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A Sui Generis System: An In Depth Analysis of European Union Governance and Political Innovation and its Effect on Business

Mike Spicer

ABSTRACT

The formation of the European Union (EU) just over 50 years ago signalled the beginning of a new era for European businesses. The eventual removal of trade barriers and increased co-operation between members along with the more recent eastern expansion has led to a more interdependent system where some firms are struggling to sustain their competitive advantage. This paper attempts to clarify the EU's unique blend of capitalism, governance and corporate lobbying as an example of Europe's history of political innovation. Secondly it investigates the effects these factors have on business within the EU, with emphasis placed on the Dutch business environment. Indeed, the EU is a constantly evolving political structure that highlights the increased pressures of globalization and economic interdependence. Furthermore, the greater liberalization associated with the EU has encouraged the Netherlands to pursue a strategy of more strict market capitalism, a departure from its social welfare roots. The establishment of multi-issue politics participation in multiple trade associations and interest groups, as well as more informal networks, has become a source of competitive advantage for Dutch firms. Due to their ability to maintain high positions within these associations and create a standardization of group actions, firms can influence the outcome of the EU's decision-making process. Although the EU has brought about many changes within the structure of its members' business systems, it is also reflective of the trend of globalization. This paper illustrates the interdependence and interaction between firms and political institutions within the European Union.

INTRODUCTION

The EU is commonly referred to as a *sui generis* system, meaning that it is something new and therefore, to a degree, unpredictable. This label however is being used by many to criticize the EU as an unproven and inefficient system of governance, citing governance without government as its largest flaw. This paper will attempt to analyze the current form of EU governance and demonstrate it as an example of Europe's penchant for political innovation, in this case, successful innovation. Several key components of the EU structure will be examined in terms of their contribution to the overall position of EU governing bodies and their subsequent effect on business policy decisions. In particular, the question of the effectiveness of governance without government will be addressed. Secondly, intricacies unique to the EU will be highlighted in terms of corporate lobbying and the activities of interest groups by examining the activities of corporate lobbying both domestically and on the EU level, and the effectiveness of different techniques. I will also examine the different forms of domestic governance and the influence of traditional forms of government on the current style of EU governance. Finally, this paper will examine the overall effect of EU governance on business operations and strategy for Dutch firms.

THREE FORMS OF EUROPEAN CAPITALISM

In order to fully understand the EU in terms of its style of governance and capitalism, we must first examine the way in which the nations that comprise the union operate. We will first investigate the three major forms of capitalism found throughout the nations of Europe: market, managed and state capitalism, giving specific attention on the United Kingdom, Germany and France as they best represent the differences between the forms.

Of particular interest for the ever evolving EU is the theory of market capitalism. Market capitalism is characterized by liberal, open markets in which economic actors interact autonomously to determine the direction of their activity (Schmidt, 2002). This form of capitalism is exemplified within the EU by the United Kingdom whose service-based industry thrives due to its ability to adapt quickly to consumer needs, constantly seek the most cost effective methods of conducting business and take advantage of investment capital to turn quick profits.

Market capitalism is completely driven by the open market and therefore tends to be the direction in which most countries, not only within the EU but worldwide, are pursuing as a result of the removal of trade barriers and the increasing pressure of globalization (Schmidt, 2002). Managed capitalism is still affected by market conditions, but takes a more calculated, long-term approach, best represented by Germany. Managed capitalism is typified by a government body that acts as a “facilitator” between business and government. Perhaps the most distinctive feature however, is the relationship between industry and finance. In managed capitalism, industry is more concerned with long-term growth and market share, and therefore has very close relationships with banking as opposed to market capitalism which relies on the open market to maximize profits and short-term results (Schmidt, 2002). The final model of capitalism is state capitalism, which is becoming increasingly less prevalent, but is best represented within the EU by France, despite their recent liberalization of financial markets over the last two decades. This type of capitalism is exemplified by state involvement in all aspects of business within a nation from fully state controlled wage bargaining to state mediated industry-finance relations (Schmidt, 2002).

With three distinct systems of capitalism exemplified by three seemingly strong financial nations, which system should the EU be pursuing for its members? The response seems to be that the EU’s governing bodies favour a policy of market capitalism. Although there is evidence to support other forms, market capitalism is most closely linked with high levels of competition and requires nations to focus their resources on industries in which they hold a competitive advantage. This market orientation is also natural, due to the nature of the EU being a trade union with no barriers between market states, therefore encouraging competition among international firms for profits and market share.

