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Reshaping European Regulatory Space: An Evolutionary Analysis

MARK THATCHER and DAVID COEN

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The article examines European institutions for implementing EU regulation. It assesses their development using seven different models that have been introduced or discussed for organising implementation. It argues that the development of European regulatory space has followed an evolutionary pattern involving gradual reshaping through a series of steps, with previous stages influencing later stages and institutions being built on existing structures. Despite pressures and frequent discussions of comprehensive change, existing organisations have managed to limit and shape reforms. The result has been institutional 'layering' and 'conversion' instead of streamlining, and a gradual strengthening of networks of national independent regulatory agencies. The analysis therefore suggests that evolutionary analysis based on historical institutionalist approaches seems highly appropriate to the EU. Equally, it shows how even if there are strong demand-side pressures for centralisation of regulation, existing institutional arrangements and organisations limit and shape the supply of new institutions, so that debates about radical change coexist with a fragmented, cluttered and complex European regulatory space.

In the last 20 years, EU regulation has been transformed.[1] Its scope has expanded from a concentration on competition policy to coverage of many sectors, from telecommunications to food, while its depth has increased tremendously, as detailed legislation has been passed. Much work has focused on increased demand for EU regulation, be it from firms, governments or the European Commission (on regulation, see notably Bergman *et al.* 1999; Majone 1996, 2005; Gatsios and Seabright 1989). But, for regulation to be implemented, appropriate institutions for the greatly enhanced EU regulation also have to be established. This article looks at such institutions, notably concerning regulation of markets.

Implementation of public policies always raises questions of discretion and diversity. But, in the case of the EU, there are two other reasons for implementation being crucial. One is that there is a strong tension between the creation of a single European market through centralised EU-level

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legislation and its decentralised implementation by national-level authorities (see Armstrong and Bulmer 1998; Majone 2005; Young 2005; and, for cross-sectoral analyses, Schmidt 2002; Thatcher 2007). EU legislation is frequently broad and difficult to implement, and conditions in national markets vary, so the same rules must be applied differently to achieve a similar objective. Hence it is difficult to monitor whether EU regulation is being implemented consistently with respect to obtaining a single market. Worse still (for achieving a single market), there are strong national traditions of protecting domestic firms, while member states have incentives to aid domestic suppliers by cheating on the implementation of EU regulation, from late transposition or misinterpretation of EU rules to outright non-enforcement.[2] Most visibly, the sheer variety of national institutions responsible for implementing EU legislation makes consistency across member states very difficult. For instance, many countries regulate markets through national ministries and independent regulatory agencies (IRAs), but there are considerable differences in their institutional form, ambitions, capacity and relationships with politicians, incumbent suppliers and new entrants (see Coen and Thatcher 2005; Coen and Héritier 2005; Gilardi 2005; Levi-Faur 2005; Thatcher 2002a,b). Consequently, there is a real risk of conflict between the principles of a single market – notably equality of treatment among firms and ending barriers to entry – and its administration by a multiplicity of member states.

A second reason for the importance of implementing institutions for EU regulation is linkage to major analytical questions about the development of the EU. The dominant neo-functionalist and inter-governmental bargaining theories, whilst differing in their explanations of European integration, emphasise rational actors (such as transnational firms, the European Commission, the European Court of Justice or national governments) demanding further integration due to the advantages they derive.[3] They present the development of the EU in terms of transfers of powers from member states to EU bodies such as the Commission or European Court of Justice to respond to these demands. However, recent work has suggested that existing institutions mould the evolution of European integration. Thus, for instance, integration may occur due to 'policy transfer' between different sectors and between the national and supra-national levels (Bulmer and Padgett 2005; Bulmer *et al.* 2007; and see Börzel 2001 on uploading and downloading). Equally, it may occur as informal practices grow up that are then formalised (Coen and Héritier 2005; Héritier 2007). Finally, initial steps may lead to implementation gaps resulting in further integration (Kelemen 2004). More generally, historical institutionalist studies have argued that institutions change gradually and sometimes in path-dependent ways, as existing structures limit and shape new ones (see Mahoney 2000; Pierson 2000; Streeck and Thelen 2005; Thelen 2004; for path dependency or past legacies in the EU, see Kelemen 2005; for an analysis of the occurrence of path dependency see Capoccia and Kelemen 2007).

Evolutionary change can occur through 'layering' (creating new institutional elements in old regimes), displacement of existing institutions within a regime, 'drift' (deliberate neglect of institutions) and conversion of existing institutions for new functions (Streeck and Thelen 2005; Thelen 2004).

Examining the regulatory institutions for implementation allows us to consider whether, how and why existing structures affect the development of the EU and whether the institutional outcomes of debates is classic European integration with transfers of powers to the Commission and ECJ, or whether new forms of governance are in fact being used. At first sight, the prospects for comprehensive reform of European regulatory institutions should be better than in many other domains such as national welfare policies, offering a 'harder' case for historical institutionalist claims of evolutionary institutional change. One reason is that regulation at the EU level is less detailed and more recent than at the national level. Moreover, the 1980s onwards have seen radical changes in regulation in EU member states, showing the potential for comprehensive change (see Majone 1997; Thatcher 2007). Furthermore, the article illustrates how tensions between centralised rule-making and decentralised implementation have given rise to significant and repeated debates since the 1990s about the creation of new institutions to ensure effective implementation of EU regulation and hence which modes of integration and governance should be used.

The article argues that European regulatory space has not been radically and comprehensively but has in fact followed an evolutionary development involving gradual reshaping through a series of steps, with previous stages influencing later stages and institutions being built on existing structures. Initial reforms were very limited, despite talk of 'Euro-regulators'. Thereafter, further steps have taken place: new coordinating institutions have been created, and have been given formal powers. There has been a thickening of organisations and rules concerning regulation. In short, a process of 'institutionalisation' has taken place (see Armstrong and Bulmer 1998; Bulmer 1994; Stone Sweet *et al.* 2001). Each phase has prepared the ground for the following one through several mechanisms: actors created in one phase then became significant in pressing for movement towards further changes; experimentation with different institutional arrangements has occurred both within and across sectors; dissatisfaction with the results of one stage led policy-makers to seek further reforms; learning took place, thereby also altering actor preferences. As a result, evolution has taken place through 'layering', as new institutional coordination mechanisms have been developed in addition to existing ones, and through 'conversion', as existing regulatory organisations have been given expanded and different functions and powers. Evolutionary change has not been due to exclusion of past policy options from discussion: on the contrary, past institutional options are rejected in one stage but return for consideration in later stages. Instead, change has been gradual because, in part at least, new regulatory

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organisations have shaped institutional choices, suggesting that as institutionalisation of European regulatory space grows, it becomes more difficult to make radical changes.

The outcome of institutional evolution has been a gradual strengthening of networks of national policy-makers (in this case, independent regulatory agencies) for implementing EU regulation. Those institutions have become more formalised and centralised. But, there has been no movement towards a neat and tidy regulatory space. Instead, that space is filled with multiple organisations and is strongly marked by past steps. Indeed, evolution has been far from painless or consensual: rather it has involved strong debates about the extent of centralisation of powers at the European level and the respective roles of the European Commission and national and EU regulatory agencies, showing that implementing institutions link to wider political battles about integration and the form of the EU.

