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Policy Learning in Embedded Negotiations: Explaining EU Electricity Liberalization

Rainer Eising

In 1996, after eight years of controversial negotiations, the European Union (EU) agreed to liberalize EU electricity markets. This reform was a watershed in the evolution of a sector that until then had been exempted from competition. The outcome is puzzling, because it differs markedly from the member states' initial positions on this issue. As many member states initially defended their sectoral structures, several commentators doubted they could ever agree on a directive.¹ After the EU reform was enacted, it was viewed as the least common denominator of negotiations among the large member states, France, Germany, and Britain.²

In contrast to this line of reasoning, I demonstrate that approaches that assume that the member states define their interests solely on the basis of their domestic situations and defend them rigidly in the EU negotiations cannot satisfactorily explain this regulatory reform. The intergovernmental approach is most outspoken on this issue: Member-state actors form their preferences on the basis of domestic economic situations or in response to pressure from domestic interest groups. Agreements are then reached on the basis of bargaining power and mutual concessions in a given bargaining space.³ However, this reasoning is not exclusive to

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1. See Padgett 1992; and Ortwein 1996.

2. In her study on the evolution of EU energy policy, Janne Haaland Matlary clearly subscribes to an intergovernmental explanation of electricity liberalization. In her view, the final compromise reflects "national differences in market structures, energy policies and market philosophies" in Great Britain, France, and Germany. Matlary 1997, 159–60.

3. Moravcsik 1998.

intergovernmentalism but is also prevalent in many policy analyses of the EU. For example, in their analysis of EU environmental policymaking, Adrienne Héritier and her collaborators assume that the large member-states attempt to transfer their regulations and regulatory practices to the European level to limit adaptation costs and to strengthen the competitiveness of their national industries. As a consequence, “opposing national interests and goals often only allow for solutions based on a least common denominator basis, on mutual exchanges, and on comprehensive package deals.”⁴ Even analyses that ascribe a relatively great action capacity to the EU do not relate this to negotiations of the Council of the European Union (hereinafter referred to as the “Council”) negotiations; instead they ascribe it to the autonomous role of the European Commission and the European Court of Justice (ECJ),⁵ to the influence of scientific experts, and even to member-states’ hopes that they need not really implement EU legal acts.⁶ Thus, even if these approaches assess the autonomy of the supranational actors quite differently, a large part of the EU literature assumes that the member states form their policy preferences independent of EU-level interactions.

Intergovernmentalism explains the resistance to the sectoral reform quite well: Given the stability of their esteemed domestic models of sectoral organization, the overwhelming majority of member states and sectoral utilities opposed EU liberalization for a long time and tried to limit its scope. But intergovernmentalism accounts for neither the *unanimous agreement of the member states on a fundamental reform* nor the fact that *the involvement in the EU negotiations led some member states to liberalize their markets entirely* rather than only partially as the EU directive requires. It has only a limited importance for explaining the outcome, because it underrates the impact of changes in the institutional context of strategic action and conceptualizes the preference formation of the member states too statically. Instead, I assume that the policy preferences of member states are not fixed, and I regard their preferences over the main organizing principle of the domestic sector—competition or monopoly—as their basic policy preferences.⁷ These general preferences inform more specific preferences about the policy proposals discussed in EU negotiations.

4. Héritier et al. 1994, 181.

5. See contributions in Sandholtz and Stone Sweet 1998.

6. Eichener 1996, 271–76.

7. Alternatively, analysts might delineate even more general preferences, such as the desire for an “efficient domestic sector,” as basic policy preferences of member states. What I conceive as basic policy preferences would then be transformed into preferences about policy alternatives. However, in my opinion, such a conception is too broad. To rephrase a criticism raised by Martha Finnemore on asserting rather sweeping interest definitions of states in international politics: It is all well and good to assume that EU member states want efficient domestic sectors, but what do they consider as an efficient sectoral regime? Finnemore 1996, 1. In short, the empirical analysis of preferences has to be conducted below the meta-level. For similar views, see Mayntz 1999, 86; Pollack 1998, 219.

In a nutshell, I argue that the EU institutional setting shapes strategic action by member states and alters the payoffs they attribute to different policy options.⁸ This leads to changes in the set of feasible outcomes and supports agreements. More specifically, I claim that four distinct institutional mechanisms structure EU decision-making processes. First, formal and informal norms are important focal points that shape the broad repertoire of outcomes and strategies available to member states and EU organizations. While policy concepts circumscribe the course of action in certain issue areas, procedural and distributive fairness norms warrant that essential national concerns are taken into account and that negotiators aim for equitable outcomes. By ruling out major contingencies, these norms are important conditions of the actors' interest calculations.⁹ Strategic interaction unfolds in this normative context. Second, the EU institutional setting changes the coalitions of support and opposition by altering the actors' endowments and opportunities. In particular, it gives supranational organizations formal powers in the decision-making process. Third, EU decision routines provide standardized mechanisms for resolving conflicts and facilitate policy learning by increasing the amount of information available about policy consequences. As a result of these learning processes, member states' basic policy preferences can change. Both the mechanisms of conflict resolution and the changes of preferences support a cooperative outcome, even though, in the end, member states' approval of an EU directive hinges greatly on their perceptions of its impact on their domestic settings. Finally, the vertical differentiation within the Council system, which ranges from working groups to the heads of state and government, implies that the decision criteria employed for particular policy proposals can be broadened to overcome issue-specific rigidities.

The analysis focuses on the United Kingdom, France, and Germany, because these large member states play the central role in the intergovernmental account of the integration process. If they are subject to the above institutional mechanisms, other member states are likely to be at least equally receptive to such processes. Moreover, the liberalization of the electricity supply industry is a crucial case for testing these propositions. Because the sector has been embedded in domestic institutions and the established sectoral models have enjoyed high regard in most of the member states, national governments were "least likely" to change their policy preferences in favor of a radical overhaul of their sectoral arrangements.¹⁰

In the following pages I first outline the theoretical framework in more detail. Then I flesh out the process of liberalizing the EU electricity markets. Thereafter, I use an intergovernmental approach to analyze this process to illustrate which elements this perspective cannot satisfactorily cover. Next, I demonstrate how formal and informal norms structure strategic action in the EU. I show that the EU

8. There are several strands of neo-institutional approaches. For useful overviews, see Hall and Taylor 1996; and March and Olsen 1989 and 1998. For some applications to the EU, see Garrett and Tsebelis 1996; Pierson 1996; and Scharpf 1985.

9. March and Olsen 1998.

10. On crucial case studies, see Eckstein 1992.

decision routines provide standardized mechanisms of conflict resolution and promote policy learning. I conclude by summarizing the article's key points.

Institutions, Norms, and Policy Learning in EU Negotiations

While I share the intergovernmental assumptions that, in EU policymaking, the actors follow instrumental calculations and their strategic interaction is important in explaining outcomes, I depart from the intergovernmental approach in three crucial aspects. I find that the theoretical framework rests on *the concept of bounded rationality*, on *neo-institutional premises*, and on *theories of policy learning*.

In the intergovernmental conception, none of the actors has great difficulty obtaining relevant information, processing it, and developing consistent preferences. Transaction costs are low, and the actors enjoy "complete information" throughout the negotiations.¹¹ The actors command a high degree of *rationality* that enables them to define clearly the situational logic at work. I depart from this assumption and start from the premise that human beings, organizations, and nation-states face substantial "informational and computational limits on rationality" so that even all "intendedly rational behavior is behavior within constraints."¹² Considering uncertainty in negotiations "fundamentally changes the analysis."¹³ In this respect, two dimensions of the boundedness of rationality are particularly relevant. First, strategic action is affected by "expectations about how others are likely to behave."¹⁴ Often it is only during negotiations that the member states become aware of their opponents' preferences, which can lead them to step back from their initial positions, reconsider their bargaining strategies for the pursuit of given preferences, and to reposition themselves. Second, as a result of limited information, issue complexity, and multidimensional domestic structures, member states are often unsure whether their initial policy preferences are based on "correct" assessments of the adequacy of the EU policies at hand. New information can give rise to learning processes and to a change in basic policy preferences,¹⁵ even if interest definitions are deeply rooted in domestic settings.¹⁶

Assuming a bounded rationality and focusing on "daily" EU decision making, I argue that EU institutions have a much larger role to play than the intergovernmental

11. Moravcsik 1998, 66.

12. March 1978, 590.

13. Sebenius 1992, 324; see also Kratochwil 1989, 48; and March and Olsen 1989, 146.

14. Hall and Taylor 1996, 945.

15. In his historical institutional analysis of EU social policymaking, Paul Pierson traces the change of member-state preferences mainly to factors exogenous to the EU (1996, 139–42), so his argument does not seriously question the intergovernmental account of member states' preference formation.

16. I use the terms *interest definitions* and *preferences* interchangeably even if the term *preferences* implies, in its generic connotation, a ranking of interests.

approach ascribes to them.¹⁷ The EU institutions consist of a set of EU organizations and a set of norms, rules, and routines that prescribe behavioral roles, constrain activity, and shape expectations.¹⁸ The EU institutional setting differs from that of the member-state polities and is characterized by a multilevel structure, a combination of supranational and intergovernmental elements, and a strong role for the judiciary.¹⁹ The treaty rules allocate decision-making powers and provide for an autonomous role of supranational organizations (the European Commission, the European Parliament, and the ECJ).²⁰ During the policy cycle, the EU organizations are largely restricted to agenda setting and policy formulation, and the member states organize implementation. Furthermore, the competencies of the political actors vary according to different procedures. As a result, neither the intergovernmental Council or individual member states nor the European Commission or the European Parliament enjoy complete control over the evolution of the EU policy agenda, the course of the negotiations, or their outcomes. Throughout the decision-making processes, multilayered negotiations with shifting centers overshadow formal powers. Since the territorial and functional representatives come from fifteen different national systems, actor constellations are also remarkable for their heterogeneity and fluidity.

