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Introduction[1] The Shadow of Hierarchy and New Modes of Governance

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This special issue about sectoral governance in the shadow of hierarchy focuses on two sets of questions. *Firstly*, do new modes of sectoral governance in themselves contribute to the efficacy of policymaking or do they require the shadow of hierarchy, i.e. legislative and executive decisions, in order to deal effectively with the problems they are supposed to solve? And, *secondly*, what are the institutional links between sectoral governance and territorially bounded democratic governments? How do different links contribute to the efficacy of policymaking and how do they change over time? Is there a retreat of government from policymaking and a corresponding increase of sectoral governance, or just the opposite?

Distinguishing sectoral governance from territorially bounded democratic government avoids conflating them, as happens in the literature on policy networks, policy subsystems and policy communities and hybridisation (Sabel and Zeitlin 2007; Scott and Trubek 2002; Trubek and Trubek 2005). While the two are in practice intertwined, we argue that their analytical distinction is necessary in order to understand the nature of their linkages and reciprocal influence.

Definitions

In ideal-type terms, *sectoral governance* is here defined as policy formulation[2] by private and/or public actors in delimited sectoral areas which takes place outside the main political legislative avenue of decision-making. By contrast, *territorially bounded democratic government* is based exclusively on legislative decisionmaking and immediately derived executive decisions by public officials. The scope and focus of governmental decisionmaking may be changed by government across all areas of a polity and is not limited to a particular subject or district. By contrast, private and public actors developing sectoral governance measures are limited to their particular sectors and sub-sectors, and cannot redistribute resources from one policy area to another.

The term *hierarchy* is used to describe legislative decisions and executive decisions that steer democratic governmental action at the national and European level (Scharpf 1997). The shadow of hierarchy can involve legislative threat or inducements. Legislators can threaten to enact adverse legislation unless potentially affected actors alter their behaviour to accommodate the legislators' demands. Such threats have a probabilistic element (Halfteck 2006). Whether firms respond by complying or not complying depends on how likely it is that legislators will implement their threat and how they would do so.

Dimensions of democratic government and sectoral governance

We first focus on the *level* at which democratic government and sectoral governance are linked. Sectoral governance may operate at a supranational level and be linked to supranational forms of government, or supranational governmental decisions may cast a shadow of hierarchy over national sectoral modes of governance. Another important dimension concerns the *number of actors* involved in democratic government and sectoral governance. Are multiple governmental actors interacting with one actor of sectoral governance? Or do multiple actors of sectoral governance interact with one governmental actor? If there are multiple actors, do they co-ordinate their activities, and what are the implications for policy efficacy?

What is the *quality of the interaction or typical instrumental relation* (Windhoff-Héritier 1987) characterising the link between democratic government and sectoral governance? An entire continuum of attributes is conceivable, extending from facilitating, approving, lending authority, providing positive and negative incentivisation, and prescribing procedural rules and the structure of participant actors. It may consist of a strict or loose monitoring relationship or direct imposition plus sanctions by government on sectoral actors in cases of non-compliance. For example, government may facilitate sectoral governance in terms of infrastructure, by publicly approving the results of sectoral governance and lending public authority. Or government may sanction ineffective sectoral governance by threatening to act itself or legislating in ways that transform the existing form of regulation. Whether governmental actors are willing and able to exert positive or negative sanctions is variable. The *point in time* of government intervention in sectoral governance can be located along a continuum: governmental action may trigger or accompany sectoral governance; it may directly participate in sectoral government (co-regulation) on a regular basis; or it may be announced as a last resort if sectoral governance should fail.

Empirically, there are a variety of sectoral modes of governance related to different forms of governmental action: self-regulation, defined as policymaking by non-legislative public and private actors independently from political actors' intervention (e.g. voluntary agreements of industry possibly with private third party certification); regulated self-regulation, defined as policymaking by private actors in a regulatory framework set by legislation (e.g. voluntary agreements acknowledged by public authorities); or co-regulation, defined as joint policy- and rule-making by public and private actors (see e.g. Knill and Lehmkuhl 2002).

