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Paper  
*From Friend to Foe? Shedding Light on the Interorganizational Relationship between the EU and the Council of Europe*  
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Abstract  
Against the background of a growing number of international organizations (IOs) whose activities are increasingly marked by mutual interferences, this paper seeks to establish how international organizations behave in situations where they are confronted with organizational overlap. To what extent do overlapping competences lead to cooperation or conflict, and what are the conditions conducive to cooperation/ conflict between international organizations? Drawing on the literature on interorganizational relations, the paper constructs an innovative theoretical framework bringing together interest-based, organizational, physical and cultural factors that may have an impact on interorganizational cooperation or conflict. The empirical part of the paper analyzes the relations between two major IOs with overlapping competences in the field of human rights protection: the European Union and the Council of Europe.  
The empirical results, which stem from qualitative fieldwork, demonstrate the explanatory power of the theoretical framework. Based on a detailed reconstruction of how both IOs interacted in relation to several institutional and policy issues, the paper shows that interest-based factors are the most relevant for explaining the relations between the EU and the Council of Europe. More precisely, the biggest threat to cooperation turned out to be organizational self-interest. Despite similar policy interests in the protection of human rights, serious conflicts between both sides arose as soon as organizational self-interest was at stake. Processes of socialization and intra-organizational capabilities only played a secondary role. On the basis of these findings, I argue that cooperation between IOs is most likely when neither side considers the activities of the respective other side to put its own organizational survival at risk. As a consequence, the relations between similarly large and powerful organizations should be easier to handle in a cooperative manner than relations where a significantly larger and more powerful organization threatens to crowd out the other, inferior side.
Introduction

‘Fundamental rights at the heart of policy making’ formed the title of one press release sent from the newsroom of the European Commission in April 2012 (Commission 2012), illustrating the increasing prominence of fundamental rights within the European Union (EU). This fact is reflected, most importantly, in the Charter of Fundamental Rights of the EU, in force and legally binding for over two years now. With the ratification of the Lisbon Treaty, EU member states obliged the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of the Council of Europe (COE). To this end, the European Commission (henceforward: Commission) and the COE kicked off joint talks on the EU’s accession to the ECHR in July 2010. Two years later, technical negotiations have concluded and a draft accession agreement has been drawn up. However, the accession process is far from the finish line: The accession, based on an international treaty between all 47 COE member states, only enters into force upon ratification by all parties, which – this goes without saying – is a rather lengthy process.

The idea of EU accession to the ECHR did not appear out of the blue during negotiations over the Lisbon Treaty; on the contrary, it is part of ongoing and longstanding reflections and discussions dating as far back as the 1970s. At its core, this process asks the question of how to tackle the EU’s accession to the ECHR, while simultaneously implying the much broader picture of how to deal with the increasing overlap between the EU and the COE: The more competence the EU has gained over the last two decades, especially in the field of Justice and Home Affairs (JHA), the more urgent it has become to reflect upon the relationship between these two regional organizations that both deal with human rights in Europe. The Action Plan adopted at the so-called Warsaw Summit of the COE in 2005 recognizes this overlap in the legal field and stresses the need for increased cooperation (COM 2005: Chapter IV.1):

Considering the important contribution of the Council of Europe to democracy, cohesion and stability in Europe, we call on the Council of Europe to:
- strengthen its relations with the European Union so that the Council of Europe’s and the European Union’s achievements and future standard-setting work are taken into account, as appropriate, in each other’s activities; (emphasis mine)

Originally, however, the COE and the slightly younger EU (more precisely its predecessors) were founded as alternatives both aiming at European integration. They have run parallel for most of their existence, each within its very own field of activity and each forging different paths for integration. The COE, as the main European organization for the protection of
human rights, has fostered European integration through the protection of human rights, pluralist democracy, and the rule of law since 1949. The slightly younger EU, founded in 1957 (the term ‘EU’ is used to enhance readability, omitting the EU’s predecessors, namely the European Coal and Steel Community, the European Economic Community, the European Atomic Energy Community, and the European Community), took another road and tried to bring the European countries closer by focusing on coal and steel. Since then, the EU has grown in both its competencies and member states. At the present time, the EU is far from being the coal and steel organization of the 1950s, and through its development it intrudes into competence spheres of other European organizations. One policy field, among others, in which the EU has recently engaged, is the human rights field. While the EU had started combining trade agreements with human rights requirements as early as in the 1970s, it was only in 1993 that the EU adopted its first specific human rights norm, incidentally strongly resembling the COE criteria for membership: the so-called Copenhagen Criteria, which accession countries have to fulfill before becoming members of the EU. The EU’s interest in human rights has steadily increased from the 1990s onwards, the most visible consequences of which include – other than the Charter of Fundamental Rights of the EU (2000) – the Fundamental Rights Agency (2007), and in terms of staff restructuring, the new Commissioner post for Fundamental Rights (2009). Having exhausted the Common Market as a vision for further integration, the EU has been intrigued by human rights as new raison d’être and longs to portray itself as a human rights organization (Von Bogdandy 2000). As a result, the EU is eager to (retrospectively) construct a foundational human rights myth that would suggest that the EU and human rights are, and always have been, intrinsically linked (Smismans 2010).

This compels the COE, the previously exclusive regional organization in the policy field of human rights protection, to confront a new competitor now heavily involving itself in the COE’s core task. As a result, the EU and the COE now (partly) occupy the same policy space, and their relationship is a contentious one, a problem that has not yet been resolved. On paper, they like to picture themselves as complementary partners that reinforce one another and consequently improve human rights protection in Europe. Yet, the inflicted principles of complementarity (i.e. no parallel structures) and cooperation seem to remain an empty claim when it comes to practice, as states the to-the-point report by Jean-Claude Juncker (2006: 2) on the relations between the EU and the COE:
Although each has enriched the other, the two organisations remain at best a shaky team. Although each has borrowed from the other, they have never been able to make themselves permanently complementary.

