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Cooperation in the European Union: Ostrom's Design Principles applied to the European Council.

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Cooperation in the European Union
Ostrom's Design Principles applied to the European Council.

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What are the factors that hamper collective action in the European Union?

Abstract

This research investigates the factors that influence the collective action in the European Union, as it is a unique organisation. To do that it has determined the European Council as the most influential body that can ensure collective action between the sovereign member states of the European Union. To assess how that is done the design principles of Elinor Ostrom (1992) are used as a measurement. Together with scapegoat theory, borrowed from social-psychology, the actions of the European Council are analysed in two cases. Where the first case, the EU-Turkey deal as a response to the refugee crisis of 2015, had successful collective action. The second case was less successful, as in the poisoning of Navalny a collective response failed. In both the cases there was the possibility to blame an equal scapegoat, however, the affected actors differed in their tangibility. The study shows that some of the design principles are easily discarded in the EU, which hampers the success of cooperation. Furthermore, it shows that a scapegoat can influence the working of Ostrom's design principles, however, to increase the external validity of that a more diverse case study must be done.

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List of abbreviations

CPR	= Common Pool Resource
COREPER	= Comité des représentants permanents (the committee of permanent representatives)
EC	= European Commission
EP	= European Parliament
EU	= European Union
EUCO	= European Council
GPG	= Global Public Good
ICC	= International Criminal Court
MEP	= Member of European Parliament
QMV	= Qualified Majority Vote
UN	= United Nations
US	= United States

1. Introduction

The European Union (EU) is a “sui generis” institution (de Baere, 2008, p. 1), which means that it is a one-of-a-kind institution. This is so because the EU was established to prevent wars between sovereign, democratic states from taking place in Europe (Schuman, 1950). The founders argued it was best to achieve this through economic and political cooperation between the independent members. This was to be done through extensive agreements between the states, which are so extensive that it is argued to be more than just a combination of several international agreements. This uniqueness of the EU makes the body also interesting for research (Haas, 2004, p. 4). Moreover, the EU has had great successes in some areas, e.g., peace in Europe, but has also had some failures, e.g., the 2015 refugee and 2008 financial crises, and the failure to create one joint approach to stop climate change. These problems have arisen, among other reasons, because of a lack of collective action between the member states. Therefore, this paper researches the following question:

What are the factors that hamper collective action in the European Union?

Because the malfunctioning of collective action in the EU is a reason for the failures of the EU, it needs to be researched before it can be solved. If the factors that affect the collective action are found it is also clear what can be done to prevent more failures. One factor that immediately springs to mind is the democratic working of the EU as the member states of the EU are democracies. And according to McCormick (2015, p. 101) there exists a democratic deficit as there is a “gap between the authority of EU institutions and the ability of EU citizen to impact their work”. It is likely that the democratic deficit is a hampering factor, or at least the reason for the existence of a mediating factor.

2. Literature Review

2.1 European Union Institutions

The most important decision-making institutions in the EU are the European Parliament (EP), European Commission (EC), Council of the EU and European Council (EUCO) (McCormick, 2015, p. 5). The build-up of the EP and EC is quite different from that of both the councils, as is discussed below.

The commission has the function of a cabinet in a state (Gouglas, Brans & Jaspers, 2017, p. 359), each state has a commissioner, therefore, there are twenty-seven commissioners. The way in which they are elected however is quite extensive, opposed to a normal cabinet formation. The president-elect of the EC, together with the member states' governments (Wonka, 2007, pp. 170-171), selects a list of candidates for the commission, which he proposes to the EUCO. The EUCO then select a candidate per commission, whom need to appear for the parliamentary counterpart committee, before the full list of candidates is submitted for approval to the EP. The EP can accept or decline the entire group, so there is no negotiation for separate positions possible anymore (European Commission, 2021). In the end, the EC is decided upon by the EP and EUCO, thus, the EC is highly dependent on both the EP and EUCO. Because of that it is less likely that new collective action springs from it, moreover, if the EC does promote collective action, it is done because members of the EP or EUCO requested so.

The Council of the EU also has a less significant role opposed to the EUCO and EP, as the Council of the EU is made up from the ministers of all member states that have the topic of interest in their portfolio (McCormick, 2015, pp. 185-189). Thus, the formation constantly changes, which means that they do not have a stable power base. Moreover, the council of the EU is a secondary role for ministers that are mostly not elected to their position and because they must follow the lead of their head of state (which is in the EUCO), it is unnecessary to investigate this council.

The way in which the European Parliament is chosen is more straightforward, as it is a parliament with direct elections. The MEPs are elected in their own countries, to represent their national political party and their country in the EP (McCormick, 2015, pp. 195-197). Furthermore, in the EP they band together in political party groups with the parties from other as well as the same nations. Because the EP primarily is a body that oversees and adapts proposals, rather than propose legislation itself, this body is not likely to instigate collective

action on its own terms. Thus, the EP is not investigated further, as the collective action must come from another organisation in the EU.