Owing to these characteristics, strategic action in the EU is problematic and is guided by norms and decision routines. These “guidance devices” reduce the complexity of decision situations and form an important set of reference points.²¹ They narrow the space of cooperative solutions and facilitate the cohesion of the EU organizations and the national actors.²² To some extent, the treaties and secondary legislation embody such points of reference. But since the *acquis communautaire* embodies “many and competing” and even “partly ambiguous” formal rules,²³ these do not always contain clear-cut and exhaustive prescriptions for the course of action to be taken. Informal norms and routines supplement them. They clarify uncertainties, reduce the number of options implied in formal norms, and provide for courses of action that the actors perceive as appropriate. As a result, they can have a greater impact on negotiations than do formal decision-making powers and procedures.²⁴

17. Apart from assuming an almost complete rationality on the part of actors, which decreases the need for institutions that reduce complexity and simplify choices, this conception results largely from the intergovernmental focus on treaty-making decisions and the claim that institutions are virtually absent in this type of “constitutional” policymaking; see Moravcsik 1998, 61.

18. Keohane 1989, 163.

19. For the following argument, see Eising and Kohler-Koch 1999.

20. Much of the literature on EU policymaking centers on the relative autonomy of EU institutions. For a recent collection of articles that stress the autonomous role of the European Commission and the ECJ, see Sandholtz and Stone Sweet 1998.

21. On norms as guidance devices, see Kratochwil 1989.

22. On ideas—and norms—as focal points, see Goldstein and Keohane 1993, 12.

23. On the relationship between formal and informal rules, see Christensen and Rovik 1999, 168.

24. In contrast, Christensen and Rovik argue that formal norms and rules invariably have a greater impact on actors than informal norms do (1999). Similarly, in her account of EU electricity liberalization, Schmidt (1996) emphasizes the formal competition policy mandate of the European Commission and the supporting role of the ECJ in this policy area.

This is particularly the case when actors need ready-made but adaptable templates that simplify policy choices.²⁵ In such circumstances, informal norms allow for a more flexible coverage of unforeseen contingencies than do formal rules.

If they are not taken for granted, norms exert influence “through the reasoning process”²⁶—that is, they give important reasons for actions and choices. This makes rather general norms primary candidates for adoption, because these are “supposed to have general validity beyond the case at hand” and are easily interpretable.²⁷ Since general norms do not formulate a clear “do” or “do not,” their interpretation depends on the context in which they are enacted. While these norms map out broad courses of action, the actors specify their implications for the actual decision situation during their negotiations. These interpretations make norms more unequivocal; they restrict policy choices and define deviant behavior. Norms already written into the treaties are not open for immediate revision, whereas informal norms can be more liberally interpreted. Three general norms were crucial during the liberalization of the electricity supply industry: the consensus norm, the reciprocity norm, and the concept of market integration.

A set of fundamental norms revolves around the whole range of the EU institutional setup. These norms orient actors when questions arise related to the allocation and use of powers and to appropriate procedures. Among these norms, the consensus norm provides for the actors’ fair participation in decision making, and it influences the choice of formal decision procedures and the voting behavior of member states. Norms about the distribution of costs and benefits—such as the reciprocity norm—shape member states’ perceptions of the fairness of policy outcomes. They facilitate the resolution of distributive conflicts by establishing a fair distribution of costs and benefits. Furthermore, policy concepts—such as market integration—are important “focal points” within and across specific policy areas. They inform broad orientations about the goals of a policy, its contents, and the instruments to be employed. They limit policy choices because they imply a set of baseline propositions regarding the appropriate conduct of a policy in a certain issue area. Thereby, they ensure some coherence and continuity in EU policies.

While the concept of market integration influences the substance of policy proposals, the consensus and reciprocity norms do not just constrain strategic action. They also facilitate discussion about the merits and drawbacks of policy proposals, because they ensure that the actors’ salient concerns are taken into account and they direct actors toward a fair outcome. As intersubjectively shared fairness norms, they enable member states to tackle massive conflicts of interests. Since the negotiations are embedded in these norms, the routine interaction between the EU organizations and in the Council can generate policy learning. During these negotiations, the member states “get the facts right” and acquire “common knowledge.”²⁸ Their

25. Kratochwil 1989, 10.

26. *Ibid.*, 11.

27. Scharpf 1997, 91.

28. Risse 2000, 12.

negotiations provide for an increase of information about the consequences of policy change and allow member states to re-evaluate their initial preferences about the policy outcome. As a result of new information embodied in a Commission proposal and the growing information on the situation in other member states, they subject their domestic arrangements to detailed scrutiny. As a consequence, the payoffs they attribute to different outcomes and their established preferences about policy goals and means can change.

The problem is to verify that such policy learning has occurred. I suggest two ways to identify policy learning in EU negotiations. First, process tracing needs to provide evidence that the actors changed their preferences and not just their strategies.²⁹ It also needs to show that preferences changed as a result of EU-level negotiations and not as a result of other factors. Second, policy change can indicate that policy learning has occurred.³⁰ However, since policy change can also come about through bargaining, such change alone is not a satisfactory indicator for learning processes. That policy learning has caused member states to change preferences is particularly evident if they change the domestic status quo and *exceed the minimum requirements of EU directives* when implementing those directives. Member states' movement beyond the scope of prescribed policy change provides strong evidence that the members did not just stick to a bargain forced upon them but that they have been persuaded of the need for policy change.

Finally, EU decision-making routines provide standardized mechanisms for resolving issue-specific conflicts and result in policy solutions typical of the EU. The legal acts of the EU contain pronounced mechanisms for maintaining flexibility (for example, transition periods, exemption rules, administrative discretion, general legal principles, and regulatory alternatives) that allow for the resolution of conflicts and for an appropriate implementation in different national contexts. Nevertheless, EU regulations and directives are not a *menu à la carte*. They contain a core set of rules that have to be implemented in all member states and that trigger behavioral changes beyond their regulatory content.

In sum, the course of negotiations in the EU is not marked just by "the relative bargaining power of important governments,"³¹ even if such power is part and parcel of the process. Given uncertainty over each member state's preferred policy outcome, the formal and informal elements of the EU institutional setting guide member states' orientations regarding the appropriateness of policy proposals, as well as their consequences.³² In other words, they change the set of feasible outcomes and structure the payoffs related to policy proposals that then encourage a particular outcome.

29. For a similar proposal, see Pollack 1998, 223.

30. Of course, constraints might prevent actors from implementing their new policy preferences. For a more extensive discussion of these issues than presented here, see Hall 1993; Levy 1994; and Sabatier 1993.

31. Moravcsik 1998, 3.

32. On the logic of consequentiality and the logic of appropriateness, see March and Olsen 1989.

The Liberalization of the EU Electricity Supply Industry

Until the mid-1980s, EU institutions played no role in regulating the electricity supply industry, even though in the three treaties of the European Community—European Atomic Energy Community (Euratom), European Coal and Steel Community (ECSC), and European Economic Community (EEC)—they had some legal bases for doing so. Thus far, there is no legal provision in the EC treaty for a Community energy policy. Due to the emphasis the member states placed on their national autonomy in this sector, the Commission's Energy Directorate General (DG XVII) was mostly restricted to formulating studies and forecasts.³³

Only with the advent of the Internal Market Programme did the liberalization rationale extend to economic sectors that had previously been exempted from competition, such as transport, telecommunications, and electricity. When the Commission drew up an inventory of obstacles to an Internal Energy Market in 1988, it identified most of them in the fields of electricity and gas. The Commission therefore envisaged the application of Community law to these sectors and set as its goal free trade between member states.³⁴ Its inventory contained some vaguely defined plans for a comprehensive liberalization of the two network-bound energy sectors. Just one year later, DG XVII presented some draft proposals that introduced a few competitive elements into these sectors—namely, directives on the transit of electricity and gas, on price transparency throughout the Community, and on the notification of investments.³⁵ Of these proposals, the member states objected only to the last, their reason being its interference with private investment decisions.³⁶

After further internal preparations and controversial discussions with the member states, the European Parliament, and sectoral firms and associations, the Commission put forward an ambitious proposal for liberalizing the EU electricity and gas markets. In its proposal for a directive to create an Internal Energy Market based on Article 100a (EEC),³⁷ the Commission emphasized a step-by-step approach and signaled that it wanted to consult both the European Parliament and the Council. The core elements of the proposal aimed at a fundamental reform of the sectoral practices. First, distributors and large industrial firms would no longer be bound to their “area supplier” but would be able to contract deliveries from other generators by giving them statutory access to the network—in other words, third-party access. Second, all exclusive rights for the construction of power stations and power lines would be abolished and replaced by a nondiscriminatory authorization procedure. Finally, to prevent cross-subsidies between different activities (which might undermine competition), the management and accounting procedures of vertically integrated utilities would be separated, a process known as “unbundling.”

33. Matlár 1997.

34. Commission of the EC 1988, 20.

35. See COM (89) 332 fin.; COM (89) 334 fin.; COM (89) 335 fin.; COM (89) 336 fin.

36. *Agence Europe*, 19 May 1990, 12.