How (international) organizations react when confronted with such organizational overlap, i.e. an intersecting mandate (overlapping competencies), possibly accompanied by a common membership, is the core interest of this research. An organizational overlap can either lead to conflictive situations such as turf wars and duplication of tasks, or can allow IOs to cooperate and strive for common goals. Starting from the organizational overlap, the central research questions are the following: Do overlapping competences lead to cooperation or conflict between IOs? What are the conditions conducive to either cooperation or conflict between IOs?

In order to answer the guiding research questions indicated above, the paper at hand looks into the issue of setting human rights standards, an area in which the overlap is most visible and in which the COE’s role is the most potentially challenged by the EU. The COE’s ‘membership increasingly overlaps with that of the EU and the EU has, by taking on greater responsibility in the area of human rights, strayed into the COE’s area of technical specialization’ (Stivachtis and Habegger 2011: 170) and threatens the COE’s role as ‘the’ standard-setter par excellence in Europe. From a geographical point of view, the study therefore focuses on the internal dimension: the human rights protection within the EU-27 (as opposed to looking at non-EU member states). Those interested in the external dimension, e.g. the joint programs between the Commission and the COE targeted at non-EU member states, may have a look at Brosig (2010).

The literature is divided into whether relations between the EU and the COE are expected to be cooperative or conflictive. Given the great number of member states (currently 47) and the sophisticated ECHR control system, the scenario of the EU replacing, or rather absorbing, the COE – “‘the” watchdog for human rights in Europe’ (Brummer 2010: 281) – is not very likely, at least not in the near future. Yet, one strand of the literature argues that the COE is rather skeptical about the EU’s approach towards the human rights field and sees the expanding leverage of the EU with partial disapproval. In this context, De Schutter (2007: 3-5) refers to the COE’s fear of marginalization and traces this fear back to the following factor: Due to the enlargement of the EU to 27 member states, the EU now forms a majority within the 47-member COE. As a result, the COE risks becoming a standard-receiver in cases for which the EU has taken legislative initiatives. In other words, no longer able to act independently, the COE often has to align itself with these new EU standards. Therefore, one
would expect the IOR to be conflictive. Another strand of literature argues that, while human rights form the core policy of the COE, the EU sees human rights only as a peripheral policy. In this line of reasoning, the EU does not threaten the COE’s position, and IOR will be cooperative (Brosig 2010: 15-6). This research will show which of the two arguments proves to be accurate for EU-COE relations.

The research at hand is innovative in several aspects that are of theoretical as well as empirical relevance. Its primary goal is to shed light on the IOR between the EU and the COE by generating and providing primary data on five empirical cases dealing with policy and institutional issues in the realm of human rights. For this purpose, 40 qualitative semi-structured expert interviews have been carried out and analyzed according to a qualitative content analysis. Additionally, the empirical research (undertaken in order to fulfill this aim) has the second goal of providing information on major trends in the development of the European human rights protection system, asking whether the COE’s fear of marginalization is justified and whether the EU has become an important standard setter. The third goal is to allow a better theoretical understanding of the relations between organizations, answering the question of which implications the present study has on our understanding of IOs in general. Therefore, the paper ultimately draws and incorporates conclusions regarding the latter two aims.

Given the empirical interest of this research, it contributes to the literature on the EU and IOs, IOR in general, and the human rights protection in Europe in terms of empirical focus. Although the current literature acknowledges the role of the COE within the European human rights protection system, it only scarcely subjects it to closer scrutiny, not to mention its lacking analysis of the interorganizational relations with the COE’s most important partner, the EU. The fact that the COE occurs, for the most part, only as a large footnote in the social science community and/or is absorbed under the heading ‘EU’, has different reasons: First, it might result from the fact that the COE tends not to hold too high of an opinion of itself and has a rather reticent attitude as opposed to other IOs, e.g. the EU. Second, the COE has acted very generously with regard to the EU, allowing it to hold its sessions in the COE Palais de l’Europe in Strasbourg and adopt the COE’s symbol (the COE flag adopted in 1955 shows 12 stars on an azure field) and its anthem (the COE approved the Ode to Joy as the European anthem as early as in 1971). Given the ‘blurring’ of the two IOs and the joint use of symbols, the public, the media, and even major scholars are confused and do not distinguish between the EU and the COE. The exception is law scholars, who have published extensively on the
COE in the past. However, the judicial analysis is often engaged in different empirical questions, i.e. the EU-COE relationship’s limitation to the two courts. The political science perspective at hand complements the (mainly judicial) analysis of the European human rights protection system by turning its attention to the question of how the COE reacts to the EU’s increasing engagement in human rights.

The remainder of the paper is structured as follows: The chapter below starts by putting forward the theoretical framework and constructing a model for IOR, justifying the case selection as well as the methodical approach. The paper then introduces the empirical results of the case studies: First, it descriptively shows instances of cooperation and conflict in the IOR. Second, it links the empirical results to the explanatory factors set up in chapter 2 and summarizes the main findings in a table. Third, it presents the empirical results against the background of the theoretical framework by scrutinizing the two different patterns of explanatory factors influencing IOR. The concluding chapter summarizes the main results and focuses on the broad implications of this research.

