

Agent discretion meets pathological delegation: The role of the High Representative in the formation and operation of the lead groups.

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Agent's discretion meets pathological delegation: The role of the High Representative in the formation and operation of the lead groups in EU foreign policy.

The aim of the paper is to better understand a hitherto understudied aspect of informal differentiated cooperation (IDC) in EU crisis management - the role of the 'EU element', which is claimed to be present in IDC, due to the competences transferred to EU institutions in the Lisbon Treaty. To this end, it conceptualises lead groups along the principal-agent approach as manifestations of pathological delegation, which occurs when individual states decide not to delegate a specific task to the High Representative but instead initiate IDC despite having delegated certain competences in this area to the HR via the Treaty. An exploration of discretion-affecting factors regarding the Contact Group on Libya and the Normandy Group reveals whether and how the agent can contribute to the IDC. The results bring new insights on determinants of agent's discretion, which may be of interest to scholars investigating delegation patterns and agents' performance in IOs.

Keywords: principal – agent approach, discretion patterns, supranational agents, pathological delegation, High Representative, Libya, Normandy format

Despite the EU foreign policy belonging to the core state powers and the resulting reluctance of Member States to transfer decision-making in this area to the EU level (Genschel & Jachtenfuchs, 2016), the mounting challenges of the last three decades have demonstrated the need for increased coordination of EU foreign policy activities. Against this backdrop, several changes within the governance structure of EU foreign policymaking have been introduced by the Treaty of Lisbon (ToL) (Missiroli, 2010; Reynaert, 2012). In a nutshell, the decision-making power remained in the hands of the Member States, but the Treaty provisions further institutionalized this policy area by, i.a., extending powers within agenda-setting and policy formulation of a supranational agent – the multi-hatted office of the High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR) supported by the newly established European External Action Service (EEAS). Yet, mentioned in the introduction to this special issue (reference to the introduction here), regardless of the developments of the governance structures, informal differentiated cooperation (IDC) has proliferated in EU foreign policy over the last decade. In particular, one of the most common

formats of the IDC are informal groupings, also called ‘lead groups’, via which selected Member States engaged in crisis management outside the EU institutional framework (Delreux & Keukeleire, 2017; Rieker 2021; Alcaro & Siddi 2021; Alcaro 2018; Siddi et al. 2022). Evidently, despite delegating certain powers to the aforementioned supranational institutions, the EU countries in certain cases prefer to engage in IDC, omitting the existing EU’s governance structure. This observation constitutes the underlying puzzle that this article seeks to explain, which is why and under what circumstances the Member States decide on IDC, despite having delegated certain competencies to EU institutions, and what is then the role of these institutions? To narrow the scope of the analysis, the article focuses on crisis management as one of the main elements of EU foreign policy, and one in which lead groups are most common.

Despite the fast-growing literature on the functioning of various forms of IDC in EU foreign policy (reference to the introduction here), studies explaining the role of the supranational institutions in the formation and operation of IDC are still rare. It is surprising, since as Alcaro argues “all lead groups include a ‘member state element’ and an ‘EU element’, as, after all, they are a dual entity involving the intergovernmental action by a select group of EU member states and the common action by EU institutions” (2018, p. 12). Researchers have so far observed that the “EU element” can improve transparency and prevent divisions between participating and non-participating Member States (Alcaro & Siddi, 2021; Grevi et al., 2020). Siddi et al. claimed that inclusion of the HR office in IDC “would provide a useful tool to ensure that informal differentiated cooperation feeds into the agendas of the Foreign Affairs Council and the European Council and adheres to EU’s common values and established common positions” (2022, p. 14). However, not only is empirical evidence supporting such assumption is rather anecdotic (for an exception, see Alcaro & Siddi 2021), but past scholarly efforts do not explore whether and how the EU institutions can engage in formats of IDC.

To tackle the aforementioned puzzle, this paper is embedded in rational choice institutionalism referring to the literature on why and how governments delegate certain powers to supranational institutions (Hawkins et al., 2006; Nielson & Tierney, 2003). Specifically, it employs the prism of the principal-agent model (PA), and draws on its applications in the EU studies (Delreux & Adriaensen, 2017b, 2018; Elsig, 2007; Mügge, 2011; Pollack, 2003; Tallberg, 2002), particularly reflecting on research on the delegation from collective principals

(Dijkstra, 2017; Helwig, 2014; Menz, 2015; Sobol, 2016). Following the latter, this paper conceptualizes the Member States as the collective principal, which is composed of multiple actors who make decisions jointly and has a single contract with the agent (Nielson & Tierney, 2003, p. 247), and the High Representative as their supranational agent. The focus on the HR is justified by its legal mandate and inter-institutional locus of this office (Art 18, 26-29, 38, 42 TEU), that make their officeholders responsible for the coordination of all EU foreign policy activities. It can therefore be assumed that it is, on one hand, in the agent's interest to be involved in occurrences of IDC and on the other that the Member States, driven by a functional motivation, will make use of their agent. Furthermore, the HR is one of the main agents in the EU crisis management (Helwig, 2014, p. 164; Plank & Niemann, 2017, p. 136), whose dynamics are the focus of this article.

The paper argues that the application of the PA approach provides complementary insights than the existing accounts of IDC, which focus on the cooperation patterns between the Member States that underpin the emergence of IDC largely neglecting dynamics between the IDC and the supranational institutions. In turn, the PA model offers analytical tools to explore both the circumstances in which the selected members of the collective principal decide for IDC despite having delegated certain authorities to the agents (politics of delegation) as well as the role that the agent can play in the formation and operation of IDC (politics of discretion).

As far as the politics of delegation is concerned, Tallberg claimed, "states can either attempt to address pressing problems on their own, in purely intergovernmental cooperation with others, or by delegating political authority to supranational institutions" (2002, p. 25), yet no delegation and full delegation are the two ends of the spectrum with a range of alternative governance forms in between. At the same time, as Moravcsik noted, the relationship between functional demands for delegation and concerns for national sovereignty can lead to delegation problems (1993). The execution of foreign policy, as a core state power, is closely linked to national sovereignty. One can, therefore, assume that IDC in EU foreign policy may constitute a governance form that is a manifestation of an irregular delegation pattern located between the two outer parameters of no delegation and full delegation. Drawing on the PA model, this article conceptualizes IDC as a situation in which individual members of the collective principal do not choose to delegate a specific task via micro-delegation to the HR but to trigger forms of intergovernmental cooperation, even though several competencies have already been

delegated to the agent under macro-delegation. Therefore, to explain the dynamics behind IDC, this study relates to the anomalies of delegation that deviate from the basic PA model that have been identified by researchers (Menz, 2015; Sobol, 2016; Thompson, 2007). The concept that seems best apt to capture the dynamics leading to IDC in EU foreign policy is the ‘pathological delegation’ developed by Sobol. He defined it as a situation when the structure of delegation itself and features of the PA contract provide incentives for actors within the collective principals to engage in individual actions of control undermining the collective delegation effort as well as hindering the agent’s work (2016, p. 338-339).