The European Council consists of all heads of state (McCormick, 2015, p. 5), which are primarily elected by the citizens of their own nation to lead their state. As the EUCO is the principal agenda setter for the EU (Carammia, Princen, & Timmermans, 2016, p. 822), it remains the body in which collective action finds its origin. Therefore, this research investigates what the factors are within the EUCO that influence collective action.

2.1.1 European Council

The EUCO is the “the supreme political body in the European Union” (Tallberg, 2008, p. 685), and is assisted by the council of the European Union and two types of permanent commissions that prepare the meetings, the so-called ‘Comité des représentants permanents’ (COREPER I and II). The COREPER I and II “consists of the EU ambassadors [COREPER II] from the 27 Member States and their deputies [COREPER I]” (Bonde, 2011, p. 150). As the members of the committees are permanent representatives, they get to know each other, which creates a possibility for more informal negotiations (Lempp & Altenschmidt, 2008, p. 512).

This informality is the power and usefulness of both the COREPERs, as they can prevent deadlocks (Lempp & Altenschmidt, 2008, p. 511). The informal manner of deliberating between the ambassadors can ensure that the deal is struck behind closed doors, where states can give in more on subjects without losing face. Informal negotiations are equivalent to bottom-up negotiations, as informal discourse disregards the formal rules imposed by others. Informality in the EUCO disregards any perceived power imbalance between the member states as each head of state has to be heard.

Further, the European council is in this research interpreted as a bottom-up institution as the scope of this research is the cooperation within the EU, and the EUCO is the most logical institute to provide that. In the end the actors that cooperate within the EU are the member states. Furthermore, in the European Council collective action is achieved through bottom-up negotiations, as the COREPERs and the council of the EU prepare the meetings between equally powerful members.

2.1.2 External parties

As the EU institutions are internationally directed, the EU is an international organisation, Putnam's (1988) “two level game” is present. Since the two-level game

influences negotiations between sovereign states. However, in the EU there is an extra actor on a separate level involved, i.e., the EU itself, thus, in the scholarly work it is proposed that there is a third level in the game of European Politics. This means that the levels that are influential here are (1) the domestic, (2) the international (external), and (3) the European (internal) level (Hubel, 2004, pp. 348-350). Every actor involved in the EU must consider the consequences for his decisions on each of those three levels, as the head of state is reprimanded on all the levels. As the heads of state are only direct representative and accountable to their domestic audience, through elections, this might be seen as the most important level.

External actors to the EU can come in multiple forms, as they can be international organisations, for example the UN, international regimes, e.g., the ICC, leaders of other states, and/or multinational corporations. Each of these actors can influence the EU by addressing one or multiple of the three levels of Putnam's (1988) two-level game. Each actor that can influence at least one level influences the EU's policies. This is important to consider, as in collective action external actors can have an influence on the creation of laws. An example of such external actors is the behaviour of foreign states, e.g., changing presidents in the United States, but also the flow of refugees can have a disturbing effect on the way of life of the EU.

3. Theoretical Framework

3.1 Ostrom Design Principles

When collective action theory is used there rise two dominant approaches from the academic work, the “Global Public Goods” (GPG) (Kaul, 2012, p. 729) and the “global commons” (Ostrom, 1998, p. 17) approaches. As the main difference between those approaches is that GPG is top-down, while the global commons approach is bottom-up (Brando et al., 2019, p. 570). And as the research is directed at the EUCO, which is a bottom-up institute in the EU, the approach that is bottom-up, global commons, must be followed. Therefore, the work of Elinor Ostrom is investigated, as she is the leading global commons scholar.

There are eight principles that Ostrom deems to be vital elements for a long-lasting commons (McGinnis & Ostrom, 1992, p. 8), these principles are used to assess the quality of the EUCO. The first design principle is that the institutions require “Clearly Defined Boundaries” (McGinnis & Ostrom, 1992, p. 9), in which the institute can work. This design principle is logical, because if the institute or another actor does not know who is responsible for what, the actors involved will point to each other when the provision or maintenance of the commons fails. Moreover, unclarity in responsibility for the commons promotes free riding (Olson, 1965), as the free rider can argue it is not his responsibility to pay for its provision.

The second design principle states that there needs to be a congruence between the rules of provision and the local conditions (McGinnis & Ostrom, 1992, p. 9). This is because the local conditions need to be considered if the rules are to be optimal. The third design principle investigates the “Collective-Choice Arrangements” (McGinnis & Ostrom, 1992, p. 9) in the institution. For this it is important that the involved actors can codetermine the rules, as it promotes participation. And with more actors involved the burdens are shared by more. This decreases the price for every involved actor and lowers the likelihood of free riding as the price to participate is lowered, Moreover, the increased influence from the local level ensures a bigger yield to participate.

The fourth design principle is the necessity to be able to audit the mechanisms an institution has, that monitors local conditions and individual behaviour (McGinnis & Ostrom, 1992, p. 9). This is required to prevent abuse of power by the monitors, which would hamper the efficiency of the commons. The fifth design principle is the availability of “Graduated

Sanctions” (McGinnis & Ostrom, 1992, p. 9) to punish offenders in a way that reflects the gravity of their infringement. This is required for the authority to be trustworthy.

