



Explaining the development of EU Railway Policy: Insights from New Institutionalism

Helene Dyrhaug

School of Politics and International Studies (POLIS)

University of Leeds

Email: h.dyrhaug00@leeds.ac.uk

The development of the EU Railway Policy is explored by combining Historical Institutionalism and Rational Choice Institutionalism, where the aim is to identify DG TREN's path dependence and how this influences its interaction with other key actors within the institutional setting. In other words, the article explains the role institutions have had on DG TREN and its ability to open the railway markets within the EU to competition. By Combining Historical and Rational Choice Institutionalism this article contributes towards our understanding of the development of the EU Railway Policy and the relationship between Directorate Generals in shaping the policy, which are both areas where there is little research. Firstly, the article sets out the theoretical framework. Secondly, the framework is tested by examining path dependence which DG TREN created in establishing an EU Railway Policy. The identified long term policy preferences are then used to explain DG TREN's relationship with other Directorate Generals within the institutional setting and how their preferences determine the policy outcome.

Introduction

The EU is in the process of opening the national railways to competition and creating a European railway market that facilitate a continued flow of traffic which is not disrupted because of different technical specifications or national legislation. This has been a long process which started in 1991 but it is only within the past eight years and in particular past five years that there has been any sense of movement towards this objective. The increased legislation and progress towards an EU railway market has expanded the scope of Directorate General for Energy and Transport (DG TREN) competences and interests, the policy now touches upon Competition Policy, Social Policy, Environmental Policy to name a few. This paper therefore challenges the often-held view that the Commission is a unitary organisation, instead this paper will examine the differences between the Directorate Generals which share DG TREN's competences in the field of EU Railway Policy.

The paper will use a combination of Rational Choice Institutionalism and Historical Institutionalism to demonstrate how policy preferences are developed and how they shape the relationship between Directorate Generals for this purpose. Rational Choice Institutionalism is important due to its focus on the institutional innovation of actors; its capacity to illuminate policy style; the importance which it places on the fragmentation of actors and segmented policy making, and its capacity to explain the way in which Directorate Generals will try to impose networks on other Directorate Generals. At a different level,

Historical Institutionalism offers a long-term perspective, that focuses on path dependency and lock-in – both of which I argue are crucial to understanding the development of the EU Railway Policy. The innovation within the paper stems from its combination of insights from these two subsets of the New Institutionalism. Some (see f.x. Steinmo and Thelen 1992) contend that this combination is not suitable due to the ontological differences between the two theories. However a number of scholars have previously combined Historical Institutionalism and Rational Choice Institutionalism (see f.x. Katznelson and Weingast 2005; Johanson and Raunio 2005). This article follows the latter by applying empirical research to the theory, and argues ‘that there is room for agency and that strategic and motivated actors act within constraints. Such constraints results from path-dependent developments along with the preferences of the actors involved in the process. The process in turn is guided by the determined behaviour of prime movers, or primary actors, who serve as driving forces behind the path dependency’ (Johansson and Raunio 2005: 521).

This paper firstly examines the development of EU Railway Policy by focusing on its path dependence and the decisions taken which have created the long term policy preferences/objectives. Additionally the key policy priorities and their developments will be emphasised, this will be done with reference to the Member States who have been major obstacles to opening the railway markets and therefore has been instrumental in shaping DG TREN's preferences and creating path-dependencies. The same developments occurred to the other

Directorate Generals, who developed their policies parallel with DG TREN. Thus each Directorate General within the Commission has developed distinct path-dependencies and developed on-going agendas as a result of their individual experiences and roles as set out in the treaties. Thus it is important to recognise that actors do not exist in a vacuum, they participate in several institutional settings, which Tsebelis term a nested game (Tsebelis, 1990).

Secondly the paper will apply Rational Choice Institutionalism to discuss the interaction and relationship there exists between the Directorate Generals. Just like DG TREN the other Directorate Generals have developed their own path-dependencies which affect their policy preferences today. With the opening of the railway markets the EU Railway Policy is expanding and starts to affect other policy fields, which means that DG TREN interacts with more Directorate Generals and at times encroach on their competences. In other words, DG TREN is attempting to maximise its competences at the expense of other Directorate General – which is typical rationalist behaviour. Moreover, its relationship with the other Directorate Generals that are responsible for EU Railway Policy is determined by several factors for example the formal rules of inter-service consultation, the individual Directorate Generals' competences identified in the Treaty and to some extent informal relations between individual administrators in the European Commission. Thus, I argue that the preferences within these interactions are shaped the actors' path-dependence which in turn shapes the policy outcome.

The method used to illustrate the argument is a combination of interviews with Commission Officials and interest groups and participant observation¹. As EU Railway Policy has not attracted much attention by political scholars, the use of interviews enabled me to shed light over otherwise sketchy areas with the aim of increasing our knowledge. In short this paper will combine Historical Institutionalism and Rational Choice Institutionalism to examine the workings of the European Commission and the development of the EU Railway Policy; this will be done by placing more weight on the application of the theories than the actual theories.

Combining Historical and Rational Choice Institutionalism

The Commission is often seen as a single monolith institution, yet as the Commission (2006) and other scholars (see e.g. Nugent, Hooghe) recognise there are marked differences within the Commission. These are in general not apparent to the public as the Commission or rather the College of Commissioners, which is the political arm, and the administration, the various Directorate Generals and special services, publicly show a united front in form of Commission press-releases, speeches, communications, legislative proposals etc. (Nugent 2000: 2-6). More importantly some Directorate Generals are considered more prestigious and are often more 'powerful'. This is especially the horizontal policies, and in particular Directorate General for

¹ During my five month stage in DG TREN I was fully functioning member of the unit and as such I would consider myself to be a 'complete participant' (Bryman, 2004: 301)

Competition (DG COMP) is one of the most prestigious Directorate Generals (Cini and McGovern 1998; Nugent 2000: 5).