37. Commission of the EC 1991.

The directive proposals provoked widespread opposition from the utilities and the member states.³⁸ According to the member states, the EU proposals were incompatible with their domestic arrangements and long-standing sectoral orientations. Various member states also feared that opening the markets would have negative economic repercussions on their sectors. Belgium, France, Greece, Italy, the Netherlands, and Spain opted clearly against third-party access, and Germany, Denmark, and Luxembourg were “merely” skeptical. Only the United Kingdom and Ireland supported the controversial proposal, because Britain had already liberalized its domestic sector and Ireland was considering a reform. After their accession to the EU, Finland and Sweden also came to support the liberalization policy. Thus, given the initial positions of the member states, there was no readily identifiable bargaining space that would have allowed for a directive to be formulated. The utilities even founded an EU trade association to defend their domestic positions. In general, EURELECTRIC formulated a defensive posture in favor of the status quo and suggested a vaguely defined and minimal market opening to satisfy the Commission plans.³⁹ However, unlike most of the EURELECTRIC members, the British utilities supported the Commission plans from the outset. Some continental utilities also expected advantages from liberalization, with the Dutch and several French and Spanish distributors anxious to loosen their dependence on their suppliers. Finally, the large industrial consumers supported the liberalization plans.⁴⁰

The debate of the proposal in the Parliament was marked by deep party-political cleavages. In the European Parliament’s first reading of the proposal, its largest group, the Socialists, stressed traditional sectoral orientations: the maintenance of the security of supply, the environmental implications of this sector, and the need to maintain equal prices for similar customers, as well as other public service obligations of the utilities.⁴¹ The European People’s party, which favored more competition, mainly abstained from the vote in order to allow the Parliament to take a position. To both the Commission and the Council, it was evident from this voting behavior of the parliamentary parties that, in its second reading, the European Parliament was unlikely to reach the absolute majority required to amend or reject the Council’s common position if this reflected at least some of the parliamentary proposals. Thus, in its own amended proposal the Commission included mainly those elements of the European Parliament’s position that would not run counter to the spirit of market integration.⁴²

38. See *Financial Times Energy Monthly* (hereafter *Energy Monthly*) 38 (February 1992):7, 35 (November 1991):6, 39 (March 1992):2, 40 (April 1992):4, 42 (June 1992):7, 43 (July 1992):2, 44 (August 1992):4, 46 (October 1992):4, 48 (December 1992):45; *Agence Europe*, 31 January 1992, 6–7 April 1992, and 20 May 1992; and *Handelsblatt*, 9 April 1992.

39. EURELECTRIC 1992.

40. Author’s interviews with representatives of Eastern Electricity, Electricity Association, Ipswich, 19 March 1996, and London, 5 March 1996; BASF AG, Ludwigshafen, 26 January 1995; and Verband der Industriellen Energie- und Kraftwirtschaft, Essen, 22 December 1994.

41. *Official Journal of the European Communities*, No. C 329, 150; No. C 329, 182.

42. Commission of the EC 1993.

On the basis of the amended Commission proposals, the highly controversial discussion continued in the Council. During the negotiations, France and Germany were the main antagonists. While France feared the repercussions of liberalization on its nationalized regime and opposed EU liberalization, Germany dwelled on the economic consequences arising from a market opening in the context of heterogeneous national regimes but gradually came to endorse EU liberalization. The German utilities feared an inflow of French electricity because of the high excess capacity and price advantages of the French state monopoly Electricité de France (EDF).⁴³ They also worried about the closure of the French market because of the high degree of vertical integration within EDF. Although in the second half of the 1980s the EDF and the French government had even supported plans for a limited opening of the EU market to turn the excess capacity into revenues, they took a much more defensive posture when they learned about the comprehensive reform plans of the European Commission. At the end of the 1980s, they perceived liberalization as a threat to the fundamental principles of their sectoral regime.⁴⁴

To defend its sector, France suggested its own competition model to the Council and won the support of other countries with similar supply structures. Earlier, in late 1993, the French industry ministry published the results of a study on the French sectoral setup that had been triggered largely by the EU negotiations. The so-called *Rapport Mandil* had concluded that the major principles of the French sectoral regime should be preserved and that a thorough liberalization should be rejected.⁴⁵ On the basis of these results, the French government proposed an alternative to the Commission model, calling it the Single Buyer (*Acheteur Unique*) model. From then on, the debate centered on whether the French concept could be introduced in parallel with the Commission's proposal.

Thereafter, the Council asked the Commission to assess whether the French proposal could be considered equivalent to the Commission's own proposal. Accordingly, the Commission ordered the Energy Economics Institute of the University of Cologne to undertake a study on the subject. According to this study,⁴⁶ the French model led to far less competition than the Commission's own proposal, so that the Commission demanded major modifications to the Single Buyer proposal.⁴⁷ Although in principle the Council accepted the Single Buyer model as an alternative to the Commission model,⁴⁸ thereafter the reciprocity of the market opening was at the core of the Council debate. Both competition models, it was claimed, should guarantee a similar degree of market access, market results, and consumer choice. The intense negotiations as well as the successive solutions to a broad variety of issues led to several changes in the amended Commission proposal

43. Harms 1987.

44. *Agence Europe*, 24 March 1995.

45. Ministère de l'Industrie 1994.

46. EWI 1995.

47. European Commission 1995.

48. Council of the European Union 1995.

and progressively enhanced member states' willingness to agree to a settlement. At the end of 1995 the United Kingdom, Sweden, Finland, and Denmark were willing to compromise.⁴⁹ However, Franco–German disagreements over the compromise position still threatened to forestall agreement, which was achieved only after bilateral consultations between the French president and the German chancellor in mid-1996.

The European Parliament passed the directive without further changes in late 1996.⁵⁰ The directive provides for a progressive market opening. Between 1999 and 2003, the member states must liberalize 25–33 percent of their national markets. The extent of the liberalization is certainly not as great as in the telecommunications sector.⁵¹ But even if it allows member states to choose among several alternatives with regard to the regulation of network access and leaves the definition of *eligible consumers* largely up to member states, it introduces competition into the sector and thereby fundamentally alters the established sectoral regimes. Moreover, the initial supporters of liberalization (the United Kingdom, Sweden, and Finland) as well as several member states that initially viewed liberalization rather critically (Germany, the Netherlands, Spain, Belgium, and Denmark) now open their domestic markets fully or almost fully to competition.

The Change of Member-state Preferences and Bargaining Strategies

National Structures and National Preferences

The intergovernmental approach rests on two fundamental assumptions about the preference formation of the EU member states. First, it implies that the member states form their preferences independent of the effects of the EU institutions. Second, their issue-specific preferences “within each negotiation” are clearly defined,⁵² well ordered, and stable, because they are based on domestic structures or domestic interest coalitions.⁵³ I now apply these assumptions to the liberalization of the electricity supply industry to illustrate that the member states' interest definitions are not stable and do not rest exclusively on domestic factors. Their preferences can change substantially during the course of EU negotiations—which is an important reason for the success of these negotiations.

49. *Agence Europe*, 21 December 1995.

50. European Parliament and Council of the European Union 1996, 20.

51. Schmidt 1996.

52. Moravcsik 1998, 23–24.

53. Apart from economic criteria, Moravcsik also names geopolitical calculations. Moravcsik 1998, 27–34. These need not be addressed here, because they did not play a role during the liberalization of the electricity supply industry. In the intergovernmental approach, the relationships among domestic structures, domestic interest coalitions, and national preferences are not fixed. Economic interest groups influence the formulation of governmental policies; however, governments have to weigh these claims against “general demands for regulatory protection, economic efficiency, and fiscal responsibility.” Moravcsik 1998, 37.

Prima facie, the liberalization of the electricity supply industry seems to be a perfect case for reasoning on the basis of structural national interests. The sectoral arrangements were at the core of twentieth-century industrialization and were marked by a very long period of stability in all the member states. Since electricity supply is network-bound and is regarded as a natural monopoly, competition was absent and there was a preference for national autonomy in the supply of energy sources to the sector. Changes such as were experienced in the globalization of telecommunications markets were basically absent; neither did the slow evolution of generation technologies trigger reassessments of the established sectoral regimes.⁵⁴ Therefore, the member states were very likely to base their preferences on their domestic sectoral structures. The government of France remained wedded to the infrastructure built by the state-owned utility EDF in the postwar period—the supply of electricity by a nationalized monopoly supplier in accordance with national priorities such as the development of nuclear power. Likewise, the German government defended sectoral arrangements that had profound historical roots: They were characterized by the presence of a few large firms, several regional utilities, multiple local producers, both public and private ownership, and continued reliance on coal and nuclear energy. Of the three large member states, only the United Kingdom was likely to opt for EU liberalization, because it had already liberalized and privatized its domestic sector in the late 1980s and early 1990s.

In this situation, the member states ought to have developed clearly defined and stable preferences about their domestic settings and EU liberalization. However, only the United Kingdom has lived up to these expectations. In France and Germany, we can note clear changes in bargaining strategies and interest definitions.⁵⁵

Bounded Rationality and Preference Changes of the Large Member States

Between 1987 and 1990, the United Kingdom radically reformed its sectoral arrangements.⁵⁶ The Conservative government included the electricity supply industry, which had been nationalized after World War II, in its comprehensive privatization program. Modeled on the earlier reforms of telecommunications and gas, a regulatory agency, the Office for Electricity Regulation, was established. Also in line with the preceding reforms, the sector was privatized, liberalized, reorganized, and highly regulated. To organize large-scale electricity trading, the government even designed a complicated trading mechanism, the Electricity Pool. After this national reform, the British utilities and the Department of Trade and Industry

54. Author's interviews with representatives of Bundesministerium für Wirtschaft, Bonn, 20 January 1995; and European Commission DG XVII, Brussels, 17 January 1995.

55. For detailed accounts of domestic politics in the United Kingdom, France, and Germany during the liberalization of the EU electricity supply, see Eising 2000; and Eising and Jabko 2001.

