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Differential growth and how liberalization was achieved in the postal services sector

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Abstract

EU liberalization has a tendency to occur even in the most disputed policy areas. Drawing on two approaches, gradual institutional theories and differentiated integration, this contribution seeks to clarify how the EU achieved liberalization policy in the postal market. A qualitative study of the decision-making process of the Postal Directive suggests that differential growth, in particular related to time rules in existing legislation that ensure future re-negotiations and concessions that constrain resistance, have contributed to policy change in EU postal services. This occurred under the conditions of instability in the market due to an unclear line between who is allowed to compete where, social norms that made it politically costly to create barriers to further integration and longevity that created desires to put an end to a process.

Keywords

Differentiation; European integration; Liberalization; Policy change; Postal services

The EU is first and foremost known as being a liberalization project. The Single European Act in 1992 established the European Single Market and aimed for free movement of goods, services, capital and people. Although today the internal market is a consolidated area in the EU, liberalization processes are on-going and disputed. This is particularly clear in the area of the freedom to provide services in the internal market, which has been considered to be unexpectedly slow (Stone Sweet 2010: 28) and a 'leftover area' (Bulmer 2009: 310). In several service areas EU liberalization has met barriers and ended up largely modified (e.g. the Services Directive) or even rejected (e.g. the Port Directive). However, the European Commission repeatedly puts even the most disputed policies on the agenda and opponents argue that the Commission never gives up. This fact suggests that as long as the EU mill grinds slowly enough, EU liberalisation eventually occurs even in the most disputed areas. It is therefore of interest to explore how time and what Goetz and Meyer-Sahling (2009: 190) call 'time rules' contribute to imposing liberalization in the European Union.

For the purpose of answering this question, I draw on theoretical perspectives of one mode of gradual institutional theories, "layering" (i.e. adding of new rules on top of existing policy), as well as differentiated integration, as time and time rules play a crucial role in both. I argue that layering – although being an institutional approach – provides important insights to understand policy change. This is because any liberalization policy involves an institutional change: when liberalizing a market, how the market is organised changes, i.e. liberalization changes the institutional setting within which actors behave. I also argue that there are elements in the differentiation literature that contributes to better understanding how layering occurs. Layering is differential growth. There is no layering without differentiation. I draw on both perspectives, exploring the factors and conditions that contribute to explain policy change within the EU postal market.

Liberalization of postal services in the EU is a well-suited field for analysing the question of time and elements that become effective through time. The decision-making process of "fully" opening the postal services to competition has been slow: lasting almost two decades since 1989, when the Postal and Telecommunication Council invited the Commission to prepare measures to develop postal services in the EU, until the decision makers agreed on the final amendment in 2008. The process included three sequences consisting of a first directive and two amendments. Moreover, in

the postal sector public services remain the most predominant (Finger and Finon 2011: 57), highlighting the major tension between a “universalist” perspective, which is based on social solidarity and a “competitive” approach focusing on efficiency and consumer choice. The social aspect inherent in postal services, the difficulty of avoiding the ‘whiff of monopoly’ in such network services (Spiller 2011: 13) and the high share of employee costs (i.e. 80 per cent of the production costs are labour costs) make postal services particularly difficult to liberalize. Thus, the Postal Directive represents a crucial case for understanding how the EU is able to introduce liberalization reform – it seemed very unlikely from the outset.

Drawing on interviews with 13 officers and document analysis, I find that that time played an important role in fundamentally changing the approach of service production from a focus on public service to an emphasis on competition both in terms of strategic time rules and temporal concessions and as a background condition as longevity. Time occurs as important in the incremental process of layering, where the reformers started liberalizing at the sector’s margins. This created instability as the line between the liberalized and the reserved area remained unclear. The inclusion of timetables and “expiry” dates in the early versions of the Directive ensured that the dossier would be placed on the agenda again in the near future and created pressure for further liberalization. The opponents could accept such time rules as long as they were guaranteed to have a say in the new round (i.e. any amendment to the earlier Directives would follow the ‘ordinary legislative procedure’ that is a co-decision procedure including both the Council and the Parliament).

The remainder of this contribution aims at explaining the decision-making process of the Postal Directive. Section two presents relevant approaches of differential growth that guide the analysis. The third section describes the data and research techniques adopted. The fourth section gives an account of what happened in the postal case, while the fifth section discusses the empirical findings in light of the theoretical aspects.

