

# **Modes of governance in the EU**

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## **1. Introduction**

For more than a decade, political scientists have been involved in a lively debate on the concept of governance in general and on new modes of governance in particular. This debate was triggered by major political changes regarding the role of the state in shaping and transforming society. At national level, it was the decline of the intervention state and the increasing responsibility of non-state actors in public decision- and policy-making which gave rise to the concept of governance as a more cooperative mode of steering society. In the international realm, the increasing importance of cooperation between states as well as between international and non-governmental organizations triggered the notion of governance as a mode of jointly providing common goods in the absence of government. Yet to date, no clear definition or common understanding of the term ‘governance’ has emerged. Instead the debate, whether referring to national states or the international system, covers a broad range of highly diverging conceptualisations (see for example Pierre 2000, Pierre and Peters 2005, Caporaso and Wittenbrink 2006). The spectrum reaches from a purely state-centred view on governance, equating the term more or less with governing or political steering (Treib et al. 2007), to a much broader definition focusing on the actions of and interrelationships between a plurality of public and private or societal actors and the institutional pattern underlying various modes of governance (Kooiman 1993).

Against this background, it is the aim of this chapter to, first, clarify the concept of governance, second, highlight basic modes of governance and their role in the EU and, third, develop an explanatory framework for the emergence of specific modes of governance in the framework of the EU-system. Two questions are central to this chapter:

- First, is the EU characterized by specific modes of governance and, if so, in which respect do they differ from modes of governance practiced at national level?
- Second, to which extent are European modes of governance shaped by the structure of the EU-system, its institutional setting and its procedures of decision-making?

In order to deal with these issues and questions, this chapter is structured as follows. First, a brief outline is given on the debate on (new) modes of governance and its origins as well as its significance in EU-research. This is followed, second, by a clarification of the term governance and a distinction between four basic modes of governance, constituting ideal types. Then, third, the focus is on how, why and to what extent these types of governance play a role in the EU-system and which modifications they undergo as compared to governance at national level. Furthermore, it will be discussed in which sense European modes of governance can be termed as ‘new’. Fourth, an explanatory framework will be developed by focusing on how different modes of governance evolve in the process of European policy-making and how they are shaped and modelled by the structure of the EU-system, its institutional setting and its procedures of decision-making. Finally, conclusions will be drawn with regard to the analysis of governance and policy-making in the EU.

## **2. Modes of governance: the origins of the debate**

The theoretical discussion on (new) modes of governance had its origin in two different sets of debates. The first, which I term the ‘governance without government’ debate, was initiated by Rosenau and Czempiel (1992, see in particular Rosenau 1992) with regard to international relations or, more specifically, to order in world politics. In his seminal arti-

cle, Rosenau argued that, although a global public regime let alone a world government does not exist, some kind of order is being established. It results from cooperation among states, creating international regimes, and the interaction between a plurality of actors, both public and private or non-governmental, pursuing different objectives, but all contributing to provide common goods and thus to establish order in a globalizing world.

The second debate is rooted in research on changes in statehood at national level (Benz 2004a). In this context, the emergence of new or alternative modes of governance is seen as a reaction to a declining capacity of the state to direct economic growth and social progress and to solve complex problems of modern societies. In this debate, it is assumed that public regulation and intervention is increasingly being shared with or partly delegated to private or non-governmental actors. This in turn requires coordination between different actors, thus shifting the mode of governance from hierarchy to cooperation, from regulation to delegated self-regulation, from top-down political steering to horizontal coordination. Both debates have in common that they contest the exclusive role of the state in providing common goods and shaping public order, whether within states or in the international realm.

The arguments of both debates are particularly suited for application to the EU. Like the international system, the EU lacks an institutionalized government or a dominant actor for decision-making, but it is nevertheless able to establish a dense web of rules and procedures guiding the behaviour of member states, and, unlike the international system, it is able to some extent to enforce compliance with the rules. As compared to national states, the EU is less characterized by a declining capacity of intervention but rather by the lack of such a capacity. In general, its competences to intervene directly into economic and societal developments are limited. Above all, it directs the behaviour of member states' governments in order to achieve objectives defined at European level. Since the relationships between European and national level are not structured as hierarchical, the Union is highly dependent on coordination of action and cooperation with national and sometimes also regional government level. The same applies to its relationships with private or non-governmental actors. In sum, because of the characteristics of the EU-system, European

governance is oriented on coordination of and cooperation with a wide variety of actors in order to achieve common goals rather than on the use of hierarchical means to direct their behaviour. Compared to the intervention state, which until recently was the dominant mode of shaping national political systems (Jessop 2003), the EU is characterized by modes of governance based on softer or more indirect means of achieving its policy objectives.