This overall conclusion is important both empirically and theoretically. Regulation is the EU's core activity and hence the choice of modes of coordination for EU legislation goes to the heart of European integration. It raises uncomfortable issues: the extent to which the EU should seek uniform administrative arrangements and application of European legislation across 27 member states; the allocation of responsibilities for different elements of policy-making between organisational levels; relationships between the Commission and national actors; how to avoid implementation gaps; the development of coordination mechanisms outside the formalised comitology procedures used for legislation. At the theoretical level, the article suggests that new work on evolutionary change can be usefully applied at the EU level. Indeed, analysing EU developments as the product of incremental change, collisions and compromises between organisations and endogenous processes may offer a better paradigm to understand the institutionalisation of Europe than 'grand bargains' or rational design of an overall system.[4]

We begin by setting out the choice of different institutional models for European regulatory space in economic markets, which lie at the core of the EU. The models range from the Commission leaving implementation to national bodies at one extreme to a single EU-wide regulator responsible for implementation throughout the EU. But beyond this dichotomy between supranational and national regulation, newer hybrid forms of coordination have emerged, such as informal forums, European networks of regulatory agencies or different forms of 'Euro-regulators'. Then, using process tracing in three economically and politically key sectors – financial services, telecommunications and electricity – we show how each step has prepared the ground for further reforms and how institutional 'layering' and 'conversion' have taken place. Equally, we underline that past choices return to the agenda, indicating continuing pressures for comprehensive change, but that existing institutions limit and reform, so that abrupt alterations are rejected. The three phases we identify consist of EU-supervised national implementation,

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informal networks of independent regulators and forum governance, European networks of national regulators. We end by looking at current debates on creating 'Euro-regulators' and then draw wider conclusions about the evolution of European regulatory space and the analysis of the development of the EU.

Institutional Choices for Structuring European Regulatory Space

Debates about administrative arrangements to coordinate the implementation of regulation across the EU have seen discussion of several models. Unfortunately, labels such as 'Euro-regulator' have been used without adequate definition, and indeed sometimes with diverse meanings over time. This section sets out different institutional choices by looking at seven major models that have been given serious attention for the implementation of EU regulation (as opposed to passing EU legislation). The models concern the formal 'regulatory space' in Europe, i.e. the structures for taking decisions about implementing EU legislation concerning regulation of markets.[5]

The seven models (summarised in Table 1) are stylised and based on five factors that structure regulatory space: the principals, i.e. the actors who formally delegate powers over implementation (if any); the participants in decisions about implementation (who may be agents if there is formal delegation); the allocation of powers and responsibilities for the implementation of EU legislation; possible mechanisms of implementation, dealing with issues of consistency and interpretation of discretion across EU member states (these can range from informal learning and norms to explicit but non-binding benchmarks/guidelines right up to legally binding decisions and standards and rules); which actors have controls over actors responsible for implementation decisions.[6]

The models themselves are subject to many variations but a schematic typology is presented. They are presented in an approximate hierarchy of increasing centralisation of coordination, starting with implementation in the hands of national bodies and ending with a single EU regulator, but it should be noted that this refers to formal powers – whether control in practice would be more centralised in one model than another is a different issue.[7] Finally, it should be noted that many of these regulatory options can be layered upon each other over time as they are not mutually exclusive and can operate in parallel.

EU monitoring and supervision involves the classic EU method whereby the EU delegates responsibility for implementing EU regulation to national regulatory authorities (NRAs – public bodies designated by member states, hence normally including government departments and independent regulatory agencies). The European Commission and behind it the European Court of Justice are responsible for ensuring that NRAs correctly implement EU regulation through monitoring and supervision; ultimately this can mean infringement proceedings against member states for failure to

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TABLE 1
TYPOLOGY OF INSTITUTIONS OF THE EUROPEAN SPACE FOR IMPLEMENTING REGULATION

Type of coordination	Principals and legal basis	Participants	Allocation of powers and responsibilities	Mechanisms of implementation	Allocation of formal controls
EU supervised national implementation	EU Treaty	NRAs, Commission and ECJ	NRAs implement, European Commission and ECJ oversee	Legal infringement proceedings	Commission and ECJ
Forum Governance	None formally – no formal delegation	NRAs, Commission, suppliers, users and user groups	None formally	No legally binding measures; learning and norms, and benchmarking	None since no formal delegation
Informal networks of IRAs (NIRAs)	None formally – no formal delegation	IRAs	None formally	No legally binding measures; learning, norms, and benchmarking	None since no formal delegation
European Networks of Regulators (ERNs)	EU Commission and national governments and regulators, using EU secondary legislation	Designated national regulators (e.g. IRAs) and Commission)	National IRAs, with guidelines set by ERN	Advice to Commission on legislation; setting formal guidelines, learning, norms, and benchmarking	Commission and national regulators
European Regulatory Agency (ERA)	EU Commission and national governments and regulators using EU secondary legislation	Designated national regulators (e.g. IRAs, national government officials), Commission and sometimes European Parliament	Commission or NRA, except for 'technical' decisions	Specific Decisions, advice to Commission approval (or veto); setting formal guidelines; learning, norms, and benchmarking	Commission, member states, European Parliament

(*continued*)

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TABLE 1
(*Continued*)

Type of coordination	Principals and legal basis	Participants	Allocation of powers and responsibilities	Mechanisms of implementation	Allocation of formal controls
Federal European Regulatory Agency (FERA)	EU Commission and national governments using Treaty amendment	Representatives of member states/ IRAs	FERA with NRAs being subordinate in FERA's domains	Setting standards and rules and taking decisions in individual cases within its domain; learning, norms, and benchmarking	National governments; possibly also European Commission and European Parliament
Single European Regulator (SER)	EU Commission and national governments using Treaty amendment	European officials	SER – NRAs abolished	Setting standards and rules and taking decisions in individual cases	National governments; possibly also European Commission and European Parliament
Direct regulation by the European Commission	National governments through EU Treaty	European Commission	European Commission	Setting standards and rules and taking decisions in individual cases	European Court of Justice

comply with EU law. Informal methods such as benchmarking or discussions of national officials may occur, but they are not supplied institutionally and hence rely on the initiative of individual actors. Indeed, national agencies may in practice become 'double-hatted' as they also become 'agents' of the Commission with which they develop links (see Egeberg 2006). National governments have controls over EU institutions such as the European Commission and ECJ, as well as over NRAs.[8]

Forums are informal consultative groups. They do not enjoy formal delegation of powers and hence lack formal principals and controls (although informal delegation of functions, for instance by the Commission or national regulatory authorities, may take place). Their participants can be drawn from across a sector – both public and private and from EU and national levels. They offer a form of informal sectoral governance (cf. Kohler-Koch and Eising 1999). They can coordinate through informal mechanisms such as policy learning or setting benchmarks and norms. Such forum governance relies heavily on soft law through norms becoming accepted via a process of policy iterations between participants.[9]

Informal networks of independent regulatory agencies (NIRAs) are also informal groupings that do not have formal delegation. But they have a much narrower membership than forums, since they consist of independent regulatory agencies that enjoy domestic independence from national governments and exclude officials from ministries and the European Commission or the private sector. They also rely on informal mechanisms to influence national IRAs such as learning, norms and benchmarking, perhaps even aiding the development of a European regulatory 'epistemic community'.[10] However, unlike forums, they provide a more institutional setting for the IRAs, encourage contact via regular scheduled meetings, and reduce collective action problems by having a narrower and hence less diverse membership in the form of IRAs.