DIFFERENTIAL GROWTH

The focus is on explaining integration, which used to be a common research goal in the first phase of EU scholarship from the 1960s onwards (see Rosamond 2007). Yet whilst this early scholarship is characterised by ‘grand theories’, the aim of this analysis is to contribute to middle-range theories; that is, starting with an empirical phenomenon. Whilst several EU scholars today focus on governance, integration studies are still relevant, as for example shown by the increasing interest in differentiated integration (e.g. *Journal of European Public Policy*'s special issue ‘Differentiated integration in the European Union’, published in 2015). This section presents perspectives from the literature of differentiated integration and gradual institutional theories. While there are plentiful approaches that may contribute to explain policy change (see Capano and Howlett 2009), I choose these two approaches as time plays a role in both. They provide a comprehensive but manageable number of dimensions in the analysis.

For more than two decades, differentiation has been an integral part of European integration (Leruth and Lord 2015). Viewed as a cause, differentiation is considered a facilitator for further integration – as a key instrument to overcoming deadlock between heterogeneous member states (for reviews, see Holzinger and Schimmelfennig 2012; Stubb 1996). An issue with accounts that treat differentiated integration as a cause, is that differentiation easily ends up explaining differentiation: the many different ways of doing things (the different ideologies and traditions) in the member states explain differentiated integration – this is not really an explanation. However, it is still of interest to understand the effect of differentiation on agreement or unification.

One assumption in the literature on differentiated integration is that flexible policy provides for further integration that would otherwise be halted (see, for example, Kölliker 2001). Such differentiation includes modification of disputed policies through watering-down and vague policy formulation, so that existing policies can be maintained to a larger extent than the reformers

originally intended. It comprises opt-out possibilities such as territorial, sectorial or temporal derogations, giving for example exceptions to certain territories or sub-sectors or allowing certain actors more time to adjust to a new policy. That way, for example in the area of liberalization, actors have the possibility to invest in new institutional arrangements and benefit from learning effects before having to meet competition from other actors. Thus, resistance against a policy decreases.

In order to come to agreement member states that benefit the most from a new policy offer greater compromises in order to achieve the policy, whilst poorer member states exploit this situation by requesting concessions. As a result, political content that would encroach on important member state interests are removed. As such, the final outcome may be without 'real political meaning' (Novak 2010: 94). Differential growth is key also in a distinct strand of literature on gradual change. In contrast to contributions on differentiated integration, gradual institutional theories propose that such incremental steps eventually may contribute to quite fundamental changes. Scholars such as Thelen (2004) and associated colleagues (Mahoney and Thelen 2010b; Streeck and Thelen 2005) developed a gradual reform perspective as a reaction to an exaggerated distinction between long periods of institutional stability and exogenous shocks that sometimes disturb the stability and induce radical change. In their opinion, there was a lack of tools to explain modes of continuous processes of reforms the way institutions normally evolve. They argue that there is an inherent dynamic within the institutions themselves that opens up for incremental changes: even "stable" policies (i.e. formal compromises or relatively durable policies) are still challenged and are therefore exposed to shifts.

According to this view, it is sufficient that there is an opening for actors to enact change – there does not have to be a need for change. The authors argue that institutions themselves encourage certain change strategies or invite agents to foster change. Yet there are also possibilities of actors being disadvantaged by one institution to use their privileged status in relation to other institutions to push for change. For example, trade unions that have sometimes been disadvantaged by the Commission, have exploited its contacts with its socialist partners in the European Parliament to resist liberalization policy or include social policy (Parks 2008). Researchers of gradual reform view such mobilization and testing of the boundaries of existing institutions not as radical interruptions of stability as equilibrium scholars tend to do (e.g. True 2000), but as contributing to the institutions' persistence. Institutions survive, when they serve the relevant actors' interests well (Hall and Thelen 2009: 11).

