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National Strategies and Priorities

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Domestic preparation of the Finnish position

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ORGANISING FOR EU ENLARGEMENT:
Challenge for the Member States and the Candidate Countries

The Dublin European Institute, University College Dublin,[1] was awarded, in 2001, a research contract under the EU's Fifth Framework Programme[2] to carry out a comparative study of the impact of the EU on the structures and processes of public policy in six small countries: **Ireland**, **Greece**, **Finland**, **Estonia**, **Hungary** and **Slovenia**. The Project's partnership, under the direction of Professor Brigid Laffan, Dublin European Institute, University College Dublin[3], includes: Professor Dr. Wolfgang Drechsler, University of Tartu; Professor Teija Tiilkainen, University of Helsinki; Professor Calliope Spanou, University of Athens; Professor Attila Ágh, Budapest University of Economic Sciences and Public Administration; and Professor Danica Fink-Hafner, University of Ljubljana.

The aim of the research project was to deepen our understanding of the processes of Europeanisation in a number of the existing member states and some of the candidate states.

The research project encompassed the following three objectives:

- The conduct of research which offers immediate policy relevance to key stakeholders in the enlarging Union;
- The conduct comparative, theoretical and empirical research on the management of EU public policy making in three existing member states – Ireland, Greece and Finland – and three candidate states – Estonia, Hungary and Slovenia;
- The shedding light on the capacity of smaller states to adjust and to adapt to the increasing demands of Europeanisation on their systems of public policy-making and thus to identify the barriers to effective, efficient and accountable management of EU business.

Research Strategy

The research design consisted of two phases and within each phase, two levels of analysis. **Phase I** analysed the management of EU business at the macro level of the core executive and was complemented by a micro case study of a recent policy negotiation using decision analysis. **Phase II** of the research broadened the analytical focus to encompass other levels of government – the EU and sub-state – through multi-levelled governance. Here attention was centred upon the emergence of policy networks and the interaction between public actors and the wider civil society in specific, discrete policy sectors.

[1] National University of Ireland, Dublin (University College Dublin).
[2] European Commission, Community Research Fifth Framework Programme (Socio-Economic Research).
[3] This project forms part of the Governance Research Programme, Institute for the Study of Social Change, University College Dublin, www.ucd.ie/issc/ and www.ucd.ie/govern/intex.htm.

Methodology

The study employed two specific methodologies: historical institutionalism and rational institutionalism in a new and innovative fashion. The use of combined perspectives provided a theoretically innovative and new approach to the study of the Europeanisation process. Both approaches could be used as they were applied to different elements of the empirical research.

Academic and Policy Implications

This study's findings provide insight into the manner in which diverse state traditions, institutions and political and administrative cultures influence national adaptation to EU governance and how the interface between national policy processes and the Brussels arena is managed. It is expected that these findings will assist those making and managing policy, thus facilitating adjustments to the changing European Union while also contributing to the growing academic debate on Europeanisation.

At various stages during the course of this project the research findings and analysis were presented to a range of stakeholders and academics to facilitate feedback and enhance the analytical process. Further details about the Organising for EU Enlargement (OEUE) project are available on the project web site www.oeue.net, along with i) the Project Report, ii) the OEUE Occasional Papers and iii) a selection of papers by the research partners which draw on various aspects their project research.

AUTHOR

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ABSTRACT

Tight timetables and hurried negotiations characterised preparations for the European Arrest Warrant on both the national and EU levels. This was the reason why on the national level the responsible Ministry of Justice and its civil servants there were perhaps even more influential than normal. This rush also led to a lapse in the lines of communication and eventually a unique institutional conflict between the government and the Law Committee. More generally, the case study demonstrated that increasingly, it is the amount of EU legislation that puts enormous pressure on the Finnish preparation machinery. What is particular for this case is that the civil servants from the Ministry of Justice apparently did not receive sufficient political guidance before the conflict with Eduskunta was a reality. The Law Committee took the civil servants initiative as the political position of the government. When the minister took another position, the Law Committee felt that it had been led astray.

Abbreviations

C	Centre Party
CAP	Common Agriculture Policy
CCP	Common Commercial Policy
CD	Christian Democrats
CFSP	Common Foreign and Security Policy
COREPER	Committee of Permanent Representatives
EAW	European Arrest Warrant
EMU	European Monetary Union
EU	European Union
FA	Ministry for Foreign Affairs
GL	Green League
JHA	Justice and Home Affairs
LA	Left Alliance
MAF	Ministry of Agriculture and Forestry
MD	Ministry of Defence
ME	Ministry of Environment
MFA	Ministry for Foreign Affairs
MI	Ministry of Interior
MJ	Ministry of Justice
MoE	Ministry of Education
MoF	Ministry of Finance
MoL	Ministry of Labour
MP	Member of Parliament
MSAH	Ministry of Social Affairs and Heath
MTC	Ministry of Transport and Communications
MTI	Ministry of Trade and Industry
NATO	Northern Atlantic Treaty Organisation
NC	National Coalition
PM	Prime Minister
PMO	Prime Minister's Office
SDP	Social Democratic Party
SPP	Swedish People's Party

