Behaviouralizing Europe: behavioural economics enters EU policy-making

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Behavioralizing Europe: How Behavioral Economics Enters EU Policymaking

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Abstract

If there is one economic policy paradigm that clearly benefited from the crisis, it would be the booming field of behavioral economics. Emphasizing cognitive bias and the limited rationality of economic behavior, it has great promise for offering policy guidance in a post-crisis world. It is therefore not surprising that in the past years, behavioral economics has made steady inroads into EU policymaking, most notably in the areas of consumer policy and health and food safety.

This paper evaluates the rise of behavioral economics as a policy paradigm within EU policymaking. After briefly presenting its key approaches and insights, it first charts how behavioral economics has slowly filtered into EU policy. In what policy areas did it emerge and what insights were imported? It secondly maps the type of actors and organizations that have been instrumental in disseminating behavioral economics. How did these actors translate theoretical insights into EU policy? The final aim of the paper is to determine to what extent behavioral insights are changing the policy outlook of the EU. How are behavioral approaches affecting the political rationality of EU policy and to what extent do they present a break with reigning liberal and neoliberal policy views within EU policymaking. The paper concludes by arguing that while behavioral approaches to EU policy remain modest to date, they present a formidable shift in the political rationality of EU governance with potentially far-reaching political implications.

Introduction

Many have been hopeful that the global financial and economic crisis would usher in a paradigm change of sorts within economics and economic policy making. Some argued that the economic crisis would forebode the end of 'orthodox' or 'neoclassical' economics and would break the hegemony of a neoliberal economic policy consensus (e.g. Stiglitz 2008). So far, none of the hoped for changes appear to have materialized. If there has been any change in economic policy, it has come from a rather unexpected quarter. If there is one school of economic thought that came out stronger from the crisis, it would be behavioral economics. With its focus on cognitive bias and the limited rationality of economic action, behavioral economics promises to be a suitable candidate to retroactively explain the crisis and for offering more adequate policy guidance for the future. Although most behavioral economists seem hesitant to directly claim the crisis as a success for their field, many spoke indirectly to it.[1] Behavioral economists were coveted as commentators in the media, especially those working on finance such as Richard Thaler and Robert Shiller.[2] In the years following the crisis, many behavioral economists of name, saw the time right to publish popular accounts of their work often adding a clearer policy angle, which immediately gained best-seller status such as Akerlof and Shiller's *Animal Spirits: How Human Psychology Drives the Economy, and Why It Matters for Global Capitalism* (2009).

It is therefore no surprise that in the aftermath of the crisis, behavioral economics is rapidly gaining popularity in policy circles. Key in popularizing behavioral economics in policy circles has been Robert Thaler and Cass Sunstein's best-selling book, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (2008). Drawing on a wide variety of intriguing examples, it vividly conveys that insights from behavioral economics can

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[1] In an interview, behavioral economist Dan Ariely made the link as follows: "I think the financial (failure) in such a magnificent way got people to think. That all of those people who were supposed to evaluate risk seem to have failed demonstrated that something very basic is wrong. So I think the final crisis has been very useful. Now almost three years later, the question is: will we make enough changes?" Caitlan Carroll. 2012. Behavioral economics: the missing link in the financial crisis?. *DW Deutsche Welle*. October 25, 2010. http://www.dw.com/en/behavioral-economics-the-missing-link-in-the-financial-crisis/a-6323299. Last accessed: 12 April 2016.

[2] Thaler made it even into a feature movie, appearing alongside Selena Gomez in *The Big Short*, explaining what synthetic CDO's are.

be used to nudge individuals and societies into reaching more optimal outcomes. By nudging people away from the various cognitive biases that affect decision making, such as shortsightedness or status quo bias, one could help them take better care of their own interest. The idea of nudge immediately appealed to policy makers as it introduced a seemingly smart, simple, intuitive and non-invasive type of policy making. Soon after, policy makers began enlisting the help of behavioral economists. It led President Obama in 2009 to appoint Cass Sunstein (2013) to become his regulation czar as head of the Office of Information and Regulatory Affairs. Perhaps most well-known, in 2010, Prime Minister Cameron of the UK created the Behavioral Insights Team (popularly known as the Nudge Unit"), to be headed by David Halpern (2015).

The promise of behavioral economics and *Nudge* did not leave EU policy making unaffected. Since 2008, one can witness the piecemeal entry of insights and techniques from behavioral economics into EU policy. These first emerged at the erstwhile Directorate for Health and Consumers (SANCO) – now DG Justice and Consumers – especially in the areas of consumer affairs and health policy. Behavioral science has been of influence on legislation on pre-ticked boxes in e-commerce websites, the packaging of tobacco products, and the regulation of standard information documents for investment products. Behavioral insights affected policy on online gambling, energy efficiency labelling, and information on bank fees. With the adoption of the Better Regulation Agenda in 2015, a number of behavioral principles have become a fixed part of the so-called Better Regulation Toolbox, setting guidelines for future regulation.

The steady import of insights and techniques from behavioral economics into EU policy raises a number of pertinent questions. The purpose of this paper is to evaluate the rise of behavioral economics as a policy paradigm within EU policymaking. After briefly presenting some of the key approaches and insights of behavioral economics, the paper first charts how behavioral economics has slowly filtered into EU policy. In what policy areas did behavioral economics emerge, what insights and techniques were imported, and how can we explain that they emerged where they did? It secondly maps the actors and organizations that were instrumental in disseminating behavioral economics within European policy making. How did the various actors translate theoretical insights into EU policy? These questions are studied however with a view of answering the central question of this paper. It seeks to determine to what extent insights and techniques from behavioral economics are affecting and changing the policy outlook of the EU. Given that behavioral economics is marking a critical departure from a traditional, orthodox or neoclassical view on economic policy, it is an apparent challenge to both conventional liberal as well as neoliberal market policies. How then is the importation of behavioral techniques and insights affecting policy making in the EU and the political rationality of EU at large? In doing so, I specifically seek to determine whether the behavioral turn presents a break with reigning neoliberal policy views within EU policymaking, whether it constitutes a return to liberal policy views, or if it could perhaps be construed as the advent of a post-neoliberal politics? The paper concludes by arguing that it does neither. While behavioral approaches to EU policy remain modest to date, they present a worrisome shift in the political rationality of EU governance with potentially serious political implications.

1. Behavioral Economics: Insights and Techniques of a New Policy Paradigm

The central idea of behavioral economics is that individuals do not always act as rationally as assumed in the models of neoclassical economics. Influenced by a long tradition of research in especially psychology it is arguing that one needs to study the real life psychological underpinnings of decision making in order to understand economic phenomena. One typically distinguishes between a first generation 'behavioralists' such as Herbert Simon that since the 1950s have studied the idea of bounded rationality, and a newer generation of scholars with a background in mostly cognitive psychology such as Amos Tversky and Daniel Kahneman who since the 1970s have been supplementing economic science with insights from psychology (Sent 2004, Heukelom 2014). This latter generation offered empirical proof that actual decision making violates the basic ideas of the rationality assumed in economics. Behavioral economics shows that real people suffer from all sorts of cognitive biases that prevent them from acting rationally. This basic behavioral idea has entered practically every area of research in economics, ranging from finance (e.g. Shleifer, Thaler, Shiller), macroeconomics (e.g. Akerlof, Leibenstein), the theory of the firm (e.g. Cyert, March), labor economics (e.g. Fehr, Gächter), development economics (e.g. Mullainaithan) to game theory (e.g. Camerer, Rabin) (Sent 2004, Camerer, Loewenstein, and Rabin 2004). Many of these behavioral economists have been awarded a Nobel Prize in economics in the past decade (Sent 2004).

