Regulatory Regimes in Europe

Paper presented to the ECPR Regulation standing group meeting, Pisa, 6-8 September 2007.

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Introduction

Between 2001 and 2005, the European Union created three policy regimes in the area of the single market that govern the interaction of the member states and their regulatory bodies and the European Commission. These three policy regimes delegate authority from the member states to the European level to differing degrees. There is a regime for company regulation, a regime for regulating stock market transactions, and a regime for setting accounting standards. Together they build the core of a project to complete the internal market and ensure investor protection in Europe.

Each of the three regimes is an innovation for the governance of the single market because (1) decision-making authority is delegated to the European level, sometimes extensively; (2) decision-making authority is delegated to independent regulatory institutions at the national level; and (3) the responsibility for coordinating transnational regulation is shared by a number of national and European bodies that work together on the basis of the regimes' principles. In the case of company regulation, which established the primacy of the member states over European institutions, the organisational principles set down in EU directives mandates the interaction of national regulators in a detailed way. The creation of these policy regimes therefore results in a significant transformation of the institutional configurations, of the actor constellations and the nature of their interaction in regulating financial markets and companies in Europe. Informal networks changed into formal cooperation and delegation with an established structure in the new regimes.

The structures and the governance of the three policy areas are nevertheless different. The regime for company regulation creates, aside from a new legal European company form, rules to regulate cross-border mergers, takeovers, company migration and the implications for shareholders and employees. The regime builds on existing national legislation and regulation and steers the national regulators without delegating authority to the EU. The regime for financial market regulation is a multi-level system in which regulatory authority is transferred to the European Commission with the participation of national regulators in the policy-making process. The regime manages the reporting requirements of listed companies as well as the behaviour of managers, bankers, accountants and journalists with regard to stock trading in the pursuit of investor protection. The regime for accounting standards manages the introduction of uniform accounting standards for use in corporate financial reports for companies in the single market. It delegates responsibility for developing standards from national legislators or organisations to a private international body, the International Accounting Standards Board (IASB) without any European rights to shape the rules that are established. The EU in this case builds on previous decisions of many member states to adopt IASB standards for their own use. Delegation therefore does not necessarily mean an increasing influence of EU institutions.

The regimes promote the further development of new directives and by-laws to regulate the single market, precisely because they establish the responsibility of the European and national legislators and regulators in each policy area, easing negotiations. Different actors take the lead in formulating and implementing policy. This begs the question: why are disparate modes of governance established, even in closely related policy areas?

All regimes share an approach that builds on existing national institutions rather than challenging them. I suggest that European regimes can first be established when there is consensus between the member states and between them and European institutions on both fundamental and organisational principles. The fundamental principles define the governing participants and their legitimate claims to power on other participants and on the regulated. They legitimate a particular form of governance and rule out alternatives. Organisational principles steer the activity of the governing participants and their interaction in the context of these fundamental principles. Together, these principles build the legitimating and organisational framework of the regime, enabling collective action of the participant member states (Young 2000: 495).

I further suggest that the national governments actively attempt to shape the European context of their own regulatory policies to ensure that they reflect pre-existing national principles of legitimate public policy and rule out alternatives. This can lead to the development of a regulatory regime based on intergovernmental principles, and a rejection of a European regulatory state (Majone 1996) were a strong national desire to shield policy responsibilities from harmonisation and to protect national regulators and governments from being displaced or hollowed out exists. This stands in contrast to the König-Archibugi's collusive delegation thesis, which expects delegation when a policy area is particularly difficult to deal with politically (König-Archibugi 2004: 154). I expect national governments to insist in retaining national sovereignty precisely where the changes for the voting public brought on by delegation are greatest. This was so in the case of company regulation, were disparate regulatory customs and principles existed in the member states, disparate socio-economic pacts and the method of ensuring social peace between investors, managers and employees were the norm, and public expectations of national government responsibility are highest.

In contrast, the member states appear to be open to the suggestion that they delegate responsibilities when national and European regulation are so similar that they become substitutable. This means that the retention of national sovereignty is influenced by the compatibility of supranational proposals. The willingness to delegate is even stronger when national regulatory authorities are tied into the decision-making structures at the supranational level, ensuring that future disputes over policy are avoided or at least negotiated. The attempt to reconcile European and national conceptions of legitimate regulation can therefore promote delegation when it builds on existing regulatory institutions and the regulatory logic of the member states. These assumptions form the basis for deriving hypotheses about the capacity of the European Union to build functioning institutions.