INTRODUCTION

Europeanisation is a reciprocal process in which the member states are both adapters to the EU but also projectors of national level concerns on the EU level (Bulmer and Burch 2000:48).[4] The research results presented here are based on a case study analysis of the Finnish domestic level negotiations of the Commission's proposal for a European Arrest Warrant (EAW). In particular this paper explores the role of national actors, the designers of Europeanisation and the uploading of the national concerns to the EU level in the creation of a new policy. Up until recently, policy developments within the arena of Justice and Home Affairs (JHA) were best characterised as intergovernmental. In the field of criminal law, the EU focus was limited to the development of coordination between police and judicial authorities of different member states, in cases of cross border crime. However the completion of the internal market and deepening integration has created new possibilities for cross border and international crime, including terrorism. The political will for the development of the JHA has increased (Heiskanen and Kulovesi, 1999). More broadly speaking, the prevailing ideology seems to have begun to change from an authority centred ideology to the citizens' Europe, which was highlighted in the Treaty of Amsterdam. Concrete examples of this new emphasis in this Treaty include the creation of an area of freedom, security and justice (Title I Article 2 and Title VI Article 29) and the inclusion of the Schengen acquis as a part of EU legislation. (Nuotio 2002.)

In the field of EU Criminal Law, the decision to adopt the European Arrest Warrant (EAW) was a pioneering effort to enforce a common approach to law enforcement right across Europe. In 1999, the European Council agreed that "*the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced*"[5]. The European Council statement prompted the Commission to prepare novel legislation on the EAW. Moreover, the functional need was amplified by the 9/11 terrorist attacks. In the immediate aftermath of this atrocity in 2001, the member states shared a common political will to launch the so-called anti-terrorism package in which the EAW was included. The decision on the EAW was reached in December 2001 and the new legislation came into force on 1 January 2004.[6] The effect of the EAW meant that judiciaries of the member states no longer needed to seek a formal extradition procedure in order to forcibly transfer a person from one member state to another for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

This paper explores and analyses the Finnish national preparations for a common position on the European Arrest Warrant (EAW) and the surrender procedures between the EU Member States. For the analysis of the policy negotiations, three network-based quantitative

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[4] In the EU 5th framework funded research project 'Organising for the EU enlargement' Laffan uses Radelli's definition of Europeanisation as the: '*Processes of a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies* (2000:3.)' See also Kassim & al. 2001.

[5] Presidency conclusions of the Tampere European Council meeting in October 1999.

[6] COM(2001) 522 final

models of collective decision-making are applied and tested.[7] This modelling approach examines how preferences of different - formal or informal - stakeholders are transformed into one collective outcome (Payne 2002, 7).

The modelling approach and data collection

In this paper, we adopt a rational institutional approach where the research framework is derived from a growing theoretical literature in the social sciences on the role of institutions and institutional change. "The institutional perspective provides a meaningful middle range theory that highlights the importance of institutions in framing and structuring processes of EU policy-making" (Payne 2002:7). In this paper, a number of different decision-making models are compared: the compromise model, the exchange model and the challenge model. These different negotiation models are based on differing assumptions about how collective decisions are reached, where initially there is no agreement across the stakeholders involved (either formally or informally) in the decision making (Payne 2002:7; Assen, Stokman and van Assen, 2002).

The three models applied in this research differ in their underlying assumptions about the negotiation process but share the same input model variables. In each model, those that have an interest in the decision-making situation are called *stakeholders*. They are individuals or groups that have the capability to use their resources to exert influence in the decision-making process. A stakeholder's *capability* means the ability to influence the behaviour of others in the direction of the interests of the stakeholder. In this research we have identified different kinds of capability (e.g. capability to (resource), capability over (formal authority) and information capability (informal)). We measure the capability of each stakeholder on a scale from 0 to 100, with the most capable actor rated at a 100. The *policy position* of the stakeholder is the preferred position of the stakeholder with regard to the particular issue being negotiated. Each of the issues is represented by a particular issue dimension which ranges from 1-100, where the most extreme policy positions on each issue are placed at 1 and 100 and the policy positions of all the other stakeholders are placed in between these two extremes. The actual decision outcome can also be placed on the issue dimension, as well as the model predicted outcome, which allows us to examine the accuracy of the model prediction. The *salience* of the issue for the stakeholder is the level of importance the stakeholder attaches to the issue. Salience is measured on a scale from 0 –100, where if a stakeholder attaches a rating of 100 to an issue, that stakeholder is willing to mobilise its full capabilities to reach the desired outcome.