Behavioral economists such as Kahneman, Thaler and Sunstein nowadays analyze decision making using two systems (Kahneman 2011, Thaler and Sunstein 2008). As reflected in the title of Kahneman's *Thinking, Fast and Slow*, on the one hand there is the automatic system 1, whose thinking is uncontrolled, effortless, associative, unconscious and fast. On the other is the reflective system 2, whose thinking is controlled, with effort, deductively, self-aware and operates slow. When taking an economic decision, such as buying another beer, purchasing a home, or making an investment, both systems affect how one acts with the slow one seeking to take control over the fast one. Since *Nudge*, the two selves are often referred to as Econs and Humans, in which the first stands for the rational decision making of the slow system 2 and the latter for when the fast system 1 takes over. Behavioral economics in this view, has been devoted to studying the various cognitive mechanisms that prevent Humans from acting as Econs. The work of behavioral economics spans a near limitless array of experimental studies of the various cognitive biases that hamper rational decision making. Following DellaVigna (DellaVigna 2009) these cognitive departures from the rational decision making model could be categorized as nonstandard preferences, nonstandard beliefs, and nonstandard decision making. Examples of the first are default effect, endowment effect, or social preferences. Examples of nonstandard beliefs are overconfidence, priming, the law of small numbers, and projection bias, while nonstandard decision making occurs when confronted with all sorts of heuristics such as framing, limited attention, or menu effects. Having provided overwhelming empirical evidence for the salience of these decision biases, behavioral economics has made a strong case that in real life, most human actors fail to conform to the rational model of *homo economicus*.

The behavioral view that actors for a host of observable reasons do not always act fully rationally has obviously far-reaching consequences for both economic theory and policy. A central question is what this means for the economic policy view of markets? When economic actors can longer be trusted to be always rational, what are the consequences for the supposed efficiency of market outcomes. Recall that the main argument for letting markets operate freely, is that markets when all agents act voluntarily and rationally and in absence of obvious market failures, produce outcomes that are most efficient for society. But if people can no longer be assumed to act as Econs, then the whole argument for free markets seems to crumble. Such a view would indeed jeopardy not just undermining a libertarian, but also a liberal or even a neoliberal approach to public policy. Thaler and Sunstein's work at the University of Chicago on behavioral economics, would thus present an outright challenge to some of the premises of that other Chicago School of Friedman and Becker. Behavioral economics however, as is most visible in Thaler and Sunstein's ideas about *Nudge*, has carefully been skirting around this possible implosion of liberal economic thought.

On the one hand, it could be argued that market competition can in fact address and correct behavioral biases. After a few market interactions in a competitive environment, such as eating in a few times too many in a tourist trap or buying additional insurance too often, one's biases may be corrected by the market (viz. 79-80). Markets in these cases make Humans, Econs again. With behavioral biases being omnipresent however, the market may not be able to correct behavioral biases in all possible instances. Biases could therefore lead to continued market failure and may thus require a form of behavioral policy. Such a policy could consist of what Thaler and Sunstein call "nudges," behaviorally informed changes of the "choice architecture" in which agents make their decisions. If we know that agents suffer from inertia and status quo bias and will pick whatever default offer is in front of them when buying online or selecting a retirement package, changing the choice environment such that the default options favor them would be a rational thing to do. Using a well-placed behaviorally informed nudge, they argue, Humans could be pushed to act more like Econs, allowing markets to again work their wonders. So instead of advocating laissez faire, Thaler and Sunstein propose a behaviorally informed form of "libertarian paternalism." It is a behavioral policy paradigm which by altering the choice architecture nudges agents to better fulfill their own interests.

Behavioral economics thus ushers in a completely new rationale for policy making. It is clearly different from liberal policy interventions which generally seek to redress some form of market failure by means of regulation. It is also different from neoliberal policy interventions that take the liberal perspective one step up as they turn markets into a universal policy instrument and use markets through market-based policies for instance, as a means to regulate society. The behavioral policy paradigm sits somewhat uneasily in this spectrum of market oriented policies. Its rationale is not primarily to regulate markets for the sake of efficiency or the protection of its citizens. Neither does it regulate society in a neoliberal way by creating more and more markets. As a policy paradigm its primary object of regulation is not markets, but rather the Humans that inhabit them.[3] It moreover does not really regulate its subjects, but rather aims at changing their environment such that humans can come closer to their inner econ. Behavioral policy interventions thus derive their legitimacy from making humans more rational in acting their own self-interests.

With these distinct features of the behavioral policy outlook in mind, the remainder of this paper will be devoted to analyzing how insights from behavioral economics have been affecting the policy outlook of the European Union and in what direction they may be taking Europe.

[3] The peculiarity of the behavioral policy paradigm and its position vis-à-vis markets shows when it is contrasted with experimental economics. While both rely critically on experiments, Heukelom (2014) has convincingly argued that the latter's focus was on markets with the primary aim of showing that market environments can indeed shape Humans to be Econs. Behavioral economists on the contrary focused on individuals and used their experiments to prove that in most market environments Humans fail to be Econs. Two similarly research approaches arrive at opposing political standpoints.

2. **Behavioral Policy Making in the European Union**

Over the past eight to ten years one witnesses a growing interest in the insights of behavioral economics among policymakers in the EU. As the result of a growing interest and considerable efforts, behavioral economics has made some important inroads into EU policymaking. Among its most visible achievements to date are four flagship cases in which behavioral insights inspired EU legislation in the form of directives, official recommendations, and a proposal for regulation, with still a number of cases in the making. The first of these has been the inclusion in 2011 of a prohibition of pre-ticked boxes on e-commerce websites in the Directive on Consumer Rights (2011/83/EC, art. 22; see also Sibony and Alemano (2015)). The proposal for this directive prepared by the erstwhile DG Health and Consumers (now DG Justice and Consumers) dates back to 2008 and is advertised as one of the first visible uses of behavioral insights in EU policy making.[4] It directly follows from the behavioral insight that actors tend to suffer from default bias and that a prohibition on pre-checked boxes is a minor alteration in the purchasing environment that allows consumers to remain closer to their interests.[5] A second oft-cited case is the 2009 decision of the European Commission in the area of competition that bans the Microsoft's default option for Internet Explorer by requiring it to insert a 'choice screen' that allows consumers to decide which browser to install (Case COMP/C-3/39.530 – Microsoft (tying)). Behavioral insights did not inform the Commission's decision on the settlement with Microsoft that it would provide a solution that would undo the tying its operation system with Internet Explorer, but appear to have played a role in

[4] Proposal for a Directive of the European Parliament and of the Council on Consumer Rights, COM/2008/0196, art. 31.

[5] While the Consumer Directive is widely mentioned as a flagship example of behavioral policy making (e.g. website Justice and Consumers, OECD, Alemanno 2015), honesty compels me to declare that I have not yet been able to establish any evidence supporting these claims. As stated, the prohibition of pre-ticked boxes appears for the first time in the proposal for the directive in 2008. There are no identifiable references to behavioral studies or insights predating this proposal. One may also wonder why for instance provisions about cooling-off periods, as an example of myopic decision making, which predate the revised consumer rights directive are not touted too as behavioral policy insights. Some of these provisions seem to be a revision of an earlier provision on the right of withdrawal ('cooling-off') (art. 6) and an extension of article 9 on inertia selling of the Directive on the Protection of Consumers in Respect of Distance Contracts (97/7/EC) ('distance selling)'. The prohibition on pre-ticked boxes, but also the provision on cooling-off periods are definitely compatible with behavioral theory but to what extent can they really be explicitly attributed to behavioral insights.

concluding on the exact technical solution offered by Microsoft that was cleared of remaining default biases after conducting a market test (ibid., p. 18).

A third flagship case of behavioral policy making are the new provisions on plain packaging and visual display bans in the Revised Tobacco Products Directive (2014/40/EU, art. 9). According to Alemanno (2012b, a) the directive is, with its emphasis on graphic warnings, plain packaging and display ban, indicative of a behavioral turn in tobacco regulation. Rather than regulating consumers through financial incentives like taxes or by providing information about health hazards for instance, it nudges consumers by changing the decision environment to act in a way that takes better care of their health interests. Some of these measures are a response to the behavioral problems such as information overload presented by previous information policy measures. The new tobacco directive is perhaps the first case in which the drafting of the directive was explicitly guided by behavioral research. The DG Health and Consumers commissioned Sambrook Research International, a market research consultancy, with reviewing the scientific knowledge on health and tobacco labelling which resulted in a report entitled *A Review of the Science Base to Support the Development of Health Warnings for Tobacco Packages* (2009). Many of this report's recommendations on what type of warnings could effectively affect smoker's behavior, ultimately found their way into the new tobacco directive.

