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Summary

Dealing with new modes of governance in the EU requires a reflection both on the concept of governance as such, and on the exact understanding of 'novelty'. Different dimensions of governance can be distinguished, each of them highlighting particular features of the EU system. It is also necessary to be aware of the fact that old and new modes of governance can only be successfully approached in a dynamic time analysis which is also policy-specific. What might be 'new' in one policy area, is not necessarily so in another. This paper tries to systematically collect different conceptions of governance, their peculiar perspectives, and draws conclusions for empirical research on modes of EU governance in a variety of dimensions.

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I. Starting with Governance: between Vagueness and Narrow-Mindedness

Within the existing literature, there is little consensus on "new modes of governance". Many contributions introduce the notion of without explicitly defining what actually is or what should be, 'new' about it; some authors refer to those modes rather as 'recent' expressions of EU decision-making, others stress their 'innovative' character. Confusion is further increased by the fact that the term 'modes' is often used synonymously with 'patterns', 'forms' or 'models' of governance. Few authors are willing to explain in which way new modes of governance are related to 'old' modes, and to which ones in particular.

It is argued here that a major source of confusion in the discussion about 'new modes of governance' stems from the lack of differentiation with regard to the discussion of the term 'governance' itself, particularly with regard to its different layers. There should be a differentiation of modes of governance according to the level of abstraction. We will not arrive at a clear-cut definition if we constantly mix up the different dimensions of the discussion about governance. Therefore, as a first step, there should be an analytical exercise in differentiation and delineation.

Furthermore, we shall not arrive at a concrete vision of new modes of governance if we are not sure about what the 'old' modes are. There has to be an empirically and methodologically sound investigation of the pre-existing phenomena before we start to define what could be regarded as innovative and novel.

But there is only little optimism for arriving at a single and standard definition of new modes of governance, covering all possible areas of EU decision-making. Instead, as will be shown, a differentiated approach taking the peculiar conditions of policy areas into account, will promise more success. Secondly, the time factor is highly relevant, leading towards a dynamic analysis of governance in the EU and trying to reflect the changes visible at certain turning points.

In order to approach new modes of governance empirically, a number of different fields of investigation could be singled out, which do not sum up so far to a coherent research design, but should be taken as points of reference which might take us further in the future, particularly in finding an overall conceptual framework.

II. What is New about the Modes?

1. Different Understandings of Innovation and Governance

When addressing the issue of governance there seems to be an ambiguity regarding the extent to which '*new*' elements, modes, forms or types have emerged and in which way these may be distinguished from former ones. One reason for this lies in the fact that different understandings of innovation related to the notion of governance are in play:

- **The innovation introduced by the concept of *governance* as a special way of grasping collective decision-making, as distinct from traditional concepts like that of 'government':** This new reality was coined in term like "governance without government" (Rosenau and Czempiel 1992) or "governance beyond the nation-state", describing a phenomenon that is not limited to the European Union, but that represents a broader and wider process of change in the overall nature of political decision-making which can be found in different arenas worldwide; it does not exclude authoritative allocation of values by hierarchical steering, but is considered as much broader; it includes the dispersion of

locations of authority, the search for solutions under conditions of "de-bordering", or the participation of non-state actors in the allocation of values;

- **The innovation introduced by the *European Union* as a specific expression of "governance without government", particularly as form of "multi-level governance" (Marks and Hooghe 1999) or "network governance" (Kohler-Koch 1999):** in this view, the EU is regarded as a special case and most progressive model for governance which has limited national sovereignty through integration to a degree unprecedented in modern history; it imposes limitations upon the sovereignty of the member states and acquires state-like functions without revealing the quality of a full-fledged state;
- **The changes *within the EU system of governance*, leading to new modes in which the EU itself is taking decisions, deviating from its own 'traditional' or 'orthodox' forms and methods:** And here again, sometimes the notion of 'new' simply refers to the time frame, equating the fact that some decision-making procedures have been introduced only recently, while there are efforts to substantiate the term in a systematic manner. With the Open Method of Coordination, the discussion came up about exactly this dimension of governance: the EU was applying new approaches for managing policy problems in the European multi-level system, saving national autonomy to a large extent and helping to encourage bottom-up processes of regulatory policy.

When addressing new modes of governance it is sometimes extremely difficult to draw a clear line between the different aspects of change and innovation related to the notion of governance. Often these different uses of the term and its innovative capacity become mixed up, either due to conceptual vagueness, but also due to the fact that processes of change in this area are overlapping and sometimes interfering. It should be substantiated which specific features are implied within each of these notions of governance and their modal expressions.

This effort is further complicated by the fact that within the academic literature, there is a true fashion of dealing with 'shifts in governance' (van Kersbergen and van Waarden 2004, p. 144) which also affects the European Union. It has become a popular and prominent exercise to identify patterns of change in the way political decisions are prepared, taken, implemented and controlled.