The research applies and compares three different negotiation models of decision-making. The *compromise model* weights each stakeholder's position by their capability and the level of salience they attach to the issue. The model predicted outcome is mean of all actors' weighted position. The *exchange model* focuses on exchanges in policy positions as a result of negotiations. The exchange model assumes that all actors are willing to bargain. In other words,

[7] Bueno de Mesquita and others (1985), Coleman (1990), Stokman and Van Den Bos (1992), Stokman and Van Oosten (1994), Pappi and Henning (1998) .

one antecedent for this model is cooperation of the stakeholders (Stokman and Van Oosten, 1994; Assen & al. 2002). The *challenge model* (developed by Bueno de Mesquita & al. e.g. 1994) does not assume cooperation but considers if actors are willing to challenge other actors' voting or policy positions. The decision of the stakeholder whether or not to challenge another stakeholder, is based on the expected utilities of challenging or not challenging other actors. The model examines expected utilities in challenge situations.

A number of different methods of data collection were used for this research. An extensive review of all of the relevant policy documents, academic and policy-oriented literature, including newspapers, on the subject of this case study was conducted early on in the project. Then a number key experts who had an in depth knowledge of the Finnish European Arrest Warrant negotiations, were interviewed. These experts had a close working knowledge of the EAW negotiations. These interviews were used to identify the key issues and stakeholders involved in the Finnish EAW negotiations. Experts were used to collect the model-guided data (e.g. policy positions, capability and salience) for each stakeholder with regard to each of the EAW issues identified.

Finnish institutional framework and preparation of the national position

The speed of the developments at the EU level set the timetable for national preparations of the Finnish position for the negotiations of the European Arrest Warrant. The EAW as a whole was prepared and accepted in a very short period of time, by EU standards. The timetable set by the Justice and Home Affairs Council (JHA) was very tight and haste characterised the entire preparation process on both the national and EU levels. The anti-terrorism package – including the EAW - was to be accepted by December 6th 2001, that was, less than three months after the 9/11-tragedy.

Table 1: History of the EAW decision on the EU level

Date	Event
9 September 2001	European Commission adopted proposal
20 September 2001	JHA Council set deadline for agreement by 6th December 2001
21 September 2001	European Council
16 October 2001	JHA Council
19 October 2001	Informal European Council in Ghent
17 November 2001	JHA Council
6/7 December 2001	JHA Council reached agreement across all states except Italy
11 December 2001	Italy agreed to proposal
6 February 2002	European Parliament voted and approved proposal
13 February 2002	Six member states announced plans to introduce the European Arrest Warrant one year earlier than necessary

Actual negotiations between the member states were started on October 1st 2001 and while most of the controversies were resolved in the Article 36 Committee[8], there were also bilateral meetings at a ministerial level, as well in the COREPER and JHA Council. Fourteen of the EU member states reached an agreement at the Laeken meeting 6th-7th December 2001 and finally, an agreement which included all fifteen member states, was reached on 11th December 2001. The EAW came into force 1st January 2004.

Compared with most other countries in Europe, the Finnish system of preparing the national position on proposed new EU legislation is quite formalised (Rehn 1998:20-24, Mattila 2000:138-142 and Laffan 2001:83-86). The process officially starts with the European Commission informing the responsible ministry in an EU member state of the proposed new EU legislation. In Finland, the Ministry of Justice (MJ) and the Ministry of Interior (MI) were the two competent ministries responsible for the overall JHA area, but the Ministry of Justice (MJ) had particular competence for the EAW legislation. Therefore, the MJ was responsible for the preparation of the Finnish Government's position on the EAW issue. Preparation in the Ministry of Justice was swift. Under normal circumstances, there would have been a number of working group meetings arranged which involved the relevant civil servants across the different departments as well as within the Ministry of Justice. However, due to the tight timetable there were no working group meetings arranged. Instead, the preparation of the Finnish position was left very much in the hands of the responsible civil servants in the Ministry of Justice, who at the more senior levels, were also the civil servants who participated in Brussels negotiations. The MJ civil servants were highly expert and our research showed that even at this early stage

[8] The Article 36 Committee is one of the key committees of the JHA Council of Ministers, reporting to COREPER. It comprises senior officials from the national ministries of all of the member states.

of the national level preparation, they succeeded in anticipating where the possible points of controversy might arise. In a memorandum of the Ministry of Justice (EU/27090, 1/0765), the main controversies were identified as:

1) extradition of own nationals (contradicts sections of the Finnish Constitution)
2) abolition of dual criminality principle (contradicts Finnish Extradition Law)
3) human rights of the individual sought for extradition (consent to surrender and extradition to third countries with possible death penalty)

In the national preparation of the Finnish position on the EAW, some of the normal stages of debate and consultation were bypassed and those that were skipped are marked with a red cross over the box. After the MJ completed its own internal preparation of its position on the EAW[9], the issue was brought to the co-ordinating bodies or the EU sections – that is the sub-committees of the Committee for EU matters. The most important task of the EU sections is the horizontal co-ordination between the ministries and responsible agencies, particularly in the community law. A civil servant from the Ministry of Justice chaired the meetings, and there was also a member of the EU Secretariat present. The EU sections can meet in either narrow or larger form. The former includes just civil servants while the latter includes interest groups as well.

