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SMALL STATE STRATEGIES TO INFLUENCE THE EU'S DECISION-MAKING PROCESS. THE CASE OF THE REGULATION ON A FRAMEWORK FOR THE FREE FLOW OF NON-PERSONAL DATA AND THE ESTONIA'S PRESIDENCY IN THE EUROPEAN COUNCIL

Master's thesis

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I hereby declare that I have compiled the paper independently

and all works, important standpoints and data by other authors

has been properly referenced and the same paper

has not been previously presented for grading.

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ABSTRACT

This work provides an overview of some of the possibilities for small states to influence the European Union's decision-making processes during the Presidency of the European Council. The case of the Regulation on a Framework for the Free Flow of Non-Personal Data in the European Union and the Estonia's Presidency in the European Council is analysed. The study answers the question, what were Estonia's strategies, as a small state, during its Presidency of the European Council to influence the European Union's decision-making process when discussing the Regulation on a Framework for the Free Flow of Non-Personal Data in the European Union.

In order to give an answer to this question, a combination of Tallberg 2004 and Grøn and Wivel's 2011 methodologies on the strategies of the small states are used. Additionally, the time framework of Smeets and Vennix 2014 is used to divide the life of a file guided by a Presidency into logical steps.

In order to contextualise the decisions made by the Estonian Presidency, eight civil servants at different levels of Estonian public service were interviewed for this study in addition to the document and literature analysis.

It was shown in the study that the goals and the strategies of the Estonian Presidency of the European Council changed depending on the stage the regulation was in. It changed from the awareness raising State as a Norm Entrepreneur strategy to a compromise seeking State as a Self-Interested Mediator strategy.

Keywords: small states, European Union, Presidency, digital, strategies, influence

Introduction

Despite the fact that interest towards small states has risen since the period of mass-decolonisation in the 1960s, the concept of a small state is still poorly defined – it is often conditional and dependent on a research question. (Panke, 2015; Raadschelders, 1992; Maass, 2009). Researchers argue whether small states should be defined using quantitative parameters such as territory, population, gross domestic product, and military capacity or go beyond quantitative criteria and concentrate on specific advantages of small states: strength acquired in certain contexts or the disadvantages in other ones. (Thorhallsson 2012, 139)

Additionally, the ability of a small state to influence decisions on multilateral levels has been studied widely, both on global (e.g. the United Nations (UN)) and regional (e.g. the European Union (EU)) levels. However, there is no consensus on whether or not small states can play an essential role in forming the wide-scale policies. Some researchers argue, small states are weak and cannot generate enough power to compete with bigger players as they lack material resources (Nasra, 2011, p. 164; Grieco, 1988). Whereas, the bigger states can easily change the rules of the game. (Keohane 1971, 162-163) According to the realism school of thought, the decisions at the international level are prepared by the larger states and formally adopted all other actors - there is not much choice for the others (Nasra 2011, 164; Grieco 1988). Opposing scientists say that there is a way small states can influence wide-scale policies. They can use their normative powers, i.e. their ability to generate and spread norms and values, as well as set or change normative standards. (Björkdahl 2008, 136) The size of public administration in small states is usually not big enough to cover the whole range of global issues. This pushes small states towards strategic prioritisation and development of fine knowledge on chosen topics. Small size and flat hierarchical structures allow small states to be more flexible than their larger counterparts, which often helps them to bring important topics to the table more efficiently and perform "niche diplomacy". Niche diplomacy refers to a country's ability to prioritise topics according to its interest or advantage and its ability to become a leader in a few of those most valuable areas. (International Peace Institute, 2014, p. 16) With enough know-how, smart prioritisation, and strategy used pushing a home agenda on a multilateral stage is possible for small states and has been successfully performed by some (Thorhallsson, 2012; Björkdahl, 2008; Mosser, 2001; Kronsell, 2002). Examples of small states being successful at the international level include Sweden in ecology, and Luxembourg in the financial sector. (Neumann & Gstöhl, 2004, p. 5).

In order to overcome the challenges highlighted by the realist school of thought, small states usually try to act through international organisations' grounds, in which, they are afforded greater equality than they usually have. (Neumann & Gstöhl, 2004) In international organisations, small states can achieve a position that is disproportionate to the size and the abilities of their administrations. (International Peace Institute, 2014)

Similar to other international organisations, the EU offers needed protection of the small states' interests. The embedded rules of equality save them from open protectionism, discrimination of exports, financial complications, and soft security threats from the outside. (Grøn, et al., 2015, pp. 243, 252) The EU is unique in the level of economic and political integration of its member-states, as well as the coordination mechanism used to govern the system. (Kronsell, 2002) In this safe environment, the European small states can use several available platforms to express their ideas and interests at the European level and global level. (Grøn, et al., 2015, pp. 243, 252)

In the EU there is no single actor, nor a group of actors, that is strong enough to exercise power in all policy domains (Nasra, 2011, p. 164); however, one of the governing mechanisms allows every member state to guide the Union through the decision-making process as a "first among equals". That is, all member states participate in six-month rotations for the role of the Presidency of the European Council. This is a unique situation for the member states. It is a chance to not only participate in the Council meetings, but also to chair them. (Nugent 2006, 203) This role gives every member state an opportunity and a responsibility to be a broker, external representative, and an administrative manager or leader of the European Council. (Tallberg 2003, 2). This is a once in every 14 years (in the case of 28 member states) special status within the EU bureaucratic system that opens up opportunities for small states to wield influence that they may not have had otherwise.

In the latter half of 2017, Estonia ascended to the Presidency of the Council of the EU for the first time. Consequently, Estonia chaired most of the working groups and committees in the Council, while also assuming responsibility for the evolution of all filings of future laws in the EU. As a self-proclaimed "digital-nation" and a leader of e-government solutions, such as i-Voting and universal digital ID for its residents, Estonia had an agenda of promoting e-government policies and raising an awareness on the importance of digital files (e-Estonia, 2018). 'A digital Europe and the free movement of data' was explicitly outlined as one of the four priority spheres of

Estonian Presidency. The regulation on a framework for the free flow of non-personal data was highlighted as one of the most important files during Estonia's term. (EU2017EE 2017)

Studies focused on Europe, usually take a population of 10-15 million as a threshold for defining a small state; which means that all states apart from Germany, the United Kingdom, France, Italy, Spain and Poland are considered small. (Thorhallsson, 2012, p. 136) This is the definition applied in this study as well. Due to its smallness and horizontal digital agenda outlined in its National Programme, Estonia was chosen as a case study for this thesis.

This research centres on the ability of Estonia, as a Small State, to influence the decision-making processes of the EU during the state's Presidency in the European Council. Specifically, *what were Estonia's strategies during its Presidency of the European Council to influence the European Union's decision-making process when discussing the regulation on a framework for the free flow of non-personal data?* The results of these strategies are not immediate and may appear in the long term. For this reason, this work focuses only on the Republic of Estonia's attempts and the choice of strategies to influence of the EU's decision-making processes, and not the degree of their success - as those considerations will become more evident over time.

This work is organised into five sections. Section 1 discusses the role small states play in the European Union and elaborates on the possibilities of the small state Presidencies to influence the decision-making process of the Union. Section 2 describes the theoretical approach taken in this work to analyse the case of the Estonian Presidency and the Regulation on the Framework for the Free Flow of Non-Personal Data in the European Union. Section 3 gives an overview of the Estonian case. Section 4 describes the methodology used to contextualise Estonian strategies used when dealt with the free flow of non-personal data regulation. Section 5 analyses the Estonian Presidency's strategies and attempts to influence the EU Council's decision-making process.

