

National de-delegation in multi-level settings: Independent regulatory agencies in Europe

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Abstract

National politicians in Europe have created independent regulatory agencies (IRAs) with significant powers over markets such as communications and energy. After delegation, they have engaged in institutional politicization of IRAs and undertaken numerous attempted or actual de-delegations. Yet overall de-delegation over the period 2000–2020 has been limited, as many de-delegations have been abandoned, temporary or reversed, and also counterbalanced by extensions of IRA powers. The article examines different explanations for this pattern. It looks especially at Europeanization, which has operated through normative and particularly coercive mechanisms. EU coercion has involved threats of legal action, monitoring and enforcement of existing EU legal requirements, and EU legislation expanding IRA powers and protection. IRAs are more vulnerable to de-delegation than trustee non-majoritarian institutions because their position can be altered with simple legislative majorities. Yet even for such agents, the ability of national politicians to reverse delegation is constrained by multi-level institutional settings.

1 | INTRODUCTION

Independent Regulatory Agencies (IRAs) have spread widely in Europe since the 1980s, offering an important example of delegation to Non-Majoritarian Institutions (NMIs). The most powerful IRAs are those for regulating markets for communications, energy, and transport as well as

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general competition authorities (Coen & Thatcher, 2005; Guidi, 2016; Majone, 1997). National politicians have delegated key regulatory powers to IRAs concerning competition, prices and service provision.

Yet after creating IRAs, politicians have entered into strong conflicts with them, sometimes to the extent of engaging in ‘institutional politicization’, which involves publicly calling into question the initial delegations, especially when problems and controversies arise in politically-sensitive fields such as energy or communications. We seek to contribute to the study of post-delegation politics by looking at whether, how and why such institutional politicization leads to ‘de-delegation’, which curbs IRAs by reversing or revising the original formal delegation. Since IRAs are ‘agents’ whose delegation contract at the national level can be altered relatively easily by elected politicians, they appear especially vulnerable to de-delegation. Their position contrasts with other NMIs such as international organizations or constitutional courts that are trustees for whom de-delegation requires super-majorities or unanimity among multiple principals.

At the same time, IRAs operate in a greatly changed European institutional setting compared with when they were initially created. European Union (EU) legislation concerning the institutional position and features of IRAs has expanded, while European networks and agencies have been established. Our empirical and theoretical question is thus whether national institutional politicization leads to de-delegation for NMIs that enjoy limited domestic institutional protection but operate in a multi-level governance system. In particular, we examine whether the relative lack of national barriers to de-delegation is offset by the effects of multi-level governance.

We begin by developing different expectations from relevant literature about patterns and processes of de-delegation. Based on such expectations, we then empirically investigate five countries with diverse national institutions and state traditions (Britain, France, Germany, Italy and Spain) and two sectors (telecommunications and electricity) that have differences in politically important regulatory outcomes over the period 2000–2020. We find a general pattern that politicians have engaged in institutional politicization of IRAs that challenges the existing delegation and then engaged in multiple attempted or actual de-delegations. Yet overall, de-delegation over the period 2000–2020 has been limited, because most de-delegations have been abandoned, temporary, or reversed; moreover, they have been offset by quite the opposite movement, as IRAs have been given new powers and functions. The pattern holds across both sectors and diverse European countries. National challenges to IRAs have not led to de-delegation—on the contrary, delegation has increased.

The findings are consistent with expectations derived from literature linked to Europeanization and more generally institutional isomorphism. We therefore proceed to investigate in greater detail whether the EU has influenced domestic de-delegation decisions and if so, through which mechanisms. We find that the strongest evidence is that legal coercion by the EU—in the form of legislation and the decisions of the European Commission and Court—has been a significant factor in limiting de-delegation despite national politicization. It has operated through monitoring and enforcement of existing EU legal requirements, the threat of legal action pre-empting de-delegation and EU legislation expanding the powers and protection given to IRAs. The United Kingdom (UK) offers an exception to our general findings, as de-delegations were rare and decisions to expand IRA powers arose before EU legislation, reflecting the country’s position as a ‘policy leader’ in EU regulation of markets before Brexit.

The analysis shows that even for agents such as IRAs, the ability of national politicians to de-delegate is constrained and counter-balanced by EU institutions and legal requirements. The

findings suggest that post-delegation linkages with actors at different levels of governance, especially other NMIs such as the European Commission and Court and cross-national networks, protect NMIs from de-delegation by their original principals. They suggest that while national politicians can attack the legitimacy of NMIs and seek to curb them, multi-level governance restricts their ability to do so through de-delegation.

2 | DE-DELEGATION AND IRAS FOR MARKETS IN EUROPE

A thriving line of research on ‘agencification’ has analyzed the spread of IRAs across countries that are highly diverse in terms of state and economic traditions in Europe and beyond (Gilardi, 2009; Jordana et al., 2011; Levi-Faur, 2005). Initial studies sought to explain delegation to IRAs and its formal institutional design (notably the extent of independence) through the functional benefits offered to national elected politicians (such as enhanced credible commitment, blame shifting and greater technical expertise), albeit mediated by sectoral characteristics and national factors such as numbers of veto points and players, domestic politics or state traditions (e.g., Gilardi, 2002, 2009; Thatcher, 2002). Subsequent work on post-delegation politics focused on political control, especially whether formal controls were used in practice and thus whether formal independence translated into behavioral independence (among the many examples, see for instance, Maggetti, 2007; Hanretty & Koop, 2013). Analyses have often drawn on rational choice Principal-Agent (P-A) theory, although they have been complemented or challenged by sociological and historical institutionalist accounts and subject to major criticisms, notably over the role of actors beyond principals and agents (cf. Benoît, 2021; Maggetti & Papadopoulos, 2018).

Less attention has been paid to the evolution of the formal ‘delegation contract’ of IRAs after their creation, notably changes in delegation as a whole, which includes regulatory powers granted as well as controls. Yet in the light of subsequent experiences, events and changed preferences, national politicians may engage in institutional politicization of IRAs. Politicization is a much-used term with different usages; even if referring specifically to IRAs, it can refer to appointing IRA members who have political affiliations (cf. Ennser-Jedenastik, 2016), higher public attention (cf. Koop & Lodge, 2020), and a reversal of ‘depoliticization’ through an increase in the discretionary powers of elected politicians or even the scope of politics (cf. Fawcett et al., 2017; Hay, 2007, 2014). Indeed, recent literature has treated depoliticization as part of ‘governing strategies’ or ‘tools and tactics’, and delineated ‘institutional’ or ‘governmental’ depoliticization (reductions in the powers of politicians notably through delegation to other bodies such as agencies) from rule-based depoliticization (setting rules that constrain policy makers) and preference-shaping depoliticization, or else governmental, societal and discursive politicization (Fawcett et al., 2017; Flinders & Buller, 2006; Hay, 2014). The literature has also included the possibility of (re-)politicization, which may arise from many sources, ranging from the self-created failures of delegated bodies to new ideas and discursive changes (cf. Hay, 2014; Kuzemko, 2014 for energy).