This push toward a strong market orientation is reflected in the EU’s accession conditions, and the requirement of applicant states to liberalize their markets. Nowhere is this feature more prominent than in the former communist and Soviet states of Eastern Europe. History is also on the side of accession, as formerly centrally planned states have a strong desire to limit governmental intervention in business, and participate in the global market from which they had previously been shut off. This is visible in countries such as Estonia, where a thriving technological sector has motivated the country to continue along the path to liberalization. Knell and Srholec (2007) argue, however, that post socialist countries cannot simply decide to liberalize and become market economies, but must move along a continuum from a managed or co-ordinated approach to eventual liberalization. The Varieties of Capitalism (VoC) approach argues that as former command economies transition themselves into market-oriented economies, potentially new variants of capitalism can be created. These new forms would arise due to the large changes being made to the institutional framework, including changes in long held customs and traditions (Knell & Srholec, 2007).

FORMS OF DOMESTIC GOVERNANCE

Continuing with our preliminary investigation of the individual states, we look at the particular forms of governance that are in place within EU member states. Governance is defined as the ways in which decisions are made and policy is created to reflect the preferences of the citizens (Eising & Kohler-Koch, 1999), whereas government is the body or structure which enacts and enforces these policies. Similar to the individual styles of capitalism found within the EU, each country has developed their own style of governance to reflect what they believe to be the most efficient and effective method. The easiest way to understand the different types of governance among EU nations is to classify the interaction between constituents and the governing bodies in place, and the methods in which governments make policy decisions. Policy decisions are influenced by the political role of interest groups, be they large labour unions, special interest groups or individual corporations. Two broad definitions have been developed; pluralism, which refers to a system where numerous competing interests exert strong influence in their own specific sector, and corporatism, which is characterized by a strong relationship between government and large associations from which important decisions arise (Hague & Harrop, 2004). Corporatist nations, for example Germany, tend to exhibit governing decisions that favour the common good of the nation; while pluralist nations such as the United Kingdom tend to make policy decisions on the basis of individual interest, reflecting their belief that all citizens affected by a policy have a right to participate in the policy making process (Eising & Kohler-Koch, 1999).

Those governing bodies whose decisions are based on the idea of the common good are displaying their belief in the importance of collective decision-making. That is, the constituents of a country will always be bound together by the same policy so it is best to act in the interest of the common good. Nations of statism, such as France, use this common good decision-making based on a principle of majority rule, meaning the largest or strongest group will typically receive the benefit of political policy. Corporatist nations however pursue a more negotiated attempt to bridge the differences between groups to arrive at a decision of common good (Eising & Kohler-Koch, 1999). This style is exemplified by Germany and is in keeping with their style of managed capitalism in which the government acts as a facilitator for business. These contrasting styles of governance within domestic borders present an intriguing issue for the EU of incorporating the different interests and styles of governance of all 27 member states into effective policy decisions.

LEVELS OF NATIONAL SOVERIGNTY

With the numerous and widespread forms of capitalism and governance found throughout different EU nations, it is readily apparent that although they are member states of a shared trade union, individual countries still place a very high value on their individual sovereignty. This concern with domestic borders and sovereignty can be crippling for the idea of a union, as nations take a “me first” attitude toward proposed EU policy. In fact, some analysts believe that Europeans would be better off abandoning their current system of nation states and pursuing a true federal system (Calleo, 2001). This belief is supported when one investigates countries in terms of their adherence to EU legislation. Simply put, due to the fact that EU nations still enjoy complete autonomy and sovereignty, they have the ability to abide by the EU policy decisions they choose without fear of significant punishment. Nowhere was that better demonstrated than shortly after the induction of Eastern Europe’s “EU10.” Wealthier and more advanced Western European nations feared that with the opening of the EU to Eastern Europe, cheap labour would flood west and snatch up labour positions. In addition to this, there was a fear that many would take advantage of generous unemployment and welfare payments in lieu of actually seeking employment. In response to this concern several nations enacted transitional agreements on labour from the east (*The Economist*, 2006). These agreements cut to the core of the issue described above, that national governments have no qualms about enacting legislation which contravenes fundamental EU rights. In this case, free movement of citizens for purposes of employment is a basic right of all EU citizens, but regardless, some countries did all that they could to prevent this from happening. Interestingly, the countries in this example with the strictest agreements experienced the highest number of illegal, undeclared workers (*The Economist*, 2006). More importantly however, this example illustrates a serious threat to the legitimacy of EU policy making, and the credibility of EU policy; however, the fact that Ireland, the country with the highest levels of migration, experienced the highest subsequent level of economic growth and lowest unemployment figures displays that EU policy, although difficult to enforce, can be successful.