[9] The government's (ministry's) position (in U66/2001) was in short as follows. The Council of State regards extradition as a consequence of crime an important part of cooperation between the member states. The basic position to the framework decision is positive. Finland has enforced 1995 and 1996 extradition agreements of the EU compiling the general European agreement of 1957 on extradition as a consequence of crime. These agreements have eased extradition between the member states significantly. As the framework decision enters into force, present general agreement applied will be annulled. The Council of State's position to abolition of dual criminality is positive providing that basic rights can be secured. The Council of State regards necessary that bases of refusal are considered also on a more general level from the point of view of the principles of the Finnish legal system as well as from the point of view of human rights. The Council of State considers important to pay attention to human rights in negotiations of the framework proposal. From the reasons mentioned above, the Council of State considers important to study the framework decision in respect to the Finnish Constitution before the framework decision can be accepted.

in the case of the EAW negotiations, the section in question met in the narrow form. There were no significant differences of opinion concerning the proposal on this level. Indeed, the EAW was never a really controversial proposal between the Finnish ministries. Therefore, it did not rise to the Committee on EU affairs - nor was it handled in the Cabinet Committee on EU matters.[10] The Permanent Representation was involved in the EAW in terms of policy co-ordination at the EU level and the permanent representative represented Finland in the COREPER. However, many of the controversial issues were solved already within the Article 36 Committee where experts on criminal law debated the framework proposal of the Commission.

The Eduskunta (Parliament) was also involved in the EAW negotiations at home through its political mandate. In the Finnish political system, the Eduskunta's position are not legally binding on the Government. Nevertheless the Eduskunta must be consulted and must inform the government of its position on a given issue before decisions are taken on the EU level. According to the normal parliamentary practice, the Eduskunta can dismiss the Government if the government does not get a vote of confidence. Since there have been only majority governments during Finland's EU membership, there has been no real threat to the government's position by the Parliament. Nonetheless, it would be politically very unwise for the government to have open confrontations with the Eduskunta. It would decrease the popularity of the government, weaken the position of the negotiators and undermine the legitimacy of decisions as they are implemented. Moreover, the government has a constitutional duty to report to the Eduskunta, not only during the preparatory phase, but also after decisions are taken on EU level. Thus, parliamentary control takes place both before and after the EU level decisions are taken. (Boedeker and Uusikylä, 2000; Raunio and Tiilikainen, 2003.)

The Eduskunta can be categorized as a working parliament (see Arter, 1999). It has a committee system that reflects central government departments, parliamentary standing orders that lift committee work above plenary sessions and members that concentrate on detailed legislative work instead of grand debates on the floor. A great deal of legislative work is progressed in these committees. Committee deliberation is a mandatory part of legislative process preceding the plenary stage (see also Raunio and Tiilikainen, 2003). In the case of the EAW, the Speaker sent the EAW matter to two Special Committees of the Grand Committee, namely to the Law Committee and the Constitutional Committee. The Grand Committee can hear briefings or experts before giving a written or oral statement. The same goes for the special Committees. Issues like negotiation positions of other nations are not made public.

The nature of the legislative system together with the large number of parties (fragmented shape of party system) makes consensus seeking and negotiations between government and opposition essential in the Eduskunta. However, in EU affairs there have been no major conflicts

The Cabinet Committee is chaired by the prime minister and the members are ministers of the foreign affairs, justice, trade and industry, agriculture and forestry, trade plus three other ministers defined by the prime minister, including the minister from the responsible ministry. The Committee meeting, however, is open to all members of the Cabinet. There are also four expert members and two with a permanent right to attend.

between the government and opposition. There have been some disputes over opinions between Government and the Eduskunta in institutional matters (See Jääskinen 2000:114ff.). The EAW decision also managed to raise a controversy on procedural issues between the Eduskunta and the Government. The EAW created a debate in the Law Committee and in the Grand Committee. In the Constitutional Committee there were discussions over the matter but no real disputes. The government communication on EAW was given to the Eduskunta on the 11th October 2001.

