State Aid, Issue Framing
and the Politics of Expertise

Prepared for Presentation at the ECPR Joint Session,
Lisbon, 14-19 April 2009

Umut Aydin
Department of Political Science and International Relations
Bogazici University
Bebek, Istanbul 34342 Turkey
umut.aydin1@boun.edu.tr
Abstract

State aid rules of the European Union prevent member states from granting aid to companies, which distorts competition in the single market. The Treaty of Rome grants the European Commission extensive powers to monitor member state aid. Yet, until the mid-1980s the Commission did not use these powers fully and state aid control remained on the sidelines of other competition priorities. Since then the Commission’s control over state aid has increased considerably. What explains the changes in this policy since the 1960s? A state-centric perspective emphasizes member state interests’ convergence on the need for a rigorous state aid regime in the 1980s following their decision to complete the single market. This explanation does not account for the gradual nature of the changes in state aid policy which started in the 1960s and continued after the 1980s. I argue in this paper that the changes were driven by the European Commission’s strategic issue framing that tied state aid control to market integration in the 1980s, the Economic and Monetary Union in the 1990s and the Lisbon objectives in the 2000s.

Introduction

In May 2004, the European Commission, the watchdog of member state aid in the European Union (EU), started an investigation into the alleged state support to France Télécom. The French government had given verbal assurances of a €9 billion credit line to the company in 2002. According to the Commission, this verbal assurance saved the company from bankruptcy by helping it raise capital on the markets, and as such, constituted state support to the company. The French government held that the credit line was not needed in the end and was never even set up, but the Commission argued that the assurance of the government to the company amounted to state support and found it to be incompatible with state aid rules of the European Union (Dombey 2004). With this decision the Commission set an important and controversial precedent by defining verbal indications of support as state aid (Meller 2004).

This example illustrates the increasingly prominent role that the European Commission and in particular the Directorate General (DG) Competition (formerly DG IV) has come to play in regulating and monitoring state aid in the European Union member states. Such a significant degree of regulation and monitoring of state aid to companies is unique to the European Union among regional organizations and is even without precedent among federal states. However, the Commission’s powers in state aid control should not be taken for granted. While state aid rules
were part of the Treaty of Rome (1957), it was not until the late 1980s that the European Commission could use these powers to establish firm control over member states’ aid policies.

The founding members of the European Economic Community (EEC) laid down the rules that govern state aid in the Treaty of Rome and gave the Commission the responsibility to monitor member states’ aid policies. The Treaty declares any aid given by member states that distorts or threatens to distort competition to be incompatible with the common market. The Treaty also assigns the Commission the task of reviewing member state aid schemes to determine their compatibility with the common market.¹ In the first two decades following the founding of the EEC, DG Competition was cautious in exercising the powers granted to it by the Treaty to control state aid. Since the mid to late 1980s, however, it has become active in controlling member state aid to industry. Its regulatory and monitoring powers over state aid has gradually increased, leading to a rising number of investigations and interventions into member states’ aid schemes and an overall decline in state aid levels in the EU. Currently, the Commission has extensive powers in state aid control: DG Competition officials can make on-site investigations to company headquarters in state aid cases and the Commission can demand the recovery of aid that it finds to be incompatible with the single market.

What explains the increasing powers of the Commission in this field? One can argue that control of member state aid is essential to the completion of the single market because state aid has greater trade-distorting effects the more closely integrated the markets are.² From this perspective, the evolution of the state aid policy is closely tied to the efforts to complete the single market in the European Economic Community. The member states decided in the Single European Act to complete the single market by 1992 and consequently, they were willing to

¹ Articles 87-89 of Treaty of the European Union (Articles 90-92 of the Treaty of Rome) are the rules applicable to state aid.
² This was the argument proposed in the Commission’s 1985 White Paper on Completing the Single Market. However, the origins of the idea go back to the European Coal and Steel Community’s state aid rules and the Spaak Report (1956). Both of these documents suggested that regulating member state aid was crucial for the proper functioning of the common market.
empower the Commission to establish a stricter control over state aid in the EU. What explains the evolution of state aid policy, according to this perspective, is the convergence of member states’ preferences on completing the single market and adopting a rigorous state aid regime that the single market necessitates (Moravcsik 1993, 1998).

I argue that convergence of member state interests on the need for a stricter state aid policy is only part of the story. Such an explanation does not account for the gradual development of the policy prior to the 1980s or for the developments in the policy since then. Nor does it give an adequate account of the piecemeal nature of changes in this policy area. The regulatory and monitoring capacity of the European Commission in state aid did not increase all at once and due to a single decision on the part of the EU member states, but happened gradually since the 1970s, which cannot be explained by focusing solely on member states’ decision in the Single European Act to complete the internal market.

In order to understand the evolution of state aid policy, I argue that it is essential to analyze the role of European-level institutions, the European Commission—in particular the DG Competition—and the European Court of Justice. DG Competition has been pivotal in framing the state aid issue so that the majority of the member states came to see a strong state aid policy to be in their interests. In the 1980s, member states’ decision to complete the single market provided an impetus, but it was the DG Competition that seized this opportunity to emphasize the link between state aid control and the completion of the single market. By framing the issue in this way, DG Competition succeeded in making state aid control a priority for competition policy. DG Competition’s framing was successful because it fit with the broadly accepted crisis perception in the Community and because the DG had accumulated experience and expertise in other areas of competition policy and had gradually laid the foundations of state aid policy in the “dormant” years of the 1960s and the 1970s (Smith 1998). When the interests of some of the member states shifted towards better control of state aid in the EEC in the 1980s (Smith 1996),
DG Competition allied with these member states and framed the state aid issue in a particular way to convince the member states that were reluctant or had ambiguous preferences on state aid policy.

Developments in state aid policy in the 1990s and 2000s can be similarly examined with a framework that combines the role of member state interests and the Commission’s framing of the issue in a way that coincides with and furthers these interests. In the 1990s, DG Competition increasingly framed the state aid issue in terms of market integration and the Economic and Monetary Union (EMU). It emphasized the need to reduce member state spending on aid, which coincided with member states’ interests to maintain balanced budgets to meet the convergence criteria to join the EMU. In the 2000s, the Council and Commission motto of “less and better targeted aid” has been closely linked to the Lisbon Agenda (2000) of making the EU the most competitive economy of the world. In line with the Lisbon Agenda objectives, the Commission officials increasingly emphasize the need to redirect state aid to objectives such as R&D and innovation, the environment and employment, which they argue can help European economies become more competitive.

The empirical analysis in this paper traces the evolution of state aid policy through four periods: 1960-1980, the 1980s, the 1990s and the 2000s. I track changes in Commission’s issue framing and the corresponding changes in the member states’ positions towards state aid control in these four periods, which vary in terms of the conditions that facilitate or hinder successful issue framing. The analysis relies on primary data such as interviews that I conducted with officials working on state aid in the European Commission and the member states’ permanent representations, as well as state aid lawyers, business representatives and other experts. These are supplemented with speeches and reports by the Commission and the member states, as well as newspaper articles and secondary literature on state aid policy.

This research contributes to our understanding of how state aid policy developed through the
gradual, piecemeal efforts of the Commission, frequently aided by the European Court of Justice.\footnote{The European Court of Justice (ECJ) has supported most Commission decisions on state aid especially in the earlier, developmental stage of the policy. In the recent years, the ECJ and the Court of First Instance have grown more critical of the Commission’s approach in state aid cases, and forced it to become more transparent in its approach.} It diverges from a strictly rationalist, state-centric approach that ties state aid policy directly to the member states’ interest in creating the single market, and instead offers an explanation that accounts for the gradual, long-term development of the policy and the evolution of the institutions themselves by adapting to changes in their environment. In addition to accounting for changes in the state aid policy of the EU, it provides insights into how EU institutions shape integration through day-to-day politics of the Union.

