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Dynamic Multi-Level Governance – Bringing the Study of Multi-Level Interactions into the Theorising of European Integration*

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Abstract: This article aims to fill a gap in the theoretical literature on European integration by providing a dynamic and multi-level explanatory framework of the dynamics of European integration – defined as the locus of governance shifts from the national to the European level. While with the development of governance approaches, the multi-actorness of the EU has been taken into account, the objective of understanding how interactions between different actors explain dynamics of *integration* has been abandoned. Thus, the article shows that by focusing on dynamic patterns of interaction between subnational, state and supranational actors, some core dynamics of the European integration process can be better captured. A dynamic and multi-level model of interaction, termed 'reversed intergovernmentalism', is proposed here. The model posits that governments' intervention at the EU level often takes place as a reaction to developments orchestrated by Community institutions, but that, through their reaction, states in turn foster both the process of integration and another form of EU intervention in such a way that the very nature of EU integration can also divert from initial EU agendas. Setting itself against existing theories of European integration, the argument shows that integration dynamics can only be fully understood within a process of interaction and reciprocal feedback between actors at different levels of governance.

Keywords: integration theory, neo-functionalism, intergovernmentalism, multi-level governance, negative integration, positive integration, social policy, political science

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1. Introduction

This article fills a gap in the theoretical literature on European integration by providing a dynamic and multi-level explanatory framework illuminating some facets of European integration – defined here as the locus of governance shifts from the national to the European level. While theories of European integration have been successful in shedding light on core aspects of integration and institutional change, accounts from both ends of the theoretical debate, 'intergovernmentalists' and 'supranationalists' alike, suffer from the same inability to capture how *interactions* between subnational, state-level and supranational actors interplay in those processes. With the so-called 'governance' turn, new approaches were applied to the study of the EU – departing from the observation that if the 'beast' (Puchala 1999) was to look increasingly like a state, comparative politics theories would be useful in revealing aspects of its functioning. Governance approaches started to focus on the daily politics of the EU as the key to understanding institutional change. The 'multi-level governance' model (Hooghe and Marks 2001), for its part, provided a first attempt at capturing more accurately interactions between actors at different governance levels. Without doubt, the application of theories of comparative politics to the study of the EU allowed scholars to shed light on formerly under-examined aspects of EU policy-making processes. Yet, if the multi-level nature of EU policy-making was revealed with the governance turn, the objective of understanding how interactions between subnational, state-level and supranational actors explain locus of governance shifts was abandoned. The aim, here, consists therefore in elaborating a dynamic model of interaction between actors at different governance levels – and showing how this can help us explore some of the core dynamics of the European integration process. First, rather than picturing the static 'multi-actorness' of EU policy-making, a dynamic model can explain how developments in one institutional venue *induce* developments in other venues, or, in other words, how actions by one set of (institutional) actors can induce actions by another set of actors that were formerly passive. Second, it can allow us to make clear that these interactions do not only characterise the EU decision-making system once in place, but are at the very heart of the dynamics of integration. Thus, building a dynamic multi-level model should shed light on new *paths* of EU policy integration. Jachtenfuchs and Kohler-Koch (1996) have already characterised the EU as a 'dynamic multi-level system', where 'dynamic' refers to the permanent process of institutional change, and 'multi-level system' to the multi-actorness nature of the EU decision-making process. Yet, they do not explain how multi-level interactions between actors provoke the very process of integration and institutional change.

After discussing the grounds for developing a new conceptual approach, the article proposes one possible dynamic multi-level model termed here 'reversed intergovernmentalism'. Essentially, the model posits that when EU institutions – the European Commission and the European Court of Justice (ECJ) – use their judicial, regulatory and agenda-setting powers respectively, this may trigger member states' attempts to reorient the EU policy-making process to their preferred directions. Thus, governments' intervention at the EU level often takes place as a reaction to developments orchestrated by Community institutions. Crucially, however, their intervention in turn *fosters* and *changes the nature* of European integration. Needless to say, other dynamic models of interactions exist. The reverse process, in which member states initiate the delegation of competences at the EU level, but unexpectedly lose control over policy, has already been captured quite successfully by institutionalist approaches. In the 'institutionalist' mode, initiators of integration are member states, but EU institutions extend their remit more widely than was initially foreseen. European institutions use narrowly-defined competences in an extensive fashion, gaining control over policy in ways that were formerly unexpected by governments. The 'reversed intergovernmentalism' mode, in which member states *react* to EU-led intervention but then *change the turn* of EU-level agendas once they enter the 'game' has been left unexplored. 'Reversed intergovernmentalism' will be illustrated with two cases, EU broadcasting policy and EU social policy. In each of these policy sectors, member states were particularly unwilling to transfer their sovereignty to the EU level, and EU-level policy solutions were nonetheless designed, with their participation**.**

2. Stalemate in the Debate

The process of European integration has been the object of continuing controversies between 'intergovernmental' and 'supranational' or 'neo-functionalist' perspectives. While the focus of academic discussions in the field of International Relations has now shifted towards an ontological debate opposing classic 'rationalist' approaches to constructivist or sociological ones, the debate about the respective relevance of different actors in the EU integration and policy-making process is still pertinent – current attempts at developing multi-level governance models being an expression of the continuing significance of the question.

