

**Sterile Debates and  
Dubious Generalisations: An Empirical  
Critique of European Integration Theory  
Based on the Integration Processes in  
Telecommunications and Electricity**

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### **Abstract**

Analyses of European integration processes are still dominated by the dichotomous debate between intergovernmentalism and supranationalism. Sides are often taken in this debate based on very case-specific empirical findings. An analysis of two cases, European telecommunications and electricity policy, illustrates how misleading such generalisations can be. The former case is often used to support supranational claims, while the latter highlights the importance of intergovernmental vetos. However, further analysis reveals the very parallel supranational policy approach of the European Commission to both sectors and the resulting weakness of the dominant interpretation. An analysis using a multi-level governance approach to European integration would avoid these difficulties.

### **Zusammenfassung**

Viele Analysen des europäischen Integrationsprozesses orientieren sich an der Theoriedebatte zwischen intergouvernementalen und supranationalen Ansätzen. Häufig fußen Stellungnahmen jedoch auf empirischen Einzelfällen, die solch weitergehende Generalisierungen kaum zulassen. Eine Analyse der europäischen Telekommunikations- und Elektrizitätspolitik dient als Basis dieser Kritik. Erstere wird oft zur Unterstützung supranationaler Erklärungsansätze herangezogen, währenddessen der zweite Fall die fortwährende Dominanz intergouvernementaler Vetos hervorhebt. Die nähere Analyse zeigt jedoch, daß diese Interpretation zu kurz greift, denn in beiden Fällen verfolgte die Europäische Kommission einen parallelen, supranationalen Politikansatz. Eine Erklärung beider Fälle mit dem Ansatz europäischer Mehrebenenpolitik vermied diese Probleme.

## Contents

1	Introduction	5
2	Theories of European Integration and Empirical Evidence	7
3	Two Case Studies	13
3.1	European Telecommunications Policy: Successful Supranationalism	14
3.2	European Electricity Policy: Successful Intergovernmentalism	18
4	Explaining Different Outcomes: Beyond Intergovernmentalism and Supranationalism	22
4.1	Sector Characteristics and the National Situation	24
4.2	Member States' Interests in Telecommunications and Electricity	27
4.3	Supranational Actors and the Institutional Context	36
5	Conclusion	43
	References	47



## 1 Introduction

Theories of European integration still predominantly revolve around the old dichotomy between supranationalism and intergovernmentalism. The positions first taken in the 1950s and 1960s have been refined in many ways since, but the existence of a sort of supranational “spillover effect,” outside of the control of the Member States of the European Union,<sup>1</sup> and its relevance for integration still represent a focal point of theoretical considerations (Sandholtz/Zysman 1989; Moravcsik 1991; Burley/Mattli 1993; Garrett 1992).

What is often overlooked are the frequent empirical shortcomings of the arguments. “In the field of Community studies, isolated case studies of grand bargains, policies, and institutions have been the rule rather than the exception” (Anderson 1995: 452). Of course, this case-study orientation has a strong rationale, given the vicissitudes of European integration, the uniqueness of decisions of “high politics,” and the sector-specificity of European policy-making, all of which make it difficult to draw on more than a single case study. But the eagerness to engage in theoretical debates on the basis of such studies (whether it be the dominant debate focused on in this paper or other debates) is rarely matched by concern for the generalisability of the argument’s empirical foundation. For principally, the very features of “uniqueness” should at the same time preclude any overly far-reaching generalisations. Consequently, in the theoretical debate on European integration, disagreement is not only motivated by conceptual differences but may simply be caused by the arbitrariness of the empirical foundation: had another sector been chosen, the analyst might have come to contrary

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I would like to thank my interview partners (predominantly experts, officials at the European Commission and at national ministries, and private actors); to protect anonymity only the number of the interview is cited. Earlier versions of this paper were presented at the ECPR workshop on European Multilateralism in Bordeaux in 1995 and in the study group of the GAAC Young Scholars’ Institute on the Political Economy of European Integration in Berkeley of the same year. In addition, I profited from the many comments of my colleagues at the Max Planck Institute for the Study of Societies (MPI für Gesellschaftsforschung) in Cologne. I am grateful for all remarks and observations received and would particularly like to thank the following individuals: Roland Czada, Cédric Dupont, Dieter Freiburghaus, Philipp Genschel, Kjell Hausken, Adrienne Héritier, Jonah Levy, Susanne Lütz, Renate Mayntz, Fritz Scharpf, Uwe Schimank, Raymund Werle, Dieter Wolf, and Michael Zürn.

1 Referred to hereafter simply as “Member States.”

conclusions. Of course, the fact that analyses of European integration are burdened by this problem is nothing new. It just reaffirms Puchala's (1972) image of blind men touching different parts of an elephant as an analogy for competing theories of integration.

Problems of case-study method are well known (Liebersohn 1991). It would of course be short-sighted to argue that there is no room at all for them in the study of European integration, and the numerous case studies that enhance the theoretical repertoire underscore this point (Pierson 1996; Streeck 1995). My concern involves instead what I perceive to be the quite problematic interaction between the theoretical debate and the state of empirical knowledge. In a dichotomous debate, every case study at hand is likely to be in keeping with one of the two opposing positions. As an all-to-easy point of reference, the subsumption under the terms of the debate risks closing off empirical enquiry prematurely. No effort is made to seek evidence that might put an end to sterile debate, since it lies beyond the scope of the theories' premises. Thus, the existence of a prominent debate and the relative inaccessibility of a broader empirical base augment each other in producing seemingly general theoretical claims (that are actually highly issue dependent) and theoretically induced empirical shortcomings.

The evidence I present on behalf of my argument is mainly indirect in character. This has the advantage of turning the criticism into a constructive argument. Instead of tracing unsubstantiated generalisations from existing case studies, I present an analysis of two case studies, which fit the two sides of the debate quite well. Thus, the case of European telecommunications policy is a supranationalist success story, while the case of electricity policy highlights the strength of the intergovernmentalist veto. Once these two cases are taken together, the dominant lines of interpretation must be modified, since their parallelism precludes such different explanations. Having demonstrated the trap that the dominant theoretical debate can pose for single case study evidence, the parallel analysis of the two cases points to further variables relevant for the successful adoption of European policies. Moreover, it becomes quite apparent how orientation toward the dominant theoretical dichotomy blinds one to the multiple interaction effects between supranationalism and intergovernmentalism in what should be more appropriately conceptualised as a system of multi-level governance (Scharpf 1994).

In the following, I first summarise theories of European integration and draw attention to the way in which theoretical debates on conceptual issues may be confounded with the idiosyncrasies of the respective empirical case. I then present my two case studies with their apparent support of the two major paradigms. The similarity of the policy approach taken in the two cases points to the fact that an interpretation oriented toward the dominant theoretical positions must be in-

sufficient, possibly both empirically and conceptually. I therefore proceed with a more detailed analysis, which reveals previously missed interaction effects between the supranational and the national level. These are crucial for the understanding of the two integration processes, but they will be missed as long as one continues to cling to the dominant perspectives.

## **2 Theories of European Integration and Empirical Evidence**

Traditionally, theories of European integration divide on whether to emphasise the importance of intergovernmental or supranational factors. Put simply, the question focuses on the relevance of supranational institutions and actors in relation to the participating nation-states. Such a question is of course a matter of degree, and consequently a series of different positions may be discerned (Cornett/Caporaso 1992; George 1993; Caporaso/Keeler 1995).

An extreme position not attributing any impact to the supranational level is based on the neorealist tradition in theories of international relations (IR). This approach emphasises national sovereignty, so that international cooperation is seen to result only on a lowest common denominator basis, where all participating countries realise advantages (Hoffmann 1966).

A second, more dominant position in the debate on European integration is taken by neoliberal explanations based on the theory of international regimes. While this is a rationalist approach of utility-maximising nation-states, by focusing on regimes it pays heed to supranational institutions. For policy issues which are marked by international interdependence, international regimes offer an institutionalised arena for solving coordination or collaboration problems and for monitoring their enforcement. Once international regimes exist, there is an incentive to solve additional problems of international interdependence within this institutional structure, allowing these regimes to grow in relevance and become the institutional setting for addressing an increasing array of issues (Gehring 1994).

Another position, which may be termed constructivist (Sandholtz 1994: 18) goes one step further, by acknowledging not only the existence of supranational institutions but also of supranational actors. Here, the fact that the European Commission and the Court of Justice have been allocated certain rights, such as the Commission's formal monopoly on policy initiation and the Court's autonomy in establishing breaches in the legal obligations of Member States, is seen as resulting in a qualitative change. This contrasts to rationalist approaches that empha-

sise the interests of Member States. The actor quality of supranational organisations implies that these supranational actors bring their own interests into the integration process, which have to be taken into account in addition to the sum of all Member States' interests. Furthermore, private actors are generally included in analyses based upon this approach. For instance, Sandholtz and Zysman (1989) saw a coalition between the Commission and European business leaders as being influential in the renewed momentum of the 1992 process.

As representative of the other end of the spectrum, the neofunctionalist approach has to be mentioned. Based on the functionalism of Mitranyi, neofunctionalism posited an increasing momentum towards integration resulting from the functional interdependence between policies, leading to the "spillover" of sectoral integration into other sectors, and the increasing supranational orientation of national élites (Haas 1964; Nye 1971). According to this conception, the nation-state loses some of its grip on the course of integration as private and supranational actors become relevant. However, the inclusion of actors does not yet amount to a clear microfoundation for the approach. Moreover, institutions are not very prominent in this perspective. Neofunctionalism was dominant in the early stages of the European Community and suffered a strong setback with the crisis of integration in the 1960s and 1970s. There was no complementary functionalist approach to explain the barriers to integration and the persistence of nation-states.<sup>2</sup> With the momentum of the Single Market initiative in the 1980s, neofunctionalism has seen a revival of sorts (Keohane / Hoffmann 1990: 284) and was recently applied, for instance, to the judicial politics of European integration (Burley / Mattli 1993).

From its origins in neorealism and neofunctionalism, the intergovernmentalism versus supranationalism debate is based on distinct theoretical and empirical precepts. Theoretically, governmental interests in preserved sovereignty are seen, on the one hand, as imposing natural limits on the integration process. On the other hand, the functional requirements of structures and processes provide ammunition for integration and remove it from narrow concerns of sovereignty. These different epistemological foundations make a direct juxtaposition difficult. The same holds true of the original empirical focus of the two approaches. Intergovernmentalism presumes that analyses of "high politics" are germane to the understanding of European integration, because treaty negotiations predetermine the integration processes to come. Neofunctionalism, in contrast, is concerned with sectoral integration processes and focuses instead on professional élites and associations rather than on governmental actors.

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2 See Corbey (1995) for a recent attempt at "dialectical functionalism" that accounts for both the success and failure of the integration process.

In line with the common perception of the debate, I will abstract from the functionalist tradition and simply refer to an actor-based supranationalism. This finds support in both the “constructivist” position and in recent adoptions of neofunctionalism (e.g. Burley/Mattli 1993), where the attempt to operationalise the approach has resulted in a stronger actor orientation. Empirically, my focus will be on sectoral integration processes, which implies a certain supranationalist bias to the analysis, given that intergovernmentalism is concerned with “high politics.” However, the disregard for sectoral processes exhibited by intergovernmentalist studies does not imply that this approach would assume that its principles do not hold in this context. Despite the agenda-setting power of the Commission and the prevalence of qualified majority voting, for instance, an intergovernmentalist position would argue, on the one hand, that the Commission would closely follow the wishes of the largest Member States, as Garrett (1992) has done for the rulings of the Court. On the other hand, it would be assumed that the mutual respect for each other’s sovereignty would prevent the passing of legislation that contravenes vital interests.

