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EU Governance of Governance: Political Steering in a Non-Hierarchical Multilevel System

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Abstract

This article analyses 65 years of European governance as a process that has evolved from a simple model, based on hierarchical means of political steering, to a complex system of governance, using both hierarchical and non-hierarchical governance modes and combining them in innovative ways. The central thesis is that European governance constitutes a system of governance of governance, aimed at shaping and directing the governance of the member states. The article elaborates a conceptual framework by drawing on Kooiman's concept of three orders of governance. It identifies European governance as predominantly second order governance, focussing on the creation of appropriate procedures and institutional settings that structure governance processes. Empirically, the article provides an overview of the emergence and consolidation of a system of governance of governance in four phases. Furthermore, it analyses the creation of appropriate procedures and institutional arrangements in three selected policy areas. It thus highlights how second order governance is incrementally shaped. The article concludes that the evolving system of governance of governance reflects the multilevel structure of the EU and the need to balance permanently the contradictory policy objectives, governance modes and implementation strategies of the European and the national government levels, as well as the divergences among the member states.

Keywords

EU governance; Policymaking; Second order governance; Cohesion Policy; Competition Policy; European Employment Strategy

The governance of the European Union (EU) has recently drawn much scholarly attention. In particular, a lively debate has emerged on new modes of governance, roughly defined as non-hierarchical means of political steering (e.g. Borrás and Conzelmann 2007; Eberlein and Kerwer 2004; Héri-tier 2003; Sabel and Zeitlin 2010; Szyszczak 2006). Scholars of new modes of governance assume that these phenomena emerged only recently and that they particularly characterise those policy areas where the European level lacks clear competences. Thus, new modes of governance are perceived as central characteristics of the European polity with its incomplete competences and constrained authority vis-à-vis the member states. Other scholars, however, contest these claims; in their view, the Union, like nation states, predominantly relies on hierarchical means of steering, generally exercised through legislation (e.g. Börzel 2010).

In contrast to both these positions, I argue here that the dichotomy between hierarchical and non-hierarchical governance modes is not helpful to understand the specifics of European governance. The Union has always relied on both forms of governance, even though we do observe an increase and also a sophistication of the non-hierarchical spectrum in recent years. What distinguishes European governance from governance in national political systems is its increasing reliance on *governance of governance*, or what Kooiman (2003) terms second order governance. The term governance of governance refers to the establishment of steering mechanisms which do not directly focus on the final addressees of a policy, the citizens of Europe or economic actors, but primarily address national governments in such a way that they themselves establish governance modes which serve to achieve policy objectives defined at European level.

This, however, is not to say that the governance of governance has been a characteristic feature of European integration since its inception. On the contrary, after initial attempts with rather traditional forms of state interventionism, more sophisticated governance modes triggering governance transformations in the member states evolved only slowly over a longer period of time, together with the expansion of European policymaking. Moreover, these governance modes did not permeate all policy areas in the same way and intensity (we still find a mixture of varying approaches across EU policies) and their development and sophistication is by no means complete. Hence, at present, the Union is not marked by a fully developed system of governance of governance; yet we can observe an increasing tendency to organise governance processes in such a way that they channel the governance of the member states in the desired direction.

The move from a predominantly state interventionist model to a system of governance of governance was not the result of an intentionally steering actor with a clearly defined goal, for example the European Commission. Instead, it was the outcome of intense interactions between the European and the national government levels or else the supranational and the intergovernmental institutions in the process of building and expanding EU policymaking. Whereas European level actors and particularly the Commission aspired to regulate and harmonise the European space, national governments were eager to safeguard their autonomy and pursue their own policy objectives. The contradictory goals and objectives of the two levels hampered both sides in achieving their aspirations; such contradictions could only be reconciled by stepwise embarking on governance processes which allowed to a certain extent for directing the policies and developments in the member states, without, however, constraining too much their autonomy. Thus, over a longer period of time, the EU has increasingly established governance modes which channel the governance of the member states into a direction defined at European level. It has thus adapted its governance approaches to the reality of a multilevel system, where the European level lacks the full spectrum of competences and member states are still sovereign, at least formally.

However, when framing EU governance as an emerging system of governance of governance we have to bear in mind certain caveats. First, EU governance does not straightforwardly focus on shaping the governance of the member states. Instead, as a consequence of the ongoing contestation between the Union and the member states about policy objectives and the division of powers between the levels, EU governance of governance takes shape in such a way that it allows a balancing of the diverging policy objectives of the two government levels. In order to facilitate and stabilise such balancing acts, the Union has to establish appropriate procedures and corresponding institutional arrangements for defining common ground. In other words, establishing a system of governance of governance or second order governance is not limited to establishing appropriate governance modes at the European level, but also requires careful institution-building that enables the continuous adaptation of governance processes to varying circumstances. Second, governance modes which focus on directing the governance of the member states mainly work through indirect steering mechanisms; yet these should not be confused with new or non-hierarchical modes of governance. Indirect steering mechanisms may entail both hierarchical and non-hierarchical modes of governance. Their indirect impact results not from the steering mechanisms as such, but from a longer sequence or a whole chain of interlinked steering mechanisms. Third, a system of governance of governance is not by definition soft in its impact. Even though it does not directly intervene in day-to-day matters in the member states, it can significantly constrain the room for manoeuvre of national governments to pursue their own policy objectives or even compel them to follow a strict European route. Fourth, a system of governance of governance does not automatically result in corresponding adaptations at the national level. On the contrary, national governments and authorities use many ways to evade, circumvent or even counteract the stimuli, pressure or even coercion 'from above'.

