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Europeanization and the governance of the transport sector with regard to rail passenger services, especially in the Federal Republic of Germany

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Executive summary

While there is evidence that the EU influenced national policies on transport, the concrete impact often remains untouched in the existing literature. With a strong focus on Europeanization, which will be used as the decisive factor to explain the relationship between the EU railway policy and the governance of the German rail passenger services market, this study compares legislation from both the European and the German level in the form of a case study and then analyses how the increased influence of the EU impacted on the governance of the rail passenger services sector in Germany. The outcomes suggest three implications. First, the European railway policy is part of an ongoing process, starting in 1991, and can be divided into five temporal phases and three main fields of action. Second, the European law is highly incorporated into the German law. Third, there has been a change in the way the German railway passenger services market is governed, characterised by a more liberal structure and increased market shares of competitors to the Deutsche Bahn after an increased adaptation of European policies. All in all, this analysis shows for the German case that Europeanization stimulates both enhanced liberalization and a shift from government-driven policy making towards a governance-driven one.

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I. Introduction

This first section of the study will provide the starting points for the upcoming analysis, including the methodology that will be used and the expected type of answer.

I.1 The point of departure

With a widened and deepened European integration, liberal policies gained momentum and resulted in concrete policies, such as the creation of the internal market. This development also affects railway policies. Besides the mere technical aspect of harmonisation of railway systems and the dream to one day build a pan-european network, a bulk of aspects of liberalization and privatization in the end can be reduced to legal competences. Following the Single European Act of 1986, liberalization of markets became a prominent field of policy making. In 1991, a first directive addressing particularly railways has been issued and hence can be labelled as a first visible step in Europeanizing railway markets. One may wonder why, though transport policy does fall under the shared competences between the European Union and its' Member States, there are still such fundamental differences in national railway policies. These differences are expressed not only in different pricing systems, but also, first and foremost, in the market structure, which refers primarily to the number of competitors and their respective market shares.

There are two developments that occurred during the last decades and which had a significant impact on transport policy, either in a direct or indirect manner. On the one hand, the ongoing process of European integration increasingly influenced political practice not only on the European level but also on national and sub-national levels (Denters & Rose, 2005, p. 4). When decision-making in the EU has a visible effect on those (sub-) national levels, one can speak of Europeanization. On the other hand and in the light of Europeanization, also the often-claimed shift from government to governance clearly leaves its' traces on transport policies. New paradigms such as New Public Management or, in the case of Germany, the New Steering Model (Kuhlmann, 2009, p. 234), influence every day business of governments and private actors at all levels. As both of these phenomena, Europeanization and a market structure characterized by governance, are also interlinked, the research question of this study will focus on the impact of Europeanization on the governance of the transport sector regarding rail passenger services in Germany.

I.2 Research (and sub-) question(s)

When taking all those points together, the following research question seems to be the most suitable in order to account for the different aspects of the topic:

- “How can the process of Europeanization impact on and explain the current governance structure of the German transport sector with regard to rail passenger services?”

This question can be classified as an empirical question because it will be answered with data obtained from the real world (Punch, 2006, p. 3). Further, the purpose of the question is descriptive, because the main part will analyse what is present in legal texts and how the market is governed. This is in line with most of qualitative research (Babbie, 2007, p. 89). With regard to the temporal dimension, the question refers to the period between 1991 and today, because the first relevant European policy addressing rail policies, Directive 91/440, was issued in 1991.

As there are different concepts and mechanisms adding to the research question, a number of sub-questions will need to be answered first, before merging these answers in order to get a statement about the overall research question. The following sub-questions can be seen as a stepped-approach in order to find an adequate answer to the overall research question:

- 1. What are the main elements and legal principles of the EU railway policy?
- 2. How do the European and the German railway policies integrate?
- 3. Can an impact of EU railway policy be observed on the governance of the German rail passenger services market?

Though other cases have already been studied, this study can add to complement the puzzle and try to contribute to understand the bigger picture. The relevance of the study, or in other words the goal of undertaking the following analysis, is twofold.

On the one hand, existing studies rather focus on either other countries or other aspects, such as tendering procedures or rail freight markets. For example Mäkitalo, who investigated in the relationship between deregulation at the European level and actual competition in the rail freight market in Finland (Mäkitalo, 2011), shows that despite the European legislation competition is still low. Ludvigsen and Osland investigated in the question whether there exists “causal links between the completeness of legislative adherence and the occurrence of market rivalry” (Ludvigsen & Osland, 2009, p. 31) in a comparative study on old and new EU Member States’ rail freight markets. In a work on the Estonian case, Koppel sticks to a legal dimension, when comparing EU objectives with the one established in Estonia in the years after accessing the EU (Koppel, 2006). He finds that though EU legislation has been fully implemented in Estonia, the desired results are still lagging. Also studies on the structural effects of Europeanization are numerous. One of the prominent scholars in this field is Nash, who comes up with a threefold classification of implementation of European rail policy (Nash, 2008). Another interesting study is conducted by Carnis, who explained automatic speed enforcement

systems with the help of neo-institutional economics (Carnis, 2010). Governance as a topic of analysis has come up only recently and leaves a large scope for investigation, as the present studies focus rather on a theoretical aspect of governance and not on the direct application in the field of railway policy, as it will be done in this study. This study is thus expected to come up with new insights from applying the general ideas to the specific German case.

On the other hand, the social relevance of the study can be considered to be high as well, because the topic in the end affects everyday life of European citizens. When making use of public transport, more precisely rail passenger services, people are confronted with the results of European and national or even sub-national policies. When privatization and liberalization are promoted and competition is increased, prices can be reduced and consumers can benefit from this. Also the shift towards a policy-making which is characterized by governance rather than by government influences citizens' everyday life. In the end, the significance of the study is given, because it will fill the gap and come up with an empirical analysis of how the European and the German law on the transport sector integrate, with a specific focus on rail passenger services. The results can then be used to support and back-up the general assumptions that the European Union is promoting liberalization and that after having been for a long time a monopoly, the German railway market was opened in the past years as a direct result out of Europeanization and EU defaults.

I.3 Methodology

Taking the research question as a starting point, this part will present the methodology which will be used in order to guide the process of finding an answer to the research question.

a. Research design

The study follows a non-experimental design with unobtrusive research. This can be argued by the fact that “ a presumed cause and effect are identified and measured but in which other structural features of experiments are missing” (Shadish, Cook, & Campbell, 2002, p. 18). Indeed, the governance structure of the German railway market is identified as an effect of the process of Europeanization, which is the presumed cause. In other words, EU railway policy is seen as the independent variable which, through the process of Europeanization, has an effect on the dependent variable, respectively the market structure of the railway sector in Germany. Though it is expected that this relationship holds, there are other factors that account for the dependent variable as well. However, they are not taken into account in this study. Also the possibility that there exists a two-way relationship between the two variables is known, though this study will leave out the aspect of German policies influencing European policy-making. As the study will not interfere in real-life but rather “study social behaviour without affecting

it” (Babbie, 2007, p. 319), when analysing in-depth laws and other legal documents, one can speak of unobtrusive research (Babbie, 2007).

Concerning the quality of the analysis, reliability is presumed to be high. As the written documents are analysed after their publication, their content cannot change, which means that the same results would be found when repeating the analysis (Babbie, 2007, p. 143). This is also guaranteed by the fact that the content is taken literally and reliability would only be threatened if it was understood and interpreted in different ways. Threats to reliability are hence limited. When it comes to the validity, the situation is slightly different. Overall, with a clear research design, the validity of the study is presumed to be high. However, as it is a case study, generalizations for other units, outcomes or settings are not always guaranteed (Shadish, et al., 2002, p. 87), which is in line with the rationale of undertaking this study, namely the analysis of the German case. Nevertheless, the advantages of conducting a case study prevail and no better methodology would suit the chosen approach. It also has to be mentioned that the whole part dedicated to the European dimension, which accounts for a substantive part of the upcoming study, remains valid in any case, whatever the country under analysis might be.

Primarily qualitative data will be collected for this study. In the theoretical part, a content analysis of existing legislation on policies related to railways and passenger services will be conducted. Legal texts, namely EU treaties for the general conditions and other legislation such as directives for more specific EU policies on rail transport will be used as the source. Also documents such as White Papers of the European Commission and other official publications of the EU will be included in the analysis. Concerning the case study of Germany, the starting point here consists of legal texts as well, such as laws or recommendations. Besides this, also sectoral publications coming from the rail sector, ministries and other authorities and independent organisations will be analysed to allow for statements about the results of the impact of Europeanization on the current governance structure and in the end contribute to answering the research question. This applied part can also include more quantitative data, such as on the market structure of the rail sector. In the second part of it, the situation resulting out of the legislation will be analysed, while having a closer look at the market and governance structure. Frequency tables or other maps of market structures can be included in this part and also illustrations on the relationship between different actors could be used to demonstrate the current situation. The method used is thus part of what is called secondary data analysis (Trochim, 2006).

b. Case selection

The research design of the study will be focused on a single case hence one can speak of a case study. This is in line with the bulk of legal studies, which often consists of qualitative studies, either focused

on a single case or on a comparison of different systems or cases. This implies the “in-depth examination of a single instance of some social phenomenon” (Babbie, 2007, p. 298). In particular, the thesis will study the case of Germany’s rail passenger services market. The decision to focus on the Federal Republic of Germany as the case under study was taken due to a number of reasons, among others the long time monopoly of the Deutsche Bahn (Beck, 2011, p. 23) on the railway market in Germany. This makes it interesting to see whether the EU could contribute to alter this position and open the market. As the largest Member State of the EU and home to the biggest market, it is of vital importance in the overall European market. Despite its traditional monopolistic structure, Germany is one of the countries with most advanced liberalization in general. The study will thus show how these two aspects go together. The shift from government towards a more governance-driven process in Germany, which manifests itself primarily via the New Steering Model and New Public Management (Kuhlmann, 2009) was and still is prominent in Germany and thus transport policy probably did not remain untouched from this development. Especially the governance aspect calls for a single case study, because this allows for an in-depth analysis of the German case, without unnecessary broad classifications which are often used in comparative case studies.

c. Expected results

The outcomes of the analysis will lead to a twofold conclusion regarding the three sub-questions and the leading research question. The first step will allow for statements about what the EU railway policy looks like. In the second step, the sub-questions about whether the EU and German policies are integrated and how the market structure in Germany looks like will be answered with the results out of the analysis. This can be seen as a classification of the process of Europeanization with regard to railway policies in Germany. Here the analysis will seek to find evidence for “drawing a picture” of the governance structure and to see whether this “image” is in keeping with what common perceptions of governance would predict. It will also be seen whether the link between Europeanization and the emerging of governance structure, as it will be explained in the following section, can be observed in the German case. In the end, based on the conceptualizations and operationalizations described in the section to follow, the research design will contribute to find appropriate evidence to answer the overall research question.

