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**NEWGOV**  
**New Modes of Governance**

Integrated Project  
Priority 7 – Citizens and Governance in the Knowledge-based Society

**3<sup>rd</sup> Annual Activity Report**  
**Covering the period months 25-36**  
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## **I. Executive Summary**

### ***I.1. The key objectives of NEWGOV***

The aim of the NEWGOV IP is to examine the transformation of governance in Europe (and beyond) by mapping, evaluating and analysing the emergence, execution, and evolution of what we refer to as ‘New Modes of Governance’ (NMG). By new modes of governance we mean the range of innovation and transformation that has been and continues to occur in the instruments, methods, modes and systems of governance in contemporary polities and economies, and especially within the European Union (EU) and its member states.

The precise scientific objectives of NEWGOV are pursued within four different clusters, each of which contains a set of inter-linked projects. The four clusters are dedicated, respectively, to ‘emergence, evolution and evaluation’, ‘delegation, hierarchy and accountability’, ‘effectiveness, capacity and legitimacy’, and ‘learning, experimental governance, and reform’. Within these clusters there is a total of 24 projects which cover topics such as ‘capacity building and the OMC’ and ‘arguing and persuasion in EU governance’ in cluster 1, ‘regulatory agencies and network governance’, ‘governance and the EU securities sector’ and ‘European public services regulation’ in cluster 2, ‘new forms of governance and eastern enlargement’, ‘the domestic impact of European law’ and ‘new modes of governance in relations with non-member states’ in cluster 3, and ‘varieties of capitalism and economic governance in CE Europe’, ‘new corporate governance regimes’ and ‘distributive politics, learning and reform’ in cluster 4. The clusters and the projects are accompanied by two transversal task forces, one on ‘legal issues’, the other on issues of ‘legitimacy and democracy’ which make inputs across the Integrated Project. Joint activities across the consortium as a whole include workshops, conferences, the mutual exchange and cross-fertilisation of ideas, information, and data, and through research training conducted in two summer schools.

### ***I.2. Major scientific achievements during the reporting period and expected end results, intention for use and impact***

The third year of the NEWGOV project saw an intense process of activity at the Consortium, cluster and project levels. While each sub-project has its own implementation plan and pursues its own methodological path and set of objectives within the overall research agenda elaborated by the Consortium and cluster leaders, during the third year (depending on the duration of the individual project) many project moved into the phases of analysis and (partly normative) evaluation of the findings, as well as of the production and dissemination of research results. After the overall scientific framework document was revised and focussed in year two, project and clusters could more easily produce research output that can be compared across clusters and projects. Several ‘collective goods’ instruments managed at the Consortium level, in particular workshops, the consortium conferences, and practitioner fora, are applied to facilitate this process.

At the cluster level, the cluster leaders have worked hard to ensure that the projects continue to relate their analysis to the four broad sets of analytical perspectives (the “Four E’s” – *Emergence, Execution, Evaluation and Evolution*), which constitute the guiding questions at the core of this Integrated Project. The third annual report gives account of the progress made and the tentative and sometimes already final answers each of the projects have to the related hypotheses that have been formulated in the NEWGOV Scientific Objectives Document. The richness of these analyses cannot be conveyed or unified in a short piece of text, but the Steering Committee will produce synthetic results in the course of the final implementation phase; identified linkages are further explored in workshops and conference reaching across clusters and projects. The systematic comparison of the theoretical questions and findings on Emergence, Execution, Evaluation and Evolution will be compiled in a joint publication at the end of the project.

The most important achievements have obviously been made at the level of our individual projects, since that is the level at which most of the hard research is being conducted. Depending on the implementation plan of each of the projects, a few projects are still carrying our primary research in their respective fields, while most others are more advanced in their research plan and are engaged in analysis and evaluation in order to prepare the final research output. In addition, six projects have concluded their research already during the second and third year; academic publications will appear in the course of the next months or have been published already. Around 150 project deliverables have been produced in year three, ranging from project workshops, practitioner forums, and meetings, websites, technical deliverables such as glossaries, indicators, scientific guidelines, refinements of research approaches, and interviews digests, to reports on empirical research, working papers, journal articles, book chapters, special issues of peer-reviewed journals, edited volumes, and final project research reports.

After the NEWGOV Consortium successfully participated in a Commission call for proposals to enlarge the Consortium by a partner from the Targeted Third Countries, the European University at St. Petersburg acceded to the Consortium during the third project year and participates in the “Inside-Outside” project dealing with “New Modes of Governance in Relations with Non-Member States”. The study of EU-Russian co-operation conducted by the new partner complements the comparative research which is being done by the sub-project and the Integrated Project as a whole. The NEWGOV project will benefit from the expertise of the new partner specialised in the co-operation between the EU and Russia. It will enhance the dissemination of research results to the Russian academic community and practitioners.

At the beginning of the third project year, Stefano Bartolini succeeded Helen Wallace as Director of the Robert Schuman Centre for Advance Studies at the European University Institute (the coordinator), and thus as Chairperson of the NEWGOV Steering Committee and of the NEWGOV General Assembly.

### ***1.3. Main elements of the plan for using and disseminating knowledge***

The “Plan for Using and Disseminating Knowledge” of the NEWGOV Project focuses on the effective dissemination of the generated knowledge. We rely on a two-tier strategy which includes (a) activities coordinated and implemented on the Consortium level, and (b) activities which are implemented by the individual partners and projects.

The primary tool for disseminating the results of the research conducted by the Consortium is the Consortium web-site [www.eu-newgov.org](http://www.eu-newgov.org). Launched on 1 February, 2005, it contains topical information concerning the project, in particular publications, reports, articles and working papers of the Consortium. Links to other information sources relating to the project’s research fields are provided, as well as regularly updated information on events organised in the framework of NEWGOV. After a starting period, the website has between 3.500 and 4.750 visits per month, predominantly from European and the US-American higher education institutions, but also from governmental institutions, companies and organisations.

During the first three project years, six working paper coming from the NEWGOV project have been published (a total of 15 Working Papers are available) in the joint CONNEX-NEWGOV Working Papers Series EUROGOV, with some others still in the review process. Around 50 Working Papers are foreseen to be published during the duration of the two projects (NEWGOV and CONNEX). The website of the Working Papers series is: [www.connex-network.org/eurogov](http://www.connex-network.org/eurogov).

Relaying the results of the research to the scientific community and strengthening the integration of the research carried out on the cluster and project level is mainly implemented by Consortium-level

workshops and conferences, each of them focusing on specific analytical themes or empirical topics. The workshops bring together researchers from across the Consortium with access for scholars from the wider circle of associated institutions, in particular from other FP6 projects. The third annual Consortium-wide conference took place in May/June 2007, bringing together researchers from all projects and Task Forces. The conference was organised around a selection of focused questions dealing with the Emergence, Effectiveness, Execution, and Evolution of New Modes of Governance. The aim was to facilitate systematic comparative discussions and to identify and extend transversal issues and relationships between the four different clusters of projects in the NEWGOV consortium.

The strengthening of cross-cluster contacts and the integration of the Task Forces into the work of the clusters and projects are also aims of the workshops organised on the Consortium Level. The workshop focussing on New Approaches to Socio-Economic Governance was organised by cluster 4 and took place in December 2006.

Dissemination for practitioners is a key aim of the Consortium. Besides the publication of a research results-oriented External Newsletter and the Policy Brief Series (with three issues published so far), a Practitioner Forum series is being organised at the Consortium Level, complementing similar activities of the individual sub-projects. During project year 3, the second and third Consortium Practitioner Forums took place; in November 2006 on “Old and New Modes of Governance: Effectiveness, Efficiency, Legitimacy”, and in April 2007 on the issue of EU agencies. At the same time, many NEWGOV projects have organised workshops and seminars with the participation of practitioners, e.g. projects 7, 8, 11, 12, 15, 19a, 22, and 23. The decentralised approach secures that stakeholders from the respective policy fields can be targeted.

Beside these activities coordinated at the Consortium level, NEWGOV researchers have been very actively disseminating project generated knowledge to the academic and policy making communities. During the first three project years, researchers have presented NEWGOV research at more than 250 conferences, workshops, seminars and on other occasions. It included the most prestigious academic events such as Ninth and Tenth Biennial International Conferences of the European Union Studies Association (EUSA), conferences of the European Consortium for Political Research (ECPR), the International Studies Association (ISA), the International Political Science Association (IPSA), the Society for the Advancement of Socio-Economics (SASE), the American Political Science Association (APSA), the Conference of Europeanists, or the International Association for Legal and Social Philosophy. Beyond that, around 300 monographs, edited volumes, special journal issues, articles, book chapters, working papers etc. have been published or are in the process of being published by NEWGOV researchers.

## II. Projects and Project Leaders

### II.1. List of Projects

(click on the cluster/project to be transferred to the presentation on the NEWGOV website)

#### Cluster 1: Emergence, Evolution and Evaluation

1. [The Evolution and Impact of Governing Modes](#)
2. [The Open Method of Co-ordination](#)
3. [Arguing and Persuasion in EU Governance](#)
4. [Legal Perspectives on Democracy and New Modes of Governance](#)

#### Cluster 2: Delegation, Hierarchy and Accountability

5. [New Modes of Governance in the Shadow of Hierarchy](#)
6. [After Delegation: Regulatory Agencies & Network Governance](#)
7. [Governance and the EU Securities Sector](#)
8. [European Public Services Regulation](#)
9. [Choice and Combination of Policy Instruments](#)
10. [Private Dispute Resolution: Legitimate & Accountable?](#)
11. [The Role of Civil Society in Democratising European & Global Governance](#)

#### Cluster 3: Effectiveness, Capacity and Legitimacy

12. [Coping with Accession: New Forms of Governance and European Enlargement](#)
13. [The Domestic Impact of European Law](#)
14. [Smoothing Eastern Enlargement: Independent Regulatory Agencies and Non-Hierarchical Steering](#)
15. [Evolving Regional Governance Regimes: Challenges for Institution Building in the CEE Countries](#)
16. [Inside-Out: New Modes of Governance in Relations with Non-Member States](#)
17. [Democratisation, Capture of the State and New Forms of Governance in CEE countries](#)

#### Cluster 4: Learning, Experimental Governance and Participation

- 18a. [Distributive Politics, Learning and Reform: Emergence and Evolution of National Social Pacts](#)
- 18b. [Distributive Politics, Learning and Reform: Emergence and Evolution of Administrative Partnerships](#)
- 19a. [New Approaches to Economic Governance in the EU](#)
- 19b. [New Approaches to Economic Governance in the EU: The Politics of Central Bank Accountability in the Age of Globalisation](#)
20. [‘Varieties of Capitalism’ and Economic Governance in CE Europe](#)
21. [Towards New Corporate Governance Regimes in Europe](#)
22. [Changing Governance Architecture of International Taxation – TAXGOV](#)
23. [Learning and Local Innovation System](#)
24. [Democratisation/Participation of Civil Society in New Modes of Governance](#)

#### Task Forces

- [Democracy Task Force](#)
- [Legal Task Forces](#)
  - [New Modes of Governance and the relevance for EU law](#)
  - [Which governance structures for European private law?](#)
  - [Litigating EU Law](#)

## II.2. Contractors and project (co-)leaders

(click on the name to be transferred to the contact details on the NEWGOV website)

- |   |  |
|---|--|
| 1. European University Institute                                      | <a href="#">Stefano Bartolini</a> (Chairperson of the Steering Committee), <a href="#">Adrienne Héritier</a> (Scientific Director), <a href="#">Fabrizio Cafaggi</a> , <a href="#">Gráinne de Búrca</a> , <a href="#">Colin Crouch</a> , <a href="#">Martin Rhodess</a> , <a href="#">Alec Stone Sweet</a> , <a href="#">Ingo Linsenmann</a> (Project Manager) |
| 2. Universität zu Köln  | <a href="#">Wolfgang Wessels</a> , <a href="#">Udo Diedrichs</a>   |
| 3. Freie Universität Berlin   | <a href="#">Tanja A. Börzel</a> , <a href="#">Charalampos Koutalakis</a> , <a href="#">Thomas Risse</a>  |
| 4. Institut für Höhere Studien  | <a href="#">Gerda Falkner</a>  |
| 5. University College Dublin  | <a href="#">Brigid Laffan</a>  |
| 6. University of Sussex*  |  |
| 7. Observatoire social européen asbl                                  | <a href="#">Philippe Pochet</a>  |
| 8. Institute for World Economics of the Hungarian Academy of Sciences | <a href="#">Kalman Dezseri</a>   |
| 9. Fondation Nationale des Sciences Politiques                        | <a href="#">Nicolas Jabko</a> , <a href="#">Patrick Le Galès</a>   |
| 10. Swedish Institute for European Policy Studies                     | <a href="#">Carl Fredrik Bergström</a> , <a href="#">Ulrika Mörth</a>  |
| 11. University College London   | <a href="#">Richard Bellamy</a> , <a href="#">David Coen</a>   |
| 12. Max-Planck Inst. f. Gesellschaftsforschung**                      |  |
| 13. Università di Trento  | <a href="#">Carlo Ruzza</a> , <a href="#">Stijn Smismans</a>   |
| 14. Universidad de Granada  | <a href="#">Leonor Moral Soriano</a>   |
| 17. Universität Bern***   |  |
| 18. Universitat Autònoma de Barcelona                                 | <a href="#">Nuria Font Borrás</a>  |
| 19. Central European University Budapest                              | <a href="#">Laszlo Bruszt</a>  |
| 20. Foundation The Institute of Public Affairs                        | <a href="#">Lena Kolarska-Bobinska</a>   |
| 21. Universität Zürich  | <a href="#">Dirk Lehmkuhl</a>  |
| 22. Stichting Katholieke Universiteit Brabant                         | <a href="#">Luc Renneboog</a>  |
| 23. Universiteit van Amsterdam  | <a href="#">Daniela Obradovic</a> , <a href="#">Jelle Visser</a>   |
| 24. Università Bocconi  | <a href="#">Maurizio Ferrera</a>   |
| 26. London School of Economics and Political Science                  | <a href="#">Iain Begg</a> , <a href="#">Robert Hancké</a> , <a href="#">Carol Harlow</a> , <a href="#">Abigail Innes</a> , <a href="#">Waltraud Schelkle</a> , <a href="#">Mark Thatcher</a>   |
| 27. University of Essex   | <a href="#">Albert Weale</a>   |
| 28. University of Exeter  | <a href="#">Dario Castiglione</a> , <a href="#">Claudio Radaelli</a>   |
| 29. Universitetet i Oslo  | <a href="#">Andreas Follesdal</a>  |
| 30. Universität Bremen  | <a href="#">Patrizia Isabelle Nanz</a> , <a href="#">Jens Steffek</a> , <a href="#">Susanne Schmidt</a>  |
| 31. Wirtschaftsuniversität Wien                                       | <a href="#">Stefan Griller</a>   |
| 32. Universität Basel   | <a href="#">Anne Peters</a>  |
| 34. Institute of Sociology, Academy of Sciences of the Czech Republic | <a href="#">Zdenka Mansfeldova</a>   |
| 35. Polish Academy of Sciences  | <a href="#">Michał Federowicz</a>  |
| 37. University of Cambridge   | <a href="#">David Stuart Lane</a>  |
| 38. Forschungsstelle Osteuropa an der Universität Bremen              | <a href="#">Heiko Pleines</a>  |
| 40. University of Limerick  | <a href="#">Martin Kay</a>   |
| 43. Université Catholique de Louvain                                  | <a href="#">Christian de Visscher</a> , <a href="#">Frédéric Varone</a>  |
| 44. Université Robert Schuman Strasbourg*                             | <a href="#">Jörg Monar</a>   |
| 45. Universität Luzern***   | <a href="#">Sandra Lavenex</a>   |
| 46. European University at St. Petersburg****                         | <a href="#">Elena Belokurova</a>   |

\* as of 1 September 2005, partner 6 was replaced by partner 44

\*\* as of 1 September 2006, partner 12 left the consortium, the main researcher joint partner 30

\*\*\* as of 1 June 2006, partner 17 was replaced by partner 45

\*\*\*\* as of 30 October 2006

### III. Overview on the major scientific objectives during the third year

#### III.1. The research framework: Analytical Questions on the Emergence ( $E_1$ ), Execution ( $E_2$ ), Evaluation ( $E_3$ ) and Evolution ( $E_4$ ) of New Modes of Governance

The aim of the NEWGOV IP is to examine the transformation of governance in Europe (and beyond) by mapping, evaluating and analysing the emergence, execution, and evolution of ‘New Modes of Governance’ (NMG). By new modes of governance we mean the range of innovation and transformation that has been and continues to occur in the instruments, methods, modes and systems of governance in contemporary polities and economies, and especially within the European Union (EU) and its member states.

‘New modes of governance’ cover a wide range of different policy processes such as the open method of co-ordination, voluntary accords, standard setting, regulatory networks, regulatory agencies, regulation ‘through information’, bench-marking, peer review, mimicking, policy competition, and informal agreements. But we also include new modes of governance and forms of policy experimentation in different economic sectors, where either new mixes of public and private goods are sought, and/or where new and innovative forms of policy process linking public and private actors have been put in place to deal with new policy problems. Policy areas in which the new and innovative modes of governance have been, and are being applied include, for example, macro-economic management, economic reform and innovation, research and development, employment, social inclusion, public service provision, and sustainable development; migration, criminal prosecution, utility and service regulation, taxation, training and education and others. Thus, we are not simply interested in exploring the mix of old, renovated and new governance mechanisms in the EU’s multi-level structure, we are also interested in the manifestation of new and innovative modes of governance in systems of socio-economic organisation.

Our analytical attention does not solely focus on the creation of new or novel instruments of governance. NMGs should not be studied in isolation from existing political, legal and socio-economic structures.

1. innovation is rarely path-breaking and usually occurs in the context of institutional inertia and complexity, demanding that the ‘old’ is examined along with the ‘new’;
2. a core concern of the project should be to understand the reasons for, and consequences of shifts to NMG, again demanding that the dynamics of relations between ‘old’ and ‘new’ should be analysed;
3. the innovation and the transformation of ‘old modes’ in the face of new challenges in Europe’s multi-level polity are also important
4. moreover, the most fascinating puzzles may be found at the boundaries of governing modes, both old and new, where they overlap, merge into one another and develop hybrid forms.

As set out in the Implementation Plan, we derive four broad sets of analytical questions (our “Four E’s” – *Emergence, Execution, Evaluation and Evolution*), which constitute the ‘puzzle’ or ‘puzzles’ at the core of this Integrated Project. They constitute the research framework of each of the clusters, projects and Task Forces and the individual reports below give tentative answers on these questions after two years of research.

- EMERGENCE. Why did the new modes of governance emerge in the first place? Are they primarily a response to ‘complexity’ and related primarily to the search for effectiveness and efficiency, and to what extent are they driven by perceived need to enhance legitimacy? Can they be traced to intentional strategic planning or have they emerged gradually through experimental learning? Or, at the EU level, do they rather manifest a search for ‘second-best’ means of policy influence by transnational elites and coalitions faced with the reality that much regulation is still

national (and still jealously guarded at that level) and other supranational channels for exerting that influence are blocked?

- EXECUTION. How are the new modes executed? How do they function in practice? To what extent are new modes of governance characterised by ‘experimental deliberation’ and to what extent do they manifest processes of learning? And can such processes become institutionally embedded and endure? Or are new modes of governance necessarily linked to ‘old modes’, especially the use of hierarchy - i.e. legislation and executive intervention - in order to render them more effective?
- EVALUATION. Are these new modes of governance better able to tackle the challenges of competitiveness and linked social problems in a diverse and interdependent world? Are they - as has been claimed – indeed more efficient, effective, robust and flexible? Do they improve governability or do they detract from it? What is the impact of shifts to new forms of governance on existing state structures and legal accountability and what are their implications for existing forms of democratic legitimation? Are they destabilising of these structures or do they strengthen them?
- EVOLUTION. Finally we raise the question of the long-term development of the new modes. How do they develop over time? Do they escape form or are they subject to the traditional distributive politics of ‘who gets what, when and how?’ Are they gradually subject to processes of institutionalisation and embedding in existing political/administrative frameworks, and assisted or impeded by the ongoing but uncertain process of EU constitutionalization, or are they especially subject as ‘light’ forms of governance to capture by ‘traditional’ forces and institutional erosion?

In the following we will present and discuss the most important conceptual, theoretical and empirical insights presented by the different clusters in the course of the third year of research.

### ***III.2. The Emergence (E<sub>1</sub>), Execution (E<sub>2</sub>), Evaluation (E<sub>3</sub>) and Evolution (E<sub>4</sub>) of New Modes of Governance: A first overview***

#### *III.2.1 Emergence (E<sub>1</sub>) of New Modes of Governance*

##### Cluster 1: Why do new modes emerge?

Cluster 1 finds that the emergence of the new modes of governance are equally interest, discourse and problem-driven. It in particular stresses the importance of *conditions* such as

- features of the policy area: the sensitivity of a policy area in terms of national interests,
- the attention of and commitment by intermediate actors
- institutional opportunities, their constraints and dynamics. The institutional framework is of key importance for the emergence of governing modes with path-dependency being an overarching force that comes to bear in a number of very different policy fields, ranging from CFSP to pension reform;
- the dynamics external factors such as technological developments, international pressure, the institutional dynamics of the EU (e.g. enlargement) appear to play an important role.

