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>> The sectorization of policy-making  
and resistance to policy change:  
the case of the European Union

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## Abstract

*This article puts forward the hypothesis that the sector-based structuring of policy agendas, debates and decision-making can impede policy change when dealing with issues with an inter-sectoral scope. In so doing, it takes the politics of services of general interest regulation in the European Union as a case study for theory building. Drawing on historical and discursive institutionalism, it empirically demonstrates how feed-back effects of historically entrenched policy arrangements, on the one hand, and discursive interactions among agents, on the other, considerably constrain and shape the formation of preferences and coalitions. Since the sectorization of policy making is a salient feature of contemporary governance, this hypothesis is relevant for understanding policy change in connection with a broad range of policy issues and politics.*

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## Introduction

The role of policy sectors is both an old as well as a new theme. In the post-1945 era, the sectorization of policy-making is one of several convergent structural developments – such as privatization and new practices inspired by the New Public Management – that impact policy-making in developed countries. It goes hand-in-hand with the shift from the logic of hierarchical government to that of horizontal governance through policy networks (Atkinson and Coleman 1989). In its most fundamental form, a sector can be defined as “a form of institutionalized division of labor in public policy” (Muller 2010): 591. Together with the policy cycle model, policy sectors or subsystems have become one of the main heuristic devices in policy analysis as: “...each policy sector should be studied in its own right and has a unique politics of its own (...) each sector has a unique combination of technological attributes; problems to be solved; demands of managing the policy; and combinations of producer and consumer interest groups that conflict or cooperate to achieve common or group-based goals” (John 1998: 7-8). As a result, many scholars have tended to reproduce the sectorization of policy-making in research while designing analytical frameworks along the lines of policy subsystems. Thus, despite the recognition of the powerful structuring power of policy sectors, the broader question of how it affects the dynamics of policy change has overall received little attention. This paper addresses this question and hypothesizes that the sectorization of policy-making can be a factor explaining resistance to policy change over issues that have inter-sectoral relevance.

In the European Union (EU), sectorization has been accentuated by regional integration and the increasing intertwining of EU and national public policy (Bulmer 1983). Because it is a multi-national and multi-level polity in the making, the EU faces great challenges with regard to policy making and implementation. Interestingly, scholars of the EU have increasingly re-directed their focus from the study of policy change (Caporaso et al. 2001; Schmidt and Radaelli 2004) towards institutional resilience or political inertia: they found a limited and differentiated Europeanization of policies and institutions in the Member States (Börzel 1999; Mair 2000), non-compliance with EU rules, and diverse political and societal resistances to EU integration (Balme and Chabanet 2008, Saurugger, 2012). However, little has been said about how sectorization is impacting policy change at the EU level. In their work on non-compliance with EU law, Falkner and her colleagues have argued that issue linkage, i.e the connection between a European directive and a broader set of domestic reforms, is one factor that explains non-compliance. Unlike specific measures, broader non-sectoral agendas are more likely to trigger resistance among national actors and constituencies and slow down the pace of policy change at the national level, as in the case of the Working Time directive (Falkner et alii 2004). One may argue, though, that the relationship between sectorization and change varies across the different stages of the policy process. The fact that the joint-decision trap in the EU can best be overcome when dealing with sectorally circumscribed policy issues like sectoral politics makes it possible to escape conflicts involved with domestic “high politics” (Peters 1997). This might also explain why such political and societal resistance backlashes at the implementation stage, when policy decisions made at the EU level have to be integrated into a coherent set of domestic

measures and various actors can perform linkages that had been previously cautiously evaded. When focusing on policy debates at EU level upstream of the policy process, it is argued here, the bias towards sectoral politics constitutes an impediment for actors who seek to promote policy change at the inter-sectoral scale. More specifically, the argument is that sectorization places constraints on preferences and coalition formation. The demonstration draws on the historical institutionalist scholarship focusing on coalitions (Thelen and Mahoney 2010): however, it elaborates this framework in two respects. Firstly, feed-back and lock-in effects of established sectoral policy arrangement must be considered as possible institutional constraints in the same way as the existence of veto players. Secondly, the way ideas and discourses interplay with institutional constraints that shape actors' preferences and ability to form coalitions cannot be overlooked (Schmidt). The sectorization hypothesis put forward here therefore makes it possible to refine the relationship between sectoral politics and policy change while putting into perspective the scattered elements in the literature that depict the former as a driver for the latter.