I.4 Conclusion

To sum up, figure 1 illustrates the underlying idea of the framework behind this study. It should be understood in the following way: There exists a relationship between EU railway policy and the German railway market structure. This relationship is captured as the process of Europeanization. Europeanization is expressed via EU law and German law in this approach. The three sub-questions of

the study focus each on one of the three parts of the relationship, one on the independent variable, the EU railway policy, one on the process of Europeanization as such when focussing on EU law and the translation into German law, and the final one on the German market structure. The figure shows that answers to all of those sub-questions are indeed necessary in order to answer the leading research question, which combines all aspects, or in other words should be understood as explaining the overall relationship expressed in the figure. Again, it shall be noted that third factors contribute to the current situation in Germany as well, but they are left out for the scope of this study.

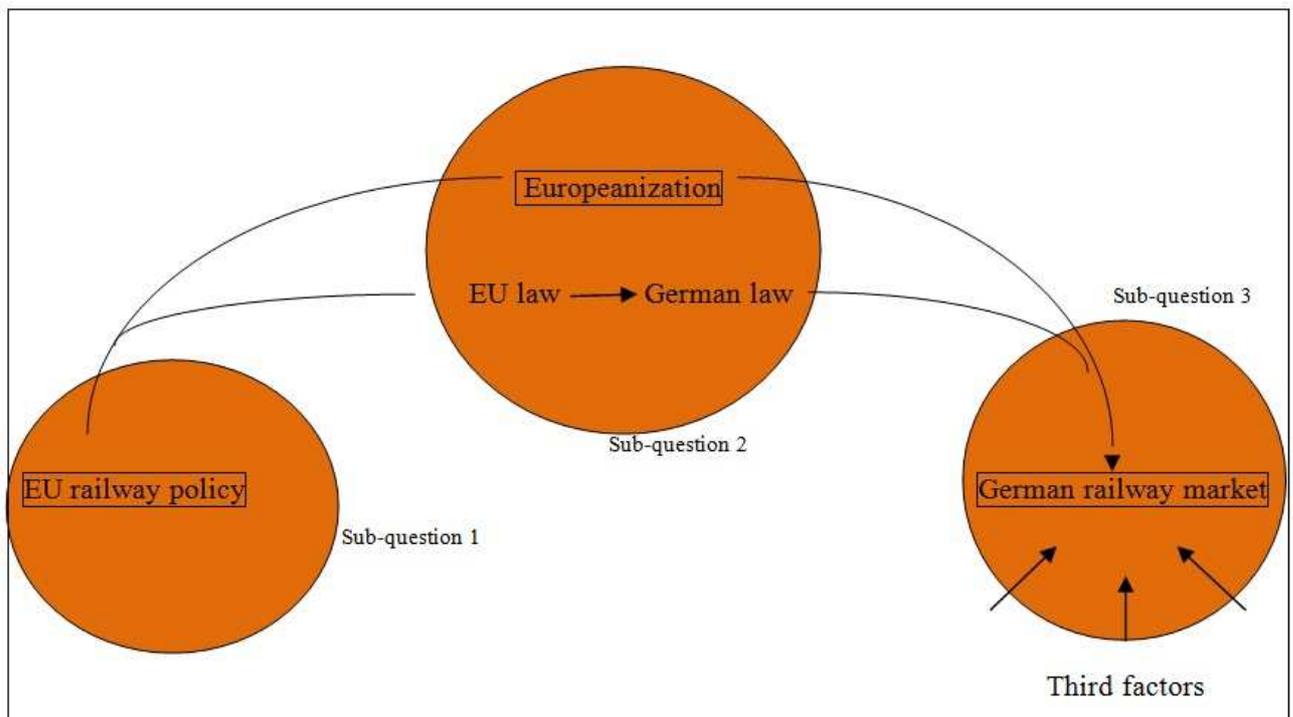


Figure 1: Illustration research design

The remaining part of this study is divided into three main parts. Firstly, section II of this study will set the ground for the analysis, when presenting the main concepts that are used, such as Europeanization, liberalization, privatization and governance. Secondly, the analysis will be conducted and deliver answers to the sub-questions. This means that section III will see how the EU railway policy looks like, whereas section IV focuses on the Federal Republic of Germany. Here, the policy in Germany will be briefly reviewed, before both the German and the EU policies will be contrasted and possible impacts of the EU railway policy on the governance of the German rail passenger services market will be looked at. Thirdly, the final section of the study, section V, will in the form of a conclusion assemble the answers to the three sub-questions obtained in sections III and IV and provide an answer to the overall research question. Concluding remarks will be delivered and starting points for further analysis will be offered.

II. Analytical framework

Before turning to the sub-questions, this section will present the analytical framework which is needed for conducting the analysis in the following sections. As a brief overview of the current state of arts in the literature has already been given in the introduction, this section will exclusively focus on the main concepts that will be used in the analysis, namely Europeanization, governance, liberalization and privatization. Though some of the concepts are rather broad, adequate conceptualizations and operationalizations will be offered.

II.1 Europeanization

To put it very general, there are various concepts in the literature on how Europeanization can impact on national or sub-national levels of policy-making, and hence approaches in the field of railway policy could be diverse as well. What they all have in common is the lack of a mutual framework, or in the words of Wolman: “The body of work as a whole lacks a common framework for analysis”(Wolman, 2008, p. 87). This also applies to the legal dimension and shows that there is no single standard-text to account for the topic. For that reason, the following part should be read as a mere suggestion of influential concepts and appropriate literature that can help to create an operationalization of Europeanization that can be used for the scope of this analysis.

The impact of the process of European integration on national or sub-national policies is seen as the concept of *Europeanization*. As Knill and Lehmkuhl describe this phenomenon, “the extent to which the implementation of European policies implies changes to domestic institutions such as dominant regulatory styles and the decision-making structures of particular policy sectors”(Knill & Lehmkuhl, 2002, p. 255) is a manifestation of Europeanization. They present a model for explaining the impact of European regulatory policies on domestic decision-making and distinguish between three different mechanisms, namely Europeanization by *institutional compliance*, Europeanization by *changing domestic opportunity structures* and Europeanization by *framing domestic beliefs and expectations* (Knill & Lehmkuhl, 2002) when arguing that distinctive approaches lead to different forms of Europeanization. As the authors claim that the three mechanisms have to be seen in an inter-dependent context, they could either reinforce each other, occur simultaneously without affecting each other or in some cases weaken each other (Knill & Lehmkuhl, 2002, p. 276).

The goal of this study is to see how the current governance structure of the German railway market can be understood in the light of Europeanization. The theoretical framework by Knill and Lehmkuhl would thus come up with answers not adequate to provide appropriate answers, as the three mechanisms could also overlap, as stated by the authors. Another, more suitable attempt to assess the impact of Europeanization can be found in the work by John, who came up with a stepped approach,

illustrated as a “ladder of Europeanization”. Though he primarily writes about the activities that sub-national and regional authorities pursue and which are generated by the process of Europeanization (John, 2000, p. 72), the general idea can be applied to a national context just as well. Thus the more actively a certain government absorbs European policies and implements them, the higher they would be ranked on the ladder. To adapt this to the German case, the following ladder seems to be most suitable:

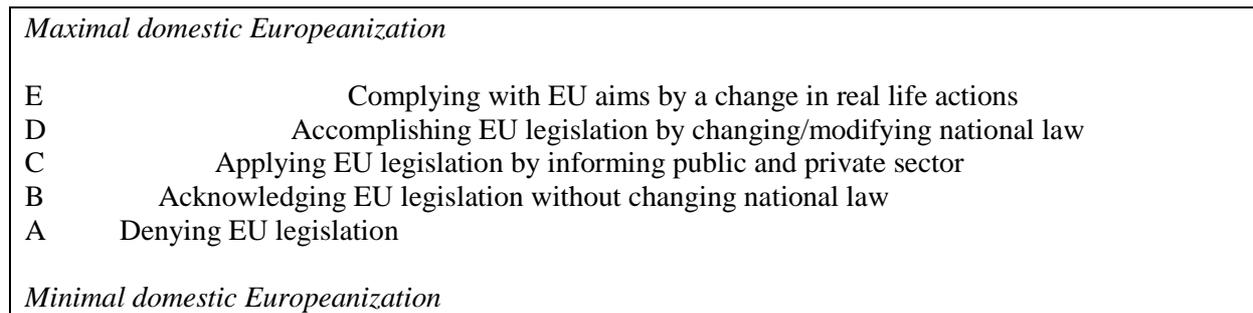


Figure 2: Europeanization

In order to in the end locate Germany on the ladder, the content of laws from both the EU railway policy and Germany will be compared and the governance structure of the German rail passenger services market will be analysed to see whether the real life actions as included under step E can be captured. The ladder can hence be read as a scale for measuring the degree of Europeanization. It should be noted that this operationalization is about Europeanization at the domestic level, which is also known in the literature as “Download Europeanization” (Marshall, 2004), compared to “Upload Europeanization”, which refers to an influence of (sub-)national authorities in the process of policy-making at the European level and which is beyond the scope of this study.

