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Summary

This paper examines how new modes of governance measure up to other governing modes. Faced with complex policy challenges, how does non-binding coordination compare to binding coordination. Have OMC-type processes been successful where they have been applied and do they represent an attractive alternative to policy makers? These questions will be analysed with respect to two policy fields; Information Society (IS) and Research (R&D). Central to the Community’s Lisbon agenda, the policies present overlapping and complementary objectives. While the former promotes the diffusion of knowledge and existing technologies, the latter contributes to knowledge creation and technological innovation. Taken together, each policy domain displays revealing ‘governance asymmetries’ as regards their objectives and their means to achieve them. These asymmetries illustrate the relative success of binding, non-binding and financial instruments in achieving policy goals.

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I. Introduction

Six years after the launching of the Lisbon strategy, policymakers (and academics) are currently reviewing the ability of the Open Method of Coordination (OMC) to achieve its goals. This so-called ‘new mode’ of governance has been the repository a disproportionate level of aspiration (OMC as a panacea to old governance’s failings) and scepticism (OMC as talking shop). A theme of early analyses of OMC was whether new modes of governance emerge a) because binding measures are unable to achieve the European Union’s (EU) new policy goals, or b) because they are complementary to traditional legislation. This question could not be answered *a priori*.

Today the then newly hatched modes are, so to speak, coming home to roost and the execution of these policies can now be subjected to evaluation by academics, member states and Community institutions alike. The two policy domains analysed in this paper, Research and Development (R&D) and Information Society (IS), display a heterogeneous mix of governing modes extending from the voluntary participation to binding policy instruments. Happily, unlike other OMC processes that have fallen by the wayside, both policies have received considerable political energies since the Lisbon summit put them centre stage of its growth agenda. Have these energies created heat, or just light? We are now in a better position to answer this question.

Each policy domain has a distinct Community ‘pedigree’. Naturally enough, given the novelty of the technology underpinning the policy field, the Treaty of Rome did not provide the EU with legal competence for matters concerning the Information Society. Revisions of the Treaty have not changed this as the so-called policy is in fact a constellation of different policy objectives ranging from internet security to the content of Governmental websites.¹ However, under this policy umbrella come both Telecommunications (an area of binding coordination since 1998²) and Television (since 1989).³ Information Society policies have also widely been promoted using the Open Method of Coordination (since 2000) allowing for a ready comparison of the general effectiveness of both modes; do harder forms of coordination achieve policy goals ‘better’ than softer ones. Our analysis of this field suggests a tentative answer to this question.

R&D policy is a more solidly established area of Community action and the original Treaty of Rome provided for the promotion, coordination and funding of research activities.⁴ Although enshrined in the Treaty, no binding legislative framework comparable to, say, competition policy can be said to truly embed the research into Community competence which has remained an area where coordination by member states is voluntary and piecemeal. Similar to Information Society, OMC processes have been drawn up to achieve its policy goals but unlike the former, the EU provides for distinct financial instruments and devotes around 3% of its budget on research projects mainly through the framework programmes (IS spending represents around 1.2%). Certain indirectly related areas of EU legislation have a major influence on how research is conducted; for example, patents, copyright and state-aids are all covered by Community action and our paper will briefly examine how the EU’s policy mix tackles the problem of how to promote and coordinate research.

¹ The term “Information Society” does not appear in either the Consolidated Treaty or the Treaty establishing a Constitution for Europe

² eCommunications regulatory package 1998

³ "Television without Frontiers" directive (89/552/EEC),

⁴ TITLE XVIII — Research and technological development

II. R&D and IS: complementary goals with asymmetrical means

The production and diffusion of scientific knowledge is seen as a necessary condition for maintaining EU competitiveness. Increased R&D, measured by outputs such as patents, publications, etc. is systematically identified as a motor for economic growth.⁵ Government (and EU) intervention has been justified on the grounds that private firms underfund research as benefits are both differed and uncertain. Consequently, states directly fund research and provide financial incentives for firms to do so. However, increasing the absolute production of knowledge (stock of knowledge) is not sufficient for ensuring economic growth as the capacity for absorbing scientific progress, measured by number of researchers, institutions, technological infrastructure, legislative and financial conditions, determines how knowledge ‘spills over’ into society.