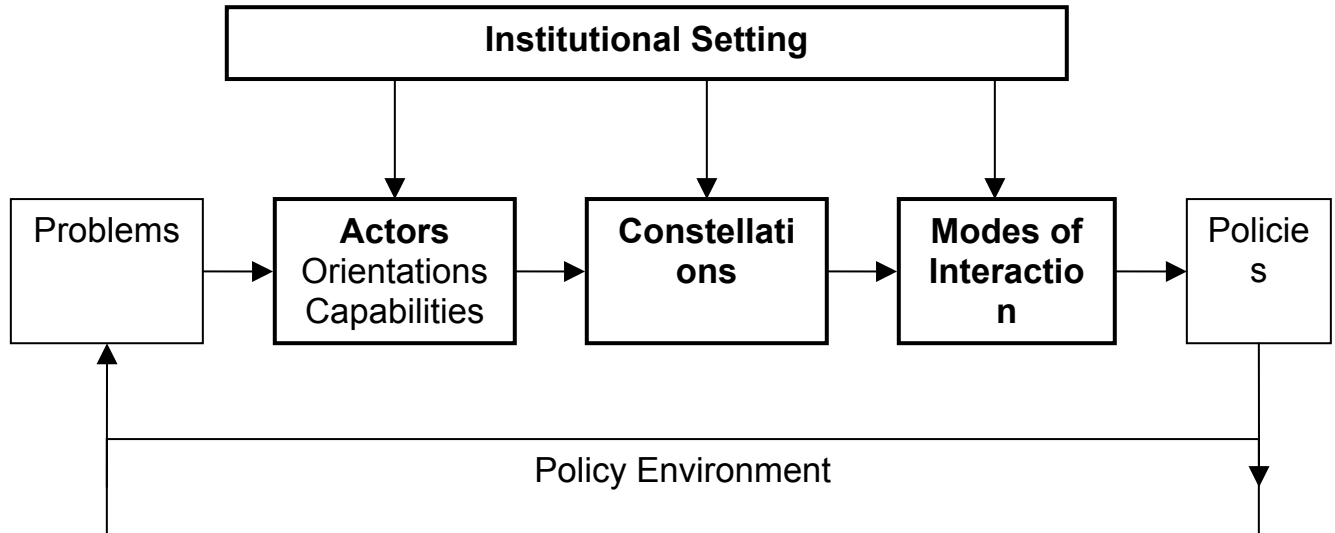
Each organisational unit, in this case Directorate Generals within the European Commission, has evolved through time. Its decisions have locked it into a path which shape future decisions and subsequently constrain actors at a later time (Pollack 2008: 3). Thus when the organisation, Directorate General, interact with other actors it will attempt to impose its preferences and network on the other actors, yet its options are constrained by previous decisions, lock-ins, and by institutional rules which determine the relationship between actors. In other words path-dependence shapes preferences which are important for the actor, and by combining Historical Institutionalism with Rational Choice Institutionalism it is possible to make the preferences endogenous to the theory.

Historical Institutionalism is, therefore, useful for understanding how institutions and policies develop, yet it lacks the ability to explain and analyse events that change the path taken. Rational Choice Institutionalism, on the other hand, has a shorter time perspective and it is more concerned with assessing 'the impacts of structure on behavior and policy' (Peters 1999: 56). Here, preferences and definitions of personal interests are exogenous to the theory, although rational choice institutionalism attempts to accommodate these failing it is only partly successful, where preferences such as a drive toward utility maximisation still remain external to the theory, while others are included in the organisation

(Peters 1999: 44). Thus, Rational Choice Institutionalism has been “inclined to designate actor preferences by imputation rather than demonstrate how they had been institutionally induced” (Katznelson and Weingast 2005: 4). By combining it with Historical Institutionalism to explain how preferences have developed this hybrid theory might be able to solve the problem with change, in that it aims to endogenize institutional change (Stacey and Rittberger 2003: 861). This entails treating institutions as both dependent and independent variables, while actors are assumed to ‘be inveterate designers of institutions’; these institutions are able to constrain the actors’ following decisions. More importantly, actors are neither equal nor living in a vacuum (Stacey and Rittberger 2003: 872-874) thus the theory recognise that there are outside factors that affect the institutional equilibrium.

The institutional setting is therefore essential to the policy making, as figure 1 below indicate there are three aspects of the institutional setting (Scharpf, 1997); firstly the actors’ preferences which have developed through time as decisions have been made, the secondly there is the constellation of actors, some will have similar preferences and can create alliances other will be marginalised as their preferences are not compatible. Finally the mode of interaction is determined by the rules, which in EU context could be co-decision policy making or as in this article interservice-consultation in the Commission. These three factors determine the policy outcome.

Figure 1 – policy environment adapted from Scharpf (1997; 44)



The following section will, therefore, draw on table 1 to explain the development of the EU Railway Policy and set out the context that Directorate Generals interact with one-another, whilst there is extensive interaction between individual Directorate Generals and non-Commission organisations, including the Council, this article mainly focuses on the intra-Commission relationship and aims to enrich our understanding of the working of the Commission and its individual Directorate Generals.

DG TREN' path dependency and its on-going agenda

The Treaty of Rome clearly sets out specific task and responsibilities that the Commission needs to adhere to and it dedicated a whole chapter to the creation of a Common Transport Policy. The Commission took this as meaning

it had to develop a common transport market, where the Common Transport Policy is set out 'to contribute in the best possible way to the development of a free, competitive, market in goods and services. Secondly, so far as its compatible with the primary objective, it should aim to achieve a free market in transport itself' (Gwilliams 1979). These objectives are reflected in the Commission' first attempt – the Schauss memorandum - to establish a Common Transport Policy (CEEC 1961: 6). DG TREN' memorandum was unsuccessful because the individual Member States all had distinct national transport ideologies and giving these different understandings of transport it is no surprise that the Council rejected the memorandum. It was too revolutionary for the Member States (Munby 1962).

