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# **HARMONISATION AND CONVERGENCE? NATIONAL RESPONSES TO THE COMMON EUROPEAN TRANSPORT POLICY**

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## **Abstract**

*Over the past decade, an increasing amount of scholarly attention has been shifted away from processes of institution-building and policy-making at the European level and, instead, has focused on the impact of European integration on national political and administrative institutions, policies and politics. Coined as Europeanisation, this strand of research challenges expectations of far a reaching harmonization and convergence of policies and politics in EU Member States. Rather, it has been shown that European influences are processed differently in the Member States, and, thus, are causing differential responses at the national level. Comparing road haulage and railway policies in five European countries, the article provides evidence for Europe's differential impact. It identifies a spectrum of reforms of national transport markets, with a hard-core, pro-competitive disengagement of the state in Britain at the one end and an Italian-style refusal of reform by private actors at the other, while France, Germany and the Netherlands ranging between these poles.*

## **Introduction<sup>(1)</sup>**

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Since its early days, research on European integration has primarily addressed processes of institution-building and policy-making at the European level. In theoretical terms, the debate between neofunctionalism, (liberal) intergovernmentalism, and, more recently, constructivist and multilevel governance approaches helped to cope with the dynamics and particularities of the emerging European polity. In empirical terms, there is a rich body of literature that describes both similarities and differences between policy sectors. Contrasting this rich theoretical and empirical knowledge about the "bottom-up" perspective at the European level, relatively little attention has been paid to the impact of European integration on domestic political and social processes of the Member States. Only over the past decade, an increasing amount of scholarly attention has focused on the consequences of European integration in the framework of the EU for national political and administrative institutions, policies and politics.

The concept of Europeanisation, however, is still subject of controversial debates involving its definition, domains or focus and scope of research.<sup>(2)</sup> For the present purpose, Europeanisation refers to the question of how European decisions impact upon Member States' political and administrative structures and policies. More specifically, the article is concerned with the extent to which the implementation of European policies implies changes to domestic institutions such as dominant regulatory approaches, decision-making structures and patterns of implementation in a particular policy sector. By providing an in-depths analysis of the changes in the road haulage and railway policies in five European countries, that is France, Great Britain, Germany, Italy and the Netherlands, the article addresses the question of whether or not the ever increasing European integration and the implementation of European provisions leads to a harmonisation and convergence in the Member States. So doing, the article is concerned with two important parts of a sector that in both its infrastructure and its service dimension is genuinely transboundary and, as such, is at the heart of the common market project. Moreover, its focus on four larger countries and on the Netherlands, enables it to capture the dynamics in the countries that are of particular importance in the development of European policies in general and of transport policy in particular.

The article is structured into two broad parts. The first part sets out to present the empirical information by first giving a brief

summary of the EU provisions on road haulage and railway policy. It then turns to the overview of the changes in the transport policies in the five countries under review. While the first part of the article is largely descriptive, the second part has a more analytical orientation. Its purpose is to provide answers to the questions of whether a tendency towards harmonisation and convergence could be observed or, if not, what factors may explain differences in the responses of Member States to EU policies.

## **European Transport Policies and National Responses**

### **European Transport Policies**

Despite the Treaty of Rome's call for the establishment of a Common Transport Policy, the transport sector has only recently undergone profound change. European transport markets had been characterised by separate national markets governed by contrasting regulatory approaches, and interstate agreements regulating aspects of international transport. Given the heterogeneity in the regulatory approaches in the Member States, it was hardly surprising that a Common Transport Policy took off only since the mid 1980s.

Frustrated by the high demand for consensus in the European Council of Ministers and the persistently diverging interest of the Member States, the European Commission changed its strategy to progress the achievement of a Common Transport Policy since the late 1970s. Instead of trying to harmonise national transport regulations by prescribing detailed EU provisions which had to be implemented by the Member States, the Commission linked its concept of a European transport policy to the general idea of the Single European Market, that is a free flow of persons, goods, services and capital within the boundaries of the European Union.

In the case of *road haulage*, the Commission's objective was to create a single market for transport services offered throughout Europe irrespective of the nationality of the road haulage companies. Cutting prices and increasing the quality of services were supposed to enhance the competitiveness of European economies in general and of the transport industry in particular (Kerwer, 2001: p. 175). To achieve this objective, a major effort was made to overcome a situation in which cross-border transport markets were governed by

bilateral agreements. Thus, decisive steps on the way towards a European road haulage market were the liberalization of international and, in particular, the right for non-resident hauliers to operate on other Member States (cabotage).