Analytical Approach

Ingeborg Tömmel (2007) asks whether there are new insights into modes of governance in the EU, and more specifically, how to go about describing disparate modes of governance in which both European institutions and national governments are responsible for steering policy and its implementation. She observes a Europeanisation of policy areas through the establishment of new procedures that steer decentralised governance actors. These European methods increasingly rely on the open coordination and cooperation of the member states, as the EU does not acquire supranational characteristics, whilst the member states retain their traditional hierarchical patterns of authority within their jurisdictions. The nature of European coordination varies from policy area to policy area according to the degree of mobilised opposition within the member states. This is the basis for understanding the complementary roles of European and national modes of governance and explaining the differing degrees of coordination and opposition to the Europeanisation of a policy area.

Eberlein and Grande (2005) have suggested what this non-hierarchical mode of governance could look like. They show how the horizontal and vertical differentiation of governance in Europe frays the hierarchical authority of the nation state, and suggest that informal networks develop to ensure the coherence and efficacy of national policy. Informal governance actors negotiate between national governments and the EU, between the state and non-governmental organisations over the way the EU is governed, without generating formal rights and responsibilities.

Grande sees functional, transnational regimes emerge out of this process that are specific to particular policy areas. These regimes are established in the EU by 'cooperative states' that attempt to regain and enhance their capacity to govern in a deterritorialised environment. Other states are either weak or unwilling (Grande 2003: 290-293).

Soft coordination and informal networks are found most frequently where non-hierarchical modes of governance are strongest, where little or no delegation of responsibility takes place, as in the open method of coordination (Knill and Lenschow 2003, Shäfer 2005). As Tömmel suggests, the actors can only rely on cooperation or coordination in such circumstances, not on authoritative, hierarchic government. In contrast, regimes give official governance actors an official status, even when the regime is built on an intergovernmental basis.

The structures of governance can be more formal, however and require a higher degree of compulsion if the member states and EU institutions create the required legal framework and institutional capacity (at both the European and national levels). In order for this to happen, the decision makers must agree on constitutive and regulative norms that define the relevant governing actors, and the horizontal and vertical relationships between them that define their roles in the policy process. I refer here to Wiener's (2007) suggestion, that these principles can be negotiated to establish constitutions and similar governing structures at the international level. The negotiations do not only establish the rules of the governance of the policy regime (the regulative norms), but the identity of the actors themselves (constitutive norms). This is a differentiated identity in which national and supranational components have disparate strengths according to the policy area in question.

When member states and EU institutions agree on intergovernmental norms, they create a stronger form of commitment to specific governance rules than is the case of governance through informal networks. The identification of governing actors and their rights in the governance of the policy area restricts the degree of freedom that national governments and regulatory bodies have in taking decisions. The result can no longer be equated with uncoordinated international politics or open coordination. It constitutes a new form of governance.

We can best test these hypotheses by investigating the demands of the member states and of EU institutions in negotiations over the rules of regime governance and by looking at the domestic policy of selected member states in key policy areas. If my hypothesis is correct, that a regime requires prior agreement on both constitutive and regulative norms, then we should observe that regimes are not created where agreement exists on only one set of norms. If my hypothesis is confirmed that regimes must build on national constitutive and regulative norms in order to reach agreement, then we should see minimal adjustment pressure on national policies and institutions from their EU counterparts. If it is true that opposition to the delegation of national responsibilities is particularly strong when institutionalised interests of the public are at stake, then we should see no behaviour that corresponds to the new *raison d'état*, to the delegation of decision-making responsibility to independent authorities.

I investigate below the positions of the negotiators in EU negotiations and show the influence of domestic factors, focusing on Germany and the UK. These two countries are treated as dissimilar countries in the varieties of capitalism literature, as coordinated and liberal market economies respectively, that are each embedded in a broader set of social relations that determine the logic of regulation (Hall and Soskice 2000). Both countries are suitable to compare disparate interest and institutional constellations and their impact on attempts to negotiate European governance. In contrast to the expectations of the varieties of capitalism literature, which stresses path dependence and only incremental changes, this article shows that policy areas with relatively small publics are able to liberalise much more quickly and thoroughly than policy areas with large, diverse publics. This is important for determining whether domestic policy changes made European institutions possible, or whether new European rules changed domestic policy. In dong so, we must observe how strongly national governments adapt their own policies to European and national pressures for change and which topics are non-starters because they touch on strongly vested interests.

