The European Commission as Corporate Actor? European Telecommunications Policy after Maastricht.

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Telecommunications in the past constituted a tightly regulated, nationally oriented policy field. In economic terms it was characterized by closed national markets and few transnational interactions. Telecommunications are now developing towards an international market with minimal national regulation. Among the factors that contributed significantly to these changes, bold actions by the European Commission have to be mentioned. The actions consisted of recommendations, directives, programs and other activities, such as supportive statements by the European Court of Justice. Contrary to what is very often hinted at, however, it is not to be expected that on the European level a central state authority will develop, that resembles the old national regulatory and institutional structures. Rather a complex system of multi level governance is coming into existence which features not very clearly specified competencies and a mixture of private, para-public and public institutions with shared responsibilities. The present paper will both try to analyze recent trends in European telecommunications policy as well as assess the role of the European Commission. With respect to the latter it will be argued that the conceptualization of the Commission as a corporate actor signifies an important step forward in analyzing the Commission, but it is still a concept that needs further clarification.

1. Restructuring Telecommunications: Analytical Perspectives

The Treaty of Maastricht for the first time has mentioned explicitly a competence for the European Commission in the field of telecommunications. Telecommunications are dealt with under the heading of Trans-European Networks (Art. 129 b-d). Article 129 states that the Common Market might get additional stimulus through the development of trans-European networks for example in the field of telecommunications. In order to achieve these objectives, the Community (a) shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest; (b) shall implement any measures that may prove necessary to ensure the interopearability of networks, in particular in the field of technical standardization; (c) may support the financial efforts made by the Member States for projects of common interest financed by Member States, which are identified in the framework of the guidelines; the Community may also contribute through the Cohesion Fund to the financing of specific projects in Member States in the area of transport infrastructure. (a) requires the consultation of the European Parliament, the committee of the regions and the economic and social council. Guidelines will be adopted by a qualified majority vote in the council with the concerned member state(s) approving (codetermination procedure). In the cases (b, c) a qualified majority in the council is required based on the cooperation procedure (Art. 189c). Since Maastricht then the constitutional competence has been significantly broadened for the EU and institutional procedures have been outlined. It would be misleading, however, to think, that only from then on telecommunications policy is taking place at the EU-level and an understanding of telecommunications policy would require a close look at the negotiations between the governments of the member states leading to Maastricht. To the contrary: prior to Maastricht especially the Commission had already succeeded to expand its competencies in a dramatic manner - in spite of the fact that some observers as well as concerned actors (e.g. national governments) doubted its constitutional and political mandate.

Telecommunications nowadays is treated as an area in which the policy guidelines are set in Brussels and not any longer in the European capitals.

How did this extension of competencies come about? Especially what enabled the Commission to become successful in the 1980s after similar attempts have repeatedly failed during the 1970s? An answer to these questions has to take into account the overall changes in the telecommunications sector, that were to be observed over the 1980s. Meanwhile there is an important body of studies dealing with these processes. In the literature diverging hypotheses for explaining the changes are to be found. Bauer/Steinfield (1993) argue, that it was a combination of heightened public awareness among public elites (a), a dissatisfactory situation for equipment manufacturers, which had to cope with small, fragmented national markets (b), the breakdown of the Keynesian consensus and a loss of confidence in national regulation (c) as well as the emergence of a new world political economy (d). Dang et al. (1993:93) look beyond the structural features and argue, that the transformation was driven "by international institutions primarily concerned with promoting their institutional self-interest as corporate actors." Still others maintain, that the decisive factor, has been pressure coming from big corporate telecommunications users and their associations (Cp. Aronson/Cowhey 1988). Finally there are those who stress the importance of the prevalence of a neoconservative ideology in explaining the success of restructuring efforts (Cp. Duch 1991; Grande and Schneider, 1991). This is not the place to discuss the pros and cons of each of these explanations. The thesis of the present paper will be that in fact the Commission has played an essential role in the process of restructuring European telecommunications not the least, because it exploited very cleverly the situation of insecurity and change dominant in this field on the national level.

2. The Development of European Telecommunications Policy: Don't say we haven't been busy!

The origins of the successful strategy of the Commission can be traced back to the roundtable meetings organized by Davignon in the late 1970s. As it has been repeatedly described (Cp. Sharp 1989) a consensus among leading corporate managers and commission officials in some high technology sectors had evolved, that measures to strengthen the European industry in combination with the creation of an European market should be envisaged, especially in the field of information and communication technologies (ICT).