The regulation of the services of general interest (SGI) in the EU is used as a case study for theory building rather than for proper testing. The notion of SGI that first appeared in EU primary law with the Treaty of Amsterdam covers what would be labeled public utilities, social services, *services publics*, or *öffentliche Daseinsvorsorge* in the various European national traditions. Since the 1986 Single European Act paved the way for a common European market, these services have undergone a major process of marketization and liberalization – a policy program championed by individual countries, especially the UK, as well as by the EU Commission. This has implied the opening of national markets and the subsequent suppression of traditional monopolies by national historic operators in a number of sectors (electricity and gas, telecommunications, audiovisual, transport, postal services). This in turn, has triggered a debate about the re-regulation of those services at the EU level for tackling the detrimental effects of competition with regard to the affordability and quality of basic services and the funding of non-profitable activities traditionally assumed by public authorities. Insofar, SGI regulation reflects the changing State-market-society boundaries (Bartolini 2005). The issue has been on the agenda of the EU institutions since the mid-1990s and in a more pressing manner between 2001 and 2007. In 2001, the EU Commission put forward a Green Paper that was accompanied by a consultation of stakeholders, including large SGI providers, local, regional and national authorities. In 2004, the Commission took an additional step towards legislative procedure with a White Paper. Both papers were discussed in the EP, which subsequently passed accordant resolutions. The Party of European Socialists as well as unions and lobbies unsuccessfully carried out a campaign asking for a European framework directive on services of general interest in 2006. Moreover, the agenda for SGI regulation was consistently supported by the French government. It was mainly French political actors that put the issue on the agenda in the aftermath of the large 1995 strike, in which effects of EU integration on the “French social model” played a great role (Héritier 2001). As a result, an article on the societal role of SGI was first introduced in the 1997 Treaty of Amsterdam. More recently, the Lisbon Treaty has provided a legal basis for a European regulation of the SGI. However, Article 14 of the Treaty on the Functioning of the Union and the new Protocol on the SGI will not result in legislation. The European Commission has repeatedly refused to put forward such a proposal on the

grounds that there was neither a legal basis in EU law nor a clear political demand from the Council and the Parliament for such a move. Rather, the Commission has engaged in the revision of existing dispositions in competition policy to extend derogations (and ease State funding) with regard to local and social SGI. Today, while sectoral directives rule liberalization of the so-called network industries (electricity, telecommunications, transport, postal services, etc), the status of social services, non-mandatory education and culture remains pending. Legal uncertainty is a source of resent especially among local public authorities that are in charge of providing social SGI. The question therefore arises as to why legislation was not put forward and what factors impeded policy change. As the following pages will show, established rules for sectoral liberalization, on the one hand, and ideas and discourses about the superiority of the sectoral over the inter-sectoral approach to regulation, on the other, played a crucial role in shaping preference and coalition formation.

The first section of the paper considers the major alternative explanation for policy inertia in the EU, namely the discrepancy between national preferences; it explains why, either considered in a rational choice or in a historical institutionalist perspective, it does not provide for a satisfactory explanation of resistance to policy change in the SGI case. The second section elaborates the sectorization hypothesis on the basis of historical and discursive institutionalist insights into coalition formation and policy change. The third section provides empirical data, demonstrating how sectorization can shape preferences and coalition formation in the EU. It focuses on the comparative analysis of preference formation in France and Germany, mainly because they were the main players involved in the debate, which reflects these two countries' significant weight in EU decision-making. Furthermore, they stand for two contrasted SGI institutional traditions: as a unitary State, France has a centralized organization of SGI, whereas Germany, as a federal State, displays a strongly decentralized organization of SGI. These two traditions strongly shape the policy debates over SGI at the EU level.

### **1. The sectorization hypothesis: resistance to policy change beyond national preferences**

#### *The limited explanatory power of national preferences*

The main explanation for policy inertia at EU level is divergence among national interests, as Member States remain the crucial decision-making body for legislating in the EU. In his liberal intergovernmental account of EU integration, Moravcsik (1993, 1998) argues that policy change is the result of a bargaining process among the Member States that remain the central players. National preferences are defined on the basis of dominant interests among actors or groups at the national level. In the case of SGI regulation, national preferences cannot be conceived exclusively as economic or material interests. Rather, it can be argued that Member States seek to preserve their institutional arrangements. Historically entrenched regulation at the national level generates a path dependency (Thelen and Steinmo 1992; Pierson 1996), and incentives for actors to favor the status quo over the establishment of a new policy model. Due to their strong local and social dimension, policy change in the realm of the SGI must be justified in the public sphere. In this respect, though,

the EU's action in the social realm enjoys little legitimacy due to a lack of proximity with citizens that contrasts with the strong cultural dimension of these services. The different types of policy and institutional regimes that can be distinguished in the unified centralized states (France and the UK), in the federal and regionalized states (Germany as an archetype), in the Nordic states characterized by the local anchoring of social services, and in Central and Eastern Europe (Bauby, 2011) are often seen as irreducible to a single regulatory model at EU level. To what extent, then, can opposition to a regulatory directive over the SGI be seen as a rational strategy defended by Member States willing to preserve their national and regional arrangements?

The absence of any major step for SGI regulation can, at first sight, be explained by a clash between French and German preferences. Whereas France has consistently been a strong advocate of a framework directive regulating the SGI, the German government has firmly opposed it. As SGI are subject to local and regional competence in the German federal Republic, the *Länder* have been major veto players in this debate, with vigorous opposition from the *Bundesrat* (the German upper house) to a framework directive on SGI. Resistance to policy change therefore lies more with the German actors than with the French. In both countries, SGI are embedded in the conception of the State and its tasks towards society (Dyson 2009): for this reason, the general interest dimension of SGI is legally – and, in the case of Germany constitutionally – enshrined. Both governments express an interest in preserving the societal role of SGI from the potential detrimental effects of EU competition policy and profess to find the right balance between competition in the European single market and social regulation at the national level. However, parliamentary debates reveal that MEPs from the main government parties in France and Germany (the Conservatives and the Social Democrats) have diverging strategies. For the Germans, the invocation of subsidiarity as opposed to regulation at the EU level can best preserve the local and regional competences and the societal role of SGI. For the French, in contrast, social cohesion through public services can only be guaranteed at the EU level.