Box 1: Timeline of Finnish proceedings

- A memo attached (EU/27090, 1/0765) on the EAW issue was prepared by the Ministry of Justice in September 2001
- The Government Communication for the MPs was sent 11th October 2001.
- The Grand Committee of Eduskunta sent U 66/2001 to the Law Committee and to the Constitutional Committee
- The Grand Committee received statement of the Constitutional Committee on 7th November 2001
- The Grand Committee received statement of the Law Committee 13th November 2001
- Position of the Government changed 27th November 2001 (according to experts)
- Issue handled in the Grand Committee 5th December 2001

The government's communication was handled in the Eduskunta as a U-matter (U 66/2001). U-matters are issues in which the Eduskunta would have competence, if Finland were not a member of the EU. The Eduskunta does not have a legal mandate but a political one (through regular parliamentary practice, the government must enjoy the confidence of the parliament) and it has the right to be informed by the government both ex ante and ex post decision-making on the EU level. The Grand Committee of Eduskunta sent the issue to the Law Committee and to the Constitutional Committee and received replies as follows: the statement of the Law Committee (LaVL 21/2001vp) was completed 13th of November 2001 and the statement of the Law Committee contained one disagreeing opinion in writing. The statement of the Constitutional Committee (PeVL 42/2001) was completed on the 7th of November 2001.

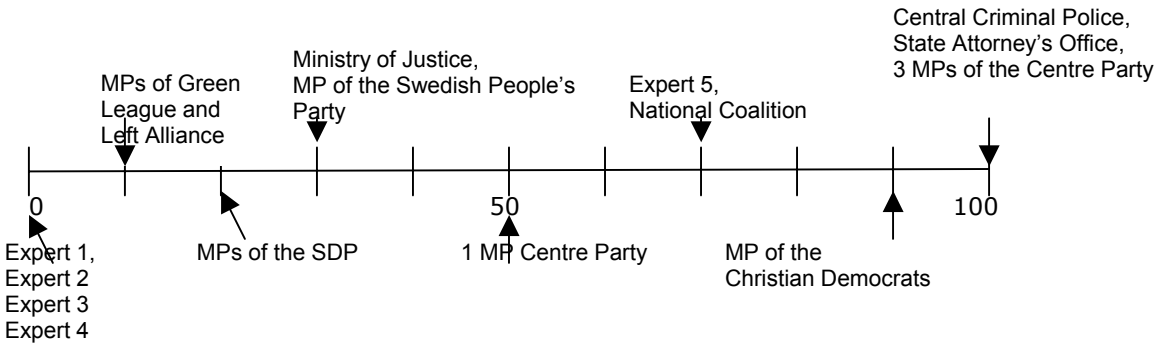
While there were no great disputes within the Constitutional Committee, it did recommend certain amendments to the Government's proposal. The Committee pointed out that the under the Finnish Constitution, extradition of citizens was prohibited. The Committee also took a negative stand to the extradition of persons to third countries that practised the death penalty, torture or any other inhumane treatment. In case of the dual criminality, the Committee suggested that it would be extended only to serious offences and under aged offenders would be extradited only in exceptional cases.

Modelling the Law Committee Negotiations

The Law Committee comprised a range of different interests including representatives from the different Finnish political parties as well as representatives from a number of interest groups who were invited to participate in the debate. This was not an uncommon practise in the Finnish parliament. Many members of the Law Committee were former policy officers and they formed a

strong cohesive group within the committee. Across the entire group, there were really only two issues that created real controversy in the Law Committee and these were whether Finland could agree to the principle of dual criminality and to the principle of extradition to third countries, which allowed the death penalty. The third issue, which the Ministry of Justice had originally identified, that is the extradition of own nationals within the EU, did not create any significant controversy with only one committee member expressing a strong opposition to this principle under the proposed EAW legislation.

Figure 2: Issue dimension one of Law Committee: Dual criminality



Policy Positions:

0:	Dual criminality must be maintained
10:	Very tight conditions for lifting dual criminality
20	Less tight conditions for lifting dual criminality
30:	Dual criminality can be lifted, if offences are serious
50:	Conditions for lifting dual criminality are wide-ranging
70:	Dual criminality only in special cases
90:	Dual criminality only in extremely special cases
100:	Elimination of the principle (in accordance with Com proposal)

Decision outcome:

20: Dual criminality under relatively rigorous conditions

The issue of dual criminality raised two totally different views on the issue. At the one extreme were the "police party", the Central Criminal Police (CCP) and State Attorney's Office (SAO). They argued in favour of the Commission's proposal as they saw it as a mechanism for improving the working relations between national policy forces and judiciaries at the international level and achieving more fluent forms of international co-operation in the fight against cross-border crime. At the other extreme, one could find a rough coalition of different interests, including lawyers and other legal experts, as well as various political parties including the Green League (GL), Left Alliance (LA) and the Social Democratic Party (SDP). This grouping was concerned about the considerable differences that existed across different national legal jurisdictions and in particular the possibility of abuse of the individual's human rights, no matter what that individual might be charged with. Interest groups were not actively involved in the debate on the dual criminality issue.