Three Regimes of European Integration

The Company Regulation Regime

A central argument of this article is that the member states, the Commission and the European Parliament -- to the extent that it is included – must agree on regulative and constitutive norms before they can establish a regime. These norms are not pre-determined, but are developed by the actors involved in negotiations about basic rules and principles.

This did not happen between 1970 and 2001 because the Commission insisted on a set of uniform rules for the single market under its regulatory oversight, which generated opposition from many member state governments. Individual directives that established minimum standards in company law were passed, but none of the Commission proposals for laws to regulate and simplify cross-border transactions such as mergers acquisitions or company migration were passed. Instead, companies remained exposed to a plethora of ad hoc decisions and uncoordinated actions of the member states.

After the Commission acquiesced to the demand of the member states to allow for legal diversity and national regulatory responsibility, an agreement on the constitutive norms of the regime became possible. The European Council succeeded in moving the Commission to accept that the European Company Statute constituted an 'additional goal of the Union' under EU treaties, so that the Community method of qualified majority voting and Parliamentary co-determination did not apply. This led to the Council retaining its claim to a right of initiative in the legislative process and granting the Parliament only a right of consultation. The Parliament insisted on the old Commission policy of legal harmonisation and demanded that the Commission become the lead regulatory authority for companies in the single market, but remained isolated when the Commission sided with the Council and accepted a compromise on regime principles. The Commission viewed the member state-based solution as better than no solution and supported an intergovernmental solution. On the regulative side, the responsibilities of national regulators and the form of their cooperation in cross-border transactions was embedded into the directives. Formalised networks of governance were created to provide for transnational regulation.

The agreement on a company regulation regime was more difficult than reaching agreement on the other two regimes. The high political sensitivity of company law resulted partly from the large circle of affected parties, whose property and employment rights were at stake. It also followed from the strongly entrenched perception of the member state governments that their sovereignty in the area of company regulation was a key requirement of their policies for promoting international economic competitiveness and addressing voter concerns about investor, consumer and worker protection (Donnelly 2007a).

The member states decided to start negotiations on company law in response to a decision by the European Court of Justice in 1999 that would have hollowed out their capacity to control company regulation if left unchallenged. The Centros case confirmed the freedom of establishment for companies in all countries of the single market over the opposition of some member states. While the ECJ prohibited governments from refusing to register a company coming to do business, it did not undermine the right of governments to prevent companies based in their jurisdictions from leaving. In negotiations with the Commission, the member states secured for themselves their own primary regulatory responsibility for companies in exchange for a commitment to firm rules for the orderly management of cross-border transactions. Conflict avoidance amongst disparate legal systems and the preservation of diversity were entrenched as the raison d’être of the company regime of the internal market.

The constitutive principles of the regime were negotiated in the European Company Statute 2001 and the accompanying Employee Participation Directive 2001. They not only ensured that the member states would have regulatory responsibility for the new European Company (Societas Europaea, SE), but also that they retained regulatory control in later regime directives. There was previously no governance mechanism for managing cross-border transactions. Either the national government in question accepted the activity of companies registered in other EU member states on their own territory in principle (the proponents of incorporation theory, e.g. UK) or they insisted on the strict application of national laws (the proponents of real seat theory, e.g. Germany)(Wymeersch 2003).

The decisive point is that the ECS does not fully provide the legal rules for the SE. The SE must be based on the company law of the country in which its headquarters are located. This application of real seat theory ensures that European rules and governance build on the norms of national legislation and regulation. This solution has a key advantage for countries attached to incorporation theory, that the application of real seat theory protects national law and regulation from the pressure of harmonisation from European law. Only Luxembourg opposed this concession in the Council of Ministers, even though half of the EU member states use incorporation theory domestically. The agreement on real seat theory made it possible for the EU to sort out clear national and EU responsibilities in future directives managing cross-border company regulation to facilitate the transnational coordination of national regulators.