Against this backdrop, this paper argues that examining the specific features arising from the collective nature of the principal and how they impact delegation patterns, might shed light on the dynamics of the lead groups (as one of the IDC occurrences) and on the HR’s discretion in their formation and operation. Reflecting on the puzzle underlying the article from the perspective of the PA approach, two sets of questions arise which will guide the analysis. (1) Firstly, this paper asks what the specific characteristics of the collective principal are and how they affect the delegation patterns enabling pathological delegation. Thus, the study discusses the scope conditions for pathological delegation and examines whether they occur in the case of the lead groups. (2) Secondly, the paper explores the role of the agent when pathological delegation occurs and explores the factors affecting discretion that determine an agent’s participation in the formation and functioning of informal groupings.

The remainder of this article is structured as follows. It starts with the examination of the complexities of the PA relationship between the Member States and the HR. First, attention is paid to the characteristics of the collective principal and the resulting delegation patterns and then the paper turns to the agent and examines its institutional features and the patterns of its discretion. The characteristics of this specific principal-agent dyad is the starting point for the discussion in the second part of the paper, in which they are confronted with the scope conditions for pathological delegation. It is studied to what extent the characteristics of the examined PA relationship provide fertile ground for pathological delegation and if so, how does it impact the HR’s room for maneuver. In addition, other possible determinants of agent discretion that may affect agent’s room for manoeuvre in formats of IDC, are identified here. In this way, this section provides a conceptual underpinning for the empirical part, which follows. Based on two case studies – the Contact Group on Libya (2011) and the Normandy

Group (2014), the third part examines whether conditions conducive to pathological delegation were present in each case and whether they determined the formation of lead groups. Furthermore, empirical evidence from two case studies provides a basis for identifying explanatory factors for agent discretion beyond the implications of pathological delegation. The concluding fourth part offers both empirical and theoretical reflections. The former focuses on the insights from the case studies regarding the agent's discretion in cases of IDC. The latter discusses the analytical usefulness of conceptualizing differentiated cooperation as a form of pathological delegation and its possible added value to scholarship on discretion patterns in international organisations (IOs).

The article draws on desk research. Its conceptual framework is based on the literature on the delegation and supranational agency in IOs, as well as on the applications of the PA model to EU policymaking. In terms of empirics, the paper reviews the existing academic and expert literature as well as relevant policy documents and press articles on the lead groups.

As for the contribution to the special issue this paper is a part of, this study speaks to the microlevel of analysis of the IDC (reference to the Introduction) by perceiving the supply of differentiated cooperation as a result of certain delegation complexities that characterize the institutional dimension of EU foreign policymaking. Moreover, by providing insights on the conditions for and implications of the “principal's pathological behavior” (Sobol, 2016, p. 335) and by discussing explanatory factors with regard to agent's discretion in cases of irregular delegation, the study shall be relevant for scholars studying the decision-making processes within various institutional settings, such as collective delegation from nation-states to IOs, where the delegation and performance problems remain highly relevant (Gutner, 2005, p. 32).

Member States and the High Representative: uncovering the specifics of this principal-agent dyad

As indicated above, the delegation and discretion patterns in every PA dyad, are determined by the institutional features of both principal and agent and by the specific political and legal environment the dyad operates in. Therefore, this section explores the characteristics of the collective principal (Member States), who through a single contract delegates certain powers and authority to the agent (HR).

Member States as the collective principal in EU foreign policy

Drawing on the scholarship, we can distinguish three interrelated characteristics of this particular collective principal that affect the politics of delegation. The first key feature results directly from the fact of joint delegation. The collective principal, which consists of 27 Member States, has to first solve collective-action problems to agree on what to delegate to the agent and how to control it (Nielson & Tierney, 2003; Tallberg, 2002). Since the individual actors within the collective principal pose different geopolitical exposures resulting in distinct strategic cultures, the principal is likely to be characterised by *heterogeneity of preferences* regarding foreign policy issues that impact the delegation patterns (as explored in more detail below). Moreover, the preference heterogeneity takes on particular significance in relation to this particular collective principal, due to the *unanimity* as a decision-making rule that applies in most areas of EU foreign policy. According to the PA model, principals delegate power to agents if they consider it functional and beneficial. Hence, there must first be an agreement among 27 countries as to what is perceived to be the preferred solution that the agent should pursue. Another feature of the collective principal at stake that may increase preference heterogeneity is *power asymmetries*. The EU countries vary greatly in size and economic wealth, and this determines their political weight. Although the unanimity in decision-making may be perceived as a factor that limits the significance of power asymmetries, there is evidence in the literature that more powerful Member States can leverage weaker states and persuade them to support their positions (see i.a. Tömmel & Verdun, 2017). Furthermore, power asymmetries within the collective principal, give individual actors within the principal instruments of individual control over the actions of the principal they co-create and over the agent they delegate to (Delreux & Adriaensen, 2017a, p. 16).

Before we delve into the implications the above-mentioned features have for the delegation patterns, there is one underlying dynamic that characterizes the act of delegation in EU foreign policy. As Delreux and Adriaensen pointed out “national sensitivities or concerns over subsidiarity and sovereignty have resulted in the partial delegation of authority from member states to the EU on sensitive issues” (2018, p. 266). As indicated earlier, EU foreign policy is a prime example of such a sensitive issue. Hence, the delegation of authority from the Member States to the agent is partial: the collective principal remains the key decision-maker and the HR is empowered mainly regarding the agenda setting and policy formulation. Furthermore, the partial delegation takes place in a two-stage process, via macro- and micro-delegation, during which the effects of the aforementioned characteristics of the collective principal