A fourth flagship case is what was probably the first behavioral study commissioned by the Commission that explicitly drew on insights from behavioral economics. In 2010, the DG Health and Consumers commissioned Decision Technology Ltd. to study the decision-making process of consumers in the market for retail investment services with a view of designing policy solutions that could assist consumers in making "better decisions." It resulted in a report titled *Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective* (2009). The lead author of the report was Nick Chater, a professor of Behavioural Science at the Warwick Business School and co-founder of Decision Technology, a consultancy specializing in behavioral approaches to consumer decision-making. The study set out reviewing the literature in behavioral economics and psychology on the “behavioral biases” affecting consumers in retail finance. It showed how consumer’ beliefs regarding investment decisions may suffer from framing effects and intertemporal biases, their preferences could be reference-dependent or shortsighted and people’s decisions may be subject to heuristics and display risk and ambiguity aversion. A number of online experiments and one in a laboratory setting were designed to study how subjects respond to various policy interventions addressing these biases. On the basis of these experiments, the report recommends simplifying and standardizing investment product information for instance using a standardized “Key Information Document” for investment products. Should the EU continue to develop such a standard document, the report advises that further behavioral research is needed to test the effectiveness of its design.

The results of the study were presented by the Commission at its second Behavioral Economics Conference organized in November 2009. Based on the report DG Internal Market started a consultation on standards of protection in retail financial services.[6] This eventually led in 2014 to a decision to introduce standardized information documents with the adoption of the Regulation on Key Information Documents for packaged retail and insurance-based investment products (PRIIPs) (EU No 1286/2014). Picking up another recommendation from the Decision Technology report, in 2015 finally, a behavioral study was conducted by London Economics that subjected proposed variants for a format of the Key Information Document to consumer testing before the regulation would go into effect in 2017.[7] The first piece of EU legislation that had a basis in behavioral economics and behavioral policy making has become a fact.

The next flagship cases of behavioral policy making are clearly in the making. In 2014, the Commission issued a Recommendation on online gambling (2014/478/EU). It was accompanied by a 2014 behavioral study commissioned by the Consumer, Health and Food

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[6] Working Document of the Commission Services (DG Internal Market), Consultation by Commission Services on legislative steps for the Packaged Retail Investment Products initiative (2010). See: http://ec.europa.eu/internal_market/consultations/2010/prips_en.htm. Last accessed: 6 April 2016.

[7] London Economics and Ipsos, Consumer testing study of the possible new format and content for retail disclosures of packaged retail and insurance based investment products (MARKT/2014/060/G): http://ec.europa.eu/finance/finservices-retail/docs/investment_products/2015-consumer-testing-study_en.pdf. Last accessed: 6 April 2016.

Executive Agency (CHAFEA) as part of its Framework Contract on the provision of behavioral studies, and was conducted by LSE & Partners.[8] The study titled *Study on online gambling and adequate measures for the protection of consumers of gambling services* (2014) used experimental settings to assess the response of online gamblers to existing and new protective policy measures. The research approached gambling behavior as quintessentially stemming from widely researched cognitive biases, such as Tversky and Kahneman's (1971) classic "gamblers fallacy," because how else would one explain continued behavior in the face of evident losses. Using online and laboratory experiments, the study found that pre-gamble protective measures were not effective, that some of them such as registration forms are even counterproductive because they chase away gamblers to illicit venues, and that only in-gamble measures resort effects. As regards the registration forms, the behavioral study is clearly contradicting one of the core elements in the Commission's Recommendation and it remains to be seen how these tensions will be resolved in future policy.[9]

A last example of behavioral policy making that has entered the legislative stage, is the Proposal for a regulation on energy efficiency labelling (COM/2015/0341 final). The new regulation proposes to revise the labelling system and return to a simple A to G scale, doing away with complicated +-additions (e.g. A++++). The motivation for this revision is based on behavioral research showing "that [while] the new label scale is understandable for consumers, it has reduced their willingness to pay more for more efficient products, because they are less motivated by a difference between A+ and A+++ than by a difference between C and A."[10] The study the Commission bases itself on here, was conducted by London

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[8] Executive Agency for Health and Consumers, Multiple Framework Contract with reopening of competition for the provision of behavioural studies (EAHC/2011/CP/01).

[9] As the executive summary of the Recommendation states: "There should be a registration process to open a player account so that consumers have to provide details of age and identity for verification by the operators. This should also enable operators to keep track of player behaviour and raise the alarm if necessary." See: http://europa.eu/rapid/press-release_IP-14-828_en.htm?locale=en. Last accessed: 6 April 2014.

[10] See p. 3: European Commission, 2015, Report from the Commission to the European Parliament and the Council, Review of Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication of labelling and standard product information of the consumption of energy and other resources by energy-related products. COM(2015) 345 final: http://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v5.pdf. Last accessed: 6 April 2016.

Economics and IPSOS under the auspices of DG Energy.[11] The study consisted of a literature review of the effectiveness of various label frames, a large multi-national online behavioral experiment and simple experiments at retail stores in several Member States to determine effectives. While it studied behavioral responses, it is striking to see that the study hardly motivates its research set-up by referring to insights from behavioral economics, for instance addressing what cognitive biases the label frames sought to address. The last two examples nonetheless illustrate the growing importance of behavioral insights and studies as input in EU policy making.

In the slipstream of these flagship cases, one discovers a rapidly expanding field of behavioral policy initiatives in various stages of the policy process. Table 1 presents a non-exhaustive list of some of these policy initiatives grouped by policy area. It illustrates that behavioral economics has definitively set up shop in EU policy making.

Table 1: Behavioral Policy Initiatives in the European Union

Year	Area	Study	Research Institution	Directorate General
Consumer Policy:				
2011	Digital Agenda	Consumer behaviour in a digital environment	London Economics	EP, DG Internal Affairs
2012	Bank Fees	Bank Fees Behaviour Study	TNS	DG Health and Consumers
2013	Common Sales Law	Testing of a Standardized Information Notice for Consumers on the Common European Sales Law	Gallup	DG Justice and Consumers
Environmental Policy:				
2013	CO2 Labelling	Testing CO2/Car labelling options and consumer information	LSE and Partners	DG Climate Action
2013	Energy Labelling	Study on the impact of the energy label – and potential changes to it – on consumer understanding and on purchase decisions	London Economics	DG Energy
2014	Consumer Behavior	Influences on consumer behaviour: Policy implications beyond nudging	Ecological Institute	DG Environment
Health Policy:				
2014	Patient rights	Impact of information on patients' choice within the context of the Directive 2011/24/EU of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare	London Economics	CHAFEA, DG Health and Consumers
2014	Sustainability Information	Study on the effects on consumer behaviour of online sustainability information displays	Ecorys	EAHC, DG Health and Consumers
2014	Food Information	Study on the Impact of Food Information on Consumers' Decision Making	TNS	CHAFEA, DG Health and Consumers
2015	Eating Habits	Milan BExpo 2015: A behavioural study on food choices and eating habits	Ecorys	CHAFEA, DG Health and Consumers
Taxation:				
2014	Taxation	Behavioural Economics and Taxation	EC Joint Research Council	DG Taxation and Customs Union

[11] London Economics and Ipsos. 2014. *Study on the impact of the energy label – and potential changes to it – on consumer understanding and on purchase decisions* (ENER/C3/2013-428 Final report): https://ec.europa.eu/energy/sites/ener/files/documents/Impact of energy labels on consumer behaviour.pdf. Last accessed: 6 April 2016.

