Limited Fragmentation through Coordination in the Regulation of the Energy and Telecommunications Sectors in Belgium[1]

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Abstract

In the post-liberalization area, utility companies operate in a context of multilevel regulation, involving a wide set of authorities with general or sector-based competencies. Such a specialization in the regulatory arrangement could potentially generate overlaps, blind spots and lack of effectiveness. This paper tries to temper these predictions and shows that coordination mechanisms drastically limit overlaps and blind spots in multi-level regulatory arrangements, because these mechanisms compensate for the dispersion of competences between multiple levels and authorities caused by specialization.

By constructing a typology of coordination instruments, this paper aims to identify what instruments contribute towards avoiding overlaps and blind spots. The empirical analysis is

[1] This paper has been prepared within the framework of the ongoing REGUNET-project. This research project of the Belgian Federal Science Office is realised in execution of the Research Programme "Society and Future". Several public and private organizations, among which the Belgian sector regulators, are participating willingly in the REGUNET-project, and have been quite forthcoming with information. However, the authors would like to stress that all data gathering and conclusions reached in this paper are their sole responsibility. The aforementioned organizations have never authorized or have been asked to authorize in any way the content of this paper.
The REGUNET project is a three year project aiming to assess the effectiveness and coherence of multilevel regulation in the utilities sectors. The basis of this paper was provide by the second work package, which mapped the regulatory arrangement of the energy and telecom sectors in Belgium, this to acquire a better understanding of the regulatory processes in these two sectors. Further research aims to expand this understanding to three other European countries (Ireland, the Netherlands and Switzerland), to be able to come to a comparative analysis

based on a comparison of two utility sectors, energy and telecommunications, from a single-country perspective. These two sectors have a substantial amount of regulatory actors involved in them, and the arising coordination needs are captured by on the one hand procedural coordination mechanisms, on the other hand structural coordination mechanisms.advisory

Introduction

In the post-liberalization area, utility companies operate in a context of multilevel regulation, involving a wide set of authorities with general or sector-based competencies. Within the European Union, the legal framework is defined at this level of authority and its implementation belongs to the Member States and potentially the federated entities in federal countries. At each level of authority, the competencies are divided between different organizations (e.g. Ministers, ministries, independent regulatory agencies, and competition courts). Such a specialization within the regulatory arrangement can generate overlaps and blind spots, as well as a lack of effectiveness. The relevant literature points out that competition between multiple regulators, though also potentially having beneficial effects, can have disadvantages as well, such as the lack of transparency and equal rights, redundancy in interventions, high administrative costs for companies, risk of blame shifting between regulators, and blind spots in rule enforcement. This paper tempers these predictions and shows that coordination mechanisms drastically limit overlaps and blind spots in the multilevel regulatory arrangements of the utility sectors. In line with Verhoest and Bouckaert (2005), coordination is understood as a process that aims at enhancing the voluntary and forced alignment of tasks and efforts of organizations within the public sector.

In a theoretical part, we present the concepts of specialization and coordination and the typology of coordination instruments. Then, two case studies describe the regulatory arrangements of the energy and telecommunications sectors in Belgium from a synchronic and territorial perspective, i.e. the regulatory arrangement which is in effect at a certain point in time and within a specific territory. The legislative framework is sketched and the overall arrangement briefly presented. The emphasis is put on the division of competencies and coordination instruments used along four dimensions of specialization: vertical, horizontal, between general competition regulation and sector regulation, and between sectors.

The last part compares the coordination instruments used in both sectors. It appears that a multitude of coordination instruments are used in regulatory arrangements, with an emphasis on non-binding instruments..advisory However, some non-binding instruments are used informally in the shadow of hierarchy as long as no conflict stands out (e.g. the veto power of the European Commission on the national market analyses in the telecoms sector).

Specialization and Coordination in Regulatory Arrangements

Regulation is a broad and encompassing concept ranging from rule-making to monitoring and evaluation. It is defined as the "public administrative policing of a private activity with respect to a rule prescribed in the public interest" (Mitnick 1980). It covers a whole range of activities, such as the definition and enforcement of public service obligations, company status, competition rules, technical standards, and access prices. Regulatory bodies are involved in several tasks: translation of general policies in more concrete rules, criteria, norms and standards (e.g. standards of interconnection); application of rules and standards in individual cases via licenses and permits (e.g. building permission, license for supply or approval of technologies); and monitoring of compliance and enforcement (e.g. information gathering and application of sanctions and rewards). Thus, regulation is conceptualised as a bundle of tasks, where the output of a preceding task forms the input for the following task[2]. However, it is by no means always the case that these different tasks are also performed by the same actor.On the contrary, they can be spread across several organizations (Hood, Rothstein et al. 2001).

The Regulatory Arrangement

Regulation is often organized at multiple levels. While regulatory functions have for a long time been carried out by central administrations, they are increasingly shared with and delegated to specialized agencies, self-regulating bodies, and other both supra- and sub-national authorities: "Multilevel regulation involves interaction, reinforcing, and colliding rule making and governance at the international, Federal, [Regional], and city/local community levels. It emerges from varied top-down, bottom-up, and negotiated processes within the state, among states, among [regions] and cities, and among economic and social

[2] These regulatory tasks represent a cycle or chain, where all tasks are connected in a logical order. The chain normally starts with the creation of general rules. Next, these criteria are applied to a specific case. If the applicant is compliant with the criteria, then an individual authorisation or license is granted, allowing the applicant to perform an activity (e.g. enter a market). Next, monitoring is performed to test whether the regulatee still complies to the norms, after the licensing. If necessary, the regulatee may be sanctioned, for instance by retracting the license.

interests" (Doern and Johnson 2006: 21-22). From this a regulatory arrangement emerges, which we define as the whole set of organizations and authorities, located at different levels of government, that have the task to orientate or govern the behaviour of market actors, and have the capacity to implement regulatory decisions and to control their enforcement. The regulatory arrangement encompasses all the organizations involved in regulation, not just those organizations that are typically seen as part of the policy implementation phase. It includes multiple levels of authority (e.g. international, European, federal, regional, and local), as well as different organizations and bodies at the same level of authority (e.g. the independent regulatory agency and the competition authority at the national level).

Until now, little has been said about regulatory arrangements. Descriptions have mainly focused on the (independent) sector regulators (Coen and Thatcher 2005; Gilardi 2007). Regulatory arrangements taken as a whole could usefully describe the context where regulatory agencies and other regulators operate in. In particular, the degree of specialization of the different organizations, and the coordination mechanisms and other forms of interactions between the different competent authorities can tell a lot about the actual functioning of regulation. Our aim is to develop analytical tools that are able to grasp the complexity of the interactions occurring within regulatory arrangements. We look at the combined action of regulators at different government levels with an emphasis on the dialectical relationship between specialization and coordination.

Specialization of Regulatory Actors

Reforms conducted under the influence of New Public Management broke up the multi-objective bureaucracies embodied in hierarchical and monolithic departments into small single-purpose organizations, with limited objectives and specific tasks (Hood and Dunsire 1981; Pollitt and Bouckaert 2004). Thus, the extent to which competences have to be grouped together or can be separated determines the level of specialization of a regulatory arrangement (Christensen and Lægreid 2006). Specifically towards the regulation of utilities, four dimensions of specialization can be identified: (1) a vertical specialization across governmental levels; (2) a horizontal specialization within a sector, divided between several public sector organizations (e.g. ministry, agencies and bodies of appeal); (3) specialisation between sector-specific regulators and general competition authorities; and (4) specialisation between sectors.

Specialization does not necessarily imply that there cannot be any overlaps or blind spots in regulation. In fact, overlaps in competencies between several specialized agencies can be the result of a deliberate attempt to create a market in regulation, in line with the theory of 'regulatory competition'. On a macro-level, this theory stated that countries compete with each other through regulation, in order to attract companies, citizens and resources (Tiebout 1956). But this kind of competition can also exist within a country, this between regulatory authorities within one level of government, between different levels of government and between public and private sector organizations. Competition between several regulatory bodies with overlapping competencies may result in favourable outcomes, such as innovation in the used types of regulation, the avoidance of 'regulatory capture' and other regulatory failures, the increase of performance of the regulatory organizations (because benchmarking becomes possible), an intrinsic drive to minimise and simplify regulation, the creation of checks and balances, and the existence of a back-up in case of failing regulators (Hood, Rothstein et al. 2001: 174-175). At the same time, competition between different regulatory actors within a country can lead to lack of transparency and equal rights, high administrative costs for companies dealing with divergent regulators, risks of blame shifting between regulators, companies that play regulators off against each other, and blind spots in rule enforcement (Hood, Rothstein et al. 2001; Geradin and McCahery 2004).

In our case studies, we have found no indications that potential overlaps or blind spots were in any way the result of deliberate attempts to create regulatory competition. On the contrary, they were seen as to be avoided, and the direct result of inconsistencies in regulation and the regulatory arrangement. Therefore, this will also be the premise of our approach towards them: if they are not sought after, they should be seen as undesirable. As an alternative, we put forward the concept of coordination between regulatory actors, because under certain conditions, this can avoid these blind spots and overlaps, as well as help to reduce the number of rules and administrative burdens, stimulate innovation with regard to types of regulation (because of the pooling and the exchange of experience and expertise), improve the enforcement of regulation (by exchanging standardised information), prevent 'regulatory capture' (because the regulator is not the only decision-maker), and increase the regulators' accountability.

Coordination as a Tool for Successful Specialization

The greater level of intricacy of the regulatory arrangement makes it possible for regulation to cope with a greater sophistication of the private sector, but makes it at the same time more

difficult for regulation to be compatible with multiple societal interests. Specialized organizations risk to only take into account the specific issue they have competences over, without taking into account the broader picture. Hence, a specialized regulatory arrangement is at risk to progressively lose macro-control, if sufficient coordination between regulatory actors is not provided (Verhoest and Bouckaert 2005: 5).

Coordination is a central issue in public administration, which has met a renewed interest with the current reforms influenced by the New Public Management, and the resulting 'agencification' (Peters 1998; Pollitt and Bouckaert 2004). Coordination is in one sense seen as the "extent to which organizations attempt to ensure that their activities take into account those of other organizations" (Hall, Clark et al. 1977: 459). The mechanisms can be more or less integrative: organizations may simply limit themselves to exchange information with each other and adapt unilaterally, or they can reach mutual adjustments through extensive negotiation or coercion. In the second sense, coordination refers more precisely to a "mutual adjustment between actors or a more deliberate interaction [that] produces positive outcomes to the participants and avoids negative consequences" (Lindblom 1965: 23). In this regard, coordination is scaled from independent decisions by organizations to governmental strategy encompassing all areas of the public sector (Metcalfe 1976).

Both previous definitions relate the concept of coordination in first place to the result of the interaction between actors. Following Bouckaert, Peters and Verhoest (forthcoming), we consider coordination as a process rather than an outcome and keep their definition: "The instruments and mechanisms that aim to enhance the voluntary or forced alignment of tasks and efforts of organizations within the public sector. These mechanisms are used in order to create a greater coherence, and to reduce redundancy, lacunae and contradictions within and between policies, implementation or management".