The Participation Directive set rules to protect employee co-determination of management decisions as a social institution of key importance, above all for German companies. A company that undergoes a change of legal form, a takeover or merger into an SE must retain co-determination and extend it to parts of the company not already covered. Only a two-thirds majority of the employees in at least two countries can set this requirement aside. Co-determination is therefore protected both by real seat theory and the EPD.

The constitutive principles of the regime were used for three further directives governing cross-border transactions: Takeover Directive, the Merger Directive and the Migration Directive. As in the ECS and the EPD, national company registration offices are involved in implementation and enforcement. They remain involved here as well, but share responsibility with cartel and financial market trading regulators and with tax authorities.

The stock market regulators of the member states play a central role in the implementation of these directives. A takeover bid is regulated by the rules of the country in which the offeror company is registered. The reaction is regulated by the rules of the country in which the target company is registered. For proposed mergers, the regulator in the country where the new company will be registered is responsible, as is the law of that country. This creates legal certainty for shareholders and generates clear roles for national regulators. In addition, tax authorities and cartel regulators have the right to ensure that the company's legal obligations have been fulfilled before the company leaves the country's jurisdiction.

The tax authorities have a key role because they decide according to international treaty and practice where a company has its main headquarters, which in turns decides the responsibilities of other national regulators. All member states protect the authority of the tax authorities rigorously regardless of whether or not they subscribe to real seat theory. Tax authorities consequently become the effective gatekeepers of the freedom of establishment in the single market.

The use of national laws deliberately prevents a harmonisation of national law, as the Commission had originally intended. The Commission wanted to regulate takeovers and mergers in Europe in exactly the same way as other financial market transactions, which would have increased its own authority (see below) but could not convince the Council. The member states saw it as necessary to build these directives on the constitutive principles of the company regulation regime because national laws and regulations in this area were highly politicised and built on conflicting principles.

The Commission preferred the British model. In the UK, anything less than primacy for the individual shareholder in mergers, takeovers and company migration could not be considered as it would have weakened the British conceptions of investor protection, shareholder democracy and good corporate governance practices. This includes a comprehensive ban on defensive measures by the management of a target company during a takeover bid and a decision on takeovers and mergers by a majority vote of the shareholders (House of Lords 2003a, 2003b)

Several other governments defended special voting rights that granted them and privileged groups of shareholders the power to block takeovers and mergers. The German government demanded a level playing field in defensive measures and passed its first Takeover Law in 2002 to legalise this. The member states may block takeovers in 'the public interest' according to the directive. The political agreement on disparate national laws and traditions hinders the completion of takeovers and mergers, but was a necessity in the face of the political opposition to changing national rules. The Commission accepted the compromise even though it was unhappy with it, accepting it as better than no solution at all.

Germany and the UK showed that company regulation was highly politicised and that political parties were united on the need to protect national responsibility from delegation and national laws from harmonisation. In both countries, spectacular corporate collapses and scandals became the topic of election campaigns that resonated with the public and unleashed public discussions about the best possible response of government. Both regulatory and fundamental principles were discussed in the process of arguing over the degree of legitimate state intervention. In the UK, corporate governance was made an election issue in the 1996 election, after which an extended public debate ensued, leading to a proposal for 'enlightened shareholder capitalism' (Company Law Review Steering Group 2001). The government wanted to retain the flexible approach to company regulation and the laissez-faire relationship between the state and business (Brown 2005) In EU negotiations, the government remained careful to protect national law and prerogatives (Interview).

In Germany, all political parties supported increased regulation of companies as an appropriate response to poor corporate governance, including a strengthening of the supervisory council, of external regulation and managers, and a preservation of co-determination. In 2002, the Schröder government published a 10-Point plan to regulate German companies and implemented it after its election victory. Notable was that even the liberal Free Democrats supported not only the regulatory measures but also the constitutive norm of an active state that enforces the constitutional principle that property has social responsibilities. This could not have been further removed from the British situation.

Alongside the regime, the Commission and the member sates created and informal network of corporate governance experts to exchange experiences and learn from one another. The European Corporate Governance Network (ECGN) is not tasked to seek ways to harmonise the law of the member states. The Commission has confirmed this in their refusal to develop a Code of Corporate Governance for the EU, citing the legitimate primacy of the member states in company law.