1. ROLE OF SMALL STATES IN THE EUROPEAN UNION. THE POSSIBILITIES OF THE PRESIDENCY TO INFLUENCE THE COUNCIL'S DECISION-MAKING PROCESS

1.1 Role of Small States in the European Union and their bargaining abilities

The strict organisational rules of the EU save small states from open protectionism, discrimination against exports, financial complications, and soft security threats from the outside. The EU eliminates the "survival problem" of the small states. (Grøn, et al., 2015, pp. 243, 252) Moreover, the balance between big and small states in the EU has been taken into consideration throughout its development. The strong institutions (Commission, Parliament, and Council) were established to counterweight different interests and keep the power balanced between the states. (Grøn & Wivel, 2011)

Although the Union offers great procedural and institutional protection mechanisms for the small states, it does not fully protect them from power asymmetry. Unlike other international organisations, the EU has a very high level of economic and political integration of its member states. It is also coordinated differently: there is no central authority in the system (Kronsell, 2002) and the member states are not equal because of their differences in voting weight (Wivel, 2010, p. 16). The policy-making in the EU takes place in networks and consists of a range of parallel processes. (Kronsell, 2002, pp. 291-292) Policy-making in the EU happens on multiple levels of bargaining and negotiations. The multi-level system is also influenced by a variety of processes like states pooling their sovereignty, discourse of integration, spillover effects and path dependency. The relationships between different actors are what matters the most. (ibid.)

Small states are usually more dependent on EU integration and are less able to influence the network-like functioning process of the Union than their bigger counterparts due to structural imbalances. (Wivel, 2010, p. 16; Thorhallsson & Wivel, 2006) The weighted voting system connected to the population sizes of member states is a problem for small nations. Small states have a lesser number of votes than average in the EU (Panke, 2015). In practice, that means they need to cooperate with a larger number of states to get their ideas across and form majorities or

blocking minorities (Grimaud, 2018, p. 24). Additionally, in most of cases, due to the population size small states have less administrative capacity than bigger ones. (Panke, 2015) This results in smaller delegation sizes, limited ability to build up policy expertise and broad networks of contacts with other member states and institutions. (*ibid.*) Furthermore, small states usually suffer from budgetary constraints. Therefore, there is less margins for trade-offs in order to secure policy deals (Grimaud, 2018, p. 24). As a consequence of these structural imbalances, the bargaining leverage of small states is limited.

After the Lisbon Treaty went into force in 2009, the position of the small states and their bargaining abilities were further decreased. Firstly, the Lisbon Treaty has decreased the independence of EU's Commission by introducing elections of its President by the Parliament (Grøn, et al., 2015). The Commission has traditionally been the protector of the small states' interests. Small states have been relying on the Commission in many questions because it is technocratic, independent, collegial and pursues the "general interest" of the Union. It also has provided small states with expertise in the areas where they may lack it. An elected president has brought danger of greater politicisation of the institution. (Grøn & Wivel, 2011)

Secondly, the Treaty of Lisbon has changed the voting procedure in the Council. Now qualified majority voting can be used almost in all spheres of policy-making; prior to this policy change, unanimous vote was a common practice. During unanimous vote, all the states need to achieve consensus on a decision and, therefore, enjoy equal weight. When the method of qualified-majority voting is used, every member states' vote weight is connected to the country's size of population. Because of this, small states are now in a relatively weaker position compared to their status in unanimity vote. (Grøn & Wivel, 2011; Thorhallsson & Wivel, 2006).

Thirdly, the treaty made it easier to cooperate informally and *ad hoc* on intergovernmental areas, like security. This allows for a greater ability for cooperation between big and powerful states, and has the potential to leave the smaller nations behind (Grøn, et al., 2015a; Grøn & Wivel, 2011)

Fourthly, the Parliament's participation in the law-creation processes has grown with the Lisbon Treaty. Increasingly issues are decided according to the co-decision procedure, which is now called the ordinary legislative procedure. The ordinary legislative procedure involves the Council and the Parliament as equal decision-making bodies and requires the approval of both institutions on the legislative piece. Small states have a weaker position in the parliament, due to its approximate proportionality to the population of the member states. Therefore, greater

involvement of the Parliament diminishes the powers of small states in the EU. (Grøn & Wivel, 2011)

1.2 The Possibilities of the Small State Presidency to Influence the Council's Decision-Making Process

In the safe environment of the EU, small states can concentrate on the policies that are of particular importance for them and express their ideas and interests both at the European and global levels. State governments are particularly strong in the European system; much stronger compared to the Commission and European Parliament (Grimaud, 2018, p. 14). Therefore, the European Council is the institution in which member states can push for their interests in the most efficient way. One of the most opportune occasions for promoting is the Council's Presidency position: a rotating half-year presidency of almost all the bodies of the European Council gives access to the union's agenda-shaping for its beholder. (Tallberg, 2003)

The main tasks of every Presidency are (1) arranging and chairing most ministerial formations and lower level meetings of the Council, (2) mediating consensus-building for initiatives and seeking to accommodate possible sensitive interests of the member states, (3) ensuring continuity and consistency of policy development while setting priorities for the better functioning of the Union, (4) representing the Council internally when dealing with other EU bodies (Parliament and Commission) and externally when representing the EU outside its borders. (Quaglia & Moxon-Browne, 2006, Nugent 2006, 203-205, Thomson, 2008, p. 594)

After the introduction of the Lisbon Treaty, the rotation of the countries is arranged into three state groupings, or TRIOs (previously known as troikas) (Nugent, 2006, p. 203; Batory & Puetter, 2012). Countries forming a TRIO set an 18-month long joint agenda that helps identify the issues Presidencies are going to deal with during their terms, and provides a longer vision for the Union. (EUR Lex, 2018) Additionally, the Lisbon Treaty has reduced the political powers of the Presidency. The treaty introduced the positions of Council's President and High Representative for Foreign Affairs. That changed the ability of the Presidency to deal with international issues and shifted the Presidency's focus to the "low politics". The President and the High Representative chair the highest formations of the Council: the European Council and the Foreign Affairs Council respectively. Moreover, they have the power to represent the Union internationally (Thorhallsson & Wivel, 2006; Grøn & Wivel, 2011; Quaglia & Moxon-Browne, 2006)

Research on the influential powers of the Presidency is divided. Many researchers argue, that the Presidency is a neutral position or even "an office without power". That is, the Presidency lacks policy initiating powers and cannot be perceived as an executive power. That power is given to the Commission and the member states without any privileges to the Presidency. (Thomson, 2008, p. 595; Tallberg, 2003) Secondly, the Presidency inherits the largest part of their agenda from their predecessors. It is said, there are only between 5-10 per cent of issues that are influenceable. (Tallberg, 2003) Thirdly, there are often force majeure situations at the national, European, and/or international levels that are unpredictable and need immediate attention of the Union. They can force the Presidency to change its focus from the National Programme to concentrate on topics of current interest of the Union. (*ibid.*) The possibilities to prioritise national agenda over the Union's ones are scarce. Fourthly, institutional control and "peer-watch" is strong in the EU. The Presidency faces criticisms if it tries to overstress its home agenda at the expense of the collective. (*ibid.*, p. 4). Fifthly, Enlargements have made the mediation role of the presidency even more complex: there are a lot of conflicting interests to accommodate. As a consequence, it has reduced the political powers of the presidency. (Quaglia & Moxon-Browne, 2006).

