Articles

Innovative Governance in EU Regional and Monetary Policy-Making

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A. Introduction

The European Council of Lisbon (December 2000) formally adopted the Open Method of Coordination (OMC) as a means to implement the Lisbon Strategy, a package of policies aimed at promoting economic and social innovations in the member states. The Open Method of Coordination is a means of governance based on the cooperation of member states. The formal introduction of the OMC, based on policy coordination at European level in order to induce change in national policies, triggered a lively scholarly debate on the role of new modes of governance in the EU. New modes of governance are roughly defined as non-hierarchical forms of political steering that rely on policy coordination among a multitude of institutional actors and across government levels. Scholars have coined a variety of terms to capture the characteristics of these governance modes, such as soft modes of governance,[1] network governance,[2] multilevel governance,[3] experimental governance [4] or, as we call it here and elsewhere, innovative governance.[5] Despite the wide variety of terms, scholars hold several assumptions in common. Thus, most scholars assume that new modes of governance have only recently emerged. Furthermore, they assume that such modes of governance particularly emerge in policy areas where the Union lacks competences, while some form of common action is needed.[6] Finally, many scholars take it for granted that non-hierarchical modes of governance result in weak impacts.[7]

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[1] Dermot Hodson & Imelda Maher, *The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Co-ordination*, 39 J. OF COMMON MARKET STUD. 719, 719-46 (2001); Susana Borrás & Thomas Conzelmann, *Democracy, Legitimacy and Soft Modes of Governance in the EU: The Empirical Turn*, 29 J. OF EUR. INTEGRATION 531, 531-48 (2007).

[2] THE TRANSFORMATION OF GOVERNANCE IN THE EUROPEAN UNION (Beate Kohler-Koch & Rainer Eising eds., 1999).

[3] Gary Marks *et al*., *European Integration since the 1980s: State-Centric versus Multi-Level Governance*, 34 J. OF COMMON MARKET STUD. 341, 341-78 (1996).

[4] EXPERIMENTALIST GOVERNANCE IN THE EUROPEAN UNION: TOWARDS A NEW ARCHITECTURE (Charles Sabel & Jonathan Zeitlin eds., 2010); for a commentary see Amy Verdun, *Experimentalist Governance in the European Union: A Commentary*, 6 REGULATION & GOVERNANCE 385, 385–93 (2012).

[5] INNOVATIVE GOVERNANCE IN THE EUROPEAN UNION: THE POLITICS OF MULTILEVEL POLICY-MAKING IN THE EUROPEAN UNION (Ingeborg Tömmel & Amy Verdun eds., 2009).

[6] Arthur Benz, *Combined Modes of Governance in EU Policymaking*, *in* INNOVATIVE GOVERNANCE IN THE EUROPEAN UNION, *supra* note 5, at 27-44.

[7] *See supra* note 1; Beate Kohler-Koch & Berthold Rittberger, *Review Article: The "Governance Turn, in EU Studies*, 44 J. OF COMMON MARKET STUD. 27, 27-49 (2006).

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In this article we seek to dispel some of these commonly held assumptions and argue that new or non-hierarchical modes of governance are not necessarily a recent phenomenon, but have characterized European policy-making from its inception. Accordingly, we argue that instead of a shift from hierarchical to non-hierarchical modes of governance, the Union continuously moves back and forth between the use of different modes, resulting in increasingly complex and innovative combinations of modes of governance. Furthermore, we find that non-hierarchical modes of governance are not only applied in policy areas where the Union lacks competences. Instead, we argue these modes of governance play a much broader role – namely for coping with deadlocks in the policy process.[8] Indeed, such deadlocks arise when the Union does not have major competences at its disposal. However, deadlocks can also emerge when member states refuse, obstruct, or simply delay due implementation of European policies. Further deadlocks may result from changes in the policy environment. In any event, the Union or, more precisely, the European Commission, often seeks to overcome deadlocks in policy-making by relying on non-hierarchical means of political steering. Such means of political steering, however, will only be effective when certain conditions are met. First, as it is widely acknowledged in the literature, non-hierarchical modes of governance may have 'harder' impacts when combined with hierarchical steering mechanisms, or when implemented at least in the shadow of hierarchy.[9] Second, we argue that 'harder' impacts may also be achieved when non-hierarchical modes of governance are firmly embedded into appropriate institutional structures and arrangements.

To underpin these arguments, we begin by conceptualizing the EU as a government level ill equipped to design, manage and implement policies. The Member States, represented through the Council, are reluctant to transfer competences to the EU. As a result, policy formulation at the European level is subject to inter-institutional decision-making, often marked by conflicts, tough negotiations and weak compromises. Policy implementation involves several government levels, yet these levels are not interlinked by hierarchical relationships, with the 'upper' level holding the ultimate political authority. Instead, the 'lower' levels, the Member States, are in fact sovereign. Therefore, Member States can often evade, obstruct or (at least temporarily) ignore political steering exercised by the supranational level. Thus, the Commission, the representative body of the EU, is constantly searching for steering mechanisms that are more effective in directing the behavior of its addressees. These addressees are primarily the governments and administrations of the Member States but, to a lesser extent, may also be non-state actors. The strategic choices of the European institutions, the responses of actors and institutions at national level, and the interplay among them shape the form of new or innovative governance modes, as well

[8] Adrienne Héritier, *New Modes of Governance in Europe: Increasing Political Capacity and Policy Effectiveness?*, *in* THE STATE OF THE EUROPEAN UNION 6: LAW, POLITICS AND SOCIETY 105-26 (Tanja Börzel & Rachel Cichowski eds., 2003).

[9] Fritz Scharpf, GAMES REAL ACTORS PLAY. ACTOR CENTERED INSTITUTIONALISM IN POLICY RESEARCH (1997); Adrienne Héritier & Dirk Lehmkuhl, *The Shadow of Hierarchy and New Modes of Governance*, 28 J. OF PUB. POL'Y 1, 1-17 (2008).

as the combinations of governance modes.[10] These processes are accompanied by continuous institution building within the EU in horizontal and vertical directions, which serves to create and enhance the regulatory structure underlying the exercise of governance.

Against the background of this conceptual framework, this article examines the process of shaping European governance in two policy areas: cohesion or structural policy, and monetary policy. There are several reasons why we selected these two policy areas for empirical research. First, these areas are by no means new, while much of the new modes of governance literature focuses on new policy areas such as the European Employment Strategy.[11] Second, the EU primarily operates in these policy domains by hierarchical rule, or at least by following well-established and institutionalized procedures. Yet, third, we also observe that non-hierarchical modes of governance play a major role in these policy areas, often accompanied by extensive institution building. Therefore, we see these cases as paradigmatic for an analysis aimed at gaining better insight into the conditions that lead to the emergence of new modes of governance and innovative combinations of governance modes. Furthermore, we expect to generate insights into the conditions that shape the institutional underpinnings for these modes of governance. The central questions guiding our research are as follows: What are the conditions that lead to the emergence of non-hierarchical modes of governance and how do these modes relate to hierarchical governance modes? To what extent and under which conditions are these processes underpinned by institution building and, how do they relate to the strategic choices of and the interplay among the institutional actors involved in European policy-making?