become apparent. In the case of EU foreign policy, the act of macro-delegation is constituted by the ToL. It contains provisions delegating powers from the Member States to the HR with the authority for policy decisions remaining with the collective principal acting via the European Council (Art. 26 TEU) and the Foreign Affairs Council (Art. 28-29 TEU). Due to multiple responsibilities, the HR has a potentially distinctive role to play when it comes to agenda setting and formulation of policy proposals, yet the responsibilities the HR has been tasked with, remain ambiguous (Helwig & Ruger, 2014; Howorth, 2011). Hence, since the macro-delegation stipulates only a general direction for the agent’s actions, the micro-delegation remains central to the HR’s ability to act. It takes place through a jointly adopted Council decision, which provides the agent with an explicit mandate to act on a particular political issue. Yet, the unanimity rule and the high preference heterogeneity within the collective principal complicate the micro-delegation (Helwig, 2014, 2017a; Koenig, 2014). As Nielson and Tierney noticed, the higher the number of actors involved within a collective principal, the more difficult the coordination of decisions between them gets (2003, p. 248). In our case, 27 countries account for a highly complex and diversified collective principal characterized by a distinct heterogeneity of preferences. The latter can hinder the delegation in a twofold manner: the collective principal cannot agree on a joint policy direction and thus the micro-delegation cannot happen, or the collective principal reaches a common decision on the issue at stake but individual actors within the principal have divergent opinions whether it is beneficial for them to delegate the implementation of the decision to the HR (see also: Mugge, 2011). In light of the PA model, the two-step delegation can be perceived as an *ex-ante* control mechanism applied to supervise the agent and to prevent agency losses – a situation when the HR would undermine the principal and pursue their own interests. As it has been argued, “the trick is to delegate just the amount of power to enable agents to achieve desired outcomes with minimal agency loss” (Thatcher & Stone Sweet, 2002, p. 5) and the two-step delegation process helps to gauge the amount of delegated authority while keeping the HR under strict control.

The High Representative as the constrained agent

Considering the features of the collective principal, it comes as no surprise that the literature speaks about the HR as a constrained agent with limited discretion to act on their own (Amadio Vicere & Fabbrini, 2017; Helwig, 2014). Discretion is understood here “as the room for maneuver the agent has in carrying out the delegated authority, partly depends on how the

principal acts and partly on how the agent plays the game” (Delreux & Adriaensen, 2018, p. 267).

Drawing on the literature, we can distinguish two key institutional characteristics of this particular agent that affect its discretion. The first factor is constituted by the *limited resources* the agent has at its disposal, in the light of the arrangements by the ToL regarding the role of this office. On the one hand, the legal framework equips the HR with the agenda setting power and the power to propose its own initiatives as well as makes it responsible for coordinating and carrying out the Common Foreign and Security Policy (CFSP), as well as the Common Security and Defence Policy (CSDP) and ensuring the consistency of the EU's overall external action. On the other, it makes the agent dependent upon the support of the collective principal who enjoys the decision-making and the budgetary authority. The agent is, for instance, responsible for leading the crisis management efforts on EU's behalf, yet it does not have the authority to enforce Member States' compliance and cooperation in this matter (Helwig, 2014, p. 117-118). Hence, Major and Bail referred to a “contradiction between supranational leadership tasks for the High Representative on one hand and the unvaryingly intergovernmental control of resources on the other” (2011, p. 28). The lack of resources that hinders the agent's ability to act becomes especially evident when the second factor affecting its discretion kicks in – the *preference heterogeneity* within the collective principal. As elaborated above, the difference of opinions among the members of the collective principal, complicates the micro-delegation. Without a specific mandate to act and equipped with limited resources (Helwig 2014, p. 170). At the same time, preference heterogeneity within the collective principals can also create the right conditions for the agents to shirk (Dür & Elsig, 2011; Nielson & Tierney, 2003). However, agency shirking can only happen if the agent has enough resources to act on its own and if the principal's control mechanisms allow for this situation (Tallberg, 2002, p. 29). As elaborated earlier, it is not the case of the HR.

Agent's discretion meets pathological delegation: conceptual foundations

The presented features of delegation and discretion that characterized the relationship between the Member States and the HR provide a backdrop for examining whether this dyad is prone to the occurrence of pathological delegation (Sobol 2016). This paper assumes that IDC in EU foreign policy is a result of irregular delegation and aims at exploring the agent's discretion in such cases, on the example of lead groups. Hence, this part provides the conceptual basis for

the empirical part that follows. It seeks on the one hand, to explore the conditions under which pathological delegation occurs and, on the other hand, to identify factors, beyond those resulting from pathological delegation, that may explain agent discretion in relation to lead groups.

Scope conditions for pathological delegation

As indicated above, Sobol defined pathological delegation as a situation when the structure of delegation itself and features of the PA contract provide incentives for actors within the collective principals to engage in individual actions of control undermining the collective delegation effort as well as hindering the agent's work (2016, p. 338-9). Drawing on his work and on other research concerning irregular delegation patterns in the EU and beyond, we can assume that there are three conditions necessary for a pathological delegation to occur:

- (Geo)political salience of the issue at stake
- Structure of the delegation act (existence of a collective principal and problems with delegation arising therefrom)
- Ill-designed contract between the principal and the agent (distribution of resources and definition of objectives)

Whereas the two last factors can be considered internal since they relate to the characteristics of the PA contract, the first factor puts the external conditions for pathological delegation into the limelight. Sobol argued that in the case of the high political salience of the issue at stake, individual actors within the collective principal may be more prone to act independently undermining the activities of both the collective principal and the agent (2016, p. 347). This observation has been also shared by Menz who claimed that in the case of politically sensitive issues, the preference heterogeneity resulting in the inability of the collective principal to agree on a decision and in individual principals breaking rank, is particularly evident (2015, p. 318). Furthermore, according to Sobol, the structure of the delegation act can lead to pathological delegation as a consequence of problems inherent to the collective principal, such as preference heterogeneity and power asymmetries. The former is also confirmed by Menz who showed that disagreements among the collective principal might lead to individual Member States acting on their own (Menz, 2015, p. 318). Such action may also be driven by the frustration of some Member States by the pace and scope of EU actions taken in a certain issue or by the perception of little benefit in delegating a task to the agent (Tallberg, 2002, p. 25; Thompson, 2007, p. 10). Moreover, Thompson, while examining the dynamics within the United Nations Security

Council observed that power asymmetries can lead to ‘principal subversion’ as “even if the agent is faithfully pursuing collective interests, individual members may have an incentive to obstruct agent performance—an especially tempting strategy for powerful states” (2007, p. 10).

