

CONFERENCE REPORT

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THE TRANSFORMATION OF EU POLICIES? EU GOVERNANCE AT WORK RG6 CONCLUDING CONFERENCE Sciences Po Paris, 17-18 January 2008

Conference Steering Committee:

Renaud Dehousse; Thomas Conzelmann; Hussein Kassim; Mario Savino; Ellen Vos; Laurie Boussaguet (RG6 research manager)

Introduction

During this last period of activity, the main ambition of the CONNEX network has been to further integrate the work undertaken within the RGs and at the level of research teams. For RG6, dedicated to “The Transformation of the European Policy Space”, the first two periods of activity allowed for the identification of a number of cross-cutting issues. The purpose of the concluding conference has thus been to complete this process by bringing together RG members for a two-day conference that aimed at summarizing the scientific debate surrounding some of these questions.

Objectives

Since RG6 has brought together scholars from a variety of disciplines and somewhat diverse interests, a strategy of *gradual integration* was devised during the group’s first meeting in September 2004 in Mannheim. Five research teams were created, each with its own research agenda:

- RT1: Interactive methodology for analysing democratic network governance (Team leader: Peter Bogason, Roskilde);
- RT2: Soft modes of governance and the private sector (Team leaders: Thomas Conzelmann, Darmstadt, and Klaus Dieter Wolf, Darmstadt);
- RT3: The open method of coordination (OMC) in the enlarged EU: dilutor of integration or guarantor of subsidiarity? (Team leaders: Jörg Monar and Jim Rollo, Sussex);

- RT4: Evolution of a polycentric administrative space (Team leaders: Sabino Cassese, Roma, and Mario Savino, Roma);
- RT5: Accountability and credibility (Team leaders: Jacques Le Cacheux, OFCE Paris, and Jérôme Creel, OFCE Paris).

Another two groups were later added:

- RT6: The politics of reforms of continental European welfare states – Team leader: Bruno Palier (Cevipof Paris);
- RT7: Risk governance in the EU – Team leaders: Ellen Vos (Maastricht) and Olivier Borraz (CSO Paris).

Six broad cross-cutting questions were identified from the start, in order to ensure a degree of interaction between the various groups that would enrich the responses. These questions were: (1) the growing use of ‘soft’ policy instruments; (2) the use of policy networks as an alternative to centralization; (3) problems of policy coordination at the EU level; (4) the problems raised by delegating powers to autonomous or to private bodies; (5) the role of private actors in public policies; and (6) the complex relationship between governance and democracy.

As several of these themes overlap, it was expected that a number of joint initiatives would foster integration among group members. Indeed, CONNEX’s second working period was characterized by the development of new cross-cutting activities:

- CC1: The legitimacy and democratic character of soft modes of governance in the EU (Team leaders: Thomas Conzelmann, Darmstadt, and Susana Borrás, Roskilde)
- CC2: Governing the EU: policy instruments in a multi-level polity (Team leaders: Hussein Kassim, Birkbeck London, and Patrick Le Galès, Cevipof Paris)

The work that has been accomplished so far has enabled the group’s steering committee to identify a number of issues that have received only limited attention to date in the literature on European governance. Those issues have been the focal points of our concluding conference. In addition, the conference has provided an opportunity to obtain practitioners’ feedback on the views put forward by the various paper givers, as well as it has provided input for the network’s final conference, to be held in March.

Topics

Session I: The End of the ‘Community Method’?

New modes of governance, which are at the heart of RG6 reflections, are traditionally defined in opposition to the traditional “Community Method”. The basic principles of the latter are clearly identified, although in-depth analyses concerning the concrete operation of this method in question have been lacking.¹ These principles include: the transfer of legislative powers to the EU, the creation of the European Commission as a “supranational” executive, the possibility of voting in order to adopt binding legislation, and enforcement powers are vested in the European Court of Justice. One of the most remarkable elements of this international regime has been its stability: 50 years on, despite a significant enlargement of the number of member countries and several treaty revisions, it may be argued that the key features of the system have remained unchanged.

New modes of governance provide a near-perfect mirror-image of all of these elements. Centralization is deliberately avoided (particularly if it entails a strengthening of the Commission’s powers). Uniformity is perceived as unduly burdensome: flexibility is the new buzzword. For the same reason, non-binding instruments are preferred. **What is the significance of the emergence and development of NMGs? Do they suggest the demise of the old system? Or do they simply represent a provisional step before the extension of this system to other fields?** These questions have been addressed in the first panel of the RG6 wrapping-up conference.

Contributions

a) Renaud DEHOUSSE (Sciences Po Paris), “The Community Method : Chronicle of a Death to Early Foretold”.