Telecommunications could only be successfully targeted because it was subsumed under the doomsday imagery dominant in the evaluation of the whole ICT industry - in spite of the fact that the situation was quite special there. In the late 1970s there was no significant backlog compared to American and Japanese industry. In some parts of telecommunication, the European industry was even world leader (Cp. Woolcock 1984). Telecommunications on the other hand seemed to be a perfect target for public steering activities, since the telecommunications "market" was dominated by public decision making and state monopolies.

Industrial policy motives were the main driving forces behind the Commission's strategy which decidedly had grasped the initiative and was writing communications and reports that were expressing the new consensus and tabled to the Council (see for example COM/79/65: The European Community and the New Information Technologies; COM/83/329: Communication on Telecommunications). The real initiatives started in 1983 and the phase until 1987 basically was concentrated on the development of policy proposals and programs and the attempts to get them passed by the Council. Three concepts were developed in these years: promotion of European interests in the telecommunications market, harmonization of technical and regulatory frame conditions, market liberalization. A second phase started with the Single European Act and the Green Paper on Telecommunications. The Green Paper of 1987 (COM/87/290) was a widely underrated document at its conception, but it set the tone for the development of a full scale community telecommunications policy with a clear emphasis this time on market liberalization. With the Maastricht Treaty and the Bangemann Report (among other initiatives) a third phase might be beginning, in which the final assault on national regulatory competencies is launched by proposing and trying to establish a new European regulatory authority for

telecommunications (a counterpart to the American Federal Communications Commission). On the other hand the Commission is again pushing stronger in the direction of industrial policy motivations, by planning to subsidize new infrastructures, the development of new applications etc. Billions of dollars are planned to be spent by the Commission in this domain. On September 29, 1994 the European Research Council for example passed specific programs on telematics applications of general interest (843 millions ecus) and information technologies (1,911 million ecus).
For infrastructure purposes in the whole area of transeuropean networks 3 billion ecus are planned to be spent until 1999.

The Commission no doubt has been successful in its attempts to enlarge its competencies. The formerly strictly national oriented telecommunications policy has been internationalized in virtually all areas (Fuchs 1993a). There is still national regulation of telecommunications, but it is not any longer the domain of telecommunications experts (technicians etc.) and it has been over-layered by international rules and regulations. In the process telecommunications regulation has become part of the more broader domain of economic and competition law.

How does the regulatory architecture of telecommunications look like? The EU meanwhile establishes a framework for regulations and activities via its different Green Papers or by so called Communications. Green Papers and Communications usually are accompanied by a "Resolution" of the Council.

Green Paper on the Development of the Common Market for Telecommunications Services and Equipment Com (87) 290; C 257/1
Green Paper on a Common Approach in the Field of Satellite Communications in the EC Com (90) 490
Green Paper on a Common Approach in the Field of Mobile and Personal Communications in the European Union Com (94) 145
Green Paper on the Liberalization of Telecommunications Infrastructure (Part One) Com (94) 440

Figure 1: Green Papers in Telecommunications

Directives are legally binding for the member states, but the implementation of the Directives is left to the individual administrations, which gives them plenty room for discretion.

Directive on the Initial Stage of the Mutual Recognition of Type Approval for Terminal Equipment (86/361/EEC, OJ 217/21, 24.7.1986)

Directive on the Frequency Band to be Reserved for the Coordinated Introduction of Public pan-European Cellular Digital Land-Based Mobile Communications in the EC (87/372/EEC, OJ L 196/85; 25.6.1987)

Directive on Competition in Markets in Telecommunications Terminal Equipment (88/301/EEC, OJ L 131/73, 27.5.88)

Directive on the Electromagnetic Compatibility Harmonization (89/336/EEC, L 139/19, 3.5.1989)

Framework Directive on Open Network Provision (90/387/EEC, OJ L 192/1, 28.6.90)

Directive on Competition in Markets for Telecommunications Services (90/338/EEC, OJ L 192/10, 24.7.90)

Directive on Public Procurement for Supply and Works Contracts in Telecommunications and other Sectors (90/531/EEC, OJ L 297/1, 17.9.90)

Directive on the Frequency Bands Designated for the Coordinated Introduction of pan-European Land-Based Public Radio Paging in the EC (90/544/EEC, OJ L 310/28, 9.10.90)

Directive on Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors (90/531/EEC, OJ L 297/1, 29.10.90)

Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment Including the Mutual Recognition of their Conformity (91/263/EEC, OJ L 128/1 29.4.91)

Directive on the Frequency Band to be Designated for the Coordinated Introduction of Digital European Cordless Telecommunications (DECT) (91/288/EEC, OJ L 144/47, 3.6.1991)

Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Equipment, Including the Mutual Recognition of their Conformity (91/263/EEC, OJ L 128/1. 23.5.91)