Departing from these theses and caveats, this article presents an overview of how the European Union stepwise established a system of governance of governance. The central question is how and why the EU has increasingly embraced such a form of second order governance. Additional questions are how the process of establishing second order governance took shape, and how and why major turning points occurred during this process. As part of a special issue aimed at reviewing 65 years of European governance, the article is not so much about new empirical findings regarding EU governance, but aims at re-conceptualising the EU's governance in light of the rich literature on the issue.

The article is structured as follows: the next part elaborates a conceptual framework for grasping the phenomenon of an emerging European system of governance of governance. This framework draws on Kooiman's (2003) concept of three orders of governance and adapts it to the specific context of the EU. European governance is classified mainly as second order governance, aimed at shaping the procedural and institutional *context* for structuring governance processes. The third part provides a brief overview of the evolution and expansion of EU policymaking and the corresponding diversification of its governance modes. It identifies four phases, which each contributed in a specific way to developing a European system of governance. The fourth part analyses selected paradigmatic cases of establishing procedures and institutions which constitute important building blocks for second order governance. The examples presented refer to cohesion policy, competition policy, and the European Employment Strategy (EES), policy areas that were established in different phases of integration and hence vary in their dominant governance modes from hierarchy via negotiation to cooperation.¹ The final part concludes that European governance evolved to its current form in response to conflicts between the European and the national government levels. Firmly organised procedures and institutional settings for joint decision-making serve to balance the diverging policy objectives and strategies of public and, partly, also non-state actors. Second order governance thus provides the framework for managing the conflicting relationships among the relevant actors and improving the effectiveness of European policymaking.

THE CONCEPT OF GOVERNANCE OF GOVERNANCE

In his seminal work on 'Governing as Governance' (2003), Jan Kooiman distinguishes three orders of governance, termed first, second and third order governance. In first order governance, 'governing actors try to tackle problems or create opportunities on a day-to-day basis' (Kooiman 2003: 135). However, since 'problem solving and opportunity creation ... are embedded in institutional settings', the creation and maintenance of these institutional settings is second order governance. 'In first-order governing, the emphasis is on governing as a process, whereas in second-order governing attention is focused on the structural aspects of governing' (Kooiman 2003: 153). In a similar vein, other scholars also distinguish between governance as a process and governance as a structure (see e.g. Mayntz 2004; Börzel 2010). Finally, third order or meta-governance refers to norms shaping the governance process. Governing changes and '(re)design processes from a normative point of view is the essence of meta-governance' (Kooiman 2003: 171).

In applying Kooiman's typology to the EU, we can state that the Union rarely deals with first order governance. For obvious reasons, it does not engage in resolving day-to-day policy problems or in defining detailed policy measures. The EU forms an additional government level superimposed on the member states, but it does not have any competences to define policies directly for its territory, let alone to implement them. The Union's governance therefore mainly focuses on framing and structuring the policymaking and governance of the member states.

This is not to say that the Union completely stays away from tackling policy problems. However, since the member states are at least formally sovereign, the Union aims at tackling such problems by

directing the governance of the member states in a way that they themselves are stimulated or even compelled to address these problems. Where competences are given, the European level may set rules or boundaries to the governance of the member states, and thus use hierarchy as a governance mode. Furthermore, it can establish rules for establishing market mechanisms, which implies using competition as a governance mode. In other cases, where competences are incomplete or lacking, the EU reverts to less hierarchical governance modes, such as negotiation and cooperation. In all cases, the Union primarily engages in second order governance.

Exercising second order governance implies creating, in addition to the basic institutional structure and procedural norms of the Union, procedural avenues and institutional arrangements that provide, in various ways, direction to the governance of the member states (Bulmer and Padgett 2005). Procedural avenues are often laid down in formalised regulations, so that participation is binding for all actors involved in policymaking. In addition, a host of informal practices accompanies these formalised procedures and in many cases also precedes them. Institutional arrangements include the establishment of permanent or temporary committees, advisory boards, inter-governmental or transnational networks or expert forums. These arrangements as well are partly regulated by European legislative acts, but are partly also based on informal agreements and practices among the actors involved. Both procedural avenues and institutional arrangements are designed to fulfil a broad set of functions in the governance process. Procedures chiefly serve to stabilise the governance process where competences are not clearly defined and the authority of decision-making and action is not allocated to specific actors. Institutional settings are created where powers are shared by diverse actors and thus have to be pooled in order to make the governance process work. Both procedural and institutional arrangements serve varying functions, ranging from the exchange of ideas and visions or a mere advisory role to more specific policy functions, e.g. the definition of objectives, the elaboration of proposals, the design of implementation strategies and, finally, the evaluation of the achievements of a policy. Implicitly, such arrangements also serve as a framework for learning and socialisation processes among the actors involved, so as to improve policymaking and governance processes continuously (Sabel and Zeitlin 2010). Finally, such arrangements provide legitimacy to EU policymaking, since the elected bodies of the member states participate in them.

The European Union, by governing through second order governance in this way, aims at compensating for its lack of authority vis-à-vis the member states and at tackling the diversity *among* the member states. In other words, the Union strives to create the procedural and institutional framework for balancing the diverging policy objectives of the European and the national government levels and promoting convergence among the member states.