The paper is structured as follows. The next section lays out an explanation for the evolution of the policy that focuses on member state interests and discusses why such an explanation is inadequate. It then introduces my main thesis, which focuses on the role of EU institutions in the development of state aid policy. The third section discusses the evolution of the policy from the 1960s to the current period in order to explore the plausibility of the arguments that the paper develops. The fourth section concludes by discussing the implications of the argument for the analysis of state aid policy in particular and EU policy-making and implementation in general.

**Explaining the Evolution of State Aid Policy**

The scholarship on European integration has traditionally been divided between intergovernmentalist and neofunctionalist approaches. Intergovernmentalism and liberal intergovernmentalism explain European integration as the outcome of interstate bargains. Neofunctionalism gives primary importance to the role of supranational and transnational actors and the process of incremental change driven by the logic of functional self-sustaining processes (Risse-Kappen 1996, 55). After long being dominated by these approaches, research on European integration now draws extensively on alternative perspectives in international relations and comparative politics. Scholars working on transnational relations explore how transnational and
transgovernmental actors shape the integration process by influencing both domestic structures and international politics (Cameron 1995; Risse-Kappen 1995). Constructivists problematize fixed preferences and rational behavior that intergovernmentalists and neofunctionalists attribute to the actors and explore where member state preferences and identities come from (Pollack 2001, 222). In comparative politics, variants of institutionalism such as rational choice, historical and sociological institutionalism, and approaches such as multi-level governance and comparative federalism contribute to the study of European integration (Hix 2001; Nicolaidis and Howse 2001; Pierson 1996; Tsebelis and Garrett 1996).

State-centric approaches to European integration such as intergovernmentalism and liberal intergovernmentalism assign little independent role to European level institutions. For intergovernmentalists member states remain the only important actors at the European level. Institutions help promote cooperation where “transaction costs—the costs of identifying issues, negotiating bargains, codifying agreements, and monitoring and enforcing compliance—are significant” (Moravcsik 1993, 508). Even though member state governments sometimes transfer authority to institutions, they do so under limited circumstances and remain in control (Moravcsik 1993, 509-11).

A state-centric perspective suggests that delegation to supranational institutions occurs when member states find cooperation to be in their interests but find it difficult to achieve on their own due to high costs of negotiating agreements, monitoring compliance and punishing defectors.

---

4 Moravcsik’s liberal intergovernmentalism adds that societal groups influence the integration process through the domestic structures of member states (Moravcsik 1993, 1998).
5 Moravcsik (1993) argues that in the EU member states pool national sovereignty through qualified majority voting rules and delegate sovereign powers to semi-autonomous central institutions. Delegation will be more likely if three conditions are present. First, if the potential gains from cooperation exceed the benefits of status quo, such as in cases where time pressure, previous failures to reach agreements and the desire to implement a prior decision requires rapid decision-making, states are more likely to pool sovereignty. Second, if there is a high level of uncertainty regarding the details of specific delegated decision, delegation is more likely. Third, governments will have more incentive to delegate authority “when there is little probability that the cumulative distributional effects of delegated or pooled decisions will be biased in an unforeseen way against the interests of any national government or major domestic group” (Moravcsik 1993, 510-11).
(Garrett and Weingast 1993; Keohane 1983). In state aid policy, the state-centric approach would suggest that delegation of powers to the European Commission occurred in the 1980s because member states increasingly realized that their objective of completing the single market would be hampered if member states were allowed to use state aid to favor their own companies. Without a strong central authority to monitor state behavior, member states realized that it would be impossible to ensure compliance with state aid rules and the objectives of the single market would be undermined. Prior to the 1980s, even though the Treaty of Rome included rules prohibiting state aid, the Commission did not have sufficient power to implement these rules against reluctant member states, and thus state aid policy remained on the sidelines of competition policy. It was the convergence of member states interests on the need for a stricter state aid policy in the 1980s that prompted them to grant the Commission more autonomy in implementing the Treaty’s state aid rules (Moravcsik 1991).

This state-centric explanation does not account for various aspects of the evolution of EU’s state aid policy. First, while the preferences of some member states such as the UK and the Netherlands changed in favor of stricter state aid rules in the 1980s, most member states were still reluctant to give significant powers to the Commission in this area (Brittan 1992, 90; Gilchrist and Deacon 1990, 33). Thus, they had to be “convinced” by the Commission and the member states that were willing to regulate state aids more strictly. Second, the state-centric approach does not account for the fact that there was no single decision by which member states granted more authority to the Commission until the Procedural Regulation of 1999. If the explanation for changes in state aid policy had been the convergence of member state interests, we would see a more clear and immediate change in state aid policy along with the decision to complete the single market. Changes in policy were much more gradual than this explanation would lead us to expect. Until 1999, the Commission carved out more room for itself to implement state aid policy by gradually expanding its autonomy and reach (Smith 1996). The Commission’s efforts to
expand its reach had already started prior to the 1980s, and have continued since, thus cannot be explained easily with the single market project.

Third, and finally, because of its focus on the member states as the main drivers of integration, this explanation cannot account for the evolution that the European institutions themselves went through in their efforts to shape the policy. For example, the Commission’s framing of the issue gradually shifted focus from state aid’s harmful effects on competition in the Community to its harmful effects on member state budgets, and more recently to its potential benefits for member states’ competitiveness. Along with the change in focus, some argue that the Commission’s attitude towards state aid has matured over the years, meaning that it became more legally and economically grounded (Hansen, van Ysendyck, and Zühlke 2004). The relationship between the European Commission and the Community courts (ECJ and the CFI) has also changed through the decades. Thus, the institutions themselves change and adapt to their surroundings through their interactions with one another, the member states and private actors, and this has significant implications for the evolution of the policy. A state-centric perspective misses this point.

In contrast with the state-centric perspective, neofunctionalist and institutionalist approaches emphasize the role of supranational institutions in furthering European integration. These approaches portray EU politics as a complex and pluralistic political process that is not firmly under member state control. In a seminal article, Pierson (1996) claims that when member states grant authority to supranational institutions, inevitably gaps emerge in member states’ control of the policy area. For instance, decision-makers with short time horizons may leave such gaps or issue density may create gaps as unintended consequences. Once such gaps emerge, Pierson claims, they are very difficult to correct because of sunk costs, the resistance from the European institutions, and obstacles to reform in the European Union’s decision-making process (Pierson 1996, 132-145).
Other strands of institutionalist research draw attention to how European institutions successfully set agendas and frame issues, and subsequently influence the integration process (Fligstein 2001; Hix 2002; Pollack 1997; Smyrl 1998). Compared to agenda-setting, issue framing is a more fluid mechanism by which actors can shape European integration. Framing refers to “the process of selecting, emphasizing and organizing aspects of complex issues according to an overriding evaluative or analytical criterion” (Daviter 2007, 654). Research on social movements and American public policy, for instance, investigates how political actors across institutions, social movements and interest groups try to control the prevailing images of the policy problem through the use of rhetoric, symbols and policy analysis (Baumgartner and Jones 1991; Rein and Schn 1993; Snow and Benford 1992; Tarrow 1998). Actors use frames strategically to legitimate certain decisions or to activate certain issues, actors and special types of knowledge (M 2000, 173-4; Sell and Prakash 2004). Frames help actors “to induce cooperation in others by convincing them that the course of action being proposed is in ‘everyone’s interest’” (Fligstein 2001, 266). According to Fligstein (2001), crises create an environment in which rules governing interactions are in a flux, and thus they provide institutional entrepreneurs the possibility to offer new frames. Baumgartner and Jones (1991) argue that framing of policy issues is most effective when there is a parallel shift in the institutional venue within which policies are made. Others argue that specific frames that fit or resonate with a master frame—a dominant frame held by various actors—are more likely to be adopted widely (Nylander 2001, 294; Snow and Benford 1992, 137).

