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EUROPEAN INTEGRATION AND RESISTANCE
TO INSTITUTIONAL CHANGE:
THE POLITICS OF SERVICES LIBERALIZATION
IN THE EUROPEAN UNION

AMANDINE CRESPY

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AMANDINE CRESPI is Assistant Professor of Political Science & EU Studies at CEVIPOL/Institut d'Etudes Européennes, Université Libre de Bruxelles (ULB). She can be reached at: acrespy@ulb.ac.be.

ABSTRACT

This paper demonstrates how the historical and discursive strings of neo-institutionalism can bring new insights for drawing a bigger picture than is currently done in EU studies. The central claim is that this requires exploring not only the drivers but also the obstacles to further policy integration in the EU. In this respect, it is fruitful to consider the intertwined way in which both institutional reproduction over time and ideas conveyed by agency can explain the success or failure of coalitions and hence policy outcomes. Throughout the paper, these reflections are applied to ongoing research about the politics of services in the EU, a matter of inter-sectoral relevance that implies major political, social and legitimacy issues.

EUROPEAN INTEGRATION AND RESISTANCE TO INSTITUTIONAL CHANGE: THE POLITICS OF SERVICES LIBERALIZATION IN THE EUROPEAN UNION

Introduction¹

In February 2006, the European Parliament (EP) adopted a substantially revised form of the Services Directive that liberalizes all services activities in the European Union (EU). Because of its radical approach to liberalization and deregulation (notably by means of the country of origin principle²), the original draft of the so-called Bolkestein Directive³ put forward by the European Commission triggered fears about social and regulatory dumping as well as firm relocation across the EU. Protest against the Services Directive proposal became the symbol for the defense of “Social Europe” against the neo-liberal bias of the EU (Crespy 2010b). The issue was highly politicized: left-wing political parties, the anti-globalization movement and trade unions mobilized to an unprecedented extent. Two major euro-demonstrations gathering about 50,000 people took place in Brussels and Strasburg in 2005 and 2006 respectively. The pressure from public

1 I want to thank Sarah Guillou, Vessela Hristova, Peter Hall, Andrew Martin, Tobias Schultze-Cleven, Kathleen Thelen, as well as an anonymous referee for their very useful comments on previous drafts of this paper. I am also thankful to Simon Toubeau for his careful reading. This research was supported by the Arthur Sachs Foundation as well as by the Fondation Van Buuren.

2 The legal device implies that services providers have to comply only with the rules of their country of origin when providing for services in another EU country, except for a core of labor law provisions.

3 Fritz Bolkestein was the Dutch Commissioner for the Internal Market in the Prodi Commission from 1999 to 2004. He saw the Services Directive as a major achievement to put on track before the end of his mandate. Due to his openly neo-liberal views, the Services Directive became famous as the Bolkestein Directive in several countries.

opinion and civil society led the EU institutions to soften the de-regulatory nature of the proposed legislation and allow for the preservation of some national rules in sensitive areas related to services of general interest (SGI)⁴ – including health care –, labor law, and workers’ mobility.

The Commission’s initiative for the liberalization and deregulation of services markets was all the more contested because it interfered with a long-running debate in the same policy area: the initiative for a framework directive establishing regulation at the EU level for limiting the impact of EU competition law on SGI. Since the early 2000’s, the regulation of SGI at the European level has been a recurrent bone of contention in EU politics. While the EU has engaged in the liberalization of the so-called network industries (electricity, telecommunications, transport, postal services, etc), the status of a number of social services (help to people in need, families, and job seekers, child and elderly care) as well as of non-mandatory education and culture remains pending. The Party of European Socialists as well as unions and lobbies have unsuccessfully carried out a campaign asking for a European framework directive on SGI in 2006. The European Commission has repeatedly refused to put forward such a proposal on the grounds that there was neither a legal basis in EU law nor a clear political demand from the Council and the Parliament for such a move. The Lisbon Treaty now provides a legal basis for a European regulation of the SGI. However, Article 14 of the Treaty on the Functioning of the Union and the new Protocol on the SGI will not result in legislation. Rather, the Commission has engaged in the revision of existing dispositions in competition policy to extend derogations (and ease State funding) with

4 Services of general interest is the European term for the public and services that come under different labels in the various Member States of the EU.

regard to local and social SGI.

The Services Directive and the unborn framework directive on SGI foresee contrasted means for achieving integration: the former enforces deregulation of national markets, while the latter would have established a European regulation of SGI. The two debates produced contrasted outcomes since the Services Directive was eventually adopted whereas the framework directive on SGI was not even submitted to co-decision. However, in both cases the political dynamics reflect a similar phenomenon, namely resistance to change with regard to established policy regimes, especially when services activities have a strong societal dimension. In both cases, agents – organized civil society, national and European MPs, European civil servants, members of governments or public opinion at large – have resisted and contested measures for enhanced integration of services markets in the EU. How can we account for these resistances? What are the conditions and factors that allow them to resist policy integration and in its various dimensions and implications? These are the questions tackled here.

A number of scholars have explored the manifestations of resistance to EU integration in the realm of politics with studies on Euroscepticism (Szczerbiak and Taggart 2008), social movements (della Porta 2006), or more encompassing approaches dealing with ownership and contestation (Crespy and Petithomme 2010). In contrast, the study of resistance to EU integration in the realm of public policy has so far been limited to the study of non-compliance at the implementation stage (Gelderman, Ghisen et al. 2010; Saurugger forthcoming). The current crisis of the sovereign debt in Europe shows that policy issues are not confined to specific sectoral problems: they also often relate to existential matters for the

EU. In this respect, the current political context in the EU is quite compelling for investigating resistance to institutional change.

In the first age of European studies, scholars have mainly sought to understand the drivers of integration and the agents' motivations for advocating the pooling of sovereignty and delegation of powers to the supranational level. This question engendered a long-lasting confrontation between the neo-functionalists, who highlighted the importance of external functional pressures combined with the influence of self-interested agents, and the intergovernmentalists, who claimed that interests of the States are the most crucial factor driving integration. From the late 1980's onwards, and more obviously since the mid-1990's, the research agenda has shifted towards the modalities and functioning of European governance, and, eventually, its impact on national politics and policies (Europeanization). This scholarship has been to a large extent permeated by the various neo-institutionalist approaches (Aspinwall and Schneider 2000) emphasizing agents' rational calculations (rational-choice institutionalism), the structuring role of culture (sociological institutionalism), historically inherited institutions (historical institutionalism), or the role of ideas and discourse (discursive institutionalism) (Hall and Taylor 1997; Schmidt 2010). This shift is often referred to as a "normalization" trend in European studies, whereby the EU is no longer considered as an institutional system *sui generis* requiring specific theories, but is analyzed by means of concepts used in comparative politics, political sociology or political theory (Saurugger 2010).