There are some, who disagree with the perception of a powerless Presidency. They argue that the office of the Presidency gives a privileged position to its holder. The member state holding the office is usually seeking to satisfy national preferences within the formal role it is given. (Tallberg, 2003; Tallberg, 2004; Thomson, 2008) Firstly, the Presidency has considerable control over the frequency of Council's bodies meetings, their agenda, and the conduct of their meetings and, therefore, can increase or decrease the speed of the legislative cycle. Secondly, the Presidency has greater access to the processes of the EU and the top civil servants of the institutions. This provides the Presidency with an ever-greater network within the institutional structure of the Union. Thirdly, government officials get to represent the EU in several local and international events. This grants them greater prominence in the media, and they are able to transmit their views to a larger audience. (Nugent 2006, 205) Fourthly, despite every member state's right to lobby the Commission, the Presidency is "the first among equals" and enjoys the special relationship with it. This special relationship is especially important if the Presidency wants to influence the policies of the first pillar: policy areas where only the EU can legislate and member states have limited powers. These are policies on customs, competition rules, monetary policy, trade, and marine plants and animals (European Commission, 2019a). Fifthly, the Presidency takes the lead in the informal institutional processes and practices. The Presidency can influence existing Council's structures and possibly create new ones (also informal ones); for example, the prior Presidencies

have done so by introducing new Council configurations. (Tallberg, 2003) This is not opposed, as there is a certain demand for brokerage in the Council. The Presidency is expected to help to find compromises between the conflicting positions of member-states. Finally, in case of a number of possible solutions, the Presidency is always tempted to choose the one that fits its home strategy. Possession of privileged asymmetrical information on parties' preferences, gathered through the enlarged network, and procedural control supports it. (Tallberg, 2004, p. 1000)

The smallness of the country in the office brings in an additional layer of the Presidency's advantages and disadvantages. The typical challenge small states face is the burden of double representation at the meetings. As the administrative resource is very scarce, it is complicated for small states to fill up all the needed positions in all policy areas of the EU (Thorhallsson & Wivel, 2006, p. 663). During the Presidency, the lack of expertise on all of the European policy issues created by the small administrative capacity, typical for the small states, is especially visible. They rely on the Commission's competence in many cases. (Grøn & Wivel, 2011) For the same reason, unexpected local or international events change the course of the Small State Presidencies drastically. They need to concentrate their resources in a newly appeared sphere and may not have any ability to deal with previously planned issues anymore. (Thorhallsson & Wivel, 2006)

The advantage of the limited use of administrations forces Small States to collaborate with EU institutions, especially General Secretariat of the Council and therefore their institutional networks are stronger (Quaglia & Moxon-Browne, 2006, p. 362). It has been noticed before, that stronger ties with EU institutions are beneficial for the success of a Presidency (*ibid.* p. 353). Furthermore, small states are considered better mediators because they have a less national interest to defend and are perceived as honest brokers. There are no possibilities for the Small States to use objective powers. Thus, they are more likely to aim for a consensus and less likely to undertake unilateral initiatives. (Quaglia & Moxon-Browne, 2006, p. 362) The prestige associated with the role of the Presidency is especially valuable for the small states. It is a rare opportunity for them to get wide media attention towards their views on almost every policy area. (Thorhallsson & Wivel, 2006)

2. THEORETICAL APPROACH TO CASE ANALYSIS

There are several aspects one needs to take into account in order to be able to recognise and analyse the strategies used by the Presidency to influence the decision-making process of the EU. Firstly, it is important to know the Presidency's goal – what is it that they want to achieve regarding particular regulation. There needs to be an understanding of whether that regulation already exists, or is a completely new piece of legislation that needs to be created. Secondly, one should know the key players who can facilitate the Presidency's goal and, therefore, need to be targeted. Thirdly, the possible ways to approach the actors need to be defined. Finally, a timeline of the EU's decision-making process needs to be determined and divided into the logical steps in order to be able to track the progress of the file. The aforementioned mentioned goals, actors and approaches to influence them should be viewed through the prism of these logical steps. Due to the EU's legislative procedures, where different actors step in at a different time (European Parliament, 2019), it is probable, that the choice of strategies, approaches, and actors will differ depending on the timeline period.

To find out the goals of the Presidency, Tallberg's 2003 theory on different ways to influence the EU's agenda during the Presidency is used in this work. Influence is usually equated to the ability to introduce new issues to the agenda – i.e agenda-setting power. In Tallberg's view, influence should not be limited to that. He distinguishes between three forms of agenda-shaping:
- *Agenda Setting* – the Presidency can exercise the powers of shaping the agenda by focusing on problems that are otherwise neglected and enjoy so-called problem formulation prerogative
- *Agenda Structuring* – as the time from when an issue gets to the agenda and when an actual decision is taken is long, the power to emphasize or de-emphasise certain issues is very important. The Presidency has the power of procedural overlook, that is the key in the agenda-structuring. Using this power, the Presidency sets the pace for issue handling – making it go faster by scheduling more meetings or slower by not reserving too much time for the discussions
- *Agenda Exclusion* – the Presidency can influence the decision-making process by not taking any decisions in the areas not comfortable for the Presidency. In order to exercise this power, some dossiers can be either "forgotten" or openly blocked.

For each of the goals the Presidency decides to achieve on certain legislation, Tallberg provides several approaches the Presidency can use. Although Tallberg's framework was done before the Lisbon Treaty was ratified, most of his points are still valid; some of them, however, are not. After the ratification of the Lisbon the foreign affairs policies were transferred under the responsibility of the Highest Representative for Foreign Affairs. Presidency is not able to influence it as much as before (Grøn & Wivel, 2011).

Tallberg's suggested approaches to agenda influence are:

Agenda-shaping	Agenda-structuring	Agenda-exclusion
Raising awareness on the preferred issues before the start of the Presidency	Defining frequency of the working-group level meetings	Excluding issues from the agenda
Tackling the issue in the National Programme that is being put forward before the Presidency	Deciding on whether or not organise informal meetings	Lobbying the Commission not to come out with certain files
Choosing the themes of the informal meetings	Deciding on the agenda of meetings	Presenting impossible compromises
	Deciding on the voting method	
	Being able to achieve faster agreements with the Parliament during trilogues	

After the goal is known, there should be an overview of the players the small states should be aware of that can facilitate the influence of the EU's decision-making process. Grøn & Wivel 2011 highlight the most important actors and the ways the Presidency needs to interact with them in order to get a plausible result (Figure 1). Depending on the choice of interactions, they group them

into strategies. The strategies Grøn and Wivel describe, are state as a lobbyist, state as a self-interested mediator, state as norm entrepreneur.

The State as Lobbyist - in order to utilise this strategy, small states can apply their knowledge of a specific area and act similarly to corporate lobbyists. This includes providing the right institutions with expert knowledge, knowledge of the encompassing European interests and knowledge of encompassing domestic interests. Usually, it means the state should act before the legislation has been drafted by the Commission or before it has been presented to the Parliament.

The Commission and the Parliament are the best to be approached in this case due to their severe need of outside knowledge and limited administrative capacity. The Commission enjoys the prerogative of legislative drafting and therefore needs constant expert views and opinions. The possible approach to the Commission lobbying can be a provision of seconded national experts (SNEs) to strategically chosen parts of the Commission. This way the knowledge may be transferred from the member-state to the Commission and the member state can receive an up to date information on Commission's plans regarding the topic member state is interested in.

In order to lobby the Parliament, the rapporteurs should be approached. As the most part of the agreements is reached in the first reading, rapporteurs have a lot to say in the wording of the legislation. The Presidency can influence whoever is chosen to be the rapporteur by providing them with the expert knowledge and the knowledge of the domestic interest groups. In addition, a country can target the process of getting the "right" rapporteur elected. In this case, the membership in a large political group is advantageous as well as the expertise of an individual MEP.

The State as Self-Interested Mediator - small states have an advantage of being seen as honest brokers. The bigger states tend to use their vetoing powers and other methods of legislation shaping more often. Small states can, therefore, be trusted by other member states to promote the issues of the general interest. Usually, these kinds of issues are "low politics". These are general policies and grand strategies – something no one feels is interfering with their local priorities.

To create this kind of a "trust network" the Council, Council Secretariate, the Commission, administrative level civil- servants of member-states, SNEs should be targeted. The administrative capacities of the mentioned units can be linked to the Presidency ones an put to work to achieve the "common goal".

The State as Norm Entrepreneur - this strategy concerns the state being the "best" in a certain area. With its own example, the state can set an ideational basis for changing the institutional environment or specific policies. For this strategy, the focus and prioritisation of specific policies or issues are especially beneficial. In addition, playing into dominant discourse (majority favourable) or becoming the benchmark in a particular policy area (identifying "right" or "desirable" behaviour) is the key.