Studies of the European Commission which draw on sociological institutionalism and constructivism have found framing to be an important mechanism by which the Commission has influenced policy choices in the EU. Wendon (1998) finds that the Commission’s reshaping of the dominant image of the EU’s social policy was crucial for influencing policy outcomes and expanding its own role in this area. On this occasion, the Commission was able to change the
dominant frame from one based on social rights to one that emphasizes how social policy contributes to stable economic growth and job creation. Nylander (2001) claims that the Commission succeeded in transforming the issue frame of liberalization of the electricity sector from one that emphasized the sector’s public utility function to one that emphasized neoliberal deregulation. The neoliberal deregulation frame was successful, Nylander argues, because of its fit with the Single Market master frame (Nylander 2001, 309). Others such as Mrth (2000) confirm the significance of issue framing for policy outcomes, while also pointing to the existence of competing frames within the DGs of the Commission.6

Building on these studies of the European Commission, I propose issue framing as a mechanism by which the European Commission has influenced the evolution of state aid policy. I argue that three factors influence the degree of Commission’s success in framing an issue and convincing the member states of this particular framing. First, the Commission’s framing of a particular issue is more likely to be successful if the frame fits with a broadly accepted interpretation of the problems that the Community is facing. Fligstein (2001, 266-7) argues that crisis situations prove a particularly fertile ground for new frames because of the fluidity of the social conditions.7 For instance, in the 1980s the Commission created the Single Market frame in response to the broadly perceived political and economic crises of the EEC (Fligstein 2001, Fligstein and Mara-Drita 1996). Hall (1993, 283-7) makes a similar argument on how the perceived economic crisis in the 1970s in Britain contributed to the shift from the dominant Keynesian paradigm to a monetarist economic paradigm. The new frame will be successful, then, to the extent that it fits with the generally accepted interpretation of the crisis, in other words, it is congruent with a more overarching frame in which the problem is perceived.

---

6 Cram’s (1994) work on the Commission has drawn attention to the fact that different DGs of the Commission hold different (and sometimes contending) perspectives in the same issue area.  
7 Goldstein and Keohane (1993) make a similar argument from a rationalist perspective. They argue that ideas can act as roadmaps or focal points when actors are uncertain about their interests or when there is no unique equilibrium solution to problems.
Second, an actor’s framing or reframing of an issue is more likely to be acceptable to other actors, the greater its experience and expertise in that issue area. Increasingly complex and technical problems force decision makers to turn to experts, or what some scholars refer to as “epistemic communities” (Haas 1992). The influence of such communities of experts varies between policy areas, with higher influence expected in “complex policies with high degree of uncertainty and technical content, in which interests are not self-evident, and policy constituencies are undefined and crosscutting” (Quaglia 2005, 547). These experts can help elucidate cause-and-effect relationships, shed light on the interlinkages between issues, limit the range of alternatives and help define self-interests of states (Haas 1992, 15-6). What legitimizes or authorizes these experts’ activities is their “professional training, prestige, and reputation for expertise in an area highly valued by society or elite decision makers” (Haas 1992, 17). These expert groups rely on “intangible assets” such as information and access to empirical data, technical knowledge, and an organizational culture which emphasizes a strong civil service ethos (Quaglia 2005, 547). Other scholars call “the ability to read environments, frame stories, and induce cooperation” a social skill which relies on the actor’s experience and expertise in that issue area (Fligstein 2001, 266). Therefore, as the Commission accumulates more experience and expertise in an issue area, its framing of the issue is more likely to convince other actors.

In addition to the characteristics of the issue frame and the perceived expertise of the institutional actor that is doing the framing, I argue that the preferences of the member states matter for the acceptance of the new framing. The Commission cannot go against the tide of all the member states. If all member states oppose the Commission’s new issue frame, the Commission does not have the power to shape policy as it likes. For the Commission’s framing to have an impact on policy outcomes, the Commission needs allies among the member states. Thus, framing is more likely to succeed in changing policies if there are a number of member states whose interests converge around the Commission’s preferred policies. From this perspective, we
would expect the Commission to make an effort to frame issues strategically when there are a few member states whose interests coincide with the Commission’s perspective. Under such conditions, the Commission’s framing will be more successful in convincing the member states the more closely the particular frame fits with the overarching discourses in the Community and the more expertise and experience the Community holds in that issue area.

In exploring the EU’s state aid policy from such a framework we expect the DG Competition to attempt to create a strategic issue frame if there are a few member states that support its policy position of strengthening state aid control. When some member states back its efforts, the Commission would be willing to play the role of the “institutional entrepreneur” and produce an issue frame in order to convince members with opposing or ambiguous policy positions (Fligstein 2001). The frame is more likely to resonate with the member states the more closely it fits with an overarching problem definition and the higher the Commission’s expertise in the area.

**State Aid Policy and the Commission**

Competition policy of the EU aims to prevent distortions to free trade in the single market. The legal basis for the policy can be found in Articles 81, 82 and 86 to 89 of the Treaty of the European Union (Articles 85-86 and 90-94 of the Treaty of Rome). The policy has two main objectives. The first is to deal with anti-competitive behavior of private firms. The second objective is to regulate uncompetitive behavior of member state governments, including state aid to industries and state owned enterprises. The Commission also examines mergers with a Community dimension to ensure that they do not impede competition in the internal market.

In the decade following the founding of the European Economic Community, competition policy became an essential part of the common market project. After all, “there was little to be gained from the removal of tariff barriers and quotas if having promoted the free operation of economic forces through the free movement of capital, goods, people and services, private companies were to engage in collusive and other anti-competitive activities” (McGowan and
Wilks 1995, 147). Following this logic the Commission gradually established a coherent regime regulating the anti-competitive practices of private firms. According to some observers, competition policy became the “first supranational policy” of the EEC (McGowan and Wilks 1995, X), being the sector in which the formal authority of the Commission and the Court is at its greatest (Andersen and Sitter 2006, 15).

The signatories to the Treaty of Rome recognized that in addition to private firms, member states may on occasion distort competition with public policies such as granting state aids and maintaining public monopolies.8 Thus, they included provisions in the Treaty to regulate these. In the area of state aid, the Treaty of Rome states that any aid granted by a member state which threatens to distort competition by favoring certain firms is incompatible with the common market (Article 87), and requires member states to notify the Commission of their plans to grant new aid (Article 88). The Commission, in turn, is required to keep all existing and new aid plans under review. The Treaty acknowledges that state aid might be a good thing on occasion, and thus Article 87 recognizes certain types of aid as compatible with the common market, such as aid to promote economic development in certain areas where the standard of living is below the community average, to promote the execution of a project of common European interest and to promote culture and heritage conservation.

In contrast with its activism in regulating the anti-competitive behavior of private firms, the Commission acted much more cautiously in tackling member states’ anti-competitive behavior. A strong tradition of state involvement in the economy and high levels of support to the industry in the post-World War II period meant that for most European countries industrial policy was a jealously guarded area of national autonomy (Webb and Sheldrake 1993). Consequently, member states were reluctant to subject national state aid to the Commission’s control and state aid policy gained the reputation of being the “Cinderella of the EU’s competition policy” (Bishop 1995,

---

8 The Spaak Report (1956, 57-9), precursor to the Treaty of Rome, identified state aid as a significant concern in the proposed common market.
cited in Cini and McGowan 1998, 158). In time, the Commission has expanded and consolidated its control over state aids, and state aid control is no longer considered a poor relative of anti-trust (Ehlermann and Atanasiu 2001, xxiii). In the rest of this section, I trace the developments that led to these changes in policy.