In sum, the process shoes that the regime was the product of agreements between the member states and the Commission on the constitutive framework of their relationship. The regime consciously rejects the possibility of a regulatory state at the European level and the ECJ's vision of negative integration. The regime was only possible because the Commission finally accepted the member states' principles and because the Parliament was shut out of the discussions. The company regulation regime formalises and enables the cooperation of specific regulatory bodies in the member states in overseeing cross-border transactions using national law. The member states never attempted to apply the new raison d'état (Wolf 2000) in this policy area. On the contrary, it was clear to all politicians that national governments could not relinquish control of company regulation. The completion of the single market generates public concerns and opposition against foreign influences on national institutions, particularly against the weakening of co-determination in Germany and against the weakening of shareholder protection in the UK.

Regime for Financial Market Regulation

The regime for financial market regulation is concerned with trading in shares, especially with the ability of managers, analysts, auditors, accountants, reporters and bankers to influence the market price of shares with information, and with the ability of investors to make informed decisions about the market value of a company. In contrast to the company regulation regime, the member states agreed quickly on the principle of delegating regulatory competence to the European Commission and the harmonisation of national laws. The most important constitutive issues were therefore sorted out quickly. Nevertheless, it took a further three years before the Commission, member states and Parliament could agree on further regulative principles that identified the governing actors and their regulatory rights and responsibilities.

As with the company law regime, there were individual directives before the regime came into being. These were not governed by any coordination mechanism. The absence of a regime delayed EU projects because the relationship between the EU and the member states was not institutionalised, despite the similarity of national and EU goals (investor protection and competitiveness policy) and methods (supervision by independent regulators).

The key to the member states' willingness to delegate responsibilities to the Commission was that they had already begun a process of public policy convergence, particularly to independent regulatory bodies. The regulators gained the right to directly pass legislation as part of a programme developed and supported by all mainstream political parties in the mid-1990s to improve competitiveness and investor protection. This convergence was an important prior step for facilitating agreement on a substitute at the European level. Only the regulative relationship between the European and national authorities had to be sorted out.

The regime was made possible by the Lamfalussy Plan (2001), which suggested rules to manage the relation between national and European regulators. Lamfalussy foresaw four levels of responsibility that largely built on existing national institutions without giving up on the goal of continued legal harmonisation. The Plan completed the constitutive principles as well as providing the regulative principles for the regime.

A new and important part of the regime is that the Commission is empowered to decree new rules to increase regulatory standards. This delegation allows the Commission to adapt the EU acquis under the supervision of a committee of the member states and of a group of market participants.

The governments of the member states and the European Parliament only play a central role by the passing of so-called Securities Directives. These directives provide the foundation for the governance of the financial market regulation regime and are known as Level 1 of the Financial Services Action Plan. The Listing Directive, the Prospectus Directive and the Transparency Directive set minimum standards for the requirements placed on listed companies regarding their sales prospectuses and ongoing information that may affect share price. The directives allow companies to list on all exchanges in the single market using a single sales prospectus and working under the supervision of a single regulator. The minimum standards correspond to the country of first registration.

In addition, the Market Abuse Directive criminalises deliberate misrepresentation of the market by managers, financial analysts, accountants, auditors, underwriters and journalists. The Statutory Audit Directive sets minimum standards for the independent supervision of financial reports and auditors. The directives pursue the goal of protecting investors from misleading information. The directives go far further than previous directives, such as the Insider Directive 1989, partly because they build on a convergent policy of the member states and partly because the responsibilities of the governing actors could be set much more explicitly.

The Commission's DG Internal Market, Financial Markets Division, is permitted to release further regulations to implement the directives. Implementation, the second level of the regime, takes place under the watchful eye of national ministerial attachés in the European Securities Committee. More important, however, is the Committee of European Securities Regulators, CESR, seated in Paris. CESR advises the Commission and market participants on the formulation of new directives and regulations. It has a strongly developed structure of sub-committees dealing with specific questions on an ongoing basis. CESR's expertise and its contact with market participants give it great influence with the Commission. Its members, the national regulatory authorities, are responsible for the concrete implementation of the securities directives. Their legal independence in the policy process facilitates this role since new rules made in Brussels need not necessarily be approved by national legislatures.*

Level 2 shows most clearly how delegation to independent national and independent European regulatory bodies fit together. Both European and national institutions are strengthened by this arrangement. Both the British and German governments strengthened the principle that statutory regulation should replace self-regulation at the national level before using the same principle at the European level. The UK transferred regulatory supervision from the private London Stock Exchange to the Financial Services Authority (FSA). Most important was that the FSA acquired the right to issue regulations in its own right. This was a revolutionary of British constitutional doctrine (Moran 2004).