While such normalization has allowed for more fine-grained analysis of the increasingly intricate institutional arrangements and policies of the

EU, it has also brought an excessive fragmentation of research. Students of the EU tend to over-specialize in compartmentalized fields, either in terms of empirical subject or theoretical approach, or both. Objects therefore tend to be narrowly circumscribed, often focused on one institution, one group of actors, one policy sector or one type of political process. As specialized research is not always cumulative, we tend to lose the broad picture. What is integration? What are the drivers of integration? What are the obstacles to further integration? With some exceptions⁵, these are questions that have been asked less frequently in the last fifteen years. However, recent events have made P. Schmitter's words resonate. As he put it:

Any comprehensive theory of integration should potentially be a theory of disintegration. It should not only explain why countries decide to coordinate their efforts across a wider range of tasks and delegate more authority to common institutions, but also why they do not do so or why, having done so, they decide to defect from such arrangements. (2002: 4)

This paper is a first attempt to take up this challenge. The focus lies on resistances to institutional change in relationship with policy issue that is broader than a specific sector since services activities account for 70% of the EU's Gross Domestic Product (and the SGIs for about 26%)⁶.

5 One can for instance think of G. Marks and L. Hooghe's « Postfunctionalist theory of integration » (Hooghe, Liesbet and Marks, Gary, "A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus", *British Journal of Political Science* 39, 1 (2009): 1-24.); or of the qualification of the EU by J. Zielonka as an empire (Zielonka, Jan, *Europe as Empire. The Nature of the Enlarged European Union*, (Oxford: Oxford University Press, 2006)). The reflection in political theory about Europe as a cosmopolitan polity also deserves mention.

6 The European Centre of Employers and Enterprises Providing Public Services (CEEP), "Public Services – Supporting the Very Fabric of European Society".

The neo-institutionalist literature in political economy and comparative politics provides a good basis for addressing resistance to institutional change in the EU insofar as scholars: i) tend to study rather large objects that are relevant for integration as a whole; ii) consider institutional continuity and change, i.e. the dynamics of EU integration or the lack thereof, as *explanandum*; and iii) discuss a limited number of variables as *explanans*. More specifically, I argue that a synthesis of recent development in historical institutionalism, on one hand, and discursive institutionalism, on the other hand, offers a fruitful framework that help us to focus on coalitions and agency as mediators of ideational and institutional variables. This paper therefore contributes to recent reflections about the cross-fertilization of the historical and ideational strings of neo-institutionalism with the emphasis on agency as a common ground (Schmidt 2010a). I demonstrate this argument by applying this framework to past and ongoing investigation of the debates over the Services Directive and the unborn framework directive on SGI. The paper falls into four sections. Taking the politics of services liberalization as an example, section one explains why it is important to deal with inter-sectoral policy issues that touch upon fundamental aspects of EU integration. Section two draws from the seminal distinction between positive and negative integration to conceptualize EU integration in terms of institutional change. Section three combines the typology of incremental change put forward by W. Streeck and K. Thelen, on one hand, and discursive institutionalism theorized by V. Schmidt, on the other hand, and identifies the relevant variables explaining the two cases under study.

Services liberalization as a broad policy issue for explaining institutional change

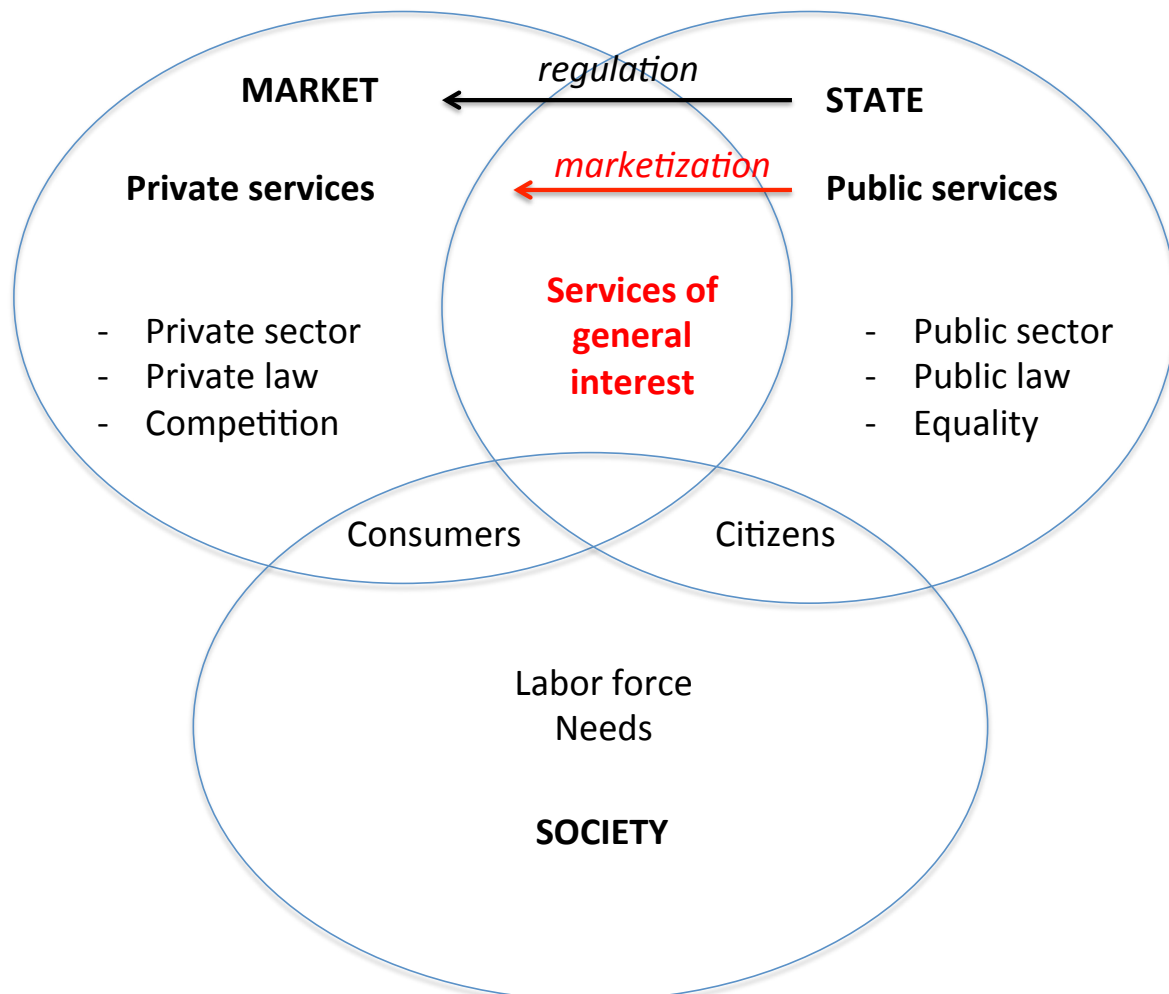
While no generalizations about institutional change in the EU can be made when looking at the sole issue of services, this subject is broad enough to take into account various actors, institutions and processes and therefore generate hypotheses that may be relevant with regard to EU integration as a whole. Since services represent about 70 percent of the European economy, it is not possible to cover empirically the whole range of activities involved. Rather, the focus here lies on how the EU and its Member States have sought to respond to the political and social problems brought about by the structural changes that have occurred in Europe over the past

three decades. Because they epitomize the moving boundaries between the public and the private sphere, the State and the Market (see Figure 1), the stress will especially lie on public services.

