May 2007

European Governance – Negotiation and Competition in the Shadow of Hierarchy

TANJA A. BÖRZEL
Freie Universität Berlin

boerzel@zedat.fu-berlin.de

Paper prepared fort he European Union Studies Association meeting, Montreal, May 17-20, 2007.

Abstract

This paper argues that the EU is not as unique a governance system as the Babylonian variety of its labels may suggest. Like its member states, the EU features a combination of different forms of governance that cover the entire range between market and hierarchy. Unlike at the national level, however, this governance mix entails hardly any network forms of governance, which systematically involve private actors. The EU is largely governed by negotiated agreements between inter- and transgovernmental actors. While business, interest groups or civil society organizations are seldom granted a real say in EU policy-making, market-based mechanisms of political competition have gained importance. Thus, the EU is less characterized by network governance but by inter- and transgovernmental negotiations, on the one hand, and political competition between member states and regions, on the other. Both operate in shadow of hierarchy cast by supranational institutions.

1. Introduction[1]

This paper explores the nature of *European Governance*. It is often argued in the literature that the EU system of multilevel governance is unique and therefore cannot be compared to any other form of political order we are familiar with both, at the national and international level. Political scientists have shown a remarkable creativity in developing new concepts to capture the *sui generis* nature of the EU, describing it as a "new, post-Hobbsian order" (Schmitter, 1991), „a post-modern state" (Ruggie, 1993; Caparaso, 1996), or "a network of pooling and sharing sovereignty" (Keohane and Hoffmann, 1991)

This paper, by contrast, argues that the EU is not as unique a governance system as the Babylonian variety of its labels may suggest. Like its member states, the EU features a combination of different forms of governance that cover the entire range between market and hierarchy. Unlike at the national level, however, this governance mix entails hardly any "modern" (Kooiman, 1993) or "cooperative" (Mayntz, 1998) modes of governance, which systematically involve private actors. The EU is largely governed by negotiated agreements between inter- and transgovernmental actors. While business, interest groups or civil society organizations are seldom granted a real say in EU policy-making, market-based mechanisms of political competition have gained importance. Thus, the EU is less characterized by network governance (Rhodes, 1997; Eising and Kohler-Koch, 1999) but by inter- and transgovernmental negotiations on the one hand, and political competition between member states and subnational authorities, on the other. Both operate in shadow of hierarchy cast by supranational institutions.

In order to develop this argument, the paper proceeds in three steps. The first part develops an analytical framework that is based on a broad concept of governance as institutionalized forms of political coordination. It draws on the classical distinction between market, hierarchy and networks as governance structures but complements them with a second, procedural dimension that focuses on the modes of social coordination. The second part applies this analytical framework to study the structures and processes of European governance. The analysis will show that EU policies are largely formulated and implemented in multiple

[1] I am thankful to Ingeborg Tömmel, Arthur Benz, Andrea Lenschow, Nicole Bolleyer, Sandra Eckert, Diana Panke, Thomas Risse, Carina Sprungk und Tobias Hofmann for their helpful comments and suggestions. Special thanks go to Lars Schäfer, Peter Dylling-Brenzinger, Annabelle Merklin and Andreas Oldenburg for their excellent research assistance.

overlapping negotiation systems. Yet, network relations that span across sectors and levels of government are a not a *sui generis* character of the EU but a core feature of modern statehood (Scharpf, 1991; cf. Benz, 2001; Leibfried and Zürn, 2006). Likewise, EU policy-making can rely on a strong shadow of hierarchy cast by supranational institutions. The key distinction between the EU and the modern state lies in the subordinate role of private and public interest groups in the EU negotiation systems, which are largely dominated by governmental actors. While forms of private self-regulation or public-private co-regulation abound in the member states, we hardly find any network governance at the EU-level. Instead, political competition has gained increasing importance, particularly since the introduction of the Open Method of Coordination and the application of the principle of mutual recognition to areas outside the Internal Market. The paper concludes with some considerations on why trans- and intergovernmental negotiation systems and political competition have flourished under shadow of hierarchy cast by supranational institutions while new forms of governance involving private actors are still rare.

2. Governance and EU Policy-Making

2.1. What is Governance?

The *Governance* concept has made quite a career, not only in European Studies but also in other areas of political science (Schuppert, 2005). Yet, despite its success, there is a Babylonian variety of definitions that can be quite confusing. It would go beyond the scope of this paper to provide an overview of the (European) governance literature.[2] Rather, this section seeks to develop a governance typology, which draws on existing concepts and approaches and allows to systematically compare the different forms of governance and their various combinations with those of other political systems, such as states or international organizations.

Following the works of Renate Mayntz and Fritz W. Scharpf, governance is understood as institutionalized modes of coordination through which collectively binding decisions are adopted and implemented. (Mayntz and Scharpf 1995b; Mayntz, 2004; Scharpf, 2000). In this understanding, governance consists of both structure and process (Scharpf, 1997: 97; Mayntz and Scharpf, 1995: 19). Governance structures relate to the institutions and actor

[2] Cf. Börzel, 2005a; Kohler-Koch and Rittberger, 2006.

constellations while modes of social coordination refer to the processes which influence and alter the behaviour of actors. Governance structures and governance processes are inherently linked since institutions constitute arenas for social coordination and regulate their access, allocate competencies and resources for actors and influence their action orientations.

2.1.1 Governance as institutionalized rule structures

Research on governance usually distinguishes three different types of institutionalized rule structures: hierarchy, market (competition systems)[3] and negotiation systems.[4] These are ideal types, which differ with regard to the degree of coupling largely defined by institutions. Hierarchies are based on an institutionalized relationship of domination and subordination, which significantly constrains the autonomy of subordinate actors (tight coupling). In negotiation and competitions systems, the formal relation between actors is equal. While they may differ with regard to their bargaining power or competitiveness, none is subject to the will of the other. The institutions of competition systems do not provide for any structural coupling. Actors have full autonomy to coordinate themselves through the mutual adjustment of their actions. Negotiation systems are characterized by loose coupling. Social coordination is based on mutual agreement. Unlike formalized negotiation systems, the symmetrical relations of networks are not defined by formal institutions but constituted by mutual resource dependencies and/or informal norms of equality.

The degree of coupling is defined by institutions. So are the actor constellations within the institutionalized rule structures. Institutions allocate resources to actors and regulate their access to decision-making arenas. Unlike private actors, institutions bestow upon public actors the power to unilaterally impose decisions, even though they refrain from invoking their hierarchical authority when acting in negotiation and competition systems. Public actors can also define and modify the institutional rules of negotiation and competition systems thereby shaping actor constellations. (Mayntz, 1996: 156-160; Scharpf 1997: 36-50). Finally, public actors have an institutional mandate to pursue the public interest. While they may be

---

[3] In the political science literature, markets are not regarded as forms of governance since they are based on spontaneous interactions that leave "no place for 'conscious, deliberate and purposeful' effort to craft formal structures", (Williamson, 1996: 31). Yet, market mechanisms can be institutionalized to coordinate actors behaviour through competition (Benz, i.E.). This paper uses the concept of competition systems to describe the institutionalization of market-based modes of political coordination.

[4] The literature discusses other characteristics of networks, such as actor constellations that equally involve public and private actors (Mayntz, 1993b) or relations based on trust, which favour problem-solving over bargaining as the dominant action orientation (Scharpf, 1997: 137-138; Benz, 2001: 171). However, such as narrow concept of network governance is flawed both in theoretical and empirical terms (cf. Börzel, 1998).

guided by their self-interest, public actors have to justify their actions and face sanctions for rent-seeking or corrupt behaviour (Scharpf, 1991: 630; cf. Scharpf 1997: 178-183).

