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**Delphine Chabalier**

Laboratoire Systèmes productifs, Logistique et Organisation du transport (SPLIT)  
Institut National de Recherche sur les Transports et leur Sécurité (INRETS)  
2, avenue du Général Malleret Joinville  
F-94114 Arcueil cedex  
tel : 33 (0)1 47 40 72 16  
e-mail : [delphine.chabalier@inrets.fr](mailto:delphine.chabalier@inrets.fr)

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**The Europeanization of the railway sectors**

**Abstract**

Since the 15th March of 2003, the international transport of freight railways is liberalised. The European Commission thought that this opening to competition in a sector which was structured by historical public integrated monopolies would imply an important evolution. But after more than two years the balance is very different according to the member States. French and German freight railway sectors illustrate these differences: while the German railway incumbent is becoming the first European railway enterprise, the French one does not manage to go out the French borders.

This communication wants to demonstrate that national context continues to be an important factor despite the European railway policy. Two elements seem to be essential the interplay between railway unions, the enterprise and the State, and the clear choice for the national railway enterprise to behave like another enterprise and to give up “service public” activities.

**1 Introduction**

Since the mid of seventies, railway sectors had difficulties. There was a substantial fall of the market share in both freight and passenger markets during the 1970s and 1980s. In relative terms the decline is particularly relevant because it was during a period when the total volume in both markets grew about 50%, implying that the railroads were not able to take advantage of growing demand in these years. During the past fifty years, the most common market structure in many countries’ rail sectors was a single, state-owned firm, entrusted with

the unified management of both infrastructure and services. Despite some differences in their degree of commercial autonomy, the traditional methods of regulation and control of this sort of company have been relatively homogeneous. Under this protective environment, most national rail companies incurred growing trade deficits during the 1970s and 1980s. Furthermore, social obligations to their staff made it nearly impossible to reach any agreement on redundancies or even wage adjustments. In some countries, the companies were forced to finance their deficits by borrowing, so their accounts lost all resemblance to reality (Campos, Cantos, 2005).

The European Commission was aware of this situation which concerned European railway sectors too and tried to implement a European railway policy. But before the end of nineties, the majority of member states were opposed to give up their sovereignty under the national railway sectors. However, several member states, for instance Germany and France, reformed their railway sectors from the nineties. Thanks to their national context, we can see that they had not the same opportunity to implement the railway liberalization: in Germany it was possible in 1994, without the European pressure, while in France, the European pressure was necessary to overcome the national oppositions. So this time-lag and national factors explain why the situation of French and German railways is currently very different for the freight sector: the German one had several new operators and the national railway incumbent has a European strategy whereas in France, new entrants do not dash for operating freight services and the SNCF does not compete abroad with other railways.

So firstly, we will see how German and French governments reformed their railway sector on national basis taking into account the first European railway directive at the margin, while after the second step of the European railway policy, from the end of nineties, there is a Europeanization of the railway sectors.

## **2 The characterization of Europeanization**

### ***2.1 The general approach of Europeanization***

Before presenting the theoretical approach of Europeanization, we begin by define it. Among the different definitions of this concept, we choose Radaelli's one which is the most complete. For him, Europeanization means the "processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse identities, political structures, and public policies" (Radaelli, 1997). This definition allows to study the impact of Europe on decision making and also on the domestic structures. It is this second case that interests us in this communication.

Heritier's study (2001) argues that the implementation of a European policy by the members states does not mean the convergence of domestic structures towards a same European model. According to Radaelli (2003, 37), we can discern four possible outcomes of

Europeanization. The first outcome is one of inertia which means a situation of lack of change, when a country finds that EU political architectures, choices, models or policy are too dissimilar to domestic practice; it may take the forms of lags, delays in the transposition of directives, implementation as transformation, and sheer resistance to EU-induced change. The second outcome is absorption which signifies an accommodation of policy requirements without real modification of the essential structures and changes in the logic of political behavior. The third one is transformation when there is a paradigmatic change (Hall, 1993), when the fundamental logic of behavior changes. Finally, the last outcome is the retrenchment, i.e. a very paradoxical effect when national policy become less “European” than it was. Thanks to this typology, we can qualify the effect of European railway policy on domestic railway sectors, but it does not explain how the national railways change under the European pressure.