To address these questions the article is structured as follows. The next sections specify our analytical framework by defining four ideal categories of governance modes and clarifying the interrelation between modes of governance and the institutional structure of the EU. The subsequent sections highlight how and why different modes of governance evolve in two policy areas of the EU, cohesion policy and monetary policy, and how and why they are combined in order to reach the desired impacts on actors and institutions involved in policy-making. The empirical analysis highlights the interplay between EU actors and institutions and the ensuing processes of institution building. Finally, we draw conclusions about the interrelationship between innovations in European governance and

[10] Benz, *supra* note 6 at 28.

[11] Armin Schäfer, *A New Form of Governance? Comparing the Open Method of Coordination to Multilateral Surveillance by the IMF and the OECD*, 13 J. OF EUR. PUB. POL'Y 70, 70-88 (2006); Kenneth Armstrong & Claire Kilpatrick, *Law, Governance, or new Governance? The Changing Open Method of Coordination*, 13 COLUM. J. EUR. L. 649, 649-77 (2007); *See* Donatella della Porte & Philippe Pochet, *The European Employment Strategy: Existing Research and Remaining Questions*, 14 J. OF EUR. SOC. POL'Y 71, 71–8 (2004).

the strategic choices of and interplay between institutional actors. In particular we conclude that, in order to compensate for the limited allocation of competences to the European level and to circumvent Member States' resistance to a more comprehensive role in steering, European institutional actors have developed a range of governance innovations and built new institutions in order to direct the behavior of actors. European governance is rarely characterized by either cooperative or coercive means of political steering, but rather by innovative combinations of both, embedded into firmly organized institutional structures.

B. Modes of Governance and their Role in the EU

The term governance has a complex meaning as it refers to both a process as well as an underlying regulatory structure.[12] Governance as a process aims at coordinating the behavior of a multitude of actors in order to provide common goods or establish and sustain public order. The governance process is exercised through a variety of governance modes that encompass a broad spectrum of hierarchical as well as non-hierarchical means of political steering. Governance as a regulatory structure[13] provides the institutional sub-stratum that regulates and stabilizes the governance process. This regulatory structure in turn refers to different categories of institutional actors, which are involved in the process.[14]

Although a multitude of actors is usually involved in governance processes, the most prominent role is played by the state and a wide spectrum of public authorities.[15] Yet increasingly, non-state, private, or civil society actors are becoming involved as well.[16] Societal actors may also exercise governance without interference of the public sphere, thus establishing order through self-regulation; in practice however, this is rarely the case.

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[12] RENATE MAYNTZ & FRITZ SCHARPF, *Steuerung und Selbstorganisation in staatsnahen Sektoren*, *in* GESELLSCHAFTLICHE SELBSTREGULIERUNG UND POLITISCHE STEUERUNG 9-38 (1995); Renate Mayntz, *Governance Theory als fortentwickelte Steuerungstheorie?*, *in* GOVERNANCE-FORSCHUNG: VERGEWISSERUNG ÜBER STAND UND ENTWICKLUNGSLINIEN 1-29 (Gunnar Schuppert ed., 2005).

[13] James Rosenau, *Governance, Order and Change in World Politics*, *in* GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS 1-29 (James Rosenau & Ernst-Otto Czempiel eds., 1992).

[14] For an overview of the various disciplinary perspectives on how Governance is used to regulate structures *see also* Kees van Kersbergen & Frans van Waarden, *"Governance" as a Bridge Between Disciplines: Cross-Disciplinary Inspiration Regarding Shifts in Governance and Problems of Governability, Accountability and Legitimacy*, 43 EUR. J. OF POL. RES. 143, 143–71 (2004).

[15] JON PIERRE & GUY PETERS, GOVERNING COMPLEX SOCIETIES: TRAJECTORIES AND SCENARIOS (2005).

[16] JAN KOOIMAN, GOVERNING AS GOVERNANCE (2003).

Modes of governance may vary depending on which actors are involved in the policy-making process The institutional setting, which structures the relationships between actors, may also widely vary, according to the level of governance (international, national or regional/local), the combination of government levels involved, and the relationships between the political, the economic as well as the societal sphere.

In order to analyze the governance approaches of the EU, we define and specify in this article four ideal type categories of modes of governance. This typology provides an analytical tool for capturing the different governance modes applied by the EU and the various combinations of their use, as well as the shifts in approaches which regularly take place. Furthermore, the typology helps to understand the interrelation between modes of governance and the institutional settings underlying them. The central criterion for the differentiation between four ideal types of governance modes is the prevailing mechanism of political steering, or the prevailing mechanism of coordinating the behavior of actors. That means, we differentiate between governance modes according to the process dimension of governance. This leads us to a distinction between hierarchy, negotiation, competition, and cooperation.[17] The first three ideal types are similarly identified by other scholars.[18] These types, in turn, largely correspond to those of another typology that differentiates, on the basis of institutional criteria, between state or hierarchy, market, and networks.[19] Thus the distinctions between three governance modes roughly correspond to the first three modes in our system; the only difference is that we distinguish a fourth mode, cooperation, which is completely based on the voluntary commitment of the actors involved. Some authors, however, provide as well for forms of voluntary cooperation by subdividing the category network into bargaining and problem-solving networks.[20]

We define our four ideal types of modes of governance as follows:

Hierarchy as a mode of governance is usually associated with the state, in particular the sovereign state, exercising power over individual citizens or society as a whole. Hierarchy in modern states is primarily exercised by legislation and rule making, accompanied by powers and actions to enforce compliance. With regard to the EU, hierarchy is primarily

[17] Ingeborg Tömmel, *Modes of Governance and the Institutional Structure of the EU*, *in* INNOVATIVE GOVERNANCE IN THE EUROPEAN UNION, *supra* note 5, at 9-23; see also INGEBORG TÖMMEL, *Governance und Policy-Making im Mehrebenensystem der EU*, *in* DIE EUROPÄISCHE UNION: GOVERNANCE UND POL'Y-MAKING 13-35 (2007).

[18] Tanja Börzel, *European Governance: Negotiation and Competition in the Shadow of Hierarchy*, 48 J. OF COMMON MARKET STUD. 191, 191-219 (2010).

[19] Andreas Wald & Dorothea Jansen, *Netzwerke*, *in* HANDBUCH GOVERNANCE: THEORETISCHE GRUNDLAGEN UND EMPIRISCHE ANWENDUNGSFELDER 93-105 (Arthur Benz *et al.* eds., 2007).

[20] Benz, *supra* note 6 at 31; See also Ole Elgström & Christer Jönsson, *Negotiation in the European Union: Bargaining or Problem-solving?*, 7 J. OF EUR. PUB. POL'Y 684, 684-704 (2000); *see also* Christer Jönsson *et al*., *Negotiations in Networks in the European Union*, 3 INT'L *NEGOTIATION* 319, 319-44 (1998).

exercised through EU legislative powers. Hierarchy is also found in authoritative decisions at the European level, i.e. those of the Commission, the Council, the European Court of Justice, or the European Central Bank.

Negotiation, by contrast, supposes the interaction between various categories of actors. These actors may range from exclusively public actors of different government levels and functional sectors to a combination of public and private or non-state actors, or to a spectrum of only private or civil society actors. Negotiation is the preferred mode of governance for accommodating highly divergent interests among the actors involved. Compliance with the outcomes of negotiations may either be enforced or voluntary, according to the (binding or non-binding) nature of the concluded contracts or agreements. Negotiation as a mode of governance plays a prominent role in the EU, since the latter is characterized by conflicting interests between the European and the national level and also among the member states. Hence, the Union is in need of building consensus among its constituents.

