’-building. By definition clusters are “geographic concentrations of interconnected companies and institutions in a particular field” (Porter 1998: 78). The strengths of cluster-building lay in the resulting spill-over effects such as facilitating the recruitment of new employees in the respective region, improving the coordination with the corresponding suppliers, intensifying cooperation among similar companies and so forth. Therefore, the spatial proximity of diverse companies can be regarded as a useful strategy to come up with new ideas and innovative products as Scott and Storper emphasize: “Specialized regional economies are the locus of intense knowledge spillovers, thereby helping to raise the rate of innovation, and to promote long-term growth” (Scott and Storper 2003: 583).

This last argument is particularly relevant for legislative regions because – in contrast to administrative regions such as French ones – they enjoy political competences which can be used for the promotion of regional economic development. In this regard, the basic objective would be to create optimal legal and infrastructural conditions for such clusters (Thiele 2006: 39). To sum it up, it is fair to conclude that over the last decades the regional level has constantly gained importance for business interests.

1.4 Regional engagement in the European Union

After having elaborated on the importance of regions at present, this chapter is going to focus specifically on the diverse EU activities of regions from the 1980s until the coming into force of the Lisbon Treaty in 2009.³ It will be shown that regional engagement has increased significantly during this period and that the regions’ EU activities went hand in hand with the unrealistic wish to establish a regional or ‘third level’. After leaving this hope behind at the end of the 1990s,

³ The reason for not going back to the 1970s or 1960s is due to the fact that regions were not concerned about EU policies at that time.

regions started to adopt a rather pragmatic and professional approach on European integration with the objective to make their voice heard in EU-decision making.

1.4.1 The 1980s - the roots of regional engagement

The first time the regional level experienced an upgrading was in the 1980s when the European Commission initiated its regional policy programs in order to enhance social cohesion and reduce the economic disparities among Europe's regions. Later on, this aim was legally codified in the Single European Act which stated that "The European Regional Development Fund is intended to help redress the principal regional imbalances in the Community through participating in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions" (Article 130c). As a result, regions were allowed to play an active role in a specific supranational policy area for the first time of the European Union.

The 1980s were of particular importance for the regional level and 1984 can be considered the founding year of the *sub-state* representations in Brussels: Birmingham City Council opened the first office. It did not take long for other sub-national authorities to follow suit so that from that date onwards political scholars have detected a quick burgeoning of regional representation. Approximately ten years later, the number of offices reached more than 140 (Jeffery 1997b: 183) and today it is estimated that there are more than 200 *sub-state offices* (Huysseune and Jans 2008: 1). Experts highlight that it is impossible to name their exact number because, contrary to Member State permanent representations, embassies or consulates, sub-national offices do not enjoy official status which means that they need not to register (Tatham 2010: 81).⁴

The principal reason for the establishment of regional representations in the second half of the 1980s was the Single European Act which resulted in an increasing transfer of political rights from the national to the European level (Jeffery 1997b: 189). Already at that time several subnational authorities in a number of Member States enjoyed far reaching political competences in several policy fields but this development curtailed their power. By opening representation offices in Brussels, German and Austrian regions, for example, hoped to gain direct access to the EU institutions in order to receive information about upcoming EU legislation as soon as possible

⁴ This observation specifically refers to administrative regions because almost all legislative regions maintain an individual webpage about the activities of their representation office or provide at least contact details on the regional government's webpage.

(Hooghe and Marks 2001: 87). The basic objective for them was to prevent any future transfers of power whereas administrative regions such as the British ones were not concerned about this aspect but focused on acquiring EU funds instead. The UK devolution process in the 1990s, however, led to newly elected regional authorities and granted far-reaching political rights to Scotland, Wales and Northern Ireland which, in turn, resulted in a change of activity for the respective regional representation offices. New structures had been created in order to be better able to meet the new regional government's objectives.

Other regions considered the German Länder experiment a test case for their own regional engagement and subsequent regional representations were capable of building upon the precedents set by the German 'pioneer' group (Rowe 2011: 48). From the late 1980s until the second half of the 1990s German representation offices fought a long battle against the federal government for the right to establish direct contacts to the EU institutions. They argued that EU policy-making could no longer be treated as foreign policy – a policy area under which the competences were reserved to the federal government – because most laws stemming from the EU seriously impacted on the regional level (Bulmer et al. 2000: 34). The federal government, on the other hand, argued that such a *Nebenaußenpolitik* ('auxiliary foreign policy') would jeopardize the federal government's scope of negotiation in the Council since Germany would not speak with one but 17 voices. Yet, this perception was over exaggerated. After some time and some quarries the German government accepted the Länder EU engagement and both actors started to work with instead of against each other.

1.4.2 The 1990s - sub-national mobilization and wishful thinking

With the enforcement of the Treaty of Maastricht in 1993, a significant transfer of political power from the national to the European level took place. This development, in turn, heavily affected regional competences. In Germany, for example, the Länder lost competences in higher education, occupational training, environmental protection, transport, regional policies as well as regional promotion of economic development, agriculture, organization of the market in wine, and public finance (Laufer and Münch 1998: 289-290). In order to sign the Maastricht Treaty the German national government depended on the consent of the Länder, though. That was the very first time that regions could express their claims and national as well as European leaders needed to take their demands into consideration. As a result, the subsidiarity principle was incorporated

into the Treaty, the Committee of the Regions was established, and regional access to the Council of Ministers was granted. According to former Art. 5 (TEC) the subsidiarity principle specifies that “In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community”.

The possibility of regions to build strong coalitions and to shape the European integration process initiated the debate about a ‘third level’, a ‘Europe of the regions’ and ‘sub-national mobilization’. The basic vision of the third level was that there has to be a state level beneath the level of the nation-state in every Member State (Jeffery 1997a: 69), so that the regional level officially forms part of the EU’s decision-making processes next to the first (EU) and second (nation-state) levels. Furthermore, strong regional players such as the German and Belgian regions associated with the slogan ‘Europe of the regions’ a federal Europe in which, ultimately, regions might become even more important actors than the national government itself.

In hindsight, these expectations can only be regarded as excessively exaggerated or wishful thinking. Because of the sub-national diversity in the EU a homogenously constructed ‘Europe of the regions’ could not become reality since sub-national structures “remain strongly influenced by national traditions and reflect the differences of bureaucratic cultures and political conflict of the past” (Bullmann 1996: 4). For that reason, scholars have rephrased the slogan and, at present, one speaks of “Europe with... *some* of... the regions” (Greenwood 2011: 176; emphasis in the original). The word ‘some’ in this slogan already indicates that not all regions possess the capability or the will to engage in the complex European decision-making processes. Particularly legislative regions stand out in this context because they have to transpose and implement European laws in the end. In order to increase regional cooperation in economic and cultural matters and to forge political ad-hoc coalitions more quickly, these regions founded the Conference of European Regions with Legislative Power (REGLEG) in 2000. REGLEG members are obliged to actively participate in policy formation in accordance with the principles of subsidiarity. Another crucial objective is to raise the visibility, awareness and understanding within the EU-institutions of the specific features of regions with legislative power. The vast majority of administrative regions, in contrast, simply do not engage in that sort of activity because they are poorly endowed with personnel and financial resources. Besides, they lack the legislative

competences so that regional engagement at the European level is primarily focused on fund acquisition and information gathering. In comparison with their legislative counterparts, the frequency of legislative lobbying activities is very low (Interview 1, Interview 2, Interview 3).

The role of legislative regions in the various negotiation rounds on the Treaty of Maastricht and the foundation of regional representation offices in Brussels from the mid-1980s onwards have also triggered the debate about 'subnational mobilization'. This concept contradicts the state-central model which highlights the gate-keeping role of the Member State as well as their monopoly of representation. Liesbet Hooghe was among the first scholars who described this new phenomenon: "Subnational mobilization is perceived as an instrument to challenge state power, and to support supranational authority. Subnational units compete with member states for control over territorial interest aggregation" (Hooghe 1995:4). This is not to say, however, that subnational mobilization erodes the central role of the Member State in EU decision-making but complements it (Hooghe 1995: 5). The debate about subnational mobilization led to a variety of studies examining the diverse formal and informal channels of interest representation which will be described in detail in chapter 2.

As the EU had gained more political competences in the 1990s new actors appeared on the surface and the debate on multi-level governance began. This debate focuses on whether a "reconfiguration of governance" (Jeffery 1997c: 212) in the EU could be detected since regions could engage on European politics autonomously because they had established an own direct route to the institutional architecture of the EU via their regional representations. From that moment on, several scholars have continued to point out that the EU also provides a 'window of opportunity' for some regions because, theoretically, they could simply by-pass their central government through their EU networks (Ansell et al. 1997: 350). Especially in EU Regional policy, there are several cases which demonstrate that regions made use of this strategy because their central government reduced national regional spending (Hix and Hoyland 2013: 176).

Depending on the respective type of regions – administrative or legislative – regional mobilization can take various forms such as securing information on EU developments, explaining the region's viewpoint on policy issues to EU decision-makers, or even attempting to influence EU policies (Jeffery and Rowe: 2012). With regard to the latter one has to differentiate between 'downloading' and 'uploading'-activities. The first term describes the process in which the representation office collects as much relevant information and data as possible and forwards it

to its home base where the regional government decides upon the positioning. The second term refers to provide European Commissioners, MEPs and all civil servants of the various committees with regional specific information. To put it in other words: uploading includes interest representation or lobbying. Especially this activity is of high importance for legislative regions if they attempt to make their voice heard and get their interests accommodated at the European level. It does not come as a surprise that interest representation entails high costs so that not every legislative region is financially in the position to lobby for its interests. Although it is difficult to exactly quantify the representation's added-value, it is fair to assume that they are of utmost importance for regions to make their voice heard - otherwise it is hard to explain why Bavarian officials purchased and renovated a property the beginning of the 21st century the whose costs amounted up to approximately 30 million euros.

1.4.3 The 21th century - more power for regions?

Since most legislative regions had come to terms with the fact that their initial hopes and expectations of the early 1990s about their future role in EU decision-making were far too ambitious and unrealistic, a more differentiated and pragmatic approach towards the European Union was considered necessary in the beginning of the 21th century. Due to massive allegations of corruption and the subsequent resignation of the Santer Commission, the Commission as a whole was 'stigmatized' and lost credibility in the eyes of many citizens so that it needed to regain trust. Therefore, regions argued and still argue that by ensuring a stronger inclusion of the regional level in the EU decision-making processes, the Commission would not only increase its legitimacy but could also counter the often cited EU's remoteness from citizens - a "win-win-situation" for both actors (Interview 10; Interview 15).

As a response, the Commission published a White Paper on Governance in which it acknowledged that "Many people are losing confidence in a poorly understood and complex system to deliver the politics that they want. The Union is often seen as remote and at the same time too intrusive" (European Commission 2001: 1) and continues to write that "there needs to be a stronger interaction with regional and local governments and civil society" (European Commission 2001: 2). From that moment on, the Commission even increased its efforts to include small interest organizations in its decision-making process by offering financial support to non-profit organizations such as Eurolink Age, European Federation of National Organisations Working

with Homeless, European Disability Forum, European Anti-Poverty Network and many more (Buholzer 1998: 240).

Since the Lisbon Treaty came into force in December 2009, the formal position of regions have been somewhat strengthened. To begin with, the principle of subsidiarity was expanded and now it explicitly refers to the regional and local level: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, *either at central level or at regional and local level*, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level” (Art. 5 (3) TEU; emphasis added). In similar vein, the Protocol on subsidiarity has been re-formulated so that the Commission is formally obliged to take into account “the regional and local dimension of the action envisaged” (Protocol No. 2, Art. 2). Next, the Committee of the Regions is legally able to appeal the European Court of Justice if it believes that the subsidiarity principle has been breached. Finally, Lisbon has established an early-warning system for national parliaments concerning the compliance with subsidiarity. If a certain threshold has been reached, national parliaments are able to object to a Commission’s legislative proposal so that, in turn, the Commission needs to review it. Afterwards, it has to decide if it maintains, amends or withdraws the respective proposal.

Yet, in how far these changes really increase the position of regions in practice remains a controversial issue. On the one hand, political scholars assess that this framework “sets a potentially significant new marker in the relations between the EU’s key agenda setter and the local and regional level” (Jeffery and Rowe 2012: 756). This assumption, however, is rather vague because it does not refer to any clear measurable criteria that allows to trace improvements in reality. Legal experts, on the other hand, stress that the region’s capacity to challenge EU actions is rather weak because they are still treated by the EU Courts as ‘non-privileged applicants’ which requires applicants to be either addressed, or directly and individually concerned by the respective EU initiative (Thies 2011: 25-27). Since these conditions constitute an “almost insurmountable obstacle to conferring the capacity to impugn EU acts on individual, as well as on the Länder, which are on the same level from this point of view” (Panara 2011: 149), one can conclude that regional governments still face huge difficulties in defending their political competences by referring to the subsidiarity principle.

That the Committee of the Regions has been granted a new right can certainly be considered an increase in the importance of that body. However, this change might have a symbolic rather than political relevance because litigants are almost never successful in challenging EU actions on the basis of a potential breach of the subsidiarity principle. The reason for this is due to the fact that it is very easy for the European Commission to explain why action at the Union level is necessary. In general, EU legislation attempts to reduce or even eliminate different legal regulations in the Member States in order to guarantee uniform standards as regards consumer protection, product safety, environmental conditions and so forth. Since a single Member State is literally not in the position to achieve these transnational objectives, the necessity for EU action is hard to deny (Nuffel 2011: 66). Besides, the Commission always pays close attention to include passages in its legislative proposals that underline the necessity of taking action at the European level so that it appears rather unlikely that the Union Courts will uphold potential claims.

As regards the last mentioned innovation - the establishment of an early-warning system for national parliaments concerning the compliance with subsidiarity - is also debated controversially. Some scholars believe that this instrument could indeed strengthen the regional level (Kiiver 2011; Cooper 2012) whereas others call into question its effectiveness due to the lack of parliamentary human resources and the very short scrutiny time of only eight weeks (Paskalev 2009; Knutelská 2011). What we can be sure of, though, is the relatively limited use of the EWS. Several studies have demonstrated that, evidently, national parliaments are rather reluctant to make use of it (Raunio 2010; de Wilde 2012; Hefftlér 2013).

1.5 State of the art and research relevance

In the early and mid-1990s, studies on EU activities of regional governments started to grow considerably.⁵ At that time, Liesbet Hooghe and Gary Marks - who are among the most known political scientists in this subject - published several articles about the increasing importance of sub-national actors and the diminishing role of nation states in EU decision-making (Hooghe and Marks 1996). They argued that the EU provided the regions with various external channels to upload their interests autonomously, thereby by-passing their central government and

⁵ It should be noted, however, that the German academic literature had already dealt with that topic much earlier (Birke 1973; Oberthür 1978; Hrbek and Thaysen 1986).

influencing EU decision-making. Since then much time has passed and academia has come up with many competing and sometimes contradicting results. Due to this lack of consistency it is difficult to make any general remarks about recent findings because scholars stress that the actual role of regions in EU decision-making depends upon a lot of factors.

To begin with, the policy field itself is of major significance (Swenden 2009: 122). In this regard, the majority of studies have been limited to regional and cohesion policy (Jeffery and Rowe 2012: 752) which provided evidence that regional governments did challenge their central governments in terms of establishing direct networks with the European Commission. Yet, since this policy area is founded on the principle of partnership, the increasing communication and negotiations with civil servants of the Commission do not come as a big surprise. Besides, one cannot easily transfer conclusions in cohesion policy to other policy areas because most EU policy fields do not exert (re)-distributive but regulatory effects. As a consequence, experts highlight that since “[...] regional political exchange with the supranational level is largely confined to EU structural policies [...] we need more analyses that investigate the differential impact of regional political choices on a larger portfolio of relevant policies” (Bauer and Börzel 2010: 260).

Apart from specific policy analyses, scholarship has also attempted to produce rather general results concerning the regions *Europafähigkeit* (fit for Europe) for Treaty amendments (Große Hüttmann 2005; Bauer 2006; Eppler 2008) and EU day-to-day politics (Jeffery 1997d; Lambertz and Große Hüttmann 2009; Sturm and Dieringer 2010). With regard to the former, scholars have noted that constitutionally strong regions such as the German, Austrian and Belgian ones have recently changed their ‘let us in’ to a ‘leave us alone’ attitude (Jeffery 2003: 107; Jeffery 2004b: 3) which means that they do not demand further participation rights in negotiations about Treaty amendments but aim to protect their regional competences at the national level instead. In EU daily politics, however, some scholars consider legislative regions as active players who might even by-pass the Member State government which means that they are able to defend their individual interests autonomously. Ansell et al. argued that regions could “potentially mobilise Commission support against their own national government” (Ansell et al. 1997: 350). In similar vein, Tatham found that the opportunity structures provided by the European level “do represent important channels of access that regions can use in an attempt to influence the EU policy process”(Tatham 2008: 493) and concludes that “[R]egions thus have the opportunity to become

relevant players in the Brussels policy-game even against the wishes of their sometimes inextensible gate-keeping central governments” (Tatham 2008: 511).

Other authors, however, are rather skeptical about these assumptions and believe that working with the central government yields much greater results (Pollack 1995: 362-363; Bache 1997; Jeffery 1997c: 205; Nagel 2009: 86; Swenden 2009: 122). For bringing structure to this debate, Rowe advocates not to treat regions all around Europe as similar actors but to differentiate between legislative or constitutional regions on the one hand, and administrative or non-constitutional regions on the other (Rowe 2011). She states that, in contrast to legislative regions, administrative regions do not represent an elected regional government but a very heterogeneous subscriber base of profit and non-profit organizations with the result that they “are often implementing only a weakly articulated strategic policy agenda on Europe” (Rowe 2011: 96). Consequently, if scholars are about to making general conclusions about subnational authorities’ lobbying strategies, they should make very clear reference to legislative regions since in most circumstances they are the active participating players that seek to make their voice heard.

However, legislative regions do not represent a homogenous group of actors either, which renders any analysis even more complicated. Generally, EU regions in federal states such as Germany, Austria and Belgium enjoy more political competences and inner-state mechanisms to defend their interests and coordinate their actions than regionalized states such as the UK, Italy or Spain. Bearing these differences in mind, it is not surprising that recent studies which laid their focus on one Member State solely have provided competing results. The German Länder are usually seen as the most active players in the multi-level system of the EU which make immense efforts to promote their interests directly upwards the EU institutions (Knodt et al. 2009). The Spanish *Comunidades Autónomas*, in contrast, rely on the Member State’s government in most circumstances (Nagel 2009: 86) whereas Scotland works sometimes with and sometimes without the central government (Swenden 2009).

These different results and sometimes contradicting findings are the primarily reason why the debate among multi-level governance proponents on the one side and liberal intergovernmentalists on the other has still not come to an end. Whereas the latter argue that the Member State government is the most crucial actor in EU decision-making which holds a gate-keeper position, the former challenge this claim and assume that regions could by-pass their

central government and pursue their own individual objectives. Since some authors demonstrated that some regions are capable of representing their interests autonomously at the European level without involving their national government, the question arises of how often and in which policy fields regions actually make use of this method. Until the present day, no scholar has provided hard evidence about *regular* state by-passing. Undeniably, several regions do that once in a while. But is it possible to make general conclusions if this action is the exception rather than the rule?

This work argues that multi-level governance proponents can only seriously challenge liberal intergovernmentalists if at least two conditions are met. First, state by-passing has to be observed also in areas other than EU Structural and Cohesion policy. For that reason, this research project conducts a comparative study between German and British legislative regions in three distinctive EU policy fields: Competition, Education and Environmental policies. Second, state by-passing needs to occur on a *regular* basis which means that the majority of regions within a Member State defend their interests without the support of the central government if the European Commission takes action. It will be argued that no region alone is able to influence EU decision-making substantially so that the basic criterion for defending regional interests is coalition-building with other actors in order to increase the region's political weight. If we find evidence that regions prefer to forge a coalition with their regional counterparts rather than with the central government in one of these policy fields, the theoretical debate gets fresh impetus.

Another issue in this subject is that experts disagree about the most important variable that affects regions' EU lobbying activities. Scholarship has identified a number of factors which somehow impact on the capability of regions to influence EU decision-making to their favor (see chapter 3). As a consequence, research went down different paths without providing irrefutable results that could have convinced liberal intergovernmentalist theorists. For example, some authors focused exclusively on the region's size (Nielsen and Salk 1998), whereas others concentrated on the region's financial situation (Bouwen 2002: 10) or its cultural distinctiveness (Hepburn 2010). If we are aware of the most crucial variable in this context, future research can bundle its efforts and come up with new evidence.

Bearing in mind that scholars could not detect this key variable, this study makes use of insights from a different discipline: organizational sociology. By applying the situational approach, one of the most popular approaches in organizational sociology, this work is going to show that the legal and constitutional situation of the EU and the Member State is by far the most essential

variable for hypothesizing whether a region works with or without the national government. However, since the situational approach lacks explanatory power concerning actor behavior, it will be combined with rational choice theory.

To sum it up, this work makes at least three contributions to the on-going debate of subnational activity at the European level that has emerged over the last decades:

1. To scrutinize the preferred lobbying strategy of legislative regions with different legal provisions in EU Competition, Environmental and Education policy generates new data about potential state by-passing. Depending on the final results, this project provides further arguments for liberal intergovernmentalist or Multi-level governance proponents.
2. Tackling this field of study from a different discipline (organizational sociology) adds a new theoretical perspective to the subnational mobilization literature which might provide fresh impetus. The situational approach offers a clear analytical structure which helps to elaborate on the relationship between the various identified factors in MLG and lobby group literature, thereby revealing the most important variable that influences regions' lobbying activities. As a result, future researchers can bundle their efforts and find new evidence more easily.
3. A comparative study of German and UK regions allows to draft a more accurate picture about the role of legislative regions in the EU. Moreover, illustrating whether these regions interact *with* or *without* their central government on the one hand and with the European institutions on the other in three different policy areas helps to better grasp the complexity of EU decision-making. Depending on the final result, this research may provide arguments for or against the alleged EU's democratic deficit (EU's remoteness to citizens).

1.6 Case selection and methodology

The principle reason for this comparison constitutes the different legal-political situation of both Member States which results in distinctive inner- and outer-state information as well as participation rights in EU decision-making. Due to the German constitution the German Länder do not only possess comparatively strong legal political competences but they also dispose of many formal mechanisms and instruments to coordinate their views and to get their interests accommodated at the national as well as the European level. Since the entry into force of the Lisbon Treaty, the EU has been provided with a precise catalogue of competences which is divided

into exclusive, shared and supporting competences. This differentiation resembles very much the situation of the German Länder and other regions and allows to develop clear-cut hypotheses about the cause-effect-relationship between the legal and constitutional situation of the EU and the Member State (independent variable) on the one hand and regions' lobbying strategies (dependent variable) on the other. It will be argued that the national government is the most important coalition-partner in EU Environmental policy because it constitutes a potential veto-player through the Council of Ministers. In EU Education and Competition policy, in contrast, other actors such as inner- and outer state regions are considered more important to defend regional interests because either the regional or the European level enjoys exclusive competences so that the national government does not hold a veto-player position. Due to the constitutional situation of the German Länder, state by-passing is expected in both EU Education and Competition policy.

Ideally, a comparison between constitutional and non-constitutional regions might appear very fruitful; however, almost no administrative region engages in legislative lobbying. Scholarship has already shown that the vast majority of those regions concentrate on gathering information and fund acquisition. In fact, administrative regions from England, Hungary and Czech Republic have reduced their staff or have even closed their representations (Interview 1) so that this study needs to select a Member State whose regions are not equipped with strong legal-political competences in EU affairs: the UK. The still ongoing devolution process has resulted in an asymmetry between Northern Irish, Scottish and Welsh competences and although these regions enjoy comparable political competences vis-à-vis their German counterparts, their legal situation is a different one. EU politics is treated as reserved matter to the central government which means that these regions only possess shared political competences in this matter. Admittedly, this renders a UK/Germany comparison somewhat difficult in EU Education policy since the German Länder do not lose their exclusive competences in this regard.⁶ However, this policy field is still very interesting because it scrutinizes the only situation in which some regions are legally as strong as the Member State government or perhaps even stronger. In case that by-passing occurs only in this policy area but not in EU Competition and Environmental, one may hypothesize that exclusive legal competences are the key criterion for state by-passing. As a consequence, state by-passing of UK legislative regions is expected in EU Competition policy.

⁶ By the way, this situation applies to every EU Member State. At present, only the German Länder possess constitutionally guaranteed political rights in EU Education policy.

The reason for choosing EU Competition, Environmental and Education policy is because the EU as well as the regions possess different legal political competences in those areas. Whereas the European Commission can autonomously carry out legislative initiatives in most competition policies without formally involving the Member States through the Council of Ministers, it is dependent upon their consent in EU Education. In fact, the German Länder even have exclusive competences in this policy field so that they *de jure* hold a veto-player position. As regards environmental policies, both actors are equipped with shared political competences so that no one can impose the will on the other. In total, these three policy fields cover all possible legal manifestations of the EU's and the Member State's constitutional situation.

In carrying out this research project, I have collected and evaluated data and information from three different types of sources. First, academic publications as regards the multi-level system of and interest representation in the EU; second, newspaper articles about lobbying and democratic concerns; and third, semi-structured expert interviews with policy advisers, heads and deputy heads of office of the regions' representations in Brussels about (a) collecting and exchanging information with other organizations, (b) the procedures of lobbying and the mechanisms facilitating coalition-building as well as (c) the necessity, frequency and relevance of coalition-building.⁷ Apart from the regions Saxony and Mecklenburg-West Pomerania, all representation offices of the German and UK regions were willing to take part in this study. For each policy field, I sent an interview request to the theses offices so that the maximum number of interviews for one representation was three. Due to human resource constraints or vacancies, only two persons could be interviewed in the case of Hesse, Saxony-Anhalt, and Thuringia and one person in the case of Saarland, Berlin, Hamburg, Scotland, Wales and Northern Ireland. In total, the overall number of interviews with civil servants from the representation offices were 27. On top of that, one director of the Committee of the Regions, four policy advisers of the European Commission, three MEPs and three advisers of the Permanent Representation of Germany were interviewed in order to cross-check the final results. The interviews were conducted between February and July 2014. The interviewees requested discretion so that quotes and references need to be anonymized.

⁷ See Appendix A and B

1.7 Operationalization

With regard to independent variable, the following three specifications at the EU and national level will be applied:

1. Exclusive legal political competences
2. Shared legal political competences
3. Supporting or no legal political competences.

At the European level, the Treaty of Lisbon has established a division of competences between the EU and its Member States. Article 2 of the Treaty on the Functioning of the European Union specifies that:

- “When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.” (Art. 2 (1) TFEU)
- “When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.” (Art. 2 (2) TFEU)
- “In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.” (Art. 2 (5) TFEU)

Table 1 provides an overview about the major policy fields and the EU’s corresponding legal competences.

Table 1: The division of competences between the EU and its Member States

Exclusive competences of the EU	Shared competences of the EU	Supporting competences of the EU
Customs union	Internal market	Protection and improvement of human health
Establishment of the competition rules necessary for the functioning of the internal market	Social policy, for the aspects defined in the TFEU	Industry
Monetary policy for the Member States whose currency is the Euro	Economic, social and territorial cohesion	Culture
Conservation of marine biological resources (fisheries policy)	Agriculture and fisheries (except conservation of marine biological resources)	Tourism
Common commercial policy	Environment	Education, vocational training, youth and sport
	Consumer protection	Civil protection
	Transport	Administrative co-operation
	Trans-European networks	
	Energy	
	Area of freedom, security and justice	
	Common safety concerns in public health matters, for the aspects defined in the TFEU	

Source 2: Piris 2010: 75

In Member States that consist of legislative regions, the regional government may possess exclusive, shared or no legal political competences in a policy field. Concerning the two selected Member States of this research project - Germany and the UK - we can state that their legislative regions enjoy different legal-political competences. The Länder have a variety of exclusive and shared competences which allow them to even represent the national government in the Council of Ministers in a few matters. The legal situation of the legislative regions in the UK, however, is a bit more complicated. Since chapter 4 will specifically discuss this aspect in detail, it is sufficient

to state that Scotland, Wales and Northern Ireland enjoy exclusive competences in a number of policy fields but cannot act independently at the EU level because European affairs remains a reserved matter to Westminster Parliament.

As regards the operationalization of dependent variable (lobbying strategies of legislative regions), this work differentiates between four possible specifications which will be worked out in chapter 3 in detail:

1. Coalition-building with the national government
2. Coalition-building with regions of the same Member State
3. Coalition-building with regions from other Member States
4. Coalition-building with non-governmental actors such as private companies, associations, labor unions, NGOs and so forth

The last three stated strategies are of particular importance because if a legislative regions decides to apply one of them, it 'by-passes' the national government.

1.8 Structure

The structure of my study is as follows. Chapter 2 illuminates the lobbying phenomenon in the European Union. It not only works out why lobbying is perceived in a negative way by many citizens but also why politicians depend on external advice. Afterwards an overview of different understandings of the term 'lobbying' and a concrete definition thereof will be provided. Then, I turn to the main addressees of lobbying in the EU decision-making process: the European Commission, the Council of Ministers, the European Parliament and the Committee of the Regions. I describe how the EU institutions' structure, composition and legal tasks affect the lobbying efforts and strategies of organizations. Since each institution demands different kinds of information, it is argued that every lobbyist needs to be perfectly familiar with these features in order to make its voice heard. The final section sets out when and how the Commission starts to work on a draft and at what stage this draft becomes a legislative proposal which, in turn, is then sent to the Parliament and the Council. Since most EU legislation is adopted by the ordinary legislative procedure, which sets both legislators on equal legal footing, the various policy stages are laid out. This chapter shows that lobbying needs to be carried out as early as possible for getting interests accommodated; otherwise it will be extremely difficult for any lobby organization

to make substantial changes when the European Commission has already formulated and forwarded its legislative proposal to the other EU institutions.

Chapter 3 outlines how regional governments in EU decision-making can be conceived of in an organizational sociology context. The three main paradigms of organizational sociology – organizations as a rational system, organizations as a natural system, and organizations as an open system – are introduced and it is argued that the open system perspective fits best to the focus of this research project. Next, the situational approach, one of the most popular approaches of the open system paradigm, is applied in order to identify the factor which makes state by-passing most likely. In this regard, Multi-Level Governance and lobbying literature lists a couple of crucial factors which have an impact on a region's capability to influence EU policy-making to its favor, but until now scholars have not attempted to relate these factors to a region's lobbying strategies so that their individual importance in this matter is not clear, yet. The analysis concludes that the legal and constitutional situation of the EU and the Member State represents this key factor. Finally, this chapter develops hypotheses for the three selected policy areas: EU Competition, EU Environmental and EU Education policy. It is expected that regional governments need to build a coalition with their national government in EU Environmental policies whereas they prefer to by-pass it in the other two areas.

Chapter 4 represents the empirical part of this project. I proceed by analyzing the legal and constitutional situation of Germany, the United Kingdom on the one side and DG Competition, DG Environment and DG Education and Culture on the other. The remainder is subdivided into three sections that illuminate the actual role of German and UK legislative regions in EU decision-making. The first one analyzes the various mechanisms which facilitate coalition-building in practice and scrutinizes at what point in time the selected regions start their lobbying activities. This section provides evidence that regular state by-passing appears to be rather unlikely because most mechanisms are dependent upon close cooperation with the national government. The second one illustrates with whom the German and UK regions exchange relevant information for defending their regional interests at the European level. Although all selected regions exchange information with EU institutions and the other inner-state regions quite often, this section also shows that the national government is a crucial source of information. Consequently, a clear hint whether regions by-pass their national government is not deductible. The third section assesses the necessity as well as the frequency of coalition-building with the national government, inner-

state regions, legislative as well as non-legislative regions in other EU Member States, profit-oriented companies, non-profit oriented companies and associations as well as unions. Additionally, this part also provides evidence about the perceived relevance of coalition-partners. The results demonstrate that the national government is clearly considered as the most important and influential actor for promoting regional concerns in EU Competition, EU Environmental and EU Education policies which means that by-passing is not carried out on a regular basis in Germany or the UK. On top of that, this chapter it provides some reflections on the by-passing phenomenon of legislative regions and argues that if by-passing is understood as working *against* the national government rather than working *without* it, it appears extremely unlikely that future research will come up with new evidence that supports the claims made by Multi-Level Governance proponents. Finally, the last chapter outlines some concluding thoughts on successful lobbying; it is argued that future research should also pay special attention to the personality of civil servants because the interviews conducted revealed that civil servant socialization plays an important role in defending regional interests.

Chapter 5 compares the empirical results presented in chapter 4 and works out similarities and differences between the German Länder and the UK regions. Afterwards, it discusses the results of the three selected policy areas as regards the hypotheses developed in chapter 3. Finally, it pinpoints the strengths and weaknesses of the methodology of this study.

2 Lobbying within the EU's multi-level system

Lobbying at the European level is not a new phenomenon. Already at the end of the 1950s, European umbrella organizations such as COPA (Committee of Professional Agriculture Organisations), Eurochambres (Association of European Chambers of Commerce and Industry), or UNICE (Union of Industrial and Employers' Confederations of Europe) started to sprout around Belgium's capital. In the first decades of the European Union, few scholars paid attention to these lobby organizations but since Maria Cowles (1995) published her seminal article about the influence of the European Round Table of Industrialists on the agenda for the single market program, industrial and commercial lobby organizations have been closely surveyed by the media and NGOs.

With the entry into force of the Single European Act in 1986, not only profit organizations but also legislative regions realized that a move to Brussels was inevitable since the establishment of a single market was getting very close. Particularly the introduction and the gradual expansion of the qualified majority voting in the Council of Ministers as well as the EU's continuous enhancement of legal political competences caused lobby organizations to lay their focus on the European level. As a matter of fact, experts stress that "nowadays, most legislation is done in Brussels and not in Berlin, Paris or Madrid" (Kleinfeld et al. 2007:8). Therefore, almost all legislative regions and many administrative regions founded a representation office that is located closely to the EU institutions.

At present, the total number of private and public actors that attempt to represent their interests at the European level is extremely large. It should come as no surprise that it is nearly impossible to quantify their exact number since there is no obligatory register for interest groups. In the 1980s scholars estimated that approximately 500 interest organizations disposed of an own EU office whereas the latest data show that this figure rose to over 2,000 (Hix and Hoyland 2013: 162-163). Figure 2 points out that the majority belongs to European interest group associations

such as EU trade and professional associations as well as citizen interest associations. With regard to the focus of this research project, the same figure shows that regional representation offices are clearly outnumbered so that influencing EU policy processes becomes a very challenging task.

Figure 2: Types and numbers of interest organizations active in EU public affairs

<i>Type</i>	<i>2007</i>	<i>2011</i>
Corporates	295	313
EU trade associations and EU associations of the professions	843	823
National associations based in Brussels		
Trade and professional	122	–
Employers' federations	38	–
Chambers of commerce	40	36
EU and global trade unions	24	23
'Interest groups' – citizen interest associations	350	372
Regions	198	226
Think tanks	72	51
Law firms	115	125
Public affairs consultants	153	200

Source 3: Greenwood (2011: 10), based on Landmarks Publications (2007) and Dods (2011)

The remainder of this chapter is as follows. First, it will be illuminated that although the term lobbying is widely seen as a negative concomitant of politics, politicians could not adopt efficient policies without external advice. Then, a precise definition will be introduced which, in contrast to other studies, also includes *formal* means as one crucial characteristic for the lobbying activities of legislative regions. Afterwards, the addressees of lobbying at the European level will be laid out. This sub-chapter specifically pinpoints the legal powers, the internal structure and the system of decision-making of the European Commission, the Council of Ministers, the European Parliament and the Committee of the Regions as well as their roles in relationship to one another.

At the same time, this part highlights the different kinds of information each institution requires from lobby organizations. The final section lays the focus on how a draft becomes a legislative proposal within the Commission and how the most applied legal procedure for adopting EU legislation - the ordinary legislative procedure - works in practice. In a nutshell, this chapter analyzes how lobby organizations are capable of successfully influencing EU legislation.

2.1 Lobbying - infamous but indispensable

Scholars still do not agree on the origin of the term 'lobbying' which stems from the Latin *lobium* meaning hall or vestibule. The literature provides several explanations such as:

- The initial term's origin refers to English stakeholders affected by a certain policy who waited in the lobby to the House of Commons and sought favors from Members of Parliament.
- The term has its roots in New York state politics in the early 1800s where association representatives pushed forward their case on legislators.
- The presidency of Ulysses S. Grant in the second half of the 19th century gave birth to the term 'lobbying'. This president possessed a suite in the vicinity of the White House where stakeholders waited and attempted to meet and ask him for favors (Thomas 2004: 151).

During the 20th century, however, lobbying evolved into a very sophisticated set of activities, ranging from transmitting relevant information to initiating public events and supporting politicians either technically or even financially (van Schedelen 2010: 46). Particularly the latter aspect lent the word 'lobbying' a negative touch since some people equate it with bribery and collusion: "Functionaries, politicians and lobbyists concoct unpopular decisions behind the scenes with which they bully citizens" (Bolesch 2006, own translation). A further reason for its negative connotation is based on the assumption that in most cases only multi-national companies are able to get their interests accommodated although experts highlight that "market power does not automatically translate to political power" (Greenwood 2011: 65). Besides, the Commission and the European Parliament financially assist small NGOs or civil society organizations in order to reduce the imbalance between profit and non-profit organizations and to let those groups express their concerns in the EU decision-making processes. In fact, scholarship points out that NGOs and

CSOs are not defenseless against large industries and had already successfully made their voice heard (Buholzer 1998: 14; Lahusen and Jauß 2001: 66).

Nevertheless, in the eyes of many citizens the image of lobbying is still a negative one because the media has illustrated several cases in which civil servants in ministries as well as parliamentarians at the national and European level had been consulted by lobbyists and used their pre-formulated text for later negotiations and parliamentary debates. When the German Federal Ministry of Economics and Technology aimed to draft a regulation on energy labeling for passenger cars at the end of 2009, the corresponding ministry granted special privileges to the local car industry. In contrast to other stakeholders, it was allowed to send its opinion to the ministry a long time before the official consultation procedure started, and ultimately, the car industry's position was transposed into law (Becker et al. 2013: 34). Another national example constitutes the reform of the German Medicine Act in 2005 when the head of department "Public and Market Relations" of the pharmaceutical company Sanofi-Aventis successfully lobbied against cheap drug imports from non-EU member States. The chief lobbyist sent a proposal with specific suggestions for the upcoming reform to Dr. Wolf Bauer – himself a pharmacist and a conservative Member of the German Bundestag. Ultimately, not only that the final law permitted individual drug imports from non-EU Member States under very strict conditions, it also contained several passages of the initial proposal by Sanofi-Aventis (Grill and Hackenbroch 2013: 60-61).

Yet, successful lobbying does not stop at the national arena. At the European level, MEPs are also steadily lobbied by huge international companies and sometimes, the MEPs' proposal is very similar or even identical to the lobbyists' pre-formulated request. Currently, the EU aims to renew the Data Protection Directive of the mid 1990s and Lobbyplag – a platform which compares the statements issued by lobby organizations with the MEPs later suggested amendments – has shown that a French MEP took over one-to-one the suggestions of the American Chamber of Commerce and a German MEP copied parts of the request of Amazon and Ebay (Hecking 2013).

Although these few examples pinpoint the problematic relationship between lobbying conducted by huge international companies that pursue profit-oriented interests of their shareholders on the one hand and the democratic elected politicians who are supposed to represent the interests of the common good on the other, experts state that "interest representation and democracy belong together like piston and cylinder" (Kleinfeld et al. 2007: 7; own translation). Politicians are very well aware that for most people lobbying has a bad aftertaste

but they stress that “politics need lobbying and vice versa” (Grill and Hackenbroch 2013: 61; trans.) because, nowadays, the vast majority of policies are extremely complex, complicated, and interwoven with other policy fields so that the responsible decision-maker is neither capable of deploying the necessary amount of resources nor is s(he) able to consider all effects and repercussions that come along with the initial policy. For that reason, politicians are dependent upon the expertise of third parties (Dagger 2007: 14).