Gradual reform implies different types of policy changes. Streeck and Thelen (2005) mention five modes: "conversion", that is re-direction to new goals; "displacement", which refers to a situation where an increasing number of actors adopt new, emerging policies; "drift", implying that there is a difference between the rules and the real world; "exhaustion", meaning institutional breakdown; and 'layering' that carefully introduces new policy on top of the existing policy, without replacing the existing policy. Researchers have pointed out that the boundaries of these modes are unclear (see Van der Heijden 2010; Rocco and Thurston 2014). However, the fact that the Postal Directive was amended twice, thereby introducing new elements on an existing policy, suggests that layering may explain the introduction of the competitive approach in the postal sector. Thus, this case study's focus is on layering. In contrast, the Postal Directive is not about conversion as despite an increasing focus on cost efficiency, the "old" solidarity aim of universal services remains in the new Directive. Exhaustion is also not relevant as it is about policy change, not breakdown. However, due to increased competitive pressures from technological innovations such as electronic substitution, it

could be expected that drift also contributes to explaining the liberalization reform. Also displacement could play a role as potential market entrants and other promoters of liberalization find their interests advanced by the Commission, member states that have already introduced such reform and right-wing parliamentarians. Yet there are strong veto positions in the EU. Hence, total displacement seems impossible. Therefore promoters of displacement may settle for layering instead (Mahoney and Thelen 2010a).

To understand the meaning of layering (for a review of the concept, see van der Heijden 2011), the notion of path dependency is useful. It implies that earlier courses of action are difficult to reverse, once they have been introduced. Decisions in the past therefore limit future options or enable certain paths more than others. This rigidity of institutions explains why for example, national institutions exposed to similar globalization or Europeanization pressures remain diverse (see Hall and Soskice 2001; Lorrain 2005). Pierson (2000) clarifies how path dependency works, conceptualising it as grounded in a dynamic of 'increasing returns'. It means that a social process is path dependent, when it is self-reinforcing or generates positive feedback. Thus, path dependency confines future available directions because the benefits of existing practices (i.e. investments have already been made and learning effects make the activities effective) compared to other alternatives increases over time. This is relevant for theories of gradual reform as they aim at explaining why policy change occurs despite such stability of institutional arrangements. Layering occurs as reformers learn to circumvent such unchangeable elements (Streeck and Thelen 2005: 23). When there is resistance against displacement, promoters of policy change may avoid such barriers when introducing a voluntary policy on top of an existing policy (Rothstein 1998) or by introducing changes only at the margin (Palier 2005: 131). Thus, 'the actual mechanism for change is differential growth' (Streeck and Thelen 2005: 24).

Although being motivated by different empirical observations (i.e. flexible European integration and incremental institutional reform), the literature on differentiated integration and gradual institutional theories complement each other. The well-described content of differentiation, including for example modification and opt-out possibilities, adds insights to the gradual institutional perspective. In particular, this is clearly related to layering, where there is no layering without differentiation. Therefore the differentiation literature contributes to better understanding about how layering occurs. Moreover, gradual institutional theories contribute to understand why and how differentiated integration may result in future change.

METHODS

The analysis draws on evidence such as policy papers, minutes from hearings in the European Parliament and meetings in the Council, consultancy reports, reports by interest groups, online newspaper articles and thirteen semi-structured in-depth interviews. The aim of the interview sampling was to cover views from the industry and EU institutions, which was based on Internet searches and contacting the relevant persons/organizations. These include: two Members of the European Parliament representing the Group of the Progressive Alliance of Socialists and Democrats and the Group of the European United Left; a desk officer in the Commission's Directorate-General for Internal Market and Services; a desk officer in the General Secretariat of the Council; three representatives of trade unions including Uni europa and the Norwegian Postkomm; an international correspondent of PostEurop; two representatives of Deutsche Post; a representative of the German Presidency 2007; two representatives of the Portuguese Presidency 2007; and one representative from a national regulator in a large member state. Attempts to speak with each of the two rapporteurs of the Postal Directive in the European Parliament were not successful.

The interviewees spoke based on personal experiences rather than taking an official role. Anonymity, which ensured that they could speak freely, was considered more important than the benefits of readers to know the source of each statement. The interviews took place in 2011 and 2012. This oral data has been important for establishing the mechanisms at work and has been cross-checked with the mentioned written documentation. The interview data has been essential for covering gaps and documenting facts. However, a caveat is the interviewees' lack of memory, as the processes of the early versions of the Postal Directive go more than a decade back in time. In addition, the interviewees were more concerned with the more recent amendment. Therefore the evidence is richer on this last process than the two former. For that reason, earlier studies have been important sources of background information.