For this reason, the Council and the Parliament should be targeted. The Presidency needs to be able to recognise the dominant discourse in both decision-making bodies. In addition, it is valuable for the Presidency to stay close to the Commission. The Commission owns a lot of information on all the issues of the member states and the policy areas. Having a good contact can enable reciprocal information exchange.

	The State as Lobbyist	The State as Self-Interested Mediator	The State as Norm Entrepreneur
Actor Possible approach	**Commission** Provision of SNEs	**Council** Creation of trust networks in the organisation	**Council** Recognition of the dominant discourse
	Parliament Targeting the rapporteurs. 1) Being able to influence the choice of a suitable rapporteur 2) Lobby the one already elected	**Council Secretariat** Creation of trust networks in the organisation	**Parliament** Recognition of the dominant discourse
		Commission Creation of trust networks in the organisation	**Commission** Getting information to recognise the dominant discourse
		Administrative level civil-servants of member states Creation of trust networks in the organisation	

		SNEs Creation of trust networks in the organisation	

Figure 1 Strategies, actors, approaches. (Grøn & Viwel 2011)

As can be seen, Tallberg's and Grøn and Wivel's approaches partially overlap and support each other. Depending on the goal and the strategy, the chosen approaches may be similar or complement each other. Combination of the approaches that can be taken to achieve the Presidency's goals discussed in both of the frameworks and the list of actors in Grøn and Wivel's work allows for a deeper contextual analysis of the Presidency strategies of influence. For this reason, the combination of both theories is necessary to achieve an adequate overview of the context and strategies used.

The reality is that it is almost impossible to go through the full legislative process during one Presidency term. The average duration of the common legislative procedure from Commission proposal until a signature is 22 months (ca 4 Presidency terms) (European Parliament, 2016a). For this reason, the abovementioned framework of actors and approaches needs to be incorporated into a timeline relatable to the Presidency. There should be a clear understanding of what is the status quo of the regulation by the time the Presidency gets it and to what state can it be matured by the time the Presidency's term is finished. For this reason, the timeline of a Council mechanism a successful Presidency needs to go through provided by Smeets & Vennix (2014, pp. 1441-1442) is used (Figure 2).

Chair (t0)	Chair (t1)	Council (t1)	Chair (t2)	Council (t2)	Chair (t3)	Council (t3)
Assesses external and internal environment	Formulates ambitions and decides on role(s)	Assesses Chair's ambitions on dossier	Attempts to guide and steer internal debate	Encourages or discourages approach taken	Proceeds towards the political level	Agrees to or blocks decisions suggested

Figure 2; A mechanism of presidential success. (Smeets and Vennix 2014, p. 1441)

During the first step ('T0') the presidency is planning its work and assesses the external and internal environment. Planning usually starts long before the official start of the Presidency term – at least one year before the date.

At 'T1', the Presidency formulates its priorities and ambitions in certain areas. The Presidency waits for the reaction of other member-states.

At 'T2' priorities and ambitions are turned into actions. This is mostly done at the Working Party and Committee level. The Presidency uses agenda-shaping and brokerage powers and pushes the legislation through the Council. Presidencies have two options to do it. It can follow the standard operating procedures or draw extraordinary attention to a matter. Other delegates will obviously try to influence what is discussed in the Working Parties.

At 'T3' a presidency has the last opportunity do re-decide on its course. Presidency makes a decision based on the previous feedback and its own ability to take risks on whether or not it should take the issues to the political level. The member states will have to decide whether they will go along with the suggestions. (Smeets & Vennix, 2014, pp. 1441-1442)

The mechanism described by Smeets and Vennix concerns only the Council. It is important to have a detailed look of it as the vast part of Presidency activities is held there. However, in order to analyse the Presidency's strategies to influence the decision-making mechanisms, it is important to keep in mind the wider picture. In order to get the full picture, the interactions with other institutions, especially the Commission and the Parliament, are important. The Commission enjoys the prerogative of legislative drafting and holds the files before they reach the Council. After the negotiations on the file are finished in the Council, the Presidency plays an important role representing the Council during trilogues with the Parliament.

It is probable, that the choice of strategies, approaches and actors will differ depending on the timeline period. Thus, each time period should be analysed separately following the road depicted in **Error! Reference source not found.**. The goal should be identified for each period, after what according to the actors and approaches involved the strategy should be distilled.
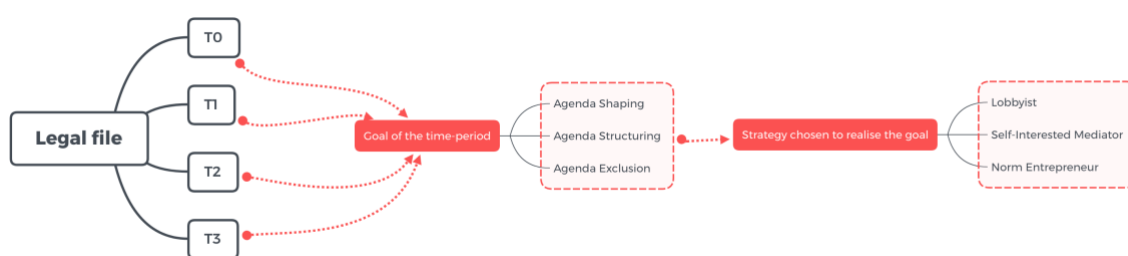

Figure 3 Road of the analysis

3. ESTONIA – A SMALL STATE'S DIGITAL PRESIDENCY

3.1 Estonia – a Small Member State of the European Union

Estonia can be considered a small state. As of 1 January 2019, the population of Estonia was 1 324 820 people (Statistics Estonia, 2019). Only three countries among the EU member states have smaller populations: Cyprus, Luxembourg and Malta.

Estonia applied to become an EU member state in 1995. The previous admittance of Sweden and Finland was an important factor for that due to Estonia's strong trade relationships with these countries (Kasekamp, 2013). Estonia was a 'good student' of European integration. The accession negotiations began in 1997. Estonia managed to complete needed free-market reforms quickly, opened a number of new Embassies in European countries, and expedited the process the best it could. (Kasekamp, 2013) Their wish for a strong integration into the wider system of Western countries did not stop with accession to the EU. In 2010, Estonia became a member of the Organisation for Economic Co-operation and Development (OECD). The following year, the official currency of the state was changed from the kroon to the euro thanks to strict budgetary policies Estonia adopted. Even though the change happened in the middle of the eurozone crisis, Estonia was eager to complete the process. By 2011, in terms of membership in international organisations, Estonia became one of the most integrated countries in Northern Europe. (Ehin, 2012)

Unfortunately, due to their attempts to fit in and deferring from argument, Estonia was put in the group of "most inactive states" in day-to-day negotiations. (Panke, 2010) One reason for their perceived inactivity could be the small size of public administration. Small state's public administration usually needs to perform the same functions as the bigger ones but with less personnel available. There are not many possibilities for specialisation; civil servants usually perform multiple functions at the same time. (Randma, 2001) This is also true in Estonia. The challenge of smallness was especially evident during the accession process to the EU. Estonia needed to adopt European legislation and create a structure in the administration that could support the European processes, but they lacked specialists. The lack of administrative capacity and specialisation were the main constraints in the accession process. (Ehin, 2012)

On a positive note, Estonian public administration has a relatively flat hierarchy, strong interactions between civil servants and politicians through informal networks; both of which allow for quick communication between different layers and makes the system very flexible. (Randma, 2001)

When the new Presidency-rotation cycle was discussed, Estonia made the strategic choice of assuming the Presidency at the very end of the cycle. It was feared that the small state administration was not prepared to take up this role. (Kasekamp, 2013) The Estonian presidency was scheduled to happen in the first half of 2018 in TRIO with the UK and Bulgaria. Due to the will of the United Kingdom to leave the EU, the decision was made to move the Presidencies forward. On 26 July 2016, it was announced, Estonian Presidency would take place in the second part of 2017. (European Council, 2016)

The preparation for the Estonian Presidency period started unusually early. Estonia's Presidency Preparatory Commission was created on 24 May 2012. The commission consisted of the key representatives of various ministries, the Government Office of Estonia, and the Estonian Permanent Representation to the EU and chaired by the Secretary of State. The main goal of the commission was to create the Presidency's action plan, including the planning of the personnel, security, logistics etc. (Riigikantselei, 2012) The first Action plan was confirmed by the Government in 2014. (Riigikantselei, 2016) Following the decision, the number of workers was enlarged in the Permanent Representation and in the capital in line with the Presidency Personnel Strategy[1].