Within the original six Member States the national transport priorities varied from the French interventionist style that was based on the principles of cohesion, security, employment and public service, these principles were also in place in Germany (Aspinwall 1999: 120). The German state took a long term perspective where 'economic and social development was built into both regulation and infrastructure planning' (Teutsch 2001: 137). The German transport ideology is quite similar to the French *droit de transport*. In France transport is an integral part of the social structure which affect 'the distribution of population and employment and shaping the social life of the community' (Button 1984: 11). However, the German transport policy differ in that 'economic efficiency of the sector is the corner stone of the regulatory regime'

(Teutsch 2001: 166). By comparison the French state is more concerned with the social aspects of transport.

The Netherlands have traditionally had a more liberal approach where transport acted as a facilitator of the industry's needs (Aspinwall 1999: 120). The Dutch perception on transport is often grouped with British 'Anglo-Saxon Philosophy', which is a commercial approach, where the aim is to maximise efficiency (Button 1984: 11). Moreover, the competitiveness of the Dutch transport sector is often linked to the prosperity of the Dutch economy (Lehmkuhl 2001: 218).

These differences and the Commission's inability to make proposals that could satisfy all Member States affected the Common Transport Policy. Over the next few decades proposals were adopted in piecemeal and mostly focused on tariff reduction in the field of road haulage. Moreover, in 1962 the Council adopted regulation 141/62 which exempted all inland transport modes from the competition chapter (Stevens 2004: 104). The regulation has only just been revoked. This exemption was based on the assumption that the transport sector possessed some distinct features that were not suitable for competition, although the regulation was replaced in 1968 by regulation 1017/68 which almost applied the competition regulations in full (Goyder 1998: 80). Thus the Council had not changed its position and the Commission still struggled with its proposals and was unable to create proposals that satisfied all Member States. In 1973, after the first enlargement the Commission published a communication

on the development of the Common Transport Policy, and 'the ideas in the 1973 communication were not totally divorced from the objectives set out in the 1961 Memorandum' (Abbati 1987: 67). Again the Council did not take notice of the Commission and there was little action taken (Abbati 1987: 68). Consequently, the 1973 enlargement did not to change the Council' position with regards to the Common Transport Policy.

Although DG TREN has from the start been active in pursuing the opening of transport markets to facilitate the increased trade and mobility its initial strategy was not successful. The critical junction came in the mid 1980s where the European Parliament, which has long been supportive of the market opening and often makes amendments to speed the process up, under article 175 of the treaties (now article 232) brought legal actions against the Council of Ministers for its inability to make decisions with regards to article 74 and 75 of the treaties (now article 71 and 72) – the creation of a Common Transport Policy, here the European Court of Justice (ECJ) decided that the Council had failed to act in establishing a Common Transport Policy (Greaves 1991). Around the same time the ECJ made decisions on specific transport cases (see e.g. *Nouvelle Frontiers*) which supported the Commission' objectives. Furthermore, the Single European Act with its realisation of the Single European Market "restructured the public sector, and creat(ed) a central role for politicians in the restructuring" (Peters, Pierre and King 2005: 1284). Finally, by the 1980s the situation in the Member States railway markets were dire and many railways were affected by

financial crisis and several Member States were looking into restructuring their sectors, the options considered and adopted were wide-ranging from liberalisation, privatisation over to state intervention and fuelling the railways with more state aid. In general it seemed that the railways were incapable of adjusting to the changes in demand and the way people travel. Thus these factors created an opportunity for DG TREN to re-launch the Common Transport Policy. From a Historical institutionalism perspective, this is also termed 'formative moments', where 'public policy is assigned new objectives, new priorities are established, and new political and administrative coalitions evolve to sustain those new policies (North 1990, Steimo, Thelen and Longstreth 1972)' (Peters, Pierre and King 2005: 1276). One can question whether DG TREN established new objectives; instead its priorities finally converged with those of the Member States, and enabled it to push for market opening. This is also conceptualised by Bulmer and Burch who describe a critical junction as 'when an opportunity arises for significant change, such opportunities may not be realised and exploited, but if they are, the outcome is a critical junction' at which there is a clear departure from the previous patterns (Bulmer and Burch 2001: 81). Here market liberalisations and harmonisations can be considered to be critical junctions, where the EU (then EC) moved from stalemate to action and deepening integration.

One of the key aims of the EU Railway Policy is to ensure that the railway markets become competitive and stop the decline in modal share by shifting the

balance away from road and air transport (CEC 2007). Nonetheless, the first railway legislation which took step towards market based regulation was adopted in 1991 and it took another ten years for the First Railway Package to be adopted, the break was not due to DG TREN inefficiency, it published several proposals, instead the Member States continued to disagree and were not able to adopt the proposals which had to be withdrawn by DG TREN.

Despite being a heavy financial burden for the state the railways were often the last national transport mode that was privatised/liberalised, often Member States continued to provide extra funds to the railways which perpetuated the vicious financial cycle and Member States would interfere in the management of the railways which further worsen the situation. The reason for the slow market opening and 'the modern problems of rail not only stem from rigid and inefficient state organizational structures but from attitudes and transport philosophies that developed over a long period and have proved extraordinary resistant to change' (Ross 1998: 64). Consequently, DG TREN changed strategy from a full-blown liberalisation to a step by step approach, similar to the one seen in the EU Airline Policy.

The gradual opening of the EU railway markets started in 2001 with the adopted of the first package, which reduced state interference and created fair allocation of capacity. In 2004 the second package was adopted, it continued the line taken by the first package by opening the freight markets and was followed up

by the third package, which was adopted in 2007. It took on social policy and more passenger oriented issues. The three packages combined and Directive 91/440 creates an open railway market within the EU. Moreover, the step by step process gives the Member States time to adjust their national markets to competition.