2.2 Definition and characteristics of lobbying

Scrutinizing the academic literature it becomes obvious that there is no common definition of the term ‘lobbying’ (Buholzer 1998: 6). Some scholars have a very broad understanding whereas others apply a more concrete explanation. Basically, one can differentiate between goal-oriented, process-oriented as well as goal- and process-oriented definitions, as Table 2 shows.

Table 2: Definitions of lobbying

Goal-oriented	Process-oriented
<ul style="list-style-type: none"> ● The overall objective of lobbying is to shape content (Wehrmann 2007: 39) ● Attempting to put issues onto, or up the political agenda, influencing policy outcomes to their favor, and framing the dimensions that define policy issues (Kleinfeld et al. 2007: 10; Beyers et al. 2010: 6) 	<ul style="list-style-type: none"> ● A process in which the members of the interest group on the one hand and public authorities on the other exchange information (Buholzer 1998: 9) ● Monitoring and analyzing political developments and, if necessary, participating actively in these developments (Michalowitz 2007: 74)
<p><u>Goal- and process-oriented</u></p> <ul style="list-style-type: none"> ● A cipher for all forms of direct, informal and in most cases not immediately observable attempts by representatives of societal interests to influence policy-makers in order to shape policy outcomes to their favor in the short-, mid- or long-run (Wehrmann 2007: 40) ● The build-up of unorthodox efforts to obtain information and support regarding a game of interest in order to eventually get a desired outcome from a power-holder (van Schendelen 2010: 48) 	

Source 4: own compilation

Contemplating all those definitions listed above we get a precise image of what lobbying is about. Yet, applying a purely goal-oriented definition and blinding out the necessary processes is not helpful to understand how lobbying is carried out so that the final picture would be incomplete. The same conclusion goes for process-oriented understanding insofar as the definition does not tell us anything about the desired objectives. For that reason, a definition that includes both goals as well as processes offers the most accurate picture of the various facets of lobbying and will therefore be applied.

Against this background lobbying will be **defined** as *using formal and informal means with the objective to influence policy processes in order to achieve the desired outcome*. Consequently, this definition is not only process but also goal-oriented and involves three crucial characteristics on which a researcher can focus on:

1. Influence
2. Desired outcome
3. The usage of formal and informal means

The first characteristic implies that there is “a causal relation between the preferences of an actor regarding an outcome and the outcome itself” (Nagel 1975: 29). This element is probably the most interesting but at the same time most difficult one to analyze. The obstacles of measuring a concrete, straightforward relation between lobbying efforts and the desired final outcome are high because many different (and sometimes unknown) actors use many different pathways to exert influence (Dür 2008: 1220-1223). Consequently, attributing influence to one actor only is almost impossible.

Desired outcome – as the second characteristic – can result in either introducing something new, altering or preventing launched proposals. For realizing the first aspect, actors have to establish contacts to the European Commission since this institution is responsible for initiating EU legislation; for altering or preventing a launched proposal actors need to carry out legislative or even better pre-legislative lobbying activities and get in touch with the relevant decision-makers in the European Parliament and the Council (see below). A researcher focusing on this characteristic also faces challenges because (s)he must get to know the respective lobby organization’s objective. It is, for example, not always expedient to take official statements as a basis for identifying the actor’s objective because an actor usually does not make its real objective public right from the beginning. Consequently, the official objectives mentioned in the statement may be over- or underreported in order to have room for maneuver.

The third and last characteristic contains process-oriented elements and states that lobbying is done by formal and informal means. In case an EU institution officially asks organizations for input, the resulting actions can be considered formal lobbying activities. The European Commission, for example, often conducts public online-consultations in which all actors are able to participate. Additionally, the Council of Ministers regularly invites experts from public or private organizations, and in similar vein, external experts are frequently invited for European Parliament committee meetings. Last but not least, the Committee of the Regions represents an official method for regions to make their voice heard in EU affairs. In contrast to these formal ways of participation, an organization may also informally take proactive steps and contact EU decision-makers on its own initiative. This kind of lobbying is mainly carried out by telephone

conversations, email correspondence, or even face-to-face at lunch or dinner-meetings and events.

2.3 The addressees of EU lobbying

To understand the different intervention possibilities of lobby organizations in general and legislative regions more specifically, a close look on the internal structure and legal powers of the European Commission, the Council of Ministers, the European Parliament, and the Committee of the Regions as well as their roles in relationship to one another is necessary. Moreover, it is crucial to be aware that these institutions do not request the same kind of information. Studies have illuminated that the European Commission is predominantly interested in pan-European information whereas the Council primarily requires specific information about the situation within the respective Member State (Bouwen 2002). Consequently, if a European-wide operating organization strives to establish protectionist measures for one national market only, it must lobby the Council. If, however, the same organization pursues this objective for various Member State markets, it should better lobby the Commission and provide European-wide solutions (Woll 2009).

Since this research project is interested in lobbying activities of legislative regions, it is going to include the Committee of the Regions for two reasons. First, this actor is formally included in the EU decision-making process and, second, practitioners as well as scholars state that it has played a role from time to time for regional actors to promote their interests upwards the EU's main legislators (Bache et al. 2011: 236). The European Economic and Social Committee, however, is not included in the analysis because regions hardly use this platform to promote their interests and, moreover, "there is little evidence to suggest that Council has ever taken the slightest notice of the ESC's opinion" (Jeffery 2002: 338).

Although the European Council plays a decisive role in the EU's institutional architecture - it is generally regarded as the main agenda-setter of the EU - it will not be taken into consideration because of its composition and tasks. The European Council is composed of the Heads of State or Government who "shall meet twice every six months" (Art. 15 (3) TEU) and this institution is supposed to use its political weight to "define the general political directions and priorities" for the EU (Art. 15 (1) TEU). Because of these two characteristics, most scholars do not mention the European Council as a key addressee of EU lobbying (van Schendelen 2010; Matyja 2007, Merkle

2003) or conclude that this institution represents a crucial lobbying addressee only for very exclusive decisions such as Treaty amendments or crisis management but not for every-day-politics (Greenwood 2011: 27).⁸ Since this research project focuses on the latter, this institution will be left out.

The European Court of Justice is not included either because the ‘decision-makers’ in the ECJ are independent judges whose main task is to interpret EU law and monitor compliance with it. They are neither bound to a Member State’s opinion nor to other interest organizations’ positions which means that they do not take up sides with any actor. As a consequence, organizations face enormous difficulties and uncertainties if they really attempted to lobby the ECJ. Moreover, going to court involves immense financial costs and cases are generally lengthy so that most organizations refuse to use this channel (Eising and Lehringer 2013: 186).⁹

2.3.1 The European Commission

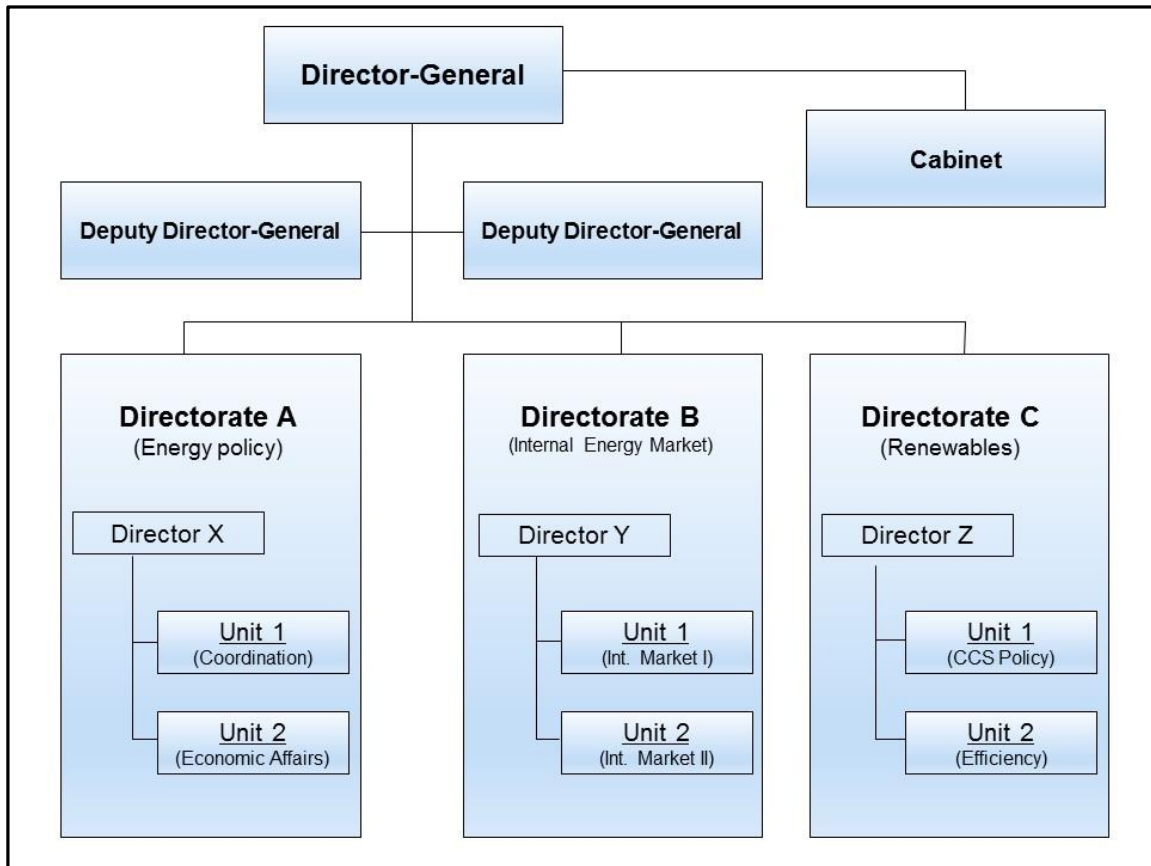
The European Commission is composed of the two major blocks: the College of Commissioners as well as the Directorates General and Services. The college is composed of one Commissioner per Member State who is responsible for one portfolio (e.g. Commissioner Cañete for Climate Action & Energy or Commissioner Oettinger for Digital Economy & Society). Each Commissioner is supported by his cabinet - a special team of normally seven policy advisers plus support staff who offer political advice.

Scrutinizing the internal structure of the Commission, it becomes obvious that there are many different departments, the so-called Directorates General (DGs), and several Services. To be more specific, there are currently 33 DGs which are structured by sector (e.g. DG Competition, DG Energy, DG Mobility and Transport) and 11 special services which are structured by function (e.g. Internal Audit Services, European Anti-Fraud Office, Legal Service).

⁸ To provide a complete picture: Fiona Hayes-Renshaw states that the European Council also acts as “the final arbiter of disputes that have proved impossible to resolve at lower levels” (Hayes-Renshaw 2009: 72). In other words, it may occur that the European Council also decides about EU every-day-politics but there are no empirical figures about the frequency.

⁹ Yet, if a lobby organization does decide to go to court, it possesses a variety of litigation strategies (McCown 2009).

Figure 3: Example of a possible composition of a Directorate-General



Source 5: own graph; based on DG Energy
http://ec.europa.eu/dgs/energy/doc/dg_energy_organigram_en.pdf

The inner structure of a DG is a little more complex, though (see Figure 3). At the top level, each DG is headed by a Director-General and one or more Deputy Director-General who directly report to their Commissioner or to his/her Cabinet. At the medium level and managed by a Director, there are different Directorates (e.g. Energy policy, Internal Energy Market, Renewables) that deal with rather general areas. The lowest hierarchical level, in turn, is composed of special units (e.g. Coordination, Economic Affairs, Int. Market I and II, CCS Policy, Efficiency etc.) which focus on more specific tasks. Each unit consists of several policy officers and is headed by a Head of Unit. As it will be shown further below, drafts, which will become legislative proposals at a later point in time, are worked out at that level. Consequently, lobby organizations need to pay special attention to these policy officers.

In total, there are approximately about 32,000 employees working in the European Commission; most of them are either official administrators (10,000), or official assistants (10,000) or contract agents (5,900) (European Commission 2013). Although citizens and the media commonly refer to “the” Commission, lobby organizations have to keep in mind that it is not a homogenous actor, but consists of many different members who “may have very different perspectives and, most importantly, very different interests or preferences” (Cram 2001: 776). Moreover, there are a lot of committees inside the Commission such as expert and Comitology committees as well as consultative committees that play an important role for the policy formulation.

The Treaties stipulate that the Commission “shall promote the general interests of the Union and take appropriate initiatives to that end” (Art. 17 (1) TEU) which means that it is supposed to settle the resulting differences between the various actors participating in the EU decision-making processes. As a consequence, the Commission’s civil servants are predominantly interested in European solutions in order to advance the political, economic and social integration of the EU Member States. Every lobby organization needs to bear in mind the Commission’s overall objective because purely local, regional or national claims are very unlikely to be taken into consideration. Matyja (2007: 159-160) exemplifies this aspect and states that, instead of carrying out individual lobbying activities, national interest associations should mainly work through their European umbrella association in order to facilitate the work of the Commission.

The Commission is generally regarded as the sole institution which is equipped with the right to propose legislative acts so that most people say that it possesses a monopoly (Article 294 TFEU). Although this statement is certainly true, it has to be distinguished, though, because the European Parliament (Article 225 TFEU) and the Council (Article 241 TFEU) are capable of setting the agenda for a specific policy as well. Since the Commission has continuously stressed the importance of increasing the EU’s democratic legitimacy, it almost always follows up these requests. But even if the Commission itself initiates a proposal, it does not draft it without taking into account the EP’s and the Council’s position simply because it is dependent upon their later consent in most circumstances.

Obviously, the origin of policy proposals is not unimportant because it allows lobby organizations to diversify their channels to ‘upload’ their interests. Interestingly, the vast majority of the Commission’s proposals do not stem from the Commission itself but from past policy

commitments, international agreements or requests of other actors. In this regard, Strohmeier (2007: 62) provides a rough overview about the policy proposals' origin:

- 35% come from international agreements (negotiated by the Member States)
- between 25 and 35% amend existing legal obligations (among others technological innovations, temporary limited laws)
- 20% stem from the Council, the EP, the Member States and industrial actors
- 10% come from changes or amendments of primary or secondary law (among others court rulings)
- the rest constitutes initiatives by the Commission itself which are flanked by Green- and White Books¹⁰

If a legislative proposal is supposed to be drafted, the Commission always needs to name the specific Treaty Article on which its proposal is based. During the drafting phase, there are usually several DGs involved because a lot of policy fields are tightly interconnected. However, there is always one 'leading DG' which carries the main responsibility so that this DG requires special attention (Nugent 2001: 242). More specifically, Broscheid and Coen (2007: 362) have shown that in 2005 some DGs were more contacted by lobby organizations than others; they calculated that the number of interest group activities is particularly high for DG Enterprise (221), DG SANCO (149), DG Environment (132) whereas it is relatively low for DG Regional Policy (24), DG Humanitarian (13) and DG Fisheries (10).

It has already been briefly mentioned that every Commissioner is advised and supported by his/her cabinet. The cabinet's principal task is to be the Commissioner's eyes and ears: they collect information and brief their Commissioner about recent developments. Each cabinet member monitors one or more policy areas. Priority is given to coordinate and negotiate their Commissioner's policy proposal with other cabinets because almost every policy proposal cuts across other policy fields. Bearing in mind that a DG's proposal needs to be accepted by the whole College of Commissioners, a previous exchange of views between the affected DGs is

¹⁰ Although these figures seem to be rather outdated (1998), Strohmeier believes that they are still valid. Additionally, one should not neglect that several proposals also stem from the European Council. In this regard, the conclusions of European Council summits usually contain the phrase 'the European Council invites the Commission to...'. However, there are no specific figures which quantify the exact amount.

paramount.¹¹ To sum it up, a Commissioner's cabinet attempts to formulate a policy proposal in such a way that it not only reflects their Commissioner's principle ideas but also that it is acceptable for the other Commissioners as well (Nugent 2010: 113-121).

Bearing in mind the structure and composition of a DG it is understandable why one needs to grasp the Commission as a heterogeneous actor. If an organization lobbied the responsible cabinet member of the leading DG solely, other DGs could exert influence on the draft so that changes might occur very quickly. Besides, internal conflicts between DGs happen at times as the following example by van Schendelen underlines. This expert has analyzed a piece of legislation about genetically modified organisms (GMO) in the late 1990s, in which the diverse attitudes of the various DGs become clear.¹²

“Between 1998 and 2001, the whole dossier has been a clear example of *many cleavages* inside and between the Commission, the EP and the Council. [...] The Commission was particularly divided by its DGs, their Cabinets and even inside them. While DG Environment was sitting in the driver's seat, DG External Trade (for settling GMO issues with the US), DG Industry (for economic growth) and DG R&D (for new technology) wanted to hit the brake pedal. DG Agriculture was divided between traditional and modern farming, and DG Consumer Affairs (the forerunner of DG SANCO) between consumer benefits (price, quality) and safety (health).

(van Schendelen, 2010: 191; emphasis in the original)

It has been already briefly mentioned that the Commission has established a variety of committees that are crucial for policy formulation. Concerning their composition, one can differentiate between two types of committees: there are experts and Comitology committees¹³ which are composed of Member State civil servants on the one hand, and consultative committees that consist of private interests on the other. The experts and consultative

¹¹ In theory, a simple majority is enough for adopting a proposal; in practice, however, Commissioners usually attempt to reach consensus (Hix 2005: 43)

¹² In 1998 the Commission's DG Environment, Nuclear Safety and Civil Protection proposed to revisit the old Directive 90/220/EC on the deliberate release into the environment of GMOs to the EP and Council.

¹³ The Comitology system is perhaps the most complex organizational feature of the European Commission. Since March 2011 only Implementing Acts according to Article 291 TFEU are dealt with by Comitology committees which operate under either (a) the advisory procedure or (b) the examination procedure. However, recent research has shown that, in practice, this differentiation is considered somewhat irrelevant because Commission civil servants attempt to reach consensus among the various Member States experts (Hustedt et al 2014: 112).

committees are considered most important for lobby organization because they are established during the early policy drafting phase (see below) whereas the Comitology committees meet during the final implementation phase. Although the opinions and results of the consultative committees are not binding to the Commission, scholars do not question their crucial influence on the legislative proposal (Bouwen 2009: 30).

Due to their composition, it does not come as a surprise that legislative regions are more likely to affect EU Commission drafts through expert committees. More specifically, a recent study by Sannerstedt (2005: 100-101) indicates that members of Commission expert groups – compared to Council working committees, or Comitology committees – enjoy a fairly high degree of autonomy which means that they are rarely restricted by a negotiation mandate from home so that the importance of the respective home ministry as a source of information is relatively low. Moreover, the same study shows that Commission expert groups are very open for external sources of information, which is particularly interesting for legislative regions and other lobby organizations (Sannerstedt 2005: 110-111).¹⁴

Bearing the above in mind, one should not assume that organizations are treated as petitioners. Quite the contrary, the Commission highly relies on their input since it possesses only very limited human and materialistic resources (Bache et al. 2011: 338). Even more importantly, the Commission willingly includes as many actors as possible in order to increase the legitimacy for its legislation (Bouwen 2009: 22). For adopting policies that solve specific issues, the Commission needs to consider many factors that affect the efficiency of the legislative policy to a large extent. This is not as easy as it may sound. When it formulates the legislative proposal the Commission is dependent upon very precise *information* by the affected actors. However, the commonly used term ‘information’ consists of many different characteristics; information might:

- simply describe features of the present environment
- explain future changes in the environment
- capture crucial variables and their effectiveness to control the environment
- inform about alternatives
- communicate own values and objectives (Buholzer 1998: 228-229)

¹⁴ Sannerstedt himself stresses that his conclusions are based on a questionnaire sent to solely Swedish members of these groups and committees so that his findings cannot be transferred easily to all Member States.

These diverse characteristics of the term information demonstrate that the Commission's task to formulate and adopt policies that fulfill their objective without causing too many unforeseen effects is a very challenging undertaking. Therefore, the expertise and input of organizations is always welcome. What makes the Commission as a whole extremely valuable for lobby organization is its omnipresence in nearly all decision-making processes at all stages so that the Commission is perfectly aware of the different actors' positions (Nugent 2010: 121).

2.3.2 The Council of Ministers

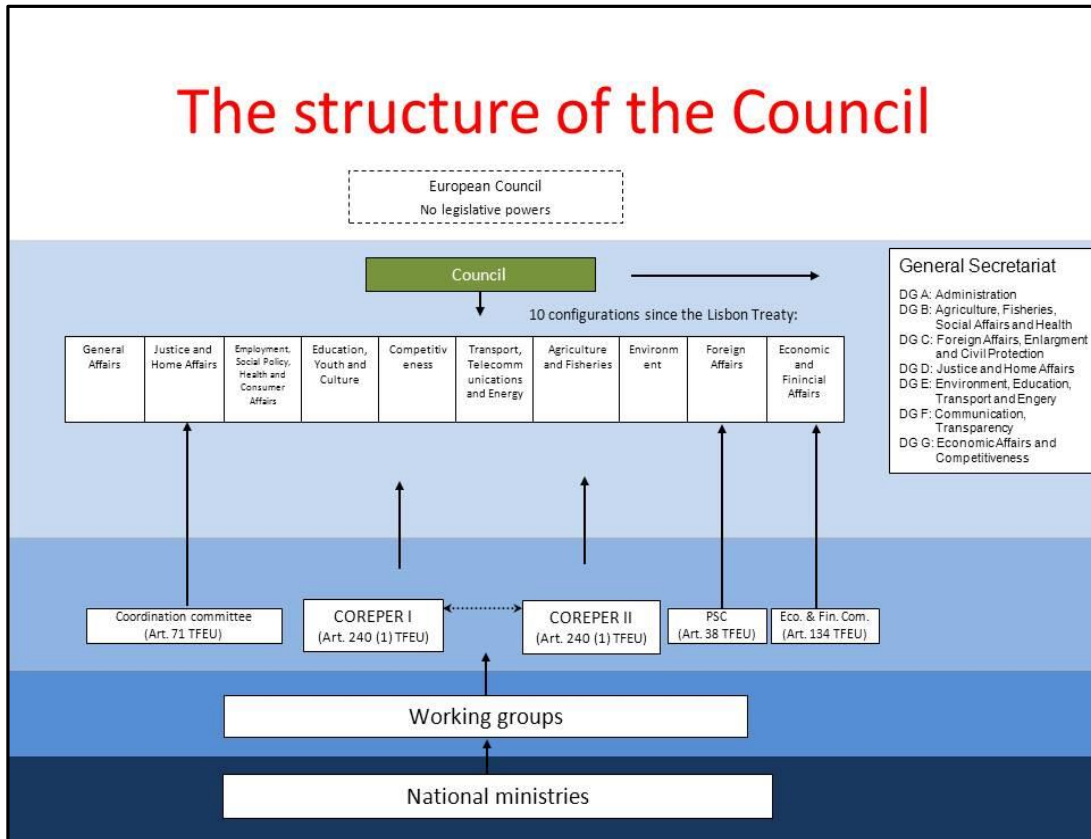
Similar to the European Commission many people think of 'the' Council as a homogenous actor, whereas it actually consists of ten different configurations with many different divisions and units (see Figure 4). The Council of Ministers is composed of one representative per Member State at ministerial level (Art. 16 (2) TEU) and contains a central position in the EU decision-making process. In fact, for some scholars it represents the EU's center of political power (Matyja 2007: 156). Together with the European Parliament, it exercises legislative as well as budgetary functions and it shall carry out policy-making and coordinating functions (Art. 16 (1) TEU).

Depending on the specific Treaty provision, the Council makes decisions either by unanimity or qualified majority voting (QMV).¹⁵ Since the entering into force of the Lisbon Treaty, QMV is the general decision-making mode (Art. 16 (3) TEU). If a decision is taken by QMV, theoretically, it is conceivable that a Member State gets outvoted. In practice, however, it has to be highlighted that Council members do not strive to outvote each other but seek consensus. In this regard Heisenberg (2005: 70-79) states that from 1994 to 2002, on average 81% of all decisions were adopted by consensus without voting. In his findings Mattila (2008: 27-28) is able to confirm this practice and states that even after the big enlargement in 2004 nearly 90% of all votes in the Council during May 2004 and December 2006 were taken unanimously which means that in just very few circumstances the Council is formally required to vote. Besides, in case several Member States are opposed to a decision being made, the Treaties also entail very specific provisions for

¹⁵ Article 16 (4) TEU stipulates that "as from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union".

establishing a blocking-minority so that particularly the smaller Member States need not worry about being outvoted.¹⁶

Figure 4: Internal composition of the Council of Ministers



Source 6: Wessels, Valant and Kunstein 2015 (forthcoming)

If the media covers European news about this institution, it almost always reports about the Council’s ministerial level. Yet, hardly any decision is directly made by the top level of the respective Council formation itself, but by the Committee of Permanent Representatives (COREPER) and various working groups.¹⁷ Indeed, Fiona Hayes-Renshaw emphasizes that “insiders have estimated that, in some Council configurations, the ministers only actively discuss

¹⁶ According to Article 16 (4) TEU, a blocking minority “must include at least four Council members, failing which the qualified majority shall be deemed attained”.

¹⁷ Delicate policy fields may also be discussed in specialized bodies, as for example agriculture (Special Committee on Agriculture), foreign policy (Political and Security Committee), or economic and monetary issues (Economic and Finance Committee)

between 10 and 15 per cent of all of the items on their agendas, with the rest being discussed by Coreper and the working groups” (Hayes-Renshaw 2012: 77). Therefore, the ability of the ministers to reach consensus is to a large extent based on the efficient system of decision-making at an early stage. In this regard, especially COREPER enjoys a decisive strategically position within the Council’s architecture since it is located between the ministerial and working group level. This crucial committee takes decisions on the basis of the working groups’ reports which draft detailed analyses of Commission proposals for legislation. If COREPER is not able to agree on the details of a proposal, it will be sent back to the working groups. For that reason, scholars conclude that COREPER “is an important de facto decision-making body, evident in the steady stream of pre-cooked agreements that are sent to the ministers for formal adoption” (Lewis 2013: 148).

At the lowest level, experts in working groups are the first who elaborate on a Commission’s legislative proposal. Simplifying to some extent, these groups primarily concentrate on technical rather than controversial or delicate issues which have to be solved at higher levels.¹⁸ Depending on the EU’s workload there might be approximately 250 working groups in a year, each group consisting of four or five representatives per Member State. Since the EU composes 28 Member States, the working group meetings are enormously big, and for that reason, effective lobbying at this early stage appears to be very costly and challenging. Consequently, it is fair to assume that lobby organizations with limited financial and personnel resources prefer to contact COREPER officials because they enjoy greater political weight. Some of them – particularly those working in COREPER II – are drawn from the diplomatic service and possess valuable contacts to highly ranked politicians.

Generally, however, the earlier a lobby organization takes initiative, the more likely it is that its interests will be accommodated. This is particularly true for the Council because the items on Council agendas are divided into ‘A’ and ‘B’ points. Items marked with an ‘A’ means that the experts at the lowest level have already agreed on all details so that the highest level will adopt the item without discussion. Insiders estimate that up to 85% of all dossiers are adopted by ministers as ‘A’ points (Hayes-Renshaw and Wallace 2006: 79). The medium level - COREPER - will

¹⁸ Fouilleux et al. (2005) point out that the dichotomy between ‘technical’ and ‘political’ issues is actually misleading since, in practice, this distinction is constantly blurred both within and around Council working groups.

only become active concerning 'B' points which means that lobbying activities aimed at that committee only will miss a lot of items marked as 'A' points.

In contrast to small and medium-sized economic lobby organizations, which lack the necessary resources, legislative regions do already become active at the working group level for two reasons. First, civil servants who are engaged in working groups are also seconded from regional administrations from time to time which means that the legislative region in question may already have a contact person in place. Second, some legislative regions even possess the legal opportunity to send an observer to these meetings.¹⁹ Although this person is not allowed to speak, (s)he makes notes and informs the regional level about key actors and the latest happenings.

Due to the Council's composition and tasks, lobby organizations must be aware that this institution requires different information in comparison to the European Commission. Whereas the Commission predominantly requests European-wide solutions, ministers and civil servants in the Council are primarily receptive to national concerns. In his comprehensive study about the access of lobby groups to EU institutions, Bouwen (2002: 27-28) could provide evidence for this assumption. He found that national and individual firms enjoy the highest degree of access to the Council, particularly if the firm constitutes a national champion. European associations, in contrast, have a comparatively low degree of access and consultants have clearly the worst access to this institution. Sannerstedt's (2005: 110-111) study contributes some further insight for lobby organizations. Concluding from his findings one can state that any lobby organizations needs to argue from a strict national perspective because the autonomy of Council working groups is rather limited. Civil servants in those groups primarily use information of the home ministry and follow national instructions. Consequently, lobbying organizations should establish contacts to the corresponding national ministry in the first place in order to make their voice heard in the Council's working groups.

A recent case, which was heavily debated in the media, underlines the Council's primarily receptiveness to national concerns. In June 2013, the European Commission, the representatives of the Member State's government and the European Parliament already agreed to adopt a regulation on limiting car emissions by 2020. Yet, shortly before the legal act was supposed to be

¹⁹ Whereas the German Länder can rely on their "Länderbeobachter" in this regard, the UK legislative regions do not have such an option at their disposal.

rubber-stamped in the Council, Germany's chancellor Angela Merkel was successfully lobbied by German premium automobile producers which argued that the newly agreed provisions would have far-reaching negative consequences for the national economy. The chancellor, in turn, managed to win a blocking minority in the Council so that the already agreed details of the regulation had to be re-negotiated.

Bearing in mind that national arguments are vital to gain access to the Council, it appears likely that legislative regions have an advantage over economic lobby organizations. If, for example, a powerful economic region is negatively affected by a legislative proposal, the economic effects could extend to the Member State's total economy as well so that the national government is better advised to support its region.

2.3.3 The European Parliament

The Parliament itself declares on its webpage that it will be the "guardian of EU citizens' new catalogue of civil, political, economic and social rights - the Charter of Fundamental Rights" (European Parliament 2014a). In contrast to the other EU institutions, EU citizens themselves are able to determine its composition by universal adult suffrage every five years, so that from a democratic point of view it constitutes the most important institution for the people within the EU's architecture.

In its infancy, the Parliament was equipped with very little legal political competences so that it constituted a weak legislator. The Treaties of Maastricht, Amsterdam, Nice and Lisbon, however, have continuously increased its competences so that nowadays it is called a "genuine co-legislator" (Burns 2013: 163) vis-à-vis the Council. Yet, the EP's influence depends on the respective procedure. In this regard, Michael Mezey differentiates between three policy-making categories:

- A legislator with strong policy-making power which is capable of modifying or rejecting proposals.
- A legislator with modest policy-making power which is able to modify but which cannot reject proposals.
- A legislator with little or no policy-making power which cannot modify or even reject policy proposals (Mezey 1979: 26).

In this regard, Article 289 TFEU provides the European Parliament with two different procedures: the special legislative procedure (SLP) and the ordinary legislative procedure (OLP), formerly known as the co-decision procedure. The SLP, in turn, is divided into the consultation procedure where the EP is only asked for a legally non-binding opinion, and the consent procedure which grants the EP veto but no amendment powers. The OLP, in contrast, allows the EP to veto as well as to amend legislative proposals. Applying Mezey's categorization to the EP's legal situation, one can conclude that solely the OLP provides the EP with strong policy-making power which means that, *de jure* and *de facto* the Parliament does only constitute a real co-legislator vis-à-vis the Council in those policy fields that fall under this procedure.

Since every successive Treaty has enhanced the EP's political rights, it has steadily gained more and more confidence so that the Commission faces difficulties to make any precise predictions about the EP's voting behavior (Michalowitz 2007: 66). In order to speed up and facilitate the entry into force of EU legislation as well as to produce a 'capacity-to-act'-image, the Commission, the EP and the Council have established the so-called trilogue-meetings. In these informal meetings, key persons of the three institutions discuss possible issues at an early stage so that the vast majority of legislation can be adopted in the EP's first reading. Indeed, in the second half of the mid 1990s fewer than 20% of proposals were agreed on at the first reading whereas by the 2004-2009 Parliament approximately two thirds of proposals were concluded at this early stage (Judge and Earnshaw 2008: 233). According to the European Parliament's "Activity Report on Codecision and Conciliation" during the 7th legislative term (July 2009 – June 2014), this figure has even increased: 85% of the files had been adopted at the first reading stage (European Parliament 2014b: 8).

When the Commission decides to become active, it always needs to name the specific Treaty Article on which its proposal is based. The respective Treaty article, in turn, specifies the corresponding procedure for the EP. At present, most Commission proposals fall under the OLP so that the EP is able to have a say in many circumstances. In this regard, Nugent (2010: 179) shows that the EP is an extremely active legislator: between 2004 and 2009 it approved a total of 2,924 texts, nearly half of which – 1,355 – were legislative documents. Consequently, the expansion of rights caused a rising workload for MEPs and led to a change of perception among the various lobbying organizations at the European level. Many companies, associations, NGOs and other interest groups have built up and maintain close contact to the MEPs. For the past two

decades, thousands of interest groups have requested accreditation so that the EP decided to establish a Joint Transparency Register in June 2011 in which organizations and entities are required to accede to this Register prior to requesting access rights from the EP.

Recent EU media coverage has demonstrated that economic lobby organizations value the European Parliament as a crucial actor for changing or even stopping legislation. In 2013, the European Parliament's Committee on Environment, Health and Food Safety debated on several occasions about the Commission's Tobacco Products Directive which was supposed to oblige tobacco companies to put large health warnings on their products, to ban slim cigarettes and to ban special flavors such as menthol. The tobacco industry, in turn, attempted to persuade MEPs to vote against this strong position. In order to increase its chances Philip Morris created short biographies about most of the EU-parliamentarians which contained explicit details about their occupational background, and additionally, each relevant MEP was given a priority, ranging from 'low' to 'high' (Berndt 2013: 19). This way, the corporation had a very accurate idea about each MEP's voting behavior so that still indecisive politicians could be quickly identified and specifically targeted.

Like in most other parliaments, the lion's share of the EP's work is prepared and done within various standing and ad-hoc committees. Indeed, Simon Hix emphasizes that "it is in the committees that the real scrutiny of EU legislation takes place. The committees propose amendments to legislation in the form of a report and a draft resolution, which are then submitted to the full EP plenary session in more or less a 'take it or leave it' form. Amendments to the proposed committee resolutions can be made in the full plenary, but without the backing of a committee and the EP party support that goes along with this, amendments are less likely to be adopted by the parliament" (Hix 2005: 93). To be more precise, the EP's workload in the past provides evidence that some committees produce far more reports than others; experts calculated that between 2004 and 2007 the standing committees on Environment, Transport and Legal Affairs dealt with over 50% of all co-decision reports (Judge and Earnshaw 2008: 170). As a consequence, lobby organizations need to establish contact with those MEPs who sit on the relevant committees for the respective legislative proposal.

Practitioners and scholars agree that the most relevant persons within the diverse committees are the rapporteur and the 'shadow' rapporteurs (Farrell and Hèritier 2004: 14; Interview 19). A rapporteur is the selected MEP by the respective committee coordinator

responsible for drafting a report on the Commission's legislative proposal whereas the 'shadow' rapporteurs of the other political groups play a supportive and an informative role. First, they assist the 'principal' rapporteur and, second, they provide their own party with up-to-date information about the latest developments. After the committee's members have discussed and voted on a Commission's proposal, it is forwarded to the entire parliament and, usually, the plenary adopts the committee's position (Burns 2013: 166).

This brief description of the rapporteur's tasks exemplifies that they constitute a central bridge between the EP, the Council and the Commission. For that reason, they represent the favored contact persons of the Presidency because rapporteurs possess a huge amount of information and, furthermore, they are capable of selecting what to pass on to the other committee members. Usually, a normal committee member does not raise complaints if a deal between the Council and the Parliament has been struck in an informal dialogue (Farrell and Hèritier 2004: 14-15). Because of this central position, they play a striking role in shaping the party group's position so that they are of primary interest of lobby organizations.

It has to be pointed out, though, that the relationship between lobbyists and MEPs is based on mutual dependency. For both parties the fundamental logic behind this relationship is to maximize their potential influence. On the one hand, the lobby organization wants to increase its chances of getting its interests accommodated and adding a further channel of interest representation to its portfolio certainly helps to achieve that goal. MEPs, on the other hand, only possess very limited financial and personnel resources so that they actively consult with lobby organizations on a regular basis (Hix and Hoyland 2011: 183). Yet, MEPs are very well aware that they need to use the provided information with caution because the organization's interests do not always tie in with the European citizens' interests and the common good.

As in the case of the Commission and the Council, lobby organizations also must be aware of the specific information required by the actors within the EP. On the one hand, the MEPs have to evaluate the Commission's proposal from a European perspective for two reasons. First, their genuine task is to assess the possible positive and negative effects of the proposal on the European internal market (Bouwen 2001: 29), and second, the European Parliament itself claims to be the guardian of all EU citizens. For these reasons, research has revealed that European associations have higher access to the MEPs than national associations (Bouwen 2002: 22-24). On the other hand, one should not forget that the decision-makers in the Parliament are not civil

servants but politicians who would like to get re-elected so that effective interest presentation also requires taking the concerns of the MEP's electorate into consideration. In this regard, it is crucial to bear in mind that the voting practices of the European elections vary from country to country; some Member States split their territory into regional electoral districts whereas others have a single electoral district. To be more precise, Judge and Earnshaw point out that in 2004, 18 Member States based their elections upon a single national electoral district; 5 Member States used regional constituencies (Belgium, France, Ireland, Italy and the UK); and Germany and Poland used hybrid systems (Judge and Earnshaw 2008: 69-70). However, own research has revealed that priority is usually given to EU relevant information because if every MEP defended regional or national interests only, it would be nearly impossible to reach a consensus. Besides, in case of party political incongruence, the individual MEP might pursue different political objectives (Interview 35, 36, 37). In a nutshell, there are several reasons to assume that the European perspective outweighs the regional one. Consequently, lobby organizations should primarily provide EU relevant arguments so that the respective MEP is better able to convince other MEPs.

2.3.4 The Committee of the Regions

The Committee of the Regions (CoR) constitutes the EU's Assembly of Regional and Local Representatives and currently it is composed of 353 members. The CoR was founded in 1994 by the Treaty of Maastricht on the initiative of German and Belgian regions in order to provide sub-national authorities with the direct voice in the EU's multiple decision-making processes. Since former regional competences had been transferred to the European level and bearing in mind that most EU legislation is implemented at the regional and local level, particularly the German Länder demanded the establishment of a body in which they could get regional interests accommodated.

Until today, the successive Treaties have strengthened the role of the CoR so that the Commission is obliged to consult it in a number of policy areas which have an impact on the regional level such as health, education and culture, social policy, environment, energy, transport and many more (Art. 307 (1) TFEU). Moreover, the CoR is able to issue an opinion on its own initiative if it deems such action appropriate (Art. 307 (3) TFEU). On top of that the Lisbon Treaty has granted the CoR the right to bring an action before the Court of Justice of the European Union if the principle of subsidiarity has been breached (Protocol No. 2, Art. 8 (2)).

Although legislative regions had been very enthusiastic about this new channel of interest representation in the beginning, only a very limited number of regions actually used it for lobbying purposes in the following years for a variety of reasons. Firstly, as described above, the CoR only plays a consultative role which means that it cannot oblige the other EU institutions to give feedback regarding its opinions. As a consequence, not all of the EU institutions took the CoR seriously. For example, the Council of Ministers refused to provide feedback on CoR opinions several times (Jeffery 2002: 341), and until 2002 the European Parliament tended to support the CoR only if it did not interfere in anything the Parliament was doing (Millan 1997: 10). Afterwards, the Parliament started to consult the CoR more often; nonetheless the CoR was still considered a potential ally and rival at the same time (Christiansen and Lintner 2005: 9). Next, the CoR's diverse membership divides rather than unities the members around a specific issue. There are regional as well as local representatives, but there are also actors from administrative and legislative regions. Therefore, the result usually presents the lowest common denominator only (Hooghe and Marks 2001: 82). On top of that, the CoR membership divides along party political lines too, as it is not composed of neutral experts but elected politicians.