Thus, by its application to the EU, both above-mentioned debates merged into one, focusing on the emergence of governance without government and on alternative modes of governance, characterized by coordination of and cooperation between government levels and between public and private or non-governmental actors. These forms of coordinative and cooperative governance were mostly seen as having emerged quite recently, in particular as a reaction to member states' reluctance to further transfer powers and competences to the European level. Therefore, they were often discussed under the label new modes of governance (Héritier 2002). Some scholars assume that these new modes of governance characterize only a transitional stage in the integration process until member states are ready to create a more powerful system at European level. Others however claim that coordinative modes of governance are particularly suited to and inherently linked with the systemic structure of the EU-system. This latter view will further be elaborated in this chapter.

### **3. Modes of governance; a typology**

In following Rosenau (1992) and Mayntz (2002, 2004, 2005; see also Benz 2004 b and c), governance is to be defined in broad terms, distinguishing it clearly from governing, or political steering. Whereas the latter terms refer to strategic actions of the state or public authorities in order to intervene into the economic and societal sphere, governance refers to the overarching modes of providing common goods or establishing public order, resulting from the interaction between various categories of actors and from forms of coordination of their behaviour. Thus governance, in contrast to government, refers to vari-

ous actors contributing to establish public order through taking decisions and/or actions for the common good. Governance is based on a system of rule(s), shaping and coordinating the behaviour of actors (Rosenau 1992). The term has two dimensions: on the one hand it refers to a process; on the other hand it refers to the underlying regulatory structure (Mayntz 2004, Börzel 2005). Governance as a process encompasses various modes of coordinating the behaviour of different actors. Governance in its structural dimension refers to the actors involved in the process and thus to an institutional setting underlying and shaping its various forms.

In looking first at the process dimension of governance, different categories or modes of governance can be distinguished. In the literature on the issue, a wide variety of proposals on how to categorize modes of governance coexists. The variety refers to the number of categories, ranging from 3 to 17; to the defining criteria, referring to either the process or the structural dimension of governance or to both; and, sometimes, to the actor constellation and/or the procedures being used (i.e. the Open Method of Coordination). Moreover, the degree of abstraction also varies widely within and between such typologies.

In partly relying on, but also diverging from this literature, I present below four categories, constituting basic modes of governance as different modes of coordinating the behaviour of actors. These are the following:

- hierarchy,
- negotiation,
- competition,
- cooperation.

These four categories are exhaustive and, at the same time, mutually exclusive. They refer to different processes of shaping the relationships between public and private or non-governmental actors, thus coordinating their behaviour in specific ways.

With regard to the structural dimension of governance, it is the institutions and actors involved in the process which form its basic constituents. In the first place, the state or pub-

lic authorities play the most prominent role in structuring governance (Pierre and Peters 2005). However, private or non-state actors are increasingly being involved. They may also exercise governance without direct interference of the public sphere, thus establishing order through self-regulation (Zürn 2005). The institutional setting structuring the relationships between actors can widely vary according to the level of governance (international, national or regional/local) and to the relationships between the political, the economic and the societal sphere. In looking at modes of governance under an actor-perspective, the interdependence between the two becomes obvious: according to the actors being involved, modes of governance vary and vice versa.

In the following, I will briefly describe the four modes of governance in more concrete terms, referring to both the process and the structural dimension as well as to the actors involved and the relationships between them.

