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THE POLITICISING DEREGULATION

*****DRAFT VERSION *****

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ABSTRACT:

WITH THE NEW APPROACH TO TECHNICAL HARMONISATION, A DISTINCTION HAS BEEN DRAWN BETWEEN A POLITICAL PROCESS — IN WHICH LEGISLATION IS NEGOTIATED AND ADOPTED — AND A 'TECHNICAL' PROCESS, IN WHICH FRAMEWORK DIRECTIVES ARE FILLED OUT. THIS DISTINCTION, HOWEVER, IS CONTESTED AND MAY BE DIFFICULT TO UPHOLD. IN TECHNICAL STANDARDISATION A NON-POLITICAL YET POLITICAL AREA IS DEVELOPING, IN WHICH PRIVATE COMPANIES COMPETE WITH ANOTHER AND WITH OTHER INTERESTS IN SHAPING RULES FOR THE SINGLE EUROPEAN MARKET. HOW THESE NEW CHALLENGES AND OPPORTUNITIES AFFECT THE CONSTITUTION OF PRIVATE COMPANY IS EXPOUNDED WITHA CASE STUDY OF THE DAIMLER-BENZ GROUP.

THE POLITICISING DEREGULATION

– PRIVATE COMPANIES AND THE CONSTRUCTION OF THE SINGLE EUROPEAN MARKET
BY CHRISTIAN FRANKEL

What is the political? This basic concept of political science is tricky and widely discussed. In its most simple definition, it must rest on a distinction from the non-political. Hence one can categorise various discourses, statements, activities etc.: it may e.g. be considered non-political to walk down the street, but political to take part in a demonstration. And it may be considered political to set general conditions for transactions at the market and non-political to do transactions.

However, the boundary between political and non-political is itself in play, and may be contested *politically*. It may e.g. be argued that transactions basically are political as it is held by some advocators of the political consumer. The circumstance that the distinction between political and non-political is itself political, is disturbing because the political is both one side of a distinction and the unity of this distinction, which is also to say that the non-political becomes political.¹ We have a paradox, which is discomfoting because sets a question mark at a fundamental concept in political science. On the other hand, however, it also point at an interesting fact, namely that in the constitution of the social, this paradox is handled practically, as we do in fact operate with distinctions between political and non-political. However, as the concept of the political is paradoxical, there is no nature of the political; the political is not an identity but a difference. How this difference is applied or set is contingent, and is itself an important object of study for political science. Hence one solution to political science in handling this paradox is to study *how* this distinction is established socially, i.e. turn it into an empirical question. To be able to catch the contingent nature of how the unity of the political difference is set, such an approach should be able to observe change of the social constitution. Thereby paradoxicality is not avoided, but accepted and to be handled in an analytic, which provides a valuable point of observation.

My aim in this paper is neither to develop such an approach not to apply it thoroughly. However by using selectively some tools from such analytic, I present how the single European market project has displaced the distinction political/non-political. Doing this, I want to give an alternative interpretation of the single European market project as a project which — due to the constitutive character of the distinction — also displaces what is on either side of the distinction. My argument has more steps. Firstly, I argue that the ideal typical liberal state transforms the distinction political/non-political into one of state, that regulates, and market, which is non-political. However, for the market to be constituted, standards are necessary (**Section I**). Standards may be considered unequivocally political, such as legal standards, or non-political, such as standards for bags for vacuum cleaners. However, a not unimportant group of standards are highly

¹ The presentation of this line of thought is inspired by Niklas Luhmann. Cf. e.g. Luhmann 1992

equivocal in terms of the political distinction, amongst others the so-called technical standards. What we see is that the political distinction is reformulated as a distinction between political and technique. Technical standards are supra-commercial standards, i.e. standards set by specific standardisation organisations, primarily in the co-operation between industry interest, and yet not politically defined standards. Exemplifying with German history, I argue, that the way the political paradox is handled in technical standards leads to a poly-centric organisation of society. This is to say, that the state is attributed a monopoly of political decisions, however, at the time the state accepts the rise of standards organisation as private governments. This paradoxical situation of acceptance and non-acceptance is handled in arrangements and agreements, where the state tries to keep its monopoly of political regulation of the market by accepting and strengthening the autonomy and capacity of the private governments called standards organisations (**Section II**).

In **Section III** I get to the object of the paper, namely the single European market project. In this project, technical standardisation is pointed out as a central tool in uniting the national markets. Hence the distinction political/technique is applied at supra-national level, and transnational governance emerges, which is to say that poly-centrism goes supra-national. The political task of ensuring a single market is namely formulated as a question of efficiency in the development of technical standards, which again has led to a monopolisation of technical standardisation. This is crucial as markets — amongst others — are constituted by standards; hence European standards cannot be regarded as completely voluntary. Similar to the development at national level, a paradox of acceptance and non-acceptance of technical standardisation emerges, which is about to be institutionalised in the EU in measures aiming at governing technical standardisation. The displacement at European level of the distinction between political and non-political, suggests a focal point for the study of private enterprise, namely the political firm. This is the topic of **Section IV**.

Section IV point out an interesting twist in the relation between stabilisation and destabilisation. The ideal of the liberal state is reformulated: focus is not more on ensuring calculatability and a stable (legal) environment, but ensuring a single market. In this process, the political task is also seen as one of destabilisation, namely of removing standards previously providing framework for transactions. The task of stabilisation is to large degree left with the standards organisations, and hence indirectly primarily with industry. This is a significant development, amongst others because European standardisation is configured radically different than national standardisation. The role of stabilisation is attributed indirectly to private enterprise. In these circumstances it becomes crucial for companies to take strategically part in how change is stabilised through technical standardisation. Taking a case study of the Daimler-Benz Group as starting point, I argue that the political yet non-political technical standardisation and the need to create stabilisation, by private companies is conceived in terms of second order competition. Second order competition is a competition between companies and other parties involved in technical standardisation, of determining the premises of transaction. **Section V** is a concluding discussion.

I. State and the poly-contextuality of markets

a. Introduction; ideal types

This section takes as starting point a discussion of two ideal types which will provide the background for the discussion of the single European market project. On one hand, I present an ideal type of the liberal state, and on the other an ideal type of market and the economic system. These ideal types are theoretically defined analytical concepts, which are not to be found empirically. Ideal types are not descriptions of empirical facts, but both tools for formalisation thereof,² and a tool for explicating ideals guiding social constitution.³ In this paper I use ideal types as a contrasting effect, which serves to highlight certain societal development. Firstly, I present the ideal type of the liberal state, to show how it forms the distinction between political/non-political as a distinction between state and market. Secondly, I discuss the ideal type market, to establish a focal point for the constitution of markets, namely standards. Standard as a general concept will then serve as a starting point for the discussion of the more narrow term technical standard in Section II.

b. The ideal type liberal state, and the distinction between state and market

The ideal type of the liberal state, is an ideal for organisation of society, which can be traced back to the 17th century,⁴ in which the market is created as a non-political room. According to this ideal type, the state provides actors with a framework, within which they can realise their freedom. Actors may be individuals (citizens) as well as collectives. The state provides this framework by holding a monopoly on coercive power as well as on binding decisions with societal scope, i.e. decisions which are accepted as binding by most members of the society, whether or not the members themselves are actually affected by them.⁵ Such binding decisions are defined as political decisions. Through such decisions, actors are conferred rights and obligations—and hence a ‘room’ of freedom.

This ‘room’ of freedom is created in a circular movement, in which the people confers powers to the parliament, which again elects a government, the government rules through an administration, and the administration confers rights and obligations to the people, which thereby become citizens.⁶ One such right is the inviolability of property, and one category of obligations, is the mutual obligations on which economic exchange at the market is based. Hence the model may be narrowed to a duality of *state* and *market*. Consequently, the state is to provide a framework for

² Andersen 1990, p. 178

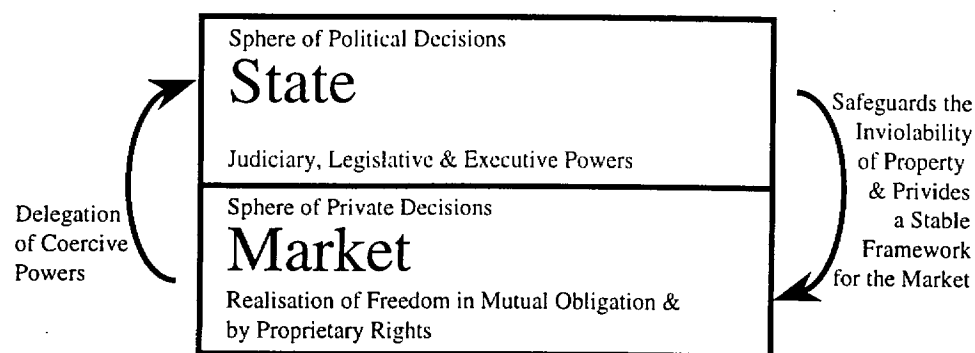
³ Kjær 1996

⁴ Pedersen 1988, p. 269

⁵ This definition draws on the Encyclopedia of Social Science

⁶ Nielsen and Pedersen 1987, pp. 6-7

the market. Or more precisely, the state provides a calculable — and hence relatively stable — environment for economic actors.⁷ The ideal type is outlined in the graphical presentation below.