Having said this, it does not mean that the CoR constitutes an ineffective body which does not have any impact on EU legislation at all (Warleigh 2002: 183-185). Some scholars explicitly state that it has played a role from time to time for regional actors to promote their interests upwards the EU's main legislators (Bache et al. 2011: 236). As a matter of fact, some legislative regions - as for example North-Rhine Westphalia or Bavaria - have established a special department for the Committee of the Regions at their home base. Consequently, one can expect that this comparative case study of German and UK regions might reveal different opinions about the importance and effectiveness of the CoR.

2.4 Understanding EU legislation: from draft to act

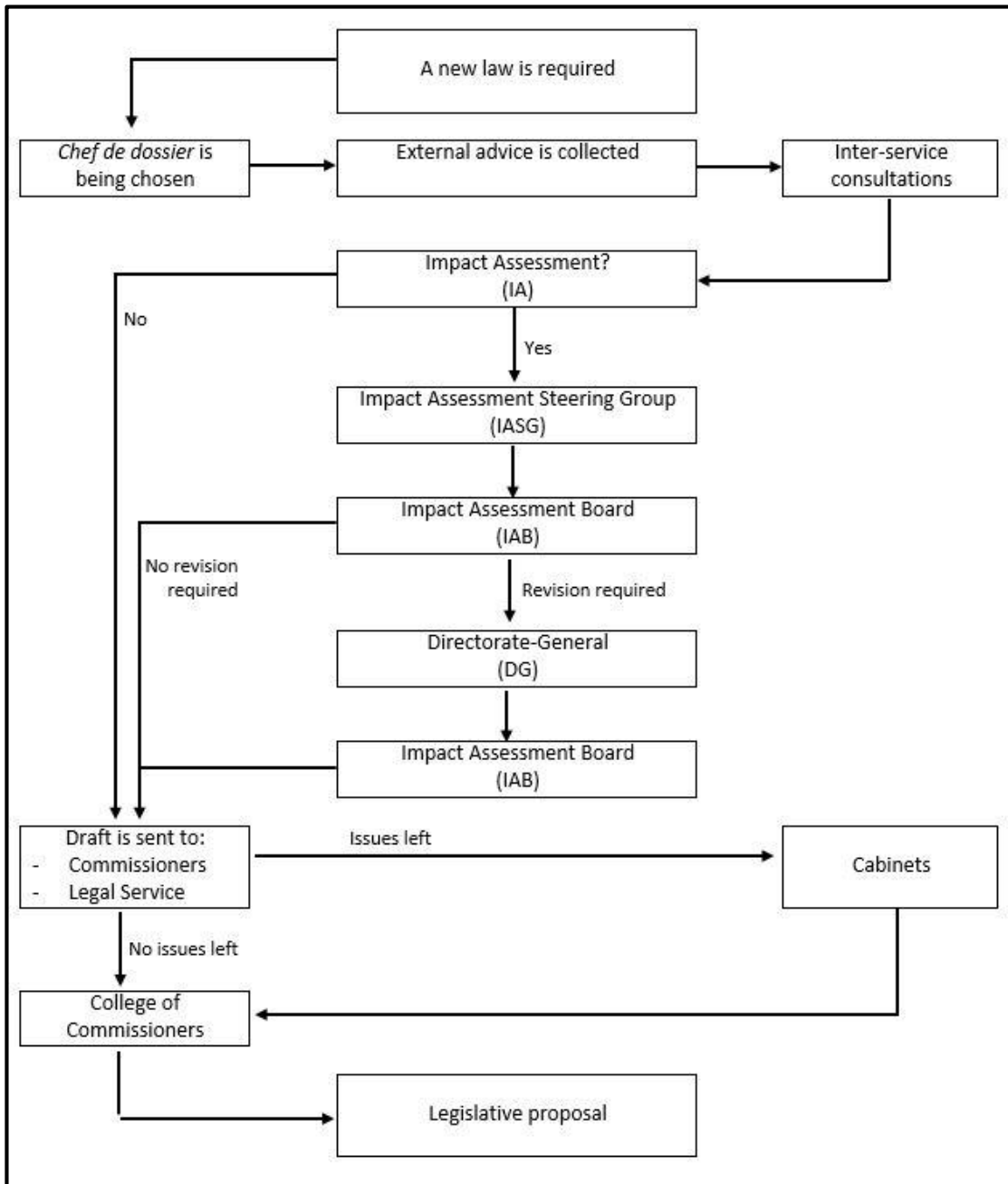
There is no doubt among scholars or practitioners that good timing is a critical aspect for lobby organizations to influence EU decision-making: "It is common knowledge among lobbyists that as long as no formal documents are produced during the policy formulation stage, changes to the legislative proposals can be made much more easily" (Bouwen 2009: 20). Simplifying to some extent, there are two basic explanations as to why a lobby organization has been successful: either

it has done its homework and was well prepared, or it was simply lucky. As it has been already pointed out, it is extremely difficult to prove empirically how the final wording of a proposal did come about and which organization(s) exerted influence, but what we can be sure of is that any lobby organization attempts to minimize uncertainty and luck. For that reason, any organization that wishes to increase its chances of getting its interests accommodated needs to be familiar with the internal procedures of the European Commission as well as the legal procedures in the Council and the Parliament. Therefore, the remainder will explicitly focus on how a draft is created within the Commission and how the most applied legal procedure for adopting EU legislation - the ordinary legislative procedure - works. Only if a lobby organization understands the different stages of how a draft becomes an act it may influence EU legislation on a regular basis.

2.4.1 From draft to proposal

At the European level, there are a number of different stages that a draft needs to go through before it turns into a proposal (see Figure 5).

Figure 5: The different stages of a policy draft



Source 7: own graph

As soon as a new law is meant to be required, the general policy objectives and priorities need to be put down by the responsible DG. This is done by several top-level meetings between the Director General, Directors and the Commissioner’s cabinet. Afterwards, one person within the

DG will be selected as *rapporteur*²⁰ who is supposed to write the *dossier* (draft) and monitor it in the further stages of the decision-making processes (Nugent 2001: 242). As it will be shown, the *chef de dossier* is of particular importance for lobby organizations because this person decides whether possible amendments made by the Council or the European Parliament should be rejected or accepted.

Before the *chef de dossier* begins to work on the first draft of the proposal, it is necessary to include and evaluate external advice in order to increase the acceptability among the affected stakeholders, to make the policy making-process more legitimate and to avoid unforeseen consequences. Therefore, communications, Green or White papers are published which pinpoint the general objectives and call for further opinions. Not only through workshops, forums and expert advisory groups but also through public consultation on an open web portal, the Commission receives valuable input for the final legislative proposal (Gillies 1998: 179-180). This procedure constitutes one of the few formal means by which every lobby organization is able to participate within the EU's decision-making process. Since no draft has been created at this early stage, yet, the chances for a lobby organization of getting its interests accommodated are comparatively high.

Meanwhile, the *chef de dossier* gets in touch with the cabinet members of other relevant Directorates-General (DG) because, ultimately, they need to approve the final draft collectively. These so-called 'inter-service consultations' are very important in order to avoid possible turf battles and to present a coherent approach. It has been shown above that coherency is not always guaranteed because each DG concentrates on different aspects of an identified problem. Therefore, early coordination is of utmost importance and as soon as an agreement has been reached among the experts within the different cabinets, the general agreed items of that deal are not supposed to be altered during the drafting phase once again. For the very same reason, scholars underline that "cabinets are crucial points of access for governments, lobbyists and other actors and institutions keen to influence the Commission" (Egeberg 2013: 134-5).

Before the draft becomes a legislative proposal, the Commission's Secretariat General needs to check whether an Impact Assessment (IA) has to be conducted. The IA evaluates the potential

²⁰ Note that some scholars use different names for this person such as 'desk officer' (Gillies 1998: 179) or 'chef de dossier' (Karr 2006: 156). In order to better differentiate this person from the *rapporteur* in the various EP committees, the term *chef de dossier* will be used.

economic, social and environmental effects of a proposal. In this regard, the Commission (European Commission 2009) has published guidelines that provide some rough indicators when such a measure is necessary. According to these guidelines, the following Commission initiatives require an IA:

- all legislative proposals of the Commission's Legislative and Work Program (CLWP)
- All non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts (with the exception of routine implementing legislation)
- Non-legislative initiatives such as white papers, action plans, expenditure programs, negotiating guidelines for international agreements
- Certain implementing measures (so called 'Comitology' items) which are likely to have significant impacts (European Commission 2009: 6)

Depending on the scope and complexity of the respective initiative, there might be more than one DG responsible for elaborating on the IA. In any case, the Secretariat General provides support by establishing an Impact Assessment Steering Group (IASG), which brings together policy specialists from other affected DGs for offering advice. Finally, the Impact Assessment Board will scrutinize the submitted draft and control the quality of the IA. In some occasions it may ask the responsible DG to provide additional information, change some details and resubmit the IA.

After having conducted the IA, the final draft is sent to all Commissioners and their Cabinets, interested DGs and the Commission's Legal Service for final suggestions. Ultimately, when all DGs have almost agreed on the formulation, the draft is sent to the Cabinets where pending issues are tried to be resolved. Very delicate and controversial elements that cannot be solved at that stage will be forwarded to the College of Commissioners. Once agreement has been reached and the final draft has been approved, the text becomes an official proposal for a decision, a directive or a regulation (Gillies 1998: 180).

This short summary of how a draft becomes a proposal should not create the impression that this process happens overnight as the following example about the White Paper on Transport²¹ demonstrates. When the Commission decided to set up a long-term strategy at the end of 2008 to solve future issues in the transport sector it, first, initiated an online public consultation, several

²¹ The full official title was a "Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system" (European Commission 2011a)

expert group meetings and a High-Level Stakeholders' conference from January to March 2009. Within the following months it evaluated the obtained results and presented a Communication in June which once again asked for further input through a second public consultation and a High-Level Stakeholders' conference. Afterwards, the Commission started the preparation for the White Paper on Transport Policy and set up an inter-service group which met between November 2009 and June 2010 in order to coordinate the different views of various DGs.²² Then, an IASG had to carry out a comprehensive Impact Assessment until the middle of December and submitted it to the Impact Assessment Board (IAB).²³ The IAB, in turn, requested the responsible DGs in the beginning of January to make changes. After having re-submitted the draft, the IAB once again asked to DGs to revise it in the beginning of February. Finally, at the end of March 2011 the Commission released its White Paper on Transport. As a result, it took 2 years and 3 months until the initial draft became a proposal for a White Paper (European Commission 2011b: 5-8).

Bearing in mind these various time-consuming procedural steps, it seems logical that so many experts steadily stress that lobbying at an early stage is crucial. It does not come as a surprise that the higher the draft goes within the Commission, "the more reduced is the capacity for interest representation because of the mechanics of seeking change, the increasing politicization of measures, and the trade-offs that form part of reaching agreement" (Greenwood 2011: 37). Consequently, if the respective interest organization has not managed to include its position in the drafting phase, it appears very unlikely that it will find its interests being represented in the Commission's legislative proposal.

In order to minimize the likelihood that the legislative proposal will be amended various times or even rejected by the European Parliament or the Council, the *chef de dossier* also establishes informal contacts with the key persons in these institutions ('trialogue'). From a legal perspective, neither the Council nor the Parliament are in a position to revise any items within this draft. However, in light of the later following ordinary legislative procedure, in which the Parliament as well as the Council may reject the legislative proposal, the Commission does not ignore their input. Consequently, it is crucial for any lobby organization to get to know the responsible persons at this stage. To wait until both institutions are formally included in the decision-making process is

²² The number of involved DGs within the inter-service consultations had been 17 (!) (European Commission 2011b: 5)

²³ The Impact Assessment Steering Group involved 16 DGs (ibidem)

too late since their concerns are already taken into account much earlier. Therefore, the probability of success will be highest only if contacts are established to all key persons simultaneously and as early as possible.

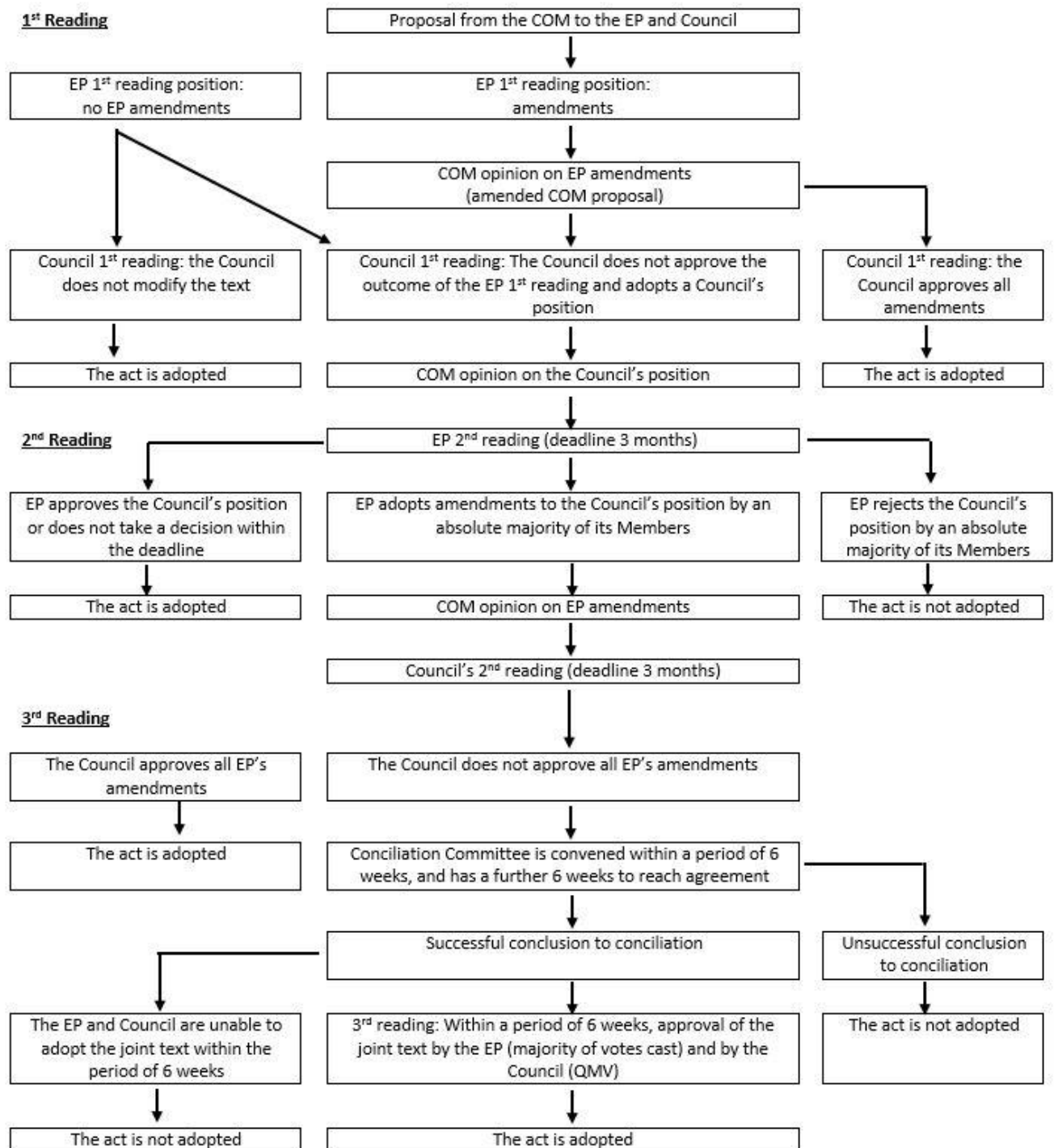
Finally, it should be pointed out one more time that the Commissioner's Cabinet and especially the *chef de dossier* are constantly in touch with the Member States during the whole drafting phase through the above mentioned 'expert committees'. This means that before the Commission adopts a proposal it has already discussed the proposal's basic and general components with the most relevant actors. This way, the Commission does not only gather important information at an early stage, it also increases the chances of a future successful implementation. As a consequence, although the Commission is legally not obliged to follow the committees' recommendation, it usually attempts to embed their suggestions as far as possible in order to face fewer obstacles in the later decision-making process.

2.4.2 From proposal to act

Only the application of the ordinary legislative procedure, formerly known as co-decision procedure, turns the EP into a co-legislator vis-à-vis the Council so that both institutions are equally important for adopting legislative acts. The specific details are laid out in Article 294 TFEU and are illustrated in Figure 6.

Before the actual legislative process begins, the Commission formally and informally contacts different interest groups from the private and public sector, civil servants from the Member States as well as MEPs with the objective to gather relevant information concerning the future proposal. This way, it becomes less likely that the proposal will encounter serious issues at the later stages. After collecting and assessing the gained data, it formally initiates a proposal.

Figure 6: Co-decision procedure (Ordinary legislative procedure)



Source 8: Based on European Parliament 2012: 51

At the first stage, the Council's working groups and the EP's committees scrutinize the Commission's proposal (see Figure 6). On issues such as environment, education or transport the Treaties legally require the Commission and the Council to consult the Committee of the Regions. Moreover, national parliaments might also play a role in this phase if they detect a breach of the principle of subsidiarity.²⁴ As it has been stated above, there have been only a few cases in which national parliaments have actually made use of this right. One reason for this is that the Commission does not elaborate on its proposals in isolation, but includes various actors right from the beginning, which, as a consequence, reduces the unintended violation of the principle of subsidiarity. Afterwards, the EP starts to hold its first reading in which it decides whether it should approve the proposal or propose amendments to it. The Commission, in turn, may change its proposal and forward it to the Council. If the Council does not suggest any new changes and approves all the EP's amendments, it can adopt the act as amended. At present, this working style is the rule rather than the exception (Duff 2009: 52). In light of the past relationship in the 1990s when the Council considered the Parliament a rival rather than a co-legislator this development is quite remarkable. At that time, the majority of proposals were adopted in the second or even in the third reading so that legislation took more time to be passed. In case the EP and Council cannot agree on a common position the Commission could act as a mediator and give its opinion so that the decision-making process does not consume so much time.

If no agreement has been reached, the second reading in the EP begins. Within a time limit of three months the EP either has the option to approve the Council's position or to take no decision at all which then automatically leads to the adoption of the legislative proposal. Nugent reports that at this stage normally 90% of all proposals are in an acceptable form for the EP so that no further debate is needed (Nugent 2010: 183). This impressive figure has its roots in the above mentioned inter-institutional negotiations ('trilogues') and demonstrates that all three parties – the Commission, the Council and the EP – are able to reach consensus without going through all possible readings (Fouilleux et al. 2005: 618; Lewis 2012: 329). In case the EP aims to reject or amend the proposal an absolute majority is needed. If the Council accepts the EP's

²⁴ Protocol No. 1 on the role of national parliaments and Protocol No. 2 on the principles of subsidiarity and proportionality in the Treaty on the EU stipulate that national parliaments may issue a reasoned opinion within eight weeks if they consider that the Commission's proposal has breached the principle of subsidiarity.

amendments, the act is deemed adopted, but if the Council rejects them the so-called Conciliation procedure will be convened.

The Conciliation committee consists of representatives of the 28 Member States and an equal number of Members of the European Parliament, grouped in an EP delegation which respects the relative strength of the political groups. The procedure will be canceled if the committee does not find a consensus within the next six months. If it is successful, it forwards the joint text to the EP and Council which have to approve it within six weeks with the majority of votes cast and QVM, respectively.

3 Regions in an organizational sociology context

Until the present day, Multi-level governance proponents have not been able to provide hard evidence about regular state by-passing in policy fields other than structural and cohesion policy. This fact constitutes one major reason why these scholars cannot convince liberal intergovernmentalists about their perception of the functioning of the European Union. Since this debate has not progressed for quite some time now, this research project applies a theoretical approach from a different subject with the objective to generate new insights. To the author's knowledge no other study has approached this topic from an organizational sociology perspective, yet. For that reason, the first section does not only briefly introduce this sub-discipline but it also elaborates on a definition for regional governments in the context of the EU in order to understand how they should be conceived of.

Afterwards, the basic structure of the situational approach, an approach which enjoys great popularity among sociologists, as well as its major points of criticisms will be illustrated. In its basic form, it consists of three interrelated concepts: the organization's goals, the organization's external situation and the organization's internal situation. In this research project, the organization's internal situation refers to a region's lobbying strategies (dependent variable) whereas the external situation includes external factors such as the legal and constitutional situation of the EU and the Member State, the demographic and economic situation, leadership etc. which all impact on the region's choice of strategy. Bearing the debate between Multi-level Governance proponents and liberal intergovernmentalists in mind, this chapter differentiates between two strategies: either the regional government works *with* the national government in order to defend its interests at the European level or it works *without* it ("by-passing").

The situational approach provides a useful analytical structure which allows to the identification of the most important external factor that exerts a strong influence on the region's preferred lobbying strategy. The following analysis will demonstrate that the legal and constitutional situation of the EU and the Member State constitutes the key factor (independent variable) which makes by-passing most likely. In the end, this chapter develops hypotheses which depict the cause-effect link between the EU's and the Member State's legal and constitutional situation and the regions' lobbying strategy in EU Competition, Environmental and Education policies.

3.1 Organizational sociology

Organizational sociology is a very young discipline whose roots lay in the United States after World War II. In the 1960s and 1970s it also became widely known in Europe, especially Germany and France. Nowadays, it is considered a subject of international importance with a broad scientific community from many different subjects: business administration, psychology, public administration, and economics. Because of this interdisciplinary characteristic organizational sociology is capable of contributing significantly to science. Analyzing specific topics from different academic angles helps to enhance our knowledge about the diverse interdependent casual processes at work which affect the organization's structure, its members as well as its goals.

Sociology as a discipline is a very large field which is usually distinguished between 'general sociology' and 'special sociologies'. The first category specifically concentrates on theories that attempt to explain the relationship between people and systems as well as the change of systems. Topics that are usually dealt with by scholars are power, rule, social conflicts, social inequality, social milieus, change of cultures, division of labor in a society, differing norms and values and so forth. Special sociologies, in contrast, lay the focus on structures and processes in societal sub-systems such as sociology of religion, sociology of education, sociology of labor or, sociology of military in order to work out regular patterns (Scott 2006: 206). As a consequence, special sociologies describe and analyze narrow subjects with the aim to generate practical results for the respective sub-system.

Most researchers grasp organizational sociology as a special sociology (Mayntz 1963: 31; Pfeiffer 1976: 9; Preisendörfer 2011: 11) which is relevant for both theory and practice. The

theoretical relevance refers to possible generalization problems of the final results. Understanding organizational sociology as a special sociology implies that empirics or statements which are valid for the concerned sub-discipline cannot be transferred easily to general sociology in every circumstance, whereas the opposite is true for general sociology: here, observations can be applied to special sociologies (Endruweit 2004: 9-10).

The above mentioned theoretical issue is strongly connected with decision-making in the 'real world' because grasping organizational sociology as general sociology can lead to wrong decision-making in practice with profound implications for organizations. Such an understanding would imply that a managing authority of an organization in sub-discipline A could smoothly adopt the characteristics of an organization in sub-discipline B in order to create higher incentives for its employees, to increase its efficacy or generally to reach its objectives more efficiently. Yet, not surprisingly such a simple adoption is very likely to fail in most circumstances and for that reason, classifying organizational sociology as general sociology appears to be problematic. Against this background, this work understands organizational sociology as a special sociology like most sociologists.

Studying organizational sociology it becomes obvious that there is no single, clear-cut definition of 'organization' (Endruweit 2004: 17; Scott and Davis 2007: 27-32; Abraham and Büschges 2009: 55-62; Preisendörfer 2011: 13). In sociological terms, organizations can be literally everything as for instance car producers, chemical companies, schools, churches, hospitals, shopping malls, banks, environmentalist groups, associations and much more. The reason for having introduced such a broad understanding of that term in organizational sociology relates to the fact that – in spite of all the differences – most organizations are confronted with similar issues such as defining objectives, hiring and training staff, setting incentives for their members, choosing a central or decentralized system of decision-making and so on (Ebers 1981: 1-2). Depending on the disciplinary background of the researcher and the specific theoretical perspective an organization can be a means towards increasing efficiency, an instrument to safeguard power, an apparatus which sets boundaries for people, an opportunity to generate individual freedom, a system of agreements, a hub for communication and many more (Kieser and Walgenbach 2010: 1).

The breadth of definition is very useful for this research project because it allows the analysis of a regional government from an organizational sociology point of view. Since the

repertoire of approaches and theories of that subject is quite extensive, the following section needs to elaborate on the understanding of regional governments in the context of EU lobbying first.

3.1.1 Three paradigms of organizations

The fact that academics have not treated regional governments as organizations in EU decision-making to this day has two implications. First, a sociological understanding for regional governments in the EU's multi-level system does not exist, and second, academics have not applied organizational sociology theories or approaches in this context, yet. For that reason, we have to approach this sub-discipline step by step. In the first instance, the three main paradigms²⁵ of organizations in organizational sociology will be introduced. Each one lays the focus on different organizational aspects which reduces the total number of applicable theories and approaches. Afterwards, the regional government of legislative regions will be linked with one paradigm. It will be argued that the open system perspective fits perfectly well to the nature of regional governments in the European Union in general and to the focus of this research project in particular.

It has already been mentioned that in sociology the term organization is not very precise so that nearly everything can be considered an organization. Although all organizations share several characteristics such as setting-up goals, establishing a managing authority, delegating tasks or stating formal rules (Abraham and Büschges 2009: 19-29), they vary in size, structure, or operating procedures. Additionally, there are also diverse types of organizations such as economic organizations (companies, banks), public organizations (theatre, opera), voluntary organizations (political parties, civil society groups), governmental organizations (Scottish Executive, Land of Bavaria) coercive organizations (prisons, mental hospitals), law-maintaining organizations (police, courts) and many more.²⁶ Bearing in mind the omnipresence of organizations it is fair to say that they constitute an essential part of our daily life and because of that fact, studies about them are regarded as so important.

²⁵ Note George Ritzer's (1975: 157) definition of a paradigm: "A paradigm is a fundamental image of the subject within a science. It serves to define what should be studied, what questions should be asked, how they should be asked, and what rules should be followed in interpreting the answer obtained."

²⁶ Some examples of how to categorize organizations are provided by Parsons (1960), Etzioni (1961) or Watson and Shackleton (2008).

Since this project is the first one that places the regional governments' lobbying strategies in an organizational sociology context, it is necessary to work out how such actors can be understood in that subject. Organizational sociologists usually apply one of the three following paradigms in order to investigate organizational characteristics such as the internal structure, behavior of members, decision-making, authority, compliance and so forth:

1. "Organizations as a rational system"
2. "Organizations as a natural system"
3. "Organizations as an open system" (Blumberg 1987: 12-17; Scott and Davis 2007: 29-32; Blaschke 2008: 7-57; Anderson et al. 2009: 103-124)

Scott and Davis (2007) point out that each system or paradigm consists of several 'schools of thinking' which highlight different organizational characteristics. The rational system perspective is represented by Taylor's scientific management approach (Taylor 1911), Fayol's administrative theory (Fayol 1949), Weber's bureaucracy approach (Weber 2010: 703-738), and Simon's theory of administrative behavior (Simon 1997). Although each school puts the emphasis on a different organizational aspect, they also share certain assumptions. Generally, they perceive organizations as a rather closed system in which the main focus is laid on achieving specific goals by choosing efficient structural arrangements. As a consequence, the primary concern of these schools is effectiveness and efficiency; it is argued that decisions are made and goals pursued because of rationality (Blaschke 2008: 8). The influence of the external environment or irrational behavior on the organization's structure or goals, however, are not taken into account. Particularly the latter deficit – the exclusion of irrational behavior – was criticized and led to the natural system perspective.

In comparison to the previous paradigm, the natural system perspective concentrates on the informal structures, norms and values within an organization, thereby focusing on its members and their behavior. Proponents admit that formal guidelines may restrict or even limit certain interactions, but they never determine the behavior of any member because employees are not machines. Everyone differs with regard to his or her qualifications, socialization, personality etc., and since the organization's managing authority is not willing or capable of supervising everyone, unofficial methods are usually established in order to deal with daily occurrences and unforeseen issues (Blumberg 1987: 13). The main schools of thought in this regard are the human-relations-theory (Mayo 1945), Barnard's Cooperative System (Barnard

1938), and Selznick's Institutional Approach (Selznick 1948). The bottom line of these schools is that human beings within an organization are of utmost importance for reaching the organization's objectives and therefore, the emphasis is placed on the individuals' behavior and interaction (Anderson et al. 2009: 104; Blaschke 2008: 19).

Finally, the open system perspective criticizes the previous two paradigms because none of them takes the (external) environment as a significant influential factor into account. If both previous paradigms have something in common, it is their focus on the interior. Open system proponents envision that an organization cannot be seen as an isolated isle in the sea which is sealed off from its surroundings; quite the contrary, they argue that organizations constitute components in larger systems of relations (Scott and Davis 2007: 31). As a consequence, open system theorists specifically illuminate the interdependence between the organization's environment on the one hand and the organization's internal characteristics and goals on the other and stress that the former exerts a strong impact on the latter. Neither formal rules or procedures nor the behavior of members can be completely understood without explicitly including environmental characteristics. Influential schools of thinking of this paradigm constitute the Systems Design (Burton and Obel 2004; Nissen 2006), the Contingency Theory/Situational Approach (Lawrence and Lorsch 1967; Kieser 2002), and Weick's Social Psychology of Organizing (Weick 1979).

3.1.2 Regional governments as open systems

After having introduced the three main definitions of organizations the question of which paradigm fits best to regional governments arises. Yet, one cannot state that one perspective is more important than the other since each system is able to make valuable contributions to science and practice. In fact, some scholars have even combined the rational or the natural system perspective with the open system perspective (Scott and Davis 2007: 107). Therefore, the answer depends on two criteria. The first criterion refers to the actual focus of the research project and the second one relates to the organization's goals.

The first and most important criterion is linked to the research question. If the researcher conducts a comparable study of various regional governments in EU Member States about their recruitment processes, formal structure or hierarchies, the rational system perspective appears to be a fruitful paradigm. Weber's bureaucracy approach, for example, underscores that

functionaries are hired on grounds of their qualification, that each one fulfills a specifically defined number of tasks and that functionaries should receive a decent salary in order to safeguard their future on a long-term basis (Weber 2010: 162-164). If, however, the focus is laid on the interaction and behavior of the organization's members we could certainly adopt a natural system perspective since it stresses that those characteristics cannot completely attributed to rationality. From time to time, many people behave irrationally, do not follow guidelines or are simply unmotivated. In such a study, Barnard's Cooperative System might offer valuable insights because this theory helps to explain the employees' the lack of compliance (Barnard 1938).

Since this research project is dedicated to the lobbying strategies of legislative regions in the multi-level system of the EU, the third paradigm seems to be the promising one because, in general, developing strategies is always dependent upon the inclusion of environmental characteristics such as customer behavior, competitors, technology, legal provisions and so forth. The open system perspective explicitly states that the environment is a crucial factor that exerts strong influence on the organization's interior. Therefore, one can conclude that the first criterion, which refers to the focus of a research project, points to the open system perspective. The second mentioned criterion lays the focus on the organization's goals because a look on this aspect helps to assess whether an inclusion of the environment constitutes a fundamental aspect for the organization.

Without running risk of oversimplification it is fair to say no organization exists without goals. Setting-up goals is probably the most basic and, at the same time, the most essential characteristic of any organization because they guide, motivate, symbolize, justify and evaluate behavior (Scott and Davis 2007: 185). As already described above, the sociological term organization is very vague so that the overall goals provide a good impression about the possible relationship between the organization and its environment. Not surprisingly, goals differ from organization to organization. Whereas the primarily goal of a prison is to re-socialize people, an environmentalist group may aim to save the rainforest. Compared to a business company whose major goal is to make profit, public institutions such as libraries, museums, theatres but also municipal garbage disposals or national post offices primarily offer services for citizens. Bearing these diverse goals in mind, it becomes obvious that each type of organization faces different environmental challenges and opportunities. For achieving monetary goals any business company must strictly consider the consumers' preferences, the number of competitors, and future

technological innovations as essential environmental characteristics whereas many public organizations are financed by the state so that their focus is a different one.

When it comes to EU politics, the official tasks and goals of many regional governments in legislative regions usually include lobbying to shape European legislation whereas the objectives of administrative regions concentrate on networking and acquiring EU-funding opportunities. In order to fulfill their mission, the German Länder have established representation offices near the EU institutions. They constitute an early-warning-system which means that they inform the home administration about the latest developments and topical issues in the EU. Moreover, they are expected to promote regional concerns and interests directly upwards to the EU institutions and to build-up alliances with other actors. French regions, which as administrative regions do not enjoy legislative competences, fulfill rather vague tasks such as assisting regional and local politicians in their European initiatives or developing European projects. To be more precise, Table 3 pinpoints the major tasks of two legislative as well as two administrative regions in EU politics.

Table 3: Overview of the tasks of different regional representation offices

Regional representation offices of...	Tasks/goals
Baden-Württemberg (legislative region)	<ul style="list-style-type: none"> • Early-Warning-System: informing the regional government about topical issues and developments in the EU • Addressing regional interests directly in European decision-making processes at all stages by contacting the European Parliament, the Commission, the Committee of the Regions, as well as the different Council formations. • Forging alliances with other regional representation offices • Communication-forum: connecting all kinds of actors to European decision-makers • Promoting the region’s cultural specialties, history and art
Burgenland (legislative region)	<ul style="list-style-type: none"> • Identifying and observing relevant subjects in order to get Burgenland’s regional interests accommodated at the European level • Coordinating and preparing the agenda for the Committee of the Regions • Helping all kinds of actors to get in touch with European decision-makers • Cooperating with other regional offices • Promoting the region’s cultural specialties, history and art
Ile-de-France (administrative region)	<ul style="list-style-type: none"> • Informing and raising the awareness on EU policies and programs • Increasing the value and promoting the interests of its members to the European institutions • Assisting regional and local politicians and players in their European initiatives • Representing the Ile-de-France regional and local authorities to the European institutions
West Midlands (administrative region)	<ul style="list-style-type: none"> • Networking with partners or other business from across Europe • Developing European projects • Profiling other organizations, their products, services or projects to a European audience

Source 9: <http://www.stm.baden-wuerttemberg.de/de/Aufgaben/110857.html>;
<http://www.burgenland.at/politik-verwaltung/landesverwaltung/landesamtsdirektion/60>;
<http://www.iledefrance-europe.eu/index.php?id=57>; <http://wmie.wordpress.com/west-midlands-european-centre/>

It becomes obvious that for any regional government that somehow interacts with the EU, the inclusion of the environment represents a fundamental criterion for achieving the respective goals. This observation has an important theoretical implication for the sociological understanding of regional governments as organizations because the applied paradigm should treat the (external) environment as a crucial factor that significantly influences organizational characteristics. In other words, if the research project addresses the activities of regional governments in the EU, the theory or the approach should not consider them as a closed system which is isolated from its environment but, quite the contrary, it should regard such organizations as open systems whose actions vis-à-vis other actors cannot be understood without incorporating environmental characteristics.

The foregoing has demonstrated that for theoretical and practical reasons the open system perspective is the most suitable paradigm for this research project. As mentioned above, several theories and approaches exist within this paradigm, each of them laying the focus on different organizational aspects. The situational approach²⁷ appears to represent the best option for analyzing and explaining the lobbying strategies of regional governments in legislative regions, because it specifically concentrates on the organization-environment relation (Pfeiffer 1976: 120; Allmendinger and Hinz 2002: 12; Preisendörfer 2011: 78).²⁸

3.2 The situational approach

The situational approach has its origin in two traditional theories. On the one hand, it draws on insights from management theory which stresses that the internal structures of an organization have a strong impact on the behavior of the organization's members as well as on the organization's efficiency (Preisendörfer 2011: 80). On the other hand, the situational approach is heavily marked by Weber's bureaucracy approach which emphasizes, among others, that the organization's efficiency is strongly affected by a clear hierarchy, a precise division of labor,

²⁷ In Anglo-Saxon literature, this approach is called "The Contingency Theory". The reason for using the German expression is because the term "theory" appears to be somewhat misleading in this context, as it will be shown in the following section.

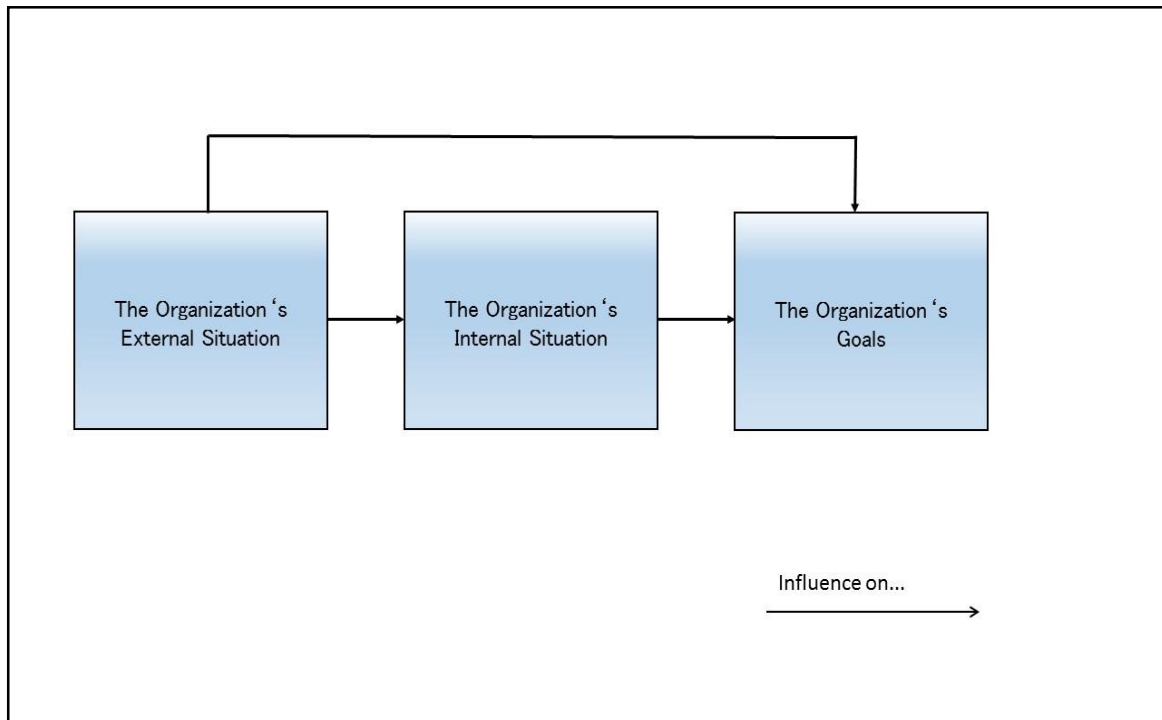
²⁸ The System Design theorists, in contrast, concentrate on improving work flows, control systems and information processing whereas Weick's Model of Organizing scrutinizes the organization's members and their collective perception of the environment which leads to informal rules or routines (Scott and Davis 2007: 99-106).

codified formal rules and procedures which must apply to all members, and the mandatory written documentation of oral declarations and decisions (Weber 2010: 160-166).

Until the 1950s most people did not question Weber's work and some even considered it wrongly a universal model for private and public organizations alike. However, empirical research revealed that in reality many private organizations did not adhere to Weber's ideal type of bureaucracy because it was regarded as inappropriate or even inefficient in some circumstances (Senge 2011: 34). Some organizations, for example, chose to create flat hierarchies with a decentralized system of decision-making whereas others have established steep hierarchies with a centralized system of decision-making. In similar vein, some organizations indeed established a precise division of labor whereas others assigned their members vague tasks so that they enjoyed considerable leeway. Due to this diversity, sociological research began to investigate more closely the different internal characteristics of organizations and attempted to answer the question of which organizational structure would be most efficient in what situation. For the first time, sociologists explicitly included the external environment of the organizations into their analysis because they assumed that the latter exerts a strong influence on the organization's internal characteristics. Furthermore, by developing clear concepts, these 'situational sociologists' were the first who operationalized organizational variables such as hierarchy, standardization, centralization, division of labor and so forth in order to make these features comparable for future empirical research. Although the total number of these concepts may vary from subject to subject, sociologists have usually applied four specific ones but in its most basic form, the situational approach contains three principle concepts (see Figure 7).²⁹

²⁹ These four concepts are: "the organization's situation", "the organization's structure", "the behavior of the organization's members" and "the organization's efficiency" (Kieser and Kubicek 1978: 112).

