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NEWGOV

New Modes of Governance

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Summary

This deliverable contains an updated and revised set of key terms which are relevant for dealing with new modes of governance in the EU, but also offers a broader picture. In those cases where terms are based on scientific literature in the narrow sense, the sources are indicated. In case the definition has been obtained from other, more general sources (internet search systems, encyclopaedia, lexical sources, or the partners' own definitions), there is no explicit source indicated.

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Next stage of Cluster Glossary on Governance¹

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| Agency | An agency is an (more or less) independent body that operates outside the line of hierarchical control by the central government. |
| Anarchy | The absence of a centralized (international) authority. |
| Arguing and Persuasion | Pure arguing as a communicative mode can be analytically distinguished from pure bargaining in modal, procedural and structural aspects. In respect to modal terms, arguing is characterized by the use of empirical and normative validity claims in contrast to pragmatic demands and threats. In procedural respect, processes of arguing can not be sequential but are reflexive, in that actors' arguments and reasoning refer to prior statements and arguments. The validity claims, on that the arguments are based, are assessed upon specific criteria, which have to be commonly comprehensible. Validity claims thus refer to some external authority and are – in structural respect – triadic in nature. On that basis <i>we define arguing and persuasion as non-manipulative reason-giving in order to alter actors' choices and preferences irrespective of their consideration of other actors' strategies</i> . Defined that way, it is not presumed that arguing is more effective than bargaining or even naturally efficient and, thus, automatically leads to a reasoned consensus. But it is presumed that this communicative mode rather leads to a reasoned consensus than to a compromise without a change in the actor's preferences, because actors are submitted to the better argument and may change their preferences accordingly. We will know a consensus when the result is a) surprising, b) beyond the lowest common denominator, and c) when actors give the same reasons for its achievement. |
| Associative models | Of democracy stress the importance of intermediary structures in a society like interest associations and political associations. |
| Auto-Regulation (Self Regulation) | Rules which political or economic actors impose on themselves. |

¹ Sources: The use of scientific sources is indicated. Other sources comprise lexica and internet sources.

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| Benchmarking | The process that involves the engaging practice of search and comparison. Policy makers, in this case, are able to identify policies or practices that yield supposedly superior outcomes. It consists of identification and imitation of any successful or best practice. A ‘contextualised benchmarking’ requires: collection of data on outcomes and policies that lead to them; assessment of outcomes and study of how policies work; and some determination about whether the institutional environment surrounding the policy is similar to that of the observing system. The →OMC is usually identified as a contextualised form of benchmarking. On the opposite, a ‘decontextualised benchmarking’ ignores the local conditions under which policies must be implemented. |
| Brusselisation | A third way of governance that some have labelled as “Brusselisation”. Briefly, this concept means that “while the relevant competencies do remain ultimately at the disposal of the Member States, the formulation and implementation of policy will be increasingly Europeanized and Brusselized by functionaries and services housed permanently at Brussels”. [Esther Barbé: The Evolution of CFSP Institutions: Where does Democratic Accountability Stand?, The International Spectator 2/2004] |
| Code of Conduct | A particular type of →auto-regulation establishing normative standards, usually authored by private actors. |
| Constructivism | Reality is socially constructed by cognitive structures that give meaning to the material world. Reality is seen as a mental construct that is built on and added to: Human beings create an image of what the world is like and how it operates and they adapt and transform their understanding of new experiences in light of what they already “know”. |
| Convergence | To achieve commonly agreed employment outcomes through concerted action, where each Member State contributes towards raising the European average performance. This principle has been made more concrete by the Lisbon Council and following Councils where full employment was confirmed as an overarching goal of the Union and tangible targets were set for the Union as a whole. |
| Co-operation | Co-operation refers to the practice of people or greater entities working in common with commonly agreed-upon goals and possibly methods, instead of working separately in competition. |