The latest version of the intergovernmental explanation of the EU is provided by Moravcsik (1993), who assumes that states are rational actors who play 'two-level games' (Putnam 1988). Intergovernmentalist theories of European integration argue that major choices in favour of Europe reflect the preferences of member states, which aim to further economic or geopolitical interests (Hoffman 1966; Garett 1992). Negotiations outcomes are seen as the result of the bargaining power of the states. Functionalist approaches see European integration rather as the product of growing international interdependence. Sharing the functionalists' view of institutions, neofunctionalists have, however, emphasized the role of supranational institutions as motors of the integration process (Haas 1964). Haas recognises the continuing importance of national political elites, but explains that in response to new policies at the EU level, shifts in the expectations and activities of individuals are also expected to emerge via 'political spill-over'. Shifts in loyalty in turn enhance the dynamic towards the development of a new political community. Haas also recognises the importance of 'functional spill-over', a process by which cooperation in one sector

engenders cooperation in another, previously unrelated, sector. Sandholtz and Stone Sweet (1998), in their 'supranational governance' model, add to traditional neofunctionalist accounts by pointing to the role of private transnational actors who perceive an advantage in the creation of European rules and foster the integration process. Thus, scholars have been successful in showing that actors at different governance levels exercise considerable influence over dynamics of European integration and the formulation of EU policy outcomes. However, neither intergovernmentalism nor theories drawn from neo-functionalist insights have convincingly proven their ability to deal with *multi-level interactions* between international, national and subnational actors. Both have been criticised for focusing too dogmatically on the role of one set of actors while ignoring others. Even more problematic is the failure of existing accounts to capture *interactions* between developments taking place at distinct levels of governance. It is this perceived shortcoming that has largely inspired the multi-level governance (MLG) model (Hooghe and Marks 2001), which sheds light on the 'multi-actorness' of the policy-making process.

The MLG model points to the existence of overlapping competencies among multiple levels of governments and the interaction of political actors across those levels. Instead of the two-level game assumptions adopted by state centrists, MLG theorists posit a set of overarching, multi-level policy networks (Marks *et al.* 1996). Hoogue and Marks (2003) have produced attempts at general theorizations, elaborating two ideal types of MLG, Type I and Type II, which define the realm of possible interactions between different levels of governments and jurisdictions. However, various criticisms have been raised against MLG. One of them, in particular, is relevant to our discussion. It addresses the relationship of MLG to the intergovernmental/supranational dichotomy. According to Jordan (2001), MLG has effectively replaced neofunctionalism in that it incorporates all the main elements of the theory, except for its central emphasis on spillover. Another, related, reproach is that the model lacks a causal motor of integration and thus is not a theory. As pointed out by George (2004), the critique can be seen as inadequate since MLG was not fleshed out in order to explain the dynamics of European integration. The model emerged along with the comparative politics turn in EU studies, as part of a broader effort to understand the EU as a political system. This is a good counter-argument to Jordan's criticism, which, however, brings us to the core of this paper: the absence of a model able to capture how interactions between actors at different levels of governance provoke integration dynamics. The MLG model is indeed essentially a static approach, which describes EU policy-making and decision-making processes once already in place.

Studying interactions between actors at different governance levels and how these feed into European integration dynamics and institutional change over time is not strictly new. If recent attempts at capturing interactions amongst actors at different levels of governance came with a loss of focus on integration dynamics – as exemplified by the MLG model – institutionalist approaches should be mentioned here. Historical Institutionalism (HI), in this respect, can be singled out, for it looks at interactions between actors at different governance levels – institutional actors at the national and European levels – and also does this *over time* (Pierson 1998). It grasps both interactions between actors at different levels of governance and how those interactions provoke integration dynamics and institutional change. Historical institutionalist scholars begin with the intergovernmentalist claim about member states' primacy, but then take into account the way in which institutions structure individual and collective policy choices. Indeed, although those states that create institutions do so because they expect benefits to arise from their existence, institutions tend to lock into space and create path dependencies. Long-term institutional effects can thus

widely diverge from states' initial expectations. HI does highlight how interactions between actors at different levels feed back into one another and provoke locus of governance shifts, providing us in fact with a dynamic multi-level model. Yet *other modes* of multi-level interactions must exist, and the lack of exploration of such possibilities in the literature is striking.

Similar shortcomings characterise the analysis of interactions between domestic politics and international institutions in the International Relations (IR) literature. Gourevitch (2002) argues that we do not have very efficient theories to handle the interactions between the country and the systemic levels. While a shift in the locus of political power has been observed – both within nation-states, with the growth of quasi-independent agencies, and externally, with the shift of institutional power to the international or regional levels – dynamics of interaction between the levels are still understudied (della Porta and Tarrow 2005). In most existing accounts, either the international or the domestic level is held constant. Conceptualising interactions and reverberations between them is therefore one of the main challenges for future research agendas. One notable attempt to sketch out dynamic MLG models is made by Sikkink (2005) in relation to global activism and protest. Sikkink (2005) examines the role of interactions between international and domestic opportunity structures in influencing the emergence of transnational collective action, laying out four models aimed at predicting prospects for transnational activism, depending on the degree of openness of domestic and international institutions. In the EU context, the 'international' level (EU institutional context) is held more constant and thus Sikkink's model does not transpose well. When it comes to domestic institutions, though, Sikkink's conclusion that private actors tend to use international opportunity structures when domestic ones are 'closed' would seem to apply very well.