As far as the third condition – the ill-designed PA contract, its most evident characteristics seems to be the distribution of resources. What makes pathological delegation likely to occur is a situation where the principals do not provide the agent with enough resources to carry out the delegated tasks (Sobol, 2016, p. 342-343; see also: Pollack, 1997). Additionally, Thompson argued that the principal’s control over resources might be applied to “undermine the performance of well-meaning agents already engaged in productive behavior” (2007, p. 10). Also, Gutner, while studying the World Bank's environmental performance, pointed to the possibility of problematic delegation when “delegation consists of conflicting or complex tasks that are difficult to institutionalize and implement” (2005, p. 11). Also, Dijkstra in his analysis of the non-exclusive delegation from the Member States to the EEAS touched upon the challenges of an ill-designed contract. In his case, the Member States delegated certain functions to the EU diplomatic service, but some of them continue to also carry out the delegated tasks themselves (2017, p. 56-57).

Overall, the three scope conditions for pathological delegation outlined above, seem to fall on fertile ground in the case of the PA contract between Member States and the HR. As already indicated, foreign policy, especially its security and defense dimension, belongs to the core state powers and is characterized by a high level of political importance and sensitivity. Furthermore, the collective principal is characterized by both the preference heterogeneity and power asymmetries which may impact the activities of individual Member States. Also, the delegation act discussed here bears the characteristics of an ill-designed contract due to the ambiguously formulated, yet complex responsibilities of the agent combined with limited resources at its disposal and the resulting need for a continued micro-delegation from the principal.

Since the paper assumes that the IDC in EU foreign policy constitutes a governance form resulting from the pathological delegation, the exploration of the three scope conditions shall shed light on the dynamics underpinning the occurrence of the lead groups. Furthermore, as already indicated, the presence of the scope conditions has implications for agent’s discretion.

However, these do not exhaust the explanatory factors that affect agent discretion in case of pathological delegation.

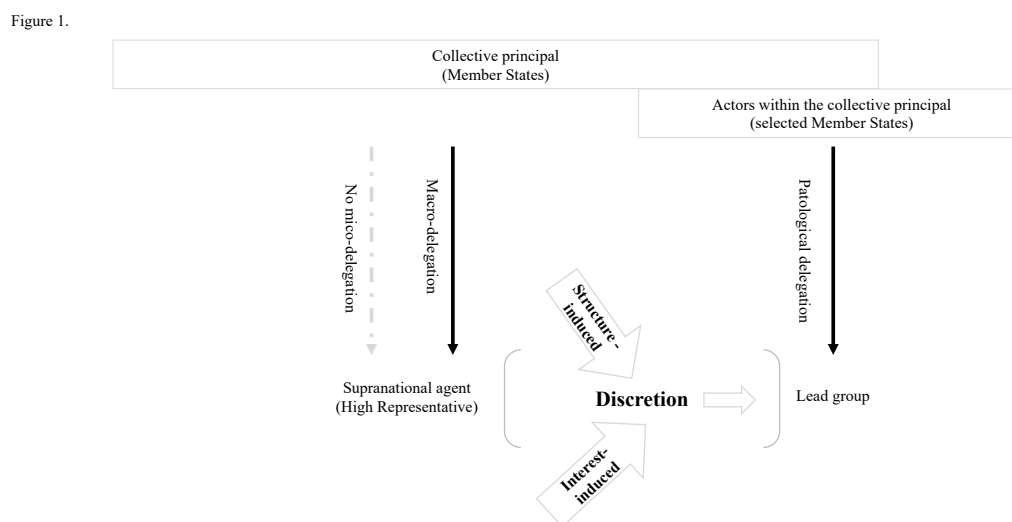
Agent's discretion in cases of pathological delegation

The very definition of pathological delegation, which describes a situation where Member States choose to engage in intergovernmental cooperation outside the EU institutional framework, implies that agent's discretion is limited from the outset. However, since the ToL provides the agent with a general mandate to act as crisis manager and as scholars claim there is an "EU element" within the lead groups (Alcaro, 2018, p.12), this paper takes an explorative approach to investigate what determines HR's discretion (despite its acknowledged low level) during the creation and operation of IDC formats.

There are several discretion-affecting variables identified in the literature with regard to supranational agents (Delreux, 2010; Delreux & Adriaensen, 2018; Elsig, 2010; Niemann & Huigens, 2011; Plank & Niemann, 2017). In order to better grasp the variety of the factors that might explain HR's discretion with regard to the lead groups, the study follows Plank and Niemann and distinguishes between two dimensions of HR's room for maneuver: the "structure-induced" discretion resulting mostly from the external environment of the agent and "interest-induced" discretion as an outcome of HR's intentionally pursued action to enhance the room for maneuver (2017; see also Delreux, 2010 and Helwig, 2014 for different labels with analogous sense). Among the explanatory factors for structure-induced discretion, that can be derived from the literature, are *delegation patterns* and *control mechanisms*, which in case of the pathological delegation embrace the three scope conditions introduced above; *information benefit or lack thereof*; *degree of preference homogeneity between the principal and the agent*; *context of the policymaking* (including the participation of third parties and the context of the negotiations); *degree of urgency* of the policy issue at stake; *interaction between agents* acting in the same field. The interest-induced discretion involves agent related sources such as *entrepreneurial strategies* used by agents to exert their influence (see i.a. Elsig & Dupont, 2012; Sus, 2021); *strategic use of agenda setting power*; *information surplus* of the agent resulting from the institutional memory of the environment in which the agent is embedded; *broad interpretation of agent's own mandate*.

The following figure presents the conceptual framework for the exploration of agent's discretion in cases of pathological delegation.

Figure 1. Framework for exploring agent discretion in pathological delegation



HR’s discretion in the formation and operation of the lead groups

Several examples of post-Lisbon lead groups have been identified in the literature on EU foreign policy (Alcaro & Siddi, 2021; Delreux & Keukeleire, 2017; Grevi et al., 2020). From these, two have been selected – the Contact Group on Libya launched in 2011, and the Normandy Group launched in 2014, as possibly most different cases regarding explanatory factors for agent’s discretion: the engagement of other international actors, the level of preference heterogeneity among the Member States regarding the conflict at stake; the incumbent of the HR’s office at the moment of crisis. Moreover, the Contact Group on Libya was the first lead group launched after the ToL came to life. In turn, the Normandy Group is one of the most recent examples of such informal grouping. Two such different case studies have the potential to provide comprehensive insights into HR discretion.

