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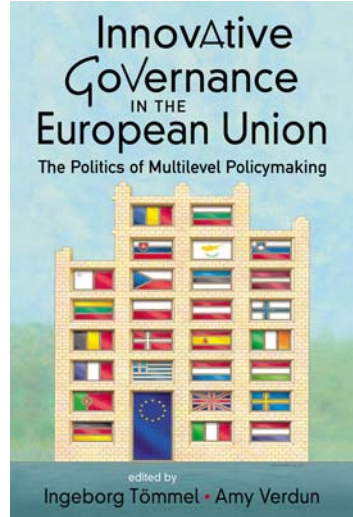
Innovative Governance in the European Union: The Politics of Multilevel Policymaking

edited by
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Innovative Governance in the European Union

Ingeborg Tömmel and Amy Verdun

Policymaking in the European Union (EU) has been an important area of research since the foundation of the European Communities. Yet, in the early years of integration, European policies were limited in scope and substance. Certain powers regarding the creation of a Common Market and adjacent policy areas (i.e., competition policy and agricultural policy) were transferred to the European level, whereas the bulk of policymaking clearly remained the responsibility of the member states.

This situation changed slowly in the 1970s and rapidly in the 1980s. Together with the launch of the single market project, EU policymaking evolved in a broad range of areas. Today, nearly all possible policy areas are covered by the EU, either based on exclusive or—more often—shared competences or merely on a coordinative role at the European level.

It was in particular the increased use of coordinative procedures and practices in European policymaking that gave rise to alternative analytical concepts and interpretations. The focus of analysis shifted from a state-centric view of European policymaking to concentrate on (1) the highly diversified EU procedures and practices, combining formalized modes of rule setting with informal practices of negotiation, cooperation, and consensus building; (2) the multilevel and multi-actor structure underlying these procedures and practices, and, not least, (3) the diverging patterns of implementation under a common umbrella. The analytical concept best suited to capture these specific aspects of EU policymaking was the governance approach.

The governance approach was initially developed to analyze alternative modes of political steering within states and in the international system. Viewed from a governance perspective, policymaking was no longer seen as merely public intervention in the economic and societal sphere but rather as a complex interaction among a wide variety of actors: governments, other public institutions, international organizations, private actors, and representatives

of civil society. The governance approach not only investigates how and why certain policies are made but also analyzes the institutional setting, the actor constellation, and the ensuing process of coordination among actors. Public order is assumed to be the result of interactions of divergent political forces and societal actors, all pursuing their respective interests but striving, at the same time, for coordination of behavior and action. As a consequence, the boundary between the public and the private sphere, between state and economy, and between state and society is increasingly blurred.

These insights generated by the governance approach were particularly suited for application to the most recent developments in European policy-making. In particular the “invention” of the open method of coordination (OMC), which spread rapidly across a range of European policy areas, gave rise to many studies on the issue. The OMC is a procedure for defining policy objectives at the European level while leaving member states discretion to determine their own policy objectives and practices. In the literature, the OMC and other similar approaches to policymaking are often labeled “new modes of governance.” This term refers to both a recent change in governance and new forms of governance, using in particular “soft” or nonhierarchical means to achieve policy objectives.

In spite of a rapidly and increasingly diversified literature on (new) modes of governance in EU policymaking, theoretical reflection and empirical research have not resulted in a clear conceptualization of the governance approach, let alone in a stringent methodology for its application to the analysis of new forms of policymaking (Kohler-Koch and Rittberger 2006). A wide variety of competing concepts, interpretations, and perceptions of the term *governance* and its meaning coexists in the literature. In empirical research, we see an even greater variety in the use of the governance concept in general and that of new modes of governance in particular.

In the context of this book, we prefer to speak of *innovative modes of governance* in the EU. We capture under this term not only the recently established coordinative procedures such as the OMC, but all forms of governance in the EU that transcend the classic forms of state intervention based on legislation and/or financial incentives. Such a broader and more open terminology implies that these forms of innovative governance have not just recently started to emerge. Instead, we assume that they were present in the EU in one policy area or another since its foundation. It is only with the enormous proliferation of EU policymaking—its rapid spread into areas that hitherto were seen as highly sensitive to the member states striving to preserve their autonomy—that coordinative procedures and practices have started to play a major role and come more visibly to the fore as new or, in our terminology, innovative forms of governance.