Given the progress in achieving a Common Transport Policy, European provisions on technical, social, environmental and fiscal matters warrant that nowadays (in international transport markets) all hauliers are subject to the same pricing regime. However, the emphasis must be put on 'international' transport, since the European provisions in principle do not effect the existing national regulations. Or, to be more precise, they affect national regulations only in cases when they either hamper the free flow of goods or violate provisions on competition policy and state aids. Every single measure opposing the principle of a free flow of services and to privileges domestic over foreign enterprises is seen as irregular. It is in this dimension that the national autonomy of regulation was eroded by the advent of a common European transport policy. European provisions do not affect the existence of those national regulations that are only concerned with regulating domestic transport, such as tariff systems (Lehmkuhl, 1999: p. 76-78).

The situation is quite similar in the case of the *railways*. In order to supplement the intermodal competition between rail and road (and, in addition, in some countries also waterways), the intramodal competition among different railway companies on a European scale was at the heart of the European Commission's policy objective. The idea that incumbent and possibly newly emerging railway companies may provide transport services by rail represents a significant departure from the established opinion that for technical and economic reasons (such as high sunk costs in infrastructure and rolling stock) railways are "natural monopolies" and must be protected. The Commission pushed this idea for mainly two reasons. On the one hand, concerning the idea of introducing competition of different suppliers on the same infrastructure, the railways were just but one further case in the line of the Commission's efforts to realise the Single Market Program in the area of public utilities such as telecommunication and electricity. On the other hand, the Commission's goal to revitalise the European railways by strengthening its competitive position in relation to other modes of transport was closely linked to the objective to

increase the environmental sustainability of transport (Kerwer and Teutsch, 2001b: pp. 40-41).

The policies pursued to achieve this objective have an organisational (the application of new management techniques and a reformulation of the relationship between the railways and the state in contractual terms) and a regulatory (a separation of infrastructure and operation and the introduction of rules for market access and operation) dimension. The instruments on which the Commission recruited, however, were largely restricted to directions – which, according to the EC Treaty, do not prescribe a specific model but only specify goals, thus granting Member States a significant leeway when implementing them.

As a consequence, to date the achievements of the Common European Railway Policy are rather limited: for instance, the separation of infrastructure and operation has been restricted to accounting (and not to institutional separation) and despite the joint efforts of the European Commission and some Member States (especially the Netherlands) the project of trans-European rail freeways for freight is based on the voluntary agreement of the Member States and, accordingly, has not yet significantly progressed.

To summarize, in both the road haulage and the railway sector, the European Commission has set the course for the realization of a Common European policy based on the principles of free access to European transport markets, on the establishment of minimum standards in financial, social and technical regulation and, even more limited, on the accommodation of different policy objectives, for instance by emphasizing the importance of an environmentally sustainable transport. However, its prime concern was and still is the building of liberalized European transport markets. And this objective has only to a limited extent been achieved. While in the case of road haulage the decoupling of liberalization and harmonization allowed for pursuing an indirect economic strategy of confronting liberalized international with differently regulated national markets, the Common European Railway Policy is less about designing and implementing a European model but more "about small and incremental steps towards establishing a different but more compatible system of national rules that leave considerable freedom of action for the member states" (Kerwer and Teutsch, 2001b: 52). Nevertheless, in its White Paper on

the common transport policy at the horizon of 2010 the European Commission frankly acknowledged that "the completion of an integrated market for rail freight services is a cornerstone of the transport policy vision ... but [al]though some progress has been made with advancing the Single Market project for rail freight, the process is clearly behind other transport modes" (Commission 2002: p.2). In particular, "the existing technical and regulatory barriers work in favour of existing companies, and are continuing to hamper the entry of new operators" (European Commission 2001: p. 31).<sup>(3)</sup>

In what follows, the national responses to the European road haulage and railway policies are presented.

### **National Transport Reforms**

Over the past two decades, most European countries have experienced reforms of their transport regulations. In the following, the most significant developments in both the road haulage and the railway sector will be presented, always with an eye on the central concern of this article, that is the question of the influence of European decisions and policies on national transport policies.

#### **France**

*Road Haulage.* Since the 1980s, two reform projects have changed French road haulage markets. The period of 1986-1989 led to a substantial reform of the pre-existing regulatory framework established after the Second World War. Characterised by a substantial liberalisation and deregulation, this reform included a replacement of licences by authorisations, thus spurring a gradual abolition of quantitative restrictions until the end of 1998 – the year in which the full liberalisation of cabotage within the EU was realised. The second import reform element was the gradual replacement of the compulsory tariff for road transport services (*tarification routière obligatoire*) by a voluntary system of indicative prices. With the abolition of the two major pillars of the previous regulatory framework, market co-ordinated instruments gained a much stronger importance in the regulation of French road haulage at the end of the 1980s.

Without generally challenging the liberal framework, a number of measures adopted in the 1990s indicated a social re-regulation. The overall purpose of these measures was to mitigate

the consequences of deregulation. At the heart of this re-regulation was an agreement between hauliers' associations and two trade unions for long-distance haulage – mediated by the government – on working time definitions and payments. In addition, agreements and decrees were ushered on issues such as qualitative criteria for admission for to the road haulage profession and a legally enforced minimum price for road haulage services (Douillet and Lehmkuhl, 2001:pp. 109-116).