Now, was the German strategy an efficient calculus for preserving local and regional policy arrangements? Evidence rather points to the contrary. As it was acknowledged by the coordinator for economic and social affairs within the EP group of the Party of European Socialists (PES)<sup>i</sup>, the German crispation over subsidiarity has been counter-productive. The key aspect is that resistance to policy change results only seemingly in a *status quo*: the absence of dramatic change – with for instance the adoption of new rules – left room for policy drift, i.e. “the changed impact of existing rules due to shifts in the environment” (Streck and Thelen 2005). The rules in the area of competition policy have originally been designed for private services of an economic nature. As a growing number of utilities have been liberalized and privatized, and as the CJEU has defined a growing number of public services as economic services, competition law has increasingly impacted the organization and financing of public services in the Member States. Although it was often versatile, or so balanced that it did not set a political line, case law of the CJEU was often re-interpreted by the Commission in a sense that favored competition over the general interest in secondary law (Baquero Cruz 2005), thus emphasizing the policy drift. For this reason, the rigid defense of subsidiarity cannot be seen as an efficient strategy for those who seek to defend their

national interest and/or preserve national institutional arrangements. Preference formation is a complex process characterized by uncertainty and ambiguity concerning the (re)definition of preferences when actors react to the course of events (Hall 2005b). The sectorization of policy-making in the EU, it is argued, plays a crucial role in this process.

*How policies shape politics: the effects of sectorization on coalition and preference formation*

Agency and coalition formation is at the center of scholarship on policy change. While bringing agency back to the core of historical institutionalism, Mahoney and Thelen have recently theorized the ways in which coalition formation is shaped by institutional rules or settings. They have developed a framework that links modes of change to types to institutional contexts and types of agents that promote change (Mahoney and Thelen 2010: 28-29). In the context of SGI regulation, one could ask why policy drift could prevail over displacement, i.e. the removal of existing rules (at national level) and their replacement by new rules in the form of a European directive. However, in order to explain why the displacement strategy pursued by the Social Democrats, the French government and the unions was not successful, this framework needs to be further elaborated in two respects: with regard to the nature of institutional constraints, on the one hand, and the agents' motivations and ideas, on the other.

Firstly, with regard to institutional constraints, Mahoney and Thelen mainly consider the existence of veto possibilities and the characteristics of the targeted institution (Mahoney and Thelen 2010: 19). The implications in time and feed-back effects of established policy arrangements can be conceived as further constraints on agency (Pierson, 1993). By modifying the balance in (material or symbolic) resources and power among agents, established policy practices "affect the social identities, goals and capabilities of groups that subsequently struggle or ally in politics" (Skocpol 1992 : 58). When the EU Commission puts forward a Green Paper, such as that on SGI in 2001, it does not do so in a political vacuum. Quite on the contrary: it follows a decade of liberalization in the utilities networks through sectoral directives. It is therefore argued that entrenched practices in the framework of sectoral liberalization impeded preference formation over SGI regulation as a whole. In the pluralist European governance, sectoral actors and stakeholders' specific interests (large providers, regulation agencies, interest groups) have a significant weight in policy-making. Contrary to this, political parties or unions that represent diffuse interests are particularly weak in the EU (Delwit *et al.* 2004). Smith has even argued that the " 'sectorising' of the government of Europe" entails a pro-market bias, as it makes the introduction of coherent policy programs difficult and thus serves the advocates of competition (Smith 2006: 190). In the SGI case, pro-regulation political parties, i.e the Social democrats, the Greens and the radical left, together with the unions, endeavored to form an insurrectionary coalition aimed at the displacement of SGI regulation from the national to the EU level. In order to be successful, they would have had to convince and involve a number of sectoral actors in order to prevail over the "ghost" coalition (including some DGs of the Commission, anti-regulation Member States, private providers) whose strategy relies on the policy drift of competition policy.



Secondly, with regard to coalition formation, historical institutionalists leave the issue of actors' motivations in the dark, therefore opening a theoretical space for approaches that address the role of norms, ideas and discourse in the definition and continuous reconfiguration of actors' preferences (Hall 2010). In this perspective, ideational and discursive scholars have put forward two arguments. First, interests are political and social constructs and can therefore not be taken for granted; and second, ideas and their manifestation in discourse can have a causal impact on political processes in general and policy change (Schmidt and Radaelli 2004; Béland and Cox 2010). Examining the interplay of institutional settings, on the one hand, and ideas and discourse, on the other, helps to understand how coalitions that seek to promote or hinder change can be formed on the basis of perceived shared interests and values (Schmidt 2008; Schmidt 2010). Institutions and ideas are therefore mutually constructed, in the sense that ideas are motives constrained by institutional settings and, in turn, ideas' carriers can contribute to changing those institutions that constrain their action. The SGI case displays indeed a co-construction of institutions and ideas, in the sense that the sectoral structuration of policy-making, as a policy constraint, becomes an idea whose pervasive invocation by agents in political discourse shapes deliberation and, as we will see, obstructs decision towards policy change.

