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Summary

This Policy Memorandum draws together results concerning the Evaluation of Governing Modes within Cluster One and presents first comparative findings with a set of conclusions that will serve as a point of reference for the publication of a joint monograph.

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1 Evaluation of Governing Modes

The evaluation of the emergence, evolution and impact of modes of governance represents a challenging task. The specific nature of each research project and subproject has led to a broad and variable range of approaches and perspectives, suited to deal with the peculiar problems and issues of relevance to them. The following overview represents a kind of summary of evaluation efforts in the research area of Cluster One, followed by a first attempt in sketching a comparative assessment. This work will lead to further efforts in comparative and compatible research output, which will inspire the publication of a joint volume on new modes of governance.

2 Results and Trends from a Policy Perspective

2.1 Arguing and Persuasion in EU Governance

2.1.1 Evaluation

Within this sub-project, the criteria used in evaluating “modes of governance” – i.e. the IGC and the Convention – were efficiency, quality, and legitimacy. Within the framework of rational-choice bargaining theories, quality is tantamount to the efficiency of decision-making. Efficiency, in turn, relates to the attainment of outcomes to which there is no alternative that would make an individual better off without making any other individual worse off (Pareto-optimum). Proponents of deliberative democracy in contrast suggest that decision-making processes that systematically allow for arguing, reason-giving and mutual learning rather than hard-nosed bargaining will have a substantially improved chance of leading to outcomes of a usually higher quality. The main reason is that arguing and reason-giving provide mechanisms to probe and challenge the normative validity of actors’ interests as well as to check the empirical facts on which policy choices are based. Thus, the deliberative quality of a decision-making process may increase when decision-makers are in the first place given the chance to evaluate and consensually agree on its legitimacy. Consequently, “quality” does not equal “efficiency”; it rather emphasizes the aspect of effectiveness through legitimacy. In other words, one could argue that the notion of quality corresponds to the “credit” the people are willing to extend to their government in restraining individual freedom. Factors lowering this deliberative quality are generally seen to lie in secretive, intransparent decision-making processes where legitimate interests are viewed as being systematically disregarded.

Submitting that outcomes of higher quality are normatively desirable, a clear difference between hard bargaining and deliberative arguing can be identified. Preliminary results suggest that the Convention method improved the deliberative quality of negotiations, led to reasoned consensus and, in the end, to better outcomes. However, evaluation has to differentiate between elites’ and citizens’ attitudes, and research suggests that outcomes of high quality do not guarantee the citizens’ approval. A comparison of the treaty revisions the EU underwent in the past 20 years, however, also hints that negotiations behind closed doors likewise fail to gain the citizen’s approval.

Based on the Evaluation of these Governing Modes, a policy recommendation therefore is to publicly address the citizen’s unease with European politics in the current and any future constitutional process.

2.2 Modes of Governance in Social Dialogue and OMC Pensions Reform

2.2.1 Evaluation

For the evaluation of the operation of the OMC on pensions, three different dimensions of its influence can be discerned: normative (definition of norms, new common objective for the reform of national pension systems); cognitive (in terms of learning ‘from the others’, ‘with the others’, and ‘to learn’) and procedural (i.e. increased participation and integration of different actors and interests).

Evaluation of the first operation of the OMC in the field of pensions leads to mixed results. Some improvements have characterized the normative influence of the process. For example, a number of common objectives have been defined (with some ambiguities remaining). From a cognitive perspective, the Pensions OMC has led to some advancement, despite the particular weakness of both benchmarking and the peer review process. The first cycles of implementation favored learning ‘with others’ (i.e. advancements on common indicators) and learning ‘to learn’ (parallel forms of bilateral and multilateral exchange of information outside the OMC).

2.2.2 Evolution and Expectations

Based on the Evaluation of governing Modes in the area of Pensions Reform, a number of policy recommendations have been proposed:

1. ‘learning as such is neither a sufficient nor a necessary condition for policy change’, too many expectations on cross-national benchmarking risk to lead to much disappointment;
2. political and technical limits to the development of the effective coordination of pension policies made this field particularly difficult for coordination;
3. despite the lack of decisive outcomes from the first implementation of the OMC, some first (but limited) results should suggest to continue: in particular the cognitive dimension of the process seems to provide useful tools for the potential increase of exchange of information between members.
4. procedural problems must be dealt with through better internal articulation of the process, more participation of national parliaments and more effective integration of this OMC in the EU socio-economic governance. This is especially true after Enlargement.