Van der Heijden (2013) emphasises the value of using complementary theories when studying policy transformation. He argues that researchers tend to overlook evidence that may go against the chosen theory, while easily finding proof to support this theory. In order to avoid such issues, the analysis includes a rich description of the case, relating the explored factors to the theoretical framework after the description. Moreover, the interview guide included questions about conflicts, cooperation and power relations. The purpose of these topics was to check whether other theories would be better at explaining the policy change in the postal sector.

THE DECISION-MAKING PROCESS OF THE POSTAL DIRECTIVE

This section presents the results about what happened during the decision-making processes of the Postal Directive and its two amendments – in the following, labelled the first, second and third “Directive”. The third Directive is treated in more detail than the two early Directives, as thorough analyses of the early Directives exist (Schmidt 1998; Smith 2005) and because the final step of market-opening as introduced through the third Directive was the most disputed, making it particularly interesting to understand how the EU was able to agree on this last amendment.

In 1989 the Council invited the Commission to prepare measures to develop postal services in the EU. Three years later the Commission (1992) launched the Green Paper that highlighted the aim of liberalizing postal services and improving quality standards by introducing minimum requirements with regards to delivery. Using competition law, the Commission had planned to enact liberalization itself, but due to massive opposition by the member states, it gave in to pressures to include the other legislators in the decision-making process (Schmidt 1998: 281). The policy was controversial as traditionally a protected public postal operator could use its revenues generated in profitable activities to subsidize losses in other activities (Geradin and Humpe 2002). Social solidarity justifies such subsidization: the price of an item was the same for every citizen across a national territory. However, the competitive approach undermines this way of funding postal services. In a competitive situation, a competitor can choose to enter only those markets that are profitable. A consequence of such “cream-skimming” is that it deprives the established public postal operators of the revenue to fund universal services. Given the loss of sources of revenue, “universalists” were concerned that this would endanger the performance of universal services. In contrast, the Commission argued that practices of cross-subsidization serve to give dominant operators an unfairly protected position and cover inefficiencies. The Commission viewed liberalization as a means to make state operators become more efficient – to cut the “pumping” of state money into an inefficient sector and improve the quality of postal services as operators would have to pay more attention to customer needs (Interview 1).

Member states that had already opened up their domestic markets for competition, or were in the process of doing so, largely supported the Commission’s competitive approach partly because they believed competition from foreign companies could improve services at home (Interview 7) and the

established postal operators in such countries were looking for markets abroad (Interview 5). The established companies in such countries supported liberalisation of their domestic markets as long as they could enter the markets of foreign operators, i.e. they emphasised the importance of a level playing field. Likewise potential entrants were concerned with potential manipulation by the incumbent. Large postal users dependent on postal services (e.g. Postal Users Group, Free and Fair Post Initiative) embraced liberalization expecting it to reduce their costs.

In contrast, member states that opposed the Directive were concerned with how to fund and maintain the universal service provision. Such financial worries were particularly wide-ranging in countries with several islands, mountains and a dispersed population and/or poor quality standards. Several member states also struggled with restructuring processes, in particular member states that joined the decision-making process with the enlargement of the EU in 2004. They feared that their established postal operators would be inapt to compete in an open market and therefore sought to postpone liberalisation (Interview 8). Among the interest groups, public postal operators and trade unions opposed liberalisation. Trade unions were concerned with “social dumping” and unemployment, but also higher prices for small consumers such as households (i.e. the prices of individual mail increases whilst bulk mail prices decreases) (Interview 6).

The dispute went on for almost twenty years and included three “Directives”: The first Postal Directive was initiated in 1995 and decided on in 1997. It distinguished between services that may be “reserved” for the universal service provider and services that were open to competition. Whilst the liberalization achievements in this legislation were rather small, the quality measures were substantial, obligating the member states to guarantee a minimum of characteristics of the universal service (e.g. at least one delivery and collection five days a week for every EU citizen at affordable prices). It also set a timetable for further liberalization at a later point in time. Following-up this timeline, the legislators amended the Directive in 2002. This second Directive included further steps of market opening. In 2008 it was amended again with the third Postal Directive, which “fully” opened the market by introducing competition to the remaining letter policies.