The development of dynamic models, specifically designed to explain possible paths of European integration, is necessary. Only a dynamic framework can capture how interactions between actors at different governance levels can result in a 'locus of governance shift' from the national to the supranational level. The next section is thus an attempt at elaborating a model in which multi-level interactions between actors at different governance levels can provoke integration dynamics. Since the model laid out here is a 'dynamic' multi-level model, it also includes a *time dimension*. Rather than picturing interactions between actors at different levels of governance at a given *n* moment, it looks at how action from policy actors at a given level of governance at time *x* can provoke/induce action by other policy actors at another level of governance at time *y*.

3. Towards a Dynamic Multi-level Governance Model

In certain events, the Communitarisation of policy sectors can be seen as a case of 'reversed intergovernmentalism'. 'Reversed intergovernmentalism' starts from the premise that the Commission and the ECJ are able to initiate locus of governance shifts from the national to the European level by making use of their agenda-setting, regulatory and judiciary powers. Such mechanisms occur in *sectors formerly under national competence* and in which there *is no clear Treaty basis for EU intervention*. It would, indeed, be difficult to conceive of EU institutions 'competence maximizing' strategies in sectors where member states would have previously conceded substantial sovereignty delegation during Treaty reforms. This is only the very first piece of the model, but let us begin here.

With the comparative politics turn in EU studies, greater emphasis has been placed on understanding the role played by EU institutions. Scholars have moved beyond the study of formal decision-making mechanisms in order to shed light on informal mechanisms of interaction within EU institutions and amongst different institutional actors. Because of their compound nature, the Commission powers have been the object of great scholarly attention. The Commission has the monopoly of legislative initiative, and under qualified majority voting (QMV) in the Council, it is more difficult for member states to amend the Commission's proposal – in which case unanimity applies – than to accept it, which requires only a qualified majority. Given the remit of its formal power to 'propose legislation', the Commission has consensually been characterised as an active agenda-setting body. Perhaps even more interesting, though, has been the unveiling of informal agenda-setting dynamics. Cram describes the Commission as a 'purposeful opportunist' mastering the ability 'to respond to opportunities for action as they present themselves and even to facilitate the emergence of these opportunities' (Cram 1997:156). When there is opposition from member states to the full-blown development of a policy, the Commission may propose instead a limited small-scale programme, thus preparing the ground for future policy intervention when the environment within the Council is more conducive (see also Haaland Matlàry 2000).

Even more crucially, scholars have shed light on how Directorate-General Competition (DG Competition) within the Commission has been skilfully using its regulatory powers in order to interfere in new policy sectors. When making use of its regulatory powers, the Commission acts without the participation of member governments in what Scharpf has called a 'hierarchical' decision mode (Scharpf 2001). DG Competition performs these functions when it is acting as a guardian of the EU Treaty in infringement procedures against national governments (Scharpf 2001:14). The Commission also holds administrative powers under European competition law, which it can direct at private actors, prohibiting cartels and abuses of dominant position, or member states, confining their ability to restrict competition or grant state aids in specific sectors (Schmidt 2000: 9). Schmidt further explains that the Commission has the potential to interfere with those parts of national economies that are not predominantly structured by market principles. Since a country's national restrictions often also hamper a potential economic activity of other European nationals, the margin of interpretation for the Commission is very wide. Very interestingly, Schmidt (2000) has shown that by looking at once at how the Commission uses both its regulatory and agenda-setting powers, we can better grasp the overall influence of the Commission in the policy-making process. She argues that the Commission can, using its regulatory powers, bring about domestic reform in certain states, so as to make member governments change their preferences, and make them more favourable towards the stance favoured by the Commission when it proposes legislation. Once states have adjusted their domestic regulatory frameworks on the basis of the Commission's injunctions, they are more likely to adopt a stance favourable to trade liberalisation. They thus back a position that they would not have supported, had they been able to keep their former regulatory traditions (see Hathaway 1998). By drawing on supranational legal obligations, the Commission therefore alters the preferences of some member states, increasing the chances of having its legislative initiatives accepted within the Council (Schmidt 2000: 39).

Similar arguments have been made on the independence of the ECJ. The role of the ECJ as a political actor in the EU policy process has been widely discussed by political scientists. Academic lawyers have argued that the ECJ also succeeded in transforming the founding

Treaties into a constitution (Dehousse 1998; Weiler 1995; Wincott 2001). Of direct relevance to our argument here is the way the ECJ has actively implemented the economic principles of the EU Treaty in numerous sectors. EU institutions can initiate a negative type of integration, which essentially consists of eliminating trade barriers, without having to resort to the participation of member governments. By contrast, positive integration, which aims to harmonise national legislation and set up common forms of administration (Scharpf 1996), requires consensual agreement of member states within the Council. The process of negative integration, which does not involve the creation of distinct supranational policies, nevertheless has a strong impact on domestic policies. Member governments must incorporate EU-level developments, initiated by the Court or the Commission without input from member states, into their legislative and policy traditions.