## **2. Sectorization, coalition and preference formation**

Comparing the position of various French and German actors in the debate over SGI regulation, this section shows how sectoral politics inherited from the past shaped actors' preferences and hampered the formation of a strong coalition advocating a framework directive to regulate the SGI. This part of the case study is based on official documents from various institutions (notably the contributions to the consultation on the Commission Green Paper on the SGI in 2000-2001), as well as the existing literature and surveys on SGI liberalization. Moreover, a number of interviews with key actors in Brussels bring crucial insights into specific aspects. From an analytical point of view, the way in which sectorization generated a self-reinforcing lock-in impeding policy change can be conceptualized as a three-step process, in which: 1) the established sectoral approach to SGI 2) shapes interests on a sectoral basis and hinders the formation of a coalition promoting diffuse inter-sectoral interests, and which 3) brings about a strengthening of the sectoral approach to policy making. Furthermore, sectorization becomes the focus of discourses in the political arena, the main counter-frame to the idea of a framework directive. This plays a great part in orienting decision making.

### *The long established sectoral approach to SGI regulation and liberalization*

The European Commission never really had a political agenda on the SGI. In the aftermath of the adoption of the Single European Act in 1986, the objective of the Commission is to establish a European industrial policy based on the free circulation of goods and services in order to create a Single Market. This implies the end of national monopolies and the opening of networks and infrastructures to "third" (i.e. foreign and private) providers in the various sectors of telecommunications (1988), audiovisual (1989), transport (1991) and

energy (1996 and 1998). The so-called network industries are labeled “services of general economic interest”, i.e. they are seen as economic activities that are subject to EU competition law. While market liberalization originally only affected big consumers in industry, liberalization directives contain a revision clause that foresees the continuous extension of liberalization to services provided to the public at large. The Commission pursued market opening and the establishment of new policy models at EU level according to sectoral characteristics in terms of technology and markets. In the telecommunication sectors, for instance, state monopolies on infrastructures were challenged by technological innovation in the 1980s, and this sector is today the most competitive market among the network industries. In contrast, air or railway transport imply a “natural monopoly” with regard to the main infrastructures, while services could be opened to competition. As for gas and electricity markets, they involve issues related to the production and import of energy and major geostrategic and political interests. The competitive “telecom model” of regulation could therefore not be duplicated in all sectors. In every sector, a viable system for the financing of “universal service obligation”, i.e. the accessible, equitable and affordable provision of basic services to the entire population, had to be designed.

Since 1997, the EU Commission has been carrying out a sector-based analysis of liberalization policy in the network industries. Whereas the EU Commission has consistently drawn positive conclusions, independent research has shown that the actual benefits and the structural changes brought about by competition, the financing of universal service obligations, and the quality and affordability of services for consumers remained, to some extent, problematic (CIRIEC 2004; Hall 2005a; Hermann et al. 2008; Clifton and Diaz-Fuentes 2010). However, liberalization policies in the network industries were only called into question by a minority among the Greens and the radical Left, while firms and regulators have seen themselves empowered by sectoral politics.

Besides “services of general economic interest”, the Lisbon Treaty also acknowledges the existence of “non-economic services of general interest” (Protocol 26, article 2) that mainly cover mandatory education, obligatory social protection schemes, public administration, police and justice. However, no definition of either economic or non-economic interests is provided by EU primary or secondary law, and contentious cases are being ruled by the CJEU. A number of sectors remain in a “grey area”: the legal status of social housing, social assistance, health services and non-mandatory education remains pending. The purpose of a framework directive regulating the SGI was therefore to address this situation, as well as problems involved with liberalization in the network industries. However, when the EU Commission suggested initiating legislation in 2000, it is was already engaged a sector-based dialogue with sectoral actors. This bears two consequences: on the one hand, national preferences are focused on the sectoral approach; on the other hand, the preferences of sectoral actors (regulators and firms mainly) prevail over those of organizations standing for diffuse interests.

*National preferences for the sectoral approach and the prevailing of sectoral actors' preferences*

On the side of German authorities, there is a strong belief that the sectoral approach can circumscribe the influence of the EU. In the public consultation accompanying the Commission Green Paper in 2003, the German government thus expresses that:

“Sector-specific Community regulation can be only considered in sectors of economic general interest that, due to their size and connection, have a significant weight at the European scale. Potential additional regulation must be thoroughly justified by a sectoral context and with respect to the peculiarities of the sector at stake. It is the task of the Community to justify that the sector at stake meets the conditions, that a Community competence exists and that the proposed measures are compatible with the subsidiarity principle”<sup>ii</sup>.