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| Coordination | Coordinating involves determining the time, place and sequence of operations or action to be taken on the basis of the analysis of data. |
| Country surveillance | The annual reporting leads to the evaluation and comparison of progress made and to the identification of possible best practice among Member States. This creates peer pressure to improve the quality and effectiveness of policy. Exchange of experiences and peer pressure are meant to steer policy debate and enhance the effectiveness of policies. |
| Cycle | Each → OMC process consists of different steps that are periodically reiterated. In line with the definition proposed in Lisbon, each cycle involves: fixing guidelines (with specific timetables for achieving the goals which they set); establishing quantitative and qualitative indicators as a means of comparing best practice; translating these guidelines into national and regional policies by setting targets and adopting measures; periodic monitoring, evaluation and → peer review organised as mutual learning processes. |
| Deliberative theories | Of democracy put the main emphasis on political communication and opinion formation and the engagement in public discourse. |
| Democracy | Can be described as government by the people, either directly or indirectly through elected representatives with Parliament as the central political institution on which all other public authorities depend in a certain way. |
| Democracy; basic principles of ~ | “Freedom” and “equality”. |
| Democracy; idea of ~ | The equality of citizens and the identity of the governing and the governed. |
| Democratic (political) accountability | In the democratic process the executive is accountable to the legislature, ministers are responsible for actions of their departments. This principle is called “concept of administrative responsibility”. |
| Direct applicability | Means that a legal act does not have to be transposed into national law but grants rights or imposes duties on the Community citizen in the same way as national law. The Member States are bound directly by Community law and have to comply with it in the same way as with national law. |

Direct effect

Direct effect is a principle of European Union Law stating that European regulations have a direct effect on EU citizens and on the laws of the member states.

The concept was defined by the European Court of Justice in its ruling in Case 26/62 Van Gend en Loos v. Nederlandse Administratie der Belastingen ([1963] ECR 1), which stated that European Community regulations could (and should) be tried before national courts, since the regulations have a direct effect on individuals' rights and responsibilities similar to that of national laws.

European Convention

At the Laeken summit in December 2001, the Heads of State and Government agreed on convening the “Convention on the Future of Europe” as a forum preparing the 2004 IGC (European Council 2001a). The adopted Laeken declaration set out the institutional provisions and the mandate of the Convention. It was composed of four main components: representatives of the national parliaments, the EP, representatives of the member states, and the European Commission. The Convention comprised 105 members plus their alternates plus the three presidents. A Praesidium was meant to serve as a steering group. It was chaired by the president Giscard d’Estaing and his two vice presidents Amato and Dehaene and represented, albeit very unbalanced, each of the four components. The Convention secretariat supported its work. The agenda took the form of a questionnaire that was subdivided into four themes: the division and definition of competences between the Community and its Member States; the simplification of the Union’s instruments; →democracy, →transparency and efficiency in the EU; questions regarding a constitution for the Union. The result of the Convention should be either a catalogue of different opinions, among which the IGC could pick some solutions, or a single proposal. The Convention’s work was sequenced in three consecutive stages: the listening stage (*Phase d’Écoute*), the study stage (*Phase d’Étude*), the proposal stage (*Phase de Réflexion*). On 18 July 2003, the Convention’s chairman presented a single text to the European Council – the “Draft treaty establishing a Constitution for Europe“.

Functionalism

In the social sciences, specifically sociology and sociocultural anthropology, functionalism is a sociological philosophy that originally attempted to explain social institutions as collective means to fill individual biological needs. Later it came to focus on the ways social institutions fill social needs, especially social solidarity. Functionalism is associated with Emile Durkheim and more recently with Talcott Parsons.