Here, we focus on ‘institutional politicization’, understood as elected politicians calling into question an original grant of powers to an IRA. We follow the definition used in this special issue—‘any sustained, public challenge to the legitimacy of an existing NMI by officials who possess some authority to override, curb, or abolish it’ (for a deeper discussion, see the introduction to this special issue, Thatcher et al., 2022). Institutional politicization can take forms ranging from attacks on an IRA’s creation and powers to specific proposals and attempts to change the existing delegation. As with the entire special issue, we examine whether, how and

why institutional politicization leads to de-delegation, which is defined as an ‘authoritative alteration—or annulment—of an existing ‘delegation contract’, in order to reduce the formal authority of the NMI to make law, regulate, or govern in other ways’ (Thatcher et al., 2022). Hence de-delegation is a change in formal rules to curb IRAs that can include outright abolition of IRAs, reductions in their powers and/or imposition of additional formal controls either directly or through reorganizations.

Whether institutional politicization leads to de-delegation, however, is a question that calls for empirical analysis. De-delegation is only one way in which elected politicians can reduce the power of IRAs. Alternatively, they can use existing formal controls such as appointments and budgets, or informal controls, even refusing to comply with IRA decisions; they may also engage in ‘institutional layering’ by inserting multiple organizations in a policy field (cf. Streeck & Thelen, 2005). Moreover, elected officials may turn to other forms of politicization (cf. Hay, 2014). Nonetheless, de-delegation is particularly feasible at the national level, because IRAs rarely enjoy constitutional protection. Indeed, de-delegation can be introduced by elected politicians through laws requiring simple parliamentary majorities or sometimes even through governmental decrees.

Few studies of de-delegation of IRAs for markets in Europe have been undertaken; to the best of our knowledge, none comparatively.¹ Nevertheless, two recent studies are relevant and exemplify different claims. Isik Ozel (2012) introduces the term de-delegation. She argues that in Turkey there has been a backlash against IRAs by politicians using nationalism, based on state traditions of highly centralized bureaucracy and distrust between politicians and bureaucrats. It has led to legal changes such as directly attaching IRAs to government ministries and giving ministers authority over IRAs’ decision-making. Thus, Ozel’s approach is close to historical institutionalists’ accounts as it directs attention to endogenous forces undermining delegation due to the effects of inherited national institutions and state traditions.

In contrast, Susana Coroado (2020) has looked at increases in the formal independence of IRAs in Portugal and considered five explanations: coercive isomorphism by the EU; the need for increased credible commitment due to liberalization or privatization; emulation, which can operate across sectors nationally but also cross-nationally; dealing with political uncertainty; and managing political control. She finds that the most important factors have been coercive isomorphism and credible commitment, although there has also been some domestic emulation. The first and third factors are close to a sociological institutionalist analysis of institutional isomorphism, while the second is more of a rational choice P-A argument.

The studies of Ozel and Coroado provide useful initial directions for research linked to different wider theoretical lenses. However, they have limitations and hence need development. Both examine just one country, and Ozel looks at Turkey, excluding the effects of the EU. While valuably setting out different explanations, Coroado’s analysis of changes in formal delegation is indeterminate in terms of outcomes, as some explanations suggest cross-national convergence (e.g., coercive isomorphism and cross-national emulation) but others cross-sectoral convergence within countries (e.g., domestic emulation). Also, the article looks only at increases in formal independence, as distinct from de-delegation as a whole which also includes alterations in powers and responsibilities delegated to IRAs or their abolition. As a result, both studies leave important questions unanswered, notably whether their claims hold more widely for de-delegation in Europe.

Given the lack of comparative studies of de-delegation of IRAs and multiple possible explanatory factors, we offer an initial analysis. Our first step is to develop expectations derived from the two recent empirical studies and wider theories. We focus on IRAs for economic markets

in Europe. Thus Ozel's analysis underlines the role of inherited domestic factors. If applicable beyond Turkey, it would lead us to expect cross-national variations in de-delegation due to factors such as differences in state traditions concerning bureaucratic power and loss of political control. In particular, countries with strong traditions of centralized state power would be more likely to de-delegate than those with greater decentralization or suspicion of central power. De-delegation could occur through processes such as the development over time of alliances between the central government bureaucracy and elected politicians (as described by Ozel) or court decisions against delegation.

In contrast, if applicable to de-delegation, Corrado's finding of EU coercion and cross-national emulation would result in the convergence of de-delegation across European countries, whereas domestic emulation would operate across sectors within countries. Her suggestion of the importance of the EU responds to critiques that P-A analyses are too focused on relations between principals and agents, thereby neglecting other actors in the wider 'regulatory space' (Maggetti & Papadopoulos, 2018), and also links to a wide literature on 'Europeanization' in the sense of whether, how and why the EU affects domestic policies and institutions (for some classic examples, see Featherstone & Radaelli, 2003; Stone Sweet et al., 2001; Graziano & Vink, 2006; for more recent works, see e.g., Leontitsis & Ladi, 2017). The literature identifies similar mechanisms or processes including 'coercive Europeanisation' marked by legal imposition supported by a 'shadow of hierarchy' providing incentives for states to comply, albeit mediated by domestic conditions, as well as normative and mimetic transfer (cf. Börzel & Risse, 2012; Lodge, 2000; Radaelli, 2000). More specifically, as the EU has greatly expanded its regulatory activities, studies have pointed out that national agencies (including IRAs) have become 'double-hatted' and built up relationships with other European actors as well as national ones (Egeberg & Trondal, 2009). Indeed, in electricity and telecoms, IRAs are members of advisory European networks which became EU 'networked agencies' composed of representatives of national IRAs (Coen & Thatcher, 2008; Scholten, 2017). Membership of such networks can allow IRAs to share information, cooperate and develop rules with each other and the European Commission, bypassing national governments (Mathieu & Rangoni, 2019; Rangoni, 2019), as well as develop strong norms of independence that increase the resources and autonomy of IRAs vis-à-vis their national principals (Maggetti, 2014; Mathieu, 2016; Yesilkagit, 2011). In short, EU legislation and European networks may affect de-delegation through different mechanisms—such as coercive, normative or mimetic isomorphism.

Finally, another highly relevant possibility linked to wider rational choice P-A analysis is that de-delegation occurs if IRAs fail to deliver expected benefits for elected politicians. In the case of IRAs for 'network' sectors such as telecoms and energy, politicians might find that IRAs failed to perform useful functions and deliver expected benefits for them, such as greater efficiency resulting in better outcomes (notably lower prices), enhanced credible commitment that allows attracting greater investment, and taking blame for unpopular decisions (cf. Corrado, 2020; Levy & Spiller, 1996; Thatcher, 2002). Politicians might also face higher costs associated with increased 'agency losses', that is, the IRA going beyond its 'zone of discretion', for instance exceeding its mandate, and acting in ways that are far from the preferences of elected politicians. Finally, those preferences may change, for instance due to changes in who is in government. If these factors apply, we would expect to see de-delegation varying with the 'performance' of IRAs and/or with changes in the preferences of elected politicians.