While political hierarchies are confined to public actors, negotiation and competition systems may vary in their actor constellations. *Inter- or transgovernnmental*[5] *negotiation systems* comprise public actors only, who may come from different policy sectors and/or level of government. *Intermediate negotiation systems* bring together public actors with representatives of business and/or societal interests (Mayntz, 1993b; Scharpf, 1993. They are often referred to as "cooperative" (Mayntz, 1998), "modern" (Kooiman, 1993) or simply "new" modes of governance.[6] Some authors reserve governance only for informal networks and formalized negotiation systems between public and private actors, which are then referred to as network governance (Rhodes, 1997; Eising and Kohler-Koch, 1999). *Private negotiation systems* do not include public actors. They take the form of "private interest-government" in associations (Streeck and Schmitter, 1985) ant the so called "private regimes" as they have emerged in international politics (cf. Cutler, Haufler and Porter, 1999).

In competition systems, it is not only private actors that compete for the provision of public goods and services, e.g. when they are contracted out. Public actors, such as universities, often participate in the competition. *Regulatory or tax competition*, by contrast, is confined to public actors (states, regions, municipalities), since only they hold the competencies for setting collectively binding regulations and taxation (Benz, 2001: 171-173; Benz, i.E.).

2.1.2 Governance as modes of coordination

Institutionalized rule structures induce certain modes of social coordination. (vgl. Scharpf 1997). Thus, governance processes and structures are causally linked. Governance structures do not determine but rather promote specific modes of coordination. They provide a "possibility frontier" (*Möglichkeitsgrenzen*), which does not support institutionally more demanding modes (Scharpf, 2000: 90-94; Scharpf 1997: 46-49). Thus, hierarchical coordination is not feasible in negotiation or competition systems. The latter also preclude the use of non-hierarchical modes of bargaining and arguing.

---

5 Drawing on Keohane und Nye, transgovernmental negotiation systems are defined as a "set of direct interactions among sub-units of different governments that are not controlled or closely guided by the policies of the cabinets or chief executives of those governments" define (Keohane and Nye, 1974: 43).

6 Héritier, 2003; cf. the Integrated Project "New Modes of Governance in Europe" coordinated by the European University Institute in Florence.

There are hierarchical and non-hierarchical modes of coordination. Hierarchical coordination usually takes the form of authoritative decisions (e.g. administrative ordinances, court decisions) actors *must* obey. Hierarchical coordination or direction (Scharpf 1997) can, hence, force actors to act against their self-interests (Scharpf 1997: 171). They may be either physically coerced by the use of force or legally obliged by legitimate institutions (law). Note that even majority voting entails a genuine element of hierarchical coordination since it imposes the will of the majority upon the minority (Scharpf 1997: 155/156).

Non-hierarchical coordination, by contrast, is based on voluntary compliance. Conflicts of interests are solved by negotiations. *Voluntary agreement* is either achieved by negotiating a compromise and granting mutual concessions (side-payments and issue-linkage) on the basis of fixed preferences (bargaining). Or actors engage in processes of non-manipulative persuasion (arguing), through which they develop common interests and change their preferences accordingly (Benz, 1994: 118-127; Börzel and Risse, 2005).

Coordination in competition systems is also non-hierarchical. Actors compete over meeting certain performance criteria, to which they adjust their behaviour accordingly (cf. Benz, i.E.). They are largely motivated by egoistic self-interests. But they pursue a common goal or some scarce resources of which they wish to obtain as much as possible by performing better than their competitors. Political competition induces actors to contribute to the provision of collective goods and services by pursuing their self-interests. Unlike under private competition, their performance is evaluated and rewarded by institutionally defined criteria legitimized by public authorities.

2.1.3 The Combination or Embeddedness of Institutionalized Rule Structures

The institutionalized rule structures and their embedded modes of coordination are ideal types and are hardly found in reality. Rather, we find combinations, both, within and beyond the state (Benz, 2001: 175-202). "*Governance regimes"* (Benz) or *governance mixes* (Börzel, 2007b) are different combinations of the ideal types, embedding one in the other by making one subordinate to the other ("shadow)" or nesting them, i.e. linking them horizontally.

The three types of negotiation systems are often embedded in hierarchical structures. Almost always, public and private actors negotiate under a shadow of hierarchy. This is also true for political competition systems, since public actors usually set the legal rules of the game and intervene to prevent market distortions or correct outcomes that violate public interests. In a similar vein, hierarchies and negotiation systems can operate in the shadow of the market. New Public Management, for instance, seeks to place public administrations in a political competition for good performance with each other and/or with private organizations (Benz, 2006: 10). Likewise, states or regions may compete in setting business-friendly regulation or taxation in order to attract economic investments and avoid competitive disadvantages, respectively (Héritier et al., 1994). The institutional framework for political competition may not only be set by hierarchies (e.g. states) but can also be negotiated. Thus, the World Treat Organization shapes the conditions for regulatory competition among states in the same way as international regimes set important parameters for state regulation in the field of environment, security or human rights.

Embeddedness implies a ranking between the different institutionalized rule structures. The dominant rule structure sets or changes the rules of the game for the subordinate rule structure and entitles actors to intervene in order to correct or substitute policy outcomes. As a result, the primary rule structure casts an institutional shadow which has a significant influence on the action orientation of the actors in the secondary rule structure. Nestedness, by contrast, requires actors in the different rule structures to coordinate their actions in order to reach a political decision and implement it, respectively. This is particularly the case if policy processes involve multiple arenas. (Benz, 2006: 12).

In order to systematically capture and account for the governance mix in the European Union, the next section develops and analytical framework that applies the governance typology introduced above to EU policy-making.

2.2 European Governance: An Analytical Framework

The analytical framework takes as a starting point the institutions that define the rule structures of EU policy-making. Institutions determine which actors have access to the policy process, give them resources to pursue their interests and define their relationships with each other. Not only do they oblige actors to follow certain rules constraining their strategic

choices. Institutions also entail standards for appropriate behaviour (norms), which influence the preferences, perceptions and action orientations of actors in policy-making. (March and Olsen, 1989; Scharpf, 1997: 38-43). The institutions of EU policy-making are largely constituted by European Primary Law. At the same time, a whole set of informal institutions has emerged, which are more difficult to capture.

The analytical framework focuses on the formal institutions since they largely define the rule structures supporting different modes of coordination in EU policy-making. Moreover, priority is given to the decision-making stage because the implementation of EU policies is subject to rather uniform rules that only vary between the First Pillar and the Second and Third Pillar, respectively. In principle, the member states are responsible for implementation and enforcement. The extent to which they resort to hierarchical or non-hierarchical coordination with public and private actors at subordinate levels of government varies both between and within the member states. In the relationship between the EU and the member states, however, implementation is embedded in the hierarchical structure of supranational institutions, at least under the First Pillar (Single Market, Monetary Union) and increasingly also under the Third Pillar (Justice and Home Affairs). The shadow of hierarchy is cast by the supremacy and direct effect of European Law. The European Commission as the Guardian of the Treaties can bring legal proceedings against any member state that violates European Law. The European Court of Justice (ECJ) has the power to authoritatively settle the case (Art. 227, 227 ECT). Competition policy is subject to similar procedures (Art. 82; 88 ECT). The member state governments, of course, can avoid hierarchical coordination by defying the ECJ – the EU has no coercive powers by which it could force its member states into compliance. Yet, it would constitute a serious breach of European Law. And domestic courts and enforcement authorities have to execute the rulings of the ECJ. This is particularly the case under the preliminary ruling procedures (Art. 234 ECT) where domestic courts refer cases of conflict between national and European Law to the ECJ to settle the issue.

Under the First Pillar, the Commission can also use comitology to hierarchical coordinate the implementation of European Law. To execute decisions of the Council, the Commission may adopt legally binding measures (Art. 202 ECT). However, the member states have placed the executive powers of the Commission under the control of committees that are comprised of national experts. Their opinions are not binding, but under the regulatory procedure, an objection can nullify the decision of the Commission and the case is referred to the Council.

Thus, comitology is a transgovernmental negotiation system that is placed under the double shadow of hierarchy of the Commission (outside the regulatory procedure) and of the Council (under the regulatory procedures).