The sixth design principle accounts for the quality of “Conflict Resolution Mechanisms” (McGinnis & Ostrom, 1992, p. 9) within the institute. This is necessary to ensure a smooth cooperation with all actors in the institute. The seventh design principle is the “Minimal Recognition of Rights to Organize” (McGinnis & Ostrom, 1992, p. 9), or in other words the right to be free of involvement by others and have self-determination. This is required for an institute because if it has no self-determination, it is not the decision-maker or the provider of collective action. The eighth principle is the necessity of “Nested Enterprises” (McGinnis & Ostrom, 1992, p. 9), which means that the institute should have a constant, repetitive relation on multiple layers. This is necessary to ensure low-cost and low-level spaces in which agreements can be reached quickly and cheaply.

The design principles proposed by Ostrom focus mostly on dynamics that influence behaviour and decision-making within the institute that provides and manages the common. However, the dynamics in the EU with outside actors also can influence that institute.

3.2 Scapegoat Theory

An external actor can be a mediator for the behaviour of members in the group. To investigate such group-behaviour it is fruitful to consider social-psychological studies that investigate behaviour of people with in- and out-groups. These are made up of the people within a group or organisation, the in-group, and people outside of it, the “out-group” (Berkowitz & Green, 1962, p. 295). An approach to studies in group-behaviour is the scapegoat theory, which discusses the reactions of the in-group in crisis. Scapegoat theory argues that people in time of crisis need to find a reason for why they are in the inconvenient situation (Rothschild, Landau, Sullivan, & Keefer, 2012, p. 1156). Such reasons are often identified to be external factors of the group or individual that is in crisis (Bilewicz & Krzeminski, 2010, p. 242), as then they do not have to hold themselves accountable. It does not matter if the selected conditions or people are really the reason for crisis, because the targeted are often “too weak, defenseless, or dependent on the aggressor” (Zawadzki, 1948, p. 128) to fight back. The hostility towards the scapegoat often comes from an “internal process-frustration” (Zawadzki, 1948, p. 128) rather than it being a response to external stimuli.

The “Dual-motive model” of Rothschild, Landau, Sullivan, and Keefer (2012) expands this knowledge by observing that there are two sides to the action of scapegoating. It is done firstly to maintain “perceived personal moral value” (Rothschild et al., 2012, p. 1148) through blaming it on someone else to minimize feeling guilty for the crisis. Secondly, people blame a scapegoat to maintain “perceived personal control” (Rothschild et al., 2012, p. 1148) by creating a reason (the scapegoat) for the otherwise ‘unexplainable’ crisis. To create a scapegoat is thus, to play the ‘blame game’ in one’s own benefit. The effectiveness of scapegoating is seen in the US-Iraqi war, as President Bush successfully blamed Iraq for the terror attacks of 9/11 while most of the attackers were Saudi Arabian (Cable News Network, 2021). In that case president Bush gained support for attacking Iraq, while there was no easy link to 9/11. He blamed the Iraqis for 9/11, which increased his control over the US congress as he had to stop the scapegoat.

An important fact to keep in mind is that scapegoating does not necessarily need to be done on targets that are innocent. The main target of scapegoating is to point to an outside enemy, to keep perceived personal moral value and control (Rothschild et al., 2012, p. 1148). And just that goal makes scapegoating applicable to this case, as the EU must maintain control to remain significant in world politics. If the EU does not remain in control over its own policies, it is nothing more than a group of quarrelling countries that cannot determine what to do.

3.3 Scapegoat Theory applied to the Ostrom Design Principles

The addition of scapegoat theory to Ostrom's design principles is done because scapegoating is done as a reaction “to an internal process-frustration” (Zawadzki, 1948, p. 128) and to maintain control (Rothschild et al, 2012, p. 1148). Moreover, the design principles are focused primarily on processes and conditions within the group, the application of scapegoat theory is plausible. To each of Ostrom’s design principles there is an expansion of scapegoat theory possible, as is shown in table 1 and explained below. What is important to understand is that this is also an adjustment to the work of Ostrom rather than just a continuation. This is because social-psychology is added to her work, thereby considering the out-group influence. It is necessary to add this as historical evidence shows that scapegoats can be used very effectively to promote certain, otherwise undesirable, policies. E.g. the Marshall-plan was successfully passed by the US senate, because of the communist threat in Europe (Kunz, 1997, p. 165).