Sources: EC websites: e.g. website of the EC Joint Research Centre.[12]

Reviewing the uptake of insights from behavioral economics into EU policy making, leads to two general observations. First is to conclude that although in relative terms behavioral policy making in the EU remains only marginal, insights and techniques from behavioral economics have however been established as a legitimate input in EU policy making and have in fact influenced legislation. Over a period of less than ten years, behavioral economics and the wider field of behavioral science is steadily being accepted as a legitimate and valuable new approach in EU policy making. While its impact in terms of number of cases is still negligible, as a new set of knowledge and policy practices, behavioral economics is unmistakably starting to make waves in the EU. What started as a fledgling policy approach, is now maturing into a powerful new engine for EU policy making. The next section will review the mechanisms that contributed to behavioral economics' entry into EU policy.

Secondly, there are a number of distinctive patterns to the entry of behavioral insights into EU policy. For one, it is striking to see in what areas behavioral insights started appearing. As the flagship cases and table 1 illustrate, behavioral policy is nearly exclusively concentrated in the areas of consumer policy, environmental policy, health and food safety, and to some lesser extent in the areas of taxation, and a recent appearance in education, youth, culture and sport. Of these, it emerged first in health and consumer policy which at the time resorted under one Directorate general: DG Health and Consumers (SANCO). It was at this directorate that behavioral economics got a first foot on the ground in EU policy making. DG SANCO, soon joined by the Commissions' Joint Research Centre (JRC), was the first to adopt behavioral economics as a key area within its policy making. The reason that behavioral research first emerges in the area of health and consumers can probably be attributed to circumstantial factors, but it is interesting in three respects. One is to note that the entry of behavioral economics into policy does not take place in policy areas that are

[12] The most complete list of studies is maintained at the website of the Joint Research Centre of the European Commission: https://ec.europa.eu/jrc/en/research/crosscutting-activities/behavioural-insights/publications. Last accessed: 5 April 2016.

typically considered ‘economic.’ As opposed to fields that are easily associated with economic policy such as monetary policy, fiscal policy, competition and regulation of the internal market, financial markets, labor markets, or taxation, behavioral insights first appear in domains generally considered ‘non-economic.’ In an important overview of behavioral economics, Camerer, Loewenstein and Rabin (2004, 31-36) for instance single out macroeconomic policy and saving, labor markets, and finance among the most important areas of application. Thinking of the appeal of Thaler and Shiller’s work in this area, one would expect that in the aftermath of the financial crisis, behavioral economics would also in the EU, have first burst on the scene of financial market regulation. Or, given the macroeconomic troubles following the Eurozone crisis, one would expect a surge in behavioral policy making in that area, or given the EU’s weak performance on unemployment one would expect behavioral policy on labor markets. Instead, the current contribution of behavioral research has been more modest and focused first on more peripheral, non-economic domains.

A second aspect worth highlighting is the object of application of the EU’s behavioral policies. The way it has been taking shape, it is focusing exclusively on governing the behavior of EU individuals and especially consumers. This is in large part due to how behavioral economics is set up, emphasizing the biases affecting decision making. Behavioral economics focuses less on institutions, notably markets and their failures, but on failures in decision making. Policy is therefore less disposed toward regulating the market, but rather the behavior of individuals on markets. However, behavioral policies can be applied to other actors than consumers, such as financial institutions or businesses. The shift toward regulating the behavior of citizens rather than markets, and its near exclusive focus on consumers as opposed to other actors, is to be considered a significant shift brought upon the EU with its embrace of behavioral economics.

Another important aspect of behavioral economics’ first point of entry in EU policy, is its political context. In the areas where behavioral economics first surfaced, he EU has a more limited competence. Unlike an exclusive competence with regard to monetary and competition policy, the EU has only limited competence in the areas of consumer, health, or environmental policy. Consumer protection, the environment, and public health are areas of shared competence between de EU and Member States (c.f. TFEU Art. 3) with even less competence with regard to human health (cf. TFEU Art. 4). In these areas, the EU has less power in these areas to adopt legally binding acts. What would be the reason that behavioral economics surfaces in areas where EU competence is less? For one, as a softer form of regulation, behavioral policies are much better suited to a political environment where direct regulation is limited. Against taxes and other forms of direct regulations, nudges may require less and different types of legal action. The EU cannot tax smokers, but with a reference to the internal market, it can issue a directive on the labeling and packaging of cigarettes that nudges citizens to smoking less. Behavioral policies are therefore especially attractive in areas where more overt policy making is politically infeasible. Behavioral economics may therefore surface in areas where more invasive policies run into political limitations.

A fourth pattern that emerges from these first encounters between behavioral economics and EU policy making, is the method by which behavioral research is mobilized and applied in the policy process. The behavioral policies cited all passed through a similar policy making trajectory. In nearly all cases a behavioral research studies is commissioned to a research consultancy at the earlier stages of the policy process. The main purpose of these studies is to generate decisions on the behavioral effectiveness of various policy options. They generally take the form of a literature review and contain a number of either online, laboratory, or in-situ experiments. It must be noted that some of the research studies bear only little resemblance to the concepts and theories originally developed within behavioral economics. The studies are often not directed at studying the biases hat prevent people from acting in their own interest. Instead the purpose often seems to be to determine, what works. In some respect, the studies make sure policies are market tested. As such, this type of behavioral research fits well in a turn towards evidence-based policymaking and the ideas of better regulation. One effect of such a mobilization of behavioral research is that policy options are protected from further political contestation in the legislative process. The main purpose of behavioral research is to deliver policy options that work.

To sum up, behavioral economics appears to have successfully entered EU policy making and managed to establish itself as a legitimate input for EU policy. The import of behavioral theories and practices has primarily affected the areas of consumer, health and environmental policy, while leaving core economic policy making unaffected. It made its first entry in areas that proved politically fertile for the soft nudges of behavioral policy. It nonetheless introduced a new approach of governing these policy areas which instead of regulating markets, takes the behavior change of the EU individual and consumer as its primary object of application. And its tools and techniques help provide policy solutions that are market and behavior tested and therefore less politically contentious. Having established how behavioral entered EU policy making, the next section explores how it got there.

3. Behavioralizing EU Policy Making

As the examples show, behavioral economics has been swiftly capturing the policy imagination in the EU. In order to understand the purchase of behavioral ideas and why they emerged in EU policy, it is worth examining in more detail how behavioral ideas travelled from the world of academia to that of EU policy. As always with the nexus between science and policy, the history of how behavioral ideas entered EU policy making is multifaceted and does not follow one single pattern of transmission. As a theoretical field, behavioral economics has quite a considerable history with a first generation going back to as early as the 1940s and with its current generation gaining dominance around the 1980s (Sent 2004, Heukelom 2014). Given that behavioral economics enters EU policy only after 2000, it is worth explaining some of the transmission mechanisms involved. In our case, three distinct transmission mechanisms stand out.

The first mechanism explaining the transmission of behavioral economics to EU policy is a set of *push factors*. Behavioral economics emerged as an internal debate within economics and between economists and psychologists. During most of its history, the various contributors to the field were primarily concerned with defining their own theoretical and empirical questions and with establishing behavioral economics as a respected field of inquiry (Heukelom 2014). Theoretical questions instead of policy issues were the concern of the field. This began to change only in the 1990s when as part of a new self-conscious phase in the history of behavioral economics, as part of a concerted effort to consolidate the field one also began *popularize* behavioral economics as novel policy paradigm.[13] Although they do not have a clear policy outlook, the Sloan Foundation and especially later the Russell Sage Foundation were very important in establishing the outlook of the field (Heukelom 2014).[14] The policy outlook of the field is articulated for the first time when in 2003, Thaler joined by the legal scholar Sunstein, publishes the article 'Libertarian Paternalism' in the *American Economic Review* and in Camerer and others' 'Regulation for Conservatives: Behavioral Economics and the Case for 'Asymmetric Paternalism.'' Provocative metaphors and slogans were mobilized to accompany the first translation of behavioral economics into policy ideas. The real popularization of the field however took off with the appearance of a swath of highly appealing books during the second half of the 2000s and especially during the height of the global financial crisis, that helped familiarize a large audience with insights from behavioral economics. Without exception, these books have become best-sellers not least because they are extremely successful in the way they present thought provoking concepts, use imaginative examples backed up by strong evidence to sway their readers. Their real appeal however also derives from how below the appealing array of fun science facts, they are offering a very concrete promise of a novel and self-evident policy paradigm. An example of a book in which that political promise of behavioral economics comes out most explicitly is *Simple(r): The Future of Government* by Cass Sunstein (2013).