A broad consensus exists on the distinction between three mechanisms of coordination in social life, i.e. hierarchies, networks and markets (Thompson, Frances et al. 1991; Peters 1998). Hierarchical mechanisms rely on authority and power, market (or competition) mechanisms on bargaining and information, and network mechanisms on mutual cooptation and mutual norms. While these three fundamental mechanisms are widely accepted in the literature, they remain somewhat general and abstract. Rather, we propose a typology of coordination instruments tailored to the analysis of regulatory arrangements (see table 1)[3].

[3] "The coordination instruments are specific activities which are done or structures created in order to bring about coordination" (Bouckaert, Peters and Verhoest: forthcoming).

This typology is based on the distinction between procedural and structural coordination instruments.

Procedural coordination refers to the interactions between the main sector regulator (e.g. BIPT in the telecoms sector) and the other organizations involved in the regulatory arrangement, but specifically those defined in legally set procedures (i.e. primary and secondary legislation). The main sector regulator can play different roles in these procedures (e.g. advisory role, decision proposal, decision-making or overruling of others' decisions). Procedural coordination concentrates solely on the procedures engaged in by the main sector regulator, which includes any appeal procedures against these decisions where the appellate body has full jurisdiction to decide over the case. We define a procedure in this regard as a formal interaction between organizations that leads to a regulatory decision. Structural coordination on the other hand groups together the interactions not handled in legally defined decision-making procedures, mainly those occurring in platforms for advice and consultation, information sharing systems, coordinating functions and the like. For example, Belgium uses formal and informal concertation platforms between national and regional regulators where discussions are held out of the legal decision-making procedures (e.g. ENOVER and FORBEG in the energy sector).

Table 1: Typology of Coordination Instruments

I. Procedural instruments	
Unilateral, top down imposition of decisions which constrain or determine the functioning of the other actor (e.g. instructions by a minister to an agency)	**Ranging from more hierarchical instruments for coordination…**
Veto power, nullification of decisions, overruling	
Binding advice	
Non-binding advice, consultation	(formal non-binding advice can be virtually binding in practice because of lack of expertise with the decisive actor)
Negotiation	
Joint decision, co-decision	**… to more network-like instruments for coordination**
II. Structural instruments	
Reshuffling of competencies (e.g. bringing closely related competencies together in one organization, reallocation of competencies because of better coordination)	**Ranging from more hierarchical instruments for coordination…**
Coordinating function or body with hierarchical power over other actors	
Coordinating function or body with no hierarchical power over other actors	

Systems or procedures for information exchange (e.g. sharing of database, common information structure or sharing of reports)	
Advisory platforms (platforms for non-binding advice, best practices, etc.)	(could also refer to presence of a representative of actors in another actors' advisory board)
Concertation bodies or platforms (platforms which decisions still have to be approved by the participating organizations before they enter into effect)	(could also refer to presence of a representative of actors in another actors' governing board or other board but without voting rights)
Bodies for collective decision making (platforms which decisions are binding for the member organizations)	(could also refer to presence of a representative of actors in another actors' governing board or other board with voting rights)
Joint planning by regulatory actors	
Joint actions by regulatory actors by pooling of information, resources and staff (joint inspections, joint monitoring or joint reviews)	**… to more network-like coordination instruments**

Procedural and Structural Coordination in Practice: Case Studies

The case studies for this paper show the multitude of both procedural and structural coordination instruments used in a context of great specialization, aimed at reducing overlaps and blind spots. Our endeavour is then to be able to observe what kinds of coordination instruments allow a multi-level, multi-players, and multi-tasks regulatory arrangement to perform well, or to simply work. In a multi-level perspective, we look at the four dimensions of specialization to see which coordination instruments are used, following the typology presented above.

The observations are based on a comparison of two cases of utility regulation located in the same country: telecommunications and energy in Belgium. The regulatory arrangements of the Belgian energy and telecommunications sectors are multi-level, multi-actor and multi-task arrangements. Surprisingly, although the number of regulatory actors involved is substantial, the extent of fragmentation seems to be limited and the coordination problems are few. For each sector, we present the current legal framework and the regulatory arrangement following the four dimensions: (1) vertical specialization and coordination across governmental levels; (2) horizontal specialization anc coordination within a sector; (3) specialization and coordination between sector-specific regulation and general competition; and (4) specialization and coordination between sectors.

Methodology of the case studies

The analysis is synchronic. A snapshot of the regulatory arrangement is taken at one moment in time for both sectors, to be precise in January 2009. The evolution of the arrangement is not taken into account. A territorial approach was taken, meaning that the multi-level regulatory arrangement is described from the perspective of one particular place. For telecoms, this place is located in the Walloon Region (i.e. Louvain-la-Neuve) and for energy in the Flemish Region (i.e. Leuven). As such, the regulatory arrangement described does not present all the different possible configurations existing in the EU or even in Belgium, but only one configuration that applies to one place. The scope of the comparison is thus limited both in time and in space, this to reduce the complexity of the regulatory arrangement without impeding the rigour of the analysis.

The choice for Belgium is motivated by the number of political levels involved and the challenge of the constitutive autonomy of the Regions and Communities within the Federation. The choice to compare telecommunications and energy is justified by the fact that, although both are utility network industries, here are important differences that exist between these two sectors. First, they produce very different goods and services. Energy production is based on primary goods (e.g. natural gas), while telecoms produce electric signals only, and in this way resembles more a services industry. Second, their regulatory frameworks differ in the level of autonomy they give to the Member States' Governments. The Telecoms framework is closer to standard competition law and leaves a lot of competencies to the European Commission and the national independent regulatory agencies (or sector regulators), while the energy framework leaves more control to the national executives and to the (Federal or Regional) Government rather than the sector regulator. Third, the delegation to the Federated entities (i.e. the Regions or Communities in Belgium) is higher in the energy sector. In the telecoms sectors, the Community level is involved marginally through broadcasting, while in the energy sector, the Regional sector regulator and Government are heavily involved in regulation of distribution networks, supply through the distribution network, and the development of renewable energy. Thus, the observation of regularities in the use of coordination instruments between both sectors would tell much about the effectivity of these instruments, whatever the context.

Methodologically, the REGUNET researchers first analyzed the legal acts on the Belgian Federal and Regional/Community levels (sector specific and general competition law), and used the information found on these levels to obtain data on relevant European legal

documents as well. Second, relevant literature was examined both from academic and professional sources (such as OECD documents). Third, the researchers sent a standardised questionnaire to the sector specific regulators and the general competition authority, containing requests for information on the structure of the organization, the links with Ministries and Departments, control methods by other organizations, and contacts with various other organizations. The legal analysis, academic literature and questionnaires were then completed by a series of interviews with public and private organizations, most notably the sector regulators, general competition authority, relevant Departments, European Institutions, and private federations. The aim of the interviews was to complement the obtained information and to put data that could not be interpreted correctly into its context.

Regulatory Arrangement of the Energy Sector

The legal and regulatory situation of the energy sector in Belgium is the result of several laws and regulations on the European, Federal and Regional levels that always consisted of separate texts for the electricity and natural gas sectors. Though both these sectors differ in terms of production, transportation and storage, little difference is observed in their regulatory arrangements, in particular the division of the sectors in four submarkets: production, transmission (electricity) or transport (natural gas), distribution and supply. Production and supply have been liberalized while transmission/transport and distribution remain (natural) monopolies[4]. Liberalization of the electricity sector was driven by the European Law as of 1996[5]. Likewise, the liberalization of the natural gas sector started as of 1998[6].

The Belgian Federal laws implement the EU energy framework[7]. They are also divided between electricity and natural gas with reference laws of 1999, that foresee in particular the creation of an independent regulatory agency, the Commission for the Electricity and Gas Regulation (CREG), set up in 2000. In the energy sector, the Regional level occupies a major

[4] The EU has made tremendous efforts to unbundle the submarkets, making sure that no company would vertically integrate all of them, and thus be able to cross-subsidise to inhibit competition on the liberalized markets.

[5] Directive 96/92/EC, establishing common rules for the internal market in electricity, repealed in 2003 by the Internal Market in Electricity Directive (2003/54/EC). The framework is completed by a directive about the security of supply and investments in infrastructure (Directive 2005/89/EC) and a regulation that governs the conditions for access to the network when engaging in cross-border trade in electricity (Regulation 1228/2003).

[6] Directive 98/30/EC concerning common rules for the internal market in natural gas, repealed in 2003 by the Directive 2003/55/EC (also known as the Second Gas Directive). The Regulation 1775/2005 that governs access to the natural gas transmission network completes the framework.

[7] For electricity, this concerns the Law of April 29th 999 about the organization of the electricity sector, and for gas the Law of April 12th 1965 concerning the transportation of gaseous substances through pipes, as revised by the Law of April 29th 1999 concerning the organization of the gas sector. Numerous amendments were adopted in order to follow the evolution of the EU framework.

position in the regulatory arrangement as well. Concerning supply through the distribution network[8], liberalization was put into operation in the three Regions with significant differences in time, between 2002 and 2003 in Flanders[9], and 2003 and 2007 in Wallonia and Brussels[10]. Each Region has a sector-based regulatory authority, the *Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt* in the Flemish Region (VREG)[11], *Commission wallonne pour l'énergie* in the Walloon Region (CWaPE), and Brugel in the Brussels Region[12].

Description of the regulatory arrangement in the energy sector

The regulatory arrangement in the energy sector in Belgium is organized primarily around the Federal and Regional Governments, together with the Federal (CREG and Regional (VREG) sector regulator. While the European Commission continues to play an important role in producing norms, it is not directly involved in the everyday regulatory process.(see Figure 1). Here, we will present the most important public actors involved in policy making and policy implementation, this on the European, Federal and Flemish Regional level.

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[8] Supply through the transmission/transport network was liberalized on the Federal level, while supply through the distribution network was liberalized on the Regional level. Though the quantity of supply through the transmission/transport network is quite high, household consumers were only directly involved in the energy liberalization process when supply through the distribution network was liberalized.