II.2 Liberalization

Liberalization has for a long time been and still is one of the underlying core rationales of the European Union’s politics. In the common sense, liberalization refers to a restructuring of the market. Woods defines liberalization as “government policies which reduce the role of the state in the economy, such as through the dismantling of trade tariffs and barriers, the deregulation and opening the financial sector to foreign investors, and the privatization of state enterprises.”(Woods, 2008, p. 252). When associating liberalization with deregulation, the former one is considered to increase efficiency because incentives for efficiency would be much higher in a perfect competition than in a regulated market (Newbery, 1997, p. 368).

Rather than limiting it to a general economic definition as a reduction of government restrictions, liberalization in this study is considered as the opening of the railway markets due to EU

legislation. Hereby, it remains important to understand it “as a paradigmatic manifestation of NPM” (Ludvigsen & Osland, 2009, p. 33), thus of the New Public Management. The operationalization for this concept is done via the three dimensions presented by Ludvigsen and Osland, namely the termination of the *legal status* of national railway monopolies, the termination of the *functional status* of national railway monopolies and the introduction of *new regulatory structures* “which separated the infrastructure and the signalling system managers” (Ludvigsen & Osland, 2009, p. 33). These dimensions are included under the New Public Management doctrine, which in turn is part of the broader concept of governance, as shown later-on. The three dimensions will be analysed for the German case when analysing the existing law. To put the concept of liberalization in the framework of the overall research design and also the sub-questions, it shall be seen as being part of the overall context, because it is part of the EU railway policy and then through the process of Europeanization with the components of EU law and national German law trickles to the market structure of rail passenger services.

II.3 Privatization

Opposed to liberalization, the concept of *privatization* primarily refers to ownership rather than to control or regulation (Newbery, 1997, p. 358). As it is often difficult to achieve perfect competition in the public sector, privatization is seen as a complement to liberalization, because when ownership is transferred from the state to private bodies, competition can be established easier (Newbery, 1997, p. 358). Privatization thus often goes hand in hand with liberalization or can be seen as part of it, but it could also occur without the other one.

The operationalization of privatization is very clear, as railway undertakers and infrastructures could be owned either by the state or by private owners. Ownership by the state is often expressed through state-owned companies. In this regard, it is linked to liberalization and the operationalization of the legal status.

II.4 Governance

Working on Europeanization always implies thinking about governance simultaneously. The clear link between Europeanization and governance has been described for example by John, who argues that due to an ongoing Europeanization, more and more actors at different levels become aware of their possibility to influence decision-makers in the EU and hence they come up with new networks and relationships. In the end, this highly reflects what governance is about, namely “new and stronger partnerships across organizations” (John, 2001, p. 12). This part will now refer to the concept of governance as such. Though the two concepts are interlinked, for analysing the governance of the

market structure of the German rail passenger services market it is helpful to provide clear starting points for the operationalization.

The literature on governance has grown significantly during the last two decades and nowadays offers a wide range of approaches to and differentiated conceptions of governance. They still share the main underlying rationales, which can be found in the main texts of the field, such as the works written by Rhodes (Rhodes, 2007) or Stoker (Stoker, 1998). Prominent aspects of governance include markets, hierarchies and networks and seek to define a new manner of decision-making and relationships between actors. Treib *et al.* account for the variety of conceptions in the field of governance-literature and present different modes of governance (Treib, Bähr, & Falkner, 2007).

The concept of *governance* in this study is conceptualized as a rather broad concept, following the style of John, who defines governance as “a flexible pattern of public decision-making based on loose networks of individuals.”(John, 2001, p. 9). He continues that governance “conveys the idea that public decisions rest less within hierarchically organized bureaucracies, but take place more in long-term relationships between key individuals located in a diverse set of organizations located at various territorial levels.”(John, 2001, p. 9). Stoker in his propositions on governance refers amongst others as well to institutions from but also beyond government, new sets of relationships with regard to power dependence and self-governing networks (Stoker, 1998). Causes for the emergence of governance are various and interlinked to each other. With an ongoing “internationalization of economics” and “globalization” (John, 2001, p. 9), economic institutions were no longer bound to national-markets but acting on a global level. Also a “greater demand for the private sector to be involved in public decisions” (John, 2001, p. 11) can be observed and contributes to the shift towards a governance-marked policy-style. Both private actors and policy-makers recognised the need for a stronger interaction in order to remain competitive on the market. “Europeanization of public policies” (John, 2001, p. 11) constitutes a further cause for the governance-shift. Besides the changed economic environment, also social changes and phenomena are rooted in the process, such as migration and demographic changes. John identifies them as “new policy challenges” (John, 2001, p. 12). Hand in hand with a governance shift also goes “the move to the post-bureaucratic state” (John, 2001, p. 13), primarily characterized by the New Public Management.

The operationalization of governance follows the different aspects that are commonly understood as being part of a governance structure. In the words of John, there exists in the end a so-called “ideal type of governance” (John, 2001, p. 15). This ideal type includes four different elements, all of them expressed via two aspects. Table 1 presents a schematic overview on this ideal type. One of the elements is institutional reform, which includes “institutional multiplication” and “institutional restructuring”, another one is new networks, which combines “stronger horizontal networks” and “new cross-national networks”. A third element of the ideal type is called new policy initiatives and contains

“local innovation and capacity building” as well as “revived central initiatives”. The final element is responses to dilemmas of co-ordination and accountability and are expressed through the “search for new mechanisms of control and accountability” and through “more prominent forms of executive leadership” (John, 2001, pp. 15-16).

Element	Part of the element
Institutional reform	<ul style="list-style-type: none"> ➤ Institutional multiplication ➤ Institutional restructuring
New networks	<ul style="list-style-type: none"> ➤ Stronger horizontal networks ➤ New cross-national networks
New policy initiatives	<ul style="list-style-type: none"> ➤ Local innovation and capacity building ➤ Revived central initiatives
Responses to dilemmas of co-ordination and accountability	<ul style="list-style-type: none"> ➤ Search for new mechanisms of control and accountability ➤ More prominent forms of executive leadership

Table 1: Ideal type of governance following John (John, 2001, pp. 14-17)

This typology will be used to analyse the current governance structure of the German transport sector with regard to rail passenger services. The different values that the elements could take are included in Table 2, which originally contrasts local government and governance but could be used in the study likewise.

	Government	Governance
Number of institutions	Few	Many
Bureaucratic structure	Hierarchical Consolidated	Decentred Fragmented
Horizontal networks	Closed	Extensive
International networks	Minimal	Extensive
Democratic linkage	Representative	Representative + new experiments
Policies	Routinized	Innovative Learning
Central government	Direct control	Decentralizes + micro intervention
Leadership	Collegial/clientelist	Mayoral/charismatic

Table 2: Local government and governance contrasted (John, 2001, p. 17)

The analysis will thus show whether the elements of the German rail passenger services market show characteristics typical for government or rather for a governance-driven process. As it is dealt with a case study, it will be possible that the classification cannot be taken in every detail. However, the underlying ideas are relevant and thus the operationalization shall be seen more as a guiding document.

II. 5 Hypotheses

Building on the abovementioned concepts and on studies on either other countries or other aspects than rail passenger services, the following hypotheses can be formulated. In the analytical part of this study, they will be controlled for with the results of the data analysis based on the operationalizations constructed above. They result out of the introductory remarks and the illustration of the research design and the elaborations on the different concepts that are at stake.

One of the main goals of the EU is to promote the single market, and hence an ongoing deepened European integration is expected to have a positive relationship with competition, as the markets shall not only be open for the all competitors at the national, but also at the European level. This means that monopolistic positions will be overcome and allow for a wider choice of producers. In the end, this means that Europeanization leads to liberalization. With regard to the sub-questions, the first hypothesis thus fits in the first one. But as mentioned earlier, liberalization is present in the both the independent and the dependent variable and also in the relationship between them, the process of Europeanization.

- Hypothesis 1: The more the process of Europeanization is advanced, the more liberalization of the railway market will be promoted.

During the last decades, a bulk of EU Member States has experienced shifts from policy-making characterized by government towards one marked by governance. This process is seen to be fostered by Europeanization. Linked with this is the idea that Europeanization and the development of governance are going hand-in-hand. The second hypothesis thus states about the third sub-question.

- Hypothesis 2: The more the process of Europeanization is advanced, the more a shift towards governance can be observed on the German railway market.

This study will answer a descriptive research question about how the governance of the German rail passenger services markets can be explained in terms of Europeanization. As this is not a strict causal-relationship, because other factors could influence the German market as well, the definition of the variables has to be seen as a guiding background, but not as the core of the empirical analysis. Recapping the illustration of the research design, it can thus be proposed to consider hypothesis one as being part of the left-hand side of the picture, whereas the second hypothesis belonging to the right-hand side, as seen in Figure 3.