[13] For a more in-depth history of the foundations of contemporary behavioral economics, see Heukelom (2014), especially Chapter 6. Heukelom shows how methodological shifts in the field that took place in the 1990s were not only critical for the (re-)establishment of behavioral economics, but also immediately put its policy implications to the fore. The slow translation of behavioral economics into policy recommendation has also been noted by Berg (2003).

[14] While the Russell Sage Foundation has no political outlook, Heukelom shows how its Behavioral economics program played a significant role in separating the more 'liberal' behavioralists from the more outspoken pro-market experimental economists such as Vernon Smith. Although the Behavioral Economics program has been severely reduced at the The Russell Sage Foundation, one of its more recent initiatives is

While the popular genre has no doubt been crucial for the popularization of behavioral policy, but they are not the only one. Besides winning the hearts, one also needs to translate ideas into policies. Within academia, books and articles start explicitly addressing the policy implications of behavioral economics (most notably Shafir 2013). An important transmission channel for translating and popularizing academic insights to policy are the various national and international organizations economic policy organizations. One of these is the OECD claiming that it "has been working at the forefront to understand how behavioural insights can help governments and regulators design policies in such a way that citizens make better decisions and actions for themselves."[15] The OECD has for instance since 2005 been working for instance on incorporating behavioral economics into its 2010 toolkit on consumer policy which used as input by policy makers (Lissowska 2011). In 2014 it organized a conference on *Behavioural Insights and New Approaches to Policy Design* which brought together leading theorists such as Thaler and Sunstein, practitioners such as David Halpern of the BIT, international policy specialists, but also Xavier Troussard of the EC Joint Research Centre.[16] Through a conference like this, its reports and publications (e.g. Lunn 2014) the OECD has actively assisted in the translation of behavioral economics into policy. A similar function is performed by the World Bank for instance through its 2015 *World Development Report: Mind, Society and Behavior*, the IMF (e.g. Blanchard 2011) and a host of national and international organizations.[17] The active popularization of the ideas of behavioral economics together with their translation into policy ideas by academics and policy organizations, has constituted an important push factor for making those insights available and relevant for EU policy.

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[15] Statement on website: OECD, Behavioral Economics, published at: http://www.oecd.org/gov/regulatory-policy/behavioural-economics.htm. Last accessed at: April 10, 2016.

[16] OECD website: www.oecd.org/naec/NAEC_Behavioural-Insights-Programme_23-Jan.pdf. Last accessed: April 10, 2106. The conference resulted in a conference report: (OECD 2015).

[17] From my research I got the impression that the 'high priests' of macroeconomic and monetary policy transmission, such as the IMF but also central banks such as the Fed. or ECB, and national economic bureaus appear much less susceptible to the challenges of behavioral economics, and that the first channel of international policy dissemination is through the issue of regulation.

A second transmission mechanism is formed by a highly diverse set of intermediaries that are *policy entrepreneurs* in *policy networks*. Especially since the publication of *Nudge*, there has been a growing number of academics, policy organizations and think tanks, research consultants, and other small-scale initiatives that exerted themselves to translating behavioral economics into policy, some of which are explicitly aimed at EU policy. To cite just a few examples, various state offices, such as Departments of economic affairs or finance, research divisions of central banks and other official economic policy research organizations have started to embrace and promote behavioral policy making.[18] An interesting development is the setting up of organizations that are specifically devoted to translating behavioral research into policy. The Behavioral Science and Policy Organization operating from Durham NC, and funded by a number of research universities and the Sloan and MacArthur foundations for instance, whose mission is "to foster dialog between social scientists, policymakers and other practitioners in order to promote the thoughtful application of rigorous, empirical behavioral science in ways that serve the public interest."[19] Also in a less organized fashion, individual academics apply themselves to promoting behavioral theory for instance through publishing working papers with titles such as *A Practitioner's Guide To Nudging* (Ly, Zhao, and Soman 2013) and *Nudging around the World* (Ly and Soman 2013). A striking example of an academic turned policy entrepreneur for behavioral economics is Alberto Alemanno. A legal scholar specializing in EU law and risk regulation, Alemanno (2012b, a) has been at the forefront of studying behavioral policy making in the EU (viz. Sibony and Alemano 2015). Besides his academic work he has however been making numerous blog-post in which he emphatically speaks of nudging in the EU and has been involved in many conferences and

[18] For an overview of the many official behavioral policy initiatives across Europe, see: EC Joint Research Centre, *Behavioural Insights Applied to Policy. European Report 2016*. See: http://publications.jrc.ec.europa.eu/repository/bitstream/JRC100146/kjna27726enn_new.pdf. Last accessed: April 10, 2016.
[19] Website Behavioral Science and Policy Association. See: https://behavioralpolicy.org/. Last Accessed: April 10, 2016.

workshops on the topic, organized a conference titled "Nudging in Europe" bringing together scholars and EU practicioners, and acted as a consultant for the EU.[20]

While some of these activities count as regular scholarly work, there are also examples of more idiosyncratic special purpose initiatives and organizations devoted to promoting behavioral policy. iNudgeyou based in Denmark, advertises itself as "The Danish Nudge Unit" and operates a blog ("want to learn how to nudge") and organizes courses.[21] It is run by a research consultancy that has conducted projects for LEGO and Copenhagen Municipality. It has also led the setting up of TEN - The European Nudge Network in 2014.[22] This is a network of behavioral policy practitioners in the European Union with an interest in nudge and was endorsed by Alemanno in one of his blog posts.[23] It goes to show that academics and others have gone a long way in enthusiastically promoting behavioral insights and their promise for policy making.

Notwithstanding the fervor of these initiatives, most of the applied behavioral research is probably conducted by entrepreneurial academics and their equivalents at research consultancies. There has been a surge among academics and research consultancies to set up specialized divisions or organizations that are devoted to behavioral policy research. These consultancies have been at the forefront of tailoring behavioral economics into manageable studies that render outcomes that are of use in the policy process. The studies commissioned by the EU for instance were without exception conducted by European policy research consultancies such as TNS, London Economics, Ipsos, and Ecorys, often in cooperation with

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[20] See for instance: Conference website Nudging Europe: What Can EU Law Learn from Behavioral Sciences. http://local.droit.ulg.ac.be/sa/nudging_europe/. Last accessed: April 11, 2016. Alberto Alemanno. Personal blog. http://www.albertoalemanno.eu/. Last accessed: April 10, 2016. Alberto Alemanno. 2012. Nudging Europe: Why the European Commission should include behavioural insights in the design of regulatory proposals. http://www.politico.eu/article/nudging-europe/. Last accessed: April 10, 2016. Alberto Alemanno. The EU needs to embrace behavioural insights in the design of its policies 2012. http://blogs.lse.ac.uk/europpblog/2012/06/26/eu-behavioural-insights-policies/. Last accessed: April 10, 2016.

[21] iNudgeyou, the Applied Behavioral Science Group. See: http://inudgeyou.com/homepage/nudge-denmark. Last accessed: April 10, 2016.

[22] TEN – The European Nudge Network. https://www.linkedin.com/groups/4746574/profile. Last accessed: April 10, 2016.