THE FIRST DIRECTIVE

During the process of the first proposal, only few segments were proposed to be opened up for competition, the most controversial being addressed was advertising mail and cross-country mail. Viewed as important sources of revenue for covering the universal service, most member states were against exposing such services to competition (Geradin and Humpe 2002: 100). In the Parliament a left-wing rapporteur, Brian Simpson, played an important role in modifying the proposal. As a result, the Commission had to make several concessions and include elements that would limit the effect of competition. For example, the Commission granted general authorizations and individual licenses for non-reserved services, thus leaving it in the hands of the member states to decide on requirements that postal operators had to fulfil in order to enter the market, thereby creating substantial entry barriers (Council 1997). As the effect of liberalization as set out in this Directive would be minor and it was guaranteed that any future amendment would include all the EU legislators in co-decision, opponents eventually accepted the Directive that had gone all the way to conciliation, before it was accepted at third reading in the Parliament. However, the proponents of liberalization achieved one important step in the first Directive: although liberalisation would only be enforced at the edges of the postal market, the EU legislators established the competitive approach as a principle and introduced a timetable for future liberalisation. This timetable started a dynamic shift towards further liberalisation of postal services.

THE SECOND DIRECTIVE

In May 2000, the Commission introduced a second proposal, recommending to liberalize postal services in two further phases: First, by 2003 the weight and price limit for services that may continue to be reserved should be reduced to 50 grammes. Second, by 2007 a subsequent reduction of the remaining exclusive rights should be undertaken. There was still no majority for such market opening in neither the Parliament nor the Council, yet the setting had changed. Firstly, the rightwing politicians in the Parliament were of the opinion that it was time for further market opening. One of them was the new rapporteur, Markus Ferber, a German Christian Democrat. 'He was assuming the responsibility with a total other intention than Brian Simpson, who was still a Member of Parliament, but he had lost his influence on the issue, so from the left we tried to moderate it' (Interview 10). It made a difference as 'Simpson was certainly more open to labour unions and to include their demands than Ferber' (Interview 8; Interview 6). Secondly, at the Lisbon Summit (23-24 March 2000) a majority of leftwing governments had agreed that the Council, together with the Commission, would set a strategy to accelerate liberalization of postal services, as this was considered beneficial for economic growth. The Summit took place a couple of months before the Commission launched the second Directive. The strategy weakened the position of those opposing liberalization as advocates proposing further liberalization, argued that the member states had already agreed to introduce competition:

So the Commission could say, 'we follow only that what was concluded by the ministers of the national states involved in the European Union'. That made it very difficult to fight against it. It was not occasional that at that moment both the Directive on the postal services, public transport and the energy was made, because they already had the support of the prime ministers of the member states. The Commission, which only has the formal right to initiate legal texts, could say, 'we are only doing those things that the Council of Ministers has asked us'. That made it very difficult [...]. Some at the rightwing side said, 'we have already decided to do, so we are only creating a law text to make it continuously irreversible. But it is not a political discussion, we have had it already, the member states agree, we also agree, the Commission agrees, so don't make objections' (Interview 10).

However, there was a perception that 'status quo has served Europe well' (Economic and Social Committee 2001). Therefore both the Council and the Parliament wanted a more restrained approach than the Commission aimed for. At first reading, the Parliament rejected several of the provisions that would contribute to further liberalization and called for employment and social goals to be included. The Commissioner, Fritz Bolkestein, argued that the amendments went 'against the grain' of the Commission's proposal and would hinder advantageous modernization (Parliament 2000). Therefore, the Commission left out the amendments delaying and limiting further liberalization and excluded amendments concerning social and employment issues, including instead a formulation emphasising the social tasks of the Community. However, the Council moved toward the Parliament's position postponing the final step towards full market-opening and including higher weight and price limits for the reserved area in 2003 (100 grammes), delaying the 50 grammes step from 2003 to 2006 and the subsequent step from 2006 to 2009 (Council 2001b). The Council insisted that any liberalization concerning the 50 grammes-category would have to be based on a new legislative decision-making process. The common position was adopted by qualified majority with the Dutch delegation voting against and the Finnish abstaining (Council 2001a). The Parliament approved the proposal at second reading (Parliament 2002).