Table 1 – comparing airline and railway market packages

	Airline Market Opening	Railway Market Opening
		Directive 91/440 - separating accounts between railway operation and network
1st Package	1987	2001
	<ul style="list-style-type: none"> - Allocation of slots - access and fares 	<ul style="list-style-type: none"> - allocation of slots and charging - railway licence - Technical – interoperability
2nd Package	1991	2004
	<ul style="list-style-type: none"> - Mutual recognition of pilot and air traffic controllers' licences - charging - opening air freight - safety certification 	<ul style="list-style-type: none"> - Creation of European Railway Agency - Opening freight – international and domestic (including cabotage) - Safety directive - Technical – interoperability
3rd Package	1992	2007
	<ul style="list-style-type: none"> - opening of domestic routes (cabotage 1997) - airline licensing 	<ul style="list-style-type: none"> - train drivers certificate - open access for international Passenger service (cabotage from 2010) - passenger rights

As the above comparative table indicates the steps in the processes of opening the railway and airline markets vary but the structure and the objectives are the same. More importantly, the structure of separating the operators from the infrastructure – vertical separation – is shared amongst both sectors. Although complete vertical separation is favoured by DG TREN and DG COMP the framework directives allow for some vertical integration, for example in Germany Deutsche Bahn is both infrastructure manager and railway operator whilst in Sweden the Infrastructure Manager Banverket is completely separated from the national railway undertaking SJ. Thus EU railway market opening as a whole has clearly developed the same template for opening markets. This path dependence plays an important role in Historical Institutionalism where past decisions lock the decision-makers into a path and consequently limit their future decisions. In other words, Historical Institutionalism 'can explain, through institutionalist lenses and without a teleology of integration, the involvement of key actors in the transfers of competence at particular junctures of the integration process' (Armstrong and Bulmer 1998: 54). DG TREN is aware of the impact EU decision-making have on future policy and believes that 'any future policy orientation for the (Common Transport Policy) CTP should take into account past and current developments in this field' (CEC 2006: 5 and 41). The historical aspect of Historical Institutionalism 'recognizes that political development must be understood as a process that unfolds over time' (Pierson 1998: 29). It forms a part of the 'theory of constraints, that is, its explanation of how ideas and institutions limit the range of possible solutions that policy

makers are likely to consider when trying to resolve policy problems' (Campbell 1998).

The Commission, most notably DG TREN, has continuously championed a Common Transport Market for all transport modes, which for reasons mentioned above was rejected until the Member States' preferences started to change and converge with DG TREN's objectives. The opportunity was exploited by DG TREN, who was able to push its idea of market opening through and start the opening of the railway markets. The process lends itself to the same that was used for the airline deregulation, which implies that DG TREN is locked into one path and has not been able to distract from this in order and has not needed to as the path has proved to be successful since it has opened the transport markets and thus achieved the objectives set out in the Shauss Memorandum.

Thus the on-going agenda by DG TREN to creating a Common Transport Market with open and fair competition is an example of Historical Institutional lock-in. In other words, a lock-in of formal institutions means 'that bodies such as the Commission acquired distinctive and on-going agendas' (Rosamond 2000: 117). The focus on path-dependence and lock-in produces an unclear relationship between structure and agency. Subsequently, Historical Institutionalism is now concerned with how individuals, for example DG TREN, relate to institutions (Peters 1999: 71). Especially lock-ins provides the actor

with the ability to act or as Pierson (1996) argues that preceding decisions (paths) make previously possible alternatives unlikely, here Historical Institutionalism is good at explaining patterns and not how these might change, instead it has a tendency to overemphasise 'permanence of institutions' (Lindner 2003: 916). Thus the next section will combine Historical Institutionalism and Rational Choice Institutionalism, the aim is to make DG TREN's preferences endogenous and emphasis on how these patterns are used within the institutional setting to gain an advantage over the other Directorate General.

DG TREN' alignment with other Directorate Generals

The actor's relationship to the other actors within the institutional setting is determined by its preferences and thus its path-dependence. The combination of Historical and Rational Choice Institutionalism provide us with better understanding of the interaction between actors and their development of preferences. The actor, according to Rational Choice, 'want things, and they act in such as way as best to obtain what they want' (Jupile et al 2003: 12). An actor will therefore form alliances with other actors who have similar preferences to ensure that its policy preference will be chosen, whilst at the same time trying to marginalise actors who have different preferences. Here the actor engages in a web of alliances to ensure that it will expand its competences. This web of alliances vary from policy issues to policy issue and from one institutional setting to another. The following section will focus on actor constellation and their mode of interaction in other words the section will

examine the nested game there exist between the concerned actors, here DG TREN is the most important actor since it has the overall responsibility for the Common Transport Policy and within this the EU Railway Policy. The assumption is that 'DGs tend to be protective of what they consider to be their own sphere of policy influence, in some cases even seeking to 'steal' policy competences from elsewhere in the Commission. Demarcation disputes are not uncommon' (Cini 2000: 76). Subsequently it is important for each Directorate General to assert its power and be a successful actor, not only with regards to the Council and Parliament but also with regards to other Directorate Generals. The analysis will show how the nested game influence market opening in the field of Railway and how it has affected DG TREN's relationship with other Directorate Generals, here the attention will be on DG COMP, Directorate General for Environment (DG ENV) and Directorate General for Employment and Social Policies (DG EMPL). This relationship is explained in figure 2, which take the Common Transport Policy as point of departure and show the Commission actors that have a share in the policy.

Figure 2 does not show the Directorate Generals preferences, values or internal cultures. Indeed 'significant distinctions may be found between DGs with horizontal mandates versus those with specific task descriptions; DGs with a strong treaty base or money to spend versus those with these resources; DGs responsible for free market policies versus DGs responsible for social regulation'(Hooghe 2000: 107). In practice this means that DG COMP is more

prestigious (Cini and McGowan 1998; Nugent 2000: 5). It has a strong treaty basis, and since competition policy (with a few exceptions) reaches across all the other policies and in comparisons to other Directorate Generals it has regulatory powers that enable it to influence the market without consulting the Council or Parliament. DG ENV, on the other hand, is often mentioned as a marginal actor within the Commission (Weale et al; 2000). These factors are important in the constellation between the actors and will affect the mode of interaction, where an actor like DG ENV is more likely to be marginalised than an actor like DG COMP, even though the institutions determining the interaction is not biased towards either actor.