Directive on Remedies, Corrective Mechanisms and Conciliation Procedures in Relation to 91/531/EEC (92/13/EEC, OJ L 76/14, 25.2.1992)

Directive on the Application of Open Network Provision to Leased Lines (92/44/EEC OJ L 165, 5.6.92)

Directive Coordinating the Laws, Regulations and Administrative Provisions Relating to the Application of Community Rules on Public Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors, (92/50/EEC, OJ L 209/1, 18.6.92)

Directive on the Coordination of Procurement Procedures for Supply, Services and Work Contracts in the Water, Transport and Telecommunications Sectors, (93/38/EEC, OJ L 199/84, 14.6.93)

Directive on Supplementing Directive 91/263/EEC in respect to Satellite Earth Station Equipment (93/97/EEC, OJ L 290/1, 29.10.1993)

Directive on Services and Terminals Open to Competition (94/46/EC, OJ L 268/15, 13.10.94)

Directive on the Application of the Open Network Provision to Voice Telephony (COM (92) 247 final - SYN 437, 27.8.92; vetoed by the European Parliament)

Directive on the Mutual Recognition of Licenses and other National Authorizations for Telecommunications Services, Including the Establishment of a Single Community Telecommunications License and the Setting Up of a Community Telecommunications Committee (Com (92) 254 final - SYN 438, 15.7.92; First Reading in Parliament completed)

Directive on the Reservation of Frequencies for Digital Short Range Radio (91/C189/15, OJ C 189/14, First Reading in Parliament completed)

Directive on Mutual Recognition of Licenses (Com/93/652 final, First Reading completed)

General Directive on Data Protection (COM/92/422 final, pending)

Directive on Data Protection and Privacy in Digital Services (COM/90/314 Final SYN 288, OJ C277/04, pending)

Figure 2: Important Directives on Regulatory Issues of Telecommunications in the European Community

Equally legally binding are Decisions, which, however, are only binding to the specific addressees of the measures. A case in point would be the introduction of an international access code (92/264/EEC, OJ 137/21, 11.5.1992) or the exemption of agreement between Irish Telecom and Motorola setting up a radiopaging service company. More generally decisions are especially made with respect to a breach of the rules of competition or the abuse of a dominant position. The number of decisions has grown over the years reflecting the more advanced state of telecommunications regulations, but also the increased competencies of the Commission.

In spite of the fact that recommendations and opinions are not binding to the member states, they nevertheless might exercise an important influence. In the beginning of its activities the Recommendations and Communications to the Council were the most widely used policy instrument of the Commission. In 1986 the ISDN-Recommendation on the development of a common European telecommunications network was passed (86/659/EEC), which formed the basis for an ongoing cooperation and coordination between the main actors and which resulted in a de facto introduction of ISDN in all member states (except Greece) in 1993 (Cp. also Fuchs 1993b).

With the help of these and other initiatives, the Commission is well on its way to create an open and competitive market for telecommunications equipment, it is working towards a progressively opening of national markets to a competitive supply of value-added services and it is pressuring for a further curtailing of the power of existing telecommunications administrations to use their regulatory authority to constrain competition in services or equipment. The formulation of important parts of telecommunications policy became transferred to international institutions, which for example are engaged in an ex-ante standardization of network technologies and services (cp. the European Telecommunications Standards Institute). National standardization prepares international standardization and is complementing it. The space for a meaningful national standardization is growing ever smaller.

3. Balanced or Unbalanced Strategic Orientations?

This all sounds like a true success story and in part this impression is justified. The complaints of the defenders of national sovereignty, that the Commission has already gone too far as well as the demands of the free market supporters, that the Community is still far behind what it is supposed to be doing, cannot be measures for judging the activities of the Commission. Nevertheless the activities of the Commission are not as straightforward as they seem to be at a first inspection.

It is typical for the measures in telecommunications that they feature an important inconsistency, a strategic uncertainty on the side of the Commission. On the one hand the Commission and most recently again the outgoing Commission President Jacques Delors have stated that building pan-European network infrastructures is a top priority. Plans for these infrastructures usually have been worked out and are still being worked out with the help of public authorities and the old network operators, i.e. the non-privatized, more or less state owned telecommunications administrations. Furthermore the renewed interest in universal service obligations[2] seems to strengthen the position of the old incumbent actors.

On the other hand most of the various Green Paper activities, directives etc. issued by the Commission try to support a liberalization of markets and a weakening of the status of the same old network operators. The Commission is in some way aware of the problem. It actually says, that its aim is "..to ensure an appropriate balance between harmonization and liberalization in the Community telecommunications policy." (ECSC-EC-EAEC 1994: 5) The question is, whether there is actually a balance or whether rather murky compromises are sometimes achieved and contradictory policy aims are being formulated.