While it favors the setting up of a broad horizontal legal framework for the SGI, the French government also claimed that sectoral liberalization had been a success and that sectoral rules should not be called into question or affected by a potential framework directive<sup>iii</sup>. The articulation between the existing sectoral rules and a new broader framework actually raised concerns among many stakeholders. Whereas the French government has officially supported the adoption of framework legislation, the position papers of the main French – former or still public – firms (*France Télécom, la Poste, EDF, GDF*) reflect a more ambiguous assessment. Whereby they « expect a European framework directive », they also stress

“the importance of the distinction between sectoral regulation and the regulation of competition. We suggest that regulation remain sector-specific to network industries (electricity, gas, postal services, telecommunications, transport). Another element deserves attention: the recurring question of the universal service. Public firms explain that the universal services cannot be included in a global definition of services of general interest and they underline the “technical” difficulties for calculating the compensation related to the universal service”<sup>iv</sup>.

Here, it seems that the framework directive was doomed by those who were supposed to be its proponents, to remain an empty shell stating general principles (accessibility, equity, affordability transparency) that already enjoy a consensus, while the means to ensure compliance towards these principles could not be determined at the EU level. As for private firms represented by the MEDEF, they have opposed EU framework regulation. These positions clearly contrasted with contributions sent to the EU Commission by citizen organizations, such as the *Ligue des droits de l’homme* or ATTAC, that formulated principled claims for the recognition of the fundamental nature of SGI in society and denounced their marketization. Furthermore, emerging sectoral claims by organizations in the realm of social policy can be observed: their claim is no longer that of the preservation of SGI (or the French notion of *service public*) but demands for the recognition of « a social universal service » and a European status for non-profit sector organizations<sup>v</sup>.

An interview-based survey conducted among European organizations in 2004-2005 leads to similar conclusions in respect of the « structuring sectoral logics related to real specificities as well as actors’ logics related to their position in the constellation » (Mangenot 2005) : 155)<sup>vi</sup>. While the European Trade Union Confederation (ETUC) (pro-directive) and the industry lobby Business Europe (anti-directive) oppose each other, the Consumers’

organization (BEUC) and the platform representing public or mixed firms (CEEP) display mitigated positions. More strikingly, European providers and regulators' organizations express strong skepticism towards the potential added-value of a horizontal framework with regard to existing sectoral rules in their sector (Mangenot 2005) : 168). Due to uncertainty about the articulation between sectoral and horizontal rules, many actors are skeptical or even clearly opposed to the initiation of a framework directive on SGI. This was a strong deterrent for the Commission, too, since it seeks to have the widest support among stakeholders before initiating legislation.

#### *The lock-in of the sectoral approach*

The adoption of the Services Directive in 2006 further locked-in the sectoral approach, thus obstructing horizontal regulation. In 2004, the EU Commission put forward a draft directive that aimed at liberalizing all services activities in the EU. The regulatory barriers to the free movement of services within the EU and the persisting fragmentation of national markets had been identified by the Commission as a main obstacle to the achievement of the Single market in a policy area that stands for about 70% of GDP and employment in the EU today. The Services Directive was therefore a key measure in the Lisbon strategy launched by the EU heads of States and government at the Lisbon European Council in 2000. No distinction was made between public and private services as the draft directive included a number of SGI such as (non-mandatory) education, health services, social assistance, etc. Because of its radical approach to liberalization and deregulation (through the country of origin principle)<sup>vii</sup>, the proposal put forward by the EU Commission triggered fears about social and regulatory dumping as well as firm relocation across the EU. "Bolkestein"<sup>viii</sup> became the symbol for the defense of "Social Europe" against the neo-liberal bias of the EU (Crespy 2010). The issue was highly politicized, and a broad coalition actively resisting policy change formed as left-wing political parties, the anti-globalization movement and trade unions mobilized to a yet unseen extent. Two major euro-demonstrations gathering about 50,000 people took place in Brussels and Strasbourg in 2005 and 2006. The Services Directive famously played a great part in the failure of the French referendum for the ratification of the European Constitutional Treaty held in May 2005. The pressure from public opinion and civil society led the EU institutions to soften the de-regulatory nature of the proposed legislation and allow for the preservation of some national rules in sensitive areas related to SGI, labor law, and workers' mobility.

The adoption of the Services Directive had both legal and political implications that enhanced the sectoral approach to SGI regulation. From a legal point of view, it led to an extreme fragmentation of the SGI category that can be submitted to various legal regimes. The demand by the EP Rapporteur, the Social Democrat Evelyne Gebhardt, to exclude all SGI from the scope of application was rejected. The Services Directive therefore reinforced legal uncertainty and complexity, while it practically dissolved the notion of SGI as a unified concept. From a political point of view, the shock created by the large scale protest against « Bolkestein » had a strong impact on the Brussels political microcosm. The new Barroso Commission appointed after the European election in June 2004, traumatized and politically weakened by the controversy, was afraid that a framework directive on SGI with broad scope of application could similarly trigger protest by a large coalition of political actors

dissatisfied with the proposal<sup>ix</sup>. The issue of SGI regulation had become so sensitive politically that it was taken away from the Directorate General for the internal market, whose civil servants had elaborated the draft Services Directive under the supervision of Commissioner Bolkestein, and transferred to the General Secretariat<sup>x</sup>. However, it had to respond to pressing demands from various actors, and primarily local authorities, to clarify the rules for SGI. In 2006, already before the definitive adoption of the Services Directive, Barroso committed to deal with social SGI in a Communication to the Parliament and the Council<sup>xi</sup>. In 2007, in a new communication, it definitively closes the debate on a framework directive and confirms a sectoral approach for clarifying the rules for social SGI only<sup>xii</sup>. In 2009, the Commission similarly put forward a directive on cross-border health services, a sector that was a « left-over » of the Services Directive.