The EU also engages in third order or meta-governance. It promotes certain norms and objectives which guide its own activities and frame policymaking in the member states (Daviter 2007). The most basic norm underlying European governance is that of free markets and fair competition. This norm often serves to expand EU policymaking or the Union's influence on national policies, as has been the case with the liberalisation of public utilities (Schmidt 2004). Another, more specific example is the Union's, and particularly the Commission's, role in framing the discourse on lifelong learning. This norm serves as a template for a broad set of reforms in the education systems of the member states (Klein forthcoming). Common norms can even be identified in the push for coordinating issues of citizenship acquisition and loss, as Maas argues in this issue. In short, the Union engages in processes of meta-governance in order to transform fundamentally the economic and social organisation of the member states.

To sum up, the European Union plays a prominent role in exercising second and also third order governance, while the responsibility for first order governance remains mainly the domain of national political systems and, partly, non-state actors. Through second order governance, the Union

shapes the procedural and institutional environment that structures governance processes. Through third order or meta-governance, it pushes norms that constitute an overarching framework for reforms in and convergence among the member states. The Union thus builds a *system of governance of governance*. The next sections, focussing mainly on second order governance, provide empirical evidence of these processes.

THE EVOLUTION OF EU GOVERNANCE

As noted in the introduction, the EU and its precursors, the European Communities (EC), did not start from the outset with establishing a system of governance of governance. On the contrary, such a system evolved only slowly through a long process of trial and error and experiments with various governance approaches. Underlying this process was the persistent – though varying in its intensity – conflict between the European level and the member states about the scope of EU policies, the objectives to be pursued in common, the transfer of competences, and the extent of national autonomy. These conflicts often caused deadlocks in the process of European policymaking; yet in the longer run, they resulted in changes in the dominant governance approaches (Héritier 1999; Szyszczak 2006). Deadlocks particularly arose where member states refused to transfer competences to the European level, while European action was clearly needed. Yet, they also emerged in other cases, e.g. when the design of European policies was incoherent or infeasible, when member states and other addressees were reluctant to or incapable of duly implementing policies, or when the policy environment changed. It was these deadlocks which stepwise triggered a fundamental transformation of European governance, aimed at shaping and framing the governance of the member states. Within this process, four distinct phases can be observed, which, except for the first, added innovative features to the EU's governance approach and at the same time transformed earlier approaches. During the first and the third phase, supranational forces were comparatively influential in shaping EU governance, whereas the second and the fourth phases were marked by the dominance of the intergovernmental institutions and actors. Yet in all phases, the tension between the intergovernmental and the supranational institutions and the resulting compromises were decisive for how European governance took shape. Its concrete form depended mainly on whether and to what extent member states were willing to act in common or to preserve their autonomy, and the creativity of the Commission in finding solutions for often contradictory goals. The overall process resulted in a dense web of procedures and institutions facilitating further experiments with governance approaches and also their diffusion across Europe.

The first phase started with the establishment of the European Communities in the 1950s. The founding fathers envisaged both creating a common market and establishing a set of policies to counteract market failures. They first built a Community for Coal and Steel (ECSC), soon followed by a European Economic Community (EEC) and an Atomic Energy Community (EURATOM). Whereas the common market was favoured by all national governments, policy measures for dealing with market failures were more controversial. They were strongly inspired by state interventionism (Milward 1984), that is policy measures intervening directly into the economic sphere, and implied uneven distributional impacts. Nevertheless, national governments agreed on setting up a few policies of this realm, for example a Common Agricultural Policy (CAP) that compensated market failures mainly through price support and certain measures in the steel and atomic energy sectors.

None of the interventionist policy concepts resulted in major successes. The projected interventions in the coal and steel sector, among others the envisioned setting of production quotas in case of declining demand, were never implemented; instead, the member states themselves managed the industrial output, and later the decline, of these sectors. Similarly, the atomic energy policy remained primarily a national concern. The subsidy scheme of the CAP evolved to a dysfunctional dinosaur consuming large parts of the Community budget. All these policy failures proved that

simple and direct forms of hierarchical intervention, based on the policy model of nation states, could not and did not work in the multilevel and multi-polity setting of the EC. They failed due to both the hesitance of the European institutions, in particular the Commission, to exert pressure for due implementation, and strong resistance from the member states against any intervention 'from above'. Only the customs union as a first step towards creating a common market was quickly accomplished. Yet even the accompanying market-making policies² in competition matters failed to be implemented. The Commission did not use its far-reaching powers in this sector as it experienced much opposition from the member states (Cini and McGowan 2009). Not surprisingly, therefore, the EC and particularly the Commission embarked at an early stage on devising alternative routes towards political steering.

The second phase began in the late 1960s, when attempts were made towards further integration in order to improve the functioning of the common market. The Commission pushed for setting legally binding, common industrial norms and technical standards for the whole Community (Egan 2001). However, it met enormous resistance; national governments did not wish to transfer powers in this area or could not agree on common standards. The process ended with the European level defining only some basic principles, while the task of setting concrete standards was devolved to private, transnationally organised bodies. The first features of a governance of governance emerged.

