
European Governance by The Emergence of a new Type of Package Deals

Nils C. Bandelow/Diana Schumann/Ulrich Widmaier
Ruhr-University of Bochum (Germany)

Abstract

European integration is a fluent process which couples decision-making to power distribution between the political institutions. In this system it is of prime concern for the European Commission to find partners in order to accelerate European integration. Under these circumstances European integration provides grounds for a new type of governance. The article claims that within the institutional setting of the EU package deals which involve different policy domains are increasingly likely to occur between private (firms) and a specific type of public actors (European Commission). In two sample business sectors – biotechnology and electrical energy – the emergence of package deals between the Commission and large firms involving different policy domains can be described as an analogous form of governance in spite of conspicuous sectoral differences. The following expositions will show that package deals may have positive effects on the progress of European policies. Nonetheless, we will evaluate the welfare effects of package deals between the European Commission and large firms on the European level. Finally we suppose institutional reforms to keep package deal's risks within limits.

Introduction

Over the last decades, the dimension for policy-making in the European Community (EC) has immensely increased. The fact that the European Union yields legally binding decisions for member states and especially their industry sectors is no news. But the phenomenon that the European Commission is able to successfully regulate national industries, although there is no legal basis for any regulation in the

respective policy fields, calls for further attention. Indeed, there exist many studies which deal with the reasons for the renunciation of strong legal powers by the Commission and which explain the relevance of weak forms of vertical governance for the EC's success in "governing without government". Yet, weak forms of vertical governance, such as co-operative or bargaining strategies between European institutions and member states, do not fully explain how the Commission manages to enforce basic changes of national policy-making in the face of strong resistance of member states and national interest groups and without any regulatory competencies. In our study we claim that the institutional setting of the European integration provides grounds for the emergence of a new type of package deals, i.e. package deals between the European Commission and large firms on European level. This type of package deals allows well known weak vertical governance to coincide with "hard" horizontal bargaining processes and also allows the Commission to invalidate the opposition of member states or interest groups.

The following expositions will show that, above all, two given facts of the institutional setting of the EC contribute to a probability of package deals: a low level of public control and a high degree of fragmentation in decision-making processes. Both give large companies room for political access. However, the emergence of package deals on European level essentially depends on the resources the partners can trade. The empirical examples of biotechnology and electrical energy we have chosen make clear that on both sides, on the side of the Commission and on the side of large firms, there are resources that are of interest to the respective trading partner. It will be shown that there are principal goals on both sides initiating the will to pursue particular interests through package deals. The examples also demonstrate that despite conspicuous differences in the biotechnology and energy sector, both sectors give reason to assume that package deals between public and private actors will increasingly emerge on the European level.

The Institutional Setting of the EU as a Structural Opportunity for Package Deals

The fast and uncertain process of institutional change within the European Union has the effect on political and economic actors that they have to endeavor to gain influence on policy outcomes and engage

in the formation of new institutions at the same time. Within this process, each actor aims at both—at maintaining their decision-making power and at possibly gaining even higher influence (Schumann 1993). Thus the simultaneousness of policy-making and institutional change resulted in highly complex politics.

Furthermore, there is evidence that the decision-making process of the EU is being hampered by so-called "joint decision traps" (Scharpf 1988). They imply that decisions cannot be made by simple majorities or by power of hierarchies but are a matter of negotiations that require unanimity votes or at least qualified majorities instead. Negotiation systems of such kind are assumed to be an obstacle for progress in the process of positive integration within the Union because actors may make use of their veto right.

Consequently, public choice literature points out that within complex political settings and "joint decision traps" negotiations and their potential results can be modeled through the concept of package deals. Package deals can be defined as the exchange of losses in some issue area with benefits in another, resulting in a mutual overall gain for the actors involved. The basic idea behind such arrangements is to establish links between issue areas which are of different value for each "trading partner". Actors accept losses in fields of minor importance when they gain profits in others with higher preferential intensity. In other words, these arrangements allow the "traders" to express their preferences in different intensities. Normally, such preferences are ignored by separate decisions under majority rule (Stratmann 1995). Thus, the main advantage of package deals is to overcome decision blockades. Such decisions, however, might possibly increase the overall welfare of the group of actors while at the same time they might decrease the profit of individual actors. Hence package deals are only likely to occur, if there is a win set which does not only enlarge the overall profit but also grants a gain for individual actors (cf. Mueller 1989; Stratmann 1997).

The strategy of package deals is particularly useful for actors in a pluralistic and competitive environment. This can be demonstrated by supposing the extreme case: one actor is at the short end of an $n-1:1$ vote, so s/he needs to win over at least half of her/his opponents to get what s/he wants (this is what Shepsle/Weingast 1994, 154 call "heterogeneity"). This case may often occur in the EU because each actor has specific interests while natural partners are rare. Therefore, the only possibility to arrive at positive integration is to combine

different elements or objects which are characterized by different preferential intensities. The precondition for package deals is that "traders" have resources their partners desire: each "trader" has to assess the partner's resources which are more valuable than their own. Empirical studies have shown that it is often difficult to agree upon joint decisions which include symmetrical benefits and losses for both partners.