Theoretical Framework

Absent Theories of Interorganizational Relations

In the context of the steadily increasing number, importance, and complexity of IOs over the past decades, it is astonishing that existing political science literature fails to sufficiently address and explain interorganizational relations (IOR). IOR were largely neglected by theoretically informed scholars routed in international relations (IR), who considered the study of IOs as ‘the ugly duckling’ (Verbeek 1998: 11) within the discipline and bypassed IOs with the notion of ‘international regimes’ (Verbeek 1998: 11-3; Biermann 2008: 153). Particularly in the aftermath of the Cold War, one can see IOs widening in their scope and membership, and the policy space at an international level becoming increasingly filled with IOs. As a result, initially clear-cut arrangements between IOs on the question of who (unilaterally) deals with which policy issue have become blurred. In such complex settings ‘[t]here are few social problems that still can be dealt with, let alone solved, within or by one or a few organizations working alone’ (Hanf and O’Toole 1992: 165). As the number of overlaps between IOs has risen and is still rising, it becomes more and more important to ask how they interact. Especially in the light of scarce resources and constraints of empty coffers, one has to scrutinize whether these overlaps between IOs hamper the efficient use of their finances. Will organizational overlaps lead to a waste of resources, be it through turf wars or
duplication of tasks, or to pooling of resources as IOs combine forces in order to achieve their goals? Implicit in this argument is the practical assumption, which is – unsurprisingly – quite common among researchers dealing with IOR, that cooperative relations are more likely to lead to optimal (policy) outcomes than conflictive ones. However, from a market-oriented perspective, one could argue the opposite: The more IOs compete for resources and policy solutions, the better it would be for the states, since only those IOs that are successful in providing a specific service can survive (lower costs). At the same time, enhanced competition (for resources and policy solutions) improves the IOs’ responses to current challenges as competition spurs innovation, and as a result, the IOs are constantly trying to out-do each other. Applied to this paper’s focus on human rights protection in Europe, it is argued that cooperative relations are more likely to lead to better protection of human rights, since conflict brings forth conflictive norms and thereby the possibility of ‘forum shopping’, which means that actors (states) can select from each forum what suits them best.

Along with IR, it is possible that organization theory could also answer the question of which factors influence relations between IOs. Yet, for a long time, issues of an interorganizational nature were ignored by organization scholars (Evan 1966: 176). It was not until the 1970s that IOR became a topic worth researching, especially to those advocating the resource dependency approach, which suggests that IOs seek to accumulate resources via relations with one another. This research argues that the resource dependency approach offers one explanation as to why IOs engage in relations with each other in the first place, and is particularly adequate for analyzing networks (a multiplicity) of IOs and singling out the goods of exchange processes (money, expertise etc.). However, it is less suitable for analyzing dyadic relationships, and it does not explain what, or which factors, trigger cooperative (conflictive) IOR.

Given the above-mentioned research gap within the literature, one needs to look elsewhere in order to determine which factors influence the state of an interorganizational relationship. Managers make up one group that has long been preoccupied with IOR, since they have had to cope with larger systems and, for practical reasons, have needed to think about diverse internal and external factors faced when operating within larger systems. Therefore, IOR are tackled most importantly in the field of applied management studies and in the literature on implementation. However, the literature emerging on IOR from the 1970s onwards has been broad-ranging and heterogeneous. This is where this research comes in: Drawing on this fragmented literature, an innovative and coherent framework is constructed in Chapter 0,
bringing together interest-based, organizational, physical, and cultural factors that may have an impact on interorganizational cooperation or conflict. According to the research’s guiding thesis, the biggest threat to interorganizational cooperation is organizational self-interest, despite a shared policy interest.

**Constructing a model for IOR**

To recall, this research aims at identifying factors that influence interorganizational relationships. The challenge inherent in this research is filtering out the most important factors listed in the ‘broad ranging and heterogeneous’ (Oliver 1990: 241) literature. Based on this reasoning, it needs to be emphasized that this research does not claim to conceive a completely new theoretical model. In fact, the theoretical model is not built from scratch, but incorporates the existing literature. However, the merit of the model is to single out and combine factors in a way that allows for empirical research. The factors identified revolve around the following four complexes: interest (policy and organizational), organizational characteristics, socialization, and physical opportunity, and will be presented in the section below.

The first factor tackles the most obvious inducement for cooperation, shared policy interest (organizations pursuing the same goal) (1984: 492; O'Toole 2003: 237). It should be pointed out, though, that the common interest incentive is not understood as a tautology. If both IOs agree on what needs to be done, e.g. on the division of tasks or competence sharing, there is no need for cooperation, and instead a need for coordination. Consequently, this research project conceives common interest as the extent of shared interest in achieving a specific common, e.g. policy, goal. Following O’Toole and Montjoy, this research also considers two other forms of inducements for interorganizational cooperation: authority (an obligation for the organizations to cooperate) and exchange (organizations cooperate because they receive something in return). Regarding the first form of inducements (on this aspect see also Schermerhorn 1975: 849), one must add, though, that an authority (figure) across organizations is rare in practice (Hanf and O’Toole 1992: 172). Since in the case of the EU and COE there is no such authority that is capable of enforcing interorganizational cooperation between them, this research passes over this aspect. Within the framework of this research, exchange is, in contrast, treated as a part of the interorganizational cooperation (e.g. IOs exchanging information) and not as an independent factor influencing it. Following this reasoning, the shared policy interest factor is left as being the most important form of inducement for interorganizational cooperation.
Closely linked to the question of shared interest in specific policy goals is the question of (multiple) competing goals that pose a threat to the policy interest of one organization. One goal that possibly competes with shared policy interest is the organizational self-interest. On the one hand, organizational self-interest may take the form of an IO aiming at extending its own sphere of competence; on this note, scholars such as Downs (1967: 16) point out that ‘all organizations have inherent tendencies to expand’. Therefore, it is likely that in some cases organizations give priority to distinguishing themselves over cooperating with another organization. On the other hand, organizational self-interest may materialize when IOs feel threatened by other organizations; Halpert (1982) sums up the scholarly results on this issue by stating that specifically organizational leaders may perceive that cooperation does not only ‘threaten them in terms of loss or fragmentation of authority, but it also endangers their organizations in terms of loss of either total identity or program identity’. In cases of perceived loss of autonomy and turf, there is little likelihood for successful cooperation.