Services and the reconfiguration of capitalism in Europe

The rise of services in the economic structure of developed countries is undeniably the major mutation of capitalism since the industrial revolution. The conditions for and the principles underlying the provision of public goods and services have been deeply affected by this transformation. Surprisingly, the implications of the tertiarization of advanced

Figure 1: Transformations in the realm of services since the 1980s'



capitalist economies have received little attention in political science. While significant variation across European countries persist, Europe has been witnessing a common process of marketization (or commodification) of a number of public utilities and social services. This means that these services have been increasingly provided by markets and no longer by public authorities themselves. Correspondingly, they have been increasingly submitted to the rationales of competition and profit making. However, the States remain responsible for the regulation and, in case of serious market failure, for the allocation of these services.

While the freedom to provide services was already enshrined in the 1957 Treaty of Rome founding the European Economic Community, it has long remained dead letter. With the tertiarization of European economies, however, services have received increasing attention by the EU institutions. Since the 1986 Single Market Act that paved the way for a common European market, the EU has been following the policies of liberalization and/or privatization implemented in a number of Member States (for instance in the UK and Germany). This implied pursuing the opening of national markets and subsequent suppression of the traditional monopoly by national “historic” operators in a number of sectors (electricity and gas, telecommunications, audiovisual, transport). In parallel, the European Court of Justice (ECJ) has had to rule over an increasing number of cases where the free circulation of services and competition law were in conflict with social regulation (labor law, pay of foreign workers, etc) at the national level. Although case law is multifaceted and not consistent over time, the ECJ has arguably played a crucial role in extending the free circulation of services at the expense of national regulation.

The economic, legal and political developments affecting public services in the EU therefore reflect the changing State-market-society boundaries (Ferreira 2005) as well as the political restructuring of Europe (Bartolini 2005). Since public services are widely seen as one dimension of the European social model(s), the regulation of SGI is part of the debate over the sustainability of the welfare state under the conditions of a globalized and depressed economy (Esping-Andersen 2000; Kautto 2002). The fact that a whole range of services is a matter of solidarity and social fairness will therefore affect the modalities of institutional change. Against the background of the current financial and economic crisis, one can expect the marketization of public services to increase in the coming years. Indeed, the austerity plans carried out will further undermine the capacity of States to finance SGI out of taxation; this will be an incentive for States to get rid of costly activities that national budgets can no longer afford, and transfer them to the market (health care has a great potential in this respect). Insofar, the existence of regulatory mechanisms that are effective upon markets Europe-wide become even more crucial.

Legal, political and legitimacy issues

While it is mainly framed as an economic or legal problem in the literature, the regulation of services markets at the EU level therefore involves crucial political and legitimacy issues. The enormous contention triggered by the EU Services Directive adopted in 2006 shows that, because of the high societal relevance of many services, the regulation of services at the EU level has a major mobilization potential among civil society. The Services Directive famously played a great part in the failure of the French referendum for the ratification of the European Constitutional Treaty (Crespy 2008).

The regulation of SGI, and in particular, the way it is affected by EU competition policy remains a bone of contention today. The distinction between economic and non-economic services determines whether the EU competition rules apply to services (especially the prohibition of state aids and the capacity of States to impose regulatory obligations upon foreign services providers). Because this distinction remains a “grey area” in EU law (Dony, 2006)⁷, States have been even more constrained in their capacity to finance and regulate public services. While the ECJ has often promoted the extension of the free movement of services (at the expense of national regulation) (Hatzopoulos and Do 2006), a number of decisions also point at attempts to embed free movement into values of fairness and solidarity (Wernicke 2009). Since the introduction of an Article (16) on the Services of General Interest in the Treaty of Amsterdam, legal scholars have continuously analyzed the tension between public and private law, between the underlying economic and constitutional conceptions of citizenship (Freedland and Sciarra 1998), and between economic competition and

public interest (Prosser 2005; van de Gronden 2009). The asymmetric regime – with strong exclusive Commission competences in the field of competition and shared fragile EU competences in the realm of social policies – has been increasingly seen as problematic: it features the conflict between market integration by means of deregulation at the EU level and long-established regulated social models at the national level (Joerges, 2009).

Furthermore, with the so-called *Laval* and *Viking* cases in 2008, the ECJ ruled in favor of the free movement of services at the expense of the capacity for trade unions to engage in collective action in order to constrain foreign services providers to comply with national collective agreements. These two rulings have undermined the legitimacy of the Court to a great extent. It has led a number of scholars to critically assess the political role of the Court in driving integration (Joerges and Rödl 2008; Snell 2009). These cases have contributed heavily to feed a climate of strong resentment among important sections of the population and European trade unions towards the EU policy in the services sector.

Finally, liberalization pursued by the EU in a number of public utilities sectors are not unproblematic as independent has proved. First, productivity gains claimed by the Commission mainly result from cuts in labor force subsequent to liberalization and/or privatization (Rachel and Harrison August 2004). Secondly, price drops in the first years are often outstripped in a second phase (Flecker, Hermann et al. 2008) and mainly benefit large consumers (business) rather than households (CIRIEC 2004). Thirdly, liberalization and privatization have led to dramatic changes in working conditions (including the development of call centers) and far-reaching specialization of work as well as wage cutting

7 Today, three categories can be distinguished. The *services of general non-economic interest* (SGNEI): a core of services that remain the task of States and that are out of the scope of European treaty provisions (free movement of services): internal and external security (defense, police), administration and justice, social security schemes, mandatory education. The *services of general economic interest* (SGEI): the formula was already coined in the 1957 Treaty of Rome and qualifies any activity of general interest that has an economic dimension/purpose (i.e. most services). It is mainly public utility sectors, commonly labeled network industries, which have since then been liberalized by means of EU directives and are subject to coordinated or integrated regulation: transport (railway), telecommunications, audiovisual, energy (electricity and gas), and postal services. However, the list remains open and a number of social services have been considered of economic nature by the ECJ. The *social services of general interest* (SSIG): this label has emerged as a result of mobilization of interested parties in the sector of health care, social housing, child care, etc who claim for a protective status for these services (right to State financing, no submission to rules of public procurement, etc). All SSIG are potentially of economic nature and subject to Treaty provisions on competition, state aids and free movement of services.