Whereas both hierarchy and negotiation refer to processes of decision-making, competition as a mode of governance refers to a mechanism that affects the decisions of individual actors and thus coordinates their behavior. However, competition does not emerge by itself but has to be established and sustained by defining the rules of the game and guaranteeing their validity and effectiveness. Thus, competition is for the most part dependent on government or public authority that creates and maintains the regulatory framework, although often behind the scenes. At the same time, competition relies on individual actors accepting the rules and complying with the ensuing mechanisms. Compliance, in contrast to hierarchy, is not enforced but triggered by strong incentives and disincentives. Competition as a mode of governance plays a major role in the European Union since the core project of European integration, the creation of the single market, focuses on establishing competitive relationships between economic actors and Member States. However, competition is not restricted to the realm of the single market. It also plays a major role in other policy domains, by establishing a system of either real or 'simulated' competitive mechanisms.

Cooperation encompasses a plurality of actors and a wide variety of measures aimed at directing their behavior. As a mode of governance it does not at all rely on coercion, but is based on voluntary participation of different actors in more or less organized processes that enable or stimulate collaboration. Cooperation implies that compliance with jointly defined objectives or common agreements is also voluntary. Compliance therefore is not guaranteed; a larger degree of non-compliance may occur. However, some scholars expect compliance to be even higher, since actors have voluntarily agreed upon common objectives or measures to be taken. Given their commitment, they would be more inclined to implement these measures. Cooperation, therefore, is a mode of governance with highly contingent outcomes; its effectiveness may vary depending on the actors involved, their commitment, external circumstances and specific conditions. Since cooperation is based on voluntarism, it is increasingly being fostered in all cases where formal competences are not at hand. It allows for taking joint action and thus for circumventing the reluctance of Member States to transfer powers to the EU. Moreover, since actors are more or less free within a framework of cooperation in making their policy choices, this mode of governance is suited to accommodate divergent policy objectives and strategies of national governments and other actors involved.

These four ideal type categories of modes of governance in practice are often combined with each other or used in hybrid forms. However, the extent and the combinations of their usage have not been stable over time. Thus, most scholars of governance assume that in recent years a major shift has taken place away from hierarchy, as the most widely used mode of governance, towards new soft modes of governance.[21] We question whether such a shift has occurred in the framework of European policy-making. Instead, we assume that soft modes of governance were already in use in the early years of integration, although perhaps in a less visible and less institutionalized form. Furthermore, we assume that European modes of governance do not simply represent a replica of those used at the national level. Instead, major innovations in European governance have taken place affecting all four modes of governance, although to a different extent, and resulting in new combinations of governance modes. Such innovations are triggered by the need to increasingly solve policy problems at the European level, while competences are not transferred accordingly or member states try to evade European interference into their domestic policies. Thus, innovative governance follows from the actor constellation in European policy-making, the strategic choices of individual actors and institutions, and the interplay between them. These constellations facilitate the emergence and evolution of certain governance modes and combinations between them, while others are exposed to major obstacles. We discuss these issues in more detail in the next section.

C. Governance in the Context of the EU's Institutional Structure

In applying the governance approach to the EU, we have to question whether and how modes of governance interrelate with the institutional configuration of the European polity and the interplay between the individual institutions and actors. We assume that within the EU, the same ideal type categories of modes of governance are in use as at the national level. However, there could be major differences, first, in the extent to which these modes are used and, second, in the combinations in which they evolve. Further differences may relate to the institutional setting and actor constellations underlying European governance.

[21] *See* COMMON GOODS: REINVENTING EUROPEAN AND INTERNATIONAL GOVERNANCE (Adrienne Héritier ed., 2002); Burkard Eberlein & Dieter Kerwer, *New Governance in the European Union: A Theoretical Perspective*, 42 J. OF COMMON MARKET STUD. 121, 121-42 (2004); For a critique *see* Börzel, *supra* note 18.

Therefore we need to examine, first, the role that the EU institutional structure plays in shaping modes of governance and, second, how institutions and actor constellations are reshuffled in the process of governance and adjusted according to demands for policy effectiveness. Whereas the first issue is a conceptual one, which will be dealt with here, the second refers to empirical questions that will be touched upon in our two case studies.

In looking at the EU institutional structure, we see a highly fragmented political system as compared to that of nation states. The Union is characterized by a horizontal fragmentation of powers at the European level as well as a vertical fragmentation of powers between the European and the national level. At the European level (horizontal dimension), two institutions are dominant: first, the Commission, representing the 'general interest' of the Union, and, second, the Council, representing primarily the particular interests of the Member States. Both institutions are seconded by an extensive support structure. The Commission's support structure consists of other supranational institutions, i.e. the European Court of Justice (ECJ) and, to a certain extent, the European Parliament.[22] The Council's support structure is more differentiated than that of the Commission. It constitutes a substructure encompassing COREPER, the Committee of Permanent Representatives, a number of specialized committees, as well as working groups. Through these bodies, national officials, provide support by preparing Council decisions. If we look at the vertical dimension, the Commission primarily represents the European level vis-à-vis individual Member States, even though the Council sometimes takes on this role as well. The national level is primarily represented by the central governments of the Member States.

The relationships between the fragmented, yet interdependent institutions in the horizontal and vertical dimensions are characterized by continuous struggles for power and dominance and, at the same time, attempts at mediation. Although the position of institutional actors is defined in basic terms in the Treaties, their actual position in the policy process may vary according to their capacities to take a leading role or to act as policy entrepreneurs. At the European level, Member States, when acting jointly in the Council, have difficulties taking the lead because of highly diverging interests among themselves. The Commission can exploit such a situation insofar that it is itself able to act as a policy entrepreneur and to mobilize other institutions and actors to obtain their support.

In the vertical dimension, the interaction is complicated by the fact that the upper level, the Union, is not formally superimposed onto the Member States and the latter are sovereign. The EU has only in a few policy areas exclusive competences and clear

[22] As the European Parliament (EP) gains influence in the legislative process, the EP can be seen in some cases as on par with the Council. For the sake of argument we can simplify and consider the Council only, even if obviously it is often with co-decision of the EP that legislative acts are passed.

mechanisms for enforcing compliance. In most other areas, competences are, at best, shared with the Member States. This constrains the Commission in taking the lead in the process of policy implementation vis-à-vis national governments. However, within the multilevel system of the EU, the actors of the lower level, in particular national governments, are not in an uncontested position. Although they are formally sovereign, their sovereignty is constrained by European laws and regulations. Yet they often attempt to offset these constraints by simply evading, circumventing or ignoring rules set at the European level.

In sum, the distribution of powers among institutional actors of the EU is continuously being contested and restructured through on-going processes of decision-making, consensus building, conflict and cooperation. The central institutional actors, in particular the Commission and the Council, but also other institutions not described here, are continuously involved in power struggles and negotiations determining their respective role and influence in every policy area.