THE ROLE OF LOBBYING AND SPECIAL INTEREST GROUPS

So if the EU can propose and enact legislation, but the individual nation states can essentially choose which guidelines they will abide by, how do special interest groups and lobbyists effectively influence relevant policy decisions? EU lobbying is very unique, in that it presents challenges to lobbyists and interest groups by providing two very separate and distinct forums in which to exert influence. Depending on the salience of the issue, relevant policy decisions will be made either at the domestic level or the EU level, and each requires an individual approach.

On a strictly domestic level, the success of individual interests is largely influenced by the type of government system in place. In pluralist societies, such as the United Kingdom, politics is seen as competition between many individual interests, where the state is largely an arena for this competition (Hague & Harrop, 2004). The central theme of pluralism is that no single group can dominate government, as the highly individual nature of pluralism tends to restrict groups into one single policy sector. It is believed that through this system the government can effectively represent not only economic interests, but also act for the diverse range of interests found throughout society. Conversely, corporatist nations, such as Germany, value co-operation, co-ordination and planning between government and interest groups.

Peak associations, described as those major social partners of capital and labour, negotiate with government to implement key policies (Hague & Harrop, 2004). The peak associations are typically comprised of large unions that aggregate numerous individual groups into a larger, more powerful union. These subsequently larger groups can exert a greater influence and have a larger role in negotiations with policy makers.

But when it comes to interest group influence on an EU level, the process becomes much more difficult. Whereas sovereign nations tend to have well established processes in place, the EU presents a challenge in that they have several legislative bodies but no traditional government. Smaller domestic firms are at an even greater disadvantage, as EU lobbying is effective only if one possesses a large amount of resources. Small firms typically are reduced to joining an EU association which will lobby on behalf of its members, the trade-off being that the individual firms' voice is diluted among many more along with their potential influence.

With the main offices of the European parliament and European commission being in Brussels, the most effective lobbyists have offices in that city along with a staff dedicated to influencing EU policy decisions. Aside from direct financial incentives which border on the unethical, successful lobbying on the EU level centres on the provision of information by the lobbying party to members of the policy making body. This information can come in three forms; expert knowledge in a particular field related to salient policy issues, information on the general European interest, and information on general domestic interest (Bouwen, 2002). The latter two are the areas in which large European or domestic associations may have an advantage. Typically these associations are comprised of a large number of diverse actors that represent the general preferences of both individual nations and the continent as a whole. Expert knowledge, however, is typically more desirable for policy makers, as legislation tends to be very sector specific as opposed to broadband. Large multinational corporations therefore tend to have an advantage in this particular arena, as their growth and success is typically based on expertise in a particular field. Furthermore, due to their multi-layered organizational structure, associations are further removed from market reality (Bouwen, 2002). Those who can provide the desired information to the right people will see results, which begs the question: who are the right people to approach within the EU structure?

In almost all situations of decision making, those individuals working around and within the European Commission play a crucial role (Van Schendelen , 2005). The multi-layered structure of the EU, with the Commission, Council, and Parliament along with the Court of Justice and the Court of Auditors ensures that there is no shortage of public servants to approach and attempt to influence. The most relevant for lobbyists, however, meet two distinct criteria. The first being their position of strength regarding the decision making process, and the second being their personal policy preferences which could be based on domestic or personal values (Van Schendelen , 2005). This being said there is never going to be a shortage of connections between EU public servants and the private business sector, and therefore influence will always be exerted from interest groups. Large international firms hold an advantage due to their ability to employ liaison offices in Brussels with staff dedicated to keeping in contact with politicians, and keeping their firms abreast of any upcoming policy issues (Bouwen, 2002). With this in mind, one may think that the current EU structure and form of governance encourages corruption or gives an advantage to the large multinational firms with endless resources at their disposal. However, due to the EU's unique system of networking and constituency building, its policy making decisions are very well informed of the general interest groups as well as the preferences of the wealthy elite.

THE EVOLUTION OF EUROPEAN UNION GOVERNANCE

The preceding information culminates now, as we address the distinct form of EU governance that has evolved over time as a result of the influences of individual nations' forms of capitalism, governance and policy making. The EU's recent inability to pass a constitution into law only highlights the largest challenge for the EU moving forward, and that is integrating the priorities and positions of the 27 member states into effective and binding policy. This difficulty could be a result of the nature of the EU; being a system of networks with no clear decision making centre (Beck & Grande, 2004), as well as the fact that some citizens have a fundamental problem with being governed in the absence of an actual government (Eising & Kohler-Koch, 1999).