To explain these phenomena, the researchers of Europeanization define the concept of “goodness of fit” (Risse, Cowles, Caporaso, 2001, 6) between the European and the domestic level which determines the degree of pressure for adaptation generated by Europeanization on the member states i.e. the lower the compatibility between European and domestic processes, policies and institutions, the higher the adaptational pressure. Once the degree of proximity defined, certain factors support the change, whereas others can block it. There are mediating factors: Risse, Cowles and Caporaso (2001, 9) identifies three of them which are the “multiple veto points”, the institutions facilitating the change and the co-operative cultures. Risse and Börzel (2003, 63) take again the same method that Risse, Cowles and Caporaso, while using rationalist and sociological neo-institutionalisms to identify the various mechanisms of institutional change which can according to them also be applied to the changes of the public action and the political activity. According to an approach institutionnalist of the rational choice, and more particularly “the logic of consequentialism” (March, Olsen, 1998), Risse and Börzel propose to conceptualize the pressures with the adaptation emanating of Europeanization like providing new opportunities for certain actors and forcing in an important way the room for manoeuvre of other actors. The approach of sociological neo-institutionalism defining the “logic of appropriation” (March, Olsen, 1989, 1998) makes it possible to show according to Risse and Börzel that an important degree of distance between the European level and the national level can lead to processes of socialization and training implying the internalisation of new standards and the development of new identities.

Even if these developments are very interesting, they can not allow us to understand the changes which have occurred in the German and French railway sectors since the mid of the nineties. So we prefer to propose an other theoretical frame to analyse the evolutions.

## ***2.2 The implementation of the concept in the railway case***

Radaelli’s typology of European policy impact on domestic structures allows us to understand that there are different impacts. But the frame of analysis developed by Risse *et al.* and Risse and Börzel is for us too much top-down, we prefer to consider an approach bottom-up: it is not the European pressure that involve the changes in the railway sectors, but the

particular institutional set of each railway sector that implies its Europeanization. Moreover, in the particular case of railways, we hypothesize an Europeanization of national railway sectors if there are a paradigm change and organizational changes in the sector.

We hear the concept of paradigm political according to direction defined by Peter Hall (1993): political decision makers owns a cognitive and normative matrix which constitutes for Hall a political paradigm because it implies not only the goals of policy and the kind of instruments which can be used to reach them, but also the nature of problems to which they are supposed to answer. Then he identifies three means of evolution of a paradigm by adapting the approach of Thomas Kuhn (1962).

The first order change corresponds to incremental transformations of the cognitive and normative matrix mobilized by the political decision makers. The second order change corresponds to an evolution of the instruments implemented to fill the objectives defined by the decision makers starting from the cognitive and normative matrix. Lastly, the change of third order or change of paradigm means mobilizing a new cognitive and normative matrix, because the preceding one does not allow the political decision makers to give answers adapted to the problems they encounter. Thus for Hall, the process of a change of paradigm is not only due to the change from the points of view of experts, but especially of political decision makers.

But the study of the paradigm change in the railway sector is not sufficient to deal with the Europeanization of the sector. For us, there is an Europeanization if there are also organizational changes i.e. the apparition of new operators and the development of a European strategy by the historical railway undertaking.

In order to understand these organizational changes, the approach of Europeanization defined by Risse, Caporaso, Cowles and after Risse and Börzel are not sufficient because they hypothesise that it is the pressure of adaptation that can explain the changes which could be observed. For us, we can suggest the Europeanization of the railway sectors because of an interaction between the institutional configuration of liberalization as required by the European policy and the institutional configuration of the national railway sector. So we prefer using the concept of institutional complementarity which supposes an interaction between the European institutional configuration of railway liberalization and the one of national railway sector. According to Amable (2005, 82-87), “the institutional complementarity is present when the existence or the particular form taken by an institution in a field reinforces the presence, the operation or the effectiveness of another institution in another field”, he also defines a “dynamics of the institutional complementarity which could be that the presence of an institutional form in a sector leads to the adoption of an institutional form in another”. This choice allows us to understand the rhythm and the facility for national railway sectors to implement the European policy. Now we will see the different steps of the European railway policy, and suggest how they have interacted with the national railway sectors.

### **3 A first step for the European railway policy without national consequences**

The European Commission proposed a paradigm change of the railway policy since the beginning of the nineties, but the member states did not want to lose their sovereignty on the railways. So, in a first step, it was only because of national context that reforms could occur in the railway sector and the European Commission found difficulties to make adopt the European railway policy.

#### ***3.1 The difficult first step of the European railway policy***

Since the negotiations on the drafting of the Treaty of Rome, two alternatives have been opposed concerning the setting up of a European transport policy. Traditionally, the Dutch favoured an approach based on the liberal market-driven policies, which best suited their compact trading economy, while France, Germany and Italy, with large territories and dispersed populations, were much more accustomed to extensive State intervention in the provision of both road and rail transport and wanted a common transport policy which would allow such intervention to continue (Degli Abati, 1987, pp. 29-33). Despite this opposition, it was decided to mention the objective of an European transport policy in the Treaty, but when the Commission suggested directives to implement it, few of them were adopted by the Transport Council, so we can not say that a European transport policy had been implemented after the Treaty of Rome, contrary to the European agricultural policy.