In sum, the implementation of EU policies under the First Pillar takes place in the shadow of hierarchy of supranational institutions that even reaches inside the member states. Proponents of intergovernmentalist approaches might argue that supranational institutions cannot really oblige the member states to implement EU policies against their will, since it is the member states which adopted these policies in the first place. Rather, the member states delegate executive powers to the Commission as their agent to ensure the effective implementation of their political will (Pollack, 1997; Garrett, Kelemen and Schulz, 1998). As the "Masters of the Treaties", the member states remain in firm control over their supranational agent, not only through comitology but also because they can always change the rules of the game by modifying the powers of the Commission in the Treaties. Yet, the „shadow of intergovernmental negotiations" is significantly weakened since by now it rests on the consent of 27 member states!

Under the Second and Third Pillar, the legal shadow of hierarchy is absent since the decisions by the Council do not fall under the judicial authority of the ECJ nor are they subject to comitology. Which forms of governance apply in the implementation of EU policies depends even more on the institutions of the member states than under the First Pillar. In any case, this paper only considers implementation if the Treaties explicitly specify institutional rules that diverge from the general pattern, as it is the case in structural policy.

The analytical framework specifies different forms of European governance, which are conceptualized as institutionalized forms of political coordination. They are constituted by differing combinations of institutional rule structures which support specific modes of coordination (figure 1). The typology draws on the work of Fritz Scharpf, whose interaction modes focus, however, more on public actors and neglect the embeddedness and nestedness of governance forms (Scharpf 1997; Scharpf, 1999; Scharpf, 2001; Scharpf, 2003).

2.2.1 Supranational centralization: hierarchical coordination by supranational actors

Unlike the modern state, the EU cannot rely on a legitimate monopoly of force to bring its member states into compliance with European Law. Yet, supranational institutions entail a

strong element of hierarchy, since they can bind the member states against their will. This is particularly the case for authoritative decisions of the European Central Bank, the European Commission, and the European Court of Justice, which do not require the consent.

2.2.2 Supranational joint decision-making: negotiations in the shadow of hierarchy[7]

Majority decisions in the Council entail hierarchical coordination of the minority by the majority. At the same time, however, the „Luxembourg Compromise" established a strong norm of consensus-seeking and has transformed the „Community Method" under the First Pillar in a inter- and transgovernmental negotiation system, in which the representatives of national and at times subnational governments seek to reach political agreements under the mediation of the European Commission. With the subsequent empowerment of the European Parliament (EP), actor constellations increasingly include members of parliament, which in turn have to negotiate a common position adopted by majority rule. The shadow of supranational hierarchy becomes weaker, if the Council decides by unanimity and the co-decision or co-operation procedure does not apply. In these cases, the institutionalized rule structures resemble more purely inter- and transgovernmental negotiation systems as we find them under the Second and Third Pillar.

2.2.3 Mutual recognition: regulatory competition in the shadow of hierarchy

Supranational Institutions do also cast a shadow of hierarchy on competition in the Single Market. The principle of mutual recognition, which the ECJ established in 1979 with its seminal *Cassis de Dijon* decision, constitutes the framework for a moderate regulatory competition between the member states (Sun and Pelkmans, 1995: 68f.). European Law mandates the opening of national market (market-making or negative integration) and generates competitive pressure not only on domestic companies but also on public regulation of the member states. In a nutshell, the principle of mutual recognition allows high-regulating countries to maintain their regulatory standards but prevents them from using those standards as non-tariff trade barriers. A good produced in one member states has to be granted access to the markets of any other member state, even if the product standards are higher in the importing than in the exporting member state. The access can only be denied if compliance with the higher standards is in the imminent public interest of the receiving country and is

---

7 On the shadow of hierarchy and (new) modes of governance in the EU see Héritier, 2003 und the findings of Project No. 5 „New Modes of Governance in the Shadow of Hierarchy", which is part of the Integrated Project „New Modes of Governance " funded by the 6th Framework Programme of the European Union http://www.eu-newgov.org/datalists/project_detail.asp?Project_ID=05, last access 21.2.2007.

subject to judicial review by the ECJ. Thus, while fostering competition, the principle of mutual recognition constrains the dynamics of a race-to-the bottom by the requirement to (implicitly) agree on minimum standards. It thereby significantly expands the shadow of supranational hierarchy under the First Pillar since the dismantling of non-tariff barriers does not require the consent of the member states – unlike the harmonization of national standards at the EU level. This form of "horizontal transfer of sovereignty" (Nicolaidis and Shaffer, 2005) has been increasingly invoked under the Third Pillar, e.g. in the area of asylum and immigration policy (Schmidt, 2007).

2.2.4 Intergovernmental cooperation: negotiations between governmental actors

Under supranational centralization and supranational joint decision-making have no or only limited formal decision powers, the opposite is true for the intergovernmental cooperation under the Second and Third Pillar. The (European) Council usually decides by unanimity and shares the right of initiative with the Commission. The Parliament is at best consulted, and the ECJ has only limited power of judicial review (Art. 35 para 6 EUT). In the First Pillar, a new form of transgovernmental negotiation systems has been emerging, in which national regulatory agencies coordinate their regulatory activities e.g. on standards of data protection and the licensing of pharmaceuticals.

2.2.5 Open Method of coordination: political competition in the shadow of negotiations

The Open Method of Coordination (OMC) is based on inter- and transgovernmental negotiation systems, in which the governments of the member states agree on joint goals, which are legally non-binding and in which supranational actors are not formally included. Within an agreed-upon time frame, the member states then develop national action plans whose implementation is subject to regular review and evaluation to foster processes of mutual learning through the identification of best practice. The member states enter in a sort of political competition, in which they compete for the best performance in reaching joint goals. By outperforming other member states, they gain a competitive advantage in attracting or keeping economic activities. OMC provides for the participation of non-state actors. Depending on their involvement, OMC resembles an inter- or transgovernmental or an intermediate negotiation system.

2.2.6 Network governance: negotiations between public and private actors

Formal and informal EU-institutions often provide for the consultation of economic and societal interests by the Commission, the Parliament and the representatives of the member states. In some cases, the Treaties even allow for the participation of non-state actors in EU negotiation systems on equal basis. Such intermediate negotiation systems between public and private actors are often referred to as *network governance* (Eising and Kohler-Koch, 1999; Kohler-Koch and Rittberger, 2006). At the informal level, we also find a vast variety of interactions between EU decision-makers, both national and supranational, and (trans)national representatives of economic and societal interests. However, in order to qualify as informal negotiation systems, they have to be stable over time and engage in joint-decision making rather than merely being arenas for the exchange views.

2.2.7 Delegated/regulated self-coordination: private negotiations in the shadow of hierarchy

Instead of negotiating with private actors, the Commission and the Council can also delegate regulation to private negotiation systems. With the exception of the Social Dialogue, this is hardly done at a systemic level but within individual policies setting the legal framework for the self-coordination of private actors. They place their regulatory activities under the hierarchical supervision of supranational actors, which may hold ultimate decision-making powers or can substitute for private regulation in case of suboptimal or failed outcomes. This is also the case for voluntary environmental or social agreements, which are negotiated without the participation of Commission, Council and Parliament but have to conform to the parameters formulated by supranational actors.

2.2.8 Private interest government: private negotiation systems

Private actors may coordinate themselves without having a mandate from or being under supervision of supranational institutions. Economic interests have organized themselves at the EU-level in umbrella organizations. The so called Euro-groups have the possibility to take binding decisions for their members, e.g. codes of conduct, and monitor compliance. Yet, if private interest government negotiates voluntary agreements in which members commit themselves to certain standards in order to avoid public regulation, the shadow hierarchy looms again.

2.2.9 Regulatory and tax competition

While competition in the EU mostly takes place under the shadow of supranational hierarchy and inter- or transgovernmental negotiation systems, some areas are neither subject to the principle of mutual recognition nor the Open Method of Coordination. Rather, member states adjust their social and tax policies in order to avoid competitive disadvantages and gain competitive advantages, respectively (Scharpf, 2001: 7-8).