The institutional configuration of the EU and the ensuing interplay between institutions and actors clearly shapes European governance. Although the four ideal types of governance modes all play a role in European policy-making, the extent and form of their use may be favored or constrained by the EU's institutional setting. Thus, in the case of hierarchy as a mode of governance, the EU is constrained in its use because it is not sovereign. Hierarchy can only be exercised in those cases in which Member States have explicitly transferred powers to the European level. Yet even where legislative powers are transferred, the use of these powers, again, depends on the Council, who is the ultimate decision-maker in European legislation. It is true the Parliament, in particular since the Lisbon Treaty came into force, is a co-legislator along with the Council. But in general, Parliament's legislative decisions are not induced by concerns about transfers of competences to the European level. By contrast, legislative decisions by the Council may fail to be adopted if only a small group of Member States is concerned about too far-reaching competences of the European level; in such a case, these Member States will make use of their veto power. In addition, the EU is severely constrained in enforcing compliance with its rules. Competences in rule-enforcement are limited to defined cases and procedures, whereas general powers of command and control vis-à-vis the Member States do not exist. Since the Member States are formally sovereign, they have means and ways at their disposal to resist or delay implementation even in those cases where coercive powers are granted to and exercised by the European level. In sum, hierarchy, if used in the European context, may be less hierarchical in its impact as compared to national jurisdictions.

Conversely, the Union's institutional setting and the interplay between the institutions and actors involved in policy-making offer opportunities and incentives for making use of non-hierarchical modes of governance.[23] Thus, the lack of powers at the European level and the fragmentation of powers among institutional actors with highly diverging interests stimulate interactions aimed at both aggregating and transforming diverging interests and preferences in order to achieve common objectives. This in turn fosters the use of negotiation and cooperation as modes of governance. Furthermore, any significant powers transferred to the European level largely refer to the building and maintenance of market mechanisms in order to boost competition. Therefore, the EU provides ample scope for using market mechanisms, or competition, as a mode of governance.

The above discussion of opportunities and constraints for the emergence of certain modes of governance in the EU does not necessarily imply that their use varies in quantitative terms as compared to the national level. Rather, it indicates that additional means, instruments or procedures might be needed in order to make European governance effective. Furthermore, it shows that additional institutional arrangements might be required in order to cope successfully with certain constraints that the institutional structure of the EU sets to policy-making. In sum, we assume that, with its distinct institutional structure and complex actor constellation, the EU constitutes a particular feeding ground for innovations in the ways that governance modes are applied.

D. Governance in Selected Policy Areas

In turning to our case studies in two selected policy areas, our aim here is to elaborate on when and why certain modes of governance emerged and in which form and combination they are applied. In particular, we question how European institutions and actors reacted to the opportunities and constraints inherent to the institutional structure of the EU. Furthermore, we look at the strategic choices of these actors in order to make European policies more effective or to preserve national autonomy. In sum, we analyze the interplay between these actors and institutions that shapes European governance and results in institution building. Our overall aim is to draw conclusions about the characteristics of European governance and how it relates to both the institutional structure of the EU and the complex interplay between its actors.

[23] Benz, *supra* note 6.

I. Cohesion Policy[24]

Cohesion policy of the EU (also labeled regional or structural policy) was initiated in 1975, when a fund was established that provided subsidies for fostering economic growth and development in less favored regions.[25] The main objectives of this policy and the procedures of its implementation were laid down in a Council regulation that established a certain degree of hierarchy at the European level. Yet this form of hierarchy was partly offset by the substance of the regulation. The policy was mainly based on the provision of financial incentives in order to stimulate Member States to tackle economic disparities within their territories. However, the Council succeeded in overriding the impact of these incentives by allocating *a priori* the financial means of the fund. It set fixed quotas for every Member State according to defined criteria, such as Gross Domestic Product (GDP) and unemployment rates. The implicit competitive arrangement linked to the financial incentives was thus undermined. EU cohesion policy was reduced to financial transfers between Member States via a centralized pool at the European level.

Yet, from the outset, the Commission aimed at implementing a genuinely European policy.[26] In contrast to traditional regional policy practiced at the national level, the Commission attempted to direct Member States towards new policy objectives and governance approaches.[27] The Council fiercely rejected these attempts. Yet, in the longer run, it had to give in; the net payers[28] in the EU had a clear interest in an effective policy, whereas the net recipients were more concerned about the involvement of the Union in their domestic affairs. The final result of the interplay between the forward pushing Commission and the reluctant Council was a step-by-step process of reform, enacted through Council regulations in 1979, 1985 and 1989 respectively.[29]

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[24] This section draws on the authors' wider research on cohesion policy development in the EU. For lengthier accounts *see* in particular INGEBORG TÖMMEL, STAATLICHE REGULIERUNG UND EUROPÄISCHE INTEGRATION: DIE REGIONALPOLITIK DER EU UND IHRE IMPLEMENTATION IN ITALIEN (1994); Ingeborg Tömmel, *Transformation of Governance: The European Commission's Strategy for Creating a "Europe of the Regions"*, 8 REGIONAL AND FED. STUD. 52, 52-80 (1998); Ingeborg Tömmel, *Die Reform der Strukturpolitik der EU: eine Reform europäischer Governance?*, *in* Band 2 REGIONAL GOVERNANCE 181-200 (Ralf Kleinfeld *et al.* eds., 2006).

[25] IAN BACHE, THE POLITICS OF EUROPEAN UNION REGIONAL POLICY (1998).

[26] JENNIFER WOZNIAK BOYLE, CONDITIONAL LEADERSHIP: THE EUROPEAN COMMISSION AND EUROPEAN REGIONAL POLICY (2006).

[27] The Commission's concept focused on improving the endogenous potential of less developed or restructuring regions. In addition, it provided incentives for public actors to initiate policies that would improve the competitiveness of their regions as a whole.

[28] Net-payers or net-contributors are those member states that on aggregate receive less money from the EU than they contribute to it; conversely, net-recipients receive more than they contribute.

[29] Iain Begg, *Cohesion or Confusion: A Policy Searching for Objectives*, 32 EUR. INTEGRATION 77, 77-96 (2010).

The Commission's policy concept also implied that it had to mobilize new actors. In particular regional authorities as well as non-state actors were mobilized for implementing the ambitious policy goals. Therefore, the Commission attempted to redirect financial incentives to these decentralized actors. National governments, however, used all available means to obstruct the Commission's efforts. Yet in the end, sub-central actors responded to the Commission's incentives by increasingly taking on a role in the implementation of the European policy.

Together with the substantive concept of cohesion policy, the procedures of policy formulation and implementation had to be altered as well. In the horizontal dimension at the European level, the Commission put pressure on the Council to formally regulate the main policy objectives and concepts for implementation.[30] In the vertical dimension, the Commission was restricted in its activism as it lacks the powers to exercise hierarchy vis-à-vis the individual Member States. It therefore relied, from the outset, on negotiations with each national government on the terms and modes of policy implementation as well as on the funding of, first, single projects, later programs, and finally overall national plans. With the growing importance of the whole policy area from the end of the 1980s, that is, after Southern enlargement and the implementation of the single market project, these negotiations were embedded into a formalized institutional framework. Furthermore, they were officially extended to the regional government level, thus acknowledging it as an important player in policy-making. Accordingly, the reform of 1989 introduced the so-called principle of partnership. Partnership in this context was defined as a cooperative relationship between the European, the national, and the regional government levels, in order to achieve common goals in policy-making.[31] A sequence of negotiation steps for designing and adopting policy programs was established and laid down in Council regulations, involving all three government levels. This institutional arrangement regularized negotiations and compensated for the lack of hierarchical relationships between the Union and the individual Member States.