Central focus of Renaud Dehousse’s contribution was on the limits and perspectives of the Community Method, asking whether we are in front of a chronicle of a death too early foretold. In the first part of his presentation, Dehousse spelled out the main characteristics of the Community Method, which are summarized as a model based on: a) the delegation of power to supranational institutions; b) the supremacy of the Commission over legislative initiative, with direct implementation of powers, and with control over implementation by the Member States; c) the compulsory jurisdiction of the Court of Justice; d) the central role of the Member States in the policy process through various decisions via the Councils of Ministers and implementation by national administration; and, finally, e) binding decisions and centralized enforcement mechanisms (Integration through law). Dehousse’s main conclusion is that **the Community Method is, in its essence, an “original hybrid”**, since, unlike most international organizations

¹ To fill in this lacuna, a workshop has been organized in November 2007. The attempt was to take account of recent research on this issue. Its findings have fed into the work of the January conference.

or unlike federal systems, the scope of its competences is not crucial. Using the classification offered by Treib, Bähr and Falkner², Dehousse argues that the Community Method rests on legally binding and enforceable decisions, taken according to institutionalized procedures, in a political system characterized by a high dispersion of authority between institutions. This is, however, a model in crisis. It undergoes, in fact, a *legitimacy crisis* due, for example, to the fading support for the EU, the decline of turnout at European elections, and the rise of Eurosceptic movements. In addition, it faces an *ideological crisis* caused by the diffuse idea that the Community Method is a model somewhat dated. **The evidence provided by data collected by the Observatory of European Institutions (Observatoires des Institutions Européennes) shows, however,:** i) **no clear substantial decline of the volume of legislative initiatives, ii) a consensus-based system; iii) with no stable majority.** From these empirical evidences, other conclusions follow. These involve, for example, the fact that: iv) **the Enlargement did not, in reality, lead to major disruptions of the system as shown by the number of legislative acts adopted on a yearly basis; v) the presence of a long shadow of the Community method through gradual extension of QVM at each Treaty reform** but also due to the fact that legal integration has not stopped even in those areas where the need for diversity is most acutely felt (e.g. in social policy); vi) **new modes of governance can be used by EU institutions in order to enhance their own influence. According to Dehousse, this is not to say that there are no problems on implementation, but, at the very least, that the announcement of the demise of the Community Method seems highly premature.**

b) Gerda FALKNER (Vienna), “Are New Modes of Governance Really New?”

Gerda Falkner’s contribution dealt with the question of whether the new modes of governance that are developing at EU level are, in their essence, really new. During the presentation, Gerda Falkner discussed the results of two recent studies. In the paper, “Modes of governance: towards a conceptual clarification”³, the author discussed the basic concepts that are at the heart of this debate, notably “governance” and “modes of governance”, arguing that most contributions share a common concern for the relationship between state intervention and societal autonomy. But different strands of the literature have, so far, highlighted different facets of this continuum. Existing understandings have then be classified according to whether they tend to emphasize the politics, polity or policy dimensions of governance. Falkner and her colleagues use these categories to present a structured overview of different dimensions of modes of governance. In this context, **they argue that the classification of modes of governance as “old” or “new” is of little analytical value. Moving from individual dimensions to systematic classification schemes and typologies of modes of governance, the authors highlight, in fact, a number of shortcomings of existing schemes and suggest an approach that could avoid these weaknesses. As a first step in this approach, they take a closer look at different policy**

² Gerda Falkner, Oliver Treib and Holger Bähr (forthcoming), “Modes of governance: towards a conceptual clarification”, *Journal of European Public Policy* 14, 1, pp. 1-20.

³ Gerda Falkner, Oliver Treib and Holger Bähr (forthcoming), “Modes of governance: towards a conceptual clarification”, *Journal of European Public Policy* 14, 1, pp. 1-20.

properties of governance and develop a systematic typology of four modes of governance in the policy dimension: coercion, voluntarism, targeting and framework regulation. *Coercion* is characterised by binding legal instruments prescribing detailed and fixed standards that leave little leeway in implementation. This mode of governance is least flexible in that it entails fully binding and highly prescriptive pieces of EU legislation. *Voluntarism* is the complete opposite of this traditional mode of steering. It is based on non-binding instruments and only defines broad goals that member states may specify in implementation. *Targeting* is slightly more intrusive vis-à-vis member states. It also uses non-binding recommendations, but these recommendations are more detailed and thus leave less room for manoeuvre for specification at the implementation stage than is true in the case of voluntarism. *Framework regulation*, finally, remains within the realm of binding law. Unlike coercion, however, it offers member states more leeway in implementation, e.g. by defining only broad goals to be specified by member states, by presenting a range of policy options to choose from.