Figure 1 summarizes the different forms of European governance, which will guide the empirical analysis in the next section. A comprehensive coding of the more than 20 policy areas that are subject to EU regulation would go beyond the scope of this paper. Nevertheless, the analysis reveals some interesting patterns. We will see that the EU mostly governs through trans- and intergovernmental negotiation and competition systems that operate under the shadow of supranational hierarchy.

3. European Governance – Negotiation and Competition in the Shadow of Hierarchy

Consistent with the analytical framework developed in the previous section, the empirical study of European forms of governance in the various policy sectors takes the formal institutions prescribed by the Treaties as a starting point. (cf. Börzel, 2005b). They determine which actors – (supra-/sub) national public vs. private – have access to the EU policy process and to which modes of coordination they can resort. Again, it is beyond the scope of this paper to provide a comprehensive mapping of the modes of coordination in different policy sectors. Rather, the following section seeks to identify "possibility frontiers" for the different governance mixes. It draws as much as possible on the existing literature in order to account for the extent to which forms of governance are not only defined by European Primary and Secondary Law or other agreements but are actually applied. Figure 2 summarizes the major findings of the analysis.

3.1 The Long Shadow of Supranational Hierarchy

The first thing that is striking about the EU is that while all three ideal types of governance forms are present, they are hardly found in isolation. The supranational institutions of the EC-Treaty provide ample possibility for hierarchical coordination at the EU-level. *Supranational*

centralization reigns where supranational actors have the powers to take legally binding decisions without requiring the consent of the member states. Thus, the European Central Bank (ECB) authoritatively defines EU monetary policy (Art. 105 ECT). The presidents of the national central banks of the member states are represented in the ECB Council. However, they are not subject to any mandate (Art. 108 ECT). In competition policy, the Commission can conduct investigations against cases of suspected infringements, impose sanctions and take legal recourse to the ECJ (Art. 82 ECT; Art. 88 ECT). Strictly speaking, the supervision of agreements and mergers between undertaking as well as state aid control fall under implementation rather than decision-making, since the Commission enforces competition rules set by Articles 81, 87 ECT and a series of directives and regulations, which have been adopted by qualified majority since the Amsterdam Treaty. In case of public undertakings, however, the Commission can adopt legally binding regulations without the consent of the member states if privileges of public undertakings constitute a major obstacle to the completion of the Single Market (Art. 86 para. 3 ECT). The Commission has only invoked these powers once, when it sought to break open national monopolies in the telecommunication sector (Schneider, 2001; Schmidt, 1998). But it has alluded several times to the possibility of using Art. 86 ECT, if member states and public undertakings are unwilling to negotiate a subsequent liberalization of the energy sector (Matlary, 1997; Schmidt, 1998; Eising, 2000). The shadow of hierarchy is reinforced by power of the Commission to bring infringement proceedings against member states violating the principles of free and fair competition (Héritier, 2001).

Finally, the European Court of Justice can bind the member states against their will by interpreting European Law. This form of *supranational centralization* is not confined to market making (Scharpf, 2001). With the dynamic interpretation of the Treaties in its case law (Weiler, 1981), the ECJ has expanded European regulation beyond negative integration. For instance, the ECJ empowered the EC to enact social and environmental regulations at a time when the member states had not yet bestowed the EC with the necessary competencies (Knill, 2003: 22). In a similar vein, the ECJ established the principle of state and damages liability for violations of European Law (Craig, 1993, , 1997). While ECJ case law is a direct form of *supranational centralization*, it also has a significant indirect effect by casting a shadow of hierarchy on inter- and transgovernmental negotiation systems. This is particularly the case for the unilateral removal of national regulatory standards used by the member states as non-tariff barriers to the freedom of goods and services. The supranational shadow of hierarchy

provides an important incentive for public and private actors to agree on a subsequent deregulation at the national level, which may give rise to re-regulation at the EU-level (Héritier, 2001). A particularly interesting example is the impact of ECJ case law on national tax regulation (O'Brien, 2005) and public health policy (Graser, 2004), since the EU has only limited competencies in these two areas. The member states will thus have to negotiate in the shadow of competition created by supranational centralization if they wish to adapt their national regulations to European requirements of the freedom of services and capital.

In sum, the EU consists of hierarchical institutionalized rule structures, which offer the Commission, the European Court of Justice and the European Central Bank ample opportunities for hierarchical coordination. Supranational centralization gains even more relevance by casing a strong shadow of hierarchy, in which the member states negotiate to reach agreements, mostly – but not exclusively – on market making policies. ECJ case law, in particular, increasingly interferes with market correcting and welfare state policies. At the same time, the ECJ operates in the shadow of intergovernmental negotiations by which the member states as the "Masters of the treaties" can change the rules of supranational centralization and exempt certain areas from the reach of the ECJ. If the constitutional level of EU meta-governance is also taken into consideration, we find a threefold embeddedness of institutionalized rule structures.

The shadow of supranational centralization is significantly enlarged in the areas subject to *supranational join decision-making*, in which the Council decides by qualified majority and supranational institutions set the rules for implementation. This applies to almost all policies under the First Pillar but also for the framework decisions under the Third Pillar (Art, 35 para. 1 EUT). In other words, the core areas of EU policy-making are embedded in hierarchical structures. The latter form the institutional framework for inter- and transgovernmental negotiation systems, which dominate the supranational policy process. While the so called Community Method grants the Commission and the European Parliament a significant say, EU decision-making is still dominated by the Council with its numerous working groups and the Committee of Permanent Representatives as well as the expert committees of the Commission, which prepare legal proposals and execute Council decisions (comitology). These formalized negotiation systems are embedded in transgovernmental networks, which span across several levels of government and stages of the policy process. The networks serve supranational, national and subnational actors to coordinate their interests and reach

agreements through the exchange of resources and arguments. While they mostly seek to influence supranational and intergovernmental decision-making, they may also produce regulatory outcomes. For instance, national regulatory agencies formed European regulatory networks in order to coordinate their regulatory activities in response to the EU-induced liberalization of national markets. Informal transgovernmental negotiation systems, such as the European Competition Network (ECN, Wilks, 2005: 131), have emerged in several policy sectors (see below).

The shadow of hierarchy cast by majority decisions in the Council and authoritative decisions by the Commission or the ECJ, respectively, has a significant influence on the dynamics and outcomes of inter- and transgovernmental negotiation systems (Golub, 1999; Tsebelis and Garrett, 1997; Börzel, 2003). On the one hand, the perceived "threat" of a unilaterally imposed decision increases the willingness of governmental actors to compromise. On the other hand, inter- and transgovernmental actors have to make sure that their agreements are likely to stand scrutiny by the Commission and the ECJ. The parameters set by their interpretation of European Law are not always oriented towards mere market liberalization and free competition but may also support market correcting policies (Héritier, 2001). The "dual mechanism of anticipated reactions and the fleet in being" (Scharpf 1997: 200) is particularly prevalent in the Single Market but also impacts upon other policy sectors, such as the environment, social policy and tax policy.

Private actors are consulted throughout the entire EU policy process at the different levels of government involved. Yet, they rarely enjoy a seat on the negotiation table. And unlike in the "negotiating state", Europe-wide forms of *private interest government in the shadow of hierarchy* have hardly emerged. If at all, we find them in the area of technical standardization and, increasingly, in the liberalization of public utilities. EU technical standardization is mostly voluntary since supranational harmonization is confined to national regulations concerning the public interest. For the other areas, the Council delegated the task to develop technical standards to three private organizations (CEN, Cenelec und ETSI). The technical standards are not legally binding but are subject to a conformity assumption, which only applies, however, if the member states to not voice objections during the comitology procedure (Gehring et al. 2007). The standardizing organizations have – with the exception of ETSI – only one representative per member state. Since national standardizing organizations are not always private, self-regulation is not only regulated by the EU and subject to the

control of the member states through comitology. It also involves public actors. This is also the case for the regulatory networks, that emerged in the regulation of pharmaceuticals and food stuff (Koutalakis 2006; Gehring et al. 2007) as well as the deregulation of public utilities (Eberlein, 2001; Héritier and Coen, 2005; Smith, 2005). We need detailed case studies to find out whether private actors are merely consulted or have a real voice not to mention a vote. But what seems to be clear by now is that these regulatory networks were first of all set up to release the Commission from the burden of implementing market creating regulation (Gehring et al. 2007).