Specification of the research questions

This special issue addresses the question: is the shadow of hierarchy needed to guarantee the efficacy of policymaking and policy performance under sectoral governance? Which link between government and governance – along the specified dimensions – ensures a high policy performance.[3] It has been argued that the new modes of sectoral governance have been delegated to non-legislative and private actors because the latter have more expertise and are more flexible and speedy in adjusting to new and complex environmental challenges. Moreover, by being cut off from the mainstream of legislative political decisionmaking, sectoral governance is supposed to guarantee the credibility and stability of public policymaking in the light of changing political preferences of governments. To what extent does the performance of the different types and forms of sectoral governance analysed here bear out this expectation?

The conditions in which the threat of governmental intervention increases or decreases policymaking efficacy of governance actors may be explained by a multiplicity of hypotheses. The threat of legislation in a policy area can induce private actors to engage in effective self-regulation. It may also motivate private actors to make sustained efforts at self-regulation in order to avoid legislation. Regular executive monitoring of sectoral self-regulation may prevent the externalisation of costs of self-regulation to the rest of society; executive monitoring of sectoral self-regulation supported by boards of stakeholders may reduce the externalisation of costs of sectoral self-regulation even more (Cafaggi and Muir Watt 2006); the imposition of standards plus sanctions will induce more effective sectoral governance than mere public recognition. The support given to these hypotheses is likely to vary between policy areas and to change over time.

Two broad patterns of change are perceptible in the link between government and governance over time. One pattern is that sectoral governance may roll back the frontiers of government by shifting tasks to non-legislative and private actors' policymaking bodies. This may occur at the vertical or horizontal level. National governmental tasks may give way to supranational or national sectoral forms of governance. Such a general tendency was, for instance, to be observed in European environmental policy in some areas of clean air policy at end of the 1990s. The opposite pattern, sectoral governance preparing the way for government, identifies a shift from previously purely sectoral modes of governance to governmental action. In particular, European decisionmakers want to make inroads on sectoral modes of governance in areas such as social policy and labour market policy, for example, through the open method of co-ordination. Given the pressure of high unemployment, member state actors were willing to accept a new mode of governance, because it does not imply a surrendering of formal national competences to the European level (de Ruiter 2007). Between the two extreme patterns a variety of gradual changes can be mapped along the dimensions of level, actor structure, quality of interaction and time.

Theoretical background

We argue that answers to many of the questions raised above may plausibly be derived as hypotheses from contract theory in general, principal-agent theory as used in political science and transaction-cost theory (Brousseau and Fares 2000). We do not build our argument on normative economic principal-agent theory, which is based on the assumption of perfect rationality and seeks to prevent hold-ups by the agent by drawing up a complete contract with in-built incentives to prevent shirking on the part of the agent (see Karagiannis 2007). Political science principal-agent theory is based on the assumption of actors' bounded rationality and, as a consequence, incomplete contracts between principal and agent. The development of governance may initially be conceived as a contract between governmental actors and actors of sectoral governance which, given bounded rationality, is incomplete and does not include provisions for all possible contingencies and events of the future. Given an incomplete contract and the opportunism of the contracting partners, rules are drawn up between the contracting parties that establish a governance arrangement (Brousseau and Fares 2000; Koenig-Archibugi 2006) providing for the adjustment of the contract to changing conditions, for resolving conflicts in the application of the incomplete contract and for ensuring compliance with the contract.

A contract does not have to be formalised in writing, but can also be an informal agreement. In particular, patterns of voluntary co-operation and of admittance of private actions by public actors are intriguing examples involving self-regulation, as in the case of paper and PVC industries and collective agreements by social partners. They would not be recognised within a narrow and formalistic concept of delegation. Even when tolerating or incentivising private self-regulatory actions, governmental actors maintain a different role in the overall governance arrangement as the shadow of hierarchy continues to exist. The same holds for informal modes of co-operation between governmental and governance actors for instance, in networks of regulators or fora of specialised agencies and private actors such as the Florence Energy Forum or the Madrid Forum for Gas. In these cases, we may look in vain for acts of formal delegation or efforts of designing with complete contracts. Rather, networks and stakeholder forums engage in policy formulation or implementation without clearly delegated authorisation. It is important to note that governmental actors, most often the European Commission, have stressed their intention to retain control as principal over regulatory processes.

When drawing up a contract to produce policies, the partners have to take into account pre-existing legislative or institutional rules. The link between political institutional rules and the contract among actors of government and governance and its particular attributes is a central concern of this special issue. In the language of political science principal-agent theory, the actors representing the collective institutional rules are the *principals*, the governance actors the *agents*.