In a second study “Expansion of the Community Method in European Environmental and Social Policy”⁴, the same authors analyze the expansion of the “Community Method” in European environmental and social policy, describing the development of competences and decision-making procedures in these policy areas as well as the quantitative development of hard and soft law, finally, relating this development to changes in decision rules in the two policy areas. **The analysis has revealed that the expansion of explicit legislative competences and the proliferation of qualified majority voting was a much more protracted process in social policy if compared to environmental policy.** According to the authors, it seems that member states have been more reluctant to cede sovereignty in social policy. Second, **binding and non-binding policy outputs have developed differently in both policy areas. Environmental policy was marked by a permanent prevalence of hard law.** Binding legal acts show a stronger increase than non-binding legal acts. **In contrast, soft law plays a more prominent role in social policy**, although binding policy outputs still outnumber non-binding ones. Both binding and non-binding policy outputs have developed roughly in parallel. **The data yields, in conclusion, no support for the argument that there is a general trend towards the adoption of softer, more flexible policy instruments since these are more effective in solving many of the problems faced by complex systems of governance. The alternative hypothesis that soft law is regarded as second-best solution, which is replaced by hard law as soon as institutional arrangements allow it, has been supported by the observations in social policy but not by the observations in environmental policy.**

c) Jonathan ZEITLIN (Wisconsin), “Learning from Difference: The New Architecture of Experimentalist Governance in the European Union”⁵

Jonathan Zeitlin’s contribution was aimed at discussing the emergence on new forms of “experimentalist governance” that are taking place in the European Union. In particular, Jonathan Zeitlin has shown that current widespread characterizations of EU governance as multi-level and

⁴ CONNEX reference number: 01/D18

⁵ Charles F. Sabel and Jonathan Zeitlin (forthcoming), “Learning from Difference: The New Architecture of Experimentalist Governance in the European Union”, *European Law Journal*, vol. 14, no. 3 (2008)

networked overlook the emergent architecture of the Union's public rule making. According to the author, **the European Union represents a novel polity without a state characterized by a new governance architecture. In this architecture, framework goals (such as full employment, social inclusion, 'good water status', a unified energy grid) and measures for gauging their achievement are established by joint action of the Member States and EU institutions.** Lower-level units (such as national ministries or regulatory authorities and the actors with whom they collaborate) are given the freedom to advance these ends as they see fit. But in return for this autonomy, they must report regularly on their performance and participate in a peer review in which their results are compared with those pursuing other means to the same general ends. Finally, the framework goals, performance measures, and decision-making procedures themselves are periodically revised by the actors, including new participants whose views come to be seen as indispensable to full and fair deliberation. **EU experimentalist governance is, as a result, a machine for learning from diversity and can be described in terms of *Directly Deliberative Polyarchy (DDP)*.** *Deliberative* since it uses argument to disentrench settle practices and redefine interests/preferences. *Directly-Deliberative* since it uses the concrete experience of actors' differing reactions to current problems to generate novel possibilities for consideration. *Polyarchic* since it is a system in which local units learn from discipline and set goals for each other.

d) Kenneth ARMSTRONG (London), NMGs and Constitutionalism

Kenneth Armstrong's contribution focused on the role of "New Modes of Governance and Constitutionalism after Lisbon". Following Weiler's metaphor, Armstrong affirms that **constitutionalism still represents the DOS and WINDOWS of the European Community: its operating system conditioning the process of governance itself.** However, exploring the possible relationships between the new programmes of governance emerging in the post-Lisbon context, the author argues that **new forms of governance (such as the Open Method of Coordination – OMC -) now pose a serious challenge to EU constitutionalism, since they occupy an unsettled constitutional space.** This space is characterized by a range of possible encounters between constitutionalism and governance. Armstrong characterizes these encounters as involving 'accommodation' – an ability of one to co-exist with the other without change to either – 'adaptation' – an encounter which alters in a limited manner one and/or the other – and 'transformation' – a more fundamental change to either governance or constitutionalism – as well as 'antagonism' – manifested as either incompatibility or irritation. In his analysis, these mutual encounters are discussed in the light of key developments in Lisbon policy co-ordination processes since 2000. Three constitutional frames – competence, subsidiarity and fundamental rights – and their relationship to the emergent OMC are then illustrated. As the author suggests in his concluding remarks, these encounters offer both an explanatory framework for, and critical perspective on, the evolution of post-Lisbon governance, since they help to improve understanding on the urgent need to reconcile "constitutionalism" and the emergence of these "new modes of governance".