The partnership principle in structural policy also provides for the involvement of private actors in inter- and transgovernmental negotiation systems. The literature calls it a prime example of *network governance*. Yet, if at all, it constitutes only very weak intermediate negotiation systems, which operate under a very strong shadow of hierarchy. The Treaties explicitly prescribe the involvement of the social partners – beyond the consultation of the Economic and Social Committee – for the management of the European Social Funds. Their representatives are members of the management committee, in which the member state governments are represented as well and which is chaired by the European Commission (Art. 147 ECT). There are also several EU regulations, which specify the partnership principle and provide for the participation of the social and economic partners at the various stages of programming (cf. 1260/99/EC: Chapter IV, Art. 8). Moreover, a recent regulation extends the partnership principle to include civil society (1083/2006/EC). But the extent, to which private actors are actually involved, is contested in the literature and varies significantly across the member states. The concept of multilevel governance emerged from studies of structural policy. But it has focused on the role of local and regional governments (Marks, 1992; Hooghe, 1996; Bache and Flinders, 2004). Private actors have hardly been systematically considered. But it seems that economic and social partners still have a marginal role compared to national, regional and local governments. And while the partnership principle may seek to encourage the building of intermediate negotiation systems, it would always operate in the shadow of hierarchy, since private actors do not have a veto over the decisions taken. In any case, there is certainly not enough empirical evidence to speak of *network governance* in structural policy.

The Social Dialogue is undoubtedly the most significant form of *private self-coordination in the shadow of supranational hierarchy* (Art. 139 ECT). In selected areas of social policy, the

social partners have the right to conclude agreements, which can be turned into European Law (Falkner, 1998). This form of Euro-corporatism is unique and has hardly been invoked. Other forms of *private self-regulation in the shadow of hierarchy* are equally rare. While voluntary agreements at the national level abound, they have only been hardly used by European business organizations to prevent EU regulation. If at all, they are found in the area of environmental and consumer protection (vgl. Calster and Deketelaere, 2001; Héritier and Eckert, forthcoming).

Private interest government as the ideal type of private negotiation systems is as much an exception as its public-private counterpart of network governance. As we have seen, the partnership principle has not given rise to intermediate negation systems at the EU level. And even within the member states, private actor involvement remains limited. We find some inceptions of public-private partnerships in the area of research and development (e.g. co-funding of Galileo).

While private and intermediate negotiation systems are hardly found in the EU, a complex European competition system has emerged in the shadow of hierarchy cast by supranational institutions. Each market can be conceptualized as a hierarchically regulated competition system. What is special about the European market is the *principle of mutual recognition*, which is a form of supranational competition rule that does not have to rely on the harmonization of national regulations. Its application in the area of Justice and Home Affairs, e.g. regarding the (non-)recognition of asylum seekers, illustrates that the principle of mutual recognition can work outside the Single Market, if the national regulations of member states are too divergent to allow for agreement in the inter- and transgovernmental negotiation systems (Schmidt, 2007; Wagner 2007). As a result, the shadow of supranational institutions creeps into areas, which the member states explicitly sought to seal off their influence. Unlike in the Single Market, however, the principle of mutual recognition is not to facilitate the removal of non-tariff barriers but, on the contrary, shall help to establish market correcting policies. It may sound cynical to conceive of asylum seekers, migrants and criminals as problems of market failure. But the completion of the Single Market does indeed create a need for coordination in the area of internal security and immigration. The removal of border controls, envisioned already by the Schengen Treaty of 1985 and made European Primary Law with the Amsterdam Treaty (Art. 61-69 ECT), renders the control of illegal immigration and transborder crime extremely difficult. The functional interdependence between market

integration and internal security has led to a spill-over effect as a result of which significant parts of the Third Pillar have been subsequently transferred into the First Pillar (Börzel, 2005b). Where the member states have been unable to agree on supranationalization, the principle of mutual recognition applies.

The principle of mutual recognition covers a wide range of policy sectors under the First and Third Pillar. However, there are areas of competition between the member states, which are neither regulated by supranational institutions nor placed under the shadow of inter- and transgovernmental negotiation systems (on the latter see below) or which operate outside any political coordination by the EU level. For reasons of scope, this paper cannot deal with unmitigated *regulatory or tax competition*. It mostly concerns process-regulation and (redistributive) welfare state policies.

3.2 Inter- und transgovernmental cooperation and its shadow

The areas of intergovernmental cooperation, which the member states explicitly sealed against shadow of supranational hierarchy, largely correspond to the ideal type of public negotiation systems. European decisions rests on the voluntary coordination of the member states (unanimity or consent) and often do not have legally binding character. (*soft law*). They are prepared and accompanied by inter- and transgovernmental networks, which act free from the shadow of hierarchy. This is not only true for the Second and parts of the Third Pillar, but also for selected areas under the First (parts of social policy, macroeconomic and employment policy, research and development, culture, education, taxation), in which the EU has no or only very limited competencies and the influence of the supranational troika (Commission, Parliament and Court) is severely restricted. In order to generate the necessary coordination at the EU-level, member states have increasingly resorted to the *Open Method of Coordination* (OMC), which constitutes a form of political competition in the shadow of inter- und transgovernmental negotiation systems.

OMC has no basis in the Treaties. It emerged as the main instrument to implement the so called Lisbon Strategy, which the European Council adopted in 2000 in order to promote economic growth and competitiveness in the EU. OMC works on the voluntary agreement of joint goals, which are legally not binding. In order to realize these goals, the member states develop national action plans whose implementation is monitored and evaluated on the basis

of common indicators. The member states shall compete for best practices which are to trigger processes of mutual learning. OMC is in principle open for the participation of non-state actors. Yet, in practice, it has largely taken the form of inter- and transgovernmental negotiations with hardly any involvement of private actors (Rhodes, 2005: 295-300; Borrás and Jacobsson, 2004: 193-4).

In the meantime, OMC has traveled beyond Lisbon and is applied in asylum and immigration policy (Wagner 2007), health policy (Smismans, 2006) or environmental policy (Lenschow/Reiter 2007). With the exception of environmental and social policy, private actors, again, have hardly any role to play neither in the formulation of joint goals at the EU level nor in their implementation at the national level (Hodson and Maher, 2001; Héritier, 2003; Armstrong, 2003 170-94). *Intergovernmental cooperation* sets the rules for the political competition among the member states.

4. Conclusions

This paper explored the nature of European governance. The first part developed an analytical framework that identified 10 different forms of governance for the EU. The categories used heavily draw on the work of Fritz Scharpf whose typology of political coordination in multilevel systems sought to overcome the dichotomy of intergovernmentalism and supranationalism that has dominated EU policy-making. The analytical framework of this paper modifies the four types of governance developed by Scharpf in order to accommodate the role of private actors, on the one hand, and to account for the embeddedness of governance structures on the other. The second part used the analytical framework to study the governance mix in the various areas of EU policy-making. The empirical findings confirm the usual portray as the EU as a multilevel negotiation system. However, the analysis reveals several characteristics of the EU that have been largely overlooked in the literature. First, EU negotiation systems are mostly embedded in hierarchical structures established by supranational institutions. Second, EU negotiation systems are dominated by governmental actors. Third, governmental actors negotiate in the supranational shadow of hierarchy not only in the First Pillar. By applying the principle of mutual recognition in areas of Justice and Home Affairs, the supranational shadow of hierarchy increasingly reaches into the Third Pillar, which the member states sought to confine to intergovernmental cooperation only.

Fourth, in areas not subject to the supranational shadow of hierarchy, member states rely on inter- and transgovernmental cooperation to coordinate their policies. This is not only the case in sensitive areas of internal and external security but increasingly concerns welfare state policy. The Open Method of Coordination is a major attempt to regulate the redistributive consequences of *economic* competition for the national social security systems. It relies on *political* competition to coordinate national policies and have them adjust to jointly agreed goals.