The Origins: 1960-1980

In the first decade of the European Economic Community, state aid control was slow to develop. During the 1960s, there were no general guidelines and no real debate with the member states on state aid and only two state aid cases were brought to the European Court of Justice (Ehlermann 1994, 413-15). Furthermore, the Commission’s attempts to introduce legislation on agricultural state aid by recourse to Article 89 failed twice (Ehlermann 1994, 414). State aid control became relevant for the Commission only in the late 1960s when the customs union was completed and even then, progress on the implementation of the Treaty rules on state aid was slow (Cini and McGowan 1998, 143).

The tide started to turn in the early 1970s when the Commission issued a communication suggesting a coordinated solution to the problem of regions outbidding each other to attract mobile investment projects. As early as in the 1960s, the Commission realized the potential for escalation of competition in subsidies, and set out to create a framework for coordinating regional aid (Wishlade 1999, 94). As United States and Japanese companies started locating in Europe (Commission 1993), there was a concern that member states would compete to attract them by offering state aid. The Commission responded to this perceived crisis situation by framing the regional aid issue in terms of avoiding a subsidy race which would be costly and which would work against the Community objective of closing the disparities between the Community’s regions. After a series of studies and a proposal from the Commission, the Council issued a

---

9 Article 94 of the Treaty of Rome (renumbered Article 89) allows the Council of Ministers to introduce procedural regulations on state aid based on a proposal from the Commission.
Resolution on Regional Aid which laid down core principles governing regional aid policy (Cini and McGowan 1998, 148).\textsuperscript{10} The Resolution established concepts such as maximum aid ceilings, principles such as regional specificity and transparency of regional aids.

The broad and vague wording of the state aid rules in the Treaty of Rome and the reluctance of the Council of Ministers to pass procedural regulations on state aid left a regulatory space for the Commission which it started to fill through the use of soft law (Cini 2001, 199). Starting with aid to clothes and textiles, the Commission went on to issue guidelines on state aid to coal and steel, regional aid and investment aid (Cini 2001, 199-200, Ehlermann 1994, 416-7). The European Court of Justice supported the Commission’s early efforts. In a landmark case in 1973, the Court reaffirmed the Commission’s right to demand repayment of state aid that it found to be incompatible with the common market.\textsuperscript{11} The Commission’s Philip Morris decision in 1979 and the subsequent Court judgment on the Philip Morris’ appeal were equally significant in terms of clarifying the definition of state aid and strengthening the hand of the Commission.\textsuperscript{12}

The developments in state aid policy through the 1970s, while significant for laying the foundations of the policy, did not result in a drastic expansion of Commission’s powers or a significant tightening of state aid control in the Community. The main obstacles for further developments in policy were the oil shocks and the ensuing economic recession of the 1970s. The recession ushered in a wave of industrial policy activism and made it difficult for the Commission to take concrete steps to tighten state aid control (Ehlermann 1994, 58). In the absence of support from the member states, the Commission was not able to push through significant changes in policy. Nonetheless, in the 1960s and the 1970s the Commission made its first attempts to clarify

\textsuperscript{10} The Treaty allows member states to grant aid to reduce the disparities between the richer and poorer regions of the Community as well as within their territories (Article 87(a) and (c)). The Community also provides funds towards reducing regional disparities through its Structural Funds program.


the definition of state aid and laid the foundations of the policy. It also sought to frame the issue of regional aid in response to increasing levels of foreign direct investment and member states’ competition for new investments. The Commission framed the issue in terms of avoiding a bidding war among the regions, which it argued would widen the disparities between the rich and the poor regions of the Community (Cini and McGowan 1998, 148). This framing was important for drawing member states attention and triggering some activity in this area, but was only partly successful at this time. The Commission was only beginning to acquire expertise on state aids, and the member states were not particularly receptive to the proposal of establishing strict control over state aid.

**Acceleration: state aid policy in the 1980s**

The 1980s marked a watershed in the evolution of the state aid policy. The judgment of the European Court of Justice in the Philip Morris case, which supported Commission’s interpretation of what constitutes distortion of competition in state aid cases, boosted the Commission’s confidence. It took the Commission a few more years to act on this new-found self-confidence. In 1983, the Commission communicated to the member states its intention to order recovery of aid that it deemed illegal, clarifying an issue which the Court had decided in favor of it 10 years ago. The fact that the Commission took so long to act on the ECJ’s decision could be attributed to its caution when it did not have strong support from the member states for the policies it advocated. According to Smith (1998), the Commission intended to enforce the recovery of illegal aid so as to gradually increase the deterrent effect of state aid control. If illegal aid could not be recovered from the recipients, the Commission’s monitoring of member state aid would have lost its credibility (Marinas 2005, 17). Only a year after its communication to the member states, the Commission insisted on the full recovery of state aid to a Belgian company (Smith 1998, 64-5).

In the course of the 1980s, recovery orders became frequent Commission practice. The ECJ
firmly backed the Commission's approach by stating that recovery is the logical consequence of the finding that an aid was unlawfully granted (Schaub 1996). In its recovery policy, the Commission concentrated its efforts on big cases like Renault and Peugeot (1988), Alfa Romeo (1989) and British Aerospace/Rover (1993). An emphasis on large cases allowed the Commission to devote its scarce resources to cases that could have a significant impact. The Commission’s struggle to get France to recover $640 million in state aid from Renault, for example, became a symbol of the Commission’s bid to assert more effective control over state aid (The Economist 1989; Renaux 1989). Commission officials also note that the Competition Commissioners thrive on opportunities to investigate big cases, as they increase the visibility of the policy. Over time, the possibility that aid found to be incompatible with the Treaty would be recovered increased the member states’ incentives to consider Commission’s requirements earlier in the process (Smith 1998, 65).

The major boost to DG Competition’s efforts to improve state aid control came from other developments in the Community. In the early 1980s, the Community faced an economic crisis as the member state economies experienced sluggish growth. It also faced political and institutional crises as the UK threatened to pull out of the Community due to budget negotiations (Dinan 2005, 81-85). Within the European Commission and the European Parliament, there was a search for ways to resurrect the process of economic integration, which culminated in the mid-1980s in the launch of the single market project. Some member states, groups in the European Parliament, and transnational European businesses supported the Commission in its efforts to launch the single market project (Sandholtz and Zysman 1989).

The project to complete the single market provided the opportunity for the Commission and in particular the DG Competition to push forward on the issue of state aids. The Commission’s *White Paper on Completing the Single Market* outlined the measures that the member states

---

13 Author’s interview with DG Competition official. March 2004.
needed to take in order to complete the single market (Commission 1985). The *White Paper* posited that a strong competition policy would play a fundamental role in maintaining and strengthening the internal market. The Commission emphasized that “it will be particularly important that the Community discipline on state aids be rigorously enforced” as the Community sought to complete the internal market (Commission 1985, para.158). The Commission reasoned that state aids not only distorted competition, but also undermined the efforts to increase European competitiveness in the long run. According to the *White Paper* state aids represent a drain on public resources and threaten to defeat efforts to build the internal market. (Commission 1985, para.159).

In 1985, the newly appointed Competition Commissioner Peter Sutherland established a Task Force on State Aids (Cini and McGowan 1998, 145). The Task Force started to review all member state aid in the Community in order to provide a better estimate of the volume and trends of state aid. The initial set of findings was published in 1988 as the *First Survey of State Aids in the European Community* (Commission 1988b). The *Survey* demonstrated the extent of state aid in the member states: on average, aid represented 3% of the GDP and 10% of government expenditures in the member states, but in some member states the figure went up to 5% of the GDP and 19% of government expenditure (Commission 1988, 3). The Commission pointed out that state aid to enterprises exceeded the revenue generated from the direct taxation of companies (3% as opposed to 2.3% of GDP). In addition to drawing attention to the sheer volume of state aid, the *Survey* reiterated the *White Paper*’s warning about the competition-distortive effects of state aids in the internal market. The *Survey* also pointed, as the Commission did previously about regional aid, to the danger that member states could engage in competitive bidding in state aid, and thus cancel each other’s aid efforts. Two additional Commission reports published around the same time, the Padoa-Schioppa *Report on Efficiency, Stability and Equity* and the Cecchini Report *European Challenge- 1992* reinforced the importance of state aid control within the
internal market (Commission 1988, 1).