3 | RESEARCH DESIGN, CASES AND METHODOLOGY

We compare the diverse expectations of de-delegation based on different explanatory factors and processes with the patterns found empirically. We study de-delegation between 2000 and 2020 in five countries—Britain, France, Germany, Italy and Spain. All were members of the EU and of European networks and EU agencies, although the UK left in 2020. Their domestic institutions and politics have varied in respects that could be important for politicization and de-delegation. Thus state traditions, used by Ozel, differ, with France for instance being seen as a ‘centralized statist’ country compared with traditions of suspicion of state action for instance in Britain, while Germany has strong federal features (cf. Dyson, 2010). More broadly, IRAs’ age, norms, operation in practice and ‘fit’ with wider varieties of capitalism have varied (Guidi et al., 2020). The UK is commonly considered a ‘Liberal Market Economy’ (LME) whereas France, Italy and Spain are generally understood as ‘Mixed Market Economies’ (MMEs) or ‘Mediterranean’ polities with stronger statist traditions and suspicion of independent authorities, while Germany is often characterized as a ‘Coordinated Market Economy’ (CME). The rationale for including three MMEs—France, Italy and Spain—is that these are countries that are likely to experience de-delegation—given their legal, administrative and political traditions that run counter to independent agencies—and also that they have different adjustment mechanisms to outside pressures than CMEs and LMEs (cf. Guardiancich & Guidi, 2016; Guidi, 2014; Hall, 2018). Finally, domestic politics in the three have varied, in terms of which kinds of political parties have been in power, which is seen as significant for delegation (cf. Ennser-Jedenastik, 2016).

We select two politically and economically strategic sectors—electricity and telecommunications. They have been much used in analyses of delegation and post-delegation regulation (e.g., Mathieu & Rangoni, 2019). They are both ‘network industries’ that share certain historical features, notably decades of public ownership and monopoly, the existence of politically and economically powerful ‘national champion’ firms which are influential interest groups, and strong traditions of ‘universal service’. These features make the two sectors highly likely ones for cross-sectoral domestic diffusion. In both sectors, elected politicians in most European countries had created IRAs by the early 2000s. Thereafter, EU legislation concerning the institutional position of national regulatory authorities developed and European networks and agencies were created in the 2000s (Coen & Thatcher, 2008; Mathieu & Rangoni, 2019). Such European activity could lead to cross-national convergence through isomorphic processes. At the same time, however, several politically important post-delegation outcomes have differed across the two sectors. We focus on IRA performance on two outcomes that are key for elected politicians—prices and meeting the politicians’ ‘industrial policy’ preferences.² Comparing the two sectors allows us to probe whether such outcomes and hence benefits for elected politicians lead to differences in de-delegation.

The empirical analysis proceeds in two steps. First, we examine the patterns of de-delegation found and compare them with the expectations of institutional outcomes derived from the different approaches set out above. In particular, we examine whether there are distinct national patterns in line with expectations generated by Ozel’s national state traditions, or cross-national similarities which would be compatible with mimetic, normative or coercive Europeanization, or national cross-sectoral convergence which would be compatible with domestic emulation or finally cross-sectoral differences which could be due to the variations in the functional performance of IRAs for elected politicians.

We find cross-national and cross-sectoral similarities. These findings are compatible with different forms of Europeanization. But we need to investigate whether Europeanization has

really operated (since convergence may also arise from exclusively domestic decisions, such as cross-sectoral emulation), and if so, how, since Europeanization may operate through a variety of mechanisms. Therefore, our second step is to supplement cross-sectoral and cross-national comparisons with initial probes and process tracing about whether and which of the mechanisms or processes of Europeanization identified in the literature review—mimetic, normative and coercive—have operated in key episodes of de-delegation. Our process tracing is theory guided, as it tests three mechanisms put forward by work on Europeanization based on sociological institutionalist theories, and largely deductive as it tests these three mechanisms; it is applied comparatively across countries and sectors to increase its strength, and on key episodes for efficiency (cf. Bennett & Checkel, 2015; Schimmelfennig, 2015; Trampusch & Palier, 2016).

We examine all known de-delegations in the five countries for the two sectors identified through searches of legislation, newspapers and secondary sources. We carried out interviews with senior officials in both sectors with expertise at both national and European levels (see Section B of the [Appendix](#)). Additional supporting evidence from interviews and primary sources is in Section D of the [Appendix](#); references to this material are indicated in the body of the text by bold numbers in square brackets. For the second step, we focus on EU legislation and key organizations, notably the European Commission, the Court of Justice of the EU (CJEU) and European networks and agencies, to see whether and how they have affected national decisions about de-delegation. We do not seek to offer a complete explanation of the findings of limited de-delegation and indeed extensions of delegation, but instead examine the plausibility of whether EU regulation contributed to the patterns of de-delegation found and mechanisms for this.

In line with the special issue, our research question is whether, how and why institutional politicization leads to de-delegation, that is, elected politicians abolishing an IRA, reducing its powers or increasing controls over it. Although other forms of politicization and modes of controlling IRAs are important, given space constraints, the focus of the special issue and the literature discussed above, we look at formal de-delegation, which alters the institutional framework within which IRAs operate. We look at (de-)delegation as a whole, including both powers given to IRAs and controls over them; while many studies have examined formal independence of IRAs from elected politicians, notably using Gilardi's index (Gilardi, 2002), few have considered which powers have been (de-)delegated.

4 | NATIONAL DELEGATION TO IRAS IN TELECOMS AND ELECTRICITY

Traditionally, network sectors in Europe (and elsewhere) such as electricity and telecommunications were highly 'political'. Elected politicians enjoyed many powers over state-owned suppliers (which usually held legal monopolies), including setting prices and investment. They used their powers not just to provide 'public services' but also for purposes such as pursuing 'industrial policies' of favoring selected 'national champion' firms, holding down prices at politically sensitive times, providing employment and aiding macro-economic policies. Ministers enjoyed wide discretion and their decisions were debated in legislatures and elections (see e.g., Thatcher, 2014, pp. 9–11).