In this book we pursue four main objectives. First, we aim to clarify further the governance approach and its application to EU research. Second, we seek to identify the nature of European governance and in particular its

innovative dimension in a number of European policymaking areas. In selected areas of policymaking we assess what specific forms of governance prevail, the ways to coordinate the behavior of a wide variety of actors, and how the institutional setting affects the behavior of actors. Third, we strive to compare these case studies so as to identify common characteristics of, as well as divergences between, the different areas of European policymaking and the respective forms of governance. In addition, we seek to spell out the similarities and differences between European modes of governance and policymaking and the corresponding modes at the national level. Fourth, we aim at generating insights into the interrelation between European modes of governance and the institutional structure of the EU.

In the next section we outline the distinctive features of European policymaking and provide a first insight into why innovative modes of governance might play such an important role in the EU. In the last section of this introductory chapter, we provide a brief overview of the chapters of the book.

The Distinctive Features of European Policymaking

European policymaking is characterized by specific features that distinguish it from policymaking at national level. These features are linked to the institutional structure of the EU and its role vis-à-vis the member states.

First, European policymaking is usually not directed at its final addressees or target groups. Rather it focuses on intermediary actors—national and partly regional or local governments as well as private or non-governmental actors—so as to direct their behavior toward regulating or influencing economic processes or social change.

Second, the EU is not sovereign in determining the realm and scope of its competences. These limits on autonomous action imply that European policymaking needs to include specific strategies for creating competences at the European level or else to establish specific procedures so as to circumvent or to substitute for the lack of competences.

Third, the EU is not simply superimposed onto the member states so that it can rule over national governments or other actors directly. In order to achieve its policy objectives, it often has to develop strategies that mobilize governments or other actors to cooperate with EU institutions. Furthermore, the EU has to institutionalize stable relationships with national (regional, local) governments and nonstate actors in order to address the lack of clearly defined hierarchical relationships.

Fourth, the EU itself has no competences to implement policies directly. The implications are that the EU is dependent on national (regional, local) governments and increasingly on private and nonstate actors for policy implementation. Therefore, European policymaking often entails strategies and procedures that direct the behavior of decentralized actors on due implementation.

In this book we give particular attention to four aspects of European governance and policymaking. One is the modes and procedures for generating new policy competences or widening the scope of action at the European level; the second is the modes and procedures for generating the goals and substance of European policymaking. A third aspect is the mobilization of actors for cooperation in policy formulation and implementation. Fourth is the structuring and restructuring of relationships between government levels and between public and private or nongovernmental actors.

We focus on these four aspects of European governance and policymaking not only because they allow for highlighting the specific patterns and procedures of European policymaking but also because we regard them as paradigmatic for elaborating on the emergence of innovative modes of governance in the European context. In other words, the characteristics of European policymaking lead us to expect innovative governance to play a major role in the EU so that it can deal with the complexity of the multi-level and the multi-actor structure of the system.

The book contains fourteen case studies that cover a wide range of policymaking areas—in particular those in which we observe innovative modes of governance. Based on these case studies we seek to find answers to a number of questions. Are there common features across different policy areas characterizing governance and policymaking of the EU? Are there specific features of EU governance and policymaking in different fields that distinguish it from governance and policymaking at the national level?

The Chapters of This Book

Chapter 2, by Ingeborg Tömmel, provides a conceptual framework for the analysis of the case studies. The chapter discusses the emergence of the governance approach and its application to EU research. Furthermore, it presents four basic modes of governance—hierarchy, negotiation, competition, and cooperation—serving to analyze the distinctive forms and combinations of modes of governance in the various policy areas. Finally, it elaborates on the relationship between European modes of governance and the institutional structure of the EU, discussing incentives and constraints for the use of various modes of governance.

The chapters in Part 1 start with a reflection on combined modes of governance and then continue with case studies that examine particular shifts in modes of governance. Chapter 3, by Arthur Benz, takes the framework set out in Chapter 2 a step further by investigating how combinations of modes of governance operate and evolve in the context of the multilevel system of the EU. Depending on the mechanisms generating collective action and the way they are coupled (tight or loose), modes of governance can be positively or negatively linked. Benz shows how combinations of modes of

governance can either reinforce actors' willingness or ability to coordinate their policies or cause conflicts.