The emergence of sectoral governance may be a result of deliberate delegation on the part of governmental actors, or a tacit or explicit tolerance of governance actors' policymaking on the part of governments. Governmental principals might be willing to delegate because of lack of expertise, or lack of time and political attention, or in order to secure policy credibility over time by cutting policymaking off from the changing preferences of changing governments. Governmental actors may also insist on regulating the self-regulation or even fully participate in the activities of governance actors, i.e. joint decisionmaking with public actors (co-regulation).

In delegating policymaking functions to governance actors, the governmental principals may run two risks, the risk of adverse selection and the risk of moral hazard, i.e. the risk of losing control over the agent by the principal (agency loss). To minimise these risks, a contract specifies important conditions regulating the definition of the link between democratic government and sectoral governance. The principal-agent literature spells out a variety of instruments the principal may apply in order to reduce the two risks of non-compliance, such as the mechanisms of police patrol (i.e. the constant policing of agency practice) and firebell-ringing or deck-stacking (i.e. defining rules governing the agents' activities), using multiple agent structure, budgeting, monitoring and threatening new legislation (McCubbins, Noll and Weingast 1987; Moe 1990; Sabel and Zeitlin 2007).

Major objectives of this special issue are to specify the conditions under which the link with hierarchy increases the efficacy of sectoral governance and to discuss the conditions under which the link changes. Principal-agent theory offers a number of hypothetical answers to the question of whether a looming shadow of hierarchy is conducive to better policy performance:

- The more control instruments the principal applies, the less agency shirking there will be and the better the policy performance will be.
- The higher the technological complexity of a policy area, the less the principal will be able to control the agent.
- If agents at the national level are well organised and communicate with each other, their position vis-à-vis the supranational principal and the national principal will be stronger and, as a consequence, agency shirking will be easier.
- A supranational principal will be better able to control the agent at the supranational level than is possible for multiple national principals at the national level.
- If there are multiple principals with different preferences and a single agent, the agent can more readily alter the contract de facto or in writing.

In the following, we will address major findings and points of discussion highlighted in the contributions to this special issue. Christian de Visscher, Olivier Maiscocq and Frédéric Varone evaluate the Lamfalussy reform in the securities market, undertaken in 2000 to improve the legislative process while ensuring a democratic and institutional balance. They demonstrate that the process as implemented has been successful so far, but that more evidence is needed of developments. David Coen and Mark Thatcher explore the European networks of regulators that have been created in key industries, describing a growth in network governance and the introduction of double delegation within a principal-agent framework in Europe. In a review of the European energy market, Burkard Eberlein finds evidence that governance and government play complementary roles in the policy process. Leonor Moral Soriano assesses the link between governance and government in the Spanish electricity and gas sectors, deducing that one should not presuppose that old modes of governance are strongly governmental and hierarchical: the opposite is the case in the Spanish electricity sector at least, where it is new modes of governance that are linked to hierarchy. In their examination of the paper and PVC industries, Adrienne Héritier and Sandra Eckert establish that industry's willingness to engage in self-regulation is prompted by the threat of governmental legislation; implementation of such self-regulation requires at least a weak 'shadow of hierarchy', rather than merely monitoring by NGOs. Dirk Lehmkuhl underscores the European Commission's increasing use of new modes of governance – such as legally non-binding instruments – in competition policy and shows that judicial control is becoming more prominent than judicial review. Finally, scrutinising the history of the European social dialogue, Stijn Smismans discovers a strong dependence on the shadow of hierarchy; he concludes, however, that rather than 'complementing government' the current social dialogue looks like not-too-effective governance in the absence of government.

Findings and points of discussion

Features of the link between government and governance

In most of our cases, there is interaction between the national and the supranational level. Both the European social dialogue and the cases of industry self-regulation predominantly occur at the European level: collective agreements or voluntary accords are agreed upon by public and private European parties, cross-industry social partners or sector-specific European industry associations. The national level plays a role because of the federal structure of these associations, but does not constitute an important factor in determining the decision-making outcomes.

Governance of securities markets principally involves the member states but predominantly occurs at the European level. In contrast, the historical analysis of Spanish electricity and gas market regulation is presented as a domestic story involving the Spanish government and public and private bodies. The supranational level comes into the picture only when domestic actors seek to upload domestic policy to the European level or when they are expected to comply with European provisions. The multilevel dimension of the delegation process is evident in the case of regulatory networks in energy, telecommunications and competition policy. It facilitates co-operation, information exchange and implementation of supranational provisions through multilevel networks. Networks of European regulators frequently have an international dimension allowing for co-operation beyond the European Union, for example, the international competition network established by the European Commission or the Madrid Forum for Gas.