Aside from the still hegemonic, traditional IR approaches on European integration (the focus of this paper), there is a growing body of literature on European integration attempting to break away from a dichotomous debate. Attempts at theory integration come partly from an IR background (Zürn 1995; Risse-Kappen 1996; Jachtenfuchs 1995; Jachtenfuchs/Kohler-Koch 1996), partly from a public policy or comparative politics perspective (Wessels 1992; Grande 1995), but also from an explicit rational-choice institutionalist perspective (Pollack 1995). Recently the notion of multi-level or multi-tiered European governance seems to have become the common label for work outside of traditional IR perspectives. Empirically, analyses of sectoral integration processes often adopt this approach. Contrary to the neorealist belief, it is held here that European policy-making exhibits a very different logic from intergovernmental treaty negotiations, from which it is also largely independent, since the ambiguities inherent in the treaties leave much scope for action (Cram 1994: 197; Marks et al. 1995). The nation-state dominance of most IR approaches is loosened, and private actors at the national and supranational level, in addition to supranational actors such as the Commission, are systematically integrated into the analysis. To take account of these multiple actors, the policy network approach is often adopted (Héritier et al. 1994). Other concepts from public policy analyses that have been made fruitful for the study of European integration include the notion of “joint-decision traps” (Scharpf 1988) or Coleman’s (1974) concept of corporate actor as a conceptualisation of European institutions (Schneider/Werle 1990).

The various theoretical foci on European integration correspond in many ways to the incoherence of the integration process itself. The development of the Com-

munity has been characterised by significant shifts in relevance of supranational versus intergovernmental factors, as was experienced most recently in the transition from the momentum of the Single Market to the relative setback experienced after the Treaty on European Union (Wallace 1993). Accordingly, either supranational or intergovernmental accounts of European integration seem intuitively more plausible, depending on the time period under discussion. Furthermore, once one leaves the level of the overall integration process (with its intergovernmental conferences and different treaty additions) in favour of more detailed case studies of diverse sectoral integration processes, differences are seen to be not only diachronic, but synchronic as well. While some cases of sectoral policies are characterised by the strong impact of supranational factors, others may proceed in a very intergovernmentalist fashion. As a result, theoretical controversies may be as much dependent on the choice of empirical evidence as they are the result of the preliminary conceptual assumptions made and the strength of the theoretical model employed.

Two prominent examples may first serve to demonstrate the conceptual aspects of debate. In an influential article, Sandholtz and Zysman (1989) explained the regained momentum of the 1992 process in terms of a combination of structural changes in Western Europe's position in the international economy and the successful policy leadership of the Commission, backed by a transnational industry coalition. In opposition to this, Moravcsik (1991) presented an interpretation in which the Commission and transnational élites hardly played any role in the Single European Act. At the core of the revival of European integration he saw the alliance between France and Germany with their credible threat to promote a two-track Europe, should the UK block further integration. What appeared as supranational leadership, Moravcsik argued, were actually ideas the heads of states had generated long before.

These two interpretations raise some empirical questions, such as who generated innovative policies, as well as emphasising the fundamentally conceptual issue of the relative importance of supranational versus intergovernmental factors. A more recent debate on European judicial politics between Garrett and Burley-Slaughter/Mattli illuminates the conceptual aspects of the debate even more clearly. In an article on the internal market, Garrett (1992) interpreted the actions of the European Court of Justice as simply reflecting the preferences of the Franco-German alliance, using a rationalist approach similar to that of Moravcsik. Burley and Mattli (1993), in contrast, argued that European legal integration corresponds most closely to the neofunctionalist model, and that law has taken the role accorded to economics in the original theory (*ibid.*: 44). The Court, in their view, drives European integration forward by means of its interpretation of the Treaty, leading to instances of political and functional spillover. Empirically, they

refuted Garrett's argument that the Court's rulings reflect Franco-German preferences.

In a comment on this article, Garrett (1995) argued that the uncertainty existing for all Member States of the Community, on whether their partners would honour existing intergovernmental agreements, made it rational for them to allocate the enforcement function to an independent supranational agency, to which all would abide. While the Court's rulings would naturally violate the short-term interests of Member States repeatedly, the Court could not move too far from the underlying consensus of the Member States on the course of European integration, given the fundamental necessity of their cooperation. In their response, Mattli/Slaughter (1995) contended that the question was not whether the Member States behaved rationally by creating an agency. The real question involved uncertainties that created leeway for the Court to advance integration to an extent not achievable in intergovernmental negotiations. These uncertainties surrounded the question of what exactly constituted the underlying consensus on integration among Member States and at what precise point it would be violated. They argued that by agreeing that the Court had some degree of judgemental discretion, Garrett had come very close to their own position.

This debate elucidates how the question of the relative weight of supranational versus intergovernmental actors rests on prior conceptual decisions that then guide subsequent perceptions. For basic epistemological reasons it is difficult to reach an accord. However, it should not be an empirically based debate, if one could not expect to reach further clarity on the basis of empirical studies. Analyses of "high politics," such as the major treaty additions, face difficulties in this respect, because the historical background for each case is generally too distinct to allow for comparisons and generalisations. Interpretations of unique cases lend themselves to the perpetuation of theoretical disputes, as the comparison with other cases is not an available means to overcome the ambiguities of different interpretations. Institutional politics, for example by the Court, should provide a more appropriate area for comparison, as it may be possible to compare the relative importance of different factors across cases (Stein 1981). Another opportunity is offered by analyses of sectoral integration processes. These have received increasing attention in recent years, since they can elucidate the nature of supranational policy-making, identify the different factors supporting and opposing integration, and map the changes implied by European integration for domestic political systems (Schumann 1991).

While analyses of sectoral integration processes offer the potential of achieving more empirical certainty on the range of variables relevant for European integration, the problem remains that there is no typical integration process of sectoral

policies. Rather, the course of integration is highly fragmented, characterised by a sector-specific design of competences at the supranational level and by many differences across sectors between involved actors, their interests, and national institutional features. Research is therefore predominantly restricted to single case studies, which already offer ample empirical complexity, given the range of actors and institutions relevant for European policy-making. Until now, no taxonomy of different integration processes exists that could systematise parallels and differences across cases.

The dominance of single case studies and the sector-specificity of integration has had the consequence that conceptual and empirical differences are often confounded. When conceptual arguments are based on single case studies, it is difficult to validate any claim made because a different case could bring the opposite result. In a recent debate, for instance, Kassim (1994) argued for the inappropriateness of the policy networks approach for the study of European integration, basing his argument in part on the contention that its supporters relied too heavily on the exceptional case of European research policy, which could not be taken as representative (*ibid.*: 23). In a reply, Peterson (1995) argued that, on the contrary, Kassim made his argument on the basis of work on European air traffic and competition policy, whose notable (and exceptional) absence of policy networks implied an inappropriate empirical bias for Kassim's conclusions (*ibid.*: 394).

As this debate shows, without more systematic attempts to base theoretical conclusions on cross-sectoral evidence, the potential contribution of policy analyses to the understanding of European integration will be partly wasted. This failure becomes apparent not only in the rare instances of controversies roused by conflicting case study findings, but also in the impossibility encountered in many case studies of narrowing down empirical complexity to a limited set of relevant variables. Thus, Marks (1993: 404) contends in an analysis of structural policy that "we are seeing the emergence of a far more complex, open-textured, and fluid situation in which subnational governments interact both with the EC and cross-nationally." Or Andersen (1993: 136) sees European energy policy characterised by political spillover, but then concludes "The EC is successful when it makes things happen. However, what will happen in the energy sector, still remains to be seen. There are different degrees of Europeification and the energy sector is still at the lower end of this scale" (*ibid.*: 154). But ideally one should expect analyses to penetrate the "fluidity" and opaqueness of the European integration process and contribute to its explanation.

This difficulty is, of course, not limited to sectoral studies alone (Schneider/Cederman 1994: 642). Thus, Cameron (1992: 65) summarises the Single Market initiative by saying: "In short, then, the 1992 initiative was the product of a complex

interaction among several economic, institutional, and political factors, some of which were integrationist and others intergovernmental.” In addition, Keohane and Hoffmann (1990: 295) surmise, in a manner worthy of a Solomon: “Our analysis of the dynamics of the Community and of spillover suggests that despite the revival of supranationality and the emergence of a Community-wide political system in which state sovereignty is both pooled and shrunk, what matters most are the bargains among the major players.”

The significant variation found among European policy processes as well as the uniqueness of “high politics” decisions, it appears, have more frequently been taken as a legitimation for single case studies than as an indication of the necessity to approach their study in a more systematic way. Given that conclusions drawn from explicitly sector-specific processes of European integration are even less viable than they would be if sectoral differences were less pronounced, this means that the potential value of case studies can hardly be realised. I support this criticism with a juxtaposition, and subsequent analysis, of two case studies. To emphasise my argument, that mere empirical idiosyncrasies fuel the debate on European integration theories, I present these cases initially in support of each of the two explanatory models. However, the similarity between the two cases shows that these explanations are ill-founded. Apparently, quite different conclusions would be reached, were the empirical work restricted to one case, and the interpretation oriented around the dominant theoretical debate. In the following analysis, I provide a more consistent interpretation of the two cases.

By applying this model of supranational and intergovernmental success and failure, I follow, on a more empirical level, a line of reasoning similar to the one recently proposed for theoretical models of European integration. Thus, Schneider and Cederman (1994) have argued that the meagre state of European integration theory can only be overcome by including the possibility for success and failure in theoretical models. In a different vein, Corbey (1995) has presented a dialectical neofunctionalist model, in which success and failure alternate.

### **3 Two Case Studies**

I will now present my two case studies, starting with the earlier process of telecommunications, which also served as a model for the policy approach to electricity. The description is not strictly parallel but aims to convey the main stages and problems of both policy processes, showing how each case can be taken to sup-

port one of the two dominant explanations. Further empirical details will be introduced in the following analysis.

### **3.1 European Telecommunications Policy: Successful Supranationalism**

In the EC, telecommunications was long not subject to common policy deliberations. There is no explicit mandate for doing so in the founding treaties and, until the 1980s, postal ministers hardly ever met. In 1984 common policy activities started due to the industrial policy view that otherwise the relatively strong European telecommunications sector might lose out to US firms, as had recently occurred in the computer sector (Schneider/Werle 1990: 92). The initial cornerstone of this involvement was the 1987 “Green Paper on the development of the common market for telecommunications services and equipment,”<sup>3</sup> a long document that laid out the changing technical, economic, and international aspects of telecommunications and called for a common reform of the regulatory framework. The single market initiative and a 1985 judgement of the European Court of Justice in the “British Telecom Case” were important aspects of the legal context of this document. The Court’s decision had established that the provision of telecommunications services fell under the competition rules of the EC treaty and was to be regarded as a normal economic sector with no exceptional status (Ellger 1992).