56. Henney 1994.

tried to transfer this model to the EU level and consistently supported the EU reform.⁵⁷ Due to domestic privatization, sectoral arrangements were considered to be highly efficient and largely compatible with the envisaged reform at the EU level. Thus, the British government consistently supported EU liberalization, and the intergovernmental assumptions apply to the United Kingdom without reservation.

In contrast to the British case, the French and German positions were neither clear nor stable; they changed during the course of the negotiations. Beyond being attributed to technical and economic developments,⁵⁸ such modifications can be traced to two sets of factors: to changes in strategic action and to learning processes. The following analysis demonstrates that the French and German changes were not related to changes in strategic action on the *domestic level*, which contradicts a strictly intergovernmental account. Rather, the EU institutional context altered the payoffs and incentives related to policy outcomes. In both countries, the leading state actors displayed a bounded rationality that was manifested in two types of uncertainty. The main French actors (EDF and the Ministry of Industry) could not foresee how other member states and the European Commission would react to their initial support for a limited opening of the EU electricity market; this later forced them to reposition themselves and to oppose a comprehensive reform. The German Federal Economics Ministry could not initially identify its own “correct” preferences, because the Commission plans were a radically new proposal and the issues involved were highly complex. Learning processes in the course of EU negotiations led to a preference change in favor of liberalization. Sectoral firms and associations then adapted their strategies to the ministry’s preference change.

In France, the Ministry of Industry (Ministère de l’Industrie) and the national utility EDF dominated the domestic decision-making process. During the liberalization process, both actors broadly agreed on their positions. The Ministry of Industry acted mainly as a “sponsoring department” for the national monopoly utility. Those actors favoring a comprehensive liberalization of the French sector—like the competition directorate in the Ministry of Economics and Finance, several large industrial conglomerates, and some local distributors—did not play a major role.⁵⁹ Initially, the two protagonists emphasized their economic interests in exporting electricity because of the high over-capacity that EDF had built up since the oil crisis in the 1970s. As a result of its ambitious nuclear program, the firm had low production costs and large overcapacities that the French market could not absorb. Because the cross-border electricity exchange in the EU was based on the voluntary

57. Author’s interviews with representatives of the British Department of Trade and Industry, London, 12 March 1996; Electricity Association, London, 5 March 1996; PowerGen, Coventry, 7 March 1996; and National Power, Swindon, 8 March 1996.

58. Since the mid-1980s, international oil and gas prices have dropped, and combined-cycle gas turbines for generating electricity have become increasingly popular. These developments could have justified the liberalization of the EU electricity market; however, none of the fifty-one interview partners considered them to be relevant developments in the EU negotiations.

59. Author’s interview with representative of Ministry of Economics and Finance, Paris, 18 April 1997.

cooperation of European suppliers, EDF faced important internal trade barriers within the EU. For example, for more than two years in the second half of the 1980s, Spanish utilities blocked EDF's attempts to deliver electricity supplies to a Portuguese utility.⁶⁰ EDF's negotiations with large German industrial firms also ended without success. To give substance to its demands for a strengthening of cross-border electricity trading, in 1988 the Ministry of Industry even called upon the Commission to open state aid proceedings against the German government because of subsidies granted to the hard-coal sector.

However, only shortly thereafter EDF as well as the Ministry of Industry started to oppose the Commission's initiative to liberalize electricity when its potential repercussions for the French sectoral organization became clearer. Facing the potential loss of its monopoly status, EDF now championed a cooperative increase of cross-border electricity trading in the EU that would have left the market situation of the incumbent utilities virtually unaffected.⁶¹ As a consequence, the position of the Ministry of Industry also changed: "The realization that EDF was no longer on board dampened the French government's enthusiasm for the IEM [Internal Energy Market] at around 1989."⁶² Now, fundamental principles of the French electricity supply industry's organization became the focus of the Ministry of Industry's attention.⁶³ According to the French actors, the Commission plans would endanger their national autonomy in energy supply, the long-term security of supply based on nuclear energy, and the equal treatment of customers across the country—as well as the tradition of public service that EDF symbolized more than any other state enterprise.

With its emphasis on interest politics, intergovernmentalism can explain in part the changes in the bargaining positions of the French actors, because the Ministry of Industry's position largely followed EDF's turnaround. However, even then it remains unclear why EDF changed its position. To explicate the firm's strategic adaptation, an intergovernmentalist account would need to take the bounded rationality of actors into account more than it actually does. It would also need to pay more attention to the impact of the EU agenda and institutions on the national actors' positions. Even the largest European utility and the French Ministry of Industry could not forecast the consequences of their initial position to demand an increase of EU cross-border electricity trading. Both of them expected that such an increase would be possible without major repercussions for their domestic sectoral regime. In particular, they did not expect that the European Commission would put forward a comprehensive scheme to liberalize the EU electricity markets in such a radical way. In short, they could not calculate other actors' responses to their initial move, and they overrated their ability to control the political agenda of the supranational organizations. Consequently, the Ministry of Industry and the EDF

60. McGowan 1993, 48.

61. EURELECTRIC 1992.

62. Eising and Jabko 2001, 751.

63. *Agence Europe*, 24 March 1995.

adapted to the dynamic evolution of a political agenda they could no longer control and tried to limit the damage to the French sector. From the late 1980s onward, both the EDF and the Ministry of Industry tried to minimize the scope of EU market opening. Within the European sectoral trade association EURELECTRIC, the EDF led the opposition to the Commission plans. Within the Council, the Ministry of Industry submitted its proposal for a Single Buyer. Its fervent opposition to the EU reform rested on its perception that the established sectoral model was sufficiently efficient and on its assessment that liberalization would be incompatible with the French sectoral arrangements.

Initially, the German actors were very hesitant about European proposals for an Internal Energy Market. The German coalition government, the opposition parties, and the different ministries at the federal and regional levels all took a rather negative stance. With regard to the core elements of the Commission proposal, they emphasized the heterogeneity of the member states' sectoral structures and the need to maintain the long-standing principles of network-bound energies—the security of supply, the economic provision of universal services, and environmental protection. According to the Federal Economics Ministry, the Commission proposal required very “careful examination.”⁶⁴ Because of the new character of the Commission proposals and their unpredictable consequences, it was the established sectoral arrangements that initially guided the actors' orientations. Since these arrangements were still perceived to be quite efficient and since their maintenance was incompatible with EU liberalization, the EU reform was regarded with skepticism.

Two developments at the beginning of the 1990s are indicative of the status quo orientations among state actors. First, the most important sectoral arrangements were by and large transferred to the new German *Länder* during the reunification process.⁶⁵ Second, the Federal Economics Ministry wanted, mostly for symbolic reasons, to upgrade environmental protection into a leading goal of German energy law. However, this reform was intended neither to change regulatory standards of environmental protection nor to introduce more competition into the electricity sector. As late as 1991, Economics Ministry officials considered that there was no need to dramatically change German competition rules in the electricity sector. They were satisfied with a process of incremental reform and had no plans to overhaul the whole electricity supply industry.⁶⁶

Only two years later the Federal Economics Ministry would not only fervently support EU liberalization but also would put forward its own reform proposals.⁶⁷ The close interaction within the EU negotiations had shifted the attitude of ministry officials toward a more positive evaluation of competition in the energy sector. The long, intense, and detailed debate on different sectoral models triggered a fundamental reassessment of the principles that had informed the organization of the

64. Bundesministerium für Wirtschaft 1991, 97. See also *Handelsblatt*, 2 April 1992.

65. Ortwein 1996.

66. Cronenberg 1991, 45.

67. Bundesministerium für Wirtschaft 1994a,b.

German electricity supply industry for about a hundred years.⁶⁸ This learning process led to a reevaluation of the conventional wisdom that competition could not really succeed in the electricity sector due to its technical and economic features.⁶⁹ Now it was felt that liberalization should improve allocative efficiency and industrial competitiveness.

Within the German sector, the interlocked reform debates at both the European level and the domestic level caused changes in strategic action. The German sector consists of three different groups of firms: very large utilities, about sixty regional utilities linked to them, and a multitude of local utilities.⁷⁰ Early in the debate, the three groupings and their sectoral trade association opposed the EU reform.⁷¹ But gradually the combined pressure for reform at two political levels led to the erosion of consensus among the sectoral actors.⁷² While the local utilities ferociously opposed any kind of liberalization,⁷³ the regional and large utilities opted for the introduction of competition as a lesser evil. These two groups of utilities feared that municipal firms would be granted major exemptions from liberalization due to their linkages with actors in the major political parties and at the local level. They also came to regard EU liberalization as an opportunity to undermine the municipalities' control over local supply areas, given that such an opening-up of municipal areas of supply was unlikely to come about in a national reform.⁷⁴ With their turnaround, the large and regional utilities adapted their bargaining strategy to the changed preferences of the state actors, which further increased the likelihood that both the European and the domestic reform plans would succeed.

The intergovernmental approach can account only partly for the changes that took place in Germany, because it underplays the impact of EU institutions on domestic actors. It can partly explain the strategic adaptations of the large and regional utilities that saw the EU reform in part as a threat and in part as a "window of opportunity" to open up the municipal firms' supply areas given that they could no

68. Author's interviews with representatives of Bundesministerium für Wirtschaft, Bonn, 21 December 1994 and 20 January 1995; and Bundesministerium für Umwelt, Naturschutz, und Reaktorsicherheit, Bonn, 18 April 1995.

69. Bundesministerium für Wirtschaft 1994a.

70. In 1993 the large interconnected utilities generated about 80 percent of electricity; the regional suppliers, about 9 percent; and the municipal firms, about 10 percent. The large utilities distributed about 34 percent of the electricity produced; the regional firms, around 39 percent; and the municipal firms, about 27 percent. Schiffer 1995, 166.