A large variety of actors are present in the EU governance arrangements, starting with the Commission as a public governmental actor in the cases of competition policy or the regulation of securities markets. In securities and in energy regulation the Commission is also involved as legislative actor. The European Parliament has a solely legislative role, and the European Court of Justice and the Court of First Instance act as the judiciary body of the EU. In some cases, such as self-regulation by industry, the governmental role can be fulfilled by a single institution such as the Commission, while in securities regulation the Commission, the European Parliament and the European Council all have formal decision-making roles. Multiple-actor policies pose the question: should we consider European networks of regulators involving twenty-seven national regulators and the Commission as single, multiple or collective agents?

The complexity is increased by the variety of policy instruments available, ranging at the extremes from a hierarchical command-and-control approach restricting activities of sectoral governors, to pure self-regulation with little or no shadow of hierarchy. The latter is the case with European environmental self-regulation by industry: the Commission does not give official recognition to the voluntary standards adopted by industry, which might be a positive incentive. Although extreme command-and-control approaches are not found in the cases in this special issue, we find the threat and enactment of legislation are evident as explicit assertions of hierarchy. Examples are offered by the regulation of energy markets in Spain and at the European level and the environmental self-regulation by industry. Facilitation plays a role in European networks of regulators and energy forums in which the Commission acts as a co-ordinating secretariat and covers travel expenditures; the endorsement of privately developed standards is a central feature in the regulation of European accounting standards, in securities market regulations and in the European social dialogue; the Lamfalussy process is an example of lending authority to a sector governance decision. It also shows that it makes a difference when governmental actors prescribe decision-making rules. Thus, the European Parliament's insistence on the introduction of a sunset clause sets a time limit on the Commission's implementing powers under the Lamfalussy process.

The point in time at which governmental institutions intervene in sectoral governance activities varies greatly. In the first place it may prompt the development of a specific governance mode, as it was the case in environmental self-regulation by industry. Or a governmental intervention may transform informal sectoral co-operation into a formal governance structure. The European networks of regulators are a case in point: informal co-operation is gradually changing into a formal pattern of sectoral governance. What we find more frequently are cases in which governmental intervention undertakes continuing performance monitoring of sectoral governance activities. The consequences of poor performance differ greatly. In the pre-Lamfalussy stage of comitology, i.e. the European Union-style committee system which oversees the acts implemented by the Commission, authority is completely withdrawn, whereas in environmental self-regulation by industry and European energy market polices the threat of legislation loomed large.

A delegation theoretical account of hierarchy and new modes of governance

To capture differences between types of links between government and sectoral governance, the papers in this special issue apply a theory of delegation drawn from the political science approach to principal-agent theory (see e.g. Stone Sweet and Sandholtz 1998; Pollack 1997, 1998; Thatcher and Stone Sweet 2002; Rasmussen 2005; Franchino 2004). It offers answers to the questions: why do principals delegate specific tasks and responsibilities to agents and which mechanisms enable them to control the agents' activities after delegation?

Why delegation

Given high transaction costs, delegation to specialised organisations or agents allows political principals to tackle two core problems of governing: to ensure both sufficient expertise of decisionmaking and a substantial degree of stability and predictability of policymaking. In the regulation of securities markets, authors stress that the most important causes for delegation under the Lamfalussy process are the slowness of previous financial market regulations and the lack of expertise of governmental actors in member states and the EU. Extensive comitology procedures were established, which also allow for the involvement of market practitioners, end-users and buyers of securities to increase promptness of action and expertise, without aiming at any particular substantive regulatory goal (de Visscher, Maiscocq and Varone, in this issue). Eberlein, too, identifies the need for expertise as the main motive underlying delegation in the case of the Florence Energy Forum. Coen and Thatcher's comparative case study on European regulatory networks in telecommunications and securities reveals the same pattern leading to the delegation of competences. High-level groups of experts or 'committees of wise men', after exposing a glaring lack of policy achievements in these sectors, proposed the creation of Euro-regulators to increase regulatory efficiency and co-ordination. Similarly, in the case of environmental self-regulation by industry, the analysis of Héritier and Eckert clearly shows that without the expertise of industry the complicated technological problems of plastic and paper recycling could not be adequately dealt with by governmental actors. By contrast, Smismans shows that, in the case of the European social dialogue, delegation to expert fora does not always turn out to be a success story. In spite of the superior expertise of the governance actors, e.g. trade unions and employers' associations, the efficacy of policymaking is seriously endangered by the stalled decision-making processes between the conflicting actors within the governance structures.