The second factor can be described as the organizational characteristics. Scholars such as Downs (1967: 50), Allison (1971: 79-80,164-6), and Scharpf (1978: 347) point out the need to decompose organizations into fragmented or multiple actors rather than treating them as unitary actors. Following Knoke (2008: 460), this research holds the view that ‘inside every organization are interest groups with their own frequently conflicting, organizational goals that may make an organization clearly distinguishable from an assumed unitary rational actor’. Since organizational units (departments) involved in the IOR are most often not fully detached from other units and/or cannot act independently for themselves, IOR research has to bear in mind the possible constraints arising from these complex settings. By treating organizations as multiple actors, it follows that the ‘complexity of joint action’ (Pressman and Wildavsky 1974: 87) – expressed in the number of actors and decision points – increases. To put it bluntly, the more actors involved, the more difficult the interorganizational cooperation; this of course this to intraorganizational cooperation as well.

The third factor that will be taken into account can be framed as the socialization factor, which splits into two interactive aspects: ways of seeing the world, and trust. First, since IOs are (and remain in spite of interorganizational interaction) independent and autonomous actors, ‘the differing routines and specialized languages, not to mention distinct ways of seeing the world’ (O'Toole 2003: 235) pose tremendous challenges to interorganizational cooperation. Following Barnett and Finnemore (1999: 719), one could also refer to it as the organization’s culture, as ‘an organization’s culture, understood as the rules, rituals, and
beliefs that are embedded in the organization (and its subunits), has important consequences for the way individuals who inhabit that organization make sense of the world' (Barnett and Finnemore 1999: 719). In order to better understand the respective other organization’s culture, common settings for communication are needed. According to O'Toole and Montjoy, (1984: 492), ‘organizations tend to develop routines, or standard operating procedures, by which personnel interact in regular and predictable ways to solve regular and predictable problems’.

Second, the ‘socialization’ factor looks at the individual unit, i.e. the persons involved in the IOR: A key topic in the literature, which strongly influences interorganizational settings, is trust (Bachmann and Zaheer 2008: 533). According to the contact hypothesis, this research assumes that trust can be fostered by interorganizational social interaction (Schruijer 2008: 424; Pettigrew 1998: 70), which is expected to ‘blur the boundaries between organizational units and stimulate the formation of common interests that, in turn, support the building of new exchange or cooperative relationships’ (Tsai 2002: 181). Informal social interactions might take the form of a joint lunch or a ‘good-natured drink’ after an official meeting. In the same token Ring and Van de Ven (1994: 95) argue that ‘in the temporal development of a cooperative IOR, social-psychological processes will create a separate set of pressures to preserve the relationship’. This of course applies only to situations in which assigned individuals do not change. Personnel turnover has the effect of restarting the development from scratch (Ring and Van de Ven 1994: 103-5).

The fourth factor, **physical opportunity** for interorganizational cooperation, alludes to the fact that the external environment as well as the existing internal capacities of IOs impact on the IOR. Based on Schermerhorn (1975: 852) and Egeberg (2003: 118), this research suggests that at the external environment level, the geographic proximity of potential partners is crucial to interorganizational cooperation. As technology (communication and transport) has advanced since the 1970s, the actual geographical distance might not be so important anymore, e.g. a good transport system facilitates interorganizational cooperation. Nevertheless, the proximity between actors remains a factor (e.g. it is expected to make a difference whether the actors are located in different cities or are on-site). At the intraorganizational level, there is the question of whether slack resources are available – and can be easily mobilized – to build and explore interorganizational cooperation (Schermerhorn 1975: 852; Mattessich et al. 2004: 27). On this note, scholars such as Mattessich et al. (2004: 12) speak of environmental characteristics influencing the IOR: ‘The group [of actors
involved in the IOR] may be able to influence or affect these elements in some way, but it does not have control over them’.

In conclusion, Chart 1 below summarizes the theoretical framework and sets out the factors that impact on the nature of the IOR, i.e. facilitating or hindering interorganizational cooperation. Although the factors are mutually dependent, it goes without saying that the factors are not assumed to be equally important; for example, the policy interest factor is expected to be more decisive in fostering interorganizational cooperation than the physical opportunity factor, which of course exerts influence but is rather seen as an intervening variable.

Chart 1: Factors influencing interorganizational relations – Kolb

![Chart 1: Factors influencing interorganizational relations – Kolb](image)

Source: Own compilation.

**Methodology and Data**

The paper is a small-N qualitative study of the relationship between the EU and the COE. From a geographical point of view, the study focuses on human rights protection within the EU-27. In order to uncover and explain which factors account for the state of IOR (cooperation/conflict) between IOs, it adopts a process tracing approach, which ‘attempts to identify the intervening causal process - the causal chain and causal mechanisms - between an independent variable (or variables) and the outcome of the dependent variable’ (George and Bennett 2005: 206). The concluding chapter engages in a discussion of whether and to what extent one can draw conclusions for the relationships of IOs in general from the results based on the EU-COE analysis. In terms of data collection, the study draws on qualitative field work involving semi-structured expert interviews as well as documentary research based on primary and secondary literature and official documents. The semi-structured expert interview considers experts to be the source of information; its advantages include its usefulness in
cases in which the decisions and actions that lie behind an event need to be established, which applies to the topic of IOR, and its potential to compensate for lack and limitations of documentary evidence. The series of 40 in-depth interviews involves, first, officials who are directly involved in the EU-COE relations and, second, members of NGOs, national administrations, and researchers who closely follow the behavior of the IOs from the outside. The analysis based on a qualitative content analysis (Mayring 2003) was conducted through the qualitative data analysis software Atlas.ti