Van Kersbergen and van Waarden (2004) distinguish nine different uses of the term 'governance', derived from different disciplines or academic communities. Additionally, they also analyse a number of "shifts in governance" which go well beyond the EU system, but are of relevance to it (van Kersbergen and van Waarden 2004, pp. 152ff.), such as the shift from national to international 'governments' and courts, a vertical shift from national to sub-national levels, a horizontal shift from governance by the executive and legislative powers to the judiciary, a move from public to semi-public organisations and semi-autonomous agencies; the problem is that they enumerate rather than categorize and classify these different types of governance and the types of shift taking place, and that they do not differentiate between the different layers of governance. This leaves the reader without a clear notion of the actual trends and empirical realities.

2. Governance with or without Government: Some Basic Features

Governance started its terminological career in the field of economics, from where it found its way into political science (Mayntz 2003; 2004), describing an *innovative* perspective on political decision-making: [...] the term governance is mostly used to indicate a new mode of governing, different from the old hierarchical model in which state authorities exert sovereign control over the people and groups making up civil society" (Mayntz 2003, p. 1). Thus, the idea of innovation and novelty has been present in this academic discourse about governance

from the start. Interestingly, one of the key background factors explaining the emergence not only of the academic notion of governance, but also of the political reorientation with regard to new models of political steering, were related to the crisis of the welfare state and the failure of reform policies which became apparent during the 1970s (Mayntz 2003, p. 2).

In order to filter out the different meanings and connotations implied by different modes of governance, it is useful to have a closer look at the general use of the term (van Kersbergen and van Waarden 2004). Rosenau (2001, p. 171) describes governance as "systems of rules, as the purposive activities of any collectivity, that sustain mechanisms designed to ensure its safety, prosperity, coherence, stability, and continuance". According to Treib, Bähr and Falkner "a workable definition of governance is best attained if we concentrate on the policy dimension"; starting from this conceptual decision, governance is defined as "political steering, and modes of governance denote different styles or instruments of political steering" (Treib, Bähr and Falkner 2004, p. 1-2).¹

Markus Jachtenfuchs and Beate Kohler-Koch propose that governance should be defined as "the continuous political process of setting explicit goals for society and intervening in it in order to achieve these goals" (Jachtenfuchs and Kohler-Koch 2004, p. 99), adding that "governance thus involves setting goals and making decisions for an entire collectivity, including individuals or groups who have not explicitly agreed to them. It also involves a rather high level of intervention which may stabilize or alter a given status quo" (Jachtenfuchs and Kohler-Koch 2004, pp. 99-100). This short menu of definitions has already brought to the surface the different perspectives on governance, viewed as a system, or as a process, or a set of activities; furthermore, the scope of the term can be conceived either as rather broad or as narrow.

In a broad understanding, 'governance' has been conceived as the more encompassing and modern term compared to 'government', relating to different forms and ways of taking decisions for and within society as a whole: "Governance has become a pervasive form of political steering" (Mayntz 2003, p. 1). This view was closely linked to the transformation of the modern political systems into the direction of the "cooperative state" (Ritter 1979), a model which prescribes a fundamental change in state functions, roles and instruments.

From a more narrow point of view, the idea of "governance without government" (Rosenau and Czempiel 1992) was conceived as a counter-model to the ideal-type of 'nation state government', in terms of hierarchical steering of society (Mayntz 2004) by using authoritative instruments – mainly law, money and force –, relying upon a comparatively homogeneous source of legitimacy represented by the national electorate. Also, the increasingly important role of international organisations, regimes, and institutions, and the rise of subnational actors, civil society and private corporations, has led to broad scepticism regarding the idea of the nation state as the main political actor domestically and internationally, and nourished ideas about a different kind of arrangements in play (Rosenau and Czempiel 1992). This understanding was not wholly revolutionary, but could build upon older ideological and theoretical traditions which were present in social science and international relations.

More specifically, basic features were identified in the use of coordination instead of hierarchical steering for taking political decisions, the interaction of public and private actors, primarily within policy networks, where the state is less of a monolithic entity but is differentiated into state actors with important, but limited resources, and a high degree of self-regulation. All these items belong to the idea of governance, but they can be regarded either

¹ On the distinction between 'governance' and 'steering' see Scharpf and Mayntz 2005.

as exclusive attributes of the term (narrow definition) or as additional features to other, more traditional ones (broader definition).

According to Renate Mayntz, the emergence of this new understanding which was coined by the term 'governance' requires the existence of some preconditions: with regard to the political regime (powerful, but not omnipotent authorities, democratic legitimacy, particularly by representation of crucial societal interests), and with regard to civil society (existence of a strong, differentiated and well-organised civil society). Thus, the disappointments which were brought by the insights that state omnipotence was a myth, contributed to the search of new concepts better able to grasp political reality.

3. The European Union as a Model of Governance: The Macro-View of Governing Modes

The notion of governance has found an attractive field of application and declination in the European context, where major trends identified with this concept were extremely well—developed, so that the EU could appear as a model case for "governance beyond the nation-state" (Zürn 2000, pp.183ff.)