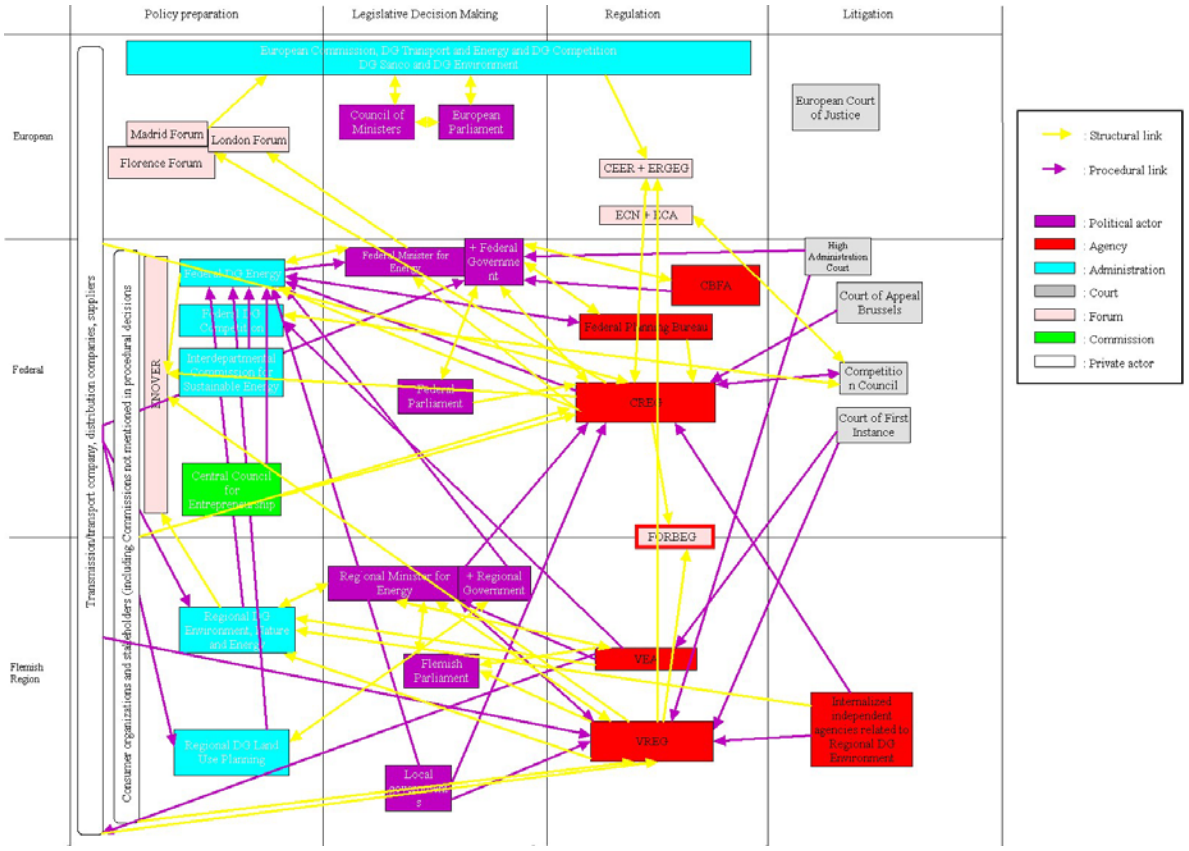
[9] Regional Laws of July 17th 2000 about the organization of the electricity market and September 17th 2000 about the organization of the gas market.

[10] In the Walloon Region, electricity is regulated by the Regional Law of April 12th 2001 concerning the organization of the electricity sector, modified by the Regional Law of July 17th 2008, and gas by the Regional Law of December 19th 2002 concerning the organization of the gas sector, as amended by the Regional Law of July 17th 2008. In the Brussels Region, the energy market is regulated by the Regional Law of July 19th 2001 concerning the organization of the electricity sector, amended by the Regional Law of December 14th 2006, and the Regional Law of April 1st 2004 concerning the organization of the gas sector, amended by the Regional Law of December 14th 2006.

[11] VREG was established in 2001 but its structure was changed in 2004. These changes were operationalised in April 2006 (Regional Law of April 30th 2004).

[12] CWaPE, has been operational since September 2002 and Brugel since 2007 (Regional Law of December 14th 2006). The three regional sector-based regulators share similar responsibilities and are also all independent regulatory agencies.

Figure 1: Regulatory Arrangement in the Energy Sector in Belgium



At the European level, policy-making is made under co-decision between the Council of the EU and the European Parliament on initiatives prepared by the European Commission[13]. In policy-making, the national and Regional sector-based regulators are consulted through the European Regulators' Group for Electricity and Gas (ERGEG), the Commission's formal advisory group of energy regulators[14]. The policy implementation phase is handled by the Commission's DG Transport and Energy (DG TREN), but DG Competition (DG COMP) checks the compatibility of decisions with the EU competition law, and more recently the DG Health and Consumer Protection has become more involved due to the creation of the London Forum. Lastly, the DG Environment is an important contributor to the Green Package, revolving around renewable and sustainable energy sources, which has an important impact on overall European energy policy.

In the energy sector in Belgium, the competencies are divided between the Federal and Regional levels. At the Federal level, policy-making is directly managed by the Minister of

[13] Art. 289 of the Treaty of the EU.

[14] A separate organization, the Council of European Energy Regulators (CEER), groups the different sector regulators as well, but is completely independent from the European Commission.

Climate and Energy, in consultation with other members of the Government (e.g. consumer protection, social protection, foreign policy, finances, and the environment). The Federal Ministry for the Economy (*SPF Economie*), which houses both the Federal DG Energy and the Federal DG Competition, assists the Minister in the preparatory works. The Federal DG Energy is also responsible for prospective studies, which are technically a part of the policy implementation phase, but provide a feedback loop for policy preparation as well? Inter-departmental meetings allow the inclusion of the viewpoints of other ministries. The positions of the Regions in policy-making are also officially expressed within the *Energie overleg Staat-Gewesten groep* (ENOVER)[15]. CREG is involved in the policy-making stage through prospective studies and it is consulted concerning reforms of its own statutes and capacities.

Policy implementation on the Federal level is primarily a shared responsibility between the Federal Minister for Energy, sometimes together with the Council of Ministers[16], and the Federal sector regulator, CREG. Because of its close ties with the Minister for Energy, the Federal DG Energy is always involved as well, even if they are purely procedurally not. Coordination between the Federal and Regional levels with regards to policy implementation is handled by a completely informal advisory forum between the sector regulators at the two levels, called the *Forum des régulateurs belges de l'électricité et du gaz* (FORBEG). With regards to the regulated markets (transmission/transport and distribution), the transmission submarket is regulated by the Federal authorities, together with the setting of the social tariffs, and tariffs for the transmission/transport network and different distribution networks[17]. With regards to the liberalized markets (production and supply), the Federal level retains some regulatory competencies regarding production, and is involved in regulation of supply through the transmission/transport network, the regulation of social tariffs and maximum prices. It can also set public service obligations. Additionally, the Federal sector regulator has general monitoring competencies regarding the state of the market and competition on the market. The latter is a shared competence between CREG[18] and the Belgian Competition Authority

[15] Cooperation agreement of 18 December 1991 between the Federal and Regional Governments.

[16] More specifically, the Council of Ministers is able to suspend decisions of CREG regarding tariffs. This kind of overruling power gives it a strong position in that particular decision procedure, a power it has already used once.

[17] A move of competence in tariff setting to the Regional level is at this time under discussion.

[18] In terms of economic regulation, the CREG is involved in general monitoring, accepting the tariffs for the transmission and distribution network, and the transit tariffs, giving advice on a mechanism for the exchange of electricity blocks, proposing minimum purchase obligations for green stream certificates through the transmission network, designating the transmission network operator and giving licenses to retail/supply companies to provide electricity or gas directly through the transmission network, procedures to start up new production facilities for electricity, procedures to reinforce the transmission network, procedures for domain

(Federal DG Competition and Competition Council). It is the Competition Council however that is the primary actor. Finally, regulatory decisions can be enforced through sanctions by CREG, and can be appealed either to the Competition Council, the Court of Appeal in Brussels, or the High Administration Court (Court of State, *Raad Van Staat* or *Conseil d'Etat*).

The policy making and policy implementation framework on the Federal level shows significant parallels with the Flemish Regional level. For instance, in Flanders policy-making is driven by the Flemish Minister of Public Works, but other Members of the Government are also consulted through inter-cabinet meetings. The Minister is assisted in policy preparation by the Flemish DG Environment, Nature and Energy, but a heavier involvement can observed of the Flemish Regional sector regulator, VREG, and of the Flemish Energy Agency (VEA), which tasks focus on the implementation of energy policy, notably the promotion of energy savings. The Flemish DG Environment, Nature and Energy provides a platform in this way for VEA to consult with other satellite independent agencies (such as the agency responsible for waste collection, OVAM). As already stated, ENOVER provides a platform for coordination with the Federal level.

Policy implementation is again divided between the Regional sector regulator, VREG[19], and the Flemish Minister of Public Works, together with the Regional Flemish Government[20]. However, unlike on the Federal level the sector regulator seems to be most central to the regulatory process. The Flemish DG Environment, Nature and Energy seems to be less involved in policy implementation, again unlike on the Federal level. Regulation on the Regional level is primarily aimed towards distribution networks. We have seen before that the Federal level is primarily focused on the transmission network. This can sometimes cause issues for the gas sector, since it is not always clear in this sector where the transmission network ends, and the distribution network starts. For the electricity sector, the transmission network is any network which exceeds currents of 70kV. Though technically a clear distinction can be made, the transmission network operator (Elia) currently manages some networks under 70kV, which may pose regulatory issues. With regards to production and

concessions for offshore facilities, development plans of the transmission network for electricity, prospective studies, and procedures to accept costs by energy companies due to public service obligations.

[19] Within economic regulation, VREG is involved in the provision of permissions to distribution network operators, provision of licenses to supply companies that supply energy through the distribution network, provision of green stream certificates to producers of green stream energy, provision of licenses for installations related to green energy, and public service obligations imposed on the distribution network operators and the retail/supply companies.

[20] With Flemish Government is meant the political actors, not including the administrations.

supply, the liberalized markets, the Regional level has competences regarding green production facilities, green certificates, and supply companies that supply energy through the distribution network. The Regional level can also impose public service obligations. As mentioned before, FORBEG is used as an informal platform for deliberations between Federal and Regional sector regulators. There is no competition authority at Regional level, as competition is a Federal competence. Consequently, VREG has no competencies on general competition regulation, nor does it have any formal links with the Competition Authority. However, it can be informally contacted regarding a specific case or consulted as expert. Regulatory decisions are enforced through sanctions by VREG and VEA, and can be appealed to a Court of First Instance or to the High Administration Court.

Vertical specialization and coordination across governmental levels in the energy sector

With respect to vertical specialization and coordination between the EU and the Member State, there are no strong procedural links between the European and Federal or Regional levels, but several structural ties (e.g. yearly implementation reports sent to the European Commission). National representatives work together in the comitology committees, while ERGEG brings the sector regulators together and advises the Commission. However, the European Union concentrates on policy-making. In terms of regulation, the European Union is only partially involved in the procedure of authorising interconnections (i.e. cross-border connections): DG TREN provides standard guidelines to the Member States. With regards to general competition law, the ex-post evaluation of the Belgian market is made by the Competition Authority, but in case of cross-border issues, the Commission's DG COMP either acts as a coordinator between the involved competition authorities, or handles the case by itself.

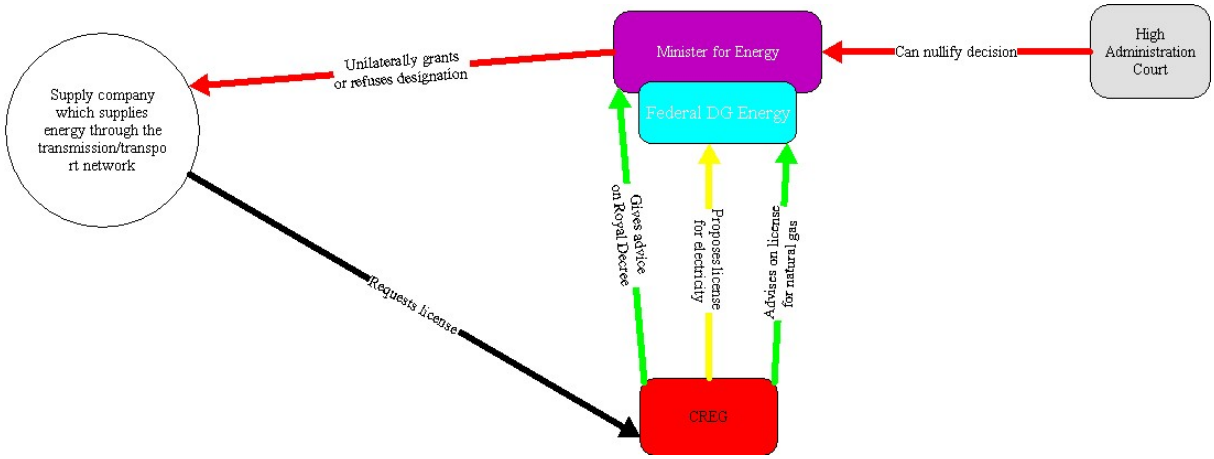
The second element of vertical specialization and coordination, i.e. between the Federal and Regional levels, shows that the competencies between the two levels of authorities are well delineated both in the Constitution and into the law. Each level works on their own and within their own competence. There are only a very limited amount of procedural coordination instruments involving both levels, and even in these there is a clear delineation of competencies. Nevertheless, some structural coordination instruments exist in order to coordinate common matters. As already mentioned, the Federal Government consults the

Regions within ENOVER for policy-making, and FORBEG groups the sector regulators on both the Federal and Regional levels regarding implementation.