Apart from the fact that this research focuses on the interorganizational relationship between the EU and COE regarding internal human rights policy, it needs to be established that this research follows scholars such as MacMullen (2004) and de Schutter (2008) in treating the EU and the COE as IOs. It goes without saying that the EU and the COE are of different natures, differing substantively in terms of institutional attributes – such as access to membership, policy coverage, the institutional apparatus, decision procedures and processes, and mechanisms to ensure output compliance – and financial resources at their disposal. Ultimately, the EU is partly a supranational arrangement, whereas the COE is predominantly an intergovernmental entity. Nevertheless, both are considered IOs. Within this IO-centered view on the topic, this research concentrates on the respective bureaucracies of the two IOs, while omitting the intergovernmental bodies as well as other actors that might play a role in the IOR, e.g. EU and COE member states. Accordingly, whenever this research refers to relations between the EU and the COE, this explicitly means relations between the Commission and the General Secretariat of the Council on the EU side and the Secretariat on the COE side. The idea of including the European Parliament as well as the Parliamentary Assembly of the COE was contemplated in the beginning, but abandoned due to pragmatic reasons (problems of access). Equally, the relations between the two Courts, the Court of Justice (EU), and the European Court for Human Rights (COE) are not part of this research. See Schecck (2005; 2007) for an extensive analysis of the relations between the two courts.

In order to find out whether the EU’s incursion into some of the COE’s core areas of competence fuels the COE’s fear of marginalization and, if so, if this fear is justified, this research analyzes the following cases: the establishment of the EU Fundamental Rights Agency (FRA) in Vienna, the negotiations regarding the joint cooperation agreement Memorandum of Understanding (MOU), and the IOR in the issue areas of data protection, fight against terrorism, and fight against Roma discrimination. Given that the FRA and the MOU are the two most important issues in the relations between the EU and the COE
regarding institutional questions, they are selected to be part of this study. With data protection, fight against terrorism, and fight against Roma discrimination, this research has chosen policy issues fulfilling two criteria – first, issues that *both IOs are engaged in contemporaneously*, otherwise there is no overlap; and second, issues that *are high on the agenda* of both IOs, conducive for interorganizational relations to take place – and offering an interesting *variance across policy field* (JHA and social policy), and *across time* (data protection starting in the mid-1990s, fight against terrorism after 2001, fight against Roma discrimination after 2004). It would be a massive incursion in the core competences of the COE if the EU was successful in capturing the standard-setting tasks in these policy issues. By analyzing these policy issues, this study assesses whether the fear of marginalization of the COE is justified. The below Table 1 names the cases for the IOR between the EU and the COE that this research analyzes.

Table 1: Cases and time frames of the research project

<table>
<thead>
<tr>
<th>Case</th>
<th>Relations</th>
<th>Policy field</th>
<th>Time Frame</th>
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<tbody>
<tr>
<td>FRA</td>
<td>Institutional</td>
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<td>2003 – 2009</td>
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<tr>
<td>MOU</td>
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<td>2005 - 2009</td>
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<td>Data Protection</td>
<td>Policy</td>
<td>JHA</td>
<td>1995 - 2009</td>
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<tr>
<td>Fight against Terrorism</td>
<td>Policy</td>
<td>JHA</td>
<td>2001 - 2009</td>
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<tr>
<td>Roma &amp; Travelers</td>
<td>Policy</td>
<td>Social policy</td>
<td>2004 - 2009</td>
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**Cross-case study results**

**Cooperation or conflict?**

Human rights are too important in the construction of Europe to justify one body (the EU) trying to reinvent the wheel. Likewise, they are too important for the other body (the Council of Europe) to stand on the past and not to recognize that the future is constantly being made. (Quinn 2001: 874)

This observation describes quite accurately the main problem in the IOR between the EU and the COE, namely the EU’s power and attempts to reinvent the wheel and the COE’s skepticism about the EU’s engagement in human rights. Speaking to this assessment, the chapter below, by bringing together the empirical results and the theoretical framework, identifies the interest-based factor as the primary factor determining the IOR between the EU and the COE. Before going into the discussion, the paragraphs below describe the full variance of the dependent variable.
The empirical case studies have shown both instances of conflict as well as cooperation in the EU-COE relations. **Confictive relations** involve differences in opinion that result in missing political support, such as hostile press releases and documents (e.g. FRA, terrorism), motivation of one’s own ‘lobby’ (e.g. national parliaments and member states’ politicians) and interventions in order to block the initiative of the other organization (e.g. FRA). Also, one can see complaints about the behavior of the counterparts on a personal level or organizational level (e.g. terrorism, data protection, general access of COE to EU meetings and documents). The terrorism case reveals a kind of ‘race’ for who can come up with a legal initiative first. Linked to this are discussions on duplication and reinvention of the wheel (e.g. Roma). Also in dispute is the question of the ‘Disconnection Clause’ with which the EU defies control of the COE convention system (e.g. terrorism).

As regards **cooperative relations**, the case studies have highlighted information-sharing through liaison offices and reciprocal representation. Nevertheless, the information-sharing process is criticized as being one-sided (e.g. COE cannot access restricted EU documents). The two IOs organize joint press conferences or initiatives (e.g. Roma), conduct joint projects (e.g. Roma) and conclude cooperation agreements (e.g. FRA, MOU). They also support each other politically, e.g. by referring to each other’s work or bearing out a convention (e.g. terrorism). The study emphasizes the importance of informal features of cooperative relations, as cooperation often depends on how well the counterparts get along with each other (which implies that relations are not institutionalized) (e.g. data protection). Moreover, informal relations might be more successful precisely because the institutional frameworks of the two IOs do not always support formal cooperation (e.g. Roma).

The findings show **differences between policy areas**: Cooperation between the EU and the COE is much more advanced in the JHA field than in the social policy field, in which the COE is merely named as one of the four or five most important actors. Also, specific coordination meetings between the EU and the COE are in place in the JHA field, highlighting the importance of the relations within this field.