71. Grawe 1991.

72. Author's interviews with representatives of Bundesministerium für Wirtschaft, Bonn, 20 January 1995; Deutsche Verbundgesellschaft, Heidelberg, 1 February 1995; Verband kommunaler Unternehmen, Köln, 5 July 1995; Vereinigung Deutscher Elektrizitätswerke, Frankfurt, 25 January 1995; and RWE Energie AG, Essen, 18 May 1995.

73. VKU 1994.

74. The joint position paper of ARE and DVG (1994) clearly states that the large interconnected utilities and the regional utilities preferred maintaining their monopoly supply areas to liberalizing the market. However, given the lack of political consensus on this issue, they supported a full-fledged market opening—to include both German municipal utilities and foreign state monopolies like EDF in the liberalization.

longer defend their monopoly status.⁷⁵ However, the Federal Economics Ministry's preferences did not evolve outside of the EU negotiations; rather they must be regarded as a result of a learning process initiated by these negotiations. This makes an intergovernmental explanation unsatisfactory.

In sum, with its emphasis on domestic structures and interest alliances, the intergovernmental approach accounts for important elements of the member states' interest definitions and bargaining strategies. Nevertheless, even in the French case this approach would need to consider more than it has so far the effects of bounded rationality and a lack of member-state control over the EU political agenda. Moreover, in Germany EU reform opened up options to state actors that led to a fundamental reassessment of the domestic sectoral structure. Intergovernmentalism cannot satisfactorily account for this learning process. The following sections will analyze in greater detail the effects that the EU institutional setting has had on member states' preferences and strategies.

The Institutional Context of Strategic Action in the EU

European integration has entailed profound changes in the institutional setup in which the member-state actors and the sectoral utilities were situated. This institutional context structured strategic action and supported a cooperative outcome. First, it changed the rules of the game. The concept of market integration, the consensus norm, and the reciprocity norm limited the courses of action available to EU organizations, and they tamed member-state power⁷⁶ by mapping out the broad options available for the definition and pursuit of national interests. Second, the institutional setting changed the coalitions of support and opposition and brought different actors into the game—in particular, supranational organizations with some autonomous powers in the decision-making process.

Policy Concepts and the Commission's Right to Initiate EU Policies

The transformation of the institutional context entailed a change of the focal point that had informed the organization of the electricity supply industry. As a result of the member states' heterogeneous background conditions, policy concepts have a special relevance for guiding actors' orientations in the EU negotiations. They structure the expectations about the appropriateness of policies and about their consequences. The actors do not necessarily need to agree on "all the definitions of the central problems"; rather, in order for any policy concept to become a "suc-

75. The interest differentiation of the utilities *followed* rather than *preceded* the state actors' preference changes, so that the Federal Economics Ministry's turnaround cannot be attributed to pressures from the large or regional utilities—nor to pressures from industrial energy consumers, because this group had been voicing its concern about high energy costs since the early 1980s.

76. I borrowed this formulation from Katzenstein 1997.

cessful dominant approach” what is needed is “sufficient overlap.”⁷⁷ In EU environmental policy, the concept of *sustainable development* provided a focal point for the convergence of expectations guiding political action.⁷⁸ In social policy, the *social dimension of the internal market* fulfilled a similar function and galvanized agreement on the Social Protocol of the Maastricht Treaty.⁷⁹

Among these concepts, EU *market integration* is fundamental. Prominently enshrined in the treaties, it is a central element of the *acquis communautaire*. Liberalization of the electricity supply industry was part and parcel of the EU Internal Market Programme, whose beneficial economic impact is taken almost for granted and which has enjoyed broad support across the member states since the mid-1980s because it is embedded in a neoliberal policy agenda and rooted in the founding treaties.⁸⁰ Market integration has long been the backbone of European integration and the dominant economic policy doctrine. It guides orientations and behavior in such a way that actors are unable to bluntly refuse liberalization measures even if market integration is extended to economic sectors—such as the electricity supply industry—that have developed their own organizing principles. The central position of market integration among EU policies acted as a catalyst for the initiative to liberalize the network-bound energies, a move that was also justified by the precedents that other sectors, such as telecommunications, had set. Market integration worked as a focal point on which activities in various sectors and policy areas converged.

Furthermore, the institutional transformation changed the actor constellations and brought supranational organizations into the game. Among the EU organizations, the European Commission is the “traffic center” for the adoption and diffusion of policy concepts. The Commission’s right of initiative grants it a central position in the phases of agenda setting and policy formulation. The central role of the Internal Market Programme in the revival of the integration process gave the Commission a strong incentive to act on the programme’s behalf in areas that the programme had not yet covered. Based on its competition policy responsibilities, the Commission had acquired an excellent understanding of the British reform, which had already demonstrated that competition could be introduced into the sector. However, the intensity and scope of the British reform could not be transferred directly to the EU level. Nevertheless, informed about the initial French interest in increasing electricity exports, the interest of large industrial consumers in lowering their electricity costs, and the British reform, the Commission developed a liberalization agenda for the EU electricity supply industry. Taken together, the dynamics of the Internal Market Programme and this interest constellation provided the Commission with a unique window of opportunity. From the late 1980s onward, it greatly intensified its

77. Gottweis 1999, 75.

78. Lenschow 1999.

79. Falkner 1999.

80. See Moravcsik 1998; and Sandholtz and Zysman 1989.

work on the Internal Energy Market⁸¹ and finally designed an ambitious proposal for the liberalization of the network-bound energies. The Commission's main point of reference was the Internal Market Programme. It justified the creation of an Internal Energy Market with the opportunity costs of a "non-Europe" in this sector as well as with positive effects for the EU industry and consumers.⁸² Because of the central role played by market integration, the member states were unable to oppose the initiative entirely even if most of them displayed a great resistance against it. Moreover, they could not challenge the validity of market integration as a leading norm in the EU system per se. From the outset, their opposition was restricted to arguments about why the electricity sector should not be subsumed under this norm.

Institutional Norms: The Consensus Norm

The Commission's proposal reflected not only the influence of the dominant policy concept in the EU but also the influence of institutional norms. These norms shape the actors' orientations and beliefs about what constitutes the EU's legitimate claim to make binding decisions.⁸³ They change the framework of strategic action by structuring the *participation* of the actors and regulating the *decision rules* in the negotiations. The participation of the different EU bodies, the inclusion of societal actors, and the consensus principle within the Council serve to bridge the actors' heterogeneity and their cleavage lines. Even if majority decisions are increasingly common in the Council since the Single European Act and the Maastricht, Amsterdam, and Nice treaties, its decision-making practices are still characterized by a search for consensus to find solutions that are acceptable to all member states.⁸⁴ The possibility of taking a decision by qualified majority certainly enhances the Council's propensity to reach an agreement, because the "possibility of breaking deadlocks by voting drives the negotiators to break the deadlocks without actually resorting to the vote."⁸⁵

Nevertheless, with heterogeneous situations in the member states, multidimensional cleavage lines, manifold issues to be negotiated, a dynamic political agenda, and unclear and unstable preferences of the member states, the consensus norm warrants not only "comprehensive protection" against being outvoted on important single issues such as the Internal Energy Market or even continuously.⁸⁶ It also allows for a search for outcomes that *all* member states consider adequate and fair, which helps to ensure member states' compliance with such rules. Consequently, Council members usually make strong efforts to produce outcomes that all of them can accept.

81. Faross 1989.

82. Commission of the EC 1988, 6–9.

83. Kohler-Koch 1999.

84. Hayes-Renshaw and Wallace 1995.

85. Weiler 1991, 2461–62.

86. Gehring 1995, 209.

This informal norm greatly influenced the choice of the formal decision procedure. Since there were several competing formal decision procedures, the course of action to be taken was uncertain. The consensus norm clarified these ambiguities and provided for the choice of a decision procedure that all actors considered appropriate. The Commission could choose from among four different procedures. First, it could have applied the EU competition rules of Article 85, 86 EEC-Treaty against the utilities. Second, it was entitled to initiate infringement procedures according to Article 169 EEC against the member states. Third, it had the formal power to unilaterally formulate a Commission directive based on Article 90 (3) EEC. Finally, on the basis of Article 100a EEC-Treaty it was able to propose a directive that would allow other EU bodies to participate in the liberalization process. Why, then, did the Commission look to the fourth of these procedures to open up the EU electricity markets?

The member states, the European Parliament, and the largest part of the Commission preferred a procedure that would involve all of the EU bodies. Most of the actors perceived that applying EU competition law was inappropriate for opening up electricity markets. The application of EU competition law is the domain of the Competition Directorate-General (DG IV). In contrast to most of the other Commission services, DG IV has a highly legalistic, bureaucratic culture.⁸⁷ Within the Commission, DG IV is the most visible exception to the consensus-oriented approach. DG IV suggested applying EU competition law and Article 90 (3) EEC to the electricity market, whereas DG XVII, which is responsible for energy policy, opted for market opening on the basis of Article 100a EEC. The planned unilateral action of DG IV that followed its own precedent in the telecommunications sector faced fierce resistance from the European Parliament and the member states. Due to the economic relevance of the electricity supply industry and to its quasi-public status in many member states, the Parliament and the member states signaled to block the use of Article 90 (3) EEC.⁸⁸ The United Kingdom—the only member state wholeheartedly supporting the EU reform—was also unwilling to tolerate unilateral action by the Commission.⁸⁹ This indicates that the preferences for consensus depended not on situational calculations but on fundamental institutional considerations. Both the Council and the European Parliament emphasized the need to proceed consensually, to involve all of the EU bodies in the negotiations, and to consult the sectoral actors extensively. Therefore, and based on a large majority in a collegial meeting, the Commission refused DG IV's envisaged approach and

87. Laudati 1996.

88. *Financial Times*, 23 January 1992. Unlike the electricity sector, in telecommunications there was broad agreement among all actors that the sector should be liberalized. Moreover, DG IV's use of the Article 90 (3) EEC procedure was limited to the opening of partial sectoral markets (services and equipment). Therefore, the cases had a more limited relevance for the whole sector than the plans for the electricity sector did.