Cluster 2 has identified specific *triggering factors* favouring the emergence of new modes of governance, using situational and structural conditions for policy initiatives and becoming drivers for change; thus

- a specific problem situation may give rise to new initiatives, reinforced by perceived policy failure, gaps between problem-solving needs and capacities, and a gap of member state compli-

ance with EU legislation, such as in research and technology, information society or justice and home affairs.

- new preferences, policy priorities and ideational maps in the EU and member states may account for the search of adequate ways of organising decision-making and thus open opportunities for new modes of governance, as has been the case in OMC.

#### *Different policy areas and different new modes*

To give some empirical illustration of these general arguments concerning emergence, Cluster 2 emphasizes commonalities and divergences in the emergence of new modes across policy areas and points out different forms of new modes of governance. A commonality is a tension between the member states wanting to act at Community level but showing reluctance to cede sovereignty. Here the new modes are considered as experiments making more decisive steps towards a possible expansion of formal European competences. The OMCs in R&D and IS emerged in the light of national policy failure that provoked experimental delegation at EU level. Similar reasons for the emergence of self- and co-regulation practices on the national and global context have been identified by Project 4: to accelerate and render European policy-making more cost-efficient, to increase flexibility and expertise, to reduce the decision making burden of the EU institutions, to help better compliance, only to name a few. Agencies as an expression of new mode of governance have *emerged* as a result of the ever more important problem-solving capacity of governance; still, their role, function and legal status is highly disparate and has to be analysed in a differentiated way. Self-regulation as an increasingly important field of EC governance creates new roles for private actors, without necessarily leading to a loss of influence for the EU institutions. Soft law and self-regulation have been used since 2001 by the European institutions themselves either as regulatory alternatives or as complementing hard law.

At the same time the introduction of new policy areas needs to be distinguished from the introduction of new modes of governance. The two may be linked in different ways. New EU policies are often made operational by using existing modes of governance, while their evolution over time might bring changes that could lead to innovation. In other cases, and this is a particularly young process, new modes of governance are chosen at the moment of introducing new policy areas, and very often explicitly so.

To illustrate some of the above made general arguments regarding emergence: New modes are likely to emerge in areas of technical complexity, where traditional policymaking would prove inadequate, such as in *research policy and information society* where EU members lag behind in terms of converting scientific output into commercial innovations, and in terms of public and private investment. Thus, case studies Ireland and France show that in telecommunications policy new modes, i.e. the delegation to independent regulatory agencies, emerged as a response to weak or divergent member-state commitment resulting from a high demand of expertise and technical complexity.

One of the central findings of project 3 is that different non-hierarchical modes of steering, arguing and bargaining, are not particularly chosen by the actors involved, but in fact emerge as a function of preexisting informal and formal institutions, thus defying an actor-based perspective in favour of a focus on institutional conditions. For the specific explanandum, the emergence and effectiveness of processes of arguing, we regard transparency, the presence of trusted actors, as well as institutions altering role perceptions of negotiating actors as particularly decisive in that regard. As to the conclusions on the institutional scope conditions for deliberation and practical proposals for future treaty revision processes, the central contention has been that institutional settings are decisive for the effectiveness of 'weak' steering modes such as arguing. Project 3 identifies overlapping identities on the one hand, and transparent and centralized negotiation settings on the other, as factors in-

creasing the likelihood of the prevalence of arguing in multilateral negotiations. These results were confirmed in a case study on the EU's Single Legal Personality.

Nevertheless, implementation on the EU level shows a number of specificities. Self- and co-regulation were introduced as alternatives to legislation in the course of a debate on new forms of European governance, linking up to a more fundamental discourse on principles and values of the integration process. The use of alternatives is now increasing in the course of the simplification process, where application of the principles of subsidiarity and proportionality play a decisive role. Since the end of 2003, the Community institutions also expected that the formalization of the self- and co-regulation through the Interinstitutional Agreement on Better Law-Making should further facilitate their use and spread it to different areas.

### Cluster 2: Why do new modes emerge?

The question of whether a shadow of hierarchy, i.e. the threatening of legislation is a necessary and sufficient condition for new modes to emerge, based on political science principal agent theory and transaction cost theory, is at the center of the Cluster's 'Why Emergence?' question. Some projects addressing this claim come to its confirmation, the findings of other projects challenge the hypothesis and point to other more powerful explanations. The cluster covers a wide area of different policy types from environmental regulation, competition policy, telecommunications, energy policy to general interest services.

Thus, project 5 ('New Modes of Governance in the Shadow of Hierarchy') has looked at the shadow of hierarchy and political mobilisation as drivers for the emergence of new modes. Examining industry self-regulation on environmental issues, it has been found that legislative threats and political mobilisation lead to the conclusion of voluntary agreements among industry actors. In a second case study on energy regulation at the European level, to be conducted during this last year of NEWGOV, the project will investigate the emergence of self-regulation among transmission system operators (TSOs).

Project 6 ('After Delegation: Regulatory Agencies and Network Governance') is looking at the delegation to independent regulatory agencies (IRAs) and the emergence of regulatory networks among these IRAs. With respect to delegation to IRAs, it is notably being asked who has delegated what powers. To examine networks among IRAs, a survey is being conducted at this stage of project research. The objective is to find out what different forms of networks and linkages of national IRAs have emerged at the EU-level. So far, the study of the emergence of European regulatory networks confirmed that the delegation of powers is conducive to new modes. In a cross-sector perspective, there is evidence that the new European Regulatory networks in telecommunications and securities have acted as models for the developments in energy.

Project 8 ('European Public Service Regulation'), which so far has focussed on the domestic level, is now analysing governance in the energy sector at the European level. It is found that new regulatory measures as they are being proposed for the European electricity and gas markets contradict one of the NEWGOV working hypothesis concerning the emergence questions: the narrower the competences of the European Union, the higher the need to create new forms of governance (including non-binding rules) especially those promoting coordination activities among national institutions. This hypothesis proves to be wrong as the European Community, in the absence of expressly recognized competence in energy matters, has adopted energy directives using the competence on internal market as legal basis.

Project 10 ('Private Dispute Resolution: Legitimate and Accountable?') argues that innovative modes of governance in the realm of European competition policy are driven by the resource constraints of the European Commission. The project finds that the old approach, according to which any agreement between companies is treated as illegal until it is notified and explicitly approved by the European Commission, overstretched the institutional capacity especially when activities were expanded to merger control and when the EU had to face subsequent enlargements. In response, the European Commission launched a fundamental overhaul of its merger control and anti-trust policy, promoting decentralisation and modernisation. Decentralisation refers to the devolution of policing anti-competitive behaviour and handling complaints through the national competition authorities and the Commission which are now linked by the European competition network. The concept of modernisation captures the new priorities of the Commission's enforcement agenda such as private enforcement by activities of companies before national courts.

Project 9 ('choice and combination of policy instruments') is looking at the emergence of new policy instruments in different policy sectors, including urban and environmental policy. The project aims at working on the combination of policy instruments to analyse the coordination problems and the extent to which new modes of governance are emerging. The first results show that the introduction of such policy instruments at the EU level is justified because "central intervention failed to reach its set policy objectives, and led to the development of the new modes of governance" (E1, first hypothesis), e.g. OMC, Benchmarking, Mainstreaming, etc. Yet, it is also possible to argue that new modes of governance have been introduced in contested issues areas (environment and urban policies) (E1, third hypothesis). The project does not offer a general theoretically guided explanation of why there are typical patterns of development.

Finally, project 11 ('The Role of Civil Society in Democratising European and Global Governance') is looking at the emergence of new forms of civil society organisation (CSO) participation and their cooperation with international governmental organizations (IGOs). It is found that the literature, although empirically rich, has not managed so far to develop a general theoretical model for explaining the emergence and transformation of IGO-CSO relations. At this stage, the researchers have come forward with a systematic approach to the analysis of IGO-CSO relations that takes motivations on both sides into account and lends itself to the study of both success and failure. Drawing on the existing literature and its insights on IGO-CSO relations, they present a comprehensive framework for analysis that identifies and aligns factors that may be causally significant. The idea is to structure these factors in such a way that general hypotheses on IGO-CSO relations may be developed and comparative research designs facilitated.

### Cluster 3: Why do new modes (not) emerge?

#### *Seek and ye shall find? Evidence on NMG*

The six projects in Cluster 3, which focus on the domestic level and explore NMG in nine different countries in Southern, Central and Eastern Europe have found only limited evidence for the emergence of New Modes of Governance. This is even true if we adopt a less demanding definition that focuses on non-hierarchical modes of coordination and does not necessarily require the (equal) involvement of private actors and includes policy implementation as well as binding policy outcomes. There is a clear dominance of traditional modes of governance, or "hierarchy in disguise" (project 15) in which state actors resort to command and control regulation to adopt and adapt to EU policies. Consultation, outsourcing, and to a lesser extent voluntary agreements are the only NMG we find that involve private actors.

While the findings of scarce and only weak forms of NMG apply across all nine countries, the Southern European countries show some interesting change over time. Spain and Portugal in particular has seen some first inceptions of NMG after accession.

The two projects (13, 16) that focus on governance in the context of EU Treaty law and on EU relations with third countries have been more successful in tracing NMG – although they also do not necessarily satisfy the more narrow definition of NMG as developed in the framework paper. Thus, project 16, which focuses on the emergence of NMG in relations with associated neighbourhood countries applies a broader understanding of NMG which also covers purely public forms of NMG such as transgovernmental networks and networks of regulators, partly organized around European agencies. This is to some extent also the focus of project 14, which looks at networks organized under the auspices of independent regulatory agencies in the context of pre-accession negotiations. Project 13 also builds on a broader concept of NMG, adopting a negative definition as deviations from the traditional Community method.

#### *Factors fostering and impairing the emergence of NMG*

The findings of scarce and only weak forms of NMG for the nine countries are all the more remarkable since they significantly differ with regard to their political, social, economic and cultural institutions. What they have in common, however, points to some important factors in explaining the emergence of NMG. Hungary, Poland, Czech Republic, Estonia, Lithuania, Rumania, as well as Greece, Portugal and Spain are both accession and transition countries at the time when they are analyzed in the various projects. The combination of both factors results in conditions that, somehow paradoxically, may require NMG but are unfavourable for their emergence.

First, the top-down nature of the accession process, in which the candidate countries have to download a vast number of EU policies in a rather short period of time has most of the time not allowed for the involvement of private actors. On the contrary, accession conditionality and the focus of the Commission on the absorption capacity of the candidate countries has strengthened the autonomy of central government actors in hierarchically imposing policy outcomes. This is even the case for regional and agriculture policy, in which the Commission explicitly requires and encourages the involvement of subnational and private actors (see projects 15, 17).

Second, accession countries do not only have to cope with the challenge of adopting and adapting to the comprehensive *acquis communautaire*. Their governments also have to manage the still ongoing transition to democracy and market economy. Both, accession and transition, require immense resources, a demand that is hardly met by the weak governance capacities of the candidate countries. On the one hand, state actors often lack sufficient financial (money), administrative (staff) and cognitive (expertise) resources, and the capacity to mobilize existing resources (e.g. due to administrative fragmentation), respectively, to effectively adopt and enforce public policies. Moreover, given the political instability and frequently changing governments, they may not appear as reliable negotiation partners. In the absence of a credible shadow of hierarchy (see projects 12, 14, and Cluster 2), non-state actors have hardly any incentives to cooperate with state actors exchanging their resources for political influence. At the same time, state actors often shy away from cooperating with non-state actors, too, because they are afraid of being captured (project 12), or are indeed captured by powerful private interests (see project 17). On the other hand, non-state actors are often equally weak. They do not have sufficient organizational capacities to offer themselves as reliable partners to state actors. Or they lack any resources to exchange to begin with (projects 12, 14, 15, 17). These findings are in line with an argument of the governance literature that new modes of governance require both, a strong state and a strong society (Renate Mayntz refers to a modernization deficit of Central Eastern European countries; cf. D 9 and D 19 of project 12). Weak governance capacity is complemented by a state tradition which is hostile to the involvement of non-state actors in public

policy-making. Not only are NMG incompatible with the legacy of authoritarianism and socialism. NMG do not necessarily correspond to the newly established institutions of representative democracies. Thus, non-elected interest groups and civil society organizations are not always accepted as legitimate representatives of societal interests. Moreover, their involvement in the policy process outside majoritarian institutions is often considered as a continuation of traditional clientelistic networks (projects 12, 17).

While the weak capacities of transition countries may render NMG an important way to cope with the challenge of accession by pooling resources and sharing costs with non-state actors, the conditions for the emergence of NMG are highly unfavourable. As a result, there is a clear dominance of traditional command and control regulation. Nevertheless, we have found some albeit scattered and weak forms of NMG that point to factors that may foster their emergence.

First, EU pressure is a prominent factor in inducing state actors to resort to NMG. On the one hand, the EU may legally require the involvement of private actors (e.g. the principle of partnership or participatory policy instruments in environmental Directives). Thus, it may be rational for state actors to apply NMG in order to avoid punishment and to receive rewards by the Commission, respectively (accession conditionality, see projects 12, 15, 17). On the other hand, there is a normative logic that may drive the emergence of NMG – it is the “EU way of doing business” (project 12, 17). The Commission has actively promoted the idea of NMG as a means to help countries cope with the challenge of accession. But note that the Commission has not always been truthful to its own approach, e.g. in structural policy where the emphasis on absorption capacity has fostered centralization and, hence, counteracted attempts for the involvement of subnational and private actors (projects 15, 17).

Second, the EU does not only provide incentives and governance paradigms that may favour NMG. It also helps strengthening governance capacities of accession countries. The transfer of money and expertise through Community programs and twinning processes provides state as well as non-state actors with additional resources they can exchange. These processes also foster policy learning and trust building. Moreover, the monitoring and sanctioning system of the EU (accession conditionality and infringement proceedings) have empowered non-state actors by opening new opportunities for them to pursue their interests, e.g. by taking their governments to court. State actors may resort to NMG in order to accommodate the interests of non-state actors and avoid complaints to the Commission or legal proceedings (projects 12, 13, 14, 15).

The EU’s pushing and pulling may help to compensate at least partly for the weak governance capacity of accession countries. Taken together, the factors fostering and impairing the emergence of NMG identified by the projects in Cluster 3 account for most of the variation we observe across countries, policies, and time. The importance of governance capacity will be further explored by the Cluster. First, project 12 has submitted a symposium on capacity and NMG as well as a proposal for an edited volume currently under review with Palgrave. Second, the cluster leader will submit a proposal to the Consortium for a cross-cluster activity addressing the weak governance capacities in Central and Eastern European countries with a particular focus on civil society. Finally, cluster 3 will engage in some joint activities with cluster 2 to discuss the relationship between governance capacity and the shadow of hierarchy.

Next to governance capacity, the projects of Cluster 3 identified some further scope conditions for the emergence of NMG. Project 13, which looks at the cases of mutual recognition of services and state aid control, reveals that NMG have been introduced by supranational entrepreneurs, the ECJ and the European Commission, in situations in which the Member states could not build a consensus on further integration. In a similar vein, project 16 argues that NMG are a default option, when

traditional modes of governance, such as hegemony and negotiation, fail and an alternative is required. Moreover, both projects find that trust plays a crucial role for the development of the NMG in question. In the case of mutual recognition, trust among Member states is a precondition for its function, and where levels of trust are insufficient, measures of trust-building are likely to be introduced. In its progressive development of state aid soft law, the Commission has tried to secure Member state trust by involving them in the process of policy formulation. Project 16 also identifies trust or the quality of inter-personal relations between experts as an important factor, but more related to the functioning of NMG. If these micro-level factors are not fulfilled, the execution of NMG becomes difficult to achieve, because the networks lack their social ‘glue’. Project 16 also emphasized the properties of a given policy field as important scope conditions for the emergence of NMG. Two types of problem structures are crucial in this regard: Firstly, *enforcement* problems, which refer to the strength of incentives to cheat on a given governance arrangement (prisoner’s dilemma and public goods problematic). The greater the enforcement problems associated with a given solution, the “stricter” the governance modi should be. Secondly, *distribution* problems, which emerge when the parties favour different solutions to a common problem (‘battle of the sexes’) and when unequal costs and benefits result from a common solution (e.g. ‘rambo’). In such situations, the cooperation necessary for NMG is difficult to achieve due to the difficulties of finding a commonly accepted solution. Project 14, finally, identifies similar institutional conditions that foster the emergence of NMG across different policy areas. It argues that in spite of similar functional pressures emanating from the adoption of and adaptation to the *acquis communautaire* in candidate member states, the link between emergence and expected functionality of NMG conditions the incentives of principal actors to depart from traditional modes of governance and delegate regulatory functions to participatory non-hierarchical modes of governance. Pre-existing convergence of preferences between resourceful actors and the likelihood of consensual regulatory outcomes reduce the risk of ‘agency losses’ i.e. the gradual emergence of divergent preferences and agendas from the ones initially delegated by the principals in the policy area. Given the challenges imposed by the quantitative (large number of accession countries) and qualitative (weak administrative capacities of accession countries to ensure effective legal harmonization) dimension of eastern enlargement, an accommodating constellation of interests between key actors and their ability to engineer consensus by insulating from politicization pressures are key properties that affect actors’ preferences regarding the institutional design of accession negotiations.

#### Cluster 4: Why do new modes emerge?

The emergence of new modes of political and socio-economic governance are characterized as much by power-seeking and by conflict between actors (and in the EU’s case, member state governments) as they are by the rather ‘idealized’ conception of politics that inspired NEWGOV’s original hypotheses. It is certainly the case that our projects have found evidence of delegation, for example, when central intervention has failed to meet its objectives. This has been true of central bank governance, the search for flexible central and local ‘pacts’ for governing socio-economic change, and the development within firms of new forms of decentralized (and sometimes negotiated) corporate governance practices. Successful practices also tend to be emulated, as found in the spread of central bank independence and the emergence of new forms of corporate governance transparency, as well as in the emergence of new elements in taxation systems.

Nevertheless, in the same sense that ‘delegation’ as a notion may reflect to too great an extent the concerns of a rational choice agenda in explaining the reallocation of authority between levels of power (in central banking there has been a ‘power shift’ as well as ‘delegation’ shift; the development of novel forms of social pact reflect a ‘loss’ of central authority) so too does the idea that a principal objective is to save political transactions costs. Transaction costs may actually increase in the emergence of more participatory, less hierarchical modes of governance and to considerable problems in meeting the high expectations of the actors involved (see projects 19a and 24). What

we are actually witnessing in many areas of socio-economic governance are new contests over the exercise of power at multiple levels and considerable difficulties outside the strictly technocratic areas of central bank independence and corporate governance laws in reducing transaction problems and finding new ways of delivering on policy objectives. This is the central lesson, for example, of the mechanisms launched to help reach the objectives of the Lisbon agenda. The danger of linking ambitious objectives to untried and unproven new policy mechanisms is that process will substitute for substance and ‘output’ legitimacy will decline.

#### Democracy Task Force: Why do new modes emerge?

Some of our research in this task force concurs in suggesting that the weakness of traditional forms of democratic legitimacy at the EU level have contributed to preparing the ground for the emergence of new modes of governance. This is part of a general discussion of the way in which NMG operate within the shadow of hierarchy. The more informal and less hierarchical way in which NMG function have been seen, by political and societal actors, as providing more ‘open’ and ‘discursive’ ways of decision-making, when compared to the more ‘rigid’ mechanisms of traditional democratic politics at the national level. Some of our research, however, tends to question whether this perception is entirely correct, suggesting that NMG pose problems for democratic legitimacy and accountability. This topic will be further explored in our discussion of the relationship between ‘delegation’ and ‘representation’ as part of WP6.

#### Legal Task Force on New Modes of Governance and the relevance for EU law: Why do new modes emerge?

The most important theoretical claims resulting from the various sectoral studies of the LTF can be summarized in the following. NMG emerge as a result of very basic changes in economy, polity and society, as well to more technical innovations in public administration. In these accounts, as society becomes more complex and problems harder to solve, there is a need for more experimentation.

As concerns the EU context, in particular, the emergence of NMG can be seen as an answer to the specific and complex challenge presented by the twin aims of the EU of reconciling market integration with the needs of social ordering.

In terms of policy sectors, while the emergence of this new architecture of NMG has been noted firstly as a response to catastrophic breakdowns in regulatory capacity (food safety, maritime safety/pollution) or the threat of these (financial market supervision), it was then used also as a means for unblocking rule-making in domains that had become stalemated by struggles between proponents of (traditional) centralization and (traditional) decentralization (competition policy, state aid).