- Thus *hierarchy* as a mode of governance is usually associated with the state, in particular the sovereign state, exercising power over individual citizens or society as a whole. Hierarchy in modern states is primarily exercised by legislation and rule-making or by taking binding decisions, accompanied by powers and action to enforce compliance.
- *Negotiation* by contrast supposes the interaction of various types of actors. This can range from exclusively public actors of different government levels and functional sectors to a combination of public and private or non-state actors as well as to exclusively private or non-state actors. Negotiation is the preferred mode of governance for accommodating highly divergent interests among the actors involved. Negotiations can result in binding decisions or even in formal contracts, but they are usually not accompanied by hard sanctions.
- Whereas both hierarchy and negotiation refer to processes of decision-making and/or rule-setting, *competition* as a mode of governance refers to a mechanism affecting the decisions of individual actors and thus coordinating their behaviour. However, competition does not emerge by itself but has to be established and sustained by defining the rules of the game and guaranteeing their validity and effectiveness. This means it is for a large part, although behind the scene, dependent on

government or public authority creating and maintaining the regulatory framework. At the same time, it relies on individual actors accepting the rules and complying with the ensuing mechanisms. This implies that compliance, in contrast to hierarchy, is not being enforced but triggered by more or less strong incentives as well as disincentives.

- *Cooperation* for its part encompasses a plurality of actors and a wide variety of measures aimed at guiding their behaviour. It does not at all rely on coercion, but is based on voluntary participation in a cooperative process. This implies that compliance with jointly taken decisions, common agreements or only jointly held beliefs is also voluntary. Thus compliance is not guaranteed; a larger degree of non-compliance is highly probable. However, some scholars expect compliance to be even higher, since actors have voluntarily agreed upon common objectives or measures to be taken and, because of conviction, will be more inclined to implement them. Cooperation, therefore, is a mode of governance with highly contingent outcomes; its effectiveness may vary according to the actors involved, the degree of their commitment, external circumstances and specific favouring conditions.

The four basic modes of governance, as defined above, constitute ideal types. In practice, they are often combined with each other or used in hybrid forms. However, the extent and the combinations of their use have not been stable through history. Thus, most scholars of the governance-approach assume that in recent times a major shift has occurred away from hierarchy as traditional and most widely used mode of governance towards new or softer modes of governance. The latter are assumed to include, to a much higher degree than in the past, non-state actors into the process of governance and to make use of indirect means for directing the behaviour of actors.

This shift is being explained, on the one hand, as a consequence of processes of globalization, altering the balance between national governments and international organizations and regimes at the expense of the former and also the balance between public and private or non-state actors. On the other hand, processes within states as a consequence of

the internationalization of the economy and an increasing differentiation of societies, transforming the state-economy and the state-society relationship, are seen as its cause. In both cases, the state is no longer seen as being the exclusive actor responsible for providing public goods (see Benz 2004a).

Although there is no clear consensus in the literature, new modes of governance are often characterized as non-binding decisions, voluntary agreements, non-formalized procedures of consensus-building and, more in general, as procedures for coordinating the behaviour of different actors, both public and private or non-governmental (Héritier 2002, Eberlein and Kerwer 2004). In other words: new modes of governance are conceived of as soft modes of governance, since they do not rely primarily on formal powers and authority or on established mechanisms and procedures to enforce compliance.

The notion of new modes of governance however does not imply that these modes were invented right now or yesterday. It rather refers to their increasing use and significance, as well as their growing independence from the “shadow of hierarchy”. This increasing significance in turn is linked to the decreasing capacities of states in shaping exclusively the economic and social development of their territories. Thus, what is new about new modes of governance is the phenomenon that governance can successfully be exercised without relying exclusively or predominantly on the authority of the state. Against this background, it is obvious why new modes of governance have become such a salient issue for the study of the European Union, a political system lacking the powers and the sovereignty of a national state, yet, directing successfully the behaviour of member states and non-state actors.

#### **4. Governance in the EU**

In looking at the dominant modes of governance characterizing the EU, it is important to note that the four basic categories presented above all play a significant role. However, there are substantial variations as compared to the practice of governance within states.

First, every mode of governance differs in both its process and its structural dimension from the corresponding modes at national level; second, the mix of modes of governance in the Union differs from that of the member states.

In the following, I will first give a brief sketch of European modes of governance according to the categories presented above and then, second, elaborate its specific characteristics as compared to governance in national political systems.