Table 1***Ostrom's Design Principles together with Scapegoat Theory***

Principles	Definition of Ostrom	Application of Scapegoat theory.
1. Boundary	A clear definition of what is in whose power to do.	A scapegoat can be used to expand the boundaries of the institute's powers.
2. Congruence of rules and local conditions	The extent to which the top-level is connected to the local/bottom level.	A scapegoat can be used to unify the two levels.
3. Collective-choice	The fact that every actor participates in decision-making.	A scapegoat can activate the debate and ensure that action is undertaken.
4. Monitoring	The extent to which monitors and members are accountable for their actions.	A scapegoat helps to keep the heads of state accountable.
5. Sanctions	There should be different forms and levels of sanctions for misbehaviour	A scapegoat ascertains graduation in the levels of punishment.
6. Conflict Resolution	The availability of low-cost, local arenas to resolve conflicts	A scapegoat brings the various levels together, thereby lowering costs of negotiation.
7. Right to Organize	The right to self-determination, without being challenged by external authorities	A scapegoat strengthens the feeling of necessity to protect the right to organize.
8. Nested Enterprises	The extent to which there is repetitiveness in relations in the institution	A scapegoat strengthens the 'nests' of an institution.

Note. The sources for this table are McGinnis & Ostrom (1992, pp. 7-9), Ostrom (2000; 2010), Zawadzki (1948), and Rothschild et al. (2012).

The boundary principle is affected by a scapegoat because an out-group is framed as a threat to the status-quo. To stop that threat from becoming a real danger the institution must do everything possible to maintain control (Rothschild et al., 2012, p. 1148). So, scapegoat theory can be used to expand boundaries to the power of the institute. The congruence of rules and local conditions is affected by creating a scapegoat, as by blaming one party aloud the course of action is clarified, oppose the scapegoat. As a consequence this unifies the top and low levels. The collective choice principle is limited through a scapegoat, as a scapegoat establishes the course of action that has to be taken, i.e. aid or oppose the scapegoat. In this sense the scapegoat has a polarizing effect on the discussion, which ensures that at least something is done.

A scapegoat clarifies which group is to blame for everything that is going wrong (Bilewicz & Krzeminski, 2010, p. 242). Thus, this shows who should be held accountable by the participants, if it is clear who is guilty it is also clear who should be sanctioned. Moreover, the in-group, should not be punished as severely as the out-group, as the in-group is not guilty. Thus, the scapegoat clarifies who to blame and how he should be punished. Similarly, as the scapegoat clarifies who is the wrongdoer in the eyes of the in-group (Berkowitz & Green, 1962, p. 300), conflict resolution is effortless. I.e. the scapegoat is the one at fault and must be punished. Furthermore, the scapegoat brings together the various parts of governance in their opposition to it, thus, also conflicts between them are managed more easily.

A scapegoat shows that outside groups are dangerous (Berkowitz & Green, 1962, p. 295), thereby, the right to organize without interference is strengthened. As the in-group wants to remain in control, they will be more observant of the specific perceived external danger the scapegoat possess. Thus, a scapegoat will generate conscientiousness with the in-group to watch out for threats and defend their right to organize. Moreover, this will strengthen the nested enterprise of the EU, as it will increase the necessary repetitiveness of deliberation to oppose and control the scapegoat.

The fact that a scapegoat could affect such changes to institutes, also within the framework of Ostrom's design principles, is of major importance. Because this shows that a scapegoat can strengthen or weaken any principle in the EUCO that could be a mediating factor for collective action.

3.4 Hypothesis

Reality shows that there is cooperation within the EU, otherwise it would have not survived until now. Therefore, it seems logical that there are several principles that are in a worse state than the others. As we have seen in the introduction, there is a democratic deficit in the EU, and this could explain why the democratic member states have collective action problems. This is so because the democratically elected heads of state represent their national citizenry that partly despises the EU, because of their inability to influence it through democratic means. The principles in which this democratic deficit reflects the most are the principles 2, 3, 4, and 7. Because there is a shortcoming in the democratic working of the EU, the congruence between local conditions and pan-European regulations is disturbed, as there is little to no feedback through the democratic deficit. Moreover, the democratic deficit shows that accountability is also inadequate in the EU, thus, the fourth principle of accountable monitors is impeded. The democratic deficit also makes the right to organize dubious, as there is no possibility for the EU citizenry to organize themselves within the European Council. Furthermore, as the EUCO lacks an external body that has power over it, the principle of conflict mechanisms (principle 6) springs out as a probable cause for the collective action problem. Since there is no neutral actor that can resolve the issue.

H1: *Collective action in the European Union is hampered by the factors that do not follow Ostrom's design principles 2, 3, 4, 6, and 7.*

Furthermore, as the heads of state all have the possibility to drain the collective choice with a veto in cases of “vital and stated reasons of national policy” (Treaty on the European Union, 2016, p. 34). This translates into a problem for the collective action as one of the members alone can hold the other members hostage to its demands, thereby the decision-making speed is restrained to the absolute minimum to what everybody can agree on. A positive influence on this can be the framing of a scapegoat, as this creates a situation in which there is a necessity to act. Likewise, the head of state that wants to veto the decision-making can be framed as a scapegoat and held responsible by its national citizens. Thus, the EUCO can frame that head of state as a scapegoat to create a sense of necessity for unity in the EU, the union must be protected from it. In this manner an ‘us’ versus ‘them’ situation is created, in which all the heads of state are stimulated to support the ‘us’ which is the of the EUCO. Thereby the benefits of a veto are limited, as it can cost the support of other heads of state in different topics. Therefore, the following hypothesis is added to this research.