In order to understand the decision making process we must understand the system of governance in use in the EU.

Determining the type of governance used in the EU is difficult as it is not a state, super-state or confederation (Beck & Grande, 2004), nor can governance be objectively characterized based on patterns in large decision making, as the more “salient the issue, the greater the need to keep them under member state control” (Eising & Kohler-Koch, 1999: 17). The style of governance, that has evolved as a result of attempting to appease all member states simultaneously, is based on a series of formal and informal networks between EU legislative bodies and domestic governments, trade associations and large multinational firms; this system has come to be known as network governance. The core idea of this form of governance is seeing problem solving as the essence of politics, and policy making as highly dependent on the participation of organized social subsystems (Eising & Kohler-Koch, 1999). To this end, the European Commission has displayed this form of networking for years by actively engaging in building up multinational interest groups to aid in policy decisions in which the commission has an interest (Eising & Kohler-Koch, 1999). Two important notes to consider, however, affect this strict network governance categorization. First, depending on the policy arena which is being dealt with, the EU can exhibit different forms of governance, for instance statism in monetary policy or corporatism in social policy (Eising & Kohler-Koch, 1999). Secondly, the EU is comprised of nations with very long and rich political histories, and has always demonstrated the ability to evolve and innovate new systems of governing. That, when combined with the fact that the EU is only 50 years old and still in a formative phase implies that future evolution and change is very much possible (Eising & Kohler-Koch, 1999).

AREAS OF CONCERN FOR EU GOVERNANCE MOVING FORWARD

Although the EU has enjoyed praise in the worldwide political community, there are several flaws that have arisen in recent years that threaten its continued progression. With its informal system of networking and constituency building being the basis of policy decisions, some citizens feel as though the system is not fully democratic, and is vulnerable to corruption or persuasion from third parties, typically the large multinationals, exemplified in the Netherlands by Royal Dutch Shell. This type of thinking can breed the phenomenon of Euro-scepticism and reduce EU citizens’ faith in the legitimacy of the governing system. This fact was highlighted in the referenda on the Treaty of Maastricht which noted that decision makers “had to bring the European Union closer to its citizens” (Eising & Kohler-Koch, 1999: 17).

A major and more salient issue, however, is the EU’s inability to propose and enact a common foreign policy, and with enlargement now expanding east into the former communist and Soviet bloc nations, this seems more and more unlikely. This topic has recently come to the forefront of EU policy making with the Russian invasion of Georgia and the EU’s subsequent response, or lack thereof. Ever since the conflict in Kosovo, leading EU nations have expressed the importance of being able to deploy a collective military force when deemed necessary, therefore removing their dependence on either NATO or US forces (*The Economist*, 1999). However, foreign policy making with 27 member states, each with the power of veto, is very difficult if not impossible (*The Economist*, 2007). When the conflict in Georgia came to a head current EU president Nicolas Sarkozy headed to Moscow on behalf of the EU to broker a multi-point ceasefire agreement which both Georgian and Russian leaders agreed to. The Russians then ignored the conditions set forth in the agreement and refused to pull out their troops; the response from Sarkozy was the threat of an EU summit. The nonchalance of Russia again highlights the EU’s lack of power in terms of foreign relations, and this reputation is not aided by the diverse range of responses from individual nations of the EU. While France and Germany have tried to remain neutral, Italy has passed full blame on Georgia, while Britain, Sweden and the eastern states have condemned Russia’s aggression (*The Economist*, 2008). These contradictory responses essentially eliminate any chance of the EU presenting a united front in foreign relations, a fact that was clearly visible on Sarkozy’s visit to Moscow. He was there in the capacity of EU president, however when the ceasefire was signed there were three flags clearly visible; the Russian, Georgian and French, which again shows Russia’s desire to not recognize the EU’s power in foreign negotiations. Unless the EU is able to ratify legislation to create a common foreign policy and military force, they will never be able to have a legitimate and respected voice in foreign relations.

THE DUTCH BUSINESS ENVIRONMENT

We have seen how domestic systems and styles of government affect EU structure, but what is important to know is how the EU structure influences the business operations of firms. The final portion of this paper will highlight how some of the more unique factors of EU governance have changed the method of doing business within the Netherlands.