The Green Paper was followed up by a broad consultation process of relevant organisations in the field and in February 1988 the Commission published proposals for its implementation, including deadlines for the different measures. Given the long-term stability and monopolistic structure of national telecommunications regimes, the proposals were ambitious. Thus, the existing terminal equipment monopolies were to be abolished by the end of 1990 and all services with the exception of telephony were to be liberalised by the end of 1989. For 1992 a review of the remaining monopolies for the network and for telephony was planned. Moreover, a range of accompanying measures, including the separation of regulatory and operational activities and the definition of fair access and usage conditions of the network (Open Network Provision – ONP) was initiated.

The programme had gained solid support from European business in the consultation process, and, at the beginning of 1988, the Council of Ministers passed a resolution backing the proposals. Nevertheless, the implementation of this pro-

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3 In contrast to White Papers which lay down comprehensive policy programmes “*ex cathedra*” in the British tradition, Green Papers aim to stimulate discussion on less explicitly forwarded policy options among the relevant actors.

gramme could not have seemed very realistic at the time, given the entrenched nature of the monopolies, the large number of those with something at stake, and the multiple issues of public policy involved. It was therefore utterly critical that the Commission have some supranational powers it could refer to, liberating it in part from its reliance on a qualified majority in the Council of Ministers. Based on the legal interpretation provided by the Court of Justice in the British Telecom Case, the Commission had already announced in the Green Paper its intention to issue the necessary measures for liberalisation on its own, using its powers under European competition law. Based on Art. 90.3 of the Treaty of Rome, it released directives in 1988 for the liberalisation of terminal equipment and in 1990 for that of services (excluding simple telephony), thereby employing a legal provision which had been used only once before. Where Member States maintain monopolies or have granted special rights to “undertakings” that do not conform to the competition law of the Treaty,<sup>4</sup> and are not necessary for the maintenance of the service (Art. 90.2),<sup>5</sup> Art. 90.3 allows the Commission to issue directives without the cooperation of the other bodies (Sauter 1995). In addition to the liberalisation of market segments, both directives also included aspects of organisational reform, mandating the separation of regulatory and operational functions which were previously joined in the PTTs<sup>6</sup> (Ravaioli/Sandler 1994).

In both instances of the Commission’s recourse to this article, Member States disputed the competence of the Commission to issue a directive without the Council, leading several Member States to seek a decision of the European Court of Justice (ECJ). In the terminal equipment case, France – supported by Italy, Belgium, Germany, and Greece – turned to the Court. The policy issue as such had broad support among the Member States, and the conflict concerned only the procedural question. But even before the judgement of the Court, the Commission issued its second directive for the liberalisation of telecommunications services, and this time, there was also material dissent between the Commission and Member States. Many countries were very reluctant to liberalise data services and to restrict monopoly rights to the public voice telephony service. In this controversy, the compromise was struck between the Commission and the Council of

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4 Such as the prohibition of cartels and of abuse of dominant positions (Art. 85, 86), but also obligations from the other chapters of the Treaty, for instance the need to dismantle existing state monopolies (Art. 37).

5 European competition law recognises few exceptions, possessing instead the general clause of Art. 90.2, which excludes those services of a general economic interest whose provision is obstructed by the application of the competition rules. But, “the development of trade must not be affected to such an extent as would be contrary to the interests of the Community.” In view of the liberalisation in the UK it is also unlikely that Art. 90.2 could provide strong arguments for telecommunications monopolies (Baggehufwudt 1993: 178).

6 Postal, Telephone and Telegraph Administrations.

Ministers in December 1989 to issue the liberalisation directive together with the harmonisation measures of the Council. Thus in June 1990 the Commission published its directive in parallel to a Council directive describing the future regulatory framework (called the Open Network Provision [ONP]). This time Spain – with the support of France –, Belgium, and Italy challenged the directive before the Court. In early 1991, the Court backed the Commission's choice of Art. 90.3 in the terminal case. In 1992, the services case was also upheld by the Court.<sup>7</sup>

With the legal support of the Court of Justice, the use of Art. 90.3 for the liberalisation of segments of the telecommunications system has become an established practice in the telecommunications sector. The normal pattern of policy-making is the publication of a consultation document and the separation of measures into “liberalising” Art. 90 directives adopted by the Commission and “harmonising” Art. 100a directives agreed upon by the Council. Thus, in 1990 a Green Paper on satellite systems was issued, and in October 1994 the Commission incorporated satellite services and equipment into the two existing Art. 90 directives. In 1992, a consultation document reviewing the services directive led to the Commission's proposal to liberalise the telephony service, which was then endorsed by the Council for 1998. A Green Paper on Mobile Telecommunications followed in 1994, and a Green Paper on Infrastructure in 1994/95, which resulted in the Council Resolution in November 1994 on the liberalisation of infrastructure in 1998.

In European telecommunications policy, the Council is under clear supranational pressure to agree on regulatory measures, since the Commission has aptly used its existing competences under competition law to further liberalisation. For instance, in the discussion of the liberalisation of telephony in the 1992 review, it initially proposed the liberalisation of intra-European international traffic at an earlier stage. Since profit margins are particularly large in this market segment, this proposal was strongly opposed by the telecommunications organisations, and the prevention of this intermediate measure, which the Commission could have implemented on the basis of Art. 90, greatly furthered the acceptance of total voice liberalisation at a later stage. Recently, the Commission has been even less unambiguous in the use of its powers. Thus the Competition Commissioner has made it repeatedly clear that the clearance of the joint venture between DBP Telekom and France Telecom (“Atlas”) would be much easier, were both countries to show clearer signs of an imminent liberalisation of networks. Finally, in terms of the approval of infrastructure liberalisation, the fact that the Commission, backed by some Member States, repeatedly brought the limited infrastruc-

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7 Only a minor aspect of both directives – the definition of special rights – was declared void by the Court.

ture liberalisation of only alternative networks (i.e. the networks held by electrical companies, railways, highways, and cable TV) into play worked as an incentive to agreement on total liberalisation at a later date.<sup>8</sup> The Commission nevertheless formulated a draft Art. 90.3 directive for the liberalisation of cable TV networks shortly after the Council meeting of November 1994 and drafted another one to liberalise all existing alternative networks for mobile operators in mid-1995.<sup>9</sup> This is further evidence for the extent of supranational pressure for European telecommunications policy. Following this, the Commission drew up yet another directive for the early liberalisation of all alternative networks for the provision of already liberalised services.

In order to achieve the transition to a fully liberalised telecommunications environment, several Council directives will have to define the regulatory framework, while liberalisation measures can rely on the Commission's competences under Art. 90.3. In less than a year, since mid-1995, the Commission has adopted three Art. 90.3 directives which liberalise various aspects of alternative networks.

In the telecommunications sector, the Commission has thus been able to implement an ambitious policy programme successfully, with the necessary support of the European Court, leading to the Europeanisation of a formerly largely nationally shaped sector. The Commission has initiated an influential European-wide policy debate and enacted its own measures, lending support to the relevance of supranational factors in European integration. Member states lost their right to veto the liberalisation measures, which put them under pressure to agree on re-regulatory directives in the Council. Furthermore, the directives issued by the Commission did not reflect the lowest common denominator among the Member States, as an intergovernmental position would mandate. This is evidenced by the conflict over the first two directives in the Court as well as by the current opposition of several Member States to the planned restricted liberalisation of alternative networks by 1996.

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8 The reasoning is that many Member States feel that a stepwise liberalisation starting with specific market segments (European international voice traffic, alternative networks) will make the transition to a competitive environment less controllable because substitution effects will then take place.

9 There is (1) a draft to liberalise the use of cable TV networks as alternative infrastructures for competitive service providers and (2) a liberalisation draft granting mobile service operators the right to build their own fixed networks, to use all existing alternative infrastructures (cable TV, electricity, rail, and highways), and to interconnect freely among themselves. Both additions shall be effective as of 1996. Lastly, an extension to include the total liberalisation of all restrictions from 1998 onwards is planned (COM(95) 158: 59).

Considering the process of European telecommunications policy, it comes as no surprise that this sector is often cited as empirical evidence of the relevance of supranationalism to European integration. For instance, Schneider and Werle (1990: 80) have taken this sector as a basis from which to argue that European institutions do not remain mere aggregates of their members' interests but develop institutional self-interests and become corporate actors in their own right. Together with Dang-Nguyen (1994: 495), they contend that the implementation of European policy proposals "has completely escaped the control of the national telecommunications administrations and has now become an almost exclusive domain of the European Commission." Sandholtz (1993) demonstrates that the Commission's leadership was highly instrumental in the success of European telecommunications policy and takes this case as evidence against the intergovernmental approach, which underestimates the role of supranational institutions. Similarly, Fuchs (1994) uses telecommunications to show how the Commission acquired competences, arguing that while it started out coordinating policy, it is now a *primus inter pares* (*ibid.*: 190).

### **3.2 European Electricity Policy: Successful Intergovernmentalism**

Electricity forms part of the larger energy sector policy. Despite the fact that two of the three founding treaties for the EC are energy related (Euratom and the Coal and Steel Treaty), European energy policy has progressed very hesitantly. "There is general agreement that energy policy must be ranked as one of the Community's major failures" (Padgett 1992: 55). The political relevance of the sector and the plurality of concerned interests have hindered a common policy approach.

A first step towards a common energy policy was the resolution of the Council of 16 September 1986 on common political goals until 1995. It included an emphasis on the need for an improved integration of the Community's energy market with the goal of increasing the security of supply, reducing costs, and strengthening the competitiveness of the national economies. This resolution was followed up by a 1988 Commission report on "The internal market for energy," which took stock of the situation in the different segments of the energy sector and the major barriers to the internal market. Its most important result was a new initiative to apply existing community law (in particular the rules for competition and state aid) to the energy sector, and above all to electricity and gas.<sup>10</sup> While the publi-

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<sup>10</sup> In contrast to telecommunications, the Commission could not rely on a central judgement of the Court, comparable to the "British Telecom" case, to specify the obligations for network-based energy (Slot 1994).

cation of a broad policy document as an introduction of the internal market initiative to the sector was very similar to the approach taken in the telecommunications case, this document was not superseded by an organised process of consultation. Thereby the Commission acknowledged that less support was expected and that it needed to take a more affirmative stance than is possible with a Green Paper (Interview 13).

The ensuing discussions focused on electricity and gas,<sup>11</sup> which had emerged as the major area for policy action. Influential in this respect was the strong support of France, which demanded access to foreign networks as a means of exporting its surplus electricity. In fact, France helped to introduce the Commission's proposals by lodging a formal complaint with the Commission about German coal subsidies. It claimed they were a distortion of the EC electricity market that harmed French export interests. Portugal, which wanted to import French electricity through Spain, and the already liberalised UK also supported the liberalisation measures. The Commission foresaw a series of liberalisation proposals to gradually open electricity and gas networks to third-party use, to help increase trade, and to establish the internal market.

In particular, the document's reference to an obligation of network owners to give third parties the opportunity to use their networks for the transport of electricity and gas, called "common carriage,"<sup>12</sup> aroused European-wide controversy. Most Member States were profoundly against the plan, and so was the electricity supply industry. Arguments pointed to the uncertain implications of liberalisation for the long-term security of supply and for network investment and expressed discomfort with strengthening Community competence in energy matters. Because differences in political regulations and levies were a major cause of price differentials rather than divergent levels of efficiency, it was argued that the harmonisation (instead of liberalisation) of national electricity policies would get closer to the root of the problem. At the same time, many of the benefits of a single market could be realised by strengthening the existing collaboration of suppliers in the UCPTE.<sup>13</sup>

The Commission proposed a stepwise approach (Dohms 1994), starting with very modest measures that hardly affected the status quo. A directive to increase price

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11 The proposals on gas and electricity were largely formulated and advanced together, which is why – though focusing on electricity – I sometimes mention gas.