In essence, EU R&D policy aims to increase the stock of scientific knowledge whereas as its IS policy aims to increase the absorptive capacity of member states economies. Community action has been aimed at the *coordination* member states research programmes to harness economies of scale and reduce duplication. Currently, the vast majority of research is carried out at an exclusively national level.

In a complementary manner, EU IS policy recognises that member states must have structurally similar capacity to be able absorb knowledge in order for the spillover effect to take place. It promotes the *convergence* of structural conditions for absorbing innovation within member states. In essence, R&D policy corrects market conditions for the production of knowledge, IS policy creates markets for that knowledge.

III. EU Governance

EU policies achieve their objectives through a variety of means that have been classified in two ideal types: ‘binding’ and ‘non-binding’. The implementation of binding measures is mandatory and enforced by the Commission via the European Court of Justice. ‘Non-binding’ coordination leaves more autonomy to member states and implementation is voluntary. Usefully, for the sake of comparison, R&D and IS policies areas display quite distinct forms of governance. On the one had, IS policy can rely upon both community method legislation e.g. the ‘e-communication package’ and a raft of non-binding measures of coordination. On the other hand, R&D policy does not have binding legislative instruments but relies on non-binding coordination and autonomous budgetary leverage (see table1).

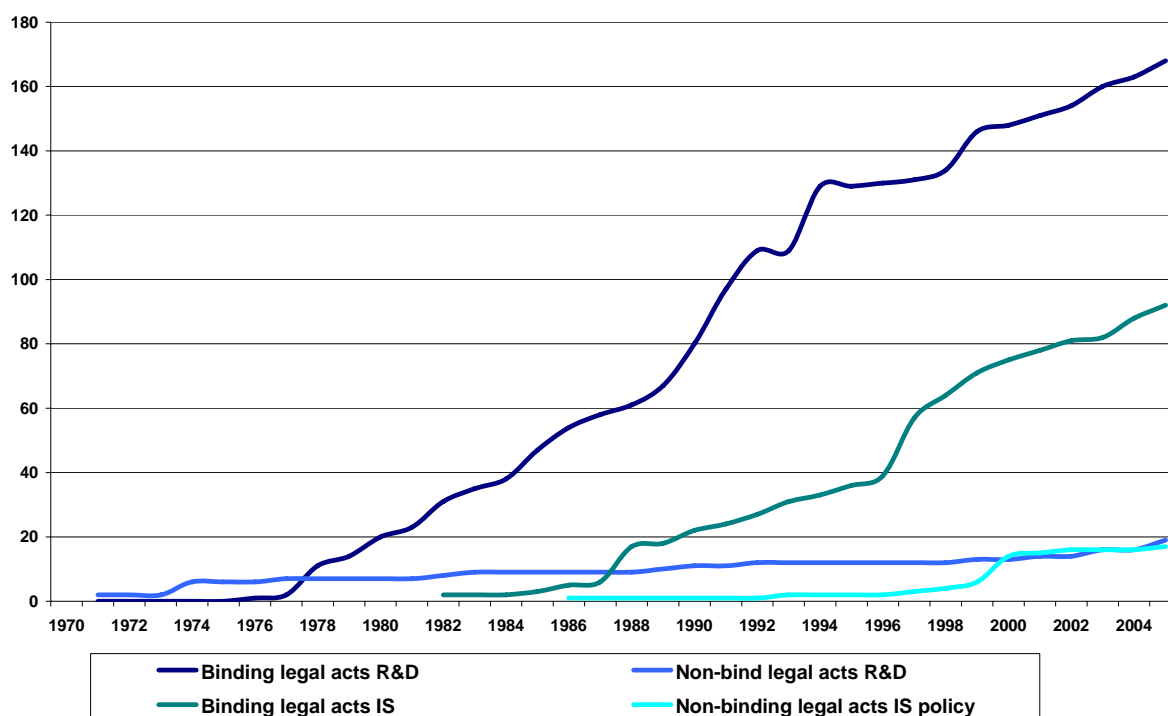
Table 1: Governing modes in IS and R&D

Instruments	Binding measures	Non-binding measures	Financial measuses
Policy			
Research	No (mostly decisions)	Yes	Yes (projected 8% of EU budget)
Information Society	Partial (directives in some areas)	Yes	No (1.2%)