As with the first legislation, the second Directive had introduced conditions for level competition (e.g. an independent regulatory authority and the requirement of keeping separate accounts for the universal service and services within the non-reserved area). However, there were claims of national postal operators abusing their dominant position and new entrants encroaching on the reserved

area (for examples, see van der Lijn et al. 2005). Court rulings have been initiated, yet based on legal clauses of services of general economic interest, such decisions did not enforce further competition in the postal sector. Instead it has been argued that they strengthened proponents of state intervention (Sauter 2008: 171). Court rulings and potential litigation that has driven EU legislators to accept liberalization in other sectors (e.g. telecommunications and energy), were not effective for opening the postal services market.

THE THIRD DIRECTIVE

In October 2006, the Commission tabled another proposal amending the two former directives. A few months later, Germany entered the Presidency, followed by the Portuguese Presidency in the second half of 2007. Although Germany was in favour of the proposal, progress was slow, yet it accelerated under Portugal, although reluctant towards including a final date of market opening in the Directive. There were several conditions as to why the process was slow moving. In the beginning, the Commission was not supportive in moving the process along: 'They came with a kind of dogma that this is our proposal, it is well studied, the impact assessments are complete, [...] you have to read them and you have to agree!' (Interview 2; Interview 11). The consultations and assessments had indeed been extensive over recent years¹, yet several member states were not convinced and were unwilling to discuss the key issue: the final date by when the reserved area should be abolished (Interview 7).

Another condition was the unencumbered situation of the German Presidency, as for Germany the situation was clear. Germany had already opened its national markets and foreign competitors had entered. This situation would remain even if there had been no new directive or the Directive would have looked very different (Interview 8). Eventually competition from other sectors constituted a larger threat for public postal operators than competition from other postal operators. However, at the time, this process of stagnation of letter markets due to electronic substitution had taken place much slower than had been anticipated and primarily occurred in Scandinavia and the Netherlands (Wik Consult 2006, pp. 14). Electronic substitution thus did not become an important topic in the negotiations (Interview 5; Interview 7), although internet trade contributed to strengthen the private express delivery sector (e.g. FedEx, UpS) and weaken the established postal operators and postal workers.

However, the second Directive included a deadline that had some effect on the member states' ability to make a decision. Without a further proposal adopted by the 31 December 2008, the sector would primarily be subject to EC Treaty rules (Article 86 TEC), which allow the Commission to address decisions and directives to member states as considered appropriate (Commission 2006: 5). Member states opposing liberalization wanted to avoid such a 'case by case' approach:

It was always a potential threat: 'If you do not agree, then the second directive will expire and it expires completely'. The consequence would be as if there had been no directive in the postal sector. From that it follows that there would be no monopoly for nobody. For the opponents that would be a horror scenario; something had to happen. Insofar we could work calmly with the details' (Interview 7).

The expiry date therefore created a pressure for reform, yet not necessarily further liberalisation, as the legislators could also have agreed to abolish the deadline and otherwise keep the Directive as it was. Gradually there were some moves towards a "mid-position" in the negotiations between the member states and the Presidency. The timetable included in the earlier Directive played an important role. Having assented to a timetable at an earlier stage, the member states had quasi agreed to market opening:

If you're from a country and you say that you agree that liberalisation will take place in 2009 [as stated in the second Directive's timetable], what is your argument to say that I don't want it. It can happen, but from a political point of view, it's a risk, you cannot consent [i.e. you may hinder integration]. Maybe you can change it from 2009 to 2010, but still you cannot change the full position saying that no, I don't want market or liberalisation. So for us it was an argument to convince them, 'come on, you cannot change position now. We've been working towards market liberalization so you cannot say now, that you are not prepared. You knew about this six-seven years ago, so it's not an argument to say that I'm not prepared, I have too many public servants. You knew that this was going to happen' (Interview 9).

In general it is considered negative to be outvoted in the Council or standing in the way of integration. This adds to the understanding as to why the argument about the timetable was effective. None of the big member states wanted to be seen as standing in the way for integration:

They had noticed that eventually the process was no longer to put back. [...] they did not want to get the image that they were slowing down the process. No, no, they didn't want that image; they couldn't permit themselves to do that. (Interview 7; Interview 9).

Moreover, throughout the process the Commission became more willing to give concessions:

They want to get the Directive through and they will give away everything except market opening. [...] that's why it's so open, because the Commission didn't dare to oppose anything to the member states' (Interview 9).