Horizontal specialization and coordination at the same governmental level within the energy sector

As such, the policy levels are quite independent from each other and cooperation within the regulatory arrangement is mainly developed on the horizontal dimension. At the Federal level, economic regulation is shared between CREG and the Minister of Energy. For instance, the Minister is responsible for granting licences to suppliers who supply energy through the transmission/transport network (see Figure 2). The request for the license however is sent to CREG, and it then proposes the license (in case of electricity)/gives advice on the license (in case of natural gas) to the Minister. This proposal carries an important weight, since it is normally followed[21]. Moreover, the general conditions for the granting of the license are set in a Royal Decree decided on by the Minister, but again it is CREG that gives advice on this Royal Decree. Since it is not the CREG that officially decides, appeals can only be made to the High Administration Court.

Figure 2: Procedure of Licensing Suppliers through Transmission Networks

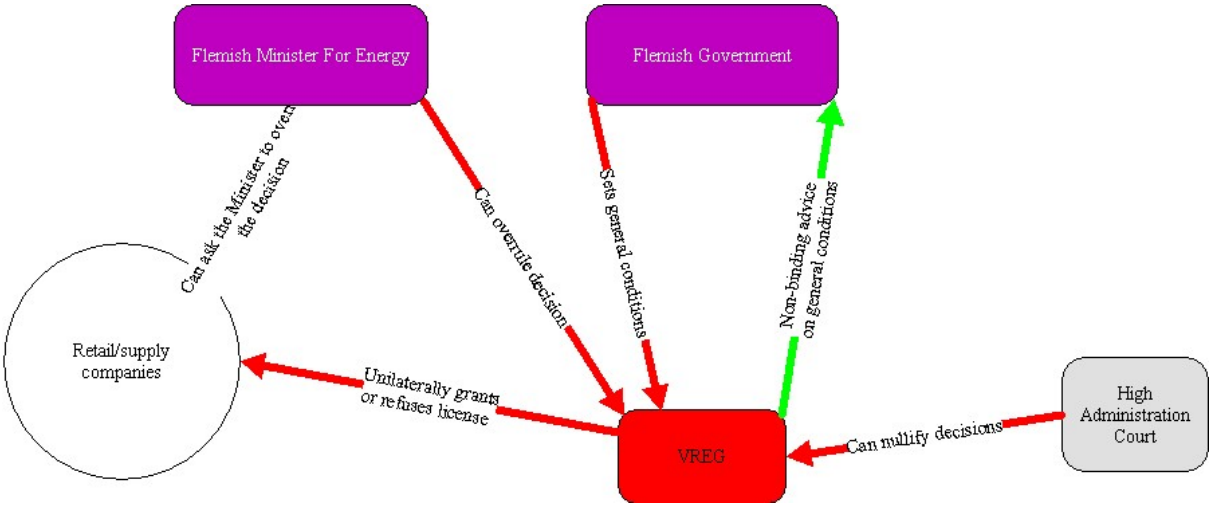


The regulation is organized quite similar at the Regional level, with a distribution of competence between VREG and the Flemish Minister of the Energy. For example, VREG has the task to grant licenses to supply companies, under the control of the Flemish Minister (see

[21] CREG has a much better view than the Minister for Energy or the Federal DG Energy about economic regulation issues. There has only been one, presumably politically motivated, case where CREG's advice was not followed.

Figure 3). The Flemish Government sets the general conditions of a license, to which the candidate supplier must adhere, and VREG gives a non-binding advice on these general conditions. This advice is usually followed as VREG holds the technical expertise. VREG grants the license itself, but in case of appeal the Minister can suspend the decision. VREG has also the competence to withdraw the licences.

advisoryFigure 3: Procedure of Licensing Energy Suppliers through the Distribution Network



To sum up, the horizontal distribution of competencies at the Regional and Federal levels is similar. The most important difference between the Federal and Regional level is that at the Federal level, it is the Federal Minister who will most likely make the regulatory decision, while on the Flemish Regional level it is the sector regulator that makes the decisions. In light of the importance given to the proposal/advice of CREG, this difference should not be overstated however. Within the Flemish Region, there is further specialization because other agencies also have competencies related to the energy sector, for instance the Flemish Energy Agency (VEA), which is competent in energy savings.

Specialization and coordination between energy regulation and general competition.

The division of competencies between the energy regulators and the general competition authorities is relatively clear. At the Federal level, CREG is charged to collaborate with the Competition Council to eliminate anti-competitive behaviour, this by reporting this behaviour to the Federal Minister and the Competition Council, when observed in the course of the monitoring competencies of CREG. Until recently, the exchange of confidential information from CREG to the Competition Council was problematic, since such an exchange was not foreseen in the different Acts. However, this situation has recently been remedied. At the

Regional level, we see no overlaps because the Regional sector regulator is not involved in general competition policy.

Specialization and coordination between energy sector and other sectors

In terms of inter-sectoral coordination, there is no specialization between natural gas and electricity. The same organizations are responsible for regulating both sectors, and the different sector regulators also have no internal division splitting up the regulation of electricity and natural gas. Unlike the telecommunication sector, as we will see later on, there is also no other sector inherently related to the electricity and gas sectors, as is the case between telecommunications and media. Nevertheless, energy issues have impacts on closely related policy sectors, such as the environment. Usually, coordination is organized at the Government levels during the policy-making stage. The different ministries make comments on bills in inter-cabinet and inter-department meetings.

Regulatory Arrangement of the Telecommunications Sector

Telecommunications first referred to the public phone and the telegraph. The dependence of telecommunications services on a physical network was problematic for the development of competition. Economics of network industries is based on an extreme large scale effect which has been the rationale for public monopolies. In the early 1970s, technological evolution put pressure on the market, which questioned monopolies and their inefficiency.

In Belgium, the liberalization of the sector is due to the EU telecoms policy that has developed since 1990[22]. At that time, the incumbent was turned into a public limited company[23]. The second round of the opening process was launched in 1996 with the objective of a full market opening in 1998[24]. In spite of liberalization, some operators maintained dominance and control on the market. To tackle this, the EU decided to adopt the current legal framework that improves economic regulation with the conduct of market analyses and the designation "powerful operators"[25]. National sector-based regulators are implementing the

[22] Directives 90/388/CE, 94/46/CE, 95/51/CE, and 96/2/CE liberalizing the market for terminals and services with high added value.
[23] Law of March 21st 1991 on autonomous public companies.
[24] Directive 96/19/CE transposed into Belgian Law by the law of December 19th 1997.
[25] The 2003 EU telecoms framework is composed of the Directive 2002/19/EC on access and interconnection of electronic communications networks and services ("Access Directive"), 2002/21/EC on a common regulatory framework for electronic communications networks and services ("Framework Directive"), 2002/22/EC on universal services and users' rights ("Universal service Directive"), and 2002/58/EC on the processing of personal data and the protection of privacy ("Directive on privacy"), the Commission Directive 2002/77/EC

framework and charged to impose specific obligations (e.g. about transparency, network access or tariffs) to the powerful operators. The 2003 framework is a sophisticated legislative initiative that extends regulation to all electronic communications networks and services, pushes sector regulation very close to general competition law, and sets up a regulatory arrangement centralised around the European Commission while enlarging the national regulator's competencies at the same time. The European Framework was transposed in Belgium through Federal and Community laws[26].

Description of the regulatory arrangement in the telecoms sector

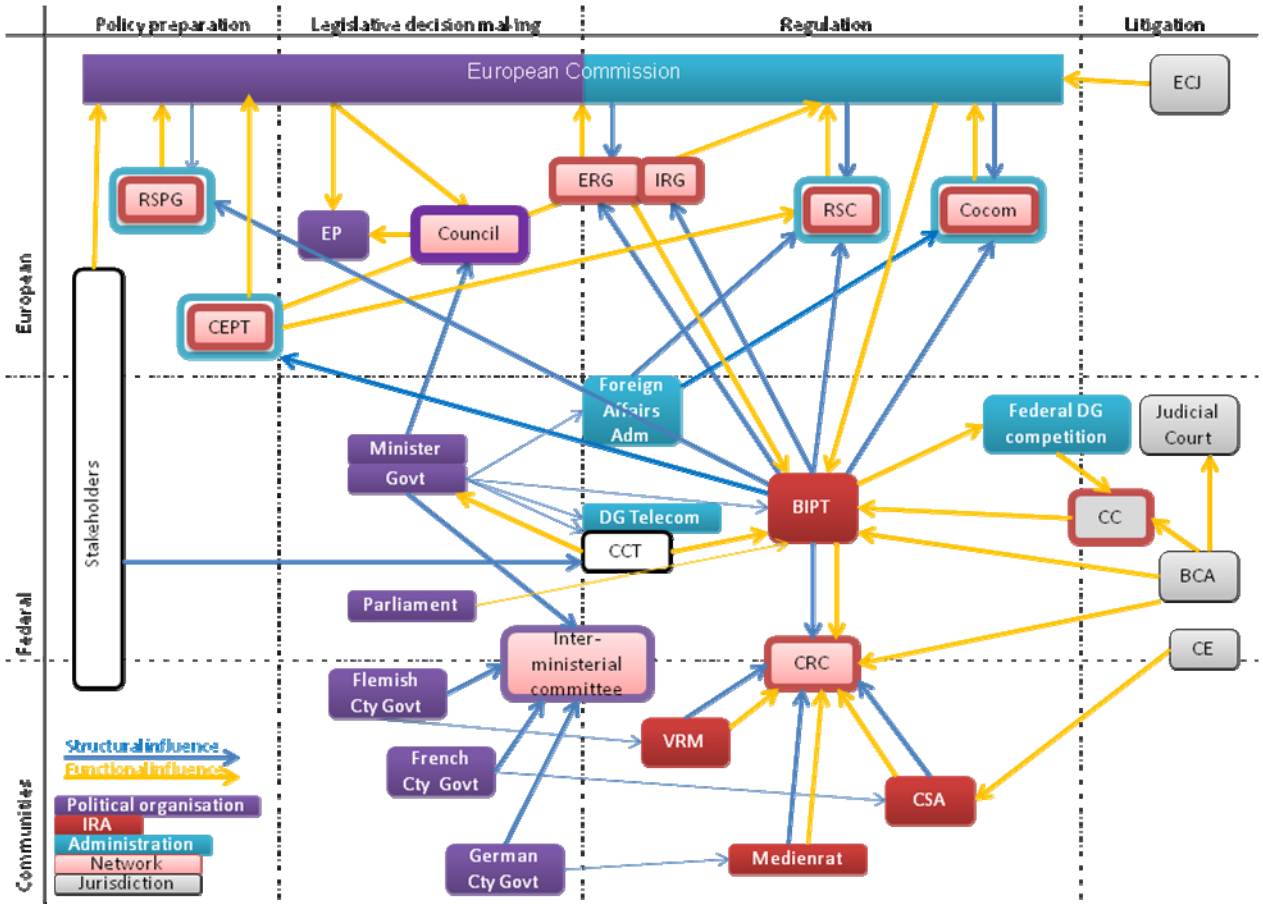
The regulatory arrangement in the telecoms sector in Belgium is organized around the European Commission, and the Belgian Institute for Post and Telecommunications (BIPT), the sector regulator (see Figure 4). At the European level, the policy initiative belongs to the Commission which consults a large set of public and private stakeholders in particular the European Conference of Postal and Telecommunications Administrations (CEPT), the association of national telecoms administrations, and the Radio Spectrum Policy Group (RSPG), the European Regulators Group (ERG) and the Independent Regulators Group (IRG). Under co-decision, decision-making belongs to the EU Council and the European Parliament, but the Commission is still present to discuss the amendments and can withdraw the proposal at any time. In the implementation phase (referred as regulation in Figure 4), the Commission still participates. The Directory General Information Society (DG INFSO) monitors the Member States' transposition and DG Competition (DG COMP) participates to the supervision of the market analyses made by the national sector regulators within a joint task force with DG INFSO that has a veto power on these analyses. In addition, the Commission can take technical implementing recommendations or decisions to harmonise implementation under the supervision of comitology committees (i.e. the Communications