At the beginning of the eighties, the European Parliament put pressure on the Transport Council to set up the transport policy, but, when the Commission made new propositions, the ministries did not act or adopted directives without consequences for their transport sector. So, the Parliament, frustrated by the failure to make any progress towards a common policy and by its own lack of influence, was casting about for the means to break the log-jam. They hit upon the unprecedented notion of taking both Council and Commission to Court for their failure to develop a common transport policy. Therefore, a resolution was adopted on 16 September 1982 by the European Parliament to make a Court action under article 175 of the Treaty. The Parliament invited the Court to declare that the Council had infringed the Treaty by failing to introduce a common transport policy. The Parliament was only partially successful in its submission, because the obligation to establish a common transport policy was not expressed in the Treaty of Rome in sufficiently specific terms for an action for infringement of the Treaty to stand up. However, the Court did find, in its judgement of 22 May 1985, that the Council was in breach of its more specific obligation to ensure freedom to provide international transport services within the Community and to lay down the conditions under which non-resident transport carriers may operate transport services in a member state. According to Stevens (2003, 55), the practical effects of this judgement was small, since no penalties neither deadline were imposed for the Council to mend its breach.

The political effect was more important. Indeed, in the same month that the Court announced its judgement, the Commission presented its White Paper on Completing the Internal Market which launched the single-market programme. Among the different measures designed to complete the single market by 1992, several concerned targets between 1986 and 1989 for the adoption of single market measures by the Council in relation to road, air and sea transport. And this time, the Council agreed with the Commission's propositions. But nothing was done for rail transport; the oppositions always existed between the different ministries.

In 1989, the Commission made new propositions in order to gradually liberalize the rail sector, but only one directive was adopted in 1991 without mentioned liberalization of railways. The German and French ministers with the Belgium, and Luxembourg ones were always against the opening of competition of rail sector, alternative supported by United-Kingdom and the Netherlands. However, this directive, named directive 91/440, presented measures to prepare the opening to competition, in particular because this directive required the Member states to have separate accounting for railway infrastructure and the operation of transport services as such. The provisions of directive 91/440 was a turning point: the Member States recognized for the first time that logics of market could be applied to the railway transport sector (Dehousse, Galer, 1996, 12). However, even if it proposed important projections compared to the directives of the previous decades, the measures remained very weak compared to ones of liberalization in progress in the other means of transport, air transport and road transport (Dehousse, Galer, 1996, 11; Silla, 2002, 517).

The transposition of directive 91/440 highlighted again the two alternatives of organization of the railroads. Among the countries which supported the Commission in its project to liberalize the railroads, some did not await other European measurements to reform and to liberalize their railway sector. As of the middle of the years 1990, the United Kingdom, the Netherlands set up a new railway organization. But, because of the few forcing character of the directive 91/440 and its not very ambitious measurements, they operated an economic change of paradigm for the railway organization according to their own economic, social and political realities and not under a European pressure. One thus attends a diversification of the railway organizations (Crozet, 2004, 49).

The countries which were opposed to a railway liberalization transposed the directive with minima, without going further that the measures suggested. In particular, we can quote the French case: the French government adopted in 1995 the decree of transposition of the directive 91/440 which supposed the countable separation of the activities of management of the infrastructure as required by the directive. It was because of the strikes of the railwaymen in 1995 that the government decided to be further creating in 1997 a specific organization to manage railway infrastructure by allotting the corresponding debt to it and thus removing it from the budget of SNCF.

For Knill and Lehmkhul (2002), directive 91/440 constituted only for the governments a resource making it possible to legitimate certain measurements of their national reform. Thus, in spite of its attempt, the Commission did not succeed in persuading the whole of Member States to the interest of railway liberalization. So in an article of "*Le Monde*", we can

read the feeling of a European civil servant about the result of the directive 91/440: “We missed liberalization by the railroad” (Jakubyszyn, 1997). The Commission met the same difficulties again when it put forward new measures which were adopted in 1995. They were the directives 95/18/CE relating to the licences of the railway companies and 95/19/CE relating to the distribution of the capacities of railway infrastructure. The first directive set up common criteria for the licensing to the railway companies established in the European Union; second specified on the one hand the conditions of use of the rail network to move a train of a point with another, on the other hand the guiding principles for the collection of the royalties of use of the infrastructure. There still, the Commission would like to go much further in its proposals but the Member States against the liberalization of the rail succeeded in thwarting Commission’s plans. However, this balance of power was reversed in 1996 because of German railway reform which constituted a true change of paradigm towards liberalization. Whereas this country was traditionally opposed to any intervention of Europe in the railway organization, it revised its position to defend the interest of the liberalization of the railroads at the European level. Because of the change of paradigm of Germany, the balance between Member States supporting a model of European organization of railroads by the co-operation and those for liberalization is changed.