European Regulatory Networks (ERNS) are composed of designated regulators – usually but not necessarily national independent regulatory agencies, and sometimes also Commission officials. ERNs are created through a 'double delegation' – from both the Commission and national regulators, as each delegates formal coordinating functions and powers, such as setting standards or rules for implementation to the ERN (see Coen and Thatcher 2008). Both can be expected to have formal controls over ERNs. The ERNs enjoy formal powers and are more formalised and institutionalised modes of coordination of implementation compared with forums and informal NIRAs. For instance they have a more homogenous and defined membership (national officials), usually have a small secretariat and working groups and provide formal access to the Commission debates via consultation and regular plenary sessions. The role of ERNs is to coordinate national bodies that continue to implement EU legislation alongside the ERN. ERNs do so both through participating in formal rule-making (e.g. by setting or advising on standards) or through facilitating

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learning and best practice through regular interaction and discussion among national regulators and the Commission.

European Regulatory Agencies (ERAs) also involve a double delegation from the Commission and national regulators and/or governments. However, unlike ERNs, European Regulatory Agencies can make recommendations that are then subject to Commission acceptance (formally, they make proposals to the Commission), whereas ERNs can only offer advice on legislation. ERAs can be divided into three groups according to their powers: those offering advice, especially technical and scientific, to the Commission; those carrying out inspections; those empowered to adopt legally binding individual decisions (Majone 2005: 94). ERAs are established by secondary legislation to fulfil specific tasks and enjoy a limited degree of autonomy from the Commission (see Kelemen 2005: esp. 175–177). They also have management boards composed of representatives of national governments, the Commission and sometimes the European Parliament rather than just national IRAs, underlining the greater degree of integration and independence from national bodies. Nevertheless, ERAs face important constraints. They can only apply rules to specific decisions rather than making rules: the 'Meroni' doctrine of non-delegation, at least as currently interpreted, prevents the Commission from delegating rule-making powers. They also rely on national bodies for information and expertise, and sometimes for undertaking functions that the ERA delegates to national members. Examples of ERNs include the European Food Safety Authority or the European Agency for the Evaluation of Medicinal Products (EMEA), or the European Aviation Safety Authority or the Trademark Office (see Dehousse 2002; Kelemen 2002; Majone 2005: 83–99; Nicolaides 2006; Vos 2000; for the EMEA see Gehring and Krapohl 2007).[11]

Federal European Regulatory Agencies (FERAs) do not yet exist. They would have powers to make rules and set standards for implementation throughout the EU; national regulatory authorities would continue to exist but they would be subordinate to the FERA in the FERA's domains. A FERA could be composed of representatives of each member state; the European Central Bank offers an analogous body. Powers would be transferred from both the Commission and national governments and hence they would be its principals. The creation of Federal European Regulatory Agencies would require treaty amendment to be agreed by national governments (at least if the Meroni doctrine that the Commission cannot delegate rule-making powers remains as currently interpreted); governments would be expected to have controls over such agencies, as well as the European Parliament and perhaps the Commission. A Federal European Regulatory Agency would undertake implementation by setting detailed EU-wide rules and standards and taking decisions on matters within its jurisdiction (which would be defined by the treaty amendments) as well as informal mechanisms of coordinating national regulatory authorities. The rationale for such bodies has been argued to be increased policy-making

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efficiency, especially in complex and technical policy domains, as well as insulating national bodies from domestic pressures.[12] If the US experience in sectors such as telecommunications and energy were copied, lower-level regulatory agencies would continue to exist and to have powers in certain fields, notably intra-national issues, but questions that affect inter-(member) state trade would be under the jurisdiction of the FERA.

A *Single European Regulator* (SER) differs from a FERA in being the sole body responsible for implementation and being composed not of representatives of national regulatory agencies but of officials who are chosen to serve the EU as a whole. SERs do not exist and would be a radical step in that national regulatory authorities would be abolished, ending issues of coordination of such bodies (but perhaps transforming them into intra-organisational ones) and instead the SER would take all decisions on individual cases concerning implementation of EU regulation. Creating an SER would require Treaty amendment and would involve transferring powers from both the Commission and member states, which hence would be its principals. It would also necessitate resources, since the body would cover implementation across the EU. National governments would be expected to have controls over the SER, and perhaps also the Commission and the European Parliament. The closest analogous body is the Securities and Exchange Commission (SEC) in the US, which regulates securities markets.

Direct regulation by the European Commission is rare, since the organisation is small. It has been used in certain parts of competition policy, notably cross-border mergers and acquisitions over certain thresholds, abuse of a dominant position and state aids. Yet a major part of the Commission's regulation, namely vetting agreements between firms that have the potential to affect inter-state trade, were handed to national competition regulators in 2002, greatly reducing such direct regulation (see Wilks 2005 for an analysis).

European Regulatory Space in Network Industries

Network industries such as securities trading, telecommunications and electricity offer good examples of regulatory space, due not only to their importance but also as classic examples of governing EU regulation. Traditionally, regulatory space in Europe was dominated by nation states. Most network suppliers were publicly owned. Formal regulatory powers lay in the hands of ministries, which in practice enjoyed very close links with the state-owned suppliers. The EU played almost no role in regulating network industries; thus, for instance, the EU telecommunications ministers met twice between 1959 and 1977 (Schneider and Werle 1990: 87); almost no EU sectoral legislation was passed, and network industries were seen as outside competition law. Insofar as international coordination took place, it took the form of intergovernmental organisations that were composed of

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national representatives and had no powers to impose decisions; examples included the CEPT in telecommunications, which went beyond the EU, or IOSCO in securities.

However, from the 1980s onwards, new European administrative structures were created to regulate network industries. Although the timing of each phase has varied a little across different network industries, we see a repeated pattern, suggesting a cross-sectoral logic rather an industry-specific one. In part, the changes arose from the combination of three developments, namely the growth of EU regulation, privatisation of suppliers and modification of national regulatory structures. However, a fourth factor was endogenous processes from each previous phase of changes in the EU's regulatory space. We show how these processes contributed to an evolutionary pattern of development, with experimentation, layering of institutions, and gradual change.

Given the array of acronyms, Table 2 sets out the key types of regulator and specific regulatory organisation.

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TABLE 2
ACRONYMS IN EUROPEAN REGULATORY SPACE

Acronym	Full name	Brief description
Types of regulator		
IRA	Independent Regulatory Agency	National agency for regulation with considerable formal independence from elected politicians
NRA	National Regulatory Authority	Organisation responsible for implementing EU regulation – may be an IRA or a government department
NIRA	Network of independent regulatory agencies	Informal network of national IRAs without formal delegation – e.g., CEER in energy or IRG in telecommunications
ERN	European Regulatory Network	Network of IRAs created by EC law
ERA	European Regulatory Agency	EU body able to make recommendations to the European Commission
FERA	Federal European Regulatory Agency	EU body with power to impose decisions concerning implementation on IRAs – none yet created
SER	Single European Regulator	Body responsible for implementing EU regulation in the EU – none yet created
Specific regulatory organisations		
FESCO	Forum of European Securities Commissions	Informal NIRA for securities, created 1997, replaced by CESR
CESR	Committee of European Securities Regulators	ERN for securities, created 2001
IRG	Independent Regulators Group	Informal NIRA for telecommunications, created 1997
ERG	European Regulators Group	ERN for telecommunications, created 2002
CEER	Council of European Energy Regulators	Informal NIRA for energy, created 2000
ERGEG	European Regulators Group for Electricity and Gas	ERN for energy, created 2002

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Phase 1: EU-Supervised National Implementation

In the late 1980s and 1990s, the EU began to pass sector-specific legislation in network industries, beginning with telecommunications and soon expanding to electricity, gas and securities (Bulmer *et al.* 2007; Coen and Thatcher 2000; Levi-Faur 2005; more specifically, for telecommunications see Humphreys and Simpson 2005; Thatcher 2001; for energy see Eberlein 2003; Eising and Jabko 2000). Significant legislation for postal services and the railways only began in the late 1990s (see Héritier 2005).