Interestingly, the sectoral approach by the EU Commission was also accompanied – or was a response to – a further sectorization of interest representation. After the adoption of the Services Directive that they consider as a major political failure, the French organizations that had campaigned for a framework directive on SGI decided to set up a lobby dedicated to the issue of social SGI, the *Collectif SSIG*, arguing that “there was no other choice than to collectively penetrate the tower of EU law to obtain the recognition of their specificities (...) with a common objective: sectoral visibility”<sup>xiii</sup>. In contrast, at the same time in 2006, the Party of European Socialists as well as the ETUC attempted to counter the effects of the Services Directive with a public campaign for a framework directive on SGI. The PES set up a group comprising MEPs, lawyers, and experts on SGI that drafted a framework directive proposal for SGI regulation and symbolically handed it in to the European Commission. But only a few months after the adoption of the Services Directive, this initiative had little echo and no practical effect. As for the ETUC, it tried to mobilize national constituencies with a petition for the defense of public services. But, for various reasons, the initiative did not garner strong support among its national trade union member organizations, and the signatories of the petition mainly concentrated in France and Belgium<sup>xiv</sup>. Thus, the attempts at mobilizing public opinion and constituencies at large failed. Eventually, the interviewed lobbyist from the *Collectif SSIG* concludes: « After working eight years on this issue and lobbying for a framework directive, I can say it, this claim makes no sense ».

To sum up, the dynamics of the policy debate over SGI regulation display a pattern of self-reinforcing lock-in where the sectoral practices shape actors’ preferences thus hindering the formation of a coalition capable of promoting a displacement strategy for policy change in the form of a new set of rules contained in legislation. On the contrary, the debate led to a strengthening of sectorization, both in public policy initiative EU institutions (the Commission in particular) and interest intermediation. However, the ways in which policies shape politics are not mechanical. The effects of sectorization were to a significant extent mediated and constructed by discursive interactions that shaped preference formation in the parliamentary arena.

### 3. Discursive interactions: sectorization as a main frame in policy debates

This section presents part of a broader systematic frame analysis<sup>xv</sup> based on the minutes of plenary debates concerning four debates on SGI regulation that took place in the EP between 2001 and 2007 (see appendix). The investigation of these debates displays how the relative support among MEPs for a legislative initiative on the part of the Commission progressively vanished over time. From a discursive-institutionalist point of view (Schmidt 2008), the EP is a crucial arena for analyzing preference formation and the impact of political discourse on the decision-making process in the EU. Debates among MEPs articulate both a coordinative discourse informed by the cognitive arguments and expertise conveyed among epistemic communities and policy networks in Brussels, as MEPs are lobbied by all interested parties in the various dossiers; on the other hand, the EP is the only elected institution of the EU, and MEPs are very well aware of their role as representatives of citizens' interests at large and as intermediaries between their constituencies and the remote EU institutions. Insofar, they also articulate more normative arguments based on values and public philosophies and directed towards the larger public. Moreover, the EP has gained powers as the co-legislator of the Union via the successive Treaty reforms, and its stance is crucial for the Commission to submit legislation.

In the debate over the Commission Communication on SGI from 2001, the Conservatives were not opposed to the idea of adopting a framework directive regulating the SGI, as accounted for by the report of the German Conservative Werner Langen. But over time, an anti-directive position crystallized within the EPP, while the pro-directive stance of the PES faded. Graph 1 shows the simultaneous rash eviction of the framework directive theme in the Conservative discourse and the spectacular decrease of the salience of that frame in speeches by Social Democrats. In 2007, the idea of a framework directive had clearly been abandoned.

(Graph 1 here)

The weakening depicted in Graph 2 displays a more complex picture as far as the sectorization frame is concerned. In 2001, the salience of the sectoral approach is quite low within both political groups; it is slightly more salient in the discourse of the Social Democrats. In 2003, there is a strong party polarization, with the EPP expressing a strong preference for the sectoral approach, whereas the PES advocates the adoption of a framework directive. After this point, however, a new discursive dynamic is triggered, whereby the discourse of the PES MEPs converges with the conservative discourse focused on the sectoral approach to SGI regulation.