12 The document did not explicitly define the obligations under "common carriage." The term was later dropped in favour of third-party access (TPA).

13 The following countries belong to the UCPTE (Union pour la Coordination de la Production et du Transport d'Electricité): Albania, Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Switzerland and countries of the former federal state of Yugoslavia.

transparency for large users of gas and electricity was adopted in June 1990, and two directives for electricity and gas to increase the transit possibilities of suppliers through each other's networks were adopted in October 1990 and May 1991, respectively.<sup>14</sup> Another proposal, to improve the Commission's information on investment plans in the oil, gas, and electricity sectors, did not find support. The overall plan behind these proposals was to gradually abolish or adapt the existing monopolies for the import and export of electricity and gas as well as for the production, transmission, and the distribution while establishing a European-wide regulatory framework on such matters as access to networks and rights for production. Organisational changes for the incumbents were to accompany these changes.

Encouraged by its significant success before the Court in the telecommunications terminal case, the Commission drafted Art. 90 directives in the summer of 1991 as a way to sidestep the resistance to the liberalisation of electricity and gas networks. Moreover, it initiated infringement proceedings based on Art. 169 against existing monopolies for the export and import of electricity and gas against France, Denmark, Spain, Italy, Ireland, the Netherlands, Belgium, Greece, and the UK (Slot 1994: 525). By this time France had already ceased its support of European policies, correctly perceiving that it would not only benefit but also be forced to make changes. In view of the strong opposition of Member States and of the European Parliament, the Commission dropped its plan to use Art. 90 to enforce liberalisation. Instead it presented proposals for the second stage of the programme as Council directives in February 1992, which included the opening of the networks for large consumers of electricity and gas, now called third-party access (TPA). In the future third phase of liberalisation, the rights to TPA were to be extended. Further measures of this second phase included the permission to build networks and the organisational unbundling of production, transport, and distribution (Argyris 1993: 34ff; Hancher/Trepte 1992: 155–159).

Especially the TPA proposal remained very controversial, gaining only the support of the UK and Portugal. The proposals were discussed several times in the Council, which emphasised in its conclusions that modifications needed to be made in particular with regard to the modalities of network access (TPA). The European Parliament delivered its opinion, which included hundreds of changes,

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14 The transit directive was modelled on a disagreement between France and Spain on the terms of use of Spain's network for exports to Portugal. This conflict had been settled in the meantime. "The Spanish public electricity company conditioned transmission on EDF's agreeing that the Spanish electric company supply a significant part of the contracted for electricity. This requirement constituted a clear case of abusive refusal of transmission in violation of Art. 86, in conjunction with Article 90 (1)" (Ritter 1994: 139–140).

in October 1993, having already received the proposals from the Council in March 1992.<sup>15</sup> It suggested delaying liberalisation measures in favour of a prior harmonisation of Member States' policies. In December 1993 the Commission responded with the presentation of amended proposals for the internal market in electricity and gas, which watered down the liberalisation goals and weakened the controversial TPA ("negotiated TPA"). Not only the Council directives took very long periods of time. In addition, the remaining infringement procedures against France, Denmark, Spain, Italy, Ireland, and the Netherlands were only brought before the Court at the beginning of 1994, after repeated attempts of the Competition Commissioner to use these legal proceedings as a lever to move Member States to make advances in the Council (Interview 50).

During 1994, France, the major opponent of the liberalisation policies, presented an alternative proposal to the TPA system in the Council discussions, called the Single Buyer concept. Under this proposal, third parties would not receive the opportunity to use the network directly, but they would be free to buy cheaper electricity from alternative sources and sell it to the network operator, the "Single Buyer." With this concept France hoped to be able to combine pressure to liberalise the production, import, and export of electricity with its own domestic priority of having control over the long-term planning of production capacities, which was required by its nuclear energy programme. Essentially, this proposal left the monopoly of the Electricité de France (EdF) intact.

Since France (and the EdF) is the largest electricity exporter in the Community, it is practically unimaginable to proceed with European electricity policy without its consent. For this reason, the Council decided to ask the Commission at the end of 1994 to study whether this system could be introduced in parallel to the negotiated TPA approach. Questions of reciprocity were paramount, given that several Member States feared the dominance of EdF once they opened their systems under the TPA approach. Another issue concerned the compatibility of the French approach with the Treaty, and especially with its competition rules.

In its report to the Council, the Commission listed several additional requirements for the Single Buyer proposal, in order to comply with the obligations of the Treaty and with the reciprocity principle. Both EdF and the French Government strongly criticised this response to their attempt to build a compromise on this difficult issue. At the same time, the Commissioner, Van Miert, was threatening to issue an Art. 90 directive at the end of 1995, should the internal market for electricity not show progress. While France was thus under strong pressure, it

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15 The lack of clear deadlines for the first reading was cited in interviews as one major shortcoming under the new co-decision procedure (Interview 7). See Scharpf (1995) on the procedural imbalance between measures of positive and negative integration.

managed to use its presidency at the Council meeting in June to strike a more favourable compromise: in a resolution, the Member States agreed in principle to the compatibility of the Single Buyer and the TPA approach, reducing the different shortcomings raised by the Commission report to points to be agreed on by COREPER<sup>16</sup> (Interview 53).

Since this first step toward compromise, it has not been possible to make any further progress toward an agreement. France is not willing to budge on the remaining points of controversy, and neither is Germany, which supports the modified Commission proposal and strongly demands the directive to safeguard reciprocity. The Commission has not carried out its threat to use Art. 90.3. The current view is that the European Council will have to deal with the matter in mid-1996 if no agreement can be reached beforehand.

Compared to telecommunications, the energy sector has been subject to fewer analyses. Nevertheless, I hope that this short description has shown that this sector is well-suited for confirming the importance of intergovernmental vetoes (Matthies 1989; Padgett 1992). Padgett (1992: 59), for instance, finds an “incrementalist, consensus orientation of the Commission,” sees its “bargaining position weakened by a lack of technical expertise” (ibid.: 62), and agrees that the “ultimate outcome ... is likely to fall well short of Commission ideals” (ibid.: 74).

#### **4 Explaining Different Outcomes: Beyond Intergovernmentalism and Supranationalism**

Taken as such, each case makes for a nice empirical example for engaging in the supranationalism – intergovernmentalism debate. On the one hand, the Commission, backed by the Court, is unassailable; while on the other, large Member States’ interests, particularly those of France, predetermine a great deal of resulting European policy. However, both case studies are marked by a highly parallel supranational policy approach (de Cockborne 1990). In both service sectors, the original situation is one of nationally-oriented segmentation and monopolies. In order to implement the internal market initiative, the Commission’s approach is to abolish parts of the monopolies and to put these market segments under a European-wide regulatory framework. It tries to enact these changes on the basis of its own competences under European competition law, as a way to put some

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16 COREPER is the committee of the permanent representatives. It assembles the ambassadors of the Member States to the EU and prepares the decision-making of the Council.

pressure on the Member States to agree on harmonisation in the Council. But it only succeeds in one case. Because of this similarity, the cases lend themselves to a comparison of the relative importance attributed to different causes of the successful adoption of European policies (Sartori 1991). Using another case as a control, the limitations of an interpretation along the lines of the two main theoretical approaches become apparent.

In the case of telecommunications, we are to believe it was an influential supranational lever that forced through integration at the risk of conflict with Member States. In the case of electricity, though, we are asked to acknowledge that intergovernmentalism was supreme, and especially the veto power of France, such that proposals were watered down in the face of opposition, and supranational competences were not used or only taken up with reluctance and delay. Given the same policy approach, this is simply not plausible. Only if there were significant differences in approach towards both sectors, could the two explanations hold: supranationalism, if there had not been attempts to Europeanise electricity policy, and intergovernmentalism, if it had not been the Commission backed by the Court which had achieved such progress in European telecommunications policy.

While the comparison shows that the previous analysis is insufficient, the cases are not similar enough to reveal the decisive variable to supplant an intergovernmentalist or supranationalist explanation (Meckstroth 1975, Przeworski/Teune 1985). Thus, I am faced with a common problem in the study of European integration processes. For my purpose, this is not a serious drawback. I do not provide a significantly expanded empirical basis; nor do I have cases that meet strict demands of comparative analysis. Nonetheless, the two cases amply demonstrate the need for scepticism in orienting single case studies along the lines of a dichotomous debate. Their similarity is sufficient for each to offer a useful check of the interpretation based upon the other case. Thus the juxtaposition of my cases demonstrates advantages which can be alternatively achieved on the basis of a counterfactual analysis (Fearon 1991), where possible causal variables are counterchecked in order to establish their further relevance.

On this basis, I want to raise attention to two related, rarely noticed repercussions of the ongoing dichotomous theoretical debate. In a field such as European integration, which is characterised by heterogeneity and fragmentation, single case study evidence is even less representative than in a more homogeneous environment. Given that any case is most likely to match one of the two sides of a dichotomous theoretical debate, theoretical claims become very issue dependent without adequately reflecting this dependence. Moreover, theory structures empirical evidence, so that the debate risks becoming tautological.

For a more consistent explanation of the two policy processes, the focus of the two approaches on the empirical material has to be abandoned in favour of a broader perspective. Instead of the black-and-white picture painted by the two approaches, this means that the interaction effects between the national and the European level will have to be taken into account. When discussing Member States' interests, this implies that these cannot be simply taken as exogeneously given but have to be put into the context of the internal market. Thus, the question has to be raised as to the extent to which national actors' parameters of action are changed, for instance, due to the situation of interdependence they find themselves in, and what kind of opportunities the supranational level provides for these actors. Similarly, when approaching the supranational level, not only the supranational action capabilities of the Commission but also the influence of European institutions on the interests of national actors shall be analysed.

In the following, I shall not only be concerned with differences (as a comparison would be) but also with similarities, in order to assess the plausibility of possible explanatory variables. Before focusing on the interests of national actors in both sectors and on the supranational institutional context, some characteristics of the sectors and the different national situations shall be discussed as the background upon which integration takes place. It is here that the two sectors differ, hindering a direct comparison.

#### **4.1 Sector Characteristics and the National Situation**

I will now first introduce some characteristics of telecommunications and electricity and give some background on the situation of the Member States. The two sectors display many parallels, both being capital intensive systems with a high degree of infrastructural and political relevance that have been traditionally categorised as "natural monopolies."<sup>17</sup> A monopolised supply structure is a pervasive feature of both systems, something which has only been challenged on a larger scale from the 1980s onwards, and then only for telecommunications.

In Europe, a rather homogeneous regulatory model was typical for telecommunications. In most countries, a comprehensive national monopoly, the PTT, provided both telecommunications and postal services. It is normally directly headed by the postal minister and is responsible for all operative and regulative aspects of the system. European electricity systems, in contrast, have a more diverse structure. There is both public and private ownership, with varying degrees of

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17 "Natural" in this context refers to the fact that the supply through a single network is economically the most efficient means.

vertical integration, and sometimes regionally specific monopolies. Germany's electricity industry is an example of a private, vertically segregated supply structure with regional monopolies, whereas France has a comprehensive system with only one public, national monopoly, the Electricité de France (EdF), responsible for all aspects of electricity supply.