The most promising preliminary conclusion from the analysis of the emergence and evolution of the OMC on Pensions is about the importance of institutional variables (active both at national and European level) to explain the peculiarity (in terms of convergence capacity) of a mode of governance. At national level, electoral incentives and lock-in effects (both related to pension institutions) have led national actors to resist to the shift of competencies to the EU. At the European level, the ‘tool-kit’ introduced through the European Employment Strategy for the coordination of national policies has been easily adapted (via a functional spill-over) to the coordination of social policies. It is thus the interaction between institutional forces active in a certain policy, at national and supra-national level, which influences the emergence and evolution of the EU governance.

2.3 Modes of Governance in Labour Law and Environmental Policy

2.3.1 Evaluation

As already mentioned, the evaluation of governing modes poses severe difficulties. Firstly, the perceived (as opposed to empirical) effectiveness depends on the interests and beliefs of political actors. Representatives of the automobile industry have different views about effective environmental protection than environmental groups. The same is true for other political actors, like political parties or DGs of the Commission. Secondly, there are usually no *ceteris-paribus* conditions in order to test which mode of governance performs better in a given situation. Therefore, a comparison of modes of governance remains context-dependent.

In general, many authors argue that non-hierarchical modes of governance are more effective than hierarchical ones. However, there is no empirical proof of this argument, e.g. authors of the misfit thesis argue that the degree of compatibility between European and national policies is responsible for the effectiveness of European policies. Then, the same mode of governance can be effective in one country and ineffective in another country.

Based on secondary literature on EU social and environmental Policy, OMC certainly seems to suffer from serious “implementation” performance shortcomings. This would support the view that hard law is more effective than soft law, especially if major institutional or redistributive changes are envisaged (cf. Falkner/Treib/Bähr 2006: 4).

2.3.2 Evolution and Expectations

Both in EU environmental policy and EU social policy there has been a steady increase in the number of modes of governance without abrupt changes. In environmental policy hierarchical modes of governance are still dominant. In social policy non-hierarchical modes of governance play a greater role.

2.4 Modes of Governance in Cohesion Policy

2.4.1 Evaluation

The existence of new modes of governance within cohesion policy does neither compete with nor substitute to the classical modes. The elements of new modes rather complement the traditional modes by providing for both a learning path before ceding sovereignty to the EU level (see the pre-1987 period when cohesion policy was run through weak Community competences and decentralized payment mechanisms) and for more efficiency, transparency and legitimacy after having ceded sovereignty (see the unfolding multi-level and multi-actor type European governance method through the partnership principle).

Thus, within cohesion policy NMG is mainly present in the form of partnership whereby the EU pushes the member governments to open up their public administrations and to include into the processes of decision-making, implementation and monitoring a range of stakeholders. At the new member states level however – given the conditions explained under point 5 – the emergence of new governance modes is still sporadic, its evolution is weak. Therefore it is too early to embark on a definitive evaluation, since there are still shortcomings regarding both, the willingness of the central public administrations and the capacities of the potential partners in the new member states. Nevertheless, two observations regarding the evaluation of NMG in cohesion policy can be made:

First, in the midst of institutional capacity-building coupled with unfolding public administration reform and under the time pressure for delivering the first National Development Plans to

the European Commission, most new member states did not really comply with the partnership principle. In such a context recourse to any kind of NMG has so far rather been sporadic. The other side of the coin is that the potential partners seem in many cases to lack the necessary information, as well as the capacity to play the role of a competent partner in the whole process of national/regional development.

Second, despite the initial weaknesses however, there are clear signs that in most new member states the introduction of the partnership principle – as an obvious element of NMG in our interpretation – could gradually be reinforced as a result of both supranational and subnational pressures. This process is accompanied by an increasing willingness of the public administrations to open up and by an increasing awareness of the partners concerned.