(Hermann, Brandt et al. 2008). Fourthly, the capacity of public authorities to set up regulatory designs allowing for welfare maximization in terms of price and quality is in fact very limited (Petretto 1998). Last but not least, the Commission failed in meeting its commitment to effective stake holders' participation in policy evaluation (Hall 2005). For all these reasons, citizens' perception of these policies are not as unanimously positive as the Commission conveys (Van Gyes 2009; Clifton and Diaz-Fuentes 2010)⁸.

Implications at the global level

Today, most SGI are covered by the General Agreement on Trade and Services (GATS) and included in the Common commercial policy, where the European Commission enjoys exclusive competences. A main move has been made with the Lisbon Treaty that puts an end to the exclusion of audiovisual, educational, social and human health services, which are now incorporated into the field of the EU exclusive competence (Article 207(1) TFEU) with regard to WTO negotiations. The interactions between internal and external policy over the SGI are complex and ambivalent. On the one hand, the Commission is bound to preserve the national states' regulatory capacities in the fields that enjoy exceptional status internally: for example, "in June 2005, the European Commission made a conditional offer to commit postal services to market access to the extent of the liberalization of the internal postal market" (Krajewski 2009: 211). On the other hand, the EU has been – together with the US – the

main driving force of services liberalization during the Doha Round launched in 2001. Since it has competitive, large firms providing SGI (for example water distribution), major economic interests are involved (Kelsey 2008). The reference to enhanced competitiveness on the global markets as a main motivation for internal liberalization included in the first 2004 Services Directive proposal triggered mobilization by anti-globalization activists, trade unions and left-wing politicians in Belgium, France and Germany and was removed. All in all, the EU's role with regard to SGI is very ambivalent between the European-style protection of public interest and the search for increased competitiveness on global markets.

To sum up, the rise of the services sector in advanced capitalist economies was accompanied by structural changes as far as a wide number of services is concerned. The transnationalization of services markets in the EU, while being seen as a factor for increased competitiveness, also raises major social, political and legitimacy issues. Those are related to the capacity of national States to regulate those markets to preserve their social model, on one hand, and to the capacity of the EU to decide and implement EU-wide rules for accommodating the free market and public interest, on the other hand. Services therefore trigger debates that involve a wide range of actors, institutions and groups, including citizens and public opinions at large. From a methodological point of view, such a topic offers a long (yet reasonable) time span that can be broadly defined as the post-Maastricht era in Europe. Insofar, the issue of services is a fairly large and relevant field of investigation to throw light on the drivers of institutional change in the EU.

⁸ The Commission has conducted policy evaluation since 1997 in the liberalized public utilities sectors on the basis of indicators for economic performance as well as Eurobarometer polls for assessing citizens' perceptions. See for instance: European Commission, "Horizontal evaluation of the performance of network industries providing services of general economic interest", SEC(2007) 1024, 12.07.2007.

Conceptualizing EU integration in terms of institutional change

Institutional change in the EU: from the drivers to the resistances

Historical institutionalist and constructivist scholars have often focused on issues of political economy in Europe, such as social policy (Pierson 1996), labor markets (Palier and Thelen 2010), the European Monetary Union (McNamara 1998; Hay and Rosamond 2002) and political economy at large (Hall 1993; Schmidt 2002). After the calamitous ending of the decade-long constitutional adventure, political as well as scholarly attention tends to shift from institutional and constitutional integration back to economic integration. The current debt crisis is accentuating this trend and putting political economy at the center of the debate. From a theoretical point of view, however, the broader neo-institutionalist agenda, on one hand, and the EU integration research, on the other hand, have followed reverse paths. Historical institutionalists have progressively turned their attention away from the study of continuity towards the study of change (Thelen and Steinmo 1992; Streeck and Thelen 2005; Schmidt 2010; Thelen and Mahoney 2010). In contrast, students of the EU have increasingly abandoned the question of the drivers of integration to investigate the factors accounting for institutional resilience or political inertia as they find limited and differentiated Europeanization of policies and institutions in the Member States (Börzel 1999; Mair 2000), non-compliance with EU rules (Gelderman, Ghisen et al. 2010; Saurugger forthcoming), and diverse political and societal resistances to EU integration (Lacroix and Coman 2007; Balme and Chabanet 2008; Crespy and Petithomme 2010; Leconte 2010).

So far, the main puzzle connected with public services in the EU has been focused on liberalization, thus explaining change in the affected sectors. On one hand, sectoral studies have concentrated either – in an intergovernmental perspective – on national economic interests of the Member states (Padgett 1992; Knudsen and Jette 2005), or – in a neo-functionalist perspective – on the joint effects of sectoral actors and EU institutions (mainly the European Commission) (Matlary 1997; Eising and Jabko 2001). On the other hand, scholars of Europeanization have sought to explain the effects of European integration on national policies (Schneider 2001; Tixier 2002). In contrast with existing research on services liberalization, the Services Directive and the (unborn) Framework Directive for public services raise the puzzle of resistance to change. Taking issues with prominent scholars of Euroscepticism (Taggart 1998; Szczerbiak and Taggart 2008), who have mainly conceived oppositions to integration in a single continuum featuring “hard” and “soft” Euroscepticism, I have argued that there is no univocal definition of European integration: rather, the perceptions and framing of the nature of integration by agents play a key role in the mobilization of coalitions for mediating or resisting change (Crespy and Verschueren 2009). Conceptualizing continuity in terms of resistance to change means that continuity is not perceived as the natural order of the world punctuated by change, rather that the political world is a field of struggles and that both change and continuity are the results of agents of mobilization and ideas (Blyth 2010).