Figure 7: The situational approach



Source 10: own creation; based on Olavarria 1999: 224

The first one constitutes the organization's external situation which contains all relevant features that cannot be altered by an organization *in the short run* such as a country's constitution or laws, the number of people who live in a certain territory, or consumer behavior. Depending on the respective research topic the number of possible factors might vary significantly. If, for example, the researcher focused on an economic organization whose aim is to develop marketing strategies for its clients, it would be almost impossible to enumerate all conceivable factors of the organization's external situation that somehow affect the client's success (Olavarria 1999: 227-228). The second depicted concept represents the organization's internal situation which includes, among others, the organization's structure, the behavior of its members, the decision-making procedures or any form of action taken by the organization. In contrast to the external situation, the organization is able to control or influence these factors in the short run. The organization can choose its own structure, it can set rules which stimulate members' behavior, it decides whether decision should be taken unanimously and it is also free to select the most appropriate strategy. In other words, the regions' lobbying strategies belong to the organization's internal situation. The last concept is the organization's goals which might involve anything that

the organizations wishes to achieve such as a high turnover, a high degree of efficiency, a high reputation among consumers or simply a favorable outcome of EU decision-making processes.

The principle aim of this research project is to work out the preferred lobbying strategy of legislative regions or to put it differently: the main question is which type of lobbying strategy is considered most successful in what situation. In order to do that it is necessary to identify the most important factor of the organization's external situation that predominantly impacts on the choice of a region's lobbying strategies.

Besides, analyzing this key factor is also very helpful for future research because scholars can bundle their efforts and come up with new evidence more easily. As this chapter will show, the legal and constitutional situation of the EU and the Member State represents the most crucial factor in this matter which can be distinguished between exclusive, shared and supporting or no legal competence. Consequently, this factor represents the independent variable and the regions' lobbying strategies the dependent variable.

This objective is compatible with the situational approach because its central thesis is that there is not just one single valid decision for acting but various situation-specific alternatives (Staeble 1981: 215). To be more specific, situational sociologists generate hypotheses such as 'if an organization faces situation X_1 , the most promising course of action is Y_1 whereas if an organization faces situation X_2 , the most promising course of action is Y_2 '. In other words, the proponents of the situational approach reject the overall validity of more general theories. Instead, their aim is to identify all conceivable courses of action in a given situation in order to then detect the most promising one (Staeble 1976: 36). Applying that thought to this research project, it means that we have to work out the conceivable lobbying strategies and determine the most promising one for EU Competition, Environmental and Education policies.

But how do we do this? First of all, it is necessary to elaborate on the causal relationship between the organization's external and internal situation. To put it differently, the researcher has to examine which factor of the organization's external situation affects the organization's lobbying strategies the most. This is done by plausibility assumptions (Olavarria 1999: 119; Kieser 2002: 175). As outlined above, the lobbying strategies will be distinguished between working *with* the national government on the one side and working *without* the national government on the other ("by-passing"). Both strategies share coalition-building as a common feature but the "by-passing strategy" explicitly excludes the national government as a potential coalition-partner (see

below). Since the situational approach alone is not capable of making any assumptions concerning a regional government's preferences about coalition-partners, it is necessary to combine it with another model that explains and predicts actors' behavior (Tomczak 1989; Gussek 1992; Olavarria 1999). For that reason, this work is going to combine it with rational choice theory in order to develop situation-specific hypotheses.

Comparing this research design with other studies which have applied the situational approach, it becomes obvious that this project concentrates on one independent variable only - the legal and constitutional situation of the EU and the Member State. Various works have, in contrast, investigated the impact of two to five independent variables of the organization's external situation on its internal situation (Lawrence and Lorsch 1969; Tomczak 1989; Olavarria 1999). As these studies focused on economic organizations such as business companies, the analysis of more than one external factor is deemed necessary because this type of organization pursues different goals and faces a far more complex situation than some governmental organizations do. For example, an international automobile manufacturer whose major goal is to achieve a high return on investment needs to consider an innumerable amount of factors such as consumers' behavior and preferences, the total number of possible buyers and competitors, the competitors' current market position, available technology, suppliers, infrastructure, environmental and geographical factors, the national tax system and many more, so that an analysis about economic organizations concentrating on only one factor would produce superficial and low-content results at best. EU lobbying strategies of governmental organizations, in contrast, are hardly or less affected by any of the above mentioned external factors but by just a few ones which have already been identified by MLG and interest group literature (see below).

3.2.1 Critique

Although the situational approach has constantly gained popularity among sociologists, economists and political scientists, it has received a lot of criticism so that its shortcomings should be brought up also (Staeble 1981: 223-226; Kieser 2002: 183-191; Kieser and Walgenbach 2010: 432-435; Preisendörfer 2011: 92-94). First, the situational approach's postulated one-way relationship between the organization's external and internal situation is not always correct because some organizations may indeed have enough power to exert influence or even control their environment (Aldrich 2008: 144-145). Yet, these sorts of organizations are either monopolies

or oligarchies or they are international corporations which generate immense profit and employ a huge number of people so that they are able put pressure on other organizations. Clearly, regional governments do not fall into this category so that this critique can be neglected.

Second, the operationalization of variables in various empirical studies is inconsistent. Studies which refer to each other have either used different scales or some researchers asked about perception whereas other focused on hard, measurable facts. This crucial difference makes comparisons very difficult if not impossible. However, the selected independent variable of this project - the legal and constitutional situation of the EU and the Member State – can be easily operationalized; in this regard, legal-political experts differentiate between exclusive, shared and supporting or no competences (Piris 2010: 75).

Third, the empirical evidence which has been produced so far is not representative because all studies took samples without making reference to the total population. This weakness can be ascribed to the fact that for most organizations, particularly economic ones, it is almost impossible to estimate or even calculate the total population. This issue does not touch representation offices of legislative regions since almost all maintain one.³⁰ Besides, this study does not work with samples but includes all legislative regions of Germany and the United Kingdom.³¹

Fourth, the quality of information produced by most studies applying the situational approach has not been very high because they analyzed the structure of organizations. Typical results are ‘the larger the organization, the more decisions are taken on a decentralized basis’ or ‘the stronger the pressure of competition, the more decisions are taken on a decentralized basis’ (Kieser 2002: 184). Since this project does not focus on the organization’s structure but on the regions’ strategies to influence EU legislation this study is expected to reveal more interesting results.

Fifth, and closely related to the previous aspect, it is noted that the situational approach lacks explanatory power since it does not say anything about the actor’s preference for strategy selection. Scholars compensate for that deficit by combining the situational approach with another model which is capable of explaining and predicting actors’ behavior so that clear-cut

³⁰ The only exception constitutes the Austrian region Vorarlberg. Besides, Hamburg and Schleswig-Holstein share one representation in Brussels (Hansa-Office).

³¹ With the exception of Saxony and Mecklenburg-Western Pomerania which refused to take part in this project.

hypotheses can be produced (Tomczak 1989; Gussek 1992; Olavarria 1999). Since this critique also applies to this study, the situational approach will be combined with rational-choice theory.

To sum up, the situational approach has been criticized with good cause but its deficits, which in most cases refer to economic organizations, are negligible for this study.

3.2.2 Lobbying strategies of regions in EU decision-making

Chapter 1 has pointed out the high importance of the EU for regions so that it does not come as a surprise that legislative regions do not remain passive but become active players at the European level whose major objective is to have a say in EU decision-making. In this regard, liberal intergovernmentalists underline that the Member State government holds a gate-keeper position so that regions are only able to influence EU policies by liaising with their national government. Multi-level governance proponents, in contrast, not only stress that “regions play an important role in the EU system of multi-level governance” (Bauer and Börzel 2010: 260) but also that they “have the opportunity to become relevant players in the Brussels policy-game even against the wishes of their sometimes inextensible gate-keeping central governments” (Tatham 2008: 511). These opinions are based on the fact that regions may establish direct communication with (a) the European Commission, (b) the Council of Ministers, (c) the European Parliament, (d) and the Committee of the Regions in order to influence policy processes to their favor. However, whether legislative regions really by-pass their national government in policy fields other than structural and cohesion policy on a regular basis is not known. For that reason, this study distinguishes the regions’ lobbying strategies as follows: either they work *with* their national government in order to promote their interests at the European level or they work *without* it (“by-passing”).

Although the national government is either included or excluded, both strategies have something in common: they rely on coalition-building. Coalition-building is a process in which actors at different levels exchange information, coordinate their activities and cooperate with each other in order to increase their chances to make their voice heard. The basic rationale behind this idea is to boost the region’s political weight in meetings with EU decision-makers. To put it differently, instead of lobbying the decision-makers of EU institutions individually or autonomously, a region liaises closely with other actors and confronts the European Commission, the Council or the European Parliament with an aggregated viewpoint. Chapter 2 has worked out, inter alia, that the Commission explicitly demands European solutions and hard, verifiable facts

so that this institution is more receptive to one statement of ten actors than to ten single statements. Since the European Commission is a key decision-maker in EU politics, coalition-building appears to be mandatory in almost all circumstances.

In case the regional government decides not to work with the national government, it may build a coalition with three potential types of actors. The first possible coalition-partners, who might allow the region to by-pass the national government, constitute other regions within the same Member State. This type of coalition is probably the easiest one to build because a regional government is often aware of the interests of its regional counterparts. Especially if consistent intergovernmental-institutionalized procedures (see below) are already in place, it neither takes much effort or time to coordinate and cooperate with other inner-state regions. For that reason, such a coalition appears to be very fruitful to promote regional interests at the European level. Second, a region could consider a coalition with regions from other Member States. In comparison to the previous type of coalition, this one is difficult to forge because of possible communication problems and a lack of institutionalized procedures. The advantage of this coalition type is that it allows a regional government to convincingly argue from a European perspective and to present EU-wide solutions. In this regard, European platforms such as REGLEG may provide legislative regions in different Member States a forum where they can coordinate their views. Third, a region could also forge ad-hoc coalitions with non-governmental actors such as private companies, associations, labor unions, NGOs and so forth. As the European Commission especially requests expertise from actors that are directly affected by its proposals, a coalition with those organizations may provide the regional government with concrete, verifiable facts which make it more likely that Commission personnel take the region's point of view into consideration. In contrast to the second coalition-type, this one seems to be easier to build because either the regional government already knows the key persons in international business companies, employers' associations, labor unions etc., or those organizations establish contact with the regional government on their own.

Intuitively, one may also think that the European Parliament and the European Commission constitute potential coalition-partners with whom the region could by-pass its central government. This conclusion, however, would be premature in the case of the European Parliament and it would be wrong with regard to the European Commission. Although each region has 'its own' MEPs in the Parliament, one should not assume that these MEPs support their

regional government in any circumstance. Chapter 2 has already pointed out that although MEPs are receptive to national and regional concerns, each MEP has to argue from a European perspective in order to convince other MEPs. If no other region is negatively affected by a proposal, the MEPs cannot assist their regional government. The European Commission constitutes a political neutral institution which does not build coalitions at all (Interview 1, Interview 2, Interview 3). To be more specific, a civil servant in this institution stressed that “it is correct that we establish contact to all kinds of actors and take their concerns into consideration before we elaborate on a draft. But we would never ever build any kind of coalition or even change proposals simply because the content is unpleasant for one individual organization only. In fact, our proposals are always unpleasant for some organizations and if we backed down in such a situation, we could stop making proposals once and for all” (Interview 2). On top of that, one should bear in mind that both actors are not homogenous but heterogeneous institutions. Even if a region was able to convince one DG or a number of MEPs about its perspective, this would be meaningless unless the remaining DGs and the other for a majority needed MEPs would support it as well. For these reasons, neither the European Parliament nor the European Commission are treated as potential coalition-partners for regional governments. As a result, they only remain key addressees of lobbying.

The idea that regions could build coalitions with other actors in order to make their voice heard at the European level is not a pure theoretical thought. Although it is certainly true that the majority of regional cooperation agreements in the past focused on economic and cultural matters, there are also several examples that prove that political cooperation has become an important instrument to influence the European political agenda. For instance, Christian Engel (2005: 127) states that North-Rhine Westphalia and Scotland have concluded several agreements with the aim to establish a close political cooperation in European matters, as both regions are aware that they can achieve more by working together. Hooghe and Marks (2001: 87) report that Saxony-Anhalt preferred to cooperate more closely with Spanish regional offices than with West German Länder because it shared more economic features with the former. Moreover, Peter Bursens and Jana Deforche (2008: 8) point out that trans-regional cooperation helped Flanders considerably to shape the development of the Council Regulation on the European Sugar Reform in 2006 to its favor. On top of that, North Rhine-Westphalia has forged alliances with industrial

actors in order to amend the Commission's proposal concerning the REACH regulation (Stein 2007: 142-144).

This section has worked out the different possible coalition-partners of a regional government, but which one will be chosen by a regional government to boost its political weight? When does a region prefer to build a coalition with inner- or outer-state regions? It is likely that a region forges a coalition with a business company, a labor union or a NGO? Or does a region even attempt to use all possible types of coalitions simultaneously? It has been stated above that the situational approach can only reveal the most promising course of action in a given situation if it is combined with another model. Therefore, the following section will elaborate on this aspect by applying rational choice theory.

3.2.3 Regional governments as rational actor

Ideally, an organization may attempt to forge as many coalitions as possible in order to increase the pressure on EU institutions. As it will be argued below, however, coalition-building requires human and materialistic resources in order to find the right partners. Yet, it is fair to say that no organization possesses an unlimited pool of resources and compared to most economic organizations, governmental organizations have to work with a relatively small budget. Moreover, coalition-building usually implies that the initial position with regard to concerned EU legislation has to be altered in order to reach a compromise. Taking this dilemma into account, this work assumes that regional governments are rational actors. Using rational choice arguments for predicting the behavior and actions of governmental actors as regards EU lobbying appears to be legitimate because scholars have already highlighted the importance for interest groups of employing scarce resources effectively (Dür 2008: 1218).

A core assumption of rational choice theory is utility maximization by weighing opportunities and constraints (Opp 1999: 173; Abraham 2001: 3) which means that a rational acting organization is tended to choose the most effective and efficient course(s) of action. Effectiveness refers to a high degree of target attainment and efficiency relates to optimal resource consumptions which keeps materialistic and personnel costs as low as possible. In the context of EU lobbying strategies of legislative regions this means that a regional government will not forge coalitions with all possible candidates but only with the most influential coalition-partner.

With regard to effectiveness, it is necessary to bear in mind that there are many actors at the European level that also try to shape EU legislation to their favor. Even experts are not able to quantify the exact number of lobbyists but it is assumed that there are more than 15,000 (Beise 2014: 17). Particularly, international enterprises, global corporations and consulting agencies that possess immense financial resources and political power are part of the 'EU game'. Every day, the EU-institutions receive a flood of emails, opinions, statements, assessment reports etc. so that the influence of one single actor appears to be negligible. Therefore, many small- and medium-sized companies make use of EU-umbrella associations (so-called Eurogroups) which consists of groups with similar interests closely located at the EU institutions. The overall objectives of such a collective are the creation and maintenance of a platform for observing each other, the bundling of specific interests for increasing the likelihood of shaping EU policies, and the reduction of costs stemming from lobbying activities. But not only regions face immense competition in EU politics; the Commission itself is predominately interested in pan-European solutions so that individual opinions are of minor importance. Taking these aspects in account, one can conclude that with a very high level of probability a region is almost always obliged to forge coalitions with other actors in any circumstance.

Concerning efficiency it is fair to assume that no organization possesses an unlimited number of human and materialistic resources, and therefore, a rational actor always seeks to reach its goal with an optimal resource management. In comparison to other legislative regions, the German Länder are well staffed and continue "to set a benchmark in regional representation" (Rowe 2011: 129), but only a handful employ enough personnel to cover all policy fields. Consequently, several civil servants handle more than one policy area so that they cannot invest much time for finding and contacting all possible coalition-partners. Besides, coalition-building is usually resource intensive. Therefore, a coalition is only forged if the interests of both parties are similar but it requires time and effort to find this out. In the case of a potential coalition partner being identified, contact will be established. In politics it is widely known that the devil lies in the detail which means that both sides often disagree about some aspects. As a result, a compromise is needed and since more coalitions usually require more compromises, the final position may only represent the lowest common denominator. Therefore, an organization's priority is to seek the most influential coalition-partner in order to save time, resources and to reach the highest utility.

Since rational actors are interested in achieving a high degree of target attainment and keeping resource consumption as low as possible, the question arises of whether a regional government is supposed to concentrate its lobbying efforts on the European Commission, the Council or the Parliament. Clearly, no institution can be considered unimportant but from a rational actor's perspective it makes sense to particularly focus on the potential veto-players in the concerned policy field.³² A veto-player is a single actor (or a group of actors) who has certain preferences over policy outcomes which is capable of blocking a change in the status quo. Obviously, this definition already indicates that the EU's and the Member State's legal and constitutional situation is particularly helpful in this regard because it specifically scrutinizes which actor possesses what competences to adopt laws. As a consequence, the regional government's strategy and possible coalition-partner(s) heavily depend upon this external factor.

As it will be shown further below, the European Commission represents the veto-player in most EU Competition policies whereas the Council and the Parliament constitute the potential veto-players in EU Environment and EU Education policy. But which actor will be specifically targeted by regional governments in the last two mentioned policy areas? From a rational choice perspective, the answer is the Council of Ministers for a couple of reasons. First, the regional government does not have to spend much time and effort to get in touch with the national government so that it gets to know its standing easily. This point does not apply to the European Parliament because the region only possesses close access to 'its own' MEPs. In other words, if the regional government wants to be thoroughly informed about the other MEPs' opinions, it needs to invest far more resources in comparison to the 'Council-route' which would be inefficient. Besides, if the MEP belongs to a different political party, establishing contact might be considered burdensome for some regional politicians.

The second reason relates to the voting behavior in both institutions so that this argument takes the effectiveness aspect into consideration. With regard to the system of decision-making in the Council, it has been shown that it is based on consensus which means that it is very unusual to outvote other Member States. Consequently, if the national government picks up the region's

³² The qualifier 'potential' has to be used because since the entry into force of the Lisbon Treaty, the Member State government *de jure* constitutes a veto-player in only a very limited number of policy fields, such as Common Foreign and Security Policy. In the vast majority of policy areas, however, one Member State could be outvoted in the Council if it does not meet the criteria for a reaching a blocking-minority. According to the Treaty Article 16 TFEU "A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained."

concerns, it is not unreasonable to assume that its interests will be accommodated to some extent. Concerning the European Parliament, however, no MEP can solely defend its region's interests because, in total, there are 751 MEPs who represent more than 200 regions in the EU. For that reason, the MEPs have to think European and promote the public wellbeing of all EU citizens. Besides, the two largest political parties – the EEP and the S&D – almost always forge a coalition (in party political terms) which requires many informal meetings and negotiations so that it is extremely difficult to anticipate the MEPs final voting behavior. As a result, the 'EP-route' appears to be less effective than the 'Council-route'.

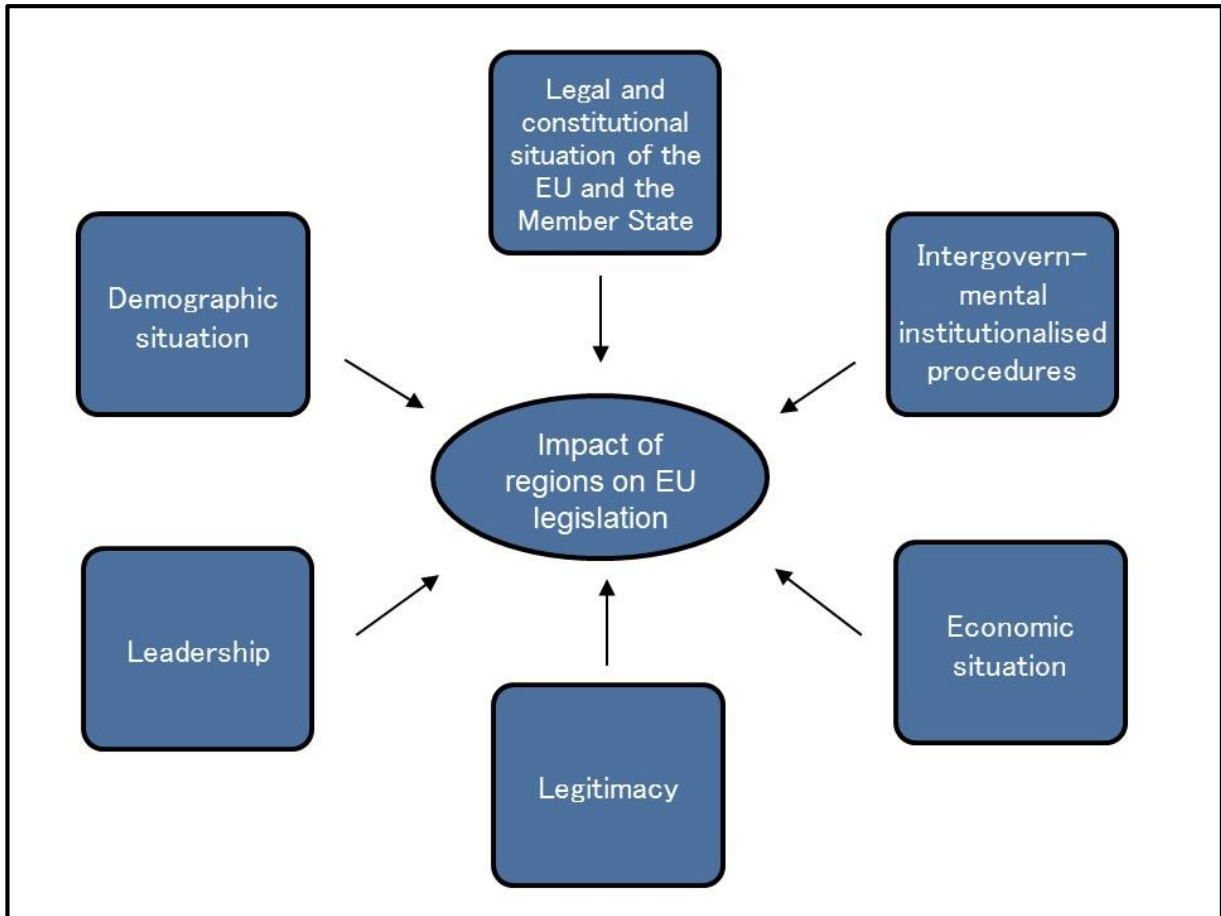
The third and last argument considers the Council's configuration which also refers to the effectiveness aspect. Sometimes, legislative regions have the possibility to represent the Member State government in this institution because the region is particularly affected by the Commission's proposal, as for example Scotland in EU Fisheries policy. Moreover, some legislative regions even possess the legal right to represent its national government if their exclusive competences are touched, as for example the German Länder in EU Education policy. Although the region is not allowed to defend its regional interests solely, it seems obvious that this route promises a higher degree of target attainment than the 'EP-Route'.

3.3 The external factors' influence on the regions' lobbying strategy

The MLG and interest group literature specifies several factors which all have an impact on a region's capability to influence EU policy-making to its favor (see Figure 8). Until now scholars have not attempted to relate these factors to the region's lobbying strategies so that their individual importance in this matter is not clear, yet. Therefore, this section is not only going to describe these external factors but it will also analyze their effect on the two different lobbying strategies. It has been argued that a region either works *with* or *without* its national government in order to defend its interests. Since one of the objectives of this research project is to investigate whether regions actually by-pass their national government in policy areas other than structural and cohesion policy, this section is going to identify the factor which increases a region's chances of defending its interests without including the national government. In other words, we are

looking for the factor which makes state by-passing most likely. It will be shown that the legal and constitutional situation of the EU and the Member State represents this key factor.

Figure 8: Factors influencing a region's impact on EU legislation



Source 11: own graph

3.3.1 The legal and constitutional situation of the EU and the Member State

The legal and constitutional situation of the EU and the Member State is regularly stated as an important factor influencing a region's activities at the European level because EU decisions could lead to a further erosion of the region's political competences (Jeffery 2000: 12). Generally, the more constitutionally guaranteed rights a region enjoys the more relevant this factor gets. Especially the German Länder experienced this kind of competence lost when the federal

government gradually transferred regional competencies to the European institutions in the 1990s, thereby weakening their political situation in the domestic system of decision-making.

The legal and constitutional situation lays the focus on which actor possesses what competences to adopt laws (Bomberg and Peterson 1998: 219; Jeffery and Palmer 2007: 221; Bauer and Pitschel 2008: 77; Sturm and Bauer 2010: 24). Depending on the legal basis of the concerned EU policy field, this factor may scrutinize the European Commission, the Council, the European Parliament, and the Committee of the Regions, and depending on the constitutional situation of the Member State, the national government as well as the regional governments needs to be included into the analysis. At both levels, legal experts differentiate between exclusive, shared or supporting/no political competences. Particularly in federal systems, legislative regions possess shared and even exclusive competences in several policy fields, so that the central government is legally obliged to negotiate those policies with its subnational authorities.

With regard to the factor's influence on the regions' lobbying strategies, it is almost impossible to deny its importance. To begin with, regions that are legally or constitutionally equipped with political competences may represent the Member State in the Council of Ministers which means that they probably possess the best channel of interest representation at all. Usually, legislative regions complain about not being included in EU decision-making processes so that this opportunity would eliminate this deficit. In case the concerned region enjoys exclusive political competences in the respective policy field, the likelihood of having the right to use this channel is comparatively high. In this regard, especially federalized states such Germany, Austria and Belgium grant their region this possibility. Moreover, even regionalized states such as the UK do not deny its legislative regions the ability to represent the Member States in the Council. Although regions are legally forbidden to address particular regional-specific interests, Tatham's quote of a DG Director demonstrates that one must not underestimate the regional minister's psychological impact on the member state minister and on the Commissioner:

In Councils you also have frequent bilateral meetings: so the Commissioner would meet bilaterally with the UK delegation and if it is at political level then it would be Ross Finnie and Ben Bradshaw who are in the meeting. And Ross Finnie would speak about the Scottish points. I think it does make a difference. I don't think you can say that a regional

Minister, because of the rule of the Treaty that regional Ministers don't have a say, that therefore their role is limited. I think it is very much a psychological impact that he has but, at the end of the day, it is a real impact. (Tatham 2008: 501)

Additionally, it is plausible that regions with legally codified rights enjoy greater significance in the eyes of the EU-institutions because they play a very decisive role for the voters and the political system of their Member State. Although hard evidence is rare, experts stress that legislative regions are “*qualitatively* different to those relations established between the Commission and the representatives of non-constitutional regions. Policy positions delivered via constitutional regions’ representations in Brussels carry the weight of their formal political power in domestic arena” (Rowe 2011: 93; emphasis in the original). Interestingly, interviews with civil servants of representation offices and the European Commission, which had been conducted before and during this research project, confirmed this assumption. A policy adviser of DG Education and Culture stressed that “in my policy field there is a huge difference between administrative and legislative regions because the latter have exclusive policy competences. As a matter of fact, we pay close attention to the opinion of those regions and we also follow their invitations more frequently” (Interview 1). This perception already indicates that a coalition with other legislative regions appears to be very promising.

On top of that, the system of decision-making at the European level, which is specified in the Treaties, exerts a considerable impact on the region’s lobbying strategy. If, for example, the EU enjoys exclusive legal competences in a policy field, the Council of Ministers and the European Parliament usually cannot cast their veto on a planned initiative. Therefore, one can assume that a region concentrates its energy on building a coalition with those actors that are especially helpful in this situation to convince the European Commission. If, however, the concerned policy only belongs to the EU’s shared competences, the ordinary legislative procedure has to be applied in most circumstances so that the Council and the Parliament constitute potential veto-players. For the reasons stated above, a regional government is probably tempted to work with its national government because the latter plays an essential role in the Council.

3.3.2 Intergovernmental institutionalized procedures

Intergovernmental institutionalized procedures (IIP) refer to the existing formal mechanisms between the various governmental levels in a Member State for exchanging information (Agranoff 2004: 34-42; Sturm 2009: 18). Such formal procedures are important for regions in a number of ways; firstly, they provide a forum that is conducive to negotiation and consultation, so that the regional government is able to make its voice heard, and secondly, it may have the chance to persuade other governmental actors of its position. In Germany, for example, regional ministers meet their counterparts of the other Länder on a regular basis in standing conferences such as the Conference of Ministers of Education and Cultural Affairs, the Conference of Ministers of Environmental Affairs or the Conference of Ministers of Justice. Regional ministers use these official conferences to coordinate their positions in order to increase the efficiency of later decision-making in the Bundesrat – the legislative body that represents the sixteen Länder at the federal level. Moreover, IIP also constitute some sort of safety net for regional governments in case of party political incongruence. In case national elections lead to a change of government, already established formal mechanisms are very useful for future cooperation in European Affairs because the different parties are ‘forced’ to meet, exchange their viewpoints, and get used to each other so that, ultimately, a trustful relationship can be established. However, one should also be aware that IIPs alone do not say much about the region’s capability of affecting EU policies positively, as they could also be ineffective if the other governmental actors are opposed to support the region. Portraying it from a different angle, even in the absence of IIP, a legislative region could get its interests accommodated at the European level if, for example, it knows the central government or other actors at its side.

Concerning the factor’s influence on a region’s lobbying strategy, one can state that due to regular meetings and conferences, coalition-building with the other governmental actors is facilitated because of two reasons. First, IIPs ensure that networks are developed between regional counterparts, and secondly, consistent IIPs result in greater exchange of knowledge and understanding between governments. In other words, IIPs speed up coordination and save valuable time so that a region can establish contact with key EU decision-makers more easily. Consequently, one can argue that IIP indirectly increase the region’s scope of action at the European level so that this factor might affect the lobbying strategy to some extent.

Finally, one may also highlight that IIP is influenced by the EU's and the Member State's constitutional and legal situation which provides an additional argument for the importance of this factor. For example, a constitution which grants regions exclusive legal-political rights leads inevitably to the establishment of consistent formal mechanisms that facilitate cooperation and coordination between the various governmental levels. In federal states such as Germany, Austria or Belgium, regions possess state-like quality so that they even have the obligation to establish the necessary formal mechanisms and institutions - otherwise, they could not fulfill their overall responsibility for the state as a whole. Yet, regionalized Member States such as Spain or the United Kingdom have less IIP at their disposal. Consequently, intra-regional coalition-building is rendered more difficult so that the national government takes on a key position for promoting regional interests upwards the European level (Nagel 2010: 153).

3.3.3 Legitimacy

Several political scholars have stated that legitimacy is a powerful variable which might strengthen the bargaining position of an actor during negotiations. Keating links legitimacy to the presence of a civil society and claims that a "regional government operates best where there is a well-developed civil society, a sense of identity, civic traditions, an associative life, and relationships of confidence and exchange within the territory (Keating 1997: 394). The same author illustrates the increasing importance of regional civil society due to the weakened position of many nation states so that people within a certain territory assume regional rather than national values (Keating 2001). Jeffery (2000: 17-18) takes up that argument and enumerates some examples which demonstrate that several regions with a strong civil society played a bigger role in EU policies than other regional governments within the very same Member State. In the case of Spain he refers to Catalonia and the Basque Country which were capable of influencing European policies better compared to their regional counterparts. Moreover, he names the Ardèche and the Drôme departments in France which were more successful in acquiring EU structural funds than their French counterparts. On top of that, he also provides the negative example of the English region West of England which was not successful in 'region-building' because of the absence of a regional civil society. Jeffery does not specify how these regions were capable of doing that but he indicates that central state institutions are less likely to ignore or deflect the articulated interests of such regions (Jeffery 2000: 17).

As regards the factor's impact on the region's lobbying strategy, one can argue that it may facilitate establishing contact to EU decision-makers on the one hand but that it also aggravates coalition-building on the other. Starting with the latter assumption, a long regional history, special traditions and local folklore are features that are unique for one specific territory. If a legislative proposal or an EU matter somehow touches these characteristics it appears very unlikely that other actors are affected to the same extent or in the same way. Consequently, the chances of building a coalition with other regions are relatively low. For example, when the EU statistical agency Eurostat prohibited Scottish kilt-makers to register the traditional dress as men's clothing, Scotland could only build a coalition with the local and regional clothing industry since no other actors were affected. However, the small number of affected organizations also had an advantage: the Scottish government was the sole actor that intervened at the European level so that, in turn, EU authorities could not and did not ignore the Scottish request.³³

Admittedly, this example does not refer to EU decision-making but it illuminates that legitimacy might aggravate rather than facilitate coalition-building with other regions or the national government. Moreover, this anecdote has shown that the UK Government was not involved in this matter and that Scotland solved this issue on its own. In view of these contrasting results, we cannot conclude with certainty that legitimacy increases or decreases the chances of by-passing the national government.

3.3.4 Leadership

Another factor that helps to increase the likelihood of getting regional interests accommodated is a charismatic leader who is able to win peoples' trust (Jeffery and Palmer 2007: 222). The sociologist Max Weber defines charisma as "a certain quality of an individual personality by virtue of which he is set apart from ordinary men and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities" (Weber 1968: 48).

Arguably, it is very challenging to pick a leader who is 'supernatural' or 'superhuman', but lobby organizations may choose a brilliant negotiator who shows empathy and is capable of conducting complex negotiations and is convincing others. Besides, as Jeffery points out leadership does not need to be high profile. To be more specific, he refers to Rembert Behrendt,

³³ In the end, the statistical forms of Eurostat were amended.

the permanent Secretary for the Ministry of Economic Affairs in Saxony-Anhalt in the second part of the 1990s, who personifies effective behind-the-scenes networking (Jeffery 2000: 16). Another example would be Edmund Stoiber, the former Minister-President of Bavaria, who put a lot of effort to strengthen Bavaria's role in the EU and established a very effective internal organization (Bulmer et al. 2000: 37).

In general, efficient leadership can be performed by any region regardless of its size and political power so that particularly small regions such as Saxony-Anhalt or Rhineland-Palatinate might 'punch above their weight'. So far this factor has been applied to the inner regional context only but one could also transfer the understanding of leadership from the regional to the supranational level. If a legislative proposal by the Commission, for example, caused negative effects for a region, the charismatic leader might use his/her influential contacts in the European institutions to defend regional interests. Enjoying the rapporteur's support of the respective committee in the European Parliament or having a civil servant in COREPER on its side can certainly help to make changes to the Commission's initial proposal. Nonetheless, it should be emphasized that this leader still needs concrete and verifiable evidence in order to defend regional-specific interests. This fact applies to negotiations and discussions at the regional and national level, but it is even more important in the European context. EU officials are steadily contacted by all kinds of lobbyists and each of them wants to exert influence. In this regard, each lobby organization has to bear in mind that the Commission, the Council and the European Parliament require different kinds of information as Chapter 2 has already demonstrated. Consequently, if the lobbyist is a charismatic leader but does not take the demanded information into account, (s)he will probably not be heard and the lobbying attempt will not be successful.

3.3.5 The demographic and economic situation

The previously presented factors are widely accepted among experts and there is no doubt about their relevance concerning EU decision-making. However, there are some further factors such as the demographic and the economic situation which are comparatively rarely stated in the academic literature (Nielsen and Salk 1998). In fact, in most cases they are only mentioned indirectly (Bouwen 2002: 10; Jeffery and Palmer 2007: 222). The reason for this is probably because there is no empirical proof of a direct cause-effect-relationship or that contradicting results have been produced. For example, some scholars have shown that a sound economic

situation stimulated greater subnational activity at the European level, whereas others have demonstrated that the opposite is true (Sturm and Bauer 2010: 24). Since both the demographic and economic situation are interconnected to some extent, they will be analyzed together.

Demography or size refers to the number of people who live in a Member State's region. Particularly in the context of interest representation in democratic societies, the demographic situation usually becomes an essential factor which increases the bargaining position of an actor. Therefore, large regions within a federal Member State possess more seats in the second chamber than smaller ones. Although one cannot apply this national rule to the European level one-to-one, it seems very likely that Bremen or Hamburg exert less political influence on an EU initiative than Bavaria or North Rhine-Westphalia. However, whether the region's size really affects policy processes at the European level has not been proven, yet. In fact, even a heavily populated region such as North Rhine-Westphalia is comparatively small to the rest of Europe. Besides, the Commission demands European-wide solutions so that the voice of one single region appears to be very weak. Within the national context, however, small regions are more likely to follow the larger ones because the latter are more influential thanks to their substantial relative size (Nielsen and Salk 1998: 244).

The economic situation focuses on the economic structure of a region and is to some extent connected with the demographic situation. An often used indicator is the region's gross domestic product which constitutes the market value of all officially recognized final goods and services produced within a certain territory. Usually, the higher the region's GDP the more people are employed in that territory. The lower the region's employment rate, in turn, the more people move and live there. Scholarship has shown that an organization with political and economic clout is more likely to gain access to the EU institutions which means that its scope of action is higher compared to economic weak organizations (Eising 2007). Furthermore, one may argue that a solid economic situation might provide a region with the opportunity to pay off other regions for supporting its request. However, there is no empirical proof that regions have done that in EU politics.

3.3.6 Conclusion

The aim of this section was to work out which factor makes state by-passing most likely. Although each factor has an impact on by-passing, the above analysis has demonstrated that the legal and

constitutional situation of the EU and the Member State constitutes the most important factor in this regard. Its overall significance is based on the following arguments:

- regions may legally be allowed to represent the Member State government in the Council of Ministers,
- the European Commission considers legislative regions as important actors in some policy fields due to their legal political role in the Member State
- the EU's legal system of decision-making impacts on the regions' lobbying strategy and
- the regions' own legal-political competences have a strong influence on the choice of coalition-partners as well.

It has also been pointed out that this factor positively impacts on the intergovernmental-institutionalized procedures which facilitate coalition-building with other governmental actors. As a result, the legal and constitutional situation of the EU and the Member State represents the key factor which impacts on the region's choice of lobbying strategy so that it constitutes the independent variable of this research project.

3.4 Hypotheses

After having worked out the independent variable of this research project, the question arises of which is the preferred lobbying strategy of German and UK regions in EU Competition, Environment and Education policies. For theoretical and analytical reasons, it makes sense to subdivide it into the following two questions:

1. Which legal and constitutional situation of the EU and the Member State is likely to cause the regional government to work *with* or *without* its national government?
2. Which coalition-partner is deemed most important if the EU's and the Member State's legal and constitutional situation tempt the regional government to work *without* its national government ("by-passing")?

The answer to the first question is that if the regional level possesses only shared or no political competences in the concerned policy field and the national government constitutes a potential veto-player through the Council, the majority of regions within the Member State will work with

their national government because it represents the most effective and efficient coalition-partner. From the three selected policy areas in this research project, EU Environmental policy depicts such a legal constellation for both the German Länder and the UK legislative regions. It should be emphasized that the expression “the majority of regions...”³⁴ is important and must be included in each hypothesis because one cannot expect that all regions within a Member State will behave similarly. Consequently, without a threshold any hypothesis has to be rejected as soon as one single region sheers out of line. After all, the situational approach underlines that the external situation does not determine actors’ behavior but provides incentives or obstacles. By accepting that a threshold is necessary, the question arises of how high it is supposed to be. As stated in chapter 1, this work argues that if MLG scholars seriously want to challenge liberal intergovernmentalists, state by-passing needs to occur *on a regular basis*. If in practice state by-passing is the exception rather than the rule, it appears unlikely that more scholars will be convinced by MLG proponents. Therefore, if more than 50% of the population respond in the designed questionnaire that ‘*in no cases*’ or just ‘*in a few cases*’ coalition-building with the national government is necessary, one can argue that the regularity criterion is met.³⁵ With regard to the legal and constitutional situation in EU Environmental policies, the first hypothesis is as follows:

Hypothesis 1: If the region possesses shared or no political competences in the concerned policy at the national level and the Member State government constitutes a potential veto-player through the Council at the European level, the national government represents the most important coalition-partner for a regional government to defend its interests. As a consequence, the majority of regions are going to work with the national government so that state by-passing will not occur.