2.5 Modes of Governance in the Area of Justice and Home Affairs

2.5.1 On Evaluation

The Commission's response to long-term developments in the area of JHA – as publicised in the proposals of June 2006 – is clearly aimed at an overall “hardening” of governance. The proposed tighter monitoring and evaluation could have a positive effect both on implementation and an adjustment of policies in the light of results achieved, while still remaining within an overall relatively “soft” governance framework based on non-binding objectives with monitoring and evaluation as key instruments to ensure proper implementation. The only major question here is whether Member States are willing and/or capable to engage in the very comprehensive reporting on the results of JHA measures at the national level the new evaluation mechanism will require. The initial reactions from the Council have not been too promising in this respect.

The proposed extension of the “Community method” to all JHA fields constitutes a much more radical step and would shift JHA “governance” to a significant extent towards “hard” governance. The generalisation of qualified majority voting in combination with an exclusive right of initiative for the Commission and full applicability of EC infringement procedures also in the current ‘third pillar’ fields would lead to a more hierarchical, rigid and uniform overall governance system in the JHA domain. While this might reduce some of the currently existing deficits in terms of decision-making and implementation it could also reduce the willingness of Member States to continue to agree on relatively ambitious objectives and to more legislation in the particularly sensitive fields of police and judicial cooperation in criminal matters. There is also the problem that the ‘communitarisation’ initiative comes without any “balancing” elements which would allow Member States to prevent the adoption of binding common measures incompatible with national constitutional provisions or fundamental principles of their legal system. The Constitutional Treaty provides an overall more balanced ‘communitarisation package’ as the enhanced decision-making and enforcement powers of Council and Commission are part of a new equilibrium because of the “emergency brake” in the criminal law field, the strengthened position of the national parliaments and legal codification of the Charter of Fundamental Rights.

Overall the Commission's initiative to use the “passerelle” provisions can be seen as an attempt to replace the slow and uneven evolution from “softer” to “harder” modes of governance in the JHA domain by a sort of major regime change in favour of the latter. This appears not only as politically premature – at least as long as the fate of the Constitutional Treaty remains undecided – but also potentially counterproductive as forcing “hard” EU governance on Member States in highly sensitive policy fields might well reduce the willingness of at least several of them to develop and engage in substantial common policies.

2.5.2 Evolution and Expectations

The currently best option for the EU seems to be to improve monitoring and evaluation and to wait for the (uncertain) outcome of the relaunch of the Constitutional Treaty project. Should this fail it may make sense to reactivate the “passerelle” option, but this time with more safeguards for national positions in the most sensitive fields. “Soft” governance modes have contributed much to the development of the “area of freedom, security and justice”, and even if there are problems of effectiveness in the JHA domain, they should only be replaced by “harder” modes when, where and to the extent to which the common political will of the Member States is sufficient to sustain their use.

2.6 Modes of Governance in CFSP

2.6.1 Evaluation

The governance perspective allows for a sober and modest evaluation of the relevance of intergovernmentalism; its relevance not be exaggerated due to the fact that the 'real' modes of decision-making and steering reveal a high potential for variation and diversity. Under the umbrella of a basically intergovernmental institutional and procedural set-up, CFSP has developed a number of different practices and habits which feed the system with a high degree of flexibility and pragmatism.

First of all, it seems ever more plausible to define modes of governance in a policy-specific and a time-dynamic perspective. CFSP has its own rules and traditions in decision-making, and it will develop forms and modes which are typical for its path of institutional evolution, which does not exclude innovative elements at all. In general, the impact of intergovernmentalism is highly visible in CFSP, but has not blocked a process of differentiation which leads to more sophisticated ways of decision-making than traditional intergovernmentalism would expect. These emerging trends are highly fragile and cautious, due to the intergovernmental nature of CFSP, but they nevertheless constitute highly innovative phenomena.

The traditional conceptualisation of CFSP as an intergovernmental policy area is not out of date or out of touch, but experiences regular phases of reinforcement in case of major crises (like Yugoslavia or Iraq). Nevertheless, beyond times of an outstanding and dramatic crisis, the political and institutional reality of CFSP is open for innovation which leads beyond intergovernmentalism. Still, a major source of innovation and dynamics lies in the creation of the ESDP, which has not, as many observers expected, strengthened the intergovernmental nature of CFSP, but led to new windows of opportunity by opening up new fields of activities. Crisis management operations rely on mixed sources of financing, even when they are primarily military in nature; the creation of a defence equipment market is an experiment without example in the EU. Extremely soft forms of coordination might even be identified in ESDP when it comes to the capability improvement mechanism.