In the case of electricity, further important differences between Member States concern the use of primary energy sources, the endowment with natural resources, and the degree of state intervention (McGowan 1993). Thus, France relies almost exclusively on nuclear energy, whereas Germany lacks the political consensus required for this form of energy and also has a particular problem with the subsidization of its coal industry which has no equivalent in other Member States. And finally, differences in tariff policies, consumption growth rates, dependence on foreign sources, and large price differentials all add to heterogeneity (Ritter 1994: 128).

Technical change and market growth plays a very different role in both systems. In telecommunications, its pace has been considerable, multiplying the range of telecommunications services, and, with the convergence of computing and telecommunications technology, the array of terminal and network equipment. Transmission technology has similarly diversified with fibre, satellite, and new mobile technology, so that a single monopolised network largely lost its rationale. Consequently, there have been considerable pressures for reform, as evidenced by the liberalisation in the USA, UK, and Japan since the early 1980s. The growth of neoliberal ideologies throughout Europe has also been influential, together with rising concerns about industrial policy and the long-term competitiveness of European industry against its Japanese and US counterparts. In the case of electricity, technical change has been much less significant. Nevertheless, liberalisation has become a reform goal in several countries, such as in the USA, the UK, and Scandinavia.

In these liberalisation endeavours, both sectors reveal similar problems. The size and long-term nature of investment, especially for the networks, stands in the way of a perfectly competitive market. In conjunction with their high infrastructural significance, this means that regulatory measures will always be relevant, notwithstanding whether only parts or whole systems are being liberalised. There are also many common problems involving the introduction of competition: nondiscriminatory access to the network has to be assured, abuse of the dominant position of former monopolists prevented, tariffs have to be rebalanced and cross-subsidisation stopped, as liberalisation would otherwise lead to the arbitrage of imbalances in cost allocation. The liberalisation of both sectors, there-

fore, implies difficult decisions concerning the mix of liberalisation and monopoly and the degree of regulatory intervention.

Though both systems have been largely nationally oriented and structured, they have also long possessed some supranational characteristics. In telecommunications, transborder communications require cooperation for the technical compatibility of networks (Schmidt/Werle 1997), for reimbursement arrangements between operators (only the country of origin collects the revenue), for numbering and direct international dialling, and for other supranational regulatory aspects. Internationally, the International Telecommunications Union (ITU) is the organisation responsible for these issues, and in Europe the CEPT<sup>18</sup> has been its equivalent. The importance of supranational collaboration rises with the increasing proportion of international telecommunications traffic, service supply, and equipment trade.

In the case of electricity, supranational cooperation is concentrated on the West European organisation of the national grid companies, UCPTÉ, which has a Northern and Eastern European equivalent. UCPTÉ organises the transfer of electricity between its members, allowing a more flexible response to regionally specific short-term peaks of demand and seasonal fluctuations in supply. The security of supply is thereby strengthened and a higher degree of efficiency may be achieved. Due to the specific technical characteristics of flows according to network tension and of nonstockability, there is a constant exchange once national grids are interconnected.<sup>19</sup> Most countries have a roughly self-sufficient supply of electricity, with the notable exception of France, which is a strong exporter, and Italy, for instance, which is dependent upon imports (McGowan 1993: 47).

Summarising sector characteristics, the significant technical change and growth rates in telecommunications and the homogeneous structure of national telecommunications systems compared to the heterogeneous situation in electricity systems and national energy sectors stand out as important background factors for any integration endeavours. It is with regard to the characteristics of the sectors, specifically, their differences along two dimensions, that makes a strict comparison unfeasible.

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18 Conférence Européenne des Administrations des Postes et des Télécommunications.

19 Electricity flows, different from telecommunications, cannot be directed. Power has to be taken from the system at the same speed that it is added because the voltage of the system has to stay constant. The flows cannot be controlled and it is impossible to establish who supplied electricity to whom, but only who added and who took how much from the system. If electricity is exported, for instance from France to Italy, it will flow through Germany and Switzerland as well.

## 4.2 Member States' Interests in Telecommunications and Electricity

To what extent do national actors consent, actively seek, or object to the Europeanisation of policy-making in both sectors? On the basis of the described sector characteristics, I will now map out the different relevant interests in each of the sectors. Starting with the national interests brought to the European level in telecommunications, the Member States' governments have supported the European policy proposals, and no manifest conflicts of interest developed among them. Nevertheless, there are certain camps of countries, like the UK and the Netherlands, with the support of Germany, that favour liberalisation, whereas the Mediterranean countries argue for a more controlled, regulated approach.<sup>20</sup> The internal market policy for electricity, in contrast, has been very contentious, reflecting the heterogeneity of national electricity regimes. Even the first stage directive to improve cross-network transit was initially objected to by Germany, Italy, Spain, and the Netherlands, only receiving notable support from the UK, Portugal (Padgett 1992: 61), and France. Moreover, France soon turned into the major persistent opponent of the European policy proposals. Until today, the conflict on the second stage proposals has not subsided, and though not every country has taken a firm position, there is a definite clash of interests between the countries favouring more liberalisation – like the UK, Portugal, Germany, and in part the Netherlands – and those resisting it, a group that includes France, Belgium, Spain, Italy, Greece, and Ireland.

Thus, from a purely intergovernmentalist focus, the success of European telecommunications policy proposals seems plausible, just as does the relative failure of the internal market programme for electricity. From these differences in support, one should expect national actors to be subject to quite different pressures of cooperation in the two sectors, with view both to gains from cooperation and to the constraints faced when acting unilaterally. Thus, keeping in mind the different national characteristics of the sectors as an alternative cause for the difference, I shall now enquire into the interests of national actors and the interdependence of action they are faced with. Characteristics of interdependence constrain, but possibly also further national actors' interests and are the essential backdrop to international cooperation (Müller 1993: 31).

International trade and competitiveness impose particular demands upon the two sectors, given their infrastructural significance, and these pressures are partly enhanced by the internal market programme and the realisation of the four free-

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20 Before its first domestic reform in 1989, Germany was very cautious towards liberalisation. Similarly, France started to support the liberalisation coalition even more recently, after having previously argued for a very regulated approach.

doms (the movement of goods, persons, services, and capital). Moreover, the network character of both sectors gives the interdependence between Member States a particular salience. Conditions and interests in other Member States can therefore be highly relevant for actors, meaning that national actors' interests are not purely domestically conditioned.

In both sectors, the positions of actors show many parallels. Supporters of the status quo are the incumbent monopolists, the trade unions (which fear the rationalisation effect of liberalisation),<sup>21</sup> and the equipment supply industry (as a beneficiary of close, clientelistic relationships with industry). Given the traditionally close ties of the monopolists with their governments, associations are relatively insignificant in both sectors.<sup>22</sup> For the public at large, the status quo may be preferable to change. In telecommunications local tariffs are bound to rise, and it is difficult to maintain unitary tariffs nationwide. With view to electricity Member States differ as to whether industrial consumers or private households are being cross-subsidised. As both sectors are highly voter-sensitive, these are important concerns.

Industrial users of telecommunications and electricity favour liberalisation since they expect it to result in price decreases for these input factors, the flexible choice of supplier, and possible product differentiation. In telecommunications there are additionally the substantial interests of those wanting to enter the sector. Although unilateral liberalisation is supported, service providers strongly argue for a European approach in conjunction with large, multinational users. Coordinated liberalisation offers significant additional benefits since the possible economies of scale facilitate a greater specialisation of equipment and services. For the electricity sector, these considerations do not hold due to a lack of product differentiation. There are far fewer parties interested in entering the field, these being largely limited to British actors who want to expand on the continent. Support for a European approach to electricity policy is, however, partly motivated by the expectation that it will increase the likelihood of domestic liberalisation.

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21 The experience of the UK points to large job losses for both sectors. Employment growth in telecommunications, moreover, falls outside of traditional union clientele.

22 At the national level, several countries display telecommunications user groups of differing strength (Schneider 1991), as well as user associations for electricity, such as the German VIK (Verband der Industriellen Energie- und Kraftwirtschaft). In Germany, the main electricity suppliers are also organised in the VDEW (Vereinigung Deutscher Elektrizitätswerke). At the European level, Intug (International Telecommunication User Group) is active on behalf of telecommunications users. The electricity suppliers founded Eurelectric, once European policy proposals increased in importance. The telecommunications operators also established a new group in 1992, ETNO (European Telecommunications Network Operators), out of the former CEPT.

Domestically, governments are thus confronted by opposing coalitions: those favouring liberalisation and reform (the business community) and those resisting it (unions, manufacturers, the monopolists).

In telecommunications, the rapid technical change and market growth with its differentiation of services and networks exert pressures for liberalisation. The national monopolists generally lack the flexibility to seize the new opportunities. Each national government faces the difficulty of finding a politically acceptable compromise that offers business sufficient opportunities without rousing the fierce opposition of the unions and a discontented public. At the same time there is uncertainty as to the best future regulatory framework and to the pace and extent of liberalisation. A liberalisation that proceeds too quickly may cause otherwise avoidable harm, involving job losses, tariff rises and losses in the competitiveness of the national equipment industry.<sup>23</sup> On the other hand, overly timid measures may result in lost opportunities and in a relocation of telecommunications-intensive business, which is greatly facilitated by the internal market. In view of the uncertainty, ideological preferences for liberalisation (UK) or for public service obligations (France) may become decisive as may the strong or weak position of the government vis-à-vis the opposition to reform.

In the field of electricity, there is no comparable sector-specific rationale for reform. However, if community-wide electricity price differentials are not eliminated,<sup>24</sup> the internal market will initiate a differentiation process in which energy-intensive industries will relocate to cheap electricity countries and strong national electricity sectors will be able to gain at the expense of weaker ones. The status quo is therefore not a long-term option. Since price differentials are predominantly caused by differences in state intervention, each government is faced with the following decision: Should it keep up with the process of differentiation and initiate policy change, either domestically or in the European framework, thereby facing vested interests and likely job losses. Or should it leave the system

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23 In the UK, telecommunications manufacturers belonged to the losers of liberalisation since they proved unable to prepare for the change quickly enough.

24 This pressure also applies to the monopolistic suppliers since large customers may and will exit high price countries in the long run. For instance, there is no phosphor industry in Germany, and German electricity suppliers have a determined interest to stop the exit of high-volume customers. Sometimes, German electricity suppliers come to the aid of high-volume users at the brink of bankruptcy and agree to special discount prices with the cartel office to keep the industry alive (Interview 26; Markt 1988).

unaltered, if the losses of reform are evaluated as higher than the economic gains resulting from competitive factor inputs.<sup>25</sup>

Thus, Member-State governments are not only faced with domestic actors, but also with the repercussions that other Member States' national systems and reform endeavours have on their domestic situation. Because of the internal market, domestic changes cannot be kept in isolation. No discrimination of other Community members may take place and no intracommunity exclusion may be practiced. Once a domestic reform is introduced by one Member State, other Member States cannot prohibit their own nationals from profiting from the reform at the expense of their domestic system. But this interdependence also works the other way around: neither can the reforming Member State bar other community nationals from exploiting its regulatory change.