### ***3.2 The German national paradigm change***

During the nineties, German railways knew a paradigm change but not because of the European directive 91/440. The change of paradigm of organization of the railway sector was decided by the German government after several retries of railroad reorganizations. As, in the beginning of the years 1980, the government became aware of the difficulties of its railway sector – a major reduction in its shares of market with respect to the road and a constant increase in the railway debt which weighs more and more on the finance public. Then, the government took several successive measures whose the aims were to make the railway company more competing on the market and to reduce its financial burden on the federal budget. The German government did not seek during the years 1980 to liberalize nor to privatize the railroads (Lodge, 2002, 143; Weisz, 2005, 955), as other countries did it (Campos, Cantos, 1999), because that would have supposed to amend the German Basic Law which stipulated that the railroads of the West Germany were part of the federal administration (Dunn, 1977). This specificity constituted an important constraint because making adopt such a constitutional change means obtain a vote in the majority of two thirds at the Bundestag and the Bundesrat which represented an important number of “veto players”. For this reason, according to Lodge, during this decade, the different reforms did not consider the privatization of the company as a potential option.

But, these reforms did not allow Bundesbahn to find the growth and its financial standing went on weighing on the public accounts (Weisz, 2005, 969). So a new board was made to think on the becoming of Bundesbahn in 1989. It was constituted of professionals, trade unionists, but also of academics so as to represent the whole of interests of railway sector. It was directed by Günther Sabmannshausen, a former head of private undertaking. For

Lodge (2002, 146), the principal function of this commission was to reduce the potential difficulties to make possible a decision of large reform of the railway sector, at least by creating a technocratic consensus on the solutions to be implemented to reform the railroads of West Germany.

The context of reflection of this commission was strongly modified with the treaty of unification of May 18, 1990. Indeed, on this date, the German federal State became owner of ReichsBahn, railway company of East Germany, which economic situation was more unbearable than that of the railroads of the West: the cost of adaptation with its counterpart of the West was estimated at more than 100 billion DM. This new situation then involved a window of opportunity for railway liberalization: the commission ended to a decision, in a quasi unanimous way: to recommend the constitutional changes which would make possible later the ministry for transport to consider the “privatization” of the unified German railway operators (Lodge, 2002, 161).

Thus, the German reunification with the obligation to reinstate the railroads of the East gave the government required opportunity to begin a large reform. The principle of the railway reform supposing privatization and the opening to the competition of the historical railway public monopoly was argument suggesting a change of paradigm. But if the Commission gave its conclusions in 1991, it was only in 1994 that the reform was implemented. During this period, large negotiations were realised between the different actors of the sector and principally with the railways unions. The culture of codecision and consensus of unions helped the German government find a compromise about the railway reform.

So, the railway unions accepted the reform to save the German railways under several conditions (Hilal, 2005; interview of a representative of Transnet, April 2006). The most important condition was that even if the status of railway workers changed, the income conditions stayed the same and no layoff was made (interview with a railway union overseer). So, in Germany specific laws issued in 1993 guided the transition of career public servants (Beamten) in the rail sector into the new regulatory framework. The legislative amendments of 1993 provided for the maintenance of career public servant status for all the workers who enjoyed it before, as well as for the continuity of all specific regulations on matters like employment protection, salary, pensions and a strike ban. However, as the employees concerned are career public servants, they cannot be employed directly by DB AG, which became a private-law company. For this reason, a special government body, the Bundeseisenbahnvermögen (BEV) was set up, which now acts as the public servants' employer, even though they work for DB AG. At the same time, a 1993 framework agreement on employment conditions cancelled the existing differences between white- and blue-collar workers, concerning, for instance, pay grades and dismissals, and generally improved levels of protection. Now there are both private law workers and career public servants (who make up about one-quarter of the total) and the number of the latter is steadily decreasing, since new recruits do not have civil service status<sup>1</sup>.

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<sup>1</sup> European industrial relations observatory on-line, 2000, “Industrial relations in the rail sector”, <http://www.eiro.euroworld.eu.int/2000/03/study/tm0003402s.html>, web page consulted the 5/08/06

The other important measure that explained that railway unions accepted the reform was the fact that Bund took over the charge of the railway debt which was about 78,2 billions DM (Lehmann, 1999) and begun a program of infrastructure investments. So the DB AG was freed of its debts and received full entrepreneurial autonomy. Moreover, the States finances investment in infrastructure on the basis of interest-free loans (Häfner, 1996).

So, in 1994, a new order for the railways system in Germany came into effect. The four key elements of rail reform were: the merger of German Federal Railway (the old DB) in the former West Germany with German State Railway (DR) serving the former East Germany to create German Rail (DB) as a stock corporation, i.e. an organization under private law with all the shares held by the federal government; the separation of the federal government's obligation to fund the national railway from the public and corporate obligations of the railway itself; the transfer of responsibility for funding and procuring regional rail passenger services to the federal states; the transfer of employees of the old DB who had the status of civil servant to either the new DB or a special federal railway assets (BEV) organisation which was set up to take over any assets not transferred to the new DB like the debt (Briginshaw, 2004). Moreover, the German railway reform followed the idea of separating rail infrastructure and transport as required by the directive 91/440. This separation was designed as a phased approach where in a first stage (1994-1999) DB was split into four divisions (track network, long distance passenger transport, regional passenger transport, freight transport). In a second phase (starting in 1999) these divisions became public limited companies in their own right under the roof of the Deutsche Bahn Holding. A third phase was foreseen as an option and had implied the dissolution of the holding, but it is still in negotiations (Link, 2000).