*Railways.* Traditionally, French railways, the *Société Nationale des Chemins de Fer* (SNCF) had been highly regulated for two reasons: to protect both freight and passenger transport from intermodal competition and to warrant the fulfilment of public-service obligations. Since the 1970s, however, various reforms relaxed the degree of state intervention. At the heart of the first wave was the introduction of the principle of compensation for public-service obligations and the development of contractual relations between the government and the SNCF. In the following years, the status of the SNCF was transformed and, in 1983, the SNCF was given the status of an autonomous public entity. The last and probably most important transformation however was the 1997 reform that introduced an institutional separation of infrastructure management and transport operations and also reinforced the role of regional authorities in rail transport. Under the 1997 law, a newly created public entity, the *Réseau ferré de France* (RFF), is responsible for developing and planning the rail network. It also owns the rail infrastructure and receives user charges from enterprises operating on the French network. Despite these organisational changes, however, the SNCF's monopoly has been preserved for all rail transport services, and the separation infrastructure and transport services is incomplete, since the SNCF still manages and maintains the infrastructure on behalf of the SNCF.

## **Germany**

*Road Haulage.* The legal provisions governing the transport industry in Germany have traditionally revolved around the nationalised railways. The regulations have affected other modes of transport, especially where they endangered the quasi-monopoly of the railways; that is, road haulage over middle and long distances. In addition to differentiating between short-, medium-, and long-distance transport, the Road Freight Haulage Act of 1952 contained a

licence requirement, a limitation on the total number of licences and tariff structures, corresponding to the railway tariffs. In addition to restrictive licence procedures and rate controls, a relatively high vehicle tax was the third pillar of the regulatory framework.

While price controls were abolished already in 1994, other important elements have significantly transformed German transport regulation since 1998. First, in order to avoid discriminating against German hauliers, the transpositions of the European cabotage provisions led to an abolition of the distinction between short- and long-distance haulage and the respective quantitative restriction to market access. Second, the quantitative restriction on licensing was replaced by licensing according to the Community provision on qualitative licensing. Third, the taxation system has gradually been transformed by lowering the taxation on fixed costs (vehicle tax), and by increasing variable costs (fuel) through various measures, including the introduction of road-pricing elements (Teutsch, 2001:pp.134-136).

*Railways.* Since its nationalisation in 1920, the railways' regulatory framework had less been guided by efforts to regulate an economic actor of the transport industry, but rather had been inspired by social, environmental, planning or security policies. Given both the rigid regulations and the manifold obligations neither the manifold reform initiative since the 1950s nor the regulation of the railways' intermodal competitors had been successful in preventing a steady decline of the railways' transport shares and the concomitant calamitous financial situation. German unification with its need to integrate two highly different but similarly financially struck railways and the European reform projects initiated a significant transformation in the regulation of the railways since 1994 (Lehmkuhl, 1996: pp: 71-74).

At the heart of the reform is the transformation of the railways into a joint-stock company (*Deutsche Bahn Aktiengesellschaft*, DB AG); a separation of infrastructure and operations in organisational terms; an opening up of the rail infrastructure to any national and foreign railway undertaking on the basis of the principle of mutual reciprocity, that is provided that the network of the foreign company is also accessible to German operators; a distinction between sovereign authority, exercised by newly formed administrations responsible for licensing and control,



and commercial operations; the merger of *Deutsche Bundesbahn* and *Deutsche Reichsbahn*; a regionalisation, that is a the shift of responsibility for regional public transport to the *Länder* as of January 1996; and, finally, a fundamental release from the debts of DB AG (Teutsch, 2001: pp. 148-156). Since that time, there are some private operators that – partly together with foreign partners – offer railway transport services, mostly in regional passenger transport by rail. At the same time, however, there are serious doubts whether the initial intention of the 1994 reform to achieve an IPO of the DB AG at the end of the ten years transformation period is still a viable (and politically desired) option.

### **Great Britain**

*Road Haulage.* Given the fact that the "watershed in British transport history" (Button, 1974: p. 26) dates back to the Transport Act of 1968, it is almost impossible to identify a European influence in the regulation of the British road haulage market. The 1968 transport reform reversed the 1947 plans to create an integrated and co-ordinated system by nationalising railways, road haulage, public transport and waterways. Although the 1968 abolition of quantitative restrictions (and the concomitant introduction of qualitative criteria for access to road haulage market) was then perceived less a privatisation or deregulation but just as another form of regulation (Knill, 2001: p. 61), it introduced a free market approach long before the EU legislation on liberalisation of road transport markets. Being well in line with the ideological ideas of the conservative government of Margaret Thatcher (1979), it set the stage for future liberalisation in transport policy (ibid.).