Participants' comments:

During the discussion, the participants raised a series of important questions which have been subjected to a heated debate. **With regard to the Community Method**, key questions concerned the fact of whether: (a) it is a myth; (b) it is entirely true that the European Commission has the monopoly of initiative; (c) it should be considered as a mode of governance contrasted to new modes of governance. In addition, the character of “improvisation” in the development of the Community Method was also emphasized. As argued by Fernand Sauer, official in the European Commission, the Community Method is, indeed, an ex-post concept. It was not used by the people who at the EU Commission were using and developing it. There was a lot of improvisation during its establishment. In the concluding remarks, the participants agreed, however, on the fact that the Community Method is alive and kicking, even though it is (can be) complemented by other instruments. **On the issue of Constitutionalism in the EU**, the emerging gap between new modes of governance, such as the Open Method of Coordination, and European constitutionalism was highlighted. Questions, however, were raised on the exact definition of “European Constitutionalism” (still an ill-defined concept). In addition, it was also questioned whether this “European Constitutionalism” is not, in reality, a reinforcement of the Community Method, while the “new modes of governance” continue to work on the outside. On this matter, as emphasized by Jean Leca, it would also be important to understand whether the “new” European Constitution (the Lisbon reformed version) should not be understood in terms of a new mode of constitution. **On the issue of the supposed novelty of the new modes of governance** as well as **on the issue of the presence of “experimentalist governance” in the EU**, introduced respectively by Gerda Falkner and Jonathan Zeitlin, comments were primarily directed at emphasizing the huge differences existent among different modes of governance and among different policy areas, as well as on the democratic legitimacy and performance of the new EU governance architecture. Through this new form of experimentalist governance, Jonathan Zeitlin responded, the EU is probably not becoming more democratic, but rather more transparent and participatory.

Session II: Integration as Depoliticization

Another recurrent theme in various workshops organized by RG 6 has been the limited role of political actors in most day-to-day decisions taken at the EU level. While classical international relations theory insists on the role of ‘governments’ in EU policy-making, work undertaken within RG6 has shed light on the role of two types of actors: bureaucrats and experts. RT7, for example, highlighted the role of scientific experts in risk governance, whether at the level of the regulatory decision-making process or at the level of the courts. Similarly, the tendency of law-makers to delegate part of their powers to different actors (whether these be administrative agencies or private bodies) has been addressed in several research teams.

Clearly, this increasing polycentricity is not specific to EU policy-making. At the domestic level as well, policy-making is characterized by an ever-wider array of decision structures. Yet this

trend is most likely reinforced by the multi-level character of the EU, which creates the need for coordination between all the actors in charge of a given problem, thereby making it more difficult to achieve a coherent 'national' viewpoint on all issues. This trend has been partially described by the existing literature on policy networks. The web of EU committees has also been analyzed along these lines.

It is evident that the role played by non-political actors (experts and bureaucrats) in EU policy-making has implications on the way Europe is perceived by its citizens. Given the weakness or partisan cleavages at the European level, decision-making appears to be dominated by technocratic elements. This may even create incentives to shift responsibility for sensitive decisions to the European level in order to avoid political tensions at the domestic level. Clearly, a critical examination of these issues is needed. **The legitimacy of this evolution is therefore often questioned, and requires critical examination.**

Contributions:

a) Susana BORRÁS (Roskilde), "The Legitimacy of the Open Method of Coordination in the EU: Integration as Depoliticization?"

Susanna Borrás' contribution focused on new governance instruments as a means of depoliticization. During the past few years, a growing number of scholars have shown that the OMC falls short of the democratic ideals of participation and deliberation upon which it is based. In her paper, Susanna Borrás took a step further exploring empirically the sources of OMC's legitimacy, while analyzing, from a contextual approach, the purported contribution of the OMC to the depoliticization of the EU governance. Based on a survey of stakeholders and a series of qualitative interviews with national civil servants, **Borrás finds that the legitimacy sources of the OMC are related to its output and to some of its specific input democratic features.** The findings of her research also show that **these sources of input-output legitimacy are largely related to the national political and policy-area context in which the instrument is used, and that in some circumstances the OMC is providing new political dynamics at the national level.**

b) Bruno PALIER (Sciences Po, Paris), "The Europeanization of Welfare Reforms in Continental Europe: an Attempt to Bypass the National Political Obstacles?"⁶

Bruno Palier's contribution dealt with the Europeanization of welfare reforms in Continental Europe presenting a systematic comparison of social insurance programmes over the last three decades. He demonstrated that, despite common assumptions, the so-called Bismarckian welfare systems have changed a lot. The author's main conclusion is, indeed, that after a period when

⁶ Bruno Palier and Claude Martin (2007), Editorial Introduction. From 'a Frozen Landscape' to Structural Reforms: The Sequential Transformation of Bismarckian Welfare Systems", *Social Policy and Administration*, 41 (6), pp. 535-554.

increasing social expenditure and social contribution to finance a “labour shedding” strategy was the main answer to economic crisis, they have recently developed policies aimed at restructuring their welfare systems, in line with the dominant social policy agenda set at the international level. **The role of the EU in reforming these systems of social protection has also been far from negligible.** The fact that there is no such a thing as a direct impact of the EU in national social policy does not mean that there is no impact at all. If we look at welfare reforms in various points in time, Bruno Palier argued, we can see various points of EU influence in national social policy. However, the EU still speaks ambiguously to national authorities. It speaks Anglo-Nordic to its Continental Member States – that is to say – the EU uses a neo-liberal and social democratic language to countries, which, by contrast, have primarily a Bismarckian tradition.