Besides, DB AG was subjected to the competition of railway operators defined by the European directive 91/440 and well beyond the European regulation. The access to the network was opened to all the public and private owners without discrimination for goods transport. Since January 1996, the organization and the financing of regional public transport people were transferred to the sixteen Länder.

So we can say that if the European directive 91/440 was not the cause of the German railway reform, it was because there was no institutional complementarity between the institutional configuration proposed by the European railway policy and the national institutional complementarity of German railways. The German railway reform can be explained only by national variables. The same analyse can be made about the French railway reform which was implemented in 1997 but because of an institutional configuration different in France related to Germany, the result of the reform is different. But after the German railway reform, there is an institutional complementarity between the set of institutions of the German railway sector and the one of the European level, which will explain a quick Europeanization of the German railways.

### ***3.3 The incremental reform of the French railway sector***

The directive 91/440 was transposed in French national legislation in May 1995. It supposed an accounting separation in the French national railway, the SNCF, between the activities of infrastructure management and transport. So the directive 91/440 did not imply a large reform in the French railway sector. The railway reform which was implemented in 1997 by the creation of a new railway actor – Réseau ferré de France, RFF – in charge of rail infrastructure management can be explained by national factors.

As other railway sectors, the SNCF crossed an economic crisis since the mid of seventies which means a fall of the rail share in the transport and an increase in its debt. So several measures of reorganization were decided in the eighties like personal reductions and decreases in the services which were offered: stations closing and cessations of certain services which were not profitable (Blier, 1991; Troin, 1995). But these measures did not imply an improvement in the railway enterprise: the diminution of market share and the increase of debt went on. However, the implementation of high speed train from the beginning of eighties involved a change. This new technology allowed the SNCF to find a new time the success. Thanks to this economic success, the high speed train allowed SNCF to finance the difficulties of other railways services. Moreover, several cities wanted to have their high speed relationship with Paris, and to fit out the French territory several projects were launched but they were less economic efficient.

So in the beginning of nineties the SNCF knew an acute economic crisis. In 1995, its debt reached 200 billions FF (Rohou, 1998). Moreover, the social background was not very good. The railway workers did not see the end of the personnel cuts off and services closures (Ribeill, 1993). Besides, the high speed train which was considered as a commercial activity changed their traditional criteria of “public service”. So when, in 1995, the French ministry proposed new personnel reductions and new services closures, the situation became very tense. In addition, the prime minister decided to launch a reflection about the special conditions of railway workers for the retirement. These two elements involved a railway workers’ strike of three weeks during November and December 1995 (interview of the ministry of transport minister in charge of the reform, June 2006; Rohou, 1998).

The railway workers pointed up the fact that the SNCF had not to bear the cost of high speed rail infrastructure and that was the cause the railway crisis. The French government accepted this argument but in consideration of it, the government decided to create a new public organisation in charge of the railway debt but owner of the railway infrastructure - RFF (Rohou, 1998; interview of the French minister in charge of the reform, in June 2006).

So we can say that the French railway reform was not a paradigm change but an incremental change, and that it was not caused by the European pressure. Moreover, the railway workers’ strike of three weeks limited the possible actions of French government. The creation of RFF was difficult to be accepted by the railway workers, even now, the railway unions want the government to suppress this reform (interview with a representative of railway union, May 2006). Moreover, during the negotiations on this creation, in July 1996,

the European Commission published its White Book about the “revitalization of railway sectors”, in which the Commission preached for the implementation of railway liberalization. When French railway workers knew this, they threatened the French government of another strike if the transport minister did not refuse at the European level the idea of liberalization which the French minister had done in the transport Council even if he was a right wing political man (Jakubyszyn, 1996). So the political power of railway workers was really high under the French government, and the government was limited in its possibility to reform the French railway sectors. Though, we can see a change after the second step of the European railway policy.

## **4 After ten years: the beginning of railway Europeanization**

### ***4.1 The second step of the railway policy***

In July 1998, the Commission put forward three new proposals aimed solely at improving the effectiveness of the existing legislation. The first measure dealt with the insertion of the liberalization of railway freight services in the directive 91/440. The two other measures consisted in the adaptation of the directives 95/18 and 95/19 to frame the railway liberalisation.