While the British provisions on market access seem broadly unrelated to European decisions, there are some relatively minor aspects indicating a relation between supranational policy-making and British regulation. A first aspect relates to the strengthening of qualitative licensing criteria where the EU approach was more restrictive than the British one; a second aspect relates to the acceptance of a higher maximum weight of trucks on British roads; and, finally, a third aspect relates to the taxation system as the British system is still characterised by a high share of fixed costs compared to efforts of both the European Commission and other Member States to shift the balance towards flexible costs, for instance, by the introduction of road pricing.

*Railways.* Without doubt, the British Railways Act of 1993 represents the most radical and far-reaching railway reform in Europe. Four elements characterise this reform. A first element is the separation of infrastructure and network operation that is not restricted to accounting, but led to a far-reaching organisational fragmentation. Operational services, including passenger and freight transport, were split up into over thirty companies. Moreover, they were institutionally separated from infrastructure provision and maintenance for which a particular company (Railtrack) was established. Secondly, the different organisational units were privatised, either by selling them off to the private sector (rolling stock, freight transport, services), by franchising them to private companies (passenger services) or by floating them to the stock market (provision and maintenance of infrastructure). The third element was the liberalisation of transport operations: while for freight operations access to the market was completely liberalised, a more restricted form of competition was introduced for the passenger sector. Market access is restricted by a competitive bidding process for franchises, which grant the successful bidder a regional monopoly for a limited period of time. Fourthly, two independent regulatory agencies were established: On the one hand, the Office of the Rail Regulator deals mainly with the classical regulatory functions in order to control privatised industries, that is aspects of competition and monopoly control, on the other hand, the Office of Passenger Rail Franchising (OPRAF) reflects a peculiarity of the railway privatisation, that is not all franchised passenger operations are economically profitable and therefore require subsidy payments. OPRAF has the responsibility to allocate these subsidies (Knill, 2001: pp. 72-79).

However, given a poor performance record including a number of fatal railway crashes since privatisation, the railway reforms were partly perceived as "failed" privatisation (Financial Times, 28-2-2002: p 7). As a consequence, the labour government forced Railtrack into the hands of administration in October 2001 and, in an effort to avoid a legal battle over plans widely regarded as indirect renationalisation, it established Network Rail as a non-divided company to take over Railtrack's responsibility of running and maintaining the mainline and suburban tracks used by private-sector train operators (ibid.).

## Italy

*Road Haulage.* For a long time, an apt assessment of the regulation of Italian transport markets was to describe it as "market protectionism in the interest of the hauliers and against the interest of the collectivity" (Munari as quoted in Kerwer, 2001a: p. 68). Four elements characterised this regulatory framework. First, qualitative standards for markets access by which firms had to prove technical and financial soundness and professional reliability; second, a licensing procedure by which the administration could control the transport capacity of road haulage; third, since 1974 a "particularly complicated system of compulsory bracket tariffs for the pricing of transport services subject to maximum and minimum limits" (Kerwer, 2001b: p. 176); and, fourth, since 1990, a tax credit scheme by which the Italian government has been subsidizing its road haulage sector by granting reductions on fuel taxes, motorway tolls and some additional minor charges (ibid.: pp. 175-179).

While the European Commission and the European Court of Justice in a series of decisions declared the tax credit scheme to be a form of illegal state aid and, as such, to be incompatible with the EU Treaty, the Italian government took a surprising first step to liberalise of road transport markets in 1998. Not only was the tax credit scheme abandoned, but also, and most importantly, the Italian government decided to gradually liberalise market access in early 1998 and, by January 1<sup>st</sup>, 2000, all quantitative market restrictions were completely abolished. As this new regulation departed from the traditional market intervention approach, it has been characterised as a "watershed in Italian transport policy" (Kerwer and Teutsch, 2001: p. 123).

*Railways.* Ever since 1905, the Italian railways, *Ferrovie dello stato* (FS), were part of the public administration. The several reforms, which took place since the 1950s, can be seen as reactions to the increasing financial difficulties of the railways. As in the French case, the railways acquired the status of an autonomous public entity to improve the managerial discretion in 1985. This, however, did not change the established decision-making structures. For instance, it was the transport administration and not the FS that determined the prices for transport services. In a similar vein, efforts to improve financial transparency and responsibility and to reduce politically motivated interventions by putting the relationship between the

government and the railway on a contractual basis were countered by the Italian Parliament that frequently intervened in order to serve the Parliamentarians clientelistic concerns (Kerwer, 2001b: p. 193). In 1992, the railways were legally privatised and transformed into a joint-stock company – with the state being the sole owner. While formerly being integrated into a single organisation, the FS now functions as a holding, consisting of more than hundred separate firms carrying out diverse activities in transport, tourism and related areas. This holding also encompasses two separate divisions charged with the management of the infrastructure (*Area rete*) and the operation of transport services (*Area trasporto*).