In terms of their functionality, NMG have emerged in three large areas: re-regulation of privatized network infrastructure (electricity, gas, telecommunications), public health and safety, and social solidarity.

#### Legal Task Force on ‘Which governance structures for European private law?’: Why do new modes emerge?

The study of new modes of governance has been undertaken both horizontally and vertically. We first tried to assess with sector specific analysis (products safety and liability, environmental law, services, electronic commerce) the development of private law, in particular contracts and torts, and to what extent the regulatory function of private has fully emerged in European law. We then have

examined whether private law constitutes an alternative or a complement to regulatory law. We have included private international law in this analysis.

By regulatory function of private law we mean “the ability of private law in particular contract, torts and property to address market failures. Such control of competition distortions in the market by states through a set of techniques is meant to protect participants in markets and to guard against undesirable external effects of markets”. While we are willing to consider also distributional consequences the major focus has been on market efficiency dimension.

In addition to this sector-by-sector analysis, we have tried to embrace the mechanism of self-regulation as one of the most complex examples of new modes of governance, whose development is also due to an increasing utilization of private law tools such as contract law. We want to examine scope and legitimacy of private actors’ normative powers which lie at the heart of the analysis, knowing that private actors now participate more actively into a normative dialogue with public authorities. In other words, we focus here on the interaction between private and public spheres.

### *1) The regulatory function of private law and new modes of governance*

First, the speed of the technological architecture in which the regulated activity takes place makes private law a key instrument for the regulation of the activity at stake. The cross-border nature of the activity contributes to such a phenomenon. Internet regulation exemplifies perfectly the influence of technology and cross border dimensions on the change of regulatory techniques and the increasing use of private law devices. This has occurred despite the regulatory stance adopted by the EC legislator. In other words while the EC legislator’s goal was to decrease the impact of tort law, it is ultimately resorted to it, in order to tame the behaviours of trans-national service providers. Indeed, when the legislator limits its action to calling for private intervention to fill the gaps, the lift-off of private law becomes crucial.

In this line, the role played by private law is significant to the extent that public authorities are not able to set a satisfactory compromise between regulatory law and private standard setting or simply to the extent that ex ante command and control measures are not easily responsive to technological changes.

Second, private law as well as private international law have recently gained attention in part because considered more respectful of regulatory diversity within an integrated market, in part because held more efficient way to solve market failures. But as diversity is taken seriously, alternative modes of coordination between legal orders have emerged too. This happens even in fields in which the EC competences is circumscribed (see the uses of OMC). Broadly speaking the relevance of soft law and regulatory cooperation mechanisms has increased.

### *2) Self-regulation*

While private rule-making is a very old phenomenon, it is nowadays integrated within the legal framework as a specific regulatory strategy. Such a process is taking place both at the European and at national levels. Private regulators’ involvement is generally speaking justified by the existence of asymmetric information between regulators and regulatees, and the necessity to resort to a skilled regulator which has expertise in the field.

The role of private regulation and private regulators is growing especially within cooperative modes. They operate according to mandates of legislative acts or in collaboration with the executive or with public regulators. These new modes try to combine the advantages traditionally recognised to self-regulation with the necessity to achieve a higher level of accountability of the regulatory process towards third parties.

It may be appropriate to distinguish between self-regulation and private regulation for which the range of participants and subjects goes further than the regulated. It is in this case that the issue of accountability becomes strategic.

While the European level is characterized by a plurality of regulators, monopolistic structures are more frequent at national levels, except in some areas such as media and financial markets. This monopolistic position may imply rent-seeking to which competition law may provide only partial responses. The research is trying to redefine the institutional framework within which self-regulation should operate, considering sector specificity.

### III.2.2 Execution( $E_2$ ) of New Modes of Governance

#### Cluster 1: Execution – Diversity and Dynamics in Different Policy Areas

The main results concerning the execution of governing modes gained across policy areas reveals that a high diversity predominates. In general, the project partners have adopted a mixture of multi-level analysis, policy analysis and institutionalist approaches, in order to explain the operation of the different modes of governance.

In *CFSP* since Maastricht the number of legal acts has been rising, while the amount of EC legislation related to *CFSP* acts has been in sharp growth, too. The mixture and hybridisation of legal instruments from different institutional spheres has thus become a striking feature without lifting the barriers existing between different the Community and the Second Pillar. The financing of *CFSP* has also been a field where mixture and hybridisation of different instruments has taken place

The primary “new” modes of governance in the *JHA* domain are the extensive use of multi-annual area and issue specific legally non-binding programme documents (such as the frequently revised EU Action Plan on terrorism), the extensive use of situation and evaluation reports as a means to enhance convergence between the national systems (mutual evaluation, threat assessment reports, etc.) and the proliferation of institutionalised cooperation and coordination structures (like the special agencies).

*Information Society policy* essentially appears to be a ‘regulatory game’ where member states have incentives to cooperate, *Research and Development policy* is a more ‘budgetary or redistributive game’ and states cooperation remains peripheral to main national objectives. New Modes may emerge in both areas but prove less effective in highly contested issue areas. Hence new modes of governance fare somewhat better in the first area than the second.

Analysis of national regulatory agencies in the area of *information society* reveals that very powerful institutions (in the case of France) and weaker ones (in the case of Ireland) were established, and also supports the consortium’s initial hypothesis that “if a new mode is linked to hierarchy, agency loss is less likely.”

In contrast, new modes of governance in *R&D policy* do not interact with a body of EC law as all decision-making powers remain at the level of national science councils and ministries. However, institution- and network-building are, more recently, a feature of EU policy although it is too early to analyse how this will affect policy execution.

Another finding on the *execution* level is that the formal integration of privately generated soft law encourages more direct involvement of private actors in Community law-making. However, the formalization process and institutional design tend to reconstruct the use of voluntary practices according to the traditional hierarchical command-and-control method. This might contribute to in-

creasing the gap between “law in action” and “law in the books”, or “legal” and “living” constitutions. These findings confirm the initial working hypothesis that in order to uphold democracy and the rule of law, self-regulation may be employed only as a complement to governmental or Union regulation.

### Cluster 2: Execution – Conditions of implementation

Probably most emphasis of research within the cluster is put on the execution of new modes. Again at the center of the analysis was the question of whether the threat of governmental intervention, e.g. a credible threat of legislation, is a necessary precondition for the implementation of the new modes.

The first case study of project 5 on industry self-regulation in the field of *environment* has investigated various links between new modes and hierarchy. The findings suggest that such links are often too weak in order to have a substantial impact on the execution of new modes. In a similar vein, the second case study on energy regulation will examine if and under what conditions self-regulatory arrangements can function effectively.

Analyzing the operation of European *regulatory networks*, project 6 questions what the formal and informal powers of these networks are. It is furthermore asked whether IRAs and their national governments have similar positions on regulatory issues before those are discussed in trans-European networks and whether these positions evolve as they are executed by trans-European networks. The relationship between the number of principals and the potential for shirking & slippage appears to be unclear from empirical findings.

Project 8 analyzes potential execution of regulatory arrangements as they have recently been suggested by the European Commission. It is argued that already the existing arrangement with the European Regulators’ Group for *Electricity and GAS* (EREGG) being an advisory group coordinating all national regulatory authorities required national institutions with decision capacity. This precondition would not be fulfilled in a situation where national governments retain decision-making power. In this perspective the suggested EREGG+ model cannot act as a remedy since reforms of national regulatory institutions are still essential prerequisites for them to gain independency and regulatory powers vis-à-vis the national governments. Hence the suggested reform will be ineffective unless the infringement procedures against Member states with no independent regulatory institutions are decided in favour of the Commission.

When looking at the execution of new modes of governance, project 9 shows that they have to combine, somewhat uneasily, with existing policy instruments, thus creating contradictions and opening new avenues for coordination mechanisms. Looking at the execution of the OMC for example, empirical results show that this process depends on the degree of constraint attached to it and to the degree of convergence among public actors at different levels (national and European) and between public and private actors. This last factor can only be overcome with difficulty, thus preventing the convergence of views on how to solve a particular problem .

Project 10 finds that delegation has not been solely guided by resource constraints, but in its execution also proves to be a means to strengthen the Commission’s position. Central to the approach of the Commission is the strategic use of soft governance - including the creation of a network involving national competition authorities, and the issuing of a whole bunch of notices and guidelines. Looking at execution in more detail, it is concluded that privatisation or outsourcing of much of the monitoring and enforcement does not imply a waiver of the Commission’s strong control capacities. On the contrary, in comparison to private action before national courts, the use of arbitration as a

means to strengthen the private enforcement in EC antitrust and merger policies would grant the Commission the privilege of an even closer control.

Project 11 examines how trans-national civil society functions as a ‘transmission belt’ between European and global decision making arenas and the emerging trans-national public sphere. It is found that this transmission belt functions in two directions: firstly, civil society organizations can give voice to citizens’ concerns and channel them into the deliberative process of supranational / international organizations. Secondly, they make internal decision-making processes of those organizations more transparent to the wider public and formulate technical issues in accessible terms. Yet empirical evidence hints to the fact that the different roles assigned to civil society organizations as watchdogs and deliberators are hard to reconcile.

### Cluster 3: Execution

Since the focus of our Cluster is on Evaluation and Emergence, our projects have not yielded findings on the operation of NMG that could be systematically compared and summarized in light of the hypotheses developed by NEWGOV. However, our projects concur that NMG, if they emerge, usually combine with rather than substitute for old modes of governance. Thus, project 12 points to the shadow of hierarchy to make NMG work, while project 16 finds evidence that NMG frequently occurs in conjunction with both hegemony and intergovernmental cooperation. Project 15 identifies NMG in the field of regional development primarily in the form of ‘layering’, as part of a dominating primarily hierarchical and centralized governance regime. Layering is a concept borrowed from historical institutionalism and refers to a type of institutional change that introduces new elements and new logic in the working of an institution without basically challenging or altering its dominant features.

### Cluster 4: Execution – Conditions of implementation

In European economic governance, it is unclear that within the complex multi-level EU polity even hierarchy can guarantee against agency losses for example. The fate of the Stability and Growth Pact over the last couple of years reveals the limits to hierarchy in such a setting, as various countries have breached the rules of the pact with apparent impunity. And yet the pact is still operating and most of those countries out of line with the deficit criteria have brought their accounts back into line. A combination of hierarchy and the role of multiple principals seems to operate here as a disciplining device. There may even have been a degree of policy learning in the EU economic governance policy making community as to how the application of rules should be secured. But this is not true of all ‘new modes’ – as the ‘hierarchy hypothesis’ suggest. In the various OMCs, and the implementation of the Lisbon process, the operation of the new mode has tended to be hijacked by domestic interests who have been able to exploit the ambiguities in the rationale underpinning the policy objectives.

When seeking to analyze the implementation of European economic governance, there are clear limits when thinking about innovations in the regulatory arena: thus in the EU’s multi-level tax policy system, hard law remains a critical component of governance (witness the increasing importance of the ECJ in this area as analysed in project 22) and the ‘hard law’/‘soft law’ and new modes/old modes distinction seems to have little heuristic value. The real limits appear, however, when examining new forms of corporate governance and the governance of new local and national economic issues where, in all cases, the real issue again is the struggle for power and resources among actors (as well as within their organizations) and attempts to shape the future of distributive outcomes. Levels of organization and influence are important elements of these distributive conflicts. Deliberation and joint learning may occur and be central to some of these developments, however, and

projects 18a and 19b are still exploring the extent to which this is the case. Nevertheless, even in these cases, bargaining and ‘powering’ can rarely be divorced from deliberation and ‘puzzling’ in the application of new distributive settlements – and in this respect some of the hypotheses of E3 have much greater relevance. A ‘policy entrepreneurship’ explanation is by far more relevant than expected. Consolidation of new forms of governance are possible, to begin with, only if there is an initial trigger that goes beyond available resources. In order to last, such new forms of governance have to be ‘governed’ properly by responsible political leaders who are also capable of keeping the partnership goals alive.

Democracy Task Force: Execution – Conditions of implementation:

In relation to the *Execution* (E2) issue, both D7 and D8 engage with this from a more normative perspective. Work for WP7 outlines the various reasons that tend to support the move from more hierarchical decision-making processes to delegation and NMG. WP8 has focused on the particular idea of ‘assurance’ as part of the legitimation and accountability process at the European level. In this respect it is possible to assess the way in which NMG operate in terms of supporting such ‘assurance’, and therefore contributing to the legitimacy of European system of governance.

Legal Task Force on New Modes of Governance and the relevance for EU law: Execution – Conditions of implementation:

The operation of NMG once it has emerged is characterized by hybridity, i.e. the co-existence of NMG with the ‘old’ legal architecture. This co-existence can be either planned or it can be created spontaneously, and it can take various forms: NMG and legal regulation can work complementary to each other, or as a rivalry to one another or, finally, by transforming each other as parts of a new integrated system where the functioning of each element is necessary for the successful operation of the other. Although more empirical and other research is still needed, there is evidence that decisive factors that result in the direction of one or another outcome include: inclusion of key stakeholders, maintenance of legal remedies as a default position, low cost effectiveness of each of the systems, resistance of actors to change.

An example of a sector where law can potentially work as a framework for participatory rule-making in order for NMG to provide concrete solutions to problems is provided by the policy area of health care services, where the classic community method is considered to have failed.

An example of the opposite scenario of hybridity, i.e. one where law seems to require NMG measures to be enforceable is provided by the EU fiscal coordination sector.

Legal Task Force on ‘Which governance structures for European private law?’: Execution – Conditions of implementation:

*1) The regulatory function of private law*

The emerging regulatory function of private law does not imply the disappearance of traditional private law. But it often enriches the function of pre-existing institutions or simply leads to the discovery of new ones such as those associated with the *amicus curiae*. The case of private associations defending collective interests, such as the protection of the environment or consumers protection exemplifies such a trend. The creation of networks of private associations at EU level constitutes a major achievement to implement the regulatory function of European private law.

While private law is characterized by its flexibility in terms of standard setting, regulating through private law is often a difficult task for its monitoring and enforcement mechanisms are not systematic by nature. There is thus a need to increase the quality of market surveillance. Enlarging the range of monitoring actors is a potential response, especially when the interests to protect are dif-

fuse. There is a trend in this direction at the European level, focusing on cooperation between monitoring actors. At the European level as well as at state levels, emphasis has been put on the pedagogic role of some private actors who are called to echo legal standards within their contracts and at the same time make more explicit their good practice commitments (through namely codes of conduct), which should ease the work of the judge.

Private international law as a coordinating method rests still mainly on the judiciary. This is why a unifying private international law is discussed in order to avoid opportunistic behaviours and thus circumvent the problem of *lex fori*

## 2) *Self-regulation*

To describe the very operation of private regulation mechanisms, one has to distinguish between different forms of interactions involving public power and private regulators: public regulation, co-regulation, delegated private regulation, *ex post* recognized private regulation, judicial definition of a regulatory body. The intensity of the supervision depends on the structure of the regulatory sphere and on whether the private regulator is monopolist or whether there is actually a plurality of regulators. In any case, they are in one way or another integrated within a more traditional framework. Their regimes thus borrow features from both public and private law. Generally speaking it has been found that “private regulators, operating within a scheme of coordination with public regulators, may exercise regulatory powers differently from those employable by purely private regulators. In particular they can produce rules whose effects go beyond the members of the organization. They are also subject to judicial scrutiny in ways different from those traditionally employed in private law”. Their roles and the effects of such roles depend on the very sphere in which they are involved: “that occupied by purely private regulators whose effects should normally be limited to its members”, “that occupied by private regulators performing regulatory function in the public interest”, and “that characterized by co-regulation or delegated self-regulation where private regulators interact with public actors, legislators and/or regulators on formalized grounds, whose effects can go beyond the members”.

### III.2.3 Evaluation ( $E_3$ ) of New Modes of Governance

#### Cluster 1: Evaluating the new modes

Cluster 1 takes issue with the hypotheses that “if redistributive, prisoners’ dilemma and institutionally deeply entrenched problems are at stake, new modes of governance are less likely to be effective”.

Findings in the areas of *information society* as well as *research and development* appear to give support to these claims. However, it must be kept in mind that research of the Dublin partner focused on the Open Method of Coordination. An OMC does not propose genuine ‘policy results’ but rather initiates a framework for improved policy design. In the case of *R&D*, features such a target-setting are a part of the OMC process, but these refer to EU-level goals that do not set individual national aims. Research showed that pure ‘soft governance’, the OMC 3%, is incapable of establishing credible policy targets (and, *a fortiori*, meeting them). The structural impact of *R&D* policy on domestic actors is minor, especially if one considers the ambitions of the policy to create a single research area. National science policies seek to attract foreign investment (in the face of competition from other member states) and ‘drawing down’ EU funds on a *juste retour* basis.

For *information society policy*, a mix of new and old modes of governance is used. Research showed that the various instruments reinforce each other; the directives provide a uniform framework for implementation, the delegated agencies tailor legislation to local market conditions and

share information via the Commission acting as arbiter. The hybrid use of instruments provides a powerful toolbox. For example, the availability of annually updated market information provided by the NRAs allows the Commission to monitor national implementation and, in extreme cases, veto domestic decisions. Also, the Commission can induce compliance by threatening a centralisation of regulatory powers. The structural impact of IS policy on domestic actors is profound. NMG may relay the effects of hard legislation however, this impact is essentially attributable to traditional Community methods.

*Research and Development* policy does not operate at such a level of communitarisation and its evolution is more piecemeal. Although our research points to a convergence in research priorities across member states, it is impossible to say whether this is due to Community action or a more global trend to concentrate research effort in certain technological areas (mainly ICT and biotechnology). The loose consensus that underpins the Community commitment to invest 3 percent of EU GDP in research has not influenced actual spending behaviour. Indeed, member states have converged towards a level of investment albeit far below the 3 percent target but this clearly cannot be construed as evidence of coordination.

Project 3 has identified a number of factors for the evaluation of innovative modes of interaction in treaty negotiations. An important determinant for the “quality” of decision-making in intergovernmental deliberative settings is the aspect of the legitimacy of rules with which the “governed” comply due to the insights in their appropriateness. The main reason is that arguing and reason-giving provide mechanisms to probe and challenge the normative validity of actors’ interests as well as to check the empirical facts on which policy choices are based. Findings suggest that the deliberative quality of a decision-making process increases when decision-makers are in the first place given the chance to evaluate and consensually agree on its legitimacy. Thus heterogeneous, transparent and centralized negotiation settings contribute to the prevalence of “weak” steering modes; they need, however, to be rooted in a politicized public sphere that provide the opportunity of probing and challenging the legitimacy of European integration.

Somewhat counter-intuitively, Project 4 concludes that the application of private instruments substantially expands the Commission’s powers and turns the Commission into a leading subject in the process of regulation both with regard to the EU institutions, and with regard to private parties. The Commission has been given all powers to accept or reject the use of alternatives according to certain procedural and substantial requirements. Although the inter-institutional agreement has made a contribution to the allocation of powers between all three EU institutions in the Better law-making agenda by vesting the Parliament and the Council with a “call-back” function, in reality the Agreement does not provide these institutions with any valid tools to act against a Commission’s unsatisfactory proposal of self-regulation, nor do they have incontestable competence to interfere into the Commission’s executive functions.

So far, there is no empirical evidence for the claim that the new modes are more effective, efficient or legitimate than older ones. As to the effectiveness of “new” modes of governance, one of the Cluster’s assumptions is that it is inextricably linked to their legitimacy. For instance, gaps between elites’ and citizens’ attitudes to policies, however, can considerably hamper the execution of decisions that are based on processes of arguing and persuasion. The rejection of the Constitutional Treaty in two referenda made this apparent. As the researchers in Project 3 conclude, transparent settings may have an effect on interaction modes in negotiations, but neither transparency nor ad hoc public relations efforts can make up for the lack of politicization of European issues, which provides citizens’ the opportunity to challenge and probe the legitimacy of European integration.

## Cluster 2: Evaluation

We distinguish the evaluation of *policy results* from the evaluation of the *structural impacts* of new modes of governance.

### *Evaluation 1: Impact on Policy Results*

The evaluation of new modes in terms of their impact on policy results proves to be a rather complex and difficult task and may to some extent be premature with respect to new modes which have only recently emerged. Nevertheless some empirical answers may be drawn out of the individual projects of Cluster 2.

Project 5 finds that self-regulation by industry actors may run short of achieving the objectives, in the absence of economic incentives or technological feasibility to do so – a pattern which holds for PVC recycling. In other cases – paper recycling is an example – self-regulation may be a sufficient, or even better form of governance to achieve certain policy goals, so that legislation becomes obsolete. The project will pose similar questions in its ongoing research on self-regulation among TSOs.