The 'reversed intergovernmentalism' model also incorporates the role of transnational networks of producers or domestic commercial actors in supporting, or even triggering, EU institutions' use of their legislative initiative, regulatory and judicial powers. The way the Commission and the ECJ have benefited from the complicity of a number of private commercial actors, which used the legal sphere in order to challenge national policies that were not favourable to them, has been acknowledged by scholars in the field (see in particular Mattli and Slaughter 1996, Stone Sweet 2000 and McCown 2005 for an account on private actors' 'eurolitigation' strategies before the ECJ). The role of private subnational actors in provoking 'locus of governance shifts' is indeed crucial; by invoking the applicability of EU law in formerly domestic policy areas, for instance, they dislodge the venue of governance, in the sense that the locus of the policy debate is displaced and EU action in the form of ECJ judgements or Commission decisions is legitimised. Actors who feel disadvantaged by domestic regulatory traditions attempt to resort to the EU venue most frequently. As explained above, it is when they apply the economic principles of the Treaty that the ECJ and DG Competition can act in a 'hierarchical' mode of governance – in which they enact decisions and rulings without the participation of governments. Thus, it also ensues that subnational-level support emanates from actors who favour a negative form of integration and the relaxing of strict domestic regulatory regimes associated with it.

Whereas the role of European institutions as initiators or 'motors' of European integration, and the complicity of private actors in this process, have been widely discussed in the literature, the way member states react or re-enter the EU policy-making process has been left unexplored. As mentioned earlier, neofunctionalist accounts have pointed to the role of supranational and subnational actors in explaining integration dynamics, but they have ignored how and with what impact member states try reorienting developments formerly orchestrated without them. In an attempt to fill this gap, the dynamic multilevel model proposed here posits that when member states reckon that their domestic policies are being challenged by EU institutions' intervention, they react by developing more proactive strategies at the EU level. Member states enter the game in response to EU-led developments, but through their reaction they *foster, in their turn, the process of integration.* When member states enter the game at the EU level, they attempt to 'reintergovernmentalise' the decision-making process, dislocating the venue of decision from the ECJ and the Commission back towards the Council, where they can best control policy. They in fact pull back the decision-making process towards a 'joint decision' mode (Scharpf 2001: 18), in which aspects of intergovernmental negotiations and supranational centralisation are combined, in order to be better able to further their policy preferences at the EU level. But more than being simply reactive, states then try to impose a different mode of integration. In order to counter the course of action initiated by EU institutions,

they endeavour to lock in certain policy solutions via a political agreement within the Council. By doing so, member governments aim at re-orienting EU action from a purely negative form of integration, aimed at removing trade barriers, to a 'mixed' regime in which common standards and forms of administration are also set at the European level. Thus, a reversed form of intergovernmentalism operates, by which EU institutions' intervention fosters member states' participation in the formulation of policies at the EU level. EU institutions succeed in provoking locus of governance shifts, but member states, while accepting the shift of governance *level,* attempt to change the *nature* of integration, resulting in policy outcomes formerly unexpected by EU institutions.

In the 'reversed intergovernmentalism' mode, EU institutions intervene, by definition, in sectors where there was either no pre-existing Treaty basis or only a meagre one. Member states react to EU-led policy developments when the latter conflict with their own policy and regulatory traditions. Since the EU 'hierarchical' decision mode, in which the Commission and the ECJ act without the participation of member states, operates only in sectors in which economic principles can be implemented (EU institutions simply cannot, given the nature of the policy-making process, unilaterally implement market-correcting mechanisms), governments react when the removal of trade barriers in a given policy sector goes counter to their favoured policy style. Member states are most likely to react when EU institutions apply their remit to policy sectors that do not *clearly* fall under the economic realm of the Treaty, but can be portrayed as having an economic component or value – such as social and broadcasting policies – as well as policies like education. The success of their policy-reshaping strategy at the EU level essentially depends on the presence or absence of consensus amongst member governments within the Council. In terms of scope conditions for the 'reversed intergovernmentalism' model, this has several implications. The model applies: 1) necessarily in sectors where there is no pre-existing or only a meagre Treaty basis for EU intervention 2) quasi-systematically in sectors in which there is scarcely a Treaty basis *and* in which the policy issue at stake can be defined in economic terms 3) in sectors in which the nature of EU intervention does not resonate with the policy traditions of at least some of the member governments. Two cases in which either no Treaty basis (broadcasting policy) or a very narrowly delimited one (social policy) existed – but where integration has taken place – are presented below to illustrate the argument.

3.1. The Case of Broadcasting Regulation

In the early 1980s, the gradual process of moving towards European level intervention in the broadcasting sector was fostered by European institutions. The ECJ asserted the Community's competence to develop relevant rules for broadcasting (Fraser 1996, Machet and Robillard 1998). For the first time, in the 1974 *Sacchi* case[1], the ECJ ruled that broadcasting was covered by the Treaty of Rome, establishing that it was a *service*, and that discrimination on the grounds of national origin of a broadcasting service was therefore unlawful. In this judgement, the Court defended a cable operator against RAI, the Italian public service broadcaster, which wanted to prevent certain television signals from being broadcast by the cable operator. In the 1980s, the Court confirmed the *Sacchi* ruling and established a body of European case law treating broadcasting as a tradable activity – the rulings focused solely on the economic aspects of audio-visual products, thus justifying EU intervention in the field (see *Debauve* case)[2].