This ideal type of the liberal state implies an explicit demarcation between the state and the market, which also is a special form given to the demarcation between political and non-political. Thus this is also an ideal of a monocentric state, namely a state with only one centre of politically authoritative decisions. This ideal is still to be found today as an ideal, coexisting and challenged by other ideals, such as social-democratic ideals of correction of unequal allocation and by the emergence of other centres of authoritative decisions, i.e. of polycentric organisation of society. The ideal may also be transformed — as we shall see below — as it is the case in the single European market project (cf. Section III).

c. The ideal type market and the constitution of markets

How are markets constituted? And how does the constitution of markets fit into this ideal type? To examine this question, I expound an ideal type of what a market is, and how markets are constituted.

One may argue, that by using the ideal type market, one subscribes to the liberal notion of markets. Instead, an alternative approach should be taken, namely to deconstruct the *grand story* of markets by pointing out that the general category market is an abstraction, covering rather than uncovering the practice of socio-economic organisation.⁸ The ideal type market, however, is highly relevant for studies of the single European market project, because this project deliberately aims at constituting exactly an ideal type of market.

Markets are generally contributed a great deal of qualities: markets co-ordinate (the invisible hand), allocate, distribute, create wealth, a great variety of goods and flexibility. This list can be continued, e.g. with inequality, unemployment, instability etc. However, to study how markets are constituted as a specific social order, I want to use a 'lean' approach to the definition of

⁷ Andersen and Kjær 1989, p. 2

⁸ For an example of this line of critique, cf. Thoening and Dupuy 1996

markets. Thereby I want to avoid the circular argument, in which markets are found to possess exactly the characteristics, which they have been attributed.

Inspired by Luhmann's distinction between market and economic system, I develop firstly an *atomistic definition*, according to which markets are poly-contextual.⁹ This definition raises the question of how markets become common to the actors at the market, i.e. the question of how this poly-contextuality becomes integrated. This integration I term standardisation, and the standardisation definition of markets builds the focal point of the subsequent parts of the paper.

The economic system may be characterised as radically self-generating. This is to say, that the system generates its own structure, its parts and hence also the boundary to its environment.¹⁰ In this line of thought, the economic system is a communication system, in which payments recursively generate payments. Contingency is handled by observing the world in terms of prices, payments and property. This constitutes the base for recursive payments, which again both generates future payments and makes them possible. Money, which are the central medium in this system, are constantly recreated in the actualisation. Money as such are not valuable. However, we receive money in the expectation, that they can be used for later payments, and without subsequent payments, money would simply cease to exist. Hence we may term the economic system a radically self-generating system.

This is not the place to unfold this characterisation of the economic system.¹¹ However, it is worth noticing that it does not entail any concept of market, but only that payments recursively are followed by payments. How these payments are organised, is not indicated. This brings us back to the question:

What is a market? At first, the answer to this question is, that markets is a specific form of observation. In this narrow and atomistic definition, a market is the categorisation by an participating observer of the economic environment. What is different is made the same, according to certain criteria. Hence different goods are categorised to be at the same market. By setting up criteria, the observer transforms goods into an abstract bundle of qualities, and hence the different becomes the same, or at least directly comparable and hence at the same market, and hence competing.

In the atomistic market definition, the criteria of the observer are idiosyncratic to the observer. Accordingly, a market is a poly-contextuality: it is a different context to each observer, and at the same time taken to be a unity, to be something, which unites these different market-observations.

9 Luhmann 1994a

10 In systems theory, this is termed autopoiesis, drawing on a concept developed by the biologists Maturana and Varela. Cf. Luhmann 1992

11 Cf. Luhmann 1994b

In standards textbooks this problem is handled by a priori to attribute markets the capacity to integrate this poly-contextuality — e.g. with the metaphor of the invisible hand — and hence making a tautology, which blocks the understanding of how markets are constituted.

The presentation made here, corresponds to the presentation of markets in standard textbooks, i.e. presentations of atomised decisions of the single market actors, i.e. by the *absence* of interaction. As only transactions are present at the market, both consensus and conflict are absent. However, the presentation points out, that there is no pre-given entity such as a market, which integrates the market-observations of the market actors. Instead, the integration takes place somewhere else. The integration of poly-contextuality I term standardisation, and provides the standardisation definition of market. In this sense, standardisation constitutes markets.

To elaborate the constitution of markets a little further, I introduce the concept institution. The category of institution designates the authorisation and stabilisation of concepts and distinctions.¹² Specifically in relation to constitution of markets, a standard may hence be defined as an institution, which couples non-interacting parties indirectly, and hence constitutes the conditions for pure transaction and the absence of interaction. Here an ideal type is discussed. Going away from the ideal type of market as pure transactions, all sorts of institutions may be added to the description.¹³ Standards are institutions which integrate poly-contextuality. The coupling through standards is to say, that various parties may use the same standard (e.g. various organisations may use the same standard in their internal reproduction), although the standard is attributed different meaning by the parties using it. Hence integration does not mean that poly-contextuality becomes one common context; it is the same, but different, it is a singularity and multiplicity at once.¹⁴

However, markets as a co-ordinated form of observation are not able to generate standards. This raises the question of how standardisation takes place, and how it is located in the distinction between political and non-political. It remains open as an empirical question, which brings us back to the argument mentioned above, of the need to study markets as particularities, because standardisation may take place in various ways, and standards may have various origins.

Standards may e.g. be a result of: cultural heritage or other social legacies; market analysis in magazines or by some interest organisation of the business community; or a result of regular conversations between actors; or of networks; or legal acts, which through regulation defines specific groups of products etc. Generally, one may conclude two things: on one hand that transaction is complemented with interaction in one way or the other; and, on the other hand, that

12 Kjær 1996, p. 23f

13 Cf. Fliegstein and Mara-Drita 1996 which discusses institutional preconditions for markets, and relates this to the single European market project. For a historical overview of various approaches to markets, cf. Swedberg 1994

14 Luhmann 1994a, p. 96

standards are not voluntary for the market actors, but a bare necessity. Only if there is a supply of more parallel standards, there may exist some free choice between these standards.¹⁵

Technical standards: One category of standards, which already at an early stage proved to be important in the constitution of markets, is technical standards. In the following section, I will give a short introduction to technical standardisation based on the German example, which — in the course of the paper — will serve to highlight the specific characteristics of how technical standardisation is institutionalised in the EU. However, the general point of the German case is that technical standards open up the political paradox, covered in the strict boundary between state and market in the liberal state. Standardisation organisations evolve as providers of authoritative rules for the market, i.e. they become ‘private governments’; the monopoly on authoritative, political decisions with the state is broken, and a polycentric organisation of society emerges. In this poly-centric organisation, the state handles the political paradox by at the same time to accept and not accept standardisation organisations as private governments. This is the topic of the following section.

II. Technical standardisation

a. Introduction: technical standardisation is supra-commercial standardisation

In this section, I firstly give a general introduction to how technical standardisation is organised. Secondly, some figures are presented to give an impression of the scale and scope of technical standardisation. Thirdly, the many roles of technical standards in coupling various parties is touched upon. Finally, the politic paradox is discussed in relation to technical standardisation.

Germany serves as an example for this historical development, both because it is generally held to be an important source of technical standards,¹⁶ because German social sciences have paid relatively high attention to technical standardisation, and finally, because it is assumed that there are certain general lines in how technical standardisation is organised.¹⁷

b. Standardisation organisations

Technical standardisation is standardisation undertaken by standardisation organisations such as DIN, CEN, and ISO. These organisations are generally characterised by being:

- organisations constituted according to private law,
- which organise work by a large amount of voluntary participants in a high number of working groups;

¹⁵ The possibility of selection between more standards may generate competition between standards, and hence may competition at the market select standards, but not generate standards.

¹⁶ Tørres (1993, p. 83) reports that the Swedish public bodies needs specialists, which can negotiate *in* German—or at least in English—with German industry which predominantly is organised in DIN

¹⁷ Cf. the comparative study of Lukes 1979. For a comparative study, which stresses differences in national standardisation, cf. Bundgaard-Pedersen 1994.

- the participants are in general representatives of industry, and
- the communication in the working groups is in general highly technical.¹⁸

However, the standards elaborated in standardisation organisations are not limited to technical matters, but do also include and effect social matters of all sorts. The designation *technical standards* is hence only used because it is commonly used to refer to standards of this origin. It would, however, be more precise to use the term supra-commercial standards, because of the dominance of industry interests in the development and activities of standardisation organisations.