The impact of new modes of governance on policy results is not at the heart of project 9. In fact, it aims at analysing the process of ‘instrumentation’ of choosing policy instruments and going beyond description and typologies, which are usual in the literature (and debate about their effectiveness). However, empirical results show that their impact depends on the degree of convergence between sectoral actors. It finds that the hypothesis “The higher the policy misfit between the existing policies and the expected policy performance of the new mode, the less likely policy effectiveness” proves to be applicable to new modes of governance in environmental and urban policies.

The empirical analysis of new modes in the realm of competition policy undertaken by project 10 does not lead to clear conclusions as to their substantive impact on policy results. On the one hand, installing an established and in the business community generally accepted mode of dispute resolution might increase compliance with EC competition policies and Commission decisions on mergers and acquisitions. On the other hand, there are voices that point to the lack of structural features such as damage claims as one of the differences between the new European and established systems such as the US American one.

Project 11 examines the impact of participatory governance on policy results in as much as deliberation is assumed to improve the epistemic quality of decisions taken. In view of the above formulated trade-off between civil societies operating as deliberators and watchdogs, it is however concluded that policy makers need to set priorities: they can either have participatory practices that enhance accountability, transparency, and control over governmental actors; or deliberative bodies that contribute to a high level of epistemic quality of decisions.

### *Evaluation # 2: Impact on Structures*

Overall, there is ample evidence that new modes of governance alter pre-existing institutional structures and have an impact on the relationship between the different European and domestic institutions, or between different European and domestic actors.

Project 5 finds that industry self-regulation, which by definition takes regulatory tasks out of the political arena, weakens the role played by the European Parliament and member state authorities. The Commission (and specifically so DG Enterprise), by circumventing the European Parliament and not having to rely on member states for implementation, has an overall preference for self-regulatory arrangements. A similar impact can be observed in the field of energy regulation where private actors play an increasingly important role. Many decisions that have formerly been taken by national governments are now in the hands of private actors, with transmission system operators playing a crucial role in an unbundled regime where generation and transmission are separated.

They are in charge of managing the operation of high-tension power lines and the cross-border transmission of electricity.

Project 6 studies trans-European regulatory networks as opportunity structures for national independent regulatory authorities (IRAs). It is argued that the EU-level networks provide IRAs with specific resources and hence potentially have an impact on the relationship between IRAs and national governments – i.e. institutional settings at the domestic level. Do IRAs use those resources available from trans-European networks in their relationships with their governments and if so, how and with what results?

Project 8 poses the evaluation question with respect to the multi-level governance regime in the electricity sector. It is argued that, whilst ERGEG as advisory group coordinating all national regulatory authorities requires national institutions with decision capacity, national IRAs would not fulfil these criteria given that national governments retain decision-making power. Hence ERGEG+ may also fail because it requires reforms of national regulatory institutions to gain independency and regulatory powers vis-à-vis the national government. Reform, it is argued, will not be possible unless the infringement procedures against Member states with no independent regulatory institutions are decided in favour of the Commission.

Project 9 shows that new modes of governance have the capacity to challenge the existing balance of powers, depending on the way actors manage to mobilize them in a strategic way. The example of the OMC shows that although not systematically imbedded with a formal steering competence, the Commission has been able to insure an informal influence through the use of expertise and information. It also benefited from the lack of convergence between Member States, which has prevented them from steering with effectiveness these processes. Thus, the E3 #2 second hypothesis (“New modes of governance lead to a shift from political to sectoral modes of expected policy effectiveness”) proves to be applicable to the project’s 9 empirical findings.

Project 10 finds that the structural implications of reform in competition policy may be described as an institutional strengthening of the Commission horizontally (European Parliament, European Council) and vertically (member states and their competition authorities). The Commission’s increasing reference to legally non-binding notices, guidelines is interpreted as an incremental strengthening of the European level in general and the role of the Commission in particular.

### Cluster 3: Evaluation

We distinguish the evaluation of *policy results* from the evaluation of the *structural impacts* of new modes of governance.

#### *Evaluation #1: Impact on Policy Results*

Since we have only found scarce and weak forms of NMG, it is difficult to explore the extent to which they can contribute to the effectiveness and legitimacy of public policy. Moreover, the projects have focussed on the (non-)emergence of NMG. They will address the question of effectiveness and legitimacy in the months to come.

The empirical evidence allows for some preliminary insights, though. Effectiveness in cluster 3 relates mostly to the timely, complete and correct implementation of EU policies. Legitimacy is defined as the voluntary acceptance of a policy by the rule targets because the policy and its making conform to pre-established norms (see the key note speech of Philippe Schmitter at the Consortium Conference in May, 2007). The projects present mixed results. NMG may increase the effectiveness of implementation by providing additional resources (money, expertise), reducing costs and helping

to resolve conflicts among actors involved (project 12), particularly if policies do not involve prisoner's dilemma and redistributive problems (project 16). However, they can also have the opposite effect e.g. by decreasing the capacity of accession countries to absorb EU funds (project 17). The same is true for legitimacy. While NMG may increase the acceptance of a policy by involving affected parties and mediating conflicts of interest, they can also generate opposition and resentment because NMG are seen as clientelistic, intransparent, exclusive, and, thus, undemocratic (projects 12, 17). Thus, instead of helping to deal with 'tough' policy problems, NMG can also create additional policy problems. In the context of EU Treaty law, NMG, such as mutual recognition or state aid soft law, have been found to considerably impact on Member states' policies. While these NMG may have increased output-legitimacy in terms of overall levels of trade and competition in the EU, both their input- and output-legitimacy are questionable from a national or subnational perspective. Moreover, NMG have given rise to additional problems of input legitimacy at the EU level. In the case of mutual recognition, issues of legitimacy arise as a result of the horizontal transfer of power. By contrast, state aid decisions – often involving important redistributive issues – are taken by the Commission largely free from control by the Parliament or the Council, and the progressive development of state aid soft law privileges certain potential state aid beneficiaries over others (project 13).

Finally, in some rare instances, we also find NMG to have increased both effectiveness and legitimacy. For instance, the participation by social partners improved the effectiveness of spending EU assistance money in CEE countries (which in the new member states is seen as the main sign of a policy's effectiveness) and, concurrently, increased public support of European integration and of certain activities of the public authorities (project 17). Likewise, the delegation of pre-accession preparations to a participatory regulatory network has significantly reduced the demand of CEE accession countries for derogations in the pharmaceutical area and has contributed to a smooth transition to the new regulatory regime. This is in sharp contrast to the environmental *acquis*, where no such NMG emerged (project 14). In regional policy, NMG helped improve the absorption capacity of accession countries by mobilizing information and resources otherwise not available or too costly to gather, see and discover possibilities where the central state does not see any and improve the local acceptance or legitimacy of governmental policies by producing goods that can be seen to represent public goods (project 15). We should also keep in mind, however, that the criteria for effectiveness can vary significantly over time and policies. Within EU structural policy, for instance, there is an ongoing struggle on what should count as effectiveness that should be increased by the Structural Funds (see project 15). Therefore, we need to be clear about the definition of effectiveness we apply in the evaluation of NMG.

In sum, we need to explore the scope conditions under which NMG foster and impair the effectiveness and legitimacy of policies at the domestic level. State capacity, again, appears to be a key factor. Thus, the degree of institutionalisation of arenas of interest intermediation between the state and private actors, on the one hand, and the ability of the state to provide incentives in order to alter private actors' preferences and interests in favour of harmonization with EU rules, on the other, appear to be crucial domestic scope conditions that facilitate the effective and efficient adoption of and adaptation to the *acquis communautaire* (project 14).

#### *Evaluation #2: Impact on Structures*

Most of our projects, which look at the structural impact of NMG, have not advanced enough to come to any generalizable conclusions. But even towards the end of our projects, it will be difficult to isolate the effect of NMG. Not only is their number limited, their emergence coincides with other changes induced by accession to the EU. Moreover, for the Central and Eastern European countries, accession to the EU has overlapped with their still ongoing political and socio-economic transition, which makes it even more difficult to attribute structural changes to the effect of NMG.

Theoretically we would expect that due to their inclusiveness NMG lead to the strengthening of civil society and the participation of a greater number and variety of state and non-state actors more generally speaking. Yet, so far our research has shown this is not really the case, as for NMG to occur state- society relations need to be based on a solid basis from the outset. The resort to NMG has not changed the societal structures in neither in member states, nor accession or third countries. Rather, our empirical evidence seems to imply that the impact of NMG on (domestic) power relations is at best differential. NMG may empower non-state actors and local authorities vis-à-vis their central governments if they have the capacities to exploit the opportunities offered to them for participating in the policy process. Thus, Spanish and Hungarian environmental groups, often supported by transnational organizations, have been more successful in getting involved than their Greek and Rumanian counterparts, partly because environmental mobilization in Greece and Romania is much more localized (project 12). In a similar vein, Polish regional actors have been more involved in regional governance regimes than their counterparts in Hungary where the degree of territorial decentralization is still weak (project 15). But the overall finding so far seems to be that NMG have reinforced rather than changed existing domestic structures, particularly with regard to the dominance of executive actors at the national but also at the EU level (project 16). Thus, the introduction of social dialogue institutions in Poland, Estonia and Lithuania has done little to transform the socialist legacy of the administrative state towards a more “Western-type” network model. On the contrary, NMG may reinforce some of the pathologies of these states by undermining “classical” modes of democratic legitimation allowing state actors to circumvent majoritarian institutions (project 17). In a similar vein, the ‘layering’ forms of NMG in the field of regional development policy in the CEE accession countries are part of a predominantly hierarchical and centralized governance regime, which induces slow change on the margins but mostly contributes to the reinforcement of hierarchical mode of governance (project 15).

#### Cluster 4: Evaluation

The notion of ‘misfit’ is easier to apply to the ‘steering’ forms of socio-economic governance than to organization and institutional creation. Problems in the implementation of the Stability and Growth Pact and in the utility of the pre- and post-Lisbon OMCs all concern to some extent a clash of principles and objectives between levels. Nevertheless, the notion of ‘misfit’ suffers from numerous problems, including the ‘static’ nature of the purported phenomenon it attempts to identify. Principles and objectives in anything other than the ‘hardest’ form of ‘old modes’, such as EU regulations, are subject to negotiation and interpretation and what is interesting are the determinants of the latter. Thus the hypotheses regarding veto players, diverse preferences and the prisoners’ dilemma nature of many of the distributive issues stake in socio-economic governance are much more pertinent to our concerns. In the areas of corporate governance, local and national pacts, the emergence of new forms of local governance etc., the centrality of power games in determining both institutional and policy outcomes brings the role of power and vetoes (and their negotiation) to the centre of the analysis.

This is the obverse of the hierarchy principle. More vetoes mean less effectiveness when deliberation is the goal – also revealing an important flaw in the Lisbon processes. The aim of bolstering participation in the name of an ill-thought through deliberative ideas has led, as revealed by project 24 to dissatisfaction on all sides. Thus while it may be true (as one hypothesis under E3 suggests) that some new modes involve more deliberation than old ones, there is in reality (a) little distinction between the reality of bargaining in old modes and bargaining in new ones (i.e. in old corporatism versus ‘new’ social pacts) and (b) little indication that the expansion of deliberation will either empower weaker organizations or (confirming the veto power hypothesis) produce more effective and legitimate decision making. The hypothesis that “new modes of governance lead to a shift from classical modes of democratic legitimation through vertical representation to other modes of democ-

ratic legitimation such as negotiating democracy, deliberative democracy and others” reveals more about the normative objectives of certain policy makers enamoured of such modes than about the natural outcome of shifting to less hierarchical forms of governance. It is likely that as ‘new modes’ evolve they will either go into decline or assume more traditional forms of vertical representation and hierarchy within or alongside them. Similarly, there is little support for the idea that “in the case of a balanced domestic power structure pro and against a reform, the European policy demands may strengthen the pro-reform faction’: this may have been true under different circumstances (e.g. the terms on which former Soviet-bloc countries secured the condition of EU membership), but in that case there was much in the way exogenous coercion and material incentives involved that do not apply to ‘new modes of governance’. European policy demands under ‘new modes’ which have little in the way of hierarchy seem to have disruptive affects with unpredictable outcomes regarding the consolidation of pro- and anti-reform coalitions. Under the post-Lisbon OMC’s elite conversion creates ‘worm-hole’ effects (i.e. linkages between Brussels and domestic policy nodes) – as the policy diffusion literature tells us - but domestic mobilization is generally limited. Finally there seems to be little evidence for the hypothesis that “new modes of governance lead to a shift from political to sectoral modes of expected policy effectiveness”. Old modes and new modes appear to require identical justification in terms of political support and vindication, as well as sectoral effectiveness at the level of policy implementation.

### Democracy Task Force

The considerations already mentioned in relation to E1 and E2 are more directly relevant to issue of *Evaluation* (E3) and *Evolution* (E4). The main evaluative issue, partly explored in work done for the previous WPs in the past two years, is whether the multi-level aspects of European governance can rely entirely, or even primarily, on output legitimacy and the kind of ‘good governance’ reasons that are often associated to the de-politicization of decision making.

Work done for WP7 and summarized in D7 suggests some general criteria in order to evaluate the reasons behind NMG and the politics of delegation more in general. These are linked on the one hand to the *demands* of complexity and specialization faced by public policy making in developed societies; and, on the other, to the substantive and procedural *standards* that are expected of public policy making, such as feasibility, effectiveness and efficiency, credibility, respect for diversity (of needs or identity), respect for diversity (in application), promotion of private autonomy and enterprise. These various reasons find application in institutional mechanisms that operate either within or outside the political system, and which therefore may rely on different mechanisms of accountability and democratic control. One main suggestion that come from D7 is that the future evolution of the NMG, particularly in a multi-level system of governance such as the one operating in the EU, should be sensitive to the way in which legitimacy and accountability depend on a complex mechanism of balance of power operated by different institutions interacting both ‘vertically’ and ‘horizontally’.

A similar line of argument in relation to the evaluation of the legitimacy of NMG in the EU is taken up in WP8 and D8. The emphasis is here on the way in which different mechanisms of political and legal accountability may contribute to the assurance that citizens, as ‘contingent compliers’, require in order to feel confident that the institutions work fairly and to everyone’s advantage, without the possibility that others may free-ride on one’s compliance. In particular, work for WP8 has concentrated on the evaluation and evolution of the accountability mechanisms developed by the European Constitutional Treaty: Democratic accountability of EU bodies toward European and national parliaments, as well as accountability of parliaments and governments to international courts with regard to human rights. D8 argues that such forms of accountability may help address the manifold needs of assurance faced by citizens. In this respect, the reasons citizens have to value accountabil-

ity mechanisms and democratic arrangements also lend support to some modes of accountability that lack strong enforcement mechanisms or ultimate electoral accountability. In other words, all forms of accountability, whether from old or new modes of governance, may further the normative legitimacy of the European Union political order. The increased role in the European Union of accountability mechanisms, democratic and otherwise, may provide much needed assurance for citizens, that the institutions and offices satisfy the appropriate standards of legitimacy, and that most other citizens and officials actually do their share.

#### Legal Task Force on New Modes of Governance and the relevance for EU law: Evaluation

##### *Evaluation #1: Impact on Policy Results*

It is suggested by the examination of various policy sectors that the classic community method has failed. While this would tend to a conclusion on the better efficiency of NMG, it is in fact its co-existence with traditional legal regulation instead that seems to have more potential, either due to the pressures that it can put on legal regulation, or due to the enabling environment that the latter creates for NMG, or due to the ‘default penalty’ position that legal regulation often assumes, i.e. as a background threat that give precise definition and move forwards the potential of NMG. This is suggested not only by the horizontal paper on hybridity but also by most of the sectoral ones

##### *Evaluation #2: Impact on Structures*

Given the nature of the specific research task of the LTF Ia, i.e. the exploration of the relation of NMG to traditional accounts of law, it is mostly on this level, i.e. on the structures and institutions that its findings relate to. More in particular:

It is suggested that, if the way forward is identified in hybrid constellations of interacting law and NMG, then accountability structures will also have to conform to this apparent hybridity, with different types of accountability mechanisms used in different situations

Another legal reality affected by NMG is the transformation of the traditional (formalistic) view about the role of courts. It is suggested that in areas of normative uncertainty and factual complexity (as the areas that gave rise to NMG) this role can be circumvented. Nevertheless, NMG call for a reconceptualisation of the role of courts beyond formalistic notions of law. Indeed the judicial role is not just about enforcement; courts already do and therefore should be also recognised as prompting and creating occasions for normatively motivated inquiry and remediation by relevant non-judicial actors in response to signals of problematic conditions or practices. This does not necessarily mean requiring informal processes that mirror the features of formal adjudication, but rather encouraging a more principled and context-specific approach to due process. This role, as an important concomitant of the court’s more traditional rule elaboration and enforcement function, enables the judiciary to participate in addressing normative questions in areas of uncertainty and complexity without compromising its legitimacy or overstepping its capacity.

At a more general level, we might need to alter our view of the EU altogether. While an empirical checklist of NMG in the EU is useful for their understanding as responses to the EU’s distinctive character as a polity, it nevertheless may be thought to overlook the underlying architecture of public rule making in the EU which transforms the distinct elements of EU governance by connecting them into a novel whole, which ends up providing precise definition to the deliberation, informalism and multi-level decision making character of the EU.

#### Legal Task Force on ‘Which governance structures for European private law?’: Evaluation

##### *Evaluation #1: Impact on Policy Results*

##### *1) Regulatory function of private law*

The unfolding regulatory function of private law contributes to better protecting diffuse interests. Private law also helps fulfil distributive justice goals once damages have occurred. It also may redefine entitlements when a material risk of harm emerges. It can provide individuals ex ante incentives to act efficiently. The rising preventive function of private law through the use of injunctions enhances its potentialities. The necessity to expand the range of available remedies to fulfil the new functions has become clear both at MS and EU level. To improve private law to allow better fulfilment of its regulatory function does not necessarily imply downgrading public law.

But ultimately, what makes the difference is the way the tension is solved at national level between approaches which stress private law, contract, efficiency and private autonomy on the one hand, and public law, the public interest, public service and state prerogatives on the other. Two alternatives can be framed:

- to redefine the meaning of the public and private sphere by reassessing values and instruments associated with public and private law
- to overcome the distinction between public and private law and operate through hybrids requiring their own legal regimes

In both cases national legal traditions do not seem to provide the sufficient background. A significant change is required. While being respectful of national legal traditions it has to promote legal innovation both in relation to substantive law and to the institutions that have to administer it.

## 2) *Self-regulation*

Generally speaking the assignment of regulatory power to self-regulatory bodies or to private regulators may raise several challenges linked in one way or another to the privatization of the law-making power. First privatization may cause conflicts of interests to arise especially if regulators and regulatees, even if only in part, coincide. This is less problematic in the context of pure self-regulation where the effects are limited to members. But once the framework becomes coordinated it then may become trickier. Liability regimes of private regulators can constitute only a partial response. Yet, a system of liability is vital to provide regulators incentives to strike an adequate balance of the different interests at stake in the regulatory process. Protection of third parties interests and collective or even public interests is to be enhanced when private regulators are involved in a coordinated framework with public regulators. This holds true at the standard setting level but also at the monitoring and enforcement ones.

### *Evaluation #2: Impact on Structures*

#### *1) The regulatory function of private law*

Placing emphasis both on private law and private regulation means accepting to set up a more decentralized structure for the law-making process. This result is not the necessary outcome of rebalancing public with private regulation. The expansion of private regulation without any regulatory legal framework may in fact bring about the opposite result: centralization.

A decentralized institutional arrangement can serve different goals ranging from safeguarding diversity to bottom-up harmonization. With regard to the latter, this is a way to give effect to the principle of subsidiarity which implies that the coordination of state actions is likely to be more effective than top-down harmonization at the EC level. The degree of decentralization can vary depending on the regulatory stage at stake: standard setting, monitoring, enforcement. When diversity is to be fostered, coordinating mechanisms such as private international law can become crucial. But when bottom-up harmonization is desired, both regulatory competition and regulatory cooperation have to be combined.

## 2) *Self-regulation*

The need for a higher level of accountability translates into three major changes concerning private regulators:

- their governance structure
- their liability regimes
- To reinforce the limits posed by competition law to private regulations.

The first can be achieved through internal reforms. The second and the third have to occur through legal reforms.

### III.2.4 Evolution (*E<sub>4</sub>*) of New Modes of Governance

#### Cluster 1: Evolution – Convergence, Softening or Hybridisation?

Analyses into the evolution of modes of governance are only possible to a limited extent by the relatively little time that has passed since their introduction. Both policy specific modes investigated within cluster 1 and overarching governance models are of recent origin. For instance, the Interinstitutional Agreement on Better Law-Making has been signed only three years ago, so more time has to go by before it can be assessed whether their use increases efficiency or flexibility in the European regulation. However, for a number of areas, tentative conclusions may be formulated, pointing out empirical findings in different policy areas.