Table 2: Model data for Issue 1 of Law Committee:

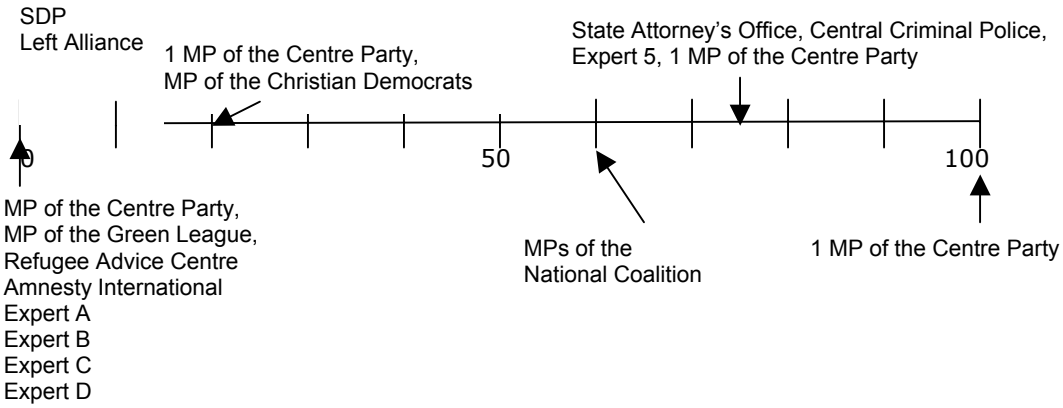
Position, Salience and Capability

Actor	Position	Salience	Capability
Ministry of Justice (MJ)	30	85	100
State Attorney's Office (SAO)	100	90	50
Common Commercial Policy (CCP)	100	90	40
Legal Expert A	0	90	70
Legal Expert C	0	90	70
Legal Expert D	0	80	60
Legal Expert E	70	80	30
MPs of the Social Democratic Party (SDP)	20	90	80
MPs of the National Coalition (NC)	70	10	60
MP of the Left Alliance (LA)	10	90	40
MP of the Swedish People's Party (SPP)	30	80	50
MP of the Green League (GL)	10	90	30
MP 1 of the Centre Party (C)	100	100	20
MP 2 of the Centre Party (C)	50	70	20
MP 3 of the Centre Party (C)	100	0	20
MP 4 of the Centre Party (C)	100	0	20
MP of the Christian Democrats (CD)	90	70	30

Table 2 presents the model-guided data for this first issue, dual criminality, negotiated in the Law Committee. As the data on the salience levels show, this issue was very controversial for a wide range of interests. In terms of the capability of the stakeholders, we see that the most powerful actor is the Ministry of Justice.

The second issue, which caused controversy, was the proposal that Finland should agree to the principle of extradition of individuals to third countries (countries outside the EU). Objections were raised because it was perceived as a Human rights issue wherein some of the third countries, to which extradition might take place, practiced the death penalty or condoned forms of punishment or even torture under their penal system, which were outlawed under the Finnish judicial system. Interest groups, such as Amnesty International, were actively involved in the negotiations for this second issue, the extradition to third countries. Moreover, most of the experts took similar positions to the interest groups and were strongly opposed extradition to countries with the death penalty. One MP did not see any problems with this issue and was ready to accept the proposal without conditions. At the other extreme, the so-called "police side", the stakeholders viewed this issue differently than those that looked at it from the perspective of human rights. Again they saw the proposal as one that could enhance collaboration across national police forces and judiciaries, as did the State Attorney's Office (SAO). This second issue also generated considerable media attention in Finland at the time it was debated in the Law Committee and subsequently in the Grand Committee.

Figure 3: Issue Dimension two of Law Committee: Extradition (to third countries)



Policy Positions:

0: Meaning of the left extreme: No extradition
10: Extradition possible like today, directly to other nations
20: Extradition is possible if the punishment is the same as in Finland
60: Extradition is possible if treatment of prisoners is not inhuman
75: Extradition is possible if treatment of prisoners in not extremely different from the one in Finland
100: Meaning of the right extreme: extradition without conditions

Decision outcome:

20: Extradition is possible if the punishment is the same as in Finland

In Table 3 below the salience levels show that for many of the stakeholders were very concerned about this issue and for those interests on both extremes of the issue dimension, this issue was highly controversial. As with the previous issue, there is considerable disparity across the stakeholders in terms of their levels of capability in these negotiations.