However, as legal monopolies were ended and many suppliers were partly or wholly privatized, elected politicians created IRAs for telecommunications and electricity. Although the timing varied, IRAs were generally set up before the EU established provisions about their legal

TABLE 1 Telecoms and electricity IRAs in Britain, France, Germany, Italy, and Spain

	Telecoms	Electricity
Britain	Office of Telecommunications (OfTel, 1984) Office of Communications (Ofcom, 2000)	Office of Electricity Regulation (Offer, 1989) Office of Gas and Electricity Markets (Ofgem, 2000)
France	Autorité de Régulation des Télécommunications (ART, 1996) Autorité de Régulation des Communications Électroniques et des Postes (ARCEP, 2005)	Commission de Régulation de l'Électricité (CRE, 2000) Commission de Régulation de l'Énergie (CRE, 2003)
Germany	Regulierungsbehörde für Telekommunikation und Post (RegTP, 1996) Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA, 2005)	Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA, 2005)
Italy	Autorità per le Garanzie nelle Comunicazioni (AGCOM, 1997)	Autorità per l'Energia Elettrica e il Gas (AEEG, 1995) Autorità per l'Energia Elettrica il Gas e il Sistema Idrico (AEEGSI, 2013) Autorità di Regolazione per Energia Reti e Ambiente (ARERA, 2018)
Spain	Comisión Nacional del Mercado de las Telecomunicaciones (CMT, 1996) Comisión Nacional de los Mercados y la Competencia (CNMC, 2013)	Comisión del Sistema Eléctrico Nacional (CSEN, 1995) Comisión Nacional de la Energía (CNE, 1998) Comisión Nacional de los Mercados y la Competencia (CNMC, 2013)

form and features. Table 1 sets out IRAs for telecommunications and electricity in our five countries, with their date of creation. It includes changes in names and coverage over time, notably single-sector IRAs becoming part of multi-sector ones (e.g., communications, energy, or all network industries) or being subsumed within the general competition authority.

IRAs were expected to 'depoliticize' decision-making. The direct role and discretion of elected politicians were reduced. IRAs were to take decisions using 'non-political' criteria to fulfill their legal duties, based on technical and economic data and following procedures that were not 'tainted' by politics. Aims such as electoral popularity, favoring selected national firms or rewarding allies were no longer legitimate. Instead, the primary function of IRAs is to regulate competition. Typically, they have mandates to ensure 'fair competition' and high-quality services. They are usually given powers to ensure 'universal service' and to set tariffs (for access to central grids or networks, which then influences competition and prices for final users). They enforce licenses and decide sanctions for breaches, and sometimes issue licenses (Thatcher, 2002, p. 126, 2005, pp. 352–254, 2014, pp. 11–13).

While IRAs enjoy legal independence, elected politicians have retained certain formal controls. These typically include appointing IRA heads and senior staff and setting agency budgets and staffing levels. In addition, politicians may wield informal methods of control, such as 'persuading' IRA heads to resign early and offering incentives to agency heads and staff to follow their preferences (Thatcher, 2005, pp. 354, 364–366). Thus they can influence IRA behavior

within a given institutional framework. However, elected politicians may decide to challenge the formal framework and then go further by de-delegating.

5 | POLITICIZATION, DE-DELEGATIONS, YET OVERALL PRESERVATION AND DEVELOPMENT OF DELEGATION

Despite, or perhaps as a result of, delegation to IRAs with ‘non-political’ aims and decision-making processes, institutional politicization has occurred pervasively and has often led to de-delegations. Elected politicians have attacked the institutional legitimacy of IRAs, notably on the grounds that they have failed to deliver expected benefits as well as part of strategies to protect key national firms, and proposed changes to curb IRAs and then engaged in de-delegations. In both electricity and telecommunications, there have been several episodes of attempted and actual reductions in IRAs’ key powers (e.g., price- and tariff-setting, sanctions, obligation-imposition), at times coupled with placing increased controls upon them, despite the different outcomes in the two sectors. Although there has been some variation, attempted and actual de-delegations have taken place across the five countries analyzed.

In electricity, governments have often taken back powers over price-setting especially for residential users who importantly, are also voters. Greater competition, overseen and promoted by IRAs, was widely expected to attract investments by private firms and lead to lower prices. Yet prices in energy after 2000 have been under upward pressure—often due to factors outside the control of IRAs such as world energy prices or the costs of nuclear power, environmental taxes, and subsidies linked to promoting renewables. Figure 1 sets out price changes in energy and telecoms in Europe. It shows that in electricity, since the liberalization of retail markets in 2008, prices for household consumers have increased faster than inflation, on average by 33% and in countries such as France, Great Britain and Spain by 50% in nominal terms (ACER & CEER, 2020, pp. 18–19). The 2022 Russian invasion of Ukraine has increased prices dramatically further, although it occurred after the present research was completed. Worse still, IRAs have failed to perform blame-shifting functions for such rising energy prices. Instead, consumers have

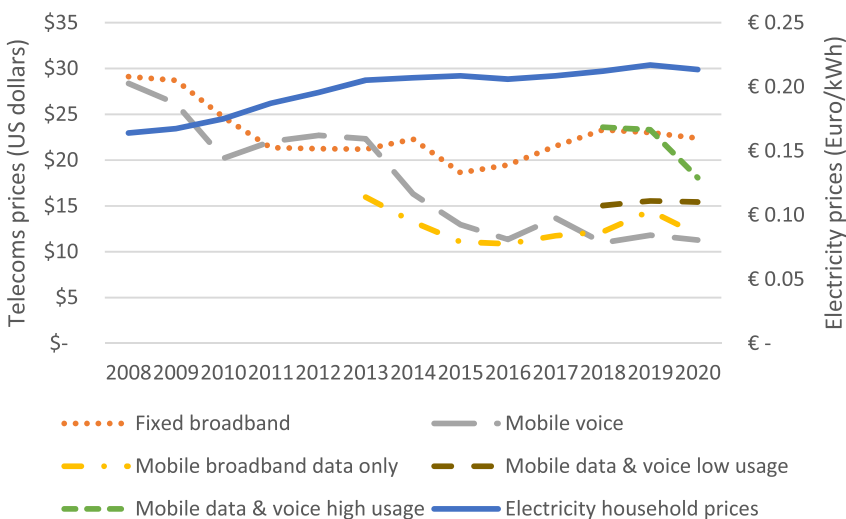


FIGURE 1 Trends in electricity and telecoms prices in Europe, 2008–2020. *Source:* own calculations based on Eurostat (Band DC: 2500–5000 kWh, household electricity consumption; all taxes and levies included) and ITU ICT Price Baskets

often considered governments as the ultimate responsible body for high energy prices, with big companies as accomplices.

Thus in several countries, politicization and de-delegation in electricity have followed price rises. The most striking example is Britain, seen as an LME that has created and welcomed IRAs. In the early 2010s the head of the Opposition Labor Party called for the abolition of the 'toothless' IRA and a sharply critical report by the House of Commons argued that the IRA had failed to act and that the government should intervene.³ Political pressure culminated in the government introducing in 2018 a time-limited price cap on energy bills for 11 million customers, hence removing the ability of the IRA to do so.⁴ But the British example is not unique. In Spain, as energy prices rose to support the costs of renewables and became more politically controversial from the 1990s onwards, the government sought to recover control over network tariffs (which account for around 40% of final electricity prices) by emptying the IRA of its tariff-setting powers.⁵ High energy prices equally led to debates about price caps in Italy, where in the early 2000s the government introduced an urgent law decree to block a price increase automatically triggered by a formula linked to international oil prices set by the IRA.⁶ Most recently, politicization and de-delegation of energy IRAs rose very sharply after prices soared in 2022 following the war in Ukraine and Russian decisions over energy; in particular, many governments set price caps, granted enormous subsidies and even (re-)nationalized suppliers to deal with the political and economic crisis triggered by such price rises.