### **The Netherlands**

*Road Haulage.* Rooted in the country's tradition of regional planning, public intervention has been legitimised by the public actors' objective of co-ordinating the development of the transport sector by regulating the supply and demand of transport services. The instruments employed to achieve this objective were the control of market entry, the use of tariffs, and the application of fiscal instruments. The recession in the 1970s highlighted the failure of these measures to fit the supply and demand of the market; the sector suffered from both over-capacity and cut-throat competition. The ineffective system of compulsory tariffs was abolished, and the government tightened restrictions to cope with oversupply by fixing a maximum loading capacity for single firms in 1975 ("tonnage-stop"). However, the new system employed to regulate capacity proved insufficient, impractical, and ultimately to be a hindrance to economic activities and innovation. Moreover, the implementation and control of the entire regulatory system was cost-intensive. As a consequence, the Dutch government set the agenda to liberalise transport markets from 1984 onwards (Lehmkuhl, 1999: pp: 136ff). Until 1992, the gradual amendments led to the abolishment of fixed tariffs and the replacement of quantitative restrictions on market access by qualitative ones such as occupational qualification, solvency and reliability

*Railways.* Until the mid 1990s, the *Nederlandse Spoorwegen* (NS), a state-owned public limited liability company, operated as a kind of nation-wide undertaking for passenger transport by rail. Subject to a number of public service obligations, the NS relied strongly on public subsidies. In contrast to passenger transport,

freight transport was considered to be a 'by-product', which had to operate on a strictly commercial basis. For a number of reasons, including an ever-increasing demand for financial support, the congestion problems on Dutch roads threatening the Netherlands self-image as the "gateway to Europe" and a growing national environmental consciousness, the existing regulation was challenged from the mid 1980s onwards. Following the recommendation of an advisory commission, the government initiated a reform in 1995 (Lehmkuhl, 2001: pp. 234-242).

At the heart of the railway reform in the Netherlands is the disentanglement of public and private functions and responsibilities. In institutional terms, this means a vertical and horizontal separation of functions with each segment embedded within a regulatory framework appropriate to its politically-assigned function. On the one hand, all infrastructure-related tasks – including licensing, access regulation and infrastructure building – are assigned to a government-commissioned sector to reinforce their public character and to ensure governmental influence for reasons of co-ordination. On the other hand, the horizontal separation of operations has been regarded as a precondition to set the agenda for competition. Provided with increased managerial autonomy and financially put on an even keel, the main services of the NS – freight and passenger transport – are now subject to competition. In the freight sector, there has been an uncompromised market approach which provided NS Cargo with the greatest possible freedom. In this respect, rail freight is on the same private footing as any road freight company. Due to the sector's high political saliency, competition in the rail passenger market was not introduced immediately, but took place in a typically Dutch way, that is limited and guided. Nevertheless, the relation between the government and the NS was transformed in such a way as to increase significantly the independence of the company and to cut back drastically on the opportunities for government intervention in its management.

## **Harmonisation, Convergence or Differential Responses?**

Much of what has been presented so far indicates that the European transport markets have experienced significant changes in recent years. Expressions such as "watershed" or "century reform"

tend to describe far-reaching changes going alongside the development of a Common Transport Policy in Europe. Such an assessment, however, is in stark contrast to interpretations of developments in the transport policies of EU Member States that indicate a differential impact of European integration on Member States policies (Héritier et al. 2001) or even talk about an "elusive Europeanization" (Kerwer and Teutsch, 2001a).

Indeed, neither does a closer look at the changes in the five countries under study provide a clear cut picture nor can a proper assessment come up with a univocal answer to the question of whether or not the emergence of a Common European Transport policy has contributed to a convergence of national transport policies. Rather, whether an affirmative or a negating answer is given to this question depends very much on the distance the observer takes to the object: with a bird's eye view, one will probably find a trend towards a strengthening of more liberal and market-conform instruments in the transport sector throughout EU Member States. The closer one approaches the countries, however, the more obvious the differences between the regulations in the Members States will become.

To elaborate on this ambiguous assessment, the following section takes a closer look at the respective changes at the national level. In addition, it offers some explanations for the differential responses in the Members States.

### **General Trends and Differential Responses**

The European Commission's prime concern has been the establishment of liberalized European transport markets based on the principle of free access to European transport markets. To achieve this objective, the Commission applied basically two different strategies: An indirect strategy of market-making in road haulage and a direct strategy of market-preparing in the railway case. Both approaches and the differential responses at the national level are addressed in turn.