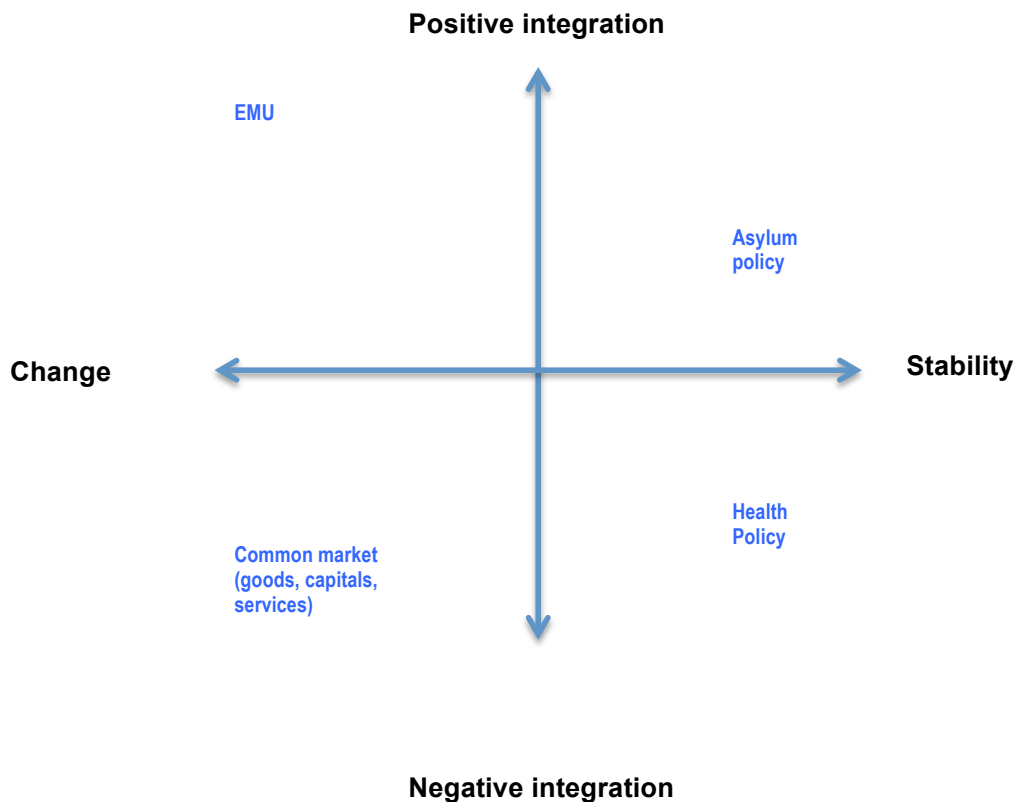
The nature and the degree of change: policy outcomes as policy mixes

In this perspective, a different conceptualization of change in the EU is put forward here (see figure

2 below). Institutional change in the EU can be conceived along two axes that picture the degree of integration, on one hand, and the nature of integration, on the other hand. The degree of integration ranges on the horizontal axis from change to stability. Stability and change are never black or white matters, and the lack of dramatic change somewhere, as pointed out by K. Thelen and her colleagues, means incremental change elsewhere. The degree of change can therefore be measured or conceived according to two distinct criteria: change in terms of policymaking and decision making (were decisions made? Were new rules enacted? To what extent did these new rules depart from previously existing rules; and change in terms of *ex post* outcome (did the new rules have an important impact on actual policy? On institutional arrangements?).

The second dimension of institutional change in the EU is that of the very nature or the direction of integration, represented by the vertical axis. As far as socio-economic issues in the EU are concerned, the distinction between positive and negative integration (Tinbergen 1954; Scharpf 1999) is very useful for conceptualizing the substantive content of change. Roughly defined, negative integration occurs when all barriers to free trade are removed (market liberalization and deregulation). Positive integration implies the set up of common policies and institutions, i.e. the replacement of various national rules by common rules at the supranational level. In reality, very few policies of the EU reflect pure models of negative or positive integration. Rather, EU decisions establish a policy mix that tends more towards one or the other *modus* of integration. Locating a policy mix

Figure 2: The two dimensions of institutional change in the EU



on a continuum rather than trying to classify policies in mutually exclusive categories is therefore closer to the empirical reality. As we will see in more detail with the examples below, whether a policy should be located closer to the positive or negative integration end of that axis depends on the respective scope of the suppressed national rules and the new common rules.

Four possibilities arise where the degree and nature of change combine:

- Strong positive integration occurs when new rules at the EU level are enacted. The European Monetary Union, with the abolishment of national currencies and the creation of a common currency (as well as the European Central Bank) is the ideal-typical example for positive integration. More generally, strong positive integration is associated with hard law (directive or regulation), exclusive or at least strong constitutionally enshrined EU competences with (re)distributive effects.
- Weak positive integration involves the establishment of common rules with a limited scope. The rules regarding the European Asylum that have existed since the Tempere Council in 1999 can be regarded as an example of weak positive integration. Common rules exist, but because immigration policy remains strongly associated with state sovereignty, they only rule selective aspects of the policy area (e.g. minimum standards on reception procedures). Weak positive integration is likely to occur in fields of shared competences between the EU and the Member States and often by means of soft law and coordination.

- Strong negative integration occurs when the EU has the capacity to remove national (tariff or regulatory) barriers to free movement within the EU; this is the result of liberalization (the opening of national markets/boundaries) and deregulation (suppression of national rules that impede free movement). The single market in goods launched with the Single European Act in 1986 rests mainly on negative integration through mutual recognition of regulation among countries. It is flanked by a narrow set of positive integration measures with harmonized product standards (quality norms, etc).
- Weak negative integration implies some degree of liberalization and deregulation while State capacity to restrict free movement is maintained to a certain extent (it must be justified by the protection of public security, public order, public health or the environment, etc). An example of weak negative integration is the recently adopted Directive on Patients' Rights in Cross-border Healthcare (2011/24/EU): the directive facilitates patients' mobility while clearly establishing their rights to seek healthcare services abroad and being reimbursed in their home country. However, the States can require prior authorization where cost, quality and safety issues are involved. Moreover, the directive has been designed for the 1% of Europeans who cross borders to seek healthcare, but does not aim at increasing mobility because this would impact the financing of the national healthcare systems.

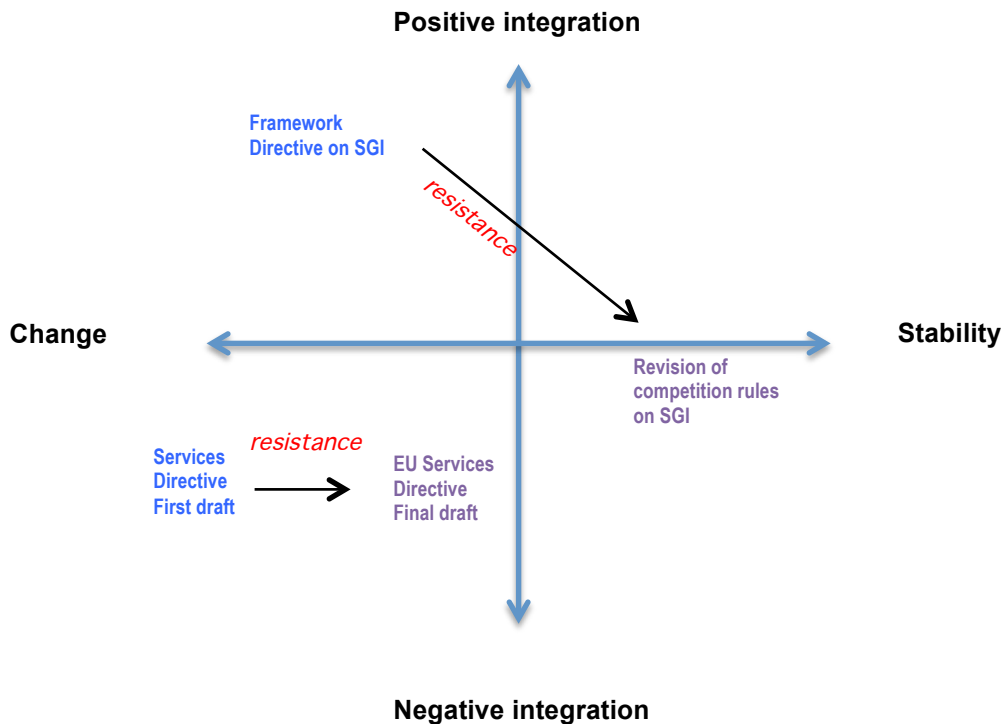
Against this conceptual backdrop, it is possible to further specify the puzzles raised by the two cases discussed here. The Services Directive case can be defined as an instance of resistance to negative integration. As mentioned above, the Commission's