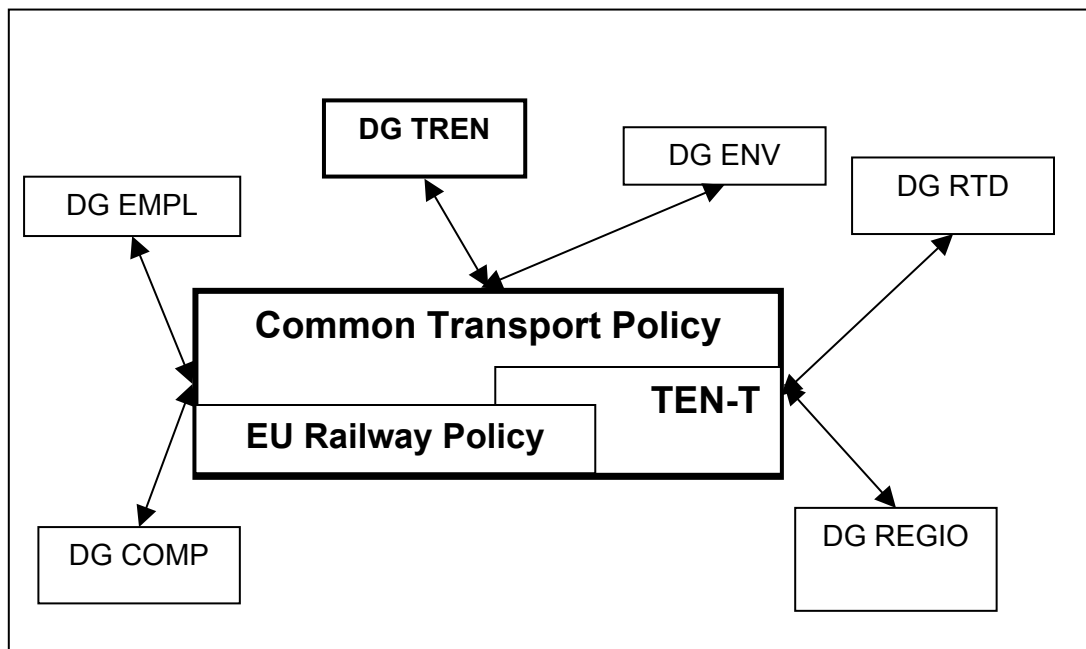


Figure 2 – the actors responsible for the Common Transport Policy

Modes of interaction – the rules of engagement

The interaction between the involved actors is defined by institutions which dictate the method of formal communication. Rational Choice perceive actors as rational, their preferences are considered to be constrained by the institutions, and they 'are all characterized by specific *capabilities*, specific *perceptions*, and specific *preferences*' (Scharpf 1997: 43), which they will use in interaction with other actors within the institutional settings. An actor's capabilities are important for the policy outcome, since they include all the resources that the actor has available to influence the outcome (Scharpf 1997: 43). These spans from financial to personal resources on which the actor can draw to achieve the desired outcome and the capabilities can be important for the outcome as they differ from actor to actor.

The definition of institutions varies from scholar to scholar but there is a consensus; that institutions are rules. Within the EU there are several institutional rules, including co-decision where the European Parliament and the Council are equal and Consultation where the Council is more influential than the Parliament. Within the Council the Member States have Veto rights or Qualified Majority Voting (QMV), the latter is applicable to the Common Transport Policy. QMV was extended to the Common Transport Policy by the Single European Act and it changed the dynamics within the Council, this in turn lead to further integration and opening of the transport markets, although the process has still been slow. By comparison the Commission's inter-service

consultation has received less attention from scholars than treaty changes and co-decision.. The augmented workload in the Commission has made it more difficult for each Directorate General to follow and monitor what other Directorate Generals are doing. To prevent inconsistent and contradictory policies and proposals, formal rules have been adopted for inter-service consultations. Here

'the department responsible for preparing a Community initiative shall contact departments associated or concerned and the Secretariat-General as soon as work begins, to inform them of the timetable for the measure in question and enable them to cooperate at an early stage, notably where national government departments, experts or other outside agencies are to be consulted during the drafting process.... Where a department consulted or associated has not reacted within the time allowed, it shall be deemed to have given its agreement.' (C(2001)1: 12).

Notwithstanding these rules, there are often sharp differences between some Directorate Generals, and often the Directorate Generals will keep their inter-service consultation to a minimum or where possible use informal contacts in other Directorate Generals in order to retain as much power over the policy/proposal as possible.

This is seen in the initial preparation for Directive 2007/59 on train drivers' certification, which DG TREN was responsible for. DG TREN's proposal was initiated at the same time as the Social Partners started negotiations on the same topic within the framework of the social dialogue. Instead of waiting for the Social Partners agreement and let the Council adopt the agreement within the framework of Social Dialogue DG TREN deliberately chose to base the

proposal on Directive 2004/49/EC – the Safety Directive – which enabled it to minimise the role of the Social Partners and DG EMPL. Under this institution DG TREN is only required to meet with the Social Partners twice, which it did. Clearly the Social Partners were not satisfied with this and felt excluded from the policy-making (interviews with the Social Partners and administrators in the Commission, 2007). The actual structure and content of the Social Agreement and DG TREN proposals differ substantially, yet DG TREN accepted the annex in the Social Partners' agreement in full which is unheard of. Nonetheless, the input from the Social Partners was limited. The example illustrates one of the 'fundamental argument of the rational approaches (which) is that utility maximization can and will remain the primary motivation of individuals, but those individuals may realize that their goals can be achieved most effectively through institutional action, and find that their behaviour is shaped by the institutions' (Peters 2005: 48). By choosing safety as a basis for the proposal DG TREN retained its control over the EU Railway Policy and was able to take a share of DG EMPL' competences. This is not the first time DG TREN uses this strategy the certification of air traffic controllers shows a similar pattern. More importantly, during the preparatory phase of the proposal there were several informal meetings between administrators from DG TREN's units for rail, air and road to discuss the proposal, and ensure that the train drivers proposal remained similar to existing directives in other transport modes, this comparison can be seen in the explanatory memorandum in the final proposal (COM(2004)142). The latter example indicates a strategic choice by individual

DG TREN administrators to share experiences, which will further the overall objectives of the Directorate General.