The obstacles to directly setting European norms and standards did not only apply to the common market; even more so, they affected social and environmental regulation. The unwieldy procedures of decision-making at the European level and the enormous diversity among the member states made all attempts at harmonisation of such regulation an impossible mission. Many legislative proposals in this period ended up in non-decision and stalemate. Thus during the 1970s and early 1980s, further experiments emerged which focused on shaping the context for member states' governance. European legislation increasingly took the form of framework regulations or directives, defining only the objectives to be achieved, while the implementation of these objectives was left to the discretion of the member states. A prime example are the directives for gender equality, adopted from the mid 1970s onwards (MacRae 2010). New distributive policies were set up (the Regional Fund) or existing ones reformed (the Social Fund and the Guidance Section of the Agricultural Fund). The subsidies provided by these Structural Funds were bound to certain basic principles; within this framework, member states were free to implement their policy objectives and priorities. Furthermore, a technology policy was initiated by inviting European industrialists to a round table that was to devise a policy concept. Finally, various forms of intergovernmental cooperation were set up in order to expand the realm of European policymaking, e.g. in monetary matters and foreign policy. All these cases reveal that the Community embarked on innovative forms of governance at an early stage. More importantly though, they also reveal that, even at this stage, European governance tended to focus on creating procedural avenues and institutional arrangements for closer cooperation with and among the member states, and, partly, also non-state actors. Nevertheless, successes during this phase were limited, since both the financial incentives to implement European objectives and the mechanisms of policy coordination were still weak.

The third phase began in the mid 1980s, when the project of completing the single market gave a strong boost to European policymaking. The project implied adopting an unprecedented quantity of new legislation, and thus reverting to hierarchical governance modes. Yet, in fact, regulating the single market largely implied deregulation and thus establishing the context for competition to work as a governance mode. Furthermore, specific strategies of additionally using market mechanisms as governance modes emerged, induced by the Cassis de Dijon judgment of the European Court of Justice (ECJ) in 1979. The judgment stated that goods produced according to the legal standards of the state of origin could freely be traded across the Community. The Commission was quick to transform this principle into a much broader governance strategy (Schmidt 2007; Sievers and Schmidt 2015). Henceforth, harmonisation of national standards and regulations resulted from

market pressures and ensuing legal adaptations within every member state. This relieved the European level from the burden of setting detailed norms and standards and deferred the omnipresent distributive conflicts among the member states to the anonymous forces of the market.

In the context of the single market project, the Commission forcefully applied the competition rules to private enterprises and the member states, and it also succeeded in using these rules for other than the intended purposes, i.e., for pushing through the liberalisation and privatisation of public utilities. Furthermore, it relied on market mechanisms for inducing such policy innovations in the member states (Schmidt 2004). In the wake of the single market, another outstanding policy project was launched, Economic and Monetary Union (EMU). In this case, both the European and the national government level share responsibility. Yet at the European level, taking authoritative decisions regarding monetary policy is delegated to an independent agency, the European Central Bank (ECB), detached from any political interference. By contrast, national governments are entrusted with safeguarding macro-economic stability, directed only by certain basic parameters set at European level.

During this phase, the Union also embarked on a broad set of new policies which were often merely based on some form of cooperation under a European umbrella. This refers particularly to a set of policies mentioned in the Maastricht Treaty, i.e., education, vocational training and youth, culture, public health, consumer protection, trans-European networks, energy, civil protection, and tourism. In these cases, the role of the EU is defined as supportive of policy coordination among the member states. The Commission 'shall take any useful initiative to promote such co-ordination' (Art. 129 (2) TEC 1992) and the Council 'shall adopt recommendations' or 'incentive measures' (Art. 129 (3) TEC 1992). The Maastricht Treaty also opened up an opportunity for the social partners to negotiate themselves on legislation (Falkner, Treib, Hartlapp and Leiber 2005). However, these policies did not result in major successes, mainly because they often lacked an appropriate institutional underpinning.

The Maastricht Treaty further expanded EU policymaking through establishing the Second and Third Pillar for Foreign and Security Policy as well as Justice and Home Affairs. Both domains envisaged transnational cooperation and common action under intergovernmental control. These forms of 'intensive transnationalism' (Wallace 2010) are increasingly underpinned by procedural norms and corresponding institutional arrangements.

The fourth phase began in the mid 1990s, when the expansion of European policymaking slowed significantly and member states were less willing than ever to transfer powers to the European level. This is the phase where the Union systematically turned to creating new procedures and institutional arrangements that left to the member states and non-state actors a maximum of discretion, while still directing their activities through various, mainly cooperative, governance modes and mechanisms. Furthermore, certain powers which the EU had held since the early years of integration were transferred back to the national level. Yet also in these cases, the Union kept control through setting regulatory frameworks and establishing transnational networks for cooperation under the auspices of the Commission (as discussed in more detail below). Finally in this phase, the Union expanded its influence to third states through systematic transfers of policy and governance approaches.

Beginning in the mid 1990s, the Commission designed a new procedure for joint policymaking and implemented it first through some experiments on a small scale. The basic features of the procedure, which later came to be known as the Open Method of Coordination (OMC), were laid down in the Employment Title of the Amsterdam Treaty (Art. 125-129 TEC 1997). In 2000, the Lisbon European Council acknowledged the OMC as a much broader tool for inducing fundamental economic and social reforms in the member states so as to improve the competitiveness of the

Union as a whole. In the framework of implementing this so-called Lisbon strategy, member states remain formally autonomous to define their own policy objectives and reform concepts; yet participation in the OMC and respecting its rules, anchored in primary and secondary legislation, is mandatory.

After the turn of the century, the Union devolved competences to the member states in policy areas that were earlier its exclusive domain. For agricultural policy, it henceforth set only the basic parameters for a fundamental reform, while the member states could design and implement such reforms according to their own preferences. In competition policy, certain competences were devolved to national authorities; yet these authorities had to cooperate within transnational networks under the auspices of the Commission (see below).