Even if the Council of ministers was more in favour of the idea of railway liberalization because of the paradigm change of German railway sector, it met difficulties to adopt a common position on the Commission’s proposals. One semester was necessary to study the proposals and their potential consequences on the national railway sectors. In the succeeding semester, the Germany was the president, and the German minister tried to obtain a common position but did not succeed. The French, Belgian and Luxembourg ministers managed to obtain a blocking minority with the Austrian, Greek, Irish and Portuguese ministers (interview with a Finnish civil servant, July 2005). Finally, the common position was found under the Finland presidency in the second semester of 1999. During this presidency, the French minister proposed to limit the railway liberalization on a specific network: a trans-European rail freight network of (TERFN), coinciding with the principal railway axes, as well as the accesses to the principal ports and terminals (interview with a French civil servant, August 2004). This solution was finally adopted by the Council of ministers.

But this common position did not mean the adoption of the directives. Indeed, since 1999, Parliament has shared legislative power equally with the Council thanks to the procedure of codecision. The Parliament used this opportunity to participate on the adoption of the “infrastructure package” and this implied the resumption of negotiations on the liberalization of the railroads.

Furthermore, in June 1999, a new European Parliament was elected; the election modified the political balance of forces. The European Popular Party became the first political group: its representatives were 224, against 201 before the elections. They largely preceded

the deputies of the European Socialist Party who passed for their part from 214 to 180 deputies. Among the members of the transport commission of the European Parliament, a Member of Parliament turned out to be particularly important: Georg Jarzembowski, deputy of the European popular Party for the area of Hamburg. Georg Jarzembowski, elected in the European Parliament since 1991, had a great practice of the wheels of the European Parliament and overall of European operation. This deputy endeavoured to amend the directives suggested by the European Commission to go further than what it required as regards liberalization of the rail: he did not accept the limitation of the liberalization of the transport of freight only on the TERFN, he wanted that it was valid for the whole of the rail network; moreover, it announced its wish to see also liberalizing the transport of the passengers (interview with a French civil servant, April 2005; interview of the European Deputy, February 2006). The amendments which he proposed were almost always voted by the commission transport then at a plenary sitting of the Parliament. Thus, at its plenary session of July 4, 2000, the European Parliament decided for a quasi-total liberalization of the rail transport and refused the common position of the Council of Ministers. If the Parliament and the Council agreed on the need for a domestic market of the European railroads, the ambitions of the ones and others met only on the principle, for the way of reaching that point, the two institutions were opposed. So a conciliation procedure had been launched to the Parliament and the Council reach an agreement. Thanks to this procedure, a compromise was found: the railway companies would be able to reach the whole of the European railway network for the international carriage of goods at the latest seven years after the entry into force of the directive on the development of the Community railroads and during the seven years, access rights for international freight transport services would be limited to the national section of the Trans European Rail Freight Network (TERFN). The amendment of the Parliament on the liberalization of international transport travellers by 2010 was abandoned.

After the adoption of this “infrastructure package” in March 2001, the institutionalisation of European railway policy has been launched. Other packages of directives were proposed by the Commission, negotiated and then adopted by the transport Council and European Parliament. We can see the same dynamic as one of other European transport policy. Besides, new lobbies appeared at the European level. The two traditional lobbies were the historical railway undertakings one and the railway union one. The lobby of European railway infrastructure managers was created in December 2001, after there were the lobby of the railway new entrants. These elements suggest the emergence of European railway policy (Chabalier, 2005). Despite this European railway policy, we can see that the implementation of liberalization in the railway freight services changes according to the member states: they implement it in different times and with different outcomes as we will see with the example of Germany and France.

#### ***4.2 The Europeanization of German railways***

Thanks to the Radaelli’s typology of Europeanization, we can say that the European railway policy has been absorbed by the German railway sector and that the sector has begun

the process of Europeanization from the end of the nineties. Indeed, the railway incumbent has developed a European strategy and new railway operators have arrived in the railway sector. This Europeanization can be explained by the concept of institutional complementarity between the institutional configuration of European liberalization and the one of the German railway sector.

As we have ever seen for the reform of the German railway, the railway unions have played a particular role in this Europeanization. For them, the most important has been the stability and the increase of the railway worker's income, and the absence of cut off. As these conditions have been respected by the oversees of the German federal railway, the DB, the incumbent has been able to develop a European strategy in the freight railway sector. Its strategy has begun since June 1998, when the freight subsidiary of the DB, DB Cargo, merged with the Netherlands national railway freight undertaking. The aim was to create a European freight railway enterprise (Savy, 1999). This strategy has gone on with the merge of this new enterprise with the Danish national railway freight undertaking in December 2000. The name of this undertaking became Railion<sup>2</sup>. Besides to merger with other freight railways, the DB Cargo compete with other railway enterprises in particular on the important freight railway corridor between the ports of the North Europe and the North of Italy (CER, 2005). The DB Cargo has utilized the means of realising joint ventures with other freight railway enterprises. In this way, Railion has operated freight services in Germany, the Netherlands, and Denmark of course and also in Switzerland and in Italy. With the SNCF, the German freight enterprise has chosen to continue the traditional cooperation. This fact can be explained by two factors: the German railways freight enterprise can not merge with the freight activities of SNCF, because it is too large (interview with a responsible of DB, March 2006), secondly, in France there is no railway freight enterprise with making joint venture as the DB Cargo made in other states.