89. Author's interview with representatives of the European Commission, Brussels, 18 January 1995.

instead proposed a stepwise procedure in cooperation with the Council and with the Parliament.⁹⁰

After this decision had been taken, DG IV initiated infringement proceedings against some of the member states in order to maintain a high degree of pressure on them and on the European Parliament, whose socialist majority faction was hesitant about liberalizing the sector.⁹¹ These proceedings should have supported the directive negotiations by undermining the member states' and utilities' belief that they would be able to maintain the domestic status quo.⁹² But in and of themselves they could not provide for an appropriate outcome, because their functionality for the market opening was rather limited. On the one hand, DG IV referred only five member states (France, Ireland, Italy, the Netherlands, and Spain) for the infringement of treaty obligations to the European Court of Justice (ECJ), and these referrals were limited to only one aspect of the liberalization—legal import and export monopolies. On the other hand, this strategy depended on the support of the ECJ, whose opinion could not be predicted. In two related Article 177 cases (*Almelo* and *Corbeau*), the ECJ had rather unsurprisingly decided that the Community rules on the four market freedoms also applied to utilities. But in its judgments, the ECJ had maintained that these firms could be exempted from competition in order to maintain “sufficient financial equilibrium to guarantee the provision of public services.”⁹³ In these judgments, the ECJ did not specify the criteria for exemption and left the final decision to the discretion of the national courts. Therefore, the interpretation of the judgments differed across the economic actors, the member states, and the Commission.⁹⁴ Among EU bodies, the member states, and the firms there was some uncertainty about the ECJ judgments in the infringement cases. Even if, according to the member-state officials, the legal strategy to open up the market did not appear entirely credible,⁹⁵ it provided a negative incentive for the member states to agree on a minimum liberalization in order to avoid an unequal opening of domestic markets.

In the infringement procedures—unlike the Article 177 EEC procedures related to the *Almelo* and *Corbeau* cases—the ECJ itself had to formulate the case-specific rulings. That the ECJ did not rule against any of the import and export monopolies in its 1997 rulings confirms the limited credibility of the competition policy route. In fact, even after the member states had agreed on a directive to liberalize the sector, the ECJ still held that the member states could maintain the most essential aspects of their national export and import monopolies. The ECJ regarded these trade monopolies as violating the EU rules on market integration, but it accepted

90. Author's interviews with representatives of the European Commission, Brussels, 19 March 1997.

91. *Energy Monthly* 53 (May 1993):15.

92. Schmidt 1996.

93. Hancher 1994, 4.

94. LeNestour and Zinow 1995.

95. Author's interviews with Ministère d'Economie et des Finances, Paris, 18 April 1997; and Bundesministerium für Wirtschaft, telephone interview, 21 March 1997.

their maintenance if the utilities needed them to be able to perform tasks of general economic interest.⁹⁶

In sum, the co-decision procedure that required both the Parliament and the Council to agree on a directive and to consult the utilities guaranteed that the claims of all EU bodies to participate in the process would be taken into account. In addition, negotiations among the EU organizations promised all of the actors a higher degree of control over the outcome and a more appropriate regulatory solution than a legal strategy would allow.

The impact of the consensus norm was not confined to the choice of the decision procedure; it also informed the decision-making processes within the Council. The co-decision procedure allowed qualified majority voting in the Council. But because of the heterogeneity of national structures and the economic relevance of the industry, the member states were not prepared to outvote each other on such a salient issue. Even the main antagonists in the debate, Germany and France, agreed “not to isolate one another” during the Council negotiations but to search for a consensual solution of all member states.⁹⁷ They refrained from attempts to mobilize a qualified majority in favor of the directive and refrained from constructing a blocking minority against it that existed until the very end of the negotiations. In the end, the member states agreed on the directive in a consensual manner. Thus, the informal consensus norm had a greater relevance for the conduct of the negotiations than did the formal procedures that were open to the Commission and to the member states.

However, the consensus principle need not necessarily warrant agreements and effective solutions if veto-orientations of individual actors persist.⁹⁸ The next section provides evidence that substantive fairness criteria hinder such a unilateral pursuit of interests and support member-state cooperation.

Fairness Norms: The Reciprocity of the Market Opening

Under the condition of consensus, bargaining “can succeed only when the major parties. . . . come away with a sense that their primary concerns have been treated fairly.”⁹⁹ For this reason, explicit fairness criteria have special relevance for resolving the main differences among the member states.¹⁰⁰ Not only in international regimes, but also in EU negotiations, reciprocity criteria form an important

96. See ECJ judgments C-157/94 (Commission—Netherlands), C-158/94 (Commission—Italy), C-159/94 (Commission—France), C-160/94 (Commission—Spain), all dated 23 October 1997.

97. Author’s interviews with representatives of the European Commission, Brussels, 19 March 1997; and the British Department of Trade and Industry, London, 12 March 1996.

98. Scharpf 1985.

99. Young 1994, 109.

100. Alternatively, issue-linkages might help to solve profound conflicts among member states. However, if the issues involved are central to *all* member states, resolving interest conflicts through issue-linkages and package deals is virtually impossible because finding “complementary asymmetries” in other areas is almost impossible. Scharpf 1997, 130. Therefore, package deals are of only limited use in the daily business of the EU institutions and are mostly restricted to conflicts among a limited number of member states.

yardstick for measuring the fairness of a regulatory outcome. The concern with the reciprocity of the market opening set the broad normative frame of the Council negotiations. It informed both the debate on the two competition models—Single Buyer and third-party access—and the central outcome of the negotiations—the introduction of quotas to liberalize domestic markets.

Robert O. Keohane distinguished between two types of reciprocity: specific and diffuse.¹⁰¹ In cases of specific reciprocity, the partners exchange goods with equivalent values in a fixed sequence. In cases of diffuse reciprocity, the equivalence of the exchange need not be symmetric and the sequence is open. In a multilateral setting with a multitude of negotiation issues, the equivalence of contributions often cannot be resolved. Therefore, in the Council specific reciprocity cannot be related to the cost–benefit equilibrium of the member states across all issue areas, but it is related to the policy proposal at hand.

Both forms of reciprocity are interrelated in a specific way. Because diffuse reciprocity cannot easily be realized in a multilateral and multi-issue environment, all the member states initially emphasize criteria of specific reciprocity to ensure the fairness of each directive. Because the member states' sectors were very heterogeneous and their interests in the liberalization differed markedly, the Council formulated several conditions to ensure specific reciprocity in the opening of the national electricity markets. The Council explicitly demanded (1) the equivalence of economic results, (2) the equivalence of the national market opening and of the access to these markets, and (3) conformity with the treaty rules of the parallel existence of the Single Buyer model and the Commission's model.¹⁰² Thereby, the Council interpreted the norm of specific reciprocity in the context of market integration in order to limit deviant behavior and the ability of individual member states to formulate alternative decisions. The reciprocity of the market opening was a major concern of those member states willing to liberalize their markets to a large extent. For them, reciprocity was a safeguard against defection by member states that were determined to maintain the domestic status quo and that supported the Single Buyer proposal.

Even if the Council's criteria did not exactly prescribe the degree and the content of market opening, they formed a focal point throughout the negotiations. The Energy Economics Institute in Cologne took the reciprocity criterion as a starting point for its comparison of the Single Buyer model with the Commission proposal. It concluded that the two proposals would lead neither to equivalent economic results nor to an equivalent market opening or equivalent access to these markets.¹⁰³ Its analysis further specified the reciprocity criterion and allowed a detailed assessment of the two competing models. As a consequence, the Commission

101. Keohane 1986.

102. Council of the European Union 1994.

103. EWI 1995.

demanded major changes to the Single Buyer proposal in order to ensure the specific reciprocity of the market opening.¹⁰⁴

The reciprocity debate gradually contributed to the convergence of expectations on how to solve the problem of ensuring a fair market opening throughout the EU. More and more, subsequent Council presidencies related specific reciprocity to a similar degree of market opening in each member state, and finally a quota for the degree of liberalization in all of the member states was formulated.¹⁰⁵ Thereby, all the member states were supposed to contribute equally to the creation of the Internal Energy Market while taking into consideration the unequal structures and sizes of the domestic markets. This focal point enabled the member states to gradually formulate quantitative criteria for the sectoral liberalization that had not been included in the earlier Commission proposal.

Together, the concept of market integration, the consensus norm, and the reciprocity norm constituted a profound change in the context of strategic action and reduced the set of feasible outcomes and strategies to an institutionally defined subset.¹⁰⁶ These norms formed a broad frame of reference for the interest calculations of member states and were necessary to arrive at a cooperative outcome in the contested issue of electricity liberalization. The crucial position of market integration in the treaties forced member states to consider why the electricity sector should still be exempted from competition. The consensus norm ensured that there would be a broad debate about the Commission proposal and that important national concerns would be taken into account. The reciprocity norm provided an important criterion for devising an equitable outcome. These norms framed the negotiations among the member states: Their interaction increased the likelihood of a cooperative outcome and facilitated policy learning by the member states.