During the entire phase, the Union engaged in policy transfers to third states. In the process of Eastern enlargement, it used *conditionality* as a means to achieve its intentions (Schimmelfennig and Sedelmeier 2004). Conditionality appears at first sight as a particularly strict governance approach, and it is indeed strict in its impact, since the addressees often have no other choice. In fact, however, it is a means to induce the addressees to comply voluntarily with EU rules and standards, in exchange for certain benefits. Thus the candidate countries of Central and Eastern Europe which aspired to benefit from accession to the EU not only had to accept the *acquis communautaire*, but also to adopt European governance approaches and corresponding institutional provisions, including the creation of a lower government level. Policy transfers were also strongly promoted in the framework of the European Neighbourhood Policy (ENP), involving the neighbouring states of Eastern Europe and the Southern Mediterranean. In these cases, the Union applies a soft form of conditionality, demanding, for example, respect for human rights and good governance, but also adaptations to European governance approaches in exchange for market access and good relationships with the Union. Policy transfers are also a primary motive of the EU when engaging in bilateral relationships with regional organisations worldwide.

More recently, the economic and financial crisis of the EU resulted in new policy initiatives at the European level. The governance of EMU particularly now appeared insufficient and incomplete in face of pressures emanating from financial markets and the sovereign debt problems of a larger part of the member states (see Chang in this issue). This, however, did not result in setting directly impacting rules at European level, even though many observers and experts demanded or proposed such measures. Instead, due to the reluctance of the member states, new policy measures such as the six-pack and the two-pack encompass a set of procedures for channelling policies and governance processes at the national level into the desired direction, while EU institutions supervise compliance with the rules governing EMU. Moreover, in the case of the debtor states, the European Council decided to apply strict conditionality. Financial transfers to the debtors, first from the European Financial Stability Facility (EFSF) and then the European Stability Mechanism (ESM), were granted only in exchange for compliance with European norms, rules and demands. In addition, compliance is assured by unprecedented forms of surveillance over legislation and reforms within those states.

Altogether, the fourth phase is characterised by significantly developing and improving the procedural and institutional dimension of EU governance, while refraining from attempts to intervene directly in the member states, let alone in third states. Thus, in this phase, expanding, deepening and refining the mechanisms of second order governance was of primary concern.

Summarising 65 years of European governance points to a gradual process, focussing increasingly on directing the governance of the member states. During this process, the initial attempts towards establishing direct policy interventions, particularly in cases of market failures, were replaced by governance approaches which devolve responsibility to many institutions and actors at several government levels. The European level sets basic norms and rules; furthermore, it creates

appropriate procedural and institutional arrangements to direct the behaviour of national governments and, partly, also other actors; ultimately, it tends to transform the governance approaches of the member states. The whole process is marked by various qualitative changes which divide it into four phases.

The *first phase* is marked by clear transfers of powers to the European level in a limited set of policy domains. Accordingly, governance during this phase relies on hierarchical rules for market-making and interventionist measures for market-correcting policies. However, most of the interventionist measures ended up in non-implementation or in policy failures. Thus, the *first turning point* occurred as early as the end of the 1960s, when European institutions intended to expand the realm of policies, yet experienced all sorts of resistance from national governments. The *second phase* is therefore marked by both stalemates in expanding EC policies and first experiments with new governance approaches. These new approaches for the first time took the autonomy of, and the diversity among, the member states into account and experimented with devolving responsibility to a broader spectrum of actors. However, a *second turning point* came about in the mid 1980s when the European Commission, in view of economic crises and the challenges of globalisation, aimed at completing the single market. While market creation enjoyed consensus among the member states, other policy projects remained contested. Therefore, the ensuing *third phase* is marked by a double tracked strategy. The single market and adjacent issues, particularly monetary union, were subject to clearly defined rules which, however, often focussed on intensifying market mechanisms. Corresponding neo-liberal norms served as an additional means of directing national policies. Where policymaking was expanded to new areas, coordination of national policies was the preferred governance approach. Unsurprisingly, these developments evoked a backlash that led to a *third turning point*, triggered by stronger resistance from national governments against European interference and a more explicit refusal to transfer further powers to the EU. Accordingly, the *fourth phase* is characterised by establishing new procedures and institutional arrangements for directing the governance of the member states and even third states, while national governments still retain much discretion. These governance approaches encompass rule setting accompanied by strong surveillance mechanisms and even strict conditionality to ensure compliance as well as policy coordination in the framework of organised procedures and appropriate institutional settings.

The four phases outlined above and the respective turning points did not come about because an enlightened actor (for example the Commission) made an explicit choice for them. They rather evolved through a process of trial and error in response to deadlocks in the policy process. Such deadlocks occurred because member states were often extremely reluctant to transfer competences to the European level or to implement European policies duly. In the face of such deadlocks, European governance evolved to more complex and more indirectly impacting methods of political steering. Altogether, a sophisticated system of governance of governance evolved that allows for *permanently balancing* the diverging policy objectives, priorities and preferences of the various government levels and, partly, also non-governmental actors.