In the cases that were brought before the ECJ, commercial actors that were dissatisfied with existing regulatory traditions in domestic arenas invariably supported the application of EU competition law. In the *Cinéthèque* case[3] for instance, French videotape distributors challenged national legislative regimes they perceived as too constraining. At issue was a French law that regulated the distribution of cinematographic works by prohibiting their simultaneous exploitation in cinemas and in video-cassette form for a limited period. Videotape distributors argued before the ECJ that the French legislation had the effect of restricting intra-Community trade. While the Court eventually did recognise cultural protection to be a mandatory requirement that could justify restrictions otherwise incompatible with Community competition law, such conclusions were the result of lengthy and fierce lobbying campaigns from the French government and representatives of the cultural community (Littoz-Monnet 2007). In the case of *Bond van Adverteerders v. Netherlands*[4], the Dutch association of advertisers brought an action before the ECJ claiming that the Dutch cable regulation infringed Treaty rules on the free circulation of services. The ECJ ruled that the prohibitions on advertising imposed on the broadcasting of television programmes from other member states were a direct discrimination against television programmes from other member states and as such unlawful. Private actors had particularly strong incentives to use European structures in states where the audio-visual sector was strictly regulated. The European venue afforded them the chance to change the way policy problems were approached and thereby induce policy changes that could not have been provoked through national policy channels.

The project for EU broadcasting regulation took a concrete form with the 1984 Green Paper *Television Without Frontiers*, which proposed to harmonise rules related to advertising, the protection of minors and intellectual property. However, broadcasting was again defined exclusively as a commercial activity. The Commission made it clear that the Treaty applied not only to economic activities carried out for remuneration but, as a rule, also to all activities carried out for remuneration, regardless of whether they take place in the economic, social, cultural, sporting or any other sphere (COM(84) 300 final). Thus, from the 1970s onwards, the Court and the Commission initiated a negative type of integration, which essentially consisted of eliminating trade barriers. The European dimension penetrated national arenas of politics, and member governments had to adapt their legislative traditions.

States where domestic policy traditions were of a more interventionist nature, such as France principally, but also Italy, Greece and Spain to a certain extent, felt particularly threatened by the locus of governance shift that was occurring as a result of EU institutions' *de facto* intervention. The wording of the 1984 Green Paper challenged both national prerogatives and the interests of public broadcasters, inducing several member governments to protest against the idea of broadcasting as an economic activity (Collins 1994). Opposition was particularly acute in France, where a model of extended public intervention in the audio-visual field has been deeply anchored in French policy traditions. In an interview with *The Times*, then French Minister of Culture Jack Lang attacked European officials, saying that:

> *They hate culture; they hate the artists. When we write the history of Europe it should be stated that the civil servants of the Community are the enemies of culture. […] I would like to consider culture as a part of the economy, and economy as part of culture, but this is dangerous because culture must not be considered as a mass-production*

> *industry. Cultural assets are not like others; they need special laws*. (*The Times*, 15 August 1985).

Thus, the French government and Southern European states recognised that transposing *dirigiste* policy solutions *within the EU framewor*k was the best possible strategy in a context in which the status quo was characterised by the *de facto* application of economic principles to the audio-visual field[5]. They decided to enter the 'game' in order to change the way policy problems were tackled at the EU level and use the EU as a medium to further national policy objectives (Littoz-Monnet 2007). However, the ECJ and the Commission favoured economic actors with a strong stake in market liberalisation. Therefore, the member governments that felt challenged by their agenda attempted to shift the decision-making process back to a venue dominated by intergovernmental negotiations. Reaching a political agreement with other states within the Council was the only way the *dirigistes* could lock in their favoured policy solution at the European level and prevent the ECJ and the Court from exercising their judicial and regulatory powers in a hierarchical manner.

During the Culture Council of June 1984, Jack Lang suggested various initiatives: the creation of a European development fund for films, a joint action to deal with pirate videotapes and an EU-level regulation aimed at preventing television broadcasts for films during a fixed period after their release in cinemas (*Irish Times,* 23 June 1984). Several resolutions were adopted in 1984 on the basis of the French proposals[6]. Jack Lang also proposed the incorporation, in the Television Without Frontiers (TWF) Directive, of a clause imposing European-produced programme quotas as a defensive measure against US imports. The following five years were the scene of continuous struggles between member governments, EU institutions and different lobby groups. *Dirigiste* actors were however put in a very reactive position in a context in which EU institutions *de facto* applied the economic principles of the Treaty to the field, in the absence of any former political consensus on the need to communautarise the sector. Significantly, at the most crucial stage of the policy negotiations, DG Competition sent a reasoned opinion to the French government questioning the legality of French legislation concerning the definition of audio-visual works that were eligible to be counted as 'European programmes' for the purpose of the fulfilment of the content quotas. The Commission strategically took action after the Council meeting of July 1989, during which the French delegation had expressed its reticence towards the content of the common position. Similar notices were sent to the Netherlands and Belgium, which had also opposed the common position[7]. In October 1989, the TWF Directive was approved by the General Affairs Council[8]. Mainly, the proactive strategies of the French government allowed for French schemes to be maintained. The principle of quotas for European works was also transposed at the EU level despite the firm opposition of several EU states. However, a lot was conceded to liberal concerns in the content of the EU Directive. Mainly, content quotas were to be applied to television channels, but only 'where practicable'. Fundamentally, France and other *dirigiste* states opted for a political compromise, because the nature of the *status quo*, characterised by the *de facto* intervention of EU institutions and the development of transfrontier broadcasting, was less desirable than a 'middle-course' EU-level solution.