- Governance** Innovative practices of networks or horizontal forms of interaction, in which actors, political and non-political, arrive at mutually acceptable decisions by deliberating and negotiating with each other.
- Governance (2)** Continuous political process of setting explicit goals for society and intervening in it in order to achieve these goals.
[Jachtenfuchs/Kohler-Koch (2004) *Governance and Institutional Development*, in: Wiener/Diez (eds) *European Integration Theory*, Oxford: OUP, p. 99].
- Governance (3)** A broad understanding of governance refers to structures of social order, namely (a) hierarchies, (b) markets and (c) communities/clans, associations and networks. While hierarchies coordinate social action by using command and control mechanisms, markets are spontaneous orders that emerge from the self-coordination of autonomous actors. Communities/clans, associations and networks function by non-hierarchical coordination based on the exchange of resources and/or trust.

A narrow definition of governance limits itself to non-hierarchical coordination between public and private actors, on the one hand, and among private actors only, on the other, in the setting and implementation of collectively binding norms and rules for the provision of public goods and services. This narrow definition of governance can also be understood as conceptualization of the notion of ‘new’ modes of governance (3) [Börzel *et al.* 2005: NEWGOV Working Paper 12 D01].
- Governance (as institutional configuration)** Following Rosenau (1992), Renate Mayntz conceives of governance as a system of rules which shapes the actions of social actors (Mayntz 2004). Different → modes of governance are situated on a spectrum that is delineated by the two opposing ideal types of “market” and “hierarchy”. Between these two types, a further set of modes of governance can be identified, like “community”, “associations” and “networks”

[Kenis, Patrick/Volker Schneider, 1991: *Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox*. In: Bernd Marin/Renate Mayntz (eds.), *Policy Networks: Empirical Evidence and Theoretical Considerations*. Frankfurt: Campus, p. 25-59].

Governance (as process of policy-making)

Beate Kohler-Koch relates governance to the process of policy-making. “In essence, ‘governance’ is about the ways and means in which the divergent preferences of citizens are translated into effective policy choices, about how the plurality of societal interests are transformed into unitary action and the compliance of social actors is achieved.” (Kohler-Koch, 1999: 14). In the European Union, “network governance” is assumed to be the predominant type of governance as distinguished from “statism”, “pluralism” and “corporatism” (Eising/Kohler-Koch, 1999: 5f.). The crucial criterion to distinguish different types of governance is thus the relationship between public and private actors in the process of policy-making. This places the concept in the context of terms like interest intermediation or public-private relations.

[Kohler-Koch (1999) The Evolution and Transformation of European Governance, in: Kohler-Koch/Eising (eds) The Transformation of Governance in the European Union, London: Routledge]

Governance (as public policy)

Adrienne Héritier defines governance as “mode of political steering” (Héritier 2002: 185). Hence, governance primarily refers to the policy dimension. From this perspective, →modes of governance are characterised by the steering instruments employed by public actors to achieve particular policy goals. Among these instruments are command and control, incentive and supply, information, deliberation and persuasion, as well as all forms of social influence and control [Windhoff-Héritier, Adrienne, 1987: *Policy-Analyse: Eine Einführung*. Frankfurt: Campus, p. 27-34].

Governance: EU Governance

Governance without government. Governance is not just limited to actions taken by a government and, although it is embedded in a context of representative democracy, EU Governance does not conform to the norms of democratic rule. This leads to the assumption that when there is no government and no democratic representation, ways and means of governing will be different in the EU.

[Kohler-Koch (1999) The Evolution and Transformation of European Governance, in: Kohler-Koch/Eising (eds) The Transformation of Governance in the European Union, London: Routledge, p. 15]

Heterarchy

A heterarchy is a network of elements which share the same "horizontal" position level in a decision-making system. Each level in such a system may be composed of a heterarchy which contains its constituent elements.