However, other national factors explain the Europeanization of the German railways, in particular the fact that small railway enterprises have persisted from the 19<sup>th</sup> century near the federal railways (VDV, 2002). These enterprises might co-operate with the DB or make their own services on their network. Besides, the railway unions have accepted that other railway companies made "public service" and used the federal railway network (interview with an oversee of Transnet, April 2006). So when the open access for freight railway services was opened in 1994, these small railway enterprises have been able to compete with the DB, and it implied no opposition of the railway workers.

We can deal with an institutional complementarity between the institutional configuration of these small railway enterprises and the institutional configuration of liberalization, because the all rules that the liberalization needs were already present thanks to these enterprises. For instance, it was not necessary to implement a law to define what could be a private railway enterprise because this definition already existed. It was the same thing to the regulation of the railway workers. So the institutional configuration to regulate private railway enterprises has already existed. The rule which has been added was the rule of

<sup>2</sup> web site Railion : [http://www.railion.com/site/railion/en/national\\_\\_subsidiaries/national\\_\\_subsidiary.html](http://www.railion.com/site/railion/en/national__subsidiaries/national__subsidiary.html) web page visited the 5th August 2006

reciprocity: if a private railway enterprise A wants to operate on the railway network which is owned by the railway enterprise B, the railway enterprise A has to allow the railway enterprise B to operate on its railway network. So thanks to this institutional configuration, there are numerous small railway enterprises in Germany and even some of them which operate freight trains on European territory. For instance, we can quote Rail4Chem, which was before the German liberalization a small railroad of BASF to link its plants, and now with other shareholder operate railway chemical traffics in different member states. Moreover, certain of these old railways have been bought by other national railway enterprises to compete with DB on its national borders, as DB has done in other member states. It has been the case of Trenitalia; Italian railway incumbent, which acquired a qualified minority in July 2003 of TX Logistics one of the largest German private railway company<sup>3</sup>. Finally, the open access to regional transport was introduced two years after the open access on freight services, so it gave the opportunity enterprises which were not profitable with only the freight transport to reach it with regional transport of travellers. Nowadays, the Competition Report<sup>4</sup> reveals that non-DB rail companies have substantially increased their share of the market: in the freight sector alone, the provisional traffic performance figures for 2005 reached 15.1 percent.

Due this context, we can suggest that the German railway freight sector is very dynamic and is oriented on the large European space. It is difficult to make the same conclusion about the French railway sector in particular because of the lack of institutional complementarity between the railway sector and the liberalization.

### ***4.3 The French railway liberalization***

The second step of the European railway policy and the introduction of open access in railway international freight have obligated the French government to liberalize the international railway freight. Indeed, the infrastructure package was adopted under the French presidency of the European Union, and the French minister of transport wanted to keep power in the negotiations about the succeeding “railway packages”. The second railway package was proposed by the European Commission in 2002. So the measures of the infrastructure package were transposed without delays in respect to the deadline of 14 March 2003. But the implementation of railway international freight open access has not meant rapid evolutions in the railway freight sector.

Despite the open access, new operators were not in a hurry to enter in the French railway sector for different reasons. Firstly, they have feared the railway unions’ opposition as in 2001 when they stopped a freight train of a new subsidiary of SNCF, VFLI<sup>5</sup>, because they thought it was the first step to the railway liberalization. The second and main reason for us is the fact that contrary to the German railway there are very few cases of small independent railroads in France, and when they exist, they have worked as subcontractor of the SNCF. So

<sup>3</sup> Trenitalia press release, 25 July 2005, *Trenitalia acquires the majority of TX Logistics, the largest German private cargo railway company*.

<sup>4</sup> Source : web site [http://www.db.de/site/shared/en/file\\_\\_attachements/reports/competition\\_report\\_\\_2006.pdf](http://www.db.de/site/shared/en/file__attachements/reports/competition_report__2006.pdf) visited the 6th of August 2006

<sup>5</sup> « Arrivée contrariée de VFLI Cargo sur le réseau principal », *Le Monde*, 28 novembre 2001

the apparition of new railway entrants in France means the organisation of a specific new legislation to regulate this sector and which has been for a long time integrated in the national public enterprise SNCF. Besides as there are few small railway enterprises, the foreign railway enterprises can not make joint venture as they have made in Germany. So this deficiency explains why there have been few new operators from the 15 March 2003. However, to consolidate our argumentation, we can quote the example of the first new entrant which was the railway enterprise Connex, subsidiary of Veolia group, which started to provide independent transportation of freight from the Lorraine region, in France, to Dilling and Vöcklingen, in Germany in June 2005, two years after the introduction of open access. Besides, this service was arrested by railway unions during the first day<sup>6</sup>. This enterprise is one of the scarce small railway enterprises which has been a subcontractor of French SNCF in freight railway. So it has known the French railway context for a long time. So we can see that the lack of institutional complementarity between the French railway sector and the liberalization has involved a delay in the apparition of new operators in the freight railway sectors. Nowadays, there are only four non SNCF-railway undertakings which own the possibility to operate freight services on the French railway network<sup>7</sup>.