directive proposal was very ambitious, foreseeing far-reaching deregulation and liberalization (on the basis of the country of origin principle). This triggered vivid mobilization by a range of mainly left-wing organizations. As a result, the final draft of the directive excluded a number of public services (audiovisual services, social housing, aid to families and children, and aid to people in need) from the scope of application; it also safeguarded the regulatory capacities of the States (although under very strict conditions), and softened the country of origin principle. In brief, the compromise implies the relocation of the final policy mix on services towards more institutional stability (see Figure 3). At the same time, the final draft does not include new provisions establishing common rules (harmonization): it only preserves the capacity for the Member States to impose their own (various) regulations upon foreign

services providers. Insofar, there is no move towards more positive integration.

The debate over the SGI and the possible adoption of a Framework Directive can be defined as a case for resistance to positive integration. While a coalition of actors (mainly France, Belgium, the unions, the radical left and the Social Democrats) had mobilized since the early 2000's for the establishment of regulatory rules at the EU level, resistance within other Member States and political groups precluded an agreement. In a Communication from 2007, the EU Commission claimed that support and justifications for proposing a Framework Directive were insufficient, and decided instead to engage with a revision of the so-called Monti-Kroes package on State aids in order to ease competition rules for local social services⁹. The balance of the SGI policy mix

Figure 3: The politics of services and institutional change in the EU



⁹ The Communication for the Reform of the EU State Aid Rules on Services of General Economic Interest (COM(2011)146) was adopted by the Commission on March 23rd 2011.

remains, therefore, on the side of stability, while the level of negative integration is moderate (the Member States preserve some regulatory capacity), combined with minor measures of positive integration (soft law has been established with the voluntary quality framework for SGI elaborated under the 2010 Belgian Presidency)¹⁰.

Explaining change in the EU: agents between institutions and ideas

Stability or continuity of institutions and policies is nothing new: it has long been the main theme of historical institutionalist research. The idea of resistances to change, however, implies that both continuity and change are strongly mediated by agency. In this respect, one can see a convergence between recent developments in historical institutionalism and approaches inspired by constructivism that take institutions, interactions and ideas into consideration. This also echoes the sociological bottom-up accounts of Europeanization flourishing in the French-speaking scholarship over the EU (Jacquot and Woll 2004; Palier and Surel 2007).

Change in the EU and historical institutionalism

Historical institutionalism was criticized for downplaying the role of agents while emphasizing continuity due to path dependencies, increasing returns of existing institutions or the role of exogenous events in punctuated equilibriums and critical junctures. In response to these critiques, K. Thelen and her colleagues have shifted the

10 Certainly, at this stage, the location of the policy issues on the graph cannot reflect a rigorous measure. In order to do so, one would have to elaborate indicators for measuring the degree of continuity, change and positive, or negative integration.

focus from dramatic to incremental change with a strong emphasis on the role of coalitions. In this perspective, change is the – sometimes unintended – result of “struggles over the meaning, application, and enforcement of institutional rules are inextricably intertwined with the resource allocation they entail” (Thelen and Mahoney 2010: 11). W. Streeck and K. Thelen (Streeck and Thelen 2005) have put forward a typology of institutional change: displacement (“the removal of existing rules and the introduction of new ones”); layering (“the introduction of new rules on the top of or alongside existing ones”); drift (“the changed impact of existing rules due to shifts in the environment”); and conversion (“the changed enactment of existing rules due to their strategic redeployment”).

This typology is very useful for making sense of the ways integration proceeds, consistently with the bi-dimensional conceptualization of institutional change in the EU presented above. As far as European integration is concerned, it can be argued that different modes of change can be linked with both different kinds and different degrees of change¹¹. Displacement, for instance, can lead to both strong positive and negative integration. In the case of positive integration, national rules are clearly replaced by new European arrangements (think of EMU); in the case of negative integration, national rules are suppressed but they are being replaced by the rules of free market and competition (non-discrimination on the basis of nationality, no unjustified State aids, etc).

11 Therefore, the point of view here is different than the one adopted by K. Thelen and her colleagues, since they conceive these modes of change as processes that, when looking ex post, all lead to important change in the long run. The purpose here is to explain outcomes in terms of policymaking and decision making, which does not presume from the intensity of change in the long run.

Layering can also be associated with positive and negative integration and can bring about less intense forms of change. New European rules (asylum policy) are added to existing national rules but cover only a very limited scope of the policy area (the bulk of immigration policy remains in the hands of the States). However, layering can also start a paradigm change that eventually will lead to important change. For instance, the introduction of a very limited and controlled liberalization in health policy (with the recent Directive on Patients' rights in cross border health care) is not likely to have a strong impact in the sector in the coming years. However, opponents have argued that it introduces the principle of marketization of health and, in this respect, pioneers major changes to come.

Incremental change by conversion in the EU mainly occurs through the re-interpretation of existing rules. One common form is the so-called codification of case law into legislation. While case law is never univocal but rather versatile and sometimes contradicting over time, a legislative proposal requires setting a political line. This process was precisely the bone of contention over the Services Directive: while the Commission was claiming that it was merely codifying case law, a number of lawyers and political actors accused it of twisting the decisions of the ECJ to systematize rules of the free market and deprive the Member States from all regulatory competences (Albath and Giesler 2006). Another famous example is the strategic use of the Article 119 of the treaty of Rome on equal treatment of pay in the European Economic Community by women in the 1960's. While this article had been introduced upon France's demand to prevent social dumping, a group of women in the Belgian weapons factory in Herstal successfully claimed that this article meant a right to equal pay between men and

women (Rouyer 04.04.2011).