H2: *The European Council uses a scapegoat to overcome its collective action problem orchestrated by the failure of Ostrom's design principles.*

To investigate this hypothesis there are two cases investigated in which the European Council use a scapegoat to inspire collective action. In both cases the scapegoat are foreign authoritarian governments, and in both cases the crisis is a human rights violation.

4. Method

In this section the method is applied, which is a small-n case comparison of two cases in which the European Council used a scapegoat. The cases that are used are the migrant crisis and the consequent deal of the EU with Turkey to reduce the flow of migrants into the EU, and the poisoning of Navalny last year, allegedly by the Russian government (United Nations, 2021). Below is further explained why these are chosen.

4.1 Case selection

The Turkey-deal and poisoning of Navalny are chosen because in both the cases the humanitarian crisis can be blamed on a foreign state. I.e., in the Turkey-deal the states dictators responsible for the extreme number of refugees, and in the poisoning of Navalny it was the Russian government. Likewise, in both cases the problem, a humanitarian rights violation, had major influence on the EU. The Turkey-deal prevented a disaster brought on by an excess of refugees seeking asylum in the EU. While the poisoning of Navalny was an attack on human rights and the democratic right of opposition without humiliation.

The Turkey-deal is an agreement between the EU and Turkey to divide the costs of receiving and harbouring refugees. In this deal the EU agreed with Turkey to divide the refugees evenly between on the one hand the member states of the EU and on the other hand Turkey (Poon, 2016, p. 1196). To compensate the relative difference in number of refugees the EU provides monetary aid and lowered the threshold for visas.

The poisoning of Navalny (The Economist, 2020), a member of the Russian opposition, has shown the dubious state of democracy and human rights in the Russian Federation. Of course, that is problematic for a trade-partner and neighbour of the EU. Moreover, the denial of the Russian government's involvement showed it to be an untrustworthy partner.

The scapegoat in the Tukey-deal was two-sided, as there was the excessive flow of refugees originating primarily from Syria, which threatened the European way of life. But there was also the second side as there were the ones responsible for that flow of refugees, the authoritarian regimes. The part of the scapegoat that was helpless, the refugees, was a tangible and lamentable group. Thereby, the European leaders were able to show the necessity to intervene.

These two-sides of the scapegoat can also be seen in the poisoning of Navalny, as the guilty party was the Russian government and the lamentable side is the state of democracy in

Russia. And as the state of democracy is dependent on how it is perceived, it is an intangible factor, which is the significant difference in the scapegoat. Because it is intangible it is more difficult to frame it in a successful manner. A tangible enemy can be punished, whereas to punish an intangible enemy something tangible has to be found. Thus, this makes scapegoating something intangible more difficult.

As the Turkey-deal has been successful in managing the influx of refugees into Europe (European Commission, 2021), while the behaviour of the Russian government has not been altered by the international reactions to the poisoning (Mikhelidze, 2021, p. 6; Rumer & Weiss, 2021, p. 1). The refugee crisis scapegoating has been successful, whereas the scapegoating in the Navalny case was not. This must be kept in mind when the cases are applied to the design principles.

4.1.1 The principle of the boundary of an institution

The EUCO is like the dominant body of an extensive international agreement. However, that agreement is not just extensive, it is even limiting the sovereignty of all the member states. Therefore, it is unique in the world, with a necessarily unique dominant body. As the EUCO must consider the sovereignty of the member states in everything it does, it is necessary to clearly decide in which fields the EU has control over the national parliaments. This is done in the Treaty on the EU and the Treaty on the Functioning of the EU.

In these treaties a distinction is made of between areas of “exclusive competence”, “shared competence”, or the “competence to carry out actions to support, coordinate or supplement the actions of the Member States” (Treaty on the European Union, 2016, pp. 51-53). The clarification of which areas fall under which type of competence ensures that it is clear who must provide the rules and regulations.

In the case of Navalny the EU officially has power over its own member states, as the EUCO should face external actors in unison (Treaty on the European Union, 2016, pp. 29-31). However, the German government condemned the action before the EUCO could discuss a response for the high representative for foreign affairs and security policy, as is expected in a case that is a foreign security issue (Płeszka, 2010, pp. 85-86). This shows that, even if it is clear who has the power to decide, in some situations states act differently, which made the response fail its goal of adjusting the Russian behaviour. In the Turkey-deal the EUCO led the negotiations (Smeets & Beach, 2020, pp. 131, 147-148), which ensured that there was reached an agreement both between the EU and Turkey and within the member states

themselves (Rygiel, Baban & Ilcan, 2016, p. 315). The scapegoat can ensure that member states ignore the boundaries, clearly set out by the treaties. Thus, a scapegoat can hamper the boundary principle and the collective action.

4.1.2 The congruence of rules and local conditions principle

To ensure optimal collective action within the EU the rules must be suitable for each separate region (McGinnis & Ostrom, 1992, p. 16). As the scope of this research is on cooperation in the EU, the local level is the level of the sovereign member states. Thus if the congruence in the European Council must be found it is to be determined if national desires are discussed. Accordingly, those desires should be decided upon if the topic is vital to one member state.