We claim that there exist conceptual parallels between logrolling politics within the US Congress (Ferejohn 1986; Shepsle/Weingast 1994; Stratmann 1992) and package deals on the European level. Although in the majority of cases, logrolling is applied to analyze the behavior of legislative bodies (see Stein 1980; Sebenius 1983; Benz/Scharpf/Zintl 1992), we employ the concept of package deals rather to the decision-making process in the Commission than to the European Council or Parliament. We assume that the Commission still is the most important actor for initiating legislation in the EU and that it plays an extensive and significant role in bargaining processes with organized interests. Whereas in Washington interest groups gain influence through Congress, in the EU it is the fragmented structure of the Commission that provides room for interest groups to engage. We decided to investigate package deals as a specific form of bargaining between the Commission and big companies because the latter have emerged along the process of economic integration as important actors in EU policy making. However, the growing importance of big multinational companies does not necessarily diminish the role of European business organizations. Their significance varies with the type of policy issue (sectorial or individual company interests at stake) and the structure of the sector (few big companies like in the automobile industry or a lot of small businesses like in mechanical engineering). As we have learned from Olson (1965), associations with a heterogeneous membership of relatively small companies are subject to a collective good problem. Furthermore, small companies are very often operating in limited market segments and are therefore not interested in deregulation policies leading to market enlargement and potentially higher economies of scale. Our plan to concentrate on the interaction between public and private actors clearly departs from the main stream of research on this topic which has been, up to now, overwhelmingly focused on public/political actors.

Also, the main thrust of research has been concentrated on bargaining processes within a certain policy area. This has to do with the nature of traditional policy analysis and its methodological focus on case studies of individual policy fields. Within the fragmented multi-level power structure of the EU the strategy of concentrating on a single policy field or sector would narrow the range of potential policy solutions or outcomes. In order to avoid misleading generalizations, it is therefore necessary to allow package deals to stretch over several policy areas (e.g. environmental policy and anti-trust policies) instead of restricting the analysis to single policy domains. However, package deals stretching over different policy areas can cause problems for corporate or collective actors. Public choice theory points to the problem of internal distribution of benefits within collective actors. Since collective actors often lack hierarchical control, package deals are less likely to occur since they will be blocked by the more disadvantaged subgroups or individual members. Nonetheless, most public choice models take stable and homogeneous belief systems among collective actors for granted (Benz/Scharpf/Zintl 1992). These conceptual problems can be largely ignored when we deal with hierarchically controlled companies as we do in our study. Still, these problems exist in the case of the European Commission which is a complex corporate actor internally divided at least in distinct Directorates General (DGs) with potentially different policy perspectives. Their general interest is to maximize their sphere of influence within the overall organization. To put it differently, a package deal between the Commission and private actors such as big businesses could involve another package deal within the Commission itself. Clearly, we have to be aware of this aspect in our analysis.

Summarizing, in the potential range of settings in which package deals can occur we distinguish between deals which are settled within one policy area and those which stretch across two or more domains on the one hand. On the other hand, we distinguish between deals which are arranged among public agents only and those where public and private actors reach such an agreement on the other. This leaves us with four potential cases in which package deals can occur. (c.f. Table 1).

Table 1
Types of Package Deals

	package deals involve only one policy domain	package deals involve different policy domains
interaction between public actors	1	2
interaction between public and private actors	3	4

(We are grateful to Edgar Grande for suggesting this scheme.)

These types show similarities, but there are also differences. Investigations of policy making processes have shown that package deals between different public actors (e.g. between the government and parliament or between different committees or parties within the parliament) occur frequently under the conditions of the political system of the United States. In this study, we claim that within the institutional setting of the EU package deals involving different policy domains are increasingly likely to occur between private (firms) and public actors (European Commission). Therefore the paper will concentrate on field 4 of table 1.

The political system of the EU shows striking similarities to the system of the United States (Majone, 1994). Both have divided institutions and offer access to organized interests that feed the policy-making process at various stages. Yet, our perspective points to some theoretically interesting peculiarities in the European system. Comparing Brussels with Washington, we find less public control of the executive institutions in Brussels, specifically of the European Commission. On the one hand, this is the consequence of a by far institutionally and politically weaker European parliament, compared with the US-Congress. On the other hand, less public control is a consequence of the fact that the European Commission is not directly elected. Furthermore policy competencies in Europe are further fragmented, both between and within the political institutions (Parliament, Commission, Council). These circumstances make package deals as a specific form of interest mediation very attractive for the partners.

But there are also factors which hamper package deals between the Commission and large firms. Since firms are no public institutions, they have no legal influence. While national governments are bound to the success of large firms, the commission is not. The dependency of national governments on elections goes hand in hand with the opportunity of firms to bind economic interests to the securing and creation of jobs of possible voters. For the Commission such a dependency does not exist. The institution only needs the support of the European Council and – in some legal areas – of the European Parliament. Thus the Commission is not dependent on the consent of large firms on principle in the way the US-President is dependent on the consent of the Congress and of the voters. There must be specific incentives for the Commission to bargain with large firms in each domain. But if there are such incentives, the obstacles for an agreement on package deals with public actors are smaller for the Commission than they are for national governments. The lack of public control gives the Commission a far better possibility to incorporate single interest groups into its decision-making-process than any national government could possibly have.

However, favorable structural requirements are only a necessary but not a sufficient condition for this kind of deals. Essential are the resources the partners can trade. In other words, the theory of modeling package deals between the Commission and large firms can only be understood, if the main goals of the actors and the resources they command to engage in bargaining processes eventually leading to a package deal are made clear.