The concessions contributed to solve several issues with the draft: One issue was that it did not solve the concern of how to finance universal services (for an elaboration, see Oxera 2007). France acted as a bearer for efforts of clarifying how to calculate universal services and rejected the proposal until the Commission gave admission to use state aid to support universal services (Interviews 2, 7 and 9). The Directive's appendix, which describes how to finance universal services and the methods of calculation, is a result of such negotiations. This had an effect on several reluctant member states.

Another issue was restructuring processes in countries with inefficient public postal operators (Interview 7; Interview 2). Due to restructuring problems key academic experts argued that certain countries should be given additional time to adapt (EurActiv 2007a). Poland was leading the opposition against the proposal due to such concerns. For this opposition's acceptance of the Directive, an option of a long transition period after the adoption of the Directive was crucial. Such member states were willing to accept end of 2012 as the end of transition, receiving two more years to implement the Directive than the majority of countries. In the final Directive this temporal derogation included eleven countries for reasons of joining the postal reform process at a late stage, having a small population and a limited geographical size with a particularly difficult topography or a large number of islands (Parliament and the Council 2008). After the option of a longer transition period was agreed on, such member states became more flexible with regards to other affairs (Interview 2). Other member states expressed that the temporal derogation was acceptable as it concerned small markets: 'We were not indifferent, but it was absolutely tolerable, as they are relatively small markets' (Interview 7) – it was acceptable as the exempted countries were not potentially interested in entering other countries and the other way around (Interview 5). However, for reasons of reciprocity the pro-liberalization camp would not accept derogations for other large member states, as their operators were potential competitors (Interview 7).

A third issue was a group of countries' demand to protect remote areas and vast zones from competition. Italy, which headed the opposition against the Directive for this reason, repeatedly argued, 'if we open up for liberalization processes and we have to give licenses to three or four

operators, then nobody is actually going to operate on the entire territory [...] then we need to keep some reserved areas' (Interview 2). The Commission excluded this possibility, arguing that member states through licence requirements could monitor the operators and decide what restrictions to impose on them, thereby maintaining the quality of the distribution and setting a benchmark, but having to treat every company in the same manner. As a consequence, there were discussions about whether to adopt a proposal by qualified majority, going against for example Italy or trying to give such member states something, so that they could accept the proposal (Interview 2). Eventually Italy abstained from vetoing the proposal, but was never completely convinced: 'You can never convince them [member states] completely by all means [...] we had already a strong qualified majority, but if we had the Italian delegation on our side of course it would be better' (Interview 2). In the end only Luxembourg vetoed the Directive and Belgium abstained.

In the Parliament the Social Democrats and the Christian Democrats tried to find a compromise. The struggle was dominated by the Christian Democrats, who also had the rapporteur, yet the compromise between these big groups did not succeed immediately and so the social democrats sought the liberals, which gave some concessions to the social democrats (Interview 10). As a result the Christian Democrats did not have a majority and had to make concessions. At first reading on July 2007, the Parliament extended the proposed deadline for full liberalization and included formulations to safeguard the rights of workers. It was 'an attempt to soothe detractors of the Commission's initial proposal, following heavy lobbying by a dozen incumbent operators and protest strikes by trade unions, which see liberalization as a threat to the sector's two million jobs' (EurActiv 2007b). The inclusion of social provisions was important for the Parliament's acceptance of the proposal, as they wanted to avoid a 'race to the bottom' that would result in dreadful working conditions (EurActiv 2008). To some extent the lobbying of trade unions had been effective. The final Directive states that basic labour conditions applicable in a member state will not be affected by the Directive. However, there are no strict rules on what or how to implement them. 'In that sense they [trade unions] were not successful' (Interview 8).

The trade unions argued that 'the losers will be citizens, governments and taxpayers, small and medium size enterprises, most national post offices – and postal workers. The only winners will be some big mailers and some big and mostly multinational private operators' (John Pedersen quoted in EurActiv 2007b; also Interview 6). Green and leftist parliamentarians supported the unions to a large extent, yet they were in a minority in the Parliament (EurActiv 2008; Parliament 2007b). In addition to concessions and the inclusion of some social provision, the longevity of the process mattered for the achievement of the final compromise:

I remember exactly how the question of how to finance the universal service, the quality of the universal service and all the social questions in the end played the decisive role. Again and again it was the question of working conditions and rights in the postal sector [...]. I believe that most delegates realized that it couldn't be hold back any longer. It was really becoming a never-ending story. At the point in time the story was really ten years old. We've had the Directive since 1997, where it has been seriously spoken about the final date. Then most of the delegates realized that time could not be holding it back any longer. Then there were cosmetics in the social area, so that everybody could say that they had embedded this and that (Interview 7).