In the EU-Turkey deal this congruence is visible through the fact that the EUCO made the deal mostly to protect its southern member states. As those are the states where the refugees come through first, threatening their way of life first. Thus, the local conditions were highly influential in constructing the deal for all the member states. In the Navalny case the congruence was not available, as the German government reacted before discussing it with the EUCO. The influence of the scapegoat in this principle is that the framing of the Russian government as a human rights violator made collective action in the EUCO fail.

The collective action failed because the scapegoat was framed in an intangible manner, with the state of democracy at risk. While the scapegoat as a threat to the European way of life, together with framing of Turkey as a tangible, safe third country (Poon, 2016, p. 1196) ensured that there was enough, but gradual, support for the deal.

4.1.3 The principle of collective-choice in institutions

The important aspect to decision-making is to understand the systems that are being used for voting. Which decision-making systems are used, is decided by the treaties for the European Union. Most “decisions are taken on the basis of a consensus” (McCormick, 2015, pp. 185-186), however, not all decisions are made based on a consensus. The other forms through which decisions can be made are a Qualified Majority Vote (QMV), or through unanimous decisions in areas that are determined to be of vital interest to certain, or all, states.

QMV means that there is a certain threshold, for when decisions made are passed. According to Bornstein (2003, p. 133) increasing contribution will be effective for solving

the free-rider problem. Thus, in the areas in which QMV is it will have less free-riders, as the costs of not contributing are high when it is likely that a decision will be passed.

The collective choice aspect in the case of Navalny's poisoning was difficult, as some member states deem democratic downslide in neighbouring states to be of vital interest to their own national security. Thereby, they have the right to veto, which troubles the decision-making. The Turkey-deal was agreed upon by the EUCO in a more informal way than usual (Smeets & Beach, 2020, pp. 147 – 148). Thus, this way of framing a scapegoat invites an informal and gradual decision-making, which ensures successful collective action.

4.1.4 The monitor principle

The EUCO is held accountable for its actions by actors external to the EU, the other members of the European Council, and ultimately their own domestic audiences. This again shows that in this case there are three levels to Putnam's (1988) two-level game. Thus, the heads of state should consider their actions in the EUCO for consequences on all three levels, this of course makes it more difficult to determine the best course of action. However, a positive effect is that it increases the number of levels on which the heads of state can be held accountable, ensuring that they will consider every possibility available.

Therefore, the third level in the EUCO's governance should prove to strengthen the collective action. This is shown in the Turkey-deal, which had lots of domestic support in Germany and the Netherlands, because of their significant Turkish diasporas (Batalla Adam, 2017, p. 52) and was agreed upon quickly because of the supportive actions of the German and Dutch governments (Smeets & Beach, 2020, p. 131). The scapegoat threat created a necessity to act, but not directly. That gave the EUCO space to negotiate and reach an agreement.

But opposed to this, the extra level could also weaken collective action. As is seen with the rapid German response to the poisoning of Navalny, which the German citizenry demanded. While citizens of other member states did not show such a haste with naming and shaming the Russian government. Thus, this again shows that a scapegoat can hurt collective action when the third, or domestic, level demands a quick response. In this sense the scapegoat's intangibility made sure that the threshold to respond was lowered, speeding up the reaction. Ultimately, this ensured the failure.

4.1.5 The principle of graduated sanctions

The third level establishes an extra dimension in which heads of state can be held accountable, and thus also in which they can be sanctioned. This extra level increases the number of options for graduated sanctions. A factor that hampers sanctions in the EU is sovereignty, which protects all member states. However, this also allows for a more diverse graduation of the sanction, as the member state must not be able to stop it with an appeal to its sovereignty.

The effect that the Turkey-deal had on graduated sanctions stems from the fact that in the deal there are multiple areas of cooperation between the union and Turkey (Rygiel et al, 2016, p. 316), which leaves space for sanctions of different degrees. This applies to both sides, the Turkish as well as the side of member states, thus there is a possibility for graduated sanctions. While in the response to the poisoning of Navalny within the EUCO there was little room for graduated sanctions for Germany. Because in this case the options were to go along with blaming the Russian government, and then condemning it in a stark manner as poisoning is a flagrant human rights violation. Or to go along with the Russian narrative of trying to blame anyone else. Thus, in this situation there was no room for graduate sanctions to get a change of behaviour.

With a tangible scapegoat, there are multiple viable and tangible solutions, which means that there can be graduated sanctions. While an intangible scapegoat requires intangible solutions, which makes the graduated scale impossible. As different actors interpret the intangible sanctions differently as they are intangible, thus open to interpretation.