Hence, in any legal or constitutional situation other than in hypothesis 1, it is expected that regions will work *without* their national government which brings us to the second question stated above. Assuming that regional governments constitute rational actors who are predominantly interested

³⁴ The majority represents more than half of the total population of regions in a Member State. In the case of Germany, there are 16 legislative regions so that the majority is nine and since the UK consists of three legislative regions, the majority is two.

³⁵ See question 5 in the questionnaire, Annex A

in a high degree of target attainment and optimal resource management, it has been argued that they primarily seek those coalitions that are deemed necessary for convincing the potential veto-player in the EU decision-making process. In the case of EU Competition policy, the potential veto-player is clearly the European Commission because, from a legal point of view it may adopt legislation without formally involving the Council or the European Parliament.³⁶ Chapter 2 has been worked out that the European Commission is primarily receptive to precise information and expertise stemming from the affected organizations as well as arguments which are of European nature. Consequently, it seems reasonable to expect that regions build coalitions with non-governmental actors such as business companies, NGOs and worker associations in order to obtain the demanded information. Additionally, one can assume that they also attempt to forge coalitions with regions from other EU Member States so that they are capable of arguing from a European perspective. To put it differently, regions will work without their national government in order to defend their regional interests because the latter does not constitute a potential veto-player at the European level. As a result, the second hypothesis is as follows:

Hypothesis 2: If the EU possesses exclusive competences in the concerned policy and the Member State government is not involved in the decision-making process through the Council, regions from other EU Member States and non-governmental actors such as business companies, NGOs or employer associations represent the most important coalition-partners for a regional government to convince the European Commission from its viewpoint. As a consequence, the majority of regions are going to work without the national government so that state by-passing will occur.

In comparison to the two previous policy areas, the case of EU Education policy is more nuanced and complicated because the legal and constitutional situation in Germany and the UK differs. Whereas the German Länder not only enjoy exclusive competences but also the legal right to represent the Member State government in the Council of Ministers, the UK legislative regions are legally not allowed to do so because they only possess shared competences in this matter.

³⁶ Chapter 4 works out that EU Competition policy can be distinguished between five sub-fields and that regions only become active in two of them. Therefore, this research project solely refers to the liberalization of public or state controlled undertakings and the control of state aid.

Although the legal and constitutional situation is a different one, this case is still very interesting because it scrutinizes the only situation in which some regions are legally as strong as the Member State government or perhaps even stronger. In other words, such a legal situation significantly increases the scope of action for regions at the European level so that state by-passing is to be expected.

Hypothesis 3: If the regional level possesses exclusive competences in the concerned policy and if it enjoys the legal right to represent the Member State government in the Council, regions from the same Member States represent the most important coalition-partners for a regional government to defend its regional interests. As a consequence, the majority of regions are going to work without the national government so that state by-passing will occur.

Table 4 illustrates the different legal constellations of legal political competences and the expected strategy selection.

Table 4: Constellation of legal political competences and expected strategy

Region	Exclusive legal political competences	Shared legal political competences	No legal political competences
EU			
Exclusive legal political competences	Impossible	Impossible	By-passing (coalition with outer-state regions and non-governmental actors)
Shared legal political competences	Impossible	Working with the national government	Working with the national government
Supporting legal political competences	By-passing (coalition with inner-state regions)	Working with the national government	Working with the national government

Source 12: own table

4 German and UK regions in EU decision-making

In the context of regional lobbying activities, contrasting and analyzing the constitutional and legal situation of Germany and the United Kingdom appears to be a very interesting undertaking because the German Länder had already been granted exclusive legal competences after World War II whereas Scotland, Wales and Northern Ireland have only gained their political competences since 1999. In the eyes of an EU official one can detect two groups of actors with very different attitudes towards the EU: on the one hand, the German Länder which heavily complained about their continuous loss of competences due to European integration, and on the other, the UK regions which remained completely silent for most of the time since they were only administrative regions without having 'special interest' in the EU. Since the beginning of the devolution process, however, their legal status has changed and they have become legislative regions which have to cope with new challenges. Although the Westminster Parliament has granted them the right to exercise political competences in a variety of policy fields the EU restricts their scope of action at the same time. From one day to another, the EU has turned from an organization which once solely subsidized the UK economy to something that curbs regional self-determination rights (interview 28). As a result, Scotland, Wales and Northern Ireland face similar constraints as the German Länder but without the possibility to rely on a firm legal power base so that their room for maneuver is limited and comparatively small. After having analyzed the legal and constitutional situation of Germany as well as the United Kingdom on the one side and DG Competition, DG Environment and DG Education and Culture on the other, the remainder is subdivided into three sections.

The first one analyzes the various mechanisms which facilitate coalition-building in practice and scrutinizes at what point in time the selected regions start their lobbying activities. This section provides evidence that regular state by-passing appears to be rather unlikely because most mechanisms are dependent upon close cooperation with the national government. The

second one illustrates with whom the German and UK regions exchange relevant information for defending their regional interests at the European level. Although all selected regions exchange information with EU institutions and inner-state regions quite often, this section also shows that the national government is a crucial source of information. Consequently, a clear hint whether regions by-pass their national government is not deductible. The third section assesses the necessity as well as the frequency of coalition-building with the national government, inner-state regions, legislative as well as non-legislative regions in other EU Member States, profit-oriented companies, non-profit oriented companies and associations as well as unions. Additionally, this part also provides evidence about the perceived relevance of coalition-partners. The results demonstrate that the national government is clearly considered as the most important and influential actor for promoting regional concerns in EU Competition, EU Environment and EU Education policies which means that by-passing it not carried out on a regular basis in Germany or the UK.

4.1 The constitutional situation of Germany and the United Kingdom and the legal situation of the European Union in competition, environment and education policies

In order to better understand the similarities and differences as regards the constitutional and legal situation, this section is going to deal with the information and participation rights of the German Länder and the UK legislative regions in European Affairs. In the German context, these rights are mainly laid down in three different sources of law:

1. The Basic Law³⁷ (BL) which not only lists the legislative political competences of the Federation and the Länder but which also contains a specific Article on European Affairs.
2. The 'Law on cooperation between the federal government and the Länder in matters concerning the European Union'³⁸ (LoC) specifies, among others, the information rights of the Länder about official and unofficial documents produced by the European Commission and the Council, as well as reports and communications generated by the European Council,

³⁷ Grundgesetz (GG)

³⁸ Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union (EUZBLG)

the Council, COREPER and the Permanent Representation of Germany. On top of that, the LoC provides details about the Länder' participation rights in national preparatory meetings for interest coordination and in EU committees and Council meetings.

3. The 'Cooperation Agreement between the Federation and the Länder'³⁹ (CA) supplements Art. 9 LoC. It is subdivided into two chapters; the first one provides further details about the participation rights of Länder representatives in EU committee negotiations and the second chapter contains additional information about the cooperation between the Permanent Representation of Germany and the Länder.

In addition to these sources, the Rules of Procedure of the Bundesrat and the 'Agreement about the *Länderbeobachter*'⁴⁰ also provide useful information about Länder engagement at the European level.

In comparison with the German Länder, the legal situation for Scotland, Northern Ireland and Wales is very different because the information and participation rights of these regions are not constitutionally codified but are only Acts of Parliament. Basically, there are two important sources of law:

1. The Act of Parliament which defines, among others, the legal competences of the respective devolved administration and possible resolution mechanisms in case of political disputes.
2. Non-legally binding agreements such as the Memorandum of Understanding and the Concordats. Those agreements lay out, among others, the day-to-day operations and procedures in European Affairs as well as the relations between the UK Government and the devolved authorities.

4.1.1 Germany

Politically, one of Germany's striking features is federalism which is constitutionally codified in Article 20 (1) BL: "The Federal Republic of Germany is a democratic and social federal state". In its most basic form, federalism is a political concept that establishes a system of different levels of government in which the legal-political power is divided between a central authority and several

³⁹ Vereinbarung zwischen der Bundesregierung und den Regierungen der Länder zur Regelung weiterer Einzelheiten der Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union (§ 9 Satz 2 EUZBLG)

⁴⁰ Abkommen über den Beobachter der Länder bei der Europäischen Union

constituent units who constitutionally retain certain individual political competences. As a consequence, each of the sixteen Länder possess their own elected regional parliament with diverse political competences so that they fall into the category of 'legislative regions'. Since Germany does not only have a horizontal division of power between the legislative, executive and the judiciary, but also a vertical separation of powers among different levels of government, experts commonly refer to the Länder' *Eigenstaatlichkeit* or statehood (Bogumil and Jann 2009: 76;) in order to emphasize their significant scope for 'self-rule'.

Due to this state structure the German Basic law differentiates between exclusive and concurrent legislative powers which are specifically enlisted in the Articles 72, 73 and 74 BL.⁴¹ However, in comparison to the Federation, the Länder' exclusive legislative powers are not specifically numerated so that according to Article 70 (1) BL, "The Länder shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation". More specifically, "On matters within the exclusive legislative power of the Federation, the Länder shall have power to legislate only when and to the extent that they are expressly authorized to do so by a federal law" (Article 71 BL). Hence, *de jure* the exclusive legal competences of the Länder' are as follows:

- Admission to institutions of higher education and requirements for graduation in such institutions
- Press and broadcasting
- Municipal law
- State-level planning
- Police law
- State-building order
- Law of public streets and roads
- Law relating to water (Bogumil and Jann 2009: 78)

The German law-making system consists of two entities: the Bundestag and the Bundesrat. The former is the national parliament and the latter is the legislative body that represents the sixteen Länder at the federal level. In other words, if the Länder want to make use of their legislative

⁴¹ See Appendix C

powers in order to get their regional interests accommodated, they exercise their constitutionally guaranteed rights through the Bundesrat. The number of votes a Land is allocated is based on the size of its population.⁴² In all the above mentioned areas, the Länder have a very strong standing vis-à-vis the Member State government because without their consent a legislative proposal cannot become law. As regards its roles and functions concerning matters dealing with the EU, the Bundesrat itself declares that “it defends the interests of the Länder vis-à-vis the Federation and indirectly vis-à-vis the European Union” (Bundesrat 2014).

If the Länder want to make sure that their voice is heard, they predominately make reference to the *Europaartikel* (Article 23 BL) which has been recently incorporated in the German Basic Law. Most scholars agree that before the *Europaartikel* came into effect in 1992, the European integration process caused a gradual erosion of regional autonomy for the German Länder (Keating 1998: 164; Lorz and Lindart 2005: 75; Große Hüttmann 2005; Grünhage 2006: 178; Jeffery 2007: 3; Green et. al 2008: 69). Until that date, the central government grasped EU politics as foreign policy so that only the Federation was legitimized to conduct relations with the EU (Art. 32 (1) BL). Furthermore, in combination with Article 24 BL, which was generally referred to as the “opening clause” (Suszycka-Jasch and Jasch 2009: 1231), the federal government could delegate national (and regional) competences to the European level without the consent of the Bundesrat. From a regional point of view, the delegation of competences stood in stark contrast to the division of power of the German law-making system, as at that time the Länder neither had any formal participation rights in European policy-making processes nor did they receive any compensation for such losses. Although Länder competencies had already been transferred to the federal level several times in the 1960s and 1970s, the Länder were always compensated through the participation of the Bundesrat in the formulation of and decision-making on federal policies. This means that until 1992 the Länder had not only been deprived of their co-determination rights in those areas, but also that their role was reduced to the formal ratification and application of European policies. For that reason, they regarded themselves as the ‘losers’ in the process of European integration (Moore and Eppler 2008: 493).

⁴² A Land with less than two million inhabitants has three votes. A Land with more than two million inhabitants has four votes. A Land with more than six million inhabitants has five votes. A Land with more than seven million inhabitants has six votes. In total, there are 69 seats.

Yet, when the EU and the Member States were on their way to establishing a Common Market through the Maastricht Treaty in the early 1990s, an amendment of the German Basic Law was mandatory. According to Article 79 (2) BL, a two-thirds majority in the Bundestag as well as the Bundesrat was necessary so that the Länder exploited this opportunity and “struck back” (Jeffery 1994). They successfully fought for a new understanding of EU politics in the sense that the federal government acknowledged the heavy impact of EU laws on the Länder’ domestic affairs. As a result, the German constitution was revised and the above mentioned *Europaartikel* was incorporated which explicitly states that “the Federation may transfer sovereign powers by a law *with the consent of the Bundesrat*” (Art. 23 (1) BL; emphasis added). In other words, since that date the Länder hold a veto-player position for future Treaty amendments that confer new competences upon the European level.⁴³

With regard to EU day-to-day politics this new article obliges the national government to include the Länder in European matters and it has to inform them via the Bundesrat “comprehensively and at the earliest possible time” (Article 23 (2) BL). This legal basis highlights that, among others, the Länder are supposed to receive all Commission proposals’ for EU regulations and directives, and that they have to be capable of getting involved in the deliberations on EU decision-making. This means that the Bundesrat is legally allowed to participate in EU decision-making of the Federation if the corresponding subject belongs to the domestic competences of the Länder (Art. 23 (4) BL). To be more precise, the Länder may attend negotiations in the European Commission and the Council if it is deemed necessary (Art. 6 (1) LoC). In fact, the federal government and the government of the Länder are supposed to keep and update a list of Commission and Council committees that deal with initiatives affecting the domestic competences of the Länder (Section I, Art. 2 CA). Although the cooperation between the Federation and the Länder “works rather unproblematic in most areas other than education” (Interview 8), the above stated legal basis is of particular importance for the Länder because it provides the opportunity to establish unofficial contacts with the responsible persons of the institutions of the EU. An official of the Permanent Representation of Germany commented on that as follows: “It is correct that the Länder have access to our protocols of Council and

⁴³ For a more detailed analysis on the role of the Länder concerning Treaty amendments, which also provides information on the Simplified Revision Procedure (Art. 48 (8) TEU) and the ‘Brückenklauseln’ (bridging clauses) (Art. 48 (7) TEU), see Panara 2011

Commission meetings, but if their representative sits at the same table with us and EU officials, the Länder can contact the responsible person more easily afterwards” (Interview 4).

Yet, the actual degree of influence of the Bundesrat differs as regards the respective subject. More specifically, the power of the Bundesrat’s decision is based on the domestic legal competences of the Länder so that one can distinguish between three cases. First, if the European Commission’s legislative proposal touches the exclusive competences of the Federation or any other field in which it possesses legislative power, the decision of the Bundesrat is legally not binding because the federal government only has to “take it [the Bundesrat’s position] into account.” Second, if the legislative competences of the Länder, the structure of their regional authorities or their administrative procedures are “primarily affected” (“*Schwerpunkt*”), the Bundesrat’s decision must be given the “greatest possible respect in determining the Federation’s position” (“*maßgeblich zu berücksichtigen*”) (Art. 23 (5) BL). In case the federal government’s opinion differs from that of the Bundesrat, both parties shall make efforts to come to an agreement. If, however, an agreement cannot be reached and the Bundesrat confirms its position with a two-thirds majority vote, its standpoint shall prevail (Art. 5 (2) LoC).⁴⁴

On a first glance, the two expressions of Article 23 (5) BL “primarily affected” and “greatest possible respect” might seem to be self-explaining and easy to interpret in the sense that the Länder are able to impose their will on the federal government. Yet, legal scholars as well as practitioners stress that this conclusion is oversimplified and would, therefore, fall short of reality. Whether the primary focus (“*Schwerpunkt*”) of a legislation actually touches the legislative competences of the Länder, the structure of their regional authorities or their administrative procedures is usually a matter of controversial debate (Interview 8). And moreover, whether the expression “greatest possible respect” is legally binding has not been fully clarified (Suszycka-Jasch and Jasch 2009: 1242; Panara 2011: 142). Consequently, in practice the legal basis provides for different ways of reading and interpreting it.

Finally, if the European Commission plans to become active in areas that fall primarily within the Länder exclusive competences concerning matters of school education, culture or broadcasting, the “exercise of the rights [...] shall be delegated [...] to a representative of the Länder designated by the Bundesrat” (Art. 23 (6) BL). It should be stressed that this passage does

⁴⁴ With the exception of matters that may result in increased expenditures or reduced revenues for the Federation.

not imply that the representative of a Land is able to make decisions autonomously or to solely represent regional interests in the Council meetings. In fact, the regional representative must act “with the participation of and in agreement with the representative of the Federal government” (Art. 6 (2) LoC) and (s)he “shall be bound by the decisions of the Bundesrat” (Rule 45I (1) Rules of Procedure of the Bundesrat) which means that the official cannot defend the sole interests of his/her region but has to represent the Member State as a whole. With regard to Commission proposals’ touching other exclusive Länder competences than those stated in Art. 23 (6) BL (school education, culture or broadcasting), the Länder representative has the right to participate in the Council meetings and Council working groups and make declarations in consultation with the representative of the federal government (Section 1, Art. 7 & Art. 9 CA). Although the Länder do not have the right to participate in COREPER meetings, the representative of the federal government has to abide by the Länder’ mandate which has been formulated in previous preparatory meetings (Section 1, Art. 2 CA). Moreover, the *Länderbeobachter* (“Observer”) is legally allowed to participate in COREPER and Council meetings and to make notes so that the Länder possess an additional channel of information (Art. 2 (2) Agreement about the *Länderbeobachter*). This official, however, is not permitted to speak or to vote.

4.1.2 The United Kingdom

In contrast to the German Länder, Scotland, Northern Ireland and Wales cannot point to constitutionally codified information and participation rights in EU affairs because, in fact, the UK does not have a written constitution. This is quite a unique situation in Europe which requires these legislative regions to mainly rely on informal arrangements and procedures. On top of that, the three legislatures do not enjoy the same legal political competences so that experts commonly describe the devolution process as “asymmetric” (Jeffery 2009: 207). To be more precise, Wales was not even considered a legislative region until the recently revised Government of Wales Act 2006 because the initial Government of Wales Act 1998 granted it only executive but not primary legislative powers. Although the legal situation among the three devolved authorities differs, there are also some similarities as for example, no regional administration is permitted to break EU law and in case of political dispute Westminster remains sovereign which means that it has the last word about legislation. In other words, it retains the constituent power and could theoretically dissolve all three regional parliaments, although for political reasons it appears very

unlikely that the Labour or Conservative Party would do that.⁴⁵ Scotland, Northern Ireland and Wales have received their legislative powers through a referendum in the mid-1990s, and therefore the Acts of Parliament enjoy high legitimacy among the population. It should be highlighted, however, that due to political reasons the UK government had already suspended devolution in Northern Ireland between February 2000 and May 2000 as well as October 2002 and May 2007 (Varney 2011: 279). During these two periods the Northern Ireland Office, a British government department in Belfast, took over the devolved powers. These two incidents exemplify that the Westminster Parliament remains sovereign and that a devolved administration might experience a (temporary) loss of political competences if Whitehall deems it necessary.

The Scotland Act 1998 provides the overall basis for Scotland's legislative powers.⁴⁶ Similar to the German Basic Law, the Scotland Act does not specify the exact areas of political competence of the Scottish parliament but lays out those matters which remain with the Westminster Parliament (Schedule 5, Scotland Act). To be more specific, Section 29 (1) of the Scotland Act generally stipulates that "An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competences of the Parliament" and Section 29 (2b) specifies that "A provision is outside that competence so far as [...] it relates to reserved matters". Concerning EU politics, paragraph 7 (1) of Schedule 5 states that "International relations, including relations with territories outside the United Kingdom, the European Union (and their institutions) and other international organisations, [...] are reserved matters", so that, formally, all meetings, discussions, negotiations etc. held at the European level are led and controlled by the UK government. Consequently, the Scotland Act does not provide any possibility for Scotland to force the UK government to be included in EU decision-making so that the Scottish Government is dependent upon the goodwill of Whitehall.

Very similar to the Scotland Act, the Northern Ireland Act 1998 serves as the legal basis for Northern Irish political competences. The Northern Ireland Act grants the Northern Ireland Assembly the right to adopt laws if it is not "outside the legislative competence of the Assembly" (Section 6 (1) Northern Ireland Act) and Paragraph 2 of Section 6 clarifies that this is the case if "it [the provision] deals with an excepted matter and is not ancillary to other provisions (whether in

⁴⁵ In fact, David Cameron even permitted Scotland to hold a referendum about independence in September 2014.

⁴⁶ The Scotland Act 2012, which amends the Scotland Act 1998, will not be part of the analysis because it predominately grants Scotland new fiscal rights and has hardly any effect on foreign and EU affairs.

the Act or previously enacted) dealing with reserved or transferred matters". As in the case of Scotland, the Act of Parliament specifies that 'excepted matters' refers to, among others, "International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) ..." (Schedule 2 (3) Northern Ireland Act) so that potential Northern Irish representation activities at the European level are not covered by law. For that reason, the government of Northern Ireland faces an identical situation as Scotland if it comes to European affairs.

In contrast to the previous two mentioned devolved authorities, the legislative powers for Wales have been recently revised and are laid down in the Government of Wales Act 2006. Comparing this Act with those of Scotland and Northern Ireland, two differences become obvious. First, Schedule 5 of the Government of Wales Act enlists precisely in which fields of competence the Welsh Assembly is allowed to legislate. This scheme is the exact opposite to Scotland and Northern Ireland where both entities are capable of passing laws in all policy areas apart from those which remain with the Westminster Parliament ('reserved' or 'excepted' matters). This list of competences is quite broad and encompasses fields such as agriculture, fisheries, forestry and rural development; culture; education and training; health and health services and many more. Foreign Affairs, however, is explicitly not a part of Welsh competences so that the Welsh government is confronted with the same representation issue in EU matters as the other two devolved administrations. Second, the Act does not speak about passing "laws" but "Assembly Measures" (Section 93 Government of Wales Act) because until 2011 the Welsh Assembly needed the agreement of the UK Parliament to pass laws in the devolved areas. After a successful referendum on 03 March 2011, however, this system was rendered obsolete. In other words, the Welsh Assembly is now capable of passing laws on all subjects in the devolved areas so that any proposed law will be called 'Bill', and an enacted law will be called 'Act'.

It becomes obvious that none of these Acts of Parliament specifically make reference to the devolved institutions' information and participation rights concerning EU affairs. For completing this picture, it is necessary to scrutinize the legally non-binding 'Memorandum of Understanding and Supplementary Agreements between the United Kingdom, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee' (2002) (MoU) which lays out the day-to-day operations and procedures in EU politics as well as the relations between the UK government and the devolved authorities.

In its first part the MoU points out that all four administrations - the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee - are committed to the principle of good communication which means that each administration is supposed to provide full and open access to almost all information to the other devolved authorities. This procedure primarily aims at facilitating cooperation in all matters, including 'International and EU Relations'. With regard to the latter, the MoU clarifies that the "the UK Government will involve the devolved administrations as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters" (Section 20, MoU). Yet, this passage is still somewhat vague and is defined more precisely in the Concordats.

The second part of the MoU consists of the Concordats and provides, among others, more specific information on coordination of European Union policy issues. Most relevant for this research project are the following three aspects: (1) provision of information, (2) formulation of UK policy and (3) attendance at Council of Ministers and related meetings.

Concerning the first point - the provision of information - the Concordat on "Coordination of European Union Policy" set outs that the devolved authorities need to receive information on relevant EU business including proposals for Treaty change in order to increase the effectiveness of the UK's decision making. Therefore, the "UK Government will provide the devolved administrations with full and comprehensive information, as early as possible, on all business within the framework of the European Union which appears likely to be of interest to the devolved administrations, including notifications of relevant meetings within the EU" (Section B4.1, MoU, p.29). In addition to that, it continues "This is likely to mean all initiatives within the framework of the EU which appear to touch on matters which fall within the responsibility of the devolved administrations" (Section B4.1, MoU, p.29).

As regards the second above stated aspect - the formulation of UK policy - the respective Concordat underlines that it is the "Government's intention" that Scotland, Wales and Northern Ireland "should be fully involved" in discussions within the UK government concerning the formulation of the United Kingdom's policy position on all matters which belong to their responsibility. More specifically, it is written that "consultation with Devolved Administrations includes the upstream opportunities to influence EU proposals in the period before they emerge

as well as the period after formal proposals are made and includes the period before approval is sought for a UK line from the European Affairs Committee” (Section B4.3, MoU, p.29).

The third and last important aspect outlined above - the attendance at Council Ministers and related meetings - the Concordat makes clear that the devolved authorities are not supposed to attend Council meetings but that this decision will be taken on a “case-by-case basis” by the lead UK minister. It goes on and specifies that “The role of Ministers and officials from the devolved administrations will be to support and advance the single UK negotiation line [...] The emphasis in negotiations has to be on working as a UK team; and the UK lead Minister will retain overall responsibility for the negotiations and determine how each member of the team can best contribute to securing the agreed policy position” (Section B4.15, MoU, p. 32). These passages underline that the devolved institutions have a weak standing vis-à-vis the UK government because they are not supposed to perform any actions that run contrary to the official UK line. In all circumstances, they must cooperate with the respective UK minister so that individual and autonomous lobbying activities are very limited.

In case bi- or multilateral communication and cooperation is not working smoothly, the Concordat makes reference to some resolution mechanisms. First and foremost, the respective matter is supposed to be resolved through correspondence (B4.6, MoU, p.30). If this mechanism has failed, the matter will be forwarded to the Joint Ministerial Committee Europe (JMC (E)) where the affected parties attempt to solve the issue on a higher official level. It should be emphasized, however, that the JMC is not an executive but a consultative body which means that it does not reach decisions but agreements (A1.10, MoU, p. 13). As a matter of fact, its agreements do not create any obligations for the UK government. In addition to that body, it is highlighted that “informal communications and meetings at official level will continue to make a major contribution to the resolution of EU issues” (B4.11, MoU, p. 31). Consequently, if the UK government does not defend particular regional interests at the European level, the respective devolved administration has no legal instrument in any circumstance at its disposal to get its interests accommodated. Besides, one can conclude that the devolved entities do not have much formal mechanisms at their side so that they predominately rely on informal inner-state instruments to make their voice heard.

4.1.3 DG Competition

Compared with the other two selected policy fields of this research project, EU Competition policy had already been enshrined in the Treaty of Rome in 1957. This should not come as a surprise because one of the basic objectives of the founding fathers of the European Union was to create a Single Market. In order to achieve that aim, it was deemed necessary to avoid any possible distortion mechanism such as cartels or monopolies that could reduce or even neutralize free trade benefits. Competition policy is a very broad policy field that pursues a number of objectives as for example increasing consumer welfare, protection of the consumer, redistribution of wealth, protection of small and medium-sized enterprises, regional, social and industrial considerations, market integration, and promotion of competitiveness (Cini and McGowan 2009: 4-5). As a matter of fact, competition policy started to become one of the EU's most effective methods of regulating and integrating markets so that this policy area is possibly the most powerful Community competence at present (Wilks 2005: 431).

Indeed, there is probably no other policy field in which the Commission has had a greater impact on the daily lives of EU citizens as the following examples illustrate. In the 1990s the European Commission successfully fought to liberalize the national electricity and gas markets which promoted competition and improved efficiency, thereby offering more services at lower prices to consumers. Moreover, it started to supervise possible market concentrations that could have been the result of mergers. In this regard, it stopped the planned merger between the two Portuguese energy companies EDP and GDP in 2004 and the Commission also imposed specific provisions for the mergers between the French companies GDF and Suez as well as the German companies E.On and MOL in 2006. On top of that, it adopted the legislative package "Connected Continent: Building a Telecoms Single Market" on 11 September 2013 which introduces a new market approach for the telecommunication sector that aims to reduce and ultimately abolish roaming charges. Finally, and perhaps most importantly, the European Commission published a legislative proposal on the award of concession contracts in the end of 2011 which was supposed to improve the legal framework applicable to the awarding of concessions, thereby establishing better access to the concession markets (European Commission 2011c)⁴⁷. Unexpectedly, however, more than one million people in more than seven EU Member States signed a petition against this

⁴⁷ Although this directive stemmed predominantly from DG Internal Market and Services, the basic idea of this proposal was to improve competition in this field. Therefore, close cooperation with DG COMP was highly necessary (see corresponding impact assessment; European Commission 2011d: 1-7)

proposal which resulted in the first successful European citizens' initiative (*Right2Water*). The protesters feared that the European Commission attempted to privatize water in municipalities through the backdoor which probably would have led to higher consumer prices. In mid-2013 the Commission changed the proposal and explicitly excluded water supply from the award of concession contracts.

These examples demonstrate that legislation from that policy field significantly affects our daily lives. In order to exercise its rights and adopt these and other legislative proposals, the Commission acts within the framework of primary and secondary law. Scrutinizing the Treaties as well as Council regulations, one can differentiate between five sub-fields of competition policy:

1. The Council Regulation on the control of concentrations between undertakings (the EC Merger Regulation, No 139/2004) that regulates the specific conditions under which companies may merge with one another.
2. All agreements between undertakings that restrict or distort competition as laid out in Article 101 TFEU.
3. Any abuse by one or more undertakings of a dominant market position as specified in Article 102 TFEU.
4. The liberalization of public or state controlled undertakings entrusted with the operation of services of general economic interest as stated in Article 106 TFEU.
5. The control of state aid granted undertakings as specified in Article 107 TFEU.

As interviews have revealed, the first three competition fields are not relevant for any of the scrutinized legislative regions for two reasons. First of all, they are reluctant to engage in quasi-legal processes because they represent a regional authority which has been democratically elected so that an intervention by the state would run contrary to the basic principle of separation of powers. Second, they are supposed to defend the overall regional interests and being the mouthpiece of one particular (economic) organization would, therefore, be illegitimate. Besides, it would make future negotiations with European Commission more difficult because after such an engagement Commission officials would certainly see those regions in a different light (Interview 20, Interview 22, Interview 25). As one official put it: "Our greatest advantage compared to lobby organizations is that we do not represent single, particular economic interests

but common welfare. The Commission officials are aware of our special status as a democratically elected authority and I believe that because of this feature they treat us differently than the usual lobbyists” (Interview 23).

The last two fields of EU Competition policy, however, directly affect regional interests so that almost all scrutinized German and UK regions carry out lobbying activities in these areas. It has already been pointed out that the Commission’s recent liberalization activities have had a considerable effect on the economy as well as the peoples’ daily life. In similar vein, state aid constitutes an important or in some cases even a fundamental financial basis for infant enterprises. The EU Treaties prohibit “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States” (Art. 107 (1), TFEU). In other words, there are four principle features that have to be met so that a measure is legally qualified as state aid:

1. An intervention by the state or through state resources such as grants, tax reliefs, government holdings of all or part of a company and so forth
2. The beneficiary obtains an advantage on a selective basis for example to specific companies or industry sectors
3. Distorted competition
4. An expected effect on trade between Member States (European Commission 2013b)

Since the Commission acknowledges the need to grant state aid to some industries in specific circumstances in order to maintain a well-functioning economy and to avoid social hardship, the Treaties also enlist several exceptions (Art. 107 (2), (3) TFEU). In addition to these ‘hard-law’ mechanisms, the Commission also makes use of ‘soft-law’ instruments such guidelines and notices. Although they do not possess any legal binding character, they always cause great tension in the EU Member States. In 2014, for example, the Commission adopted new guidelines for state aid to airports and airlines (European Commission 2014a) and it has also published guidelines on environmental and energy state aid (European Commission 2014b). A civil servant in a German representation office confirmed the relevance of these ‘soft law’ mechanisms: “My contact person in Berlin, who represents us in the Bundesrat, told me that the federal ministries were quite nervous about the final wording of the two guidelines [state aid to airports and airlines; environmental and energy state aid]. High-ranking federal officials and even ministers traveled to

Brussels and spoke with the Commission, promoting the German position and persuading the key decision-makers about the importance of state aid in the energy and aircraft sector” (Interview 17). As a consequence, participants highlight that the term ‘soft-law’ is somewhat misleading because, in practice, these guidelines are *de facto* used as a basis for approving or rejecting future state-aid requests (Interview 6).

With regard to policy-making in EU Competition policy, one can state that, generally, the Commission is “the most important actor” (Blauberger and Töller 2011: 128) but one has to keep in mind that its actual power depends upon the respective competition field. If, for example, the Commission decides to become active in the liberalization field, it is able to autonomously adopt legislative acts such as decisions and directives so that it is even capable of taking decisions against the EU Member States. It should be emphasized, however, that the Commission almost always includes national representatives in order to avoid public and political indignation (Blauberger and Töller 2011: 138).

In similar vein, if the European Commission revises former guidelines about state aid, the Member States cannot cast their veto since the Council does not play any role in this context; the legislative process begins and ends with the Commission. Again, this does not mean that the Member States are excluded from the decision-making process. Not only that the Commission always initiates open public consultations for state aid guidelines, its civil servants are constantly in touch with Member State officials. If necessary the Commissioner for Competition even travels to Berlin in order to negotiate the details for the new state aid guidelines in the energy sector with the German government. In this regard, the Permanent Representation of Germany in Brussels explains that “although the Commission enjoys exclusive legal competences in most competition matters, it never isolates itself from us. The Commission is perfectly aware about the necessity to work with us in order to avoid unforeseen consequences. Especially state aid is a very delicate topic - wrong decisions could cause tremendous social effects and since the Commission has no intention to ruin whole industrial sectors, it is open for compromises and makes concessions to us” (Interview 20).

Since, officially, the Council is not heard in these competition fields, it does not come as a surprise that the European Parliament cannot force the European Commission to alter or even discard the legislative initiative. However, to conclude that the Parliament does not play any role would be premature. Undoubtedly, MEPs do not have any legal power base at their side, but they

can bring pressure upon the Commission by making use of the media. Usually, MEPs stress that they are the elected representatives of the people and if the Commission intends to ignore them, this could create the impression that the Commission is not interested to listen to concerns of the citizens either (Interview 36). As a consequence, Commission officials are also in close contact with key MEPs in order to include their viewpoints as much as possible in EU Competition policy.

4.1.4 DG Environment

In contrast to competition, EU Environmental policy was not already part of the Treaty of Rome in 1957 - environmentalists had to wait until 1972 when the Heads of State or Government finally decided to establish a Directorate for Environment.⁴⁸ Scholars underline two reasons why the EU Member States advocated for an inclusion of environmental policy at the European level. First, in the late 1960s and early 1970s an increasing number of experts highlighted the necessity to take proactive international measures against global environmental issues such as pollution and inefficient resource consumption (Burns and Carter 2012: 512). The former, for example, was particularly brought up by the United Nations Conference on the Human Environment in 1972 and the latter received attention by the Club of Rome that published the highly debated book 'The Limits of Growth' in the same year. Second, and more importantly, the Heads of State or Government aimed at reducing and abolishing trade barriers that somehow affected market activities. Undoubtedly, different national production, quality and health standards in industrial sectors had the potential to distort free trade among the Member States so that, in fact, environmental and competition policy complemented one another (Knill and Liefferink 2013: 14). In other words, the former political leaders in the EU were more concerned about creating a Single Market than reducing pollution or increasing resource efficiency.

In the following years, it was acknowledged that this policy field was not supposed to solely serve market principles but that it should rather concentrate on protecting the environment. With the enactment of the Single European Act in 1988, the Heads of State or Government took the next step and established a solid legal footing for environmental policy in which they codified the general principles, objectives and decision-making procedures (Lenschow 2010: 309). The coming into force of the Maastricht Treaty in 1993 went one step further; from that moment on,

⁴⁸ This Directorate was part of DG Industry at that time. A fully-fledged Directorate-General was established in 1981.

environmental policy legally constituted a separate policy field so that DG Environment was truly capable of elaborating on own political initiatives in terms of secondary legislation. The consecutive Treaties initiated some changes in the decision-making rules and with the Treaty of Lisbon, the European Union's objectives in environmental policy are:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilization of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change (Art. 191 (1) TFEU).

In addition to the legal wording of the Treaties, DG ENV also works out so-called Community Environment Action Programmes (EAP) which identify key issues and priorities. In its sixth EAP (2002-2012), the Commission identified the following four areas of major interest:

1. Natural resources and waste
2. Environment and health
3. Nature and biodiversity
4. Climate change (European Commission 2001b).

Bearing in mind that all these 'hard' and 'soft-law' changes occurred in a comparatively short period of time, it does not come as a surprise that scholars conclude that "the European environmental policy has achieved to develop from a 'flanking policy' for the creating of the Single Market into one of the most central policy areas of the Union" (Knill and Tosun 2011: 184).

A crucial feature of environmental policy is its sectoral interconnectedness: it affects a huge number of other policy fields as for example agriculture, health, industry, maritime affairs, transport, trade and many more. As a consequence, not only stakeholders from many different industrial sectors but also a couple of other Directorate-Generals need to be thoroughly included in the decision-making process. In similar vein, close horizontal coordination among the different Council configurations as well as the diverse committees in the European Parliament is essential. Not surprisingly, this characteristic renders the whole policy formulation process extremely complex and complicated so that it may even take years until a legislative proposal becomes an act. Most widely known is probably the legislative procedure for the REACH regulation; the

Commission adopted its legislative proposal in October 2003 but it took more than three years until the European Parliament and the Council agreed on it in December 2006. Besides, one should not forget that before the Commission was able to formulate its proposal, intensive consultation processes with affected stakeholders had been conducted. The first consultation started in February 1999 and the last one ended in July 2003, which means that, in fact, the whole policy formulation and decision-making process took more than seven years (European Commission 2003: 31).

The previous example is, of course, an extreme one. Not every legislative procedure in environmental policy takes so much time, but since so many stakeholders are possibly affected, a great deal of lobbying takes place. But which EU actors are actually lobbied by the various lobby groups? In the two selected sub-fields of EU Competition policy, it was highlighted that the Commission represents the most dominant actor. In EU Environmental policy, however, the legal and constitutional situation is a different one. Article 192 TFEU sets out the relevant decision-making process; it states that: “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union” (Article 192 (1) TFEU). Whereas the European Parliament only has a consultative role in most competition policies, it possesses legal power in EU Environmental policy; without its approval a proposal cannot become law. As a consequence, the Parliament and the Council represent the key actors in this policy area so that one can expect lobbying organizations to establish contact to the officials in these institutions. Moreover, also the Committee of the Regions is legally involved in the EU decision-making process which might constitute an additional channel for some actors to upload their interests at the European level.

To draw a complete picture, it should be mentioned that the same Article also provides an exception; the Council acts unanimously in accordance with a special legislative procedure in the following areas:

(a) provisions primarily of a fiscal nature;

(b) Measures affecting:

-town and country planning,

-quantitative management of water resources or affecting, directly or indirectly, the availability

of those resources

-land use, with the exception of waste management

(c) Measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply (Art. 192 (2) TFEU)

In case a proposal falls into one of these three exceptions, the Council is the most decisive actor and the European Parliament turns from a co-legislator to a mere consultative institution. Although the real power of these two institutions vary from topic to topic, practitioners stress that, normally, both institutions only constitute the lender of last resort for changing details rather than stopping or preventing the whole proposal: "if we start to intervene when the proposal has been sent to the Council working groups and to the MEPs, then it is almost too late for bringing in our interests. We need to represent our interests even before a single word is written down" (Interview 18). As it has been worked out in Chapter 2, lobbying has to be conducted at the earliest stage possible which already starts before the actual draft for a proposal has been circulated in the DGs. In fact, some legislative regions even lobby the European Commission before it publishes its annual Work Program in which it identifies key challenges and priorities for the following year. Although the annual Work Program is not a legally binding document, practitioners stress that one should not underestimate its real power for the proposals which follow later. Within the environmental context German legislative regions, for example, several regions fought to get the expression "green economy" (European Commission 2013c: 5) included into the Work Program 2014 as a crucial sector for smart, sustainable and inclusive growth (Interview 15). The reason why they fought for this inclusion is quite straightforward: Germany constitutes a pioneer in environmental technologies and the acknowledgment by the European Commission that green technology is crucial for sustainable economic development will provide the Länder and the German federal government with better arguments for maintaining state-aid in this industrial sector (Interview 15).