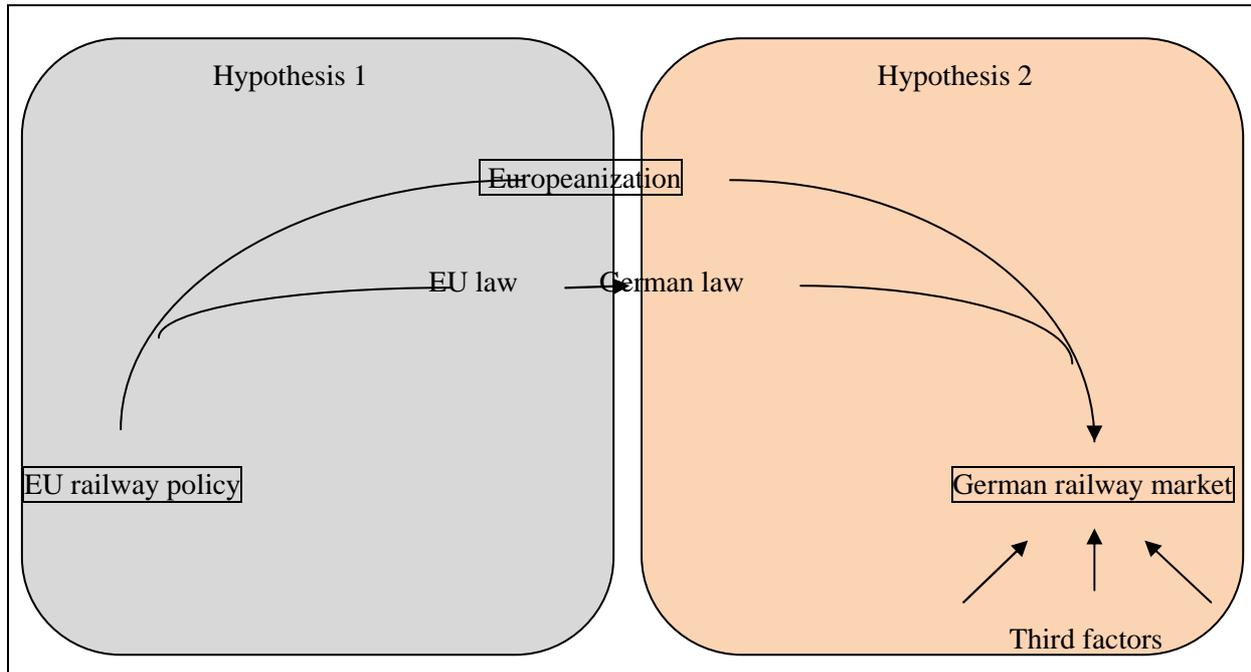


Figure 3: Illustration hypotheses

II.6 Conclusion

This section illustrated that for answering the overall research question, a number of different concepts needs to be clarified. It has also been shown that they are in a way interlinked, for example when liberalization also implies privatization and a shift in the ownership of formerly state-owned companies to private owners. Also the relationship between Europeanization and the emergence of governance has been addressed, as increasing European integration can be seen as one of the causes for governance, but governance on the other hand is influencing the Europeanization process also.

Operationalizations of the main concepts were presented, which will in the last section of this study been applied to the analysis of the German railway sector. These operationalizations are considered to be guidelines rather than strict measurement scales, because the interest of this study lies in the understanding the bigger picture of the German case and not in a particular classification scheme. The next section will now set the ground for this, when answering the first sub-question.

III. EU railway policy

After setting the ground and presenting the analytical framework, this section of the study will explain the European dimension of the law of the transport sector regarding railways. It will thus answer the sub-question of what the main elements and legal principles of the EU railway policy are. The general EU conditions of transport policies will be the starting point, before turning to policies more directly related to rail passenger services.

On an abstract basis, there are four possibilities at stake for governments in order to influence transport policy (Stubbs, Tyson, & Dalvi, 1980, p. 147). Stubbs *et al.* identify these spheres as “control of *quality* of services, control of *quantity* of services, control of the *organisation* of the transport sector and control of *resource allocation*”(Stubbs, et al., 1980). This shows that at least theoretically, there is a broad scope for influence and policy-making. The remaining part of this section will show how the EU as a concrete example used this scope for policy-making, when developing the EU railway policy.

III.1 General conditions

Regarding EU policies on the rail sector, one has to start with the general conditions on transport policies, which can be found in the Treaty on the Functioning of the European Union (TFEU)¹. Article 4 provides for shared competences in the field of transport. This means that the Member States are obliged to implement EU law related to transport policies. In case of non-action taken by the EU, the Member States can take actions. This point already makes clear that the EU possesses a strong influence on national transport policies, but also that there is room for autonomous actions by the respective Member States, which implies that there can be differences in the chosen approaches. Another core principle of EU law governing transport policies is the internal market, as stated in article 26, TFEU. Ensuring free movement of goods, persons, capital and services always implies an aspect of transport. The importance of transport policies at the EU level can be seen in the fact that a whole title is dedicated to this topic, namely Title VI, TFEU. Article 90 calls for a common transport policy and article 91 empowers the European Parliament and the Council to come up with further specific common rules, conditions, measures and other “appropriate provisions” in order to establish the common transport policy. As included in article 100, rail transport is addressed by the whole title, besides road and inland waterway means of transport. How the conditions of article 91 look like in practice will be seen in the following part.

¹ Official Journal of the European Union C115/47, Retrieved on May 04, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF>.

III.2 Specific law on railway policies

a. Introductory remark

Besides the core principles mentioned above, there exist a number of more concrete policies on transport and railways at the European level, which altogether form the so-called “EU railway policy”. The following part will thus find out how these legal policy principles translate into policy-initiatives or policies regarding decisions on privatization and possibly liberalization in the field of transport, more precisely railway, policy. In order to facilitate the understanding of what happened in the field under study, the important steps will be presented in a chronological order. This leads to a classification of five temporal phases, as explained later.

Not all of specific policies on railways are relevant for this study, as they are concerned with other aspects than market or privatization. In a nutshell, three main fields of policies can be identified and are regularly recurring in the European legislation. First of all, *market regulation* is a very important aspect and basically refers to liberalization. Cross-border competition in the rail sector should be enhanced, in line with the European Single Market and an integrated European railway area (European Commission, 2011). Second, in recent years, the *safety aspect* gained more and more attention and *interoperability* of infrastructures became a topic (European Commission, 2011a). Third, *infrastructure* and the establishment of *cross-border networks* constitute another aspect of rail policies in the EU. In this field, the building of trans-European transport network (TEN-T) is dealt with (European Commission, 2011b). Though especially the safety and the cross-border aspect are not directly linked to liberalization, they still have an impact on the latter one. Therefore legislation containing policies on these two fields will also be regarded in the part to follow.

b. First phase (1991-1996)

Following the principles of the Single European Act, a first major law of the European railway policy aimed at enhancing competition on the railway market and was enacted in 1991, namely the Council Directive 91/440/EEC² on the development of the Community's railways. This directive is still the linchpin for more recent legislation, which amend the Directive 91/440/EEC. As stated in article 1 of this directive, the aim of it was to “to facilitate the adoption of the Community railways to the needs of the Single Market and to increase their efficiency”. In order to do so, four main actions were mentioned in the directive. First, the management of railway undertakings should be insured to be independent, which basically refers to privatization, as they should be “separate from the State”. Second, the “management of railway operation and infrastructure” was to be separated from “the

² *Official Journal of the European Union* L 237, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0440:EN:HTML>.

provision of railway transport services”. As laid down later in the directive, this affects the accounts of both units which ought to be separated. Third, as a rather general action, the financial situation of railway undertakings was to be improved. With this action, Member States were allowed to deliver aids to railway undertakings in case they had debts. The fourth action included in the directive should ensure that “international groupings of railway undertakings” as well as “railway undertakings engaged in the international combined transport of goods” are given the access to “the networks of Member States”. This last point clearly includes for the first time a real opening of the railway markets in the EU. However, as article 10 states it, this opening of the market only refers to undertakings engaged in international combined transport, which includes at least undertakings from two Member States. A complete liberalization of the railway market for passengers is thus not included in this directive.

Building on the direction of the first directive, Council Directive 95/18/EC³ of 19 June 1995 on the licensing of railway undertakings lists criteria for licensing railway undertakings. The aim of this step is to facilitate the implementation of Directive 91/440/EEC in real life and to come up with a license which is valid throughout the whole Community “on a uniform and non-discriminatory basis”. Also Council Directive 95/19/EC⁴, which addresses principles and procedures of allocating railway infrastructure capacity and charging infrastructure fees, can be seen as a further clarification of Directive 91/440/EC, namely when referring to article 10.

Directive 96/48/EC⁵ on the interoperability of the trans-European high-speed rail systems which aimed at facilitating the use of systems of other Member States for the first time introduced the aspect of interoperability which refers to technical harmonization.

The first phase is thus characterised primarily by the first legislation in the field, namely Directive 91/440, and a strong presence of legal provisions addressing two fields of action, market regulation on the one hand and also infrastructure on the other hand.

c. Second phase (1996-2001)

The White Paper containing “A Strategy for Revitalising the Community’s Railways” (European Commission, 1996) was presented by the European Commission in 1996 as a mean to respond to a declining railway sector. Though having no binding force in a legal sense, the publication shows that at that time, railway policy was of vital interest for the Commission. It contains five prime areas of action, and replicates what was already included in Directive 91/440/EEC. The White Paper asks the

³ Official Journal of the European Communities, L 75, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1995L0018:20010315:EN:PDF>.

⁴ Official Journal of the European Communities, L 143/75, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1995:143:0075:0078:EN:PDF>.

⁵ Official Journal of the European Communities, L 235, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0048:en:HTML>.

Member States to improve financing of the railway sector and to “extend access rights to infrastructure”. This, again as already ruled in 1991, was to be achieved by separating infrastructure management and transport operations. Furthermore, the delivery of public services by Member States needs to be improved. Interoperability is mentioned in the Paper as well and calls for more technical harmonization, picking up Directive 96/48/EC. Also social aspects of restructuring railway markets are addressed in the White Paper for a first time when calling for as little job losses as possible.

In 2001, the so-called “First Railway Package” was concluded, also as a reaction to the Commission’s Strategy included in the White Paper from 1996 (European Commission, 2011c). It consists of three directives aimed at increasing effectiveness of the already existing legislation, based on the experiences in real life. Directive 2001/12/EC⁶ of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community’s railways based on the experiences during the last years, includes some minor changes to the former Directive. Also the Directive on licensing railway undertakings was adapted to the real-life situation under Directive 2001/13/EC⁷ of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings, when adding some exceptions such as on regional activities. Directive 2001/14/EC⁸ of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification builds upon former legislation as well, when abolishing Directive 95/19/EC and presenting new, clarified principles for railway infrastructures. Directive 2001/16/EC⁹ on the interoperability of the trans-European conventional rail-system amended the former interoperability directive, also adapted to real-world learnings.