The institutionalization of multilevel negotiations paved the way for including not only regional authorities, but also non-governmental actors into decision-making and policy implementation. Accordingly, the reform of 1994 extended the system of partnership to economic and social partners. In 2000, a further reform included selected representatives of civil society, and the most recent reform of 2007 admitted civil society in general to the system of partnership. Although governments of the Member States, with every reform, opposed the extension of partnership to non-state actors, they finally gave their consent in favor of a more effective policy.

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[30] GARY MARKS & LIESBET HOOGHE, MULTI-LEVEL GOVERNANCE AND EUROPEAN INTEGRATION (2001).

[31] Council Regulation (EC) No. 2052/88 of 24 June 1988, art. 4(1), 1988 O.J. (L 185/9).

Negotiation was not the only mode of governance used to direct the performance of Member States in cohesion policy. Since the Member States often contested Commission proposals in such negotiations, the Commission attempted to establish competitive mechanisms in order to raise policy effectiveness. Thus, the Commission aimed to allocate at least part of its funds according to criteria set at the European level. In these cases, Member States had to compete for subsidies by submitting innovative policy proposals that matched the criteria and conditions of the EU. Yet the Council restricted such a strategy by keeping the share of the funds for non-quota distribution to a minimum. This implied that mainly small-scale experiments were implemented under competitive mechanisms. As a consequence, competition appealed primarily to regions and non-state actors for whom small-scale subsidies formed a sufficient incentive to submit policy proposals to the EU. Yet, such programs, implemented from the mid-1980s onwards in the framework of Community initiatives and pilot actions, served later often as best practice examples to mainstream cohesion policy. Finally, competitive mechanisms were also established by assessing Member States' performance in cohesion policy through external evaluations and, most recently, performance audits.[32] However, competition as a mode of governance could never become dominant in cohesion policy, due to the strong resistance of the Member States.

Instead, procedures for fostering cooperative behavior and action of decentralized actors increasingly played a role in cohesion policy.[33] In some cases, transnational cooperation was triggered by setting it as an eligibility criterion for the funding of programs (e.g. the INTERREG cross border programs). Such rules, first established with the reform of 1989, tended to stimulate both transnational cooperation among regions and intraregional cooperation between public and private or civil society actors. The rationale underlying these conditions was to foster further institution building in the horizontal direction. This in turn would trigger policy transfer through the exchange of experiences and best practice examples among the actors involved and thus compensate for the lack of policy direction from the European level. For the same reason, the Commission also supported the creation of transnational interest associations, which allowed for network building among regions facing similar structural problems, or among non-state actors and agencies (e.g. Chambers of Commerce). Finally, communication among all actors involved is continuously being improved and intensified, for example by organizing large conferences for exchanging ideas, policy concepts and implementation experiences.[34] All these activities are aimed at fostering, through mere discourse, common perceptions of policy problems and possible solutions. In fact, they provide for a horizontal policy transfer, which compensates for the lack of binding policy directions from the European level.

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[32] Carlos Mendez & John Bachtler, *Administrative Reform and Unintended Consequences: An Assessment of the EU Cohesion Policy Audit Explosion*, 18 J. OF EUR. PUB. POL'Y 746, 746-65 (2011).

[33] Tömmel, *supra* note 24.

[34] Interview with Commission Official (Feb. 2007).

In past years, we have witnessed a further push towards cooperation as a mode of governance in EU cohesion policy. The most recent reform of the structural funds, enacted in 2007, introduced a series of new procedures, clearly derived from the OMC model.[35] In particular, the reform entitles the Council to decide on common policy objectives. In addition, Member States have to report regularly on their progress made in matching these objectives. The Commission then elaborates, on the basis of the Member States' reports, a synthesis report, which is adopted by the Council and, where necessary, accompanied by recommendations to the individual states.

It may seem striking that OMC-like procedures are introduced into a long established and well functioning policy area, thus apparently softening up its governance modes. However, the impact of these procedures has to be assessed within the context of the institutional structure of the EU and the actor configuration connected to it. The Commission, when negotiating with every single Member State on its programs for implementing cohesion policy, is in a comparatively weak position. Often it has to give in to national preferences and priorities, since on its own it does not have sufficient authority to force Member States to comply with European objectives. However, if the Council makes decisions on common objectives, and if Member States have to report on their performance in pursuing these objectives, and if other European actors (e.g. the European Parliament) or national, regional, and public actors as well as non-state actors, are drawn into the evaluation of this performance, Member States are increasingly put under pressure to adhere to the objectives agreed upon. Since Council decisions on common objectives or guidelines, although not formally binding for national governments, represent the aggregated will of the Member States, it becomes more difficult to escape compliance. Thus with introducing the OMC procedure into cohesion policy, the authority of the European level vis-à-vis the Member States is improved, without resorting to hierarchy as a mode of governance.

Most recently, the Commission has put forward its proposals for the pending reform of cohesion policy in 2014. These proposals imply another step towards improving the implementation of cohesion policy, without however resorting to hierarchical means of political steering. Thus the Commission proposes to conclude partnership contracts with every Member State: 'The Partnership Contract will constitute a firm agreement between the Commission and the Member States regarding the use of funds and performance. Failure to achieve progress may lead to suspension or cancellation of funding.'[36] Although these proposals are not yet adopted by the Council and the EP, they clearly indicate a movement towards the improvement of the system of partnership through

[35] John Bachtler & Carlos Mendez, *Who Governs EU Cohesion Policy? Deconstructing the Reforms of the Structural Funds*, 45 J. OF COMMON MARKET STUD. 535, 535-64 (2007).

[36] EUROPEAN COMMISSION: Q&A ON THE LEGISLATIVE PACKAGE OF EU REGIONAL, EMPLOYMENT AND SOCIAL POLICY FOR 2014-2020 (MEMO 11/663) 3.

complementing inter-institutional negotiations with final contracts. In addition, the proposals hint at a shadow of hierarchy through announcing suspension or cancellation of funding if progress is not achieved. This shadow of hierarchy is slight, however, because such a measure only 'may' occur, and 'failure to achieve progress' is hard to evaluate. Furthermore, as prior experiences have shown, the Commission will suspend or cancel funding only after extensive negotiations with the Member State concerned.[37] In sum, the next reform of cohesion policy will most probably result in further institution building in order to strengthen the authority of the Commission, yet without introducing clear hierarchical rules.

In drawing conclusions on governance in European cohesion policy, we can first state that all four ideal type modes of governance play a role. Their use has slowly evolved over time, driven by the efforts to make the policy more effective. In this evolutionary process, we see a sequence in the use of modes of governance. However, this sequence does not move from hierarchical to non-hierarchical modes of governance, or vice versa. On the contrary, all modes played a role from the inception of cohesion policy, although to a different extent. Rather, the sequence proceeds from simple to more complex governance modes and complex combinations among them. At present, negotiation is still dominant and cooperation increasingly complements it, while hierarchy and competition continuously play a role in the background. Furthermore, the modes of governance applied in EU cohesion policy do not simply correspond to the notions of hierarchy resulting in hard and cooperation in soft impacts, while negotiation and competition are somewhere located in between. On the contrary, in this case study, hierarchy turned out to be difficult to rely on and, as far as it was established, resulted in rather weak impacts. It was only by successively combining mostly soft modes of governance in innovative ways that harder impacts on the behavior of Member States and other actors involved in policy-making could be achieved. However, these harder impacts are only achieved because of their underpinning with strong institutions that create the framework for vertical negotiations across government levels and horizontal cooperation across Member States.