Germany had established a corresponding body in 1995, the Bundesaufsichtsamt für den Wertpapierhandel (Federal Securities Trading Office) and oriented listing rules to international standards. This meant that some of the strict German rules were relaxed to make the German market more attractive (Donnelly et al. 2001). The German Bundesaufsichtsamt für Finanzdienstleistungen (Federal Financial Services Office) was established as the all-finance regulator in 2000.

These changes took place at the national level, whereby the public discussion was not nearly as robust or controversy-laden as was the case for company law. The size of the interested public was also smaller, which can be seen in the smaller number of policy position papers and responses to government legislation.

Level 3, which is currently being built up, deals with the coordination of national regulatory bodies involved in the implementation of Level 2 regulations through CESR. The main activities are the sharing of information and conflict avoidance in cooperation. CESR introduced an informal procedure in 2005 for this purpose. The Commission retains the right to create rules in this area to ensure clarity if CESR should fail.

Level 4 serves the goals of policy evaluation and improvement and is focused on the Commission, which can react with further regulations, with discussions with CESR about implementation or with discussions with individual national regulators.

This leads to the development of a multi-level regime for financial market regulation. The Commission makes decisions about future regulations because the member states were prepared to delegate this authority. With the exception of passing new directives, the member states are only involved as a form of oversight through the European Securities Committee. The Lamfalussy Plan forms the terms of reference for coordinating the members of the regime on four levels. It was precisely this plan that allowed the governments of the member states to delegate, as they could be reasonably sure how the governance of the regime would unfold. The coordination of national regulators through CESR in the implementation of regulations and their organised consultation with the Commission on regulations is the centrepiece of the regime. As a meeting point for expertise for the Commission, the national regulators play a key role in the vertical authority of the EU alongside the horizontal coordination of national regulators and their own hierarchical authority within their individual jurisdictions.

The financial markets regulation regime builds on the institutions and principles of the member states. The sequence of changes in national policies and institutions and the establishment of the European regime help in reaching this conclusion. Without the change in national policy toward investor protection it would have been unthinkable to harmonise national legislation in Europe. Without the prior delegation of authority from parliaments to independent regulatory authorities, a similar transfer to the European Commission would also have been difficult if not impossible to conceive.

The result is more than the sum of the coordinated, decentralised governance actors that are found in the regime for company regulation. In Paris and Brussels, governance is strongly, even centrally organised, almost to the extent that it is hierarchically exercised in the member states. There remains room for manoeuvre in national rules, but the goal is to increase harmonisation over time. The national regulators have control over their own jurisdictions, but in a highly Europeanised context. Coordination is only required to sort out unforeseen differences of opinion.

Regime for Accounting Standards

With the FSAP, the Commission and the member states legitimated the development of a European accounting standards policy to facilitate the comparison of company financial reports in the single market. They passed the International Accounting Standards (IAS) Directive in 2001 without great discussion or debate. The IAS Directive requires listed companies to publish reports using IAS from 2005 onward. It involves a delegation of standard-setting authority to a private, supranational organisation that creates recognised standards. The EU thereby adopted standards that many member states had already adopted as part of their economic competitiveness policies.

The structure of the IAS regime differs from that of the financial market regulation regime. The Commission does not make and modify rules, but the International Accounting Standards Board (IASB), a 14-member body of private-sector accounting specialists based in London. The implications for national accounting rules and practices are different from country to country. In the UK, the constitution, rules and method of operation of the Accounting Standards Board (ASB) resembled that of the IASB, so that concerns of conflict were low. However, for the European regime to work in accordance with the general principles of EU law, which requires a statutory basis for regulation, the British government had to ensure that there was a legal basis for the ASB's work to replace self-regulation. This was accomplished by making the ASB's parent organisation, the Financial Reporting Council, a statutory regulator. Although the change was an important re-thinking of the relationship between state and business, this change fulfilled an election campaign promise of the Labour Party from 1997 to place accountants and their standards under legal supervision. Otherwise, the similarities of British and IASB standards and methods rendered the two largely interchangeable.