3.2 Estonia's Digital Presidency

The Estonian Presidency of the EU brought a national legacy of long-standing digital interest to the office and focused on digital issues. Estonia named itself a Digital Presidency. (Politico, 2017)

Estonian investments into cybernetics began in the 1960s when Estonia was still part of the Soviet Union. By the 1990s - in concert with independence movements - the political support for Information Communication Technology (ICT) implementation on a governmental level was already prominent. In 1993, the government finalised the National IT strategy that also included a

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[1] Eesti Euroopa Liidu Nõukogu Eesistumise Personalistrateegia 2016

special IT department formed in central government with a separate budget. Since then, e-government technology has been continuously advancing. The Estonian government introduced X-tee, a digital system that still connects most of the government databases and allows efficient and secure movement of data between different governmental authorities, a mandatory eID, i-voting in local, Parliamentary and European elections, and e-signature that is legally equalised to the traditional forms of contractual endorsements. (Kitsing, 2011, pp. 5-6; Kalvet, 2007) The distinguishing point for Estonia is that all governments, regardless of their political views, were supportive of the evolving e-government solutions. (Kalvet, 2007; e-Estonia, 2018; Kitsing, 2010)

Estonia has come to hold relatively high positions in e-government rankings through the years. The most recent examples are 16th place in the UN e-government development index ranking (UN, 2018a), 1st place in Barclays digital development index (Barclays, 2016), and 2nd place in the EU digital and society index in public services (European Commission, 2018). Moreover, some international bodies that deal with digital issues are located in Estonia. For example, the European Agency for the operational management of Large-Scale IT Systems and The NATO Cooperative Cyber Defence Centre of Excellence.

Additionally, Estonia actively shares its know-how with other nations. To this end, the e-Estonia Showroom, a governmental unit, and the e-Governance Academy – a joint initiative of the United Nations Development Programme, the Government of Estonia, and open society Institute - are located in Tallinn. Their purpose is to tell the story of Estonian e-government success and to create a transfer of knowledge in the areas of e-governance, e-democracy, and cybersecurity. (e-Governance Academy, 2018; e-Estonia, 2019)

Estonian Government Office was responsible for the coordination of the country's priorities. The priorities have been confirmed both in the EU Coordination Unit and the Cabinet (Estonian Government, 2017). It was planned so, in order to rise the importance of the issue internally and focus both the civil servants and political level on the Presidency (Riigikantselei, 2016).

Ahead of its term in the EU's Council, Estonia explicitly outlined its ambitions regarding the promotion of digital services and methods in its Presidency Programme (EU2017EE, 2017b). Not only was the whole chapter on Digital Europe and Free Movement of Data included into the programme, but e-solutions were focuses in each of the four chapters as well. This has made

"Digital" a truly horizontal issue of Estonian presidency. Digital solutions were described as the ones that can help the European economy to become more open and innovative. IT solutions for businesses administration simplification, e-publication VAT standardisation were in focus when entrepreneurship was discussed. In the sphere of security, e-solutions for the common border, asylum seekers and Schengen information systems as well as joint criminal records and e-evidence were highlighted. The promotion of e-government and e-services for better governance by Estonia was specifically mentioned. In the chapter for social issues, Estonia highlighted the importance of teaching digital skills and incorporating them into education programmes. The future of work and digitalisation were also mentioned as priorities. In the case of agriculture, the use of digital soil data was proposed in Estonian Presidency Programme. (EU2017EE, 2017b)

In the TRIO programme[2] Estonia incorporated its digital ambitions too. Advancement of the Digital Single Market was discussed as one of the biggest priorities for the Presidencies.

To support the national Presidency Programme and the TRIO programme, Estonia prepared a separate Digital Programme in the EU coordination body of Estonia. The Digital Presidency was planned to be organised around three pillars: digital policy, digital events, digital legacy. Estonia's goal was to "realise the benefits of a digital society for every European". The Estonian Digital Programme talked about two main goals Estonia as a Digital Presidency was ready to take up. Firstly, it would reduce the amount of paper documents in presidency activities. Secondly, it would promote the use of electronic identity in the work processes of both the Council Secretariat and the Presidency. Estonian Presidency had a strong focus on leaving a legacy for future Presidencies in form of digital tools to work with (Presidency gateway, digital signature etc.). (EU2017EE, 2017)

The proposal for regulation on a framework for the free flow of non-personal data in the EU was one of the most important files during the Estonian Presidency (EU2017EE, 2017b). Widely mentioned in the Presidency Programme and supported by a number of other documents that will be discussed later, it became the core legislative piece in Estonia's digital agenda.

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[2] Taking Forward the Strategic Agenda. 18-month Programme of the council (1 July 2017 - 31 December 2018) 2017

4. METHODOLOGY

In addition to the document and literature analysis, to contextualise the decisions made and the paths chosen, civil servants of Estonian public service have been interviewed for this study. Different level civil servants were involved into the interviews, so that different perspectives could be represented. This included personnel who dealt with "big picture" during the presidency: overall prioritisation and strategies as well as horizontal implementation of digital strategies (EU Secretariat at the Estonian Government Office); workers of the Ministry of Economic and Communications of Estonia, who dealt with the regulation on the framework for a free flow of non-personal data; Estonia's Permanent Representation to the EU workers who were coordinating the strategies and advising the experts at the place; and experts participating in meetings of working-group discussing the free flow of non-personal data regulation. In addition, local representation of European Commission gave their view to the process and commented on the relations between the Commission and the Presidency. The SNE to European Parliament and European Council shared their thoughts on the role of SNEs in the Presidency's strategic planning. The full list of interviewees can be found in the Appendix I.

All interviews were carried out by the author. The interviews were held in April-May 2019 and each lasted approximately for 1-1.5h. All the interviews were voice recorded and transcribed. Afterwards, qualitative coding was done: structuring the information into the categories. The categories were formed according to the actors the Presidency was interacting with. Information for each actor was divided further into four categories according to the timeline discussed in the Section 4. The schematic overview of the structure is:

- The Commission
  - o T0 – Before the Presidency
  - o T1 - Presidency priorities are announced
  - o T2 – Chairing of the working groups
  - o T3 – Political level confirmation
  - o T4 – Trilogues with the Parliament
- Commissioner Ansip
- The Council
- The Council Secretariat
- Member states
- Trio Partners

- The Parliament
- SNEs

There were several potentially problematic points to consider when analysing these interviews. The first problem was the choice of the respondents. The author of this research has personal connections in this sphere, as she has worked in the Presidency preparation body herself. There is a danger that the personal connections can influence interview selection choices – i.e. speak only to the people that the researcher has an easy access to and ignore those whom are unfamiliar. To overcome this problem, the snowball method of sampling was used. That is existing respondents recommend future subjects whom they deem as the most valuable for the research: the ones who would help to get full picture of the studied phenomena. This way, it was possible to use the personal connections in order to get the easier access to the interviewees as well as get to know other important figures the author was unaware of before.