#### **Road haulage**

In the case of road haulage, the European Commission pursued an indirect approach. Rather than prescribing a specific model or enacting a regulation that the member States would have to

transpose in national legislation, at the heart of the Commission's market-making strategy was the liberalization of international transport markets, with the instrument of cabotage being the leverage to liberalize also national markets. However, market-making was only one part of the story, market-correcting was another. This distinction is of importance as one might state that with respect to the former a certain convergence of Member States policies has taken place, while the latter has given rise to differential responses at the national level.

The most significant changes in the regulation of road haulage markets throughout the Member States of the EU relate to the abolition of quantitative restrictions to market access. While abolishing this basic pillar of their road haulage regulation, most countries shifted towards a regulation of market access based on qualitative criteria such as professional skills, sound financial standing and personal reliability. Although caused by a different mechanism, that is by direct European regulations and directives, a clear trend towards a convergence in the Member States' regulation could also be observed in the field of technical regulations of measures and weights of transport vehicles.

Concerning fiscal and social policies, however, divergence rather than convergence would be a proper description. Firstly, while in Germany and the Netherlands tariffs schemes have been lifted, Italy maintains its tariff system and France has substituted the tariff scheme by a legally enforced system of minimum prices for transport services. Secondly, a further aspect of divergence relates to the Italian tax credit scheme. While being perennially challenged by EU institutions, tax credits have been justified by Italian officials with the argument of a lacking harmonization of taxation in Europe (Kerwer 2001: pp. 185-6). Thirdly, in a similar vein, tax reductions and other incentive schemes have frequently been applied by the Dutch government to accommodate its policies of transport deregulation with environmentally driven concerns (Lehmkuhl 2001: pp. 223-4). Fourthly, a further drifting away from the European model has been observed with respect to the social re-regulation that has taken place in France in the 1990s (Douillet and Lehmkuhl 2001: pp. 101-2). After a phase of substantial liberalization and deregulation, the French government adopted measures including amongst other things working time regulations.

This brief assessment summarizes the ambiguity of the overall picture. On the one hand, there is a certain trend of deregulation in the road haulage markets of EU Member States. On the other hand, however, Member States did not sacrifice other policy objectives on the altar of economic efficiencies. Rather, they seek to accommodate different policy objectives, for instance by emphasizing the importance of an environmentally sustainable transport as in the Netherlands or by stressing the social policy dimension as in France and Italy. They even accept being confronted with legal measures by the European Commission when doing so.

### **Railways**

Two factors made the achievement of the Commission's objective of liberalised transport markets in the railway sector more difficult than in road haulage. Firstly, in most Member States the railways operated as state owned companies and, hence, there was marked resistance for example by France, Germany and Italy against any community attempt to intervene in domestic railway policy. Secondly, technical differences between the railways systems required solving the problem of interoperability. Given these obstacles the Commission intervened in two ways. On the one hand, it tries to set the course for the liberalisation of railway transport only in a limited market segment that is international freight markets. On the other hand, it enacted regulations that prescribed a specific way to overcome the difficulties of national railways (Kerwer and Teutsch 2001b: Pp. 51-2). These prescriptions, however, were so limited in their scope that their ambition could less be described as creating a market but rather as preparing the ground for more far-reaching policies at a later point in time (Knill and Lehmkuhl 2002: p. 271).<sup>(4)</sup> The limited character of the European provisions enabled the Member States to accommodate the prescriptions with their specific policy objectives, which in sum led to very different responses at the national level.

In Britain, for example, the railway reform was but one further item on the government's 'selling list' for public utilities. Drawing on experiences from both public sector reform and previous privatisations, the government took the provision of Directive 91/440 to its extreme by separating infrastructure and operation and applying franchising and contracting-out schemes where ever possible (Knill 2001: pp. 52-90).



In sharp contrast to the British hardcore reform, both the French and the Italian approaches were much more limited. In Italy, the organisational changes bound to increase organisational autonomy and to introduce competition have remained on a formal level. Neither has political intervention in the "railways business" been reduced nor has there been substantial development toward a market either in passenger or freight transport (Kerwer 2001: p. 198). In a similar vein, the French implementation of European provisions had neither integrated the principles defended by the European Commission, such as open access, nor had the establishment of the Réseau ferré de France as a specialised organisation responsible for railway infrastructure challenged the SNCF's monopoly for both local and national rail services (Douillet and Lehmkuhl 2001: pp. 105-7).