The renewal of the TWF Directive in the mid-1990s confirmed the existence of a dynamic multi-level game. The promotion of European works (content quotas) and the scope of the revised Directive were the most controversial issues (*European Report,* 24 March 1995). In its original version, the Directive applied to all services that consisted of pre-determined programme schedules broadcast simultaneously to more than one receiver. With the

renewal of the Directive, extending its scope to interactive services, such as video-on-demand for instance, was envisaged. Concerning quotas, the UK, Germany, the Netherlands, Denmark, Sweden and Italy were acutely opposed to their renewal (*European Report*, 18 October 1995). As had already happened in 1989, *dirigiste* states were facing a hostile majority of liberal member states within the Council and were forced to accept a political compromise. Only Belgium and Greece offered their support to the French delegation (*Les Echos*, 5 October 1995). Three states with liberal policy traditions in the field of cultural policy – Austria, Finland and Sweden – had become members of the EU in 1995, thereby modifying the potential coalition patterns during negotiations. Thus, member states agreed to embrace a compromise that preserved the *status quo* concerning content quotas – meaning that their implementation was to remain discretionary – and did not extend the Directive to new services. Furthermore, they decided to phase out the quotas after ten years (Keller 1997). However, non-binding quotas were extended to thematic channels and the Council decided to set up a contact group in charge of monitoring the Directive implementation. Certain EP amendments (favoured by *dirigistes*) were also accepted by the Council, in particular the acceptance of a minimum delay of 18 months between the first release of a film in cinemas and its broadcast on general access television[9]. While *dirigiste* actors could not impose their policy solutions, they could transform the integration mode from a negative type of integration to a 'mixed' integration type, in which economic liberalisation moves were counterbalanced by the setting of minimal common standards and marginal market-correction mechanisms.

The latest revision process of the TWF Directive tilted the balance in favour of a more flexible regulatory framework. According to the Commission, the key issue that regulators had to address is that rules devised for one-to-many broadcasting were being rendered obsolete by the shift to one-to-one, on-demand services. Thus, the proposal laid down by the Commission in December 2005 set up a substantial deregulation of audio-visual rules (European Commission 2005), distinguishing between scheduled broadcasting via traditional TV, the Internet, or mobile phones, which 'pushes' content to viewers, and non-scheduled broadcasting, such as video-on-demand and web-based news, which the viewer 'pulls' from a network. EU Ministers reached a common position in May 2007, and their text won approval from the Parliament in November 2007 (*Euractiv*, 30 November 2007). Under the new rules of the now called Audio-visual Media Services Directive[10], former broadcasting rules apply to scheduled broadcasting, albeit in a more flexible form, whereas non-scheduled broadcasting is subject only to a basic set of minimum principles, such as protecting minors and preventing incitement to racial hatred. Member states are, however, given the possibility to take appropriate measures against a provider established in another state that directs all or most of its activity to the territory of the first member state in order to prevent abuse or fraudulent conduct.

Thus, Community institutions triggered member states' acceptance that the 'game' was taking place at the Community level. Most likely, without the proactive strategies of EU institutions, states would have remained more passive concerning the development of policy solutions at the EU level in the field of broadcasting. However, the reaction of member states forced Community institutions to reintergovernmentalise and reorient, even if only to a certain extent, the *nature* of EU intervention in the field (from a more negative to a mixed type of integration, in which minimal standards were established at the EU level). Interesting is, that if *dirigiste* states could not secure all their policy preferences, it was mainly because of other states' opposition. The extent to which states' preferences

converge is an essential determinant of their success in their attempt at re-controlling policy-making at the EU level.

3.2. The Case of EU Social Policy

European institutions have acted as central actors in the creation of a significant social dimension at the EU level. Unlike in the audio-visual policy sector, a 'thin' treaty base for EU-level intervention allowed the European Commission to exploit its powers to the full. However, initiatives in the social policy sector as such remained circumscribed to narrowly defined areas. In fact, it is essentially as a result of market integration that member states started to feel constrained in their domestic policy choices related to social policy. EU-led intervention thus provoked a reaction from certain states, which in turn changed the nature of EU-level policies.

In the field of gender equality, despite the narrowly-defined EC competence in the Treaty – Article 119 of the Treaty of Rome (now article 141) established the principle of equal pay for equal work – a substantial body of EU legislation was, upon proposal from the Commission, adopted by the Council, and transformed into detailed and *de jure* obligations by the ECJ. In the 1970s and 1980s, directives on equal pay, equal treatment in the field of social security and occupational social security schemes, and equal treatment for those who are self-employed, were passed. At the same time, the ECJ played a major role in promoting a *de jure* equality between women and men and turning Article 119 (TEC) and the directives into an extensive range of requirements and prohibitions. Thus, the *Defrenne* case[11] established the direct effect of Article 119 TEC (Falkner 1998). Other rulings provoked major reforms at the domestic level, although not always to the benefit of women (Liebfried and Pierson 2000). In the 1990s, the interpretation of equal opportunity moved beyond direct discrimination. The issue of reconciliation of working and family life was dealt with in a series of directives on pregnant women, working-time and atypical workers. The most recent development in strategy is that of 'gender mainstreaming' (Rubery *et al* 1999), which implies that policymakers have to consider gender issues in all areas of policy development, not only those that obviously pertain to women or gender relations.