The findings of the Survey and the emphasis on state aid in the Commission reports in preparation for the single market led to a reevaluation of state aid policy. Sir Leon Brittan, who became Peter Sutherland’s successor as the Commission president, identified priority areas for state aid policy and sought to increase the effectiveness of the policy by focusing the scarce resources of the DG Competition on the most distortive types of aid (Cini and McGowan 1998, 145). Brittan also emphasized the need for transparency in state aid, both on the part of the member states in their aid and reporting policies, and on the part of the Commission in its criteria in assessing state aid cases (Brittan 1992, 90-1).

By the end of the 1980s, the Commission had identified some of the major problems in state aid control, had an estimate of how widely the member states granted state aid, and was ready to push for better enforcement of the state aid rules of the Treaty. Yet, it could not have achieved major improvements in state aid control without the support of certain member states. In the 1980s, some member states, particularly the UK, the Netherlands and Denmark begun to support stricter Commission control over state aids. In both the UK and the Netherlands, support for a tighter state aid policy stemmed from budgetary pressures and economically conservative ideologies. In all three countries, there was a shift in public policies away from state aid because the policy of granting large scale state aid to failing companies pursued in the previous decades was perceived to be a failure.¹⁴

Britain was in fact the staunchest supporter of tighter state aid rules (Thomsen and Woolcock 1993, 75) and helped ensure a succession of relatively liberal Commissioners of Competition since the 1980s.¹⁵ For instance, Thatcher appointed Sir Leon Brittan as the UK Commissioner responsible for the competition portfolio in late 1988 with the understanding that he would

---

¹⁴ Author’s interviews with Commission and member state officials. March and June 2004.
¹⁵ Author’s interview with member state official. Brussels, July 2006.
rigorously pursue reductions in state aid through the Community (Smith 2000). Smith (2000) argues that British government supported tighter state aid rules partly because state aid control from Brussels made it easier for the government to resist domestic pressures to rescue failing firms with state aid.

While these member states allied with the Commission and supported tighter state aid control, the reluctant member states, or those with ambiguous preferences needed to be convinced. Brittan argued that this could be done only by force of argument (Brittan 1992, 85), and in fact, that is what the Commission tried to do throughout the decade. It forcefully and repeatedly argued that state aids would have a larger distortive effect in an internal market without borders. This did not prove easy, as many French, Italian and Spanish politicians argued that state planning and subsidies ought to continue if European industry was to survive the global competition (Kapstein 1989). The French and Italian governments also challenged the Commission’s framing by arguing that the EC lacked a coherent policy towards industry (Guilford 1990; Renaux 1989). Over time, however, their discourse over state aid started to gradually shift towards the Commission’s issue frame. By the beginning of the 1990s, the Commission seemed to be “winning the argument that a reinforced state-aid policy is necessary for the Single Market” (Brittan 1992, 91). According to the Business Week magazine “subsidy” came to be a dirty word as a consequence of increased Commission attention to state aids through the decade (Kapstein 1989).

Maturation of the Policy: the 1990s

The 1990s marked the maturation of state aid policy in the Community. Overall aid levels in the member states, which had started to decline in the 1980s kept their downward trend (Commission, various years). The Commission also began to tackle the issue of notification and recovery of illegal aid much more forcefully. The developments in the policy and the expansion of powers of the Commission culminated at the end of the decade in the Council Regulation of 1999, which clarified and codified the powers of the Commission in implementing the policy.
Observers of the DG Competition argue that the 1990s marked a gradual shift from soft law to hard law in the area of state aids (Blauberger 2008; Cini 2001). I argue that these changes took place within the background of the single market and the pending EMU, which provided the Commission with the means to update its framing of the state aid issue and convince the member states of the need for a tight state aid policy.

The expansion of Commission’s powers of implementation through the decade is surprising given the interaction between the member states and the Commission early in the decade. In 1990, the Italian Council presidency proposed to the Council of Ministers a procedural legislation on the implementation of state aid policy under Article 89 of the Treaty. The Commission had asked the Council more than once in the 1960s to pass procedural regulations under this article in order to clarify its implementation powers and had failed. The Commission had then set out to fill the legislative void with soft law (Cini 2001). In 1990, the Commission perceived the Italian governments’ proposal as an attempt to weaken state aid control by involving member states more deeply with state aid regulation (Blauberger 2008, 20). In a letter sent to the other EC members, the Italian Industry Minister argued that the European Commission’s approach to state aids was haphazard and failed to take into account wider industrial policy aims, including competition with non-European companies (Smith 2001, 220-1; Wolf 1990a). The Competition Commissioner Leon Brittan rejected the Italian Minister’s proposal citing the importance of maintaining the separation of powers between the Commission and the Council established in the Treaty (Smith 2001, 221). While France also frequently criticized the Commission’s tough stance towards state aid, when the Italian Minister of Industry brought the proposal to the Council, only Spain and Belgium supported his position (Wolf 1990b). The proposal was shelved in return for promises from Brittan to better inform the member states of developments in state aid policy. The stand-off between the Commission and the Council demonstrated the increased power and self-confidence of the Commission’s DG Competition. It also demonstrated that there was no
consensus among the member states on a state aid policy different from the one developed by the Commission (Ehlermann 1994, 70).

Other developments were much more positive for DG Competition. Early in the decade, the DG flexed its muscles by bringing into line two member states opposing its proposal for the Community Framework on State Aid to the Motor Vehicle Industry (Cini 2001, 201-2). The Commission had been increasingly concerned with the massive aids granted to the motor vehicle industry and the excess production capacity in the sector in the 1980s. In December 1988, it decided to adopt a set of guidelines to monitor state aid more closely in this sector. All member states accepted the Commission’s framework with the exception of Germany and Spain, both of which opposed due to industrial policy implications (Cini 2001, 201). DG Competition took a tough line with both countries, essentially threatening to open a procedure which would make all new state aid in these countries that fell under this Framework illegal. By 1990, both countries had given in to pressure. Cini (2001, 202) argues that this showed that the Commission was now prepared to use more formal legal instruments at its disposal to impose its guidelines on reluctant member states, but notes that the Commission needs the political weight of the consenting member states behind it to justify this more heavy-handed approach. The Commission would not have been able to push through the Guidelines had it not gotten the support of all the member states other than Germany and Spain, as it can “only implement a policy if there is a certain acceptance in the public and among the governments”.

An early boost to the Commission’s powers in the recovery of illegal state aid came in 1990 with the Court decision in the Boussac case. In its decision against France in this case, the Commission attempted to establish the principle that aid not notified to the Commission would automatically be declared illegal and would need to be repaid. This was part of its ongoing efforts

16 Author’s interview with Commission official. March 2004.

to deal with the non-notification of aid. The Court ruled that the Commission could not automatically declare non-notified aid as illegal; it still had to review the aid’s compatibility with the Treaty. However, the Court went on to say that if the member state granted the aid before the Commission concluded its investigation on the proposed aid, the Commission could issue an interim decision ordering the member state to suspend further payment.18 In 1995, the Commission went a step further and announced that it may adopt an interim decision ordering the Member State to recover any amounts which have been disbursed in infringement of the Treaty and thus gave practical meaning to a suspension order when the aid was already paid in full (Schaub 1996). Through these gradual developments, the Commission achieved a more strict notification discipline and more effective recovery of aid granted in breach of the Treaty.