In telecoms, by contrast, technological developments have allowed a progressive fall in prices (see Figure 1) and a remarkable broadening of services. Moreover, privatized firms regularly delivered investments and paid high prices to acquire spectrum licenses for mobile services, providing both remarkable improvements for users and large sums to governments. Nevertheless, telecoms IRAs have also been subject to politicization and de-delegation, thus showing that regulatory outcomes are not the only driver of such developments. Indeed, two other, linked reasons for institutional politicization and de-delegation have been when pursuit of the IRA's mandate for competition conflicted with the desires of elected politicians to aid national champion firms and gain greater discretion over regulatory decisions.

Thus in telecoms, continental European governments weakened IRAs' powers as part of strategies to protect incumbents that traditionally were very closely tied to—if not directly owned by—the state. In the early 2000s, the French government curbed the IRA's tariff-setting powers insofar as those related to France Télécom,⁷ which was then 40% state-owned and employed almost 200,000 people. It also decided that contrary to previous plans, the IRA's budget had to completely depend on the state, thereby gaining an additional control over it (OECD, 2003).⁸ The Spanish government was also repeatedly accused by the Opposition and new entrants of favoring Telefónica, for example, by fixing generous access fees against the IRA's recommendations.⁹ After having delegated to itself rather than the IRA a number of powers [1], it weakened the sanctioning power of the IRA by capping the maximum penalties, immediately after the IRA had imposed a high fine on Telefónica.¹⁰ It also regained oversight powers over the 'essential services' provided by Telefónica, including to keep prices below competitive levels for 'social reasons', thereby making it harder for competitors to enter the market (OECD, 2000).¹¹ Then in what the IRA itself called a 'theft of competences',¹² in the early 2010s the government ended the IRA's exclusive powers over obligation-imposition, by taking them for itself.¹³ Thereafter, using an institutional template commissioned by Telefónica, it exploited the merger of several IRAs to not only prematurely end the terms of the Head and a Board Member of the telecoms IRA who had been appointed by the previous government, but also take back other powers on administrative charges, registering operators and numbering (REG5a; REG4; REG2) [2].¹⁴ Analogously in

Germany, in exchange for significant investments in broadband networks by Deutsche Telekom, which at the time was more than 40% state-owned and the firm with the largest workforce in the country (OECD, 2004), the government provided it with a generous ‘regulatory holiday’ from network access obligations, depriving the IRA of the power to decide such issues itself (REG1).¹⁵

Industrial policy affected politicization and de-delegation in electricity, too. There, the Spanish government ‘intervened a lot’ (EUI1) [3], repeatedly seeking to influence actual or potential overseas purchasers of energy producers such as Endesa (Bulfone, 2020). Amid a wave of mergers and acquisitions in the mid-2000s, it tightened control over the IRA by increasing the power of its politically loyal head vis-à-vis board members.¹⁶ Later, it also took back powers of imposing conditions on takeovers that it had previously delegated to the IRA, influencing the acquisition of Endesa (REG2) [4];¹⁷ acquired inspection powers; and increased control over the IRA’s budget, making it dependent on the state approval [5].¹⁸ Likewise, in 2003 the Italian government took over powers (e.g., for tariff-setting, allocation of import capacity, and reimbursement for past investment) to protect the still partially state-owned incumbent ENEL and the industrial energy consumers that were hitherto favored by the traditional industrial policy (REG8) [6].¹⁹ Similarly, the German government adopted legislation that was so detailed that it removes from the IRA the possibility of setting conditions and tariffs for accessing incumbents’ networks (REG1) [7].²⁰

In sum, episodes of politicization followed by de-delegation have been seen across all the five countries, including archetypical LMEs such as the UK. They have continued over the 20-year period, including after the financial crisis of 2008. They have taken place not only in electricity, with its politically unpopular price rises but also in telecoms, with evidence that they are driven not just by IRA ‘performance’ in terms of regulatory outcomes but also because IRA mandates have conflicted with other aims of elected politicians such as protecting national champions.

However, de-delegation of IRAs must be assessed over time and alongside extensions of delegation, to get the overall picture. When this is done, we see that despite the politicization and the instances of de-delegation just detailed, on the whole, over the period between 2000 and 2020 de-delegation has actually been limited and also offset by new delegations.

For a start, no IRA was abolished—at most, some IRAs were merged into multi-sector agencies (see Table 1). Although such re-organizations allow elected politicians to prematurely alter the heads of IRAs, they have not necessarily reduced the institutional powers of IRAs (REG1) [8], and indeed may lead to powerful multi-sectoral IRAs.

Furthermore, some de-delegations were temporary one-offs by design. Thus most of the various removals of powers witnessed by the Italian electricity IRA in the early 2000s applied only to specific instances and were not made permanent.²¹ Moreover, several de-delegation proposals were abandoned. Examples included British plans in the early 2010s to return powers over media from the communications IRA to the Secretary of State for Culture;²² Spanish legislative proposals in 2012 to reallocate powers from the telecoms IRA to the ministry (REG5b);²³ and even the ‘statist’ French 2010 proposal to introduce a politically appointed ‘*commissaire du gouvernement*’ within the telecoms IRA to ‘facilitate dialogue’ with the government.²⁴

Finally, several de-delegations were eventually reversed. In the early 2010s, the Italian government issued urgent legislation to separate Telecom Italia’s network from its supply of some services, which effectively deprived the telecoms IRA of the power to decide on such ‘network separation’. Yet with almost the same urgency, a few weeks later the government amended such legislation, revoking the de-delegation (REG6).²⁵ Similarly in Spain, the government enhanced the powers of its politically loyal head and took back key tariff-setting powers in energy as well as crucial ones over obligations in telecoms. But later, it undid all these reforms (EUI1; EUI2; REG5a, REG5b).²⁶ Equally in Germany, the government had divested the IRA of key powers on

TABLE 2 De-delegation and its limits

	Telecoms		Electricity	
	De-delegation	Limit	De-delegation	Limit
Britain	Media power proposal	Abandoned 2014		
France	Government commissioner control proposal	Abandoned 2011		
	Sanctioning power	Reversed 2014		
Germany	Obligation-imposition (exemption) power	Reversed 2010	Tariff-setting power	Reversed 2021
Italy	Obligation-imposition power over incumbent	Reversed 2012	Price-setting power	Temporary 2002
			Tariff-setting power	Temporary 2007
			Reimbursement calculation power	Temporary 2010
			Tariff-setting (exemption) power over small interconnectors	Temporary 2013
Spain	Obligation-imposition power	Reversed 2013	Board control	Reversed 2008
	Portability power proposal	Abandoned 2013	Tariff-setting power	Reversed 2019

network access in telecoms and electricity, respectively by granting a regulatory exemption to Deutsche Telekom and directly legislating on tariffs and conditions for using energy networks.²⁷ However, the government has now amended the first legislation and is about to alter the second, too.²⁸ In sum, as summarized in Table 2, a combination of temporary measures, abandoned proposals, and reversals after the fact has contributed to limit de-delegation.