However, we can distinguish an institutional complementarity between the new organization Réseau ferré de France and the introduction of open access in freight railway services. Indeed, as it is charge of the railway infrastructure management, from the 15 march 2003, Réseau ferré de France has become the organization which attributes the capacities, so-called train paths, to effectively run trains on the network. And in order to break-even the railway infrastructure, Réseau ferré de France has encouraged new operators to come in the French railway infrastructure. Besides, at the European level, Réseau ferré de France participated at the creation of a new lobby the “European infrastructure managers”, in December 2001 to make them voice heard moreover the lobby of historical railway enterprises.

Now, we study the evolution of the railway incumbent in this context of open access. In the international freight railway service, traditionally the SNCF has promoted the cooperation. While, the SNCF thanks to subsidiaries has competed where the member states have introduced the open access in the regional passenger transport, we can not see the same strategy after the induction of the open-access in the freight railway services. This different strategy in the freight railway traffic of the SNCF can be explained by the fact that, before competing with other railway enterprises, the SNCF has to reform its freight activity which has difficulties almost from the beginning of the eighties. So after the open access of freight railway services a large reform of the freight activity has been engaged against the railway unions, since 2003. The core of the Plan Fret has been the concentration on five large and profitable main axles with 24hour “assembly line production”. So, this reform has seemed to mean the large reduction of freight services and a reorganization of the productive system as the DB Cargo made in before the introduction of the open-access. Besides, the Plan fret supposed a state aid of 1,5 billion Euros. The European Commission gave its authorization for

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<sup>6</sup> « Le train privé bloqué », *Journal L'Humanité*, 14 juin 2005

<sup>7</sup> « Fret ferroviaire : le marché grand ouvert », *Ville et Transports*, 15/03/2006

this state aid provided that France introduced the open access for national freight services from the 31 March 2006 instead of the first of January 2007 as expected initially by the European directives of the second railway package (European Commission, 2005). So the French legislation confirmed the open access for national freight services, but none railway enterprises have used this new opportunity for the time being.

But, because of the renunciation of unprofitable railway freight services, it begs the question if other railway enterprises with a little productive system could be profitable for operating the train given up by the SNCF. So the ministry of transport has launched a reflection about how to implement new railway private (Chauvineau, 2005). The railway workers largely oppose themselves to this new railway organization, even if some of them have begun to accept it (interview with a representative of railway union, May 2006). For them, the small railway services might be considered as “public service” and as a traditional activity of the SNCF. Moreover, they consider the implementations of the small railway enterprises as social dumping because the condition of the employees would not be the social conditions of the railway workers of the SNCF.

However, this reflection about small railway enterprises suggests that the French railway sector is becoming to change in order to introduce an institutional configuration which would be complementary to the liberalization. Besides, the SNCF has begun to develop a European strategy of competition: since July 2005, it has operated own freight services in Belgium and bought a small railway enterprise in Italy Monferail<sup>8</sup> in 2006.

## 5 Conclusion

As suggested before, we can say that the European railway policy has not the same consequences in France and Germany. Though, the two countries have transposed the European directives in their national legislation. So the reasons of the differences are in the sectors. Even if the two railway sectors seem to have the same profile and the same story, the reforms that have occurred since the mid of nineties have suggested the large differences between these two railway sectors that were hidden up till the implementation of the European railway policy.

The first main difference consists in the place and the role of the railway workers unions. As in Germany, they accepted the railway reform under certain conditions, in France, they are still very against of the introduction of open access in railway services. The second main difference arises from the fact that in German small railways enterprises have persisted despite the unification of the federal railway in 1920. So when the open access has been implemented, the institutional set that it necessitated was already present. In this way we can see an institutional complementarity between the institutional set of the German railway sector and the one of the liberalization. In France, such institutional configuration did not exist so the aim of the French transport minister is to set up then despite the strong opposition of railway unions. These elements explain the fact that in Germany the railway incumbent can lead a

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<sup>8</sup> « Italie. SFI-Monferail : fret SNCF fait comme tout le monde », *Le Rail* n° 123, p. 22 01/01/2006

very offensive European strategy and the presences of other railways in the German freight sectors, while in France, the changes are difficult but we can see the first glimmers.

Theoretically, the case of the Europeanization of freight railway sectors suggests that the existence of a European pressure and even its transposition in the national legislation does not mean the Europeanization of a sector. For us, specific national conditions can facilitate the process which can be determined with the concept of institutional complementarity.

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