In Germany, a complete adoption of IAS would have led to greater changes than in the UK. First, the legislator was responsible for setting standards through the Commercial Code, a widespread practice in continental Europe. In Germany, two bodies were established to manage the application of IAS. The German Accounting Standards Committee (DRSC) represents Germany abroad in the IASB and the Commission. The German Standardisation Council (DSR) consults with government and accountants on the application of IAS in Germany. The EU national governments remain free to decide on the appointments made to the bodies. France, for example, ensures that various professions are represented in its National Accounting Council (Commission nationale de comptabilité). This innovation gives greater influence to private actors in the development and application of standards than they previously enjoyed.

The actual influence of national-level actors is uncertain, since IAS is adopted for information purposes only. They are an additional layer on top of national standards, that continue to be legally viable, especially in politically sensitive areas such as tax calculation. In this way, the member state governments shield themselves from harmonising pressure on their tax systems through accounting standards. This has a political as well as a practical dimension, given the weak readiness of national governments to relinquish control of tax policy (Genschel) and the central role that taxes play in political economy.

There are other open questions about the application of IAS in Europe. The most important is how strongly IAS and their counterparts, International Financial Reporting Standards (IFRS) will intrude into established accounting rules. If IAS/IFRS become more intrusive, they could conflict with the constitutive and regulatory principles of the EU member states. The popularity of IAS could be traced in the past to their reliance on principles rather than substantive rules. This facilitated their application because they were compatible with a variety of rules and interpretations. Coordination across countries was not necessary.

Since 2000, however, the IASB has come under pressure from IOSCO, the International Organisation of Securities Exchange Regulators, to establish a hierarchical relationship with national standard setters and to issue increasingly detailed Interpretations of IAS/IFRS. IOSCO wanted this to contribute to its own project of allowing companies listed on one stock exchange to be listed on all stock exchanges on the basis of one set of rules: the rules of the country of registration (IOSCO 2005).

In 2005 the IASB attempted to push through a constitutional change that would have brought this centralisation about. This would have changed the EU's delegation of authority to the IASB from a delegation of principle-setting to a delegation of intensive rule-making authority. The IASB's demand that national standard setters function as transmitters of the Board's rules and Interpretations to national governments and accountancy bodies and not as a two-way transmission belt underlined the intent to install hierarchical governance. They would no longer be involved in decision-making. The reaction of the national standard setters, the national governments and the European commission was sufficiently strong to move the Board to modify its proposal. The French government in particular criticised the lack of democratic principles and legitimacy in the proposals. The Italian government and its standard setter demanded the right to release their own interpretations of IAS/IFRS and to deviate from interpretations issued in London, which underlined the strong opposition to substantive harmonisation in that country.

The European Commission demanded for itself a direct, special relationship to the Board mirroring that enjoyed by the American and Japanese standard setters, that would give them input into standard and interpretation development. The Commission has been unsuccessful in this demand. It has observer status in the Board's Standards Advisory Council, where proposed standards are commented on by national delegations.

The Commission reviews IAS and their compatibility with EU law and goals with the assistance of the European Securities Committee, the European Accounting Committee (both Council bodies) and the private European Financial Reporting Advisory Group. The national standard setters, in cooperation with the governments of the member states, remain responsible for the detailed implementation and application and discussion of the EU's acceptance of standards.

There is an overall pattern that the member states see accounting standards as part of a wider package of policies to increase the international economic competitiveness of the country through comparability and transparency, leading to more investment. The limits of this policy at the European level are reached when international rules are intended to *replace* national rules and practices. If the implementation and application threatens to touch on politically sensitive issues like tax rates, then the size of the group of interested lobbies and citizens grows and opposition is guaranteed. IAS is therefore a layering of international standards rather than a displacement (Streeck and Thelen 2005). The establishment of hard rules remains the domain of the member states and national standard setters and is not affected by the IAS directive. This leads to the development of new, private, vertical principles of governance that assume a parallel position to the development of national standards. The regime sorts out the relationship between those national and international standards.

Conclusion

If we return to the question of how the regulatory governance of the internal market has changed, we can conclude that three new regimes have emerged in Europe that differ in their structure, in their procedures and in their dynamics. That factors that influence this have been identified that shape these differences, identify the key national and European governing actors and the mode of their cooperation. These principles regulate the means of interaction between European and national institutions. The member states ensured that all regimes contributed to the further enhancement of national institutional capacity.