Chapter 4 deals with environmental policy. In this chapter, Katharina Holzinger, Christoph Knill, and Andrea Lenschow stress that although hierarchy has traditionally been the dominant mode of governance in this policy area, in recent years innovative modes of governance have emerged. Thus, environmental policy is increasingly characterized by a mix of modes of governance, even though hierarchy still clearly dominates this area and competition is being used only to a limited extent.

In Chapter 5, Claudio M. Radaelli and Ulrike S. Kraemer provide an analysis of direct taxation policy by examining various arenas (harmful tax competition, corporate tax reform, and the tax arena dominated by the European Court of Justice [ECJ]). They conclude that there is no single actor dominating all arenas. Furthermore, they identify shifts in modes of governance in the area of direct tax policy, but they do not observe a linear trend over time from hard to soft governance or vice versa. Instead, they have found that different modes of governance dominate in different arenas of direct taxation policy.

Chapter 6, by Amy Verdun, examines economic and monetary policy-making and finds an intricate development of soft and hard modes of governance. First, soft modes of governance emerged in the area of economic and monetary policymaking prior to what is generally assumed in the literature (i.e., they were already used in the 1960s). Second, soft modes of governance can turn out to have harder impacts than the hard measures that are based on hierarchical means of steering. The opposite can also be the case: hard modes of governance can be evaded or watered down by member states, as is the case with the softening up of the Stability and Growth Pact (SGP). Third, resistance of national governments to one mode of governance fostered the emergence of other, less controversial ones, leading to a complex mix of governance modes.

In Chapter 7, Laura Cram finds that in the area of EU social policy, the member states are the dominant actors, whereas the Commission has found itself needing to act with institutional creativity to find a role to play. That role is one of "steering" or "governing" the direction of EU social policy by indirect means, which increasingly serves as a model for the spread of innovative modes of governance to other sensitive policy areas. The Commission has also actively incorporated actors from civil society in the development of this policy.

The chapters in Part 2 deal with those policy areas in which hierarchy plays the role of catalyst for other governance modes to emerge. Chapter 8, by Dirk Lehmkuhl, focuses on competition policy. It shows that although initially clearly governed by hierarchy, this policy area recently underwent major transformations, so that now a number of alternative modes of governance coexist.

Both the competition commissioner and European courts play important roles in promoting soft law instruments. Other important actors are European competition agencies and private actors. Here we find that hierarchy and cooperation are used in tandem in ways that enable soft modes of governance to have “harder” effects than may initially appear.

Chapter 9, by Susanne K. Schmidt, looks at single market policies, in particular the role of mutual recognition as a new mode of governance. Schmidt argues that the single market program took off with the implementation of the principle of mutual recognition following the 1979 *Cassis de Dijon* ruling of the ECJ. Mutual recognition as an alternative governance form, however, transfers the transaction costs of dealing with heterogeneity from the decisionmaking stage to the implementation stage. Therefore, the Commission has built up institutional support structures that absorb the resulting transaction costs. In addition, it has made national administrations responsible for reacting to demands from other member states. The Commission has also strengthened transnational networks so as to free up the workload of national and EU-level administrations.

Sports are another area in which hierarchy exercised by the ECJ clearly formed a catalyst for the evolution of EU policymaking. In Chapter 10, Osvaldo Croci shows that EU sports policy has developed because of ECJ rulings, defining sports as an economic business. In order to keep sports policy within the rules of EU law and to preserve a “European model of sport,” the Commission embarked on negotiations with sport stakeholders to reach mutually satisfying agreements before any cases might be brought before courts.

Chapter 11, by Michelle Egan, highlights the evolution of new modes of governance as an expression of changing ideas about market regulation. It focuses more broadly on the questions related to the restructuring of the state, through the delegation and creation of regulatory agencies, self-regulation, and regulatory competition as well as cooperation and institutional coordination in other cases. Regulatory reforms changed the overall mode of governance and the relative dominance of actors. Governments are but one set of actors; new actors include public-private networks, industry associations, and regulated firms. Nonhierarchical modes of governance have become more prominent in this area of policymaking; there is a growing emphasis on codes, rules, and standards, developed by standards-setting bodies or autonomous agencies.