The same can be seen in the current consultation on noise abatement on railway wagons and locomotives, this is generally an area where DG ENV is responsible and it is responsible for a Directive on noise abatement (Directive 2002/49) but DG TREN has taken the lead in the consultation and in writing the proposal, which again show how DG TREN used existing Railway legislation – the Directives on Interoperability – to take on new competences. DG TREN is showing a distinct pattern in terms of developing the EU Railway Policy, which from Historical Institutionalism can be explained through path-dependencies where DG TREN' on-going agenda is to increase its role and responsibilities within the policy, this expansion of competences are sometimes at the expense of other Directorate Generals such as DG EMPL and DG ENV.

A different type of interaction is bilateral meetings between DG TREN and DG COMP, which occur on a regular basis, having attended a few of these bilateral meetings during my internship in DG TREN I know that the aim of these meetings is to exchange information on the development of the EU railway markets. More precisely to identify where there might be potential for DG COMP to take action against individual undertakings and to discuss how the transposition of the EU Railway Acquis is progressing in individual Member States. Moreover, DG COMP often informs DG TREN on progress of any cases

it is dealing with. Through these meetings the two Directorate Generals are able to combine their competences and share information which furthers their shared objective of creating a competitive railway market within the EU.

Several scholars (see e.g. Aspinwall and Cini) have claimed that DG TREN and DG COMP do not have a good relationship because they have different perspectives. Aspinwall states that DG COMP represent the consumers interests whilst DG TREN represent the operators interests (Aspinwall 1999: 121). This is true for EU maritime policy, where DG TREN opposed liberalisation while DG COMP supported it, an interviewee from a European transport interest group suggested that the objections by DG TREN came from the Greek officials within DG TREN's maritime directorate because it would not be in the interest of Greek shipping sector (interview with transport interest group 2007). As the previous example show there is a good relationship between DG TREN and DG COMP on opening the railway markets, the two examples highlight the heterogeneous nature of DG TREN.

Institutions and actors' preferences determine policy out-come

Today DG TREN has a strong position and its positive working relation with DG COMP regarding the railway market opening has increased its position. More importantly it has learnt from past rejections which show a difference in defining transport where the Commission initially favoured a laissez-faire policy, while the states preferred a corporatist model (Button 1984). This partly explains the Member States resistance towards developing the Common Transport Policy

and the rejections by the Council were the main obstacles to developing the policy. Furthermore it begs the question of why DG TREN was not better at promoting its ideas. In comparison Directorate General for Agriculture (DG AGRI) was much more successful in establishing the Common Agriculture Policy, which is the one other policy field that has a dedicated chapter in the Rome Treaty. Lindberg and Scheingold (1972) argues that the diverse success by the two different Directorate Generals can be attributed to the skills of Mansholt (former Commissioner for Agriculture), who targeted the proposals to serve the interest of the Member States, while also using his connections to national governments and the sector. The DG TREN by contrast, accordingly to Lindberg and Scheingold (1972), did not do this or indeed learn from its mistakes so that it could reshape its proposals. Perhaps, most importantly Lindberg and Scheingold argue that national transport sectors were not seen as failures and subsequently there was no need to take action at Community level, whereas the food shortage during the war had Member States to think that there was a greater need for a Common Agriculture Policy. Another important influence was the wording of the Agriculture Chapter. It was more focused and clearly set out actions and objectives that DG AGRI should work towards. Consequently, the policy outcome was hampered by the institutions as the Member States constantly rejected DG TREN's proposals to restructure the national railways and opening them to competition. More importantly as Lindberg and Scheingold (1972) argues DG TREN was not a good strategic actor and did not try to adopt its proposals to accommodate the Member States

preferences, which possible could have led to market opening sooner and would have increased DG TREN' competences. This is supported by Ross who argues that the absence of leadership within the DG TREN severely hampered the Community's ability to create a Common Transport Policy (Ross 1998: 45).

Returning to the relationship between the DG COMP and DG TREN, which can be explained by Rational Choice Institutionalism's perception on institutions is the 'capacity to produce collective rationality from rational individual actions that might, without the presence of the institutional rules, generate collective irrationality' (Peters 2005: 49). Thus, without the rules, such interaction could ultimately lead to collapse and anarchy as described in Hardin's "Tragedy of the Common" (Hardin 1968). Nevertheless instability is rarely in the interest of the actors, who are more inclined to liaise if they believe it will benefit them. In other words;

'institutions are weapons of coercion and redistribution but they also help to migrate collective action problems; they provide enforcement mechanisms for agreements and penalties for defections; (EU) political institutions structure relationships among legislators, organised interests, political parties and the electorate; institutions are resistant to redesign ultimately because they may incorporate vested interests in their standard operating procedures' (Mulé 1999: 146).

DG COMP is often considered to believe in 'individualism and, alongside it, a faith in the consumer, a distrust of big business and a dislike of interference by the state in the workings of the market' (Cini and McGowan 1998: 51). If there is a change in institutions DG COMP could potentially loose its strong hold on the regulation of the Single Market, which it naturally is not interested in.

therefore through alliances with DG TREN in the field of railways, it is in a stronger position to maintain its regulatory powers. In general, the positive relationship between DG TREN and DG COMP produces a win-win situation for those actors who want market opening in the field of railways.