Table 3: Model data for Issue 2 of Law Committee: Position, Salience and Capability

Actor	Position	Salience	Capability
Ministry of Justice (MJ)	10	85	100
State Attorney's Office (SAO)	75	80	50
Common Commercial Policy (CCP)	75	80	40
Legal Expert A	0	100	70
Legal Expert B	0	100	70
Legal Expert C	0	100	70
Legal Expert D	0	90	60
Legal Expert E	75	100	30
Amnesty International	0	100	50
Refugee Advice Centre	0	100	40
MPs of the Social Democratic Party (SDP)	10	90	80
MPs of the National Coalition (NC)	60	60	60
MP of the Left Alliance (LA)	10	100	40
MP of the Swedish People's Party (SPP)	10	75	50
MP of the Green League (GL)	0	100	30
MP 1 of the Centre Party (C)	0	100	20
MP 2 of the Centre Party (C)	20	60	20
MP 3 of the Centre Party (C)	100	100	20
MP 4 of the Centre Party (C)	75	60	20
MP of the Christian Democrats (CD)	20	90	30

Model Predictions and Accuracy for Law Committee Negotiations

In Table 4, the different model predictions, real outcomes and error measurements for the two issues negotiated in the Law Committee are provided. Based on the error measurement assessment, the compromise model generated the most accurate predictions for the two issues concerned. The Exchange model did almost as well, but the model predictions for two issues were also quite unstable, which suggests that it was very difficult to reach consensus on these issues in the collective group.

As regards the first issue, dual criminality, the exchange model predicted outcome fluctuated between 32 and 38. Most actors had positions between 0 and 40 but consensus was not likely, according to the model. On the second issue, the real decision outcome was at position 20 on the issue continuum. While the exchange model predictions at each round of simulation moved towards this figure of 20, in the end even after many simulation rounds, the exchange model continued to predict a decision outcome of 35, which was an unstable outcome again suggesting that consensus was difficult to reach. The Exchange model predicted that after exchange, most of the stakeholders moved their position on this second issue top somewhere between 0 and 20. However the National coalition position on this second issue remained at 60 and prevented a consensus being reached. The model suggested that expectations of the National Coalition group (NC) were important. The model predicted that NC was expected to lose as a result of the possible exchanges by other actors, which together could form a coalition of support for a

position too far removed from the NC position. Moreover the other key players were predicted to receive comparable gains from these exchanges.

Table 4: Model predictions, actual outcomes and error measurement for Law Committee

Cases	Compromise model	Exchange model	Challenge Model	Real outcomes
Dual criminality	38	10 (unstable)	92	20
Extradition to third countries	19	35 (unstable)	10	20
Error Measurement Mean Absolute error Mean Squared error	 9.5 162.5	 12.5 162.5	 41 2642	 *Na*

The Exchange model is defined by its key underlying assumption that the stakeholders can reach a consensus because there are exchange possibilities open to the interests involved in the negotiations. This type of decision scenario is not what distinguishes the Law Committee negotiations. Overall, this model guided analysis of the Law Committee negotiations suggests that the particular spread of stakeholder positions and attached salience generated a decision scenario, which was defined by extreme and powerful interests, which limited the range of exchange possibilities. As table 4 also shows the model predicted outcomes for the Challenge model are the worst overall, compared with the results of both the Compromise and Exchange models. To try to explain these poor predictions, it is important to remember that the role of the Committees is advisory and that the government can act regardless of the Committee's opinion (although it would not be wise to do so). Challenge was therefore, not a likely alternative and the best strategies to use were persuasion and compromise, the underlying assumptions of the compromise and exchange models respectively.

Overall, the recommendation of the Law Committee was that with regard to the principle of dual criminality, it should be possible for a member state to refuse. Moreover, the Law Committee recommended to the Government that Finland should support the principle of extradition only if the person could return to Finland after the conviction, for implementation of the sentence. Moreover the Law Committee recommended that extradition to countries outside the EU should not take place and this condition should be included in the extradition decision.

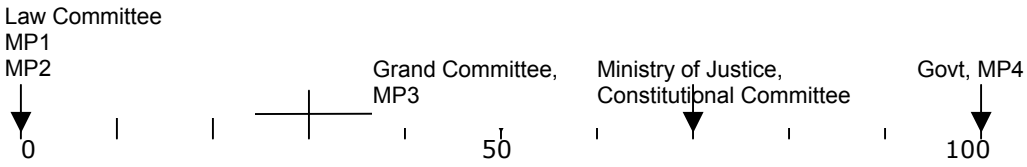
In discussing the Law Committee negotiations and the ability of the different models to accurately simulate the negotiating process, there is another important dimension to these negotiations that the reader should be aware of. As was pointed out earlier, there were two distinctive characteristics of the EAW negotiations. First there was the speed at which the