The EU's expanding regulatory framework was binding on member states and was composed of three elements. First liberalisation, i.e. ending domestic legal monopolies, initially in particular market segments but later throughout industries, including domestic users. But the EU did not just 'deregulate', for a second element was 're-regulatory rules' that governed market competition and set conditions for suppliers and public actors (cf. Vogel 1996). Key rules covered access to infrastructures, cost-based tariffs and universal service.

The third element concerned implementation and is most directly relevant to this article. EU legislation placed duties for enforcing liberalisation and especially re-regulation on 'national regulatory authorities' (NRAs). It insisted that these NRAs be separate from suppliers, thus ruling out ministries that both regulated and contained suppliers (often the case in telecommunications and postal services). The legislation did not require member states to establish independent regulatory agencies (IRAs), although the Commission often encouraged this. Indeed, this period was characterised by a variety of regulatory solutions in the domestic markets, ranging from IRAs and government departments or agencies with varying links to elected politicians in telecommunications, to IRAs, self regulation and voluntary access agreements in energy markets (Levi-Faur 2001; Thatcher 2002b, 2007).

Thus, in this first phase, EU regulation sought to open national markets through liberalisation and re-regulation but left the institutional architecture of implementation to member states. There were few instruments to coordinate national regulatory authorities or to ensure consistent implementation of EU law, a major issue for the EU given that most of its legislation was very broadly defined in line with 'the politics of compromise' among member states and also between EU institutions.[13]

Phase 2: Informal networks of Independent Regulators (NIRAs) and Forum Governance

In the 1990s, concerns emerged about lack of coordination among national regulators, uneven implementation across member states and the need for more policy learning between national officials. Directives were seen as too rigid and 'old-fashioned' and instead new modes of ensuring better

implementation of EU regulation were sought (Interview senior financial regulator 1; Börzel 2001). Moreover, the 1980s had seen the abandonment of attempts to create very detailed EU legislation to harmonise standards, using instead the 'new approach' of only setting minimum harmonisation standards. This left member states considerable discretion over implementation, especially of 're-regulatory' measures governing how competition should operate, such as interconnection or networks or licensing, and provision of services beyond competition such as universal service (Pelkmans 1987).[14] But variation in the forms of national regulatory authorities created problems of coordination throughout the EU (Interview with Commission official 1). Moreover, this 'patchwork regulatory environment' provided opportunities for industry, NRAs and member states to establish regulatory advantages at the expense of a consistent European single market.[15]

One possible response was to greatly centralise regulatory powers. Thus, for instance, in telecommunications there was support within the Commission (including Martin Bangemann, Commissioner responsible for telecommunications) for a powerful EU 'licensing committee' or a European-level agency to ensure even and effective implementation of EC regulation (Commission 1992; *Agence Europe* 10 March 1995, 24 May 1996, 25 February 1997; *Financial Times* 3 July, 30 September 1996, 19 December 1997). The European Parliament called for a Euro-telecoms authority or Committee to prevent separate and different regulatory areas developing (*European Voice* 17 April 1997; Coen and Doyle 2000; *Agence Europe* 11 April 1995, 20 February, 24 May, 21 December 1996, 24 February 1997). But no European agencies were established. The key reason was opposition by member states, many of which feared loss of control over their domestic markets and increased foreign competition to national firms, and hence preferred national IRAs. For their part, those new IRAs were attempting to establish their political position in domestic markets which Euro-regulators could have threatened (Humphreys and Simpson 2005: 102–106; *Agence Europe* 25 February 1997; *Financial Times* 19 December 1997; Interviews with Commission official and NRA). As Bangemann observed later, 'It would have been too much to ask of member states... to impose a European Regulator on top of liberalisation' (*Financial Times* 19 December 2007: 3).

Instead, two forms of more centralised coordination emerged in the late 1990s in response to not only exogenous pressures from creating the 'single market', but also endogenous pressures to coordinate markets arising from the previous regulatory patchwork and the desire to avoid European regulators. One was informal sectoral governance groups, notably the Florence Forum for electricity in 1998 (Eberlein 2003), followed by the Madrid Forum for gas in 1999. The creation of these forums was led by the Commission. It, politicians, and industry saw them as a low cost institutional design options thanks to their low political saliency (*Financial*

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Times 1 February 2000; Eberlein 2003). The initial aim was to provide a neutral and informal EU-level forum for discussion of issues and exchange of experiences concerning the implementation of the EU electricity and gas directive and the development of a single EU energy market (Electricity Directive 96/92/EC; Gas Directive 98/30/EC). The new forums included a wide range of participant, e.g. Commission officials, national regulators (both IRAs and government officials), firms, trade associations, consumer groups, commercial experts and academics. They met once a year in Florence and Madrid, respectively, and had no permanent secretariat. Instead, the Commission offered its assistance in the day-to-day issues and NRAs continued to develop independent regulatory solutions.

The second form of coordination was new informal networks of independent regulators (NIRAs). Their creation was led by national IRAs, but also encouraged by the Commission. Each saw advantages: for IRAs they were a means of cooperating with overseas IRAs, but without being controlled by the Commission; for the Commission, they seemed a step forward towards greater integration (Interview, senior French financial regulator March 2007). In securities trading, French and Italian regulators initiated an informal network of regulators called FESCO (Forum of European Securities Commissions) (Interview senior French financial regulator 1 March 2007 and senior former British financial regulator September 2007). A similar group of IRAs was created in 1997 for telecommunications, the IRG (Independent Regulators Group), although for this group the European Commission took a stronger role in its initiation (Humphreys and Simpson 2005: 86–87). A network of independent energy regulators was created in 2000, when ten national IRAs established the CEER (Committee of European Energy Regulators) (*Financial Times* 1 March 2000). This was later than the other utilities, due to the initial move for forums, but occurred when IRAs became dissatisfied with the forums as being too slow, cumbersome and lacking in enforcement capacity (Interview European Commission official 2007). Its objectives were to enhance cooperation among national energy regulators and cooperation with the EU institutions. These groups involved informal meetings of national IRAs to exchange experiences. They had no formal powers and no secretariat and drew on the resources and goodwill of leading IRAs. Initially, IRAs from some member states refused to participate, such as the UK, while others appeared ineligible as they were not sectoral energy regulators, notably the German general competition authority, which had taken the lead at the Florence and Madrid forums (see Böllhoff 2005; Coen 2005). But over time IRAs from all member joined the NIRAs.