Despite attempts to use OMC in order to institutionalize member state coordination in areas of (re-)distributive policy, European governance continues to focus on regulatory policy. Member state governments negotiate in the shadow of supranational institutions the rules according to which they whish to compete in the Single Market. These rules do not only aim to open national markets but shall also reduce social and political risks created by liberalization and deregulation. The EU has been rightly described as a "regulatory state" which, does not possess any significant redistributive capacities (Majone, 1994; cf. Eberlein, 2001). This is a much more decisive difference between the EU and the modern state than the lack of a legitimate monopoly of force. The EU may not be capable of directly coercing the member states into compliance with its laws. Rather, hierarchical coordination draws on the supremacy and direct effect of European Law according to which supranational actors can rely on national courts and authorities for enforcement. In other words, the EU can lend on the legitimate monopoly of force of its member states.

Beside a very weak redistributive capacity, the EU distinguishes itself from the modern state by the weak role which private actors play in EU policy-making. This is not to say that they are involved in the policy process. Yet, their formal participatory rights are limited and mostly confined to consultation. Rather, economic and societal actors have established numerous informal relationships with the Commission, the Parliament and the member states governments, where they exchange resources and arguments. These networks vary in form and density across policy sectors and stages of the policy process (cf. Peterson and Bomberg, 1999) and are a major characteristic of the EU system of multilevel governance. However, such informal negotiation systems are nothing special or unique to the EU but a constitutive feature of the modern state in the 21st century (Scharpf, 1991). Moreover, networks are mostly found in the "soft" stages of the policy cycle. They help to identify societal problems, to set them on the political agenda, and to formulate policies to address the problems. But the

decisions are still taken by supranational actors or in inter- and transgovernmental negotiation systems that mostly operate under the shadow of supranational institutions. In short, the EU governs with but hardly through networks (Börzel, 2005a). Private self-regulation and private interest government are equally rare. It is the dominance of governmental actors that distinguishes European governance from both, governance within and beyond the state.

The governance literature has identified two conditions for the emergence of private and intermediate negotiation systems:[8] a strong state (shadow of hierarchy) and a strong society (autonomous and resourceful private actors; cf. Mayntz and Scharpf, 1995: 21-23; Mayntz, 1993a: 41; Mayntz, 1996: 157-163). Even if the EU lacks coercive power, supranational actors have significant capacities for hierarchical coordination. Moreover, forms of private self-regulation and public-private co-regulation abound in international politics – in the absence of any hierarchy (cf. Cutler, Haufler and Porter, 1999; Biersteker and Hall, 2002; Börzel and Risse, 2005).[9] The shadow of hierarchy can therefore hardly explain why the EU has not developed any significant forms of network or private interest government. The organizational weakness of private actors appears to be more promising. While the number of transnational interest groups in Brussels is constantly on the rise (Eising and Kohler-Koch, 2005), they may be not strong enough to engage in collective action required for private self-regulation or co-regulation. Their weakness may be due to the heterogeneity of interests and a strong orientation towards national concerns. Finally, the member states may have little incentive to involve private actors in the policy process. Proponents of intergovernmentalist approaches to EU policy-making have argued that member states have delegated national policy competencies to the EU level in order to increase their autonomy vis-à-vis domestic interests (Milward, 1992; Moravcsik, 1994). The Commission, in turn, takes advantage of the private actor resources to increase its action capacity. At the same time, however, the Commission seeks to preserve its autonomy and has no interest to extend the involvement of private actors beyond informal and formal consultations. Against this background, it seems likely that executive dominance in the EU will prevail. This has significant implications for the effectiveness and legitimacy of European governance that cannot be discussed in this paper. Suffice to say that even if the Constitutional Treaty will come into force in its present form, it will not change the nature of the EU as a predominantly inter- and transgovernmental negotiation system that operates in the shadow of supranational hierarchy (Börzel, 2005c).

---

8 On the following see Börzel, 2007a.

9 The "shadow of anarchy" (Mayntz and Scharpf, 1995: 25) may indeed explain the different between the EU and the international level (cf. Börzel, forthcoming.

5. Bibliography

Armstrong, K.A. (2003) 'Tackling Social Exclusion Through OMC: Reshaping the Boundaries of EU Governance.' In T.A. Börzel and R. Cichowski (eds.), *The State of the European Union, Vo. VI: Law, Politics and Society* (Oxford: Oxford University Press), pp. 170-94.

Bache, I. and Flinders, M. (2004) *Multi-level governance* (Oxford: Oxford University Press).

Benz, A. (1994) *Kooperative Verwaltung. Funktionen, Voraussetzungen, Folgen.* (Baden-Baden.

Benz, A. (2001) *Der moderne Staat* (München.

Benz, A. (2006) 'Eigendynamik von Governance in der Verwaltung.' In J. Bogumil, W. Jann and F. Nullmeier (eds.), *Politik und Verwaltung. PVS Sonderheft 37* (Wiesbaden: VS Verlag für Sozialwissenschaften), pp. 29-49.

Benz, A. (i.E.) 'Politischer Wettbewerb.' In A. Benz, S. Lütz, U. Schimank and G. Simonis (eds.), *Handbuch Governance* (Wiesbaden: VS Verlag für Sozialwissenschaften), pp.

Biersteker, T.J. and Hall, R.B. (eds.) (2002) *The Emergence of Private Authority in Global Governance* (Cambridge: Cambridge University Press).

Borrás, S. and Jacobsson, K. (2004) 'The open method of co-ordination and new governance patterns in the EU'. *Journal of European Public Policy*, 11 Vol., No. (2), pp. 185-208.

Börzel, T.A. (1998) 'Organising Babylon. On the Different Conceptions of Policy Networks'. *Public Administration*, 76 Vol., No. (2), pp. 253-73.

Börzel, T.A. (2003) 'Guarding the Treaty: The Compliance Strategies of the European Commission.' In T.A. Börzel and R. Cichowski (eds.), *The State of the European Union VI: Law, Politics, and Society* (Oxford: Oxford University Press), pp. 197-220.

Börzel, T.A. (2005a) 'European Governance - nicht neu, aber anders.' In G.F. Schuppert (ed.), *Governance Forschung - Vergewisserung über Stand und Entwicklungslinien* (Baden-Baden: Nomos), pp. 72-94.

Börzel, T.A. (2005b) 'Mind the Gap! European Integration between Level and Scope'. *Journal of European Public Policy*, 12 Vol., No. (2), pp. 1-20.

Börzel, T.A. (2005c) 'What Can Federalism Teach Us About the European Union? The German Experience'. *Regional and Federal Studies*, 15 Vol., No. (2), pp. 245-57.

Börzel, T.A. (2007a) 'Der Schatten der Hierarchie. Ein Governance Paradox?' *Beitrag für den Autoren-Workshop zum PVS-Sonderheft "Governance", 8.-9. Februar 2007, Wissenschaftszentrum Berlin*Vol., No.

Börzel, T.A. (2007b) 'EU Governance - Verhandlungen und Wettbewerb im Schatten von Hierarchie'. *Politische Vierteljahresschrift, Sonderheft*, 2007 Vol., No. (2).

Börzel, T.A. (forthcoming) 'Regieren ohne den Schatten der Hierarchie. Ein modernisierungstheoretischer Fehlschluss?' In T. Risse and U. Lehmkuhl (eds.), *Regieren ohne Staat? Governance in Räumen begrenzter Staatlichkeit* (Baden-Baden: Nomos), pp.

Börzel, T.A. and Risse, T. (2005) 'Public-Private Partnerships. Effective and Legitimate Tools of Transnational Governance?' In E. Grande and L.W. Pauly (eds.), *Complex Sovereignty: On the Reconstitution of Political Authority in the 21st. Century* (Toronto: University of Toronto Press), pp. 195-216.