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| Hierarchy | A hierarchy is a system of ranking and organizing things. More concretely, hierarchy describes a decision-making structure that is marked by a clear ranking of actors, where subordination of institutional actors to others exists. |
| Integrated approach | The → OMC has the ambition to avoid isolated and dispersed actions or measures, but require consistent and concerted action over a wide range of policies and measures. These measures need to address diverse needs and conditions and to be the result of the interaction of institutions and a large number of stakeholders. |
| Intergovernmental Conference (IGC) | <p>This term is used to describe negotiations between the Member States' governments with a view to amending the Treaties. Treaty reform negotiations rest upon Article 48 TEU. The conferences are convened by the Council of Ministers (after consulting the European Parliament and, where appropriate, the Commission) acting by a simple majority, “for the purpose of determining by common accord the amendments to be made to those Treaties”. The preparatory work is entrusted to a group consisting of a representative of each of the Member States' governments and, as a matter of custom, a representative of the Commission. The European Parliament is closely involved throughout by means of observers and discussions with the President of the Parliament. Documents are regularly exchanged between the negotiation parties, but are normally not accessible to the public. This group regularly reports to the General Affairs Council. The final decisions of the “big bargains” are taken by the heads of state and government at a European Council. The amendments are treaties under international law. They enter into force after being ratified by all Member States.</p> <p>See also the Glossary of the European Union: http://europa.eu.int/scadplus/leg/en/cig/g4000.htm#I</p> |
| Intergovernmentalism | Intergovernmentalism is an institutional principle, a theoretical approach and a method of decision-making in international organizations, where power is possessed by the member-states and decisions are made by unanimity. Independent appointees of the governments or elected representatives have solely advisory or implementational functions. Intergovernmentalism is used by most international organizations today. |
| Legitimacy (Democratic ~) | It is a shared expectation among actors in an arrangement of asymmetric power, such that the actions of those who rule are accepted voluntarily by those who are ruled because the latter are convinced that the actions of the former conform to pre-established norms. Legitimacy converts power into authority and, thereby, simultaneously establishes an obligation to obey and a right to rule. |

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| Management by objectives | The success of the strategy relies on the use of quantified measurements, targets and benchmarks, to allow for a proper monitoring and evaluation of progress. These objectives are based on shared values among the Member States and cover issues which are felt to be of common concern. Progress towards these objectives are defined either in terms of quantitative or qualitative indicators. Through the use of targets and indicators, the results of policies are made transparent and therefore open to public scrutiny. |
| Managerial accountability | (In contrast) is not a democratic principle. It refers to a system of supervisory control, peer reviews and reporting requirements, the agents being accountable to principals. |
| Mode of Governance: 'Targeting' | <p>The “targeting” →mode of governance is one of the new modes of governance. It uses non-binding recommendations, but these recommendations are very detailed and thus leave little room for manoeuvre for specification at the implementation stage. Some of the non-binding recommendations contained in recent social policy Directives represent this →mode of governance. For example, the Part-time Work Directive recommends that employers should, as far as possible, accept requests from employees to transfer from full-time to part-time work and vice versa. To that end, employers are called upon to provide timely information on vacant full-time or part-time jobs in their enterprises</p> <p>[Treib, Oliver/Bähr, Holger/Falkner, Gerda (2004) Modes of Governance, Old and New: A Note Towards Conceptual Clarification, Paper presented at the kick-off workshop of NEWGOV Cluster One: “Emergence, Evolution and Evaluation” in Brussels 10 December 2004, p. 14].</p> |
| Mode of Governance: 'Coercion' | The “coercion” →mode of governance is characterised by binding legal instruments prescribing detailed and fixed standards that leave little leeway in implementation. This is what is usually dubbed the ideal-typical “old” mode of governance by fully binding and highly prescriptive pieces of EU legislation [Treib/Bähr/Falkner 2004: 14, see above]. |
| Mode of Governance: 'Coordination' | Coordination describes a non-hierarchical mode of governance where actors try to accommodate their behaviour in a process of communicative exchange, without being subject to binding legal obligations. Coordination may take place in networks, where ties and interactions are formally or informally defined. |