A regime for the creation of a market on defence procurement has been established, which leaves open an exit option for all participating states, but also represents a window of opportunity for a further reaching processes of regulatory policy-making in the future.

The legal spheres of action and application have so far not been mixed up, but they have grown further together; the creation of the first double-hatted special representative might be a sign of growing coherence even until reaching the stage of creating a European external service *avant la lettre*.

Differentiation of instruments applied in the sphere of CFSP has dramatically increased since the early 1990s. Today, more diversity is visible in the range of acts adopted under CFSP.

Particularly interesting seems the increase in agreements under CFSP for including third countries in crisis management operations, and the growing correlation of Common Positions and EC regulations for economic sanctions.

The result is a CFSP which has not developed into a supranational direction as such, but uses the range of possibilities included in the Treaties and operates in a pragmatic, flexible and sometimes mixed way, not by confusing legal spheres of application, but by combining instruments from these spheres and opening paths to increasingly using joint or common resources.

2.6.2 Evolution and Expectations

A number of policy recommendations in terms of efficiency, accountability, and policy change can be formulated:

Under the assumption that neither the Constitutional Treaty nor a comparable revision will enter into force in the short run, CFSP will have to work on the basis of the Nice system; thus, improvement of coordination between the Commission and the Council as well as better mutual harmonisation of views below the level of creating a common external service will be crucial. The Commission has submitted a number of proposals in this regard so far, but always stopped short of the High Representative for CFSP. However, it is particularly this post that could become an institutional entrepreneur in further pooling and coordinating resources and capabilities as well as institutional actors. Furthermore, as a growing number of relevant legal acts in CFSP are adopted in the EC, the need for bringing these two spheres closer together will become more evident. At the working level, Council-Commission teams could be charged with the preparation of such legal acts, while in exchange the Commission should become more involved in the drafting of common positions or joint actions.

Democratic control in CFSP is not just a task for the European Parliament, but an overarching political objective of relevance for national as well as EU actors. Instead of trying to copy national patterns of governance, accountability should respond to the peculiar nature of the CFSP system and include elements of a functional accountability. Functional accountability includes the participation of national as well as EU actors and the mutual check and balances of institutional arrangements. Information of national parliaments must be assured to the fullest extent possible. The same applies to the exchange of data and knowledge around the national bureaucracies. The EP should coordinate its positions more fully with national parliaments and their respective committees.

Governance in CFSP changes much more substantially via practice than via Treaty reform; the emerging modes of coordination as well as the recent efforts in creating market structures reflect a high potential for innovation based upon cautious and subtle habits and adaptation of behaviour of actors. These processes should be strengthened and pushed. The Council should therefore try to formalize some elements of the capability improvement mechanism in the sense of creating better identifiable objectives for the single member states, and it should also introduce a mutual reporting mechanism in which the national governments should document their efforts for overcoming the shortages in civilian and military capabilities. The emerging market for defence procurement should also be translated into more binding patterns of interaction, starting with an obligation by all participating countries to have their performance evaluated and assessed, including possible soft sanctions in case of violating the rules of the regime for defence procurement. This should be applied in a step by step approach, starting with rather soft mechanisms such as naming and shaming, but open for tightening in a future stage.

As a consequence, the abovementioned options and proposals are designed less to draft the agenda for the next Intergovernmental Conference, but rather to exploit the institutional potential for change and reform inherent in the specific features of CFSP governance. The basically intergovernmental framework of this policy area would not stand in contradiction to these proposals, while becoming more and more affected by incremental steps towards more binding and more effective forms of steering below the level of supranational policy-making.

2.7 Modes of Governance in Research Policy

2.7.1 Evaluation

OMC R&D is, broadly speaking, an example of the basic configuration for OMC, which operate in policy fields dominated by intergovernmental, rather than Community, decision-making. Above all, this means that a so-called ‘policy’ backed by an OMC has not necessarily received the political support of all members, nor do its objectives, although they might set Community targets, necessarily reflect their aggregate national preferences. Consequently, compliance is voluntary and often piecemeal. On the other hand, subsequent benchmarking exercises may exert some pressure for compliance on the Member States.