This becomes most prominent in the case of the development of telecommunications infrastructures. The Commission has stressed the importance of European infrastructures since the beginning of its involvement in telecommunications. And the actors most able to develop these infrastructures and

willing to cooperate with the Commission are the public network operators and their preferred suppliers, telecommunications equipment manufacturers like Alcatel in France or Siemens in Germany. The expert groups engaged in developing the early telecommunications initiatives were clearly dominated by these groups. Liberalization on the other hand aims at reducing the power and influence of these traditional actors. A good example for this conflict has been the Commission's ISDN-initiative, which threatened to fail because of this split (Cp. Fuchs 1992). The ISDN plans closely mirrored the interests of the public network operators and equipment manufacturers, but privatized network operators, user groups, computer manufacturers and free market ideologists for a long time were strictly against any mission oriented telecommunications network planning. The line of conflict is still to be seen today: claiming that universal service must be preserved, the Council of Ministers intends to wait until 1995 to even put the question of network infrastructure competition on the table. The Commission went along, knowing that if some member states get their way nothing will change well beyond the year 2000. Now the Commission's directorate is proposing an interim solution. A draft directive suggests separate treatment for existing and future infrastructure. At the urging of the European Parliament, DG IV proposes to allow cable TV companies to use their existing infrastructure to offer all telecoms services other than switched voice, beginning next year (1995). The Commission's telecoms directorate, DG XIII is weighing whether railways and utilities should be permitted to offer users alternative infrastructure.

The different strategies - more liberalization vs. a positive and constructive approach - are pursued and supported by different parts of the Commission. The lines of conflict go between Directorates as well as through the Directorates themselves. Besides the discussions about the chances of an industrial policy orientation, there is a connected debate, whether a concentration of communications and support on the classical industrial giants or on other forms of project management, which link - in a network like manner - small, potentially more dynamic units is the more advisable way to proceed. These diverging concepts on policy design are not only supported by different factions in the Commission, but also by different national administrations and departments. The Competition Directorate is looking upon telecommunications as just one economic sector among others and wants to treat it in an analogue manner. Implying that in telecommunications there is still much to do to dismantle the old regulatory regime. Statements by the Telecommunications Directorate on the other hand tend to stress the specific situation in the telecommunications sector, which needs special treatment and highlight the importance of the availability of a common, state of the art infrastructure all over Europe as well as the overall economic significance of developments in telecommunications. It is difficult to find a statement of the Competition Directorate, that is for example in favor of the Commission's ISDN recommendation, which on the other hand forms an important cornerstone of GD XIII's telecommunications strategy. Of course there is also a systematic reason for some of the inconsistencies of EU policies. In contrast to Germany, Great Britain or the USA, the European Union has no central "legislative drafting office," that at least tries to ensure some consistency. The directorates work very much on their own and central coordination is weak.

4. The Corporate Actor Perspective

These strategic inconsistencies and changes in emphasis lead to the question whether the Commission or even more so the European Union can be treated as an actor in its own right. Traditionally European institutions are not treated as actors with independent resources, powers, action capacities and institutions, but rather as passive environment (norms, rules, frameworks). "European policy making is primarily analyzed in terms of state-centric interaction with governments aggregating and representing national politic and economic interests thus widely neglecting the existence of both genuine European interests, which have to be enforced in national political arenas, and a wide variety of national and European actors which need to be coordinated and concerted in European policy-making." (Dang u.a. 1993: 94/95).

Based on this critique, international institutions should be treated as units acting on their own behalf with specific self interests. This approach has been extended in works that consider the EU to be a

'corporate actor.' Schneider/Werle (1989:423) view the EU as an actor which is restricted in its actions by the veto-powers of member governments, but at the same time it is also an actor that is bestowed with significant supranational competencies, powers and resources. A corporate actor comes into existence, if and when individual resources (law, money) become transferred to an organizational unit by its component parts. By that this new organization is empowered to act in a described area in place of its 'founders'. Once institutionalized, the new actors are not simply aggregating individual interests and are transferring them to a new level. The new corporate actor develops interests of its own, oriented first of all towards its own survival and well being. Once a new actor unit has been established the possibility is there, that processes of autonomization start to work, which might put the organization beyond the immediate reach and interests of its subunits. At some point it may become an 'autonomous actor which defies the intentions of its creator(s).' (Flam 1990:5)