The sequence in the use of modes of governance and combinations of them is not determined by an inherent logic nor does it follow a deliberate design. Rather, it reflects the interplay between the Commission and the Council as well as between the European national, and increasingly the regional, government levels as well as other actors and institutions involved in policy-making. It is triggered and shaped, on the one hand, by the Commission, which pushes as far as possible for a common, effective policy. On the other hand, the restrictive behavior of the Member States, both individually and through the Council, counteracts this push and thus causes a sequence of changes in the Commission's strategic choices. The Commission is driven to 'invent' new procedures and mechanisms, which cushion or circumvent the resistance of the Member States. The Council however, in

[37] *See* COM (2012) 496 final.

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spite of its concern for national autonomy, is also interested in developing an effective policy. Therefore, it occasionally agrees to build further institutions that improve the effectiveness of cohesion policy. The system of partnership, providing an institutional framework for negotiations in the vertical direction, as well as transnational cooperation, providing for a horizontal policy transfer, are examples in case.

II. Economic and monetary policy[38]

In the European Economic Community (EEC), economic and monetary policy-making historically was based on non-hierarchical modes of governance, in particular on cooperation. The Treaty of Rome laid down some basic principles of economic and monetary policy coordination (EEC Treaty, 1957, Articles 103-109), and considered these policies as a matter of common concern. Articles 103-109 on economic policy referred broadly to budgetary and fiscal policies, whereas on monetary policy they referred to exchange rate policies. In these early years economic and monetary coordination took place in a number of committees. The EEC Treaty called for a Monetary Committee as an advisory organ. In the early 1960s, based on Commission proposals, numerous other committees were created to assist with coordination. After initial hesitation of the Council, the following committees were created in 1964: a Committee of Central Bank Governors, a Budgetary Policy Committee, and a Medium-Term Policy Committee. Together with the Short-Term Policy Committee that already existed as well, the Community now had four coordinating committees.[39] The work that was done in the 1960s took place in these committees; they had a hybrid form. The committee members represented the Member States but worked together towards cooperation as a semi-Community oriented institution. The mechanism of cooperation in these committees was that of discussing policy objectives and exchanging views. The dominant mode of governance at this stage therefore was 'cooperation', exercised in a voluntary form.

By the late 1960s EC leaders agreed that it was necessary to move on towards further economic and monetary unification. By this time the Customs Union had been completed, and other areas of policy-making (agriculture) would benefit from having stability in exchange rates. At the Summit in The Hague, in December 1969, the goal to create an Economic and Monetary Union (EMU) was given approval, and a plan would lay out the steps towards that goal. The Werner Committee was mandated to draw up a report. Its

[38] This section draws on the authors' wider research on economic and monetary policy development in the EU. For lengthier accounts *see generally* AMY VERDUN, EUROPEAN RESPONSES TO GLOBALIZATION AND FINANCIAL MARKET INTEGRATION: PERCEPTIONS OF ECONOMIC AND MONETARY UNION IN BRITAIN, FRANCE AND GERMANY (2000); MARTIN HEIPERTZ & AMY VERDUN, RULING EUROPE: THE POLITICS OF THE STABILITY AND GROWTH PACT (2010). *See also* Amy Verdun, *Regulation and Cooperation in Economic and Monetary Policy*, *in* INNOVATIVE GOVERNANCE IN THE EUROPEAN UNION, *supra* note 5, at 75-86.

[39] LOUKAS TSOUKALIS, THE POLITICS AND ECONOMICS OF EUROPEAN MONETARY INTEGRATION (1977).

members represented the Chairs of the various economic and monetary committees mentioned above. These high-ranking experts in economic and monetary affairs had a vast experience from their deliberations in the prior years, on which they drew when drafting a proposal for EMU. The 1970 Werner Report set out a proposal in stages to create EMU.[40] Although it was adopted in 1971 it, eventually, was not implemented due to changing international circumstances and varying national policy responses to these changes.

In the 1970s progress in the area of economic and monetary integration mainly occurred through cooperation in the field of monetary policy (exchange rate policy), first through the so-called 'snake' (exchange rate arrangement) and, as of 1979, the so-called European Monetary System (EMS). The snake mechanism broke down because of its voluntary character. Any Member State that did not manage to keep its currency within the agreed parity just dropped out of the system, leaving the snake participants as a group of countries, some of which were EEC Member States and others were not. Some larger Member States were outside of the system. The cooperation in the EMS stemmed from common exchange rate objectives of the Member States. Most Member States agreed to keep their currencies within +2.25% of an agreed parity. Any rearrangements of the agreed exchange rate parities were discussed and decided on in the monetary committee. Governance in the EMS changed from the prior cooperation mode to an increased use of negotiation; the monetary committee determined, through a highly politicized and closely watched process of negotiation, whether or not to change the agreed parities between currencies. During the 1980s Member States' policies were reflected on and were reviewed in committees. They discussed 'best practices' well before those words were used to describe the process. In the case of monetary policy cooperation, national policy-makers (central bankers) used to look to the best performing country/countries and seek to follow the policies of the best performers. In this period, the best performer was often seen to be the Federal Republic of Germany, due to its success in keeping inflation low and not having to devalue the German mark when other currencies had to.

A certain degree of competition played a role in the history of macroeconomic cooperation in Europe. In the 1970s and early 1980s there was little success in formal community policy development. Yet, the modes of governance of cooperation and negotiation were used to advance the development of European policies in this area. This increased the awareness that budgetary and fiscal policies had an important effect on monetary policies (exchange rates) and therefore benefited from successful cooperation.

By the late 1980s, the EMS turned out to be more successful than in its early years. Many participating Member States had become committed to keeping the exchange rates of their national currencies within the agreed parities. It was a political decision to put much

[40] PIERRE WERNER, REPORT TO THE COUNCIL AND THE COMMISSION ON THE REALISATION BY STAGES OF ECONOMIC AND MONETARY UNION IN THE COMMUNITY (WERNER REPORT) (1970).

weight on that arrangement. National monetary authorities set their national policies after considering best practices, but also based on policy learning, informal coordination, as well as discussions. Exchange rates were the result of intensive negotiations.

The wording in the 1986 Single European Act and the aim to 'complete the internal market by 1992' triggered the resurgence of the plan to create EMU, now also building on the record of success in keeping exchange rates stable. The 1992 Treaty on European Union incorporated a model of EMU in which monetary policy was transferred to a new supranational central bank, whereas budgetary and fiscal policies remained at the level of Member States with cooperation envisaged by setting targets. Furthermore, criteria would have to be met to join the final stage of EMU. Monetary policy was to be transferred to a supranational body that would rank above the national central banks (an example of the hierarchy mode). These arrangements were mainly the result of a coalition between the Commission and national experts, in particular central bank governors, who deliberated in the so-called Delors Committee.[41] However, because of strong resistance by the Member States, budgetary and fiscal policies were to stay with national authorities, even though subject to rules on excessive deficits. The process of ensuring low deficits would include a soft part (benchmarking, assessing best practices, peer pressure) as well as a hard part (sanctions).