Beate Kohler-Koch proposes a distinction between four main modes of governance, based upon a typology which is using two main dimensions: the organising principle of political relations among actors, and the constitutive logic of the polity (Kohler-Koch 1999, p. 23). In each of these two dimensions, she finds two alternative categories: the organising principle can either be based upon a majoritarian logic of political competition like in the UK or the US, or be mainly consociational, relying upon negotiations and compromise-seeking like in Switzerland.

With regard to the constitutive logic, she offers a distinction between a basic orientation towards a 'common good', and the pursuit of individual interests.

This typology is apparently aimed at defining the basic features of governance, representing modes on a macro-systemic level of analysis. When arriving at her four types, she counts the EU system to the mode of *network governance* (Jachtenfuchs 2001, p. 253). Thus, this typology might help to understand the EU system as a whole, while it offers only a framework for defining more specific modes of governance at the sub-systemic level.

Table 1: Typology of Modes of Governance

		Organising Principle of Political Relations	
Constitutive Logic of the Polity		Majority Rule	Consociation
	Common Good	Statism	Corporatism
	Individual Interests	Pluralism	Network Governance

Source: Kohler-Koch 1999, p. 23.

Network governance has been described as an academic as well as political concept where the core idea lies in the notion of problem-solving within a setting characterised by the existence of social sub-systems whose specific rationality has to be recognised (Kohler-Koch 1999: 25). Not hierarchical steering seems to be the appropriate method for taking decisions, but instead negotiations among member governments, private and public non-state actors, prevail. Four key features have been highlighted in network governance: the role of the state, the rules of

behaviour, the patterns of interaction, and the levels of political action (Kohler-Koch 1999: 25). Basically, the state is recognised as the principal actor in the system, while acquiring the function of a mediator and go-between in order to compromise different political and social interests. The rules of behaviour hint at a constant need for negotiations between rational and self-interested actors, who target a common good as well as individual benefit. Interaction is marked by an equal footing and exchanges among actors, of which the state is less of a homogeneous block, but rather disperses into a multitude of sub-actors. Finally, political action takes place at different levels, without privileging centralised upwards trends in favour of subsidiarity (Kohler-Koch 1999: 26).

These attributes largely appear as a more 'intensive' version of the general concept of 'governance beyond the nation-state', so that the EU can be regarded as a model with the 'densest concentration' of the features of the concept. The antipode to such a view of the Union is constructed as an intergovernmentalist approach (Marks and Hooghe 1996), regarded as largely state-oriented, static and sub-level dominated. In contrast, the Union is described as a complex and dynamic set-up where "the fragmented and fluid institutional structure [...] and the lack of a strong power centre leads to an increase of channels of access and a larger variation of participants in the policy-making process as compared to governance systems in territorial states" (Jachtenfuchs 2001, p. 254).

The theoretical location of EU governance approaches is so far not fully clear. While Jachtenfuchs (2001, pp. 255-257) stresses the different perspectives and research interests of governance and integration theory, he also sustains a complementary relationship between both, which however, rather appears like a benign neglect. There is indeed a critical stance towards classical integration theory due to different academic traditions, and also due to the competing aspiration of grasping the nature of the 'beast' called European Union. Consequently, there have been few efforts for combination or linkage.

Two main problems emerge once the decision has been taken to identify the EU with a special mode of governance: firstly, the impact of EU governance upon the member states, and also the relationship between the macro-level type of governance and policy-specific modes of "sector governance" (Kohler-Koch 1999: 27). Both dimensions are interwoven, as the impact of governance is a process that follows a policy-specific pattern and may appear as imposition, involvement, or attraction (Kohler-Koch 1999: 27). Both problems represent a difficulty in defining the levels of governance, either with regard to the distinction between the European Union and the member state level, and also with regard to the intra-EU institutional level of decision-making in defining the nature of the EU system and its typical mode of governance. Thus, as Kohler-Koch admits, "monetary affairs, foreign and security policy, and cooperation in criminal law are not examples of network governance" (Kohler-Koch 1999: 31), due to the interests by national governments to control certain policy areas and to hinder the entrance of other private or public actors. A crucial question is in how far different modes of sector governance add up to a consistent pattern of EU governance as a whole, or if there is a basic difficulty in generalizing the single picture into a common type of governance.

4. New Modes of Governance within the European Union: Different Explanatory Approaches

As there is no authoritative definition of new modes of governance which would cover all empirical cases and would be accepted by all authors working in the field, we will have to collect basic elements to be found in the existing literature. Héritier ascribes three principles to new modes of governance: voluntarism (non-binding targets and the use of soft law), subsidiarity (measures are decided by member states), and inclusion (the actors concerned participate in governance), while the mechanisms in play are defined as "diffusion and learning,

persuasion, standardization of knowledge about policies, repetition (iterative processes of monitoring and target readjustment are employed) and time management (setting of time-tables)" (Héritier 2001, p. 3).