The second problem was that, biased information. As the prospect interviewees are the parties of the events themselves, it may be difficult for them to give neutral and realistic explanations of what has happened and why some decisions were preferred over others. As this was the first Estonian presidency, the event can be sometimes, over-romanticised and presented as a heroic effort of a small nation being in charge of the EU. This problem will be tackled by asking the same questions from all the interviewees and, therefore, getting the "average" opinion on the issues.

The next issue was the lack of official and available documentation to track the informal processes happened between the Estonian Presidency, member states and other European institutions. In order to understand them, the interviews of the direct participants were necessary. The lack of documented provable information was resolved by asking interviewees to comment on possible "facts" that were acquired from previous interviews.

Another interview related problem was the consent of the subjects and the security of data. As the interviewees are and were top-political and administrative actors, not all of them were willing to disclose their thoughts publicly. For this reason, the interviewees are not referred to by their names when referenced in the text. Their names were randomly changed with the letters from A to H in order to ensure their confidentiality. Despite of not willing to disclose their names next to their thoughts, all except two interviewees gave the consent to the general disclosure of their names. The names of the interviewees can be found in the Appendix 1.

5. DISCUSSION ON THE ESTONIAN CASE

In this section, the Estonian Presidency case on a Regulation of a Framework for the Free Flow of Non-Personal data in the EU will be structured and analysed according to the model presented in Section 2.2.

5.1 T0 - Initial Assessment of the External and Internal Environment. Choosing the Goals of the Presidency

The Presidency's priorities were chosen according to the existing Estonian Policy for European Union 2015-2019[3], the state of the Union, and by taking into consideration the political will of the parties in the office (interviews A, D, E). The digital agenda had a strong political push to be included in the priorities by both the Prime minister's parties (the Estonian government changed on 23th November 2016 right before the Presidency, making the case of the Presidency being prepared and executed by different governments) (interviews A, D, E; Riigikantselei, 2019).

Both national and TRIO Presidency Priorities were confirmed without the wider conciliation with other member-states and TRIO partners Bulgaria and Austria. There were no special priorities coordination mechanisms in place during the TRIO programme development. (interviews A, D, E).

Estonia had ambitions to coordinate new legislation during its presidency (interview A, D, E). As a regulation initiated during the Estonian Presidency, the framework for the free flow of non-personal data in the EU was chosen to be developed. There were several reasons for this.

Besides the fact that it was in line with Estonian digital interests, the free flow of data (terms free movement of data and the 5th freedom are also used) was not new to the EU. It was previously mentioned, in the context of open access movement for the Research data (OpenAIRE, 2019), it was a part of Commission's Digital Single Market objectives (European Commission, 2019), it was highlighted in several researches and public consultations conducted by European

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[3] Eesti Euroopa Liidu Poliitika 2015-2019

Commission (IDC and Open Evidence , 2017; European Commission, 2016; European Commission, 2017a), communicated to the European Parliament[4] and introduced as a new additional basis for the functioning of the EU by Estonian President Mr Toomas Hendrik Ilves in his speech to the European Parliament on 2nd February 2016 (European Parliament, 2016). Moreover, the regulation was mentioned in the Commission's working programme, where it promised to release the draft in 2016[5]. The Commission, however, did not do it.

Additionally, in 2016 Estonia had made a statement on the free flow of non-personal data regulation by joining a letter sent to the Commission and the Presidency at the time, the Netherlands. In a letter signed by 14 head of states, member states asked for the free flow of data across the Union and the countering of localisation initiatives. (Fioretti, 2016) The letter was a strategic step for Estonia to speak up on their position before their Presidency began (interview H, A).

This policy was considered to be aligned with the country's priorities, popular among the 14 member states, and was, therefore, suitable to be pushed by the Presidency (interviews A, C, D, E).

Building the needed institutional infrastructure to pursue the goals

From an institutional infrastructure point of view, the digital agenda was prepared with the help of Estonian Permanent Representation to the EU. The office has tracked all the digital files mentioned in the Commission's working programme. It included the ones already released and the files that were supposed to be released by a certain date. Looking at this, Permanent Representation made a forecast of the files that may land on Estonia's Presidency table. The Permanent Representation revised the files in the middle of the Maltese Presidency. This way, the forecast was kept up to date and Estonia was aware of the files coming. (interview C, H).

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[4] COM (2017) 9 Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions "Building a European Data Economy"

[5] COM (2015) 192 communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions a digital single market strategy for Europe. "A Digital Single Market Strategy for Europe". p 4.1

Additionally, in order to coordinate the digital files among the Estonian civil service and ensure the horizontality of the issue, a special digital file coordination unit consisting of the representatives of all the ministries, Estonian Central bank and Estonian Parliament was created by the EU Coordination Unit (interview E). The special digital file coordination unit was responsible for the prioritisation of the digital files among all the ministries. Every ministry was supposed to highlight digital-related files in their area of competence. After the files were known, decisions were made on the financing of the digital file related events. The events were financed centrally – ministries got additional funding for these purposes. As a result, the digital component was found in all aspects of European policy-making. With this Estonia showed other member states that digital is a truly horizontal issue and is worth the Union's attention. (Interview E)

The fact that Mr Andrus Ansip, Vice-President of the European Commission and Commissioner for the Digital Single Market, is Estonian, was a great advantage in the ability to work with digital files, especially the ones related to the digital single market. Mr Ansip used to be the longest serving Prime Minister of Estonia. He held the office from 2005 to 2014. The interviewees confirmed this made the communication with the Commissioner and his office easy, flexible and fast. In fact, there were no special structures created to stay in contact. The communication happened ad hoc. (Interviews C, D, E) The contact was used to grade the attitudes at the Commission towards the free flow on non-personal data regulation (interview E). This way, the Estonian Presidency got a faster feedback on its moves. This synergy with Commissioner Ansip's cabinet could happen also because the goals of the two parties were in line with each other. The Commission had promised in its Digital Single Market Strategy to come out with the regulation on the free flow of data in 2016[6] but did not do so. As the term of the Commission would end in May 2019, it was important for Ansip to facilitate the work on the files (interview E).

For the time of the Presidency, two SNEs were sent: one to the European Council, and one to the European Parliament. The SNEs were important information points in both institutions. According to the interviews, they were not used for lobbying purposes, but, rather, facilitated the mutual understanding between the institutions and the Presidency. (Interviews E, F)

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[6] COM (2015) 192 communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions a digital single market strategy for Europe. "A Digital Single Market Strategy for Europe". p 4.1

Additionally, some civil servants were sent to Brussels, to work at the Permanent Representation, already a couple of years in advance of the presidency. This made it possible for the social networks to be formed while working on different files and helped to get important information regarding different-member states during the Presidency (interview A, E). During the presidency, Permanent Representation played a big role in creating informal meeting opportunities for different stakeholders (member states and institution representatives) (interview A, E).

The time-period of external assessment ended on 29 June 2017, when the country officially announced its priorities. (Estonian Government, 2017). However, the free flow of non-personal data regulation was not new to the EU: Estonia chose to facilitate its development at the point when the Commission has not come out with the draft yet. Therefore, the goal of this period was agenda shaping – introducing new legislation to the Union's agenda. In order to make it happen, Estonia raised the awareness on the issue, in included it in the Presidency's Programme. Estonia has used its connections to the Commission and facilitated the talks by showing the importance of the issue by its own example: Estonia joined the letter sent to the Commission in 2016 on the free flow of data issues. This way, Estonia recognised the dominant discourse of the Union. The letter has shown that there is a large support for this legislation among the member states. Using the good relationship with the Commission helped the Presidency to identifying the "desirable" behaviour and get the fast feedback on its moves. To sum up, the Estonian Presidency tried to identify the dominant discourse and joined it, therefore, the Estonia used the strategy of the State as a Norm Entrepreneur.