("Competition Directive"), and the Decision 676/2002/EC for radio spectrum policy in the Community ("Radio Spectrum Decision"). The Directive 1999/5 on terminal equipment ("R&TTE Directive") and Regulation 2887/2000 on unbundled access to the local loop are also part of this current framework.

[26] Telecommunications belong to the Federal competencies and broadcasting the Community competences. At the Federal level, the EU framework is transposed by the Law of January 17th 2003 about the statute of the BIPT, the Law of January 17th 2003 on appeal and dispute settlement, and the Law of June 13th 2005 on electronic communications, which entails most of the transposition. At the Community level, the transposition is made by the French Community Law of February 27th 2003, the Flemish Community Law March 4th 2005, and the German Community Law of June 27th 2005. Belgium is a federation composed of two categories of sub-national entities. The three regions (Wallonia, Flanders, and Brussels) are one type of federated entity. Geographically defined, they are in charge of issues linked to the territory, such as infrastructure and the economy. The three communities (French, Flemish, and German Communities) refer to linguistic groups of people and are in charge of issues linked with people, such as culture, broadcasting and education.

Committee, COCOM; and the Radio Spectrum Committee, RSC). Eventually, the non-binding common positions of the ERG also contribute to harmonization in the Member States.

Figure 4: Regulatory Arrangement in the Telecommunications Sector in Belgium



The Belgian Federal level is mainly involved in the implementation of the EU framework. Formally, the Federal Ministry of the Economy is in charge of drafting the Federal legislation (DG Telecoms), but in fact it has remained a task of BIPT. Each bill is submitted to consultation to the Community Governments within the Interministerial Committee for Telecommunications and Broadcasting. The implementation of Belgian laws is handled by the BIPT which largely consults the stakeholders as well as the Competition Council (CC) about issues related to competition law. Usually, BIPT follows the guidelines of the ERG about secondary issues. In terms of litigation, the Competition Council is competent for dispute resolution between operators, even if the operators rather complain to BIPT or the judicial courts. Complaints against BIPT decisions must be referred to the Court of Appeal in Brussels. As mentioned before, the Communities manage broadcasting. In terms of regulation, the Federal and Community telecoms and media regulators (BIPT, CSA, VRM

and Medienrat) agreed to consult each others, notably within the Conference of Regulators of Communications (CRC), and consider their respective positions in their decisions[27].

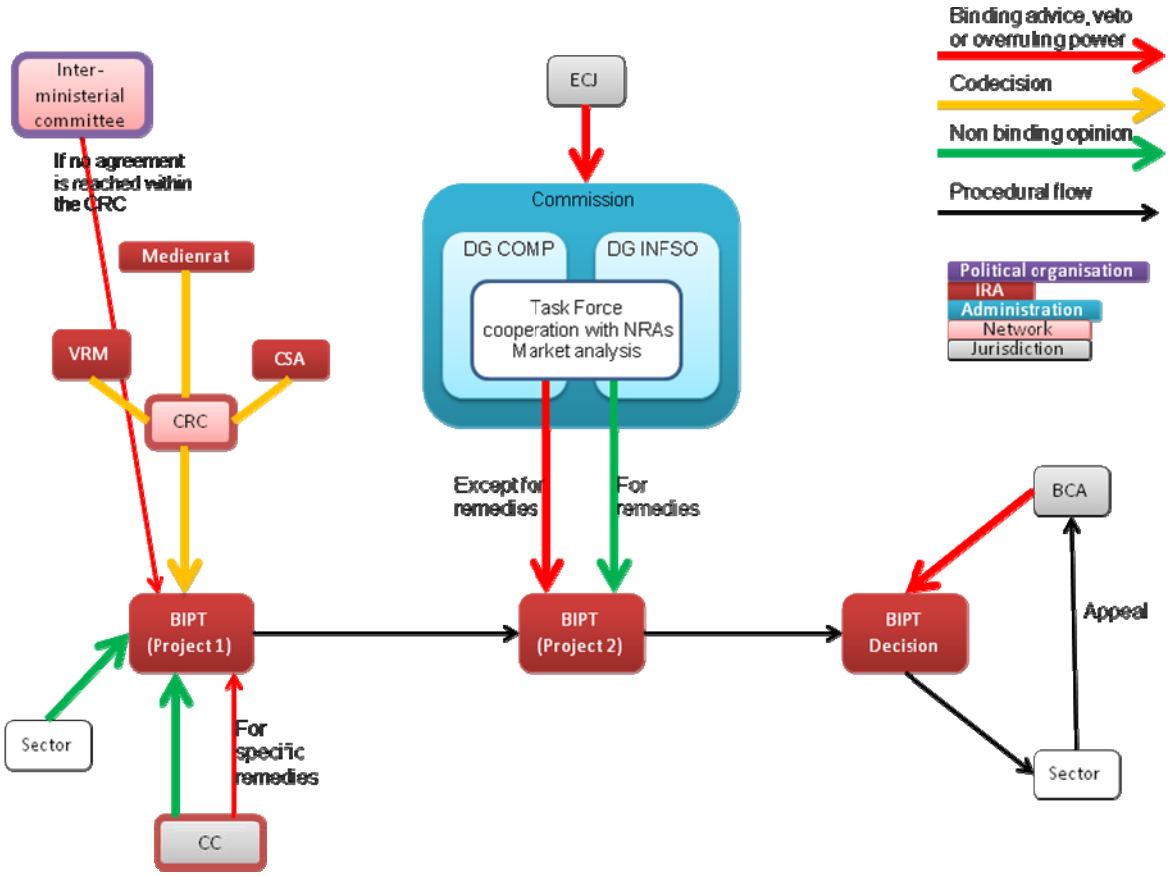
Vertical specialization and coordination between governmental levels in the telecoms sector

The major element of the telecoms regulation is the market analysis. It reflects quite well the vertical specialization within the regulatory arrangement (see Figure 5). Market analysis is a national competence with four elements. The first is the definition of the regulated markets that draws the perimeter of economic regulation. If a service does not belong to a regulated market, it is submitted to the general competition law[28]. The second consists in scrutinizing the market to assess whether it is competitive enough. The third is the identification of operators with significant market power (SMP). The fourth element is the choice of remedies, i.e. the choice of obligations that will be imposed on the operators with SMP.

[27] Cooperation agreement of November 17th 2006.

[28] According to the European Commission's Recommendation of December 17th 2007, the current list entails one supply market (access to the public telephone network at a fixed location for residential and non-residential customers) and six wholesale markets (call origination on the public telephone network provided at a fixed location; call termination on individual public telephone networks provided at a fixed location; wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location; wholesale broadband access; wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity; and voice call termination on individual mobile networks).

Figure 5: Procedure of Market Analysis in the Telecommunications Sector in Belgium



In the first phase of the procedure of market analysis, BIPT coordinates with the other Belgian regulators and stakeholders. After a first public consultation, BIPT sends its draft decision to the Competition Council for a non-binding advice (except about some remedies)[29]. Then it sends the draft to CRC which can decide to handle the issue at unanimity (or be replaced by the Interministerial Committee)[30]. In the second phase, the Commission makes sure of getting a certain degree of harmonization between the Member States. It starts with an informal phase of consultation with BIPT called the pre-notification meeting[31]. The notification follows where BIPT informs the Commission and the other national regulators of the expected measures. In reaction, the Commission issues a 'letter of comments'[32]. In absence of 'serious doubts', the letter is interpreted as an agreement and the national regulator must take utmost account of the comments made by the Commission. In case of ‘serious doubts’ against the

[29] These are the interdiction of charging excessively high prices, impeding market access, using eviction prices that limit competition, and grouping services in an unjustified way (art. 63 §1 of the Law of June 13th 2005).
[30] The CRC has not entered into force yet, for cooperation is taking place informally.
[31] Which is not compulsory but widely used.
[32] Operators, who are not consulted in this phase, claim for the possibility to react or appealing against the letter of comments. The European Court of Justice (ECJ) rejected the claim as it does not consider the letter as a legal act.

notification from BIPT, the Commission launches the phase two which freezes the regulator's decision for two more months and opens a dialogue and negotiation between both parties. In case of persistent disagreement, the Commission uses its veto power, a situation that is seldom observed. However, the veto power does not apply to remedies, but the Commission is able to suggest appropriate remedies and issue recommendations.

Within the market analysis, the interactions between BIPT and the Commission are mainly hierarchical, even if network mechanisms also play a role. As the Commission's veto power does not reach all decisions of the BIPT, other channels for regulatory harmonization are developed either through voluntary cooperation or joint decision (e.g. the non-binding benchmarks of the ERG or the binding technical implementing decisions taken under the comitology procedure with the national representatives). Thus, even if competencies are rather clearly allocated (with very few conflicts of competence), vertical coordination is widespread with a mix of hierarchy and cooperation between the Commission and the sector regulators. National law-making also involves the Commission which checks whether the transposition is consistent with the legal framework. The contacts unfold on a cooperative mode, although they are due to the hierarchical power of the Commission which has the ability to launch infringement procedures against the Member States. Coordination is often based on a hierarchical power of the Commission, although hierarchy is very rarely visible in practice while cooperation seems to be the main mode of relationships between the Commission and national authorities.