Standardisation organisations are found at many levels:

- at national level, organisations such as Deutsches Institut für Normung e.V. (DIN), Association Française de Normalisation (AFNOR), the British Standards Institution (BSI), and Dansk Standard (DS); ,
- at regional level, e.g. the three European Standardisation Organisations (ESO), Comité Européen de Normalisation (CEN), Comité Européen de Normalisation Électronique (CENELEC, and European Telecommunication Standards Institute (ETSI);
- and at international level, organisations such as International Organization for Standardisation (ISO) and International Electrotechnical Commission (IEC).

At an national level, standardisation organisations emerge as a younger sister of the industrialisation,¹⁹ while international standardisation probably had its first major increase in the period after the Second World War, and European standardisation has emerged with the single European market project.

Technical standardisation takes place in a complex construction of interlinked standardisation organisation. The presentation takes DIN as example. However, in the 1980s, DIN was only one out of more than 100 standardisation organisations in Germany alone.²⁰

However, DIN serves as a co-ordinator for German technical standardisation, and is a main forum in which the German industry can influence technical standardisation. I deliberately term DIN a forum; although it is a standardisation organisation, the most important characteristic of DIN is not that it is an organisation, but that it “serves as the round table around which gather ... anyone with an interest in standardisation”.²¹ At his round table, standards are elaborated and adopted through negotiation. The organisation DIN is, so to speak, only the tip of the iceberg. This may be elucidated by some figures:

18 There may exceptions hereto. Such may be expected e.g. in working groups elaborating management standards such as the ISO 9000 and 14000 series.

19 Lundgreen 1986, p. 52ff

20 In the mid 1980s there is reported to be around 130 standardisation organisations in Germany. I do not have a more recent figure. Cf. Bolenz 1987

21 DIN 1994a, p. 4

The registered association DIN, has around 1,000 employees and its seat in Berlin. Within DIN, around 100 standards committees are organised. In 1997, these standards committees were subdivided into 4,100 technical committees. The committees held 5,700 official meetings. Within these committees, voluntary external experts elaborate standards. In 1997, 36,000 such external experts took part in the standardisation activities of DIN.²² This is to say that DIN is highly decentrally organised. The main task for the organisation DIN is to administer the elaborated standards, check for inconsistencies and coherence between the standards,²³ publish standards, and co-ordinate the work of the committees. The work of the committees does usually not take place at the official seat of DIN. Most external experts are from the business community, and the work of the committees is mostly hosted by a company.

The decentral organisation of DIN is also reflected in the finances. In 1993, the balance sheet total was DM 160 millions. The income was generated through three sources: 68 percent through revenues from sales and other receipts, and around 16 percent from both the public sector and industry, respectively.²⁴ However, this is again only the top of the iceberg: if the work done by external experts was included, the balance sheet total would be much higher. In the beginning of the 1980s, it was estimated that the expenditures of DIN only accounted for a roughly 5 percent of the 'real' expenditures, including the economic value of the work by voluntary external experts.

As these figures suggest, is DIN a large and loose organisation. In interviews it is reported, that each working group has its own life and rhythm. A main task of DIN is hence not directly to organise how negotiations of standards take place in the working groups, but primarily to provide a framework for the adoption and recognition of standards. As a general rule, technical standards are elaborated by working groups in consensus, which in standardisation organisation means absence of dissent. The proposed technical standards are then taken through a procedure of where comments and objections may be given. When these have been taken into consideration by the working group, the standard is voted upon.

In the self-presentation of standardisation organisations, consensus and openness is stressed. The standardisation process is open to all interested parties, which in consensus elaborate a certain standard. This understanding can e.g. be found in the meta-standard DIN 820: "Standardization is the systematic process by which tangible or intangible subjects are reduced to a desired degree of order by the joint efforts of the interested parties *for the benefit of the entire community*."²⁵ This definition — which also may be found used in European standardisation — echoes the engineering ideology, prevalent e.g. in Germany in the 19th century, according to which engineers were the

22 Figures are found in the annual DIN Geschäftsbericht or — alternatively — at DIN's website www.din.de

23 This is the task of the *Normenprüfstelle*. Cf. Bolenz 1987, p. 115

24 DIN 1994a, p. 10

25 DIN 820 Part 1, quoted after DIN 1994a, p. 6, emphasis added

'priest of objective causality'.²⁶ However, exactly this engineering ideology combined with the prevalence of industry interests in technical standardisation, is held to set considerable limits to the openness of standardisation organisations. Interested parties, which are not able to communicate in the technical language used in the working group, and with other interests than those prevalent in the group, report to have a hard time gaining influence in the process.²⁷

However, in other presentations, it is explicated, that technical standards may have many roles. E.g. ISO mentions several general roles which may be attributed to standards: 'protection of the consumer and/or environment, safety and health', facilitation of trade', rationalisation and/or control of variety', transfer of technology', fitness for purpose', 'use in preparing manufacturing (company) standards' and 'compatibility and inter-operability'.²⁸ This characterisation opens up to both the various battles between interests, which are reported to take place in technical standardisation, and to the above mentioned various meanings which may be attributed to standards as indirect couplings. Due to this openness of interpretations of what technical standards are, I have here limited my definition of technical standards to a standard with a specific origin.

Institutional framework of technical standardisation. Technical standards can be both descriptive and prescriptive; compliance with standards cannot be taken for granted. To ensure that alleged compliance with standards actually is met, an institutional framework is created. Such an institutional framework can also be found for other categories of standards, such as courts and national food inspections for judicial standards. In the case of technical standards, however, the significant point is, that the institutional framework and the use of technical standards in principle is based on voluntary participation and self-organisation of the involved parties. The institutional framework makes technical standards relatively reliable. On one hand is this reliability surely a factor, re-enforcing the general compliance with technical standards. On the other hand, however, is the institutional framework a necessity — following the argument above — a precondition for the constitution of markets. An overview of the institutional framework is given below.

²⁶ Bolenz 1987, p. 17

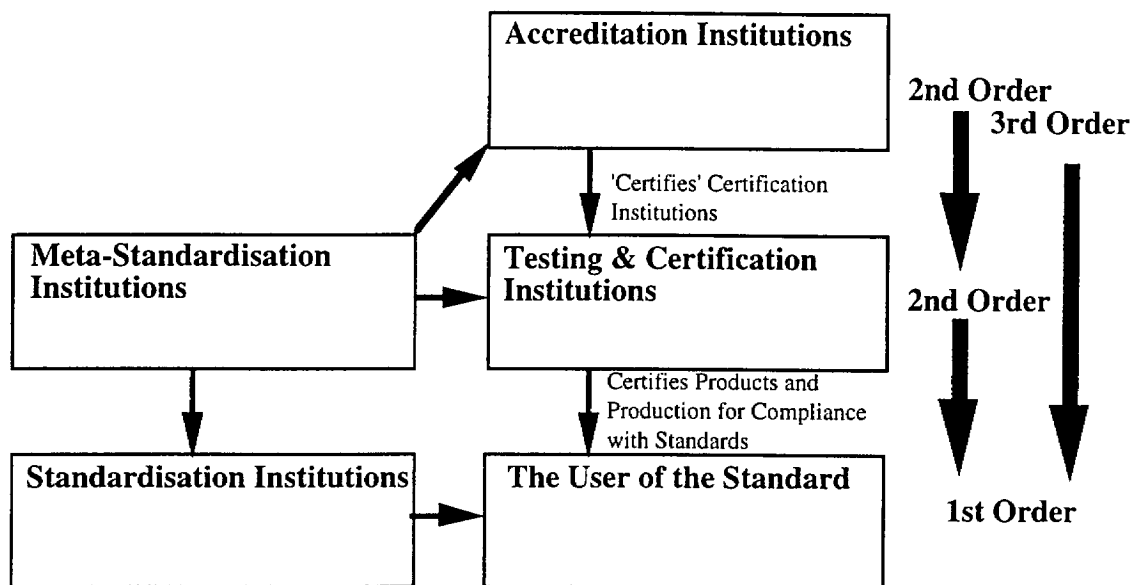
²⁷ Goldschmidt 1995

²⁸ ISO/IEC 1992pp. 106-107

The institutional framework for standards

For standards to be reliable, various institutions are created. 'Institution' is here used to indicate that specific functions are fulfilled; one organisation can fulfil more of these functions, and thereby inhabit more institutions. For a standard to exist, it has to be constructed. This is done by the standardisation institutions. However, the standardisation institution needs meta-standards to make the specification of the standard. These are produced by meta-standardisation institutions.

The standard is applied by the user. To ensure that the standard really is complied with, there are testing and certification institutions, which—if a standard is complied with—certifies the product or the production process.



However, are there more such testing and certification institutions, there may be reason to ensure that they do test and certify along the same criteria, with equivalent quality etc. The testing and certification of testing and certification institutions is termed accreditation, and is attended by certification institutions. These institutions are drawn up on the illustration. Testing and certification institutions as well as accreditation institutions do all employ standards to test, certify and makes accreditations.

As indicated on the graphical presentation, more of these institutions are second order institutions, testing the tester or standardising the standardisation process. The accreditation institutions may even be a third order institution. This is dependent on whether it limits its observations to the testing and certification institutions (second order), or *also* observes the institution applying the standard (third order).