⁵ See, for example, the Sapir (2003) and Aho (2006) reports

Following Diedrichs (1D13), Bähr, Trieb and Falkner (1D24), Figure 1 shows the quantitative evolution of binding (regulations, directives and decisions) and non-binding (recommendations, resolutions, declarations) measures. The results show that binding measures seem to dominate in both areas. Legislative activity has grown at a comparable pace in both areas although R&D's seniority means that it has a great number of acts under its heading.⁶ This impression is misleading however. A breakdown of specific instruments within 'binding measures' reveals distinctive features. R&D has only one directive, 3 regulations and 164 decisions. IS policy has 4 regulations, 37 directives, 51 decisions. Although IS racks up less acts, framework directives in the area of electronic communications mean that Community authority is far greater in the area of Information Society. Indeed, OMC-type processes are 'below the radar' of the EURLEX as they inhabit the paralegal zone of Commission communications and national reports.

Figure 1: Evolution of R&D policy and IS policy (N=296) eurlex data 2005



III.1 Information society: between a rock and a soft place

Community competence in the area of Information Society policy is 'inherited' rather than explicitly Treaty-based. The Commission has relied on rules on competition and the approximation of laws to base its legislative activities (mainly article 95). IS policy can be broken down into two main elements - infrastructure and content. Formerly in the hands of national monopolies, binding legislation has been used to re-regulate the 'hardware' of EU information society: telecommunication infrastructure. Broadly speaking, non-binding methods have been used to promote a convergence of content i.e. the services available to and provided by

⁶ The Eurlex website (March 2006) was used to compile the data. It is a blunt instrument with many anomalies. For the purpose of our demonstration R&D legislation was proxied by the directory code 'Science>Research sectors'. For IS policy, no one code covers, so keywords 'telecommunication, broadband, radio spectrum, copyright, patent, television, information society, electronic communications and coommerce, eEurope and i2010' were used to identify secondary legislation and other acts.

governments, citizens and firms. Member states vary greatly in their take up of information society technologies and EU policies aim to bridge a so-called ‘digital divide’ that runs through the Community itself and the societies of its member states.

The effectiveness of binding measures

Efforts to liberalise the telecommunications sector in the EU go back to 1987. The proposed regulatory framework required the dismantling of national monopolies in telephony and the harmonisation of national rules in telephony and electronic media. The so-called ‘package’ consisted of ten separate directives and decisions and covering internet, voice and data transmission, broadcasting and personal communications. The legislation put in place independent national regulatory authorities (NRA) in each member state to oversee the transposition and implementation of the package that came into effect in July 2003.

To date, eleven Commission reports have charted implementation in the Member states. Although progress in transposition was initially slow in many countries, the Commission opened more than 100 infringement proceedings (essentially against Belgium, Greece, France and Luxembourg) under Article 226 since the date of application of the new regulatory framework. Only Greece has outstanding transposition issues with the Commission. The compliance of member states was a separate problem and the Commission engaged over 50 infringement proceedings on the grounds of incomplete compliance against 23 member states. The European Court of Justice (ECJ) issued reasoned opinions on most of the cases. The Commission has been keen to publicise its activities and issued press releases for each procedure in an attempt to name and shame offending member states.⁷

The use of traditional (hard) methods of coordination was vigorously applied by the Commission, and to great effect. By wielding the threat of legal proceedings in front of the ECJ, all but one member state transposed, implemented and complied with the package.

The effectiveness of non-binding measures

Concurrently with the legislative activities above, the Commission has promoted a series of flanking measures aimed at creating a European information society ‘for all’. Two Community action plans (eEurope 2002 and 2005) ran until last year and has been succeeded by i2010 (European Information society in 2010). These plans covered a vast number of individual projects (eGovernment, eInclusion, eHealth, eLearning, eBusiness...) that promoted convergence in member states’ use of communication technology. Of the many OMC processes, the configuration of instruments used in IS policy was of the softer variety (see table below). It remains an exercise in international comparison that lacks the more coercive elements available to OMC employment policy such as peer review, binding targets, national action plans, recommendations from the Commission etc.