In EU Environmental policy, a Commission official reports that it is not unusual that DG Environment elaborates on proposals drafted by lobby organizations not only because they possess the necessary expertise in this area but also because DG ENV is heavily understaffed (Interview 2). Indeed, whereas DG ENV only employs 455 people (or 1.9% of the total staff), 731 employees work for DG Competition (or 3.1% of the total staff) which means that DG COMP is ½

larger than DG ENV (European Commission 2014c). Bearing in mind that DG ENV is highly interconnected with the other DGs, this difference is considerable and explains why it is dependent upon external advice. In fact, scholars underline that “most notably in the area of environmental policy, it appears that the Commission is frequently more preoccupied with reacting to the initiatives of individual states than playing an own active role on its own” (Knill and Liefferink 2007: 80). As a consequence, one can state that lobby organizations in general and legislative regions in particular are only able to upload their interests in this policy field if they take proactive steps and deliver crucial information at the earliest stage possible.

4.1.5 DG Education and Culture

Comparing the historic and legal development of EU Education policy with EU Environmental policy, one can detect a few similarities. To begin with, education policy was not enshrined in the Treaty of Rome either. Similar to environmental policy, the process of slowly integrating education policy in EU decision-making started in the late 1960s when the Heads of State or Government agreed on developing higher education further in order to establish a “centre of development, progress and culture” (European Commission 2006b: 23). However, due to the lack of legal competences the European Commission could not go ahead and initiate its own educational agenda. For that reason, it had always been dependent upon the will of the Member States to move one step further but since this area was and still is a very delicate and sensitive one, the Heads of State or Government were keen to ensure that they would not lose their prerogative in this field. On the other hand, the political leaders were aware that in times of increasing globalization and more international competition, education policy had to be integrated in a concrete EU framework so that Europe would not be pushed into the background.

Finally, in 1992, higher education as well as school education were legally incorporated into the Treaty of Maastricht which demonstrated the political will to put education on the next level. Yet, this willingness does not mean that the “competing leadership for reform in EU higher education” (Corbett 2011) between the Commission on the one side and the Member States on the other has come to an end. In fact, the Heads of State or Government made clear right from the beginning that the Union was supposed to only have supporting competences in this area and that no harmonization would take place. And indeed, this legal foundation has not changed until this day: the Lisbon Treaty not only stipulates that the European Union is solely allowed to take

“supporting and supplementing” action for improving the quality of education but also that it must “fully respect the responsibility of the Member States” for determining the content of teaching and the organization of education systems (Art. 165 (1) TFEU). Additionally, the same Article explicitly excludes any harmonization of laws and regulations (Art. 165 (4) TFEU). With regard to objectives that the European Union aims to reach in EU Education policy, the Treaty enlists the following ones:

- developing the European dimension in education
- encouraging mobility of students and teachers
- promoting cooperation between educational establishments
- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors,
- encouraging the development of distance education (Art. 165 (2) TFEU)

Bearing the unambiguous legal background as well as the sensitivity of this area in mind, one could expect that the Commission might only play a passive role in this policy field and leave it to the Member States. This assumption, however, would be premature. In the late 1990s, for example, the Heads of State or Government and the national education ministers agreed on establishing a European Higher Education Area in the scope of the Bologna process. Before and during these negotiations the European Commission had made various proposals and since some of them were accepted by the Member States, it expected to play a role in the following implementation process also. However, this project was initiated outside EU law which means that it had been intergovernmental. As a consequence, the Commission did not have any means of legal pressure so that it could only request the Member States to be included. But despite of its initial support, UK and French ministers insisted that the Bologna process is supposed to remain purely intergovernmental and rejected the Commission’s plea to become a member. Due to huge organizational and financial issues in 2001, however, the Heads of State or Government realized that an active involvement of the Commission was necessary so that it was allowed to join the Follow-up Group as a special member (Corbett 2011: 42).

Since the Commission cannot strive to establish harmonizing rules, it predominantly makes use of the so-called Open Method of Coordination (OMC) which has been introduced with the Lisbon Strategy in 2000.⁴⁹ This new form of EU governance is based on voluntarily cooperation in selected policy fields with the aim to identify and define common objectives at the European level as well as to set-up benchmarks which are monitored by the Commission. In this context, the Commission is very often the driving force and initiates programs that, in the eyes of practitioners, supposedly aim at enhancing its own sphere of competences (interview 1, interview 4). An official of a German representation office commented on that as follows: “The Commission is quite clever. It is aware that the Member States are very cautious if it comes up with new ideas in the educational sector and in order to find allies, it provides financial assistance. We [the Länder] are mostly very critical about initiatives in this area because it directly affects our sovereign competences. In light of the EU sovereign debt crisis, however, we have noticed that more and more Member States are open for the Commission’s education programs so that we are rather isolated” (Interview 8).

The latest example which illustrates that the European Commission acts indeed as an “engine” (Linsenmann 2006: 333) rather than a passive player in EU Education policy, is its communication “Rethinking Education: Investing in skills for better socio-economic outcomes” (European Commission 2012). This and other communications led to an intense debate among the German Länder because the Commission would consciously overstretch its competences in this area (Interview 31). The Commission not only addresses a variety of points that fall into the competences of the Länder such as ensuring appropriate curricula through public-private partnerships or assessing the effectiveness of curricula, but it also sets out a priority list for the Member States including possible key actions undertaken by the EU. To be more precise, Commission officials suggest carrying out regular peer-reviews in the framework of the OMC with the objective of strengthening the analytical base of country-monitoring and to establish a ranking-system concerning the performance of the education system of the Member States. Länder representatives not only complained about these far-reaching proposals, which would encroach on their competences, but they also stressed that they were not included

⁴⁹ The Lisbon Strategy was drafted at the European Council meeting in March 2000 in Lisbon. The Heads of State or Government agreed on a new strategic goal for the Union in order to strengthen employment, economic reform and social-cohesion (European Council 2000).

comprehensively into the decision-making process that produced this Communication (Interview 14).

Bearing these examples in mind, it becomes obvious that the Commission does indeed play a crucial role in EU Education policy. Due to the already mentioned legal prohibition to harmonize rules, the procedure to adopt decisions or regulations is somewhat different compared to the other two described policy fields above. The Commission makes use of either soft-law (communications, recommendations, white books) or hard-law (decisions, regulations). In case it has decided to publish a soft-law instrument, it delivers it to the Council and the European Parliament. Those institutions scrutinize the document thoroughly and send a report with suggestions to the Commission which, in turn, includes as much amendments as possible. Since education policy is a very sensitive area and some regions even possess exclusive competences in this matter, the coordination and communication with the officials from the Member State and its legislative regions is particularly close (Interview 1). Interestingly, legislative regions even enjoy a privileged status compared to administrative regions which is reflected by the fact that Commission officials attend more frequently podium discussions and meetings of those actors (Interview 1).

In most circumstances, soft-law precedes hard-law because this way the Commission is better able to gather and compare relevant data on a regional, national as well as international level so that topical and future challenges are easier to identify. Moreover, soft-law instruments provide the affected stakeholders with enough time to make their voice heard and to take part in discussions and negotiations so that the later legislative proposal is more likely to be adopted in the Council and the European Parliament. To win the necessary majorities in both institutions is elemental because the ordinary legislative procedure has to be applied (Art. 165 (4) TFEU).

The main difference between decision-making in EU Education policy and EU Environmental policy is its overall objective: the EU is legally capable of drawing up regulatory rules in environmental policy whereas it may only set up distributive policies in education. Yet, every DG only disposes of limited financial resources and if DG Education and Culture has already spent its reserves, the respective program can only be introduced after the Member States have agreed on the EU's next budget for the following seven years (the Multi-annual Financial Framework). For that reason, the vast majority of decisions on EU Education programs are initiated in the beginning of the seven year period. As a consequence, for any attempt to exert influence on the content and

the scope of future educational programs, it is paramount to establish close contacts with the Commission on the one side, which indeed constitutes an 'engine' in education policies, and with the national representatives in and outside of the Council on the other.

4.2 Promoting regional interests upwards within the EU

The overall question of this research project is whether legislative regions attempt to influence EU secondary legislation by working with or without the national government. In order to answer this question, this section is divided into three parts.

The first one is going to scrutinize at what point in time the selected regions start their lobbying activities and it analyzes the various mechanisms which facilitate coalition-building in EU Competition, Environmental and Education policy in practice. This part provides evidence that regular state by-passing appears to be rather unlikely because most mechanisms are dependent upon close cooperation with the national government.

The second part illustrates with whom the German and UK regions exchange relevant information for defending their regional interests at the European level. The interviewees were asked to indicate how often and at what stage they exchange information with the following actors: the European Commission, the European Parliament, the Council of Ministers, the Committee of the Regions, the national government, inner-state regions, legislative as well as non-legislative regions in other EU Member States, profit-oriented companies, non-profit oriented companies and associations as well as unions. If regions, for example, do not exchange information frequently with the EU institutions but receive them only from their national government, one can hardly argue that the regional level by-passes the national level. In other words, establishing contact with EU institutions constitutes the first step of working without the national government. Although all selected regions exchange information with EU institutions and the other inner-state regions quite often, this section also shows that the national government is a crucial source of information. Consequently, a clear hint whether regions by-pass their national government is not deductible.

The third part assesses the necessity as well as the frequency of coalition-building with the above stated actors with the exception of the EU-institutions. As it has been argued in chapter 3, neither the Commission, the Council, the Parliament or the Committee of the Regions can be

treated as a homogenous actor who defends the interests of one region only. Additionally, this part will also provide evidence about the perceived relevance of coalition-partners. It will be shown that the national government is clearly considered as the most important and influential actor for promoting regional concerns upwards the EU which means that by-passing is not carried out on a *regular basis* in Germany or the UK.

4.2.1 Lobbying procedures of the German Länder and mechanisms facilitating coalition-building

Irrespective of the policy area, the vast majority of the German Länder attempt to defend their interest at the earliest stage possible: the Commission's annual Work Program. It has already been demonstrated above that the inclusion or exclusion of specific words are of high importance for some because it may improve the future bargaining position of the regions vis-à-vis the Commission. Although the annual Work Program is not a legally binding document that will be entirely worked through in the following year, one must not underestimate its potential impact: "Sometimes, the Commission cannot follow-up all items that are on the list. Sometimes, it seems that an item has been forgotten. However, it will come up sooner or later and if it already reflects our interests, it will be much more likely that things will end up well" (Interview 22). In this regard, it is interesting to note that the number of people working in the regional representation office is not a crucial factor; almost all German Länder try to intervene at this early stage. The only difference is that the larger regions, which employ more personnel, can work on more items simultaneously. Rhineland-Palatinate, for example, particularly focuses on anything that somehow affects its wine-industry whereas Baden-Württemberg applies a broader approach and takes care of any items that may impact on their regional car- and environment-sector. What becomes obvious is that the German Länder act independently from each other. The reason for this is straightforward: coordination with other actors is simply too time-consuming at such an early stage because this is the very first document about future proposals which means that the Commission has not yet started to work out its general standing. As soon as it becomes predictable in which way the Commission attempts to approach a topic, coordination among the German Länder takes place in Brussels (Interview 20).

When the Commission publishes its annual Work Program, each representation office analyzes as well as comments on it and sends it to the home base. The cabinet of the regional

government, in turn, identifies crucial points and determines which items should be followed-up by its Brussels office. Generally, what all representation offices have in common is that they constitute the 'eyes and ears' of the home base; the concrete positioning is worked out by the Land's capital. Afterwards, the regional government turns to its team in Brussels and asks for advice how to best promote the objectives upwards the EU level (Interview 9, 21, 23).

In order to get a better idea about the content, the objective and potential aftermaths of the future proposal, the Commission takes recourse to formal and informal methods. Formally, it initiates a public consultation which is accessible for all people and organizations. Each consultation consists of a document with six elements: a title, the concerned policy field(s), the affected target group(s), the period of consultation, the objective of the consultation and a questionnaire. Especially the last element is of high importance because the questionnaire allows everyone to provide input on the concerned matter, thereby increasing public involvement, transparency and efficiency. At the same time, the Commission uses informal methods such as hearings and discussions where all stakeholders are free to attend. Additionally, it also responds to invitations from organizations (including regions) and attends all kinds of events where participants seek the opportunity to unofficially speak with Commission officials. Meanwhile, the representation offices also try to obtain as much information as possible so that they are able to assess whether the later draft and the future proposal will reflect their interests. From that moment on, the various mechanisms of the German Länder that facilitate coalition-building start to work.

When the Commission makes use of its formal and informal methods of information gathering, the Länder representations start to arrange multi-lateral meetings and establish *Arbeitsgruppen* ('working groups'). Depending on the concerned policy field, the number of affected Länder varies. If the draft is about education policy, it is very likely that all the Länder are affected to the same extent but if it specifically deals with seaports or major international airports, the number of affected Länder is much smaller. In the latter case, the responsible persons meet for dinner and discuss the topic on that occasion but in the former case, the meeting usually takes place in a conference room of a representation office since more space is needed. This first multi-lateral meeting forms the basis for the following *Arbeitsgruppe*. The elected group coordinator will invite the European Commission as well as the Permanent Representation to attend the next (unofficial) meeting. Since the Commission itself is very much interested in explaining its point of

view and receiving further input, it always accepts the invitation. One or two Commission officials are sent to that meeting and hold a presentation about the basic objectives and afterwards, the Länder have the opportunity to comment on the first ideas. In order to assess possible socio-economic effects and to provide specific information on the concerned topic, the Länder take recourse to reports by companies, employer associations, labor unions and so forth. In most cases, the Länder have the impression that their concerns are taken into consideration so that all of them stress the importance of that mechanism (Interview 21, 26, 33).

As long as the European Commission has not produced the legislative proposal, the main coordination activities between the Länder take place in Brussels. On rare occasions, the responsible Länder representatives in Berlin also meet and discuss the topic in order to have a vague idea about the standing of each Land.⁵⁰ When the legislative proposal has been accepted by the College of Commissioners, it will be circulated to the European Parliament and the Council of Ministers. At that stage, the next coalition-building mechanism comes into place: the European Affairs Committee of the Bundesrat. This committee is used for cooperating with each other, developing a common opinion as well as decision-making if their exclusive competences are touched. On average, this committee meets every fourth Friday so that it constitutes a very useful place for effectively building coalitions (Interview 23, Interview 21). Indeed, a common decision of that institution is considered quite powerful by the federal government and the European Commission because it is hard to ignore the concerns of sixteen regional elected governments (Interview 1, 21, 24, 32). Although not each Land sympathizes with the position of its regional counterparts in every circumstance, all parties are very well aware that official disagreement is counterproductive in any case (Interview 24, Interview 26). This is one reason why the final formulation of the decision is sometimes a bit vague so that nobody rejects it. Besides, this imprecision is also helpful at the European level because it allows participants to stay flexible in negotiations. A strict mandate, in contrast, would seriously limit the scope of maneuver with the consequence that a compromise is hard to reach (Interview 14). For these two reasons, the Länder almost always agree on a common decision very often in order to strengthen their political leverage vis-à-vis the national government and the Commission.

Perhaps not surprisingly, the political weight of a Bundesrat decision depends on the policy field. As analyzed above, Bundesrat decisions are only legally binding for the national government

⁵⁰ Each Land has set up a representation office in Berlin as well.

if the Länder enjoy exclusive political competences in the concerned policy field. For the three selected policy fields of this project, this is only the case for EU Education; most decisions in this matter *de jure* constitute a mandate for the federal government if it represents the Länder in the Council of Ministers. Although the federal government is officially expected to adhere to the Länder position, the federal representative is granted some leeway in practice; otherwise it would be extremely difficult to strike any deals (Interview 8, 14). Due to their very own experience in Council meetings, the Länder are aware that flexibility is a crucial element in EU negotiations.

The next mechanism which facilitates coalition-building is the above mentioned Länder representative for the Council working groups. Although this person is not permitted to speak, the written report constitutes a very useful source of information for the Länder because it provides a good overview of whether they are isolated or whether the federal government deviates too much from the agreed position. In any case, the Länder might be encouraged to put the concerned topic on the agenda of the European Affairs Committee of the Bundesrat once again or, in case this takes too long, they contact the federal government right away.

In addition to that, the Länder can also take recourse to the so-called *Draht-Berichte* ('cable-report' or diplomatic cable) which constitutes another mechanism. Every time a representative of the federal government attends a Council working group, a COREPER or a Council meeting, the participant has to draw such a report and sends it not only to the affected official federal authorities such as the Federal Foreign Office, the Federal Ministry of Education, the Federal Ministry of Environment etc. but also to the Bundesrat. This document contains two sections: the first one shortly summarizes the results of the meeting whereas the second section provides detailed information. To be more specific, the first section might simply pinpoint, for example, that the Member States have revised the Commission's draft on "New forms of competition in the vegetable industry", but the second part specifically states that Germany has raised serious concerns about the formulation "as soon as possible" on page 3 whereas France and Belgium have stressed the importance of that expression. In other words, the *Draht-Berichte* provide an additional source of information which, once again, could cause the Länder to arrange a new meeting where they have to reconsider their position.

The last mechanism facilitating coalition-building is the *Länderbeobachter* in the COREPER and Council meetings because this person provides the Länder with up-to-date and 'unfiltered' information about negotiations at the higher Council levels. The role of this person is quite similar

to the representative for the Council working groups: to detect deviations from previously agreed positions. However, since the *Länderbeobachter* intervenes at a rather late point in time, this mechanism does not allow anymore substantial changes to be made.

4.2.2 Collecting and exchanging information of the German Länder

With the exception of profit-oriented companies in EU Education policy, the results demonstrate that the policy field itself does not make any difference as regards the exchange of information with the respective actor. In other words, regardless of whether the policy proposal stems from DG Competition, DG Environment or DG Education and Culture, the German Länder get in touch with Commission officials almost equally often.

As soon as the Länder realize that the Commission is about to work on a draft for a later legislative proposal, the regional representation offices make use of their contacts within that institution. First of all, they attempt to call a German policy adviser of the responsible Directorate-General who works in the corresponding Directorate or even in the corresponding unit. Although everyone in the German representations speaks English, the preferred contact person should be German-speaking because it is much easier to talk about technical details in the native language. Since each Land disposes of good contacts this method works quite well in most circumstances. However, sometimes the German contact person is not sufficiently involved in the concerned subject so that (s)he provides the representation office with the appropriate contact details. Second, each Land tries to increase its chances of getting its interests accommodated by inviting Commission officials to its office. In this regard, most German representations specifically invite the affected actors in their region which means that the audience is almost exclusively German (Interview 1). Therefore, the representation office concentrates on finding a Commission official who speaks perfect German with the consequence that the speaker is “frequently not the most qualified person” (Interview 1) for the concerned topic. The Land, which organizes the event, also informs the other Länder as well as the Permanent Representation of Germany about it and all of them are free to attend. Since no office is legally obliged to include the national government, this working style is already a first indicator that no Land explicitly aims to by-pass the federal government right from the beginning.

Concerning the European Parliament and the Council of Ministers, on a first glance it seems that, generally, the results show that the German representation offices do not exchange

information very often. Such a conclusion, however, would be premature. It is correct that, principally, the European Commission is considered more important in this matter than the Parliament, but a few civil servants in the representations contact the MEPs particularly frequently because they are party members themselves. As a consequence, they do not only get in touch with the MEPs from their own region, but they can also fairly easy establish contact to the whole European Party which is particularly helpful if the *rapporteur* belongs to the same party. Yet, it should be stated that this is the exception rather than the rule; most representations only contact 'their' MEPs and these Parliamentarians, in turn, attempt to help as much as possible (Interview 9, Interview 25). As regards the Council, most interviewees stated that, personally, they are not engaged with any Council activities. In fact, it was even mentioned that they are forbidden to establish contact to the Council working groups or COREPER (Interview 16). This statement, however, has to be clarified. Generally, the Länder are allowed to send one representative to Council working groups, but this person is not permitted to speak – (s)he may only make notes and send them to the Bundesrat. The Bundesrat, in turn, uploads the information on a server which is exclusively accessible for all Länder governments and their Brussels representation office (Interview 4, 5, 6). The representative has to be an expert for the concerned policy field and (s)he is elected by the Bundesrat for a specified period of time (usually 4 years). Since this person does not work in the representation office but in a regional or national ministry, it is plausible why the figure concerning the exchange of information is low. Moreover, the Länder also have legal access to the to all COREPER and Council meetings through their *Länderbeobachter*. Similar to the Council working groups, this person only makes notes and forwards them. Although the representative is not permitted to speak or to vote, the Länder do receive the necessary information about the concerned subject. As a result, one must not conclude that the German Länder do not have access to the Council.

Most Länder think that the Committee of the Regions can be a useful additional channel for some actors to make regional concerns heard. Several interviewees could remember at least one case where the statement of the CoR brought up new evidence which, in turn, was also incorporated into the legislative proposal. However, all in all, the CoR's opinions are considered:

- not very influential due to their lack of legal power,
- boring to read because template expressions such as 'there is still potential for improvement' or 'it is disappointing that the local and regional authorities had not been

included more comprehensively' are commonly used so that the final texts look very similar,

- vague since a large amount of actors with a different legal status only produce results that reflect the lowest common denominator at best.

As a consequence, only the larger Länder, which employ enough personnel, use this body for influencing the Commission's proposals from time to time but they are aware of its modest impact.

It has already briefly described above that the Länder and the federal government precisely coordinate their various meetings in- and outside of EU the institutions which is also reflected by the high frequency of exchange of information among these actors. The civil servants of the regional offices and the Permanent Representation of Germany meet very often at the diverse events or contact them via phone in urgent cases. In fact, some of them are even friends and meet privately so that they can rely on each other.

The amount of information that is exchanged between the Länder themselves is even slightly higher compared to the national government. Particularly the smaller Länder, which do not employ enough personnel to tap all possible sources of information, consider the exchange of information with the other Länder essential. Since each Land has special interests in at least one specific area, this kind of cooperation is a very useful form of division of labor.

In contrast to the above mentioned actors, the Länder exchange information with legislative as well as administrative regions of other EU Member States only occasionally. One might have expected that the actual frequency could be higher because such activity would provide a sound basis for later coalition-building, which, in turn, could also lead to state by-passing. The interviewees provided two reasons that explain this result. First and most importantly, later coalition-building with the national government and the inter-state regions is deemed sufficient for exerting influence on EU decision-making. Therefore, the lion's share of resources is spent for this kind of action. Second, communicating in English is sometimes burdensome because not every employee possesses a high knowledge of that language. As a consequence, the conversation does not run smoothly, people have difficulties communicating, and social skills cannot be played out so that the conversation is rather exhausting and, ultimately, inefficient (Interview 9). However, it should be stressed that this observation only refers to EU lobbying activities and not

to other forms of information sharing. Some Länder offices do establish contact and do exchange information with some (specific) regions on a regular basis, as for example:

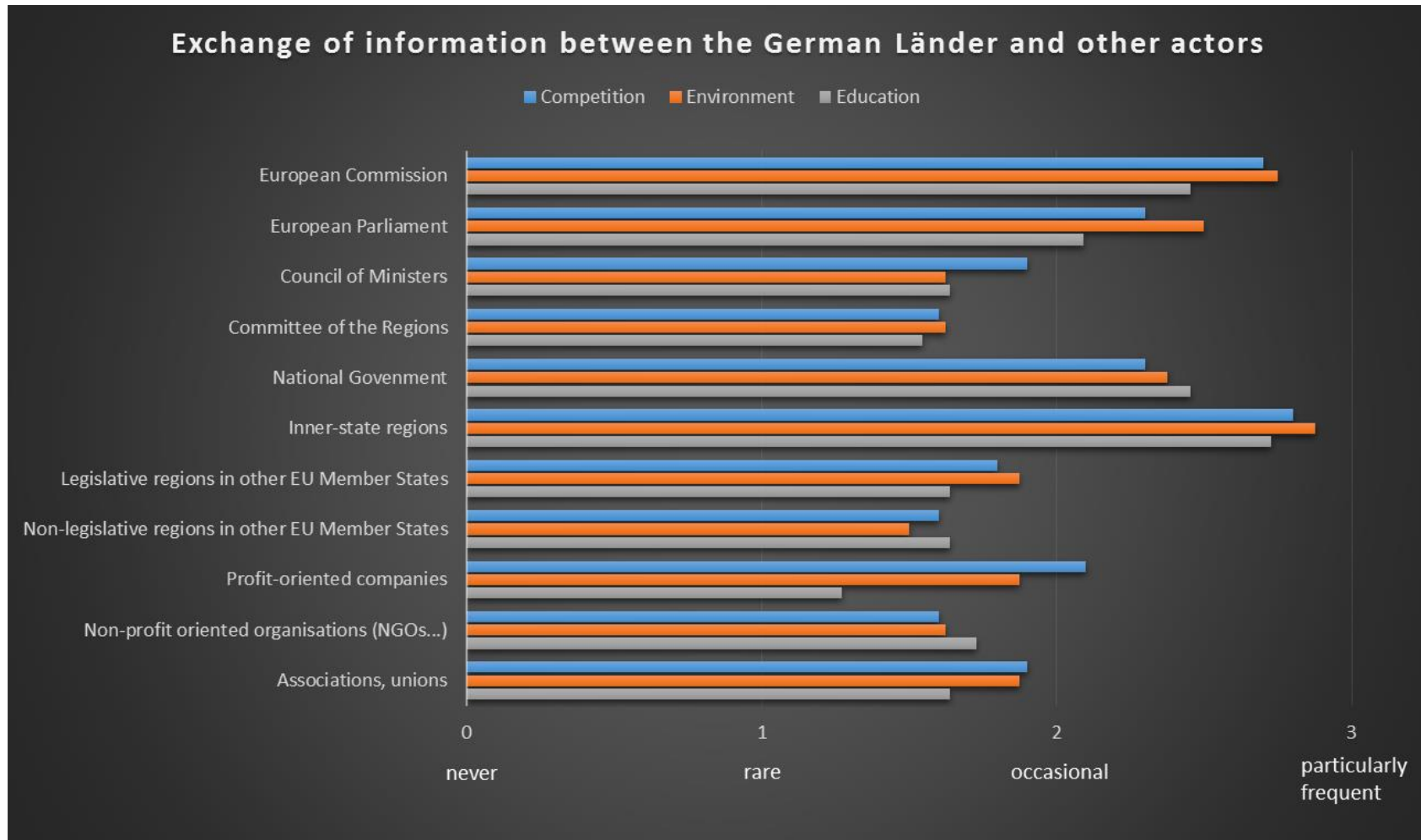
- Baden-Württemberg: Rhône-Alpes, Lombardy, Catalonia (Four Motors for Europe)
- North Rhine-Westphalia: Nord-Pas de Calais, Silesia (Triangle of Weimar)
- Saarland: Lorraine, Luxembourg (Saar-Lor-Lux)

These and other cooperation agreements demonstrate that legislative and non-legislative regions of different EU Member States work together in several areas such as technological innovation, culture, or pupil exchange but it should be clear that this is a different form of information sharing and cooperation which has nothing to do with EU lobbying.

Coming to the last identified group of non-governmental actors – profit-oriented companies, non profit-oriented companies, associations and unions – one can state that the German representation offices occasionally exchange information with these actors. With the exception of EU Education policy, the profit-oriented companies sometimes constitute a valuable source of information because they manage to receive the necessary information even faster than the civil servants in the representations (Interview 26). Although some German Länder also officially refer to their office as a meeting place for business companies, civil servants stress that they do not promote particular economic interests but defend the common good of the region as a whole. In a similar vein, they regularly meet with NGOs and associations in order to be better aware of the social and economic impact of European law but they do not speak on their behalf.

Figure 9 visualizes the findings above.

Figure 9: Exchange of information of the German Länder

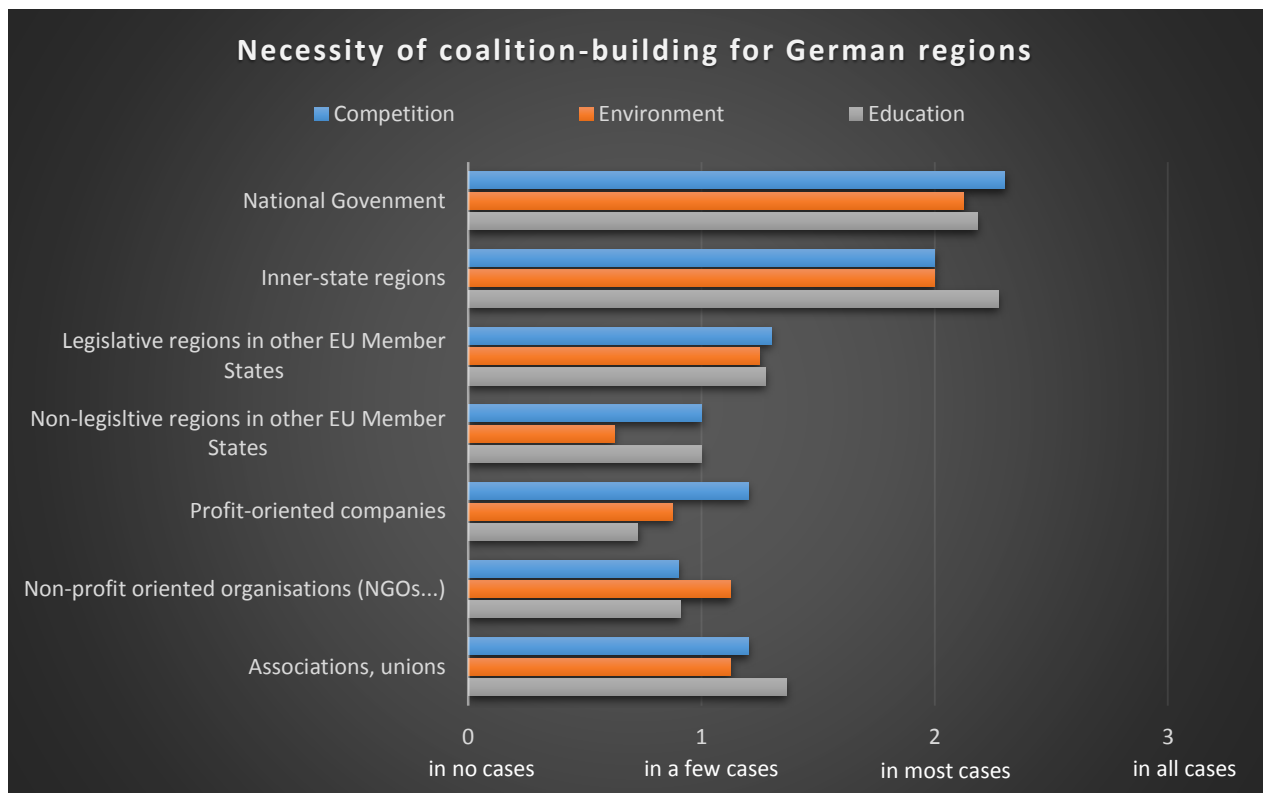


Source 13: Interviews conducted in 2014

4.2.3 Coalition-building of the German Länder

Figure 10 illustrates the results as regards the necessity for the German Länder for EU Competition, Environment and Education policy. It becomes obvious that the German Länder regard a coalition with the national government necessary in most cases for all the three selected policy fields. There are a number of reasons for this assessment. First and most importantly, the federal government explicitly enjoys a higher legal status vis-à-vis the European Commission than the Länder because the German Basic Law explicitly stipulates that “relations with foreign states shall be conducted by the Federation” (Art. 31 (1) BL). Therefore, the Permanent Representation of Germany is the only *official* organization that represents the interests of Germany. The Länder offices, in contrast, are only allowed to *unofficially* represent the interests of their territory. Although the Commission’s civil servants regularly meet with Länder officials, they strictly comply with the legal basis which means that they do not strike deals with them (Interview 1, 2, 3). Generally, this code of practice impacts on all policy fields.

Figure 10: Necessity of coalition-building for the German Länder



Source 14: Interviews conducted in 2014

In EU Competition policy, the Länder do not have any competences at all whereas the European Union, in contrast, possesses the exclusive political competences so that the Commission is able to adopt legislation even without a formal legal procedure (see above). In such a case, it appears to be very difficult for any lobby organizations to obtain information prior to the date the Commission officially publishes its first ideas. Practitioners speculate that this is probably due to the fact that the Commission is a very powerful actor in this policy field which is legally not dependent upon the Council and the Parliament for adoption (Interview 22, Interview 26). To give a concrete example, when the Commission aimed to revise its aviation aid guidelines and launched a public consultation in 2005, the Länder were not able to receive precise information behind the scenes. Although DG Competition especially sought information from public authorities such as Member States, regions, cities and so forth, regional governments could not intervene at a later point in time. The Member States' government, however, had been constantly included so that this actor represented the best and, in fact, only possibility to promote regional interests at the European level. Relying on the federal government in this matter was rather uncontroversial as these revisions affected all Länder so that, consequently, both parties fought for the same thing.

Concerning EU Environment policy, the legal situation for the Länder is not so much different than in EU Competition policy. Although they possess some political competences in that area, the German Basic Law does not offer them the possibility to represent the Member State in the Council. Therefore, the Länder always attempt to build a coalition with the national government in the first place. In most cases, this works very well but if not, they made the experience that it is very difficult to work without the Federation let alone to work against it (Interview 19, 23). In the former case, the regional government has to invest much time and energy for something whose outcome is not predictable; in the latter case, the political costs could be high because the federal government might not assist the 'troublemaker' the next time it needs its support. Therefore, even large regions rarely challenge the national government. In 2013, for example, two large German regions were in favor of the European Commission's proposal of reducing CO₂-certificates ("backloading") within the framework of the European Trade System. The basic aim was to raise the price for CO₂-emissions so that firms would be encouraged to invest in low-carbon innovations. The FDP-led Federal Ministry of Economy, however, was against this proposal so that the Federation rejected to support North Rhine-Westphalia and Baden-Württemberg at the European level. Initially, both regions unsuccessfully attempted to proceed on their own, but as soon as the

conservative-liberal coalition had been replaced by a great coalition in October 2013, both regions could count on the Federal government's support and things started to work out.

Another example which illustrates the importance of the national government's support is the directive "On the restriction of the use of certain hazardous substances in electrical and electronic equipment" (European Commission 2011e). The Länder were not satisfied with the Commission's proposal because some details would have had far reaching consequences for the photovoltaic industry. Therefore, the Länder attempted to convince the European Commission and presented all kinds of data, material and studies – but without success: the Commission clung to its draft. As a consequence, the Länder informed the federal government and the German MEPs about the possible environmental and economic repercussions and both actors assured their support. Finally, the German government found allies in the Council and German MEPs could easily convince other MEPs so that the controversial technical details were changed (Interview 33).

In EU Education policy, the Länder enjoy exclusive competences in some areas and the Basic Law grants the right to represent the Federation in the Council of Ministers. In other words, the legal and constitutional situation favors the regional level which raises the question of why the regions still consider a coalition with the federal government necessary in most cases. One could assume that the Länder may simply refer to the 'Law on cooperation between the federal government and the Länder in matters concerning the European Union' which provides them a mandate for conducting negotiations at the European level. In reality, however, the Federation usually stresses that the focus of the Commission's proposal ("*Schwerpunkt*") is not on education policy but on something else. It is not uncommon that the Federation interprets legislative proposals differently so that both parties struggle about the real focus of the concerned piece of legislation. In case the Federation does not back down, the Länder only dispose of two formal resolution mechanisms. First, the issue has to be discussed on the next Conference of Ministers on European Affairs which, however, would take too long and as long as the Ministers of Education have not formally agreed on a common position, the Länder are played off against each other by the Federation. A second possibility constitutes a legal action before the Federal Constitutional Court but this step would be very extreme and not helpful at all. As a result, practitioners state that the German federal system includes too many formal provisions for the Länder to remain flexible so that they face enormous obstacles to defend their interests in EU Education policy

(Interview 8). This means that if the Federation determines to represent the Länder' interest at the EU, they have little room of maneuver to fight the national government.

Another reason why the Länder do not or perhaps even cannot by-pass the federal government in this policy field is because the Irish Council Presidency in 2013 has established a new format which is called the "Inner-circle". Instead of 56 or more, only 28 representatives meet in this Council so that the communication and coordination process is facilitated. Almost all participants of the previous Education Council⁵¹ meetings have welcomed this new format – with the exception of the German Länder. The federal government usually prevents the Länder from representing Germany with the consequence that they have lost some of their earlier power. In order to make their voice heard, the Länder identify those topics that are of major importance for them and try to convince the federal government from their point of view. Besides, the Ministers of Education from the other Member States prefer to directly speak with the German Federal Minister for Education instead of the Länder representative (Interview 8, 9, 11). For these reasons, "the Permanent Representation of Germany is our contact partner number one at the European level" (Interview 8).

In the eyes of many German Länder representatives, the European Commission usually attempts to revise the national education system of the Member States by its own initiatives without specifically involving sub-national authorities, and therefore, the German Länder find themselves in a "defense attitude" (Interview 31). To provide a concrete example, the Communication "Opening up Education: Innovative teaching and learning for all through new Technologies and Open Educational Resources" (European Commission 2013d) was supposed to pave innovative ways of learning by using new technologies but the Länder considered that initiative problematic in several ways because 'open educational resources' (OER) meant, in fact, that educational materials would be freely available for all those wishing to use them. In Germany, however, there are publishing companies which compete for the publication of school books so that OER would undermine this market. Besides, in comparison to other Member States, the procedure for creating a school book is very complex and includes many different actors: teachers, parents and pupils work together and decide about the book's content and structure. Afterwards, the Ministry of Education of the Land reviews it and checks whether the content matches the predetermined educational objectives. Only if that is the case, the book will be put on an official

⁵¹ The Council's full name is Education, Youth, Culture and Sports Council

book-list so that it can be used for teaching. Other Member States, that supported the Commission's initiative, usually have a different system in which the corresponding Ministry either writes school books on its own or allows organizations to determine the content and write it (Interview 31).

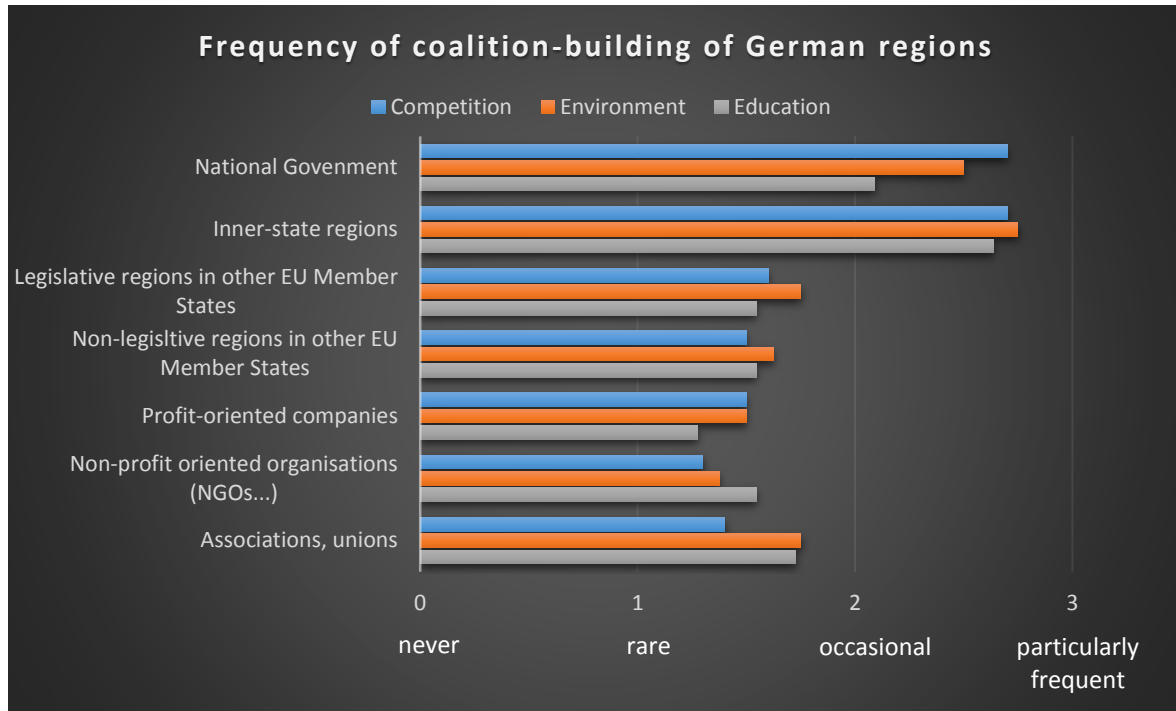
What these examples in the different policy fields have shown is that the Länder do consider the national government the most influential actor who is most likely to change the Commission's mind. In fact, even officials from the largest Länder state that "we pay attention not to by-pass the federal government" (Interview 23). Admittedly, it should be mentioned that this assessment is not only attributed to the legal and constitutional situation of the EU and the Member State, though. Another crucial aspect is that the Commission as well as the Member States act in a 'European spirit' which means that nobody ignores the concerns of the other one and that all actors try to reach a compromise (Interview 4). This spirit provides another incentive to cooperate with the national government because the representatives in the Council rarely make use of the qualified majority voting but attempt to reach a compromise by consensus.