As mentioned, these institutions may be gathered in one system, – self-certification by producers is e.g. widespread in the EU. The institutions are also to be found in all areas of standardisation: public bodies, standardisation organisations, private companies etc.

c. Poly-centrism and the institutional set-up of technical standardisation

The location of technical standardisation in the politic distinction may be highlighted by looking at conflicts between industry and state on how to regulate the emerging turbulence of technological change. Laws are rather static, not only due to limited resources; seen in relation to the ideal type liberal state, this is part of the task of the state, namely to provide a stable and calculateable environment for the market. Technology, on the other hand, is in rapid development. Already at a relatively early state in the industrial revolution in Germany, conflicts came up between industry, which wanted to employ new technology, and the state. The state had both the prerogatives of defining the standards, which technology had to fulfil, and of testing it. This conflict can be exemplified with steam boilers. Steam power was a 'state of the art' technology in the 19th century, and a prevalent source of power until the 1930s. Due to the risk of explosions, the Prussian state in 1831 introduced a general obligation to test boilers.²⁹ The users of steam power, argued that the state control was both to expensive and did not allow room for innovation. Therefore — it was argued — would Germany lose competitiveness.

As a response to this problem, boiler users organised their own testing and standardisation body, called DÜV,³⁰ which gradually was recognised by the state. Since 1900, DÜV has got the prerogative in Germany of standardising boilers and testing for compliance. At the same time, the scope of the association was enlarged to other products and technologies, including the new means of transport, the automobile.³¹

This surrender of decision powers is also reflected in legislation. Since the beginning of this century, it has been a normal legal technique, to make reference to technical standards in laws. In this technique, the law does not specify a standard to be complied with, but gives the force of law to a technical standard. Such reference may take more forms. Mostly discussed is the 'sliding reference'. In this type of reference, the law refers to a standard in an indeterminate way. This is to say, that when the technical standard changes, the law automatically does so too. In general, the sliding reference is hold to be problematic by the German legal community, because it confers legal powers to private institutions, and hence in breach with the constitution.³² As we shall see below, the New Approach in EU has resemblance to the German development outlined here.

Although, technical standards cannot be relied upon according to German court practice: and although technical standards do not ensure against liability, technical standards, has become intertwined with the legal system. In court cases, such as in product liability claims, technical

²⁹ Bolenz 1987, p. 60

³⁰ An abbreviation of 'Dampfkesselüberwachungsverein', which is German for 'Steam boiler inspection society'. Cf. Bolenz 1987, pp. 59-72

³¹ DÜV was therefore given the more general name 'Technischer Überwachungsverein', for short 'TÜV', which it still holds today. Cf. Bolenz 1987, p. 71

³² Mohr 1990, pp. 25-68:

standards are often used to specify the state of technology.³³ In the light of standards being constitutive for the market, this unclear relation to law may put extra pressure on companies to opt for technical standards as opposed e.g. to internal company standards.

This brief history outline clearly shows that German society has become polycentric with the end of last century. This is due on one hand to the self-organisation of industry, in areas which have never been within the scope of the administration of the state, such as technical standards necessary for integration of markets. On the other hand it is due to the state surrendering prerogatives of making standards to standardisation organisations. Summarising, standardisation organisations show, that the technical standardisation entails many different sorts of regulation and also various relations to the state. Due to this combination of autonomy and competencies of standardisation bodies, they are referred to as ‘private governments’,³⁴ a designation which underlines the poly-centric organisation of society emerging with standardisation organisations. This societal organisation brings back the question of how the politic paradox is handled socially, as it is not longer possible to handle it fully within the liberal form of state. The state handles this development on one hand by accepting that technical — and hence non-political — matters are regulated by private governments. However, at the same time, the state does not accept the regulation done by standardisation organisations, and therefor it aims at regulating the autonomous standardisation organisations. This is done in various ways, e.g. by ensuring plural representation of interest by giving support to bodies representing consumers, the environment etc., and in a formal agreement between DIN and the German state on authority and mutual recognition in the area of standardisation.³⁵

III. The new approach and the single European market

a. Introduction

This section will present how technical standardisation has gone supra-national, which implies that a transnational form of regulation has developed. Transnational is here used to indicate, that ‘private governments’ has quite different implications at European level than at national level. Although the institutional set up of the standardisation organisations at European level has many similarities to the organisation found at national level, it also differs in important points. The probably most important is, that European standardisation is both monopolised with the three European Standardisation Organisations (also known as ESO), and linked to legal acts of the EU in a tight yet unspecified way. So where it is questionable how voluntary technical standards are in the German case referred to above, then there is considerable support for the argument that

³³ Mohr 1990.; Gruetzner 1994, chapter 1.

³⁴ Voelzkow 1996

³⁵ The report from the Technology Assesment Board of the German Parliament on European technical standardisation and the envrionment gives a good overview of the measures taken in Germany to regulate the relationship between DIN and the German state. Cf. Joerissen 1996

European Standardisation Organisations are private governments. This will prepare the ground for Section IV, which discusses how this displacement of the boundary between political and non-political affects the character of private companies.

The presentation of European technical standardisation will focus on CEN and CENELEC. However, to present a fuller picture of the dynamics of technical standardisation, one should also take into account the third ESO, ETSI, and the relationship between international technical standardisation, taking place in e.g. ISO and IEC, and European standardisation. However, to focus the presentation, these relations are here neglected.

b. The European standards monopoly

Removal of barriers to trade has been a part of the EU-project from the beginning. It has, however, been open to interpretation what it is to say to constitute one common or single market.³⁶ The interpretation given in the single European project is relatively radical: the three European standardisation organisations are the only organisations to provide technical standards to the single market, and these standards supersede national technical standards. This may be compared with the German case, outlined above, in which more than 100 standardisation organisations have supplied standards to constitute markets. Also in the 'single' market of the USA, a vast amount of standardisation organisations are to be found.³⁷ Both cases indicate, that various suppliers of technical standards, competing standards, parallel standards and most likely also conflicting standards is no hindering for considering a market a single market. There is so to speak differing 'pain thresholds', and the EU has chosen a relatively low threshold.

The today important European standardisation organisations CEN and CENELEC are both established in the 1960s. However, until the early 1980s, they were 'sleeping beauties': in 1985 there were only 750 CEN and CENELEC standards.³⁸ A comparable figure for 1993 is 3,225 CEN/CENELEC standards.³⁹ Until the turn of the millennium, around 1,000 new European standards a year is estimated.⁴⁰ Thereby the approximately 20,000 technical standards found at national level are to be replaced and harmonised. E.g. DIN reports that only approximately 20 per cent of DIN standards are merely German technical standards. Since 1985, this figure has fallen gradually.⁴¹

³⁶ Fliegstein and Mara-Drita 1996, p. 11

³⁷ Of the approximately 250 standardisation organisations in the USA, only approximately 17 per cent notify their technical standards with the American National Standards Institute. Nedergaard 1994, p. 54-56

³⁸ DIN 1995, p. 13

³⁹ DIN 1994b, p. 5

⁴⁰ DIN 1994b, p. 8

⁴¹ Cf. DIN's website at www.din.de. The inconsistency in the figures is probably due to international standardisation.

Until the ‘new approach’ of the EU, harmonisation of standards took the form of judicial standards and were to be adopted with the (old) Article 100 EEC as legal base, which requires unanimity. Any nation could thereby veto the directive. This is to say that often highly technical matters were discussed by both the Commission, the Council and the national parliaments. In this process, any regulation was likely to touch upon some area of sensitive national interest. The result was, that the number of judicial standards adopted by the EU was negligible: in the 1970s and early 1980s, the EU “produced on average little over ten technical directives a year ...”⁴² The direct national control with harmonisation of standards, however also included that the national parliaments were to debate highly technical matters. The refusal by the German Bundestag to deliberate a draft directive on harmonisation of tractor safety because it considered the draft to overloaded with technical details has become famous.⁴³

In the new approach, European harmonisation has been speeded up by the institutionalisation of the distinction between political and technique, which has given impetus to the development of European technical standardisation. The institutionalisation resembles technical standardisation at a national level.

The New Approach was apparently firstly institutionalised in EU in the German inspired low voltage directive, which was adopted by the Council in 1973.⁴⁴ This legal technique was not further used until the early 1980s, under the inspiration of developments in the EU case law. Cases such as the Dasonneville case,⁴⁵ which ruled strictly against protectionist measures of the member states, where boldly expanded in the 1979 Cassis de Dijon case.⁴⁶ This case adopted the principle of mutual recognition in EU law, i.e. that there is no valid reasons why products “lawfully produced and marketed in one of the Member States ... should not be introduced into any other Member State ...”⁴⁷ With the adoption of the principle of mutual recognition, it was brushed aside, that Member States could uphold national regulation, as long as it did not discriminate imported goods from locally produced goods.⁴⁸

This incident was the occasion for the Commission to formulate policy consequences of the ruling. In a Commission Communication of 3 October 1980,⁴⁹ the ruling is cited and expounded in the

42 Swann 1992, p. 56

43 Schreiber 1991.

44 Council directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits.

45 Procureur du Roi v Dassonville, Case 8/74

46 Rewe-Zentrale AG v Bundesmonopolverwaltung für Branntwein, Case 120/78

47 Cf. paragraph 15 of C-120/78

48 It is also worth noticing, that the European Court of Justice also ruled, that possible exceptions to the principle of mutual recognition according to article 36EEC, were subject of the scrutiny by the Court.