- *Hierarchy* as a European mode of governance is primarily exercised through the legislative powers of the Union. Some authors even claim that regulation in the form of legislation is the dominant mode of governance characterizing the EU-system (Majone 1996, 2005). Hierarchy plays also a role in decisions at European level, i.e. those of the Commission, the European Court of Justice or the European Central Bank (ECB) (Scharpf 1999). Finally, hierarchy in the EU-system is often exercised in the member states following jointly taken decisions at European level.
- *Negotiation*, serving primarily to accommodate diverging interests of institutional actors, is the mode of governance pervading the whole EU-system. Some authors therefore speak of the EU as a negotiated order (Scharpf 1999). Extensive negotiations not only precede every legislative act, but they also structure the process of policy-making and implementation. In many policy fields, it is merely through negotiations and the ensuing decisions that policy objectives and procedures of implementation are determined (see i.e. Tömmel 1994, Cram 1997). Negotiations structure the relationships between a wide variety of public actors both in the vertical and horizontal direction as well as those between public and private or non-governmental actors, thus creating a multi-level and multi-actor system of governance (Marks 1993, Marks et al. 1996, Grande 2000, Marks and Hooghe 2001, Bache and Flinders 2004).
- *Competition* as a mode of governance plays a prominent role in the EU-system since the core project of European integration, the creation of the single market, focuses on establishing competitive relationships between economic actors and member states. Competitive mechanisms are crucial in order to induce mutual ad-

aptation and policy convergence among member states (Knill and Lenschow 2005). However, competitive mechanisms are not only being used for creating and extending a common market, but also, in the form of pseudo-market mechanisms, for structuring the behaviour of actors in non-market driven sectors and spheres. For example, through peer reviews, member states or other institutional actors participating in such procedures are subject to the pressure of competition. Pseudo-market mechanisms are also put in place by providing incentives and disincentives, i.e. in the form of subsidies or fines, for directing the behaviour of actors.

- *Cooperation* as a mode of governance plays a major and increasingly important role in the EU-system. Since it is based on voluntarism, it is primarily applied in those cases where the EU misses formal competences. It allows for a certain degree of joint action and thus for circumventing the reluctance of member states to transfer powers to the EU (Schaefer 2005). To a growing degree however, it also complements other modes of governance in policy-fields where major competences are clearly transferred to the European level, i.e. competition policy. In both cases, since actors are more or less free in making their policy-choices within the framework of cooperation, it serves to accommodate divergent policy options and strategies of national governments and other actors involved. Furthermore, because it is independent of lengthy procedures of formal decision-making, cooperation also serves to quickly adapt policy-making to changing circumstances and needs.

To what extent are European modes of governance differing from those practiced at national level? In the context of the governance-debate on the EU, this question is not directly discussed; it rather figures under the label of new modes of governance, which are seen to play an increasingly important role in the EU-system (see for example the New Governance project funded by the EU). In these debates, new modes of governance are conceived of as soft modes of governance, based on the interaction between public and private or non-governmental actors. More in general, the term is applied to non-legislative forms of governance (Héritier 2002). The EU, because of its limited formal

competences and its lack of sovereignty, is thought to be particularly prone to the emergence of such modes of governance. This notion, on the one hand, is confirmed by actual changes in European governance, in particular the introduction of the Open Method of Coordination (OMC) constituting, at least partly, a particularly soft mode of governance. On the other hand, it is triggered by the very nature of the EU-system and the perception of this system as representing the current shift in public steering from state-centred activity to a more coordinative and cooperative approach, including not only different levels of public authority from local to European, but also non-state actors on all these levels.

However, there is deep disagreement in the literature on the importance of new or soft modes of governance in the EU. Whereas some authors claim that such modes of governance play an increasingly significant role and even foresee that they might, in the longer run, replace hierarchy as a mode of governance, others stress that the EU continues to rely on traditional modes of hierarchical steering. Some even claim that the EU, more than national states, depends on such modes of steering. To date, although some quantitative studies have been performed, it is impossible to give an empirically based answer to this dispute. This is not only the case because of a lack of precise data; but it also follows from the conceptualization of the research question, which does not allow for clearly distinguishing between the EU and its member states. Indeed, new or soft modes of governance are also increasingly practiced at national level; moreover, they are not really new in the sense that they were invented right now or yesterday, but they always pervaded systems of governance. What has changed in recent times is the increasing use of such modes of governance in institutionalized form at both the national and the European level. Whether this increase is more significant in the EU or in national states is hard to determine. What, however, can be determined is the nature of European modes of governance as compared to those at national level.