The following analysis adopts an explorative approach, assuming that the case studies might reveal discretion-affecting factors that have not been identified in the literature so far, and aims at answering the following questions:

- (1) To what extent were the three scope conditions for pathological delegation to be observed in the case of the respective lead group and how did they impact agent's discretion?
- (2) Which other factors determined the structure- and interest-induced discretion of the HR and how did the agent try to contribute to the formation and operation of informal groupings?

One caveat applies. In both case studies the scope of analysis is limited. In case of Libya, it ends with the dissolution of the Contact Group in autumn 2011, despite the fact that the work of the international community on the Libyan crisis is being carried out in various formats. In the case of the Normandy Group, which is still formally in place today, the focus was on the first year of its operation, which was crucial for developing the mechanisms for the functioning of the group and patterns of agent's discretion.

Franco-British initiative for the Contact Group on Libya

The Contact Group on Libya, a multinational and multiorganizational endeavor of 21 countries as well as the representatives of the EU, United Nations, African Union, and the Arab League, has been launched on the initiative of the United Kingdom (UK) in March 2011 aiming to provide the political direction to a post-Muammar Gaddafi Libya. It was a response to the civil war that started in the country when an uprising broke out against Gaddafi's unjust rule, to which the regime responded with massive repression and violence. The initial EU's reactions to the "most serious crisis in the neighborhood since the Balkan wars of the 1990s" (Brattberg, 2011, p.1) were mostly related to humanitarian assistance as well as to the introduction of sanction and as such they have been supportive to the decisions taken at the United Nations level (Koenig, 2011). Interestingly, Catherine Ashton the then-newly appointed first post-Lisbon HR played an active role in coordinating of the EU response and just as the crisis broke out, she issued a declaration on behalf of the EU on events in Libya (European Union, 2011). However, soon it became clear that sanctions are not enough to end the violence and the divergence of preferences within the collective principal regarding the crisis reaction became evident. There were three major bones of contention: the perception of the opposition-led Transitional National Council (TNC), which has been recognized by France and then Italy as the sole legitimate representative of the Libyan people, whereas the European Council called it only "a political interlocutor" (European Council, 2011); the approach to the migratory

consequences of the crisis; and the reaction to the idea of the military intervention (Koenig, 2011, p. 10-13; Marchi, 2017, p. 3-6). The latter was strongly opposed by, i.a., Germany and led to the disability of the collective principal to find an agreement on a possible action within the framework of the CSDP. Against this backdrop, the disappointment of Paris and London, EU's two biggest military powers, with the "powerlessness" of the Union grew (Koenig, 2014, p. 262). Hence, France and UK decided to join the US and form a coalition (Obama et al., 2011) that soon launched military strikes against Libya¹. The Union's role as a security provider became secondary (Biscop, 2011). The Franco-British duo exploited their superiority in military power over the other members of the collective principal (Fabbrini, 2014, p. 196) and launched the Contact Group beyond the EU framework. The multinational Group has met three times (in April, May and August 2011), but as experts claimed the political leadership and control has been exercised by France, UK, and the US (IISS Strategic Comment, 2011, p. 4). Furthermore, since any crisis management intervention within the CSDP requires unanimity among the members of the collective principal, which was not possible to achieve, the HR Catherine Ashton, was not given any specific mandate to put such an intervention forward. As indicated earlier, the PA contract, despite providing the HR with a general mandate to act as crises manager, does not equip it with the resources needed to undertake such a task. Hence, the distribution of resources was not in Ashton's favour as the Libya crisis developed. Summing up, the Libya case fulfills all three conditions for the occurrence of pathological delegation.

Moving on to the agent discretion in the formation and operation of the Contact Group, it is worth noting that Ashton participated in the meetings of the lead group from its inception (EU Delegation to Turkey, 2011; European Commission, 2011). Yet, she did not seem to enjoy any discretion with regard to the IDC format. Her role in handling the crisis has been described as submissive to the leadership of France and UK (Marchi, 2017, p. 7). Hence, the logic behind her involvement seems to be related to the role of third parties as a possible factor explaining the structure-induced discretion. The lead group included representatives of other IOs, and thus the agent was involved in coordinating the activities between the Group and the EU at the inter-organisational level, executing its general mandate provided by the ToL. Moreover, the Council specifically tasked the agent to coordinate crisis management efforts with EU's strategic partners (see, i.a. Council of the European Union, 2011a; NATO Newsroom, 2011).

¹ Further EU Member States joined the operation at the later stage (for more on the operation, see: Biscop, 2011, (IISS Strategic Comment, 2011).

Other factors external factors did not play in favour of the agent. From the beginning, the EU response to the crisis was dominated by the differences between the Member States and they overshadowed Ashton's efforts in playing an active role (Castle, 2011). Deep divisions have left the EU looking divided and generally weak, particularly due to the extreme urgency of the conflict and the Union's inability to respond (Raines, 2011; Vaisse & Kundnani, 2011), although French and British leaders have emphasised, when referring to their actions within the lead group, that “Europe is now fully on board with this mission” (Cabinet Office, 2011) and portrayed it as a “European effort” (Sarkozy, 2011). They did not, however, make any direct reference to the consistency of their endeavor with the overall EU response. Experts perceived it rather as a situation in which “European countries are in the lead, but Europe is not” (Biscop, 2011, p. 4) and reported that the other Member States described the Franco-British initiative as a “directoire” (Fabbrini 2014, p. 191). The establishment and the operation of the Contact Group was “welcomed” by the Council (Council of the European Union, 2011a, 2011c), as a part of the international effort to solve the Libyan crisis, but it was not mentioned the European Council. The latter may indicate that the originally Franco-German initiative was challenged by some actors within the collective principal (Fabbrini, 2014, p. 191).

Moreover, as scholars noted, shortly before the lead group was launched, the agent was sidelined by UK and France, “with Cameron and Sarkozy covertly instructing her not to interfere in the military decision-making” (Marchi, 2017, p. 6). The reason for the conflict was the preference heterogeneity between these two countries and the agent. The HR did not hide her skepticism toward the planned no-fly zone and towards military engagement of the EU (Ashton, 2011; Fabbrini, 2014). Although several members of the collective principal shared her view, she faced strong disapproval from Paris and London for overstepping her authority on this issue (Watt, 2011). In general, the agent did not enjoy a high level of trust from the principal. The HR was criticized by the some Member States for “for a lack of ambition, leadership and passion” (Vogel, 2011) and by others for “trying to do too much” (Traynor, 2011). Her ability to fulfil the mandate given her by the ToL, was, moreover, directly limited by the collective principal as the latter did not approve her request for the increased funding needed for the functioning of the new diplomatic service (Traynor, 2011). Related to that, was the fact that, as the first post-Lisbon HR Ashton with her multi-hatted, inter-institutional position, was new to the EU governance structure. As was the EEAS, which she was trying to set up while handling various foreign policy crisis and inter-institutional turf wars with the

European Commission over the division of competencies (King, 2015; Spence, 2012) Therefore, her institutional backing and the possibility to reach out for expertise, was limited (Brattberg, 2011; Fabbrini, 2014).