Policy Learning and Institutional Differentiation in the Council System

Embedded in a broader normative setting, the negotiations in the Council and in its administrative substructure allow for the resolution of complicated negotiation problems and profound conflicts of interest. It is well known that two actors are particularly important during these negotiations: the European Commission and the Council presidency. As each member state serves its term in the Council presidency, the corresponding role change leads member states to sort out potential areas of compromise and to work toward reconciliation.¹⁰⁷ Incumbent member states are expected to suppress the pursuit of their own interests and search for areas of agreement. As the holders of successive Council presidencies, even France and

104. European Commission 1995.

105. See *Energy Monthly* 83 (November 1995):1, and 86 (February 1996):1.

106. See also Scharpf 1997, 39.

107. For a study that emphasizes the socialization of COREPER members, see Lewis 1998.

Germany had to abstain from pursuing their own preferences and had to put forward compromise proposals. It is not only during the phase of the Council presidency that these role changes support the evolution of compromise positions. The role changes help increase the members' understanding of the perceptions and positions of others, even if differences in the member states' underlying interests persist.¹⁰⁸ By mediating during the debate, the European Commission also attempts to work toward agreement. Even if it keeps its own interests in mind while acting as mediator, as a guardian of the treaties the Commission enjoys a neutral status that legitimates its arguments.

The incremental negotiation techniques of the Council are less well understood than the two elements of the negotiations named earlier, even though they have important implications for the outcomes. Not only do they increase the amount of information about policy consequences, but also they result in regulatory solutions typical of the EU, because they contain standardized mechanisms for resolving member-state conflicts.¹⁰⁹ The following section outlines these implications in more detail.

Incremental Negotiations and Policy Learning

The Council proceedings are structured by *incremental negotiation techniques*. For instance, the frequency of the energy group meetings within the Council increased from three or four times a year at the end of the 1980s to once or even twice a week during the liberalization debate.¹¹⁰ Due to time constraints, the Council working groups, the Committee of Permanent Representatives (COREPER), and the Council itself cannot discuss more than three to four aspects of the Commission directive proposals during a *tour de table*. Therefore, and as a result of the multilateral character of the EU, the many and varied national positions are grouped into small bundles of controversial issues for which compromise proposals are debated. First, this procedure uncouples the controversial problems from the underlying national structures and from individual member-state interests. It provides for the formulation of *types and categories* of problems as well as solutions, rather than for a debate of highly idiosyncratic situations. Thereby, it leads to a rather abstract and analytical debate about these categories and, in part, discourages some forms of debate that rest on specific national situations. Those member states willing to defend their

108. Author's interview with representatives of the British Department of Trade and Industry, London, 12 March 1996.

109. The incremental *negotiation* technique differs from the *decision* technique of "disjointed incrementalism." Dahl and Lindblom 1976, 82–85. Unlike the latter, the former does not limit the scope of policy changes to the margin, but allows for radical reversals. However, incrementalism as a negotiation technique also has a function that Dahl and Lindblom ascribe to continuous and incremental policy changes: "Incrementalism is a process of constantly testing one's preferences." Dahl and Lindblom 1976, 83.

110. Author's interviews with representatives of the Bundesministerium für Wirtschaft, Bonn, 20 January 1995; and the British Department of Trade and Industry, London, 12 March 1996.

national settings are forced to come up with proposals that not only reflect their own domestic structure but also can be applicable in and acceptable to the other member states. Thus, embeddedness in the Council debates limits the range of legitimate arguments available to the member states in defense of the domestic status quo. This dynamic is perhaps best illustrated by the debate on the French Single Buyer proposal. In order to defend the main institutional features of its nationalized electricity supply structure and win the support of member states with similar structures, the French Industry Ministry needed to bring up a proposal that was conceived as a general alternative to the Commission's proposal. The French Single Buyer proposal was designed as an attempt to minimize liberalization but was detached from the French domestic structure.

Therefore, its general elements could subsequently be analyzed and compared to the Commission's own proposal. With its own proposal justified by the reciprocity norm and based on a study commissioned by a well-respected energy policy think tank,¹¹¹ the Commission was in a position to demand important changes to the French Single Buyer proposal.¹¹² Finally, the Council accepted the Single Buyer in principle,¹¹³ though only in a substantially modified form. The result of the strong modifications to the original Single Buyer proposal was that no country—not even France—would significantly use it to implement the EU reform.¹¹⁴

The second consequence of isolating problem bundles is the Council's sequential approach to dealing with disagreements. The debate starts with those proposals that are immediately tractable and gradually proceeds to the more controversial issues. The least contested issues are negotiated in an iterative process and settled by Council conclusions that are presented every six months. These solutions become part of the "acquis of the dossier" and are no longer open for renegotiations. Backtracking behind interim agreements is generally not possible, and the negotiations stay focused on open problems. The Council negotiations generate their own momentum, because the negotiators build up several specific solutions and point out remaining problem areas.¹¹⁵ The regular interim negotiation successes forestall a breakdown of the negotiations. For example, during the negotiations of the liberalization directive, the incremental negotiation technique led to the deletion of the initial 185 member-state reservations to the amended Commission proposal.

Most controversial issues are settled by incorporating *flexibilization elements* into the directives. These elements tie up "loose ends" of the negotiations and provide a

111. EWI 1995.

112. European Commission 1995.

113. Council of the European Union 1995.

114. European Commission, Energy Directorate General 1999, 2.1.3.

115. Thus, the Council conclusions in mid-1995 (Council of the European Union 1995) accepted the parallel introduction of the Single Buyer and of the Commission's negotiated third-party access. However, the Council pointed out the need to clarify several issues: (1) construction of direct lines, (2) definition of eligible consumers, (3) definition of independent generators, (4) procedures for accepting the independent generators, (5) regulation of limits on electricity imports of eligible consumers, (6) unbundling of vertically integrated utilities in the Single Buyer model, (7) procedures for contracting new capacities, (8) treatment of lost investments, and (9) small electricity-supply systems.

standardized mechanism for resolving conflicts arising from heterogeneous domestic contexts. Such mechanisms—the inclusion of general legal clauses and of alternative regulatory options as well as the granting of administrative discretion, transition periods, and exemptions—have two main functions. Apart from aiding conflict resolution in the Council debate, they allow for a flexible implementation in heterogeneous national contexts. With regard to resolving member-state conflicts, these mechanisms matter most when they concern particular aspects of a directive proposal and when they involve only *a single or a few member states*. Since they privilege some member states and can lead to differing geometries of Community law in the member states, they need to be justified in terms of uneven abilities or national peculiarities.

Third, the iterative debate and the successive resolution of a variety of problems increase the member states' knowledge of the dossier and the problems involved. The successive negotiation rounds lead actors to review both the Commission's proposals and their domestic regulatory regime. The incremental debate increases the knowledge about each element of the often highly complex regulatory proposals. It induces learning processes, reduces uncertainty about the likely effects on the domestic structures, and puts the initial member-state preferences and their domestic settings more and more into a test stance. New information about other states' situations and pressure to analyze the domestic situations in light of the Commission's proposals often result in reassessments of the adequacy of national arrangements.

The increase in common knowledge about policy consequences can help to resolve conflicts. But Member states do not necessarily need to hold the same opinions about the proposals, because their acceptance of EU proposals depends heavily on the compatibility of these proposals with their basic policy preferences about their own domestic settings.¹¹⁶ With regard to liberalization, these preferences differed across the large member states.

In the United Kingdom, the EU proposals fit very well with the basic policy preferences of the British government, so that the Department of Trade and Industry consistently supported EU liberalization. The Conservative government favored EU liberalization because this was in line with its leading economic idea that "the role of the state in the economy should be reduced."¹¹⁷ Liberalization was generally seen as a policy that would increase sectoral efficiency and industrial competitiveness. Furthermore, since the British sectoral regime already conformed to the major demands of the EU reform, its sectoral adaptation costs would be low. Moreover,

116. Many analyses neglect the fact that member states can have basic policy preferences that imply a change of the domestic status quo rather than its continuation. Thus, like Adrienne Héritier (Héritier et al. 1994), Cowles and Risse (2001) expect that the large member states will support only those EU directives that do not require much domestic change—even though in several cases these member states had a clear preference for domestic change.

117. Hall 1993, 286–87.

while the British electricity market was already open for foreign direct investments, the EU reform would grant British utilities access to other member states' markets.

In France, the Ministry of Industry's preoccupation with short-term considerations that emphasized the gains from electricity exports initially overshadowed a fundamental set of institutional considerations that clashed with the EU plans. The *service public* tradition, which emphasized a major role of the state in the utility sectors and for which EDF was a major symbol, nourished its opposition to the EU directive. Since the Ministry of Industry perceived the French sectoral regime as a highly rational mode of supplying electricity and did not expect a major increase in French industrial competitiveness from liberalization, it did not want to change the domestic status quo in a radical way. It also perceived that liberalization would mean tremendous adaptation costs for the French sector and for French energy policy, so it opposed the EU reform and would implement "nothing beyond the European directive."¹¹⁸

In Germany, the established sectoral institutions initially shaped the German Federal Economics Ministry's orientation in favor of the domestic status quo, but learning processes in the Council debate started a fundamental shift in preferences. The Federal Economics Ministry's involvement in the EU negotiations formed an important mechanism for transmitting the liberalization doctrine to the national level. This led to a changing assessment of the rationality of competition within the network-bound energy sectors.¹¹⁹ As a result of this debate, the sector's exclusion from competition appeared less and less convincing.¹²⁰ Despite the German sectoral regime's incompatibility with the EU proposals and despite profound sectoral adaptation costs, the Federal Economics Ministry eventually endorsed the EU reform because it expected liberalization to bring about a major increase in sectoral efficiency and German industrial competitiveness. This turnaround was eased by liberalization's fitting nicely with the liberal tenets of Germany's "social market economy."