Despite resisting the Italian government’s efforts earlier in the decade, the Commission itself proposed Council action in 1996 to adopt secondary legislation on state aid. Smith (2001, 221) argues that the Commission’s request should not be interpreted as a retreat from its earlier position and a capitulation to member state pressures. Rather, the Commission sought to adapt to significant changes in its policy environment through the decade. The content of the proposal, which the Commission and the Council finally agreed on in 1998, support this view. The Council Regulation on state aid which went into effect in 1999 (EC 659/1999) clarified and expanded the Commission’s implementation powers, and limited the role of the third parties in state aid cases.

The Commission has encouraged private actors to bring up complaints about competitor companies to itself and to the national courts as a way of gathering more information, gaining private sector allies in state aid cases and enlisting the national courts to help control non-notified aid. However, increased involvement of private actors in state aid cases also complicated the

---

18 Schaub (1996) argues that the prohibition of granting aid before the Commission takes its decision has direct effect, which means that individuals may invoke an infringement of this obligation before a national Court. Thus, the national Courts also come to play a role in preserving the rights of individuals faced with potentially illegal state aid until the final decision of the Commission.
Commission’s tasks. One consequence of increased private actor involvement was a rise in the number of state aid cases that demanded Commission’s attention, and a second one was that private actors increasingly took their cases to the Court of Justice and the Court of First Instance in cases where they felt that the Commission did not fully investigate the state aid in question. The Courts seemed open to hearing cases against Commission’s state aid decisions and in time, they forced the Commission to become more transparent in its criteria in judging state aid. Thus, Smith (2001) argues, what initially was a boon to the Commission’s implementation efforts over time started to constrain its actions.

The Commission’s proposed legislation clarified and coded its powers in state aid cases partly in response to these developments.\(^{19}\) A first regulation agreed in 1998 in the Council, the so-called enabling regulation, gave the Commission the authority to exempt categories of aid from notification requirements (such as aid below a certain threshold), thus relieving it of the burden to investigate the compatibility of these aids and allowing it to focus on bigger cases (Cini 2001, 202). The 1999 Council Regulation codified the principle that decisions on state aid cases are bilateral matters between the European Commission and the member states (Smith 2001, 233). This sought to limit the rights of third parties which Court decisions had started to expand through the 1990s. The Regulation granted the DG Competition enhanced powers to enforce state aid decisions, such as the right to issue ‘information injuctions’ when the government does not supply information needed in a state aid case. It also gave DG Competition officials powers to conduct on-site investigations to company headquarters when it suspects non-compliance.

The two Council regulations adopted at the end of the 1990s are the culmination of the Commission’s sustained efforts to streamline state aid in the Community. In its efforts to tighten

---

\(^{19}\) Thomas (2000, 119) cites a member state representative who argues that after the *Sytraval* decision of the European Court of Justice, the Commission worried that the Courts would take a bigger hand in defining state aid procedures, so it sought a Council regulation to codify its practices. The representative further argues that the Commission was seeking to minimize third-party intervention which threatened to clog up the process, much as it is felt to do in anti-trust cases.
state aid control, the Commission got the support of its traditional member state allies, the UK, the Netherlands and Denmark, which believed that strict state aid control was in their interest. Others also joined in this coalition, as the Community expanded in 1995. Sweden had reduced state aid to industries even before it joined the Union, mostly as a reaction to the governments’ failed attempts in the 1970s and the early 1980s to save failing firms with massive subsidies. Finland supported strict state aid rules to industry within the EU for similar reasons, although it grants high levels of agricultural aid. These member states supported the Commission’s efforts to establish more discipline over member state aid to industries.

Member states that did not wholeheartedly support a rigorous state aid regime needed to be persuaded by force of argument. In the mid to late 1980s the Commission had convinced the member states by framing the state aid issue in relation to the single market project. This was successful in the sense that it raised the awareness of the issue and created a sense of urgency for pushing through changes in state aid policy. It had, for example, persuaded most member states on the necessity of recovering illegal state aid from companies. The Commission continued to refer to the significance of state aid control for the single market through the 1990s, but it also needed a reinforced issue frame to push for further changes in policy. The program launched with the Maastricht Treaty to complete the Economic and Monetary Union gave the Commission this opportunity.

Member states agreed to achieve monetary integration with a three-stage approach through the 1990s with the adoption of the European currency as the end goal. They also set up the convergence criteria which required the participating member states to reduce public deficits and get public expenditures under control. DG Competition seized this opportunity to push the agenda of reducing member state aid. In its annual competition reports and state aid surveys, it emphasized the need for an increasingly effective state aid policy in light of the completion of the

---

20 Author’s interview with member states permanent representatives. June 2004.
single market and the approaching economic and monetary union (Commission 1995; 1998; 1999). It cited the budgetary burden of state aid and pursued the objective of reducing member state spending on aid (Commission 1995, 18). In the words of a Commission official, the Commission tried “to put pressure on the member states and tried to educate them to make aid projects more cost effective.”

DG Competition’s efforts to reinforce the issue frame by referring to economic and monetary union resonated with the member states. Member states under budgetary strains found the Commission’s framing both convincing and congruent with their interests. In the words of a member state representative working on state aid,

It started from the Treasury’s interest in bringing down government spending. It is not necessarily directed to state aid per se, but a general policy of bringing down state spending. And one of the things that you can do to bring it down is to get rid of spending like subsidies…Finance ministers have a different appreciation of this. They want to get things done efficiently. And if you can’t convince your colleagues at home, then the second best thing is to get European regulation tighter to achieve the same objective. And there is still a massive amount of state aid as percentage of GDP, and big figures always attract the attention of Finance Ministers.

Thus, the Commission’s framing of the state aid issue in terms of its budgetary consequences resonated with some domestic actors in the member states. According to another member state representative, his government started to take a better attitude towards using resources. He argued that they did this not only for budgetary reasons; they were “also convinced that this is the right way.” The Commission’s new framing of the state aid issue in the 1990s started to change practices and attitudes towards state aid in the reluctant member states.

Modernization of the Policy: the 2000s

In the 1990s, state aid policy matured into a supranational policy area with increased implementation powers for the Commission. The Commission’s state aid case load multiplied

---

21 Author’s interview with Commission official, April 2004.
22 Author’s interview with member state representative. June 2006.
23 Author’s interview with member state representative. July 2004.
from 217 cases in 1983 to over 800 in 1997 (Bilal and Polmans 1999, 66) and aid levels in the member states continued their steady decline. Yet, there were many areas of state aid control that the Commission still wanted to improve. For instance, while aid levels showed a decline they still remained too high from the Commission’s perspective. Moreover, the Commission sought to convince the member states to refrain from the most distortive types of state aid, which is sectoral, ad hoc aid to companies, and instead allocate most of their aid for horizontal objectives. Non-notification was still a problem and the recovery of illegal aid, especially in the case of reluctant member states, took too long (Commission 2000; 2001; Marinas 2005).  

In light of these problem areas, the Commission made renewed efforts in the 2000s to tighten state aid regulation. Its motto became “less and better targeted” state aid, which reflected its dual aims of reducing aid levels and redirecting aid to objectives which it deemed to be compatible with the single market. The Commission’s program to reduce and redirect state aid followed directly from the Council decisions in the early 2000s. At the Stockholm Summit in 2001, the member states concluded that “the level of state aids in the European Union must be reduced and the system made more transparent” (European Council 2001, para. 20, 21). They specifically set themselves the target of reducing state aid as percentage of GDP by 2003, taking into account the need to redirect state aid towards horizontal objectives of common interest. The Barcelona Summit a year later reiterated these commitments. Since then, member states have repeated their commitments and adopted more detailed and specific conclusions on state aid issues in the various European Council summits as well as in the Industry Council (Commission 2003).  