The UK was the first Member State in Europe to introduce liberalisation to both sectors. In telecommunications, the UK gained significant sectoral advantages through liberalisation, because it became attractive for the relocation of telecommunications-intensive operations, for the re-routing of international traffic, and for investment not yet allowed in other countries. The UK was partly chosen as a base of operations from which to expand into other countries, so that nonliberalisers lost business.

The UK's liberalisation of electricity has had less impact on other Member States so far, due to the UK's island position but also because of French competitiveness in this sector. There is only one (small) cable connecting the UK to the UCPTE and this is now operating at the limits of its capacity, being used for French exports.<sup>26</sup> This means that an improved competitiveness of the British sector has only longer-term repercussions: direct exports of electricity are impossible, and as long as other Member States do not liberalise, it will not be possible to become directly active in their markets or to introduce transnational competition into this monopolised sector.

The electricity reform in the UK has also not entailed locational pressure on other Member States because prices have yet to come down.<sup>27</sup> But for the other Mem-

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25 This could be because the industry is not competitive, rationalisation effects are difficult to bear, or politically sensitive losses accrue elsewhere, for instance, due to cross-subsidies used in other areas, such as in public transport.

26 EDF is even a beneficiary of the British nuclear fuel subsidy which, because of the internal market, cannot be denied to French nuclear power. This will cease with the planned privatisation of British nuclear energy.

27 In the UK the electricity prices for industrial consumers are reported to have risen by 50% since privatisation in 1990, so that they are now 20% higher than the European average (Financial Times, 8 February 1995).

ber States the situation is quite different, because of their cooperation in the UCPTE, which builds on comparable national regulatory conditions, and due to the fact that the electricity suppliers can cooperate as equals on the basis of their monopoly. If participating firms operated under heterogeneous conditions, the interconnection of their networks would result in the difficult situation in which some companies could competitively supply customers in other countries without any specific reciprocity.

Given interconnection, it is uncertain whether national liberalisation is desirable. This is due to the strong export position of France in the sector. While liberalisation could strengthen the domestic locational conditions, enabling the import of cheaper electricity, this would harm the short-term electricity costs of residential consumers and the long-term investments and viability of the indigenous electricity supplier. For interconnected Member States, therefore, the improvement of locational conditions through liberalisation would simultaneously worsen the situation of the sector.

The question is the extent to which these interdependencies can be characterised more precisely and whether it is possible to discern a certain “logic” of cooperation in the sectors. Possibly, this could in large part clarify differences in the success of European policy-making. A widely used model analyses the internal market legislation as a reaction to ongoing competitive deregulation.<sup>28</sup> Once the different internal market freedoms are established, each Member State has the incentive to improve its domestic regulatory structure, putting other Member States in a disadvantageous situation and under pressure to respond by similarly establishing more favourable conditions. The danger is a “race to the bottom” where the overall level of regulation becomes suboptimal.

Because telecommunications is a sector experiencing significant growth rates, a ruinous competitive deregulation (Majone 1992: 142) among the Member States is plausible, as an attempt to exploit growth. Since electricity is a mature sector, no similar competition would result. Competitive deregulation could thus explain why a common regulatory framework is being sought as a response in only one sector. However, there are several countervailing factors, which, in fact, have severely constrained such competition. Thus, there is no guarantee that domestic firms will profit from liberalisation, and there are difficulties in finding the right

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28 In game-theoretic terms, the prisoners’ dilemma (PD) forms the underlying idea (Gatsios/Seabright 1989: 40; Majone 1992; Nicolaidis 1994). In the literature, the model’s focus differs from mine, in that product regulation is discussed under the condition of the “mutual recognition” of the Member States’ regulatory frameworks, but the main idea may be adopted. See Scharpf (1995) for a very elaborate discussion of different game-theoretic situations.

timing and the right balance between liberalisation and regulation in the interests of an even social and geographical diffusion of telecommunications in the medium and longer term (Mansell 1993: 69–109). Benefits are therefore not certain, and the early mover faces higher learning costs than late movers, who can profit from the earlier actor's experience. Consequently, governments also face domestic demands for a high level of regulation (Nicolaidis 1994: 11), constraining rapid liberalisation.

Both sectors have significant infrastructural relevance, so that there are more than just sectoral interests motivating regulatory reform. Moreover, concerns for the quality of national location, such as the competitiveness of domestic industry and its attractiveness for investment and employment, give particular relevance to all policy decisions. In addition to sector-related competition, whose rationale is restricted to telecommunications, there could be competition for locational advantage among the Member States, which should have particular relevance for electricity.<sup>29</sup>

In the European electricity market, France holds a very competitive position, just as the UK does in telecommunications. This is significant for all attempts to improve the locational conditions through electricity reform: once the countries are interconnected and the cost of network transmission is not too high,<sup>30</sup> transnational competitiveness exerts immediate constraints on locational reform. It is hardly possible to improve locational conditions without putting the domestic infrastructure providers at the risk of competing with France.

Considering the pressures for reform in both sectors, the sector growth in telecommunications is much stronger than the differentiation process caused by national price differentials in electricity. Although the internal market freedoms impose the danger of the relocation of industry, this is only a long-term threat. Cross-border trade and direct competition between the monopolists, however, pose no short-term worry, as the utilities behave in a cartel-like manner. In telecommunications, the pressures are arguably much stronger. The incumbent monopolists have less control over their networks than their electricity counterparts,<sup>31</sup> and, in view of the sector growth, it has not been possible to establish a

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29 This is not to say that the infrastructural importance of telecommunications is negligible but that in view of the high growth rates sector-specific interests or industrial policy is a stronger motivation for reform. For electricity, the exact opposite should hold.

30 Of course, this is a problem for electricity, which cannot be transported too far. In this respect the geographical location of France is highly significant for its role in the European electricity sector.

31 This is due to basic technical reasons: the telecommunications network is interactive, allowing a much more flexible use. Thus, the telephony monopoly notwithstanding,

similar cartel-like cooperation in order to postpone the effects of competition. While network holders do not easily renounce their monopolies, they have come to learn that liberalisation also provides the opportunity for expansion, while continued monopolies imply regulatory obligations (Schmidt 1996). In view of this trade-off, the expansion of carriers into new markets initiates a sort of “bandwagon process” (Granovetter 1978).

In view of possible competitive deregulation as a rationale for European policy-making, one may summarise as follows: in telecommunications sectoral competition is relevant, but faces learning-costs constraints, and BT (British Telecommunications) as a dominant competitor, against whom competition can also be lost.<sup>32</sup> In the case of electricity, locational competition is more relevant, but again, because of a dominant actor, EdF, reform may come at the expense of the domestic electricity utilities. Competitive deregulation thus does not form a significant rationale for a common European policy in both sectors.

Competitive deregulation is not the only international interdependence that confronts actors. Both telecommunications and electricity are network based, and give rise to positive network externalities: the more a network grows, the more efficient the supply of electricity becomes and the more specialised telecommunications services may be offered. This is a relatively straightforward problem of interdependence, which requires the solution of some coordination problems, such as technical compatibility and regulatory harmonisation, as has been mentioned above with regard to the activities of the CEPT and the UCPTE.

The question is whether these coordination requirements may be so strong as to require the Europeanisation of policy-making, and to lead to the differences found between telecommunications and electricity. The unilateral liberalisation of telecommunications by the USA and the UK, respectively, thus could have triggered similar steps by the other countries (Krasner 1991: 343). However, were coordination requirements this strong, a common European telecommunications policy would not have been necessary, and simple parametric adjustments (Scharpf/Mohr 1994: 8, adopted from Lindblom) on the part of the different Member States would have sufficed.

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it is easy to lower the cost of international calls in Germany simply, for example, by using an AT&T calling card.

32 Ever since the divestiture of AT&T, European PTTs have also been afraid of this competitor. However, since internal market freedoms do not apply to AT&T, I have not focused on the external world, given that the analysis is already complex enough. This is not to say that recurrent US pressures for European telecommunications liberalisation have not added, alongside technical change and market growth, a further reason for reform. However, it is difficult to establish the relative significance of this international context.

Nevertheless, coordination problems are not unimportant, if they are considered in concert with the problems of competition discussed earlier (Scharpf 1995: 10). A coordinated response offers distinct advantages to the Member States in their situation of interdependence. With a parallel reform in several Member States, open markets will not neighbour closed ones, easing problems of reciprocity. If all Member States reform, each one is less vulnerable to fall prey to highly competitive actors. For instance, the harm of low-cost electricity imports would be reduced for each country, and electricity suppliers would have the opportunity of moving their production facilities in the long-term to the country offering the best conditions (France). At the same time, a coordinated approach would have positive effects on all Member States because of network externalities. Harmonised regulatory conditions, for instance, facilitate private telecommunications networks and specialised service offerings, thereby contributing to market growth. However, because there are, at the same time, opportunities for improving the national position unilaterally by choosing early competition, the benefits of coordination do not unambiguously lead to a European approach.

In sum, while interdependence characterises both sectors, this does not lead in any way to a clear distinction in which supranational solutions are necessary for telecommunications, but not for electricity, although there are some differences between the two sectors. In addition, governments do not only face specific international interdependencies, but also have to match their policies to a range of domestic interests. Consequently, there is no uniform response to reform needs, such as in the decision whether to initiate early domestic reforms or not. Britain is a very clear example of this, as are Sweden and Finland with their already liberalised telecommunications and electricity systems. In telecommunications, the Netherlands have moved in advance of the European schedule, and so did Germany at some point. Moreover, several countries are privatising their operators (e.g., Spain and Denmark) in order to be better equipped for liberalisation.<sup>33</sup> In electricity, German reform discussions have been a regular feature of the last two decades; Spain, Portugal and the Netherlands have since enacted some reforms; and in Italy there are ongoing discussions on privatisation.

If the necessity of domestic support is considered, it is possible to take the analysis one step further. National governments may perceive distinctive opportunities in policy-making at the European level, not only with view to existing interdependencies with other countries but because of domestic constraints. For once, the monopoly of the executive on foreign policy, as Moravcsik (1994) emphasises, assures more autonomy to governments in policy-making, and interest groups

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33 In view of overall constraints of capital markets, smaller countries have been keen to privatise their operators before the major players Deutsche Telekom and France Telecom are put on the market.

may have more difficulty making themselves heard at the European level (Grande 1995). The necessity for compromise at the European level lifts some responsibility off national governments with regard to policy outcomes and consequences. The reference to a general European need for reform could, in addition, lend credibility to domestic measures. Aside from the benefits of coordination, a harmonised, European approach eases uncertainty. In view of the interdependence-based complexity faced by actors in the two sectors, joint policy-making offers the advantage of improved information on different policy options and on the situation and interests in other Member States because European-wide policy discussions and studies are added to national ones. Thus, strategic and analytic uncertainty is eased (Iida 1993), information is improved, and mutually beneficial cooperation is easier to discern. In view of the rapid changes in telecommunications and the degree of interdependence in both sectors, this is of particular importance. But even in the case of electricity, many Member States neither know the impact the internal market will have on their domestic situation nor their own preferences vis-à-vis the two proposed options (Interviews 13, 18, 41).

In view of the support of Member-State governments for European policies, it is insufficient to focus on a bottom-up perspective in which domestic interests allow or prohibit supranational cooperation. At the same time the opportunities provided by supranational policy-making for the domestic situation of governments have to be seen. This implies that concepts like "blame avoidance" (Weaver 1986) need be taken into account in explaining government strategies which, for instance, may result in national governments lending "behind-the-scenes support" to supranational policies that they publicly oppose.