With regard to the interest-induced discretion, the lack of consensus within the collective principal moved the decision-making on Libya to the level of the European Council, where Ashton had no agenda setting power or right to propose policy solutions. The possibilities to execute any of the discretion-enhancing strategies were equally constrained. Scholars argued that Ashton, recognizing the lack of room for maneuver regarding any military intervention, focused instead on playing a coordinating role in the fields of humanitarian aid, sanctions and diplomacy – on her initiative, an EU office was opened in Benghazi in March 2011 under the auspices of the EEAS (Helwig, 2013; Koenig, 2014; Stavridis, 2014).

The Franco-German duo in the Normandy format

The Normandy format refers to the engagement of Paris and Berlin in an informal group together with Moscow and Kyiv launched in June 2014 to de-escalate the conflict in the Donbas regions. The name derives from the fact that the group has met on the margins of the 70th anniversary of the D-Day allied landings in Normandy. Russian aggression in Ukraine, including the annexation of Crimea and Russian-backed armed conflict in Donbas, has disrupted the European security order and were considered a matter of great geopolitical importance (see i.a. Haukkala, 2016). Russia's policy towards Ukraine has been condemned by the European Council (European Council, 2014), however, the ideas of individual Member States how to contribute to the solution of the conflict and how to approach Russia differed substantially (Schmidt-Felzmann, 2014). Poland, the Baltics, Sweden, or the UK, since the Russian aggression in Georgia in 2008, have systematically warned their counterparts of the danger of further revisionist actions by Russia and wanted to counter Russia's aggression on Ukraine by introducing severe sanctions (Natorski & Pomorska, 2017, p. 59-62). Italy, Cyprus and Hungary were more reluctant to overly broad sanctions (Speck, 2016). The collective principal was therefore characterized by a heterogeneity of preferences, which, as argued in the literature, made action based on a unanimous vote in the FAC unrealistic (Alcaro & Siddi, 2021, p. 161). It led to a stalemate and frustration of about the EU response. Against this backdrop, the leaders of two most powerful EU diplomacies – German Chancellor Angela Merkel and French President Francois Hollande decided to take the lead and to launch an informal group beyond the EU framework to facilitate the negotiations between Ukraine and

Russia (Alcaro & Siddi, 2021, p. 156; Tanner, 2015, p. 226). Their decision to engage in IDC was initially criticized by some members of the collective principal who felt stripped of voice (de Galbert, 2015; Litra et al., 2017). The criticism came mostly from Poland, which was involved in the negotiations between Russia and Ukraine just after the outbreak of the crisis². Warsaw felt sidelined by the Normandy format (Buras, 2014; Sus, 2018) and demanded to be included in the group (UNIAN, 2016). However, with time the acceptance of the Member States towards the leadership of the Franco-German duo grew (Siddi 2018; Natorski & Pomorska, 2017).

Another factor that facilitated Berlin and Paris' decision to go outside the EU framework seems to stem from the weak position of the EU in terms of its potential performance in talks with Russia. Traditionally, Moscow has preferred to pursue bilateral relations with selected Member States, omitting the EU institutional framework (Socor, 2015). Again, Russia regarded France and Germany as reliable partners because of their long-standing policy of engagement with Russia and as the most powerful EU countries, and thus as suitable interlocutors in the negotiations. Reportedly, the representatives of Russia would not have accepted negotiations with EU officials (Alcaro & Siddi, 2021, p. 157). As Russian experts noted, “Mogherini plays an important, albeit predominantly technical, role” (Suslov, 2015) and would thus be “not really decisive on the course of negotiations” (Litra et al., 2017, p. 24-25). This observation points to the distribution of resources between the collective principal and the agent. The above considerations indicate that the three criteria for beneficial pathological delegation have been met in this case.

Concerning the role of the agent in this lead group, there was no formal engagement of either Catherine Ashton or her successor Federica Mogherini, who took over the HR office in November 2014, in the formation and operation of the Normandy group. The only time, the agent was directly involved in the crisis management in this conflict was the “Geneva Group”, that preceded the establishment of the Normandy format, and consisted of the foreign ministers of Russia, Ukraine, and the United States, as well as the presiding HR Ashton (Åtland, 2020; DeYoung & Gearan, 2014). During the meeting in April 2014, the group adopted a declaration

² Foreign ministers of Poland, Germany, and France, acting within ‘Weimar’ format, brokered an agreement between the Ukrainian president (supported by Moscow) and representatives of the Ukrainian opposition in early 2014. However, the agreement on the cessation of violence, constitutional reform and early presidential elections in Ukraine was quickly broken (Yoder 2017, p. 211-212).

outlining a series of steps to de-escalate tensions in Donbas. However, the work of the group quickly came to an end as the provisions of the Geneva Declaration were broken, and the fighting continued. As a reaction to these developments, Germany and France entered the negotiating arena by forming the Normandy Group (Lehne, 2015). The new format started at the level of the heads of state but continued its work at various levels: foreign ministers, state secretaries, advisors (Tanner, 2015, p. 246). Ashton was no longer involved in the talks, partly because of the failure of the Geneva group and partly because of her tarnished reputation with the Russians due to her active participation in the Maidan protests in autumn 2013 (Casert, 2014; Helwig, 2017b). Once Mogherini was appointed to the HR office, the Normandy format has been already in place, without the involvement of EU institutions, which reconstituted themselves after the May 2014 European Parliament elections (Litra et al., 2017, p. 19-20). For this reason, too, the information benefit worked in favour of the parties involved and of the agent. At the same time, there was no willingness of the members of the informal grouping to include Mogherini in the lead group (or the President of the European Council, for that matter, see: Raik, 2015). The literature provides two key reasons why the low level of the structure-induced agent discretion continued and limited the possibilities for the interest-induced discretion. First of all, it was feared that any change to the format could negatively affect the working atmosphere (Alcaro & Siddi, 2021, p. 126; Fischer, 2019, p. 33-34) especially in light of the above-mentioned Russia's dislike of talking to the EU representatives. Secondly, some Member States doubted Mogherini's approach to Moscow. In January 2015, she published a non-paper with ideas for renewing, among other things, trade relations and global diplomacy cooperation between the EU and Russia (Mogherini, 2015a). Her vision was met with skepticism by most Member States and was quickly shelved (Liik, 2015). Despite her subsequent assurances of unconditional support for sanctions against Russia, some felt that the agent underestimated the Russian threat (Raik, 2015). Yet, the issue has been quickly resolved and did not interfere too much with later relationship between the principal and the agent.