We suppose that the Commission's main goal is to enlarge its competencies independently of potentially diverging goals of different Directorates General within the institution. Big companies can be expected to advocate mainly their economic interests (e.g. reducing transaction costs and achieving economies of scale and scope). Anyway, both, the public and the private side, are often incapable of achieving their goals without partners. The Commission lacks legislative decision-making powers in order to achieve positive integration in some fields. Furthermore, it needs partners to extract funds from the member states. In order to be capable of making decisions without the consent of the member states, the Council and the Parliament – and regarding the recruitment of partners for European research co-operations, the

Commission – have to use their regulatory competencies and financial resources in addition to its decision-making authority within policy domains of negative integration. Depending on which policy field is addressed, the Commission has various legal instruments at hand, all of which differ with respect to the influence and liability the decision will have. It can thus use competencies in one field—for example agriculture, anti-trust, genetic engineering regulation and/or trade—in order to gain influence in fields where it is short of legal powers and sufficient economic funds such as energy, transport, the promotion of industrial biotechnology, and social welfare.

In this case it is important to realize to what substantial degree the change from unanimity to qualified majority voting in the Council has changed the "rules of the game". While under unanimity rule it is sufficient for a specific interest to find one veto-player (a national government "captured" by an important company (e.g. VW in Germany) or interest organization) as to avoid unfavorable regulation, the situation is much more complex under majority rules. For big companies with strong interests on the European level (e.g. in deregulation measures of markets) a strategy of conventional lobbying to "convince" their national governments will no longer have the desired results. They will either have to persuade a sufficient number of governments to be successful, which seems to be rather difficult and cumbersome, or they will have to involve in bargaining with the actor in charge of designing and promoting policies, i.e. in our case the European Commission. A possible resource for firms could be the support of the national government for an initiative of the Commission, once a deal has been successfully packaged. The "trading good" of the Commission could be some highly desired regulatory measures in other policy areas.

In the following two sections we will attempt to demonstrate to what extent the conditions for package deals are fulfilled in two sample business sectors and to find empirical evidence for them. The business sectors we have chosen are biotechnology and electrical energy, both following a "most different case design". The biotechnology sector on the one hand shows a mixture of many small and few large firms. The produced goods differ widely. The European market is not of great importance for the firms as they predominantly strive to supply their products to the world market. The Electric Energy Sector on the other hand only consists of large firms. The produced good, electricity, is

unique. For energy firms, the European market is of major interest. Our argumentation will be, that in spite of these differences, the emergence of package deals between the Commission and large firms involving different policy domains can be described as an analogous form of governance.

The Emergence of Package Deals in the Biotechnology Sector

At a first glimpse, package deals between the European Commission and large firms seem to be very unlikely in the biotechnology sector. There are many reasons to suppose that neither the firms nor the Commission have special interests or valuable resources to engage in this special form of bargaining. First of all, biotechnology belongs to the competitive sectors of industry which are not dependent on state subsidies. It further consists of technologies cutting across business areas and is used by companies in addition to other relatively successful divisions. Therefore chemical, pharmaceutical and food industries do not show a particular interest in European programs to promote biotechnology research.

One of the main features of many biotechnologically produced goods is their specificity. Firms tend to find economic niches to create a demand for their products, but do not need to unconditionally find partners to lower their costs by enlarging their production. On the other hand, there are some biotechnologically produced goods which may have large economics of scale, like for example herbicides. So there exists a mixture of many small and few large firms with varying interests. Particularly small firms suspect that biotechnology programs of the EU could replace the domestic programs which are more attractive for them. Large companies on the other hand are oriented to the international market, the US-market being first and foremost of most interest to them. Therefore, many firms established links to the United States at an early stage. These multinationals have, like small firms, no particular interest in supporting the promotion of the EU of biotechnological research (cf. Behrens/Meyer-Stumborg/Simonis).

Nevertheless, large firms and the European Commission are interested in bargaining with each other for some reasons. Firstly, biotechnology firms are not only interested in the promotion but also in

the regulation of biotechnology. Biotechnology can be regulated in many ways: There are horizontal regulations to lower the risks of genetic engineering research and the industrial use of genetic modified organisms. Additionally, there are different vertical regulations for biotechnologically produced goods like drugs and food. Starting in the mid-1980s, the European Commission has gained land within these regulatory policy fields. By increasing globalization of markets European companies will be forced into mergers with others to become competitive multinational actors. The effect of globalization provided a possibility for the Commission to establish itself as the co-ordination center of European biotechnology policy (Gottweis 1998, 167). Furthermore, the European Community increased the legal competencies for the Commission: the Single European Act (SEA) provided the Community with explicit powers in research and technology development (Articles 130f-p EC) as well as in the domain of environmental policy (Articles 130 r-t EC). In the meantime the necessity for a European law to regulate genetic engineering had become indisputable. But the following policy-making process was dominated by a conflict of interests within the Commission. The outcome of this conflict between the Commission's environmental department and other actors generated a basis for the success of the Commission's biotechnology policy in the long run (Bandelow 1997, 1999).