A similar pattern characterised the communautarization process of policies concerning health and safety issues in the workplace. With the Single European Act (SEA), the qualified majority rule was extended in this area out of fear that national regulations could be used as non-tariff barriers to trade (Leibried and Pierson 2000). Apart from diluting the veto option for each government, this change gave the Commission a certain leeway in interpreting, in an extensive fashion, the existing Treaty base. Much of the decision-making process took place in expert committees (Joerges and Neyer 1997), where best practices from EU member states were singled out in order to orchestrate a rather interventionist type of social regulation. The Commission played a key role as a 'process manager' by linking the work of the different committees (Liebfried and Pierson 2000) and setting in place, in a typical competence maximising exercise, new technocratic structures, such as the European Agency for Health and Safety at Work in 1996. The remit of EU activity clearly moved beyond the regulation of products to the regulation of production processes. The Commission was able to use new institutional arrangements in order to build up a policy-making framework that lessened the influence of member governments. The development of the Social Dialogue between trade unions and employers' federations has been particularly important in this respect (Falkner 1998).

Treaty reforms eventually caught up with developments that had long been under way. With the Amsterdam reform, Article 119 (TEC) was amended, incorporating the provisions of the Social Protocol, as well as existing Community case law and secondary legislation. As observed by Leibfried and Pierson, in the late 1990s, 'national welfare states remain the primary institutions of European social policy, but they do so in the context of an increasingly constrained multi-tiered polity' (2000: 186). However, if the involvement of EU institutions in social policy matters is beyond question, initiatives in the sector as such were either sectoral or modest. The very possibility of an activist social policy at the EU level confronted a sometimes reluctant Council, and most often divergences in the policy preferences of member states (Streeck 1995). In fact, while it is true that member states were getting increasingly constrained in their domestic policy choices in the field of social policy, this was more the result of market integration than EU-level initiatives in the social policy sector as such.

Social policy within the EU has indeed developed mainly in relation to the internal market, in a way that aimed more at facilitating its functioning than correcting it. A crucial point of tension between national welfare states and the completion of the common market has arisen over regulations governing the mobility of labour across member states. A series of regulations and Court decisions have affected member states' sovereignty in the field of social policy, limiting national capacities to contain transfers by territory and to shape welfare state reform trajectories. Private litigants have instigated 'a large corpus of national, and especially, supranational adjudication since 1959' (Leibried and Pierson 2000: 278). The steps taken are in themselves far-reaching: no member state can, for instance, any longer limit social benefits to its own citizens. The impact of the freedom to provide services principle on national welfare regimes has also been the object of academic discussions (Schulz-Weidner 1997). Several ECJ cases testified of a struggle between single market requirements and arguments in favour of the preserving of welfare state privileges (Liebfred and Pierson 2000: 281). Amongst the most prominent ones are the Kohll[12] and the Decker[13] cases, both initiated by consumers interested in the application of the freedom to provide services principle as a means of obtaining certain health policy outcomes. The cases focused on whether members of sick funds could make use of 'service providers' in other member states (Kötter 1998), a question to which the Court answered positively. As in the broadcasting case, the way in which EU action took place without the participation of member states, and was initiated, rather, by the action of subnational actors, can be observed.

Perhaps more indirectly, but even more importantly, the economic policies of the EU have, arguably, also put national welfare systems under strong pressure. Amongst the most widely cited types of pressures are the possibility that integration might lead to 'social dumping' and the risk that EMU's requirements for budgetary discipline may encourage downward adjustments in welfare provision (Leibried and Pierson 2000). Whereas the legal authority of the member states has been restricted only in rather small areas, the process of European integration has nevertheless eroded the political autonomy of the member states in the social field.

Yet, member states did not remain passive in the course of the supranationalisation of the social policy area. In the aftermath of the wave of Euroscepticism that came along with the Maastricht Treaty, and the renewed rise in unemployment rates in the EU, new pressing issues emerged on the EU agenda in the early 1990s. According to Deppe and Felder (1993), the idea that European integration was too exclusively focused on market

integration, thus neglecting more pressing concerns such as unemployment, began gaining some ground amongst policy-makers. Already at the 1993 Copenhagen Summit, the Heads of the States instructed the Commission to issue a White Paper spelling out a strategy for higher growth, competitiveness and employment (Schäfer 2004). With the Essen Summit in 1994, member governments agreed on a number of objectives to fight unemployment, such as investing in human capital, increasing the employment-intensiveness of growth, reducing non-wage labour costs, improving the effectiveness of employment policy by moving from passive to active labour market policy and supporting groups particularly hard hit by unemployment (European Council 1994). EU-level initiatives in the labour market field came from decision-makers as a reaction against the erosion of national welfare systems by the internal market regulation, and thus as a recognition of the need for common objectives also in the social field. Crucially, however, governments preserved some degree of national autonomy in policy-making by ensuring that none of these objectives were legally binding. The European Commission and the Labour and Social Affairs as well as Economic Financial Affairs Council were asked to monitor national developments and report annually to the European Council about their progress. Fundamentally, some disagreements among states, alongside the fear that the Commission would intervene in an extensive manner with member states' employment policies, prevented governments from delegating any competence to the supranational level (Schäfer 2004).