In this context, it is particularly difficult to define the relationship between new modes of governance and EC legislation. Adrienne Héritier describes those new modes as "more accepting of diversity", encouraging "semi-voluntary forms of coordination" (Héritier 2003, p. 33), while adding: "This occurs under the traditional Community legislative method, as many recent directives tend to be relatively open and flexible. But the move from top-down, uniform rules to more flexible and participatory approaches can best be seen in areas like the European Employment Strategy (EES) [...] which departs radically from traditional regulatory approaches" (Héritier 2003, p. 33).

Hodson and Maher address new modes of governance (in case of the OMC) by identifying three key aspects: subsidiarity, flexibility and legitimacy, which, as they say, stand in contrast to the "original EU governance model with its emphasis on centralisation, functional segmentation and vertically integrated structures" (Hodson and Maher 2001, p. 727). Instead, the new modes should preserve national autonomy, offer solutions outside the institutional set-up of the Union, and open new ways of legitimacy for the EU.

Starting from this assumption, it is rather difficult to assume a dividing line between new modes of governance and the traditional EC mode. Does this traditional mode refer in the first place to procedure (i.e. the ideal-type Community, starting with a proposal by the Commission,

On the other hand, it is often stressed that new modes of governance resort to a different kind of formal instruments. New modes of governance could be defined by adopting a 'sectoral' approach, i.e. they would include mainly the open method of coordination and its specific instruments, while the traditional way of legislation in the shape of regulations, directives, and decisions taken along the lines of the Community method, would appear as 'old'. Or, the other way would be not to start with the legal form, and to concentrate on the key features of legislation in terms criteria like openness and flexibility (Héritier 2003, p. 33; Treib, Bähr and Falkner 2004). The second approach might be more differentiated, but it is certainly more demanding in terms of conceptual clarification and empirical operationalisation.

Soft law seems to be a highly substantial feature of new modes of governance, in the sense of not bearing 'hard' sanctions in case of lacking compliance by member states to abide by the commonly agreed guidelines: "Compliance rests on the assurances made by the Member States to follow the guidelines, supported by multi-lateral surveillance of Member State activities, the possible effect of what some see as 'naming and shaming' mechanisms, the iterative elements of the process, and its capacity to shape the discourse of debate" (Trubek and Mosher 2003, p. 39).

But soft law as such is not a new phenomenon in EC legislation, on the contrary, it belongs to the traditional set of instruments. What distinguishes old and new soft law, may be grasped by the table offered by Susanna Borrás and Kerstin Jacobsson (2004, p. 188).

Table 2: Differences between the OMC and the traditional soft law

The open method of coordination	The traditional soft law
Intergovernmental approach: the Council and the Commission have a dominant role	Supranational approach: the Commission and the Court of Justice have a dominant role
Political monitoring at the highest level	Administrative monitoring
Clear procedures and iterative process	Weak and ad hoc procedures
Systematic linking across policy areas	No explicit linking of policy areas
Interlinking EU and national public action	No explicit linking of EU/national levels
Seeks the participation of social actors	Does not explicitly seek participation
Aims at enhancing learning processes	No explicit goal of enhancing learning is stated

Source: Borrás and Jacobsson 2004, p. 188

This set of distinctions appears as impressive, but is much less so if the single items are reflected systematically. So e.g. on the institutional side, traditional soft law did not only reserve a privileged position for the Commission and the Court, but also included major activities by the Council or the European Council, the latter particularly through the summit conclusions or specific declarations on different policy issues (like CFSP, or justice and home affairs), which are not legally binding, but represent a politically relevant commitment. The perceived lack of horizontal and vertical linking should also be approached with great caution, as this assessment varies from one policy area to another. To simply state that traditional soft law does not contain any reference to these aspects, cannot be maintained in general. On the other hand, what appears as highly relevant is the issue of formal clarity of procedures and their iterative nature; this feature which is often also made accountable for promoting learning processes, seems to be a highly crucial aspect of 'new' soft law, as to OMC in general.

This again leads us to ask what the central features of 'old' modes of governance are. A number of facts should be borne in mind, still. First, EC legislation in terms of procedure as well as output has been a highly differentiated phenomenon in the past and remains so until today. The term 'old modes' does not mean that these are outdated or have been overcome by the new modes of governance, but that they exist in parallel to them. The EU today is thus marked by the co-existence of old and new ways of decision-making. It is not even possible so far to identify a stage by stage strategy of introducing EU action

Second, some authors stress the new modes as an alternative to the attempts aimed at full harmonisation of national legislation; it has to be remembered however, that the EC/EU does not aspire full harmonisation in all areas; in the context of the creation of the single market, the 'new approach' adopted by the Commission consisted in moving towards the principle of mutual recognition, combined with the inclusion of non-official bodies as players in regulatory policy, like technical committees (CEN, CENELEC). To name this as an element of new modes of governance would cause serious conceptual problems, but it cannot be denied that 'softer' forms of legislation have been introduced. With regard to the procedure, the Community perspective can be applied: the Commission proposal stands at the beginning; then comes the legislative procedure involving Commission, Parliament, and Council, with the possibility of majority voting.