49 Commission Communication 1980 OJ C256/2

following way: “The Court gives a very general definition of the barriers to free trade which are prohibited by the provisions of Article 30 *et. seq.* of the EEC Treaty. These are taken to include ‘any national measure capable of hindering, directly or indirectly, actually or potentially, intra-Community trade’. ... Any product lawfully produced and marketed in one member-State must, in principle, be admitted to the market of any other member-State.” Hence the strategy of the Commission becomes one of removing barriers to trade, caused by national regulation. At first, this is a strategy very different from that of harmonisation through European technical standardisation. The strategy of mutual recognition is one of letting national legislations overlap, which may induce competition between legal systems, and not one of establishing a common legislative and technical standards framework.

In applying this strategy, however, an important institutional innovation was done, which is central to the new approach. This happened as the strategy was given a pro-active turn in the Information Procedure Directive.⁵⁰ Aim was now not only existing barriers to trade, but also to avoid the creation of new barriers. The directive establishes a double information procedure, according to which initiatives of national technical standards and regulation are to be communicated to the Commission and the other Member States before they enter into force. This implies a minimum 6 months stand-still, scrutiny of compliance with art. 30-36EEC, and the possibility to transfer the regulation activity to the EU. In order for the information system to function, the directive requires the Member States to ensure that the national standardisation organisations take part in the information system. Also CEN and CENELEC are pointed out to take part in this system, and thereby is the link to standardisation organisations established.

The use of standardisation organisations in EU-regulation was formalised in the 1985 New Approach Resolution.⁵¹ In this resolution the four principles of the new standardisation and harmonisation strategy are presented: 1. New Approach directives are only to set general requirements. 2. These requirements are to be substantiated by the European standardisation organisations (CEN and CENELEC, and later also ETSI). 3. Technical standards are voluntary. 4. The burden of proof is reversed, i.e. compliance with European standards carries a presumption of conformity with essential requirements of the directives. With this strategy, the principle and strategy of mutual recognition is supplemented with a strategy of total harmonisation of technical standards. The new approach was further institutionalised and given a boost by the Single European Act, according to which Single market directives, including new approach directives, are adopted with qualified majority. The plan of action of the single European market — the White Paper — builds directly on the New Approach.⁵²

⁵⁰ Directive 83/189, adopted by the Council March 28, 1983, OJ L 109, 26.4.1983

⁵¹ Resolution adopted by the Council May 7, 1985, OJ Nr. C 136, June 4, 1985

⁵² The new approach is discussed in the White Paper on the Single European Market, cf. Co8510, point 65-78

The New Approach has been further institutionalised in the Global Approach to Testing and Certification (1989),⁵³ which contains 8 modules, which are prescribed to use in various combinations, when products are certified according to New Approach directives. With the Global Approach, a more formal institutionalisation of certification and accreditation institutions outlined above, has taken place. Technical standardisation has also been integrated into Community policies in other ways, e.g. the public procurement directives⁵⁴ and the Eco-Management and Audit Scheme.⁵⁵

The legal acts listed above may serve as traces, indicating a process of negotiations, struggles and compromises, which have led to the new approach. Taken together, they indicate an institutionalisation, in which the EU strongly has supported the emergence of European standardisation. Does this also mean, that we see the emergence of private governments at European level? Or are European technical standards voluntary, as prescribed by the new approach resolution? The answer is no, because there is probably stronger support and more scope for standardisation organisations at European level than at national level.

This is firstly due to the constitutive role of standards. In so far as national standards are removed in the new approach, there is only the three European Standardisation Organisations to replace them. Secondly, European standards enjoy support of EU legal acts in more ways. Most importantly is probably the requirement for reference to standards in the public procurement directives, and the presumption of conformity of technical standards linked to a new approach directives.

To these two aspects comes a third: European standardisation has transformed and pervaded national standardisation. In both CEN and CENELEC one national standardisation organisation represents the Member State. These national standardisation organisations hold voting rights similar to those the specific Member State holds in the Council. Hence *one* national standardisation organisation functions as gatekeeper to the European standardisation of a specific technical area. This will most likely affect the national structure of technical standardisation, such as the plurality of standardisation organisations found in Germany. National standardisation organisations may either co-ordinate, or some organisations become subordinate to or directly a part of the gatekeeper.⁵⁶ On the other hand are the national standardisation organisations in general bound to implement European standards, whether these technical standards are a part of the new approach or not. Implementation means withdrawal of conflicting and parallel technical standards. This double

⁵³ Proposed by the Commission in Co8909 final, and adopted by the Council December 21, 1989, OJ C 10, 6.1.1990. The binding nature of the Global Approach has further been stated in Council Decision 90/683/EEC, OJ L 380 p. 13, December 31, 1990

⁵⁴ The directive require that the tenders encompassed by the directive, are held in accordance with European standards, and, if no such are available, then according to international standards.

⁵⁵ Also known as EMAS, regulation 1836/93

⁵⁶ Joerissen 1996 argues that this may negatively affect the legitimacy of German standardisation.

support for concentration of national standardisation is likely to support the effect of European standards.⁵⁷

These circumstances suggest that we also in European standardisation have private governments.⁵⁸ This raises the question of what scope of interpretation is left to the European standardisation organisations in substantiating new approach directives. Once again it is suggested, that the boundary between political and non-political is displaced. Firstly because new approach directives only set very general requirements, and the question is, how much sense these general requirements make, when they are not substantiated through standards. It may therefore be argued, that not only are standardisation organisation left considerable scope for interpretation, it may also be impossible for national authorities to test whether a certain product is conform with a new approach directive, without taking recourse to how the directive is interpreted in technical standards. Examples of this may be directives, which only set obvious requirements, such as a “to minimize risk as much as possible”⁵⁹ and also the machine directive, which regulates a very broad range of products. Thereby is not said that European standardisation automatically downgrades or ‘hollow out’ requirements set in directives; upgrading may also take place.⁶⁰ The point is only, that European standardisation has a considerable scope of decisions, formerly taking place in the political institutions of the EU. European standardisation is hence linked to EU-legislation in a tight, yet unspecified way. Referring to Section II, we have a sliding reference, as technical standards substantiating a directive may be amended without any consultation of the EU whatsoever.

Studies how the distinction between political and technique is handled in the process of standardisation, suggests an even larger scope for European standardisation organisations.⁶¹ Formally speaking, the link between European standardisation organisations and the EU is a mandate, negotiated between the Commission and the standardisation organisation. In the mandate, the substantiation of directives is contracted to a private organisation, and the funds thereby channelled to European standardisation is certainly an reason for the boost of European standardisation. However, this is no tender at a market; the monopoly of European standardisation organisations gives them a substantial position for negotiation. And for re-negotiation after the standardisation process has begun. Actually, negotiations between industry, Commission, national representatives, Council and standardisation organisations also often predate the official proposal

57 This ‘double implementation’ of new approach directives may also largen the problem of ensuring implementation.

58 Cf. Falke 1996

59 90/385/EEC

60 Cf. Eichener 1992

61 Bundgaard-Pedersen and Højbjerg 1996

of a directive, and continue through the whole decision process of the EU, to the negotiation of a mandate.⁶²

c. Discussion

The New Approach has proven to be a turbo booster to European standardisation. With the Commission of the EU we can conclude that "... the credibility and success of the White Paper on completing the internal market do not come from the fact that 300 subjects were identified for legislative harmonisation, but that 1000 or more Community Directives were abandoned which might have been necessary if the old approach, based on detailed harmonisation, had been followed..."⁶³

The New Approach may be seen as a transposition of polycentric organisation of society from the national to the supra-national level. Thereby polycentrism is radicalised into a transnational political process. I here use transnational to designate that generally binding decisions are formed in negotiations between various and in principle equal actors. Although it above has been stressed that industry interests are predominant in technical standardisation, it is in principle open to anyone.

Thus may states, public regulatory authorities, federal or local public authorities, environment NGOs, trade unions, consumer bodies, and the Commission negotiate with one another — and do increasingly do so — in the transnational sphere, none of them automatically possessing a position of *primus inter pares* (not to speak of having some higher authority).