In Chapter 12, Charles C. Pentland offers an analysis of a rather different area of policymaking: the enlargement process. The first rounds of enlargement were relatively simple: the process was managed by the member states; the Commission’s role was technical and advisory. Modes of governance displayed a combination of intergovernmental negotiation and hierarchical regulation. Subsequent enlargements reinforced this pattern, but

the political resources available to the Commission gradually expanded. Modes of governance have not become “softer”; on the contrary—conditionality has implied stricter rules and procedures. A further finding is that enlargement policy has revived the use of deliberation among the existing members about the structure and functioning of EU institutions.

The chapters in Part 3 bring together those analyses that focus on cooperation as a mode of governance, partly combined with hierarchy or competition. Chapter 13, by Edgar Grande and Ute Hartenberger, focuses on three of the most important public utilities—telecommunications, electricity, and railways; these all belong to the category of network-based technical infrastructures. The analysis of these three utilities shows that the structuring of a dynamic interaction space within Europe offers a counterperspective to the prevalent emphasis on the formal demarcation and allocation of competences. They find that “regulatory governance” in Europe is organized not in a “regulatory state”—neither nationally nor supranationally—but in new types of cosmopolitan interaction spaces, integrating national and supranational actors and institutions alike in a dynamic manner.

Miriam Hartlapp’s Chapter 14, on social policy, shows how the implementation process is a key point of governance and policymaking. In this area of policymaking member states have shown great reluctance in implementing policies correctly and in a timely manner. The European Commission has responded not so much by using more hierarchical modes of governance but rather by using seemingly softer instruments, such as more competitive mechanisms (e.g., benchmarking or whistle-blowing). The Commission has also empowered individuals and organized interests to increase indirect pressure. Hartlapp concludes that implementation politics can be characterized as a specific governance process, in which the European Commission heavily influences national policies with soft means but hard impacts.

Chapter 15, by Burkard Eberlein and Abraham Newman, compares the areas of data privacy and energy so as to examine a particular dimension of governance, namely the role of transgovernmental networks. Such networks also operate in a range of other sectors. In these areas the EU has incorporated organized groups of national regulators through European law into a novel, regulatory process, called by the authors “incorporated transgovernmentalism.” Eberlein and Newman also identify this mode of governance as different from “coordination” in that it does not exclusively rely on deliberative mechanisms and peer pressure but can bring delegated authority to bear. In this sense, it is a hybrid form combining hierarchy and cooperation.

Chapter 16, by Sandra Lavenex, examines the Area of Freedom, Security, and Justice (AFSJ). She finds that intensive transgovernmentalism is the dominant mode of governance in this area of policymaking. Its characteristics are a particular division of resources that gives salience to the Council

of Ministers and its working groups, limits the use of the Community method, weakens the legislative outputs in terms of substantive scope and legal stringency, and builds on mutual recognition and open coordination. In other words, she sees this mode of governance as privileging integration through the promotion of personal, communicative, and operational linkages between member states' administrations and law enforcement authorities while keeping the role of common hierarchical, supranational rules to a minimum.

Chapter 17 deals with another area of policymaking in which we observe horizontal coordination. Barbara Haskell examines the so-called Bologna Process (cooperation in the area of higher education in Europe). The Bologna Process has been based predominantly on cooperation, but elements of competition (benchmarking) have also been present. The actors in the process have primarily been national governments as well as subnational actors, whereas the Commission officially only becomes a major player at a later stage of the process. Haskell seeks to answer the question of whether these seemingly weak processes can generate strong results. She finds three conditions to be important: a permissive consensus among the states, several parties wanting changes but not being able to generate them by themselves, and a body in a "hub" position that can provide the strategy to bring the others together.

In Part 4, Ingeborg Tömmel and Amy Verdun draw conclusions with regard to the overall outcomes of the research project. First, they give a brief overview of how the objectives formulated in the first section of this chapter were met. Second, they briefly review the case studies and highlight the main governance modes that were used, the combinations that prevailed, and the changes over time that occurred, in particular those toward more innovative modes of governance. Furthermore, they spell out the role of the EU institutions, the Commission and the Council, in advancing or hampering the evolution of certain modes of governance. Third, they discuss the characteristics of European modes of governance: on the one hand, across policy fields, and on the other hand, the features distinguishing European governance from that of the national level. They conclude that European modes of governance do not differ as much from the national level with regard to the *processes* that they entail, but they do differ in the configuration of the *actors* involved as well as in the *institutional setting* underlying this configuration.