Third, the degree of participation and influence by non-state and non-public actors has varied considerably within the European Union. Within certain areas, there have been traditionally close relations between policy-makers and interest groups. In agriculture e.g., COPA and

COGECA belong to the best organised lobbying associations. In other areas, there have been rather weak structures of interest-mediation.

These examples underline the difficulties in finding the really innovative dimension in the new modes of governance within the EU. There is hardly a case which would not prove that certain ways of decision-making have already been practiced before, and that speaking of new modes therefore is a highly dubious enterprise. A solution to this problem may lie in the policy-specific investigation of modes of governance, without trying to preclude the degree of innovation. Modes of governance in the end are reflected in specific legal norms, institutional practice and discursive interaction in concrete policy fields. This approach would have the advantage of being able to take peculiar and particular features of single policy areas into account, but it will most certainly lead to a loss of coherence in two directions:

- There could be different time frames for the emergence and existence of old and new modes of governance in different policy fields, as the transformation from the former to the latter will follow specific patterns in the single cases.
- There could be different meanings as to what substantially is to be regarded as 'new', because the starting points as well as the dynamics will differ considerably from one area to another.

On the other hand, there is no alternative to this differentiated and policy-specific approach simply due to the fact that otherwise the notion of new modes of governance should be given up altogether.

5. Governance in Different Dimensions: Implications for Research

The analysis of different dimensions of the discussion of governance and its innovative potential could be regarded as an encyclopaedic exercise for the purpose of differentiation. Beyond this totally legitimate objective, the benefit lies in the awareness of what is to be grasped by using the term 'new' modes of governance. The differentiation of different dimensions does not necessarily mean that these dimensions are neatly separated and should not be mixed at all. There is a degree of overlap and mixture, of combination and cross-cutting in it, which should not be regarded as a vice, but as a reflection of the complex and interwoven nature of the subject.

Table 3: Three Dimensions of the Debate on Governance

	Governance	EU Governance	New Modes of EU Governance
Counter-Model	government (as too narrow)	intergovernmentalism, two-level game	'old' modes of EU governance
Features	broader, more inclusive and more complex than the classical idea of <i>government</i>	dynamic, network/multi-level governance, in contrast to hierarchical model of the <i>nation-state</i>	flexibility, subsidiarity, soft methods, delegation of powers in contrast to 'Community orthodoxy'
What is New?	a more modern and encompassing understanding of decision-making	the EU as a political centre of authority – more than an international organisation, without becoming a state	the EU itself changing its own 'orthodox' set of procedures, instruments, and approaches

More concretely, the above analysis leads to a number of conclusions which are of importance for the further progress of the research process:

- It is extremely difficult to find a single and monolithic understanding of 'new' modes of governance; it rather seems that there is always a plurality of understandings implied when we talk of these phenomena.
- The assessment of new modes of governance in the EU reveals an implicit comparison, based upon the dichotomy of 'old' and 'new'; without defining what the old mode is, it is extremely difficult to define the new ones.
- A macro-level definition of *the* EU mode as such is of limited benefit for exactly this endeavour. Therefore, it is necessary to have a closer look at different policy areas and their specific features. What is old or new has to be substantiated within a concrete policy area with its peculiar set of constitutional and institutional conditions.
- Time plays a crucial role in the analysis of different modes of governance, 'new' does not only mean innovative, it also bears a connotation of – more or less - 'recent'; thus, a dynamic perspective, collecting data and information over time, seems to be highly useful and promising.
- When it is agreed that 'old' and 'new' are (policy-) context dependent, also the question of what dimension of new governance is concerned, acquires a different shape. Elements of the broader understanding of governance could become highly relevant in some areas, while in others they are rather 'old' and little innovative. The participation of agencies or private actors might represent a 'revolution' in one field, while in another it is of limited 'news value'. Therefore the differentiation of the three dimensions is more than a mere terminological exercise.

III. Drafting Research for New Modes of Governance

1. Pre-Theoretical Considerations: Modes of Governance view from different perspectives

From the start, there was a discussion about the implications of 'new' modes of governance for the process of European integration, in particular the open method of coordination (Hodson and Maher 2001, pp. 720-721). While some authors regard OMC as a transitional phenomenon giving way sooner or later to more centralised and Europeanised forms of decision-making, others regard it as a mode in its own right, while a third group would consider it a hidden form of intergovernmentalism causing damage to the supranational character of the Union.

Jachtenfuchs and Kohler-Koch doubt on the high relevance often attributed to those forms: "Up to now the new modes of governance are of limited importance because they are applied in only a minority of cases and most of them are to be found in just two areas, environmental and social policy" (Jachtenfuchs and Kohler-Koch 2004, p. 108). There are divergent views on the coordination procedures as a "starting point" or a "resting point" (Wallace 2002: 32). Wessels, Linsenmann and Meyer in contrast regard these modes as an entry ticket into Europeanised policy-making, triggering off a dynamics which will lead in the future to more centralised forms of decision-making. According to the concept of ratchet fusion, new modes of governance represent an early stage of formalisation of cooperation among governments combined with elements of transnational interaction that will probably not remain static, but exposed to a process of constant adaptation and upgrading in the future. Stefan Collignon, on the other hand, sees it foremost as a camouflage for the intergovernmentalist wishes of the nation-states to exclude the Community institutions from decision-making, and to reduce the level of commitment to the utmost minimum.