[23] Alberto Alemanno. 2014. Nudge: hype or genuine revolution in policymaking? http://www.albertoalemanno.eu/articles/nudgehype. Last accessed: April 10, 2016.

academic institutes or individual academics. As often, the highly expedient way for ideas to travel is when they are being paid for.

The transmission mechanism with most impact however, I would contend, are what could be dubbed the *policy labs* of behavioral economics. By policy labs I mean more or less institutionalized environments in which one experiments with the first application of behavioral insights to policy. When these first experiments turn out successful, behavioral policies gain in legitimacy and the approach taken can be extended to other policy environments. The primary instance of such a policy lab is the Behavioral Insights Team (BIT) that was established in 2010 by David Cameron's Cabinet Office. The "Nudge Unit" as it often called, has been headed by David Halpern (2015). It has been semi-privatized in 2013 and now also operates branches in Sydney and New York. It was the first to help enact behaviorally informed policies, such as those based on its studies on using behavioral nudges to improve tax compliance. BIT has been an important catalyst in the transmission of behavioral economics to policy. It is cited as a source of inspiration by virtually any new behavioral policy initiative, including those within the EU. It is a telling sign that it is now common to refer to the ideas of behavioral science as 'Behavioral Insights' which can be a considered a direct sign of the centrality of BIT. Within the EU, I would argue that the policy makers and researchers of DG SANCO first in 2008 and later the JRC imitated the successes of BIT and organically formed an EU policy lab in their own right. With the creation in 2015/16 by the JRC of the Foresight and Behavioral Insights Unit, headed by Xavier Troussard, the EU's behavioral policy lab has become fully institutionalized.[24] The behavioral insights unit is in fact a central feature of a new EU initiative with exactly this title "EU Policy Lab" which presents itself as an "experimental space for innovative policy-making."[25]

A policy lab such as BIT or the EC's FBIU, performs at least three related functions in the transmission of behavioral knowledge. These functions will be illustrated by how they

[24] EC Joint Research Council. Foresight and Behavioral Insights Unit. https://ec.europa.eu/jrc/en/research/crosscutting-activities/behavioural-insights. Last accessed: April 11, 2016.
[25] EU Policy Lab. http://blogs.ec.europa.eu/eupolicylab/. Last accessed: April 11, 2016.

have functioned within the EU. The first function of a policy lab is that of *policy testing*. Early policy initiatives serve the purpose of gaining experience with behavioral policy making and the first modest successes motivate next initiatives. In 2008, DG SANCO organized one of the first EU conferences with behavioral economist devoted to the question of how to "best apply behavioural economics to consumer-related policy."[26] It commissioned a first pilot study on retail investment services and shared it results at a second EU conference organized in 2010. Advertising the conference, it stated its aims as:

> This conference will be an opportunity to present the results of the joint MARKT SANCO pilot behavioural study on retail investment services. The approach used in this first behavioural study could form the basis of a framework contract to be used by all Commission services to carry out behavioural experiments to road test regulatory or policy remedies. In addition, the conference will be an opportunity to review and discuss how the behavioural approach is being used by other national and international institutions … to gather useful evidence to inform policy-making. Indeed, the insights of behavioural economics could be applied to any policy that seeks to shape behaviour of individuals. … If policymakers want to influence behaviours, they should follow suit and master these innovative approaches. (DG SANCO, Conference Description)[27]

This statement neatly underlines the policy testing function of the policy lab. Pilots are conducted and when successful help legitimize the use of behavioral techniques that set the standard for other policy initiatives. The most important upshot of the first experiments in the policy lab is to translate behavioral science into policy and prove that it can be done.

A second function of policy labs is that of *policy mainstreaming*. It is the feature that successful studies will be used to define a standard for future studies. Van Bavel et.al. (2013, 8) report that the success of their first study and the growing interest from within the Commission led DG SANCO to establish the Framework Contract for the Provision of Behavioural Studies that enabled others to run similar studies. In 2012, it also involved the Joint Research Centre (JRC), an important measure that helped step up the mainstreaming

[26] DG Health and Consumer Protection. Conference "How Can Behavioural Economics Improve Policies Affecting Consumers?". 28 November 2008. http://ec.europa.eu/consumers/dyna/conference/programme_en.htm. Last accessed: April 11, 2016.
[27] DG Health and Consumer Protection. Conference "Behavioural Economics, so What: Should Policy-Makers Care?". 22 November 2010. http://ec.europa.eu/consumers/archive/conferences/behavioural_economics2/index_en.htm. Last accessed: April 11, 2016.

behavioral policy making through standardization and sharing of methods across divisions. In 2013, the JRC produced a very readable report *Applying Behavioural Sciences to EU Policy-making* (Bavel et al. 2013) which was clearly aimed at inviting new policy initiatives. The report briefly explains some core ideas of behavioral science to subsequently explain when to apply behavioral science to policy making, but devotes most of its attention to hands on advice about the feasibility of behavioral research for policy and how best to commission a behavioral study. At the conclusion of the framework contract and in anticipation of its renewal, the JRC organized a workshop in 2014 between EU professionals and representatives of research consultancies on *Good Behavioural Research for EU Policy-Making* (Rodríguez-Priego and van Bavel 2014) with a view of further practical guidelines for conducting and commissioning behavioral research for policy. The involvement of JRC, the (renewed) framework contract, and the setting of research standards have been important factors in mainstreaming and disseminating the use of behavioral science research in EU policy.

A third and final feature of the EU's behavioral policy lab is *policy promotion*. After having tested and proven policy translation and improving standards, a natural next step is to extent dissemination. One example of a policy promotion technique is the already mentioned EU Policy Lab set up by the JRC. Using an attractive title and website, the EU Policy Lab is presented as "a collaborative and experimental space" that uses advanced policy technologies such as "Foresight" and "Design Thinking," alongside Behavioral Insight. Its mission is to "serve all Commission's Directorates and focus on the creation of bridges and synergies" which it does through "Lab sessions" and "Reaching out." One of the projects is its continuation to offer "systematic behavioral support" to the European Commission. It is motivated by claiming that behavioral policy contributes to Better Regulation in being a form of evidence based policy. It is therefore no surprise to see that behavioral principles have made their way to the Better Regulation Agenda of 2015 and appear at various places in the

Better Regulation Toolbox.[28] The pervasive inclusion of behavioral insights in the Better Regulation Toolbox is a clear proof that DG SANCO first and JCR later have fulfilled their roles as policy lab and succeeded in making behavioral economics a standard and integrated element within EU regulation. Thus conceived the EU policy lab proved to be an effective instrument for behavioralizing EU policy.

Another project in the EU Policy Lab is that of collecting policy that is informed by behavioral insights both within the Commission, but also at the level of Member States. The aim is to build a network of behavioral policy practitioners, so as to share and disseminate behavioral insights and techniques. This project has resulted in a comprehensive inventory listing all possible behavioral policy initiative across Europe in a variety of policy areas, a summary of which has been published as a report (Sousa Lourenço et al. 2016). The latter is an example that the EU's behavioral policy promotion does not remain confined to the level of the EU. Once started with policy promotion, there is no reason to stop at the level of EU policy making and not to link up this drive with policy labs that are already active throughout Europe and to begin behavioralizing Europe.

If one seeks to understand how behavioral science made its way into EU policy one should consider the joint impacts of policy popularization and the role of policy entrepreneurs and networks. One will find however that policy labs, and especially the EU's internal policy lab built by SANCO and the JRC, has played a most significant role as it has determined today's face and direction of behavioral policy making in the EU. The relative emphasis put on policy labs here is important for two reasons. It highlights that explicit political or ideological considerations do hardly figure in the promotion of behavioral policies and that its techniques have mostly travelled through expert policy channels. It also shows that it was mostly an internal drive residing within SANCO and the JRC that advanced behavioral policy making in the EU, not some larger political project, and it only later got absorbed in the EU's larger political agenda of better regulation.

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[28] See tools numbered 11, 14, 15, 23, 28, 35, and 52 in: European Commission. Better Regulation Toolbox. http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm. Last accessed: April 11, 2016.