The Commission derives (formal) power within the EU from two sources: powers granted under the treaty and its amendments and control of the legislative program of the Council, the EU's ruling body. The latter control allows the Commission to determine, within limits, the content and the timing of EU legislation. It gives the Commission opportunity for diplomatic manoeuvering that Commissioners and the Directorates can exploit. The Council, however, makes the final decisions, and may amend the proposed legislation. Submission of directives for Council authorization is the standard procedure under Article 100a of the Treaty; such directives are usually referred to as Council directives. The Commission is also empowered by the Treaty to issue directives on its own authority, without reference to the Council, in its role of policing EU trade for such treaty violations as cartels and abuse of dominant market position or special concessions. The Commission is vested with this power under Article 90, which deals with public undertakings and those with special or exclusive rights, and includes as a subcategory undertakings of general economic interest or having the characteristics of a revenue-generating monopoly. The European Court of Justice gets its special role in combination with the mandate of the Commission in the field of competition policy. Directives as those on terminal equipment and services are rooted in the Treaty of Rome provisions espousing competition in goods and services. The directives merely attempt to implement the provisions in a way that is consistent with the goals of the Treaties and is specifically focused on the equipment and services sector. However, two additional aspects of the Treaty are important to point out:

First, in Article 90, it is specifically permitted to the European Commission to issue directives directly to member states in order to ensure the application of competition policies to public undertakings or situations where member states grant exclusive privileges. Second, Articles 85 and 86 prohibit various forms of anti-competitive behavior within the Community, including agreements that may effect trade (such as price fixing) and any abuses of a dominant position. Both of these points have been instrumental in influencing the shape and pace of telecommunications reform above and beyond the general legislative processes outlined in previous sections.

With regard to the first point, the Commission relied on the provisions in paragraph 3 of Article 90 to issue the following directives: Non-Public Voice Services Open to Competition (90/388/EEC), the Terminal Equipment and Services Directives (94/46/EC), Terminal Market to be fully opened (88/301/EEC) and in October 1994 the Satellite Directive to the member states. The use of Article 90 is not without its problems. Although not disagreeing with the substance of the directive on terminal equipment, France deeply opposed the use of Article 90 to bypass the need for review and approval by the Council of Ministers on such an important topic. France appealed, along with Belgium, Italy, Germany, and Greece, to the European Court of Justice to have the directive annulled. France wanted to force the Commission to submit future directives to the Council of Ministers. The Court, however, upheld the Commission's right to issue the directive in question. The decision stressed the specifics of the terminal equipment directive and not so much the general procedure. Nevertheless, as a result a similar case against the Services directive did not materialize, and the Commission's efforts to speed the reform process were strengthened.

The 'corporate actor' approach seems best to captur e the impression, that the EU acts proactive based on a program of its own, which is not identical with aims of the member states or of some few of them,

nor simple an aggregation in the sense of a smallest common denominator. These two results one would expect after reading the bulk of literature written on decision making in the European Union.

But may be this approach still not going far enough. An in depth analysis would have to dissect the actor 'Commission' even more and apply also the results of recent writings on the state apparatus. Hesse has called the state a poly-centric actor, a multi-organizational system (Hesse 1987: 79). He wants to highlight the development, that in spite of the fact that there seems to be something like an actor 'state', it hardly acts in a consistent and directing manner. The state or better the state apparatus consists of a variety of levels, is engaged in a variety of actions and hardly follows consistent aims or interests over time in spite of its institutional stability. This holds also true for the case of telecommunications and the EU as a political system of special quality. The Commission's material objectives have changed significantly over time. The emphasis of the Commission in the beginning was more industrial policy oriented and became more and more oriented towards deregulation and liberalization. Furthermore different groups within the EU support differing strategies. There is not only a successive shift of political priorities, but also conflicting factions and groups within the Commission with conflicting priorities. In this sense the EU cannot be even interpreted solely in terms of a two-level game (Putnam 1988) in which national and EU-interests represent different but nevertheless consistent levels, but rather as a multilevel game exercised by a network of networks. Neither the Commission is a consistent actor, nor the member states.

For Germany it has been repeatedly noted in the literature that a 'national' EU policy is hardly visible. It is a sectoralized policy with countervailing interests of the states of Germany. The EU-level can be used in a strategic manner by national groups to achieve results not amenable on the national level. These interests, however, need not be national interests, but those of (trans)national interest groups. In a more advanced state of policy development and with multiple interest groups at the EU level, it becomes more and more difficult to speak about national interests. This can be easily exemplified by the aforementioned ETSI example, where transnational coalitions exist, but also by the fact that national actors might have increasingly diverging interests. In telecommunications the interests of the national network operators and the national regulatory authorities which were more or less identical in the past are beginning to diverge. Meanwhile the official spokesman of German national interests, the ministry of posts and telecommunications, has on many issues opinions opposite to those of the new German Telekom as network operator (with a monopoly in the field of voice telephony), which, however, is also considered to be a representative of national interests.