negotiations took place at home and in Brussels. Second, in the wake of a 9/11 attack, there was a strong commitment at the most senior political governmental levels to demonstrate a unified European front and to reach agreement on the EAW as a means of demonstrating a common repulsion of cross-border crime and terrorism. In Finland, the need to react speedily resulted in a communication lapse between the various relevant interests and an emerging institutional conflict between the Government and the Ministry of Justice. At one level, the civil servants belonging to the Ministry of Justice were allowed considerable autonomy in the preparation of their position for Eduskunta. Moreover, the fact that the Ministry of Justice was responsible for and engaged in a lengthy review of Finnish criminal law strengthened their view of their own position as one of leadership to the government on this debate. When the Ministry of Justice made its views known to the Law Committee during the debate, the Law Committee understood these as the political position of the Government. As we have seen above, the Ministry of Justice was opposed to some of the European Commission's key proposals for the EAW. In fact the political position of the Finnish government was primarily driven by a strategic political objective of showing unity at a European front. This led the Finnish government to move in the opposite direction to its Ministry of Justice and to a position which tended towards agreement with the proposed EAW legislation and limiting the restrictions imposed vis-a-vis the implementation of dual criminality, extradition to third countries and so on. When this distinction of views between the Ministry of Justice and the Government emerged, there was uproar in the Eduskunta and particularly in the Law Committee which felt that it had been led astray, as to what the real Government position was. Of course this confusion at least partly reflected the speed at which negotiations were proceeding at the European and national levels and within very different spheres of political power at these two levels.

Modelling negotiations in the Grand Committee

By the time the Grand Committee began to negotiate the issues raised by its two committees: the Constitutional Committee and the Law Committee, the dispute between the Ministry of Justice and the Government had been resolved or at least clarified. The role of the Grand Committee was to present the Eduskunta's position to the government. There was overarching issue debated in the Grand Committee which related to whether acceptance of extradition to third countries could ensure that the human rights of the individual would be protected.

Figure 4: Issue Dimension for Grand Committee: Human rights



Policy Positions:

0: Right to refuse extradition to third countries
50: Extradition to third countries possible but refusal a guideline for interpretation.
70: No extradition possible to third countries where human rights are likely to be abused, as these are implicitly protected under other agreements
100: Extradition without human rights clause

Real Decision Outcome:

50: Extradition to third countries possible but refusal a guideline for interpretation

As Table 5 shows there were a range of policy positions on this core issue. The level of salience ranged considerably across the interests involved with a considerable number of interests demonstrating extreme levels of importance to the issue. Surprisingly the Government attached a relatively low level of salience to the issue, where perhaps its overriding concern was that Finland would be able to sign up to the overall EAW framework agreement at the European level and that this particular issue would not be allowed to deter this.

Table 5: Model data for Issue 1 of Grand Committee: Position, Salience and Capability

Actor	Position	Salience	Capability
Ministry of Justice (MJ)	70	100	75
Government	100	10	90
Grand Committee	50	50	100
Law Committee	0	100	75
Constitutional Committee	70	100	80
MP1 (Left Alliance)	0	100	70
MP2 (Green League)	0	100	70
MP3 (Centre Party)	50	20	80
MP4 (Social Democratic Party)	100	20	70

In the application of the models to the negotiations in the Grand Committee, we applied the Compromise and Challenge models. The results of the model predictions are presented in Table 6. The exchange model was not used because there could be no exchanges. The compromise model prediction was 50, which in fact, was the real decision outcome. In its final opinion the

Grand Committee agreed that in the case of extradition to a third nation, the permission from the first extraditing country must be received. Moreover they recommended to the Government that the principle of not extraditing to a country with inhuman treatment or death penalty should be inserted in the framework decision or in the attached statement.

Table 6: Model predictions and real outcomes in the Grand Committee

Case	Compromise model	Challenge model	Real outcome
Extradition and human rights	50	70	50

The Challenge model prediction is interesting. Initially the challenge model predicted the decision outcome of 0. However, if we recognise that in the overall decision scenario, the government's position is weighted a great deal, and indeed could be considered as a veto player, then the model prediction jumps to 70. While this model prediction is relatively more accurate than the position of 0, more importantly it suggests that the Government 's role may indeed in reality have been closer to a veto player. Indeed, given the high level of seniority at the European level at which the EAW was being negotiated, this is not an unreasonable assumption to make. In other words, given the political sensitivity of the EAW negotiations, the Finnish government tended to place higher importance on Finland being to sign up to the overall agreement than stalling the agreement at the European level, because of domestic concerns expressed in the Finnish Grand Committee.

CONCLUSIONS

Tight timetables and hurried negotiations characterised preparations for the European Arrest Warrant on both the national and EU levels. This was the reason why on the national level the responsible Ministry of Justice and its civil servants there were perhaps even more influential than normal. This rush also led to a lapse in the lines of communication and eventually a unique institutional conflict between the government and the Law Committee. More generally, the case study demonstrated that increasingly, it is the amount of EU legislation that puts enormous pressure on the Finnish preparation machinery. What is particular for this case is that the civil servants from the Ministry of Justice apparently did not receive sufficient political guidance before the conflict with Eduskunta was a reality. The Law Committee took the civil servants initiative as the political position of the government. When the minister took another position, the Law Committee felt that it had been led astray.

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