The second phase of the EU railway policy corresponds to the First Railway package and an improvement of former legislation from the first phase was focussed here. Again, policies included mostly actions regarding market regulation and infrastructure.

d. Third phase (2001-2004)

The White Paper from September 2001, entitled “European transport policy for 2010: time to decide” (European Commission, 2001), lays the ground for a second railway package and identifies three main points as the preconditions for revitalising railways under the umbrella regulating competition. First,

⁶ Official Journal of the European Union, L 075, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0012:EN:HTML>.

⁷ Official Journal of the European Union, L 075, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0013:EN:HTML>.

⁸ Official Journal of the European Union, L 075, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0014:en:HTML>.

⁹ Official Journal of the European Union, L 110, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0016:EN:HTML>.

the genuine creation of an internal market for rail transport should be prioritised. This statement thus reaffirms the rationales of Directive 1991/440/EEC and puts a strong emphasis on this, as it shows that the desired results until 2001 have been absent. Second, using the infrastructure should be optimised. Finally, services should be modernised in order to enhance consumer satisfaction and thus use of railway transport in the end. Building on this, the “Second Railway Package” was adopted in 2004, when the Council decided on some new directives (European Commission, 2011d). The main background of this second package was to “accelerate liberalization of rail freight services”, which was possible due to a full opening of the market. Directive 2004/49/EC¹⁰ aims at “improving safety on the Community’s railways” and “improving access to the market for rail transport services” and amends the former Directives 95/18/EC and 2001/14/EC. The two former directives on interoperability have been amended under the second package by Directive 2004/50/EC¹¹, when technical standardisations have been updated with the experiences from the former legislation. As mentioned, the full liberalization of the freight market can be found in Directive 2004/51/EC¹², which amends the former Directive 1991/440/EEC in this regard. The European Railway Agency is legally rooted in Regulation (EC) No 881/2004¹³. The main job of this newly established Agency is to contribute to increase the interoperability level and to build a common approach to safety, both of them on a technical side.

During the third phase of EU railway policy, the Second Railway Package was designed, and for a first time, the third field of action, safety, was given an important place.

e. Fourth phase (2004-2007)

The “Third Railway Package”, adopted in 2004, resulted in concrete directives which were passed in 2007 by the Council (European Commission, 2011e). For a first time, specific attention was paid to the passenger market. Directive 2007/58/EC¹⁴ for example, while amending Directives 91/440/EEC and 2001/14/EC, presents the ground for “the opening of the market for international rail passenger services within the Community”. A novelty in the railway policy is to be found in Directive 2007/59/EC¹⁵ on the certification of train drivers operating locomotives and trains on the railway

¹⁰ Official Journal of the European Union, L 220/16, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:220:0016:0039:EN:PDF>.

¹¹ Official Journal of the European Union, L 220/40, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:220:0040:0057:EN:PDF>.

¹² Official Journal of the European Union, L 220/58, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:220:0058:0060:EN:PDF>.

¹³ Official Journal of the European Union, L 220/3, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:220:0003:0015:EN:PDF>.

¹⁴ Official Journal of the European Union, L315/44, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0044:0050:EN:PDF>.

¹⁵ Official Journal of the European Union, L 315/51, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0051:0078:EN:PDF>.

system in the Community, which, in other words, introduced a driver licence at the European level. Regulation (EC) No 1370/2007¹⁶ aims at improving public passenger transport in general by defining the role that competent authorities play in this field. Consumers are the beneficiaries from Regulation (EC) No 1371/2007¹⁷, which includes a number of rights and obligations for rail passengers.

Continuing the path taken in the previous packages, the Third Railway Package, which lies at core of the fourth phase of EU railway policy, includes policies addressing all three fields of actions, with a direct focus on passengers for the first time.

f. Fifth phase (2011 ongoing)

The most recent mentioning of railway policies can be found in the White Paper named “Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system” (European Commission, 2011f) from 2011. Contrastingly to the older one, this White Paper does not devote a specific section to railway policies. Rather, it delivers a broad bulk of policies, with mentioning railways under different headings. However, railways are still considered an important mean of transport, but one which is still lacking a full internal market. This leads to the prioritizing of creating an internal market for railway services in order to achieve a Single European Railway Area. This point shows that the main rationale of one of the first major legislation, Directive 91/440/EC, aimed at adapting railways to the Single Market, still requires a lot of work, more than twenty years after its publication.

For the time being, the only important policy document of the fifth phase also includes elements of different fields of action, primarily market regulation and infrastructure.

III.3 Conclusion

The former sections have shown that EU rail policies can be classified according to three major aspects – market regulation, safety and infrastructure. Though the main field under study in this case is liberalization and hence market structure, the other two aspects also contribute to achieve a full liberalized market of rail in the EU. Also an ongoing development in the European railway policy can be identified. With a first major legislation in 1991, Directive 1991/440/EC, preparing the ground, the First Railway Package in 2001 reviewed how the implementation of the directive has looked like in real life and amended the older legislation. The Second Railway Package took EU railway policy a step further with a complete opening of the rail freight market, whereas the Third Railway Package than primarily addressed rail passengers. Table 3 summaries the main legislation of EU railway policy.

¹⁶ Official Journal of the European Union. L 315/1. Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0001:0013:EN:PDF>.

¹⁷ Official Journal of the European Union. L 315/14. Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:EN:PDF>.

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As can be seen, the development was marked by five major phases, the first one with the turning directive 91/440, which set the ground for all other to follow. The second, third and fourth phase were each characterized by a so-called Railway Package, which included each time a number of directives and reacted to a Commission's White Paper. In the fifth phase, until now, there is only the White Paper from 2011, and it remains to be seen how this will result into concrete legislation.

The sub-question on the main elements and legal principles of EU railway policy is thus answered with the above. Together with the other sub-questions to follow, this will thus contribute to answer the overall research question, because now it is known what will be analysed for having an impact of the German market structure.

Recapping the first hypothesis that the more the process of Europeanization is advanced, the more the liberalization will be promoted, at this stage clearly allows for an affirmation of this hypothesis. The content of the EU railway policy promotes a Single Market of railways throughout the whole Union. Also the separation of infrastructure and operation management contributes to this. So at least theoretically, the hypothesis should be agreed. In the part of Germany, it will be seen whether it holds also in the particular German case. The three dimensions presented in the operationalization of liberalization can be found in the EU law, with a termination of the legal as well as of the functional status of national railway monopolies and the introduction of new regulatory structures separating infrastructure and signalling system managers". These aspects are already included in the first policy document, Directive 91/440.

Legislation	Main concepts at stake	Concrete actions
Directive 91/440	Enhance competition, single market	<ul style="list-style-type: none"> - Independent railway undertakings management - Railway operation and infrastructure management to be separated from provision of railway transport services - Improved financial situation of railway undertakings - Networks of Member States to be open for international groupings of railway undertakings and international combined transport of goods
Directive 95/18	Licensing railway undertakings	<ul style="list-style-type: none"> - Introducing criteria for licensing railway undertakings

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Directive 95/19	Infrastructure capacity and fees	- Principles and procedures of allocating capacity and charging fees
Directive 96/48	Interoperability	- Technical harmonization of rail systems
Directive 2001/12	Competition	- Amending directive 91/440
Directive 2001/13	Licensing railway undertakings	- Amending directive 95/18
Directive 2001/14	Infrastructure	- New principles for infrastructures
Directive 2001/16	Interoperability	- Amending directive 96/48
Directive 2004/49	Safety; services	- Improving safety of railways - Improving access to market for services
Directive 2004/50	Interoperability	- Amended and updated former directives
Directive 2004/51	Freight market	- Including full liberalization of freight market
Regulation 881/2004	European Railway Agency	- To increase level of interoperability - Build common approach to safety
Directive 2007/58	Passenger market	- Opening international passenger services market within community
Directive 2007/59	Certification of drivers	- Introducing European wide license
Regulation 1370/2007	Public passenger transport	- Defining role of authorities
Regulation 1371/2007	Consumer protection	- Rights and obligations of rail passengers

Table 3: Overview EU railway policy

As seen above, most of the specific principles and conditions included in directives. This means that Member States of the EU have to reach the results they mention, but they are autonomous when it comes to the way of how they implement the content, as stated in article 288 TFEU¹⁸. Furthermore, there is the subsidiarity principle, to which is often referred in the introductory parts of the relevant legislation. Directive 95/19/EC for example reads that “Where, pursuant to the principle of subsidiarity, it is appropriate that the Community lay down the broad principles of such a system, leaving it to the Member States to put in place the detailed rules for the relevant practical

¹⁸ Official Journal of the European Union, C 115/57, Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF>.

implementation”.¹⁹ The following section will thus have a closer look at Germany and how this Member State coped with achieving the common EU goals.

¹⁹ Official Journal of the European Communities, L 143/75, Retrieved on May 25, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1995:143:0075:0078:EN:PDF>.

IV. Analysis of the German case

This section will see how Germany integrated the European law into domestic law and how this is reflected in the current rail passenger markets sector. In other words, the two sub-questions “How do the European and the German railway policies integrate?” and “Can an impact of EU railway policy be observed on the German railway passengers market?” will lead the analysis in this section.

IV.1 Legal grounds Germany

Before coming to the first sub-question of this section, a few words on the general legal grounds regarding railway policy in Germany should be stated. Just as in the European section, the allocation of responsibilities in policy making will be presented first before considering specific policies.

Analogical to the different types of competences in the EU, legislation in the Federal Republic of Germany is marked by twofold system of competences. As expressed in 70 of the German Basic Law²⁰, all competences that are not mentioned in the Basic Law to fall under competence of the federal government are hold by the Länder. Article 73, paragraph 6a qualifies railway traffic to belong to the exclusive competence of the Bund, the federal government. Similar to exclusive competences of the EU, the Länder, just like the Member States at the European level, are only entitled to act if they are empowered by the Bund, which otherwise has the sole competence.