Horizontal specialization and coordination within the same governmental level in the telecoms sector

Specialization in the telecoms sector is also horizontal, between the Government, ministries, sector regulators and courts. At the European level, the decision-making process is usual and follows the co-decision procedure. Advisory platforms deliver non-binding advices that have a high moral value and are often respected (e.g. ERG and IRG). A joint task force is organized inside the European Commission between DG COMP and DG INFSO in order to coordinate the telecoms regulation with the general competition law. At the Belgian level, law-making in the telecommunications is a competence of the Federal Government, while regulation is delegated to BIPT. BIPT is also involved in drafting legislation, but informally, and can issue non-binding opinions on these drafts. Though, the role of the Minister of Telecoms is relatively marginal and the Federal DG telecoms is understaffed and has no influence. In terms of litigation, the Court of Appeal in Brussels can overrule the BIPT

decisions. The Constitutional Court and the judicial courts settle the disputes between operators. At the Community level, the sector regulators are only involved in broadcasting (CSA, VRM and Medienrat).

Specialization and coordination between the telecoms regulation and competition regulation

The division of tasks between the competition authorities and telecoms regulators is clear. The sector-specific regulation is endorsed by the BIPT and competition authorities apply the general competition law, but both organizations cooperate. During the market analysis, the Competition Council is giving a non-binding advice about BIPT's market analyses. The Council's opinions are sometimes binding, which punctually provides the Council with a hierarchical position to the BIPT. In case of conflict, the operators should go to the Competition Council, as BIPT has no competence for it (the mediation competence is not very successful). But in practice, BIPT resolves conflicts through administrative decisions. So far, the Competition Council has not attracted much conflict as operators rather refer their cases to BIPT or judicial courts[33].

Specialization and coordination between the telecoms sector and the media sector

In Belgium, the implementation of the EU telecoms framework initially produced a conflict of competence between the BIPT and the media regulators, as well as between the Communities and the Federal Government about law-making. The Constitutional Court set an ultimatum and obliged the Communities and the Federation to reach an agreement before taking further measures. Long negotiations followed and ended up in 2006 with an agreement on a cooperation mechanism based on a network of regulators (for regulatory issues) and a network of Governments (for legislative issues).

[33] Eventually, the relationships between the Competition Council and BIPT may become more hierarchical The Government is currently working on reforming the appeal mechanism system and clarify the relationship with a view to clearly set the Competition Council in a hierarchical position towards BIPT. The idea is to transfer all appeals against BIPT decisions to the Competition Council when competition issues are involved. The Council's competence to issue non binding opinions would then be transferred to the Federal DG competition. The reform project of the Government is therefore likely to bring significant changes in the balance of power and the relationships between BIPT and the Competition Council.

Comparison of Specialization and Coordination in the Energy and Telecommunications Sectors

In terms of specialization, we observe a quite substantial number of authorities across different governmental levels participating in the two regulatory arrangements. Especially in the energy sector this can be clearly observed, because of the presence of both Federal and Regional sector regulators. However, due to the procedural and structural coordination mechanisms in place, the presence of overlaps or blind spots seems to be rather limited.

The sector regulators, in the form of independent regulatory agencies, are mainly involved in the policy implementation stage. Either they take decisions on individual cases or they prepare ministerial decisions (see Annex for a comparison of the capacities of CREG, VREG, and BIPT). The regulators also play a major role in law-making as they advice the legislator or sometimes draft the legislation. The comparison of the specialization and coordination of the regulatory arrangements in the energy and telecoms sectors in Belgium follows the four dimensions of specialization presented above: Vertical specialization, horizontal specialization, specialization between competition and sector regulation, and specialization with other sectors.

Vertical Specialization: European, Federal, and Regional/Community Levels

The integration between government levels is important in both sectors, though more pronounced between the EU and Federal levels than between the Federation and the Regions (see Table 2). This is certainly due to the specificity of Belgian Federalism built with strict barriers around the Regional and Community competencies. Most of the legislation implemented comes from EU frameworks that are transposed into national law. The EU institutions consult the Member States in the preparatory phase and carefully monitor the transposition and implementation. The Regions are autonomous from the Federation to transpose the EU frameworks within their field of competency. Not many coordination problems could be observed, except with the cost acceptance mechanism of public service obligations in the energy sector where the CREG is asked to accept costs that are the result of obligations imposed from both the Federal and Regional levels. Cost impositions from the Regional level can become problematic when CREG decides not to accept the cost calculations made by the companies. Other problems were resolved with different kinds of coordinating bodies.

Table 2: Vertical Specialization and Coordination in the Energy and Telecommunications Sectors

	ENERGY	TELECOMMUNICATIONS
Law making	**EU:** *Commission initiates + EU Council and Parliament decide + Member States implement* Advisory platforms (CEER, ERGEG, etc.) Exchange of information (Commission) Concertation body for Belgian positions (ENOVER) **Federal/Regions:** *Clear division of competencies, both decide for their competencies* Advisory platform (ENOVER)	**EU:** *Commission initiates + EU Council and Parliament decide + Member States implement* Advisory platforms (ERG, RSPG, CEPT, etc.) Non-binding advice and exchange of information (Commission) Non-binding advice (BIPT) (draft) **Federal:** *Fed. Gov. decides + Community Gov. decide* Body for collective decision making (Interministerial Committee)
ECON	**EU:** Interconnectivity: *DG TREN sets the framework + Government sets the guidelines* Advisory platforms with high moral weight (CEER, ERGEG, Madrid & Florence & London forums) Body for collective decision-making (comitology) **Federal/Regions:** Clear division of competencies Advisory platform (FORBEG)	**Market analysis:** *BIPT decides + Commission steers* Veto power (Commission) **Market analysis:** *BIPT decides + Community Regulators decide (unclear competencies)* Body for collective decision making (CRC) **Choice of remedies:** *BIPT decides + ERG recommends* Advisory platform (ERG) **Choice of remedies:** *BIPT decides + Commission and Cocom recommend (for harmonization)* Non binding advice (Commission) Concertation body (Cocom) (non-binding) **Choice of remedies:** *BIPT decides + Community Regulators decide (unclear competencies)* Body for collective decision making (CRC)
TECH	**EU:** Harmonization of technical issues: *DG TREN sets guidelines in comitology* Advisory platforms (CEER, ERGEG, etc.) Body for collective decision-making (comitology) **Federal/Regions:** Clear delineation of competencies, some issues remain because of technical difficulties to distinguish transport from distribution in natural gas, and because one electricity operator has lines both above and below 70kV Advisory platform (FORBEG) Fed. Gov. can make decisions for transmission/transport that impact distribution, and vice-versa	**Numbering:** *BIPT decides + Commission decides* Body for collective decision making (Cocom) (limited) **Spectrum:** *Belgium + international organizations* Concertation bodies (ITU, ISO, IEC) Negotiations (treaties) **Spectrum:** *BIPT+ EU* Body for collective decision making (RSC) Concertation body (RSPG) Advisory platform (CEPT) **Spectrum:** *BIPT decides + Community decides* No specific coordination instrument **Standardisation:** *Member States + Commission* Advisory platform (Cocom) Body for collective decision making (Cocom)
SOC	**EU:** *EU directives + Fed. & Reg. ministers impose obligations* Advisory platforms (CEER, ERGEG) **Federal/Regions:** *CREG accepts costs for PSO set on both Federal and Regional level (coord. Problem)* Non-binding advice (CREG at Fed. level only, VREG) Advisory platforms (FORBEG)	**USO:** *EU legislates + Member States implement* Exchange of information (Commission)
COMP	**EU:** *DG COMP retains cross-border cases + Competition Council deals with remaining cases (incl. regional cases)* Advisory platforms (ECN, ECA) Veto power (Commission) **Federal/Regions:** *clear competency for Federal level, no competencies for the Regional level*	**EU:** *Commission DG Competition + Competition Council* Advisory platforms (ECN, ECA) Veto power (Commission)
Litigation	*Constitutional Court for conflicts of competence between Federal and Regional levels*	-

Advisory platforms seem to be crucial to vertical coordination, whatever the kinds of delegation models in place between the government levels[34]. Even if their recommendations and guidelines are non-binding, they seem to work well and have an impact. Between the Federal and Regional authorities, advisory platforms compensate the rigidities of the Belgian Federal regime. In the energy sector, a concertation platform prepares the Belgian positions at the EU level (ENOVER). Another advisory platform coordinates the regulation between the Federal and Regional levels and three Regions incidentally use it as a horizontal contact point (FORBEG). At the European level, advisory platforms facilitate the inflow of information towards the EU institutions, which would otherwise be somewhat isolated (e.g. the ERGEG).

Consequently, bodies for collective decision-making are scarcely used, except in the comitology procedures. In fact, comitology committees are intensively involved in vertical coordination in both sectors (e.g. Committee on the implementation of legislation on conditions of access to the network for border exchanges in electricity or Communications Committee, COCOM). They either provide non-binding advice or take collective decisions. At the Belgian levels, bodies for collective decision-making were set up in order to resolve conflicts of competencies between the Federation and the Communities about electronic communications (i.e. CRC and Interministerial Committee). Hierarchy seems to be used as a coordination mechanism only in case of problems.

Governments of upper levels maintain control on regulation at the lower level. The European Commission controls the implementation of the EU frameworks in the Member States. First, the EU institutions have the power to legislate. They can reform the EU framework if they are not satisfied with the way their legislation is implemented. Second, the Commission has some means to exert more control on implementation. In the telecoms sector, it obtained a veto power on national market analyses made by the telecoms regulators. Third, the EU imposes decisions. If fact, the EU can enact regulations on issues of Community interest that are directly applicable in the Member States (e.g. the new EU roaming rules adopted in April 2009). In a lesser extent, the Belgian Federal authorities have a pre-eminence on the Regions

[34] A distinction is made between two types of federalism according to the way competencies are formally distributed between levels of government: Power separation and power sharing (Braun 2008: 5). In the power separation type, both levels are granted a complete authority on distinct blocks of competencies by the Constitution. For example, in Belgium, the Regions are responsible for the economic policy and the Communities for broadcasting, while the Federation is responsible of the social security. None of the levels can interfere in the other's competencies. The second type, power sharing, is based on a functional division of tasks between levels: Most of the decisions are taken at the Federal level where both the Member States and the Federal government have their say, but the Member States are almost entirely held liable of the implementation. It refers more to the organization of the relationships between the EU and the Member States, as well as the German or Swiss regime.

in the energy sector, but this exception to the Federal system is strictly limited to technical regulations having an impact on the transmission network (e.g. the compatibility of connection with distribution networks).

As already mentioned the supervision of the European Commission goes far beyond the usual monitoring of implementation consisting in a standard exchange of information and the potential threat of an infringement procedure. As a consequence, the Member States consult the Commission about draft transposition laws (non-binding advice). In the telecoms sector, the Commission uses its veto power on market analysis to create informal consultations on draft decisions of the national regulators. As such, draft regulatory decisions are sent backwards and forwards between the European and Federal levels. Procedural and non-binding coordination instruments develop in the shadow of hierarchy. As such, it seems that formalism is used only when necessary. As long as informal interactions are enough to achieve the objectives set by the interacting organizations, they are the preferred tools.prefer to use them.

To conclude, vertical coordination is the result of a mix of network-like structural and hierarchical procedural instruments, but with a clear emphasis on structural coordination instruments. Advisory platforms clearly dominate, but bodies for collective decision-making are also present. Only in telecommunications, a procedural coordination instrument is used: the veto power of the Commission on market analyses and the possibility for the Commission to take unilateral decisions (e.g. maximal cross-border prices for roaming and SMS).