At the same time, it should be noted that the Franco-German duo working without an official EU mandate, put considerable effort into keeping the other members of the collective principal and the agent informed of progress in the negotiations (Council of the European Union, 2015; Mogherini, 2015c; Natorski & Pomorska, 2017; Siddi et al., 2022). As Siddi et al. noted the "Franco-German lead group needed the support of EU institutions and networks for the internal coordination of European diplomacy, especially on sanctions" (2022, p. 12). The lifting of sanctions was linked with the implementation of the Minsk agreements, the main

accomplishment of the Normandy group (Åtland, 2020, p. 122-123). The consistency of Franco-German efforts within the Normandy Group with the policy direction adopted by the collective principal allowed the agent to mark her interest-induced discretion by framing her contribution as supportive to the operation of the informal grouping. Notwithstanding her diplomatically expressed hopes, that by the end of her term it would be the EU which would take part in such talks representing the Member States, she admitted that “we are not there yet. That's why we have all decided, in the last months, to continue to invest in the format that - since last summer - had proven to be useful in facilitating the talks between Kyiv and Moscow” (Mogherini, 2015b). Apparently, because the agent was aware of its limited room of maneuver in the negotiations between Russia and Ukraine, she decided to embrace the Normandy talks as a form of EU’s engagement in the crisis management and frame her activities as supportive to the IDC format. Thus, she not only stressed her assistance for the lead group to the various stakeholders but also assured them that she, together with the EEAS and the European Commission, was taking all appropriate measures to ensure the implementation of the Minsk agreements (Council of the European Union, 2018; EEAS, 2015; Maurice, 2016; Mogherini, 2015b). In this way, she fulfilled her mandate given to her by the ToL and making use of her roles both as the chair of the FAC and as the vice-president of the European Commission, she engaged actively in putting the Ukraine-EU Association Agreement into effect and in the coordination of sanctions imposed on Russia (Amadio Viceré, 2020). She also continuously highlighted links between her activities and the operation of the Franco-German duo (Ministry of Foreign Affairs of Ukraine, 2015, 2017; Mogherini, 2015b). At the same time, she did not use her right of initiative and for example did not pick up the idea of a peacekeeping mission under EU auspices, requested by Kyiv (EurActiv, 2015). For her lack of action on this issue, the HR has been criticized by Ukraine. Nonetheless, her role was perceived as supportive and complementary to the negotiations in the Normandy format (Fischer, 2019; Speck, 2016). As scholars argued, “even if HR Mogherini is not at the negotiation table, she has an important role in shaping the EU position on Ukraine within the European institutions” (Litra et al., 2017, p. 23).

Discussion

In both case studies empirical evidence for the existence of the three conditions for pathological delegation has been found. Both Libyan and Russia-Ukraine conflict, constituted a major geopolitical crisis at the EU doorstep and were salient to EU security due to their manifold

repercussions such as migration pressures or energy security issues. In each case, a divergence of preferences existed among the members of the collective principal, and most powerful EU countries decided to engage in formats of IDC beyond the framework of EU foreign policymaking. Furthermore, the specifics of the PA contract between the Member States and the HR rendered the resources of the latter insufficient to effectively engage in crisis management, despite possessing the general mandate under the ToL to act as crisis-manager.

Understandably and as expected, the agent discretion in the formation and operation of the examined lead groups was low and it was mainly determined by the environmental factors, with interest-induced discretion being marginal. However, as presented in the following table, the examination of both cases revealed differences with regard to the explanatory factors for the HR’s discretion with regard to their intensity and the way (positive and genitive) in which they affected the agent's room for maneuver.

Table 1. Explanatory factors for agent discretion in case of the lead groups

	Contact Group on Libya	Normandy Group
Structure-induced discretion	<p>Level of embeddedness of the IDC format in the EU foreign policy framework ↓</p> <p>Preference heterogeneity between the agent and members of the lead group ↓</p> <p>Sense of urgency ↓</p> <p>Information benefit ↓</p> <p>Institutional background of the agent ↓</p>	<p>Level of embeddedness of the IDC format in the EU foreign policy framework ↑</p> <p>Information benefit ↓</p> <p>Institutional background of the agent ↑</p> <p>Third parties’ involvement/level of the negotiations ↓</p>

	Third parties' involvement/level of the negotiations ↑	
Interest-induced discretion		Entrepreneurial strategies ↑

In the case of the Contact Group of Libya, there were six key factors that affected the discretion of the HR Aston. First of all, due to the demonstrated differences in preferences among the Member States regarding the military intervention, the Franco-British initiative has been considered as a pursuit of their own interests. Hence, the level of support for the operation of the lead group was rather low due to the different views and interests of national capitals. Thus, despite the fact the Council officially welcomed the work of the Contact Group, its activities have not been embedded in the broader framework of the EU response to the crisis. It negatively affected the discretion of the HR who was “trapped between warring capitals” (Vaisse & Kundnani, 2011) and did not have much room to link the lead group’s with other EU foreign policy tools applied in Libya (sanctions and humanitarian aid) and whose coordination was her competency. Secondly, since the geopolitical magnitude of the crisis was high, there was no time for dragging out attempts to find a compromise between Member States. Decisions were taken at the European Council, limiting agent involvement. Thirdly, since the agent did not shy away from presenting a different view on the military intervention issue from the members of the lead group, they brought her to heel by publicly reminding her of their superior position with respect to the CSDP. The general criticism of the HR’s performance has also been expressed by the other Member States and has contributed to the conflict over financial resources, further limiting the agent discretion. Thirdly, and related to the previous point, Lady Ashton and the EEAS were newcomers to the EU foreign policymaking when the Libya crisis hit. It resulted not only in a lack of trust and established operating procedures between the collective principal the agent and between the HR and the

European Commission as another agent, but also in the limited institutional support the agent could reach out for. This, again, affected her discretion in a negative way. In turn, the six factor – level of the negotiations, proved to be favorable to Ashton’s room for maneuver. Since the lead group included representatives of various IOs, the HR, as one of the representatives of the EU has been invited to participate in the meetings as well. As demonstrated above, it can be assumed that its role was reduced to coordination between the EU and other organizations, since the political direction was decided on the level of nation-states. Regarding the interest-induced discretion, no evidence could be found for the presence of agent-related sources. The information benefit was on the side of the leading Member States as Ashton did not have vast expertise on Libya or a fully-fledged diplomatic service to support her. Her attempts to use the agenda-setting power ended in the above-described conflict with France and UK. Pushed into a corner, she did not make use of her right for initiative with regard to CSDP matters and focused on other elements of the EU response: coordinating the humanitarian aid, sanctions, and diplomatic relations with Libya.