5.2T1 – Ambition Formulation and Importance showcase. Defending the Views

The Estonian Presidency started on 1 July 2017. Estonia began its preparation activities to lift the importance of the free flow of data regulation and raise the issue in the Union's agenda. It appeared initially that the regulation Estonia wanted was not supported by all the member states. (Interviews A, B, D, E, H).

According to the interviews, the "fifth freedom" slogan was a good method to attract attention, but was also harmful in a way. Some member states were afraid that Estonia was planning to open up discussions on the treaty of Rome. (interviews E, D) In order to be able to move forward, the Estonian Presidency needed to change the rhetoric. (interview E)

There was no clear understanding among member states what the free flow of data was, why it was needed, and what are the consequences of not implementing the change were. In addition, the general understanding was that the General Data Protection Regulation (GDPR) should have been enough to cover all the data concerning issues. Because of the lack of understanding between the member-states and European institutions, the European Commission was hesitant to come up with a regulation proposal. (Interviews A, B, C, D, E, F)

In order to facilitate the process and demonstrate the importance of the issue, the Estonian Presidency came up with a Vision Paper on the Free Movement of Data in June 2017[7]. In the paper, the Estonian Presidency created the common understanding of the phenomenon of the free flow of non-personal data that made it distinct from the areas covered by the GDPR, and highlighted the problems free movement of data regulation should solve. It also focused on unjustified localisation restrictions, clear rules for the data access, and the once only principle for the cross-border exchange of the public administration data. Additionally, the Presidency ordered an analysis on the issue. That analysis was done by the Lisbon Council. It explained the need for free movement of data, highlighted the bottlenecks of current legislation, and potential scenarios for the use of free data flow (Lisbon Council, 2017). These works made it possible for all the parties to understand, what the Estonian presidency meant when talking about the free flow of non-personal data and why the new piece of legislation is needed. (interviews E, A, B)

To bring this issue to the political level and stress its importance for the Presidency, the digital single market conference on the free movement of data, and informal meeting of competitiveness ministers were organised in July (EU2017EE, 2017a). It was a strategically crafted step to raise the issue high on the agenda immediately at the beginning of the Presidency (interviews A, E). At the conference, MIT professor, Mr Pentland, were presenting the top-level civil servants and the ICT ministers on the importance of the issue. At the press conference, after the informal meeting of competitiveness ministers, Mr Ansip, Commissioner for Digital Single Market, said that they achieved "[…] big support for the free flow of data initiative […] much bigger than earlier" (Ansip, 2017).

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[7] Vision Paper on the Free Movement of Data 2017

Tallinn Digital Summit was held in late-September in order to further support the name of the digital Presidency, gather the highest political support for Estonian agenda, and push the Commission to come up with the regulation proposal for the framework for the free flow of non-personal data in the EU (interviews D, E). The Summit was mainly focused on the free movement of data and artificial intelligence. The summit ended with Estonian Prime Minister's conclusion of 17 points regarding the two main topics, as well as digital literacy, trust, and digital trade rules. (Digital Summit, 2018; Government of Republic of Estonia, 2018)

The Digital Summit was needed for the Commission as much as it was needed for the Estonian Presidency, whose goal was to finalise as much of its agenda points before new European Parliamentary elections in May 2019 and to push member-states to make decisions on the digital files. (Interviews E, D)

The Digital Summit was summed up by the Estonian Prime Minister and did not create any official Council conclusions. Because of that, the Presidency was granted greater freedom in the Summit's agenda-setting (interview D). To finalise and formalise the political push, the Tallinn Declaration was signed by 32 ministers in charge of e-Government policy during the meeting of competitiveness ministers on 6 July 2017. The Tallinn Declaration stated the joint agreement to pursue goals of better interactions between businesses and public administrations, the digital-by-default and once-only principles, security, eID, openness, transparency, and interoperability when working with citizens' data (European Commission, 2017).

Thanks to the consistent and highly focused work on digital files, there was a top-level wish to go further with the file as quickly as possible. It was agreed to organise an additional informal competitiveness ministers' meeting in October with the focus on digital files, including the free flow of data. (European Council, 2017a)

Because of the explanation work done by the Presidency and the lifting of the issue into the highest political levels, the European Commission came up with a legislative proposal on the framework for the free flow of non-personal data on 13 September 2017[8]. (Interviews A and E)

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[8] COM(2017) 495 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a framework for the free flow of non-personal data in the European Union.

The goal of this period was agenda-setting. However, the willingness to facilitate the agreement on the regulation for the free flow of non-personal data was mentioned in the Estonian Presidency Programme, the Commission was hesitant to come out with it. The Estonian Presidency used its power to choose the theme for the informal meeting of the Heads of States. It was important for the Estonian presidency to drag as much attention to the issue as possible and to involve the highest political echelons into the discussion. For these reasons, they used the strategy of a State as a Norm Entrepreneur again and targeted the Commission. Estonia defined the meaning of the free flow of non-personal data and, therefore, set the benchmark for the whole Union. The Presidency talked on the issue during the events on different levels. The main reasons for that were creating a common understanding of the problem, raising its importance, and finding the dominant discourse in the Union. This signalled the Commission on the joint will of the member states.

5.3 T2 – debate in the Council. Estonian Presidency chairing the working group meetings

Thanks to the big political push by the Presidency, discussions in the council working group began. There were nine meetings of the Working Party on Telecommunications and Information Society where the Regulation on the Free Flow of Non-Personal Data in the EU was discussed (European Council, 2019).

The chairing of the working group was done in a way to be able to move forward with the discussions as soon as possible (interview A, B, H). The working group meetings were scheduled very close to each other. Their tactics were to interchange articles discussed at the working group such that a discussion on a new article started before the previous got approved. This way the Presidency was able to move forward while the conclusions were made in the background and, when ready, confirmed them at the meeting (interview H). The support of the Council Secretariat and the Commission was very helpful at this stage. Both institutions provided its workers to help the Presidency reach a consensus as soon as possible. (Interview B)

The informal social network created by Estonian Permanent Representation was very useful during this period. Some workers of the Estonian Permanent representation were already living in Brussels for some time. They had personal connections with civil servants from Permanent Representations of other member states and institutional civil servants. Because of this, negotiations were honest and fast; people were willing to exchange information. (Interview A, H)

Estonia tried to be an honest broker between parties and take everyone's view into consideration (interviews A, B, H).

During the working group discussions, it was known, that most of the member states were supportive of the Regulation on the Framework for the Free Flow of Non-Personal data in the EU; however, France and Germany were hesitant (interview A, B, E, H). That is, their local legislation restricted the localisation of data, e.g. in the area of telecommunications (Lisbon Council, 2017). As they were very heavyweight voters in the council, a strategy was created to tackle the issue by the Presidency. (Interviews D, E)

Different level meetings (from civil servants to Prime Minister's level) were conducted, both formal and informal. The top civil servants discussed issues constantly with their foreign counterparts. The goal was to get to know, what exactly does not suit the member states and why; when the reason is known it is easier to find the solution. (Interviews A, B, D, H) The change came suddenly. Presidential elections in France changed the state's course. The new French President's policy was more supportive of the digital files. Therefore, France now supported the regulation. There was no strong political unanimity in the question on the free flow of non-personal data in Germany. When France changed its decision, Germany changed its own as well. (Interviews A, B, E, H)

At the same time during discussions at the Council, preparations began at the European Parliament. The Estonian Presidency did not make any attempts to manipulate the choice of the rapporteur (interviews A, B, E, F). The role of the seconded national expert to the Parliament was to map its working order and ensure flawless communication between the two parties (interviews E, F).

During this time-period, Estonia's goal was the agenda structuring. Estonia reached its goals of the previous two periods and the regulation was already on the agenda. This time, the Estonian Presidency aimed to raise the importance of the topic. For this, they used their procedural powers when scheduling the working group meetings. Estonia scheduled the working group meetings very close to each other. Moreover, Estonia used its power over the meeting's agenda and organised it in the most efficient way for itself. This was done in order to facilitate the work and reach the consensus as soon as possible. Estonia's strategy was one of the Self-Interested Mediator. When the Presidency got to know not all of the member states were supportive of the legislation, Estonia went out to talk to the parties, got to understand their problems, and tried to offer the solution.