CREATING PROCEDURAL AVENUES AND INSTITUTIONAL SETTINGS FOR THE GOVERNANCE OF GOVERNANCE

As noted above, together with the expansion of European policymaking, a wide variety of procedural avenues and institutional settings emerged which provide the context for exercising governance of governance. While some of these procedural and institutional innovations are specific for just one policy or issue area, others permeate nearly all EU policies; hence they are essential building-blocks for a European system of governance. In this section, I focus on such paradigmatic innovations by tracing how they were first developed in one policy area, then further refined and expanded, and

finally transferred to other policy areas or even used as templates for the whole spectrum of EU policies.

For this purpose, I selected three cases: the system of partnership in cohesion policy, the transnational networks in competition policy, and the OMC procedure in the European Employment Strategy. These cases differ in that the respective policy areas were established in different phases of the evolution of EU governance (the first, second and fourth phases respectively) and hence vary in their dominant governance mode from hierarchy to negotiation and cooperation. The cases show that second order governance is not inherently linked to either hierarchical or non-hierarchical means of political steering but builds on both, depending on the policy area at stake and the enabling or constraining attitude of national governments towards European interference in their affairs.

Case 1: The System of Partnership in Cohesion Policy

EU cohesion policy was set up in 1975 by establishing the Regional Fund. The Fund provided subsidies to the member states for the implementation first of projects and later of programmes aimed at developing less favoured regions (Allen 2010; Bache 2008; Bachtler and Mendez 2007; Hooghe and Marks 2001). The member states perceived the Fund as a financial transfer mechanism between rich and poor, while the Commission, from the outset, aimed at directing the policies of the member states towards new objectives and governance modes (Wozniak Boyle 2006). However, every attempt in this direction met strong resistance from national governments. The Commission first responded to this stalemate by involving additional actors (regional authorities and specialised agencies) in policy implementation and by negotiating with governments and agencies on policy objectives and implementation strategies. However, the Commission's influence remained limited until it succeeded in establishing stable institutions for such negotiations.

Thus, with the 'grand' reform of the Structural Funds in 1989, the Commission introduced the so-called system of partnership (Bache 2008: 39-53). A Council regulation defined this partnership as cooperation between the European, the national and the regional government levels in order to achieve common goals. In fact, partnership implied an institutional arrangement for sequenced negotiations among the government levels on the elaboration, adoption and implementation of assistance programmes for less favoured regions. Partnership allowed for regular interactions among the government levels of the EU; it thus created a *vertical nexus* between the formally disconnected government levels and compensated for the lack of hierarchical relationships between them.

Once 'invented', the system of partnership soon expanded within cohesion policy and to other policy domains. Within cohesion policy, several reforms (1994, 2000 and 2007) expanded partnership so as to include a broad spectrum of non-state actors and finally civil society in policymaking, in spite of strong opposition from national governments (Bache 2008). In 2013, another reform made the system of partnership more binding for all actors involved by introducing so-called 'partnership agreements', i.e. contracts between the Union and national governments on policy programmes and implementation.

The system of partnership has been widely transferred to other policy areas and domains. For example, in the framework of the European Neighbourhood Policy, an Eastern as well as a Mediterranean Partnership was set up. Furthermore, partnership constitutes a guiding principle in the Europe 2020 strategy, aimed at a broad set of reforms in the EU (Zeitlin and Vanhercke 2014: 20). More generally, it has become the EU's preferred concept for fostering cooperation among

public and non-state actors and for subduing opposition from national governments to such forms of cooperation.

The rationale underlying the establishment and expansion of the system of partnership is obvious. Through the corresponding interactions, the Commission can put more pressure on member states to adapt to European policy goals and governance approaches. By establishing direct links with sub-national governments and non-state actors, which are in general more receptive to EU interference, it can further expand its influence. Conversely, it can also stimulate the commitment and ownership of public and non-governmental actors in designing and implementing their policies and adapting them to European objectives. Most importantly though, partnership allows for the creation of a *vertical nexus* between government levels and for stimulating *horizontal interactions* among governments of the member states, public and non-state actors, as well as the EU and third states. Partnership thus provides both a procedural avenue and a stable institutional framework for exercising and improving multilevel governance within the EU, and even beyond its borders.

Case 2: Transnational Networks in Competition Policy

The EU's competition policy was set up with the founding of the Communities as a necessary complement to the creation of a common market (Akman and Kassim 2010). The basic norms regulating this policy were laid down in the ECSC and later the EEC Treaty. As with other policies of the time, hierarchical rule was the dominant form of governance, and the Treaties entitled the Commission to take forceful action in cases of distortion of competition. Such interventions referred to restrictive practices (the formation of cartels), the abuse of a dominant position (monopoly) and (unjustified) state aid (Cini and McGowan 2009).

In spite of these far-reaching powers at the European level, policy implementation advanced subject to delays (Cini and McGowan 2009). The Commission rarely used its competences to impose harsh measures on national governments and private firms. It was only with the completion of the single market in the late 1980s that a broader consensus emerged around a forceful competition policy. However, even this situation did not generally result in straightforward decisions on pending cases; rather, the Commission preferred to negotiate solutions with the addressees and, later, to establish mediation procedures for resolving conflicts (Van Miert 2000; Lehmkuhl 2009). Thus, competition cases were often settled by compromises instead of unilateral decisions. Moreover, implementation remained highly selective as the Commission suffered from an overload of cases. The situation changed only after decentralising powers to the national level and establishing institutions that provided an arena for joint policymaking.