While DG III and XII supported product-orientated regulations, DG XI (Environment; and, until 1991, Consumer Protection) advocated a new process-orientated approach. In the late 1980s, it were the DG XI and its partners that dominated the process of formulating directives on the contained use of genetic modified micro-organisms (90/219/EEC) and the deliberate release of genetic modified organisms into the environment (90/220/EEC). Thus, the very first results of the genetic engineering policy of the EU did not match the interests of biotechnology firms (Cantley 1995, 565). Not only the big companies lost this first round. The Commission was not successful in enlarging its competence either. It managed to set a framework for a genetic engineering law in Brussels, whereas the second primary goal of the Commission, the Europeanization of promoting research on biotechnology, failed (Bongert 1997). While the major common interest of the Commission was to get substantial funds for the promotion of biotechnology, its regulation policies were paid more attention of the industry (Szczepanik 1993). The potential to impose binding

supranational regulations gave the Commission an important resource which made it attractive as a partner for large biotechnology firms. In other words, a necessary condition for the negotiation of package deals was established. In mid 1989 the big companies created the "Senior Advisory Group on Biotechnology" (SAGB). This specific form of association was the object of pioneering research (Greenwood/Ronit 1992; Greenwood/Ronit 1994; Greenwood 1995; Greenwood 1997). It also became a model for other branches in establishing direct participation for large firms on the European level in the 1990s (Coen 1998, 77). While former European associations were composed of national federations of associations, the SAGB started with just seven large firms as direct members (Hoechst, Monsanto, ICI, Rhône-Poulenc, Montedison, Unilever and Sandoz). It was thus able to overcome all the co-ordination problems of conventionally organized interest groups hampered by "membership logic". All European associations witness conflicts between large and small firms, between associations representing poor and rich countries and between various branches of industry (cf. Lanzalaco 1995). The SAGB as an exception only consisted of big companies with the overall strategy to become competitive in the global markets.

In addition to the SAGB, the national bio-industry associations of Belgium, Denmark, France, Italy, Spain, The Netherlands, and the United Kingdom established an umbrella organization that solely advocated biotechnology interests (the European Secretariat of National Bioindustry Associations, ESNBA). Formed in December 1991, the ESNBA developed a mutually supportive relationship with DG XI while large biotechnology firms and the SAGB enjoyed a close relationship with the DGs III and XII (Greenwood 1995; Aspinwall/Greenwood 1998, 25).

Although the aims of both interest organizations coincided, SAGB became the much more successful model. The European umbrella association could only add an additional voice. However, the ESNBA did not represent the whole industry since there existed no biotechnology industry associations in several member states yet (like for example in Germany).

The SAGB started to become successful in 1990. In January, the group released its main objectives in three booklets; the most important was titled "Community Policy for Biotechnology: Priorities and Actions"

(Wheale/McNally 1993). It included a list of demands for the revision of the Community's genetic engineering directives. The Commission's DGs III and XII took this document as a guideline for their own proposals. In April 1991, Martin Bangemann of DG III presented a Communication to the Council of Ministers (Industry) in which almost the same formulations as in the former SAGB-booklet were used. Although DGs III and XII clearly advocated the interests of biotechnology firms, the companies still had a major problem: the lost struggle in the 1980s was responsible for the competence for genetic engineering regulations remaining at the Commission's environmental department (DG XI). As long as DG XI was to control this crucial area, the possibilities of package deals between big companies and their partners within the Commission were limited. DG XI rejected advice from other directorates and did not consult representatives of firms but relied on its own experts (Cantley 1995).

Thus, in the perspective of the industry, the first aim was to overcome the influence of DG XI to get access to the formulation of regulative proposals. The best way to achieve this objective was to improve the horizontal co-ordination of the Commission's biotechnology policy by making use of the structural majority of the partners of the industry in the Commission. It was the increasing pressure of large firms that led to effective horizontal co-ordination in biotechnology policy within the Commission (cf. Katzek 1991; Kädtler/Hertle 1992; Greenwood/Ronit 1992; Greenwood/Ronit 1994). This "Biotechnology Co-ordination Committee" (BCC) was founded in March 1991. Involved in the BCC were the four "major baronies" (Cantley 1995, 638): DG III (Industry), VI (Agriculture), XI (Environment), XII (Science, Research & Development).

Big companies and their partners within the Commission thereby removed the leadership of DG XI in regulating genetic engineering and established themselves as the main actors and arenas of biotechnology policy negotiations in the 1990s. The enlarged scopes for action of the partners also opened up possibilities for package deals.

The big companies were still not very enthusiastic about the intention of the EC to shift the national public promotion of biotechnology research to the European level. Until the mid-1990s, only about ten percent of European biotechnology research funds had been used by industry (Bongert 1997, 128). Nevertheless, the firms consulted

the Commission and helped to establish contacts with scientists. So in the course of the 1990s the Commission were gradually becoming more successful. While the first European biotechnology programs lacked substantial financial resources, the "Biotechnology Research for Innovation and Development" program in Europe (BRIDGE) and BIOTECH 1 from 1990 to 1994 had a budget of 289 million ECU altogether. BIOTECH 2 started in 1995 with more than 500 million ECU (Bongert 1997, 126). The expanding European funds for life-sciences and related technologies are the result of the more successful politics of the Commission during the 1990's and they also form a resource of continuing financial support in the future. Although large firms are generally not interested in a transfer of biotechnology funds to the European level, they act according to a logic of "shooting where the ducks are".

Not only with biotechnology programs does the Commission lure industrial partners. We assume that the Commission also uses its funds in adjacent fields. Funds for agriculture increased to several hundreds of millions of ECU. Further programs for biomedicine and health research (BIOMED) started in 1990 and increased during the following years as well. In order to concentrate its resources on promoting biotechnology DG XII changed its internal structure in 1990. Biotechnology, agriculture and health were joint to a department of "Life-sciences and -technologies". The Commission also established "Industrial Platforms" within the BRIDGE-program to establish better contacts to the industry.