5. Policy-making in a System of Multi-Level Governance

Even some of the propagators of the corporate actor concept meanwhile seem to deny, that a corporate actor involves the image of an actor with a somewhat consistent strategy. Judging by the light of this, the common element to be detected beyond all the differing, sometimes contradictory activities of the Commission is a conscious effort to extend the prerogative of the Commission and the institutions related to it. Under this aspect it is secondary whether a strengthening of industrial policy motives or a strengthening of liberalization issues dominates. In both cases the Commission at the end will be in a stronger position by either developing new regulations or a regulatory framework for a liberalized common market or by its more mission oriented activities to develop a specific network or specific applications. This is not supposed to sound like conspiracy theory, it could also be called enlightened institutional self-interest.

The idea of the EU as a system of multi-level governance, nevertheless, might be more useful in capturing the manifold, often unstructured and fragmented activities going on at the European level. Networks and levels of conflict and cooperation then can be named as follows (Cp. Peters 1992):

(a) The national governments and the Commission, in which problems of national sovereignty and national interest predominate. Generally member states are not as such willing to implement the Commission's directives. In the case of the directive on Open Network Provision, Belgium for example

promised in letters to the Commission to implement the directive, but has never publicized the letters in Belgium and at the moment does not plan to so, which leads to a de jure implementation, but a de facto non-implementation. Spain is promising implementation for years, but steers a course of piecemeal implementation and gradual concessions to the Commission, that put the final implementation in a distant future.

(b) The Commission and single (sub)national units dealing with problems of progress in integration. With respect to the Open Network Provision, individual companies can appeal to the Commission and the Commission in return can act against national actors or regulatory authorities.

(c) The Commission and the other European institutions dealing with priorities in the integration process. The Council for example can decide on a schedule on for introducing competition in the telecommunications sector, but the Commission can also do its best to accelerate the roll out of competition e.g. by using the Courts, which is not in the interests of some member states. Remember also in this context the new role of the European Parliament as an opponent of the Commission in telecommunications regulation.

(d) The internal fragmentation of the Commission dealing with problems of regulatory authority, competencies and appropriate strategies. Most prominently in this respect are the conflicts about industrial policy and mission oriented activities.

(e) The Commission and its relations to European, transnational as well as national interest groups dealing with mutual support and influence peddling.

(f) The international level on which the Commission acts in negotiations with non-EC members or international organizations like GATT.

Usually policies are conducted in a parallel manner on different levels with mutually reenforcing or disintegrating effects. These levels are not stable, but are shifting and are interlocked. The debate for example between the Commission and the European Parliament has been started only recently in a dramatic manner. The parliament has refused to accept the Commission's ideas on the liberalization of voice telephony, by making a procedural and a material point. Procedurally the parliament wants to be more involved in the development of European telecommunications regulations and materially, it is dissatisfied with the emphasis of the Commission on liberalization issues - at the expense of universal service obligations, the interests of residential telephone users and social policy aims. The parliament's injunction was based on the Maastricht Treaty and marked the first time that the Parliament has stopped a telecommunications initiative.

Generally the way of the Commission to manage the different levels is by constructing Euro-centric networks. In 1983, the Commission created a Task Force on Information Technology and Telecommunications to develop the emerging consensus into an active policy approach. In 1984, the Senior Officials Group on Telecommunications (SOG-T), attended by representatives of the member states' telecommunications operators, was created to advise the Commission on all aspects of telecommunications, thus establishing a major link to the national policy authorities. Along with SOG-T operated the GAP (Groupe d'Analyses et de Prévision) which featured representatives from the network operators, equipment manufaturers, regulatory authrorities and consultants. In addition, the Senior Officials Group on Information Technology Standards (SOGITS), the Senior Officials Advisory Group for the Information Market, special committees within the RACE and ESPRIT programs, and a great number of other groups - such as the ESPRIT Round Table of Industrial Companies, the Standards Promotion and Application Group (SPAG), and the European Workshop for Open Systems (EWOS) - were established as formal and informal networks for European policy coordination. In the area of standardization in cooperation agreements with CEPT (European Conference of Post and Telecommunication Administrations) and CEN-CENELEC, the Commission linked with the existing bodies of trans-European cooperation in telecommunications in 1984. For purposes of standardization and based on an EEC proposal, CEPT created a new body, the Technical Recommendations Applications Committee (TRAC), in 1984 and, four years later - after only unsatisfactory results had been achieved in the eyes of the Commission -, the European Telecommunications Standards Institute (ETSI). In ETSI network operators, research institutes, equipment manufacturers, user associations etc. are equally represented. In this sense ETSI signifies an important step towards opening up the political arena for new actors. Other institutions newly created encompass a European Numbering Office and an institution for conformance testing.