c) Ellen VOS (Maastricht), The Role of Scientific Experts in EU Policy-Making⁷

Ellen Vos’ contribution focused on the role of scientific experts in EU policy-making and, in particular, she discussed the role of science and knowledge in uncertain risk regulation. As the author affirms, since scientific knowledge is perceived or portrayed to be limited, experts, stakeholders or the public have or create doubts about the possibility or severity of hazards. At the same time, regulators habitually turn to science and experts in these cases in order to justify their decisions. This situation, which Vos and her colleagues, term the ‘uncertainty paradox’, raises important questions about the role of science, knowledge and experts in the regulation of uncertain risks. By analyzing three case studies of genetically modified organisms (GMOs), the authors of the paper arrive to the conclusion that in the regulation of “uncertain risks”: 1) the risk producer (the actor who produces the eventual risk) is the *de facto* risk assessor (the actor who evaluates the risk); 2) both the risk producer and risk assessor exhibit uncertainty-intolerant behaviour, evading and defining away uncertainty; 3) the risk producer and risk protestors both seek to equate uncertainty with risk, though with radically different goals; 4) plausibility proofs are constructed through irrelevance and authority claims and dynamic boundary work; 5) exceptional decision-making procedures have become the *de facto* norm: the Commission decides in cases where no qualified majority can be built amongst the Member States in Council. **This creates a political deficit and technocratic and science-led risk management as the Commission blindly follows EFSA (European Food Safety Authority) opinions;** 6) the “uncertainty paradox” is clearly manifest within EU GMO regulation. Risk producers, assessor and managers spent most of their emerging worming their way out of the deadlocks caused by the propagation of the uncertainty paradox, and failed to make full use the critical intelligence and uncertainty information that experts can inject into the political system. **The authors’ main findings seem, in conclusion, to coincide with national critiques of EFSA: EFSA’s boundary**

⁷ Marjolein B.A. van Asselt, Ellen Vos and Bram Rooijackers, “Science, Knowledge and Uncertainty in EU Risk Regulation”, forthcoming in: M. Everson and E. Vos (eds.), *Uncertain Risks Regulated in National, European and International Context*, Routledge-Cavendish 2008

work has allowed it to disregard national claims rather than welcome concerns within systematic discussion of uncertainty.

d) Jim ROLLO (Sussex), How Much of a Role can National Governments play in EMU?

Jim Rollo's contribution focused on the broader question of how much of a role can national governments play in EMU. In particular, this question was framed into the following sub-questions: i) What do we mean by EMU? ii) How does EMU work and how much room for manoeuvre does it give to member states in monetary policy and fiscal policy? Does micro-economic policy matter? These are far from being obvious questions. Indeed, if EMU consists of only monetary policy, Rollo argued, then there is not much to talk about. The treaty is clear on institutions and practice has shut the main door for member states to take any control of monetary policy. By contrast, if it includes fiscal policy then the story has more life – but to what end and in a world of open capital markets is the scope for discretionary policy in any case highly constrained? **Rollo's main argument is that in a single country monetary policy is made with fiscal policy as a given, but this is not possible in the euro zone, since there is no single fiscal authority. National fiscal policies may then have to act as shock absorbers for asymmetric shocks – which may include demand shocks.** Constraints on fiscal policy might then be best left to markets. **The pattern of structural deficits suggest that there are domestic reasons for heading back towards fiscal balance.** On the role of micro-economic policy, Rollo argues that: 1) the *acquis* allows a lot of discretion in micro economic policy; 2) well functioning goods services and labour markets all reduce the costs of adjustment from macro economic shocks; and 3) flexible wages have the same effect as flexible exchange rates. **The main conclusion is, as a consequence, that the only route to exerting an effect on monetary policy is possibly via the powers given to the Council under Article 111 but these are highly circumscribed (which itself indicates the potential). Currently Member states have as much fiscal policy discretion as they wish to assert and the capital markets are willing to fund.**

Participants' comments:

Participants' comments during the second session of the conference primarily aimed at elucidating the problems associated to a possible depoliticization of the EU public policy space. The introduction of new modes of governance, not always fully subjected to public control, creates, in fact, serious concerns about the democratic accountability of the EU Integration process. As correctly highlighted by Sarah Kröger, peer review, a key feature in the OMC, does not appear in the public debate, but it is rather a technocratic exercise. However, in response to this remark, Fernand Sauer remembered that peer review is still the best method to deal with scientific issues. According to Jonathan Zeitlin, indeed, **rather than depoliticization, OMC associated processes of accountability can also foster a politicization of the EU public policy**

space through an increase in communication and dialogue among very different actors and on very important issues. It was, however, the participants' shared belief that more empirical research is needed in this field.