The company regulation regime legitimates the member states as the main regulators and establishes rules to horizontally coordinate their governance of the single market, whilst specific regime functions are distributed to specific national bodies that build formal, structured networks. Harmonisation is not a goal at any point in the regime. It also contains escape hatches and loopholes to protect politically sensitive institutions and interests. All of this contrasts with the preferences of the Commission, but the member states defend their position firmly because the public expects greater national control over laws and regulations that affect them and the social institutions that they work with intensively. This confirms my thesis that governments attempt to orient the constitutive and regulative principles of EU governance to existing national norms. My proposition that a regime is possible if all EU and national governments build on national institutions rather than trying to change them is also confirmed. This does not rule out national-level changes, but it requires that changes be visible first at the national level rather than at the European.

The financial market regulation regime and the accounting standards regime delegate rule-making authority to the Commission and the IASB. However, the willingness of the member states to delegate varies between the two cases. The financial markets regulation regime, Germany and the UK were clearly ahead of the EU in their switch from self-regulation to statutory regulation in the interests of shareholders. Their institutional innovations were made possible by a perceived need to improve national governance and due to a small group of affected companies and citizens. The constitutive understandings of democratic accountability and the regulative understanding of statutory regulation instead of self-regulation had already been developed before the European project appeared on the horizon. Though the innovations were sometimes revolutionary, they only inconvenienced the privileged or the criminal, who had few public sympathies. The regulations left core concerns of the broad population untouched, which facilitated a change of national institutional rules and principles in the name of economic competitiveness. Public support became even stronger when the label of consumer protection was added.

The IAS regime, in contrast, only layered international standards on top of national ones. This made it possible for the member states to establish national, detailed interpretations of IAS, for use in the Commercial Code and tax evaluations, for example. In this way, potential conflicts over core issues of political economy and over the issue of sovereignty over taxes are avoided. Attempts by the IASB to centralise governance failed due to the resistance of elected governments.

We therefore see disparately structured, policy-area-specific modes of governance that involve variable degrees of delegation to the Commission and the IASB, which leads to differences in the type of coordination and distribution of responsibilities between the governing actors. We can see in both Germany and the UK intensive discussions of national company law with many participants, coupled with the central role of company regulation in the self-defined core competencies of the member state governments. We also see public discussions in the policy area of financial market regulation, but with far less controversy and a much smaller interested public. The size of the public would have been much greater in the case of IAS if it had been allowed to have an impact on tax policy, but this possibility was foreseen by the negotiators and deliberately engineered out of the regime.

In all three cases, a clearly defined structure and processes was developed to allow future cooperation and to constitutionalise the rights and responsibilities of the governing actors. These principles had to be explicitly negotiated between the member states and the

Commission. Each of the three regimes consequently resulted in some form of decentralised activity by the member states that required coordination.

We therefore see that EU modes of regulatory governance are not the same in all policy areas, but specific to them and the national politics they encompass. Networks, such as Grande identifies, and soft coordination are most strongly found when the resistance of the member states against the delegation of authority is strongest. The regime for company law shows, however, that the regulative prerequisites of a functioning intergovernmental regime are more formal than the requirements of simple intergovernmental politics. The governing actors, their rights and responsibilities in interactions with one another have to be written down. The member states were not inclined to take this step, but they had to in order to preserve their claims to primacy in company regulation after the European Court of Justice challenged their assumed rights. Constitutively, the primacy of the member state has been defended and preserved in the regime at both the national (internal hierarchical authority) and European (horizontal coordination) levels. Regulatively, a complex set of rules had to be established to ensure reliable ongoing governance. The result is a delegation of governance to specific national actors that become the decentralised governance actors of the EU regime.

It is also possible that governance can be handled in a centralised way, as in the case of financial market regulation, if national policies have converged before EU-level talks start. The delegation of responsibilities to the Commission benefited from the previous internal delegation to independent regulatory authorities, making regime creation easy. In this case, no sensitive rights for a large public were touched when EU talks started. The IAS case is in between these two extreme cases. Delegation was acceptable as a policy for economic competitiveness as long as it was not allowed to hollow out the core responsibilities of the state. The EU takes over the coordination of decentralised national standard setters and governments that continued to play a key role in the implementation of IAS.

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