The perspective of the new modes as a phenomenon in its own right is closely related to the governance approach (Jachtenfuchs 2001; Marks and Hooghe 1996), i.e. it is less a preference for a certain type of integration theoretical question about the driving forces, the direction and outcome of the European unification process, but much more an expression of the institutional and procedural variety of the Union, a widening of its range of decision-making and implementation patterns.

The emergence of new modes of governance is explained in different fashion throughout the literature. It is not intended here to provide an exhaustive set of causal elements, but to distinguish different levels of explanations. The first one is a political one, based upon the assumption that member states face a dilemma: on the one hand, they reject the further transfer of competencies to the European Union or the introduction of qualified majority voting in certain policy areas, on the other they identify a need for action and policy-making beyond the scope of the nation-state (Trubek and Mosher 2003, pp. 36f.). Under this perspective, new modes of governance would correspond to a method of safeguarding national sovereignty, and as an expression of national resistance against Europeanisation. This tension creates a highly ambiguous situation, in which the push for enhanced Europeanization clashed with the tendencies for limiting ambitions by Brussels to absorb decision-making.

Below this primordial political calculation, there has also been a concern for an adequate regulatory model to be chosen (Héritier 2003): in this regard, new modes of governance have been regarded as a third way between European harmonisation and regulatory competition among the member states, becoming attractive through 'soft law' methods, while preserving a high degree of discretion for the national governments.

Even under the conditions of these different calculations, there has to be a amenable background condition which leads to decisions on the introduction of new modes of governance: in many contributions, the starting point is related in some way or another to a "crisis" (Trubek and Mosher 2003, p. 34), a "gridlock" (Héritier 2003, p. 105) or "deadlocks" (Héritier 2003, p. 105); these situations were marked by policy problems, where the member states were faced with the challenge of making different political preferences compatible with each other, (Trubek and Mosher 2003, p. 34), but saw their core activities being touched upon, leading to highly complex and problematic conditions for EU legislation (Héritier 2003, p. 105).

2. Defining the Variables: Modes of Governance as Dependent and Independent

Regarding the rationale lying behind the emergence of new modes of governance, a number of different, and sometimes competing, elements, have been identified in the research literature. Kohler-Koch states that "The emergence of a particular type of governance will certainly be shaped by the constitutional framework of the EU and its members"; in other words, "the polity determines politics and the policy" (Jachtenfuchs and Kohler-Koch 2004: 101). While the importance of the constitutional framework for the shape of governance is a crucial factor, this has to be seen in a differentiated manner, taking into account the highly disparate Treaty provisions and institutional norms in various policy areas.

If it is agreed that the polity determines politics and policy, Jachtenfuchs and Kohler-Koch (2004) also assume a reverse process at play, in the sense that governance shapes the polity, and that changes in the way policy is made, affects the institutional structure of the EU (Jachtenfuchs and Kohler-Koch 2004, pp. 103ff.).

This means that the institutional framework of the Union cannot be sufficiently described by the primary law laid down in the Treaties, but also requires to look at the "informal components of institutions that are often neglected in analysing the European Union". Furthermore, changes in governance are also assumed to lead to changes in the integration process (Jachtenfuchs and Kohler-Koch 2004, p. 100), given that the term integration is regarded as encompassing also the incremental and informal dimension of the relationship between the EU and member states. As a driving factor, they identify a communicative dynamics which leads member states to take on obligations without a strictly binding character, while through mutual information and assessment they are urged to comply with common objectives (Jachtenfuchs and Kohler-Koch 2004, pp. 100-101.)

Although this judgement appears highly plausible, it rather complicates the issue because the relationship between dependent and independent variable becomes difficult to determine. This tension could be handled if we assume a feed-back process right back from governance to the constitutional structure, which would lead to a reshaping of formal rules and provisions, but not as a daily process, but as an input into Treaty reforms and revisions, i.e. taking place at specific times and occasions.

Therefore, we will start from the assumption that the constitutional structure of the EU in the different pillars and policy areas is a determining factor for the shape of EU governance. The legal constitution is by far not the only factor to be taken into account, but it has to be studied in its own right. Here, the question arises, in which way the formal provisions within the Treaties might tell us something about the way governance looks like, e.g. with regard to the degree of supranationality or intergovernmentalism. These are rather broad categories, and they only help us to define the broader institutional environment in which modes of governance are embedded.