The introduction of the European social dialogue illustrates a second motive for delegation: creating credible commitment. Smismans concludes that the emergence of the bipartite dialogue as a European mode of governance may be traced not only to the conviction that this model of socioeconomic governance could overcome the stalemate in decision-making on social issues at the European level (deriving from the unwillingness of national governments to yield competences to the European level), but also to actors' belief in the inherent value of this form of socioeconomic governance. Eberlein's contribution makes a similar argument about the lack of upward governmental delegation to the EU level motivating horizontal delegation to sectoral governmental actors. In his words, delegation is politically expedient 'as a strategy to work around the lack of supranational governmental powers, by establishing network mechanisms that can co-ordinate member state policies . . . These transnational coalitions are designed to further domestic reforms *without having to resort to the level of political decisionmaking* by governments and legislators' (emphasis in original). Finally, it was an explicit credible commitment to ensure the undistorted operation of the internal market that motivated the inclusion of competition policy into the Treaty of Rome. Responding to a proposal made by President Sarkozy of France to drop the European Union's fifty-year-old commitment to undistorted competition, Michel Petite, director general of the European Commission's legal services, stated that, even though for the Community competition is a means and not an end, the European Commission, frequently in tandem with European courts, has taken effective actions against any distortions of competition in the internal market regardless whether these result from companies or member states.[4]

The design and exercise of control

In the regulation of financial markets, firstly, a rather complex picture emerges of how principals seek to ensure that agents do what principals expect them to do. Under the Lamfalussy system (de Visscher, Maiscocq and Varone and Coen and Thatcher, both in this issue) it is the member state governments, the Commission and the Parliament that constitute the governmental principals, and the regulatory networks of national financial regulators that constitute the governance agents. In a constellation of double delegation or dual agency, which extends across levels, the governmental principals – the member states, the Council of Ministers and the European Parliament – delegate the task of implementing financial market regulation to the Commission. The Commission is conceptualised as a governmental principal, which delegates this task to the Lamfalussy committees, i.e. the European Securities Committee (ESC) and the Committee of European Securities Regulators (CESR). The latter constitute the governance agents.

The regulation of the financial sector through the Lamfalussy process has indeed fulfilled its general purpose of speeding up the adoption of the Financial Services Action Plan. The frequent consultation of experts has reduced the average time taken to negotiate and adopt the first framework directives compared to the normal co-decision procedure. The Commission's control over CESR is limited, however. There are possibilities of sanctioning CESR's personnel, and the Commission does have a monitoring role within it, but with limited rights only. It can influence the budget of ESC. De Visscher, Maicocq and Varone emphasise that the governance actors in the area of securities regulation, in particular the actors in CESR, are supposed to be fully independent actors, thus reflecting a fiduciary relationship between member states and these new bodies more than a principal-agent relationship. In terms of the instrumental relationship between government and governance, this indicates a 'hands-off' attitude on the part of government and a deliberate abstention from substantive control. Having been very critical with respect to the Lamfalussy scheme, the European Parliament insisted on sunset legislation to give it the power to review periodically the renewal of the Lamfalussy legislation, thus giving the principals (the Council of Ministers and the European Parliament) limited control over the agent (the Commission).