Horizontal Specialization: Politicians, Administration, Regulators, and Courts

The horizontal dimension of the regulatory arrangements shows a limited degree of specialization between the different regulatory authorities. Competencies are divided mainly between the Governments, the administrations and the regulators. This division is clear and does not generate many overlaps or coordination problems, except about litigation (see Table 3).

Non-binding advice is the privileged procedural coordination instrument for the horizontal interactions within the regulatory arrangement. The main consulting authorities are the sector regulators (CREG, VREG, BIPT). Their contribution consists in commenting draft laws, e.g. the laws transposing the EU framework, or ministerial decrees setting the modalities of the regulation, that they are applying afterwards (e.g. the definition of universal service obligations in the telecoms sector). In the energy sector, the situation is more peculiar as

CREG and VREG do not always decide on individual measures, but advise the Minister who takes the decisions. The Competition Authority is also solicited to give advice on the telecoms market analyses and remedies. This advice becomes binding when the remedies refer to issues of general competition. Surprisingly, it is not consulted on tariff setting in the energy sector. Furthermore, the appeal court in case of non-acceptance of tariffs is the Court of Appeal in Brussels, not the Competition Council.

Table 3: Horizontal Specialization and Coordination in the Energy and Telecommunications Sectors

	ENERGY	TELECOMMUNICATIONS
Law making	**Federal:** *Fed. Gov. (law) + Minister of Energy decide* Non-binding advice (CREG) (if so asked) **Between Regions:** *Each Region has jurisdiction over its own territory* No known coordination instrument **Flemish Region:** *VREG prepares drafts + VEA is consulted + Reg. Gov. decides (laws)* Non-binding advice (VREG, VEA, various agencies) Concertation body (management meetings)	**Federal:** *Government decides (Law) + BIPT actually writes the draft (DG Telecom should)* Non binding advice (BIPT) No coordination between Federal DG telecom and BIPT.
ECON	**Federal:** *CREG and DG Energy prepare + Minister of Energy decides. Prospective studies of DG Energy + analyses of Federal Planning Bureau* Non-binding advice or proposal (CREG) (high value, except in case of high political sensitivity) Tariffs are exception: operators propose + CREG accepts. Federal Government can overrule **Between Regions:** *Division of competence* Advisory platform (FORBEG) **Flemish Region:** *Minister of Energy sets the framework and VREG decides* Non binding advice or proposal (VREG) (high value) Veto power (Reg. Gov.) (on license provision)	**Market analysis and remedies:** *BIPT decides* Non binding advice (Competition Council) Binding advice (Competition Council) on remedies about prohibition of charging high prices, impeding market access, using eviction prices, and grouping services
TECH	**Federal:** *CREG drafts + Minister of Energy decides or CREG decides* Non-binding advice (CREG) **Between Regions:** *Division of competence* Advisory platform (FORBEG) **Flemish Region:** *VREG drafts + VREG decide, general conditions set by Minister* Non-binding advice (VREG)	**Numbering:** *Government decides over the modalities (decree) + BIPT regulates* **Standardisation:** *Government decides + BIPT applies* **Spectrum:** *Government decides over the modalities (decree) + BIPT regulates* Non binding advice (BIPT)
SOC	**Federal:** *Minister of Energy decides, CREG monitors and sanctions* Non-binding advice (CREG) CREG drafts social and maximum prices **Between Regions:** *Division of competence* Advisory platform (FORBEG) **Flemish Region:** *Reg. Gov. decides + VREG monitors and sanctions* Non-binding advice (VREG)	**USO:** *Government decides over the modalities (decree) + BIPT regulates* Non binding advice (BIPT)
COMP	**Federal:** *Competition Council + CREG makes reports* **Flemish Region:** *No competency*	**EU:** *Commission supervises national market analyses* Body for collective decision-making (DG COMP & DG INFSO) *Competition Council judges and is the appeal body* Overruling power
Litigation	**Federal:** *Competition Council + Court of Appeal in Brussels deal with CREG decisions and High Administrative Court with Minister's decisions*	*Court of Appeal in Brussels deals with BIPT decisions* Overruling power (appeal) *Disputes: BIPT through administrative decisions +*

	Disputes: Competition Council + Judicial Courts Potential overlaps	*judicial courts + Competition Council (not much used)* Overlaps
	Flemish Region: *Court of First Instance and High Administrative Court for appeals* *VREG arbitrates for technical or access disputes between operators* Clear division of competencies	

Procedural non-binding advices are widespread in the horizontal coordination, but their influence varies.advic The standard non-binding advice is formulated during consultation procedures and the advised authority is free to retain or reject the arguments developed. This hides the reality of the relationships between the organizations. For instance, when the EU Commission or the Competition Council give an advice to the BIPT, the BIPT is aware that there will be consequences if it does not follow this advice without good arguments, as both organizations have some hierarchical power on BIPT later in the procedure (i.e. veto power of the Commission on the market analysis and overruling power of the Competition Council).

Second, some non-binding advices are almost always followed because of the high moral weight and high-level expertise of the advisor. In the energy sector, the sector regulator is the main advisor of the Minister for individual decisions. For instance, in economic regulation, the advice provided by the CREG is followed, except in rare case of high political sensitivity. It is also true at the Regional level where advices of the VREG on technical and social regulation could be observed. The same applies to the opinions of advisory platforms that join together much technical expertise and experience (e.g. ERGEG in energy or the ERG in telecoms).

Third, sector regulators sometimes draft the laws or ministerial decisions. For instance, BIPT is still in charge of drafting laws in absence of capacity of the Federal DG Telecoms. VREG does the same with energy laws at the Flemish level, though officially the Flemish DG Energy has this competence. The energy regulators are also drafting some ministerial decisions (e.g. CREG proposes social maximal prices and draft technical decisions as well as the VREG). As such, the non-binding character of the advice is compensated by the fact that regulators may have the first say in drafting laws or decisions, which makes them very influential.

An advanced form of a structural coordination instrument is the body for collective decision-making, which takes different forms than in the vertical dimension. At the European level, the Commission set up a task force for electronic communications composed of the DG COMP and the DG INFSO. They jointly supervise national market analyses and take common decisions. The task force is an intra-administrative form of horizontal coordination that goes beyond formal inter-department consultations. They are not limited to issue opinions about

draft laws, but coordinate the management and the implementation of public policies. A second example is observed at the Flemish level. The DG Environment, Nature and Energy organizes monthly management meetings that group together representatives of the different competencies and satellite agencies of the DG (e.g. VREG, VEA, and OVAM). Grouping related competencies in or around a single ministry seems to be beneficial for sector and cross-sector coordination, as advocated in the Whole-of-Government Approach (Christensen and Lægreid 2007).

Litigation is a component of the regulatory arrangement. Its importance is due to the high degree of conflict in the sector-based regulation. On the one hand, the decisions of the sector regulators are systematically contested (e.g. all BIPT decisions). On the other hand, disputes between operators are usual. The contesting of regulators' decisions is made at the Court of Appeal in Brussels, which has a division dedicated to regulatory issues, but also to the Competition Council for CREG decisions. As appeal courts, they have an overruling power on regulators' decisions reinforced by the fact that almost all decisions are contested. The Competition Council may be designated as the only appeal court for all sector regulators' decisions, a possibility which was originally envisioned by lawmakers. Its hierarchical power could be considerably reinforced because the Court could develop general orientations in the regulation. As it stands now, it is in fact the Court of Appeal in Brussels that developed expertise to deal with regulatory matters, since it is a separate chamber that specifically deals with theses issues. In case of disputes between operators, the judicial courts are competent. In addition, CREG and VREG can decide on access disputes, VREG arbitrates technical and access disputes and BIPT takes administrative decisions to resolve disputes. In both sector, the jurisdictions are overlapping and create the possibility of "judicial shopping".

To conclude, horizontal coordination is realised with a mix of procedural and structural instruments as well, but this time it is the procedural non-binding advices that dominate. Most often the sector regulators are involved in the preparation of Governments' decisions. The impact of these advices are various, from usual consultations without repercussions, advices taken in the shadow of hierarchy (i.e. with a possible overruling later in the procedure), advices with high moral weight (e.g. when the organization advised has no expertise to contradict the advisor), to advices that take the form of drafting regulation. A more thorough analysis thus reveals that sector regulators have much more weight in decision procedures than the procedural coordination instrument would suggest. Their advice is almost always followed. Structurally, bodies for collective decision-making are also encountered, notably

within administration in order to coordinate the management between several divisions (e.g. the joint task force for electronic communications at the EU Commission and the management meetings at the Flemish DG Environment, nature and Energy).

In both sectors, courts have an overruling power, but without being in a position to instigate coordination (e.g. cross-sector coordination) or gaining a hierarchical position on the sector regulators.

Specialization between General Competition and Sector-Based Regulation

The division of competencies between regulatory and competition authorities is quite clear, even if both are still interrelated on several aspects. Here, our aim is to answer to two specific questions: How do competition authorities interfere with sector regulation? And how do sector regulators interfere with general competition? (see Table 4).

Table 4: Competition versus Sector Regulation in the Energy and Telecommunications Sectors

	ENERGY	TELECOMMUNICATIONS
Law making	**EU:** *Commission initiative* Inter-department consultations (DG COMP) **FEDERAL:** *Gov. decide + stakeholders advise* Drafts (Fed. DG Competition)	**EU:** *Commission initiative* Inter-department consultations (DG COMP) **FEDERAL:** *Government decides + stakeholders advice* Non binding advice (Competition Council)
ECON	*CREG/VREG or Federal/Regional Government decides* Informal contacts between CREG and Competition Authority No contact with Regional authorities	**Market analysis:** *BIPT regulates + Commission supervises* Joint decision and veto power (DG COMP & INFSO) Non binding advice (Competition Council) **Remedies:** *BIPT decides* Binding or non-binding advice (Competition Council) **Non-regulated markets:** *Competition Council agrees on mergers & acquisitions + decides on infringements (e.g. price squeezing)* Clear division of competence
TECH	-	*BIPT regulates*
SOC	-	**USO:** *BIPT regulates + Competition Council applies competition law (overlapping competencies regarding price regulation)* No coordination instrument
COMP	*Fed. DG Competition + Competition Council* Procedure for exchange of confidential information (CREG) CREG alerts Competition Authorities in case of suspicion of anti-competitive behaviour *No competence of Flemish authorities* Informal contacts (VREG)	*Fed. DG Competition + Competition Council* Procedure of exchange of confidential information (BIPT) BIPT alerts Competition Authorities in case of suspicion of anti-competitive behaviour
Litigation	*Appeal to Competition Council against CREG decisions on technical regulation* Overruling power (Competition Council) *Appeals against decisions of the Competition Council are brought before the Court of Appeal in Brussels* *Federal DG Competition can act as a mediator in infringements of general competition law*	*Competition Council (or Court of Appeal in Brussels) as appeal body against BIPT decisions* Overruling power (Competition Council) *Competition Council (or judicial courts) + BIPT (mediation) to settle disputes between operators* *Court of Appeal in Brussels against decisions of the Competition Council* *Federal DG Competition can act as a mediator in infringements of general competition law*

Competition authorities are consulted in law-making in both sectors. By competition authorities, we mean both the Competition Council and the Federal DG Competition. The first is the court, and the second an administrative division that is mainly involved in policy-preparation and provides the Council's auditors with personnel to conduct the investigations. The Council is sovereign in deciding to launch an investigation and conducting it. It takes the decision and can impose sanctions. It is also entitled to issue opinions and advices.