The increasing funds can also be regarded as a result of closer contacts the Commission holds to the industry. The Commission fulfilled its part of the deal with the above mentioned communication of the Commission's vice-president Bangemann. The Commission presented drafts for a revision of the genetic engineering directives which reflect and even rephrase the concerns of industry. However, the decision-making process took several years because the German Commissioner Martin Bangemann — being sure of the support of the German government — had to fight resistance of several national governments and experts, e.g. the European Parliament, environmental groups and the environmental department of the Commission. A first result were several directives which revised the former bureaucratic implementation of EU's genetic engineering law (93/572/EEC, 93/584/EEC, 94/15/EC, 94/211/EC, 94/730/EC).

Though big companies succeeded in decreasing the influence of the Commission's environmental department by supporting the horizontal co-ordination within the Commission, their missing links and connections to the DG XI remained a problem. This was the main reason for the SAGB to merge with the ESNBA in September 1996. The new association (Europabio) has 38 large companies as direct members and eleven national associations as corporate members. It managed to establish close relationships with all the important departments of the Commission (Greenwood 1997: 72; see also <http://www.europa-bio.be>).

This new association improved the co-ordination of the industry's biotechnology policy. Its main success became apparent in October 1998 when the revision of the "contained use" directive was enacted. The revision gained law status on December 5th, 1998 and is to be implemented by the member states within 18 months from legislation (98/81/EC, cf. Leskien 1998). It fulfils the central demands of industry. It seemed as if the Commission wanted to thank the industrial partners for their help in promoting biotechnology through changing the regulation of genetic engineering and thus supporting the establishment of a European network.

To sum it up, there are many reasons to assume that there is a rising importance of package deals between the European Commission and biotechnology firms. In spite of the fact that neither biotechnology firms nor the Commission had the resources nor the interest to engage in bargaining with each other in the 1970s, the enlargement of Commission's Competencies has brought about a complete change of the situation. So only by involving in different policy domains the Commission is able to engage in package deals with biotechnology firms.

The Emergence of Package Deals in the Energy Sector: the Case of Electricity Supply

Throughout the last decades the energy sector of the European Union has mainly been characterized by different national energy policies and the reluctance of the member states to pool sovereignty in this policy area. Until the mid 1980s there existed strong relationships in the member states between governments and the energy or

electricity industry. Correspondingly, the electricity companies in most European countries were closely tied to the government through ownerships or other privileged links: for example in France (Electricité de France, EDF), Italy (ENEL) Spain (ENDESA) and Great Britain (Central Electricity Generating Board, CEGB) either a public national monopoly or a publically controlled company dominated the electricity industry. The German vertically segregated electricity supply structure was characterized by regional monopolies, in which these monopolies were not based on a state lending, but on a legally protected monopoly position. Hence, until the mid-1980s energy policy appeared to be a continual struggle between the European institutions – above all the EC Commission – and the national interests of the governments of member states. Under these circumstances it does not surprise that despite a number of attempts made by the EC Commission, there has never been a common energy policy in the EC such as there are common policies in agriculture or transport. However, the absent common policy framework does not mean that the European institutions have no influence at all in the energy sector. The example of electricity supply show quite the reverse: the basic conditions for national policy-making in the electricity sector have dramatically changed during the last years because of the Community's increased importance in the electricity area. The approach of the Commission to influence the electricity market through Third Party Access (TPA) – by which the existing electricity and gas distribution networks are obliged to open themselves to other distribution companies and large customers – towards a single internal market, created a dynamism which began to evoke a fundamental structural change of the national electricity industries. It is remarkable that the Commission's approach to create an internal market for electricity in Europe could be enforced despite of the strong opposition of many of the member states. Considering the fact that the Commission legally has no formal competencies in the field of energy policy, its success needs explanation. The evolution of electricity supply shows the Commission's progress in breaking down the barriers for an intra-European trade in electricity was not so much the result of increased competencies in the field of energy policy but the capability to utilize approved instruments for new policy domains, i.e. for competition and environmental policy. Besides the general relevance of environmental protection and trade, the liberalization of electricity supply provides empirical evidence for the assumption that a new type of package deals between public and private actors (first of all between the EC Commission and large electricity firms) is relevant for the

success of the Commission in core issue domains of electricity suppliers in the face of missing formal competencies in the field of energy policy.

Until the mid-1980s the Commission's attempts towards a common energy policy had been blocked by the divergent structural interests of the member states, although two of the three founding treaties of the EC – the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EAEC) – were related to energy. The failure of a common policy framework in the European energy sector was caused by the economic importance of the energy sector, which meant that the supply of energy was generally of great national concern and policy autonomy was guarded jealously by national governments (Padgett 1992). During this period the EC Commission emphasized on fostering national energy resources and the security of supply, in which methodologies like forecasting, target setting and the introduction of interventionist policy mechanisms played the key-role for policy-making (McGowan 1996a). Since these measures influenced, but in no way determined the implementation of national policies (Wallace/Wallace 1983), the European institutions – above all the Commission – made attempts prior to the Single European Act (SEA) to introduce a European variant of corporatism to the policy process. The Commission's endeavors to establish such political networks did not make up for the lacking engagement on part of the firms though. The close linkage between central or local governments of member states and the electricity industry had the effect that electricity firms rarely undertook specific policy initiatives on the European level; it was more comfortable to let the government compete for the preferable market conditions.