Parallel to these developments, the Commission is engaged in building up/or supporting interest groups, that might be instrumental for the success of Commission initiatives. A case in point would be the Information Technology User Group (INTUG) or the European ISDN User Forum (EIUF). The latter is totally financed and administered by the Commission. Nevertheless it gives recommendations to the Commission as a representative of user interests.3 The Commission has turned to user organizations like those mentioned, realizing that the traditional actors in telecommunications (network operators, equipment manufacturers) had only a limited interest in opening up closed national markets and develop European solutions. The user groups are often instrumentalized by the Commission for its aims.

The networks being constructed by the EU are not usually restricted to supranational and international actors, but tend to incorporate key actors from national policy arenas as well. EU policy networks are thus hybrid mixtures of national, supranational, intergovernmental, transgovernmental and transnational actors and interrelationships. The membership of the High-Level Group on the Information Society again is a case in point. It existed of a number of carefully selected individuals from industry, politics and the research community. Membership in these networks is voluntary, formally or (more often) informally regulated. In spite of their seemingly unplanned and often confusing character, the Commission spends considerable time and effort to create a network of formal institutions with formal membership status. Nevertheless the networks under construction seem to be more pluralistic than many national ones.

6. A European Communications Commission?

In September 1983 the Commission had put forward to the Council of Ministers six action lines in telecommunications. Since then, substantial progress has been achieved with the various Green Papers, the Open Network Provision (ONP) Framework Directives, the other directives, recommendations, communications, decisions and resolutions, of which only the most important ones could be mentioned in this article. Besides there are related programs like STAR, RACE and new institutions like the ETSI. The Commission is continuing to monitor and promote telecommunications throughout the Community.

Unlike in other areas of EU-policy making this program is still being accelerated. The following figure gives an overview of the areas in which the European Commission tries to have policies on the table before the end of 1996.

Regulatory Issues:
Infrastructure liberalization
Standardization, interconnection and interoperability
Tariff policy for universal service obligation
Promotion of "Global Information Society"
Intellectual property rights (IPR)
Electronic protection, legal protection and security
Pluralism in media ownership
Alternative networks for non-reserved services
Audiovisual networks, basic services, applications and content
Satellite and mobile communications, applications,
content

Figure 3: Areas in which the European Commission plans to have policies before the end of 1996
Source: European Commission, CommunicationsWeek International 26/9/94

In the foreground of the activities are still the issues of liberalization and deregulation. With the support of the Courts, action in this area is far easier to achieve and more rewarding than actions that require a positive compromise say on the content and regulation of universal services (Cp. Figure 4).

1993 Corporate Networks
1994 Green Paper on mobile and personal communication
1995 Green Paper on network infrastructure and cable TV networks
1996 Proposed new framework for the full telecom liberalization in 1998 covering items such as:
- o   tariff restructuring
- o   price caps
- o   access charges
- o   universal service obligation
- o   enhanced rights of interconnectivity for competitors

1998 total liberalization of voice services (Luxembourg in   2000; Spain, Portugal, Greece, Ireland in 2003)

Figure 4: Deregulation plans of the Commission

The aforementioned High Level Group recommended in June 1994 the establishment at the European level of an authority whose terms of reference would require prompt attention. It thinks it necessary to develop: "...a single regulatory framework valid for all operators, which would imply lifting unequal conditions for market access. It would also ensure that conditions for network access and service use be guided by the principle of transparency and non-discrimination, complemented by practical rules for dispute resolution and speedy remedy against abuse dominance." (High Level Group 1994:3)

A European FCC - and this is what this statement aims at - is hotly debated at the moment, both its desirability as well as its chances for becoming reality. The Corfu summit stated that it is necessary to set up a permanent coordination instrument to ensure that the various parties involved - public and private - are working along the same lines. The coordination instrument, to be set up as soon as possible, should be based on the appointment in each Member State of a person responsible at the ministerial level for coordinating all aspects of the subject (political, financial and regulatory) with a view inter alia to ensuring a co-ordinated approach in the Council.
The report of the High Level Group (often referred to as the Bangemann report) urges European governments to cede their sovereignty over telecommunications and broadcast policy to a pan-European body as part of a plan to embrace competition rapidly -ahead of the 1998 deadline set for voice telephony competition. As a European counterpart to the American FCC the new agency would rule on issues such as operator's licenses, tariffs, and interconnection among networks. Piecemeal deregulation will hold Europe back, the report says: "Time is running out. If action is not accelerated, many benefits will arrive late or never."