Therefore, in following, but also partly contrasting the above-mentioned views, I argue here that all modes of governance of the EU, that is, negotiation, competition, coordination and even hierarchy, are comparatively new ones in the sense that they are all based on relatively softer means of steering as well as on cooperation and coordination between

various government levels and actors in order to reach jointly defined policy objectives. This reliance on softer and more cooperative modes of governance is inherently linked to the structure of the EU-system, which is, in the first place, a multi-level structure but also a multi-actor structure (Marks 1993, Marks et al. 1996, Cram 1997, Grande 2000, Marks and Hooghe 2001, Bache and Flinders 2004). (See section 5).

The relatively softer nature of European governance becomes particularly obvious in the case of hierarchy, which is usually seen as a hard mode of governance linked to national sovereignty and the monopoly of power of the state. In the context of the EU-system, hierarchy, that is legislation and its enforcement, implies a highly interactive process including various public and private actors and, therefore, lacking the authority of rule-making and enforcement at national level. Moreover, EU-rules in the form of legislation are less hierarchical or “softer” in their impact than those of nation states. The reasons for this difference are manifold.

First, legislation at European level is precarious, because decisions are dependent on powerful actors with highly diverging interests and preferences, that is, they are dependent on consensus in the Council which however is difficult to achieve (Scharpf 1999). This forms a general constraint on making use of legislation in the EU-system and it often leads to vaguely or ambiguously formulated rules (Majone 2005). Second, in most cases, European legislation in the form of directives has to be transposed into national legislation, which implies that it gives member states a high degree of discretion in the process of transposition (Falkner et al. 2005). As a consequence, it does not have a uniform impact on the whole EU. Third, as mentioned above, European legislation is seldom accompanied by hard sanctions and clear procedures of enforcement, thus lacking the authority of national law (Hartlapp 2005). Fourth, European legislation is often framework legislation, aimed at creating procedures for guiding the behaviour of national and sometimes regional government instead of directly intervening in economic or social life. It thus has only an indirect impact which, again, may widely vary between member states (Jupille 2004).

In looking not only at legislation, but also at European decisions, a similar tendency towards a softer impact can be discerned. For example, the European Commission has the powers to take binding decisions in competition matters. But in practice, such decisions are only taken after lengthy negotiations with all actors involved – member states' governments and private firms – accommodating their diverging interests and representing rather a compromise than a clear top-down decision. It is true that the European Court of Justice takes binding, authoritative decisions without compromising with the parties involved. However, appealing to the Court implies cumbersome and costly procedures, so that only a limited number of cases are brought before the Court. Moreover, in most cases, the Court can only express a verdict; it has seldom sanctions at hand so that compliance cannot be enforced. Binding decisions without interference of member states or other actors are also those taken by the ECB. However, this mode of procedure, laid down in the Treaties, is highly contested in public debates. To sum up, hierarchy as a European mode of governance, whether in the form of legislation or decisions, is often less hierarchical than it seems at first sight, in particular, if compared to traditional hierarchical modes of governance at national level. Hierarchy as a mode of governance undergoes transformation when applied in the context of the EU-system.

The same applies, although to different degrees, to the other modes of governance.

Thus *negotiation*, usually resulting in joint decision, also implies that these decisions are less binding, in particular because member states and their governments often have to reconcile them with other objectives at national level. In case of contradictions, they are rather inclined to follow their national objectives than those agreed upon at European level. Decisions as a result of negotiations are not accompanied by sanctions or other procedures of enforcement.

*Competition*, in contrast, is a mode of governance which may have a hard impact on all actors subject to it. Once in place as a mechanism regulating the market, it is relatively independent of state or other public authority intervention. It is the market itself which sanctions or even rules out non-conforming performances. However, in case of pseudo-market mechanisms, there are seldom clear provisions for sanctions. It rather de-

pends on the incentives and disincentives and their indirect impact whether actors will comply.

*Cooperation*, by nature, is based on voluntarism and, therefore, its impact depends on the commitment of actors to European objectives and/or the perceived gains of their participation. But also in this case the impact of cooperation might be slightly softer than at national level since European voluntary agreements are usually seen as less binding.

Having said that all European modes of governance except competition in market situations lack hard mechanisms of ensuring compliance or are less binding on member states or other actors involved, does not imply that compliance is not achieved at all. On the contrary, in the longer run, as actors get more sensitive to softer modes of governance and as they sense the advantages linked to them, compliance will more and more be ensured. Therefore, softer modes of governance are not by definition less effective but are more dependent on the acceptance of actors and their sensitivity to possible gains linked to compliance with them.