In 2003, a major reform devolved parts of the EU's powers in competition policy back to the national level (McGowan 2005; Wilks 2010). The reform allowed member states to deal with minor competition cases themselves; yet each state had to establish a competition authority in the form of an independent agency. Delegates of these agencies cooperate in transnational networks under the auspices of the Commission. Distinctive networks deal with the major themes of competition policy: cartels, merger control (monopolies) and state aid. The networks serve to discuss problems of unfair competition, exchange experiences and give advice to colleagues who deal with difficult cases. In addition, they elaborate opinions on and proposals for further European policy initiatives or for common strategies and standards to be pursued at the national level. In sum, the networks coordinate national policies horizontally as well as vertically with the (in this case far-reaching and path-setting) policy initiatives and strategies of the Commission.

The rationale underlying the partial decentralisation of a hitherto highly centralised policy lies by no means in weakening the European level; on the contrary, the reform serves to improve the coherence and authority of competition policy (McGowan 2005). Acting through transnational networks under the guidance of the Commission serves to diffuse European policy objectives and governance practices to national authorities and agencies. The rules laid down in the Union's primary and secondary legislation and the long-standing experience of the Commission in competition matters ensure that European policy objectives and practices prevail when solving pending cases and designing new governance approaches. Yet member states' competition authorities also bring in their positions and preferences, so that the networks provide an arena for continuously presenting and balancing differing viewpoints, while unilateral decisions of the Commission become obsolete. Thus, the initial top down approach of competition policy transforms into a more complex model where multiple actors negotiate on appropriate policy solutions and cooperate in order to adapt governance approaches to both the Union's aspirations and the varying national contexts, while still complying with the basic norms and rules set at European level.

Cooperation through transnational networks is widely used in other policy domains as well; the networks may vary from loosely organised forms to firmly institutionalised structures. Transnational networks characterise policy initiatives where the European level has hardly any competences and coordination of national endeavours is the priority, as for example in energy policy or the broad spectrum of projected reforms subsumed first under the Lisbon strategy and currently the Europe 2020 strategy. However, they also characterise well-established policies, where simple hierarchical forms of governance proved ineffective, as the example of competition policy shows. In all these cases, transnational networks function as transmission belts between the government levels and among the member states, in order to elaborate jointly on and transfer policy and governance approaches across the Union.

In sum, transnational networks play an important role as institutionalised avenues to improve European policymaking, either through partly decentralising a formerly highly centralised policy from the European to the national level (competition policy) or by rejoining national policies under a European umbrella (energy policy) or, as is most often the case, through enabling intensive interactions in both directions (Europe 2020 strategy). Although these institutional arrangements are vertically integrated, with the Commission often playing a leading role, their purpose is also to achieve horizontal integration among the institutions of the member states. These arrangements facilitate both the transfer of EU policy and governance approaches to the national level and horizontal policy transfers among the member states.

Case 3: The European Employment Strategy (EES)

The Commission had long attempted to establish a European employment policy, and it used many straightforward as well as subtle strategies to achieve this goal. Yet the member states successfully resisted any such attempts. Only under pressure of high unemployment rates in the mid-1990s, did they accept a mere coordinative role for the EU in this area. Accordingly, the Union institutionalised a *procedure* for coordinating national policies and ultimately inducing policy change and governance innovations within the member states: the OMC.

The EES is not the exclusive but it is the most paradigmatic case for OMC governance. The Amsterdam Treaty, adopted in 1997, included for the first time an Employment Title which defined a procedure for coordinating the policies of the member states (Art. 125-129 TEC 1997). The procedure later became to be known as the OMC, after the Lisbon European Council in 2000 formally adopted it as a means to reform a broad set of national policies.

According to the Amsterdam Treaty, the EES is organised as a continuous process of policy coordination and close interactions among the government levels of the EU. It encompasses four stages: the European Council starts by drawing conclusions on the employment situation in Europe, and the Council adopts policy guidelines that provide orientation to the policies of the member states. Then the member states draw up National Action Plans (NAPs) that specify their projects and plans in the employment area. After a period of implementation, the member states submit reports on their performance in matching European objectives and fulfilling their plans. Finally, the Commission elaborates a synthesis report and the Council draws conclusions on this report and reformulates the guidelines. Where necessary, it also gives policy recommendations to individual states. This four stage process, involving the European and the national government levels, is accompanied by benchmarking, peer reviews and the exchange of best practice experiences in order to improve its effectiveness (Art. 129 TEC 1997).

Already in 1997, before the Amsterdam Treaty came into force, the Commission embarked on coordinating the employment policies of the member states. After initial experiences with the procedure, the Union enacted several reforms (Armstrong and Kilpatrick 2007). A first, minor reform in 2003 reduced the number of guidelines, but set more quantitative targets; furthermore, it expanded the coordination cycle to two years. A second, major reform in 2005 merged the Employment Strategy with economic surveillance in the framework of the Stability and Growth Pact. Henceforth, an integrated set of guidelines was formulated for both these policies, whereby one third of the guidelines referred to the EES. The NAPs were replaced by National Reform Programmes (NRP) and the coordination cycle was expanded to three years. A third reform in 2010, coinciding with the launch of the Europe 2020 strategy that was to replace the Lisbon strategy, introduced so-called Headline Targets which serve as frames for the member states to set their own targets in their NRPs (Weishaupt and Lack 2011). At the same time, reporting on national policies was integrated into the broader reporting procedures of the European Semester, that is the improved multilateral surveillance system regarding member states' economic policy (Zeitlin and Vanhercke 2014).