In the end, the reform was more or less broadly backed. Divisions remained mainly regarding the 'when' and the 'how' so that none of the delegates would 'lose face' (Interview 3).

THE RELATION BETWEEN DIFFERENTIAL GROWTH AND MARKET-OPENING OF POSTAL SERVICE

The evidence suggests that proponents of liberalization – through differential growth – were able to get around the status quo that seemed to be unchangeable. Important for their success was the introduction of time rules and deadlines as well as concessions. The initial reform introduced minor steps at the margin. In practice there was a limiting liberalisation effect at all. Yet an element of instability between the new layer and the core policy created further pressures for reform. This was because the line between conventional and special services remained controversial, encouraging legal complaints as the established operators and the new market entrants disagreed about who were allowed to operate where. Given this new context of instability, it was considered a smart move by promoters of liberalisation to include time rules such as timetables and deadlines in the early directives. That way, they guaranteed that the issue would remain on the agenda. Opponents accepted such time rules as long as they were guaranteed extensive impact assessments and co-decision in future legislative rounds and because they represented an element of delay of liberalisation pressures.

As the timetables included dates for future liberalization, the member states had in practice given assent to future market opening. As there is a consequence pertaining to creating barriers to further integration in the Council (e.g. embarrassment, reduced chance of ‘pay back’ in the form of future concessions or side-payments) (see Novak, 2010: 93), large member states were not willing to prevent a reform that was close to being accepted, once the most critical issues had been resolved. Such solutions included differentiation in terms of modification (e.g. national authorisation criteria) and opt-outs (e.g. temporal derogations). It also included some social properties and new quality standards. These properties eased resistance against the proposal. The long duration of the decision-making process itself played a role for the willingness to agree on a compromise. Over the years the legislators had invested a huge amount of resources in impact assessments and work, trying to reach an agreement. In the end it was no longer possible to hold it back. Eventually this process of layering resulted in displacement of the rules in terms of how to organise public service provision in the postal market. In contrast, the drift that was expected to contribute to policy change due to increasing electronic substitution, did not play an important role in affecting policy change as it, according to informants, never became an important topic in the negotiations.

CONCLUSION

Although market opening in the postal sector was part of a larger trend and the Commission, market entrants and large consumer groups pushed for liberalization, radical displacement was not possible due to strong opposition from defenders of the status quo. Instead market-opening was achieved through layers of reforms, starting at the margins and moving towards the core. Together this incremental layering fundamentally changed the approach of service production from a focus on public service to an emphasis on competition.

The first small moves towards opening the postal market created instability due to claims of abuse by incumbents and encroachment by new market entrants when the rules for a reserved area remains different to the rest of the market. Under such conditions, time properties such as deadlines and timetables, which ensured future re-negotiations, played a crucial role in helping proponents of liberalization to pushing for further reform. Concessions that prevented mobilization against the new policy were also important in circumventing opposition. This occurred under the conditions of longevity of the process and social norms that make it politically costly to create barriers to further integration. Draining of the process went on so that the legislators wanted to put an end to the process of reform. However, the defenders of the status quo were to some extent able to preserve

original practices through differentiation, including modification of the policy content and ensuring certain member states temporal opt-outs. Therefore and due to decreasing volumes in the letter segment, in practice the traditional monopolies remain to a large extent in the letter segment.

Given conditions of instability in the market, social norms of consensus and longevity of the process, the introduction of time rules and concessions proved effective in opening the postal market to competition. It could suggest that as long as the EU mill grinds slowly enough, EU liberalization eventually occurs even in the most disputed areas. With increasing Euroscepticism since the outbreak of the financial crisis, the Commission has increased its emphasis on preventing harm from competition policy (Aydin and Thomas 2012). However, it remains unclear whether criticism of EU liberalization policy will result in a new approach.

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¹ Studies carried out for the Commission are listed on its web page:
http://ec.europa.eu/internal_market/post/studies_en.htm

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