Similarly, Coen and Thatcher conclude that the existence of a variety of agents – i.e. several regulatory networks in the regulation of financial markets – allows for more control by principals over governance actors. An important mechanism is control over budget and resources. The fact that the different principals do not delegate important organisational resources facilitates their control over agents. Secondly, Coen and Thatcher elaborate complex delegation processes across levels. At the national level, governments of the member states have increasingly created new independent regulatory authorities. Notwithstanding some variance, independent regulators have a significant degree of legal and organisational autonomy from government departments and other sectoral or cross-sectoral competences. Member states have delegated substantial regulatory competences upwards to the EU level, with the Commission playing an outstanding role in EU sectoral regulatory regimes. European regulatory networks have merged previously enacted delegation processes at the national and European level. Coen and Thatcher call this process a 'double delegation' of powers and functions that takes place 'upwards' from the national independent regulators and 'downwards' from the European Commission to regulatory networks. Control over European regulatory networks is exercised not only by the existence of the multiple fora but also by a limitation of their resources and independent decision-making competence. In his study of the link between government and governance in the energy sector, Eberlein shows that it is in particular the European Commission that casts the shadow of hierarchy. Moreover, sectoral governance has the merits of mobilising regulatory expertise and capacity and of producing workable regulatory guidelines that are essential to govern a complicated sector. However, sectoral governance appears to be less successful in enacting regulatory solutions in the face of distributive conflicts in a politicised environment. When delegating activities to the Florence Energy Forum, the Commission never abandoned the threat of legislative and executive action to induce governance actors to overcome deadlocks when engaging in effective self-regulation.

The case study on European competition policy firstly shows the Commission acting as the agent of the member state principals. Over time, the agent developed a considerable degree of autonomy, though it has not been challenged by member states that have sought to redefine the contract with the Commission. In this struggle, as Lehmkuhl shows, a third actor, the European Court of Justice and the Court of First Instance, played a crucial role in strengthening the Commission. Moreover, the latter attempted to increase the effectiveness of its policies by increasing its enforcement capacities through decentralising the competence to detect violations of European provisions by including private actors (in principal-agent terms, the Commission increased the number of possible firebell-ringers) and, additionally, by charging national competition authorities and national courts with the enforcement of violations. On the other hand, the Commission has established a practice of applying new instruments: legally non-binding, soft modes of governance, such as guidelines, declarations, codes of conduct and so forth, which are meant to circumvent the political principals. These endeavours were supported by ECJ rulings. The agent also improved its enforcement powers by re-delegating them to national competition authorities and national courts. Lehmkuhl concludes that it was not the shadow of hierarchy which prompted more policy efficacy, but rather the agent's strategic behaviour to fend off the attempts of the political principals to trim its wings.

In environmental self-regulation by industry, the Commission is the governmental principal and industrial associations are the governance agents. Here, too, Héritier and Eckert show that there are conflicting principals: the Directorate General for the Environment and the Directorate General for Enterprise disagree about the mode of governance as such. While DG Enterprise considers self-regulation by industry desirable, DG Environment would have preferred legislation to reach desired objectives. Disagreement about means reduces the credibility of the threat of legislation. Industry decided to engage in self-regulation in response to the threat of legislation (for the plastic industry) and the threat to make legislation more stringent (for the paper industry); the political pressure of NGO campaigns is of importance in only the PVC case. There is a lack of hierarchical control through strict governmental monitoring, imposing sanctions or lending authority and formal support to the new modes of governance. Since the shadow of hierarchy over implementation is absent, self-regulation in the plastic industry lacks policy efficacy. In the paper industry, governmental control is also absent, but this is counterbalanced by strong efficacy-increasing market incentives.

In the European social dialogue on labour relations, Smismans conceptualises the Commission and to some extent the Council as the governmental principal, and employers' associations and trade unions as the actors constituting the governance agent. Apart from providing incentives for the European social partners to negotiate, the Commission may use its power of initiative in case of a perceived mismatch between its objectives and the output of the interaction between labour and business. Moreover, both the Commission and the Council may refrain from endorsing an agreement of the private parties rather than make it legally binding. While both alternatives provide the principals with control powers, their practical relevance has been limited, for non-implementation of an agreement or its change would jeopardise the future credibility of the social dialogue as a mode of governance.

Empirical complexity and theoretical challenges

The emergence of the regulatory state implies a shift from a model in which government plays a strong role in the provision of public services to a model in which government limits itself to being the enabler and regulator of the provision of public services by private actors. This has created forms of sectoral governance involving a variety of public and private actors in policy formulation and policymaking outside the legislative arena. Whereas concepts such as network governance, hybridisation or experimentalism tend to lump together both public and private sector actors, we analytically distinguish government and governance in order to apply principal-agent delegation theory. However, empirical complexity presents three theoretical challenges.