What is more, new delegations have counterbalanced de-delegations (see Tables 3 and 4 below; also Table 1). Thus in energy, IRAs were progressively given ‘massive new powers’ (EUI3), notably: over rules for cross-border supply; for data collection, investigation, and sanctioning over manipulation of trading on wholesale energy markets; and for facilitating the energy transition through for example, energy efficiency. Similarly in telecoms, most IRAs were given additional powers, especially over ‘the new territory’ of the ‘open internet’ (REG1) and over other sectors as part of multi-sector IRAs.

In sum, our general finding is that despite politicization and episodes of de-delegation, overall de-delegation has in fact been limited, due to individual changes being abandoned, reversed and temporary, as well as due to counterbalancing extensions of powers. As illustrated by Tables 3 and 4, the pattern applies in both electricity and telecoms despite differing regulatory outcomes, as well as across countries that represent diverse varieties of capitalism and regulation. How can we account for such a puzzling situation of politicization without de-delegation?

6 | MULTI-LEVEL CONSTRAINTS ON NATIONAL DE-DELEGATION

To explain the overall lack of de-delegation across five countries and two sectors that are marked by substantial differences, we concentrate on the general approach most consistent with the outcomes found, namely, Europeanization linked to sociological institutionalism. Specifically,

TABLE 3 Overall limited de-delegation and growing delegation in telecoms

	Late 1990s	Early 2000s	Late 2000s	Early 2010s	Late 2010s
Britain (1984)	+ Competition	+ Broadcasting + Licensing	+ Spectrum grants	- Competition + Radio license renewal + Penalties + Broadband traffic management + Net-neutrality + Local TV licensing	+ Public broadcasting + Internet + Local broadcasting
France (1996)	- Budget	- Tariff-setting over incumbent + Market definition (EU req.) + Market analysis (EU req.) + Obligation-imposition (EU req.)		+ Functional separation on vertical operators + Conflict resolution - Sanctioning + Reversal sanctioning	+ Net-neutrality (EU req.) + Internet + Press distribution
Germany (1996)		+ Market definition (EU req.) + Market analysis (EU req.) + Obligation-imposition (EU req.)	- Obligation-imposition (exemption) + Reversal Obligation-imposition (exemption)		+ Net-neutrality (EU req.)
Italy (1997)		- Licensing + Market definition (EU req.) + Market analysis (EU req.) + Obligation-imposition (EU req.) + Protection of minors and minorities		+ Enforcement copyrights - Obligation-imposition (over incumbent) + Reversal obligation-imposition (over incumbent)	+ Net-neutrality (EU req.) + Copyrights + Supervision advertising online betting + Supervision secondary ticketing

(Continues)

TABLE 3 (Continued)

	Late 1990s	Early 2000s	Late 2000s	Early 2010s	Late 2010s
Spain (1996)		– Essential services + Market definition (EU req.) + Market analysis (EU req.) + Obligation-imposition (EU req.) + Conflict resolution + Sanctioning – Sanctioning (i.e. capped)		– Exclusivity on obligation-imposition + Appointment procedure – Budget – Numbering resources – Operators registry – Administrative charges + Audio-visual + Reversal exclusivity on obligation-imposition	

Note: '+' indicates increased delegation, '-' indicates de-delegation; 'EU req.' indicates requirements arising from transposition of EU legislation.

we examine three mechanisms for Europeanization: mimetic, normative, and coercive processes. For each, we pay attention to the roles of EU and national actors.

Mimetic processes would involve elected politicians copying either domestically across telecommunications and energy and/or cross-nationally or through an EU model, and could be evidenced by them referencing other examples that seem successful and/or by decisions at a close temporal distance from one another. However, Table 2 shows considerable temporal variation by country and sector, particularly the dates on which de-delegation proposals were abandoned, temporary de-delegations ceased to apply, and de-delegations were reversed. Such a scattered pattern does not support mimetic processes.

Indeed, there were no references in both written material and interviews to copying other countries or an EU model in decisions not to de-delegate. Thus for instance, we did not find evidence that the Italian government's choice to adopt only temporary de-delegations in the electricity sector in the early 2000s was inspired by foreign examples. In Britain, government plans to recover powers over the media, supposedly to increase efficiencies and reduce the communications IRA's costs, were eventually dropped not in the light of foreign templates, but because they faced resistance from both Opposition and Conservative party MPs.²⁹

Turning to normative processes, these can operate through experts and their communities in influencing what institutional models are regarded as legitimate. In our case, European networks of IRAs would be a likely site for such processes. By 2000, in both telecoms and electricity IRAs had become part of wider, informal European networks.³⁰ The EU then established its own formal advisory networks, which later became 'networked agencies' composed of representatives of national IRAs.³¹

Both publicly available sources and semi-structured interviews suggest that normative pressures and namely European networks of IRAs have played some role in limiting de-delegation. The networks have published reports and statements both at the general level—monitoring IRAs' independence—and at times highlighting specific concerns and even explicitly mentioning countries (e.g., BEREC, 2012, 2020; CEER, 2016, 2021). An interviewee explained that when

TABLE 4 Overall limited de-delegation and growing delegation in electricity

	Late 1990s	Early 2000s	Late 2000s	Early 2010s	Late 2010s/ Early 2020s
Britain (1989)		+ Licensing + Sanctioning + Sustainability	+ Transmission licensing + Energy Security	+ Climate change + Market abuse + Cross-border rules (EU req.) + Compensation mis-selling + Consumer redress + Criminal powers market abuse	– Price-setting (i.e. cap)
France (2000)		+ Conflict resolution + Tariff-setting (EU req.)	+ Wholesale markets surveillance	+ Cross-border rules (EU req.) + Market abuse (EU req.) + Criminal powers market abuse	
Germany (2005)		+ Monitoring + Tariff-setting (EU req.)		+ Cross-border rules (EU req.) – Tariff-setting + Network expansion (for climate change and security of supply) + Market abuse (EU req.)	+ Cross-border renewable auctions + Reversal tariff-setting
Italy (1995)	+ Bilateral negotiation	– Price-setting (temporary) + End temporary price-setting – Tariff-setting (temporary) – Reimbursement calculation (temporary) – Tariff-setting (exemption) over small interconnectors (temporary) + Energy efficiency (white certificates)	+ End temporary tariff-setting	+ End temporary reimbursement calculation + Cross-border rules (EU req.) + End temporary tariff-setting (exemption) over small interconnectors + Energy efficiency (district heating) + Market abuse (EU req.)	