Phase 3: European Networks of Regulators (ERNs)

Between the late 1990s and 2002, restructuring European regulatory space again became the subject of significant discussion. One proposal was for

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federal European agencies (also termed 'Euro-regulators'), which would have involved considerable centralisation (*Financial Times* 3 July 1996, 19 December 1997, 16 September 2000, 8 June 2001). A second was for greater EU Commission control over IRAs. A third was for European networks of IRAs created through a 'double delegation' (see Coen and Thatcher 2008; also see Tarrant and Kelemen 2007) of functions and powers from the Commission and IRAs.

In most network industries, the third institutional option was taken through the creation of ERNs that were relatively weak in formal institutional terms (see Table 3). Their main functions were to advise the Commission on new legislation and sometimes to issue guidelines for implementation of EU legislation. They lacked powers to take decisions or impose them on their own members, and operated with only a small secretariat. The Commission had several controls, such as over budgets or attending meetings. Some changes were also made in line with the second option, as the Commission gained some limited powers (especially in telecommunications), to intervene in the decisions of IRAs,[16] but no European regulatory agencies or federal European Agencies were set up in the three sectors.

These institutional choices reflected battles among several groups of actors – the Commission, IRAs, national governments, the European Parliament and industry representatives.[17] In particular, the Commission feared inconsistent implementation, or even flouting of EU law. It sought greater centralisation of powers, preferably in its own hands, but also feared the development of federal European regulatory agencies that would be rivals to it. It wished to bring together national IRAs under its own aegis. For their part, IRAs opposed greater Commission control over their activities, but also needed to work with the Commission since they implemented EU legislation and could benefit from new EU legislation. National governments did not wish to lose power to the Commission, but were also concerned that uneven implementation of EU law might disadvantage their national suppliers, notably if other member states 'cheated' by blocking entry to their domestic markets by overseas European suppliers whilst also seeking access to those overseas markets for their own firms. Equally, governments and IRAs were concerned about their different national legal systems (Interview senior former British financial regulator). Suppliers, especially large firms, saw advantages in creating a single European market that allowed them to expand abroad and to face similar regulatory demands across countries, but were also worried by the creation of another level of regulation and loss of supportive national IRAs.[18]

Pressures for change arose from concerns about the slowness of 'classic' EU legislative decision-making, uneven implementation of EU law and the inappropriateness of making detailed EU rules through legislation in fast-moving markets. But the institutional choices were also influenced by problems in the previous phase of institutional development that resulted in

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TABLE 3
EUROPEAN REGULATORY NETWORKS

Name	CESR Committee of European Securities Regulators	ERG European Regulators Group (for Telecommunications)	CEIOPS Committee of European Insurance and Occupational Pensions Supervisors	CEBS Committee of European Banking Supervisors	EPRA European Platform of Regulatory Authorities (broadcasting)	ERGEG European Regulators Group for Electricity and Gas
Creation	Created in June 2001 as a 'less bad option' than a European securities regulator, as part of the Lamfalussy process.	Created in July 2002 as a balance to the increased delegation of decision-making to NRAs, with a view to ensuring the implementation of the framework as close as possible to the market in the member states.	Created in late 2003 after the extension of the Lamfalussy process to banking and insurance.	Created in late 2003 after the extension of the Lamfalussy process to banking and insurance.	Created in April 2005 as a forum for discussion and exchange of opinions between regulatory authorities primarily in the field of broadcasting.	Created in November 2003 to advise and consult on the achievement of the single market in energy.
Role	To improve coordination among European Securities Regulators, act as an advisory group to assist the Commission and work to ensure better implementation of community legislation in the member states – includes a role in helping draft secondary legislation.	To improve coordination between NRAs in the field of electronic communications and to advise the Commission on related matters.	As with CESR except for insurance regulators.	As with CESR except for banking regulators.	To act as a forum for regulators mainly concerned with broadcasting. No binding powers.	Similar to ERG but for electricity and gas.

Source: Coen and Thatcher 2008.

pressures for greater centralisation. Thus the NIRAs and forums created earlier in the 1990s were criticised as inadequate, notably due to their lack of powers, reliance on consensus and slowness. Support for ERNs and sometimes detailed proposals came from existing NIRAs who sought the advantages of increasing resources for NIRA members without a powerful centralised regulator (an ERA, FERA or SER) that could take powers away from them. At the same time, the Commission saw ERNs as a way of creating closer links to IRAs and hence avoiding NIRAs developing greater autonomy from it. Moreover, the ERNs were often created either through absorption of NIRAs (e.g. in securities trading and other financial services) or in a process of close layering, as in telecommunications and energy, where they have the same membership and secretariat, and indeed often meet on the same day (the main difference being Commission attendance of ERN meetings, but not ones held by the networks of independent regulatory agencies such as the Independent Regulators Group in telecommunications). Hence they were built on NIRAs, satisfying both IRAs and the Commission.

The institutional debates and choices can be illustrated across several sectors. In securities, national governments, the Commission, IRAs, large firms and industry associations were worried that EU legislation moved too slowly with respect to rapidly changing financial markets (*Financial Times* 20 March 2001; Lamfalussy 2000, 2001). There were problems of lack of harmonisation, inadequate implementation of EU law, and too little cooperation among financial regulators (Commission 1998; Moloney 2002). International firms, especially from the US, sought common rules and definitions across the EU (Interview, senior former British financial regulator). The 1999 Financial Services Action Plan approved by the Commission and Council led to a wave of legislation to obtain considerable liberalisation and re-regulation with the aim of opening up the enormous but largely nationally segmented financial market in Europe. But implementation was argued to require institutional change, both in terms of EU legislation and national authorities. To make progress, the European Council in 2000 set up a 'committee of wise men', chaired by Baron Lamfalussy, who had previously worked on European Monetary Union. The Committee found that no fewer than 45 per cent of respondents to its consultation believed that arrangements for cooperation between national supervisors were inadequate (Lamfalussy 2000: 34). They criticised differences in supervisory powers, duplication of supervision, inadequate channels of cooperation, high costs and lack of expertise. FESCO was attacked for weaknesses due to lack of official status, decisions having to be taken by consensus and not being binding (Lamfalussy 2000: 17; *Economist* 1 March 2001). At the same time, the European Commission lacked resources for implementation or even verifying correct implementation by NRAs – around 100 people worked on financial services in total (*Economist* 7 March 2002). Baron Lamfalussy described the system as 'a remarkable

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cocktail of Kafkaesque inefficiency that serves no one' (*Financial Times* 15 February 2001).

One response to the perceived deficiencies of regulatory arrangements was the idea of a European Securities and Exchange Commission, perhaps modelled on the European Central Bank, an idea put forward by some French policy-makers, such as then Finance Minister Laurent Fabius (*Economist* 1 March 2001; *Financial Times* 12 July 2000, 16 September 2000). But, British policy-makers and most national IRAs opposed it, fearing loss of power to the EU level, and justified their position by arguing that a European SEC would lack a legal basis, draw attention away from other issues and 'belongs to a very distant future' (quote, unnamed member of Lamfalussy committee, *Financial Times* 16 September 2000; *Economist* 1 March 2001). FESCO itself supported its transformation into a European regulatory network with its own powers, and drew up a new constitution for its replacement (Interview senior European financial regulator 1; *Financial Times* 20 June 2001).