Coalition-building with the other Länder is also considered necessary in most cases because "the individual opinion of one region is not relevant for the Commission" (Interview 21). To put it differently, each Land is aware that its chances are much higher to make its voice heard if it has allies on its side. Although the importance of individual interest representation in Brussels through personal contacts is regularly emphasized, most interviewees believe that this activity can only be seen as a supplementary way of defending regional interests. In other words, the majority of civil servants in the representations think that the national arena is still the most important place for getting their interests accommodated. In this regard, coalition-building with inner-state regions is particularly useful to make the federal government listen to the concerns of a regional government, because, it is the corresponding federal minister who eventually gets in touch with the EU Commissioner.

The necessity of coalition-building with other actors for influencing EU decision-making is not very high. To be more concrete, a coalition with legislative as well as administrative regions in other EU Member States is sometimes difficult to forge due to language barriers. Concerning profit-oriented companies, the Länder do not want to create the impression that they pursue particular economic interests. In this regard, they believe that the Commission sees them in a different light because they represent a democratically elected government which is responsible for the common good. Although a coalition with NGOs or associations is not regarded as

disreputable, the regional representations do not believe that it would improve the chances of defending their interests.

Figure 11: Frequency of coalition-building of the German Länder



Source 15: Interviews conducted in 2014

The results concerning the frequency of coalition-building do not deviate very much from the findings in the previous section which means that a regional government is also capable of building a coalition with the preferred actor if it is deemed necessary (see Figure 11). The interviews have revealed that the Länder especially forge a coalition with the national government and inner-state regions. As it has been outlined above, these two coalitions are highly necessary because on the one hand the national government is regarded as the most influential actor and on the other hand coalition-building with their regional counterparts is mandatory to put the federal government under pressure. This observation applies particularly to EU Competition and Environmental policy. In EU Education policy, we see that a clear majority prefers a coalition with their Länder colleagues which is, however, not very surprising because this policy area belongs to their exclusive competences. In case they receive the mandate to represent Germany at the EU level, close coordination and cooperation is absolutely necessary. But even if a representative of the

Federation will speak on their behalf in the Council of Ministers, it is crucial that they have agreed on a common position in the first place.

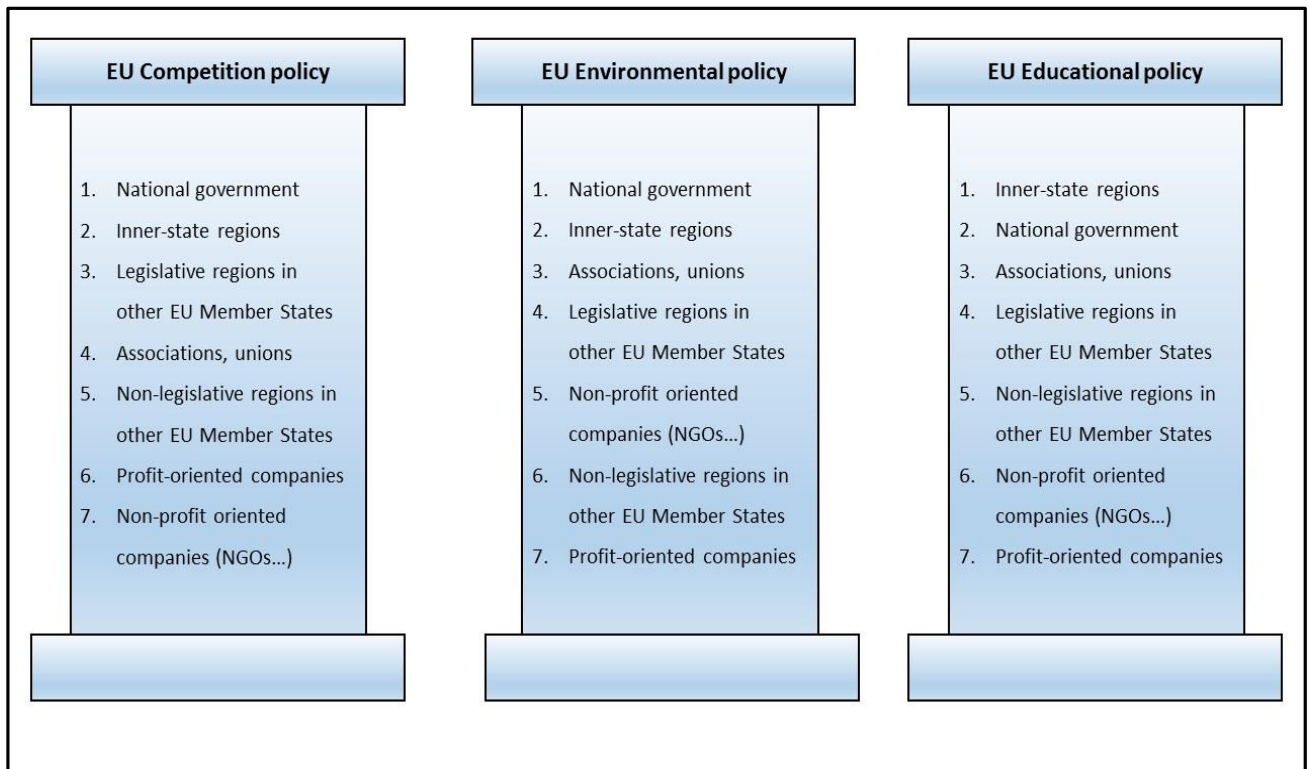
Bearing in mind that the Länder regard a coalition with the other potential actors necessary in just a few cases, it is plausible that they only forge a coalition occasionally. It is still interesting to note that the Länder do not differentiate between legislative and non-legislative regions. One could have expected that the frequency of coalition-building with Spanish, Italian, Austrian or Belgian regions would be higher compared to administrative regions such as French or Polish ones because the former have the authority to make own decision in certain policy fields. In this regard, the interviewees highlighted that this assumption is only correct for those activities which are not related to legislative lobbying such as inter-regional cooperation in cultural or economic matters. If, for example, a new cooperation agreement for pupil exchange is planned in order to overcome prejudices, it is much easier to come to a decision with legislative regions.

Concerning the last three depicted actors, employer associations or labor unions are taken as coalition-partners more often than profit-oriented companies or NGOs but compared to the national government or inner-state regions, the frequency is relatively low. Irrespective of the actual type of actor, the representations explicitly stress that they do not represent the interests of one individual actor only. To be more precise, if a profit-oriented company informs the region's Brussels office about potential negative consequences of a legislative proposal, the civil servants check whether other industries and sectors are also affected. For example, when the European Commission circulated its proposal for a "Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment" (European Commission 2008a), the Länder representations were consulted by a major solar company which convincingly argued that such a law would have tremendous negative effects for the whole (German) solar market. After double-checking the assumptions of the company, the Länder picked up its arguments and attempted to bring about the necessary changes through direct (Commission) and indirect (Council and European Parliament) intervention (Interview 33).

Finally, the interviewees were also asked to provide a ranking for the various coalition-partners for each policy field (see Figure 12). The results show that the national government and the inner-state regions are considered most important for each policy field. To be more specific, the national government is ranked #1 in EU Competition and Environmental policies and #2 in EU Education policies as the most important coalition-partner; consequently, only in EU Education policy the inner-state regions are considered more important than the national government. For

the three selected policy fields, associations, unions and legislative regions are ranked #3 and #4, but these and the remaining rankings are, in fact, not deemed important because the majority of interviewees stressed that they concentrate on working with the federal government and the other Länder most of the time. As a consequence, the gap or the relevance between rank #3 and #7 is not very high in practice.

Figure 12: Ranking of coalition-partners of the German Länder



Source 16: own graph

This section has provided evidence that the national government is seen as the most important and influential actor for the German Länder to defend their interests at the European level. Even in the case of EU Education policy, an area in which they enjoy exclusive political competences, they cannot ignore the concerns of the federal government because if the latter is determined to oppose the Länder' claim to send a regional representative to the Council meetings, the Länder do not have much of a choice but to adhere to the national line. Although in the past coalition-building was not always possible due to party-political disagreements, generally, the cooperation

between the Länder and the Federation works very smoothly (Interview 4, Interview 24). For that reason, several civil servants in the representations do not mind that they have to work through national government; in the end the overall objective is to get their regional interests accommodated.

Besides, when they were asked about whether regions need to be more included in the EU decision-making process, the vast majority believed that their region already possesses sufficient possibilities to make their voice heard – either directly through the Committee of the Regions or indirectly through unofficial meetings with Commission officials, the Bundesrat and the national government. To be more specific, almost all of them rejected a further institutional inclusion because it would render the decision-making processes even more complicated. From their own experience in EU Education they know that reaching a compromise in the Council with ‘only’ 27 other Member States is already a very difficult undertaking. Therefore, another institution with legal powers that is composed of legislative regions solely would not help at all to make the EU somehow more democratic; quite the contrary, the interviewees expected that the EU would be incapable of making decisions so that the output legitimacy would suffer tremendously. Instead, they stressed that an earlier inclusion by the European Commission would be desirable so that they obtain key information much faster.

4.2.4 Lobbying procedures of Scotland, Wales and Northern Ireland and mechanisms facilitating coalition-building

Intervening at the earliest stage possible is crucial for Scotland, Northern Ireland and Wales for getting their interests accommodated in the EU decision-making process. Although this assessment is commonly accepted, the lobbying activities usually take place after the Commission has published its annual Work Program. To put it differently, lobbying starts as soon as the Commission aims to become active in an area and gathers information on a specific topic for changing an outdated law or introducing something new. The reasons for the UK regions not attempting to mark their political footprint on the Commission’s very first document is because the number of employees is, in comparison with other legislative regions, not very high. Whereas the composition of Scotland’s EU office with twelve persons is quite good, Northern Ireland and Wales only employ eight and six people, respectively. For that reason, their scarce human resources need to be employed for crucial and controversial issues that directly impact on the

regional economy. The annual Work Program, however, is not legally binding and only addresses possible future issues which even might not be put on the agenda at all. As a consequence, the three regions do not try to lobby the European Commission at this early stage. Yet, this is not to say that they consider it unimportant but that they cannot channel their energy on this matter. Instead, their home base establishes close contacts to the responsible persons in Whitehall where Scottish, Northern Irish and Welsh interests are articulated. The UK Government, in turn, is supposed to pick up these regional concerns and include them into the overall UK position. This way, the concerns and priorities of the three legislative regions are taken care of and the UK is capable of speaking with one voice.

For managing the huge amount of information that is regularly produced at European level, Scotland's, Northern Ireland's and Wales's Brussels offices need to bundle their energies and concentrate on those topics that are of high importance for their regional government. After the European Commission has published its annual Work Program in autumn for the following year, their regional government sets up a priority list which pinpoints all those subjects. In this regard, fisheries and renewable energies are particularly important for Scotland whereas agriculture and rural development are crucial topics for Northern Ireland and Wales. In addition to this priority list, the regional governments are already in close contact with the UK Government at this early stage in order to know the latter's point of view. This is done at national as well as European level. In Whitehall the regions' representatives meet with their UK counterparts and in Brussels the regions' team meets with the UK Permanent Representation to the EU. Consequently, mutual coordination takes place at both levels right from the beginning.

As it has been worked out above, the UK legislative regions cannot refer to solid constitutional mechanisms which means that they have to rely on informal mechanisms to a large extent. One exception is the Joint Ministerial Committee (Europe) which was created by the Memorandum of Understanding with the objective to provide a coordination and negotiation platform on EU policy issues. In fact, this instrument constitutes the only formal resolution mechanism in case of serious disputes and although it is a purely consultative body, the interviewees have confirmed that it had been very useful in the past. Their regional ministers have the opportunity, four times a year, to officially to speak with the UK Government about crucial and critical topics and from their point of view, and the UK Government does really attempt to include their position as much as possible. As one official put it: "In most circumstances, the UK Government takes our requests seriously and sometimes it does not. But I assume that regions in

other EU Member States face similar problems. All in all, however, we can be pretty satisfied with the UK Government because, legally, we do not have other options” (Interview 29). In this regard, it should be made clear that the JMC (E) always meets before European Council meetings which means that this body predominately deals with very important topics such as the EU sovereign debt crisis, the Ukraine/Russia conflict, the Multiannual Financial Framework and so forth. In other words, day-to-day politics is usually not the primary concern of such meetings. Therefore, all interviewees emphasized that, in case there is disagreement about a Commission’s proposal, they would not wait until the JMC (E) meets for two reasons. First, it simply meets too rarely which implicates a loss of time, and second, the respective topic might be deemed to be unimportant for the UK as a whole. For these reasons, getting in touch unofficially with the UK department/minister/official responsible is the better choice.

In addition to the JMC (E), there is also another formal procedure which allows the UK legislative regions to inform the UK government about their priorities. To be more precise, the UK government is supposed to contact all other devolved departments twice a year so that, in theory, the UK government cooperates quite intensively with the devolved administrations. In practice, however, this mechanism does not work very well. The main problem is the limited number of employees both at home and in Brussels so that it is difficult to identify all relevant issues. This aspect becomes particularly evident if one bears in mind that most German Länder employ more than 12 civil servants and some more than 25. Internally, some UK regions even have an annual report on their activities and a work program on the following year, but because of the lack of people the regional government publishes it quite late. The bottom line is that the three devolved regions could cooperate with the national government even more if they had more human resources.

In fact, there are no further relevant formal mechanisms at the UK legislative regions’ disposal which explains why they predominately work informally with the national government. What might look like a disadvantage in comparison to other regions which can count on a diversity of formal resolution mechanisms, is in fact a pragmatic way of working with each other for the UK regions. Instead of losing time, they pick up the telephone and try to solve the issue instantly. Some interviewees even questioned whether more formal mechanisms would be beneficial at all because they might jeopardize the hitherto routine of informal cooperation (Interview 28, Interview 29). This assessment perhaps sounds a bit awkward to some but one should not forget

that, in contrast to large states such as Germany, Austria or Spain, the UK only consists of three legislative regions so that informal procedures are relatively easy to maintain.

Besides, the interviews have revealed that no official in the UK regional representation offices grasps interest representation as a zero-sum game vis-à-vis the UK government which means that they do not think in terms of 'winning' or 'losing' for a couple of reasons. The first one is that, usually, EU legislation does not affect one region only but impacts on various regions within the same Member State at the same time. As a consequence, what is disadvantageous for Wales might also turn out to be an issue for some English regions so that the UK government has an incentive to include all affected parties in the internal decision-making process. In this regard, civil servants stress that the more UK actors are involved, the more sources at the European level can be tapped. Not only regions but also business companies, banks, employers' associations and so forth maintain close ties with the Commission so that they could constitute an additional source of information.

Second, Scotland, Wales and Northern Ireland do not stick to the illusion that their opinion is more important than the UK one; quite the contrary, they draw a very realistic picture of their situation: "Although we would like to see that our regional concerns are always taken into account by the UK Government and the European Union, we have to be realistic. We do not represent the whole UK but only a couple of millions of people. So, from a democratic perspective, we have to accept that sometimes things don't always work out the way we want them to" (Interview 28). This is not to say that UK regions neglect to be involved more in EU decision-making processes if there were additional opportunities. However, they acknowledge that EU policy-making is already extremely complex and complicated so that by increasing the number of actors, it would be even more difficult.

Third, as already pointed out above, the devolved administrations have the feeling that, on balance, the UK government does not ignore their concerns. This impression is also confirmed by Jim Gallagher, the former Director General for Devolution in the UK Cabinet Office, who reports that intergovernmental processes do work in urgent European matters (Gallagher 2012: 210). However, this is not supposed to mean that cooperation between the regional and national government is always free of tension. As shown elsewhere, one could enumerate some examples that reveal conflicts (Göhmman 2010):

- Michael Aron, the former EU Director and Head of Scottish Government EU, leaked a confidential government report which assessed the relationship between Scottish and the UK government in EU matters. In this report he has explicitly illustrated that the UK Government had been reluctant to consider many of the Scottish Executive's opinions particularly if they addressed solely a Scottish problem. Additionally, it is noted that the UK Government did not always involve Scotland in EU policy processes early enough. On top of that, the Aron report highlights not only that Whitehall tended to forget about consulting the Scottish Executive, but also that from time to time Whitehall departments deliberately excluded the Executive from policy formulation. Although there are several positive reports of relations mentioned, the Aron paper sheds light on the fact that mostly Whitehall interacted with the Executive in the same way it did with any other stakeholder rather than acknowledging it as a Government body answerable to its own Parliament (Aron 2006).
- Additionally, there had been a quarrel in June 2007 over a 'memorandum of understanding' with Libya, because the UK Government has not consulted the Scottish Government about this. This was controversial because it would have allowed Abdelbaset Al-Meghrari, a Libyan prisoner convicted in a Scottish court of the 1989 Lockerbie bombing, to serve his sentence at home.
- Moreover, there was the obstruction by the Scottish government of the building of new nuclear power stations in Scotland or there had been arguments about gun control powers between Scotland and the UK.

These and other examples demonstrate that regional and national politicians do have to settle controversial situations behind the scenes from time to time. Particularly since the Scottish National Party came to power in 2007, many observers predicted a deterioration or even a break in the relations between Edinburgh and Whitehall, but all in all, academics have evaluated the relationship as 'uncontroversial' (Cairney 2010: 1), 'cooperative' (Swenden and McEwen 2008: 12) and 'trouble-free' (Bolloyer et al. 2010: 14).

A fourth reason why no civil servant in the representation office of Scotland, Northern Ireland and Wales considers interest representation as a zero-sum game is because the UK government itself does not see it this way either. Quite the contrary, the interviewees stressed that the national government would unnecessarily get itself into trouble if it ignored their concerns. In this

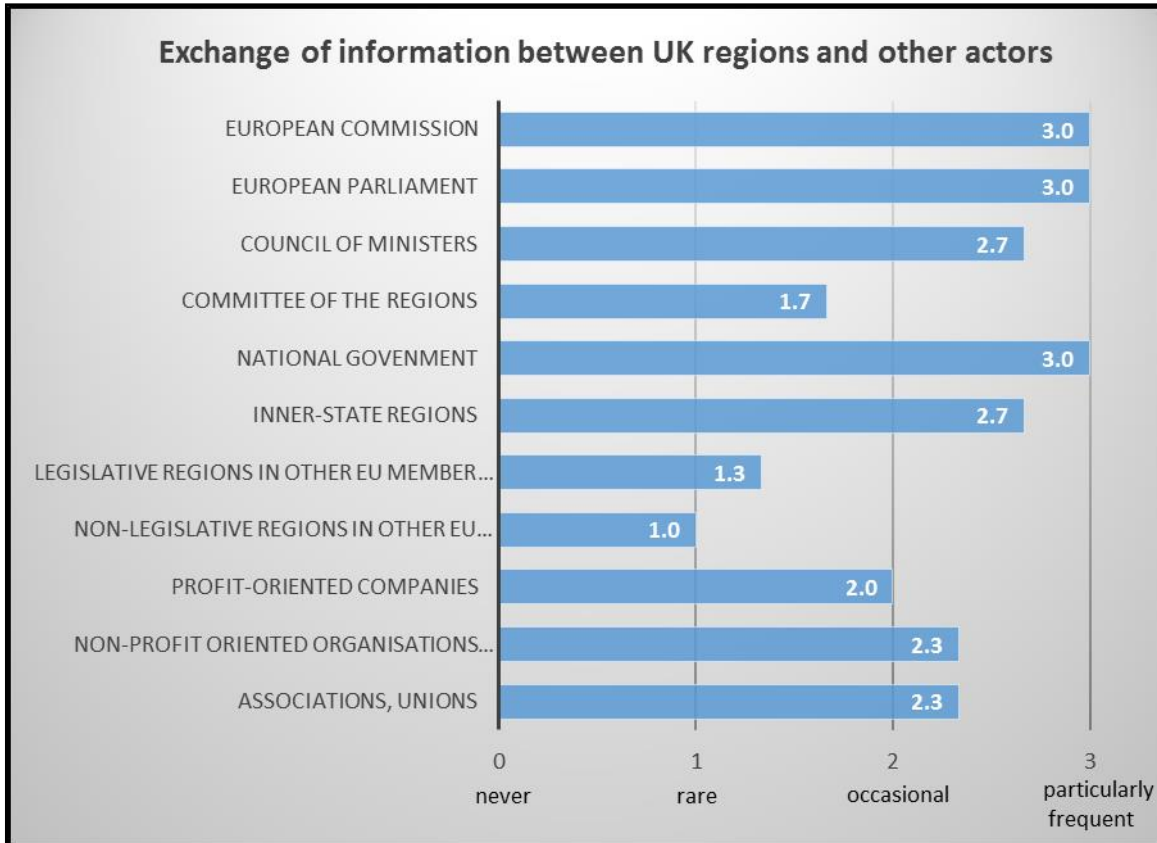
regard, one should not forget that EU legislation has to be implemented throughout the UK and in case implementation is delayed or even fails, the Member State as a whole will be called into account. Bearing in mind that a violation of European law is always costly and shameful, Member States usually try to avoid such a situation. Besides, it is not unreasonable to expect that regionalist and nationalist parties would gain further public support if people get the impression that the UK government constantly 'forgets' or ignores to involve them. Since neither the UK Labour Party nor the UK Conservatives are keen to indirectly support these regional parties, it is in their own best interest to include them as far as possible.

4.2.5 Collecting and exchanging information of Scotland, Wales and Northern Ireland

Despite the different economic focus, all three regions state that the European Commission is by far the most important source of information (see Figure 13). When the Commission plans to gather information for a legislative proposal, the civil servants in the regional representation offices get in touch with the appropriate desk officer in the Commission. In most cases, they contact the responsible person via phone and sometimes also by email. Establishing the right contact is not very difficult for English native speakers because the language barrier is usually not a problem. Besides, the staff of the regional representation offices frequently attend Commission invitations where they can speak with important officials or private actors face-to-face. Another advantage of the regional teams is that they employ people of different age which makes it easier to meet up with officials from the Commission and other EU institutions after work. Interviews have revealed that during the policy formulation process, the regional offices primarily attempt to get in touch with respective desk officer who does the "donkey work" (Interview 27). (S)he is the most important person at this stage because this person writes the first draft of what will become the legislative proposal. Depending on the specific circumstance, the aim is to include or exclude certain terms or objectives: "If you are successful at this early stage, half of the job is already done. If not, you will have a hard time to bring about substantial changes" (Interview 27). In case the regional offices were not successful in getting their interests accommodated in the policy formulation process, they set up meetings between high-ranking Commission officials (Directors, Directors General or even Commissioners) and their regional ministers. Yet, it has to be highlighted that these meetings are not supposed to thwart the general UK standing; the

UKREP only allows these bi-lateral meetings if the respective regional government complies with the previous agreed position.

Figure 13: Exchange of information of UK regions



Source 17: Interviews conducted in 2014

In a similar vein, the three selected UK regions have a particularly frequent exchange of information with the European Parliament and the Council of Ministers. In contrast to the Commission, the main difference is that developing and cultivating the communication with the respective contact persons is much easier. The working relationship with MEPs from Scotland, Northern Ireland and Wales is very dense and friendly. The reason for this is probably due to the fact that all three regions are traditionally governed by center-left parties. These MEPs, in turn, establish contacts to other MEPs and explore ways and means for finding additional allies. Bearing in mind that the German representation offices only exchange information with the Council of Ministers occasionally or even rarely, it is interesting to note that this channel is of high importance for the legislative regions of the UK. First of all, Scotland, Northern Ireland and Wales

are not prohibited to establish contacts to the Council working groups or to COREPER. In fact, as it has been already mentioned above, these regions already coordinate their work with the UK government from the very beginning. During all the various EU decision-making phases, the cooperation and coordination between these actors is constantly managed by UKREP. All interviewees confirmed that the working relationship is marked by pragmatism and trust. As long as a regional government does not cross the agreed line, the UK Government is willing to share all relevant information with them. Moreover, if it is deemed appropriate a regional minister is allowed to participate in Council Minister meetings. In fisheries policy, for example, the Scottish Minister sits frequently at the table with his/her UK counterpart and, sometimes, (s)he even represents the UK as a whole. Or, for example, in education policy the Welsh Minister regularly takes part in these meetings as well.

The Committee of the Regions constitutes an actor with which the UK legislative regions only exchange information occasionally at best. The overall reason for this is its inability to force the Council or the Parliament to take its views into consideration. The supposed inefficiency of this body, which is usually brought up by academics due to its heterogeneous composition, is not a considerable issue for Scotland, Northern Ireland, and Wales. In fact, the interviewees stressed that the actual power of the CoR depends to a large extent on the responsible rapporteur who drafts the opinion; some past rapporteurs had been very enthusiastic, committed, and precise on the details so that the final report contained very useful information for the Commission, the Council and the European Parliament. Besides, the three devolved regions primarily use the CoR for obtaining an overview about the standing of other participants and for establishing contacts to high-ranking EU officials. In other words, the CoR provides an additional channel for Scotland, Northern Ireland, and Wales in some circumstances for receiving further information and creating networks.

It has already been mentioned above that the three regions coordinate their actions very closely with the UK Government so that it is not surprising that the exchange of information among each other and with the UK Government is of paramount importance. Irrespective of the stage of policy-making, they meet weekly in the building of the UK Permanent Representation in order to discuss the latest incidents and future events. In case something new has come up, the participants exchange their viewpoints so that this meeting provides an ideal information platform for all parties. The specific standing and the actual content as regards the topic in question, however, are not specified in these meetings but at home. Edinburgh, Belfast and Cardiff

work out the details on their own and communicate them to their representatives in London where the overall coordination between the devolved administrations and the UK government takes place. The concrete mechanisms that lead to the coalition with the central government will be scrutinized further below; at this point, it is sufficient to say that Whitehall constitutes the central place where UK regions make the final decisions about their later lobbying activities.

In contrast to the previous actors, the exchange of information with other legislative and non-legislative regions is rare. Theoretically, Scotland, Northern Ireland and Wales are not only allowed to conduct direct communication with regions but also to cooperate with them in policy fields of their concern, but in practice, they make very little use of it. All interviewees stated that they do not specifically establish contacts with other regions. One reason for this is that their team is comparatively small so that they do not have the necessary capacity to carry out that kind of work. If they want to obtain an overview whether they are isolated in their standing or whether there are potential allies, they get in touch with their members of the Committee of the Regions. Generally, they do see the added-value of inter-regional coalitions but the principle problem is that they need to adhere to the UK line. Other legislative regions are aware of that fact and are discouraged to coordinate and cooperate with the UK regions at the European level because this process is too burdensome and takes too much effort.

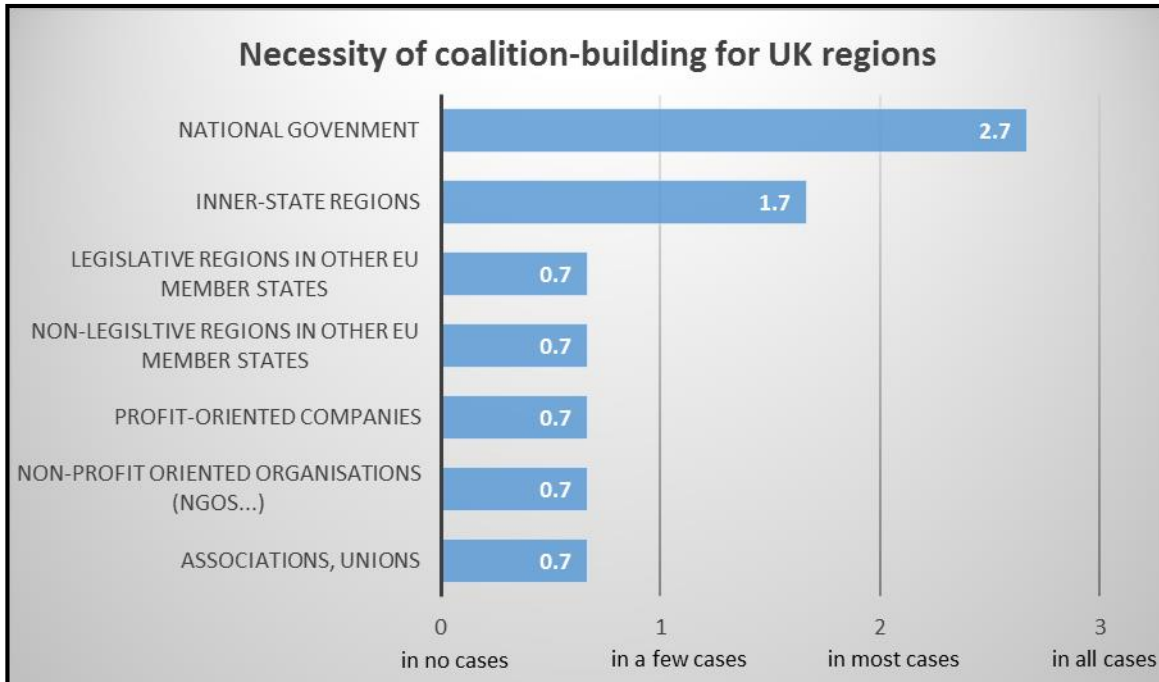
As regards the last group of non-governmental actors – profit-oriented companies, nonprofit-oriented companies, associations and unions – all three selected regions state that exchanging information happens on an occasional and sometimes even on a particularly frequent basis. Depending on the number of members of those organizations and on their regional importance, telephone conversations, bilateral meetings and invitations to podium discussions constitute regular instruments for obtaining valuable information. The interviewees stressed that since the Commission is very receptive to objective arguments, including first-hand expertise of affected stakeholders to the regional position opens the door for discussions. To put it differently, using information from stakeholders is not considered to be harmful but increases the possibility of making the regional voice heard.

4.2.6 Coalition-building of Scotland, Wales and Northern Ireland

The results depicted in Figure 14 clearly demonstrate that the three legislative regions consider a coalition with the national government necessary in almost all cases. There are two reasons for

this evaluation. The first and most important one is that, officially, the European Commission only negotiates with the Member State’s national government. Moreover, the UK government not only represents the Member State but the corresponding UK Minister also votes in the Council of Ministers. In similar vein, the devolved administrations do not have the possibility to speak up in Council meetings if the UK government is opposed to it. Second, the UK government possesses an informational advantage vis-à-vis the three legislative regions because it enjoys better access to the EU institutions. In comparison to the UK regional representation offices, the UK Permanent Representation employs far more people and since they represent the UK as a whole, EU officials are more inclined to meet and speak with them officially as well as unofficially.

Figure 14: Necessity of coalition-building for UK regions



Source 18: Interviews conducted in 2014

This assessment, however, does not signify that the national government is always included in case a UK legislative region becomes active at the European level. On occasions, the representation office asks its government to independently engage with the European Commission. The objective is not only to explain the region’s views on a proposal but also to explain domestic legislative initiatives. For example, a health ministry of a UK legislative region

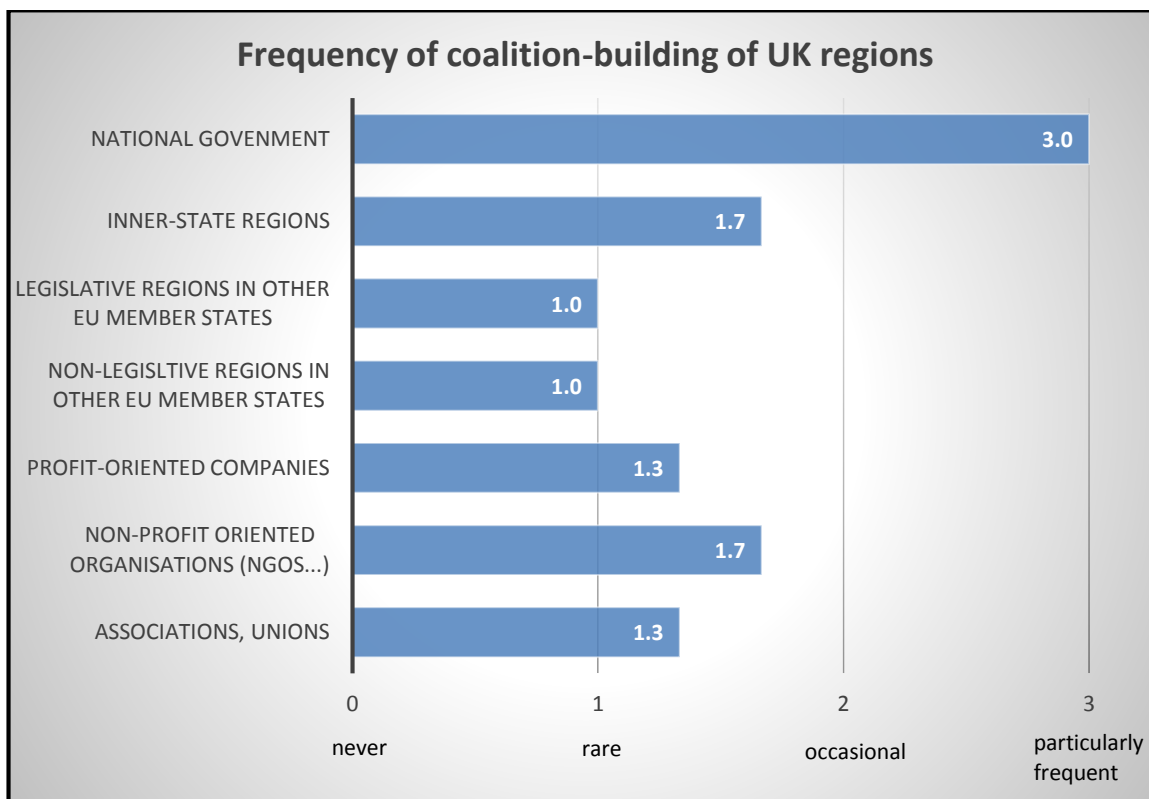
planned to introduce a tax on alcohol because too many people drink alcohol too often. The ministry referred to various studies that indicated that people drink less if alcohol is more expensive. The European Commission, in turn, said that this would not be in accordance with EU law for competitive reasons. Therefore, the regional government had to explain to the Commission its position. Consequently, representation offices do not only look at what the Commission is doing but they also contact the relevant people for pursuing domestic regional policies. In a nutshell, UK legislative regions do act autonomously in some cases; especially if they need to illuminate domestic legal initiatives.

As regards the necessity of coalition-building with inner-state regions, the interviewees highlighted that “if Scotland, Northern Ireland and Wales work together, it is very difficult for London to ignore us” (Interview 28) which means that coordination and cooperation among these actors should not be underestimated. Yet, a common problem is that their interests diverge very often due to legal, political, economic and cultural differences: legally, devolution has granted different competences to Scotland, Wales and Northern Ireland; politically, the regions’ electoral system differs which results in different party political constellations; economically, the three regions have a different focus; culturally, one region is religiously divided (Northern Ireland) whereas one other even strives for independence (Scotland). For these reasons, a coalition with the other two regions does not occur in many circumstances.

The other potential actors, however, are not considered very important for defending regional interests. Only in a very few cases, a coalition with legislative as well as non-legislative regions in other EU Member States, profit- and non-profit oriented companies, associations and unions is deemed necessary.

When the interviewees were asked about the frequency of coalition-building with the UK government, all of them responded that this occurs on a particularly frequent basis (see Figure 15). Although it is deemed necessary from time to time to contact to European Commission individually, they stressed that their lobbying activities do not thwart the previously agreed UK position. If they really did something like that, they might face serious problems in the future because Whitehall could decide to exclude them from EU negotiations. Legally, Scotland, Northern Ireland and Wales have agreed to work together with the UK Government and if they breached any of the terms and conditions of the agreement, then UK Government would probably decline to adhere to this agreement either.

Figure 15: Frequency of coalition-building of UK regions



Source 19: Interviews conducted in 2014

Although the regions are aware of the necessity to coordinate and cooperate with the inner-state regional counterparts, in reality a coalition is not very common for the above stated reasons. On top of that, German civil servants reported that since the Scottish National Party have entered government, it appears that Scotland is not even interested in maintaining good work relationships with them as in the past. Instead of working with other regions, Scottish officials would follow a policy that rather includes other nations (Göhmann 2010: 39). It does not appear unlikely that such a policy also affects the relationship with Northern Ireland and Wales.

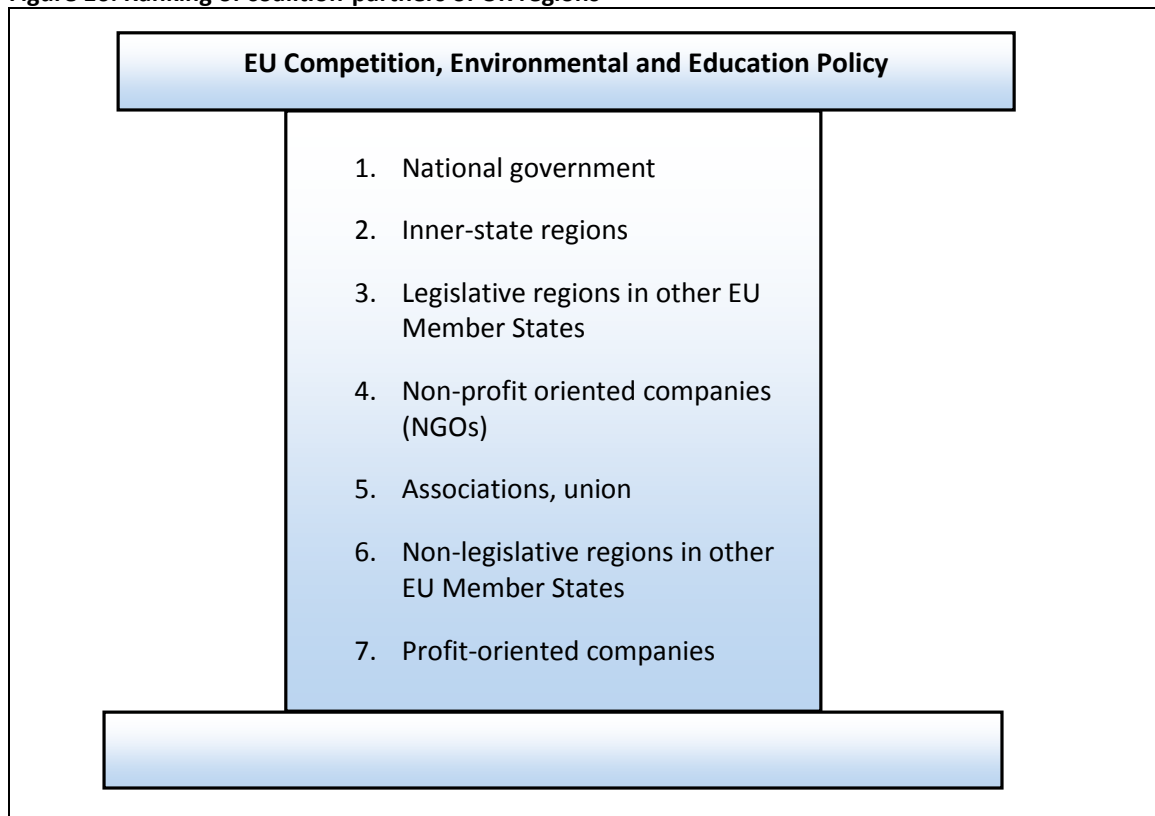
Bearing in mind the previous results about the necessity of coalition-building, it does not come as a surprise that the UK legislative regions do not forge coalitions with the other examined actors more often. In most circumstances, these actors establish contact to the offices and not vice versa. Since the vast majority of these contacts stem from the respective home regions, Scotland, Northern Ireland and Wales build a coalition if the respective organization is able to

contribute expertise to position of the regional government or if it is capable of exerting strong political pressure.