In the telecoms sector, the European DG COMP participates to the regulation through the joint task force on electronic communications. At the Federal level, the Competition Council also plays a major role. It is involved in the preparation of the market analyses for which it provides binding and non-binding advices. But mainly, it supervises non-regulated telecoms markets, i.e. the market that were judged competitive enough to fall out of the scope of the regulation (e.g. publicly available local and/or national telephone services provided at a fixed location for residential customers). As such, the Competition Authority participates to economic regulation of the telecoms markets. Surprisingly, its involvement in energy is limited to informal contacts with the regulator (CREG), and it does not intervene in tariff setting. It is also absent from technical and social regulation in both sectors.

The sector regulators also intervene in general competition. In both sectors, they alert the Competition Authority in case of suspicion of anti-competitive behaviour (e.g. suspicion of abuse of dominant position). They also provide information in investigations through reports or exchanges of information. Both CREG and BIPT signed a protocol for exchanges of confidential information, but in the energy sector the protocol was denounced in 2006 and the relationship has since then for a long time been limited to informal contacts. Only recently there is again a possibility to exchange confidential information. The Competition Council has also an overruling power on regulators' decisions. But operators privilege judicial courts whenever possible.

To conclude, interactions between general competition law and sector regulation are bi-directional. The Competition Authority has the possibility to formulate binding or non-binding advices on law-making and regulatory decisions, at least in the telecoms sector. The DG COMP can also interfere in the telecoms market analyses as member of the joint taskforce. In case of litigation, the Competition Council has an overruling power on some of the regulatory decisions, and it has been argued that this puts the Competition Council in somewhat of a hierarchical position with regards to the sector regulators. Reciprocally, the

sector regulators alert the Competition Council in case of suspicion of anti-competitive behaviour and provide information to assist them in their investigations.

Inter-Sector Specialization

Coordination between sectors is limited to law-making and to the highest level of government, to be precise within the Councils of Ministers (see Table 5). The only exception is when regulatory frameworks cross sectors, such as with the EU framework on electronic communications, which includes broadcasting and communications on the cable networks. In such cases, Belgium sets up coordination instruments between the Federal level, competent for telecoms, and the three Communities competent for the media. Nevertheless, sector regulation is in general quite isolated from other sectors.

Table 5: Inter-Sector Specialization and Coordination in the Energy and Telecommunications Sectors

	ENERGY	TELECOMMUNICATIONS
Law making	*No specialization between electricity and gas* *Coordination with other sectors through Government decisions (EU, Fed. & Regions)* Inter-department consultations on proposals	*Federal Gov. + Community Gov. (unclear competence distribution)* Inter-department consultations on proposals Body for collective decision making about media (Interministerial Committee)
ECON	-	**Market analysis:** *BIPT decides + Community regulators decide (unclear competence distribution)* Body for collective decision making (CRC)
TECH	-	**Mobile phone antennas:** *BIPT approves the antenna + Regional Gov.or municipalities deliver building permits*
SOC	-	-

Conclusion

The regulation of the liberalized utility sectors is implemented with multi-level, multi-actor and multi-task arrangements. The aim of this paper was to show that a considerable extent of specialization within regulatory arrangements does not necessarily lead to overlaps, blind spots and redundancies. Coordination mechanisms compensate the dispersion of competencies between multiple levels and authorities. The empirical analysis was based on a comparison of the regulatory arrangements in the energy and telecommunications sectors in Belgium. It encompassed the whole regulatory arrangement consisting of four dimensions of specialization: vertical, horizontal, between competition and sector regulation, and between sectors.

Several preliminary conclusions could be reached. First, the number of actors involved in regulation at one governmental level remains limited. Although it increased much compared

to the pre-liberalization period where the Members States managed utilities within a single administration, it remains grouped around a Minister, an administration and an independent regulatory agency at each level, except at the EU level where the EU Commission is still most central. Second, considering the interplay between governmental levels, with competition regulation and with other sectors, the regulatory arrangements do show considerable degrees of specialization, necessitating coordination instruments. Third, despite some particularities, both sectors use the same structural and procedural coordination instruments. Vertical coordination is dominated by a network-like structural instrument, namely advisory platforms. In the telecoms sectors, these are supplemented by hierarchical procedural instruments that are only used as a last resort. The main horizontal coordination instrument is the non-binding advice, a network-like procedural instrument, but with many variants. Indeed, it appears that sector regulators have actually much more weight in decision procedures than the coordination instrument of non-binding advice formally would suggest. The relationship between the sector regulators and the Competition Authority is bi-directional and based procedurally on non-binding advice and structurally on exchanges of information. Between sectors, coordination remains weak, limited to law-making and arbitration within the Council of Ministers. From a more general perspective, the regulatory arrangements are complex, but produce few coordination problems. In their design, the legislators seem to have believed in a clear distribution of competencies in order to make the arrangements effective. In addition, 'soft' coordination instruments have completed the arrangements. Procedural non-binding advices and structural platforms allow the extended consultation of the organizations and actors that have to implement decisions. More binding and hierarchical coordination instruments are only mobilised in case of conflicts of competencies (e.g. structural joint decision bodies for issues of common interests for telecoms and media), or when the questions are politically sensitive to the Government (e.g. the Flemish Minister of the Energy can overrule the VREG procedural decision to license a supplier). This legislator's concern for clear divisions of competencies is also illustrated by the expected reshuffle of competencies in both the Belgian energy and telecoms sectors (e.g. transfer of prospective studies from CREG to the Federal DG Energy and project to transfer all appeals against BIPT decisions to the Competition Council).

Finally, coordination instruments make functional links between policy-making and implementation. On the one hand, sector regulators (and in a lesser extent competition authorities) are widely consulted by the legislator in the policy-making phase. Although they

are only consulted, their influence is high given their expertise and the fact that they will have the task to implement the policies. On the other hand, the executives want to keep control on the activities of the sector regulators. Of course, they foresaw hierarchal mechanisms to do so, but actually privilege more network-like approaches in preliminary phases (e.g. the Government gives a non-binding advice to the regulators draft decision, rather than overruling it in a later phase). Although they attracted the expertise that flew away from the ministries, the sector regulators are still subject to government control either from the European or lower levels. One consequence of their development is a marginalization of administrations to the benefit of direct contacts between the regulators and the Minister. Though this may be temporary as administrations will try to rebuild their capacity.

As such, different actors are involved in all the phases of public policy with constant formal and informal interactions. Such an arrangement is counter-intuitive with regard to the to the New Public Management precepts in favour of a clear functional divide between policy-making and implementation. Despite the appearance induced by the presence of independent regulatory agencies, it seems that pragmatism took the upper hand on doctrine to set up smooth and effective regulatory arrangements.

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Annex

Table 6: Comparison of the Main Regulators' Competencies and Control

	CREG	VREG	BIPT
Competences			
Policy Preparation	Involvement through prospective studies Consultation in drafting of laws about its functioning	Involvement through monitoring	Drafting of laws Advice on draft laws
Norm making	Setting of transmission and distribution tariffs Advice on setting standards for access to the network and technical regulation Advice on public service obligation, and on maximum and social prices Involved in investment plan electricity and prospective studies electricity and gas	Advice on setting standards for access to the distribution networks and public service obligations Drafting of technical regulations and code of conduct Involved in investment plan distribution networks	Advice on technical and universal service regulations Sets exceptions to the general competition law
Decisions on individual cases	Advice on license provision of suppliers (almost always followed) and designation of transmission system operator Evaluates licenses for new production facilities	Granting of permissions to distribution network operators Granting of licenses of supply companies and for warm power installations and green energy	Identification of dominant operators and imposition of remedies Decision on allocation of numbers and frequencies Imposition of administrative sanctions
Monitoring	Possibility of inspections and information requests. Coercive demands for information	No inspections, but strong monitoring capabilities, including coercive demands for information	Control of the application of universal service obligations Control of the respect of prescriptions on frequencies
Enforcement of decisions	Imposition of administrative fines and "power of suggestion" on fines and license withdrawal (strong impact)	Imposition of administrative fines and withdrawal of permissions and licenses	Imposition of administrative fines and withdrawal of authorisations and licenses
Litigation	Resolution of disputes about access to the transmission network.	Mediation on disputes on technical regulation and code of conduct. Resolution of disputes about access to the distribution network.	Mediation
Control by Minister or Government			
Ex ante	Yearly negotiations on budget and Policy Plan Government veto on decisions on tariffs Appeal for license refusal Appeal for tariffs	Management agreement every three years and yearly business plan Appeal for license refusal	Semestrial management plan
Ex post	Representation in General Council (not effective) Yearly report Dismissal of CEO and management board Budget and legal framework	Monthly consultations, yearly evaluations of the business plan Dismissal of governing board and CEO Budget and legal framework	Semestrial report Semestrial evaluation of the management board Dismissal of the management board
Control by Parent Department			

Ex post	Comments on advice to the Minister (not effective) Management committee (not effective)	Monthly meetings within a management committee (not effective)	-

Table 7: Comparison of the Main Regulators' Instruments

	CREG	VREG	BIPT
Instruments			
Licensing	Advice about designation of the transmission system operator (always followed) Advice on licensing of suppliers through transmission network	Appointment of distribution network operators Licensing of suppliers	Not applicable
Using general competition law	Reporting of anti-competitive behaviour	-	Influence through market analysis
Tariff setting	Approval of tariffs of transmission and distribution	-	Approves tariffs of transmission and interconnection.
Quality regulation and standard setting	Advice on standards for access to the transmission network	Advice on standards for distribution and supply	-
Prior permission for access to the market	Proposal on licenses for production and proposal or advice for access to the transmission network	Permission to distributors and suppliers	- (general authorisation regime)
Taxing or subsidising	Collects contributions to funds and manages the funds, but no discretion	-	Collects contributions to funds and manages the funds (universal service)
Influencing corporate governance structure	Advice on independent managers of transmission operators Checking reports of the corporate governance committee	Involved in the drawing up of criteria for independence of distribution and supply companies	Possibility to impose account unbundling
Regulating market behaviour	Checking that energy prices relate to real costs Competency to monitor energy market	Part of code of conduct monitored by VREG Mediation	Control of prices and conditions of access to network and interconnection
Regulating quantity	Monitoring of virtual power plant capacity (not effective)	-	-
Regulating network capacity	Advice on development plans of transmission networks Involved in prospective studies	Part of technical regulation about continuity of supply, monitoring capacities Involved in development plan distribution networks	-
Access to the networks	Prohibition of access denial to the transmission network Appeal	Prohibition of access denial to the distribution network Appeal	Regulation of network access through remedies (market analysis)
Regulating interconnections	Monitors transit and capacity at border and accepts tariffs	Part of technical regulation No cross-border competence	Regulation of interconnections through remedies (market analysis)
Regulating infrastructure investment	Involved in prospective studies and development plans	Monitoring and advice to the Government, approval of investment plans	Yes
Universal service obligations	Advice on setting obligations Monitoring of public service obligations (sanctions) Approval of costs incurred at Federal and Regional levels	Advice on setting obligations Monitoring of public service obligations (sanctions)	Monitoring Payment of costs incurred
Definition of markets	Not applicable	Not applicable	Yes, under veto of the European Commission