Faced with diverse opinions, the Lamfalussy committee's report recommended a new committee structure and a new legislative procedure to speed up EU decision-making and improve coordination. Its recommendations led to changes. One element was a network of IRAs named CESR (Committee of European Securities Regulators) that was proposed by FESCO, the existing informal Network of Independent Regulatory Agencies, and then absorbed FESCO. EU regulation was to follow a four-level process.[19] Level 1 comprises classic EU legislation. But level 2 involves further legal measures to implement level 1 legislation. Here the Commission asks CESR to provide 'technical' advice, and in so doing to consult with market practitioners and consumers; but CESR's role is only advisory – the Commission makes proposals to the European Securities Committee which acts as a normal 'regulatory committee within the EU's comitology procedures. Level 3 sees non-legally binding guidelines, interpretation and recommendations on national implementation of legislation issued by CESR. They are designed to ensure consistent policy, financial supervision and enforcement throughout EU member states. But they do not have legal force. Finally, level 4 is enforcement of EU rules by the Commission, using its legal powers. Moreover, 'sunset clauses' in legislation delegating powers means that delegation is temporary and must be renewed.

In telecommunications, the Commission argued in the late 1990s that IRAs had insufficient powers, resources and independence from incumbent public telecommunications operators and that member states were failing to implement EU legislation; Martin Bangemann (DG XIII and DG III Commissioner) supported the creation of a European-level agency to ensure even and effective implementation of EC regulation.[20] Parts of the telecommunications industry also argued for greater centralisation to avoid inconsistent decisions by national regulators (*Financial Times* 6 February

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2003; *European Voice* 6 December 2001). Despite these pressures, no European regulator was created and the Commission pulled back from seeking one (see Humphreys and Simpson 2005: 103; Tarrant and Kelemen 2007; cf. Commission 1999a). The main reason was opposition from member states, which were not ready to accept such a powerful authority (*Agence Europe* 25 February 1997; *Financial Times* 19 December 1997). In its June 2000 proposals, the Commission, under a new Commissioner, Liikanen, did not seek to revive ideas of a Euro telecoms regulator (Commission 1999b). Instead the Commission acted in 'partnership' with national governments and was not prepared or able to strike out on its own (Thatcher 2001). It initiated two changes. One was for it to have the right of veto on how national regulatory authorities applied regulatory frameworks (Humphreys and Simpson 2005: 103–106; *European Voice* 29 November 2001). With support from the European Parliament, the Commission ultimately succeeded in gaining veto powers on two important regulatory issues decided by IRAs.[21] This move represented a considerable strengthening of the Commission's direct powers over IRAs, avoiding the need to undertake a slow and costly enforcement action before the ECJ against member states.

The second alteration was the creation of a European Regulatory Network, namely the European Regulators Group (ERG), established in 2002 (European Commission 2002; for ERG see Nicolaides 2006). The membership of the ERG is based on representatives from 27 IRAs, and observers from accession states and EEA states, while the Commission has formal observer status. The day-to-day functions are run by a small secretariat staffed by three IRA officials and based in the European Commission offices. It followed arguments by many IRAs that the informal Network of Independent Regulatory Agencies in telecommunications, the IRG, should be given a formalised basis for coordination (*Financial Times* 8 June 2001; *Communications Week International* 4 June 2001). It also allowed the Commission to bring together national IRAs and seek to influence them (Humphreys and Simpson 2005: 111–113, 180–181). However, the ERG was also a response by IRAs to threats by the Commission to take further powers over IRAs, which the IRG and IRAs strongly opposed (*Communications Week International* 4 March 2002; *European Voice* 29 November 2001). It is noteworthy that the ERG coexists with the previous informal network of regulatory agencies, namely the IRG, so that IRAs have both their own body and one formally linked with the Commission.

In energy, the European Regulators Group for electricity and gas (ERGEG) was created in November 2003 to advise and consult on the completion of the internal market for gas and electricity (see EC/2003/54 Electricity directive; EC/2003/55 Gas directive; Commission Press release 12 November 2003). It arose from a Commission initiative after difficulties in implementing the expanding EU energy regulatory framework, and frustration that the energy forums were slow, failed to produce real policy

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learning, were based on consensus and unable to reach difficult decisions on strategic internal market issues of cross-border tariffs, interconnection, and access pricing due to the role of suppliers (Bulmer *et al*. 2007: 131; Eberlein 2003: 147–150; *Financial Times* 1 February 2000). Indeed, ERGEG's mandate was to propose consistent regulatory application of EU directives and establish best regulatory practice across IRAs (*Public Utilities Fortnightly* 1 February 2004; Cameron 2002: 285–301). Its membership consisted of the 27 IRAs, while EEA and accession candidates had observer status. The Commission is present at the plenary sessions of ERGEG and runs the secretariat. As in telecommunications, the previous informal network of regulatory agencies, the CEER, has continued to coexist alongside the ERG, so have the Florence and Madrid forums.

Thus the development of regulatory space in energy has seen considerable 'layering' and 'conversion'. New networks such as the ERG and ERGEG have been established alongside existing bodies such as the IRG and CEER. The only body to disappear, FESCO, was converted into CESR. Moreover, those existing bodies were able to limit and shape the new ones, conserving their own role, ensuring much power for their national IRA members and, in alliance with national governments, preventing strong EU-level agencies (ERAs, FERAs or SERs) being established.

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Phase 4: Current Debates: Strengthened ERNs versus Federal European Regulatory Agencies (FERAs) or European Regulatory Agencies (ERAs)

In the mid-2000s, the European Commission and ERNs have led vigorous debates about reforming the institutions for coordinating implementation of EU regulation in financial services, energy and telecommunications. The Commission has argued that current arrangements for implementation are inadequate, resulting in a failure to fully introduce the single market. It has pointed to continuing uneven implementation of EU law, the maintenance of entry barriers to national markets, difficulties in cross-border trade due to diverse national standards (see e.g. European Commission 2007a; 2006). Equally, it has argued that ERNs lack powers and the ability to enforce opening of markets, being constrained to act according to the 'lowest common denominator' among their membership due to the need to obtain consensus.[22] For their part, ERNs have themselves initiated debates and/or requested more powers (e.g. CESR 2004; ERGEG 2006, 2007a,b).

Three major institutional options have been debated, but the first two have faced strong opposition from ERNs themselves. One has been the creation of 'Euro-regulators'. Although their exact institutional design has not always been clarified, the main ideas seem to be either European Regulatory Agencies or FERAs. Thus, for instance, the Information Commissioner Vivien Reding declared that 'for me, it is clear that the most effective and least bureaucratic way to achieve a real level playing field for telecom operators across the EU would ... be by an independent European

telecom authority', perhaps modelled on the European Central Bank, to obtain more 'efficient' markets and reduce the 'patchwork' of regulation that it claimed was damaging companies and consumers (*European Voice* 12 November 2006; *Financial Times* 17 November 2006, 17 February 2007). In energy, the Commission suggested that one of the two acceptable options was a European agency entrusted to apply EU standards to individual decisions in order to make cross-border trade work in practice (European Commission 2007a: 8). In securities trading, the European Commission noted problems of inconsistent regulation and there was discussion of whether Europe needed a European SEC (see also CEPS 2005; Hertig and Lee 2003; Lee 2005).