In conclusion, it can be said that all modes of governance being used in the EU are, in the widest sense of the term, to be considered as more or less new in that none of them forms simply a replica of modes of governance practiced at national level. Moreover, all European modes of governance, except competition in real market situations, are comparatively soft in their impact, although to a widely varying degree, with hierarchy figuring at one end of the spectrum and cooperation at the other.

## 5. Governance and the nature of the EU-system

In arguing that more or less all modes of governance in the EU-system are specific in that they are comparatively soft in both their procedures and their impact, the most salient issue is whether and in which way these modes of governance are interrelated with the structure of the EU-system. To tackle this question, the point of departure is a neo-institutionalist perspective on the EU and, more precisely, an actor-centred approach to

neo-institutionalism (Mayntz and Scharpf 1995). Under this perspective, it is assumed that the structure of the EU-system shapes the emergence of specific modes of governance and that the system offers incentives and constraints for their emergence. This however is not seen as a deterministic relationship between the EU-system and its modes of governance. Instead, it is assumed that the EU-system provides an opportunity structure for actors to foster certain developments in policy-making, while others are discouraged. Thus modes of governance emerge from the actions and interactions of institutional actors in the process of policy-making. Against this background, I will in the following, first, briefly define the structure of the EU-system and then, second, highlight the incentives and constraints that the system sets for the emergence of specific modes of governance.

The most prominent characteristic of the EU-system is its hybrid form, generally described as a mixture of intergovernmentalism and supranationalism. These terms however, often used as a dichotomy, are misleading in that they refer to different institutional categories and to contradicting theoretical strands. Therefore, I prefer to characterize the EU as a system reflecting two principles underlying its institutional structure, the European and the national principle (Tömmel 2006; see also Beck and Grande 2004, Majone 2005). This constellation finds its institutional expression in both a horizontal fragmentation of power at the European level and a vertical fragmentation of power between the European and the national level. In the horizontal dimension at European level, the two principles find primarily their expression in the Commission representing the Union and the Council representing the member states. Both institutions, forming the principal centres of power in the EU-system, constitute a bicephalous structure, this in contrast to national political systems which are more clearly centralized. All other institutions and actors of the system, although taking varying positions in concrete decision-making, are structurally related to one or the other side of these centres of power. Thus, the Commission is often supported by Parliament and the Court, while the Council has its own supporting substructure, i.e. COREPER, various special Committees, the Council secretariat and the working groups. In the vertical dimension, the European principle is represented by the Commission, supported in this constellation by the Council and/or the Court, on

the one hand, and by the individual member states on the other. Since the Council takes decisions on policy objectives and the overall process of integration, it has vis-à-vis single member states an important role in guiding their behaviour. The Court, because of its role in infringement procedures against member states, represents directly the European principle.

The relationship between the institutions and actors representing these principles is not definitively defined, for example by a clear division of powers, let alone by attributing sovereignty to one side of them or by clearly defining a structure of shared sovereignty. It is true that member states are sovereign, but only individually and only to the extent that this sovereignty is not constrained by rule-making at European level. In the context of the EU-system, in order to be able to exercise power, member states have to pool their sovereignty. This pooling however is not once and for all established, or delegated to the Commission, but it depends on decision-making and consensus-building in the Council and, therefore, it is precarious.

The European level, and in particular the Commission, has been attributed certain competences, but they do not allow for taking independent action. The Commission, through its monopoly of proposing legislation, can set the agenda and shape to a far-reaching degree the substance of legislation; but, in the end, it is always dependent on the Council taking the respective decisions. The Court, by using its judicial powers to a maximum, has established its position as final arbiter in the EU-system through its own judgements. However, as the most recent judgements in competition matters prove, it is also sensible to indirect pressures from the member states. Thus, the distribution of powers in the EU-system is continuously being structured and re-structured through ongoing processes of decision-making, consensus-building, conflict and cooperation. The central institutional actors, in particular the Commission and the Council as well as the Commission and individual governments of the member states, are continuously involved in negotiations determining their respective role and influence in every policy-field. It is through this continuous interaction that European modes of governance evolve and are further modelled.