The role of DG EMPL is less important to DG TREN, since there is only a limited scope for social policy such as working time and training. Both aspects have led to agreements between the Social Partners within the framework of Social Dialogue. DG EMPL's role within the Social Dialogue is to facilitate the dialogue (interviews with Social Partners and administrators from the European Commission, 2007). It does not promote its preferences in the same way as DG TREN and DG COMP do. Instead DG EMPL is less vocal within the transport sector and leaves the activities up to the Social Partners in each of the transport modes.

By comparison DG ENV is vocal but it has, from the beginning, been perceived as being staffed by 'ecological freaks' but it has slowly moved towards more mainstream ideas (Cini 2000: 80-81). It places emphasis on shared responsibilities with other Directorate Generals (Burchell and Lightfoot 2001: 103). The other actors' perceptions of DG ENV have severely hampered its ability to increase its competences and it is often at odds with other Directorate Generals which creates to conflicts within the Commission. There are clear comparisons between DG ENV and the struggle DG TREN had in the early

days, yet the inherent problem for DG ENV is that industry's primary concern is not the environment but market regulation. Even with the current focus on sustainable development all industries will only apply environmental restrictions as far as they perceive it to be economic viably and if forced by legislation. Despite the 2001 Transport White Paper and the 2006 Mid-Term Review, which both emphasis sustainable development and especially the environmental credential of railways, DG TREN main concern is market opening. In short, unless the institutional setting changes to favour DG ENV its preferences will remain marginal to railways, which is ironic since the railway sector depends on its environmental credentials when it is arguing for a modal-shift away from road and air transport.

Conclusions: Developing an EU Railway Policy – institutional insight into DG TREN

This article has showed how the development of EU Railway Policy can be explained by path dependence and the decisions taken which have locked the policy into a specific path. It has highlighted the key policy priorities of the different Member States which have delayed DG TREN development of the the policy. Moreover, the paper applied Rational Choice Institutionalism to the relationship between the Directorate Generals, which are involved in shaping EU Railway Policy. It found that DG TREN in recent years has been more successful in controlling the policy development than it was in the first 30 years of the Community. Here the institutions between DG TREN and the Council did

not help it, whereas the institutions between DG TREN and the other Directorate Generals have been more supportive for its policy preferences.

This article has shows how the initial struggle by DG TREN to develop EU Railway Policy was constrained by institutions where it needed the Member States approval of its proposals. Following the change in Member States preferences from interventionism to acceptance of more market focused policy, ECJ decisions and institutional change (for example QMV and further co-decision making) the changes have helped DG TREN's objectives. Its competences have expanded and it has taken over other Directorate Generals' competences through the use of existing technical legislation, which means that not only is DG TREN using legislation to justify further legislation but the previous legislation has created a path-dependence, which DG TREN is using to its advantage. Today DG TREN has learnt from the first 30-40 years of rejections by the Council, during this period it lacked strategic insight and was unable to progress with the development of the Common Transport Policy. Moreover, it has cultivated a good relation with the dominate Directorate General, DG COMP, which it hopes will further its objective of creating a competitive railway market in the EU, whilst using the legislation to "steal" competences from other Directorate Generals.

Finally, this article has contributed towards our understanding of the internal workings of the Commission – the relationships between individual Directorate

Generals - and the development of the EU Railway Policy, which are both areas that need to be explored through further research. Combining Historical and Rational Choice Institutionalism contributes towards our understanding of the development of EU Railway Policy and the relationship between Directorate Generals in shaping the policy. While I recognise that the fit between Historical Institutionalism and Rational Choice Institutionalism is not complete, this article has shown that there is evidence for using the subsets in tandem, yet this combination needs further fine-tuning to properly assess their application.

Bibliography

Abbati, Carlo Degli (1987). *Transport and European Integration*. Luxembourg: Office for Official Publications of the European Communities

Armstrong, Kenneth. A. and Simon. J. Bulmer (1998). *The governance of the single European market*. Manchester, Manchester University Press.

Aspinwall, Mark (1999) "Planes, trains and automobiles transport governance in the European Union". in Beate Kohler-Koch and Rainer Eising, eds. *The transformation of governance in the European Union*. London: Routledge/ECPR.

Aspinwall, Mark and Gerald Schneider (2001). "Institutional research on European Union: Mapping the field" in Gerald Schneider and Mark Aspinwall eds. *The rules of integration: Institutionalist approaches to the study of Europe*. Manchester, Manchester University Press.

Bryman, Alan (2004). *Social Research Methods*. Oxford: Oxford University Press. 2nd edition.

Bulmer, Simon and M. Burch (2001). *The 'Europeanisation' of central government: the UK and Germany in Historical Institutionalist Perspective*. in Gerald Schneider and Mark Aspinwall eds. *The rules of integration: Institutionalist approaches to the study of Europe*. Manchester: Manchester University Press.

Burchell, Jon and Simon Lightfoot (2001). *The greening of the European Union? Examining the EU's environmental credentials*. London, Sheffield Academic Press.

Button, Kenneth. J. (1984). *Road Haulage Licensing and EC Transport Policy*. Aldershot: Gower Publishing Company Limited.

Campbell, J. L. (1998). "Institutional analysis and the role of ideas in political economy." *Theory and Society* 27: 277-409.

Cini, Michelle (2000). "Administrative Culture in the European Commission: The Case of Competition and Environment". In Neill Nugent ed. *At the Heart of the Union Studies of the European Commission*. Basingstoke: MacMillan Press Ltd.

Cini, Michelle and Lee McGowan (1998). *Competition Policy in the European Union*. Basingstoke: MacMillan Press Ltd.