The analysis of the discretion-affecting factors in the case of the Normandy format paints a somewhat different picture with five key explanatory variables. Once Mogherini took over the HR office in November 2015, the Franco-German duo has been already active within the Normandy format, and the level of support for their diplomatic activity among other members of the collective principal has developed. Berlin and Paris have stressed since the beginning, that their efforts are in line with EU political guidelines and the collective principal has expressed support for the Normandy negotiations, linking the lifting of sanctions to the implementation of the Minsk agreements. Contrary to the Contact Group of Libya, the operation of the lead group was embedded in the overall EU policy framework, as one of its three main components (besides the sanctions and the negotiations of the Association Agreement). It positively affected the HR’s discretion: Although she was not a member of the lead group, the continuous dialogue with Berlin and Paris enabled her to actively coordinate the other elements of the EU response. The second factor positively influencing agent discretion that could be observed in the empirical analysis was the institutional support that HR enjoyed from both the EEAS and the European Commission. This does not imply that there have not been any challenges with Mogherini performing her multi-hatted role, but inter-institutional working arrangements were worked out and her standing in the Commission was stronger than that of her predecessor. Similarly, the Member States seemed to better grasp the

institutional and political dimension of the HR office and there were no major public disagreements between them and the agent. At the same time, however, neither Ashton's and then Mogherini's personal diplomatic experience in Russian affairs nor the EEAS's institutional competence in the matter gave the agent the information benefit. It was still on the side of the Member States, especially Germany. What, in turn, has negatively affected the agent discretion, was the level of the negotiations within the Normandy format. Here the discretion-limiting effect was twofold. First of all, the Normandy format has been launched by the heads of states and no representatives of any IOs have been initiated to join, thus there was no room for the HR to plug in. Secondly, another aspect of the negotiating context proved to be important: the role of third countries, namely Russia. As demonstrated above, Moscow preferred to deal with leaders of the two most powerful members of the collective principal, instead of the supranational agent with limited resources. With regard to the interest-induced discretion, the situation looked similar in case the of Libya. Mogherini, same as Ashton, focused on the coordination of the other components of the EU crisis response, she was mandated to deal with. Apart from one attempt to propose tools to monitor the Minsk II Agreement, which was not picked up by the Council, she did not use the right to propose policy action as the example of the peacekeeping mission in the East of Ukraine demonstrated. The only strategy that could be interpreted as aimed at increasing discretion, and for which empirical evidence was found, was the framing strategy characteristic of policy entrepreneurs. The agent managed to embrace the narrative about the embeddedness of the Franco-German activities within the lead group in the EU foreign policy while talking to different audiences both in Europe and in Ukraine and Russia, highlighting the unity across the EU and the consistency of the overall EU response. The perception emerged of a deliberate division of labor between the Franco-German duo in the lead group and the activities of the agent.

Conclusions

The aim of this article was to better understand a hitherto understudied aspect aspect of informal differentiated cooperation in EU crisis management - the role of the 'EU element', which is claimed to be present in IDC occurrences, due to the competences transferred to EU institutions in the Lisbon Treaty. To this end, the paper focused on the informal lead groups and conceptualised them along the PA approach as manifestations of pathological delegation. Pathological delegation in EU crisis management occurs when individual Member States

within the collective principal decide not to delegate a specific task to the High Representative but instead initiate forms of IDC despite having delegated certain competences in this area to the HR via the ToL. An exploration of discretion-affecting factors regarding two selected lead groups – the Contact Group on Libya and the Normandy Group revealed whether and how the HR can contribute to the development and course of forms of IDC initiated by members of a collective principal outside of the EU framework. The results showed that, as expected from the characteristics of the delegation contract between the Member States and the HR, the factors which determine the structure-induced discretion of the agent dominate, leaving little room for interest-induced discretion. A key factor explaining agent discretion appeared to be the level of embeddedness of the IDC format in the EU foreign policy framework, resulting from the consistency of the format's objectives and the policy guidelines formulated by the collective principal. This facilitated the agent's room for manoeuvre by providing conditions for division of labour between the activities of the lead group and the tasks conducted by the HR under its mandate. Under such circumstances, the agent was also able to pursue entrepreneurial strategies (framing) aimed at increasing its position in shaping the EU response towards a given crisis. The empirical analysis also demonstrated that HR's discretion can be affected by the level of institutional support it receives from both the EEAS and the European Commission, acting as another agent in crisis management. Thus, it can be expected that since the EU foreign policymaking institutional structure is now established and operational and the multi-hatted role of the HR now more ingrained in the system, it would positively affect its discretion with regard to various IDC occurrences. However, more case studies with regard to recent formats of IDC would be needed to test this assumption, since other factors such as personalities of the agents may also play a role and make this factor discretion-limiting. Finally, the case studies revealed that the role of third parties' involvement and the level of the negotiations can either enhance or limit agent discretion, depending on various external dynamics such as the stance of the conflict parties. By offering the above-mentioned insights, this paper adds to studies on agents' discretion also in other international settings.

With regard to the theoretical insights, the study demonstrated that conceptualising the IDC as manifestations of pathological delegation, can enhance the understanding of the dynamics of delegation and discretion from collective principals to supranational agents. Specifically, the principal-agent approach and its evolution which considers irregular patterns of delegation that deviate from the basic model, offer explanatory tools to better grasp the reality of decision-making processes in IOs, in which delegation from the collective principal to the supranational

agents takes place to varying degrees, providing a range of alternative forms of governance to be explored. At the same time, the varying degree of delegation (including the macro- and micro-delegation patterns) impacts agents' discretion and the conceptual framework offered in this paper enables the exploration of both structural and agent-related sources that may determine agents' room for manoeuvre when irregular delegation takes place.

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politiki-vice-prezidentom-jek-federikoju-mogerini

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