Evaluating OMC processes is a task that can be dispatched fairly quickly; they are practiced more in their breach than their observance. Most have not had anything like the impact they promised (Idema/Kelemen 2007; Zeitlin 2005), and even the more successful OMCs, most expert opinion would seem to suggest, are not unambiguously so. Values of transparency, participation and democracy and effectiveness are frequently seen to be lacking or absent (see De la Porte 2004). One possible reason for this ‘failure to impress’ that is currently the theme of OMC evaluation is that the policies with which it is associated are not, in the strict sense, ‘genuine’ policies. If by ‘public policy’ we mean a set of decisions made by actors to meet certain goals *and* it is within the actors’ power to achieve them,¹ then traditional methods of policy analysis will not readily capture any concrete ‘OMC effect’.

This is the case of EU R&D policymaking. The disappointment expressed by Commission reports and academics can hardly come as a surprise: the headline objective was for member states to invest 3 percent of GDP in research by 2010. The supplementary objective was the creation of a coordinated European Research Area. Neither target will be met. If anything, member states are spending less on R&D than at the beginning of the decade. Is this policy failure? Perhaps Euro-sclerosis? A more modest proposition is that the current trend represents business-as-usual in the member states that either ignored or were unaware of the policy. After all, the target originated in a political declaration by heads of state in 2003 with the Commission given the role of monitoring progress based on national reporting. The means of achieving the target were ‘mutual learning, joint actions and Community initiatives support national reform’. As with all OMCs, participation is voluntary, enforcement is self-imposed and opting-out is not sanctioned.

Given the toolbox of policy instruments at the disposal of advocates of OMC R&D, strict adherence to the policy objectives would have been more surprising than their actual observance. The strength of the policy was not to be in its instruments (as with competition policy) but in the idea that increased spending and coordination in R&D is good for economic growth – an idea that has not yet been empirically verified in the economic literature.

¹ The definition of public policy is from Jenkins, William (1978) *Policy Analysis: Political and Organisational Perspectives*, London, Martin Robertson.

2.8 Democracy and New Modes of Governance: Agencies

2.8.1 Evaluation

A legal perspective on the European agency mode has to assess the appropriate level of democratic legitimacy of the conferral of powers to decentralized bodies. In doing so, both input (personal, material, institutional/functional) and output (efficiency) oriented sources of legitimacy have to be considered, weighed and reassessed.

As expected, the application (operationalization) and translation of general or state-centered legitimizing modes has led to difficulties, e.g. diffusion of accountability with plurality of actors, skepticism towards quantification of efficiency criteria, etc.

Underlining the importance of input-oriented approaches and revealing their moulding in old, yet still valid ECJ case law seems to have been neglected in literature so far. For this reason, the process of evaluating agencies as governing mode must start with the factors influencing the legal and living constitution in this area. Both the legal and the living constitution are influenced by endogenous (Meroni doctrine and other ECJ jurisprudence; reaction to it by EC/EU institutions) and exogenous (regulatory demands, regulators/others asking for efficient and flexible solutions) factors.

As a conclusion, the very strict limits to the delegation of powers to agencies as established by the ECJ's jurisprudence might be loosened to a certain extent without giving up their legal fundamentals. The basis for such a development would still be input-oriented legitimacy, in other words, an effort striking the balance between on the one hand side preserving the functioning of the transmission belt securing the implementation of measures which were adopted by representatives of the people, and on the other hand flexibility in the interest of efficient administration. In the end, there stands the observation that input- and output-legitimacy are closely intertwined, and that democracy cannot be based solely on one or the other.

2.8.2 Evolution and Expectations

The pattern of use of the mode of governance "European agency" has changed substantially over time, both quantitatively and qualitatively. Different phases can be distinguished according to the impact of the ECJ (non-)delegation doctrine and the intensity of use of that governing mode, albeit that same ECJ doctrine seems to bring further qualitative development of European agencies to a halt (cf. EASA model). Due to regulatory demands and the improbability for a change in primary law, both a "downgrading" and a substantial "upgrading" seems unlikely.

2.9 Soft law in the European Union legal framework

2.9.1 Evaluation

Since a few years, the European Commission has been engaged in vigorous promotion of alternatives to legislation within the broader agenda of better law-making. Self- and co-regulation are promoted alongside the traditional Community Method in various ways, for example through the Interinstitutional Agreement on Better Law-Making (IIA). The aim of these soft modes is to introduce a number of advantages to EU policy-making: bring decisions closer to organized civil society, increase respect for diversity, and reduce the intensity and complexity of Community legislation. These voluntary instruments could mitigate subsidiarity and proportionality violation claims, while the powers vested by the IIA in the Parliament would allow safeguarding the principle of democracy. A direct dialogue between the Community and private actors might come as another benefit that would infuse more direct de-

mocracy into policy making, but at the same time eliminate Member States from decision-making (cf. Cafaggi 2006).