In the 2000s, the Commission played an important role in facilitating cooperation. As part of this aim, so-called 'Broad Economic Policy Guidelines' were set up, in which the Commission had the task to alert Member States when their policies or macroeconomic performance were deviating from the standard, and if need be to give an 'early warning'.[42] Furthermore, the so-called Stability and Growth Pact set out the details of collaboration enforcement attempts in the area of budgetary deficits and public debt. Here too, the Commission plays an important role in indicating whether Member States are performing at or below expectation. The Commission analyses the financial and budgetary situation of each of the Member States and provides its assessment of how the Member State is doing. If a Member State has an excessive deficit it offers recommendations that focus on expenditure reduction or on increasing government revenue. These arrangements have both a soft and a hard part, or in EU terminology, a dissuasive and a corrective arm. The soft part consists of exchanging best practice-experiences, informal collaboration, and non-hierarchical sets of relationships in seeking to meet the end objectives. The actors involved in policy coordination in the area of budgetary and fiscal policies are Member States, the Commission, and the Council including advisory committees. The policy community also plays an important role by providing input into the types of policies and EU arrangements

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[41] COMMITTEE FOR THE STUDY OF ECONOMIC AND MONETARY UNION, REPORT ON ECONOMIC AND MONETARY UNION IN THE EUROPEAN COMMUNITY (1989).

[42] Servaas Deroose *et al.*, *The Broad Economic Policy Guidelines: Before and After the Re-launch of the Lisbon Strategy*, 46 J. OF COMMON MARKET STUD. 827, 827–48 (2008).

that are being considered. The period between the 1990s and the start of the 2000s were characterized in this policy area by many interactions between the Commission and the Member States regarding the performance of the Member States on economic performance indicators and targets of budgetary deficits and public debt. It should be clear that these soft modes of governance can also have potentially a 'hard' effect.

Modes of governance in the area of budgetary policy also have hard components, laid down in the Treaty on European Union, further elaborated on in the corrective arm of the Stability and Growth Pact. In recent years, following the sovereign debt crisis, a further hardening of modes has taken place. The original Stability and Growth Pact already contained provisions that stipulated that a Member State repeatedly violating the three per cent annual budgetary deficit ceiling as a percentage of GDP may face sanctions. These pecuniary sanctions would first take the shape of a loan, and later a penalty. The process could give rise to a Member State being confronted with the next step of sanctions in the Excessive Deficit Procedure. However, when the Member States of France and Germany were confronted with the next steps in the procedures in November 2003, they persuaded enough Member States to refrain from applying the rules against them. As a result, what was designed to be a hierarchical mode of governance with 'hard' rules turned out, under the influence of two large Member States and then the Council as a whole, to have, if at all, a much softer impact than what one would have expected based on a review of the formal rules. However, the revisions of the Stability and Growth Pact of 2005 seem to provide a more balanced framework whereby the difference between large and small Member States no longer seems to be so salient.

In the spring of 2010 the sovereign debt crisis led to a discussion of how to harden the rules. Later, by the fall, proposals using EU secondary law were put forward that aimed at embedding firmer rules, based on hierarchy as a mode of governance, to be incorporated into the SGP. Five regulations and a directive, more commonly referred to as the 'Six Pack', were adopted and entered into force on 31 December 2011.[43] This is a clear example of a move from softer modes of governance towards harder modes and a further introduction of hierarchy in this policy area. However, at the time of writing it is unclear as to whether a hierarchical mode of governance in this domain will eventually become firmly embedded into the EU Treaties because Treaty revision is notoriously difficult to obtain. Indeed, the so-called 'Fiscal Compact' was signed without all Member States' approval.[44] But even

[43] Details of the 'Six Pack' can be found here: http://ec.europa.eu/economy_finance/articles/governance/2012-03-14_six_pack_en.htm (last accessed: 1 February 2013). For a discussion *see* Amy Verdun, *The Stability Pact: an eternal promise*, *in* THE NETHERLANDS AS AN EU MEMBER STATE: A NORMAL PARTNER AT LAST? (Adriaan Schout & Jan Rood eds., forthcoming).

[44] Most Member States of the EU wanted to amend the EU Treaties so as to amend economic and monetary governance of the EU. Not all Member States agreed to this change. Thus instead, following earlier practice (for example Schengen), a new Treaty was created for this purpose that was signed by 25 of 27 Member States. The 'Fiscal Compact' is a shorter, more popular name for this Treaty formally known as the 'Treaty on Stability, Coordination and Governance in the Economic and Monetary Union between…[formal names of the 25

without the Fiscal Compact being ratified, amendments to the SGP through the Six Pack have already strengthened the SGP and provided the Commission with a stronger hierarchical role.[45] Further initiatives towards deeper financial and fiscal cooperation are underway.[46]

Going over the historical development in this area of policy-making it should be clear that the modes of governance have from the outset included facets of innovative governance. These innovations include for example: informal exchanges of ideas, development in areas of policy-making where the mandate in the Treaty was not clear, creation of informal advisory bodies to facilitate coordination, and bodies that have a hybrid function (representing Member States, yet seeking to aim at Community coordination). We have also seen the use of benchmarking and comparing best practices as part of the policy process over the past decades. 'Soft cooperation'– through committees, informal targets and often through self-discipline – has been quite successful in creating real convergence in policies, which in turn provided a solid basis for making the next step in institutional change (take the example of the success of the EMS contributing to the desire to create EMU, and EMU in turn being put firmly in the Treaty). In recent years, these modes of governance have been formalized and put in the language of the Treaty, even in the Lisbon Treaty. But in fact, as so often in European integration, the procedures and practices preceded their formalization. Member States wanted a common monetary policy but at the same time they wanted to maintain national control over budgetary and fiscal policies. Thus, coordination of budgetary and fiscal policies was arranged via rules rather than by transferring sovereignty to a central authority (as was the case for monetary policy).[47] National governments were to meet targets. The details of how to implement such a policy-making procedure has been at the heart of the development of the Broad Economic Policy Guidelines and the SGP.

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signatories of the treaty – all 27 Member States except for the Czech Republic and the United Kingdom]. This treaty will enter into force for all Member States who have ratified it on 1 January 2013 provided a minimum of twelve euro area Member State have ratified it. If the 12th Member State ratifies after 1 January 2013 it will retroactively enter into force. Between May and September 2012 eight euro area Member States ratified this treaty. The full text of this treaty is available at: http://european-council.europa.eu/media/639235/st00tscg26_en12.pdf (last accessed: 1 February 2013). One of the notable features of the Fiscal Compact is that signatories agree to balanced budgets (defined as 3% budgetary deficit and no more than 0.5 or 1.0 structural addition to the public debt to GDP ratio, depending on the actual size of the existing public debt).

[45] European Commission, *A Roadmap to Stability and Growth*, COM (2011) 669 (Dec. 10, 2011).

[46] For useful discussions of recent governance developments in EU economic and monetary policy-making *see inter alia* DERMOT HODSON, GOVERNING THE EURO AREA IN GOOD TIMES AND BAD (2011); Mark Hallerberg *et al*., *How Effective and Legitimate is the European Semester? Increasing the Role of the European Parliament*, European Parliament Briefing Paper, IP/A/ECON/NT/2010-24. (Aug. 2011).