(Graph 2 here)

The debate over the Rapkay report responding to the Commission White Paper on SGI in 2006 is the turning point of the debate. Discussions are particularly long, with a strong increase of the number of MEPs taking the floor (47 from both the PES and the EPP in 2006 compared to 27 in 2007). This debate takes place about six months after the decisive parliamentary compromise over the Services Directive that, in spite of some derogatory

provisions, decisively inclined services regulation towards liberalization and deregulation at the national level without reregulation at the EU level. For the Conservatives, it is clear that this speaks against the adoption of a framework directive on the SGI. While at first sight paradoxical, the inversion of both curves in 2007 reflects the end of deliberation. The Conservatives no longer need to convince a majority within the assembly that the sectoral approach is the right way to go, as the Social Democrats fully endorse the strategic withdrawal from horizontal to sectoral regulation. Indeed, the debate on the Hasse Ferreira report in 2007 only deals with “social” SGI.

These discursive dynamics constitutive of preference formation and interest reconfiguration must furthermore be related to the ideological matters at stake. For the Conservatives, rejecting regulation at the EU level means both the preserving local autonomy (in tune with the subsidiarity principle) and avoiding regulation that would impede market mechanisms. Hence, the EPP proves capable of developing a consistent discourse that strengthens over time. Among the Social Democrats, in contrast, there is a discrepancy between a defensive and an offensive vision of SGI regulation. For the Germans, the preservation of the societal missions involved with the SGI can only be pursued with the preservation of local and regional authorities’ prerogatives, which speaks against the adoption of regulation at EU level<sup>xvi</sup>. Therefore, discourse among the German Social Democrats tends to converge with that of the Conservatives. For the French (as well as the Belgian) MEPs, such a defensive position is not sufficient to make the SGI immune from the detrimental effects of competition policy<sup>xvii</sup>. Eventually, while the debate was quite open in the beginning, the more consistent ideological stance and discursive strategy of the Conservatives allowed them to impose the idea within the assembly that the sectoral approach – rather than a framework directive – was the only relevant policy option. As the sectoral frame shaped preference formation within the EP, it resulted in the EP allowing for continuous policy drift of competition policy in the absence of decisive policy change with regard to the regulation of SGI.

## **Conclusion**

Because it is a functional governance regime with strong spill-over effects but one that also faces major decision and implementation problems, the EU is a most interesting case for analyzing the relationship between sectoral politics and policy change. Scholars of policy analysis and non-compliance have argued that sectoral politics offered a way out of the joint decision trap in the EU, and that de-sectorization (or issue linkage) was likely to trigger resistance to policy implementation at the domestic level. On the basis of policy debates over the regulation of SGI, this paper has put these arguments into perspective. The sectoral structuring of policy making does not systematically facilitate policy change: for actors who seek to promote broad policy change at the policy-shaping and decision-making stages, the sectorization of policy practices and arrangements constitutes an obstacle to preference and coalition formation at the EU level. The analysis draws on historical as well as discursive institutionalist approaches to policy change. The historically established sectoral structuring of SGI policy locked the preferences of the German authorities, regulators, business organizations as well as those of many French large firms into the sectoral approach to SGI

regulation. As a result, the French government, the PES and the unions were unable to aggregate diffuse interests or more actors in a coalition promoting EU level legislation. This was further reinforced by discursive interactions during parliamentary debates, where sectorization became the main frame shaping deliberation, eventually even among the Social Democrats who were originally advocating the adoption of a framework directive.

As the sectorization of policy making has become a salient feature of contemporary governance, these findings are relevant for a whole range of policy issues and polities, starting with European national States and the US. Some scholars have underlined the problems entailed by policy-making sectorization, such as the inconsistency of policy styles within a single political system (Richardson 1983), the technicization of policy making, as sectoral experts lack a comprehensive view of how various interests should be accommodated (Börzel 2002). More recently, reflections have been put forward on new modes of governance, such as mainstreaming, for tackling the fragmentation entailed by the sectorization of policy-making (Jacquot 2010). From a substantial or normative point of view, a further question is whether these dynamics have an impact on the direction of change. Scharpf (1999) and Smith (2006) have both argued that, in the EU, reregulation has to face many more obstacles than liberalization and deregulation – which is consistent in the SGI case. However, resistance to policy change can also be geared towards the impediment of further negative integration and the preservation of regulation at the national level, as mobilization against the Services Directive has proved. Furthermore, it has recently been demonstrated that sectoral characteristics and institutional arrangements play a key role in driving the post-liberalization reregulation of foreign direct investments in India and China (Hsueh 2011). A closer focus on sectorization therefore opens a large range of cases across various polities to explore the dynamics of promotion or resistance to policy change.



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<sup>i</sup> "Yes there were divergences within the German delegation for the simple reason that Germany is a federal state and the *Länder* and towns have vast prerogatives. Large towns or *Länder* did not want Berlin or Brussels to intervene in these matters. But B. Rapkay, the head of the German delegation, was telling them: 'But you are idiots, you think that you can preserve your competences over public services [SGI], but one

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day, the Court will rule with case law...' and this is what happened: there were several cases where German *Länder* lost in cases taken to the CJEU. They wanted to protect *their own way* of providing public services. In German, you don't say public services but *Daseinsvorsorge*, this is a different philosophical concept but at the end of the day, this is the same services. So the German Social Democrats were reluctant [towards the establishment of the framework directive for the SGI regulation]. They were saying: 'we don't want European regulation, this is our prerogative'. Obviously, it was not correct". Interview with Robert Goebbels, Member of the European Parliament, PES (Luxemburg), coordinator for economic and social affairs, Brussels, September 2008.