3. Areas of Empirical Research: How to Grasp New Modes of Governance

3.1. Some Starting Assumptions on Analysing Modes of Governance

In order to analyse governance modes within the EU, some conclusions should be drawn, without presenting a full-fledged research design:

1. We should try to adopt a policy-specific approach, which starts from a number of policy areas in the Treaties, for which modes of governance should be explored. There is little use to stick to the question of how to define the EU system at the macro-level, because this would offer only limited benefit for the more detailed and thorough analysis of selected areas. As a consequence, the distinction between old and new modes of governance will only be possible to make for the specific areas under investigation. As an example, in the reform debate on CFSP within the Convention, there were similar problems and dilemmas discussed as in some areas of the first pillar, regarding the tension between the wish to preserve national sovereignty and the aspiration to avoid institutional paralysis caused by unanimity. In the end, the result was to draft options for flexibility, which represent a kind of 'new' modes in CFSP policy-making. Some of these options like permanent structured cooperation even contain very specific objectives to be fulfilled by the participating member countries.
2. We should adopt a dynamic perspective, which collects information and data over time, so that trends and new developments can be identified. It does not make sense to present 'flashlights of governance', but a more systematic and structured analysis including data from the last years or decades. The identification of 'turning points' in describing and defining modes of governance should serve as a guiding perspective. From which moment have the basic styles and patterns of governance changed?
3. As a result, a twofold comparative perspective should be applied, trying to produce an analysis across policy areas and over time. We should not expect that there will be *one* pattern to become visible, but rather a number of different lines, which we will have to systematically evaluate. Most probably, certain kinds of new modes of governance may appear in certain types of policies, without representing the overall picture. The key question is if we will be able to generate a table relating policy types to modes of governance.

3.2. Offers for Dealing with new Modes of Governance

In order to approach the issue of new modes of governance, a number of different aspects can be taken into account, which so far are not linked to a systematic overall research design – this still represents a challenge we have to face, but constitute major fields of research that are of interest for the identification of new modes of governance.

Within the areas presented below, it is useful to elaborate typologies of modes of governance, and then to define to which extent they can be considered as 'new'. In a next step, it would be useful to see which kinds of typologies we have generated and in how far there are links between them.

a. The Constitutional Framework of Modes of Governance: New Modes of Governance as a result of New Provisions for the EU-Polity?

One important area of research is related to the question in how far the constitutional and institutional structure of the EU is linked to modes of governance, and in how far it reflects the emergence of *new* modes of governance (Wessels 2005). Beyond doubt, there is a formal institutional dimension to the issue, but it is also clear that informal practice also plays an important role. The constitutional dimension only reflects part of the picture, below the level of

primary law, of course a number of other formal and informal provisions have to be taken into account. Some key aspects are:

- the delineation of competences, (vertical division of competences between EU and member states)
- the legal procedure
- patterns of institutional participation (role of the EP, COM, Council, CoR, ECOSOC);
- the legal instruments foreseen (regulation, directives,...)

This systematic assessment should be undertaken in a comparative way, including the Treaty versions of Maastricht, Amsterdam and Nice, as well as the Constitutional Treaty, in order to see if there have been any substantial changes, in the sense that e.g. the degree of supranationality has been enhanced or not, or if there has been a shift in institutional influence, or intra-institutional rules (voting modalities). This exercise will define the polity context into which modes of governance are embedded, and which determine the basic features of decision-making.

b. Focusing on the Actors in Governance: New Modes of Governance for New Players in the EU?

The idea that new modes of governance also imply the emergence and increased activity of new kinds of actors can be found in a number of contributions; particularly private and semi-public actors seem to attract considerable interest. An important aspect lies in the policy-making role of technocratic institutions or agencies exercising delegated powers, while developing into politically relevant players without being subject to full-fledged democratic control and supervision.

As already stated, the idea of non-public or private actors being relevant for public decision-making processes is not specific to the issue of *new modes of EU governance*, but rather belongs to the general set of elements linked to *governance as such*. Therefore, the detection of private actors within the EU as partners in decision-making should not be taken for granted as a sign of new modes of governance.

Therefore, in combination with our perspective, the question should not be if private actors as such are involved in decision-making, but if their role and influence has changed over time. Have private actors traditionally played a role in a certain policy area, or have they emerged rather recently as key factors; in that case, the investigation should focus more specifically on the concrete status and influence of those actors. What may be 'old' in one policy area could turn out as rather 'new' in another one. So, e.g. the creation of a defence agency in the framework of the CFSP/ESDP is a rather innovative element, as agencies do not belong to the traditional institutional set-up in the EU's foreign policy system. It is still much too early to assess the impact of the Defence Agency upon governance in CFSP, but it remains beyond doubt that a successful performance would bring in innovative and formerly unknown elements into the decision-making system.

c. Defining the Decision Making Process: New Modes of Governance generate New Modes of Interaction?

On the basis of the formal Treaty provisions, the actors on the national and EU level are engaged in a process of dealing with each other, in order to arrive at joint decisions. The ways in which the interaction is shaped and translated into reality should be taken into account, for answering the question which kind of institutional and communicative culture emerges within the decision-making process. From a formal point of view, it would be interesting to

follow the different steps in the decision-making procedure and to assess in how far ideal-type models of the Community method are followed, or if there are deviations from that.