Calster, G.V. and Deketelaere, K. (2001) 'The Use of Voluntary Agreements in the European Community's Environmental Policy.' In E.W. Orts and K. Deketelaere (eds.), *Environmental Contracts. Comparative Approaches to Regulatory Innovation in the United States and Europe* (London/The Hague/Boston: Kluwer International), pp. 199-246.

Caparaso, J.A. (1996) 'The European Union and forms of state: Westphalian, regulatory or post-modern?' *Journal of Common Market Studies*, 34 Vol., No. (1), pp. 29-52.

Craig, P.P. (1993) 'Francovitch. Remedies and the Scope for Damages Liability'. *Law Quarterly Review*, 109 Vol., No., pp. 595-621.

Craig, P.P. (1997) 'Once More Unto the Breach: The Community, the State and Damages Liability'. *Law Quarterly Review*, 113 Vol., No., pp. 67-94.

Cutler, C.A., Haufler, V. and Porter, T. (eds.) (1999) *Private Authority and International Affairs* (Albany: State University of New York).

Eberlein, B. (2001) 'Die Europäische Union als Regulierungsstaat: Transnationale Regulierungsnetzwerke und die Informalisierung des Regierens in Europa.' In M. Jachtenfuchs and B. Kohler-Koch (eds.), *Europäische Integration* (Opladen: Leske + Budrich), pp. 418-47.

Eising, R. (2000) *Liberalisierung und Europäisierung. Die regulative Reform der Elektrizitätsversorgung in Großbritannien, der Europäischen Gemeinschaft und der Bundesrepublik Deutschland* (Opladen: Leske + Budrich).

Eising, R. and Kohler-Koch, B. (1999) 'Introduction. Network Governance in the European Union.' In B. Kohler-Koch and R. Eising (eds.), *The Transformation of Governance in the European Union* (London: Routledge), pp. 3-13.

Eising, R. and Kohler-Koch, B. (eds.) (2005) *Interessenpolitik in Europa* (Baden Baden: Nomos).

Falkner, G. (1998) *EU Social Policy in the 1990s. Towards a Corporatist Policy Community* (London: Routledge).

Garrett, G., Kelemen, R.D. and Schulz, H. (1998) 'The European Court of Justice, National Governments, and Legal Integration in the European Union'. *International Organization*, 52 Vol., No. (1), pp. 149-76.

Golub, J. (1999) 'In the Shadow of the Vote? Decision Making in the European Community'. *International Organization*, 53 Vol., No. (4), pp. 733-64.

Graser, A. (2004) 'Sozialrecht ohne Staat? Politik und Recht unter Bedingungen der Globalisierung und Dezentralisierung.' In A. Héritier, M. Stolleis and F.W. Scharpf (eds.), *European and International Regulation after the Nation State* (Baden-Baden: Nomos), pp. 163-84.

Héritier, A. (2001) 'Market Integration and Social Cohesion: The Politics of Public Services in European Regulation'. *Journal of European Public Policy*, 8 Vol., No. (5), pp. 825-52.

Héritier, A. (2003) 'New Modes of Governance in Europe: Increasing Political Capacity and Policy Effectiveness?' In T.A. Börzel and R. Cichowski (eds.), *The State of the European Union, 6 - Law, Politics, and Society* (Oxford: Oxford University Press), pp. 105-26.

Héritier, A. and Coen, D. (2005) *Regulating Regulatory Regimes in Europe: The Creation and Correction of Markets* (Cheltenham: Edward Elgar).

Héritier, A. and Eckert, S. (forthcoming) 'New Modes of Governance in the Shadow of Hierarchy: Self-Regulation by Industry in Europe'. Vol., No.

Héritier, A., Knill, C., Mingers, S. and Becka, M. (1994) *Die Veränderung von Staatlichkeit in Europa. Ein regulativer Wettbewerb. Deutschland, Großbritannien, Frankreich* (Opladen: Leske + Budrich).

Hodson, D. and Maher, I. (2001) 'The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Co-ordination'. *Journal of Common Market Studies*, 39 Vol., No. (4), pp. 719-46.

Hooghe, L. (ed.) (1996) *Cohesion Policy and European Integration: Building Multi-Level Governance* (Oxford: Oxford University Press).

Keohane, R.O. and Hoffmann, S. (1991) 'Institutional Change in Europe in the 1980s.' In R.O. Keohane and S. Hoffmann (eds.), *The New European Community: Decisionmaking and Institutional Change* (Oxford, Boulder, CO: Westview Press), pp. 1-39.

Keohane, R.O. and Nye, J.S.J. (1974) 'Transgovernmental Relations and International Organizations'. *World Politics*, 27 Vol., No., pp. 39-62.

Knill, C. (2003) *Europäische Umweltpolitik. Steuerungsprobleme und Regulierunsgmuster im Mehrebenensystem* (Opladen: Leske + Budrich).

Kohler-Koch, B. and Rittberger, B. (2006) 'The 'Governance Turn' in EU Studies'. *Journal of Common Market Studies*, 44 Vol., No. (Annual Review), pp. 27-49.

Kooiman, J. (ed.) (1993) *Modern Governance. New Government-Society Interactions* (London: Sage).

Leibfried, S. and Zürn, M. (eds.) (2006) *Die Transformation des Staates* (Frankfurt a.M.: Suhrkamp).

Majone, G. (1994) 'The Rise of the Regulatory State in Europe'. *West European Politics*, 17 Vol., No. (3), pp. 77-101.

March, J.G. and Olsen, J.P. (1989) *Rediscovering Institutions. The Organizational Basics of Politics* (New York / London: The Free Press).

Marks, G. (1992) 'Structural Policy in the European Community.' In A. Sbragia (ed.), *Europolitics: Institutions and Policymaking in the New European Community* (Washington, D.C.: Brookings Institution), pp. 191-224.

Matlary, J.H. (1997) *Energy policy in the European Union* (New York: St. Martin's Press).

Mayntz, R. (1993a) 'Modernization and the Logic of Interogranizational Networks.' In J. Child, M. Crozier, R. Mayntz and E. Al. (eds.), *Societal Change Between Market and Organization* (Aldershot: Avebury), pp. 3-18.

Mayntz, R. (1993b) 'Policy-Netzwerke und die Logik von Verhandlungssystemen.' In A. Héritier (ed.), *Policy Analyse. Kritik und Neuorientierung (Politische Vierteljahresschrift Sonderheft 24)* (Opladen: Westdeustcher Verlag), pp. 39-56.

Mayntz, R. (1996) 'Politische Steuerung: Aufstieg, Niedergang und Transformation einer Theorie.' In K.V. Beyme and C. Offe (eds.), *Politische Theorien in der Ära der Transformation. PVS Sonderheft 26* (Opladen: Westdeutscher Verlag), pp. 148-68.

Mayntz, R. (1998) 'New Challenges to Governance Theory'. *Jean Monnet Chair Paper Series*, European University Institute, Florence Vol., No. (RSC 98/50).

Mayntz, R. (2004) 'Governance im modernen Staat.' In A. Benz (ed.), *Regieren in komplexen Regelsystemen. Eine Einführung* (Wiesbaden: VS Verlag für Sozialwissenschaften), pp. 65-75.

Mayntz, R. and Scharpf, F.W. (1995) 'Steuerung und Selbstorganisation in staatsnahen Sektoren.' In R. Mayntz and F.W. Scharpf (eds.), *Gesellschaftliche Selbstregulierung und politische Steuerung* (Frankfurt/New York: Campus), pp. 9-38.

Milward, A.S. (1992) *The European Rescue of the Nation-State* (Berkeley, Ca.: University of California Press).

Moravcsik, A. (1994) *Why the European Community Strengthens the State: Domestic Politics and International Cooperation*. Working Paper 52, Cambridge, Mass.: Harvard University.

Nicolaidis, K. and Shaffer, G. (2005) 'Transnational Mutual Recognition Regimes: Governance without Global Government'. *Law & Contemporary Problems*, 68 Vol., No., pp. 263-318.

O'brien, M. (2005) 'Taxation, the ECJ and the Implications for Member States'. *European Law Review*, 30 Vol., No., pp. 209-33.