During the 1997 Intergovernmental Conference that preceded the Amsterdam Treaty Reform, the issue of employment was this time on top of the agenda. The European Parliament, the European Trade Union Confederation (ETUC) and some national delegations wanted the relationship between economic and employment policies to be formally specified in the Treaty. However, certain governments were still very suspicious of a binding agreement for an EU-level employment policy. In fact, conservative governments in France, the UK and Germany were even reluctant towards a 'soft' approach in the form of non-binding guidelines. It was only after electoral turnover brought the British New Labour and the French Socialists to power that an agreement became possible at all (Szyszczak 2000). Quite likely, without the leftward electoral swing, employment would not have become part of Amsterdam (Jenson and Pochet 2002). The entry of Sweden, Finland and Austria into the EC in 1995 also tilted the balance in favour of the pro-European employment policy coalition. Sweden and Finland, in particular, were cautious to protect and maintain their own national social models. In the preparation for the Intergovernmental Conference, Allan Larsson, future Swedish Head of DG Employment and Social Affairs, played a proactive role. He published a paper, *A European Employment Union – to make EMU Possible*, in which he argued that a strong employment policy would contribute positively to the EMU because it would make the labour market perform better (Jenson and Pochet 2002). In the same way, the Finns were concerned about the preservation of their social model. In so far as harmonisation was not possible, in a context characterised by the diversity of states' policy preferences (Trubek and Mosher 2001), a more flexible approach in the shape of the Open Method of Coordination (OMC) became the favoured option for those pro-EU employment strategy-minded governments. The OMC indeed departs from the Community method of decision-making by creating formalized procedures in which governmental performance is defined and assessed under broad peer-managed guidance, without sanctions. The method has been portrayed as a simple form of multilateral surveillance, by rational choice minded scholars, but as a genuine way of provoking policy change, at the core of which policy learning operates, in sociological approaches. The OMC presented a way of combining the desire of certain

states for a positive type of intervention at the EU level, with the impossibility of reaching an agreement on binding legislation.

Thus, in the same way as in the audio-visual sector, EU intervention provoked a reaction from certain states, which in turn changed the nature of EU policies. Wary that both EMU and the market-making aspects of EU intervention in the field of social policy would ineluctably lead to the erosion of national welfare states, a coalition of states pushed for the development of a market-correcting employment policy at the EU level. As in the broadcasting sector, member states' initiatives were essentially a reaction against EU-led developments. Final outcomes differ, however, in that in the social policy sector, a new policy method – the OMC – brought up the policy solution that could allow for the conciliation of the diversity of interests at stake.

4. Conclusions

Mechanisms of dynamic multi-level governance, which capture processes of interaction between actors at different levels of governance and the way in which these processes are at the core of the dynamics of integration, were uncovered here. One possible model, called 'reversed intergovernmentalism', was presented. In sectors where either no Treaty competence – or only a very narrowly defined one – allows for EC intervention, the ECJ and the Commission tend to 'communautarise' the policy area by applying economic principles to the policy problems at stake, thus provoking reactions from *dirigiste* states who then try to lock in their own policy models at the EU level. By asserting their competence into new policy sectors through the 'economic backdoor', EU institutions succeed in shifting the locus of governance to the EU level in such a way that member states have no choice but to play the game at the supranational level. Quite likely indeed, in both the broadcasting and the social policy sectors, states would have remained more passive concerning the development of policy solutions at the EU level in the absence of proactive strategies from the part of EU institutions. Yet, in both cases, member states reacted to supranational developments and aimed at reorienting the nature of EU intervention.

In the broadcasting case, some member states attempted to redirect the policy-making process towards a joint decision-mode in which governments could participate to the formulation of EU policy options. While they could not, once the locus of governance had shifted to the EU venue, substantially reorient the nature of EU intervention, they could to some extent change the EU policy outcomes from a negative type of integration to a 'mixed' integration type, in which economic liberalisation moves were counterbalanced by the setting of common standards and marginal market-correction mechanisms. In the social policy case, a similar pattern occurred, in that certain states attempted to offset the impact of market-related integration in the social policy sector. Social policy was an area in which governments had shown some reluctance to relinquish their sovereignty. In addition, obvious differences in the way welfare states had unfolded over time in EU member states made any attempt at EU-level harmonisation unthinkable. Yet, EU integration had, in the absence of any member states' decision to supranationalise the policy area, a direct impact on domestic policy choices in the sector. Regulations and Court decisions were indeed successful in limiting national capacities to contain transfers by territory and to shape welfare state reform trajectories. Thus, as in the broadcasting sector, certain governments reacted by trying to develop a more positive type of integration; in this case an EU-level

employment policy. By contract with the audio-visual sector, however, member states could not find any agreement in the form of binding legislation. Diversities in national policy styles were too wide, and member states could only solve the stalemate by devising a new 'soft' governance method, the OMC. Whereas EU intervention was already taking place in the field of broadcasting regulation, it was only the indirect impact of EU integration that affected member states' abilities to shape welfare states' trajectories in the field of social policy – EU direct intervention was circumscribed to narrowly limited sectors such as gender equality and health and safety matters. Thus, the idea that EU intervention should extend to employment policy was novel, supported only by a few states. In a situation where most member governments were in fact satisfied with the status quo, the *dirigiste*-minded governments could only promote a less binding form of EU-level intervention in the form of the OMC.

While final policy outcomes in those two sectors differ in their nature, they both exemplify how member governments can react to EU-led policy developments, get back into the 'game' and change the nature of EU intervention from a negative integration type to a 'mixed' type or a positive type in a non-binding form. The point here is straightforward; By overlooking the interaction between EU, national and subnational level actors, one can capture neither the logic of integration dynamics nor the factors behind the nature of EU intervention.

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Endnotes

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