The push for a renewed commitment to state aid policy goals came from the same group of member states that pushed for tighter rules in the 1980s and 1990s, namely Britain, the Netherlands, Denmark and the two newer member states, Sweden and Finland. It is not surprising that the Swedish presidency brought the issue of state aids to the European Council in 2001. This

24 An official told the Financial Times that the Commission has never been able to recover aid from Germany more quickly than eight years (Tucker 1998).
group of member states supported a reduction in state aid to particular sectors and the redirection of aid to horizontal objectives such as R&D, environment and small businesses. These member states preferred horizontal state aids over ad hoc sectoral aids, because they had long given up on granting sectoral state aid. Yet, such policies were only reluctantly supported by some other member states, notably France and Germany, which had to be convinced by the DG Competition and the coalition of the member states in favor of state aid control.

DG Competition couched its arguments in favor of less and better targeted state aid in terms of the Lisbon Strategy. In the Lisbon Summit in 2000, the European Council produced an overall goal for the EU in order to inject new life into economic integration (Dinan 2005, 389). The Lisbon Agenda, as the set of agreed-upon targets came to be called, was a response to the perceived weakness of the European economy and crisis in the welfare states of the EU members in the late 1990s. European political and business leaders as well as labor groups appreciated the necessity of boosting productivity in order to become more competitive and to translate growth and competitiveness into more and better jobs (Dinan 2005, 388). Thus, the member states set the strategic goal for the next decade at the Lisbon summit “to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion” (Council of the EU 2000).

DG Competition followed the argument and the set of goals agreed in the Lisbon summit to reframe the issue of state aid. The Commission’s 2005 Report on Competition Policy is representative in this regard. Neelie Kroes, the current competition Commissioner argues in the foreword to the report that “State aid control has one essential and overarching purpose—to guarantee that companies can compete on a level playing field—because open and free competition is the best way to drive economic efficiency, productivity and innovation… When state subsidies are used intelligently to fill clearly identified gaps, they can deliver sizeable spin-offs — for citizens, for consumers, for companies, for Europe’s overall competitiveness, for
social and regional cohesion, for public services, for sustainable growth and for cultural diversity” (Commission 2005, 4). In this and other reports, as well as the speeches of DG Competition officials, the Commission increasingly portrays the objectives of state aid regime “less and better targeted state aid” as a policy that can deliver various positive results in line with the Lisbon objectives. By repeated references to competitiveness, innovation, productivity and growth, DG Competition reinforces a particular framing of the state aid issue in line with the Lisbon strategy.

This frame resonates with most of the member states that are deeply concerned with the competitiveness of their economies. A member state representative explains the sources of changes in the attitudes of the member states

State aid is such a thing that it can be good if it is well implemented. But if not well implemented, it could actually be one of the worst ways of targeting development and competitiveness…EU governments probably realize that state aid can be a step back from the overall goods of jobs growth and competitiveness. And the Commission and the member states are currently obsessed with that.

The Commission’s issue frame seems to have deeply influenced how the member states think and talk about state aids. Another member state official, in describing the main goals of state aid in his country, describes the objectives as “being in line with the Lisbon Agenda…We think, for instance, that R&D aid is by nature good aid, because it contributes to the Lisbon goals.”25 The representative of another member state that has traditionally opposed the Commission’s efforts to tighten state aid policy refers to the twin pressures of budgetary restraint and competitiveness as incentives to rationalize his country’s approach in this area.26 The current objectives of state aid policy are so deeply accepted, another member state official argues, that “it is like motherhood and apple pie. Everybody likes them. All member states say that they want to reduce and redirect

25 Author’s interview with member state representative. July 2006. 
26 Author’s interview with member state representative. June 2006.
aid. Nobody will say ‘we want more aid’ at this point”.  

Another way in which the Commission sought to change the member states’ attitudes towards state aid was to encourage a more transparent and open dialogue on state aid policy. In 2001, it created the online State Aid Scoreboard to replace the previous Surveys on State Aid. The Scoreboard presents data on the levels and objectives of member state aid with a shorter time lag than the previous Surveys. The Scoreboard not only increased transparency, but also allowed the member states to “name and shame” those member states that have high levels of state aid, as even ministers started quoting the Scoreboard in the meetings of the Council of the EU.  

An interesting consequence of the move toward greater transparency and openness was the increased willingness of the ministers and policy-makers to discuss state aid issues more openly. A Commission official discusses the changing attitudes towards state aid policy:

There is an increasing openness on the part of the member states to discuss the effectiveness of different types of aid in securing the types of policy objectives you are looking for. Five years ago even, if the Commission started asking “does aid work?” we would have been very firmly told to shut up, “that’s none of your business. Your concern should be the effect of aid on competition”…Today the debate has moved on quite substantially. Member states are now exchanging information informally and cooperatively on different aid schemes, have they worked, what are their effects, what might be the alternatives which are more efficient.

These changing attitudes in the member states show that the Commission was at least partly successful in its efforts to frame the debate about the effectiveness of state aid. Member states have gradually moved away from questioning Commission’s authority to regulate state aid towards questioning the effectiveness of aid for achieving their common concerns.  

It is important to note that the Commission’s new issue frame does not go unchallenged, even when there seems to be a general acceptance among the member states on the necessity of reducing and reorienting state aid. As the finance minister and then the President of France,

---

27 Author’s interview with member state representative, July 2004.
Sarkozy frequently spoke against the Commission’s approach towards state aid (Bennhold 2004; Buck, Thornhill, and Bounds 2007). He called on other EU member states, especially Germany, to support the creation of Euro-champions with the help of industrial policy. Similarly, German governments advocated a more active EU industrial policy, which would clash with the objectives of the state aid policy (Smith 2005). Based on these ideas, public and private actors in France and Germany tried to construct an alternative framing of state aid control. Their alternative frame suggests that state aid and more broadly competition policy needs to take into account the broader global context. By adhering to strict state aid rules, they argue, the EU member states risk losing investment to other countries where governments are free to grant subsidies.

This alternative frame raised a serious challenge to DG Competition, because it raised legitimate concerns about the long term competitiveness of the European economies, the core concern of its own issue frame. However, DG Competition stood firm. After all, a large majority of the member states, as well as public and private actors still expressed support for the objective of less and better targeted aid (Commission 2006, 6). The Commission tried to win against this alternative framing by force of argument. The Commission held that companies were only marginally influenced by state aid in their location decisions and thus state aid rules did not impede investment in Europe (Kroes 2007). The Commission also tried to debunk the alternative frame by noting that 45% of world’s foreign direct investments locate in the EU and suggested that “it is a myth that state aid control stands in the way of these investment” (Ungerer 2008). The Commission’s framing also carries the force of the DG Competition’s expertise and legitimacy in this field, as by now it is a well-respected Brussels bureaucracy employing hundreds of experts.

As DG Competition tried to shape member states’ preferences on state aid, it also evolved in

---

30 See position papers reacting to the Commission’s State Aid Action Plan from various public and private actors in these countries. Available from: http://ec.europa.eu/comm/competition/state_aid/reform/comments_saap/index.html
its interaction with the member states, other European institutions and non-state actors. DG Competition’s evolution and adaptation to its environment is evident from the increasingly economic approach and rhetoric that it has adopted in state aid policy. DG Competition has long been criticized for not being precise and rigorous enough in its criteria for assessing the compatibility of state aid (Friederiszick, Röller, and Verouden 2006; Hansen, van Ysendyck, and Zühlke 2004). The judgments of the ECJ and the Court of First Instance have pushed the Commission to revise its approach. The Commission responded to these criticisms by launching the State Aid Action Plan in 2005 (Commission 2005). It issued a consultation document in which it outlined the areas where reform was needed and what it proposed to do to achieve a more rigorous and economics-based approach to state aid control. Again, the reform agenda made references to the broader issue frame that the DG Competition has adopted: “To best contribute to the re-launched Lisbon Strategy for growth and jobs, the Commission will, when relevant, strengthen its economic approach to State aid analysis. An economic approach is an instrument to better focus and target certain state aid towards the objectives of the re-launched Lisbon Strategy” (Commission 2005, para. 21, emphasis in original). After consultations with the member states and representatives of economic and social interests, the Commission started its work on this reform of state aid policy. The effects are increasingly apparent in the rhetoric of DG Competition, as terms such as “market failure,” and “spin-offs” have become buzzwords in its attempts to reframe the objectives of state aid. The practical implications of the new refined economic approach remain to be seen.