The current law on the railway sector in Germany is called “Allgemeines Eisenbahngesetz” (AEG)²¹ and dates back to December 1993. A last amendment has been applied in July 2009. In December 1993, the AEG replaced the former law, which came into force in 1951, as a necessity to implement EU directive 91/440. This was part of the “Gesetz zur Neuordnung des Eisenbahnwesens” (ENeuOG)²², a law consisting of different laws as a reaction to directive 91/440. The bunch of these new laws is known as the “Bahnreform” and addresses topics included in the directive. An important point for the German law was the degree of regionalization regarding competences of passenger short-distance traffic services, which have seen a shift from the federal level to the Länder. Article 73, 6a thus applies only for a minor part of the German lines, because the short distance lines are under responsibility of the Länder since the ENeuOG entered into force and the article is specified to be applicable for “the traffic of railways who are partly or completely owned by the State (State railways), the building, the maintenance and the management of rail lines of the State railways as well as the raising of charges for using these rail lines”.

²⁰ Deutscher Bundestag (2010). *Grundgesetz für die Bundesrepublik Deutschland*. Retrieved on June 10, 2011 from <http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>.

²¹ BGBl. I S.2542. Retrieved on June 10, 2011 from http://www.gesetze-im-internet.de/bundesrecht/aeg_1994/gesamt.pdf.

²² BGBl. I. S. 2439. Retrieved on June 10, 2011 from <http://www.gesetze-im-internet.de/bundesrecht/eneuog/gesamt.pdf>.

IV.2 Comparison German and EU law

After having seen the frame of the railway law in place in Germany, this part will now revive the main elements of the EU law and see how they can be found in the German law. Hence, the sub-question will be answered how the EU railway policy and the German policy integrate.

This part will now compare the European goals, as described in the section dedicated to the European dimension, with the content of the German law and see whether they are incorporated in this.

The core element of the reform of the German railway policy, besides the enacting of the AEG in 1993, was the conversion of a formerly stated owned Bundesbahn into a private company. The “Gesetz über die Gründung einer Deutsche Bahn Aktiengesellschaft (Deutsche Bahn Gründungsgesetz – DBGrG)“, a law on the establishment of the Deutsche Bahn, was published in 1993²³ and created the Deutsche Bahn as a stock corporation. The DBGrG, together with the AEG and some other laws, builds the content of the ENeuOG. The DBGrG accounts for the EU requirements to separate infrastructure and management of railways, when creating separate entities of the Deutsche Bahn for short distance passenger services, long distance passenger services, freight services and infrastructure. Hence, the EU law found in Directive 91/440 can be found in the German law.

Having a closer look on the three main areas that were identified in the EU law, namely market regulation, infrastructure and safety, all of them can be found in the AEG. Concerning the safety aspect, article 7a of the AEG for example calls for the establishment of a security management system that complies with the requirements of directive 2004/49 or includes standards superior to the one mentioned in the European directive. Article 9 refers to a separated accounting of railway transport services and operating management services and thus restates what is included in directive 91/440. All EU directives concerning interoperability, such as directive 96/48 are taken over by the German AEG, which reads in article 26 that those laws which are implementing directive 96/48 do not need further approval of the German Bundesrat.

While comparing the five phases of EU railway policy identified earlier, it will be seen how they are integrated into the German law. Regarding the first phase, the impact is quite clear, because directive 91/440 was the elicitor for the German rail reform, which resulted in a complete revision of the AEG in 1993. The second phase, and hence the First Railway Package, also left traces in the German law, as article 14a for example directly refers to Directive 2001/14/EC, whereas article 25a of the AEG mentions Directive 2001/16/EC, also part of the First Railway Package. The Second Railway Package and the resulted policies, which constitute the third phase of EU Railway policy, are also visible in the AEG. As mentioned above, the safety aspects, originally to be found in Directive

²³ BGBl I S. 2407. Retrieved on July 10, 2011 from <http://www.gesetze-im-internet.de/bundesrecht/dbgrg/gesamt.pdf>.

2004/49, can be read in article 7, AEG. Article 4, AEG addresses Directive 2004/49/EC. The fourth phase of EU Railway Policy, expressed in the Third Railway Package, as well as the previous packages, impacted on the German law. In the amended version of the AEG from 2009, article 1 refers to Regulation 1371/2007 on consumer rights and obligations and ruled that the content of the German law should only apply if the case is not dealt with in the European rights and obligations. This amendment of the AEG can be seen as a direct response to the fourth phase of EU railway policy. Directive 2007/58/EC is taken over in article 14, AEG. As the fifth phase of EU Railway policy is not closed by now and no legislation issued, no impact in the German law can be found for this.

At this stage, it can already be seen that the German response to EU railway policy can be situated at the top of the ladder of domestic Europeanization. The fact that EU legislation has been adapted by modifying national law allows for a location at step D. The answer to the sub-question on how the EU railway policy and the German law integrate thus has to be that there is a full integration and incorporation of EU defaults into German legislation. This holds for the theoretical part. The following part of this section will now see how this holds in practice.

IV.3 German railway passenger services market

In this part, some basic facts about the German railway passenger services market will be presented, in order to provide an overview over the developments during the last years and to see whether an effect resulting out of European legislation can be clearly observed. Thus the second sub-question will be answered here with a focus not on the legal dimension, but on the real life results.

In 2008, the transport sector in Germany was responsible for 1432.3 jobs, of which railway accounted for 74.5, which represents about 5.2 %. In 2009, railways accounted for 7.9% of the overall passenger-km in Germany (European Commission, 2011f). To put this in a concrete numeric way, the following table gives an overview of passenger railway kilometres in Germany for the period 1990-2009.

Year	1990	1995	2000	2005	2007	2008	2009
Passenger km in thousand mio	61.0	71.0	75.4	74.9	79.1	80.9	82.4

Table 4: Passenger km railway Germany (European Commission, 2011f)

Though the measurement is not regular, it shows a steadily increasing number of passenger kilometres, increasing from 61.0 thousand mio kilometres in 1990 to 82.4 in 2009. This means that in almost twenty years, the growth of passenger kilometres amounts for 35 %.

Figure 4 gives an overview of the number of train kilometres per year in the period 1994-2009. Train kilometres per year refer to the accumulated number of kilometres that all rails drove in that respective year. This shows that there has been a positive development since 1994 and 2000 and since then, the number stagnated more or less. In 1994, a total of 480 million train kilometres per year were achieved, in 2000, this increased to 591 million. After a maximum of 637 million train kilometres in 2006, the year 2009 brought 629 million.

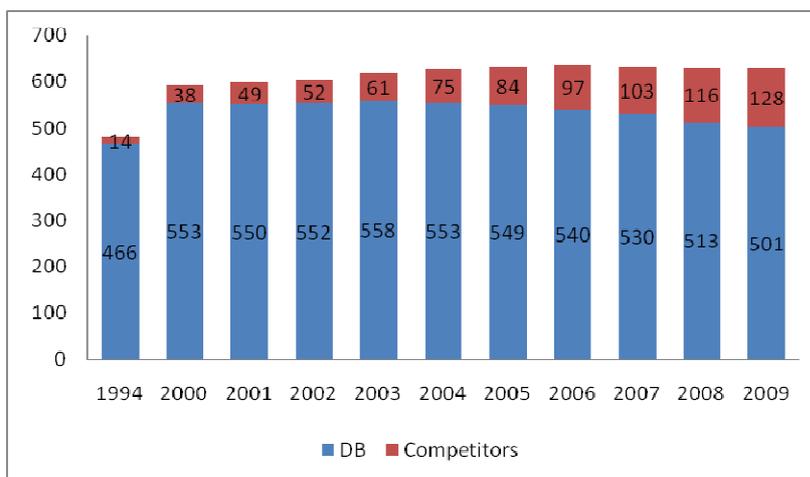


Figure 4: Million train kilometres per year (Deutsche Bahn, 2005; Deutsche Bahn, 2010; Beck, 2011)

For getting a statement about the market, it is now interesting to see who accounts for the train kilometres. Figure 5 shows the market share, with a graph representing the market share of the competitors to the Deutsche Bahn. Thus it becomes clear at a first glance that private companies could enlarge their market share significantly. In 1994, they accounted for less than 3 % of the total train kilometres, which increased to over 20 % in 2009.

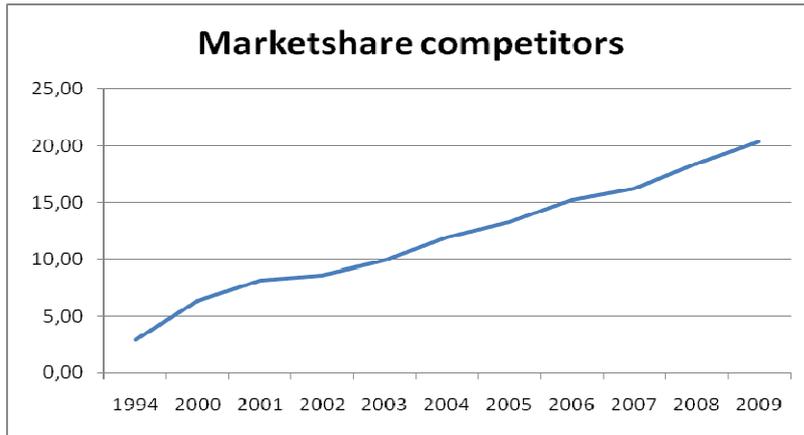


Figure 5: Market share competitors to Deutsche Bahn, % of train kilometres per year (Deutsche Bahn, 2005; Deutsche Bahn, 2010; Beck, 2011)

Besides train kilometres, passenger kilometres are another interesting value to analyse the market structure, which has been mentioned above already. Compared to train kilometres, passenger kilometres express a much higher value, because they take into account the kilometres covered by every single passenger, thus they also state something about the degree of utilization of the rails. Even though there is no data available on passenger kilometres for 1994, the figure shows quite well that there has been a slight increase in the overall number between 2000 and 2009.