In the eyes of both industry and the Commission the logic for a new European institution becomes ever more compelling, even with resistance against a new institution coming from national governments like Germany, as transnational alliances overtax independent, national regulatory bodies. The case for a Communications Commission is without any doubt more strongly supported by industry, that is big industry, which is also behind the Bangemann report, then by the governments. But this has been a line of division somewhat typical for the whole development of telecommunications policies. In the beginning of the involvement of the Commission in telecommunications there was not a statement by the Council or member governments, but also a report by a group of high level experts. In this sense there is a certain continuity, that again highlights the strategic capabilities of the Commission as well as the fact, that the national governments are not sitting in the driver's seat in this policy field.

But nevertheless there is an important issue that needs more attention. The EU could advance into the territory of telecommunications, not the least because in the last decade national regulations have proved to be out of step with an increasingly internationalizing telecommunications sector. On the international level the need for cooperation, coordination and binding regulations (especially in the fields of standardization) has been repeatedly voiced by the main actors in the policy field - not so much by the national governments. What has not been achieved so far on the European level is the establishment of an authority with power to actually enforce European regulations. The development

of such an institution, however, would be the next logical step in the development of telecommunications policy. In this respect there is a evidence for the old neofunctionalist arguments. A European market for telecommunications needs European rules and regulations, even if the national governments are not willing to concede them. The pressure is coming from those actore, who are active on the European market.

It should also be clear, however, that an European Communications Commission would not create a structure similar to those which the European nation states have developed in the last decades. But the question of a new regulatory institution is critical, because the problem of the binding character of agreements is still unresolved. There are European standards, but no institution with the power to enforce them. The creation of a new regulatory institution could also allow the Commission to avoid the impression shared by the European Parliament, that it concentrates on deregulation and liberalization issues and that it is omitting the part of a constructive, positive regulation.

7. Conclusion

Scharpf has recently concluded with respect to politics in general:
" If politics wants to arrive at an efficient solution of inner-societal and global problems, then this will hardly be achieved by sovereign decision making, but above all by the cooperation in pluralist, corporatist and inter-governmental bargaining systems, in transnational regimes and in international organisations." (Scharpf 1993:165). The typical mode of arriving at problem solutions in these cases cannot be via a hierarchical decision by an individual actor or by a simple majority vote in one specific arena. The typical mode of dealing with problems in supra- and transnational politics are talks between participants, which possess a significant degree of autonomy and veto power. (Scharpf 1993:166) The situation in telecommunications offers plenty of illustration for this evaluation. It also leads us to two questions: Is it sensible to expect the development of a European super-state or super-bureaucracy? Do the new European institutions in telecommunications have a democratic deficit?
Scharpf's quote implies answers to both questions. A convincing theory of democracy for governing in bargaining and multi-level systems is not available. The developments on the European level, however, only highlight a problem that is also visible on the national level: the cooperation and bargaining procedures defy the traditional concepts of representative democracy. The developments on the European level have to be interpreted in the broader context of the development of "governing" in complex societies.

Contrary to general belief it has to be stressed once again, that the Commission possesses a relatively small staff of bureaucrats -equalling the number of employees for middle sized cities in Germany. A new European superbureaucracy, if there should be one, is at least singinificantly different from the national ones.
Given the numbers the Commission does little rigorous fact finding before deciding what to do and what costs will be involved in its actions. The usual way to proceed is to gather expertise from the member states for the development and the writing of policy proposals. The success of the proposals are in part linked to the artfulness of selecting the right people for this purpose. Initial drafting of proposals is frequently done by technocrats, who may be superb specialists, but frequently lack the necessary ability to draft convincing regulations. Commission lawyers might review the technocrats' drafts, but often do not have the time and resources to effect essential changes. The fate of the data protection initiative is a good case in point. The character of EU-regulations is not so much owed to the predilections of the Commission, but owed to the way of their formulation in a network like process.

This is not to imply that everything is well on the European level and that we only have to find new concepts for analyzing it adequately. Access to the policy formulation process at the European level is pluralistic, but is does not ensure that actually a wide array of interests are being represented. The Commission has an open tendeny to talk with well organized, big interest groups. Furthermore the tendency to concentrate on issues of deregulation and liberalization, leaves the part of a positive

development of policy goals underdeveloped. Questions like for whom are the new networks and applications actually being designed, what kind of concept of public interest is being pursued and a rigorous debate on the design of new regulatory institutions is still missing.

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