Evaluation of the execution of self- and co-regulation practices under the IIA framework could be assessed only after some time, as most new initiatives are of very recent origin. However, as a first result, the requirements imposed on the use of self- and co-regulation indicate a certain reluctance of the Commission towards the use of these modes with a high degree of autonomous rule-making.² From a structural point of view, the conditions imposed on the co-regulation and self-regulation practices shape them into new hybrid centrally-governed self- and co-regulation instruments.³ This might create positive competition for higher quality self-regulation, but also lead towards a negative feeling of discrimination.

One further point can be made in terms of evaluating self- and co-regulation: The use of both modes is tied to nearly identical requirements (cf. Scott/Trubek 2002: 17-18). At the same time, these requirements are very much similar to those traditionally associated with the sphere of traditional law (general interest, transparency, representativeness of the parties involved in rule-making, monitoring implementation and sanctions, etc.) In other words, the regulatory mix created by the EU institutions seems to comprise too much classical law and state governance elements, raising questions about the nature of self-regulation. The threat by the Commission to legislate in case of failure to observe self-regulatory practices induces the self-regulatory bodies to assume a legislator's role and command-and-control functions over its members' voluntary practices.

In the end, the requirements imposed on the integration of self-regulation into the Community's legal framework and their subordination to Union's hierarchical structure threaten to deprive self-regulation practices of their exclusive and much sought-after features such as flexibility, cost-efficiency or better adaptation. Such shaping of self-regulation practices under the law pattern threatens to distort the very idea of new modes governance, i.e. non-hierarchical and distant from states and government.⁴ It also overturns "the reality of shared – collaborative – governance" giving preference to traditional hierarchy and final authority of European institutions (Scott/Trubek 2002: 17-18).

3 Conclusions: A First Comparison

Comparing the results of the single projects is rather difficult given the fact that the partners have followed specific approaches and perspectives in their fields of research. However, a number of comparable results may be gathered according to the criteria of effectiveness, efficiency, legitimacy and quality of governance in the EU. The following table represents major findings.

² See similar conclusion on the negative attitude towards use of the OMC in Scott, Trubek (2002), p. 16; C. Scott (2002), pp. 71, 74; F.W. Scharpf. European Governance: Common Concerns vs. The Challenge of Diversity. Paper-contribution to the Jean Monnet Working Paper No.6/01, Symposium: Mountain or Molehills? A Critical Appraisal of the Commission White Paper on Governance, available at <http://www.jeanmonnetprogram.org/papers/01/010701.html>.

³ McHarg (2006), p. 89.

⁴ M Rhodes, The Scientific Objectives of the NEWGOV Project. A Revised Framework. Paper presented at the opening session, 20 May 2005, p. 12.

Table 1: Evaluating Governance Modes

(sub-)projects	criteria for evaluation of modes of EU governance			
	effectiveness	efficiency	legitimacy	quality
Arguing and Persuasion	effectiveness through legitimacy		deliberative approach amenable to finding legitimacy consensus	arguing allows for better quality of outcomes, as exemplified in the Convention
Social Dialogue and Pension Reform	political and technical limits impair effectiveness	procedural problems must be seriously addressed		
Labour Law and Environmental Policy	hard law apparently more effective than soft law			
Cohesion Policy		partnership principle showing success in recent years		
Justice and Home Affairs	hardening of soft governance without classical 'binding' results	dependent upon specific policy area, trends towards communitarization	deficient	
CFSP	stable level of policy outcomes with high degree of differentiation	deficiencies of intergovernmental bargaining,	no major leap towards parliamentary control, but rising influence	
Research Policy	OMC with highly disparate policy results	intergovernmentalism by the backdoor	democratic deficit	
Democracy and Delegation	agencies expected to deliver policy results effectiveness by delegation		diffusion of accountability	
Soft law and Self-Coordination	potential for de facto legislation	highly threatened by hierarchical mode of governance in the EC	lack of democratic accountability inherent to the deficits in self-regulation	positive competition for higher quality