Ranging between these two poles, both the Dutch and the German railway reforms have their own specificities. In the Dutch case, the mixture of areas assigned to either the public sector, such as the responsibility for infrastructure ownership and management, or to the private sector, such as freight transport, expresses the reconciliation of the contradicting values of legitimate state intervention and liberal business practices rooted in Dutch political culture (Lehmkuhl 2001: p. 218). An assessment of the German reform is somewhat ambiguous. On the one hand, the reform, which goes further than the minimum requirements laid down in European provisions, was remarkable as both regionalisation with its institutionalisation of the user-pays principle and an opening of market access were signs of a new, market-oriented regulatory policy. On the other hand, this does not imply that the railway as a joint-stock company has become a place free of political intervention. Rather, federal government can still intervene in major railway decisions. In 1998, for instance, the idea to promote a new technology "made in Germany" made the government urge the DB AG to take the responsibility for planning and construction of a line of the magnetic levitation train Transrapid between Hamburg and Berlin (Teutsch 2001: p. 155).<sup>(5)</sup>

In sum, the brief assessment of the country specific responses in both reforms of road haulage and railways may illustrate the ambiguity that characterises the answer to the question of whether the process of European integration and the transposition of European provisions at the national level lead to a convergence of

national transport policies. What could be observed is a broad trend towards the introduction of market-oriented patterns that is, however, confronted with significant country specific patterns of implementation and re-regulation. In the remaining part of the article, we will address the major factors that help to explain this continued diversity.

### **Explaining Differences**

We can approach the search for factors explaining the distinctive reactions at the national level from two different angles: we can either look at the nature of European policies or we can examine the domestic constellation.

The first approach relates to the nature of the European policies and looks at the respective impact of European provisions. Three different ways in which EU provisions impact upon the national level can be distinguished; all three have been addressed already more or less implicitly (Knill and Lehmkuhl 2002; Kohler-Koch 1998). The basic mechanism building the backbone of the Single Market project aims at creating a market that guarantees a free flow of goods, services, people and capital. As we have seen in the case of road haulage, European provisions only restrict national policies with respect to the protection of domestic markets by limiting the market access of non-resident hauliers. The impact of this negative integration has been particularly high in countries with highly protected markets such as Germany and Italy.

The case of the European railways provides another example for the impact of European policies. Here, a specific model has been prescribed with which national provision had to concur. Basically, prescribing a specific model may trigger domestic change by altering institutional opportunities or constraints for domestic actor coalitions, and with that, the distribution of power and resources between domestic actors (Héritier and Knill 2001: p. 287). A good example is the case of the railway reform in Germany in which European provisions helped to overcome the resistance of potential veto players to tip the scales in favour of the pro-liberalization coalition (Teutsch 2001).

However, given the partially non-compulsory nature and the ambiguity of European railway provisions, European provisions

allowed for a range of different reactions at the national level. Yet, the establishment of liberalized European transport markets has a second effect, as it also served as a model or focal point for national policy options. In this respect, Europe may provide domestic actors with cognitive resources about ideas to solve domestic problems and with legitimacy to implement national policies (Knill and Lehmkuhl 2000). As the example of the limited railway reform in France shows, however, the success of European policies to alter domestic expectations and beliefs strongly depend on the domestic constellation of actors. The marked variance in the domestic constellation, hence, is the second approach we have to address when looking for factors that help to explain different responses in the Member States.

Similar to the first approach, the second approach that helps to explain variances in domestic reforms of transport regulations comprises a number of factors. Basically, factors relating to the institutional setting can be distinguished from factors relating to the country specific problem solving philosophy. Concerning the first, the concept of reform capacity has been used to summarize institutional differences between national systems (Héritier and Knill 2001: p. 258). On the one hand, reform capacity refers to the number of formal and factual veto positions that have to be overcome in order to reach and to implement a decision. Formal veto positions are typically found in federalist or decentralist systems, systems with a multi-party coalition and systems with a high degree of ministerial autonomy an independent constitutional court. Factual veto positions, for instance in systems with corporatist or clientelistic state-society relations or with strong unions, make it necessary for state actors to take into account the position of societal actors more carefully. On the other hand, reform capacity comprises the component of an integrated political leadership defined as the capacity of a government to incorporate or reconcile diverging interest and, thus, to garner broad reform coalitions.

A few examples may illustrate the analytical value of the concept of reform capacity. The Italian case represents an example of a quite low reform capacity as the fragmented multi-party system; unions that constantly threaten with strikes and the clientelistic state-society relations in the transport sector "proved to be a bulwark against the greater European trend" (Kerwer and Teutsch 2001b: p. 133). In contrast, the British case provides an example for a strong

reform capacity as the single party majority government faced little opposition when pursuing its hardcore railway reform (Knill 2001). In the Dutch case, the government revealed a high degree of integrated political leadership, as it proved able to persuade small hauliers as potential losers of liberalization to participate in the reform process. It did so by compensating both hauliers and their associations through offering tax incentive schemes and by delegating additional self-regulatory authority (Lehmkuhl 1999). Looking at the French case, finally, the strong resistance of unions in both the road and the railway sector offers an explanation for the social re-regulation in road haulage and the little progress in the reform of the railway sector (Douillet and Lehmkuhl 2001).