From the mid 1980s onwards the nation-state-business-relationship in the electricity sector gradually came under pressure. The collapse of the OPEC energy prices and the fact that the Eastern European countries entered the market caused a fundamental change for the internal market conditions as well as for the external dimensions of the electricity sector. Apart from new opportunities to secure the electricity supply in Europe, it was an increased awareness of environmental protection as well as the initiative of some member states – for example Great Britain – to enhance the competitiveness in the electricity sector, which lead electricity supply to greater dimensions within the Community. After 1985, the European institutions intensified their efforts in the electricity sector for the

creation of an internal market, and in 1986 a Council resolution heralded "a new 'market oriented approach', with emphasis on competition as the principal mechanism for securing the Community's future energy security" (Hancher 1990, 238). The new challenges of these influences evoked a shift in the interests involved in national electricity policy-making. In addition, a particular institutional change in the process of European policy-making, caused by the SEA of 1987, set the economic boundaries for firms (not only) in the electricity domain anew because it gradually eroded the exit-option from the European market place and forced firms to establish new European voices (Coen 1997). Since SEA, proposals on the internal electricity market are decided by majority voting which adds dynamics to the decision-making process. The EC Commission has been able to utilize this instrument to strengthen its competence in the regulation of electricity supply. The SEA says nothing about the property of the product "electricity", yet it marks a turning point for the Community since it reinforced the role of the Commission as the promoter for similar electricity infrastructures in the member states. From 1988 onwards, the EC had a mandate to develop an internal electricity market as part of the general single market (Matlary 1996). For instigating the move to a single internal market free from all barriers of trade, the EC Commission proposed Third Party Access to the transmission and distribution of electricity. Concerning a competitive structure of the European electricity market, a significant link was established between the Community's competition policy, which is embodied in the Rome and Maastricht Treaties, and its electricity supply (Weyman-Jones 1997). Furthermore, during the mid-1980s, the concern for environmental protection began to impinge on the electricity sector, for the world wide relevance of this issue lead the Commission to propose policies for the reduction of environmental externalities in the electricity production and consumption. Environmental policy is part of the Treaty of Rome, whereas energy policy and electricity supply is not, and environmental policy found a strong foundation in the SEA. Therefore, SEA not only had effects on the decision-making process of the European institutions, it also steadily linked electricity supply to environmental issues and market liberalization. It thus altered the nature of political goods available for electricity enterprises on the European level, considering that the link between environmental, competition and electricity supply disclosed the Commission's possibility to the effective use of policy techniques. The Commission has presently several legal instruments for the regulation of the electricity

sector at hand which allow its encroachment into core issue domains of electricity suppliers, in spite of the fact that the Commission has no legal formal competence in energy policy.

The increasingly apparent role of EU institutions in the electricity sector – above of all the regulatory role of the Commission – caused large electricity firms to develop direct lobbying strategies. In the past, electricity suppliers existed within protected markets of strong interconnections with the central governments. The mandate of the EC to develop an internal electricity market has resulted in a widening market in which electricity firms are forced to protect and expand their market position on the European level. In their seeking to attain these goals firms have two kinds of strategies at their disposal: the constitution of cartels and the exertion of influence by lobbying strategies. For the latter, resources and the right contacts are required in order to have an impact on the drafting of European directives with competitive advantages for large firms on the political market place. The evolution of a liberalization process in the electricity sector gives first empirical hints for a relevance of lobbying strategies, and the relevance of bargaining procedures between the Commission and large electricity firms respectively.

Since most member states are cautious not to loose control over their electricity supply, the Commission's proposal of TPA in the European electricity sector has been strongly opposed. On the basis of heterogeneous interests the implementation of the single electricity market was blocked by the central governments of the member states for several years. However, the EU directive concerning the common rules for electricity in the internal market came into force and the member states are now obliged to open their electricity nets to other distributors. The Commission's progress in breaking down the barriers to intra-European energy trade are the grounds for our assumption that the success is connected with the co-operative strategies the Commission applies with central – other than the public – actors in the electricity sector. It can be assumed that the Commission invalidates the resistance of member states and gets the support of large national electricity firms by negotiating the degree of liberalization with large national electricity firms and is thus able to achieve the completion of the single market without strong opposition. This supposition is underlined by the divergent degrees of openings to the European electricity market of the member states. While Germany fully opened

its nets (100 percent), other member states, for example Italy, Portugal, the Netherlands and Greece, only opened their markets by 30 to 35 percent. France has opened its existing electricity networks to other distribution companies and large customers one year later and only by 30 per cent. The divergent degrees of liberalization in the countries could be directly attributed to the interest of large national electricity suppliers in a politically supported opening of the market or to the interest in the protection of the market through regulatory measures.

The relevance of negotiations between public and private actors in the European electricity sector is also demonstrated by the fact, that after presenting the draft of the directive concerning common rules for the internal market for electricity in 1992, it lasted four years until the directive was finally passed by the European Parliament in December 1996. The electricity sector is one straggler of the liberalization process in Europe compared with other business domains (e.g. telecommunication or banking and insurance). Schneider (1999) argues that some cause for the late opening of the internal market for electricity lies in the technological complexity and capital-intensity of the electricity supply. Another explanation can be found in the renunciation of the EC of strong legal powers for enforcing competition rules in the electricity sector. The Commission had opted for bargaining and incrementalist solutions, although the strength of the DG IV (Competition) lies in its ability to intervene directly and eventually force the electricity industry to liberalize its markets.