**IOR and explanatory factors**

Bringing the empirical data in line with the theoretical framework, Table 2 below attempts to summarize the main theoretical results of the research study at hand. The attempt is to show which factors predominantly impact on which cases and account for which results (level of conflict). It goes without saying that, in order to achieve this objective, one needs to simplify matters, and therefore Table 2 cannot reflect the data exactly as they are. Thus, this table
highlights the determining factors for the cases analyzed and their effect, without implying that factors not listed for a specific case are nonexistent. In fact, this research did find instances of e.g. shared policy interest for the FRA and the terrorism cases, but the shared policy interest did not prevail for these cases, i.e. did not hold back the conflict. For the sake of completeness, it should be added that the socialization factor works in both directions: Socialization facilitates interorganizational cooperation, whereas the lack of socialization hinders interorganizational cooperation.

Table 2: Patterns of dominant factors influencing interorganizational relations

<table>
<thead>
<tr>
<th>Pattern 1: Highly conflictive relations</th>
<th>Pattern 2: Less conflictive relations</th>
</tr>
</thead>
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<td>Cases</td>
<td>Explanatory Factors</td>
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<td>Org. self interest</td>
<td>Complexity</td>
</tr>
<tr>
<td>FRA</td>
<td>X</td>
</tr>
<tr>
<td>Terrorism</td>
<td>X</td>
</tr>
<tr>
<td>MOU</td>
<td>X</td>
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</tbody>
</table>

The empirical data identify the interest-based factor (grey-shaded) as the most relevant for explaining the EU-COE relations. The interest factor splits into the shared policy interest and the organizational self-interest. On the face of it, the shared policy interest (e.g. protection of human rights in general or more specifically an issue area such as data protection) was given in all cases analyzed. Of course the extent of shared policy interest varied slightly from one case to another (e.g. there were some differences of policy interest in the terrorism case). However, it proves crucial whether the actors pursue organizational self-interest: Despite similar policy interests in the protection of human rights, serious conflicts between both sides have arisen whenever organizational self-interest is at stake. In particular, this was the case when the COE perceived the EU as intruding into some of its core areas of competence, thus threatening its organizational survival. Hence, if the organizational self-interest is high in one of the IOs, the IOR are most probably conflictive. If the organizational self-interest is low or not present at all, the IOR are most probably cooperative. In a nutshell, the theoretical results of this research show that Downs (1967: 16, 215) – who, as early as the 1960s, underlined the organizations’ inherent tendency to expand and the organizations’ sensitivity to ‘invasions’ of their core areas of competence – can indeed still be consulted for an explanation of a great deal of contemporary IOs’ behavior. Though not particularly highlighted by the above table, cooperation between the two IOs took place as well. However, it seems that first IOs must continuously overcome their organizational self-interest. Future research will show whether, and, if so to what extent, the weakness of the shared policy interest factor can be attributed to
the fact that ‘human rights’ have a strong positive connotation and both IOs – at least on the surface – support the protection of human rights.

The factors organizational characteristics (complexity) and socialization (trust) only play a secondary role, i.e. they only reinforce the main trend towards cooperation or conflict arising from the constellation of interests. The organizational characteristics factor (complexity) has a strong influence on institutional relations that are often characterized as politically sensitive and high-level. A higher value of complexity indicates a high number of actors/decision points and complex settings in which units involved in the IOR – to a greater or lesser extent – depend on other units. If the level of complexity is high, this factor increases the trend (of the interest factor) towards conflictive relations, as is the case with the FRA and MOU. Compared to the institutional cases, the present factor has a minor impact on the operational relations dealing with policy issues.

In contrast, the socialization factor has a strong influence on the (low-level) operational relations dealing with policy issues that are institutionalized, but not so strong an influence on the (high-level) institutional relations. Socialization indicates trust at the individual level between the counterparts involved in the IOR. Conversely, missing socialization indicates a lack of trust. If trust has been established, this factor strengthens the trend (of the interest factor) towards cooperative relations, as is, in part, true for the Roma and the data protection case. If trust is lacking, this factor increases the trend (of the interest factor) towards conflictive relations, which applies to the terrorism case.

The Table also displays the outcome (Pattern 1 and Pattern 2) – the dependent variable, which is conceived of as a continuum ranging from conflict to cooperation – as a dichotomy of highly conflictive and less conflictive relations. This strong simplification omits the question of whether the lack of conflict automatically implies cooperation. It should be added that conflict and cooperation vary not only over cases but also within cases during the observed time frame, a fact that cannot be accurately captured by the table. A high level of conflict can be observed in the FRA case, the terrorism case, and the MOU case; however, to some extent, all three ‘conflictive cases’ transformed into more cooperative situations over the analyzed time frame.

When recalling Chart 1, one notices that the fourth factor, physical opportunity, is not listed in the above Table 2. The results show that the environmental features and the intra-organizational resources do not have a direct impact on whether the relations are cooperative or conflictive. The staff involved in IOR cannot control these conditions, but must still cope
with these challenges (e.g. lacking resources), and thus this factor has an indirect influence on the extent of the IOR. Equally missing from the table is the first aspect of the socialization factor, the organizational culture, given the difficulty to analyze it on a one-to-one basis. This implies that several organizational cultures would exist within one organization.

The following section illustrates the patterns of dominant factors influencing IOR by examining the case studies and briefly reproducing the highly conflictive cases (FRA, terrorism, and MOU) and the less conflictive cases (Roma and data protection).

**Pattern 1: organizational self-interest and complexity/lack of trust**

In the FRA case, the terrorism case, and the MOU case one can see highly conflictive relations resulting from the IOs’ organizational self-interest and high complexity, or in the case of terrorism, the lack of socialization. The section below gives details on the cases belonging to Pattern 1.