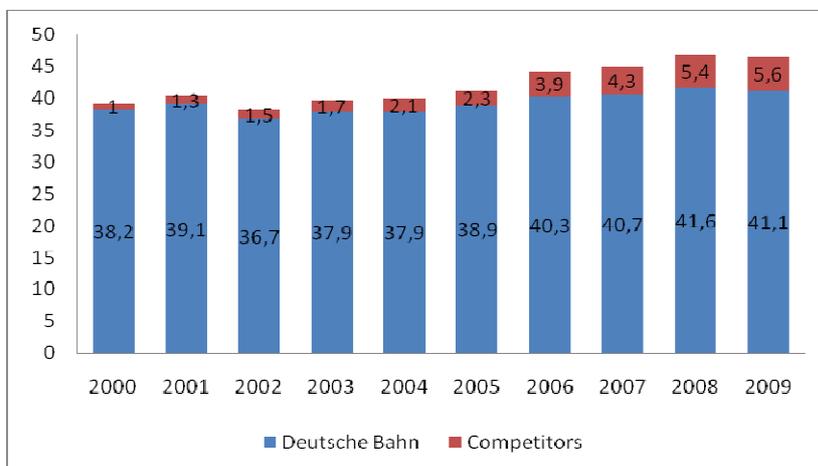


Figure 6: Billion passenger kilometres per year (Deutsche Bahn 2005; Deutsche Bahn 2010)

Again, the market share of competitors to the state owned Deutsche Bahn is of interest here. Figure 7 represents this and shows quite well how the market shares of private companies could be increased vis-à-vis the Deutsche Bahn in the period 2000-2009. With about 2.5 per cent in 2000, they accounted for 12 per cent in 2009, which is more than four times the value of 2000.



Figure 7: Market share of competitors to Deutsche Bahn, % of passenger kilometres per year (Deutsche Bahn 2005; Deutsche Bahn 2010)

When contrasting the market share of competitors to the Deutsche Bahn in both train and passenger kilometres, it is visible that their market share in train kilometres is significantly higher than in passenger kilometres. In 2009, they accounted for 20 per cent of train kilometres, but only 12 per cent of passenger kilometres. This imbalance is most likely explained by the fact that the capacity of the trains run by private companies is not as exploited as the ones of the Deutsche Bahn.

To put the German numbers into relation with other countries and to get a statement about how these numbers have to be interpreted in line with liberalization, a very useful tool is the IBM liberalization index that since 2002 analyses the liberalization of European railway markets. Results are among other presented regularly to the European Commission and used in their policy analyses. In the IBM liberalization index 2011 (IBM, 2011), Germany scores quite well. With regard to the legal requisites, the liberalization of the German rail goods and rail passenger traffic is classified here as being advanced, with a total score of the third rang. This position is also hold in the analysis of real world conditions, including the aspect of market accession. When it comes to a third sub-analysis about the dynamic of competition in the market, Germany ranks fifth, thus a bit lower than in the other two aspects, but still one of the best performing countries.

With regard to the sub-question, the above presented data thus shows that there has been a development on the German railway passenger services market during the years 1994-2001. It is now sure whether this is a concrete result out of Europeanization, as also other aspect could have contributed to an increase in the market growing, such as increase in ecological awareness of citizens or others. But as the market share of competitors also grew, this is likely to be a result of EU legislation, which was incorporated into German law. Thus, on the ladder of Europeanization, the German railway passenger services market can be located at the top, in step E, where a change in real life actions occurs.

IV.4 Governance of the German railway passenger services market

When having a look at the governance structure of the German railway passenger services market, different aspects can be looked at. As indicated in the analytical framework, this analysis will try to stick to the aspects mentioned above. Though they are not covering the whole range, they will provide a broad overview. As described earlier, a classification by John will provide the framework for the analysis. As governance as such is a broad, sometimes perceived as blurred, concept, the following classification of the German case cannot be done in a strict yes or no manner. Hence, the scale helps to locate the different aspects. They are not classified according to a strict “yes- or no” measurement, but indicate the direction of whether the respective aspect shows characteristics from a government or from a governance driven process. The following statements will have a look at the current governance structure of the German rail passenger services market, taking in mind that the legal shift occurred at the momentum of the rail reform in 1994.

The *number of institutions* can be classified as rather high, because new institutions were created at the moment of the German railway reform. Most of them are observing the implementation of the law and controlling the market. Also institutions from the European level have to be mentioned, such as the European Railway Agency. The fact that regionalization was highly promoted with the German rail reform also increased the number of institutions because every of the sixteen Länder has its own institutions of security and control. While a shift of competences to the Länder occurred, these institutions gained more influence as well.

Considering the *bureaucratic structure*, also characteristics from a governance-shaped structure are present, because with regionalization, bureaucracy was decentred and the Länder are legally allowed to transfer their competences further to other sub-national levels, such as regions or cities.

Horizontal networks are present in the German railway market as well, first of all the network of private rail companies, the Netzwerk Privatbahnen, which was established in 2001. Following their statement, they represent about 60 % of the market share of private companies in Germany (Netzwerk Privatbahnen, 2011). Members also represent private rail companies from other European countries.

This links this point to the one of *International networks*. At a European level, German is for example active in the Rail Net Europe. This thus also points in the direction of governance-marked structures.

Democratic linkage in the German railway passenger services market would be classified as representative, but without new experiments, hence rather government-like.

When it comes to concrete *policies*, they are in a way innovative, because the European legislation is often amending former directives and thus showing some sort of learning. At the German

level, no example for a concrete new innovative policy can be found, very likely due to the fact that railway policy is not the place to start experiments.

The role of the *central government*, in the German case the federal level, is twofold. On the one hand, the law on regionalization highly justifies a classification under decentralization and micro intervention. However, this regionalization also involves payments from the State to the Länder, thus there still exists control. For all lines of long-distances trains, direct control of the government is present, whereas short-distance trains are falling under responsibility of the sub-national governments.

The point of *leadership* is ambiguous, depending from what side one looks at it. The Deutsche Bahn would probably consider it as charismatic, whereas their competitors would classify it as being clientelist, as they still see the Deutsche Bahn as their main counterpart. The fact that the German Bahn in 2009 accounted for about 80 % of the overall train kilometres and 88% of the passenger kilometres illustrates that they are still the major player and hence automatically possess a certain degree of leadership position.

Table 5 below tries to locate the statements above in the comparison of government and governance marked types of markets. It can thus be seen that on average, the German railway passenger services market is characterized rather by governance than by government.

	Government	Location Germany	Governance
Number of institutions	Few	x	Many
Bureaucratic structure	Hierarchical Consolidated	x	Decentred Fragmented
Horizontal networks	Closed	x	Extensive
International networks	Minimal	x	Extensive
Democratic linkage	Representative	x	Representative + new experiments
Policies	Routinized	x	Innovative Learning
Central government	Direct control	x	Decentralizes + micro intervention
Leadership	Collegial/clientelist	x	Mayoral/charismatic

Table 5: Governance of the German railway passenger services market

That this can be seen as a result out of Europeanization can be justified because most of the aspects are an impact of the railway reform in Germany, which has its' origins in EU legislation. Most of the aspects with a ranking close to the governance ideal side are connected to regionalization, which was included in the German rail reform following European demands.

Going back the second hypothesis, stating that when Europeanization is promoted, a shift from a market characterized by government to one by governance will be seen, this shows that this is indeed true for the German case. However, this calls for a deeper analysis focused exclusively on the governance structure and a detailed analysis of this is beyond the scope of this study, which rather focuses on the overall understanding of the relationship between EU railway policy and the structure of the German railway passenger services market.

IV.5 Conclusion

This section answered two sub-questions. One of them asked how the EU railway policy and German law integrate and the answer to this is quite clear. EU legislation has been completely overtaken by German policy makers and is incorporated into the AEG. Evidence for this was found when all of the four completed phases of EU Railway policy led to amendments of the AEG. The second sub-question about an impact on the market structure has revealed that there has been a development on the market since 1994 with an increase in both train and passenger kilometres per year. At the same time, the market share of the private competitors to the Deutsche Bahn rose, though there is a significant difference between the train kilometres and the passenger kilometres. As the part on governance has shown, also there the emergence of a slight shift can be observed. But especially in this regard, the direct link to the EU railway is not necessarily the only factor shaping the governance structure.

When picking up the second hypothesis which states that advanced Europeanization leads to a stronger shift towards governance on the German railway market, this can thus be confirmed, but with reservation, as a number of other development or national conditions could be accountable for this as well.

V. Conclusion

Following the previous sections of the analysis, this one will now summarise the main findings. The answers to the sub-questions will be presented, before merging them into an answer to the leading research question. In the final part of this section, an outlook for further engagement will be included.

V.1 Summary of the sub-questions

Tracing the impact of Europeanization on the governance structure of the German transport sector with a special emphasis on rail passenger services has been the main goal of this study. As the analysis has shown, there exists a clear relationship between EU railway policy and the market structure of the German railway passenger services market. When answering the sub-questions, three implications came out.

First, with regard to the main elements and legal principles of the EU railway policy, the analysis has shown that the EU railway policy is characterised by five temporal phases. Concerning the content, three main fields of actions have been found, namely infrastructure, safety and market regulation. Policy-making has taken place in five phases, the initial phase with the publication of the first Directive 91/440, which ebbed the ground for the following phases, respectively characterised by the First, Second and Third Railway package. The fifth phase is still open and it will be seen how the EU institutions will react upon the most recent White Paper by the Commission.