Conclusion

This paper explores the evolution of state aid policy in the European Union. As the empirical analysis in this paper demonstrates, the Commission’s formal and informal powers to implement the state aid rules and its autonomy from the member states has increased significantly through the decades since the founding of the European Economic Community. One can argue from a
state-centric perspective that changes in policy were driven by the economic necessities of creating a market without internal borders. Thus, when the member states decided to integrate their economies further, they also decided to grant more powers to the Commission to pursue a stricter state aid regime.

This explanation is not entirely satisfactory. It does not account for the piecemeal, gradual nature of the changes in policy. It also leaves unexplained how the member states came to see state aid policy as an integral part of achieving the single market, the economic and monetary union and a competitive economy. State aid regulation is not an integral part of the single market program. In fact, the inclusion of state aid policy among the competition rules of the Treaty of Rome (and the Treaty of Paris establishing the European Coal and Steel Community prior to that) is extraordinary, since no international economic agreement included state aid control up until then. Fox (2002, 94) argues that no inherent link exists between state aid and the distortion of competition to justify the inclusion of state aid control in competition policy. In fact, considerable disagreement exists around the world on the meaning of “competition” and the objectives of competition policy. In most federal states subnational governments’ aid policies are not regulated, recent exceptions being Canada and Australia (Thomas 2007). Considerable debate occurs within federal states on the merits of regulating subnational governments’ subsidies and no clear consensus exists on whether such regulation is desirable (Peters and Fisher 2004). Thus we should not assume that state aid control necessarily and automatically follows from the efforts to create an integrated market.

I argue that state aid control came to be seen as an integral part of the single market project due to the Commission’s strategic issue framing. The Commission, and in particular the DG Competition acting as an institutional entrepreneur defined and interpreted state aid control as a priority for the competition policy of the EEC within the single market program. It repeatedly emphasized the negative effects of state aids in an integrated market and drew attention to the
state aid issue through various surveys, reports and speeches. What was essential for the DG Competition’s successful framing of the issue was that a number of member states were willing to support the Commission’s viewpoint. Without the backing of a core group of member states, it is unlikely that the Commission would be able to push through many changes in state aid policy.

The argument that the Commission’s framing influenced member state preferences and eventually the state aid policy raises further questions. Where do new frames come from and how does one frame win over other frames? I argue that the success of a particular frame depends on two factors: that the frame resonates with broadly accepted definitions of the problems that the actors are facing and that the actor proposing the frame is perceived to have experience and expertise in the issue area. The argument here is that the Commission was successful in framing the state aid issue at particular times in the 1980s, 1990s and early 2000s because its frame addressed the particular problems and broadly agreed solutions that the Community was grappling with. If necessary, DG Competition revised and reinforced with its frame to better resonate with the broader frames. Furthermore, it was successful in framing the issue convincingly when the member states (and other EU institutions) perceived it to have the expertise and the experience to tackle the issue. When the Commission’s expertise was questioned by other actors, the Commission adapted to the situation by reforming its approach, as it did with the State Aid Action Plan.

I analyze four periods in the evolution of state aid policy: from Treaty of Rome to the 1980, the 1980s, the 1990s and the 2000s. The first of these is the relatively dormant period for state aid policy, yet even during this period the analysis illustrates that DG Competition and the ECJ gradually developed the basic concepts and definitions of state aid. During this period, the Commission lacks the power, expertise and the support of at least a few member states that was needed to apply state aid rules against reluctant member states. The 1980s, the second period I analyze, witnessed the beginning of the Commission’s greater efforts to strengthen the policy.
The 1985 *White Paper on Completing the Single Market* was one of the first Commission attempts to draw attention to the issue of state aids in connection with the single market. The subsequent publication of the *First Survey on State Aid in the European Community* (1988a) and other reports by the Commission also drew attention to the volume of subsidies in the Community.

In the 1990s, the Commission tackled member state aid much more directly and started consolidating the rules on state aid. Throughout the period, its framing of the subsidy issue was also shifting towards a concern with budgetary restraints on the member states to meet the Maastricht convergence criteria. In 1999, the Council adopted the much-awaited Regulation on State Aid which clarified and strengthened the Commission’s powers to investigate state aid cases. Finally, the 2000s marked renewed interest in state aid policy on the part of the member states. During this period, the Commission emphasized the important role that state aid control can play in achieving the Lisbon Agenda of making the European economy the most competitive in the world. Hence, the Commission encouraged the member states to rethink their state aid strategies (“less and better targeted state aid”) to increase the competitiveness of their economies. Thus, I argue that the Commission’s efforts were crucial in convincing the member states that a strong state aid policy coincided with their interest in completing the single market in the 1980s and 1990s, reducing public expenditures in the 1990s and creating a competitive European economy in the 2000s.

It remains to be seen whether and how the 2008 financial crisis will influence the Commission’s current policy frame. The crisis is likely to transform the relationship between states and markets in Europe and to generate pressures for change in the Commission’s existing state aid issue frame. The crisis has spurred a new wave of government activism in the EU member states which is not limited to the rescue of failing banks but includes measures such as
the recently announced government support plans for the auto industry. As evidence by the controversy between the French government and the Commission over the French state aid to Renault and Peugeot, the Commission intends to stand firm to prevent the EU’s state aid regime from crumbling down under protectionist pressures (Tait, Hall, and Hollinger 2009). It seems that the Commission has governments and private sector allies on its side in this effort (Schäfer and Milne 2009).

The paper makes a theoretical contribution to our understanding of how European institutions affect the policy-making process. It offers a detailed account of how EU institutions can shape policies through gradual, piecemeal efforts over time. The concept of issue framing proves particularly useful, as it helps us identify an informal mechanism through which the supranational European institutions influence the integration process. The paper also contributes to our understanding of state aid policy, which has become increasingly significant for the member states and the European Commission. The growing salience of the EU’s state aid policy is evidenced by the numerous workshops organized at universities and research centers on state aid law and policy. These workshops bring together experts from academia and practice, such as lawyers, economists and Commission officials, and contribute to strengthening a transnational community of state aid experts. The paper thus makes a timely contribution to the institutional factors behind the evolution of the policy.

The analysis in this paper raises questions for further research in this area. The paper identifies how DG Competition has been able to strategically frame the state aid issue in terms of the broader crisis definitions in the EU. In other words, DG Competition’s framing fits in with the master frames in the Community at the time, and thus draws legitimacy from them. It is also possible that the DG Competition in its efforts to frame the state aid issue contributes to the

---

31 The US, French, Spanish, German and British governments have announced state support to car manufacturers in the first few months of 2009 (BBC News 2009a, 2009b; Mallet 2009; Tait, Hall, and Hollinger 2009).
master frame of “the single market”, “economic and monetary union” or the issue of “competitiveness” as emphasized in the Lisbon Agenda. Future research could address how DG Competition, being one of the most neoliberal DGs in the Commission (McGowan and Cini 1999, 178), contributes to and shapes these broader issue frames.
References


39