[47] Heipertz and Verdun, *supra* note 38.

Different modes of governance have different impacts in producing effective policy outcomes. At some times the softer modes of governance (cooperation) have been quite successful (1960s), whereas in times of economic crisis (1970s), cooperation did not produce the desired result. In the 1970s cooperation was extended to become slightly 'harder' with negotiation playing a more prominent role. By the late 1980s and early 1990s after a period of negotiation, some parts of the areas of policy-making were transferred to supranational bodies or put in the context of hard rules. National technocrats and Commission officials. played a role in the changes during these periods. Over time a larger role has been played by the Commission, and through a process of learning, national bureaucrats have picked up on how cooperation and competition can be successful. In 2010-2012 attempts were made to adopt hard rules and firmly embed them in a treaty. The actors moving this change in modes of governance are Member States governments, in particular the French and German governments. Modes of governance in this policy area, however, have become increasingly complex. Rather than seeing a clear move from the national to the EU level we see a combination of modes of governance at play, continuing to include both the national and the European level. Overall, we have seen varying degrees of success of both hierarchical and non-hierarchical modes of governance.

Reluctance to transfer powers over budgetary and fiscal policies to a supranational EU institution stems from a fundamental distrust in what an EU supranational budgetary and fiscal policy would imply for individual Members States. Therefore, Member States want to keep a high degree of control over this area of policy making. Thus, the collaboration continues to represent a mix of various actors: the Commission, the Member States, and the Council. Increasingly, these matters are also dealt with by the European Council.

Over the years, critics of EMU have argued that, without firm authority or firm rules, EMU would not be able to survive if it deviates from economic and political fundamentals.[48] The financial crisis has given further ammunition to this view. Yet, the extent to which hard rules and hierarchy are required in governance of this policy area is not yet clear. To date it appears that the adoption of a complex and innovative mix of hierarchical and various non-hierarchical modes of governance might be successful.

E. Conclusion

In this article, we set out to present our understanding of the concept of governance, as well as to develop and assess four ideal type categories of modes of governance in relation to the institutional structure of the EU. In two case studies, we analyzed how modes of

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[48] Tal Sadeh & Amy Verdun, *Explaining Europe's Monetary Union: A Survey of the Literature*, 11 INT'L. STUD. REV. 277, 277-301 (2009); Barry Eichengreen, *European Monetary Integration with Benefit of Hindsight*, 50 J. OF COMMON MARKET STUD. 123, 123-36 (2012).

governance emerge in the policy-making process. In particular the interplay between two categories of actors, the Commission, and the Council or Member States, gives rise to the emergence of innovations in the use of modes of governance and their combinations. The Commission tends to push for more competences at the European level and for effective policy-making, whereas the Member States are often reluctant to transfer such competences, even though they are also concerned about the effectiveness of European policy. The case studies of two policy areas, cohesion policy and economic and monetary policy, suggest that non-hierarchical modes of governance, alongside with hierarchy, are at the heart of the evolution of EU policy-making. The choice for governance modes does not follow a precise sequence or a deliberate design. Rather, it results from the interplay between the Commission and the Council or the governments of the Member States in their search for more effective European policies.

Our main conclusions based on two case studies are the following. First, in the context of the European Union, hierarchy as a mode of governance can be evaded or watered-down by the Member States, as was proved by the softening up of the Stability and Growth Pact (SGP) during the early to mid 2000s. In cohesion policy, we observe an enduring weak observation of European policy objectives laid down in binding Council regulations at the implementation stage.

Second, non-hierarchical and, apparently, soft modes of governance emerged long before they attracted major attention by scholars in the late 1990s. However, they have since been pushed more vigorously to the forefront. Furthermore, they emerged not only in those cases in which the European level lacks competences, as the literature suggests. By contrast, they equally characterize long established policy areas. In these areas, the emergence of alternative modes of governance to complement those already in place is triggered by the search for policy effectiveness, which in turn is caused by insufficient efficacy of hierarchical modes of steering. These apparently soft modes of governance often serve to harden the impact of European policy-making.

Third, European modes of governance are not deliberately designed, but rather emerge as a result of multiple and often conflicting interactions between institutional actors. Resistance of important actors, mostly national governments and the Council, to a particular mode of governance fosters other actors, mostly the Commission, to 'invent' more promising or less controversial ones. This process tends to favor non-hierarchical modes of governance that spare national autonomy, and apparently have softer impacts. Yet, as said, such modes, when applied in specific, innovative combinations, may have harder impacts than what is usually assumed.

Fourth, the use of the softer spectrum of governance modes is underpinned by institution building within the EU in both vertical and horizontal directions (e.g. the principle of partnership for multilevel negotiations in cohesion policy and committees for transnational cooperation in monetary policy). Such institution building in turn serves to improve or 'harden' the impact of European policy-making.

Turning to the broader questions that guided our research, we can draw several conclusions. The first question asked what conditions lead to the emergence of non-hierarchical modes of governance. This article has shown that the conditions that lead to the emergence of non-hierarchical modes of governance can be either that the EU lacks competence or that the EU has competence but member states are not or only half-heartedly inclined to observe European policy objectives and rules.

Our second question asked how non-hierarchical governance modes relate to those of the hierarchical spectrum. We conclude that non-hierarchical modes are used, knowing that otherwise hierarchical modes would need to be relied on. However, most parties deem these hierarchical modes as less attractive. Sometimes, hierarchical modes are set aside for non-hierarchical modes and vice versa. Thus, the first phase in a policy area may be marked by the softest forms of governance modes, such as cooperation. Moving to later stages, the mode may change to harder forms through competition and negotiation, ending even in some cases with hierarchy. More often, however, both hierarchical and non-hierarchical modes of governance are used in innovative combinations in order to achieve maximum impacts.

Our third question asked to what extent and under which conditions are these processes underpinned by institution building. Our cases demonstrate that institution building, by creating organizational structures and additional rules, often underpins non-hierarchical modes of governance in order to make them more binding.

Our final question asked how governance processes relate to the strategic choices of and the interplay between the institutional actors involved in European policy-making. The article demonstrates that the EU institutional actors use non-hierarchical modes of governance as a strategy to achieve commonly defined policy objectives in spite of Member States' resistance to European interference in their affairs. Innovative modes of governance as well as innovative combinations of governance modes often result from compromises between the EU's aspirations of forceful political steering and national governments' concern for their autonomy.

In this article we sought to identify specific characteristics of European governance that would distinguish it from governance at the national level. We found that the answer must remain ambiguous. On the one hand, the ideal type categories of modes of governance that we identified – hierarchy, negotiation, competition and cooperation – are also practiced at the national level. On the other hand, what distinguishes European from national governance is the extent to which these modes are used, in what combinations they occur, and how they are underpinned by institutional arrangements. The preference for non-hierarchical modes of governance, the continuous moves between modes of governance, the bias toward innovative solutions to problems of policy effectiveness and the various efforts to underpin governance with suited institutions clearly reflect these differences. They are answers to the fact that the EU as a political system is not vested with far-reaching supranational powers vis-à-vis the Member States, while the pressure to act remains high. Given this analysis it may no longer be so surprising why the EU has a hard time delivering effective policy-making in the face of major economic, financial and governance challenges.