4. **The Politics of Behavioral Policy: Beyond Liberalism and Neoliberalism**

Behavioral economics and policy has often been criticized for the ethics of its ‘libertarian paternalism.’ While not entirely unrelated, this paper takes a slightly different approach by asking how behavioral policy instruments affect and imply a shift in the *political rationality* of policy making, specifically in the EU. In Foucauldian theories of governmentality, the notion of political rationality is used to denote the logic or reasoning that is inscribed in a certain historical complex of practices, theories and reflections of government. What rationality is implied in and legitimates the current ideas and practices of behaviorally inspired government in the EU? Foucault (2007) has been making a convincing argument that most modern rationalities of government hinge on some notion of the economy and the market, which makes them in a very broad sense liberal in nature. The modern family of liberal and more recent neoliberal rationalities of government then consists a variety of political rationalities that each offer a distinct legitimization of government in its relation to the economy or market. The question is therefore whether the behavioral policies of the EU represent a shift in political rationality and how to situate these on the spectrum of liberal and neoliberal governmental rationalities.

As a way to analytically contrast liberal political rationalities with more recent neoliberal ones, it is useful to see that these are different ways of legitimizing the role of government that derive from quite distinct notions of the market. Liberal conceptions of government for starters, are invariably predicated on a *naturalistic* view of markets. They approach the market as a quasi-natural mechanism that is governed by its own laws and forces that autonomously produce outcomes for society. Such a naturalistic view automatically invokes a liberal conception of limited government as it indicates a dualist situation in which the naturalistic market is posed as the external object of government regulation, while regulation is at the same time limited by the market. The liberal rationale of limited government is perhaps best illustrated using the doctrine of market failure. The latter in principle assumes a form of limited government prescribing the least possible intervention in markets. Intervention is only legitimate when it can be construed as a response to market failure. What counts as market failure however is ultimately a political concern, ranging from how much political value one attaches to the problem of monopolies all the way to unequitable economic outcomes. In the liberal view then, legitimate government is essentially regulation of the naturalist market, while maintaining a clear separation and opposition between the laws of economics and politics.

In more recent years, one witnesses a slow but steady departure from classic liberal rationalities of government. Notable examples are the endless list of market-based policy solutions that emerged over the past thirty years, ranging from basic liberalization and privatization policies, market-like constructions for governing market failures to the application of all sorts of market and especially market-like solutions in a host of often traditionally non-economic policy areas. How is one to square the idea of emissions trading for instance, or the idea of a marketplace of ideas with a liberal conception of naturalist markets and limited government. The carbon market instituted by the EU Emissions Trading Scheme is in many ways quite removed from a naturalist market that is the object of limited government. What distinguishes these recent market policies is that they rely on a *constructivist* notion of the market in which markets are not the object of policies but are made by them. Markets in these latter cases no longer pose as object and limit to government policy, but have been turned into the norm of government and its preferred means. These novel ways in which markets present a rationality of government is perhaps indeed best referred to as a *neo*liberal mutation of the previous liberal rationalities. The political challenge posed by neoliberal market rationalities is that the liberal opposition between economics and politics is effectively being subverted. When one no longer merely governs markets, but governs with markets and because of markets, the separation between politics and economics is bound to elide (viz. Brown 2015).

How is one to situate the behavioral policies of the EU on this spectrum of political market rationalities? Do they represent a move back from neoliberal policies toward a classic liberal rationality, should they be interpreted as a further strengthening of neoliberal government, or perhaps as moving beyond neoliberalism toward a new, post-neoliberal rationality? On such a spectrum of rationalities, behavioral policies immediately take an ambiguous position, as is only underscored by the oxymoron contained in "libertarian paternalism." The paternalistic impulse in behavioral economics, in which a nudging government regulates its subjects toward some public interest, could be argued to be not much different form a liberal government that nudges markets toward socially beneficial outcomes. On the other hand, the libertarian aspect of behavioral policy smacks of a neoliberal government that internalizes market reasoning and incentives onto a next level as its core norms and means. Are behavioral policies like the ones adopted by the EU in effect limited by markets and putting a limit on markets, or are they a further internalization of market or economic reasoning in the practices of government, or perhaps something else?

A recent review of some of the existing critiques of the politics of behavioral change by Will Leggett (2014) is illustrative in this respect, as it neatly draws out the paradoxes and contradictions involved. On the one hand Leggett cites those who criticize behavioral policy from a broadly 'libertarian' point of view. Libertarians for instance charge behavioral policy making with shifting into a form of technocratic governance that is by and large determined by experts. Also in the behavioral policies of the EU one encounters the emphasis on expert knowledge and research based policy for instance. In such a view, the behavioral state is feared to be a repackaging of 'big government' which, combined with technocracy could even be developing some authoritarian features. Following the libertarian view, behavioral policies pose a challenge to free market principles as they are seen not to respect the liberal naturalism of the market. From this vantage point, behavioral policies are clearly the expression of a liberal political rationality in which governments constrain markets, which is for many a libertarian in fact *too* liberal.

A second set of critiques on the other hand, dubbed 'statist' by Leggett, charge behavioral policies for being *too* neoliberal. They would for instance maintain that behavioral policies tend to be pro-market and anti-state. In nudging economic subjects to do the rational thing, behavioral policies promote the smoother functioning of markets while advocating a simpler or leaner state that takes the back seat regarding economic affairs. Statists see the behavioral state as a repackaging of the neoliberal state that stands at the services of markets. Behavioral policies, in their view, pose *no* challenge to market principles, as the objective of behavioral policies is in fact to make humans more suited for the market. As such, behavioral policies are another example of neoliberal market constructivism. Leggett cites a third category that criticizes behavioral polices from a 'critical-democratic' perspective. As behavioral policies are mainly directed at the individual and not the market for instance, it is argued that behavioral governance turns every (democratic) subject into a generalized *homo economicus*. In this perspective, behavioral policies are repackaging the state into an even more advanced, neoliberal state while further intensifying the centrality of market principles in government.

Offering a more detailed governmentality perspective on behavioral policy making, McMahon (2015, 4) explains how behavioral economics contributes to an intensification of neoliberalism because of introducing new techniques that "deepen neoliberal practices and rationalities." According to McMahon, behavioral economics is intensifying the practices and rationalities of neoliberalism in at least three ways. First, it effectively strengthens the market as "depoliticized site of truth and veridiction" (2015, 3). Foucault (2008, 32) has been showing that both in liberalism and neoliberalism the market acts as a site that tells the truth about politics. While in liberal rationalities the market still serves as an external truth to government policy – as in the case of market failure –, in neoliberalism the market increasingly acts as the internal truth or norm for government, for instance when in the case of emissions trading the markets are imagined and constructed as a means of governing the environment. Behavioral policies similarly take the market and its rational behavior as their norm, when trying to nudge away bias and make people conform to their inner economist. In these examples the 'truth status' or 'veridiction' of the market is progressively depoliticized as liberal policies still assume political control over the norms of the market, by making the market the internal norm, the political interventions of behavioral policy are exclusively legitimized by reference to objectively observable non-biased rational conduct.

Second, according to McMahon, behavioral policies intensify neoliberalism because of shifting the object of regulation. Where traditional liberal and neoliberal policies used to govern institutions such as the market or individuals, behavioral policy intervenes much deeper into the actors because of how they seek to address their interests, beliefs, cognition and alter the way they behave. There is a gradual but substantial difference between constructing a market to prompt economic actors to respond to a price on environmental degradation and to nudging consumers through energy or CO2 labeling into choosing for environmental protection. Both measures are neoliberal in that they mobilize the market to govern the environment, but the second is intensifying the reach of these neoliberal measure. Third and related, McMahon argues that behavioral policies contribute to a further formatting of economic subjects as *homo economicus*. Where economic subjects in liberalism and neoliberalism were chiefly "partners of exchange," behavioral policies by addresses cognitive bias at large, generalize homo economicus to all forms of action turning the subject into an "entrepreneur of the self." Rather than steering an innate homo economicus, behavioral policies produce it by addressing its cognitive biases. This amounts to a further intensification of neoliberalism, as McMahon (2015, 13) puts it pointedly: "If the market cannot fix the individual, perhaps [behavioral] governmentality can fix individuals for the market."