Firstly, the role of government as enabler or regulator of sectoral governance involves the delegation of competences to specialised agents. Theories of delegation predict efficiency gains or transaction-costs savings through such specialisation. Such an account of the Lamfalussy process would interpret CESR as an expert forum providing policy proposals to the Commission. However, de Visscher, Maiscocq and Varone have shown that the European Parliament's prime motivation in the negotiations was not so much a concern about efficiency as worries about losing influence if matters had been handled through comitology. The Parliament gave in to the pressure of Council and Commission only after it successfully used the leverage of its competences under co-decision procedures to install a sunset legislation clause. This agreement was not about the efficiency of specialisation but reflected a particular political environment in which powers are dispersed between institutions at the European and at the national level.

Secondly, contributions to this issue challenge the assumption made by some EU specialists (see Lyne, Nielson and Tierny 2006; Pollack 2006) that the principal or the agent are unitary actors. They point out that each can be internally divided. For instance, in the case of securities regulation, the Council (i.e. the member state governments) and the European Parliament act as principals vis-à-vis the Commission as agent. There are also multiple agents or a complex agent structure. Eberlein, for instance, identified conflicts among agents over distributive issues of European energy policy. Smismans's case of the European social dialogue is an interesting example of the institutionalistion of opposed interests of labour and business in one organised agency. American theorists generalise that in 'most democratic political systems, grants of delegation are made by multiple principals' and that 'few interesting cases in the real world of politics involve only a single agent' (Bendor, Glazer and Hammond 2001: 244f.; see also Epstein and O'Halloran 1999; Moe 1990).

Multiple principal–multiple agent constellations matter for the way in which control can be exercised and hierarchy or its shadow brought to bear in interactions between government and governance. With respect to efficacy, our cases confirmed the hypothesis that a conflict among principals weakens their control capacity over agents. A case in point is the split between different DGs in the Commission in environmental self-regulation by industry (Héritier and Eckert, in this issue). In energy policy, Eberlein identifies a double shadow of hierarchy resulting from the principals' specific properties, i.e. the European Commission's competences in sectoral (energy) and cross-sectoral (competition policy) areas. The existence (and the creation) of multiple agents as in the cases of energy and securities tends to increase the control capacity of the principal.

Thirdly, principal-agent analysis is made more complicated because actors can be viewed as principals or agents, depending on the analytical perspective on their role in the process of regulation. For instance, Coen and Thatcher identify a contrasting or complementary delegation depending on whether the focus is on the emergence of European networks of regulators (agent), an upward delegation from the national independent regulators (principals) to the European Commission (agent), or alternatively on the downward delegation from the European Commission (principal) to European regulatory networks (agent). Another example is offered by the Lamfalussy process in which the Council and the Parliament are principals and the Commission is the agent but, in the interaction with CESR, the Commission is the principal and CESR the agent.

Delegation and further delegation occur in the complex policymaking processes of the modern regulatory state. The 'hydra factor' (Adams 1996: 16), i.e. the possibility that actors are not only principals but also agents, makes both the descriptive task and the analytical one more difficult but also more interesting. In particular, these considerations provide some insights for our analytical interest in the change in the relationship between government and governance over time. Lehmkuhl's analysis of the centralisation of cross-sectoral governance in European competition policy, for instance, confirms the observation that governance *in* networks is different from governance *with* networks (Börzel 2005: 87).While the former assumes the dispersion of power and competences in horizontal patterns of interactions, the latter emphasises the importance of institutional politics, of power asymmetries and of a shadow of hierarchy. In contrast, Eberlein's analysis of the energy policy at the European level provides some evidence for sectoral governance's preparing the way for more government, not in the form of a centralisation of regulatory powers at the EU level, but as more formalised networks of national regulatory authorities. The chapters of de Visscher, Maiscocq and Varone and Coen and Thatcher as well as Eberlein indicate that the combination of governance and government results in a new systemic logic that is different from addition or substitution. The interest in addressing the combination of empirical complexity and theoretical challenges drives the contributions to this special issue.

NOTES

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2. We focus on policy formulation because a distinctive feature of *governance* is the participation of *private factors* in policy formulation.
3. Policy performance is defined as policy outputs, i.e. decisions to deal with the problem at hand, and policy outcomes, i.e. first measures to implement these decisions, which may be, for example, funds spent, personnel hired or infrastructure put into place. It does not include the long-term impact on behavioural change.
4. 'EU Commitment to Competition Policy Is Unchanged', Michel Petite, letter to the *Financial Times* (Europe), 27 June 2007, p. 10.

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