Research in Project 01 has underlined that there are possibilities for cross-sector dynamics in the sense of spill-over processes. While policy interconnectedness is less important in *CFSP*, it is a key condition for the emergence and evolution of coordination processes in *fiscal policy and education policy*. Within the area of *JHA*, mutual evaluation mechanisms and decisions to assess measures periodically that induce ‘learning’ can also be interpreted in that regard (e.g. in the anti-terrorism and asylum fields).

The study of *Information society policy*, at least as far as *telecommunications* is concerned, points towards a convergence in governance across all member states. Both in market structure (through liberalisation) and governance structure (through the creation of NRAs), implementation has led to organisational harmonisation. However, this has not guaranteed convergence of performance. Although a common regulatory framework exists, practice in member states continues to defy common Community objectives. This may lead to greater convergence, even centralisation, of regulation.

Overall one might conclude that the evolution of governance at a macro-level reveals tendencies towards a fusion process that occurs in stages and is characterized by ratchet in effects. It occurs as a process of policy upgrading without following a federal logic of supranationalisation; instead, the level of complexity and intransparency is gradually reinforced.

With a view to the legal implications of new modes of governance, the steps towards privately-generated regulation as a potential alternative to legislation challenge the principles of democratic legitimacy and institutional balance as the Commission’s powers are distinctly upgraded. On the other hand, the current institutional design might also lead to the increase in power of certain well organized private actors (leading thereby to a certain “discrimination” of the least capable). This might subsequently diminish the Member States’ role in EU decision making, as strong and organized business and other society organizations will no longer need Member States’ mediation to initiate or create the rules to benefit from the Single Market.

Furthermore, there is a tendency to preserve old hierarchical structures. The Commission and other institutions drafted the formal requirements for the integration of self- and co-regulation into the EU legal framework by following similar principles that apply to traditional formal regulation (general interest, non-discrimination, transparency, representativeness, monitoring, sanctions, etc.) and subordinated them to the traditional hierarchical structure of the EU governance. This subordination, together with a more intensive involvement of the European Parliament, might threaten to deprive self-regulation practices in the course of their evolution of their much sought-after features such as, flexibility, cost-efficiency or better adaptation.

### Cluster 2: Evolution

The evolution of new modes is considered in only some projects, and depends on whether the research method adopted includes a longitudinal analysis.

Project 6 starts from the fact that most work in political science has analysed the formal delegation of powers by governments and legislatures to non-majoritarian institutions such as regulatory authorities and the institutional form of that delegation. Less attention, they argue, has been paid to regulation *after* delegation. Analyzing the operation of European regulatory networks, the formal and informal powers of the ERNA are examined as well as the different forms of networks and linkages of national IRAs (both formal and informal) have evolved over time.

Assessing the evolution of the EU-level regulatory regime over time, project 8 finds a remarkable shift from governance to government: The Commission proposes the creation of ERGEG+, a body which is supposed to adopt binding decisions for all national regulatory institutions. Hence, an institution which could be defined as new mode of governance over time turns out to be closer to an old mode of government, despite the fact that Community intervention remains unaltered.

An explicit longitudinal analysis has been adopted in the project 9 in order to analyse the long-term political careers of policy instruments. It aims at analysing systematically conflicts and controversies around their creation, implementation and modification over a 30 years period. Building up an encompassing empirical database, policy sectors will be systematically compared through the lenses of policy instruments. E4 second ('Once a new mode of governance is instituted, it will be subject to transformation' – 'In terms of path dependency there may several typical patterns and factors of change' e.g. voluntary accords (mobilisation of marginalised groups; e.g. social pacts where excluded actors seek participation)' and fourth ('New modes of governance will result as a process of experimentalism and longitudinal learning across the multiple levels of a federal or quasi-federal system, offering new solutions to traditional distributional trade offs') hypothesis are applicable.

With respect to evolution, project 10 concludes that soft means, in conjuncture with the importance that precedents of Commission decisions will achieve, strengthen the role of the Commission in procedural and substantial terms not only vis-à-vis national competition authorities, but also in relation to national courts. It is argued that legally non-binding are neither neutral instruments nor static and hence must be interpreted with respect to both the inter-institutional politics in the multilevel European polity and to their change over time. Soft-law instruments may harden as legally non-binding instruments of the Commission may be replaced by legally-binding Council regulations. The transformation from hard to soft law may aim at ensuring compliance where voluntaristic approaches have failed. An important force pushing towards a hardening are judgements of European courts, with the stance of the CFI being more firm than that of the ECJ. Along similar lines, court judgements have added specific impetus to legally non-binding instruments. For reasons of legal certainty, legitimate expectation and equal treatment, legally non-binding modes of governance may produce legal effect not on the addressees but on the Commission.

### Cluster 3: Evolution

Since the focus of our Cluster is on Evaluation and Emergence, our projects have not yielded findings on the evolution of NMG that could be systematically compared and summarized in light of the hypotheses developed by NEWGOV.

### Cluster 4: Evolution

The hypotheses under this heading are generally of a normative character, inspired by the more idealistic varieties of literature on new modes of governance and are subsequently much less useful than those found under E3. Thus, project 19a explicitly sought to investigate the hypothesis that “new modes of governance will result as a process of experimentalism and longitudinal learning across the multiple levels of a federal or quasi-federal system, offering new solutions to traditional distributional trade offs” but found little evidence that there was any ‘laboratory of experimentation’ involved in the evolution of macro-economic governance at the EU level. The hypothesis that “the stronger the cross-border character of the object of regulation of a new mode, the less differentiation we expect to find in the evolution of the new mode” is certainly borne out, however, by our studies of new modes containing strong club rules that are bolstered by strong sanctions (either hierarchically applied or horizontally-induced by peer pressures) in certain areas of macro-economic management. It is also obviously true that “once a new mode of governance is instituted, it will be subject to transformation”, for such modes are almost always the subject of ongoing re-negotiation – a source of their strengths as well as their weaknesses.

Some of our studies have suggested alternative hypotheses to the above and those should clearly be addressed in subsequent iterations of the scientific framework. A particularly interesting finding from project 19a is that the evolution of new modes of coordination may be incidental to, and depart the original ambitions. Thus while the partnership-based, deliberative ideal of the OMC attached to Lisbon I (post 2000) in the areas of social policy and labour market reform remains weak and largely ineffectual, the project leaders argue that both the Single Market Programme and the fiscal surveillance under the revised Stability and growth Pact have a more profound impact on labour market and pension reforms in member states than the Lisbon Strategy. This produces both an ‘incidental social dimension’ and an ‘accidental new mode of governance’ by encouraging labour market reforms to deal in a non-discriminatory way with low-wage competition and providing additional incentives for pension reforms through exposure and close supervision of fiscal developments.

### Democracy Task Force: Evolution

The considerations already mentioned in relation to E1 and E2 are more directly relevant to issue of *Evaluation* (E3) and *Evolution* (E4). The main evaluative issue, partly explored in work done for the previous WPs in the past two years, is whether the multi-level aspects of European governance can rely entirely, or even primarily, on output legitimacy and the kind of ‘good governance’ reasons that are often associated to the de-politicization of decision making.

Work done for WP7 and summarized in D7 suggests some general criteria in order to evaluate the reasons behind NMG and the politics of delegation more in general. These are linked on the one hand to the *demands* of complexity and specialization faced by public policy making in developed societies; and, on the other, to the substantive and procedural *standards* that are expected of public policy making, such as feasibility, effectiveness and efficiency, credibility, respect for diversity (of needs or identity), respect for diversity (in application), promotion of private autonomy and enterprise. These various reasons find application in institutional mechanisms that operate either within or outside the political system, and which therefore may rely on different mechanisms of account-

ability and democratic control. One main suggestion that come from D7 is that the future evolution of the NMG, particularly in a multi-level system of governance such as the one operating in the EU, should be sensitive to the way in which legitimacy and accountability depend on a complex mechanism of balance of power operated by different institutions interacting both ‘vertically’ and ‘horizontally’.

A similar line of argument in relation to the evaluation of the legitimacy of NMG in the EU is taken up in WP8 and D8. The emphasis is here on the way in which different mechanisms of political and legal accountability may contribute to the assurance that citizens, as ‘contingent compliers’, require in order to feel confident that the institutions work fairly and to everyone’s advantage, without the possibility that others may free-ride on one’s compliance. In particular, work for WP8 has concentrated on the evaluation and evolution of the accountability mechanisms developed by the European Constitutional Treaty: Democratic accountability of EU bodies toward European and national parliaments, as well as accountability of parliaments and governments to international courts with regard to human rights. D8 argues that such forms of accountability may help address the manifold needs of assurance faced by citizens. In this respect, the reasons citizens have to value accountability mechanisms and democratic arrangements also lend support to some modes of accountability that lack strong enforcement mechanisms or ultimate electoral accountability. In other words, all forms of accountability, whether from old or new modes of governance, may further the normative legitimacy of the European Union political order. The increased role in the European Union of accountability mechanisms, democratic and otherwise, may provide much needed assurance for citizens, that the institutions and offices satisfy the appropriate standards of legitimacy, and that most other citizens and officials actually do their share.

#### Legal Task Force on New Modes of Governance and the relevance for EU law: Evolution

In conclusion, what seems to be considered promising according to many researchers of the LTF Ia is the use of some form of hybridity between legal regulation and NMG, resulting in a system that can arguably – according to the predictions of some scholars – be destabilizing in a democratic way.

Nevertheless, despite the potential of this hybridity, or perhaps because of the choice of hybridity as a viable way forward, there are also voices that are not fully convinced on the very nature of NMG as something genuinely novel that could have transformative power over law (Armstrong/Kilpatrick and others). What is proposed as a concept that can have both the power to explain changing modes of governance, while at the same time taking into account traditional legal concerns is “reflexive universalizability” as a common trait of law and NMG (de Burca/Walker).

#### Legal Task Force on ‘Which governance structures for European private law?’: Evolution

##### *1) The regulatory function of private law*

Until recently the focus at the European level has been set on the quality of legislation, labelled better regulation. The challenge for EPL is however not limited to improving legislative quality. First, the regulatory function approach is likely to affect the entire process of rule-making. It should affect both the production of legal rules, mandatory and enabling. But it also has to encompass the set of rules that private parties, individually or collectively produced. Second private law should be concerned only with rule making. Its regulatory function implies that monitoring compliance and enforcement have to be considered in designing the rules to a larger extent than has occurred so far. In terms of monitoring, EPL governance requires a much more sophisticated system than the one currently in place. Enforcement represents also a major challenge for growth and consolidation of EPL. It is doubtful whether the judiciary should still be the unique enforcement power, given the complex architecture of EPL. Self-enforcement through self-regulation and administrative enforcement

through IRAs constitute important complements. Ultimately for private law regulatory strategy to last, it is important to provide impact assessments.

Third the regulatory function of EPL definitely entails institutional implications. Acknowledging this function calls for setting up an appropriate governance structure combining different levels. It is necessary to rethink the allocation of regulatory powers between member states themselves and between member states and EC institutions. The research is trying to assess whether the consolidation of regulatory function of private law and the emergence of new modes of governance can be reconciled within a unifying institutional design that provides better answers than the current approach at EU level and for its implementation at MS level. Proposals focus on the extension of the Lamfalussy architecture to areas different from financial markets and to the application of the OMC to areas other than employment policies. Within these approaches the regulatory function of Private international law has to be promoted.

## 2) *Self-regulation*

The project will develop a comprehensive analysis of self-regulatory systems at MS level to improve the ability of Eu institutions to deploy self-regulation as an implementation strategy for European law

### **III.3. *Synthesis and Linkages***

The reports from the different clusters on preliminary empirical findings in the light of the hypotheses originally set out and a modification of the latter indicate results which have already been linked across clusters. Further joint publications and joint workshops are planned in the next project phase. Just to mention *a few examples of* areas of synergy.

- NEWGOV cluster 2 organised a two-day workshop in spring 2007 on “New Modes of Governance in the Shadow of Hierarchy: Accountability and Legitimacy”. For the first time, it has brought together members of cluster 2 with those of the NEWGOV Democracy Task Force in order to discuss accountability and legitimacy issues of new modes of governance. The exchange of ideas between the task force and members of the cluster proved to be extremely insightful and enriching, inasmuch as concrete empirical findings in the projects were confronted with theoretic and normative standards. A follow-up workshop is planned for November 2007 and it is foreseen to publish the results of this collaboration in a special issue of a peer-reviewed journal.
- NEWGOV cluster 4 organised a workshop in December 2006 on New Approaches to Socio-Economic Governance (D9b). The aim of this workshop was to allow for reflection on common themes across the projects of the NEWGOV cluster 4 and stimulate methodological and conceptual cross-fertilisation on the topic of ‘new approaches to socio-economic governance’. It also served as an internal review system on work produced so far, with the cluster leaders and people from different projects assessing each others work. The main subjects of discussion at the workshop were the capacity of the European Commission to use soft laws and ‘new modes of governance’ across a range of policy areas. The participants examined its attempts to develop new forms of network governance, to use the ‘shadow of hierarchy’ to gain compliance or convergence with soft law policies and to promote cooperation among member states on new codes of governance as in direct tax policy. The cross-cluster workshop was also attended by members of clusters 2 and 3. Waltraud Schelkle from the LSE has submitted a special issue proposal to a scientific journal which should include a number of these papers. A follow-up meeting was organised at the ECPR Conference in Pisa, September 2007.

- During the 2007 Annual NEWGOV Consortium Conference in May/June 2007, two debates with key-note speeches concentrated on the horizontal questions of legitimacy and the rule of law. The first key-note speech was delivered by Philippe C. Schmitter, EUI, on “Can the European Union be legitimised by Governance?”, the second key-note speech Christian Joerges, EUI, on “How the Rule of Law might Survive the European Turn to Governance”.

For the final twelve project months, similar cross-cluster workshops are planned, in order to further exploit synergies of the research insights accumulated by the various clusters and projects. Please see below, sections 5.2 and 5.3.

### ***III.4. Dissemination***

Relaying the results of the research to the scientific community and dissemination for practitioners are key aims of the Consortium. Instruments for dissemination are the project website, [www.eu-newgov.org](http://www.eu-newgov.org), the working papers of the project, published in the peer-reviewed series EUROGOV, jointly implemented with CONNEX, workshops and conference, as well as academic publications. The academic and policy making communities are also target of the external NEWGOV newsletter, providing information concerning work in different parts of the Consortium, and the series of short and accessible Issues and Briefing Papers, relating to specific and topical events that arises during the course of the Integrated Project. A first issue of the External Newsletter, providing an overview on the NEWGOV project and a detailed description of the research carried out in cluster 2, was disseminated in summer 2006. At the same time, the three issues of the Policy Brief series were published so far, presenting key results of projects no. 7 on “Governance of the EU Securities Sector: Impacts of the Lamfalussy Reform”, no. 14 on “Smoothing Eastern Enlargement“ and from project no. 1 on „The Evolution and Impact of Governing Modes“ in the area of Justice and Home Affairs.

During the third project year, dissemination activities have intensified, along with the generation of knowledge at all levels of the Consortium. During years 1 to 3, researchers have presented NEWGOV research at more than 250 conferences, workshops, seminars and on other occasions. It included the most prestigious academic events such as Ninth and Tenth Biennial International Conferences of the European Union Studies Association (EUSA), conferences of the European Consortium for Political Research (ECPR), the International Studies Association (ISA), the International Political Science Association (IPSA), the Society for the Advancement of Socio-Economics (SASE), the American Political Science Association (APSA), the Conference of Europeanists, or the International Association for Legal and Social Philosophy. Beyond that, around 300 monographs, edited volumes, special journal issues, articles, book chapters, working papers etc. have been published or are in the process of being published by NEWGOV researchers. The plan for using and disseminating the knowledge provides a detailed overview. It should be noted that these dissemination activities also ensure close interaction with other FP5 and FP6 and other international projects. This kind of ‘uncoordinated’ interaction with other programmes is constantly taking place by the individual researchers involved in NEWGOV, also because they are taking part in other programmes.

In addition, NEWGOV committed itself to organising a series of forums to bring together a mixed group of academics and practitioners from different sources and to discuss with practitioners research outputs from the Consortium as a whole. The objective is thereby to complement more focused meetings organised by individual project teams and/or clusters. After the first Consortium Level Practitioner Forum and about six project level forums (projects no. 7, 8, 12, 19a, 22, and 23) organised during the second year, the following events took place in year 3:

- The 2<sup>nd</sup> Practitioners Forum, held in Brussels on Friday, November 3<sup>rd</sup>, focused on “Old and New Modes of Governance: Effectiveness, Efficiency, Legitimacy”, and brought together researchers and EU officials in a workshop focusing on Justice and Home Affairs, Common Foreign and Security Policy, and Social Dialogue and Pensions Reform. An interesting aspect of the meeting was that all projects presented are working in a very empirical manner. This should be further stressed to exploit the comparative perspective NEWGOV offers. Focusing on the Emergence and Evolution of Governing Modes, typical patterns and specificities of sectors will form a framework to comparatively assess different modes in terms of their legitimacy, effectiveness and efficiency. Adding together the results of the single policy fields, NEWGOV will provide deeper insight in the evolution of the whole EU system.
- The 3<sup>rd</sup> NEWGOV practitioner and stakeholder forum (“EU Agencies: Delegation between Efficiency and Legitimacy”) was held at the premises of the Fondation Universitaire, Brussels, on 20 April 2007 (D16). It was organized by the University of Cologne as co-ordinator of NEWGOV Cluster One and focused on issues of delegation and accountability with regard to EU agencies. As a means of best utilising the horizontal potentials of the NEWGOV consortium, a cross-cluster approach was adopted; among the participants were researchers from several NEWGOV Clusters and Task Forces who engaged in intensive discussion with officials from EU institutions and agencies. The workshop’s goal was to present the hitherto results of NEWGOV sub-projects dealing with agencies to practitioners in order to disseminate these findings on the one hand, and to receive feed-back and comments from an inside perspective on the other.
- Project 8 organised a second practitioners workshop at the University of Granada in March 2007. Two topics were discussed. The first topic was the study and validation of the European Community energy policy, especially focusing on the new package of measures adopted on the 10<sup>th</sup> of January 2007. Due to the fact that two of the main pillars of this package of measures are sustainable development and security of supply, the second topic of our workshop was the use of renewable energies, particularly wind power.
- Project 11 organised a ‘practitioners workshop’ on ‘Civil Society and Expertise’ in July 2007 in collaboration with the European Economic and Social Committee. The workshop had the objective to create a forum for practitioners to exchange information and experiences on the relation between civil society participation and the provision of expertise in EU policy-making, with equally an element of reference to practices of the WTO. The workshop has brought together 20 representatives from the European Institutions and civil society organisations and social partners, as well as experts engaged in different areas of EU risk regulation, such as food safety, occupational health and safety, environmental and research policy. The experience of the practitioners shows that the two dimensions of better governance, namely enhanced involvement of civil society and reliance on scientific expertise are at times difficult to differentiate and may overlap. On the one hand, civil society actors do not only represent interests, they also provide expertise. On the other hand, ‘scientific experts’ are often linked to particular interests.
- Project 15 organised a Practitioners Workshop on “Governing Regional Development – The governance of regional development and the new Structural Funds regulations in the old and new peripheries of Europe”. It took place at the European University Institute in March 2007. The goal was to have an overall view of what directions the new regulations are taking Structural Funds (SF) policies in terms of the evolution of regional development regimes in CEE countries. Structural Funds regulations have been playing a central role in shaping the evolution of the mode of governing sub-national development by influencing the balance of forces among the actors participating in sub-national development policy and shaping the rules of collabora-

tion among them. The most important lesson of the workshop is that the research has to focus more on the domestic sub-national factors of variation in the mode of governance like the organization and capabilities of diverse non-state actors or the coming about and evolution of different sub-national developmental alliances.

It should finally be mentioned that interaction with practitioners is a two-way process in which NEWGOV researchers not only disseminate research findings to practitioners, but very actively seek information from the latter. A large number of qualitative interviews have been conducted in the individual projects in all clusters that have offered immensely valuable empirical insights into how the new modes of governance are being applied in reality.

### ***III.5. The next Implementation Phase, Months 37-48***

During the fourth and final project year, the Integrated Project NEWGOV will concentrate on three major tasks.

#### ***III.5.1 Completion of scientific research on cluster and project level***

The first task will be the consolidation and completion of the scientific research carried out at the level of the individual clusters and projects.

Given that the key phase of activities of a number of Cluster 1 partners has ended after month 36, it is of crucial importance to sum up, conclude and assess the outcome of the common academic endeavours. Within a specific workpackage common to all projects within cluster 1, the evaluation of different modes of governance will draw on the results of the previously completed workpackages and try to provide a comprehensive evaluation of different types and modes of governance. It will address the role of institutions in different policy fields and assess the efficacy of practises governing the interaction between them. Based upon the developed indicators, as well as the working papers on the emergence, evolution and impact of governing modes, the second versions of chapters for the joint monograph serve as the main stepping stone for synthesis of the research results. Furthermore, ongoing research will provide complementary analyses of governing modes in the field of budgetary and redistributive policies, deal with perspectives and theoretical implications of modes of governance (by project no. 1). A key question for project no. 4 concerns the role of law and government regulation in the society and subsequently the democratic legitimacy and accountability of new modes of governance that will have to be reflected. In how far new modes of governance correspond to the demand for democratically controlled and responsive forms of authoritative decision-making will be a crucial issue to be touched.