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| Mode of Governance: ‘Framework Regulation’ | The “framework regulation” →mode of governance belongs to the group of new modes of governance. It remains within the realm of binding law. However, it offers member states leeway in implementation, e.g. by defining only broad goals to be specified by member states or by presenting a range of policy options to choose from. In the field of EU labour law, many recent Directives are characterised by considerable amounts of flexibility. The European Works Councils Directive is one particularly good example of this mode of governance [Treib/Bähr/Falkner 2004: 14, see above]. |
| Mode of Governance: ‘Bargaining’ | Bargaining is a particular mode of governance in negotiation systems, where actors come together in order to trade gives and takes, guided by a rational understanding of their interests, benefits and options, and subject to constraints and incentives which are conceived as external to their preference formation. Self-interest is a methodological assumption as much as the underlying model of a homo oeconomicus. |
| Mode of Governance: ‘Competition’ | Competition as a mode of governance where actors' behaviour is guided by the will to improve their comparative advantage in relation to other actors, which are conceived as striving for the same limited benefits. In a market situation, actors must constantly adjust to the volatilities of the shifting patterns of demand and offers. |
| Mode of Governance: ‘Hierarchy’ | Hierarchy describes a mode of governance that is marked by a ranking of actors and/or levels of decision-making, endowed with asymmetric formal and/or informal capacities for taking decisions. Certain actors/levels are thus subordinated to others. |
| Mode of Governance: ‘Voluntarism’ | The “voluntarism” →mode of governance belongs to the group of new modes of governance. It is based on non-binding instruments and only defines broad goals that member states may specify in implementation. The broad and legally non-compulsory guidelines that have characterised much of the processes in the framework of the open method of coordination are the best example for this type of →governance. They are not only legally non-binding, but they typically also define policy goals rather than concrete reforms, leaving it up to the member states to define how to achieve these goals [Treib/Bähr/Falkner 2004: 14, see above]. |

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| Mode(s) of Governance | <p>Modes of governance are different types of a specific conception of governance. If governance is conceived as political steering (policy), modes of governance denote different styles or instruments of political steering. On the basis of the two dimensions “flexible or rigid implementation” and “binding or non-binding legal instruments” four modes of governance can be distinguished: →“coercion”, →“framework regulation”, →“targeting”, and →“voluntarism” [Treib/Bähr/Falkner 2004: 12-14, see above].</p> |
| Multi-level Governance | <p>European integration is a polity-creating process in which authority and policy-making influence are shared across multiple levels of government – subnational, national, and supranational. While national governments are formidable participants in EU policy making, control has slipped away from them to supranational institutions. Individual state sovereignty is diluted in the EU by collective decision making among national governments and by the autonomous role of the European Parliament, the Commission, the ECJ and the ECB.</p> <p>This model does not reject the view that national arenas are important, however, a very different polity comes into focus. First, decision making competencies are shared by actors at different levels rather than monopolized by national governments. Supranational institutions have independent influence in policy making that cannot be derived from their role as agents of national executives.</p> <p>Second, collective decision making among states involves a significant loss of control for individual national governments.</p> <p>Third, political arenas are interconnected rather than nested. Subnational actors operate in both national and supranational arenas.</p> <p>[Hooghe/Marks (2001) <i>Multi-Level Governance and European Integration</i>, Oxford: Rowman and Littlefield, p. 2-3].</p> |
| Network Governance | <p>In ‘network’ systems, politics is not about the reproduction of identity but of managing differentiation. This is most pronounced in the case of the EU.</p> <p>Since <i>consociation</i> is the widely accepted governing principle and <i>interest</i> is both the rationale for exchange relations and the genuine reason for lasting agreements, the EC is well equipped as a network type of governance.</p> <p>[Kohler-Koch (1999) <i>The Evolution and Transformation of European Governance</i>, in: Kohler-Koch/Eising (eds) <i>The Transformation of Governance in the European Union</i>, London: Routledge, p. 24-25].</p> |

New Modes of Governance

New governance arrangements combine broad participation in policy making, coordination of multiple levels of government, use of information and → benchmarking, recognition of the need for diversity, and structured but unsanctioned surveillance from the Commission and Council. Because this new type of → governance does not primarily rely on top-down command and control-type regulation backed by sanctions, its use has been described as a move from ‘hard law’ to ‘soft law’.