4.1.6 The principle of conflict resolution

Conflicts within the EUCO are to be resolved by the council's president. As a part of his role, annexed in article 15 of the Treaty on the European Union, is to "endeavour to facilitate cohesion and consensus within the European Council" (Treaty on the European Union, 2016, p. 23). To ensure cohesion and consensus it is necessary to resolve conflicting opinions, or conflicts, between the members of the EUCO. Notwithstanding, the first president primarily functioned as a broker (Tömmel, 2017, p. 175), rather than a strongman that led the council. This means that the president functioned as a mediator between the heads of states that were against each other. The importance of this is that the president does not resolve problem top-down but uses bottom-up mechanisms. Thus, this is in line with Ostrom's focus on the importance of bottom-up cooperation. And this is also best for the

EUCO, because whenever the members are “national governments jealously guarding their sovereignty” (McGinnis & Ostrom, 1992, p. 31), which is the case for the member states of the EU, it is difficult but necessary to provide an arena in which conflicting actors can engage in discussion (McGinnis & Ostrom, 1992, p. 31).

Additionally, because the president lacks any decision-making power, as he does not have a vote, it does not appear as a threat to the heads of state. Likewise, the president is required to dispatch to the EP and account for the meeting (McCormick, 2015, p. 189). This establishes that the heads of state themselves do not directly account for their actions in the EP. Which ensures it is desirable for the heads of state that the president has a cheerful outlook towards them. Since the president converts their behaviour to the EP.

In the Turkey-deal the involvement of a bottom-up president is clear, as the assistants of the presidents “took control of the machine room proceedings” (Smeets & Beach, 2020, p. 147) to restrict member state involvement and thereby avoided conflict. Furthermore, the conflicts that did arise were quickly shut down by informal, or bottom up, discussions. With the German response to the Navalny poisoning the opportunity for informal and bottom-up deliberation was lost, as the wider public was involved. Thereby, the three-level game was altered, as the public level was more demanding and became the top level, which assured that informal, bottom-up, deliberation was impossible.

4.1.7 The principle of right to self organisation

The right to self-organisation is mostly focused on the positive influence it has on the congruence between local conditions and the rules applicable to that area (McGinnis & Ostrom, 1992, p. 19). The right to self-organisation is essential to ensure local cooperation and the use of specific, regional knowledge. The dangers to the right of self-organisation are present in three stages, again following the proposed third level to Putnam’s two-level game. The first danger to self-organisation is found on the international level, in the threat of interference by external leaders. The second level is between the European institutions, which might try to interfere with the council’s work if they do not agree with it. The institute most likely to do this is the European Parliament, as the commission is appointed by the EUCO, and the council of the EU consists of the ministers that are below the head of state in the hierarchy.

The third level that can try to interfere with the EUCO is their domestic citizenry, which is affected by the EUCO’s decisions and can have an influence through demonstrations

and voting behaviour. This level was seen in the Navalny poisoning as the German government was forced by its domestic audience to speak out against the action, which weakened the EUCO's collective action. Thus, the scapegoat had no positive effect on the domestic level for collective action. The intangibility of the threat, again, lowered the threshold to act for the citizens of Germany. Thus, the third level was involved which ruined the success of collective action.

While in the Turkey-deal the outside interference came both from the Turkish government and human rights organisation that did not believe Turkey was a "safe third country" (Poon, 2016, p. 1196). The internal levels cooperated as there were tangible and practical solutions and that helped the collective action to have informal, viz., bottom up, deliberations through which the deal was struck.

4.1.8 The nested-enterprises principle

The nested enterprises that exist in support for the EUCO are the COREPER 1 and 2, the council of ministers, and the advisors of the heads of state. The function of these supportive bodies is to prepare all the meetings and are thus influential in setting the agenda. But they also negotiate on a lower level to manage the details of wider decisions. As both COREPER 1 and 2 are permanent representatives the EUCO has a strong nested body in which their meetings are prepared.

However, in the poisoning of Navalny the German government ignored the nested-enterprise of the COREPER's as the government had to respond according to the demands of their own citizens. Thus, the demand of the domestic audience was too strong for the nested enterprises of the EUCO to discuss and solve the scapegoat of the Russian Federation.

In the Turkey-deal the nested-enterprise did work, because the assistants of the EUCO president collaborated with delegates from Turkey, the Netherlands, and Germany to get a deal done. Thus, the fact that the channels through which the negotiations took place were nested ensured that the deal made it through. If the scapegoat leaves the nested-enterprises room to do its work the probability for success is higher.

4.2 The influence of scapegoat theory

Scapegoat theory affects the design principles of Ostrom because it decreases the number of options the actors have. As anyone of the in-group who does not follow the in-group line will be seen as aiding the enemy. Therefore, only the options that clearly oppose or stop the enemy are feasible for the members of the in-group. This is seen in the European

Council in the Turkey-deal, the agreement that was reached because the influx of refugees had to be stopped. Even if this meant that Turkish citizens could more easily get a visa. The scapegoat, the refugee flow, ensured collective action within the EUCO because it was made essential for the entire union to stop the flow and it was clarified with whose assistance that could be done. In the poisoning of Navalny an actor that could aid to solve the problem was not present.