<p>EU-regulation EU's political and administrative bodies</p>	<p>Transnational sphere E.g. European standardisation</p>
<p>National regulation by the state Government and public administration</p>	<p>National self-regulation E.g. technical standardisation in DIN, DS and BSI</p>

This is a radicalisation of polycentric organisation at national level, amongst others because of the less developed competencies and more lengthy political decision making process of the EU than that of the Member States. The absence of a pre-given *primus inter pares* in the transnational

⁶² Bundgaard-Pedersen 1995, p. 13; Dang-Nguyen et al. 1994 p. 474ff

⁶³ The Commission of the EU, quoted after Meunier-Aitsahalia 1993:19

sphere of decision making, does not preclude that a such exists. However, the position of a such is not achieved automatically, but must be somehow invoked. This may e.g. happen in an interplay between national decision making processes, nationally based private governments, and the EU decision making process. However, generally the EU cannot give the same level of control and interplay, as a full-blown national administration is able to in relation to national technical standardisation. The political paradox occurs again at European level. Also here we find a simultaneous acceptance and non-acceptance of technical standardisation, e.g. reflected in Commission document 'Broader use of standardisation'⁶⁴ where a list of requirements to the European Standardisation Organisations are set, while at the same time the independence and autonomy of the European Standardisation Organisations is stressed. Also institutionalisations such as the European Trade Union Technical Bureau for Health and Safety (TUTB) and the Technical Co-ordination Bureau of the Consumer Unions, ANEC, may be seen in this light.⁶⁵

However, the emergence of European standardisation as private governments should also be seen in relation to the political ambition of deregulation, which is an ambition of destabilisation. In this connexion, the ideal type highlights significant changes of regulation in the new approach. One such significant change is in regards to stability. The ideal type liberal state unambiguously has the task to provide a calculateable environment to the market. In this model, stabilisation and destabilisation is clearly attributed to either side of the difference state/market. The state provides stability, while competition and technological development may induce instability at the market. The emergence of standardisation organisations indicates a first deviation from the ideal type: technical standards are — amongst others — used as a tool to mediate between the relative stable legal framework and e.g. technological change. The task of stabilisation is *both* left with the state and with standardisation organisations, and hence also with the business community. However, the state still has the task of providing a stable framework. Technical standardisation is a way to avoid that this stabilisation hinders the dynamic at the market.

With the single European market project, this development is taken one step further. Here the 'statehood' EU is not unequivocally left with the task of stabilisation. On the contrary, it is *also* very much attributed the task of destabilisation, namely of removing existing national regulation and standards. The New Approach may in this perspective be seen as a relative change of roles: private companies are attributed the role of stabilising the destabilisation created by the destruction of existing framework for the market by EU-directives. This shift is not a total reverse, but none the less significant. This will be the starting point for next section's presentation of how private companies may be affected by the displacement of the boundary between political and non-political.

64 Commission 1995

65 Fuehr 1995

IV. Technical standardisation as company strategy – survivors make it fit!

a. Introduction

In this section, I analyse how the character of private company is affected by the displacement of the boundary between political and non-political in the case of technical standardisation. The main argument is that private companies handle the paradox of technical standardisation as being political yet non-political by perceiving it in terms of second order competition. This concept indicates a competition on setting the premises for competition. This argument I support with a case study of the Daimler-Benz Group (hereafter: the Group), and its re-organisation of participation in technical standardisation in the years 1993-95.

For a company, internal and external standards somehow have to fit. They are to be adaptable. This is not to say that they are to be totally harmonised, but the products of the company are e.g. to comply with judicial standards and be coherent with technical standards to have market access. To achieve this, there are two types of strategy. One is to adapt to external standards, i.e. adapt to the environment. The other is to make the environment adopt the company standard. This latter strategy is given a considerable wider scope with the new approach. Being a pro-active strategy, however, it is surely the most demanding. In many cases, none of the two extremes will occur. However, also to be able to achieve some mix of the two extremes, a company necessarily has to know what it is at, and what it wants. What technical standards is it interested to achieve, when different possibilities come up in a negotiation in a standardisation organisation? In other words, the boundary between the private company and its environment is thematised.

How do private companies deal with these changes? Firstly, it is not given that all companies observe these changes at all. In this respect, the Daimler-Benz Group provides a critical case: if any private companies observe the possibility taking part in constituting markets through political non-political technical standardisation, then a transnational corporation such as the Daimler-Benz Group would be an obvious example, because such transnational corporations are held to hold both the necessary resources, and to be involved in politico-strategically games such as the creation of the single European market.⁶⁶ The problem with such a critical case, however, is that the handling of technical standardisation may be yet another area of the political involvement of the transnational corporation, and in this respect not significantly new to the corporation. As we shall see below, is this the case with the Daimler-Benz Group; the Group is familiar with taking measures, aiming at forming the environment, e.g. by lobbying. However, technical standardisation and lobbying are not at a general management level brought together as part of the same strategy. The Daimler-Benz Group rather perceives technical standardisation in paradoxical

⁶⁶ In a European context, cf: Sandholtz and Zysman 1989p. 117 f.; Moravcsik 1991, 1991, p. 45. Cf. also Helen Wallace in Wallace 1990, p. 215; Dang-Nguyen et al. 1994p. 474f

terms of the political non-political, namely of being a means of political influence without being political. This paradox is handled in terms of second order competition.

To use the Daimler-Benz case to inquire into how the character of private company is affected by European technical standardisation, the question has to be formulated more sharply. It is not sufficient to put the question as a question of whether the Daimler-Benz Group is involved in technical standardisation at European level or involved at all. This most likely is the case, and could take place at low levels or in insignificant 'corners' of the Group. To support the argument, two more narrow questions are raised:

- The question of strategic importance to the Daimler-Benz Group is raised: *does the Group perceive technical standardisation as an issue relevant in general to the Group?* And
- does technical standardisation affect the character of the Daimler-Benz Group in such a way, that one can observe that the *Group aims at constituting a coherent actor in the field of technical standardisation?*

In the case study I will demonstrate, that the Daimler-Benz Group both lends great importance to technical standardisation and that this involvement affects the character of the Group in a way that it aims at constituting a coherent actor. A corporate group, like any other actor, does not come into being automatically. It takes a certain effort, which — consciously or un-consciously — constructs a boundary between what is inside and what is outside the company, the association, the country, the individual etc. Various indicators or factors may here be relevant, and what is relevant may change over time. A company may e.g. be considered an actor in regards to ownership, in regards to management control, or in regards to the natural environment. The emergence of environmental legislation, regulation, and environmental management systems provide an example of how companies are about to be constituted as actors in relation to the environment, and how this changes what it is to be a company. A company is not only a producer, but also a polluter, it is not only to hold financial account, but also environmental account etc. And in the case presented here, we are provided with an example of how a private company aims at constituting itself as a coherent actor in regards to technical standardisation. To discuss how a corporate group constitutes itself as a coherent actor, I shall in the following subsection give a brief conceptualisation of corporate management.

b. Corporate management, a brief conceptualisation

However, before proceeding, it is relevant to consider what it is for a corporate group to constitute a coherent actor. A corporate group is not necessarily an entity in the same way as a company, as it may be a compound of many companies, which are to act towards the environment as a coherent actor. As this is the case with the Daimler-Benz Group, it is relevant to consider what tools are available to do this?

A corporate group may be identified in various ways. If it is identified in terms of ownership (e.g. a financial holding), the companies of the corporate group may relate to another only in

transactions. Alternatively, the corporate group may be identified in terms of hierarchy, which — latent or manifest — unites several companies as being subordinate to a central decision centre. The corporate group may also try to configure itself as a network, e.g. to achieve synergy, alliances and co-operation across the group, or to avoid a steep hierarchy. However, the network does not provide the corporate group with a boundary; the network may e.g. include strategic alliances with other corporate groups, with universities and with interest organisations. To constitute the group as network as a coherent actor, a fourth dimension comes in play: the vision. In the vision, a common destiny for the companies of the corporate group is formulated. Thereby the boundary to the environment is constituted by reference to a shared destiny; the ‘outside’ of the group is constituted as that, which does not share the destiny of the group. The vision is also a tool for co-ordination and development of strategy, as it anticipates future.⁶⁷ In uniting these elements, a group may, as appropriate according to the vision, be able to actualise itself as a network, hierarchy or as market. The group may act as a chameleon.⁶⁸

All these three principles of organisation coexist in a the Daimler-Benz Group. However, this conceptualisation of management is relatively crude. The standard assumption about ‘powerful multinationals’ presupposes that the corporate group is capable of managing the sheer size of corporate groups, and to do this, a much more differentiated understanding of corporate management is necessary, however, for the presentation to be made here, it will suffice. And, in fact, the Daimler-Benz Group has achieved a sheer size, since it in the mid-1980s pursued a strategy of diversification, synergy and globalization, all related with expansion. In this way, Daimler-Benz has become the largest European company with a turnover exceeding DM 100 billion. The Daimler-Benz Group has 100s of subsidiaries organised in 23 business units and approximately 290,000 employees world-wide.⁶⁹ In spite of a globalization strategy, the Daimler-Benz Group is still mainly located in Germany, in which it has approximately 230,000 employees.

c. The emergence of technical standardisation as a matter of strategic concern for the Daimler-Benz Group

Setting up the Task Force. Technical standardisation emerged as an issue at of strategic relevance to the Group at latest at April 8, 1993, as the Board of Management of the Daimler-Benz Group set up a committee on ‘Revision of Standardisation Activities in the Daimler-Benz Group’ (the Task Force). The material presented here, is primarily based on interviews with members of this committee, and on an internal report produced by the committee. This report diagnoses technical standardisation as an area, which — in spite of its strategic importance — is marked by the lack of management.