The key tasks during the final year will be

- to focus on the notion of evaluation as a scientific category, highlighting different methodological approaches and different options for carrying out evaluation exercises;
- to focus on questions of impact of new modes of governance on 'classical' structures of democratic legitimacy and legal accountability in two selected areas: task-delegation on agencies as well as soft law and self-regulation.
- to translate the scientifically robust criteria for assessing the academic and political value of the research results on new modes of governance into empirical results, drawing, among other things, on the completed database on Modes of Governance;
- to round off the examination of policy fields by including governing modes in additional policy fields.

The work of Cluster 1 will be concluded by a monograph on the Emergence, Evolution and Evaluation of Governing Modes. This joint publication, summing up and presenting the findings of the cluster participants, will ensure comprehensive dissemination among the academic community and the interested public.

During the remaining 12 months of the NEWGOV project, Cluster 2 will continue to work on its second joint publication. This is planned as a special issue of a peer-reviewed journal. Contrary from their first special issue, this second publication will specifically focus on the accountability and legitimacy aspects of new modes of governance. Cluster 2 is closely cooperating with the NEWGOV Democracy Task Force and has already held two workshops jointly with task force experts. Two more workshops will be held during the remainder of NEWGOV

Once the individual projects of Cluster 3 are completed, their main findings shall be drawn together in light of the cluster's research agenda. The project leaders are asked to systematically evaluate the effectiveness of new modes of governance in facilitating the adoption of and adaptation to the *acquis communautaire* in accession countries, and the role of state capacity as a scope condition for new modes of governance in particular, as well as to explore the implications of new modes of governance for the political and societal structures in the target countries. Are new modes of governance an effective means of capacity building (resources transfer, including information and expertise)? Have they helped to increase the legitimacy of public policy-making? Do they trigger administrative (e.g. civil service) or political reforms (e.g. territorial decentralization)? Which actors are empowered by new modes of governance? Do these new modes undermine traditional forms of representational democracy by fostering functional interest representation? To what extent do new modes privilege the participation of corporate (for profit) interests over public (not for profit) interests in public policy-making at the various levels (regional, national, EU)? Do new modes of governance foster the emergence of an endogenous civil society? These research questions provide a common framework that shall integrate the individual projects into a joint publication, e.g. a special issue of an international journal or an edited volume.

Cluster 3 will discuss the results at a 3-day conference. The conference will be open to members of the Integrated Project who do related research. Moreover, other scientists, policy experts, and practitioners will be invited to participate and comment on the papers. The cluster leader will publish the conference proceedings in a report. The conference report will explore the potential for doing a joint publication of the major findings of the projects addressing the research questions raised by the cluster.

Cluster 4 will continue to focus on areas of regulation where EU involvement is new and where at the national level existing modes of governance have been called into question - either because they are or appear to be ineffective, or because they are challenged by (mostly international, sometimes domestic) developments. This is the case of economic and monetary government, tax policy and corporate governance. The final cluster workshop, no. 5, will be held at the same time as the summer 2008 fourth NEWGOV consortium conference. Being the final cluster workshop, it will evaluate the work carried out over the four years of the IP. Given the heterogeneity of projects in the cluster and since many projects within this fourth cluster will continue their research up to the end of the project duration, there will be no attempt to produce a common publication for the cluster during the lifetime of the project.

The Task Forces on Legal Issues and the Legitimacy and Democracy Task Force have or will soon conclude their research phase. A number of edited volumes are in the process of being finalised or have been published already (as special journal issues), as well as a data set on the effectiveness of

the European Court of Justice. The Task Forces and its members will continue to contribute their expertise to the other clusters and projects.

### III.5.2 Integration of research results across clusters at the Consortium level

During the first two years of the project, most clusters had mainly focused on empirical rather than analytical comparisons in those policy fields that are dealt with in the respective clusters. During the third year, at the clusters and the consortium level, the NEWGOV project started to compare in greater details the developments in various policy fields, that is the foci of many individual projects, and has analysed the relative utility of different policy instruments across areas. The consortium has made comparisons across sectors of intervention, and to some extent across different modes of governance which is not the same as instruments. Instruments as defined by policy analysis (incentives, command and control, information, model) can exist in different modes of governance at the same time. Additional comparative perspectives, such as across policy areas, have come into play during the third and will continue to be analysed during the fourth project year. Research results have been compared and discussed at numerous cluster workshops and the three Consortium Conferences so far; these discussions have led to a greater coherence in the individual projects' research.

This integration from the bottom up – from projects into clusters, and then across clusters, is the appropriate way to proceed in such a huge consortium. Integrative results are therefore to be expected at the level of cluster leaders' interactions which focuses on the *joint* analytical perspective of emergence, execution, evaluation, and evolution.

At the Consortium Level, three additional cross-cluster workshops are planned in year 4 in order to further exploit synergies of the research insights accumulated by the various clusters and projects:

- The results on *new member states* will be systematically linked at a workshop to be organised by the leaders of project 17 (October 2007). It aims at exploring factors that influence the emergence (E1), execution (E2) and evolution (E3) of new modes of governance. It is assumed that the emergence, execution and evolution of NMGs is influenced by a series of cultural and historical factors and that path dependencies are rather country specific and mutual interactions between various factors differ from one country to the next. These factors should be further explored.
- The impact on *democratic structures* is discussed in the three clusters 1-3 and this should be further developed at a workshop jointly organised by cluster 2 and the Democracy Task Force (November 2007).
- Clusters 3 and 4 will organise a workshop on “*Civil Society, New Modes of Governance and Enlargement*“ (month 45). The Cross Cluster Workshop seeks to explore the societal preconditions, in general, and the role played by civil society actors, in particular, in the emergence, evolution and effectiveness of New Modes of Governance. Special focus is placed on the enlargement process, which is considered to be a most likely case for NMG given the relatively weak capacity of accession countries in adopting the *acquis communautaire* and the great leverage of the EU for encouraging the involvement of non-state actors in the accession process. This workshop will be complemented by a Practitioners Forum (see below).

Other cross-cutting topics that have been identified are for example:

- The *long-term development* of instruments studied in Cluster 2 will be linked with the empirical data of longitudinal development of instruments of Cluster 1 and findings of the Legal Task Force II on the role of the European Court of Justice.
- The *shadow of hierarchy* findings of Cluster 2 are related in an interesting way with the findings of Cluster 3 and will be jointly exploited.

- The typical nature of hybrid governance forms is another cross-cutting theme (Clusters 1, 2, Legal Task Force Ia).

During the last period of the project, hence months 37-48, the Consortium will invest considerable efforts in producing project results which will synthesise and summarize the results of the Integrated Project as a whole. The Consortium, through the Steering Committee, will conduct a stock-taking of the scientific achievements of the project: the knowledge created, its empirical content, its analytical innovations, and its implications for subsequent scientific enquiry. This stock-taking will be used to produce a synthetic summary of achievements (and of any scientific problems encountered) by the Consortium.

The following final products are foreseen or – in some cases – already available:

- Final project outputs produced by individual sub-projects are either formal ‘final reports’ or articles, monographs, dissertations, or edited volumes in which the final results of the projects are being presented. Many researchers from projects already terminated are currently submitting articles to peer-reviewed journals which summarise the results (or parts of it) of their projects. The final report on dissemination activities will give full account of the scientific dissemination by individual researchers. The Consortium itself also plans to utilise the large international conferences to take place in 2008 (and also in 2009, e.g. EUSA).
- Edited volumes produced at the level of the clusters and Task Forces. Edited volumes are foreseen for cluster 1 and 3, cluster 2 will produce a second special journal issue, legal task force Ia is in its final stage of producing two edited volumes, while legal task force Ib has already produced two special journal issues during the lifetime of the task force. In addition, another special journal issue is planned, organised by project 19a in cluster 4, which will comprise contributions from various clusters. In addition, the Steering Committee approved additional funding for a cross-cluster publication in Polish, to be produced by the Institute of Public Affairs (partner no. 20).
- Additional articles will be submitted to peer-reviewed journals by cluster leaders and the Scientific Director, based on the results of the clusters and NEWGOV in general. This output might however only be available after the termination of the project.
- Finally, the Steering Committee has committed itself to produce a high quality book that will record in fully worked and elaborated form the range of the knowledge created, its empirical content, its analytical innovations, and its implications for subsequent scientific enquiry. This will be a systematic comparison of the theoretical questions and findings on Emergence, Execution, Evaluation and Evolution and will be compiled in a joint publication. It will be a single monograph to be jointly produced by all cluster leaders and the chairperson of the Steering Committee. This publication could be around 150 pages. We have already attracted the interest of two of the large international academic publishing houses.

### *III.5.3 Dissemination of project results*

With regard to dissemination, the Consortium will continue to rely on its established instruments, hence, Practitioners Fora, the External Newsletter and the Policy Brief series, dedicated dissemination events, as well as the project website and the EUROGOV Working Papers series.

Three Consortium Level Practitioner Fora are scheduled to take place during the final project year:

- Practitioners Forum IV will be organised by cluster 1 on the topic “Towards an Evaluation of New Modes of Governance” (month 42). The purpose of the practitioner workshop will be to link up the results of research within Cluster One over three and a half years on the emergence, evolution and evaluation of governing modes to the political world in Brussels. In particular, civil servants from the Commission, the European Parliament and the Council will be addressed

in order to assess the main findings. Thus, it is a part of the completion of the different projects and will help them to make final adjustments, or find additional inspiration or confirmation to their own insights. Second, a particular added value is identified in the discussion of the implications of the recent Treaty reform for EU governance, taking up a subject already dealt with at the plenary conference in 2006 in the framework of a thematic workshop. Third, the planned publication will benefit from the discussion with practitioners in the light of sounding out the politically relevant priorities and demands.

- Practitioners Forum V will be organised by project 6 on “Regulatory Networks and New Modes of Governance in the EU” (month 44). The workshop will allow practitioners and policy makers from the Commission, IRAs and regulatory networks to discuss with academics from NEWGOV how regulatory networks perform, the extent to which they have altered governance of regulation and possible reforms. In the light of the regulatory debates on the future of networks and regulatory agencies this workshop will provide a welcome and informal (Chatham House) venue for academic and practitioner brainstorming on future institutional developments. More specifically, it will allow us to present results of the past years of research on networks of regulatory agencies and relate them to key current policy debates. Results include: a critical analysis of formal position, instruments and resources of agencies; a study of different institutional choices available to structure regulatory arrangements; a survey of how participants in the policy process saw the functioning of regulatory networks; our study of debates among IRAs, EU Commission officials and network officials on the distribution of powers and functions between different institutions. The forum will focus on three strategic sectors- telecommunications, financial services and energy. We envisage 25-30 participants of which 2/3 would be practitioners and the remainder from NEWGOV.
- Practitioners Forum VI will be organised by clusters 3 and 4 on “Civil Society, New Modes of Governance and Enlargement” (month 45, together with the cross-cluster workshop). The Cross Cluster Workshop seeks to explore the societal preconditions, in general, and the role played by civil society actors, in particular, in the emergence, evolution and effectiveness of New Modes of Governance. Special focus is placed on the enlargement process, which is considered to be a most likely case for NMG given the relatively weak capacity of accession countries in adopting the *acquis communautaire* and the great leverage of the EU for encouraging the involvement of non-state actors in the accession process. This workshop will be complemented by a Practitioners Forum, that brings together specialist working in the state and non-state sector and will contribute to the dissemination of findings developed by NEWGOV researchers during the last years. Moreover, the practitioners will provide valuable feedback on the insights generated by the various projects. Finally, the findings of the workshop and the practitioner forum might be published in a cross-cluster publication (after month 48).

At the same time, the number of project workshops specifically aiming at the dissemination of project results to the practitioner community will increase in the forthcoming period months 37-48 as numerous projects have scheduled these kind of event. This decentralised approach also secures that stakeholders from the respective policy fields can be targeted. The events included, among others,

- a review meeting with practitioners of cluster 1 (with projects nos. 1-4),
- a conference involving the scientific community and policy-makers on “European public services “ (project no. 8),
- a final conference on the effective implementation of EU policies in accession countries (project no. 12),
- a practitioners workshop of project no. 18a,
- a practitioners workshop on labour markets and wage bargaining and a final stock-taking conference of project no. 19a,
- specific country workshops and a dissemination conference of project no. 20,

- a practitioners workshop with judicial experts from the European and national level, legal task force Ia.

NEWGOV will also invite stakeholders to the large final Consortium Conference scheduled for 5-6 June, 2008.

The dissemination of research results in particular to the Russian academic community and practitioners is enhanced by the new consortium partner, the European University at St. Petersburg. This partner joined beginning of the third project year after the successful participation in a Commission call for proposals to enlarge the Consortium by a partner from the Targeted Third Countries. The partner participates in the “Inside-Outside” project dealing with “New Modes of Governance in Relations with Non-Member States”. The study of EU-Russian co-operation conducted by the new partner complements the comparative research which is being done by the sub-project and the Integrated Project as a whole. The NEWGOV project benefits from the expertise of the new partner specialised in the co-operation between the EU and Russia.

NEWGOV and CONNEX will jointly organise a dissemination conference in April 2008 in Brussels (D22). The main aims of this joint conference is

- to present the main achievements of the CONNEX Network and the NEWGOV project to practitioners and stakeholders in the Brussels arena, that is the European Institutions and other Brussels-based institutions and NGOs;
- to present and discuss controversial findings and by doing so question conventional wisdom and dissipate erroneous assumptions;
- to demonstrate the value of spending money for social science research on EU governance and legitimacy and reflecting on the merit of large research instruments such as CONNEX and NEWGOV.

From the two projects, about 6 to 8 researchers will participate. Target audience would be practitioners from the institutions (both EU and national), multipliers such as European Think Tanks (Notre Europe, Friends of Europe, CEPS, etc.), interest groups, as well as journalists. Participants outside DG Research and the responsible cabinets of Commissioners will be recruited by Ms. Ana Aguado Cornago, Adviser to the President of the EUI for Communication, Public Relations and Fund Raising Affairs, and liaison officer of the EUI in Brussels. She should target potential participants, the ‘users’ and ‘customers’, in close cooperation with Ms. Angela Liberatore, responsible Scientific Officer for NEWGOV and CONNEX at DG Research.

The External Newsletter and the Policy Brief series, specifically produced to aid the dissemination of research results to a broader academic and especially practitioner community beyond the Consortium, will continue. NEWGOV researchers will also continue to disseminate the results of their research outside the NEWGOV framework, be it at conferences, also of other FP6 projects, or for example by acting as experts in workshops organised by the European institutions or other stakeholders.

Finally, provisions have already been made for the sustainability of the research output and cooperation with partner projects beyond the project duration. In particular, the project website [www.eu-newgov.org](http://www.eu-newgov.org) will remain online for at least another four years (at least up to 2012), hence the rich project output database will remain available for the public. Equally, NEWGOV and CONNEX are currently drafting a legal framework for the continuation (or at least sustainability) of the joint publications, that is the EUROGOV Working Paper Series and the LIVING REVIEWS. These three sources will also continue to be online thanks to the IConnectEU initiative, an SSA funded by FP6. Finally, the NEWGOV co-ordinator, the European University Institute, will ensure, not least by its own contact database, that the network of NEWGOV researchers will continue to operate. It is envisaged to link up with the other projects’ contact databases of the IConnectEU Consortium.

## IV. Scientific Deliverables during the third year

(for direct download click on those marked with ‘\*’; other deliverables are not publicly available)

### Cluster 1: Emergence, Evolution and Evaluation

#### Project 1 and Cluster 1: The Evolution and Impact of Governing Modes

##### *Cluster One Interim Report Year 2*

*Udo Diedrichs and cluster 1 partners*

The deliverable provides a summary of the research activities carried out in the second project year by cluster 1. It feeds into the general second annual project report of the NEWGOV project.

##### *Preparatory Meeting for Empirical Research and Publication*

*Wolfgang Wessels, Udo Diedrichs*

In preparation for publication of an edited volume presenting the research results of the NewGov project, a number of review meetings provide the researchers concerned with the possibility to present their papers to a group of colleagues. As these papers will serve as a backbone of the volume's respective chapters, the comments given by their peers form a useful source of feed-back for constantly revising and refining the research process. This feed-back becomes even more valuable through the presence of experts and stakeholders such as EU officials and representatives from NGOs at those review meetings, who are able to add their particular perspective into the comments on the papers.

Given the large number of chapters envisaged and policy fields scrutinized, not all papers can be reasonably presented during one session. At the meeting of November 3rd, 2006, the contributions of Jörg Monar (Justice and Home Affairs), Wolfgang Wessels and Udo Diedrichs (Common Foreign and Security Policy), and David Natali (Pensions Reform and Social Dialogue) were reviewed and discussed. A number of experts and stakeholders from various EU institutions were also present and gave comments from their 'inside' perspective.

A second set of contributions to the volume will be discussed during the next practitioner forum in early 2007.

#### [Comparing Modes of Governance: CFSP and JHA in Perspective\\*](#)

*Udo Diedrichs*

Since the adoption of the Treaty of Maastricht, the evolution of the second and third pillars of the EU has attracted a high degree of interest; what seemed to be a case of parallelism in terms of institutional and procedural features, became a divorce in 1997, when substantial parts of the area of justice and home affairs were communitarised, while CFSP remained basically intergovernmental, enriched by a number of institutional and procedural innovations. In terms of the living constitution, both sectors have revealed a rather policy-specific development, making it difficult even to compare the remaining third pillar, i.e. the police and justice cooperation in criminal matters, to the CFSP. Governance in the two areas follows a policy-specific logic, although overarching trends in terms of the increasing degree of differentiation, growing links between intergovernmental and EC spheres of action, and dynamics towards mixed modes of decision-making, may be observed.

#### [Pensions OMC's influence on national reforms\\*](#)

*David Natali*

This article seeks to analyse whether the pensions OMC is compatible with or useful for pension reform in two distinct institutional and political environments. Pension systems can be differentiated and indeed analysed along various dimensions, including institutional mechanisms used to cover the old-age risk or the actors involved in devising pension reform policies. In this article, we

adopt the distinction made by Bonoli (2003) between two main clusters, social insurance systems and multi-pillar systems, differentiated according to the interaction between public and private pension schemes. We specifically analyse France as representative of the former and the Netherlands as representative of the latter.

### [New Modes of Governance in the EU Structural and Cohesion Policy and the Case of the New Member States\\*](#)

*Kálmán Dezséri and Krisztina Vida*

The present working paper analyses the emergence, evolution and evaluation of governance modes – including new or innovative modes – of cohesion policy at the EU level, as well as at the level of eight new member states (i.e. Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Estonia, Latvia and Lithuania). The aim was to conceptualise the governance experience of this policy area and its implementation at the new member states' level. This study is mainly based on the findings and lessons of six background papers produced in the framework of the NEWGOV project – this is the reason why the majority of the references in the present text are direct references to the background papers.

### [Governance in the Justice and home affairs domain: From “softer” to “harder” modes?\\*](#)

*Joerg Monar*

Since the 1990s there has been an evolution towards the use of “harder” modes of governance in the JHA domain, but this evolution has been slow and has not put an end to the very extensive use of non-binding texts and procedures with a lower degree of hierarchy in decision-making and of uniformity in implementation. In spite of a proliferation of objectives and a considerable output over the last few years EU governance in this domain is clearly not an unqualified success story, and there are substantial performance problems both as regards decision-making and the implementation of adopted measures, especially at the national level.

The initiatives of the European Commission to use “passerelle” provisions can be seen as an attempt to replace the slow and uneven evolution from “softer” to “harder” modes of governance in the JHA domain by a sort of major regime change in favour of the latter. This appears not only as politically premature – at least as long as the fate of the Constitutional Treaty remains undecided – but also potentially counterproductive as forcing “hard” EU governance on Member States in highly sensitive policy fields might well reduce the willingness of at least several of them to develop and engage in substantial common policies. “Soft” governance modes have contributed much to the development of the “area of freedom, security and justice”, and even if there are problems of effectiveness in the JHA domain, they should only be replaced by “harder” modes when, where and to the extent to which the common political will of the Member States is sufficient to sustain their use.

### [Governing Modes in Social and Environmental Policies\\*](#)

*Holger Bähr, Oliver Treib*

There are various concepts of governing modes in the existing literature. In this paper we provide an overarching scheme to classify these concepts and discuss how this scheme may help improve the understanding of policy-making at both the EU level and the national level. Our classification scheme builds on concepts drawn from the study of domestic politics, which also apply to the EU level. In the existing literature, governing modes are conceived as coordination and steering both at a general societal level and in specific dimensions of polity, politics, and policy. As far as general governing modes are concerned, the literature frequently refers to the triad of hierarchy, network, and market. Specific governing modes describe certain aspects of the process of policy-making. They are conceived as modes of interaction (polity), forms of interest intermediation (politics), and types of policy instruments (policy). General governing modes cannot be observed directly but we argue that observable specific governing modes reflect general modes of coordination and steering.