Finally, drift is very common in the EU. When decision makers do not react in the face of a changing environment, existing rules may have a different or greater impact. Problems related to the SGI can be seen as drift, since it is the changes of the larger economic environment that brought about change in the realm of SGI. The rules in the area of competition policy have mainly been designed for private services of economic nature. As a growing number of utilities have been liberalized and privatized, and as the ECJ has defined a growing number of public services as economic services, competition law has increasingly impacted the organization and financing of public services in the Member States. A coalition of pro-regulation actors have seen such a drift as problematic and mobilized for the establishment of new regulatory rules at the EU level. However this strategy of displacement proved unsuccessful and faced major resistance from those who defended the (only seeming) *status quo*. In fact, incremental change is still happening through drift due to the impact of competition law on SGI. In sum, concepts developed in historical institutionalist research are very useful for the analysis of EU integration conceptualized as institutional change in the EU. However, despite an increased emphasis on agency and ideas, historical institutionalist scholars have not theorized much on actors' motivation for promoting or hindering institutional change.

No coalitions without ideas

Since the mid-1990's, the "ideational turn" (Blyth 1997) in neo-institutionalism has been accompanied by a stronger emphasis on agency. Constructivist scholars have articulated their

theoretical claims even more consistently and often applied them to political economy and European integration (Béland and Cox 2010). At the same time, historical institutionalist scholars have increasingly emphasized the role of agency and ideas. J. Mahoney and K. Thelen (2005) went a step further in this direction while linking the fourth above-mentioned modes of change with corresponding types of agents, defined as “insurrectionaries”, “symbionts”, “subversives” and “opportunists”. P. Hall, besides his continuous reflection of the role of paradigms (Hall 1989; Hall 1993), has put forward a conception of preference formation that includes some central tenets of constructivism (Hall 2005). Bridging the gap with neo-institutionalism, V. Schmidt has made the case for a fourth new institutionalism while theorizing the impact of agents’ discourse as a driver of change (Schmidt 2010). Discursive institutionalism provides a framework for investigating how ideas translate into discourse in specific institutional settings. It is not only the structural nature of norms and ideas (in Schmidt’s words: the actors *background ideational abilities*) that impacts the political process, as a sociological institutionalist perspective would entail, but the way agents are able to use those ideas to frame a policy issue (their *foreground discursive abilities*) (Schmidt 2008). This ability, in turn, is dependent on institutional resources and constraints on agency. Thus, institutional and ideational variables are conceived as interdependent. Both the articulation of ideas and institutions (Schmidt 2010b), on one hand, and the common emphasis on agency, on the other hand, point towards a fruitful combination of historical and discursive institutionalism.

The ideational dimension of political processes can best be grasped while investigating the ideas used to define interests and mobilize coalitions. In this respect, the case study on the Services

Directive brings evidence that institutions were a structuring factor with regard to interactions and interests. The multi-level institutionalization of the EU led the contentious actors to adapt their strategy in order to use the various national, transnational and supranational channels to contest the Commission’s initiative. Furthermore, the rules for the inter- and intra-institutional relationships played a great role in determining the outcome of decision-making. However, other campaigns at the EU level did not attain such spectacular results in resisting change (Parks 2008). Discourse and framing also played a crucial role, as different sequences of the conflict unfolded, especially with the scheduled referendum over the European Constitutional Treaty in France in May 2005. Left-wing parties, unions and anti-globalization groups succeeded in imposing the “defense of Social Europe” as the main frame in the debate and creating resonance in the wider public opinion (Crespy 2010a). This, in turn, had a major constraining effect on decision-makers, not least on heads of States and governments who had to reconfigure their interests. While J. Chirac radicalized the French position, G. Schröder more radically reversed the position Germany, which had been previously very much in favor of far-reaching liberalization. Interestingly, France and Germany are the two largest services exporters in the EU with competitive firms and had clear interest in getting access to new markets. However, the Bolkestein draft seemed to bring such radical change and legal uncertainty, that even the French business association (Medef) remained skeptical of whether it was serving their interests (Crespy 2010b). Uncertainty, therefore, opens the way for a change of “instrumental beliefs” through discursive framing informed by “normative beliefs” (Hall 2010). Eventually, the conflict engendered “unholy alliances” based on both institutional and ideological grounds in the European

Parliament with a coalition of “Regulators” opposing the “Liberals” (Crespy and Gajewska 2010). The Regulators gathered mainly the political left but also a crucial number of French, Belgian and Social Democrats concerned about preserving national regulatory capacities and social rules. The Liberals were the Conservative and Liberal group, but also the Social Democrats of the new Member States and from the UK. In brief, the conflict about services liberalization in the EU provides evidence that both ideational-discursive and institutional factors explain how and why agents resist institutional change in the EU, and, in this case, the conversion strategy pursued by the European Commission. The following section shows that a similar framework can be used in the case over the Framework Directive on SGI.

Generating specific hypotheses to explain resistance to change

The puzzle here is that of resistance to positive integration: why did decision-makers in the EU fail to agree on common rules for the regulation of public services, despite long discussions accounting for the need of such legislation and the introduction of an explicit legal basis in the Lisbon Treaty allowing the EU to legislate on this matter? The establishment of a Framework Directive would have meant the success of the conversion strategy pursued by the Social Democrats, the ETUC, and a number of associations: new common rules at the EU level would have tackled legal uncertainty due to the clash between national rules and EU competition rules. Instead, the EU Commission has engaged with layering (while enacting new rules in EU competition) as a consolation prize for the pro-regulation coalition. Building on both historical and discursive institutionalism, four more specific hypotheses can be formulated in order to explain why resistances were stronger than the

coalition advocating conversion :

1. Institutional path dependencies related to national institutional arrangements imply disagreement among Member States with contrasted SGI traditions.
 2. The strong sectoralization of policy regimes and decision making in the EU impedes preference formation over an inter-sectoral issue such as the SGI, especially as far as the preferences of organizations defending diffuse inter-sectoral interests are concerned.
 3. Ideas about State-market boundaries, and more specifically the prevailing of the neo-liberal economic paradigm, impede the establishment of regulation at the EU level.
 4. Ideas about the distribution of competences between the national States and the EU, in particular the pervasive legal principle of subsidiarity, impede the establishment of regulation at the EU level.
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1. Firstly, preference divergence among the EU Member States can be explained by institutional path dependencies. Institutional arrangements for the organization and financing of public services are deeply rooted in different State traditions (Dyson, 2009). National politicians are likely to favor the preservation of national arrangements over adjustment to a new European regime. Because public services are often local services that are important in citizens’ everyday life, action of the EU in this realm is perceived as intrusive. Any major policy change would have to be explained and legitimized in the public sphere. Moreover, uncertainty about the

potential gains of such an adjustment is great and the status quo seems preferable. This hypothesis relies on many studies that identify the EU Commission as a policy entrepreneur trying to initiate integration in various policy fields, and the Member States as brakes that try to “upload” their own model or to gain opt-outs as they fail to agree on common rules (Eising and Jabko, 2001; Matlary, 1997).