When the EU decided the set up its own **Fundamental Rights Agency**, the COE took a critical, in part even dismissive, stance towards these EU developments. Although the policy interest – the protection of human rights – is beyond all questions, the issue in dispute is how to best achieve this aim. The views range from the idea that the more bodies tackling human rights the merrier it would be for human rights protection, to the viewpoint of diverting all funds simply to the COE in order to avoid duplication and parallel standards. The organizational self-interest of both IOs is evident: For the EU, human rights have a legitimating function, whereas the COE is driven by the fear of marginalization and jealousy of the FRA’s substantial budget. As regards the complexity, many actors are involved on both sides (and occasionally at different points in time) in the FRA case. These actors may not even be involved in the bilateral relations between the counterparts at the operational level, but may exert influence from the outside. On COE side, the then PACE President opposed the FRA and actively lobbied against its establishment, which not only confused the issue of IOR but even delayed and complicated EU internal negotiations. Also, the then COE SG issued hostile press releases hindering the establishment of a trustful cooperation. One can infer from this observation that, besides the involved counterparts at the operational level, researchers have to consider the behavior of leaders and notabilities in order to fully grasp the IOR.

The **terrorism** case reveals a kind of ‘race’ for who can be the first to come up with a legal initiative. Therein, one might ask whether one can observe different approaches to human rights issues (e.g. law enforcement vs. human rights approach). The data show that this is not the case. The COE Convention on the Prevention of Terrorism, in fact, goes very far in terms
of criminalization compared to other (previous) anti-terrorism treaties. What one can find, however, are differences of opinion on how to achieve the best human rights protection in Europe, e.g. whether the inclusion of a ‘Disconnection Clause’ or the EU Framework Decision, which basically transforms the COE consensus into an EU instrument, is needed. While emphasizing policy interest, the line of argument of both IOs actually reflects underlying organizational self-interest. Moreover, as in the FRA case, the COE SG issued hostile press releases hindering the establishment of a trustful cooperation. In the terrorism case, the so-called CATS meetings bring together the General Secretariat of the Council with the COE Secretariat, and were to some extent attended by the Commission. Although the issue of the Terrorism Framework Decision was often on the agenda in the meetings, conflict was not avoided. However, the conflict mainly arose between the Commission and the COE Secretariat. While the official dealing with terrorism in the COE Secretariat was the same for several years, the high staff turnover in the responsible Commission unit impeded the establishment of trust. Also, due to the principle of rotation, staff may deal with very different topics during their career in the Commission, while staff in the COE Secretariat often grows to be an expert in a specific issue area. This may lead to diverging assessments, especially during drafting processes.

In the MOU case, both IOs share the policy interest of the protection and promotion of human rights in Europe; there are only some minor differences of opinion regarding policy aspects. Similarly, both IOs are interested in formulating a Cooperation Agreement, namely the MOU. However, the contemporary FRA conflict influenced and complicated the cooperation in the MOU case. Additionally, the EU’s organizational self-interest had some effect on the binding character of the Cooperation Agreement: The EU wanted to maintain for itself as much room for maneuver as possible: ‘We are partners – we are not married’. The many different actors, the rotating presidencies on the EU as well as on the COE side, complicated the negotiation process. The IOR are particularly difficult when Russia holds the COE presidency or when COE officials with Russian origin participate. Furthermore, an initiative in the JLS area to establish a specific sub-MOU – with more binding mechanisms for cooperation and early warning for forthcoming legal initiatives – was not realized due to institutional barriers regarding a deepening of the IOR. DG RELEX, which had the function of overseeing IOR with the COE, again wanted to maintain as much room for maneuver as possible, i.e. ad-hoc cooperation instead of institutionalization, and opposed the plan.
Pattern 2: policy interest and socialization

In the Roma case and the data protection case one can see less conflictive relations. This research argues that, first and foremost, the high extent of shared policy interest (and the lack of organizational self-interest) account for this result. The socialization factor shows the importance of trust at the individual level for the IOR in these cases. The section below gives details on the cases belonging to Pattern 2.

In the Roma case, the policy interest of both IOs is congruent in most instances, due to the fact that the EU is building on the work of the COE. Yet, difficulties arise, given that the COE’s norms do not appear as ‘COE norms’ in these documents. Therefore, the COE’s organizational self-interest is at stake: The COE fears that the EU is reinventing the wheel and accuses the Commission of wanting to ‘own’ the process without letting the COE be part of it. Nevertheless, the COE tries to push the EU and FRA to do more on Roma, ‘in a way against their self-interest’ as the staff says. Returning to the policy congruence, this research identified instances of substantive disagreement, e.g. on the Italian Roma policy, between the COE and the EU. However, in this case, the COE’s counterpart was not, as is usual, the Roma unit in DG EMPL, but a DG JLS unit. A meeting mechanism was set up in 1999 on the issue of Roma, the Informal Contact Group, which ideally brings together representatives of the COE, EU, OSCE, UNHCR, and the World Bank in order to exchange information and coordinate activities. In recent years, participation of the other IOs has declined and the meetings have transformed into some kind of exclusive COE-EU meetings. However, a trustful relationship did not develop between the involved counterparts (DG EMPL and COE Secretariat). This may be due to the fact that, over the years, different EU units participated in the meetings (if they participated at all), which reflects that the former ‘accession country issue’ became an internal issue in 2004 and/or that the meetings themselves remained at a superficial level. In contrast, trust characterizes the relationship between the COE Secretariat and the FRA, with counterparts working together for years. Thus, one can see joint statements and projects resulting from the FRA-COE relationship.