[Trubek/Mosher: (2003) *New Governance, Employment Policy, and the European Social Model*, in: Zeitlin/Trubek (eds) *Governing Work and Welfare in a New Economy*, Oxford: OUP, p. 33].

New Modes of Governance (2)

→ OMC on the one hand and voluntary accords with and by private actors on the other. Ideally, these new modes of governance are guided by (1) the principles of voluntarism – that is, non-binding targets and soft law, without formal sanctions; (2) subsidiarity – that is, measures are decided by member states or private actors; and (3) inclusion – that is, the actors concerned participate in defining the policy goals and the instruments to be applied.

[Héritier (2003) *New Modes of Governance in Europe*, in: Börzel/Cichowski (eds) *The State of the European Union*, Vol. 6: Law, Politics, and Society, Oxford: OUP, p. 106].

New Modes of Governance (3)

This definition of ‘new’ modes of governance is derived from a narrow understanding of [governance \(3\)](#) as non-hierarchical coordination: New modes of governance are characterized by the direct involvement of private actors in the provision of collective goods and services.

Therefore, new modes of governance refer to the making and implementation of collectively binding decisions (based or not based on legislation) that:

1. are not hierarchically imposed, i.e. each actor involved has a formal or de facto veto in policy-making and voluntarily complies with the decisions made, and
2. systematically involve actors, for profit (e.g. firms) and not for profit (e.g. non-governmental organizations in policy formulation and implementation).

Excluded are lobbying and mere advocacy activities of non-state actors. [Börzel *et al.* 2005: NEWGOV Working Paper 12 D01]

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| Open Method of Co-ordination (OMC) | A contextualised method of →benchmarking allowing for intensive consultation to set and modify standards, with targets that are wholly or partially negotiable, and ample feedback on implementation, involving state and non-state actors at various levels. In other words, it is a new working method (or mode of governance) at the EU level, which is based on five key principles: → subsidiarity, → convergence, → management by objectives, →country surveillance and an →integrated approach. |
| Participation | The participatory dimension of →democracy refers to the involvement of civil society and social partners in the policy-making process in that they give voice to citizens’ policy concerns. |
| Peer review | The process used for checking the work performed by one's equals (peers) to ensure it meets specific criteria. Its main goal is to verify whether the work satisfies the specifications for review, identify any deviations from the standards, and provide suggestions for improvements. |
| Public debate | This criterion means that deliberation by policy-makers has to be public and debated in national and European media through national and European parliaments. Although the exchange of information and ideas among participants is defined as part of the →OMC process, public debate is not. |
| Self-bindingness | The legal effect of →auto-regulation. |
| Soft Law | Instruments which are not as such legally binding. |
| Soft law Governance | No ‘hard’ sanctions to ensure adherence by the Member States to the 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/Mosher: (2003) <i>New Governance, Employment Policy, and the European Social Model</i> , in: Zeiltlin/Trubek (eds) <i>Governing Work and Welfare in a New Economy</i> , Oxford: OUP, p. 39] |

- Subsidiarity** Policy choices remain at the national level and legislation at the supranational level is excluded. In that sense, the →OMC provides a potential equilibrium between European Union level co-ordination in the definition of common objectives and outcomes, and Member States' responsibilities in deciding the detailed content of action. The definition of the means and conditions under which programmes and policies are implemented is left to a large extent to individual Member States.
- Supranationalism** Supranationalism is a method of decision-making in international organizations, where power is held by independent appointed officials or by representatives elected by the legislatures or people of the member states. Member-state governments still have power, but they must share this power with other actors. Furthermore, decisions are made by majority votes, hence it is possible for a member-state to be forced by the other member-states to implement a decision against its will.
- Transparency** Interest citizens, stakeholders and civil society as well as European, national, regional, and local actors should have access to the relevant information at all stages of the →OMC process. This dimension is explicitly mentioned in the OMC.