Several problems have dogged the roll-out of the method, most importantly, the establishment of indicators allowing for a comparison of member states. The eEurope programme had numerous concurrent indicator working groups⁸ and the current avatar of IS policy, i2010, has tendered for an all-new set of indicators. The constant modification of different generations of indicators may make measurement of convergence hazardous.

Nevertheless, several benchmarking exercises have been carried out, revealing disappointing trends. In 2005, the Information Society Benchmarking Report concluded that although there

⁷ http://europa.eu.int/information_society/policy/ecommm/implementation_enforcement/index_en.html

⁸ SIBIS, BISER, BEEP, ECATT, STAR, NESIS, SEAMATE, to mention but a few.

were some success stories (broadband uptake, availability of online public services), ‘disparities between Member States had not reduced between the start of eEurope and 2004’ (CEC 2005) i.e. although member states had progressed towards an ‘information society’, the gaps in performance remained proportionately the same.

These coordination efforts were themselves ‘benchmarked’ independently in March 2005. The report considered the impact of OMC on IS policy, while the second analysed the impact of IS policy on the Lisbon Strategy. The conclusions of the first report made for stark reading;

The OMC mechanism in eEurope (benchmarking, exchange of good practice) has had little effect, except where it is in tune with national ways of doing things and pre-existing practices. While OMC has helped frame or reinforce policy objectives and orientations, it has not helped to define actual policy, nor has it helped to determine actions to be taken (CEC 2005:33)

The report questions whether it is worth having an OMC, concluding that ‘having an eEurope strategy seems to be sufficient, while it is not clear what the OMC is adding beyond the development of a common strategy’ (CEC 2005:35).

III.2 Research policy: An appetite for coordination?

Historically, R&D policy in the EU has been centred on fundamental research, i.e. research that does not have a readily marketable value (e.g. nuclear physics, space programme...). The state funding of so-called industrial and pre-competitive projects was considered to be market-distorting and is limited by Commission regulations. The state of research in the EU generally is a source of widespread criticism. Investment in R&D by member states compares badly to that of Japan and the U.S and has only grown by 0.7% annually since 2000.⁹ National programmes are often duplicated across member states leading to wasted resources. An OMC target was set by the Barcelona spring Council of 3% of GDP spending on R&D. Despite this, EU public and private investment is sluggish at 1.96%.¹⁰ Also, foreign direct investment by transnational corporations’, an important source of R&D funding, has fallen by 0.6% annually since 2000.¹¹

Binding measures

Before a 2005 directive to promote the mobility of third-country researchers,¹² there had been no binding measures covering research policy. Traditionally, research institutions were objects of national pride at best and secrecy at worst, with state funded research seen as a source of competitive advantage. Moreover, although information society policy is based on the widely shared assumption that similar absorptive structures guarantee better market conditions for innovation, the benefits of coordination in research are not well established.¹³ However, recent trends in the internationalisation of R&D funding have whetted an appetite. Indeed, the reason for stronger legal action in this area may have been prompted by the current trend of international investment to localise where R&D personnel is readily available.¹⁴

⁹ Japan: 3.2, U.S: 2.6, EU: 1.9. Source OECD Factbook 2005

¹⁰ Source Eurostat data 2005.

¹¹ UNCTD World Investment Report 2005

¹² Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research

¹³ See, for example, Keiko and Prange (2004)

¹⁴ UNCTD World Investment Report 2005

Perhaps contradictorily, the other impact of the EU has been to limit the extent of state funding of research. Article 87 (3) (a) imposes limits on the amount and quality of state aid that can be grants to projects. Direct state funding falls under the anti-competitive label as it can be used to prop up ailing national industries (France's Bull being a noteworthy example). The Commission has recently reviewed its rules and definition of what constitutes market distorting aid although the aim is promote 'less and better targeted aid'¹⁵

Another area of binding legislation that has, arguably, hindered the amount of research investment is the thorny issue of the Community patent. Patents encourage firms to invest in research as they secure exclusive rights of exploitation for a limited period (usually 20 years). However, the cost of patenting in Europe is five times that of the U.S. and Japan.¹⁶ Attempts to introduce a Community-wide patent began in 1974 and have become the stuff of legend ever since. National interest/pride has systematically blocked efforts with the latest efforts of 2004 tripping at the last hurdle.