Despite its strong explanatory potential, reform capacity as container for a number of institutional factors alone cannot explain the observed differences. In addition we have to take into account the prevailing problem-solving approach in a Member State that strongly influences the direction in which reform capacity will materialize (Héritier and Knill 2001: p. 259).

European countries differ in their views on the role of the transport sector in society. Broadly speaking, we may contrast a 'Continental' with an 'Anglo-Saxon' tradition (Button, 1992: p. 35; 1993: p. 153). The latter, including countries such as Great Britain, principally give priority to the market, while government interventions are restricted to improving the supply of transport. Yet, the Anglo-Saxon emphasis on the internal efficiency of the transport system does not equate with total lack of regulation or of non-commercial objectives. Attention is given to obtaining a 'level playing field' within which market operators perform (see Gwilliam 1993, 248). In contrast, the Continental tradition, including countries such as France and Germany, tend to take trans-sectoral aspects into consideration and treat transport as an input into a wider social production function. Transport efficiency may be sacrificed for reasons of industrial policies, regional policies, environmental and social policies. The French *service public* or the German term *Gemeinwohl* express different traditions justifying interventions when they are affected by a public interest. Due to its deeply rooted tradition of regional planning and damming waterways, and despite its traditional liberal attitude, the Netherlands represents a peculiar mixture of these two, the Continental and the Anglo-Saxon traditions.

In combination with the respective reform capacity, the problem-solving traditions gain significant explanatory value. For instance, we may better understand the Dutch mixture of interventionist and market-based elements that characterise both reforms in road haulage and transport. The same holds for the French case that displayed the importance of the notion of service public in the railway reform and in the resistance to further European policies of liberalization.

## **Conclusion**

Conceiving European integration as a project or model on which it is expected the Member States should converge in their policies, this article started out to examine the reforms of transport regulation in France, Germany, Great Britain, Italy and the Netherlands. This point of departure was motivated by the frequently heard assumption that the definition of unique policy requirements at European level spurs a convergence of domestic policies, instruments, administrative structures and patterns of interest intermediation (Harcourt 2002; Schneider 2001). An overall assessment of the results comes to an ambiguous assessment.

On the one hand, the liberal bias of the Single Market Programme has affected the Common European Transport Policy and, as a consequence, has left its marks also in the transport policies of the Member States. On the other hand, however, it has been shown that the search for convergence of national policies in the European Union is not only "an impossible quest" (Dimitrova and Steunenberg 2000): Europeanisation is not convergence, although convergence may be one dimension of Europeanisation; it is not harmonisation, as Europeanisation may result in regulatory competition and, by that, it can also produce divergence (Héritier, Knill and Mingers 1996); as a consequence, it seems to be more promising to analyse the differential impact of Europe.

In this respect, the reforms in both the road haulage and railway sectors of the five Member States reveal two general insights. First, external influences such as the requirement to implement European provisions are mediated through domestic filters. These filters comprise both institutional factors and feature of the prevailing problem-solving approach. Secondly, the findings confirm

the general conclusion that a total deregulation would be the exemption rather than the rule, with the rule being that deregulation is most frequently combined with re-regulation (Majone 1990: p. 3). Depending again largely on the specific domestic constellation of actors, institutional settings and prevailing belief systems, these policies of re-regulation may trigger divergence rather than convergence.

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**Notes**

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<sup>(2)</sup> See for the debate for instance Börzel and Risse 2000; Falkner 2001; Featherstone and Radaelli forthcoming; Goetz and Hix 2000; Green Cowles et al. 2001; Héritier et al. 2001; Kohler-Koch 1998, 2000; Knill 2001; Knill and Lehmkuhl 2002; Knill and Lenschow 2000; Lehmkuhl 1999; Special Issues: West European Politics (vol. 23, n. 4) and Journal of European Public Policy (vol. 8, n. 6; 2001).

<sup>(3)</sup> Commission of the European Union 2001 White Paper European Union Transport Policy for 2010: time to decide, [COM (2001) 370] of 19.09-01.

<sup>(4)</sup> In the meantime, the Commission published a number of new documents bound to push European railway markets: a) Proposal for a Directive of the European Parliament and the Council amending Council directive 91/400/EEC on the development of the Community's railways, COM(2002) 25 final, 2002/0025 (COD) 23.1.2002; b) Directive of the European Parliament and the Council amending Council Directive 96/48/EC and Directive 2001/16/EC on the interoperability of the trans-European rail system, COM(2002) 22 final, 2002/0023 (COD) 23.1.2002; c) Proposal for a Directive of the European Parliament and the Council establishing a European Railway Agency, COM(2002) 23 final, 2002/0024 (COD), 23.1.2002.

<sup>(5)</sup> The project was, however, never realized. At the moment, there is a debate to build a Transrapid line in Bavaria or North-Rhine-Westphalia.