But of course, the analysis will have to take the formal and informal rules and practices into account, like inter-institutional arrangements, coordination reflexes, or multi-level contacts. It also should investigate more closely into the communicative modes and patterns like bargaining and arguing, negotiation and deliberation, in order to watch if there has been a move towards new ways of communication.

It is extremely difficult to link new modes of governance to communicative modes, for a number of reasons. Modes of communication rarely appear in an isolated and single version, so that it is hard to relate them individually to a specific mode of governance. On the other hand, new modes of governance like OMC aspire to mobilise certain communicative and cognitive activities, like collective learning or socialisation of actors.

Instead of trying to establish a correlation between modes of governance and modes of communication, we should try to identify the specific features and conditions under which certain communicative modes may emerge and evolve, and specify the institutional requirements.

d. Defining the Policy Output: New Modes of Governance produce New Policy Instruments?

Under this perspective, it should be analysed what kind of legal output has been produced in different policy areas. There could be a collection of quantitative data on the legal output in a policy area broken down into different categories of legal acts. As a basic criterion for distinction, the legal bindingness should be adopted.

Furthermore, the characteristics of the legal text itself in the sense of how it prescribes the obligations to the member states in implementation (Treib, Bähr and Falkner 2004). It should also be assessed in which way these provisions are shaped, how much room they leave for the member states, but also if patterns can be identified over time.

As a result, it should be assessed if there is a tendency towards softer legislation leaving more room for the member states, or for mixes of soft and hard legislation.

The approach to start with the analysis of legal instruments belongs to the 'prominent' candidates for defining new modes of governance, due to the fact that the conditions for empirical operationalisation are comparatively convenient. Treib, Bähr and Falkner (2004) propose the distinction between four types of governance modes, based upon two criteria: the bindingness of a legal instrument (binding or non-binding), and the conditions for implementation (flexible or rigid). This typology is marked by a considerable degree of clarity and conceptual discipline, while it does not exclude other sets of criteria as discussed in this paper. Particularly with a view to the peculiarities in different policy areas, it is necessary to find typologies which 'fit' with the kind of legal instruments in play.

e. The Scope of Governance: New Modes of Governance reaching out beyond the EU?

The analysis of the different dimensions and layers of the discussion of governance is also of great interest for the embedment of the EU into the broader international context. In a number of policy fields, the Union is closely integrated into international organisations which limit its scope of autonomy and influence the way decisions are taken, formally and informally. As most prominent examples the WTO has a central impact on EU trade policy, while NATO is of crucial importance for decisions taken in ESDP.

The international embedment however, goes even further: it also covers the societal and transnational processes of interaction and exchange on the global level which put limits on the EU's capacity for steering and shaping policies. This again raised questions regarding democ-

ratic control and legitimacy on the global level, which have not been solved in a satisfactory way.

f. New Modes of Governance as a Reflection of Discursive Practice in the EU?

There is one dimension to the empirical investigation which has not exhaustively been discussed so far: the question in how far the discourse about new modes of governance could lead us to some further insights into the matter. The analysis of discourse could help us to clarify some fundamental problems:

- It could support our understanding of the emergence of new modes of governance, by identifying specific frames in the early, constitutive phase of the formalisation of a policy area, which are related to the basic motivations and driving forces among the actors involved.
- It could help us to see if there is an understanding of 'new' modes of governance as 'new' in the discourse among the actors, and in which way innovation is defined? Is there a gap between the political understanding at the time and the academic reflection that took place afterwards?
- Are changes in modes of governance reflected in discursive practice, and in how far can these changes be traced back by analysing discourse among the relevant actors.

Admittedly, the use of the term *discourse* and *discourse analysis* is rather simplified here; of course the application of such a method requires more refinement, and implies a variety of choices and precautions, but in general it should be regarded as a useful instrument to approach the understanding of new modes of governance.

IV. Conclusions

It is rather difficult to generally speak of new or old modes of governance without being aware of the different dimensions to the discussion. The discourse about governance is multi-layered and contains several sets of argumentation, requiring thus a differentiated way of dealing with the issue of 'new modes' and innovation. New modes of governance are those features of decision-making and implementation which include innovative elements that hitherto did not belong to the institutional set-up of a given policy area.

As a result, the approach should be policy specific and dynamic, i.e. including analysis over time and across different policy areas. It is only possible to assess the emergence and the evolution of new modes of governance if the reference system for governance is clearly defined. The attempts to generate an overall EU macro level model of governance, like 'network' or 'multi level' governance, is not wrong, but much too unspecific for the purpose of the NEWGOV project.

When taking into account the specific features of a policy area, and the different ways innovation and novelty could be approached, a number of empirical offers can be used, which might help to clarify the picture. There is single empirical research design according to which new modes of governance could be investigated. Therefore, several fields of research should be identified in which promising results might be achieved.

In these fields, it should be aspired to systematically structure the different ways governance could be organised and managed, in order to arrive at typologies or at least classifications. These would serve the purpose of providing a more structured, a more comparative and a more disciplined methodological impetus to the work undertaken in trying to define and assess the new modes of governance in the European Union.

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