Thus, the EES has undergone a series of reforms during a comparatively short period of its existence which brought about major policy shifts. These reforms increasingly sought to accommodate the reluctance of the member states against European interference, by granting them more room to design their own policy concepts and governance approaches. At the same time though, they introduced a variety of mechanisms that make European guidelines and later Headline Targets, as well as country specific recommendations, more obliging, without, however, resorting to binding instruments. The rationale underlying the EES is to stimulate the commitment of national governments in the employment area, to orientate them on innovative governance approaches, and to trigger more convergence among the member states (Zeitlin and Vanhercke 2014).

Whether the Union has achieved the desired impact is still a contested issue; yet it clearly influenced national activities in the field. Thus, Weishaupt and Lack (2011: 33) assume that the OMC process 'has triggered critical reflections of policy, shaped national policy agendas, introduced common focal points such as flexicurity and the New Skills agenda, and – arguably – convergence of policy instruments in the long run can be expected'. Similarly, Zeitlin and Vanhercke (2014) emphasise that the procedures offer ample room for reflexive learning and socialisation processes.

Unsurprisingly, the OMC as a procedure for joint decision-making and policy surveillance has been transferred to a wide variety of policy areas. This ranges from policies where the European level hardly has any competences, such as the strategy against poverty and social exclusion, to well-established policies like cohesion policy. The 2007 reform introduced the OMC procedure in cohesion policy as an additional instrument to define policy targets and to improve the authority of the Union vis-à-vis the member states.

The Three Cases in Perspective

Even though the three cases clearly differ in their dominant governance modes – varying from hierarchy to negotiation and cooperation – they increasingly display common features as a consequence of procedural and institutional innovations. Thus, competition policy was initially characterised by hierarchical governance, typical for the first phase of EU policymaking. In the face of various deadlocks in implementation, the highly centralised policy model was reformed by partially devolving competences to the member states and institutionalising transnational networks for joint decision-making. Cohesion policy reflects the governance modes characterising the second phase, with the European level setting basic rules and member states implementing their own policies. Since the rules were hardly respected, the Union introduced partnership as an institutionalised framework for negotiating on policy concepts and implementation strategies. The EES is a typical product of the fourth phase, when European governance increasingly relied on procedures for coordinating national policies. However, even the EES underwent significant reforms in a short period which further increased member states' discretion within the coordinative framework, yet made compliance with European norms and standards more compelling. Thus, in all cases, procedural and institutional innovations allowed for exercising governance on the governance of the member states. Furthermore, the governance approaches developed or refined in the framework of these cases are most broadly applied in other policy domains. In fact, they permeate the whole spectrum of European policies and thus constitute fundamental building blocks for making the governance of governance work.

In sum, the transformation of governance as described in this section tends to build both a vertical nexus between the government levels of the EU and a horizontal nexus among the member states, either through institutional settings or merely procedural arrangements. This allows for regular and intense interactions among all institutions involved, including non-state actors, and for directing their governance, without, however, violating their autonomy in formal terms.

CONCLUSIONS

Drawing conclusions on the evolution and sophistication of a European system of governance reveals a process marked by a long sequence of searching for appropriate means and ways of political steering. Starting in the 1950s with a concept of hierarchical governance in a few sectors, it soon turned out that this model of political steering suffered from limited effectiveness. The multilevel setting of the EU and the lack of authority of the European level vis-à-vis the member states opened up a wide variety of loopholes for national governments to evade, circumvent or undermine interference 'from above'. Accordingly, further transfers of powers to the European level were limited to market-making policies, where legally binding rules established the framework for competition to work as a governance mode. In all other policy areas, more complex governance modes evolved, which offer to the member states a varying degree of room for manoeuvre for governance and policymaking within a European frame.

In the context of the EU multilevel system, hierarchical governance is reserved to specific policy and issue areas, where a far-reaching consensus among the member states is already achieved. Yet even in these cases legally binding rules do not directly impact on addressees, but set the framework for another, more indirect governance mode, competition, to work via the 'invisible hand' of the market. In all other policy areas, which are much more contested between the European and the national government levels as well as among the member states, governance processes are increasingly organised through procedural and institutional provisions which enable building of the necessary consensus on a case by case basis. Governance processes channelled through such procedural and institutional provisions should not be viewed as 'soft' forms of governance. On the

contrary, since these innovative approaches are firmly embedded in a dense web of legally binding rules, member states are obliged to participate, to cooperate and also to comply with the norms and standards elaborated in this context. The procedural and institutional arrangements intensify communication and interaction among the government levels of the EU and across the member states. They give member states a much more active and prominent role in EU policymaking as well as in the coordination of national policies under a European umbrella. At the same time though, they function as often highly compelling transmission belts for the transfer of the EU's norms, procedural mechanisms and governance practices to the 'lower' levels.

The EU's governance approach of largely formalised procedural avenues and institutional arrangements that involve member states in policymaking is best captured by Kooiman's concept of second order governance. In light of the EU's multilevel system, the Union's activities in second order governance resulted in the establishment of a system of governance of governance. Such a system and the corresponding procedural and institutional provisions serve to compensate for the manifold shortcomings inherent in the multilevel structure of the EU. It reflects the need to balance permanently the contradictory policy objectives, governance modes and implementation strategies of the European and the national government levels, as well as the divergences among the member states.

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1 For the definition of four ideal-types of governance modes – hierarchy, competition, negotiation, cooperation – see Tömmel 2009.

2 For the distinction between market-making and market-correcting policies, see Scharpf 1999.

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