Against the background of this necessarily rough characterization of the EU-system, the major incentives and constraints which the structure of the system sets to the use of specific modes of governance can be determined. Major constraints lay in the following:

- Since the EU is not sovereign, it is constrained in making use of hierarchy as a mode of governance. Although it has legislative powers, the use of these powers depends largely on decision-making in the Council. Decision-making in the Council is precarious because of diversity among member states and because of a general reluctance of all member states to transfer powers and competences to the European level.
- The EU is constrained in enforcing compliance with its rules. It does not have major competences in rule-enforcement, let alone the powers of command and control vis-à-vis the member states. Since member-states are sovereign, they have many means and ways at their disposal to resist to or even obstruct various modes of exercising power by the European level.

Major incentives lay in the following:

- Since the EU-system is characterized by the fragmentation of powers between institutional actors with highly diverging interests, it offers incentives for both aggregating or transforming diverging interests and preferences. This in turn fosters the emergence of modes of governance based on negotiations, consensus-building and cooperation among different actors.
- Insofar as powers have been transferred to the European level, these powers mostly refer to the building and ensuring of effectiveness of market mechanisms. Therefore, and in combination with the otherwise limited powers of the EU, the system offers strong incentives for using market mechanisms and competition as modes of governance, also beyond the realm of the real market.
- Since the EU-system lacks far-reaching powers in many policy-fields and, therefore, is highly dependent on external power resources, it offers strong incentives for including a wide variety of actors, both public and private or non-governmental, into its procedures of decision-making and policy-implementation.

This in turn stimulates the “invention” of procedures for fostering consensus-building among the actors involved, leading to convergence of visions, norms, attitudes and preferences.

In sum, on the one hand, the “weak” and contradictory structure of the EU-system and its dependence on national governments is the main factor constraining the use of hierarchical modes of governance and thus the exercise of power and authority in traditional forms. On the other hand, it is precisely this weak and contradictory structure that fosters the emergence of alternative modes of governance based on the use of market mechanisms and competition, negotiation and cooperation as means of directing the behaviour of actors towards achieving commonly defined objectives.

Incentives and constraints shaping the emergence of European modes of governance are embedded in the structure of the EU-system. This however does not imply that they determine the emergence of modes of governance. It is the actors in the system, their choices and their interactions in the framework of incentives and constraints, who ultimately determine which modes of governance emerge in which form and to which extent. This becomes most obvious when looking at the evolution of European integration. In the beginning, this process was characterized by taking recourse to hierarchy as a mode of governance, but it had often only a limited impact. Moreover, it turned out to be difficult to extend to further policy-fields. It was only after this stalemate had been realized that actors turned to a more differentiated and sophisticated approach in governance, leading to the emergence of ever softer modes of steering and coordinating the behaviour of actors. Moreover, together with these changes, a more deliberate approach to include non-state actors into European policy-making evolved, increasing the significance of cooperative and coordinative modes of governance. Therefore, we can conclude that European modes of governance are on the one hand shaped by the structure of the EU-system, in that it prefigures the interactions of institutional actors. But, on the other, it is the choices of and the struggles between these actors which shape European governance in its specific form.

## 6. Conclusions

Against the background of the theoretical framework as outlined above, some conclusions can be formulated with regard to (new) modes of governance in the EU:

- First, the so-called new modes of governance did not emerge in recent years; they have been present in the EU-system since its inception, although in much less pronounced, less differentiated and less institutionalized forms. However, they recently became more visible because of their increased use, their increasing degree of softness, their dominance in new policy fields and because of explicit reference to them in decisions and official documents of the EU.
- European modes of governance do not emerge by design but are the result of the process of policy-making, evolving through the interaction between different institutions at European level and between the European and national (and sometimes regional) government level and the actors representing them. They are shaped and modelled according to the incentives and constraints which the institutional structure of the EU sets to their emergence and evolution. European modes of governance, therefore, are inherently linked to the systemic structure of the EU.
- Single European policy-fields are not characterized by specific modes of governance. Although policy-fields may differ in the use of modes of governance and their combinations, they are not differentiated according to categories of governance. Since modes of governance in the EU-system result from interaction, characterized, across all policy-fields, by conflict and cooperation between institutional actors, all policy-fields show a specific and – over time – changing mix of modes of governance.

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