Session III: A New Public/Private Boundary

Another feature that has emerged is the growing role of private actors in EU governance. Self-regulation of firms or industry sectors, the role of private actors in monitoring the implementation of EU environmental policy or in the enforcement of risk regulation are but a few examples of this broader trend. Increasingly, private actors are not merely seeking public intervention, but are also called upon to play an active role therein. These developments feature prominently in the work of RTs 2 and 7.

They give rise to questions of various kinds: **What are the elements that have led to this evolution? How effective is the new division of labour between public and private bodies achieved by new modes of governance? Under what conditions may they be regarded as legitimate, be it formally (legally) or by stakeholders and public opinion?**

Contributions

a) Ulrika MÖRTH (Stockholm), "The Market Turn in EU Governance - The Emergence of Public-Private Collaborations"

Ulrika Mörth's contribution aimed at exploring the market turn in EU governance taking as example the emergence of public-private collaborations. The governance turn in the EU is often interpreted as a turn towards societal inclusive decision-making and policy-making process. Soft law and other soft forms of regulations aim at a more participatory style of governance. The governance turn in the EU is also characterized as part of an "ideological shift from politics towards the market". These two interpretations of EU governance entail very different understandings of legitimacy. The paper presented by Mörth analyzes this grey zone between hierarchy and market by studying three cases of European collaborations between public and private actors: The European Satellite Navigation Programme (Galileo), The European Investment Bank and health and the European Financial market, especially the banking sector. **Ulrika Mörth's conclusions are that the paradox of governance and yet government suggests that there are profound changes in how the EU regulates and makes decisions but that there is at the same time very much business as usual.** Political labels or reforms play an important role in each of the three empirical cases. The Lisbon goal of making Europe into a strong economy, the reform of Better regulation and the EIB mantra of Value for Money seem to function as a way of mobilizing actors and making things happen. The case of the European reform package of Better regulation suggests that a general political malaise in the European project triggered reform activities that initially had social ambitions. These ambitions were taken

over by performance goals and economic competitiveness. Nonetheless, the main goal of the reform was to inject some activism and positive thinking into the European integration.

b) Andrea LENSCHOW (Osnabruck), “The Role of Private Actors in Securing the Compliance with EU Policy”

Andrea Lenschow’s contribution focused on the role that private actors play in securing compliance with EU policies. In particular, Lenschow aimed at finding a response to a set of strictly related questions: (a) what kind of private actors are involved; (ii) to what extent are private actors part of securing the implementation of EU policy, (iii) what are the roles that private actors play in this regard and how do these relate to current governance debates. Concerning the crucial issue of a possible public-private boundary shift, Lenschow arrives to the conclusion that **while we see some innovation in getting private actors involved in the process of securing compliance with EU rules, the dynamic seems to point more towards establishing complementary roles for public and private actors that in shifting from one to the other.** In addition, complementary roles are also emerging between different schools of compliance. Despite their very different analytical roots, they do not identify mutually exclusive pathway to securing implementation and frequently they seem mutually reinforcing. E.g., capacity (building) seems a precondition for both enforcement and legitimacy building; legitimacy is a precondition for effective enforcement. Nevertheless, we are missing systematic empirical evidence on the conditions under which the inclusion of private actors fulfils the theoretical assumptions of acceptance-building (legitimacy) and capacity-building (effectiveness) and on which of the roles prevails/is more important.

c) Egle SVILPAITE (Basel), “Self- and Co-Regulation in the EU Legal Framework”

Egle Svilpaite’s contribution aimed at investigating the role of self and co-regulation in the EU legal framework. After having examined the conceptual integration of the alternative mechanisms as new modes of governance into the EU legal framework, the author affirms that **it is difficult to conclude that the Interinstitutional Agreement on Better Law-Making (IIA) removed all uncertainties and will definitely contribute to the facilitation of their greater use.** More time has to pass before the impact of the IIA regulatory framework on the proliferation of self- and co-regulation practices can be assessed. The conceptualization of self- and co-regulation in the IIA shows, in fact, an intention of the EU institutions to reduce the number of practices that could be employed for the Union’s purposes. However, it is already evident that the EU institutions continue employing multiple definitions and concepts of self- and co-regulation beyond the IIA confines. However, even at this early stage of promotion of alternatives to legislation **it seems that Commission and other institutions have added too much classical law and hierarchical governance flavour into this regulatory mix which changes the nature of self-regulation.** The EU institutions impose nearly identical requirements for both co-regulation and self-regulation that in principle match nearly all features traditionally associated with law: the general

interest, transparency, representativeness of the parties involved in rule-making, monitoring implementation, sanctions, etc. Looking from these perspectives, we come to the conclusion that the requirements imposed on the integration of self-regulation into the Community's legal framework and their subordination to Union's hierarchical structure might threaten to deprive self-regulation practices of their exclusive and much sought-after features such as flexibility, cost-efficiency or better adaptation. **The “Europeanization” and “Communitarization” of private practices might threaten the very idea of new modes of governance as non-hierarchical and distant from states and government, giving preference to traditional hierarchy and final authority of European institutions.** At the same time, it is questionable whether the increased use of these new alternative regulatory methods as well as their legitimation through the soft law instruments do not compromise the European understanding of democracy, legitimacy, and supremacy of the EU law.