For instance, national administrators may encourage the Commission to initiate legal proceedings against their own country, as this can help them overcome opposition to liberalisation at home (Interview 24). A surprisingly blatant example for such an attempt to induce supranational backing for measures lacking domestic support was given by the German Postal Minister, Bötsch. He repeatedly urged the initiation of steps toward the liberalisation of alternative networks at the European level, for instance, in conjunction with France, the Netherlands, and the UK at the June 1993 Council meeting and again at the November 1994 meeting, at which time he also enjoyed the backing of the Swedish and Finnish delegations. This took place at a time in Germany in which there was not enough domestic support to enact such a measure. The introduction of competition into traditional realms of monopolies is an extremely sensitive political issue, even if benefits are as high as they are for telecommunications, so that a possible reference to supranational constraints is very valuable for governments (Interviews 8, 32). In electricity, there is no reason that similar reasoning should not apply. However, the heterogeneous national situation means that any common policy

will put some Member States at such a disadvantage as to overshadow the attractions of a common approach.

In conclusion, the interests of actors may be summarised as follows: the very different levels of Member-State support for European policies in the two sectors hides similarities in the interdependence of action faced by actors. But national actors are not only constrained in the face of interdependence. With this broader focus on the cases, the opportunities offered by the new form of multi-level governance also become apparent.

### 4.3 Supranational Actors and the Institutional Context

Decision-making on common policies on the part of Member-State governments takes place in an institutional context. Depending on the decision rules, some actors have more weight and some outcomes are more likely than others. Institutional rules may favour some policy options, open up new opportunities, and make others more costly. Because of the impact of institutional rules on the shape and choice of policy options, the preferences and interests of the actors are interwoven with the institutional setting. In particular, the default condition of action (Ostrom 1986) may be directly altered since the national status quo may no longer be an option under the European institutional framework. That preferences are often not exogenously given, but shaped by the institutional context of action emphasises the supranationalist character of integration (Sandholtz 1994).

Both analysed sector policies are part of the internal market programme.<sup>34</sup> Measures are therefore subject to the qualified majority decision rule and do not require unanimous support in the Council. The concomitant risk of being outvoted is mediated by the fact that both sector policy programmes are characterised by recurrent unanimous decisions in the Council of Ministers, in the form of (non-binding) conclusions or resolutions. These comprise a package of policy goals, combining regulatory, deregulatory, and sometimes distributive measures (per-

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34 In the energy sector, the subsumption under the internal market programme was initially contentious, mirroring the general lack of support. It was argued that the unanimous decision rule (Art. 235) should apply, because the Single Act did not mention this sector, but there was no legal conflict on the appropriate decision rule. The first stage directives for transit through the networks were based on Art. 100a, but the directive on price transparency and the attempted change of regulation of investment plans were based on Art. 213, only requiring a simple majority (Baur 1990: 80f; Mestmäcker 1990: 46).

taining, for instance, to trans-European networks). On their basis, the Commission subsequently advances proposals for specific directives. A permanent marginalisation of certain interests is therefore less likely than the decision rule would suggest on its own.

Alongside of national governments, supranational actors have distinct competences (predominantly those of the Commission and the Court, but also those of the European Parliament), and they also have a reflexive interest (Schimank 1992: 264) in the Europeanisation of policies. A major opportunity open to the Commission to influence European policies is its right of initiation. It is free to prepare legislative proposals for the Council and the Parliament, which gives it significant scope over the definition of policy agendas, including the specific policies to be addressed, and the options to be primarily discussed. Moreover, the Commission can organise an open forum for the discussion of specific sector policies among all concerned parties by issuing more general consultative documents, as it did with its repeated release of Green Papers on telecommunications policy and its internal market document on energy. Different preferences and interests are revealed in this way, and issues may be kept on the agenda. This makes an eventual reform much more likely. In this situation, the Commission has the opportunity to offer its analysis of sectoral development as a “focal point” (Schelling 1960: 75) around which the expectations of the relevant actors converge (Garrett/Weingast 1993).<sup>35</sup> In a situation where the actors face uncertainty as to the implications of different policies, these rights of the Commission may be particularly important.

Moreover, the Commission has clearly defined executive competences under European competition law, which gives it distinct supranational powers (Wilks 1992: 4). The case descriptions have already pointed to its relevance. Both sectors are normally exempt from competition rules in a national context because of their traditional character as public utilities. The applicability of European competition law has greatly helped the Commission to advance telecommunications policy, since it allowed it to independently liberalise on the basis of Art. 90.3. However, this opportunity for the Commission to exercise leadership is highly contingent on external support. This concerns first of all the support of the Court,<sup>36</sup> which

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35 For instance, in the discussion of the liberalisation of voice telephony during the 1992 Service Review, a cognitive change seems to have taken place in telecommunications organisations, that led them to realise that total opposition to liberalisation was no longer their preferred option (Interview 2).

36 Also the European Parliament becomes increasingly important, and as the Commission argues for its enlarged competences, it is more difficult to issue Art. 90 directives, which bypass the Parliament just like the Member States. However, as long as

had to affirm the Commission's powers but involves the support of Member States as well.

The Commission's need for support is demonstrated by its renunciation of the Art. 90 procedure in the case of electricity monopolies. In the context of the supranationalism – intergovernmentalism debate, the question of Member States' control of the application of European competition law is particularly interesting. The Art. 90 directives are the most prominent examples of the Commission's supranational action capability. Since their issuance culminated in two court cases, it is apparent that the Commission did not shrink away from conflict with the Member States. However, the Commission was able to rely on unanimous resolutions of the Council attesting to the desire for liberalisation, embedded in a package of different measures (Interviews 8, 56). In the case of the materially contentious services directive, the Commission agreed to a compromise in response to Member States' objections.<sup>37</sup> Behind the scenes of the open institutional conflict between the Commission and Member States before the Court of Justice, the measures as such had received relatively broad support from the Member States. The last three directives adopted by the Commission for the earlier liberalisation of alternative networks were not preceded by a Council Resolution. Exceptions granted to several Member States and the rapid course of technical change, however, much facilitated this seeming boldness on the part of the Commission. Many of the restrictions removed are no longer enforceable.

Mere responsiveness to intergovernmental interests, of course, does not make supranational competences meaningless, and it cannot be assumed that intergovernmental action would have resulted in the same outcome (Interviews 5, 6, 12, 32). Admittedly, Art. 90 is much more constrained than Council decision-making, both in its scope (allowing only for liberalisation and not for harmonisation measures) and in its dependence upon external support (of the Member States' governments, the Court, the Parliament, and private actors) (Hocepić 1994). Nevertheless, Member States and the European Parliament have far fewer possibilities to veto measures as compared to their powers in all other procedures, and these vetoes are only of an informal character.

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the Court backs the Commission's approach, the Parliament can hardly oppose the instrument in a fundamental way (Interview 12).

37 The Commission had preannounced its intention to use Art. 90 in the Green Paper of 1987 and in its implementation paper, which the Council had nevertheless endorsed unanimously. The Member States were consulted by the Commission in the draft stages of its directives (a procedure which has been subsequently broadened to include the European Parliament in the case of the satellite and cable TV directives), and a compromise was agreed upon for the services directive: it was issued together with its regulatory complement, the Council directive on network access (ONP).

The Commission's opportunities to exercise leadership are not restricted to the issuing of directives. A less demanding opportunity is the case-by-case application of European competition law, where the Commission only pinpoints necessary institutional change in one or a few Member States, and thus avoids facing the opposition of all Member States. The Commission may either use Art. 90.3 to issue a decision against a Member State because of a breach of the Treaty or it can initiate infringement proceedings under Art. 169.<sup>38</sup> In telecommunications, the Commission has mainly used this possibility for enforcing existing directives, such as the services directive. A case-by-case approach has had little relevance as a way to advance liberalisation into new areas.<sup>39</sup> In the area of electricity, however, this approach was chosen in the initiation of infringement procedures against import and export monopolies. It is a first step towards the realisation of the Commission's policy aims, and the Commission has already announced that once these cases are settled, it will bring forward procedures against the transport and production monopolies, should no prior advance be made in the Council (Interview 50).

Supranational leadership is not alone in potentially limiting the purview of Member States. Because the competition rules have direct effect throughout the Community, they may be invoked by any private party either in legal proceedings or in a complaint to the Commission. For example, should a German company agree to a delivery of electricity from EDF and the local monopolist refuses to open its network, a complaint against the abuse of a dominant position could eventually result in a ruling of the Court in which Treaty obligations would be specified. However, electricity suppliers do not enter into contracts with customers outside of their respective monopolies, effectively blocking this lever to open the electricity monopolies. This practice is based upon the established cooperative relations existing among suppliers, relations which imply that even a contract with a large customer will not match the cooperative gains accrued from mutual cooperation. Long-term interests in the status quo are thus identical to short-term interests in intersupplier cooperation. Moreover, the regional monopolist usually responds to attempts to provide cheaper external electricity by offering more favourable rates. Normally, the customer will accept this rather than pursue more principled interests in liberalisation by engaging in long legal proceedings (Interview 55). His short-term interests do not correspond to his long-term ones. In the telecommunications sector, the situation is much more favourable to the application of competition law. Interests in encroaching on the monopolised spheres

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38 The difference between these two procedures lies in the fact that Art. 90.3 decisions are immediately effective and also remain so in the case of appeal, whereas an appeal against an Art. 169 proceeding suspends its effect.

39 The Commission has used it only in the field of mobile technology, where it put pressure on different national governments to license a second mobile operator.

cannot be bought off by the monopolists, since often the motivation is not to receive cheaper service but to engage in its provision.

Nevertheless, the potential impact of European competition law is a relevant parameter for monopolists in both sectors. In the case of electricity, the infringement proceedings are a first step albeit a small one. Moreover, the national cartel offices have the right to directly apply European competition law, and the German office has been trying for some time now to establish a case to bring to court.<sup>40</sup> By living under the threat of a long-term transformation of their segmentary relationship into a competitive one, the electricity suppliers themselves contribute to its change. While cooperating cartel-like by not supplying each others' customers, the electricity suppliers have to prepare themselves individually for future competition. Of course, this brings about the danger that at some point those firms that are well-prepared to face competition defect from the coalition, realising their benefits in a competitive environment.<sup>41</sup> In telecommunications, the situation is already more advanced, helped by the fact that a cartel did not stabilise in view of market growth and technical change. While the network operators defended their monopolies and obligations of public service in the beginning, the situation changed quickly towards an emphasis on the drawbacks of regulation on entrepreneurial flexibility. Although each operator aims to keep its monopoly rents as long as possible, they are all vigilant in expanding into foreign markets as early as possible, for fear of being on the losing end once global competition matures.

To what extent can the relative weight of supranational factors be further assessed? Additional insight can be gained from the example of electricity, because of the particularly strong resistance of France toward European liberalisation in this sector. With the initiation of legal proceedings in this sector, France was faced with the decision of whether to wait passively for the Court's judgement against its import and export monopolies for gas and electricity,<sup>42</sup> or to become actively involved in the legislative process involving the Council directive on network access (TPA). The reasoning underlying such considerations is that if there is secondary legislation, the Court will take it into account in its interpretation of the treaty, since the Court is unlikely to define treaty obligations for a sector that diverge very far from a recent Council decision. France decided to aban-

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40 Frankfurter Allgemeine, 18. November 1994.