But FERAs have faced fierce opposition from existing ERNs and national IRAs, as well as some member states. These existing bodies have argued that FERAs are unnecessary and have little support in the industry. They have opposed 'transferring powers to Brussels'. Thus, for instance, in telecommunications, the ERG argued that 'national markets will always be better regulated by national regulators' (*Financial Times* 17 February 2007; see also *European Voice* 16 November 2006, 22 February 2007), while the British communications IRA Ofcom claimed that 'a central regulator received little support during the creation of existing rules and we see no reason why it might be appropriate now' (*Financial Times* 17 November 2006). In securities trading, CESR questioned the need for a European FERA that would be the equivalent of the US SEC (CESR 2004; *Agence Europe* 16 November 2005).

A second possibility is greater Commission powers over the decisions of national IRAs in order to ensure greater consistency. Thus, for instance, in telecommunications, as part of a review of the 2002 regulatory framework, Commissioner Reding argued that 'Europe does not yet have a satisfactory level of consistency and harmonisation of practices between national regulators' and worried about 'serious distortions of competition that arise in the internal market if similar remedies are not applied in similar situations' (*Agence Europe* 14 February 2006; European Commission 2006). She proposed strengthening Commission powers over IRAs, especially for cross-border disputes, extending its powers to issues such as remedies, allowing it to establish common EU guidelines over IRA appeals and even being empowered to issue authorisations (i.e. licences) that would allow service providers to operate throughout the EU (European Commission 2006: 8–9; *Agence Europe* 19 February 2007). But some national IRAs and ERNs have been sceptical about additional Commission powers, especially in telecommunications.[23]

Instead, ERNs have pressed for the third option, namely enhancement of their powers. In securities trading, CESR has argued that leaving integration to case law would result in divergence, whereas 'the market' wanted regulatory convergence, especially given its 'transnational' nature, proposing instead a 'bottom up' approach of strengthening CESR (Interview,

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Fabrice Demarigny, Secretary General CESR, *Financial Times* 16 November 2005; Interview van Leeuwen, chairman CESR and Dutch financial authority, *Financial Times* 22 March 2004, 5 December 2004). This could involve CESR having the power to take 'pan-European' decisions or lead a mediation system between different national IRAs (CESR 2004; *Financial Times* 6 December 2004; *Agence Europe* 16 November 2005). In energy, ERGEG has argued for an ERGEGplus as part of a 'European System of Energy Regulation' with powers to enforce decisions, especially concerning a European grid, for instance to approve standards, place financial penalties on new pan-European electricity and gas grid organisations, have an enhanced role in advising on legislation and gathering data, and enjoy additional resources (See ERGEG 2007a: 24–32, 43).

Debates about change remain ongoing and legislative proposals are being made for telecommunications and energy in 2007–8. However, opposition by the ERNs as well as by member states appears to be contributing to blockage of FERAs. Instead, ERNs and the Commission appear to be bargaining and creating a mutually beneficial alliance to build on existing institutions. On the one hand, they support or accept an increased Commission role and powers. Thus, in energy, the Commission has allowed the possibility of an enhanced ERGEG enjoying powers to take decisions binding on IRAs on cross-border matters, albeit with 'the appropriate involvement of the Commission, where necessary, to ensure that due account was taken of the Community interest' (European Commission 2007a: 8). In response, ERGEG has proposed that it should become a new Regulators Council, led by an Administrative Board composed of equal numbers of national representatives and of the Commission. It would be a form of European Agency with extensive powers over implementation (ERGEG 2007b). Equally, it has proposed creating duties on national IRAs to implement EU law, which would potentially greatly increase the Commission's power over IRAs and indeed make it one of their principals (ERGEG 2007c). The new body would continue alongside the existing CEER, bringing together national IRAs in an informal Network of Independent Regulatory Agencies.

The Commission proposals in September 2007 largely followed ERGEG's ideas. It put forward an Agency for the Cooperation of Energy Regulators. Its functions would be to aid cooperation between national IRAs, advise the Commission and take technical decisions when asked by the Commission on cross-border issues concerned transmission. Although set up as a European agency, national regulators would keep many powers over it. The Agency would have both an Administrative Board, half of whom would be appointed by the Council and the other half by the Commission, and a Board of Regulators composed of one representative of each national energy IRA. Interestingly, the Commission explicitly acknowledges that a powerful body modelled on the ECB was not being proposed because it would require Treaty amendment (European Commission 2007d: 10).

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The European Commission's legislative package also contains proposals to strengthen national IRAs. It would require that energy IRAs be legally and functionally independent not only of suppliers but also of public bodies, i.e. enjoy independence from governments. They should have 'legal personality, budgetary autonomy, appropriate human and financial resources and independent management' (European Commission 2007d: 9). Equally, they would have new market regulation powers.

Thus the Commission's proposals further centralise and formalise the network of national IRAs but also allow the latter a partnership in that network. Equally, they offer IRAs new resources to be independent of their national governments and to be more powerful. The package illustrates clearly the mutually beneficial relationship between the Commission and national agencies. Unsurprisingly, ERGEG, representing the national IRAs, welcomed the Commission's proposals.

In telecommunications, the EU Commissioner Vivian Reding began by suggesting greater European Commission powers over the decisions of IRAs or a European Telecommunications Agency (see European Commission 2006). But by January 2007 she was proposing that the ERG could be greatly strengthened, either becoming a classic European Agency, which would advise the Commission (notably on Article 7 enforcement decisions), or a FERA, with its own powers to making binding decisions concerning IRAs and market players, as well as legal personality and being open to challenge before the ECJ (European Commission 2006, 2007c). The latter option would mark a strong centralisation of powers and also independence from the Commission. In response, the ERG urged much greater cooperation between itself and the Commission over Article 7 actions, and accepted that, if it were given greater powers, its governance structures should be altered (ERG 2007). Although discussions are continuing, there seems strong opposition to a FERA (see *Financial Times* 24 September 2007 on divisions within the Commission; article by Ofcom's chief executive, *Financial Times* 31 October 2007). In securities trading, CESR's 2004 'Himalaya' document envisaged strengthening its powers, while the Commission's 2005–10 Action Plan suggested an increased Commission role in monitoring financial services, but neither proposed a European SEC (CESR 2004; European Commission 2005).

Thus current debates about regulatory arrangements seem to involve a further centralisation of powers, but building on existing organisations. In particular, regulatory space seems to involve continuation of roles for the Commission and EU bodies, bringing together national IRAs (both ERNs and informal Networks of Independent Regulatory Agencies). Evolution not revolution seems possible, with comprehensive restructuring or administrative simplicity being very difficult. Hence reforms involve building on existing organisations of the ERNs such as CESR and ERGEG and obtaining support for change, so that new institutions maintain their role and that of their members, namely national IRAs.

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Conclusion

The institutions for implementing EU regulation have been reformed in an evolutionary manner since the late 1980s. Analysis of three key sectors – financial services, telecommunications and energy – has revealed how each stage has influenced later ones. New organisational forms have arisen from old ones, offering examples of institutional 'conversion'. In securities regulation, the new European Regulatory Network CESR grew out of the network of national independent regulatory authorities FESCO, while in energy and telecommunications, current proposals are to strengthen and convert existing European Regulatory Networks. Often institutional 'layering' has also taken place, as new organisations are added to existing ones, which survive reforms. For instance, European Regulatory Networks in telecommunications and energy have been grafted onto a regime with informal Networks of IRAs and forums. Institutional 'layering' and 'conversion' have meant that instead of streamlining, reforms have resulted in a cluttered European regulatory space filled with several types of bodies – Commission, forums, informal Networks of Independent Regulatory Agencies, European Regulatory Networks, European Regulatory Agencies – all with responsibilities for implementation of EU legislation.