d) Sabine SAURUGGER (Grenoble), “The Social Construction of the Participatory Turn. The European Union and the ‘Organized Civil Society’”

Confronted with ever increasing criticism about its inherent democratic deficit, the European Union calls increasingly often upon the participation of the European ‘civil society’ in its institutional reform projects. Direct civil society participation is seen as a means to decrease the so-called democratic deficit and bring the European decision-making process closer to the individual citizen. The aim of Sabine Saurugger's contribution has, thus, been to question this discourse not on normative but on analytical grounds. Based on a constructivist research design, Saurugger addressed the question of the emergence of this participatory turn linked to the notion of ‘civil society’ in the official discourse and its transformation into a norm. Saurugger analyzed the fora in which the discourse of the participatory turn emerged at the European Union level, such as the Forward Studies Unit as well as the different working groups preparing the EU documents and White Papers on this issue. **The author's main argument is that the genesis of a ‘European civil society’ is both a learning process leading to the acceptance of a new norm as well as the result of a strategic usage by European institutions and non-state actors. In conclusion, the author affirms that the idea of a European democracy is a top-down construction.** While non-state actors exist at the European level and take part in the decision-making processes in the broad sense since the beginning of the European integration process, it is since the beginning of the 1990 that they become study objects in the documents of the European Union. A considerable semantic change can be observed – from “lobbys” one arrives at the end of the 1990s at the notion as of the “organized civil society”. The analysis of the genesis of title VI of the Constitutional Treaty shows that we are confronted with a true construction of a democratic standard that is based on the participation of a specific actor - the “organized civil society” in the decision-making process. Thus, **the construction of this democratic standard - or of “the participative imperative” is real. The implementation, however, remains partial and its discursive importance does not correspond to actual policy making.**

Participants' comments:

Participants' comments during the third session of the conference were aimed at highlighting the emergence, but also the limits and perspectives of a new private/public boundary shift. Even in this case, participants agreed on the necessity of collecting more empirical evidences on the topic, but some provisional conclusions were provided. A shared belief of the participants is, in fact, that **it seems highly premature to affirm the existence of a complete shift from public to private**. Synergies and tensions between the two exist, but a clear pattern is still not possible to be identified. One example can, perhaps, be given by the discussion concerning the emergence of a “European civil society”. As highlighted by Sabine Saurugger, a significant shift in focus at EU level from “interest groups” to “civil society” is, undoubtedly, taking place, but whether this will mean a complete boundary shift is still an open question.

Session IV: Is the EU still Unique?

Finally, discussions within RG6 have quite often stumbled upon the same question: **to what extent are NMGs EU-specific?** Comparisons between developments within EU public policies and those occurring at the domestic or international level have frequently been conducted as part of the group's work. Comparative analysis played a central role in the works of RT6 and of RT4. While RT6 analyzes “The Politics of Reforms of Continental European Welfare States”, RT4 systematically compares the EU with other international organizations and with the US administrative model.

Such studies inevitably lead to the well-known $n=1$ problem of European studies. While many policy developments within the EU are similar to the changes taking place in other arenas (whether domestic or international), the EU itself is not a state, and has several characteristics that are rarely found in other settings. Nonetheless, comparisons are indispensable to draw conclusions of a general nature. **Is the development of the new modes of governance addressed in this working group a response to specific problems faced by the EU, or rather the EU's response to problems common to most public actors of our time?** This issue has been addressed in the conference's final panel.

Contributions (ROUND TABLE)

a) Beate KOHLER-KOCH (Mannheim)

Beate Kohler-Koch's final discussion was centered on the main question of whether the EU can be addressed as a unique system. According to Kohler-Koch, **from a governance perspective, the EU is not a unique system**, since, in terms of policy-making, agenda-setting, decision-making

and evaluation, it looks like a political system like any other. **From a *polity perspective*, by contrast, the picture is substantially different. The EU seems, indeed, to be unique.** It is a system of accommodating competing interests, a system of governance with governments – that is to say – a system centered on steering those who are responsible for steering.

b) Claudio RADAELLI (Exeter)

Claudio Radaelli focused on the question of whether the EU is unique from a policy analysis perspective. **If we analyze the EU in terms of conflict regulation, the EU seems, at first glance, to be a unique system, since it is less conflictual than other systems. However, if we look more into details and try to analyze the mechanisms in which conflict is handled in EU regulatory processes, then the EU does not seem to be totally unique.** An example can be given by an investigation of three types of conflict in EU regulation: 1. *distributive conflict* (winners and losers); 2. *institutional conflict* (whether the Commission should be given the competence to regulate, for example, A and B); and 3. *ideological conflict* present in specific policy fields, as it happens in the case of the UK in tax regulation. In all these cases, the EU is clearly less unique than usually thought.