⁶⁷ This very brief outline of corporate governance is primarily based on Andersen 1995; Naujoks 1994; Teubner 1993

⁶⁸ Teubner 1993

⁶⁹ Cf. the Daimler-Benz web-side at www.daimler-benz.com

The Task Force had two tasks, firstly the task of elaborating a harmonised Group-wide standardisation strategy, and a directive to its implementation, and secondly to elaborate a proposal for attribution of responsibilities of standardisation to specific employees or persons. The aim was two-fold, namely both to induce savings of approximately DM 10 millions and to achieve a co-ordinated and efficient participation in technical standardisation. The results were within one year to be presented to the Board of Management for adoption. The Task Force was to have representatives from all parts of the Group, and at least 40 employees were involved in the project.

Digging up the information. The first deed of the Task Force was to diagnose that the Group far from constituted a coherent actor in the field of standardisation. The story of how the Task Force created a first overview of the Group's involvement in technical standardisation, gives a clear picture of an area, which hitherto was considered unimportant to the constitution of the Group as coherent actor. To create an overview the Task Force had to rely on external support: all technical committees of German standardisation organisations were to be contacted, and thereby get information of Daimler-Benz employees taking part in the external standardisation activities. The Task Force considered buying the relevant information of Siemens AG, which is known as the most influential German company in relation to standardisation. However, limiting the list to Technical Committees of DIN, DIN provided this information for free. June 17 circular letters are send of to all technical committees of DIN, requesting them to report back within 2 weeks whether employees from any of the corporate units of the Daimler-Benz Group were active in the committees. This information was afterwards send to the companies to be confirmed. Parallel contact was taken to the various firms of the Group, to get information about how standardisation activities were organised, how many standards—internal as well as external—existed in the companies, and how information technology was employed to organise the standards.

Overview of involvement in technical standardisation. The lack of co-ordination in technical standardisation was pointed out by a quantification of the activities. The external standardisation activities were quantified for the year 1992. In total, the Daimler-Benz Group was represented with around 700 employees in around 1,200 working groups and technical committees of standardisation organisations. However, the distribution of external standardisation activity was fairly uneven: the around 700 employees active in external standardisation work were often active in more working groups and technical committees, and more employees were often active in the same groups or committees. The activity of one Daimler-Benz employee in *one* external working group or technical committee is termed a *collaboration*. In total, the Group had 1768 such collaborations. Around 50 percent of the collaborations accounted for 74 percent of the working groups and technical committees in which the Group participated. This is also to say, that around 26 percent or 317 working groups and technical committees accounted for 881 collaborations. As the total amount of activities are serviced by only around 700 employees, they are on average active in around 2.5 technical committees or working group. The maximum collaboration of employees in one external working groups or technical committee is 10! This high figure and the general unequal distribution of activity may not be a problem, if it is part of an overall strategy.

However, if it is purely accidental or — even worse — a consequence of interest conflicts within the Group, taking place in the semi-public of technical standardisation, then it is an indication of badly employed or wasted resources. Anyhow, that this distribution is not a result of a strategy, becomes clear when one is confronted with the Task Force's presentation of the organisation of internal standardisation.

Organisation of internal standardisation. The organisation of internal standardisation was mapped both by the above mentioned information from DIN and by interviews and seminars in various parts of the Group. The over-all picture is one of many, partly overlapping co-ordination structures, which partly are ineffective and the various co-ordination structures are in no way co-ordinated amongst each others. This is e.g. reflected in the fact, that 33 different and largely incompatible computer systems are used within the Group to administer and use standards. Internal standardisation is either an issue for just one part of the group or a non-issue. Hence the internal standardisation did not provide background for a co-ordination of activities in (external) technical standardisation.

Cost of standardisation. For the Daimler-Benz—like for industry in general—it is connected to considerable expenses to participate in standardisation activities. Technical standards are a free good, open for anyone to buy and use, and the income generated selling standards accrue technical standardisation organisations. The Task Force raises the question of the costs and benefits of this participation. Benefits, it is concluded, are very difficult to quantify, although they may be very substantial. It is, however, difficult to set up criteria for when to participate in technical standardisation. The costs though, can be estimated.

The estimated total cost of standardisation activities (based on 1992-figures) is DM 94 Mil. or around 0.1 percent of turnover. This is in the lower end of the scale, if compared with other quantifications thereof.⁷⁰ The vast bulk of these costs (DM 69.6 mil) are due to internal standardisation activities. However, the work of the Task Force uncovered a surprisingly high amount of standardisation activities, which also is to say costs. Interviews suggest that the figures reported by the Task Force were set to low, not to embarrass parts of the Group. Of the estimated total cost of (external) technical standardisation activities of DM 24.5 million, the unpaid or voluntary work by employees of the Group account for DM 19 million. Subscriptions to standardisation organisations only account for DM 0.8 million. Acquisition and administration of external standards account for the remaining DM 4.7 million. The estimated cost of the work by Daimler-Benz employees in external standardisation activities is calculated by fixing quotients for how many days work each collaboration involves. The overall conclusion of these estimations is, that the Group holds considerable expenses, without knowing what for, nor with what gains. The

70 Cf. Händel, Siegfried *et al.*, 1984; and Pokorny, Fritz 1974

dual answer to this is one of savings and one of establishing a structure, co-ordinating technical standardisation activities of the Group. I shall focus on the latter. This raises the question:

Why is technical standardisation attributed strategic importance by the Group? The provided by the Task Force is that technical standardisation is *market power*. This concept has many aspects, and may as such be the result of the high practical experience by the members of the Task Force, but also reflects a lack of thorough conceptualisation of what makes technical standardisation a tool of market power. The market power of standardisation, amongst others, stems from the fact that “standards as non-tariff barriers can segment or unite markets.” However, technical standards are also market power because they may reduce “vertical integration through a broader scope for source of supply,” and “eases co-operation with international partners”. Market power is also characterised more explicitly as the shaping markets, e.g. as in the case of information technology, where standards for interface are crucial for market access. In all these characteristics of market power lies the concept of second order competition, namely of setting the premises for competition. Both the report by the Task Force, and in interviews were examples of second order competition given. It is, however, not (yet) spelled out as a (conscious) strategy, but echoes strongly in descriptions of what is to be avoided: namely that other actors in technical standardisation — be it companies, public authorities or interest groups — set technical standards which are not in accordance with the interests of the Daimler-Benz Group.

The above mentioned co-optation of standardisation organisations and industry in the elaboration and adoption of directives in the EU is not formulated as a part of a strategy. This aspect is neither reflected in the report, nor in the interviews I have conducted. The Task Force only briefly concludes that the Group does not monitor legislative changes closely enough, neither does it take extensive advantage of its possibilities to influence legislative changes. Furthermore, the possibilities of influencing legislation is only exemplified at German level.

The Group is here about to realise, that it has a little army ‘out there’, in the external field of technical standardisation, which are to represent and fight for the interest of the Group. However, to do this, it is necessary to establish internal procedures, which can define the interest of the Group, otherwise these ‘soldiers’ cannot be bound into a strategy. Hence we are back to the issue of corporate management

Resemblances of internal standardisation and (external) technical standardisation.

The Task Force does not draw up a full-fledged strategy. Nor does it consider e.g. distinctions between ways of participation in technical standardisation. However, it does suggest the organisational framework to co-ordinate participation in technical standardisation.

Firstly a structure of committees is set up. In this way, a network of networks is to ensure that information on standardisation issues are communicated across the Group and also facilitates observation of standardisation activities by the central management level of the Group. To this task is assigned a new position in the Group, the Manager of Standardisation Co-ordination, with the

possibility of reporting directly to the Board of Managers of the Group. The setting up of this structure is a decision by the Board of Managers, i.e. a hierarchical decision. However, the working of the committees, relies on co-operation and negotiation, and is as such a formation of the Group as network. In this organisational structure is priorities to be set and participation in external technical standardisation to be co-ordinated. This is also to say that internal conflicts are to be solved internally, and not in externally in the standardisation organisations. These conflicts are generally expected to be solved by negotiation and in unanimity, i.e. by drawing on the vision of a common future of the subsidiaries of the Group; however, is this not the case, the latent hierarchy will be actualised. The Manager of Standardisation Co-ordination did only expect this to happen once. The transparency to be achieved by this organisation should ensure that possible savings will be achieved. Here governance relies on the Group as a market, in which each cost centre of the group will reduce expenses whenever possible, such as if it observes that a specific task of representing the Group in standardisation organisations is taken care of by another part of the Group.