Unfortunately, it is not possible to make a judgement whether or not Estonian strategy was successful. The situation changed regardless of Estonian attempts.

This push from the Estonian Presidency paid off. This time-period was ended on 20.12.2017 with the COREPER agreeing on the joint positions (European Commission, 2018a), right before the end of the Estonia's Presidency term.

CONCLUSION

It was shown in the study that the goals and the strategies of the Estonian Presidency of the European Council changed depending on the phase of action. That is, during the periods T0 and T1 (before the Commission officially came out with the legislative proposal), Estonia facilitated the rise of the regulation on the framework of the free flow of non-personal data into the European Union's agenda. The Commission and the member states were targeted during these periods the most. The Estonian Presidency used of the small state's strategy of the State as a Norm Entrepreneur. The Estonian Presidency recognised the dominant discourse in the Union and joined it. It also raised awareness of the need for a new regulation on the free flow of non-personal data and signalled the Commission on its importance. Estonia benchmarked the problem by producing several documents explaining the phenomena and ordering a study done by third parties on the free flow of the non-personal data challenges in Europe.

During the next period T2, when the Commission came out with the proposal, the goal and the strategy of the Presidency changed. The Estonian Presidency's goal became the agenda structuring, and the Estonian Presidency used its procedural power to emphasise this issue. It scheduled more meetings in order to proceed quicker with the discussions and controlled their agendas. During this period Estonia's small state strategy was one of the Self-Interested Mediator. The Presidency tried to secure the compromise between the member states, met informally when needed, and attempted to understand reason for disagreement in order to offer the best solutions possible.

The State as a Lobbyist strategy was not used by the Estonian Presidency. Although SNEs were sent to the institutions, their position was not used in the interest of the Presidency.

In this study, it was discovered that the role of the European Parliament was not substantial in the strategical plans of the Estonian Presidency when dealing with the regulation on the free flow of non-personal data. The Estonian Presidency understood they were unable to start the trilogue process in time.

The role of TRIO partners was insignificant. The Presidency priorities were not coordinated among the TRIO states, and the TRIO partners did not take part in strategical steps when the Estonian Presidency dealt with the regulation on a Framework for the Free Flow of Non-Personal Data in the EU.

The time-frame of Regulation on the Framework for the Free Flow of Non-Personal Data in the European Union covers T0-T2 of Smeets and Vennix 2014 model. Estonia facilitated the Commission to come out with the first draft of the legislation; however, Estonia did not have the chance to finalise it. Its role ended with the consensus made at COREPER level (European Commission, 2018a). The actual time frame of Estonian Presidency dealing with the Regulation on the Framework for the Free Flow of Non-Personal Data in the European Union was:

T0 – Preparations for the presidency and initial assessment of internal and external factors began in 2012 (Riigikantselei, 2012) and lasted until the start of the presidency on 1 July 2017.

T1 – On 1 July 2017 Estonian Presidency began. Estonia released the Presidency Programme right before the start (Estonian Government, 2017).

T2 - 13 September 2017 Commission published the proposal on the Regulation on the framework for the free flow of non-personal data in the European Union and the work started at the Council.

T3 – starts on 19 December 2017, when Council agrees on COREPER mandate. Estonian Presidency ended on 31 December 2017 and the file was taken over by Bulgaria.

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APPENDIX I

List of Interviewees

1. *Anonymous*, Male, Civil Servant, Advisor
2. *Anonymous*, Male, Senior Civil Servant, Advisor
3. Mr Kaspar Kala, Advisor at the Department of State Information Systems at Ministry of Economic Affairs and Communications for Estonia, 2016-2017
4. Mr Keit Kasemets, Head of Representation in Estonia at European Commission
5. Mr Klen Jäärats, Director for the European Union Affairs at Estonian Government Office 2014 - present
6. Mr Urmas Aavasalu, Seconded National Expert to European Council 2016 - 2018
7. Mr Villu Varjas, Seconded National Expert to European Parliament 2016
8. Ms Jaana Sahk, Counsellor for Digital Affairs at Permanent Representation of Estonia to the European Union 2016 - present

Interview Guidelines

1. What was Your role during the Estonian Presidency?
2. How was organised the choice of the Presidency's priorities? Why were these priorities chosen? How were the priorities coordinated with European institutions and other member states?
3. Why was it decided to initiate the discussions on the Free Flow of Non-Personal Data Regulation?

Following questions were asked repeatedly for each Smeets and Vennix 2014 time-period

4. What was the relationship with TRIO partners during this time period?
5. Which member states supported the Regulation on the Framework for the Free Flow of non-Personal Data?
6. Which member states were against the Regulation on the Framework for the Free Flow of non-Personal Data? Why? What did Estonian Presidency do about it?

7. Were all the institutions supportive of Estonian decision to facilitate the discussions the Regulation on the Framework for the Free Flow of non-Personal Data? If not, what did Estonian Presidency do about it?

8. What was the Presidency's relationship with the Council during this time period?

    i. Council Secretariat - what was their role in the facilitating decision-making process of the Union?

9. What was the Presidency's relationship with the Parliament during this time period?

    i. Free flow of data regulation rapporteur - what was her role in the facilitating decision-making process of the Union?

    ii. SNEs - what was their role in the facilitating decision-making process of the Union?

10. What was the Presidency's relationship with the Commission during this time period?

    i. Estonians working at the Commission - what was their role in the facilitating decision-making process of the Union?

    ii. SNEs – what was their role in the facilitating decision-making process of the Union?

    iii. Commissioner Ansip - what was his role in the facilitating decision-making process of the Union?

11. What was the effect of the free flow of non-personal data themed evens organised by the Presidency? Was it meant to be so?

12. How did the Presidency approach the creation of networks at the institutions and with the representatives of other member-states? Why? How was it helpful/harmful?

13. How were discussions of the free flow of data regulation guided at the Council working group?

Appendix II

Timeline for the framework on the free flow on data and Estonian Presidency

06.2017 Estonian Vision Paper on the Free Movement of Data

17.07.2017 Digital single market conference on the free movement of data

18.07.2017 Informal meeting of competitiveness ministers

04.-05. 07.2017 Working Party on Telecommunications and Information Society

- Presentation of Estonian Presidency

20.07.2017 Informal Meeting of Health Ministers

13.09.2017 Commission Proposal comes out (Free Flow of non-personal data)

25.09.2017 Working Party on Telecommunications and Information Society

29.09.2017

Tallinn Digital Summit

06.10.2017

Tallinn Ministerial Declaration on eGovernment

17.-18.10.2017 High-level conference on e-health 'Health in the digital society. The digital society for health'

17.10.2017 Working Party on Telecommunications and Information Society

19.10.2017 European Council

24.10.2017 Telecommunications Council

25.10.2017

E-Signature ceremony: first EU legislation signed electronically

07.11.2017 Working Party on Telecommunications and Information Society

17.11.2017 Discussion at COREPER

21.11.2017 Opinion of the Spanish Parliament

21.11.2017 Working Party on Telecommunications and Information Society

27.11.2017 Working Party on Telecommunications and Information Society

4.12.2017 Telecommunications Council

05.12.2017 Opinion of the French Senate

06.12.2017 Opinion of the Portuguese Parliament

08.12.2017 Working Party on Telecommunications and Information Society

12.12.2017 Working Party on Telecommunications and Information Society

13.12.2017 Working Party on Telecommunications and Information Society

14.12.2017A digital presidency - takeaways from Estonia's programme for a digital Europe

18.12.2017 Working Party on Telecommunications and Information Society

20.12.2017 EU ambassadors agreed on a mandate for the presidency to launch negotiations with the European Parliament on this proposal.