However, the fact, that progress has only been made since the electricity market was increasingly linked to the environmental and deregulation markets suggest that negotiations between the Commission and large electricity firms were modeled by package deals. The linkage of EU electricity supply to environmental policy and market liberalization has disclosed an opportunity to combine elements and objects characterized by different preferential intensity for the Commission and large firms. As to the European Commission, the determining motives for package deals are its own interests. It prefers not to use established competencies in the areas of competition and environment to achieve a formal Community competence in energy policy itself (McGowan 1996a, McGowan 1996b). During the last years the Commission has initiated various activities to formalize its role in energy policy instead, e.g. intended to join the International Energy Agency (IEA) and to be more actively involved in the decision-making

process dealing with emergency oil stocks. Both attempts of the Commission to formalize its responsibility in energy policy were rejected in their original form by the Energy Council in May 1990 (Matlary 1996). The large electricity firms are interested in package deals as they have realized that the lobbying of the Council of Ministers would have only limited the impact on the drafting of European directives and could come too late (Hull 1993). The major electricity producers anticipate large economies of scale and joint advantages to result from the stretching of their share of the electricity market in Europe. At the same time, they are wary not to come into a disadvantageous position because of the national differences existing in basic political conditions for the electricity sector. German energy producers, for example, are interested in a harmonization of environmental regulation in the member states because of the high level of environmental protection rules in Germany. These are grounds for enterprises to be interested in having an influence on the speed and conditions for the liberalization process for an extension of their European market position. Package deals can be suitable for both sides, the Commission and the large firms, to pursue their particular interests. The large utilities are able to adjust their market behavior towards the Commission objectives, either in environmental policy or in the realization of the aim of establishing a common electricity supply framework, as long as, by exchange, they can limit the regulatory impact of the Commission's directives on the structure of the sector.

Discussion: Prerequisites and Consequences of the Emergence of Public-Private Package Deals in the European Union

We have argued, that as a result of the European integration we see a special type of governance emerge. The European Commission as a public actor engages in package deals with large firms. The deals usually involve different policy fields. The paper in the first part discussed the similarities and differences of the institutional structures of the EU and the United States, the latter being the institutional setting which is usually cited as the classical ground for package deals. Both political systems live by many-sided forms of separation of power in which political actors need partners in order to be successful. In spite of all similarities between the systems, the European Commission remains an institution with no counterpart in any other democratic

political system. Being a public institution, it is not dependent on public consent. Apart from that, European integration is a fluent process in which decision-making is linked with power distribution between the political institutions. In this system it is of prime concern for the European Commission to find partners in order to come to accelerate European integration.

The empirical part of the paper demonstrates that the enlargement of the Commission's competencies makes public-private package deals likely in various fields, as is the case of the energy and biotechnology sector.

Table 2
Differences between investigated sectors following a most different case design

	Biotechnology	Energy
structure of firms	increasing number of multinational firms	predominate national or regional firms
European Commission's competencies	significant increase of Commission's competencies in all relevant fields	no formal competencies within the field of energy policy, but significant increase of competencies in related fields
characteristics of produced goods	very specific products	all firms produce the same product

On the one hand, in the energy sector we can find only large firms often bound to their Member State. With of them all producing the same product (electricity) there is no way to gain demands by changing the product. The firms aim at the European market. On the other hand, in the biotechnology sector we find a mixture of small and large firms, a variety of specific products; and these firms aim at the world market. Furthermore, the field is dominated by a conflict in values. Nevertheless, there are striking similarities of the Commission's bargaining strategy in both sectors.

Our examples draw up the preconditions for package deals: the Commission has competencies in several policy fields and is able to offer

package deals to the partners it negotiates with; on the other hand the "trader" needs to be able to co-ordinate solutions between several policy fields in order to come to a general solution. In bargaining processes on European level only the Commission and large firms show this specific characteristic. Since interest groups are much more restricted in their action to the preferences and ideologies of their members, some of the options offered by such bargaining procedures cannot possibly be pursued. The result is that interest groups are restricted to the conciliation of compensation agreements. Another limitation for interest groups regarding their capability to conclude issue linkages is their inability to give their members a guarantee that agreements will be fulfilled (cf. Ulrich 1994).

As a matter of fact, the relevance of package deals, side payments and logrolling procedures for decision-making on the European level is often stressed by political scientists (e.g. Abromeit 1997; Weidenfeld/Jung 1997), though only for decision-making procedures within the European Council. In this particular case package deals are a strategy to surmount blockades of decisions between the member states. The possibilities of national governments to conclude package deals with the Commission are narrowed by distinct domestic interests. One important restriction are the inherent legitimate demands (elections), another are the complex responsibilities (federalism/regionalism).

The developments of biotechnology and energy policy expounded here reveal yet another requirement for package deals. The degree of resources of the Commission, i.e. financial and/or regulative competencies, influences its chances to succeed in package deals. We assume that the question of how important package deals as an instrument to achieve supranational competencies will be in the future, depends on the resources the Commission holds. Early policies illustrate how inferior the role of the Commission as a partner for negotiations in both sectors was because of its lack of competencies. Again, both sectors demonstrate that the more resources the Commission has at its disposal and the more influential it is, the more important it becomes as a partner for bargaining. It is only since the Commission has been able to fall back on explicit regulative powers, that its position in bargaining procedures with business could be institutionalized (Coen 1998). Now the Commission can strategically utilize package deals in negotiations with large firms. Package deals

are interesting for large enterprises firstly because they offer direct access to the resources of the Commission and secondly because they allow them to influence the regulatory decisions. Thus, big companies are able to use these deals in order to compensate disadvantages of political decisions on a supranational level in one policy field with advantages in other policy domains.