The results concerning the necessity and frequency of coalition-building already indicate that it appears very unlikely that UK regions are willing or even capable of by-passing their central government and the results depicted in Figure 16 points into the same direction in this matter. When the interviewees were asked to rank the potential coalition-partners, all civil servants stated that the UK Government is by far the most important actor. Although inner-state regions are ranked second, the interviewees explicitly stressed that there exists a huge gap between the relevance of the national government and inner-state regions. In fact, the interviewees had problems to rank the remaining actors because, in reality, they are rather unimportant as regards legislative lobbying. However, they stressed that other regions or unions are not irrelevant per se; if the question was about funds acquisition, the exchange of best practices or cooperation in cultural matters, the answers would have been completely different.

To sum it up, the results show that the UK legislative regions do not indicate that the UK Government is by-passed at all.

Figure 16: Ranking of coalition-partners of UK regions



Source 20: own graph

4.2.7 ‘With or without or against you...?’ Reflections on the by-passing phenomenon⁵²

In the second half of the 1990s, Multi-level governance proponents had argued that regions could “potentially mobilise Commission support *against* their own national government” (Ansell et al. 1997: 350; emphasis added) and one decade later, scholars still concluded that “[R]egions thus have the opportunity to become relevant players in the Brussels policy-game even *against* the wishes of their sometimes inextensible gate-keeping central governments” (Tatham 2008: 511; emphasis added).

The above described results have shown that the national government in Germany and the UK is considered the most important and influential actor for defending regional interests. As a consequence, no regional government attempts to work without this actor in the first place so that there is no proof of *regular* state by-passing in EU Competition, EU Environment or EU Education policy. Yet, this does not mean that the national government is not by-passed at all. Whereas the UK interviewees emphasized that they do not by-pass the UK government, a number of German civil servants in the representations have stressed that if the federal government does not or cannot represent their interests at the European level, they may decide to act autonomously, as the following examples demonstrate:

- International agreements: When the negotiations about the Transatlantic Trade and Investment Partnership (TTIP) between the European Commission and the United States focused on the audiovisual sector, a medium-sized Land requested that the promotion for children’s films should not be restricted or even forbidden. Initially, these films were not considered worth protecting but the Land and regions from other EU Member States met unofficially with Commission officials. Together they could convincingly argue that their request is based on European norms and values so that the Commission picked up the regions’ claim (Interview 26).
- New guidelines for Trans-European Networks (TEN)⁵³: when the European Commission revised its guidelines for the development of the trans-European transport network (European Commission 2013a), it contacted the federal government in 2011 and 2012 and asked for input. The objective was to identify new infrastructure projects that better connect

⁵² I have paraphrased Michael Tatham’s article (2010) “‘With or without you’? Revisiting territorial state-bypassing in EU interest representation”

⁵³ TENs are infrastructure networks in transport, energy, and telecommunication

the regions and Member States. Yet, the Länder had not been involved in the decision-making process by the federal government. Then, the Länder built a coalition in the Bundesrat and made a common decision which depicted additional corridors that would have been worth supporting. Nevertheless, this decision was ignored by the Federation once again because the European Commission only guarantees partial financing. In other words, the federal government would have had to cover the remaining costs. In the end, the Länder established direct contact with the European Commission and convinced it to integrate the requested corridors (Interview 34).

- State aid: if the European Commission has been informed that an organization receives state-aid by a Land and the Commission finds that this subsidy violates EU competition rules, it establishes contact with the corresponding authority. Yet, in this case it must act through the Federal Ministry of Economy in the first place which then forwards it to the concerned Land government. Afterwards, the federal government sometimes does not insist to be included in this process any further, so that the Land can solve the issue directly with the Commission. In practice, the Land conducts so-called “non-conversations” with the Commission – conversations which officially have never happened. This procedure has two advantages: first, the Federation has less work and second the whole process is accelerated (Interview 34).
- The revision of the Tobacco Products Directive (European Commission 2014d): initially, the European Commission attempted to ban menthol in cigarettes which would have prohibited Bavarian Snuff. The Bavarian government fought for an exemption from this ban because most German snuff clubs are situated in Bavaria which means that its regional economy would have been particularly affected. Since this case was of no major concern to the other regional governments or the national government, Bavaria acted on its own. It established contact with high ranking EU officials and fortunately the former Bavarian Minister President Edmund Stoiber, who directed the EU’s High Level Group for Reducing Bureaucracy at that time, supported the Bavarian government and unofficially met the former EU Commissioner for Health, John Dalli. Ultimately, the directive reflected Bavarian interests and snuff tobacco was exempted from the ban.

What these examples show is that, sometimes, regional governments do by-pass their national government. This, however, depends very much on the content and is decided on a case by case basis. More importantly, although they may have worked *without* the national government in

some circumstances, they have almost never worked *against* it. More than 30 interviews could only reveal one case ('New guidelines for Trans-European Networks') in which regional governments have actually done that. Therefore, it seems fair to conclude that the assumptions or expectations voiced by some MLG proponents are not reflected by reality. In fact, it appears that the national government is still seen as a gate-keeper by most regional governments – at least in the three selected policy fields. Otherwise, it would be hard to explain why almost all of them assess the national government as the most influential actor and try to build a coalition with it.

Finally, it should be highlighted once again that neither the national government in Germany or the UK excludes the regional level on a large scale. Although the conducted interviews have revealed a few cases in which the national government purposefully excluded its regions, one cannot argue that the regional level is suppressed by the national one. The civil servants in the German and UK representations made clear that in most cases, the working relationship runs smoothly and that they have the impression that their concerns are not ignored. In fact, the vast majority was even against a stronger institutional inclusion of regions in the EU decision-making process because it would render policy-making more complicated. In this regard, the idea of including regional authorities in the EU machinery to reduce the democratic deficit of the EU ('remoteness to EU citizens') has to be rejected.

4.2.8 Concluding thoughts on successful lobbying

The challenges of explaining why one organization was capable of successfully lobbying a European actor whereas another was not are well known. There are at least three structural issues in this regard: "the existence of different channels of influence, the occurrence of counteractive lobbying and that fact that influence can be wielded at different stages of the policy process" (Dür 2008a: 561). Bearing in mind the targeted lobby organizations of this research project (legislative regions), one could also add a further problem. It does not seem very unlikely that legislative regions had been successful to promote their interests only because of the support of other strong actors such as the federal government. Hence, one could not attribute the desired outcome to the lobbying efforts of the legislative regions solely – perhaps they would not have achieved their goal at all without their strong ally.

So what theory is able to explain successful lobbying best? This project has applied assumptions from rational choice theory which focus on utility maximization by weighing opportunities and constraints. Although the interviews conducted have not proven this approach wrong, several civil servants have stressed that the personality of an actor seems to be a crucial aspect as the following examples demonstrate:

- The responsible minister's attitude: the degree of involvement in EU decision-making of each Land depends very much on this factor. Some ministers are simply not interested in European affairs so that neither the Land's capital nor its representation office in Brussels take proactive steps with the consequence that the Land's possibility to shape the Commission's legislative proposal to its favor is rather low. If, however, the responsible minister emphasizes that the concerned topic is of particular importance and insists on being informed thoroughly, the representation office has far more leeway and, if necessary, employees of other policy areas assist the respective policy adviser (Interview 14).
- The socialization and qualities of the civil servants in the representation office: the willingness and ability to forge coalitions with actors depends considerably on whether the responsible civil servant has enjoyed an international or national education. Someone who has already been taught to think internationally is more willing to contact and forge coalitions with organizations or actors that are placed outside of the Member State. Additionally, an international education makes it more likely that the corresponding person knows foreign languages which facilitates coalition-building. On top of that, being fluent in French, for example, opens doors to EU institutions so that the civil servant has better access to information at an early stage (Interview 9).
- The assertiveness of the leading civil servant in the capital: a leading civil servant with a strong, self-confident character who also knows when (s)he can cross the line is likely to achieve more than someone who always complies with the rules. This means that the corresponding person must be able to assess the situation correctly, be open to suggestions, and most importantly, (s)he has to be able to withstand pressure. Bearing in mind that many politicians are usually not experts in their policy field, they have to trust their administrative personnel but if the responsible person is indecisive and leaves the decision-making to others, valuable time is lost (Interview 34).

These examples show that the personality of an actor is a very important aspect which does have an influence on the region's lobbying activities. In other words, these assessments suggest that

future research about successful lobbying of legislative regions may also adopt an approach which especially focuses on the individuals in a regional government. Although the legal and constitutional situation of the EU and the Member State constitute the key variable to understand the lobbying strategy of legislative regions in Germany and the UK, the interviewees stressed that the behavior of civil servants and politicians also contribute greatly to the success of lobbying.

Finally, it is interesting to note that a couple of civil servants expressed their discomfort about the whole lobbying debate. Every time the EU identifies an issue, the media and politicians would adopt a very national perspective and only ask 'what's in for us?'. Instead of illuminating the whole complexity of an undertaking and assessing it from a European point of view, most of these actors would primarily focus on the negative national aspects. The last quote of this study perfectly summarizes this perception.

"For me personally, there are two different understandings of successful lobbying. The first one which, unfortunately, is the prevalent type, is that Brussels initiates a piece of legislation and regions attempt to get their interests accommodated. If, ultimately, the final wording reflects the region's interests, you have done a good job and you have been successful. The second type, which in my eyes would be more beneficial for everyone, is that the popular dualism EU/Land does not exist. We all live in the same house. The EU is the roof, the Federation the 2nd floor, the Länder the 1st floor and the municipalities the basement. If the basement is on fire or the roof is leaky, the intermediate floors will be affected sooner or later as well. Therefore, we must stop looking at each floor separately. Neither the municipalities, nor the Länder, nor the Federation, nor the EU is aware of the correct way to solve an issue right from the beginning. The correct procedure can only be found by exchanging information and cooperation. Successful lobbying should be understood in this way. We should only refer to success in this context if the common good is better off in the end. Individual interests – be it regional or private ones – should not outbalance common interests" (Interview 14).

5 Conclusion

This study has attempted to systematically analyze the preferred lobbying strategy of German and UK legislative to get their interests accommodated at the European level. Bearing in mind the theoretical dispute between liberal intergovernmentalists and Multi-level governance proponents about the functioning of the European Union and the ability of subnational actors to defend their interests autonomously, the principle aim is to generate evidence whether legislative regions work *with* or *without* (=by-passing) their national government. In this regard, scholarship had already worked out a number of factors that affect a region's capability to influence EU policy-making to its favor. Yet, experts disagree about the most important variable that affects regions' EU lobbying activities in general and that favors regions to work without its national government in particular. As a consequence, research went down different paths without providing irrefutable results that could have convinced liberal intergovernmentalist theorists. For example, some authors focused exclusively on the region's size (Nielsen and Salk 1998), whereas others concentrated on the region's financial situation (Bouwen 2002: 10) or its cultural distinctiveness (Hepburn 2010).

For identifying the key factor which makes state by-passing most likely, I have applied the situational approach which belongs to organizational sociology, a sub-discipline of sociology. The reason for doing this was twofold. First, this approach offers a clear analytical structure which helps to elaborate on the relationship between the various identified factors in the academic literature. In sociological terms, it illuminates the interdependence between the organization's environment on the one hand and the organization's goals on the other and stress that the former exerts a strong impact on the latter. Second, tackling this field of study from a different discipline adds a new theoretical perspective to the subnational mobilization literature which might provide fresh impetus.

The analysis has shown that the legal and constitutional situation of the EU and the Member State constitutes the crucial factor that affects regions' EU lobbying activities. Since the situational approach does not predict actors' behavior I combined it with rational choice theory and assumed

that regional governments are rational actors who employ scarce resources as effectively as possible. Following from this assumption they do not forge coalitions with all possible actors but seek the most influential coalition-partner (veto-player) in order to convince EU key decision-makers about their preferences or concerns. Due to the fact the legal and constitutional situations differs from Member State to Member State and policy field to policy field, this project investigated the lobbying activities of the German Länder on the one side and Scotland, Wales and Northern Ireland on the other in EU Competition, EU Environment as well as EU Education policy. Concerning the constitutional situation in the Member States, Germany and the UK represent an interesting comparison because the German Länder possess very strong participation and information rights in EU politics whereas the UK legislative regions cannot count on these rights. As regards the legal situation of the EU, the three selected policy fields cover all possible legal manifestations at the European level.

The overall aim has been to scrutinize if state by-passing can be observed regularly in areas other than EU Structural and Cohesion policy because the majority of previous studies have explicitly focused on the latter. By-passing was defined as defending regional interests without working with the national government and it has been argued that doing this *regularly* means that more than 50% of the population would have to respond in the designed questionnaire that ‘in no cases’ or ‘in a few cases’ coalition-building with the national government is necessary. To put it differently, if the majority of regions forge coalitions with actors other than the national government because the latter actor is not considered necessary for achieving a desired outcome, we have evidence that state by-passing is the rule rather than the exception. In order to answer this question, I have conducted semi-structured expert interviews with policy advisers, heads and deputy heads of office of the regions’ representations in Brussels about (a) collecting and exchanging information with other organizations, (b) the procedures of lobbying and the mechanisms facilitating coalition-building as well as (c) the necessity, frequency and relevance of coalition-building. On top of that, one director of the Committee of the Regions, four policy advisers of the European Commission, three MEPs and three advisers of the Permanent Representation of Germany were interviewed in order to cross-check the final results.

As regard the first mentioned interview question – collecting and exchanging information with other organizations – the interviewees were asked to indicate with which actors they exchange important information in order to get your interests represented in the EU decision-making process. This question provides a first impression of whether regions already work with

their national government right from the beginning. The results presented above reveal only minor differences between the German Länder on the one side and Scotland, Wales and Northern Ireland on the other. The only difference worth mentioning is that the German Länder exchange information more frequently with legislative and non-legislative regions in other EU Member States than the three selected UK regions. The main reason for this is that the team of the UK representation offices is comparatively small so that they do not have the necessary capacity to carry out that kind of work. Apart from that, the European Commission, the European Parliament, the Council of Ministers, the national government and inner-state regions constitute an extremely valuable source of information for both the German Länder and the UK legislative regions.

Concerning the second stated interview question – the procedures of lobbying and the mechanisms facilitating coalition-building – the civil servants were asked to describe how they proceed when the European Commission plans to initiate a legislative proposal, how they respond to unforeseen events and which mechanisms or methods help to facilitate coalition-building. The interviewees have brought up some differences between the selected legislative regions. Whereas the German Länder even approach the European Commission when it elaborates on its annual Work Program, Scotland, Wales and Northern Ireland do not intervene at that early stage because this paper is not legally binding and therefore, they prefer to use their scarce human resources for other projects. A further notable difference constitutes the regions' lobbying activity at the national and European level: whereas the German Länder coordinate and perform their action predominately at the European level, the UK regions must concentrate their energy on both the national and European level. The reason for this is the constitutional situation of Germany and the UK: due to their constitutionally granted political competences, the German Länder dispose of several formal resolution mechanisms at the European level such as the Länder representative for the Council working groups, *Draht-Berichte* or the *Länderbeobachter*. Scotland, Wales and Northern Ireland, in contrast, cannot count on such mechanisms so that they have to maintain close contact with Whitehall. At that stage, these findings could be regarded as an indicator that German regions might by-pass their national government because they possess a variety of legal options to upload their interests at the European level autonomously.

The third and last main interview question focused on the necessity, frequency and the relevance of coalition-building. In this regard, the interviews have shown that the German Länder build a coalition with the national government in most cases for all the three selected policy fields because of the legal and constitutional situation of the EU and the Member State. To be more

specific, due to the German Basis Law the federal government explicitly enjoys a higher legal status vis-à-vis the European Commission and because of the EU Treaties the Commission's civil servants are not allowed to strike deals with regional representatives. The policy proposals of DG Competition and DG Environment presented in chapter 4 have shown that the national government Member State is constantly being informed by the European Commission about the latest changes of policy proposals. Due to these legal features and the fact that the national government possesses the formal voting power in the Council, the vast majority of interviewees have concluded that this actor represents the best and, sometimes, only possibility to promote regional interests at the European level. Although the Länder possess the exclusive legal political competences in education policy, they find it necessary to build a coalition with the federal government in most cases for a variety of reasons. First, the national government may claim that the focus ('*Schwerpunkt*') of the policy is not on education but on something else. Second, a new format ('Inner-Circle') has been established in the Education Council by the Heads of State or Government which makes interest representation more difficult for the Länder. Third, national education ministers of other EU Member States prefer to talk to the German Federal Minister for Education so that reaching compromises in the Council is rather difficult. To put it differently, because the constitutional situation in Germany may be interpreted differently, the legal situation of the EU favors the national government and preference of national ministers to negotiate with their national counterparts cause the German Länder to build a coalition with the federal government.

The results for the UK legislative regions are very similar; Scotland, Wales and Northern Ireland build a coalition with the national government in almost all cases. There are two reasons for this evaluation. The first and most important one is that, officially, the European Commission only negotiates with the Member State's national government. Moreover, the UK government not only represents the Member State but the corresponding UK Minister also votes in the Council of Ministers. In similar vein, the devolved administrations do not have the possibility to speak up in Council meetings if the UK government is opposed to it. As a consequence, the legal and constitutional situation of the EU and the Member State is the primary reason for not by-passing the UK Government. Second, the UK Government possesses an informational advantage vis-à-vis the three legislative regions because it enjoys better access to the EU institutions. In comparison to the UK regional representation offices, the UK Permanent Representation employs far more people and since they represent the UK as a whole, EU officials are more inclined to meet and

speak with them officially as well as unofficially. If Scotland, Wales or Northern Ireland decides to become active at the European level without including the national government, the interviewees stressed that their lobbying activities do not thwart the previously agreed UK position.

To sum up, although the procedures of lobbying and the mechanisms facilitating coalition-building appear to favor state by-passing in the case of the German Länder, the reality proves this assumption wrong. The preferred lobbying strategy for defending regional interests of German and UK legislative regions constitutes working with the national government.

5.1.1 Reviewing the hypotheses

In this section I am going to compare my hypotheses formulated in chapter 3 with the results of the conducted interviews. The hypotheses have been derived from the different specifications of the independent variable as depicted in Table 5.

Table 5: Constellation of legal political competences and expected strategy

Region	Exclusive legal political competences	Shared legal political competences	No legal political competences
EU			
Exclusive legal political competences	Impossible	Impossible	By-passing (coalition with outer-state regions and non-governmental actors)
Shared legal political competences	Impossible	Working with the national government	Working with the national government
Supporting legal political competences	By-passing (coalition with inner-state regions)	Working with the national government	Working with the national government

Source 21: own table

Hypothesis 1: If the region possesses shared or no political competences in the concerned policy at the national level and the Member State government constitutes a potential veto-player through the Council at the European level, the national government represents the most important coalition-partner for a regional government to defend its interests. As a consequence, the majority of regions are going to work with the national government so that state by-passing will not occur.

In this research project, this hypothesis refers to EU Environment policy. The interviews have shown that the German Länder as well as Scotland, Wales and Northern Ireland consider coalition-building with their national government necessary in most cases. Moreover, the results provide evidence that the frequency of coalition building with this actor is high for the German regions and even very high for the three UK regions. In a nutshell, the hypothesis cannot be rejected because the majority of selected regions do forge a coalition with the national government because it is regarded as the most important coalition-partner and, therefore, they do not by-pass it on a regular basis.

Hypothesis 2: If the EU possesses exclusive competences in the concerned policy and the Member State government is not involved in the decision-making process through the Council, regions from other EU Member States and non-governmental actors such as business companies, NGOs or employer associations represent the most important coalition-partners for a regional government to convince the European Commission from its viewpoint. As a consequence, the majority of regions are going to work without the national government so that state by-passing will occur.

This hypothesis relates to EU Competition policy. Contrary to the assumption, the results demonstrate that for German and UK regions, a coalition with the national government is necessary in most cases. In addition to that, the frequency of coalition building with that actor is high for the German Länder and once again very high for the selected UK regions. In fact, for both the Länder as well as Scotland, Wales and Northern Ireland the necessity of coalition-building with those actors stated in the hypothesis is rather low ('in a few cases') and the figures as regards the

frequency of coalition building are also relatively low (between 'rare' and 'occasional'). In other words, this hypothesis has to be rejected because neither regions from other EU Member States nor non-governmental actors such as business companies, NGOs and employer associations constitute the most important coalition-partners. The national government is deemed most influential and, therefore, it is not regularly by-passed in EU Competition policy.

Hypothesis 3: If the regional level possesses exclusive competences in the concerned policy and if it enjoys the legal right to represent the Member State government in the Council, regions from the same Member State represent the most important coalition-partners for a regional government to defend its regional interests. As a consequence, the majority of regions are going to work without the national government so that state by-passing will occur.

As explained in chapter 1, this hypothesis can only be tested for the German Länder in EU Education policy. Although a coalition with the national government is necessary in most cases, the Länder build a coalition with their regional counterparts (close to 'particularly frequent') more often than with the federal government ('occasional'). Consequently, German regions assess the other inner-state regions as more important than the national government for defending their interests at the European level. Perhaps somewhat surprisingly, it has been shown, however, that this assessment does not lead to state by-passing for a variety of reasons (the "real" focus of the respective policy gives room for interpretation; the 'Inner-Circle' format; the preference of national education ministers from other EU Member States). As a result, state by-passing does not occur regularly so that the hypothesis has to be rejected.

5.1.2 Final remarks

This final sub-chapter will pinpoint the methodological strengths and weaknesses of this study. Clearly, the main weakness is the limited number of cases: it has focused on legislative regions of two Member States only. As a consequence, one should be careful to make any generalizations. In fact, the constitutional situation of legislative regions differs from Member State to Member States so that other regions might have different opportunities to defend their interests at the European level. On the other hand and particularly because of the limited number of cases, this

study has not worked with samples but it has included the total population⁵⁴, and therefore, the results provide a very accurate picture of the lobbying activities of German and UK legislative regions. Moreover, before conducting the interviews, I had ensured to maintain the anonymity of my interview partners so that they could speak freely. As a result, I received many valuable information which I would have not got otherwise. On top of that, one director of the Committee of the Regions, four policy advisers of the European Commission, three MEPs and three advisers of the Permanent Representation of Germany were interviewed in order to cross-check the final results. With that in mind, it is hard to deny that the final results represent a precise answer of whether legislative regions in Germany and the UK work with or without their national government for getting their interests accommodated at the European level.

⁵⁴ Apart from Saxony and Mecklenburg-West Pomerania which refused to take part in this study.

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7 Appendix A – Questionnaire (German version)

Universität zu Köln

Wirtschafts- und Sozialwissenschaftliche Fakultät

Jean Monnet Lehrstuhl – Prof. Dr. W. Wessels

Verantwortlich für diese Untersuchung:

Dominik Göhmann

Interessensvertretung deutscher und britischer Regionen im EU-Gesetzgebungsprozess: Bündnisse als entscheidender Faktor?

Dieses Forschungsprojekt thematisiert die Rolle gesetzgebender Regionen im EU-Gesetzgebungsprozess in drei unterschiedlichen Politikfeldern und versucht herauszufinden, ob und wie diese Akteure EU-Politik mitgestalten können. Das Ziel ist es, die Bedeutung von temporären Bündnissen in den Bereichen Wettbewerbs-, Bildungs- und Umweltpolitik auf unterschiedliche Interaktionsmuster hin zu untersuchen. Aus Kapazitätsgründen beschränkt sich diese Studie auf deutsche und britische Regionen.

Wir wären Ihnen sehr verbunden, wenn Sie sich an dem Forschungsprojekt beteiligen und den beigelegten Fragebogen ausfüllen würden. Sämtliche Daten werden selbstverständlich vertraulich behandelt und **anonymisiert**. In der späteren Analyse werden keine individuellen, sondern aggregierte Ergebnisse präsentiert, so dass die Angaben aus diesem Fragebogen einzelnen Regionen nicht zuzuordnen sind.

A. Allgemeine Angaben

1. Wie lautet die offizielle Bezeichnung Ihres Vertretungsbüros?

2. Für welche(s) Politikfeld(er) sind Sie zuständig?

B. Interaktionen in EU-Gesetzgebungsprozessen

1. Informationsaustausch

Bitte geben Sie in der unten aufgeführten Tabelle an, mit welchen Akteuren in Ihrem Aufgabenbereich Sie wichtige Informationen austauschen, um die Interessen Ihrer Landesvertretung im EU-Gesetzgebungsprozess besser einbringen zu können. Darunter fällt offizielle als auch inoffizielle Kommunikation. Bitte unterscheiden Sie dazu zwischen seltenen (1), *gelegentlichen* (2) und *besonders häufigen Informationsaustausch* (3).

2. Bündnishäufigkeit

Bitte geben Sie in der unten aufgeführten Tabelle an, mit welchen Akteuren Sie sich in Ihrem Aufgabenbereich unter normalen Umständen gegenseitig abstimmen und zusammenarbeiten, um die Interessen Ihrer Landesvertretung im EU-Gesetzgebungsprozess besser einbringen zu können. Bitte unterscheiden Sie dazu zwischen seltenen (1), *gelegentlichen* (2) und *besonders häufigen Bündnissen* (3).

3. Relevanz

Bitte beurteilen Sie in der unten aufgeführten Tabelle die Relevanz der potentiellen Bündnispartner für Ihren Aufgabenbereich, um die Interessen Ihrer Landesvertretung im EU-Gesetzgebungsprozess besser einbringen zu können. Vergeben Sie dafür bitte eine Rangfolge, bei der Sie mit 1 den relevantesten und mit 7 den irrelevantesten Akteur benennen.

Akteursbezeichnung	Informations- austausch	Bündnis- häufigkeit	Bündnis- relevanz
Europäische Kommission			
Europäisches Parlament			
Ministerrat			
Ausschuss der Regionen			
Nationale Regierung			
Innermitgliedsstaatliche Regionen			
Regionen <u>mit</u> gesetzgebenden Kompetenzen anderer EU-Mitgliedsstaaten			
Regionen <u>ohne</u> gesetzgebenden Kompetenzen anderer EU-Mitgliedsstaaten			
Gewinnorientierte Unternehmen			
Nicht-gewinnorientierte Unternehmen (NGOs...)			
Verbände, Gewerkschaften			

4. Bündnisvoraussetzung

Welcher Voraussetzungen bedarf es, damit Sie mit den oben angegebenen Akteuren Bündnisse eingehen?

5. Bündnisnotwendigkeit

Bitte beurteilen Sie die Notwendigkeit der gegenseitigen Abstimmung und Zusammenarbeit in Ihrem Aufgabenbereich mit den in der Tabelle aufgeführten Akteuren, um die Interessen Ihrer Landesregierung auf europäischer Ebene zu vertreten. Bitte kreuzen Sie an.

Akteur	Notwendigkeit	Ja, in <i>allen</i> Fällen.	Ja, in <i>vielen</i> Fällen.	Ja, in <i>wenigen</i> Fällen.	Nein, in keinem Fall.
Nationale Regierung					
Innermitgliedsstaatliche Regionen					
Regionen <u>mit</u> gesetzgebenden Kompetenzen anderer EU-Mitgliedsstaaten					
Regionen <u>ohne</u> gesetzgebenden Kompetenzen anderer EU-Mitgliedsstaaten					
Gewinnorientierte Unternehmen					
Nicht-gewinnorientierte Unternehmen (NGOs...)					
Verbände, Gewerkschaften					

C. Vorgehensweise bei Interessensvertretung

1. Wie ist in Ihrem Aufgabenbereich die übliche Vorgehensweise, wenn die Europäische Kommission plant, einen Gesetzesvorschlag zu unterbreiten?
2. Wie reagieren Sie auf unvorhergesehene Ereignisse in Ihrem Aufgabenbereich? Beispielsweise wird plötzlich eine bedeutende Position aus dem ursprünglichen Gesetzesvorschlag modifiziert, so dass daraus für Ihre Landesregierung Nachteile entstünden.
3. Erachten Sie es für Ihren Aufgabenbereich als zwingend notwendig, zusätzlich zu den Bündnissen Ihre Interessen auch eigenständig den EU-Institutionen vorzutragen? Bitte begründen Sie Ihre Antwort!
4. Was unterscheidet Sie von Lobbyorganisationen aus der Wirtschaft? Haben Sie gegenüber diesen Akteuren eher Vor- oder Nachteile vor den Entscheidungsträgern der EU-Institutionen?
5. Welche Person(e)n innerhalb der folgenden Institutionen binden Sie speziell in Ihr Vorhaben mit ein?
 - i. Kommission:
 - ii. Rat:
 - iii. Europäisches Parlament:
6. Wie versuchen Sie Ihre Kontaktperson(en) von Ihrem Standpunkt zu überzeugen? Wie treten Sie mit ihnen in Kontakt?
 - i. Kommission:
 - ii. Rat:
 - iii. Europäisches Parlament:

D. Inklusion regionaler Bedürfnisse

1. Berücksichtigen die Gesetzesvorschläge der Europäischen Kommission in Ihrem Aufgabenfeld regionale Bedürfnisse genügend?
 - i. Ja, in *allen* Fällen.
 - ii. Ja, in *vielen* Fällen.
 - iii. Ja, aber nur in *wenigen* Fällen.
 - iv. Nein, in *keinem* Fall.
2. Müssen Regionen in Ihrem Aufgabenfeld noch stärker in die EU-Gesetzgebungsprozesse mit einbezogen werden? Bitte begründen Sie Ihre Antwort!

3. Ist der Ausschuss der Regionen für die Inklusion regionaler Bedürfnisse von Nutzen?
4. Gibt es noch andere Ausschüsse bzw. Gremien, die für die Interessenvertretung Ihrer Region in Ihrem Aufgabenfeld regelmäßig von Bedeutung sind?

Appendix B – Questionnaire (English version)

University of Cologne

Faculty of Economics and Social Science

Jean Monnet Chair – Prof. Dr. W. Wessels

Responsible for this research project:

Dominik Göhmann

Interest representation of German and British Regions in EU decision-making: coalitions as crucial factor?

This research project deals with the role of legislative regions in EU decision-making policy in three different policy areas and attempts to find out, if and how these actors shape EU politics. The aim is to uncover the importance of temporary coalitions in competition, education and environment. Due to capacity reasons, this research is limited to German and British regions.

We would be very grateful if you are willing to participate in this project and answer the stated questions below. All data will be treated confidentially and are made anonymous. The final analysis will not contain individual but aggregated results so that one cannot connect the individual responses to the respective representation offices.

E. General information

1. What is the official name of your office?

2. For which policy fields are your responsible?

F. Interactions in EU policy-processes

1. Exchange of information

Please indicate in the table below with which actors in your policy field you exchange important information in order to get your interests represented in the EU decision-making process. This includes official and unofficial communication. Please differentiate between rare exchange of information (1), occasional exchange of information (2) and particularly frequent exchange of information (3).

2. Frequency of coalition-building

Please indicate in the table below with which actors in your policy field you cooperate and coordinate your actions in order to get your interests represented in the EU decision-making process. Please differentiate between rare exchange of information (1), occasional exchange of information (2) and particularly frequent exchange of information (3).

3. Relevance

Please indicate in the table below the relevance of potential coalition partners in your policy field in order to get your interests represented in the EU decision-making process. Please use a ranking: 1 stands for the most relevant and 7 for the most irrelevant actor.

Actor...	Exchange of information	Frequency of coalition-building	Relevance of coalition partners
European Commission			
European Parliament			
Council of Ministers			
Committee of the Regions			
National government			
Inner-state regions			
Regions <u>with</u> legislative competences in other EU Member States			
Regions <u>without</u> legislative competences in other EU Member States			
Profit-oriented companies			
Non-profit oriented organisations (NGOs...)			
Associations, unions			

4. Conditions for coalition-building

What are the conditions for building a coalition with one of the above stated actors?

5. Necessity of coalition-building

Please indicate the necessity of cooperating and coordinating your actions with the stated actors in the table below in order to get your interests represented in the EU decision-making process. Please tick the respective cell.

Actor...	Necessity	Yes, in <i>all</i> cases.	Yes, in <i>most</i> cases.	Yes, in a few cases.	No, in no cases.
National government					
Inner-state regions					
Regions <u>with</u> legislative competences in other EU Member States					
Regions <u>without</u> legislative competences in other EU Member States					
Profit-oriented companies					
Non-profit oriented organisations (NGOs...)					
Associations, unions					

G. Procedures concerning interest representation

1. What is the usual procedure in your policy field if the European Commission plans to initiate a legislative proposal?
2. How do you respond to unforeseeable events in your policy field? For example, the Commission suddenly changes an important detail in the proposal which causes negative effects for your region.
3. Do you think that in addition to coalition-building it is mandatory to present your interests individually to the EU institutions? Please provide reasons for your response!
4. Where is the difference between you and economic lobby organisations? Compared to those actors, do you face advantages or disadvantages before the decision-makers in the EU institutions?
5. With which officials do you establish contact in the following institutions?
 - i. European Commission:
 - ii. Council of Ministers:
 - iii. European Parliament:
6. How do you attempt to convince your contact persons from your point of view? How do you approach them?
 - i. European Commission:
 - ii. Council of Ministers:
 - iii. European Parliament:

H. Inclusion of regional concerns

1. Does the European Commission include regional concerns in its legislative proposals in your policy field sufficiently? Please tick the respective line.
 - i. Yes, in *all* cases.
 - ii. Yes, in *most* cases.
 - iii. Yes, but only *in a few* cases.
 - iv. No, in no cases.
2. Do you think that in your policy field regions need to be more included in the EU decision-making process? Please provide reasons for your response!
3. Is the Committee of the Regions useful for including regional demands?

4. Are there any other committees that help you to get your interests accommodated on a regular basis?

Appendix C: Article 72, 73, 74 German Basic Law

Article 72

[Concurrent legislative powers]

(1) On matters within the concurrent legislative power, the Länder shall have power to legislate so long as and to the extent that the Federation has not exercised its legislative power by enacting a law.

(2) The Federation shall have the right to legislate on matters falling within clauses 4, 7, 11, 13, 15, 19a, 20, 22, 25 and 26 of paragraph (1) of Article 74, if and to the extent that the establishment of equivalent living conditions throughout the federal territory or the maintenance of legal or economic unity renders federal regulation necessary in the national interest.

(3) If the Federation has made use of its power to legislate, the Länder may enact laws at variance with this legislation with respect to:

1. hunting (except for the law on hunting licenses);
2. protection of nature and landscape management (except for the general principles governing the protection of nature, the law on protection of plant and animal species or the law on protection of marine life);
3. land distribution;
4. regional planning;
5. management of water resources (except for regulations related to materials or facilities);
6. admission to institutions of higher education and requirements for graduation in such institutions.

Federal laws on these matters shall enter into force no earlier than six months following their promulgation unless otherwise provided with the consent of the Bundesrat. As for the relationship between federal law and law of the Länder, the latest law enacted shall take precedence with respect to matters within the scope of the first sentence.

(4) A federal law may provide that federal legislation that is no longer necessary within the meaning of paragraph (2) of this Article may be superseded by Land law.

Article 73

[Matters under exclusive legislative power of the Federation]

(1) The Federation shall have exclusive legislative power with respect to:

1. foreign affairs and defence, including protection of the civilian population;
 2. citizenship in the Federation;
 3. freedom of movement, passports, residency registration and identity cards, immigration, emigration and extradition;
 4. currency, money and coinage, weights and measures, and the determination of standards of time;
 5. the unity of the customs and trading area, treaties regarding commerce and navigation, the free movement of goods, and the exchange of goods and payments with foreign countries, including customs and border protection;
 - 5a. safeguarding German cultural assets against removal from the country;
 6. air transport;
 - 6a. the operation of railways wholly or predominantly owned by the Federation (federal railways), the construction, maintenance and operation of railroad lines belonging to federal railways, and the levying of charges for the use of these lines;
 7. postal and telecommunications services;
 8. the legal relations of persons employed by the Federation and by federal corporations under public law;
 9. industrial property rights, copyrights and publishing;
 - 9a. protection by the Federal Criminal Police Office against the dangers of international terrorism when a threat transcends the boundary of one Land, when the jurisdiction of a Land's police authorities cannot be perceived, or when the highest authority of an individual Land requests the assumption of federal responsibility;
 10. cooperation between the Federation and the Länder concerning
 - a) criminal police work,
 - b) protection of the free democratic basic order, existence and security of the Federation or of a Land (protection of the constitution), and
 - c) protection against activities within the federal territory which, by the use of force or preparations for the use of force, endanger the external interests of the Federal Republic of Germany,
 as well as the establishment of a Federal Criminal Police Office and international action to combat crime;
 11. statistics for federal purposes;
 12. the law on weapons and explosives;
 13. benefits for persons disabled by war and for dependents of deceased war victims as well as assistance to former prisoners of war;
 14. the production and utilisation of nuclear energy for peaceful purposes, the construction and operation of facilities serving such purposes, protection against hazards arising from the release of nuclear energy or from ionising radiation, and the disposal of radioactive substances.
- (2) Laws enacted pursuant to clause 9a of paragraph (1) require the consent of the Bundesrat.

Article 74

[Matters under concurrent legislative powers]

- (1) Concurrent legislative power shall extend to the following matters:

1. civil law, criminal law, court organisation and procedure (except for the correctional law of pretrial detention), the legal profession, notaries, and the provision of legal advice;
2. registration of births, deaths and marriages;
3. the law of association;
4. the law relating to residence and establishment of foreign nationals;
- 4a. [repealed]
5. [repealed]
6. matters concerning refugees and expellees;
7. public welfare (except for the law on social care homes);
8. [repealed]
9. war damage and reparations;
10. war graves and graves of other victims of war or despotism;
11. the law relating to economic matters (mining, industry, energy, crafts, trades, commerce, banking, stock exchanges and private insurance), except for the law on shop closing hours, restaurants, game halls, display of individual persons, trade fairs, exhibitions and markets;
- 11a. [repealed]
12. labour law, including the organisation of enterprises, occupational health and safety, and employment agencies, as well as social security, including unemployment insurance;
13. the regulation of educational and training grants and the promotion of research;
14. the law regarding expropriation, to the extent relevant to matters enumerated in Articles 73 and 74;
15. the transfer of land, natural resources, and means of production to public ownership or other forms of public enterprise;
16. prevention of the abuse of economic power;
17. the promotion of agricultural production and forestry (except for the law on land consolidation), ensuring the adequacy of food supply, the importation and exportation of agricultural and forestry products, deep-sea and coastal fishing, and preservation of the coasts;
18. urban real estate transactions, land law (except for laws regarding development fees), and the law on rental subsidies, subsidies for old debts, home building loan premiums, miners' homebuilding and homesteading;
19. measures to combat human and animal diseases which pose a danger to the public or are communicable, admission to the medical profession and to ancillary professions or occupations, as well as the law on pharmacies, medicines, medical products, drugs, narcotics and poisons;
- 19a. the economic viability of hospitals and the regulation of hospital charges;
20. the law on food products including animals used in their production, the law on alcohol and tobacco, essential commodities and feedstuffs as well as protective measures in connection

with the marketing of agricultural and forest seeds and seedlings, the protection of plants against diseases and pests, as well as the protection of animals;

21. maritime and coastal shipping, as well as navigational aids, inland navigation, meteorological services, sea routes, and inland waterways used for general traffic;
22. road traffic, motor transport, construction and maintenance of long-distance highways, as well as the collection of tolls for the use of public highways by vehicles and the allocation of the revenue;
23. non-federal railways, except mountain railways;
24. waste disposal, air pollution control, and noise abatement (except for the protection from noise associated with human activity);
25. state liability;
26. medically assisted generation of human life, analysis and modification of genetic information as well as the regulation of organ, tissue and cell transplantation;
27. the statutory rights and duties of civil servants of the Länder, the municipalities and other corporations of public law as well as of the judges in the Länder, except for their career regulations, remuneration and pensions;
28. hunting;
29. protection of nature and landscape management;
30. land distribution;
31. regional planning;
32. management of water resources;
33. admission to institutions of higher education and requirements for graduation in such institutions.

(2) Laws enacted pursuant to clauses 25 and 27 of paragraph (1) shall require the consent of the Bundesrat.