Non-binding measures

The coordination of R&D policy has two main instruments, one financial; Framework Programmes and one OMC; ERA-NET. The open method adopted by member states for R&D policy is an 'OMC lite' as a 2004 CREST report pointed out (CREST 2004:11). This report was the first attempt to analyse OMC's contribution to the EU's R&D policy goals. While national budgetary expenditures are easily tracked and progress towards (or retreat from) the 3% objective can be monitored, any analysis other objectives is hindered by the absence of statistical evidence. Conceivably, researcher mobility is the most important indicator for evidence of transnational collaboration. However, no figures for researcher mobility exist. Indeed, benchmarking exercises by the Commission only provide figures show convergence (or divergence) towards objectives rather than evidence of proper coordination.¹⁷

Financial measures

Faced with a national funding deficit, current Commission plans are akin to a type of 'communitisation' of R&D policy. The Commission's budget 2007-2013 proposal was to increase Community's spending in the field from 17 billion (FP6) to over 47 billion (FP7). The current compromise of a 75% increase would increase Community funded research from 5% of overall expenditures to around 8.5%. The proposed creation of a European Research Council (ERC) with significant autonomous funds is seen by the Commission as a way of coordinating the European Research Area. Initial budget proposals set aside €13 billion of FP7 for its creation but the subsequent revisions of FP7's overall budget mean that its seeing the light of day is seriously hampered.¹⁸ Again, real world practicalities can be the gravedigger for lofty political goals.

¹⁵ Quote by EU Competition Commissioner Neelie Kroes

¹⁶ An eight member state patent costs €9,900, a US patent €10,330 and a Japanese €16,450 (Source: Commission IP/00/714)

¹⁷ See for example Towards a European Research Area Science, Technology and Innovation Key Figures ftp://ftp.cordis.lu/pub/indicators/docs/2004_1857_en_web.pdf

¹⁸ See Euractiv (2005) 'European research budget in dire straits' <http://www.euractiv.com/Article?tcaturi=tcm:29-140790-16&type=News> published 10 June 2005.

IV. Conclusion

The search for regularities in the meanderings of EU policies around the many obstacles they are faced with is a difficult one. Our discussion of how various policy instruments are used to coordinate member state R&D and IS policies highlights the ineffectiveness of non-binding measures in both fields. OMC-type methods have, broadly speaking, failed to deliver. OMC IS has had a negligible impact on member state policies. OMC R&D is still in its infancy but the goal of 3% will be missed if current trends continue. Binding measures in the area of IS policy have been successful if the compliance of member states is taken into consideration. Internal market procedures in telecommunications have created the conditions for the coordination member state infrastructures. Binding measures in R&D policy are few and attempts to establish an internal market for research (Community patent, mobility of researchers) have been thwarted. The Commission's attempts to use financial instruments to create a coordinated research area are, again, in difficulty as member states haggle over resources.

These conclusions would bear out the consortium's twin hypotheses that "the higher the policy misfit between the existing policies and the expected policy performance of the new mode, the less likely policy effectiveness" and "the higher the number of veto players with diverse preferences (or the less integrated political leadership in a political system), the lower the expected policy effectiveness" (Rhodes 2005:21). Firstly, IS and R&D OMC's have great expectations and huge challenges, but they simply track how discrete national policies remain on path of non-coordination. Secondly, attempts to bind coordination by financial and legislative means have been met with vetoes from member states.

Further research is currently underway to anchor these analyses in the domestic arena. A comparative case study of Ireland's and France's IS and R&D policies will shed light on the national strategies deployed and how they interact with EU strategies.

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