c) Luisa TORCHIA (Roma III)

Luisa Torchia's contribution aimed at responding to the question of whether, from a legal perspective, the EU can still be addressed as a unique system. **According to Luisa Torchia, from a legal perspective, the EU is not unique, but rather original.** The EU can be addressed as unique in the sense that it is not a state as the most prominent legal order, but the EU is not unique in space nor in time (other legal systems in the past and in other regions of the world have developed similar compound polities). **It is original, however, in the equilibrium between diversity and uniformity.** We do not accept death penalty (uniformity), but we do accept diversity in markets (i.e. we don't have a single European insurance system).

d) Olivier COSTA (Bordeaux)

Olivier Costa's presentation focused on the European Parliament (EP) asking whether it can be addressed as a unique political system. According to Olivier Costa, **the more the European Parliament becomes powerful, the more it becomes closer to national parliaments.** Nevertheless, it still entails some specificities. These involve, just to quote very few examples, (i) the link with the citizens (the EP is elected, but it is not effective in the representation of the citizens' will); (ii) the EP has only limited sovereignty; and (iii) the EP cannot be fired by its government (the Commission). **Olivier Costa's main conclusion is that the EP is still unique if we look at the institutional design, but it looks always more like other parliaments in a federal state.**

Participants' comments:



Participants' comments on the fourth and final session of the conference were centered on the supposed "uniqueness" of the EU, analyzed from a politics, polity and policy perspective. This question has been the object of an animated debate, but a clear, unequivocal conclusion confirming or rejecting this hypothesis could not, at present date, be provided. **The EU shows, indeed, both "unique" features that make it different from other political systems, but it has also a lot of other elements in common.** One tentative conclusion could be that the EU is an "original hybrid", but this statement should, however, be subjected to further empirical exploration.

CONFERENCE PROGRAMME

Thursday 17 January 2008

9.00. Welcome coffee.

9.15. Introduction.

Renaud DEHOUSSE, Beate KOHLER-KOCH

9.30-12.45. Session I. The End of the ‘Community Method’? (Coffee break: 11.00-11.15)

Renaud DEHOUSSE (Sciences-Po Paris), “How Much do We know about the Community Method?”

Gerda FALKNER (Vienna), "Are New Modes of Governance Really New?"

Jonathan ZEITLIN (Wisconsin), "Learning from Difference: The New Architecture of Experimentalist Governance in the European Union"

Kenneth ARMSTRONG (London), NMGs and Constitutionalism

Discussants:

Hussein KASSIM (London)

12.45-14.30. Lunch

14.30-17.45. Session II. Integration as Depoliticization (Coffee break: 16.00-16.15)

Susana BORRAS (Roskilde), “The Legitimacy of the Open Method of Coordination in the EU: Integration as Depoliticization?”

Bruno PALIER (Sciences Po, Paris), “The Europeanisation of Welfare Reforms in Continental Europe: an Attempt to Bypass the National Political Obstacles?”

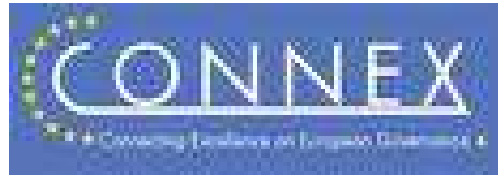
Jim ROLLO (Sussex), How Much of a Role can National Governments play in EMU?

Ellen VOS (Maastricht), The Role of Scientific Experts in EU Policy-Making

Discussants:

Deirdre CURTIN (Utrecht)





Fernand SAUER (EU Commission)

19.00. Dinner.

Friday 18 January 2008

9.15. Welcome coffee.

**9.30-12.45. Session III. A new public/private boundary
(Coffee break: 11.00-11.15)**

Ulrika MÖRTH (Stockholm), "The Market Turn in EU Governance - The Emergence of Public-Private Collaborations"

Andrea LENSCHOW (Osnabruck), "The Role of Private Actors in Securing the Compliance with EU Policy"

Egle SVILPAITE (Basel), "Self- and Co-Regulation in the EU Legal Framework"

Sabine SAURUGGER (Grenoble), "The Social Construction of the Participatory Turn. The European Union and the 'Organized Civil Society'"

Discussants:

Francesca BIGNAMI (Duke)

Thomas CONZELMANN (Maastricht)

12.45-14.30. Lunch

**14.30-17.45. Session IV. Is the EU still unique?
(Coffee break: 16.00-16.15)**

Olivier COSTA (Bordeaux)

Beate KOHLER-KOCH (Mannheim)

Claudio RADAELLI (Exeter)

Luisa TORCHIA (Roma III)



6ème PCRD