As in the other cases, one can see policy congruence in the data protection case. In addition, both IOs have the same angle, since EU legislation is inspired by the COE Data Protection Convention. There are some conflicts that resulted from the organizational self-interest, yet they lay dormant and without eruption: First, the EU accused the COE of acting in a defensive way when the EU developed the first directive dealing with data protection in the mid-1990s. Second, the plan for the EU to become a member of the COE convention did not materialize.
due to the fact that non-EU member states (and implicitly also the COE Secretariat) feared that the EU would then ‘dictate’ data protection policy in Strasbourg. This case is a clear example of the importance of the individual level, namely the officials involved in the IOR. On the one hand, when there is ‘good chemistry’ between the counterparts, relations run smoothly (e.g. regular reciprocal representation, exchange of restricted documents); on the other hand, when ‘good chemistry’ between the counterparts is lacking, the IOR tend to lapse (e.g. EU, feeling superior, does not see the need to participate at COE meetings or follow COE developments, while at the same time the COE cannot access EU meetings nor documents). From this one can infer that relations are not institutionalized and depend – to a great extent – on the personal will of the counterparts.

**Conclusion**

Three messages emerge from the present analysis.

First, this research shows that interest-based factors are the most relevant for explaining the EU-COE relations. More precisely, the biggest threat to interorganizational cooperation has turned out to be organizational self-interest. Despite similar policy interests in the protection of human rights, serious conflicts between both sides have arisen whenever organizational self-interest is at stake. In particular, this was the case when the COE perceived the EU to intrude into some of its core areas of competence, thus threatening its organizational survival. Processes of socialization and intra-organizational capacities only played a secondary role, i.e. they only reinforced the main trend towards cooperation or conflict arising from the constellation of interests. On the basis of these findings, this research argues that cooperation between IOs is most likely when neither side considers the activities of the respective other side to put its own organizational survival at risk. As a consequence, the relations between similarly large and powerful organizations should be easier to handle in a cooperative manner than relations with a significantly larger and more powerful organization, which threatens to crowd out the other, inferior side. Even though the paper at hand did not particularly highlight it, cooperation between the two IOs took place as well. However, it seems that therefore IOs continuously have to overcome their organizational self-interest first.

Second, when having in mind a world of scarce resources, we would expect IOs to be skeptical about intruders. The data find in favor of the literature suggesting that the COE is driven by the fear of marginalization and that the **COE sees the EU’s increasing interest in**
the human rights field as a threat. The outcome had been rather conflictive. This view is bolstered by the asymmetry between the two IOs, the much greater power of the EU in terms of financial (and human) resources as well as autonomy over its member states, and political weight (e.g. through media attention). I argue that the COE rightly fears marginalization, given the steadily increasing activity of the EU in the human rights field. Accordingly, one might, perhaps provocatively, conclude that the EU – from the COE’s point of view – turned from friend to foe as the EU.

Third, the EU more and more attempts to establish a human rights policy on its own and the empirical cases analyzed in this research have shown the EU’s attitude towards human rights clearly changing over time. This development is accompanied by the retrospective set-up of a foundational EU fundamental rights myth and free-riding on the reputation of the COE (Smismans 2010). Already at the turn of the millennium, Simitis (2001) classified these ‘human rights steps’ as the EU’s slow, but clear, shift from an economic to a political union. Von Bogdandy (2000: 1337) attempts explaining this development by pointing out that with the common market being exhausted as a vision for further integration, the EU is searching for a new raison d’être, and human rights provide an intriguing prospect.

To conclude, this section provides an outlook of the future development of the EU-COE relations. As the EU goes on with its standard-setting activities, one might wonder what will be the long-term future task of the COE? Will the COE remain the main guardian for the protection of human rights and keep setting human rights standards for Europe or will its role be limited to non-EU member states at some point in the future? I argue that the answers to these questions, to some extent, depend on the COE itself, i.e. whether it will be able to realign and position itself for this new development. In order to better keep up with the EU, the COE would need much more resources (financial and human) and media attention. This is what the COE is clearly lacking. In order to make the COE ‘more politically relevant, effective, and influential’, the new COE SG Thorbjørn Jagland introduced a major reform in January 2010 with the aim of revitalizing the COE as a political body and innovative organization, concentrating on a few core areas of competence, and developing a more flexible organization, both visible and relevant in Europe (COE 2011: 3-5).

Besides from this ambitious undertaking, which is currently underway, the COE already has some strengths that give the COE the edge over the EU: First, due to the fact that staff within the COE stays for a longer period of time on a specific post, COE personnel often has more
expertise than EU staff. COE staff grows to be an expert, so to speak. In joint meetings, this leaves EU personnel astonished by the knowledge of their counterparts. Second, EU officials are also astonished by the big ‘lobby’ of the COE. On the one hand, it is the member states that inform, support, and reclaim the COE’s involvement in EU activities. On the other hand, it is personal advocacy of some of the EU officials themselves, who worked for the COE before switching to the EU and/or have a close relationship with the COE. They refer to the COE’s *acquis* in EU documents, organize joint meetings, and involve COE staff in the drafting process of legal initiatives. Accordingly, in order to gain standing vis-à-vis the EU, the COE would need to focus and rebuild on these strengths.

However, what complicates a balanced IOR between the two IOs is that they differ in their self-competence and appearance. One can describe the COE as being an honorable and highly qualified, yet not very powerful organization (Zikmund 2008: 919; Petaux 2009). The EU, on the other hand, is very powerful and this power comes with an attitude, i.e. Brussels feeling strong enough to ultimately handle all agendas on its own. It is probably for this reason that past attempts to enforce a stronger interorganizational cooperation ran off into sand (Ettmayer 2008: 1196). It remains to be seen in the future whether the new attempts to bring EU and COE closer together will ultimately be successful. For the time being, it is already evident that the recent developments in the IOR between the two IOs – such as the MOU and FRA – have helped, at least, to increase knowledge and raise awareness of each other.
References