While the overall assessment must be preliminary and is open to debate, some trends may be discerned that help us qualify for finding of the projects. First of all, there is a general scepti-

cism towards the Open method of Coordination as an effective, efficient and legitimate way of decision-making in the EU, proving basically wrong the high expectations once raised. Second, movement is becoming visible in the former intergovernmental areas of CFSP and the third pillar, which do not fulfil highest demands for effectiveness and efficiency, but apparently reveal tendencies of increased policy outcomes and ways of decision-making which, while remaining non-hierarchical, add some coordinative element into it. Criteria for effectiveness are hard to make compatible among the projects, as different scientific maps lie underneath the evaluation. Project 3 has specifically introduced the term of quality of policy results, in order to refine their evaluation, arguing that arguing and deliberation as a new mode of communicative interaction increase the quality of outcomes. It would be of interest to follow this line further also for other projects in order to generate comparable assessments. In terms of efficiency, most projects claim that in general, efficiency depends upon the specific policy area but that there has been no overall trend in improving the procedural dimension of decision-making by generating new modes of governance. The picture remains disparate, while leaving open potentials for new perspectives in particular by hinting at trends towards self-regulation bringing civil society and private actors closer into EU governance, but here the impact of the mode is limited, as project 4 outlines, due to the constraints of its integration into the legal framework of the Community and the sub-ordination into the hierarchical decision-making structures of the EU, thus leading to the danger of hollowing the very concept and deprive it of its potentially innovative features.

In general, there seems to a tendency of institutional inertia and resistance towards so-called new modes of governance in the EU as a result of the very political system of the Union as developed over the past 50 years. OMC has been mentioned already as a failure in producing convincing results in terms of effectiveness, efficiency and legitimacy, while self and co-regulation are severely constrained under the threat of hierarchy mainly promoted by the Commission. The model of the Convention as a new arena for constitutional governance in the EU has been devaluated by the negative referenda in France and the Netherlands, not only leading to fresh efforts for saving the constitution, but apparently also to a restoration of the classical intergovernmental conference - which has in the end taken over the substance of the Constitutional Treaty without resorting to its neo-federal verbiage. New modes emerge and seem to be successful where the transition from older modes such as in CFSP or in justice and home affairs is taking place in a peace-meal process without ruptures and building upon the pre-existing institutional and procedural acquis; and where links and mixtures between innovation and pre-existing assets are entailed. Thus, it is much more the dynamics of change in EU governance than the strict distinction between categories of new and old modes of governance. The passing from one to the other is anyway rather difficult or even impossible to define.

These first findings will be further developed particularly in a comparative perspective for arriving at a clearer set of academically and politically relevant outcomes.

4 Bibliography

- Cafaggi, Fabrizio (2006) New Modes of Regulation in Europe: Critical Rethinking of the Recent European Paths, in: F. Cafaggi (ed.), *Reframing self-regulation in European private law*, The Hague: Kluwer Law International, pp. xxv-xxvi.
- De la Porte, Caroline. (2004) The OMC-a deliberative-democratic mode of governance? The cases of employment and pensions, *Journal of European Public Policy*, 11, 267-288.
- Falkner, Gerda / Treib, Oliver / Bähr, Holger (2006) Policy Memorandum on the Emergence and Evolution of Governing Modes in the Areas of Social and Environmental Policies, NewGov Paper, available at www.eu-newgov.org, 25.05.2007.
- Idema, Timo/Kelemen, Daniel R. (2007) New modes of governance, the Open Method of Coordination and other fashionable red herring. *Journal of Intra-European Dialogue*, 7, 108-123.
- Jenkins, William (1978) *Policy Analysis: Political and Organisational Perspectives*, London, Martin Robertson.
- Rhodes, Martin (2005) The Scientific Objectives of the NEWGOV Project. A Revised Framework. Paper presented at the opening session, 20 May 2005, Firenze, p. 12.
- Zeitlin, Jonathan (2005) Introduction: The Open Method of Coordination in question. In Zeitlin, Jonathan/Pochet, Philippe (Eds.) *The Open Method of Co-ordination in Action: The European Employment and Social Inclusion Strategies*. Brussels, P.I.E.-Peter Lang.