2. The second hypothesis, which I view as most fruitful, also stresses institutional factors, but points to the sectoralization of the EU policymaking and decision-making process. It could be formulated as the “policy shapes politics” argument. It seems that the strong sectoralization of SGI politics has become a major impediment for preference formation over a framework directive regulating the SGI as a whole. Existing empirical research brings evidence that sectoral liberalization of public utilities has induced the fragmentation of preference formation that has been reproduced over time (Mangenot, 2005: chap. 5). The forging of various labels (SGI, SGEI, SGNEI, SSIG) is illustrative of this process. As public utilities have been progressively recast in the sphere of the market, interest groups mobilized in favor of protective regulation at the EU level have been forced to withdraw into the realm of local social services. Similarly, healthcare services have been dealt with in a separate sectoral directive and therefore their inclusion in a broader discussion seems no longer necessary. Policy regimes established in the past appear to have a strong constraining effect on future initiatives as they establish technically tailored rules which are then hard to accommodate with a more encompassing policy program: this technical difficulty has been a main argument made by opponents of a Framework Directive. Sectoralization of policymaking impedes the formation of broader political views and the mobilization of inter-sectoral

political coalitions. This problematic feature of the EU governance system has been very well highlighted by A. Smith as an impediment to positive integration:

In more substantive terms, change in the modes of intersectoral mediation have also reduced the possibility of government’s introducing coherent programmes of action in order to tackle issues that many actors consider to be inherently trans-sectoral. In further “sectorizing” the government of Europe, it then becomes easier for proponents of competition-based regulation to press their case for markets as coordinating mechanisms and to disqualify alternatives as “impracticable” (Smith 2006): 1990

Sectoralization of policymaking strengthens sectoral actors, such as regulators or industry, while it weakens organizations that seek to defend large and diffuse interests such as unions. In this respect, the conflict over the Bolkestein Directive is a “lesson learned” for the Commission. The very large horizontal scope of the directive allowed inter-sectoral mobilization by a variety of actors on the left wing of the political spectrum. This, according to some interviewees, was a major strategic mistake that should not be reproduced¹². The sectoralization hypothesis is also interesting because it means that institutions are not always neutral with regard to ideas but rather can foster or impede some coalitions and some interests.

3. However, inclination toward institutional reproduction or impediments arising from established policy regimes at the EU level cannot be conceived as the only drivers of preferences on SGI. As far as socio-economic issues in the EU are concerned, especially when they have such broad implications

12 Interestingly, the French government, unlike what was decided in Germany for instance, decided to transpose the EU Services Directive not into general framework law, but into several fragmented sectoral regulations and laws. One motivation (explicitly mentioned in a Senate report) was to prevent any re-start of the contention debate from 2005 over ‘Bolkestein’.

as described in the first section of this paper, ideology and norms can be suspected of coming into play in a non-benign manner. As a scholar of EU law put it:

Ideology has always played a prominent role in competition law – political, legal and economic beliefs dominated its interpretation and development. This is trite. The issue becomes less trite when the consequences of the chosen approach are fundamental to society (Wernicke 2009: 122).

Ideas, and their discursive translation in the political process, shall be explored in two directions. On one hand, ideas about capitalism and State-market boundaries seem to be crucial. It is expected that the inheritance of the “silent revolution” that occurred in the 1990’s and 2000’s has engendered a strong bias towards marketization of public services: “the market” is efficiently used as a norm in political interactions (Jabko 2006). On the other hand, ideas about the distribution of competences among the various levels of governance (local/regional, national, European) cannot be overlooked. The extent to which the various actors are favorable to transferring competences to the EU will strongly determine their preferences toward a common regulatory framework over the SGI. In this respect, the pervasiveness of subsidiarity is suspected. While subsidiarity refers to territorial institutional arrangements, its content remains undefined and continuously re-interpreted by actors. Therefore, it is a norm (in the legal as well as sociological acceptance) that is strategically used in the political discourse. The absence of a common framing of the SGI is expected. On the basis of the literature on public policy and social movement – as well as of the Bolkestein case study – the existence of such common framing is crucial in securing a coalition mediating or resisting policy change.

Conclusion

The long-lasting opposition between neo-functionalism and intergovernmentalism has given way to a variety of approaches drawing from various disciplines and addressing more specific aspects of EU integration; this trend is often referred to as the normalization of European studies. One drawback, however, is that sub-disciplinary specialization has caused knowledge fragmentation and has become an impediment for addressing the broad question of the drivers of and the obstacles to EU integration as a whole. Therefore, there is a need for engaging with studies going beyond one policy sector, one type of process or one group of actors. The politics of services liberalization was presented as an example for a topic that has inter-sectoral significance and involves crucial political, social and legitimacy issues for the EU. The heated debates over the Services Directive and the (unborn) framework directive for regulating public services at the EU level have been considered. Although contrasted in some respects, both cases raise the question of resistance to institutional and policy change in the EU.

In order to tackle this broad puzzle, I put forward a two dimensional conceptualization of EU integration that considers the degree of institutional change, on one hand, and the nature of change (positive vs negative integration) on the other hand. Outcomes of policy debates shall be defined as policy mixes that can be located at the intersection of those two continuums (see figure 2 and 3). The typology for incremental institutional change formulated by W. Streeck and K. Thelen can be combined with this two-dimensional conception of change in the EU. In the case of the Services Directive, a broad transnational left wing coalition resisted the conversion strategy of the EU Commission: with this directive proposal,

the Commission promoted far-reaching negative integration while reinterpreting the jurisprudence of the ECJ in order to systematize the application of a strongly deregulatory legal device (the country of origin principle). In the case of the framework directive on SGI, the displacement strategy pursued by left wing actors advocating the establishment of new rules at EU level failed; as a result, the EU Commission engaged with the layering of new rules in the field of competition policy.

The combination of historical and ideational-discursive factors provides a fruitful framework for explaining the failure or success of the various strategies and coalitions in specific institutional settings. Institutional hypotheses formulated in relationship with the specific cases discussed involve

the multi-level structuring of EU governance, the stickiness of national arrangements, and the pervasive sectoralization of policy regimes at EU level. Ideational and discursive hypotheses relate to the actors' ability to formulate a coherent discourse about capitalism in Europe as well as about the distribution of competences between the EU and the Member states.

In a nutshell, the central claim in this paper is that the research agenda on European integration could be reinvigorated by addressing the issue of resistances to policy integration, understood in the broad sense. In today's troubled times for the EU, the broad existential questions are more than ever vivid and call for some informed answers.

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