<sup>ii</sup> Paper position from the Federal Republic of Germany about the Commission Green Paper on Services of

<sup>iii</sup> Note by French authorities, Response to the Green Paper of the European Commission on Services of General Interest (translated from French), no date.

<sup>iv</sup> *Idem*.

<sup>v</sup> *Idem*.

<sup>vi</sup> This study is based on a series of 16 interviews with European provider organizations (in the sectors of rail way, postal services, electricity, gas, audiovisual), with regulation authorities (telecommunications, audiovisual, postal services), in the Commission Directorate General for Competition, with the ETUC, the CEEP (public enterprises), UNICE (business), the BEUC and the European Economic and Social Committee.

<sup>vii</sup> This legal device implies that services providers have to comply only with the law of the country where they are formally established when providing services in other EU countries.

<sup>viii</sup> Frits Bolkestein was the (Dutch) Commissioner for the Internal market from 2000 to 2004 and the promoter of the Services Directive.

<sup>ix</sup> Interview with a lobbyist for the *Collectif SSIG*, Brussels, September 2010.

<sup>x</sup> Interview with a former senior civil servant in the European Commission, Cambridge (MA), June 2011.

<sup>xi</sup> European Commission, "Implementing the Community Lisbon programme: Social services of general interest in the European Union", COM(2006)177, 26.04.2006.

<sup>xii</sup> European Commission, "Services of general interest, including social services of general interest: a new European commitment", COM(2007)725, 20.11.2007.

<sup>xiii</sup> Collectif SSIG-FR, *Les services sociaux et de santé d'intérêt général : droits fondamentaux versus marché intérieur ?*, 2006, Bruxelles, Bruylant, p. 8-9.

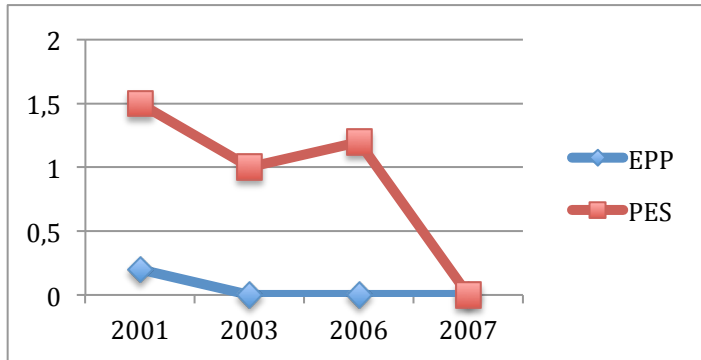
<sup>xiv</sup> Interview with a representative of the Belgian General Confederation of Public Services, Brussels, February 2008.

<sup>xv</sup> The frame analysis consists in identifying and coding words or groups of words that refer to a relevant frame, i.e. a salient idea at the level of specific policy problems and solutions, broader policy programs and paradigms, and values and norms. The analysis was conducted in the program Atlas.ti that allows for substantiating discourse content with graphs on the basis of frame occurrences.

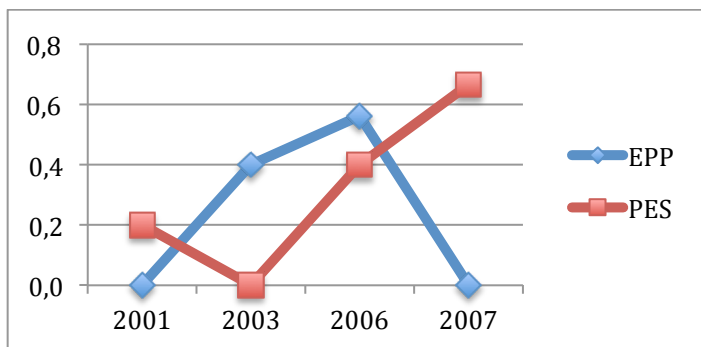
<sup>xvi</sup> Martin Schulz, Head of the PES Group, Debate on the Commission White Paper on the services of General Interest (Rapkay Report), 26.09.2006.

<sup>xvii</sup> Françoise Castex, French member of the PES Group, *idem*.

Graph 1 : Relative salience of the framework directive in EP plenary debates over SGI regulation (ratio per speaker)



Graph 2 : Relative salience of the sectoral approach in EP plenary debates over SGI regulation (ratio per speaker)



Appendix: EP Plenary debates on services of general interest

2001	Commission Communication on "Services of general interest in Europe", COM(2000)0580	Langen Report (EPP/DE)	Plenary Session on 13.11.2001.
2004	Commission Green Paper on Services of General Interest, COM(2003)270	Herzog Report (GUE/FR)	Plenary Session on 13.01.2004
2006	Commission White Paper on services of general interest, COM(2004)274	Rapkay Report (PSE/DE)	Plenary Session on 26.09.2006
2007	Commission communication "Implementing the Community Lisbon programme : social services of general interest in the European Union", COM(2006)177.	Hasse Ferreira Report (PSE/PT)	Plenary Session on 12.03.2007.