Commission of the European Communities (CEC) (2006) "Commission staff working document: Impact Assessment of the Communication "Keep Europe

Moving” Sustainable mobility for our continent. Mid-term review of the European Commission’s 2001 Transport White Paper.” COM (2006) xx FINAL

Commission of the European Community, (2004) “Proposal for a directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community’s rail network” COM(2004) 142 Final

Commission of the European Communities (2001) “rules of procedure for the Commission”. C(2001)3614

Commission of the European Communities (2001) “Rules to give effect to the Rules of Procedure of the Commission”. C(2001)1 FINAL

Commission of the European Economic Community (CEEC) (1961). “Memorandum showing the lines on which the common transport policy should be based”. Luxembourg: Office for Official Publications of the European Communities.

Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community

Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise.

Goyder, D.G. (1998). EC Competition Law. 3rd edition, Oxford, Oxford University Press.

Greaves, Rosa (1991). Transport Law of the European Community. London & Atlantic Highlands, NJ, Athlone

Gwilliams, K. M. (1979). “Institutions and objectives in transport policy” Journal of Transport Economics and Policy, VII. Paged 11-27

Hardin, Garrett (1968). “The Tragedy of the Commons”. Science, 162(3959): 1243-1248

Hooghe, Liesbet. (2001). The European Commission and the integration of Europe images of governance. Cambridge, Cambridge University Press.

Hooghe, Liesbet (2000). “A House with Differing Views: The European Commission and Cohesion Policy” in N. Nugent ed. At the Heart of the Union Studies of the European Commission Basingstoke: MacMillan Press Ltd/Palgrave. . 2nd edition.

Johansson, Karl Magnues and Tapio Raunio (2005). "Regulating Europarties Cross-Party Coalition on Incomplete Contracts". *Party Politics* 11(3); 515-534.

Jupille, J., Caporaso, J. A. and J. T. Checkel (2003). "Integrating Institutions Rationalism, Constructivism, and the Study of the European Union". *Comparative Politics*. 36(7): 7-40.

Katznelson, Ira and Barry R. Weingast (2005). "Intersection between Historical and Rational Choice Institutionalism" in Ira Katznelson and Barry R. Weingast eds. *Preferences and Situations: Points of Intersection between Historical and Rational Choice Institutionalism*. Sage.

Lehmkuhl, Dirk (2001). "From Regulation to Stimulation: Dutch Transport Policy in Europe". in Adrienne Hériter, Dieter Kerwer, Christoph Knill, Dirk Lehmkuhl, Michael Teutsch and Anne-Cécile Douillet, *Differential Europe the European Union impact on national policymaking*. Oxford: Rowman and Littlefield.

Lindberg, L. and S. Scheingold (1972). *The Failure of the Common Transport Policy: A Comparison with the Success of the Common Agriculture Policy*. European Integration – Selected Readings. M. Hodges. Harmondworth, Penguin Books.

Lindner, Johannes (2004). "Institutional stability and Change: two sides of the Same Coin". *Journal of European Public Policy* 10(6): 912-935

Mulé, Rosa (1999). "New Institutionalism: Distilling some 'Hard Core' Propositions in the Works of Williamson and March and Olsen." *Politics* 19(3): 145-151.

Munby, D.L. (1962) "Fallacies in the Community' Transport Policy". *Journal of Common Market Studies*, 1(1): 68-78

Nugent, Neill (2000). *At the Heart of the Union*. At the Heart of the Union Studies of the European Commission. 2nd edition. N. Nugent. Basingstoke, MacMillan Press Ltd.

Peters, B. Guy, Jon Pierre and D. S. King (2005). "The Politics of Path Dependency; Political Conflict in Historical Institutionalism". *Journal of Politics*, 67(4), pp 1275-1300

Peters, B. Guy (2005). *Institutional Theory in Political Science the 'New Institutionalism'*. 2nd edition. London, Continuum

Peters, B. Guy (1999). *Institutional Theory in Political Science the "New Institutionalism"*. London, Continuum.

Pierson, Paul (1998). *Path to European Integration: A Historical Institutional Analysis*. European Integration and Supranational Governance. W. Sandholtz and A. Stone Sweet. Oxford, Oxford University Press.

Pollack, Mark A. (2008). "The New Institutionalisms and European Integration" Webpages on Constitutionalism and Governance Beyond the State. *ConWEB*, vol. 1/2008. www.bath.ac.uk/esml/conWEB accessed: 28th April 2008.

Scharpf, Fritz W. (1997) *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. Boulder, Colorado, Westview Press.

Stacey, J. and B. Rittberger (2003) "Dynamics of Formal and Informal Institutional Change in the EU". *Journal of European Public Policy* vol. 10(6): 858-883

Stevens, Handley (2003). *Transport Policy in the European Union*. London, Palgrave MacMillan.

Rosamond, Ben (2000). *Theories of European Integration*. London, MACMILLAN PRESS LTD.

Ross, John F.L. (1998). *Linking Europe Transport Policies and Politics in the European Union*. London, Praeger.

Teutsch, Michael (2001). "Regulatory reforms in the German transport sectors: how to overcome multiple veto points" in Adirenne Hériter, Dieter Kerwer, Christoph Knill, Dirk Lehmkuhl, Michael Teutsch and Anne-Cécile Douillet, *Differential Europe the European Union impact on national policymaking*. Oxford: Rowman and Littlefield.

Thelen, Kathleen and Sven Steinmo (1992). "Historical institutionalism in comparative politics" in Sven Steinmo, Kathleen Thelen and Frank Longstreth eds. *Structuring politics historical institutionalism in comparative analysis*. Cambridge: Cambridge University Press.

Tsebelis, George (1990). *Nested Games Rational Choice in Comparative Politics*. Berkeley: University of California Press.

Weale, A, G. Pridham, M. Cini, D. Konstadakopulos, M. Porter and B. Flynn (2000). *Environmental Governance in Europe: An Ever Closer Ecological Union?*. Oxford, Oxford University Press