(Continues)

TABLE 4 (Continued)

	Late 1990s	Early 2000s	Late 2000s	Early 2010s	Late 2010s/ Early 2020s
Spain (1995)	– Tariff-setting	+ Renewables	+ Merger control – Board control + Reversal board control + Biofuel certification	+ End appeal ministry + Market abuse (EU req.) + Cross-border rules (EU req.) + Appointment procedure – Budget – Inspection – Conflict resolution – Merger control + Sanctioning	+ Reversal tariff-setting – Biofuel certification

Note: '+' indicates increased delegation, '–' indicates de-delegation; 'EU req.' indicates requirements arising from transposition of EU legislation.

an IRA is under attack, it goes to BEREC and then this becomes an agenda item (REG3). Thus the BEREC (2012) statement was triggered by the creation of a multi-sectoral regulator in Spain (REG3), which was linked to changes in senior personnel (REG2; REG4). Indeed, the Spanish IRA had gone to BEREC to complain about its very weak powers (REG5a)! At the time of writing, BEREC has issued a call for a study on IRAs' independence and powers (REG1) which, as yet another interviewee suggests, is one way of highlighting concerns (EUI1). In energy, too, networks play some role. Other interviewees suggest that 'CEER has a working group fighting for independence' and that the Commission discusses new powers for IRAs within the official agency ACER (EUI3; EUI2). At times, European networks of IRAs—rather than single IRAs—have gone to the Commission to ask for more powers (EUI2).

However, interviewees also highlight the limits of European networks. Thus one recognizes that although 'BEREC has a voice, it does not issue binding rules', explains that an IRA under attack goes to BEREC but in parallel also to the Commission, and concludes that 'national governments are more concerned with Commission infringement procedures than with BEREC letters' (REG3). Equally, another interviewee explains that 'being a member of networks provides a bit of protection; this relies on ties with other IRAs. But infringement procedures by the Commission, which are more formal, do the rest'. Also, the 'response of the network is not automatic [...] by contrast, the Commission *has to* intervene' (REG1) [9].

These considerations about the limits of normative pressures through European networks of IRAs lead us to coercive mechanisms, for which we find evidence that is more robust. Such mechanisms involve legal force and top-down dynamics. Hence in our case, legal coercion focuses attention on EU institutions such as the European Commission and the CJEU, EU legislation, and infringement procedures. From this viewpoint, the array of legal instruments that EU institutions can deploy has hindered member states from de-delegating IRAs.³²

At the time of IRAs' original creation in the 1980s and 1990s, EU legislation on national regulatory institutions was very limited. However, the view became that 'you cannot build an internal market without IRAs, otherwise every member state will just favor their incumbents' (EUI3). Thus from the 2000s onwards, the EU has consistently sought to protect and promote IRAs,

with EU legislation progressively adding requirements about the organizational features of IRAs. Thus, it has required that IRAs be independent of suppliers and their heads and members are recruited on the basis of their skills and qualifications, enjoy certain term lengths, are protected against dismissal and do not take instructions from governments. It also requires that IRAs have a separate budget and sufficient human and financial resources (see Table 3A in the [Appendix](#)). Equally, it has contained a series of provisions about IRAs' substantive powers in electricity and telecoms (cf. Tables 3 and 4).

Commission and IRA interviewees suggested that extensions of independence were based on experiences with previous EU rules and that 'awareness of the importance of IRAs' independence increased over time' (EUI1, EUI3; REG3). Since IRAs' independence is vital to the internal market, 'the Commission is very vigilant' (EUI2). Indeed, 'member states are obliged to report to the Commission how they have transposed EU legislation, including with reference to the powers that IRAs are expected to have. Thereafter, the Commission does a checklist. If an IRA doesn't have X or Y powers, then the Commission contacts the government' (REG1; also EUI1). In addition, the Commission also checks this by examining national laws directly itself (EUI2).

The Commission has often followed up its monitoring with infringement procedures (or their threat), leading to the reversal of several de-delegations and thus proving a key ally for IRAs (see Table 2). The Spanish IRA asked help from the Commission, which then intervened because in energy the IRA lacked crucial tariff-setting powers (EUI1). Indeed, the Deputy Director General for a Directorate-General of the Commission recalls that 'the Head of the Spanish IRA complained [...] he was very upset' (EUI2). As it is often the case during infringement procedures, 'there was lots of dialogue [with the Spanish government] and even discussion on text amendments' (EUI2).³³ The procedure, which had started in 2015, concluded in 2019, when the Spanish government returned to the IRA the essential tariff-setting powers it had been de-delegated two decades earlier (REG4; EUI1) [10]. Similarly in telecoms, the Spanish government was initially unresponsive to the criticisms expressed by the IRA about the 'theft of competences'. Yet after receiving letters from the Commission threatening to open an infringement procedure, the government returned the exclusive power to impose obligations to the IRA.³⁴ After seeing a number of early warnings and formal cautions being ignored, the Commission brought Germany before the CJEU via a fast track procedure for having granted generous regulatory exemptions to the incumbent—thus effectively deciding on the obligations (or lack thereof) at the heart of IRAs' powers. The IRA resisted the application of the German law but when it could no longer postpone it, the CJEU decision arrived (REG1).³⁵ In Italy, when the government adopted legislation to separate Telecom Italia's network from related services—thus removing the power to decide on this obligation from the IRA's hands, resistance by the IRA (and the company and its trade association) was to no avail. Yet after the Commission, prompted by the IRA and its European network, formally opened an infringement procedure against Italy and threatened bringing it before the CJEU, the government amended the legislation to reverse the de-delegation.³⁶

The importance of Commission legal action can be further illustrated by the fact that, occasionally, its moves to reverse de-delegation occur without the support of the IRA. Thus for instance when the German government adopted an 'unbelievably detailed law' which practically removed tariff-setting powers in energy from the IRA, the latter did not fight such a de-delegation. Not only did domestic courts and mainstream law scholars agree with the government, but even the IRA was neutral (REG1), triggering a 'sensation of collusion between the IRA and the government' (EUI2; also EUI1). Yet the Commission's case led to a reversal of de-delegation, with the 2021 'CJEU judgment causing an earthquake' (EUI3).³⁷ The role of the Commission is also shown by its ability to head off de-delegation. Thus in France, the government's proposal to

appoint a government commissioner directly within the communications IRA failed in the face of strong resistance not only from the IRA itself and members of the Opposition, but also after the Commission threatened to launch an infringement procedure.³⁸

Finally, EU institutions have required or put pressure on national governments to engage in additional delegations to IRAs. Tables 3 and 4 set out in detail which increases in delegation arose from transposition of EU requirements (marked 'EU req.')

and show that they are numerous, except for the UK. Thus, EU legislation has been behind the growth of telecoms IRAs' powers from the imposition of obligations on dominant players through the regulation of postal services and then the open internet, as well as the energy IRAs' power expansion from tariff-setting through cross-border rulemaking and surveillance of insider trading to the facilitation of the energy transition [11]. In short, EU institutions and legislation have been 'engines of delegation'.

7 | CONCLUSIONS

While national elected politicians in Europe have delegated major powers over the regulation of markets to IRAs, politics has not been banished. On the contrary, elected politicians have engaged in institutional politicization and engaged in several de-delegations to curb IRAs, on grounds such as political opposition to price rises—seen most clearly in the 2022 current energy crisis—or the desire to increase political discretion and protect national champion firms. Yet overall de-delegation has been limited, as individual instances have been abandoned, temporary, or reversed, as well as being counter-balanced by extensions of IRA powers. The pattern of politicization but limited overall de-delegation has taken place across different countries and in both electricity and telecoms.