The Dutch economy, the world's 16th largest in terms of gross domestic product (GDP) in 2007 (World Bank), is one that is dominated by large multinational corporations involved in a broad range of industries from transport and crude oil production, to consumer and dairy products. Traditionally a social welfare state, the Netherlands has recently seen a shift towards more of a market capitalist approach as defined earlier in the text. This shift reflects two different aspects of the Dutch business system. First, the Netherlands exports over 50 per cent of GDP making them very dependent on the open market (Van Schendelen, 2005), which is a precursor to market capitalism. Second, the national government's desire to be not only a European, but also a global business leader. A strong governmental focus on business growth, with an emphasis on large multinational growth, is reflected in their recently lowered corporate tax rate of 25 per cent. This, combined with a sophisticated financial sector and very low real estate costs compared with its western European neighbours, is a recipe for the growth of strong multinational firms (Netherlands Foreign Investment Agency, 2008). Such conditions have seen companies such as Philips, Shell, ING and Heineken flourish with their home operations based in the Netherlands. With such an emphasis placed on the development of big business, the most critical issue of EU governance which affects multinational firms based in the Netherlands is the ability to successfully participate in networking, and therefore exert influence on policy decisions affecting their industries.

The unique version of lobbying that has become necessary for firms to engage in due to the EU's form of network governance has actually given some firms an opportunity to create a competitive advantage through participation in multiple committees and special interest groups. This is highlighted by the strategy pursued by Dutch consumer products giant Unilever. Unilever has operations that span the entire EU, and as a result, they have recognized the establishment of multi-issue politics and the corresponding importance of political credibility, something which can be obtained through participation in trade associations or interest groups (Coen, 1998). Their involvement in multiple trade associations, combined with their high positions held within these groups (presidencies, vice presidencies etc.) lead to a standardization of actions by these groups. This naturally leads to an environment of information sharing between groups and a strong understanding of European business dynamics, as they affect different areas of Unilever's operations (Gueguen, 2007). Also of importance for Unilever and all other major firms, is engagement in the informal area of networking. As a successful firm within the EU, Unilever has a permanent office in Brussels, the centre of all EU political decision-making, with staff dedicated to building relationships with members of the European Commission and members of various governmental committees. It is very important not to underestimate the importance of these relationships as they can keep Unilever's management informed of important policy issues that may concern them. Policy issues that Unilever encounters are evaluated on a case by case basis, and it is through this process that they can determine whether they would be best suited to address the issue through one of their association memberships, individually as a firm, or informally through an existing relationship with someone involved in the decision-making process (Gueguen, 2007). This behaviour is unique to firms operating within the EU and is a result of the EU's unique blend of market and managed capitalism which places great importance on both free market strategies and trade association participation in policy negotiations.

CONCLUSION

The European Union is a *sui generis* system, and as such, any sort of categorization or typology applied to it is strictly theoretical. Despite its inefficiencies, as exhibited in the example of foreign policy decisions, the EU still remains a model of modern governmental innovation. Spurred by the growing trend of globalization and the desire to play a larger role in the global economy it has moved barriers to trade and encouraged the liberalization of domestic markets. Its expansion has seen formerly struggling nations such as Ireland and Estonia enter times of unequalled prosperity.

As a trade union, it has experienced very strong economic growth and success, and through the offer of membership to eastern European nations there has been a proliferation of democracy in former communist governments. Several issues will determine whether the EU's success is continued or not, and the most glaring are the lack of a strong central government, foreign policy creation and the phenomenon of enlargement fatigue. With the rapid expansion into eastern Europe, some fear that the EU will lose the ability to adequately manage such a diverse set of interests effectively. For stronger western European nations such as the Netherlands, EU integration and the spread of market capitalism has led to a vast increase in competition. The elimination of tariffs and introduction of new smaller start-up firms in new member states has led to an increase in trade association participation by larger multinational firms in an effort to standardize actions across industries. For the Dutch market specifically, a lower corporate tax rate and decreased emphasis on social welfare issues reflects its attempt to lure large firms to the confines of their borders. As time moves on, and newer EU members become more and more integrated, nations will be forced to pursue a more specific business structure, whether it is the development of smaller service-based firms at a start-up level, or a focus on the enlargement of large multinational firms, such as we see in the Netherlands. Likewise, firms will increasingly feel pressure to "play the European game," that is engage in participation in trade associations or special interest groups, in addition to informal networking between government and business reflective of the EU's unique form of network governance.

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