Peterson, J. and Bomberg, E. (1999) *Decision Making in the European Union* (New York: St. Martin's Press, Inc.).

Pollack, M.A. (1997) 'Delegation, Agency, and Agenda Setting in the European Community'. *International Organization*, 51 Vol., No. (1), pp. 99-134.

Rhodes, M. (2005) 'Employment Policy.' In H.W. Wallace, William/Pollack, Mark A. (ed.), *Policy-Making in the European Union* (Oxford: Oxford University Press), pp. 279-304.

Rhodes, R.A.W. (1997) *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability* (Buckingham and Philadelphia: Open University Press).

Ruggie, J.G. (1993) 'Territoriality and Beyond: Problematizing Modernity in International Relations'. *International Organization*, 47 Vol., No. (1), pp. 139-74.

Scharpf, F.W. (1991) 'Die Handlungsfähigkeit des Staates am Ende des zwanzigsten Jahrhunderts'. *Politische Vierteljahresschrift*, 32 Vol., No. (4), pp. 621-34.

Scharpf, F.W. (1993) 'Positive und negative Koordination in Verhandlungssystemen.' In A. Héritier (ed.), *Policy-Analyse. Kritik und Neuorientierung. PVS Sonderheft 24* (Opladen: Westdeutscher Verlag), pp. 57-83.

Scharpf, F.W. (1997) *Games real Actors Play. Actor-Centered Institutionalism in Policy Research* (Boulder CO: Westview Press).

Scharpf, F.W. (1999) *Regieren in Europa. Effektiv und demokratisch?* (Frankfurt a/M, New York: Campus).

Scharpf, F.W. (2000) *Interaktionsformen. Akteurszentrierter Institutionalismus in der Politikforschung* (Opladen: Leske + Budrich).

Scharpf, F.W. (2001) 'What have we learnt? Problem-Solving Capacitiy of the Multi-level European Politics'. *MPIfG Working Paper 01/04*, Köln Vol., No.

Scharpf, F.W. (2003) 'Legitimate Diversity: The New Challenge of European Integration.' In T.A. Börzel and R. Cichowski (eds.), *The State of the European Union VI: Law, Politics, and Society* (Oxford: Oxford University Press), pp. 79-104.

Schmidt, S.K. (1998) *Liberalisierung in Europa. Die Rolle der Europäischen Kommission* (Frankfurt a/M: Campus).

Schmidt, S.K. (ed.) (2007) *Mutual Recognition as a New Mode of Governance*: Journal of European Public Policy, Special Issue).

Schmitter, P.C. (1991) The European Community as an Emergent and Novel Form of Political Domination In Working Paper No 26 (Madrid: Juan March Institute).

Schneider, V. (2001) 'Institutional Reform in Telecommunications: The European Union in Transnational Policy Diffusion.' In M.G. Cowles, J.A. Caporaso and T. Risse (eds.), *Transforming Europe. Europeanization and Domestic Change* (Ithaca, NY: Cornell University Press), pp. 60-78.

Schuppert, G.F. (2005) *Governance Forschung - Vergewisserung über Stand und Entwicklungslinien* (Baden-Baden: Nomos).

Smismans, S. (2006) 'New Modes of Governance and the Participatory Myth'. *European Governance Papers*Vol., No. (N-06-01).

Smith, M.P. (2005) *The States of Liberalization. Redefining the Public Sector in Integrated Europe* (New York: State University of New York Press).

Streeck, W. and Schmitter, P.C. (eds.) (1985) *Private Interest Government. Beyond Market and State* (London et al.: Sage).

Sun, J.-M. and Pelkmans, J. (1995) 'Regulatory Competition in the Single Market'. *Journal of Common Market Studies*, 33 Vol., No. (1), pp. 67-89.

Tsebelis, G. and Garrett, G. (1997) 'Agenda-Setting, Vetoes and the European Union's Codecision Procedure'. *Legislative Studies*, 3 Vol., No. (3), pp. 74-92.

Weiler, J.H.H. (1981) 'The Community System: The Dual Character of Supranationalism'. *Yearbook of European Law*, 1 Vol., No., pp. 268-306.

Wilks, S. (2005) 'Competition Policy - Challenge and Reform.' In H. Wallace, W. Wallace and M.A. Pollack (eds.), *Policy Making in the European Union* (Oxford, pp. 113-39.

Williamson, O.E. (1996) *The Mechanisms of Governance* (Oxford: Oxford University Press).

Figure 1: Forms of Governance in the EU

institutionalized rule structures	**hierarchy**			**negotiation system**		**competition System**
modes of coordination	*hierarchical* (asymmetrical influence)			*non-hierarchical* (mutual influence)		*Non-hierarchical* (mutual adjustment)
	authoritative decision			**agreement via bargaining or arguing**		**competition**
governance mix (embeddedness)		**negotiation in the shadow of hierarchy**	**competition in the shadow of hierarchy**		**competition in the shadow of competition**	
actors						
public	**supranational cenralization** (supranational/ hierarchical mode)	**supranational joint decision-making** - majority - unanimity (joint decision mode)	**mutual recognition**	**intergovernmental cooperation** (intergovernmental mode)	**open method of coordination – governmental**	**regulatory-/ tax competition**
public-private		**private self-coordination in the shadow of hierarchy**		**network governance**	**open method of coordination – intermediate**	
private				**private interest government**		
	forms of governance (institutionalized forms of political coordination) in the EU					

Figure 2: Governance in the EU

forms of governance	supremacy and direct effect of Community Law					***private interest government***	***network governance***	***Intergovernmental cooperation***			***regulatory and tax competition***
	supranational centralization										
		supranational joint decision-making									
		QMV	*unanimity*	***private self-regulation in the shadow of hierarchy***	***mutual recognition***				***Open Method of Coordination***		
									governmental	*intermediate*	
foreign, security and defense policy								CFSP ESDP			
external trade	ECJ case law										
criminal/ domestic security	ECJ case law		visa-, asylum-, immi-gration		European Arrest Warrant; asylum			police and judicial cooperation	immigration		
civil affairs	ECJ case law	judicial cooperation			ECJ decision						
Four Freedoms	ECJ case law; liberalization	liberalization regulatory networks (ECN; ERGEG)		technical standardi-zation CEN, CENELEC, ETSI	product standards						
competition	merger and subsidy control	liberalization									
public utilities: energy, transport, telecommunication, postal service	liberalization (telecom), competition control	liberalization (energy, transport, postal services)		energy fora (Florence: electricity; Madrid: gas)			TEN (transport)				
monetary policy	ECB										
environmental/consumer protection	ECJ case law	product-process standards	taxes	voluntary agreements	product standards					Sustainable development	process standards
occupational health and safety standards	ECJ case law	process standards							health; job related accidents and illness		process standards

Figure 2: Governance in the EU

forms of governance	supremacy and direct effect of Community Law					***private interest government***	***network governance***	***Intergovernmental cooperation***			***regulatory and tax competition***
	supranational centralization										
		supranational joint decision-making									
		QMV	*unanimity*	***private self-regulation in the shadow of hierarchy***	***mutual recognition***				***Open Method of Coordination***		
									governmental	*intermediate*	
labour		working conditions	collective representation social security and protection	Social Dialogue		Social Dialogue			Collective representation; contractual relations; working conditions		
social policy	gender equality; ECJ case law	gender equality							Social exclusion; pensions; social security		fees, duties, performance
health policy	ECJ case law								health protection old age insurance		fees, duties, performance
culture and education	ECJ case law								vocational training		expenditures, subsidies
macroeconomic policy and employment									employment, labour market		expenditures, investments
industry	subsidy control	supporting measures							"Better Regulation"		investments
research and development	subsidy control	framework programme					GALILEO		"Mobility Strategy"		investments
agriculture		market regulation									
territorial (regional), economic and social cohesion		Structural Funds	Structural Funds	partnership principle							
taxation	ECJ case law		capital tax, value added tax					Stability and Growth Pact	Stability and Growth Pact		corporate tax-, income tax