Empirically, we describe the governing modes as classified in our scheme in two European policy areas: EU social policy and EU environmental policy.

[The Impact of Intergovernmentalism on the Evolution of CFSP\\*](#)

*Udo Diedrichs*

Decision-making in CFSP has been traditionally summarised under the heading of intergovernmentalism, marking a sharp difference to Community-based procedures in the first pillar of the EU. Still, this characterization has increasingly become problematic in recent years. In the framework of a basically intergovernmental institutional design, a number of different ways and modes of policy-making have emerged which are increasingly converting the legal and living constitution of CFSP into a "mixed-mode" policy area in which intergovernmental bargaining co-exists with emerging processes of coordination and market regulation.

[2nd NEWGOV Practitioner Forum: Old and New Modes of Governance: Effectiveness, Efficiency, Legitimacy\\*](#)

*Wolfgang Wessels, Udo Diedrichs and Tobias Kunstein*

The 'Practitioners Forum', held on 3 November 2006 in Brussels, brought together researchers and EU officials in a workshop focusing on Justice and Home Affairs, Common Foreign and Security Policy, and Social Dialogue and Pensions Reform. An interesting aspect of the meeting was that all projects presented are working in a very empirical manner. This should be further stressed to exploit the comparative perspective NEWGOV offers. Focusing on the Emergence and Evolution of Governing Modes, typical patterns and specificities of sectors will form a framework to comparatively assess different modes in terms of their legitimacy, effectiveness and efficiency. Adding together the results of the single policy fields, NEWGOV will provide deeper insight in the evolution of the whole EU system.

[Policy Memorandum on the Evaluation of Modes of Governance in Budgetary Policy\\*](#)

*Kálmán Dezséri*

Similarly to any national budget, the European Union budget clearly has a redistributive function, which is to serve common policy aims defined jointly by the member states. One of the most important issues of the redistributive effects of the EU budget is how to set member states' fiscal balances in a manner that is consistent with equity criterion without sacrificing other economic policy goals.

*Fourth Set of Indicators*

*Udo Diedrichs, Wolfgang Wessels*

The Fourth Set of Indicators/Variables subsumes the empirical categories established during the NEWGOV project's lifetime, by which EU governance can be classified and built into typologies. The scope of indicators has been broadened to include forms of government by delegation, such as agencies. The choice of indicators reflects the need to facilitate empirical investigation without foreclosing the definition of old and new modes of governance. Instead, a number of tools have been offered which are considered as useful for the systematic empirical analysis of EU governance. This list of - quantitative and qualitative - indicators is not exhaustive.

[Policy Memorandum: Governance in the Justice and home affairs domain: From 'softer' to 'harder' modes?\\*](#)

*Jörg Monar and Anya Dahmani*

The extensive use of 'softer' modes of governance is one of the distinctive features of EU governance in the JHA domain. It can be regarded as one of the reasons for the EU's current problems of effective implementation in the JHA domain. Yet other factors – such as an often lacking sufficient common political will – are at least equally important, and the less hierarchical and more flexible 'softer' modes of governance have contributed over the last few years to a significant extension of

policy objectives and cooperation mechanisms in the most sovereignty sensitive fields of the JHA domain. An ambitious initiative of the European Commission of June 2006 aimed at a ‘hardening’ of EU governance, primarily through a ‘communitarisation’ of the current ‘third pillar’ fields, has been shelved. The Reform Treaty package agreed on in June 2007 goes a long way in the same direction, but it provides a number of checks and balances which mitigate the ‘hardening’ effect. The Reform Treaty provisions – if adopted as they currently stand – will mark a substantial step towards ‘harder’ governance in the JHA domain and may well increase the effectiveness of EU governance both in terms of decision-making and implementation, but they will come at a price in terms of further fragmentation, and any potential reduction in the use of ‘softer’ governance instruments is not necessarily going to be made up by an equivalent higher use of ‘harder’ instruments.

#### [Policy Memorandum on Governing Modes in Social and Environmental Policies\\*](#)

*Holger Bähr, Oliver Treib*

“Governance” has become one of the fashionable catchwords among both scholars and political practitioners. But what does the concept really mean? Does governance refer to specific institutional forms of decision-making, to particular types of state-society relations, or to certain techniques of achieving policy goals? We argue that governance covers all of these phenomena at the same time. Given the multi-faceted character of the concept, however, it is of utmost importance to clearly distinguish the different dimensions of governance, and the individual modes of governance belonging to any of these dimensions, in order to avoid conceptual and theoretical confusion. In this paper, therefore, we provide an overarching scheme to classify different concepts and modes of governance and discuss how this scheme may help improve our understanding of policy-making at both EU and national levels.

Our classification scheme builds on concepts drawn from the study of domestic politics. In the existing literature, governing modes are conceived as coordination and steering both at a general societal level and in specific dimensions of polity, politics, and policy. As far as general governing modes are concerned, the literature frequently refers to the triad of hierarchy, network, and market. Specific governing modes describe certain aspects of the process of policy-making. They are conceived as modes of interaction (polity), interest intermediation (politics), and policy instruments (policy). General governing modes cannot be observed directly but we argue that observable specific governing modes reflect general modes of coordination and steering. In order to illustrate the individual modes of governance and their relevance for EU policy-making, we map the governing modes in two policy areas of the European Union (EU), social policy and environmental policy.

#### [Policy Memorandum on Cohesion Policy\\*](#)

*Krisztina Vida*

In the framework of the NEWGOV Integrated Project the research team of the Institute for World Economics of the Hungarian Academy of Sciences has been detecting and analyzing the emergence and evolution of new modes of governance (NMG) under the European Union cohesion/structural policy in the eight new Central European member states. In parallel of the country studies a review on the emergence, evolution and evaluation of the phenomenon of NMG within this policy field at the Community level has also been elaborated. The major findings of the analytical work can be found in the working paper written by Kálmán Dezséri and Krisztina Vida, senior research fellows of the Institute (Working Paper D48).

#### [Policy Memorandum: The Impact of Intergovernmentalism on the Evolution of CFSP\\*](#)

*Udo Diedrichs*

Different forms of decision-making in CFSP have been traditionally summarised under the heading of intergovernmentalism. This framework of intergovernmentalism constitutes a distinct contrast to Community-based procedures in the first pillar of the EU. However, due to the emergence of a number of new modes of policy-making in recent years, this theoretical characterization does not

adequately reflect reality anymore. Although CFSP has not developed into a supranational direction as such, both its legal and living constitution increasingly show features of a “mixed-mode” policy area, in which intergovernmental bargaining co-exists with emerging processes of coordination and market regulation.

This Policy Memorandum provides a synopsis of the results presented in more detail in the respective working paper (D46).

[Policy Memorandum on the Evaluation of Governing Modes\\*](#)

*Udo Diedrichs*

This Policy Memorandum draws together results concerning the Evaluation of Governing Modes within Cluster One and presents first comparative findings with a set of conclusions that will serve as a point of reference for the publication of a joint monograph.

[Policy Memorandum - The Influence of the Open Method of Coordination on Pensions\\*](#)

*David Natali*

This policy memorandum seeks to analyse whether the pensions OMC is compatible with or useful for pension reform in two distinct institutional and political environments. Pension systems can be differentiated and indeed analysed along various dimensions, including institutional mechanisms used to cover the old-age risk or the actors involved in devising pension reform policies. The paper does refer to two countries (France and the Netherlands), which are representative of two different pension models, their recent reform record and the potential influence of the EU coordination.

[Policy Memorandum: Emergence and evolution of the European social dialogue\\*](#)

*Philippe Pochet*

If the debates raged around the European Employment Strategy (EES) and more generally on Open Method of Coordination (OMC) and the new modes of governance, less and less attention was paid to social dialogue. An evaluation of the cross-industry and sectoral social dialogue is a difficult task as it is an on-going process with various dimensions. Social dialogue is based on the treaty (Art. 138 and 139) and is generally considered as being part of a hard law approach. Nevertheless, the last cross-industry agreement dated back to 1999 and only few binding agreements have been signed at sectoral level. Since 2000, the agreements signed were autonomous agreements which look like a hybrid between soft and hard law both by flexibility of the content and the nature of instruments to implement the EU agreement.

To improve the knowledge of all these elements, the Observatoire social européen has created a database including all the joint documents signed by the social partners at European level covering the 31 official sectoral committees and the interprofessional social dialogue (since 1978). From this quantitative analysis we can detect certain overall trends on the emergence and evolution of the sectoral social dialogue and compare its dynamics with those of the interprofessional dialogue.

*Database on Governing Modes CODE (Cologne Database on the European Union) – Version 1 with more substantial content*

*Wolfgang Wessels, Udo Diedrichs, Tobias Kunstein*

The CODE database provides an opportunity for undertaking empirical research on governing modes in the European Union. Version 1 has made available online data on the secondary legal output and on different categories of legal acts, allowing for a systematic investigation on the legal profile and the use of certain instruments in a number of EU policy areas. While the bulk of raw data for the second section on primary law is already available, the user interface for online access will be completed only by the end of August 2007.

[Review of cluster 30 months results\\*](#)

*Wolfgang Wessels, Udo Diedrichs, Tobias Kunstein*

During the plenary conference of the NEWGOV consortium at the EUI Florence, 31 May – 1 June 2007, the 30 months results of cluster one and their implications for the overall cluster perspective on Modes of Governance were discussed. In view of the planned joint publication, the participants presented their ideas for the respective chapters and gave an outlook for the remaining research steps. There was general agreement that the cluster's theoretical and empirical work on a vast array of forms of governance is of high relevance and has produced interesting results over the past 30 months.

[Database on Governing Modes CODE \(Cologne Database on the European Union\) – Final version\\*](#)

*Wolfgang Wessels, Udo Diedrichs, Tobias Kunstein*

The CODE database provides an opportunity for undertaking empirical research on governing modes in the European Union. Version 1 has made available online data on the secondary legal output and on different categories of legal acts, allowing for a systematic investigation on the legal profile and the use of certain instruments in a number of EU policy areas. The pilot version of CODE was launched on 8 March, 2006 (project month 19) and continuously updated. During year 3 of NewGov, the project team developed a second section of the database, focusing on primary law. Using Eur-Lex, a survey of the legal basis of secondary law instruments was conducted. The goal is establish a means for mapping all primary (and, to a lesser extent, secondary) law instruments used as legal basis for secondary legislation in EU policy fields.

We expect the database, on the one hand, to further our understanding of Governing Modes by providing empirical support (or counter-arguments) regarding our theoretical hypotheses developed within the NewGov Project. On the other hand, the goal is to create a tool on EU governance for the research community. In both regards, CODE assists in revealing quantitative patterns of secondary law in a given policy area. Similarly – on a primary law level – it allows for easy identification of both general modes of governance and specific legal provisions that form the legislative basis for each sector.

*The Dynamics of Change in EU Governance EU: Policy-making and System Evolution – Draft for a Publication*

*Wolfgang Wessels and Udo Diedrichs*

Research conducted by investigators in several sub-projects in the framework of NEWGOV Cluster One has produced a multitude of interesting results. As a means of accentuating the horizontal dimension of the Cluster's work, these results will be published as a joint volume. The volume on "The Dynamics of Change in EU Governance EU: Policy-making and System Evolution" will address three major tasks: First, it will link the research on modes of governance to the analysis of the basic legal, institutional and procedural features of the EU system in an evolutionary perspective; second, provide analyses of different policy areas in a comparative perspective; and third, relate the results of our research to the theoretically relevant approaches within the Cluster and the Consortium in order to answer the question whether it is possible to draw a line between the dynamics of EU governance modes and general assumptions on the evolution of the EU system as a whole. Thus, the volume plays an important role in the Cluster's dissemination strategy.

*Workshop Meeting: Particularly to prepare and allocate chapters for Monograph on the Emergence, Evolution and Evaluation of Governing Modes*

*Wolfgang Wessels and Udo Diedrichs*

During the workshop meeting on 31 May 2007 in Florence, a draft table of contents for the joint monograph of Cluster One was discussed and endorsed by the participants. Based on these discus-

sions, the profile of the volume is elaborated in more detail in NEWGOV Deliverable 01/D70 “Draft structure for the Volume on Governing Modes”.

*First versions of chapters for joint monograph - Abstracts and Outlines*

*Wolfgang Wessels et al*

The first versions of chapters for the Cluster One joint monograph outlines content and chain of reasoning in view of the volume’s draft structure discussed at the Firenze workshop. During year 4 of the NEWGOV project, the chapter outline will be elaborated into a comprehensive text (second version of the chapters for joint monograph, due in month 42), in particular taking into account comments by project partners and practitioners made at previous and upcoming meetings. Expected date of publication is month 48 (August 2008).

Project 2: The Open Method of Co-ordination

[The European Parliament as a Legislator: A Historical Survey\\*](#)

*Maddalena Gherardi*

The paper gives an overview of the development of the European Parliaments role as a legislator from 1952 up to the provisions of the Treaty Establishing a Constitution for Europe of 2004. It serves as a background paper for the emergence and evolution of governing modes across policy fields dealt with in Cluster 1 of the NEWGOV Project.

[Working Paper: Comparative Perspectives on OMC in Information Society in Ireland and France\\*](#)

*Colin Shaw, Brigid Laffan*

In EU parlance, ‘Information Society’ designates policy areas covered by both Community and exclusively national competence. Consequently, the field is characterised by strong regulatory and weak voluntary governance. Taking the national experience of telecommunications legislation and regulation (as the ‘backbone of Information Society policy), an area of strong Community regulatory competence, and the eEurope agenda, an area dominated by weak voluntary action and the open method of coordination (OMC), this working paper will compare case studies from France and Ireland. After an overview of Community-level action in both areas of hard regulation and soft coordination, we will show how the implications of regulation have knock-on effects on coordination attempts and that far from achieving complementary goals with asymmetrical means, hard coordination can sometimes undermine attempts at overall coordination.

[Policy Memorandum on Evaluation of OMC in Research Policy\\*](#)

*Colin Shaw, Brigid Laffan*

The OMC process, as applied to R&D policy making, has failed to deliver on many of its ambitious promises. These were (a) 3 percent of EU GDP invested in R&D and (b) the creation of a European Research Area. However, modest shifts in national policy making do indicate a convergence towards a less differentiated research space in the EU. We analyse the policy process and assess the ensuing objectives, asking whether they were credible or realistic. After presenting empirical evidence for stasis and change, we summarise arguments for and against policy coordination in the field of R&D.

*First versions of chapters for joint monograph - Abstracts and Outlines*

*Colin Shaw, Brigid Laffan*

The first versions of chapters for the Cluster One joint monograph outlines content and chain of reasoning in view of the volume’s draft structure discussed at the Firenze workshop. During year 4 of the NEWGOV project, the chapter outline will be elaborated into a comprehensive text (second version of the chapters for joint monograph, due in month 42), in particular taking into account com-

ments by project partners and practitioners made at previous and upcoming meetings. Expected date of publication is month 48 (August 2008).

### Project 3: Arguing and Persuasion in EU Governance

#### [Policy Memorandum – How to improve the quality of EU treaty negotiations?\\*](#)

*Mareike Kleine and Thomas Risse*

How can the quality of EU treaty negotiations be improved? In a recent paper we broached this subject (Risse and Kleine 2007) when assessing the legitimacy of treaty revisions at the example of traditional Intergovernmental Conferences (IGCs) and the Convention method. We argued that the legitimacy of decision-making may vary considerably with the institutional set up in which processes of choice take place. In our comparison we found that the Convention method substantially improved the prospect for deliberation in decision-making, and thus led to both a more legitimate and qualitatively better outcome.

In this paper we revisit this question, but broaden the scope of our analysis to the preparation, negotiation, and ratification stage of the five treaty revisions the EU has undergone within the last 20 years. Section 1 introduces criteria for assessing the “quality” of treaty-revisions. In the light of these criteria, section 2 analyses the three stages of treaty revisions. The last, third section discusses factors that determine the quality of treaty revisions, and, on that basis, makes more specific recommendations for improving the quality of treaty negotiations.

#### *First versions of chapters for joint monograph - Abstracts and Outlines*

*Mareike Kleine and Thomas Risse*

The first versions of chapters for the Cluster One joint monograph outlines content and chain of reasoning in view of the volume’s draft structure discussed at the Firenze workshop. During year 4 of the NEWGOV project, the chapter outline will be elaborated into a comprehensive text (second version of the chapters for joint monograph, due in month 42), in particular taking into account comments by project partners and practitioners made at previous and upcoming meetings. Expected date of publication is month 48 (August 2008).

### Project 4: Legal Perspectives on Democracy and New Modes of Governance

#### [Meroni Revisited – Empowering European Agencies between Efficiency and Legitimacy\\*](#)

*Stefan Griller and Andreas Orator*

While decentralisation and delegation of powers is not a novel phenomenon in EU Member States, an increasing trend of creating such entities and disposing them of public authority on EC and EU level can be assessed. European agencies are increasingly resorted to as an institutional answer for demands of increased efficiency, flexibility and visibility. The paper tries to investigate the “delegation issue” by identifying and differentiating the relevance of ECJ case law (Meroni, Romano) and discuss the underlying assumptions of legitimacy.

The paper shows that general constraints to transposability of the Meroni doctrine do not exist and that, while it is conceivable that the courts would change their reasoning, Meroni remains “good law”. Following the basic assumption of our first working paper (D32a) that the more “intensive” the instruments a European agency disposes of the higher the necessity to legitimize the powers conferred to it, the authors describe and ponder more generally ways of legitimizing public authority. Following Scharpf’s widely accepted dichotomy of input-oriented and output-oriented legitimacy, two respective attempts to legitimize European agencies shall be presented.

The authors would like to submit that the very strict limits to the delegation of powers to agencies as established by the ECJ’s jurisprudence might be loosened to a certain extent without giving up their legal fundamentals. The basis for such a development would still be input-oriented legitimacy, in other words, an effort striking the balance between on the one hand side preserving the function-

ing of the transmission belt securing the implementation of measures which were adopted by representatives of the people, and on the other hand flexibility in the interest of efficient administration.

[Legal Evaluation of the Selected New Modes of Governance: The Conceptualization of Self- and Co-Regulation in the European Union Legal Framework\\*](#)

*Egle Svilpaite*

Since a few years, the European Commission has been engaged in vigorous promotion of alternatives to legislation within the broader agenda of better law-making. The belief is that self- and co-regulation could be successfully employed by the EU alongside the traditional Community Method to achieve better effectiveness, flexibility, expertise in regulation, and to integrate society at large, while at the same time simplifying law-making activities and legislation. Drawing on the Interinstitutional Agreement on Better Law-Making, policies and documents of the European Union institutions, this paper aims to address the degree of the conceptual integration of self- and co-regulation as a new European regulation mechanism into the EU legal framework.

The paper starts with a short outline of the evolution of the legal framework for self- and co-regulation in the EU law. It identifies which private practices qualify for the integration into the EU regulatory framework under the definitions provided by the IIA. The paper also seeks to clarify what role – alternative or complementary - self- and co-regulation as alternatives to regulation play with respect to the traditional EU legislation. In the end, the paper addresses the possible implications for the wider debate on the new modes of governance which the integration of self- and co-regulation into the EU regulatory framework might have.

[Self- and Co-Regulation Instruments in the EU Legal Framework: Limits and Conditions of Use\\*](#)

*Egle Svilpaite*

The European Commission has been busy lately promoting new alternatives to legislation within the broader agenda of better law-making. The belief is that self- and co-regulation could be successfully employed by the EU alongside the traditional Community Method to achieve effectiveness, flexibility, expertise, and to integrate society at large, while at the same time simplifying Community legislation.

The paper inquires into the limits and conditions imposed on the use of self- and co-regulation by the Interinstitutional Agreement on Better Law-Making, various documents of the European Union institutions and other sources. The content of five main procedural and substantive conditions – compliance with Community law, added value for the general interest, transparency, representativeness and monitoring – is explored in detail along with the precluded areas of their use. In addition, the paper briefly analyses how the integration into the EU legal framework of self- and co-regulation as new European regulation mechanisms reflects and at the same time challenges the institutional balance of the European Union and whether these new modes of governance could lead to shared governance in the EU.

*First versions of chapters for joint monograph - Abstracts and Outlines*

*Stefan Griller and Andreas Orator*

The first versions of chapters for the Cluster One joint monograph outlines content and chain of reasoning in view of the volume's draft structure discussed at the Firenze workshop. During year 4 of the NEWGOV project, the chapter outline will be elaborated into a comprehensive text (second version of the chapters for joint monograph, due in month 42), in particular taking into account comments by project partners and practitioners made at previous and upcoming meetings. Expected date of publication is month 48 (August 2008).