Further ideational factors complemented this reevaluation: First, British privatization from 1990 onward had an important demonstration effect: It showed that competition could be introduced into the electricity sector without endangering the security of supply.¹²¹ The British reform completely undermined the general argument that competition could not work in the sector because of its economic and technical features. Second, at the domestic level electricity liberalization became linked to the broader debate about the competitiveness of German industry and "production site Germany" (*Standort Deutschland*),¹²² which had been launched by

118. *Libération*, 15 February 1999.

119. Author's interviews with representatives of the Bundesministerium für Umwelt, Naturschutz, und Reaktorsicherheit, Bonn, 18 April 1995; and Bundesministerium für Wirtschaft, Bonn, 20 January 1995. See also Bundesministerium für Wirtschaft 1993, 52.

120. Bundesministerium für Wirtschaft 1994a, 39.

121. Bundesministerium für Wirtschaft 1994a.

122. See the position papers and the debate in Deutscher Bundestag, Ausschuss für Wirtschaft 1997, 13.

the national producers' association, Bundesverband Deutscher Industrie, in the late 1980s. This debate had gained momentum in the 1990s due to both the economic structural crisis in the new German *Länder* and the perception of growing pressure from economic globalization. Finally, in the context of the European debate and the debate on globalization, reform proposals by national expert commissions gained prominence. In particular, a report by the Deregulation Commission also recommended liberalizing the sector.¹²³ Considering the radical nature of the sectoral reform, this report by the renowned commission confirmed the overhaul of the "conventional wisdom." Neither similar proposals made by practically the same set of experts in the 1960s and 1970s nor political pressure from the large industrial consumers in the 1980s had resulted in political reform.¹²⁴

On the basis of the EU negotiations and the national proposals, the Federal Economics Ministry proposed a national reform whose scope went beyond even the Commission's plans.¹²⁵ German implementation of the EU directive therefore exceeded the minimum requirements of the EU liberalization. First, unlike the EU reform, the German reform did not limit the range of eligible consumers to large industrial firms and distributors but included household customers as well. Thus, the entire German market has been liberalized. Furthermore, in contrast to the EU reform, the German reform did not allow for a transition period. The German market was opened in a single step. Finally, the German reform included the liberalization of the gas market, which had not been liberalized at the EU level at the time.

Similarly, in several other member states the extent of market liberalization surpasses the requirements of the EU directive. Belgium, Finland, Germany, the Netherlands, Sweden, Spain, and the United Kingdom liberalize their markets entirely.¹²⁶ Denmark opens 90 percent of its market to competition. Austria, Italy, and Luxembourg liberalize between 40 percent and 50 percent of their markets. Only France, Greece, Ireland, and Portugal do not open their markets to competition beyond the minimum threshold of 33 percent that the EU directive prescribes. While the United Kingdom, Finland, and Sweden had embarked on the domestic reforms before their involvement in the EU negotiations, the EU debate contributed significantly to the policy reversals in the other member states that exceed the minimum requirements of the directive. Given the scope of domestic implementation, one may safely conclude that these member states did not just bend to bargaining power but planned the EU reform and far-reaching domestic implementation voluntarily as a result of a learning process largely stimulated by the Commission's initiative and their EU-level negotiations.

123. Deregulierungskommission 1991.

124. Padgett 1990.

125. See Bundesministerium für Wirtschaft 1994a,b; and Deutscher Bundestag 1997.

126. European Commission, Energy Directorate-General 1999, 2.1.2.

Vertical Differentiation Within the Council System

Despite successive agreements on several aspects of market opening, the Franco–German conflict forestalled agreement among the member states for a long time. After they proved unable to resolve their differences in a series of bilateral negotiations ranging from the working level to the ministerial level, the German Bundeskanzler and the French president finally agreed on the liberalization. The Council’s negotiations gradually led these actors to perceive that trying to maximize their national–sectoral interests was no longer appropriate. Thus, the French president and the German Bundeskanzler eventually backed away from a sector orientation and sanctioned the outcome of the Council negotiations without adding major changes to the directive proposal. The other member states would have considered strong modifications to be inadequate and illegitimate. Basically, these actors accepted *post hoc* what they would not have regarded as an option *ex ante*.¹²⁷ On the one hand, their acceptance of the proposal was based on the crucial position of market integration in the treaties. They were committed to the broad EU liberalization agenda. On the other hand, their agreement was based on the evidence that the multitude of issue-specific conflicts had already been settled in the Council negotiations and that the final outcome not only considered their most salient national concerns but also allowed for flexible domestic implementation. Their long-term cooperation and their reputation as “motors of integration” let them consider any unilateral pursuit of sectoral interests as inappropriate. Their agreement reflected that they have a broader constituency and broader tasks than the sectoral state actors do. The Franco–German agreement subordinated domestic sectoral costs to macro-political considerations. Thus, the differentiation of the institutional setup into different layers of decision making further altered how each member government calculated its preferred outcome. Thus, intergovernmental negotiations are clearly important in explaining the outcome, but these negotiations are embedded in a broader institutional setting that shapes interests and strategies.

As a result of incremental negotiations and the interest conflicts among member states, the EU directive contains several flexibilization mechanisms, without being merely a *menu à la carte*.¹²⁸ The most important of these mechanisms are as follows: The directive provides for a stepwise market opening; it includes alternatives regulating market entry in generation and alternatives governing network access; it allows exemptions for small electricity systems; and member states have a large degree of discretion in defining eligible consumers. Nevertheless, the directive contains several provisions that constitute its regulatory core. These rules limit the directive’s degree of flexibilization and are valid across all member states. It is the quotas for market opening that ensure that the member states must gradually liberalize their markets.

127. On this aspect, see Mayntz 1999.

128. See European Parliament and Council of the European Union 1996.

Consensual agreement on the directive, its flexibilization elements, and the potential to be sanctioned by the EU legal system largely guarantee formal and effective implementation. As already shown, in several member states the extent of liberalization clearly surpasses the minimum requirements of the directive. Moreover, liberalization triggers far-reaching behavioral changes by sectoral firms. To name just a few developments: In some member states, electricity spot markets were set up; cross-border investments and also domestic mergers and acquisitions increased substantially; many utilities restructured their organizations and reduced overhead costs; and prices for industrial consumers have been substantially reduced. However, in areas outside of market integration the competition mechanism does not apply, so behavioral changes resulting from EU directives are bound to be more limited.

Conclusion

I have demonstrated that the EU institutional setting influences not only bargaining strategies but also basic policy preferences of member states that occupy a central position in EU decision making, even with regard to issues that are not suitable to policy learning because they involve entrenched interests and stable domestic arrangements. Even if the intergovernmental approach can explain some domestic causes of member-state preferences, it seems ill-equipped to cope with strategy and preference changes endogenous to EU negotiations. It attributes too much rationality to member-state governments, defines their interests in a rather static way, and underrates the influence of the EU institutional setting on domestic actors.

My findings show that interstate negotiations in the EU are far more complex than intergovernmentalism posits. Of course, “intergovernmental bargaining is an ubiquitous feature” of EU decision making, but it is “best explained in terms of the embeddedness of governments in integration processes.”¹²⁹ A “thick” neo-institutional approach is appropriate for conceptualizing such processes, because it can account for the effect of the EU institutional setup on preference formation and strategic action. I look at four institutional mechanisms that can facilitate cooperative outcomes: (1) norms that provide standards of behavior and outcomes, (2) changing configurations of actors and opportunities, (3) Council decision routines that support policy learning and include standard mechanisms for resolving conflicts, and (4) vertical differentiation within the Council system that can unblock issue-specific rigidities.

First, the rules of the game in the EU as a whole differ from those in the member states individually. Member-state negotiations are embedded in formal and informal norms because of actor heterogeneity and uncertainty about the political agenda. The consensus norm, the reciprocity norm, and the concept of market integration

129. Sandholtz and Stone Sweet 1998, 25–26.

structured the strategic context of member-state negotiations and limited the outcomes and strategies available to them. While the concept of market integration immediately supported the sectoral liberalization, the procedural and substantive fairness norms ensured that the member states' fundamental concerns would be treated fairly. Thus, the intersubjectively shared norms made a cooperative outcome easier to reach and facilitated debate about the merits and drawbacks of proposals. Given that informal norms and understandings play a central role in the formal EU framework, they can also be expected to play an important role in "treaty-making" decisions, an area where formal rules provide even less guidance for member states.

Second, the EU institutional setting continually reconfigures coalitions of support and opposition in relation to member states' domestic settings. It brings different actors into the game and changes the opportunities for the pursuit of interests. In particular, it empowers supranational organizations that favor integration by providing them with formal rights in the decision-making process: The European Commission initiated the liberalization debate and mediated the Council negotiations in a way that supported market liberalization.

Third, the EU decision routines not only provide standardized mechanisms for resolving issue-specific conflicts among member states but also increase the amount of information about the consequences of policy change. Member states are particularly likely to learn if the discussed proposals promote new ideas; if the proposals are complex; or if the domestic situations are multidimensional, so that neither the EU rules nor their effect on the domestic structures can be easily assessed. These learning processes are likely to result in member states' changing their preferences if the processes appear to reveal that current domestic arrangements have limited efficiency or are inconsistent. In general, more context-specific and complementary expertise on the domestic level will be necessary to stabilize such preference changes. This was the case not only in Germany but also in several other member states where the scope of liberalization clearly surpasses the minimum requirements of the EU directive. Finally, the vertical differentiation of the Council, ranging from its working groups to the heads of state, helps to resolve profound interest conflicts. Shifting the level of negotiations upward subjects issue-specific concerns to broader political considerations that can support, though not necessarily dictate, a cooperative outcome. In the case of electricity liberalization, French and German sectoral interests were overruled by macro-political considerations in favor of liberalization and integration.

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