There still remains the problem of finding an objective criterion for welfare effects of package deals between the European Commission and large firms. There are already difficulties to analyze the welfare effects of package deals between public actors. Even the public choice theory, which takes stable interests and certain effects of decisions for granted, shows considerable disagreement on the welfare effects of "vote trading" as a very special form of package deals. While during the 1960s and 1970s an optimistic view dominated the discussion (Coleman 1966; Tollison/Willett 1979), more recent research stresses the possible risks (for example Benz/Scharpf/Zintl 1992). Before a judgement on potential welfare effects via package deals involving EU-institutions can be made we have to define what positive welfare effects are. Neo-classical economy applies the "pareto-criterion" to evaluation of welfare effects. This criterion defines positive effects as at least one person being better off than before and no one is off worse. This is the result that applies to ideal market situations only and — in the political context — to the rule of an unanimous vote: If one actor experiences a loss, there will be no deal.

Nonetheless, package deals may result in decisions which do not fulfil the "pareto-criterion" but the "kaldor-criterion", which states that a net benefit occurs when the sum of the benefits is big enough to offset the costs (Benz/Scharpf/Zintl 1992). Like the "pareto-criterion" this rule provides ground for criticism: Net benefits may be positive although the social benefit may be negative. Robbing the poor to give everything to the rich may turn out to result in a net benefit. Thus, we must stress the point that allocative efficiency of package deals is a controversial issue.

The fact that these arrangements have distributive external effects is largely neglected by public choice literature (Scharpf 1991). Package deals can lead to an imposition of costs on "non-traders". If these costs outweigh the benefits achieved, the deal can be assumed to reduce the social welfare (Stratmann 1997). Considering distributive as

well as allocative results of package deals it becomes clear that it is necessary to find ways to reduce the risk of those arrangements which impose costs on non-participating groups of the society. Other problems that are of interest to political scientists are low public visibility and a lack of democratic input-legitimacy (Abromeit 1997). Neither the Commission nor the representatives of big enterprises are directly elected and thereby democratically legitimated. None of the problems is easily solved, but it seems clear that we need more public control through a clearer political polarization of competing parties which is particularly absent in Brussels.

The absence of competing European political parties or party blocks leads to a further normative problem: In parliamentary systems with proportional representation we normally have governing coalitions which can be regarded as formalized forms of package deals ("logrolling"). In non-parliamentary systems package deals may not be stable. Unstable and shifting coalitions are assumed to lead to a decrease in welfare (cf. Stratmann 1997).

Our preliminary results show that package deals may have positive effects on the progress of policies. Therefore, it would not be sensible to ban or prevent package deals, although there may be negative effects as well. The future development of the European institutional setting should bear these effects in mind. There are at least three aspects which should be considered:

1. Package deals have to be negotiated openly in the light of the media and the public.
2. It must be guaranteed that these deals and partnerships are stable.
3. Since stable coalitions are needed it must be guaranteed that package deals will not lead to lasting or even permanent shifts of cost to non-participating groups.

One possible solution to these problems is trust, which is built up by iteration and institutionalization of package deals (Benz/Scharpf/Zintl 1992). Utilizing other social factors is a possibility to gain coalition stability, too (Ferejohn 1986; Zafonte/Sabatier 1998). Recent public choice theory and empirical studies have pointed to the role of norms for package deals. Co-operation and the distribution of

gains received by these deals are important as well (Benz/Scharpf/Zintl 1992).

Shifting the focus to legislation, one of the main empirical results has been the role that is assigned to parties and (different) party-memberships of actors, especially within parliamentary systems like Germany. The main advantage of parliamentary systems is the existence of two stable groups: the government and the opposition. To a certain degree an opposition in parliament guarantees control and political competition. The European Union still lacks such a stable opposition. While governments represent their national interests in the Council and the Commission primarily is a bureaucratic institution, the Parliament is the only institution where an opposition could be established. Consequently there is a demand for an opposition as an institution of control where package deals are likely to occur. For the parliament this implies an enhancement of its influence on the appointment of the Commission and especially its leader. What we need is the choice for parliament to decide between two alternative candidates. This would lead to a "polarization" in the Parliament and helps the EC build up a European party system. Seen through a "package deal lens" this may be more important than extended legislative competencies of the European Parliament. What is needed is a parliamentary government in which the leader of the European Commission is a member of the European Parliament and depends on the support of its majority vote. Only such institutions of parliamentary government will achieve a polarization of political camps — government and opposition — which have a "natural" interest in controlling each other. In other words, only parliamentary systems can transform unstable package deals into stable coalitions that may increase welfare.

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Biographical Sketches

Nils C. Bandelow is Assistent to the Chair of Comparative Politics and Policy Analysis and the Department of Social Science, Ruhr-University of Bochum. In 1998, he finished his dissertation dealing with an Advocacy Coalition approach to genetic engineering policy. His further research is mainly directed towards health policy,

technology policy, attitudes of German and British members of Parliament toward European integration. His homepage can be visited at <http://homepage.ruhr-uni-bochum.de/Nils.Bandelow>

Diana Schumann is research fellow at the Chair of Comparative Politics and Policy Analysis, Department of Social Science, Ruhr-University of Bochum,. She is concerned with the research project dealing with European governance by package deals. This project contributes to her dissertation on "Package Deals Between the European Commission and Large Firms in the Energy Sector". She was previously occupied with the *NIFA-Panel* and is furthermore interested in labor market policy and statistic analyses.

Ulrich Widmaier is professor for Comparative Politics and Policy Analysis at the Ruhr-University of Bochum, Department of Social Science. His research interests include European Integration, Labor Market Policy, Rational Choice Theory and Comparative Politics of OECD-Countries. His further research is also based on a panel survey on the technical, social and economic consequences of technological and organizational change in the German mechanical engineering industry (*NIFA-Panel*), which was successfully finished by the end of 1999.