The visions to guide this co-ordination are the vision of Daimler-Benz as a global player and as integrated technology group. The core of the vision of the global player, is the Group which produces on a global scale:

“We fit into the trend that a number of companies—maybe 25, not more than 30—will be real global concerns, positioned in all the major regions with all the entrepreneurial aspects of business.”⁷¹

Standardisation is articulated into this overall vision in the following way:

“Standardisation may take place at the level of Daimler-Benz corporate units, at the level of the Daimler-Benz Group, at the level of associations, and at national, regional or international level. The level should be chosen according to the state of technology, ability to reach consensus and strategic planning. *For a world-wide operating corporate group, international standardisation is of highest importance, and should be prepared through the other levels.*”⁷²

Hence one aim of this strategy is to work for a global market, i.e. to avoid that the market power of standards is used as barriers to trade. However, this global strategy may be contrasted by the fact, that the Task Force felt that it was able to provide a full picture of the technical standardisation activities of the Group, solely by drawing on DIN, and that it does not consider in any way what

71 Dr. Gerhard Liener, former chief financial officer of the Group, in Daimler-Benz 1993 Going Global. Churchill Murray International, p.16.

72 Cf. Vorschlag für eine Richtlinie zur Zusammenarbeit und Interessenvertretung bei Normungsaufgaben im Daimler-Benz Konzern, Article 2, own translation, emphasis added.

resources may be available and what strategies possible by drawing on subsidiaries of the Group in other European countries and in other parts of the world.

The vision of the integrated technology group is one of a group, which is strong in research and development, and in which synergy is created between various areas of business and research. Technical standards are articulated into this vision as a tool of knowledge management. Standards can formalise, store and transfer knowledge, and thereby be used as a tool to gain competitive advantages and avoid to 'invent the wheel twice'. A central tool to achieve this — and to the total organisation of standardisation activities — is a Standards Information System. The plans for the system are quite ambitious: all standards and standardisation activities of the Group to be available on the information system; all generally accepted external rules and standards are to be available; the system is to be available in all parts of the Group; and finally, the information is to be available in the form of computer software. Thereby the standards shall be made directly available for computer aided manufacturing, design and quality control. This is to say, that the aim is to use standards as a tool for transfer of knowledge and know-how at Group-level. To realise such knowledge transfer, standardisation is to be standardised. This formalisation is of considerable scope: innovations—also minor innovations at the shop floor—are to be formalised according to certain rules, and stored in a data-base. Thereby the knowledge can be made accessible to other parts of the Group. This standardisation shall make it possible not only to make searches, but also to get in contact with other parts of the Group, active in elaborating specific internal or external standards. Therefore, the 'life cycle' of standards to be formalised. In a first, general formalisation thereof, it has five parts: strategic considerations; elaboration of either internal or external standards; administration of standards; maintenance of standards; and application and testing.

The system is also perceived as a tool for formulation of an external technical standardisation strategy. In interviews, the Standards Information System was characterised as a tool — like a hammer — with which the Group can achieve co-ordination. However, there is to be developed more specific strategies, which the Group can support and implement with this 'hammer'. The way in which the Standards Information System is to support technical standardisation activities has strong resemblances of the 83/189 information system of the EU, mentioned above.⁷³

These findings of the case study are to be discussed in the final and concluding section.

V. Conclusion: the political firm

The case study of the Daimler-Benz Group has presented how the Group has taken measures to constitute itself as a coherent actor in the field of technical standardisation. Is beyond the scope of this paper to analyse whether the Group actually achieves to act as a coherently. This is likely to be an ongoing matter of discussion in the Group. However, significance is given to the fact that this

⁷³ Cf. Gruetzner, 1994, pp. 51ff for a comprehensive introduction to the 83/189 Directive and Committee

discussion and aim arises in the first place. I interpret this as supporting the argument, that the constitution of EU — and in fact of West-European societies in general — has changed. Other interpretations may be given, and I do not argue that other interpretations may not be valid as well.

Another possible interpretation would be that only the expansions of the Group since the mid-1980s has brought up a situation in which Daimler-Benz needs to constitute itself as a coherent actor in the field of technical standardisation. In this line of argument, the Group — due to its reconfiguration — needs to constitute itself as a coherent actor in many respects. However, this argument does not give any suggestions as to why the Group holds it to be important to do so in the field of standardisation.

One could also take another line of argument, namely that it is an exceptional case that the Daimler-Benz Group for decades has not constituted itself as an actor in technical standardisation. This argument may be substantiated historically: Daimler-Benz, as a producer of vehicles, has a long tradition of being rather reluctant in external standardisation activities. In contrast to companies such as Ford and Volkswagen, Mercedes-Benz has traditionally used standardisation primarily for safeguarding quality, and not primarily as a tool to achieve economies of scale in mass-production; Mercedes-Benz was not just a car, it was a mark of quality. The materials, the technologies and the components were to be second to none. For an external company to be able to deliver to Mercedes-Benz, it had to be certified by the Department for Quality Certification of Mercedes-Benz. Some third-party certification or confirmed compliance e.g. with German standards alone was not sufficient. At Mercedes-Benz this led to a tendency of disinterestedness towards the work in standardisation organisations. Mercedes-Benz took, of course, part in this work, but had its own internal standards, which, in the understanding of the company itself, generally were higher—if not superior—to external standards.⁷⁴ The costs of this strategy was of no problem to Mercedes-Benz as long as the company was among the most profitable companies in Germany. However, with the benefit of hindsight, it is today argued that the company pushed itself into expensive markets, —even into quasi-monopolies. Since the expansion of the Group, the internal standardisation system of Mercedes-Benz is described in quite other terms. The internal standards which duplicate external standards are generally perceived as extra costs: it is both costly to produce these standards (one internal standard costs on average DM 20,000 to produce), and it pushes the company into more expensive markets as it loses the benefits of economies of scale.

Hence it could be concluded that Daimler-Benz is an exception to the general rule, that corporate groups aim at constituting themselves as coherence actors in technical standardisation. Siemens — as mentioned above — would probably provide a case study of a private enterprise which for a long period of time has constituted itself as a coherent actor in technical standardisation. Anyway, it holds a reputation of successfully doing so. Such a case study could possibly show both a more

⁷⁴ Interview

developed strategy and provide information on how such a more elaborate strategy reacts to the rise of European standardisation. Anyway, such a study would not refute the significance of the enlarged scope given to technical standardisation in the EU, and neither that significance is given to this enlarged scope by the Daimler-Benz Group. Again other interpretations of the Daimler-Benz case could focus at other lines of development, such as the regulation of international trade by GATT and later WTO, or to the increase of information technology. However, these interpretations rather supplement than question the story told here.

Hence I think it is justified that the Daimler-Benz Group constitutes itself as coherent actor in the field of technical standardisation due to changes in how West-European societies are constituted. These changes involve a change in what it is to be private enterprise. The distinction between political and non-political has been displaced — and therefor can the paradox of this distinction not be handled in terms of the ideal type liberal state. Constitution of markets become political yet non-political. Public bodies react to this by developing governance instruments, which replicate the paradox, as they at the same time accept and non-accept how decisions are taken in standardisation organisations. The Daimler-Benz Group handles this paradox in terms of second order competition, which is to be co-ordinated to achieve and sustain competitiveness in the market place. In future, however, the Group may be forced to perceive technical standardisation in more forthright political terms. We are still only at an early stage of European technical standardisation, and looking at the field, there are more signs of a general armament. Environmental NGOs are increasingly getting involved, national environment protection agencies begin to focus on technical standardisation as a part of a product oriented environmental policy,⁷⁵ DG XI has taken more initiatives, trade unions and consumer interests are involved, the USA focuses on European technical standardisation as a part of the foreign trade policy,⁷⁶ and European standardisation is criticised from a democratic perspective.

An increase in competition in technical standardisation — not only between parties with commercial interest — but also with political interests, may break up Daimler-Benz' concept of market power: how does market power fit into the common argument that the market demands this or that? This argument still relies on the idea of the market as selection mechanism, which only let the fittest survive, and ignores the phenomena of companies constituting and formulating the rules of the market according to own interest. In its extreme form is this a reversal, namely that survivors make it fit.

At the heart of the approach taken here, lies that the political paradox cannot be solved — but only handled in various ways. I have argued that this handling previously has relied on a strict division between market and state, which constituted a frame for both legitimacy of the democratic political

75 Goldschmidt 1995

76 Christe 1995 refers the following statement by US Secretary of Commerce given in 1989 after a discussion with Commissioner Bangemann: "The issues of how standards will be set and what they will be is a top concern of the American business community about EC 92."

process, and the frame which made it possible to conceive the market economy and market actors as non-political. The post-World War II developments in Europe may be interpreted as a deviation or erosion of the ideal type: neo-corporatism, Fordism, welfare state and Euro-sclerosis has been ways to conceptualise these prevalent phenomena. Many observers conclude that the deregulative single European market is a reaction against these phenomena: the single market is to vitalise the sclerotic Europe. The single European market project, however, is not a return to the ideal type liberal state or a roughly resembling construction of a boundary between state and market. It is a displacement of the boundary, and hence a transformation of what is on either side. Both political and non-political changes character. A new way to handle the paradox develops.

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