41 An interesting question is the implication of the increasing involvement of the electricity suppliers in the liberalised telecommunications market and whether demands for some "cross-sectoral reciprocity" could result, given that they exploit the decline of a monopoly with their own monopoly rents.

42 Though France is one of six countries in these proceedings, it is affected most because its export and import monopolies in both sectors are concerned.

don its total opposition and to establish a commission with the task of specifying possibilities of reform of the French system (Interview 36). It was out of this committee that the Single Buyer proposal resulted which France introduced to the Council under the Greek Presidency in 1994.

France, of course, is not alone with its specific interests in European electricity policy. Those Member States interested in a liberal outcome can be expected to compromise on future legislation in the Council only up to the point where they believe the agreement does not fall far behind an expected ruling of the Court (Interview 17). Those countries favouring the status quo, on the other hand, will compromise on a more liberal position as long as they believe that it is still less far-reaching than a ruling would be, as is exemplified by the French Single Buyer proposal.

When the Commission – in response to the Council – evaluated the two alternative proposals to determine whether they were compatible with the Treaty and whether their effects would be equivalent, this represented the first step for France toward having its proposal agreed upon as an alternative option. At the same time, it offered the UK and others the chance to determine the proposal's incompatibility with European competition law. The Commission report issued in early 1995 in fact supported this latter assessment and spelled out several necessary additions to the Single Buyer, which made the French decision to become actively involved in the legislative process appear to have been a mistake (Interview 34). At this point, the likely decision in the Council appeared worse than the one to be obtained at the Court, with the only hope, however, that the European Parliament (EP) would eventually use its new competences under the co-decision procedure to constrain liberalisation.<sup>43</sup> During 1994 the Court had issued two judgements of relevance to electricity policy, the Corbeau and the Almelo cases, which seemed to indicate that the Court now accorded much more scope to public service obligations, departing from its previously very liberal position (Hancher 1994; 1995). However, France also had the Presidency in early 1995, which allowed it some scope to deal with the pressure. As is commonly done, France prepared Conclusions for the Council<sup>44</sup> – because a formal common position of the Council was not attainable at this point – and aimed at an informal trilateral

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43 Because of the change of Parliament since its first opinion on second stage electricity system liberalisation in October 1993, the EP was not taken into account as a stable coalition partner, as it could not be certain that it would keep to its line of argumentation.

44 In order to document the progress achieved during a presidency, it is common to prepare “Conclusions” of the Council in those areas in which it has not been possible to complete legislation in a single presidential term (Interview 16).

agreement with Germany and the UK before the Council.<sup>45</sup> Here France used the Commission's threat to soon issue an Art. 90 directive and managed to get the support of Germany and the UK for Conclusions that reduced the obligations defined by the Commission for the Single Buyer concept to points of negotiation and compromise (Interview 53). Since then it has not been possible to make much progress, so that it remains to be seen on what position the Council will agree upon, how the Commission will react, how the Court of Justice decide, and what the position of the European Parliament will be.

This example elucidates the central relationship between supranational and intergovernmental factors in several ways. First of all, it is a very clear example of the impact of the supranational context. France, with its explicit preference to keep its institutional framework for the national electricity system, sees itself forced to specify possible avenues of reform. Thus, while it is normally difficult, in this case it is easy to disentangle national and supranational pressures for reform. Should the court deny the necessity for change in view of European competition law, France will not reform at all (Interview 36). The proceedings against the import and export monopolies are the first step towards liberalisation, and, if they are not legally mandated, neither will the other changes become necessary.

Secondly, the example shows the scope for uncertainty and contingency brought about by the complexity of the European institutional framework. Decision-making in the Council is not only affected by a single set of specific institutional rules, but may be impacted by decisions of the Court, the Commission, and the European Parliament. Moreover, there is a certain degree of interdependence between these decisions, as each supranational institution takes the likely or effective behaviour of the others into account, increasing both institutional complexity and the uncertainty for participants. The parameters for action therefore change constantly, as was seen in the case of France: at one point, it seems to have weakened its position by making a proposal, but at the next moment it had strengthened it. Consequently, actors' beliefs about each others' moves become highly relevant for their own actions and for the outcome of the decision-making process (Interviews 14, 17, 18). The dynamics of this process and the amount of contin-

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45 Bilateral or trilateral preparatory meetings are quite common in European decision-making, also outside the "troika" of the Member States holding the current, former, and next presidency. Each Member State has particular informal ties to a few others, which are used to speed up decision-making, and especially the larger Member States normally try to coordinate themselves. For energy, for instance, it is common that the high-level officials of France, Germany, and the UK meet every semester for dinner, sometimes with the Netherlands and Denmark participating. This gives the opportunity to ask, for instance, France to enquire of Italy and Spain to what extent they would back a proposal, since the southern countries also have closer informal ties (Interview 10).

gency involved in it, of course, move it far from a framework of analysis which attempts to decide between supranational and intergovernmental factors.

## 5 Conclusion

In this paper I have argued that the frequent fascination in the literature with dichotomous theoretical debates on European integration runs the risk of hinging on empirical idiosyncrasies. I have taken the example of the dominant theoretical debate, focusing on the relative importance of supranationalist versus intergovernmentalist explanations of European integration.<sup>46</sup> On the basis of two case studies I have aimed to show that each could be used to take up one side of the debate, but that important aspects of these integration processes were missed in this way. Given the heterogeneous development of European integration, including both sectoral integration processes and grand bargains, it is hardly surprising that single cases can be found to support each of the different sides of a debate.<sup>47</sup>

Enquiring into national actors interests as well as into the influence of actors and institutions on the supranational level reveals important interaction effects that were previously missed. Compared to what appears at first sight, intergovernmental and supranational aspects are much more prevalent in the respective development of the other sector. In telecommunications policy, the Commission's use of competition law enjoys significant support among Member States. With regard to their domestic situation, it is much easier for national governments to enact controversial reforms if supported by the European Commission. For that reason, there is often behind-the-scenes support for supranational measures that are publicly being criticised, which is generally overlooked when interpreting these instances of supranational leadership (Cowhey 1990; Sandholtz 1993).

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46 Anderson (1995: 461–462) gives the example of another recent debate on national autonomy (see, for instance, Moravcsik 1994): “Regrettably, the debate is in danger of being miscast. Those who see state autonomy expanding stress the capacity of international negotiations and institutions to redistribute domestic political resources in favor of national executives vis-à-vis interest groups. Those who see mainly constraints on state autonomy focus on shifts in the distribution of competences and authority between the national and the supranational levels. Clearly, the two conclusions are hardly incompatible. States may in fact be gaining autonomy from certain domestic groups while simultaneously losing autonomy to the EU.”

47 This is especially true, given that the theoretical focus of this debate imposes a bias on the empirical material!

While the supranational context facilitates the realisation of national interests in telecommunications reform, the electricity case provides another example of interaction between the national and the supranational level. In fact, electricity makes a much stronger case for demonstrating the impact of supranationalism than does telecommunications, because of the French resistance to liberalisation and the pressure put on France to change its domestic system. The implicit veto possibility which an intergovernmentalist position would accord to large Member States could not explain the development of European electricity policy. Although the supranational legal framework is less strictly applied than national ones, the opportunities it offers to supranational or private action are difficult for Member States to block. In view of the fact that a change of the Treaty is rarely an available option, they have to adapt to its principles, as do the dominant sectoral actors. In view of this constraint, the French opposition to electricity policy gives rise to complex interaction processes, involving the different European institutions, the Member States, and private actors. Attempts at dealing strategically with the different relevant avenues are ascribed great importance here, and the interdependence between the decisions of different national and supranational actors adds significant contingency and uncertainty to the policy-making process.

Interestingly, the interdependence faced by actors due to the internal market is not strikingly different between the two sectors, though one might have assumed this, judging from the extent of European telecommunications policy as compared to the dearth of common electricity policy. Beyond the underlying functionalist rationale for common policies, a significant difference that could be established is the incumbents' capability to inhibit the application of European competition law. Given their established cooperative relationships, electricity suppliers are well-placed to counter third-party legal proceedings since their long-term interests in maintaining their monopolies are matched by their short-term interests to keep their extensive mutual business relations undisturbed. To fend off complaints, "sweetheart deals" are granted. Large-volume users realise their short-term interest in this way and would have to sacrifice it in order to pursue their long-term interest in liberalisation. In telecommunications, in contrast, the PTTs have no comparable venue of control. Here, third parties are often interested in becoming suppliers themselves. And among the PTTs rapid sectoral change has already started the competition to expand into new areas at an early stage. It is no longer taboo to enter into each other's turf. Similarly, major equipment suppliers, as the other defenders of the old order, have gradually changed their position in the hope that the "global player" activity of their national operator will facilitate their access to foreign markets.

The difference between the sectors studied is too great for the analysis to reveal a single variable responsible for the different degrees of success in constituting

European policies. However, the importance of the underlying sectoral characteristics is clearly established. The significant heterogeneity of national electricity systems hardly makes it possible to define a single policy proposal that would be in keeping with the very different situations (Interview 26). In the case of two proposals, however, the problem of reciprocity arises: if France is allowed to adopt a Single Buyer system, while its neighbours implement the TPA approach, EdF can improve its export interests disproportionately, while its own market is relatively protected. Moreover, these barriers to integration imposed by the heterogeneous situation at the member-state level are not restricted to legislative action, but also impact on the application of the Treaty by the Commission. Thus, only six countries are affected by the proceedings against import and export monopolies, although there is just as little trade among the nonaffected Member States. The great heterogeneity among the Member States makes it difficult to approach them all by means of a single legal provision.

Correspondingly, the homogeneous national situation in telecommunications has greatly facilitated the formulation and acceptance of European policies, a point which is hardly mentioned in case studies of European telecommunications policy (Cowhey 1990; Fuchs 1994; Sandholtz 1993). In addition, the significant rate of technical change and market growth in telecommunications has helped the Commission to increase the relevance of supranational policy-making. In many instances, it is of no avail for Member States to oppose liberalisation measures, since it is simply a matter of whether the Commission will formally liberalise or liberalisation will proceed *de facto* in the markets (Interview 28).<sup>48</sup> At best, opposition could result in a very short-lived victory, and it is likely that the Commission's recent venture at liberalising alternative networks without a previous Council resolution endorsing this measure rests on this premise. At the same time, significant growth rates help overcome distributional issues since they allow the former monopolies to also benefit from growth.<sup>49</sup>

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48 Of course, these favourable circumstances offer an opportunity for the Commission to set precedents in the use of its competences. But the difficulties encountered in the electricity case show that even with a precedent remaining constraints may still be significant.

49 Whether homogeneous preconditions or technical change and market growth are more important cannot be determined on the basis of just two sectors. However, the evidence of incipient European postal policy, which profits from homogeneous national conditions but not from significant market growth and has been much delayed by controversies since its Green Paper in 1992, points to the significance of technical change and market growth in telecommunications. Because of it, distributional issues are less pivotal and difficult public policy issues like unemployment hardly arise.

With the complex pattern of interaction between the strategies of supranational and national actors, the analysis of the two sectors shows how very selective the two theoretical perspectives necessarily are in addressing decision-making processes. In this respect it can be assumed that concepts of European multi-level governance will represent a major advance for the analysis of European integration.

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