In the examples used above, the influence of the scapegoat was measured in each design principle of Ostrom. From this it must be acknowledged that a deeper investigation might be necessary for why these scapegoats did or did not work. Besides the fact that there is a difference in result with a tangible and intangible scapegoat. However, the benefit of this example is that it was made clear that informal, bottom-up, deliberation in the EUCO had a successful result (in the Turkey-deal). While the top-down reaction to a crisis was not successful, as Navalny is currently even in prison in Russia (“*Global human rights sanctions regime*”, 2021). Thus, also in situations in which a scapegoat can be framed it is beneficial to do so in a bottom-up fashion with tangible solutions, to ensure success. To do that in a bottom-up fashion it is important to have nested-enterprises, to ensure space for repeated consideration.

5. Discussion

The design principles brought forward by Ostrom are to a varying extent applied to the European Council. The principles of boundaries, collective-choice, conflict resolution, and the right to organize are found in different articles in the treaty on the European Union and the treaty on the functioning of the European Union (2016, pp. 19, 23, 51-53). While the other four principles are influenced by the three-level game that is present in the EU (Hubel, 2004, pp. 349-350). The application of a scapegoat affects the principles by altering the available policy-options, the options left when there is a scapegoat are either to oppose or to follow the line of the in-group (Bilewicz & Krzeminski, 2010, p. 242).

The influence of Ostrom's design principles on in-groups is that she argues that small and locally organised groups often are better in cooperating (Ostrom, Burger, Field, Norgaard & Policansky, 1999, p. 278), in the European Union the EUCO is a small group with similar characteristics to a locally organised group. The EU is primarily a forum for the member states to discuss political and economic cooperation (Treaty on the European Union, 2016, p. 22). In such a forum the lowest, i.e. local, level is that of the members with sovereignty.

Principles 1, 2, 3, and 8 taken together promote the usage of "strategic regions" (Andersen & Pierre, 2010, p. 219), as they define when, where, and how to cooperate. These regions are clusters of local organisations that share knowledge, which is essential for cooperation. In the treaty on the EU this is also concluded to be important for the council, as the EUCO must promote "sincere cooperation" (Treaty on the European Union, 2016, p. 22). An example in which this takes place are the shared German/Dutch tanks (Bennhold, 2019), which use Dutch radio hardware whilst the tanks themselves are German. This cooperation is a trial for a strategic region, and the battalion currently is still deployed in Lithuania as part of the "enhanced forward presence" of NATO (Derix, 2021). Thus, in the meantime it is a successful cooperation.

The three-level game (Hubel, 2004) in the EUCO is of major influence on the working of the EU. If this is considered, the third level can help to ensure more sustainable policies. Whilst ignoring the extra level might increase reaction speed, it has decreased the sustainability of the policy in the case of Navalny. This can be mediated by framing a scapegoat, which can be done also for a lamentable, rather than a guilty, group. That might even be more successful, as that is in the used examples. However, as that was a comparison of two cases the external validity is biased, which makes extrapolating the study difficult.

Moreover, the effect a scapegoat can be expected to have on the in-group is an important moderator for the success of blaming a scapegoat. In the post-WW II world it was the US-created Marshall-plan that successfully recovered and integrated the western European states, in economic and political sense, with its focus on “cooperation among the recipients” of the loans (Eichengreen, 2010, p. 3). The reason for the US to fund this project was a scapegoat, the spread of communism in Europe, again proving that a tangible threat to a way of life can be successful in gaining support.

6. Conclusion

Collective action in the EUCO is hampered by the factors that do not follow the design principles of Ostrom. In the EU this differs per subject, as the boundaries of European power are divided along various categories of competences (Treaty on the European Union, 2016, p. 51). This makes it vague for citizens of member states when the EU can act and when not, it hampers the democratic feedback for the EU. A workable solution to make it less vague for the EU citizens is to apply scapegoat theory to frame an event or subject in a manner that people have to decide to go along with, or oppose, the in-group. This can be done too quickly and by doing so it will not be successful, as it ignores the proper line of Ostrom's design principles. In a situation in which the EUCO can frame a scapegoat, whilst not creating mass-hysteria, it can be used to pressure opposing parties. Thus, the important aspect is to apply the scapegoat along the lines of Ostrom's design principles.

The European Council can have effective collective action in the areas in which they are perceived to have full-power. For that the manner of framing is important, as we have seen two separate ways of framing above. The refugee crisis needed to be stopped to ensure that the European way of life could continue, while simultaneously saving thousands of refugees. On the other hand, the framing of the Russian government that hurt its democracy ensured failure. The significant difference is that in the refugee crisis the EUCO could affect tangible change in the other involved actors, i.e., Turkey (*Implementing the EU-turkey agreement – questions and answers*, 2016), while in the Navalny poisoning the EUCO could not adjust the Russian governments intangible behaviour.

However short the examples applied to scapegoat theory are, they have a good overlap with Ostrom's design principles. Therefore, the addition is valuable and should be expanded upon. Further research in this sense could be directed at finding exactly what characteristics a successful scapegoat has, important is that this research should have external validity to be extrapolated. Other research could be directed at the other bodies of the EU, and then especially at the European Parliament as that is the other likely body from which collective action can spring.

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