Second, the sub-question on the degree of integration of European policy into concrete German law has demonstrated that there is a high degree of fit and that the European actions have been incorporated in the German “Allgemeines Eisenbahngesetz” in a rather strict manner. Various examples for this can be given and the bulk of European law is referred to directly in the German counterpart.

Third, addressing the third sub-question, a clear impact of the European railway policy on the German railway market, with special regard to rail passenger services, can be observed. During the last twenty years, there has been a steady increase in the number of competitors on the market, who also could increase their market share in both train kilometres and passenger kilometres vis-à-vis the Deutsche Bahn. A more liberal market structure and a governance-characterized policy-making cover this finding.

V.2 Answer to the research question

When recapping the overall research question of this study, “How can the process of Europeanization impact on and explain the current governance structure of the German transport sector with regard to rail passenger services?”, it is now clear that no short answer can be given to this. Already the picture

of the research design has demonstrated that there are different aspects at stake, which all contribute to the relationship between the European railway policy and the governance of the German rail passenger services market. However, deriving from the before-mentioned answers to the three sub-questions, which are all part of the umbrella research question, the following can be stated.

The case of the German railway passenger services sector can be seen as an example of maximal domestic Europeanization, because not only has EU legislation been accomplished by modifying national law, but a change in real life occurred, more precisely the opening of the German railway market and the increase of number of competitors and their respective market share. The current structure of the German railway passenger services market is a result of various developments and conditions. One of them, even if not the only but the prevailing one, is the process of Europeanization.

Two hypotheses that were guiding this study have to be read in line with the overall research question as well. The analysis has shown that, just as assumed, an advanced and deeper process of Europeanization leads to a stronger promotion of liberalizing railway markets. The second hypothesis, predicting that an advanced process of Europeanization leads to a shift towards governance on the German railway market, has also been confirmed throughout the analysis. On the one hand, Europeanization is thus accountable for a change in the legal status, when promoting liberalization. On the other hand, in the German case, these legal preconditions resulted in a practical change in real life. Both hypotheses thus contributed to the research-question when answering how Europeanization can influence the governance of the German railway passenger services market.

This study wanted to show and has done so that there exists an impact of Europeanization on the German market which can be proven. The drawing from the introductory chapter thus illustrates a relationship that is present in real-life and can be empirically proven. Taking the three sub-questions together, they can explain the illustration and thus answer the overall research question about the impact of Europeanization on the governance structure of the German railway passenger services market. In short, there has been a significant impact and a change on the market can be observed. Though other third factors might be at stake, the role that Europeanization plays is visible and also tactile. Whether the enhanced liberalization of the German railway sector would have been promoted in case that no EU influence was present is questionable, due to the long-term monopoly of the Deutsche Bahn. The reform of the German railway market, dating back to 1994, is definitely a direct result out of the process of Europeanization.

V.3 Outlook for further investigations

In the end, the results gained in this study could be used as a starting point for further questions. Besides a more detailed analysis of how the governance structure of the German railway passenger

services market changed after the establishment of an EU railway policy, which this study has proven that this is indeed the case, also broader approaches can be followed. A strict economic analysis could find out who benefits from the process of Europeanization, both in terms of money and decision-making power. Also a link on how actors of the transport and railway sector influence policy making at the European level could be analysed further under the umbrella of multi-level governance and bottom-up Europeanization. More general, questions such as how public transport could gain from ecological crises can be asked, for example with a focus on the role that subsidies as a policy could play. Another interesting point is transport taken as a “public good” and thus comparing in how far different Member States consider their transport sectors as such and how this translates into concrete policies.

List of references

- Babbie, E. (2007). *The Practice of Social Research* (11th ed.). Belmont: Thomson Wadsworth.
- Beck, A. (2011). Barriers to Entry in Rail Passenger Services: Empirical Evidence for Tendering Procedures in Germany. *European Journal of Transport and Infrastructure Research*, 11(1), 20-41.
- Carnis, L. (2010). A neo-institutional economic approach to automated speed enforcement systems. *European Transport Research Review*, 2(1), 1-12.
- Commission", E. (2011). *EU transport in figures: Statistical pocketbook 2011*. Luxembourg: Publications Office of the European Union.
- Denters, B., & Rose, E. (Eds.). (2005). *Comparing Local Governance - Trends and Developments*. Basingstoke: Palgrave Macmillan.
- Deutsche Bahn (2005). *Wettbewerbsbericht 2005*. Retrieved on June 10, 2011 from http://www.deutschebahn.com/site/shared/de/dateianhaenge/berichte/wettbewerbsbericht__2005.pdf.
- Deutsche Bahn (2010). *Wettbewerbsbericht 2010*. Retrieved on June 10, 2011 from http://www.deutschebahn.com/site/shared/de/dateianhaenge/berichte/wettbewerbsbericht__2010.pdf.
- European Commission (1996). *White Paper. A strategy for revitalising the Community's railways*. COM (96) 421 final. Retrieved on May 20, 2011 from http://europa.eu/documents/comm/white_papers/pdf/com96_421_en.pdf.
- European Commission (2001). *White Paper. European transport policy for 2010. Time to decide*. COM (2001) 370 final. Retrieved on May 20, 2011 from http://ec.europa.eu/transport/strategies/doc/2001_white_paper/lb_com_2001_0370_en.pdf.
- European Commission (2011). *Rail. Market*. Retrieved on May 20, 2011 from http://ec.europa.eu/transport/rail/market/market_en.htm.
- European Commission (2011a). *Rail. Interoperability & Safety*. Retrieved on May 20, 2011 from http://ec.europa.eu/transport/rail/interoperability/interoperability_safety_en.htm.
- European Commission (2011b). *Rail. Infrastructure*. Retrieved on May 20, 2011 from http://ec.europa.eu/transport/rail/infrastructures/infrastructure_en.htm.
- European Commission (2011c). *Rail. First railway package of 2001*. Retrieved on May 20, 2011 from http://ec.europa.eu/transport/rail/packages/2001_en.htm.
- European Commission (2011d). *Rail. Second railway package of 2004*. Retrieved on May 20, 2011 from http://ec.europa.eu/transport/rail/packages/2004_en.htm.
- European Commission (2011e). *Rail. Third railway package of 2007*. Retrieved on May 20, 2011 from http://ec.europa.eu/transport/rail/packages/2007_en.htm.
- European Commission (2011f). *White Paper. Roadmap to a Single European Transport Area -*

- towards a competitive and resource efficient transport system*. COM (2011) 144 final. Retrieved on May 20, 2011 from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF>.
- IBM (2011). *Kurzfassung der Studie Liberalisierungsbahn 2011*. Retrieved on July 25, 2011 from http://www.deutschebahn.com/site/shared/de/dateianhaenge/positionspapiere/liberalisierungsbahn_kurzfassung_2011.pdf.
- John, P. (2000). The Europeanisation of Sub-national Governance. *Urban Studies*, 37(5-6), 877-894.
- John, P. (2001). *Local Governance in Western Europe*. London: Sage.
- Knill, C., & Lehmkuhl, D. (2002). The national impact of European Union regulatory policy: Three Europeanization mechanisms. *European Journal of Political Research*, 41, 255-280.
- Koppel, O. (2006). Rail transit policy of the European union and Estonia: Objectives and outcome. *Transport*, 21(3), 1-7.
- Kuhlmann, S. (2009). Reforming Local Government in Germany: Institutional Changes and Performance Impacts. *German Politics*, 18(2), 226-245.
- Ludvigsen, J., & Osland, O. (2009). Liberalisation of Rail Freight Markets in the Old and New EU-Member States. *European Journal of Transport and Infrastructure Research*, 9(1), 31-45.
- Mäkitalo, M. (2011). Why Do Open Rail Freight Markets Fail to Attract Competition? Analysis on Finnish Transport Policy. *European Journal of Transport and Infrastructure Research*, 11(1-19).
- Marshall, A. (2004) "Europeanization at the urban level: Local actors, institutions and the dynamics of multi-level interaction", at the ESRC/UACES Study Group on the Europeanisation of British Politics and Policy Making, Sheffield, UK, 23 April 2004.
- Nash, C. (2008). Passenger railway reform in the last 20 years – European experience reconsidered. *Research in Transportation Economics*, 22, 61-70.
- Netzwerk Privatbahnen (2011). *Über uns*. Retrieved on July 20, 2011 from <http://www.privatbahnen.com/>.
- Newbery, D. (1997). Privatisation and liberalisation of network utilities. *European Economic Review*, 41, 357-383.
- Punch, K. (2006). *Developing effective research proposals* (2nd ed.). London: SAGE.
- Rhodes, R. (2007). Understanding Governance: Ten Years On. *Organization Studies*, 28(08), 1243-1264.
- Schnell, M. (2001). Competition for the German regional rail passenger market 5 years after regionalization. *Transport Reviews*, 22(3), 323-334.
- Shadish, W., Cook, T., & Campbell, D. (2002). *Experimental and Quasi-Experimental Designs for Generalized Causal Inference*. Boston, New York: Houghton Mifflin Company.

- Stoker, G. (1998). Governance as theory: Five propositions. *International Social Science Journal*, 50(155), 17-28.
- Stubbs, P., Tyson, W., & Dalvi, M. (1980). *Transport Economics*. London: Allen & Unwin.
- Treib, O., Bähr, H., & Falkner, G. (2007). Modes of governance: Towards a conceptual clarification. *Journal of European Public Policy*, 14(1), 1-20.
- Trochim, W. (2006). Unobtrusive Measures. Retrieved April 10, 2011 <http://www.socialresearchmethods.net/kb/unobtrus.php>.
- Wolman, H. (2008). Comparing local government systems across countries: conceptual and methodological challenges to building a field of comparative local government studies. *Environment and Planning C: Government and Policy*, 26, 87-103.
- Woods, N. (2008). International political economy in an age of globalization. In J. Baylis, S. Smith & P. Owens (Eds.), *The Globalization of World Politics* (3rd ed., pp. 242-260). New York: Oxford University Press.