Studies offer differing potential explanations of post-delegation institutional change for IRAs. One, based on P-A approaches, is that de-delegation follows NMIs failing to deliver benefits for their principals expected at the time of delegation, excessive 'agency losses' or a change in their principals' preferences. A second is highly dependent on national institutions and history, notably relations between elected and unelected officials, so that very diverse patterns can be expected across countries (Ozel, 2012). But a third view is that what drives changes in delegation are cross-national and cross-sectoral factors, which can include coercive isomorphism by the EU and cross-national and cross-sectoral norms and emulation (cf. Corrado, 2020). Our findings suggest that while the first two sets of views are valuable for understanding individual instances of politicization and de-delegation, they are insufficient for explaining overall patterns of de-delegation. Instead, the outcome of overall lack of de-delegation and increases in delegation—seen across countries with very different domestic politics and over a significant period and across telecoms and electricity despite very different regulatory outcomes, seems consistent with the third view and especially Europeanization.

We therefore investigated whether the EU has affected national decisions about de-delegations and if so, through which mechanisms. European organizations of IRAs and EU legislation on the formal institutional position of IRAs have greatly expanded in the two sectors. There is some limited evidence of normative mechanisms operating through European networks of IRAs. But the strongest evidence is that the European Commission and European Court, sometimes aided by European networks of IRAs and agencies, have influenced de-delegation in continental European countries through coercive mechanisms, notably: the threat of legal action leading national governments to abandon de-delegation proposals; monitoring and enforcement of EU legislative provisions leading national governments to reverse de-delegations; and legislation giving IRAs new duties and powers.

The UK has been an exception, since de-delegations have been rare and then their reversal and the delegation of new powers have been driven by domestic decisions before and beyond EU requirements. This is consistent with the country's role of policy leader in delegation and liberalization in Europe. It is too early, of course, to tell the effects of Brexit on the British regulatory model.

The present article has focused on changes to formal delegation. It is possible that if elected politicians have been unable to de-delegate, they have turned to alternative modes of attempting to control IRAs. Hence a further study would involve looking at the effects of the EU on IRA behavior. Equally, the implications of an increasing gap between national elected politicians challenging IRAs and those unelected IRAs retaining and indeed increasing their formal powers in part due to the EU are worth exploring for wider issues of governance and legitimacy. However, for the specific question of the special issue, the study of IRAs in telecoms and electricity in Europe suggests that multi-level governance inhibits national de-delegation and indeed creates countervailing forces for the extension of delegation, through both legal provisions and linkages with other NMIs such as the European Commission, courts, and transnational networks of regulators. This conclusion applies even for agents (as distinct from trustees), reinforcing the findings of other contributions to this special issue which examine other NMIs in multi-level settings. Institutional politicization has been combined with extensions of delegation rather than de-delegation.

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DATA AVAILABILITY STATEMENT

The data that support the findings of this study were derived from several public domain resources as well as interviews, referenced in the text. Additional data are available in the supplementary material of this article.

ENDNOTES

- ¹ A literature on 'organizational termination' has been applied to executive agencies within government departments, but these agencies differ from IRAs which are given powers under public law and which need legislation for de-delegation; we therefore focus on works looking at IRAs.
- ² IRAs also perform other activities—e.g. license enforcement, issuing codes, collecting data, but for space reasons, we focus on these two politically salient outcomes.
- ³ House of Commons 2013.
- ⁴ Domestic Gas and Electricity (Tariff Cap) Act 2018; for public pressure, see The Guardian 16 February 2017; BBC News 25 November 2018.
- ⁵ El País 24 March 1997; Cinco Días 30 January 2017; La Información 16 January 2019.
- ⁶ Decreto legge 193/2002.
- ⁷ Les Echos 9 January 2004; Le Monde 9 January 2004.

- ⁸ OECD (2003: 14).
- ⁹ Expansión 3 November 2000; El Mundo, 2 October 2001, 3 September 2003.
- ¹⁰ Expansión 13 March 2003.
- ¹¹ Expansión 22 November 2000; El País 5 February 2001.
- ¹² Expansión 1 April 2015.
- ¹³ Royal Decree Law 13/2012.
- ¹⁴ Law 3/2013.
- ¹⁵ <https://ec.europa.eu/digital-single-market/en/news/telecoms-commission-take-germany-court-over-its-regulatory-holiday-law> (accessed 2 May 2020).
- ¹⁶ Expansión 21 October 2006; El Periódico de Catalunya 4 November 2006.
- ¹⁷ El Mundo 27 February 2006; Europa Press 19 February 2009.
- ¹⁸ Law 3/2013.
- ¹⁹ Law Decree 193/2002; Law 290/2003; Law Decree 25/2003.
- ²⁰ <https://chambers.com/articles/ecj-lawyer-sees-eu-infringement-of-german-energy-market-rules> (accessed June 2021).
- ²¹ Law Decree 193/2002; Law 290/2003; Law Decree 25/2003.
- ²² The Independent 9 February 2014.
- ²³ Draft General Law for Telecommunications 648/2013.
- ²⁴ Law Project 15 September 2010.
- ²⁵ Corriere delle Comunicazioni 11 April 2012, 19 July 2012; Corriere della Sera 16 April 2012.
- ²⁶ EFESÉ 9 October 2008; Law 3/2013; Case C-718/18; La Información 6 December 2018.
- ²⁷ https://ec.europa.eu/commission/presscorner/detail/en/IP_07_237 (accessed August 2021); Energy Industry Act, as amended 2011.
- ²⁸ <https://www.euractiv.com/section/digital/news/eu-court-sets-precedent-in-germany-telecoms-ruling/> (accessed June 2021).
- ²⁹ The Independent 9 February 2014.
- ³⁰ Independent Regulators Group, IRG; Council of European Energy Regulators, CEER.
- ³¹ European Regulators' Group for Electricity and Gas, ERGEG; European Regulators Group, ERN; then Agency for the Cooperation of Energy Regulators, ACER; Body of European Regulators for Electronic Communications, BEREC.
- ³² Though of course, we do not imply that such processes fully explain the institutional outcome observed.
- ³³ Though eventually, the Commission did bring Spain before the Court because it was already doing so with Germany (see below) and thus preferred to bring a 'package' (EUI2).
- ³⁴ Law 3/2013; <http://ep00.epimg.net/descargables/2013/02/24/bc2701232a3bdf5a7d199cb40af021e0.pdf> (accessed June 2022).
- ³⁵ C-280/08 P.
- ³⁶ Corriere delle Comunicazioni 8 March 2012, 11 April 2012, 8 May 2012, 27 May 2012, 19 July 2012; Corriere della Sera 16 April 2012; ANSA—Political and Economic News Service 18 July 2012.
- ³⁷ Case C-718/18.
- ³⁸ Le Figaro 2 August 2011.

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SUPPORTING INFORMATION

Additional supporting information can be found online in the Supporting Information section at the end of this article.

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