How does the EU's experience with behavioral policy fit in these considerations? As we saw, behavioral policy making emerged specifically in areas that were primarily directed at consumers and citizens, not the regulation of business or markets, and was moreover aimed at changing their behaviors for their own good. It was also noted that behavioral policies surfaced in areas where the political competence of the EU is more limited and direct regulation is less feasible. And it enabled a type policy making that was 'market-tested' and 'evidence-based.' When looking at the transmission of behavioral policy to the EU, it was noted that behavioral economics mostly travelled through expert channels and that the drive toward adopting behavioral policies was hardly a political one, but came from within the policy apparatus.

These developments do not fit easily in a simple spectrum of liberal and neoliberal policies. On the face of it, the behavioral interventions of the EU have a clear paternalist and liberal streak, reminiscent of a state that is regulating markets in an attempt to do good. The policies enacted have clear paternalistic overtones in aiming to improve the environment, reduce smoking, or prevent gambling. To side with the libertarians of Leggett however, it could be argued that the EU interventions and their use of highly specialized behavioral studies take an increasingly technocratic form and represent an increasingly more intrusive government as a behavioral state. There are clearly good old liberal intentions to the policies, but its execution fits less with that of a liberal state.

On the other hand, the way the policies are enacted neither immediately conform to a standard neoliberal reading. The proposals do not show the obvious signs of a retreat of the state; at most the replacement of the regulatory state with a behavioral state. While the behavioral policies enacted may not lead to a lesser state, they do however promise a leaner and simpler government, underlined by its inclusion in the Better Regulation Toolkit. More damning for a neoliberal reading is that the behavioral policies seem to rely less explicitly on market constructivist policies in which one governs by creating markets. While none of the examples cite outspoken market principles, neither do they actively challenge them. There is moreover a clear neoliberal sense to the way that the legitimacy and effectivity of behavioral policies is determined through behavioral "market testing," which elevates markets again into the norm for policy. So behavioral policy measures look like neoliberalism, but not the way we used to know it.

Neither really liberal, nor standardly neoliberal, the behavioral policies in the EU then indeed show signs of ushering in a more advanced or intensified mode of neoliberal governance as outlined by McMahon. For one, the behavioral policies of the EU indeed shift the focus from regulating markets and regulating through markets to that of governing the interests, beliefs, and decisions of its citizens. With the use of energy labels, cigarette packaging, key information documents, and pre-ticked boxes one is no longer regulating markets, but rather the actors on that market. Intervening deeper into the human market tissue of society, this could be considered a first intensification of neoliberal governance. A second aspect is that such interventions do have the effect of making humans, Econs again or *homo economicus*, thus making subjects even better suited for the market. Studies into bank fees, key information documents for investment products, energy labeling, patient choice in cross border health care, and a prohibition on pre-ticked boxes not just help citizens better care for their interests, but especially help them to become better market citizens. By intervening deeper into economic subjects and making them more suited to the market, the neoliberal market is even deeper entrenched as the core policy principle in behavioral policy making.

The strongest indication that behavioral policy making is contributing to an intensification of neoliberalism is however found in McMahon's argument about how it is further depoliticizes the market as a site of truth. In liberal policies the market functions as an external truth for policies, while in neoliberal policies it has become the internal norm of policy increasingly obviating the need for outside political norms. The behavioral initiatives and proposals considered here contain an implicit tendency to further depoliticize policy making. Behavioral policies as they are adopted in the EU, progressively turn policy making into a technical, empirical, and non-controversial – in short a non-political – type of activity. To help consumers overcome biases seems non-controversial. Conducting studies to figure out how people respond to energy labels, changes policy making into an empirical question and finding the question of picking the right label design, a near technical one. With its paternalism so good-heartedly self-evident, and the appraisal of behavioral biases essentially an empirical question that requires a technical answer, behavioral policies purges them further from explicit political considerations. The way these policies made their way to the European policy domain, travelling mostly through expert channels and through promotion by the EU's internal policy lab, only underlines the depoliticized nature and appeal of simple(r) behavioral government.

The depoliticizing aspect behavioral policy making also ties in with an important, specifically European dimension behind its rise in the EU. It is perhaps not surprising to see behavioral policy surface in the areas where it did and not just because of its natural focus on individuals such as consumers or citizens. As an enhanced form of de-politicized policy making, behavioral policies are likely to emerge in areas where the competences of the EU are somewhat more limited. When direct regulation is less of an option, the indirect powers of behavioral policy may be a welcome way to circumvent political limitations. Just as was the case with attempts to govern carbon emissions where direct regulation by means of taxes or quota were politically not feasible, one took the depoliticized neoliberal route of governing by means of establishing a market (Braun 2009). Similar factors may have been at play behind the entry of behavioral policy making in the EU. When environmental or health policy cannot be conducted through direct political action, the advanced neoliberal means of depoliticized behavioral policy making may have provided a convenient alternative.

Conclusion: A Post-Neoliberal Turn in EU Policy Making?

This analysis of this paper shows that the EU's behavioral policies take a very contradictory position on the liberal – neoliberal continuum. Besides showing that there may not be such a thing as a smooth continuum running from liberalism to neoliberalism as I have been arguing elsewhere (Zuidhof 2012, 2014, Forthcoming), it is evidence that behavioral policies are challenging and taking us beyond these already existing political rationalities. One of the paradoxical political twists offered by behavioral policy making is that it simultaneously has the airs of a strong liberal political rationality often conceived as paternalistic, and at the same time constitutes a more advanced and pervasive version of a neoliberal political rationality. We saw that the most decisive features of the advanced neoliberalism of the EU's behavioral policies are its tendency to on the one hand reach deeper into the economic subject, while at the same time further depoliticizing its reliance on market principles.

The paradox of behavioral policy's libertarian paternalism and its advanced neoliberalism may contain an important lesson in uncovering a key feature of all neoliberal policy making. While behavioral policies on the one hand take the depoliticizing effects of neoliberalism one step further, they also inadvertently highlight the liberal paternalist core that runs through its depoliticized policies. In other words, there probably runs a depoliticized liberal core through all neoliberal policy measures. A neoliberal policy solution such as the EU Emissions Trading Scheme obviously contains a liberal wish to reduce environmental pollution, but is pursued through depoliticized carbon markets. Although this may be good news, there is reason for concern however. There is a risk that a liberal core that is built into depoliticizing market policies may one day become an illiberal core. The technocratic nature of much behavioral policy making and its similarly technocratic entry into EU policy making largely hide this from public view. Fortifying market reasoning even deeper into the human tissue of society, behavioral policies could be considered a next step in further de-legitimizing other political values, such as justice, equality, or ultimately even freedom. The risk is therefore that a depoliticized behavioral state with its depoliticizing market policies, may only further eclipse the liberal democratic state. The European Union with its current fragile democratic status may therefore not be helped by further neoliberal depoliticization of its polity.

The answer of Leggett (2014) to the challenges posed by the depoliticizing effects of behavioral policy is to advocate a democratic repoliticization of these policies. Rather than either succumbing to the joint dangers of a potentially creeping authoritarian paternalism in a liberal behavioral technocracy or the unwitting intensification of neoliberalism, Leggett proposes to democratize behavioral policy making so as to make behavioral policy democratic and liberal again. It is useful to repeat an important reminder from Thaler and Sunstein (2008, 10) that in any situation one is always already being nudged. Their argument in favor of nudging is that there is never a nudge-free context and that one had better nudge right than be nudged unknowingly. Behavioral policy may only have a promising future if it manages to offer a democratic, post-liberal and post-neoliberal future for its nudges. Current developments in behavioral policy making in the EU however, do not yet show clear signs of such a promise.

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