Several reasons for this evolutionary development are revealed by process tracing of specific sectors. On the one hand, there are continuing pressures for change that are endogenous to previous reforms. Each stage of reform has been followed by criticisms and hence debates about further reforms, offering examples of processes of disappointment and learning, as policy-makers have accepted or desired further centralisation of powers. Existing organisations often make proposals, which usually involve their development and enhancement. On the other hand, existing bodies resist loss of powers or the creation of powerful rivals. Existing bodies are often well placed in struggles over institutional restructuring: they (or their members) have great expertise, whereas the Commission is small and has limited personnel; existing bodies have links to other actors such as national governments and industry. Thus, although proposals for federal European regulatory agencies have regularly returned to the table, suggesting both demand for radical change and inadequacies of alternatives, they have not been introduced. Once in place, a regulatory organisation limits radical changes and provides incentives to build on existing institutions.

However, evolutionary change has not prevented important transformations of European regulatory space. On the contrary, new forms of governance have been attempted. There has been a gradual strengthening of networks of national regulators, with increasing centralisation of powers; as EU-wide bodies have been created, their status has become more formalised and their powers enhanced (compare for instance, the largely informal and powerless forums and informal Networks of Independent Regulatory Agencies with current discussions of enhanced European Regulatory Networks).

Building networks of regulators allows the Commission and national policy-makers to cooperate and engage in exchanges. It is compatible with important features of the EU such as limited Commission resources and reluctance to pass major Treaty changes to transfer new powers to EU organisations. Hence evolutionary change has resulted in centralisation and institutionalisation of the EU's regulatory pace, but through strengthening of networks of existing actors rather than comprehensive reforms or replacement of existing bodies with very different new ones.

What does the analysis suggest for the wider understanding of the development of the EU? Two conclusions emerge from the cases. First, evolutionary analysis seems highly appropriate to the EU. Comprehensive reforms have not been introduced even in a domain such as regulation, which involves rules rather than spending and which therefore should be easier to modify than, for instance, welfare states or government bureaucracies, and despite several debates about major changes. The article puts forward mechanisms and reasons for evolutionary change taking place. Hence historical institutionalist approaches would seem to be valuable in explaining European integration, pointing to the role of existing organisations and institutions in limiting and shaping change.

A second linked conclusion concerns the process of European integration. A strong case has been made that European integration and institutionalisation are driven by functional demands, notably by large cross-border firms in alliance with EU-level organisations (see Sandholtz and Stone Sweet 1998; Stone Sweet *et al.* 2001). This 'demand' side for change has not been the focus of this article. Rather, we have focused on the 'supply side' of European institutions and endogenous forces for change as one set of organisations are put in place and leads to pressures for further changes. But our analysis does suggest that even if there are strong demand-side pressures for centralisation of regulation, existing institutional arrangements and organisations limit and shape the supply of new institutions. The outcome is that strong tensions persist between pressures to achieve a single European market and the institutions to implement EU regulation, and hence debates about radical change coexist with a fragmented, cluttered and complex European regulatory space.

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Notes

1. Given general usage, we refer here to the EU, but most regulation takes place under the European Community pillar of the EU.
2. Borzel (2002), Treib (2007) and Mastenroek (2003) illustrated that 60 per cent of directives are transposed late, while Steunenberg (2006) demonstrated empirically that while high-level players decide on policy, the lower level players have wide discretion in shaping and transposing the policy.
3. Among the vast literature, see for instance Sandholtz and Stone Sweet (1998) and Moravscik (1999); for recent principal–agent analysis see Pollack (2003).
4. For approaches focusing on rational comprehensive analyses and grand bargains, see for instance Moravscik (1998) on Treaty bargaining.
5. For discussions of 'regulatory space', see Hancher and Moran (1989) and Scott (2001); for 'administrative space', see Olsen (2003), although he is mostly concerned with convergence, whereas here we focus on the institutions of such space; we omit self-regulation since this is not formally a mode of implementing EU law, although it may be a mode of regulation. For a recent discussion, see Cafaggi (2006); for a comprehensive analysis of different modes of regulation in the EU, see Scott (2005).
6. For analyses of advantages and disadvantages of different models, see Coen and Doyle (2000).
7. Indeed, we can conceive of a situation in which greater centralisation of formal powers actually led to less power for the central EU body or indeed less effective implementation.
8. For a full discussion of the role of the European Commission in coordinating infringement proceedings and ECJ oversight procedure see Borzel (2002) and Falkner et al. (2005).
9. In terms of EU governance debates Sabel and Zeitlin (2007) would argue that these new networks are an experimentalist form of governance, whereas Héritier and Knill (2008) would argue that that these networks operate under a shadow of hierarchy that constrains development.
10. Similar forces were also seen to be at work in the modernisation of European Competition Policy (see Wilks 2005).
11. Information gathering agencies, such as the European Agency for Safety at Work are excluded, see Kelemen (2002) for the division between these and regulatory agencies.
12. Majone (1997, 2005) has been a strong proponent of the single regulatory model on the grounds of political and economic efficiency.
13. See Eising and Jabko (2000) for a detailed discussion of member state bargaining and Commission compromises in the creation of the energy liberalisation directives.
14. Although degree of detail must be distinguished from coercion, EU directives remained legally binding and if anything, became more coercive as their scope was extended into new sectors such as the utilities (see Kelemen 2004).
15. For a discussion how member states played the patchwork regulation see Héritier et al. (2001), and for how NRAs and Business managed the multilevel regulatory environment see Coen and Héritier (2001).
16. In particular, the Commission was empowered to veto two types of decisions by IRAs concerning competition (definitions of relevant markets and significant market power) that affected inter-member state trade, under Article 7 of the Framework Directive (European Parliament and Council 2002).
17. For a parallel discussion in relation to ERAs, see Kelemen (2002).
18. For instance, in telecommunications, a BT official noted 'opposition in the industry to creating a new layer of bureaucracy at a time when firms were actually calling for less regulation' (Financial Times 16 September 2000; cf. Coen and Doyle 2000).
19. For a principal-agent analysis of the new system, see Visscher et al. (2008).
20. Bangemann pressed over a considerable period for the creation of a EU telecommunications industry watchdog (Financial Times 3 July 1996, 19 December 1997, 11 March 1999; European Voice 11 March 1999).

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21. The definitions of relevant market and of significant market definition and SMP definition Article 7 of EC/2002/21; Interviews with Commission and Telecommunication Regulator 2.
22. See for instance criticisms of the ERG for being based on the 'lowest common denominator' by the Information Commissioner (European Voice 22 February 2007) and criticism on energy (Commission 2007a: 8–9).
23. For instance, Ofcom in telecommunications argued that 'the balance of powers between the Commission and national regulators is broadly right' (Financial Times 17 November 2006); the ERG opposed 'uniformity' in the application of remedies (see ERG 2006a,b).

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