*First versions of chapters for joint monograph - Abstracts and Outlines**Anne Peters and Egle Svilpaite*

The first versions of chapters for the Cluster One joint monograph outlines content and chain of reasoning in view of the volume's draft structure discussed at the Firenze workshop. During year 4 of the NEWGOV project, the chapter outline will be elaborated into a comprehensive text (second version of the chapters for joint monograph, due in month 42), in particular taking into account comments by project partners and practitioners made at previous and upcoming meetings. Expected date of publication is month 48 (August 2008).

**Cluster 2: Delegation, Hierarchy and Accountability***Cluster 2 Workshop – New Modes of Governance in the Shadow of Hierarchy: Accountability and Legitimacy - 30-31 March 2007**Adrienne Héritier*

The fourth workshop of NEWGOV cluster 2: Delegation, Hierarchy and Accountability took place at the European University Institute, 30-31 March 2007. For the first time, it has brought together members of cluster 2 with those of the NEWGOV Democracy Task Force in order to discuss accountability and legitimacy issues of new modes of governance. The exchange of ideas between the task force and members of the cluster proved to be extremely insightful and enriching, inasmuch as concrete empirical findings in the projects were confronted with theoretic and normative standards. A follow-up on the meeting is envisaged for the remainder of the NEWGOV project and may materialise in a joint publication.

*Cluster Workshop: New Modes of Governance - A Trade-Off between Efficacy and Legitimacy?**Adrienne Héritier*

The meeting took place during the 3rd NEWGOV Consortium Conference, 31 May – 1 June 2007, and has build on previous research within the cluster which focussed on new modes of governance and policy efficacy. It examined whether new modes of governance as such contribute to the efficacy of policy-making, or whether they need the shadow of hierarchy in order to effectively deal with the problems they are supposed to solve. Expanding the scope of the research questions, the cluster participants have now considered accountability and legitimacy issues posed by new modes of governance. Contributions came from NEWGOV cluster 2 projects and the Democracy Task Force.

Project 5: New Modes of Governance in the Shadow of Hierarchy*New Modes of Governance in the Shadow of Hierarchy: Self-Regulation by Industry in Europe**Adrienne Héritier and Sandra Eckert*

In technically complex areas, political actors increasingly rely on private actors to shape public policy. This is due to the greater expertise of the private actors, mostly industry. This article theorizes and empirically investigates the conditions under which self-regulation by industry emerges in environmental policy at the European level and asks how effective it is. Is 'a shadow of hierarchy' needed to ensure the emergence and effectiveness of voluntary agreements? We show that the willingness to engage in self-regulation is prompted by a regulatory threat with governmental action. Once legislation has been pre-empted, environmental self-regulation is implemented under a weak 'shadow of hierarchy'. We identify the causes of this 'weak' control and explain the differential performance in the two sectors on the basis of different market incentives.

*European Energy Regulation I: Research Questions and Empirical Mapping**Adrienne Héritier and Sandra Eckert*

In this work package, we are investigating a new policy field which is energy policy. The objective is to identify and evaluate the role new modes of governance play in the field of energy regulation. Given we deal with the governance of a multi-faceted policy which, at a more general level, has been well-researched by political scientists, it is important to narrow down the empirical field of investigation. Following up on our NEWGOV case studies on industry self-regulation in the field of environment, we are particularly interested in elements of private regulation. Thematically, we suggest to look at two interrelated cases, which are cross-border tariffication and interconnection capacity. Actor-wise, specific attention will be paid to Transmission System Operators (TSOs).

This first deliverable consists of two parts: in a first part we will set out our field of research interest and formulate the major research questions. In doing so, we will explain why it is not of much added value to study regulatory networks as originally envisaged. In the second part we will engage in an empirical mapping exercise. We will present the set of actors which needs to be taken into account when studying European energy regulation and will situate TSOs in this context. Then we shortly present the two cases we intend to study.

Project 6: After Delegation: Regulatory Agencies & Network Governance*Regulatory Networks Questionnaire**David Coen and Mark Thatcher*

This deliverable gives an overview on the questionnaire phase of the project that ran from December 2006 to May 2007. The questionnaire was distributed to members of the Committee of European Securities Regulators (CESR), the European Regulators Groups (for Telecommunications, ERG) and the Committee of European Energy Regulators (CEER). After several reminders, we can currently report a response rate of 48% for all networks surveyed (37% CESR, 58% ERG and 48% CEER). The data from the questionnaire will be used to feed into the theoretical ground work that has been laid in previous project deliverables and will form the basis for the up-coming empirical papers. In particular, the questionnaire data in combination with interviews will enable more elaboration on the practical functioning of the networks, how they are seen by the different NRAs and the extent to which they have shifted influence over the regulatory structure away from national governments, NRAs and the European Commission.

Project 7: Governance and the EU Securities Sector*The Lamfalussy Reform in the EU Securities Markets: Fiduciary Relationships, Policy Effectiveness and Balance of Power\***Christian de Visscher, Olivier Maiscoq, and Frédéric Varone*

On July 17, 2000, the Economics and Finance Ministers Council appointed a Committee of Wise Men on the Regulation of European Securities Markets, chaired by Alexandre Lamfalussy, former President of the European Monetary Institute. It proposed a four-level system to improve the legislative process, while ensuring a democratic and institutional balance. Our paper questions how far two basic modes of delegation – agency and trust relationships – are appropriate to interpret the new structure set up by the Committee. It formulates hypotheses as regards concrete implications of the Lamfalussy process both in terms of policy effectiveness, and in terms of changes in the balance of power between Community institutions. Evidence based on the four main directives adopted according to the new procedure seems to validate the agency hypothesis, namely that the Lamfalussy process has reduced the average time taken in order to negotiate and adopt the first framework directives at Level 1 compared to the normal co-decision procedure, and that it has facilitated the removal of bottlenecks in the process through parallel working at the levels 1 and 2. In this sense, we may conclude that delegation has enhanced the policy effectiveness in the securities sector. But it is

much more difficult to assess the validity of the trustee hypothesis, namely, whether the Commission and the Committee of European Securities Regulators (CESR), in fact, act as trustees of the Member States for the benefit of market actors. For the time being, whether CESR might evolve into a European securities regulator remains an open question. Article to be published in. *Journal of Public Policy*, special issue coordinated by Adrienne Héritier & Dirk Lemkuhl.

[The Lamfalussy Process and the EC Institutional Balance: From Comitology Procedures to Policy Levels\\*](#)

*Christian de Visscher, Olivier Maiscoq*

The aim of this article is to assess whether or not the Lamfalussy reform in the securities sector has had an impact on the institutional relationship between Commission, Council and European Parliament regarding comitology. The first part presents the four-level approach of the Lamfalussy reform as endorsed by the European Council of Stockholm; the reason thereof being that the first proposals following the Lamfalussy process were submitted after that European Council, but before the European Parliament endorsement. In the second part, the main issues of comitology are explained. Based on official documents, the third part identifies the conceptions of the legislative institutions on this policy stage. These conceptions are then, in the fourth part, examined regarding their practical implementation on cases before and after the reform. In conclusion, it is shown, first, that there has been a change of the institutional conflict. This change occurred both in terms of the scope of the claims: from a choice between comitology procedures to a choice between policy levels, namely implementing measures and legislation, and in terms of the actors concerned, mainly the European Parliament. Next, it is asked whether the relationship between the conceptions of the institutions and their practical implementation is blurred by risk-aversion. Paper to be presented at the EGPA Conference, Madrid, September 2007, Study Group on Intergovernmental Relations.

[The Reform of Comitology and the Parallel Reform of the European Financial Services Sector\\*](#)

*Josefin Almer*

On 13 June 2006 representatives of the Commission, the Parliament and the Council agreed on an amendment of the so called comitology decision introducing a new comitology procedure; the regulatory procedure with scrutiny. This new procedure will put the European Parliament on an ‘equal footing’ with the Council regarding the supervision and control of delegated legislation to the Commission in the field of co-decision. The purpose of this article is to try and answer the following questions: What circumstances made the new deal on comitology possible? What were the incentives for the Council? In this article it is argued that it was the parallel development in the field of financial services that gave the European Parliament the ‘weapon’ it needed to make the Council accept an agreement on comitology.

In order to set a common frame of reference for the rest of the text the article will begin with a short background on comitology in general and the stand of the European Parliament on comitology in particular (part 2). Thereafter, in part 3, there will be a more detailed description of the development in the field of financial services focusing on the so-called Lamfalussy report on the securities market. In this article it is argued that it was the “Lamfalussy deal” that made the “comitology deal” possible and some extra attention will therefore be given to how the “Lamfalussy deal” came about. In part 4 of the article, a brief account is given of the reform of comitology and the debate on the future of the Union that led to the signing of the Constitutional Treaty. Finally, in part 5, some conclusions will be drawn on why and how the comitology deal came about seen in the light of developments in the area of financial services.

## Project 8: European Public Services Regulation

### [Book: The electricity sector in Spain\\*](#)

*Leonor Moral Soriano*

The book *El sector eléctrico en España. Competencia y servicio público*, Comares, Madrid, 2007, edited by López, María Asunción Torres, Estanislao Arana García and Leonor Moral Soriano, is a deliverable initially not foreseen in the research project. It gathers the contributions made by participants of the first workshop held in 2006 (D3).

### [Workshop\\*](#)

*Leonor Moral Soriano*

The second workshop of the EUROSERVICE-Project took place at the University of Granada on the 26th and 27th of March, 2007. Two topics were discussed. The first topic was the study and validation of the European Community energy policy, especially focusing on the new package of measures adopted on the 10th of January 2007. Due to the fact that two of the main pillars of this package of measures are sustainable development and security of supply, the second topic of our workshop was the use of renewable energies, particularly wind power.

The Workshop on the EU energy policy has helped to define two research lines closely related to the NEWGOV project. The first refers to the means that the European Commission will use to try to make the member States achieve the objectives and action plans. These objectives and plans are not binding because the European Union lacks specific powers in relation to the common energy policy and because the legal basis of the internal market has not achieved a genuine common energy market. Furthermore, the communitarian objective of encouraging independent regulatory authorities conflicts with the German Constitution and the Spanish Law which prevent these authorities from being independent and from having regulatory capacity. This involves a study of the internal laws which hinder the communitarian policy drawn up by the European Commission with regards to energy.

## Project 9: Choice and Combination of Policy Instruments

### [Research report on the europeanisation of Environmental Policy Instruments: The limited effects of instrumental innovation in the case of France\\*](#)

*Charlotte Halpern*

Since the late 1980s, "new" policy instruments, based on non-hierarchical steering modes, have been introduced in most policy areas at the EU level and in its member States. They aim at improving both policy effectiveness (input legitimacy) and democratic accountability (output legitimacy). However, the development of "new" policy instruments such as benchmarking, mainstreaming or the open method of coordination, to name a few, raises the issue of coordination and integration in existing sets of instruments repertoires at the EU level. It also raises the issue of policy change as a possible result of their implementation.

In this article, we aim at critically examine the development of "new" policy instruments in the environmental policy field. We argue that policy instruments are not neutral, they are related to politicization processes and have impacts of their own (like institutions) which structure the implementation process and policy outcomes. By developing a longitudinal and sociological analysis of the elaboration, selection and integration of the French environmental policy's instruments since the early 1970s, we will critically examine the link between policy instruments and policy change. This detailed analysis of evolving forms of instrumentation in the environmental policy field should contribute to the understanding of restructuring forms of governance at the EU level along two principal vectors: adjustment and innovation.

## Project 11: The Role of Civil Society in Democratising European & Global Governance

### *Practitioner Workshop: Civil society and Expertise\**

*Stijn Smismans*

In collaboration with the European Economic and Social Committee, we have organised a ‘practitioners workshop’ on ‘Civil Society and Expertise’ on 16 July 2007. The workshop had the objective to create a forum for practitioners to exchange information and experiences on the relation between civil society participation and the provision of expertise in EU policy-making, with equally an element of reference to practices of the WTO. The workshop has brought together 20 representatives from the European Institutions and civil society organisations and social partners, as well as experts engaged in different areas of EU risk regulation, such as food safety, occupational health and safety, environmental and research policy. The experience of the practitioners shows that the two dimensions of better governance, namely enhanced involvement of civil society and reliance on scientific expertise are at times difficult to differentiate and may overlap. On the one hand, civil society actors do not only represent interests, they also provide expertise. On the other hand, ‘scientific experts’ are often linked to particular interests.

### *Report comparing participation in EU and WTO from a normative perspective\**

*Jens Steffek*

The task of this report is a structured comparison of civil society participation in the European Union (EU) and the World Trade Organization (WTO) in the field of biotechnology regulation. More specifically, the goal is to assess to what extent the current participation of civil society organizations (CSOs) fulfils the democratizing potential inherent in new forms of participatory governance. Accordingly, section II of this report takes issue with the democratizing potential of civil society participation in the policy-making process of international organizations. It highlights two different potentials: the function of CSOs as a ‘watchdog’ that observes and critically comments on the policy process; and the role of CSO representatives as deliberators who directly participate in the policy process, thus working closely with national governmental delegates, international civil servants, and experts. Section III presents the results of a comparative study of participatory practices in the EU and WTO. We find empirical evidence in the field of biotechnology regulation that the different roles assigned to civil society organizations as watchdogs and deliberators are hard to reconcile, at least in some cases. This evidence is discussed further in section IV. On the basis of this discussion we conclude that we need to set priorities: we can either have participatory practices that enhance accountability, transparency, and control over governmental actors; or deliberative bodies that contribute to a high level of epistemic quality of decisions. The last section of the report is a normative outlook that highlights the role of CSOs in creating a transnational public sphere, which has been inadequately tackled by the literature so far.

## **Cluster 3: Effectiveness, Capacity and Legitimacy**

### Project 12: Coping with Accession: New Forms of Governance and European Enlargement

*Mapping the Implementation of the Integrated Pollution and Prevention Control (IPPC) and the Water Framework Directive (WFD) in Spain, Portugal and Greece*

*Ana Mar Fernández, Nuria Font, Carrie Romero, Pau Mas, Charalampos Koutalakis*

This paper explores the existing relationship between the notion of state capacity and the implementation of community law in the environmental domain. Its central question is to analyze the point up to which administrative and political capacity of member states are to be held accountable for correct and effective implementation of community law. This paper analyzes the process of implementation of two environmental directives in Spain, Portugal and Greece: the Water Framework Direc-

tive (WFD) and the Integrated Pollution Prevention and Control (IPPC) Directive. More specifically, the paper wants to analyze both the point up to which the aforementioned implementation processes are to be held accountable for the emergence of New Modes of Governance (NMG) and their implications for the state as to its capacity to successfully comply, implement and enforce community legislation.

The paper is divided into two parts. In the first one, the main characteristics of environmental policy-making in Spain, Portugal and Greece will be sketched, with a special emphasis on these countries' political and administrative background and styles. The second part is focused on a more detailed analysis of both Directives. Our analysis has four dimensions: the Directive's content with a special emphasis on member-states requirements, especially in terms of state capacity; the domestic fit of the Directives, especially vis-à-vis the pre-existing legal framework and transposition models of European norms into national law; the analysis of involved actors and mobilized resources in the implementation of the Directives; and last, but not least, the emergence of New Modes of Governance in Spanish, Portuguese and Greek policy-making. The paper ends with some concluding remarks.

*Mapping the Implementation of the Integrated Pollution and Prevention Control (IPPC) and the Water Framework Directive (WFD) in Central- and Eastern Europe*

*Tanja A. Börzel, Aron Buzogany, Sonja Guttenbrunner*

The present paper is a policy study which looks at the implementation of the Water Framework Directive (WFD) and the Directive on Integrated Pollution Prevention and Control (IPPC) in Poland, Hungary and Romania. Special attention is given to the legal and administrative implementation of the Directives as well as on the possibilities of non-state actors to be involved in this process. We find that there is a legal misfit between European and national legislation in all three countries, making EU requirements often clash with domestic regulations. One main difficulty of domestic adaptation lies in the diverging legal approaches implied by the Directives: the rather open, participatory character of the IPPC and the WF Directives are still at odds with the prevailing legalistic and mainly hierarchical command and control approaches of the administrations in the new accession countries. Furthermore, the Directives impose high costs for new Member States, which are typically also faced with the problem of weak national administrations. In all our cases we can find involvement of private actors in the policy making process. However, cooperation between state and non-state actors appears in different forms and remains generally weak.

*State Capacity and the Emergence of New Modes of Governance*

*Tanja A. Börzel*

This paper seeks to identify factors that promote and impede the emergence of new modes of governance focusing on the role of state capacity. The first part of the paper gives an overview of the factors, which our 36 case studies on the implementation of six EU environmental directives in Hungary, Poland, Romania, Greece, Portugal, and Spain have identified as impeding and facilitating the emergence of NMG, respectively. The inductive approach shows that state capacity plays a major role in accounting for why NMG have (not) emerged. In the second part, the paper adopts a more deductive approach developing a theoretical framework that systematically differentiates between different dimensions of state capacity discussed in the literature. We separate the notion of state capacity into several components proposing a three-pronged definition and discussing how each prong may causally relate to the emergence of NMG. The paper concludes with an elaboration on how to operationalize the different capacity variables and the presentation of an analytical grid we will use when we revisit our 36 empirical case studies to explore the explanatory power of our capacity framework.

*New Modes of Governance and Enlargement – The Paradox of Double Weakness\**

*Tanja A. Börzel*

This paper argues that the accession countries of the Southern and Eastern enlargements have lacked two fundamental preconditions for the emergence and effectiveness of new modes of governance: state and non-state actors with sufficient resources to engage in non-hierarchical coordination to improve the effectiveness of public policy. This “governance capacity” has been largely taken for granted by the governance literature since it has almost exclusively focused on Western democracies. In order to develop the argument about governance capacity as a fundamental precondition for new modes of governance, the paper proceeds in the following steps. The first part will lay out the empirical puzzle and the theoretical challenge it poses to the literature on (new modes of) governance. It will also explain the research design of the empirical study and provide the analytical framework that will guide the comparative case studies. Finally, the major findings of the comparative case studies will be briefly summarized and their implications for the literature on (new modes of) governance discussed. The double weakness of transition countries results in a serious paradox for governance research – the stronger the need for non-hierarchical modes of governance, the less favourable are the conditions for their emergence and effectiveness.

*Proposal for a Special Issue: New Modes of Governance and Enlargement\**

*Tanja A. Börzel*

This is the proposal for a special issue submitted to West European Politics. The special issue summarizes some of the major findings of our Project 12 Coping with Accession. It explores the role of new modes of governance in the accession of the Southern European countries in the early 1980s and the Central Eastern European countries in this decade. Our case studies on the adoption of and adaptation to the environmental *acquis communautaire* find only limited evidence for new modes of governance.

We argue that the accession countries of the Southern and Eastern enlargements have lacked the two fundamental preconditions for the emergence and effectiveness of new modes of governance that the governance literature tends to take for granted since it has almost exclusively focussed on Western democracies. The double weakness of transition countries results in a serious paradox for governance research – the stronger the need for non-hierarchical modes of governance, the less favourable are the conditions for their emergence and effectiveness.

*Accession and Effectiveness: New Modes of Governance and Beyond*

*Tanja A. Börzel*

This paper develops a framework to identify factors that promote and impede the effective adoption of and adaptation to the *acquis communautaire* in accession countries. Originally, our study had set out to analyze the role of New Modes of Governance in the implementation of EU policies, using the environment as an example of positive integration, which imposes significant costs on and requires considerable capacities of accession countries. We expected New Modes of Governance to be more likely to emerge since they would help public actors to share or shift the burden of implementation on to private actors. Since we did not find any substantial forms of New Modes of Governance, we decided to broaden our focus on policy effectiveness beyond the role of New Modes of Governance. If it is not New Modes of Governance, which factors do then help to promote the effective adoption of and adaptation to the *acquis communautaire* in our six accession countries?

The paper proceeds in three steps. First, we will discuss the role of new modes of governance for the effective adoption of and adaptation to the *acquis communautaire* in accession countries. Second, we will introduce alternative factors that may influence both the capacity and the willingness of state actors to effectively implement EU policies. Thus, state capacity remains the focus of our analysis. The paper will conclude with a discussion of how to operationalize effectiveness as our dependent variable and the various independent variables specified by our theoretical approach.

### Project 13: The Domestic Impact of European Law

#### *Field Report – European state aid control in the new Member states*

*Michael Blauburger*

This field report builds upon Deliverable D3b on the empirical basis of our project and summarizes the empirical work and some main findings on the impact of European state aid control in the new Member states. As a first step, state aid policies of the new Member states before and after accession are compared with the old Member states and among each other, based on quantitative data from the EU State aid Scoreboard. Subsequently, two country case studies on Poland and the Czech Republic shed more light on the domestic impact of European state aid control and its variation across Member states. The findings confirm a considerable European impact on national state aid policies that has even risen after accession, despite the discontinuation of accession conditionality. However, this impact varies across Member states according to domestic policy preferences and different national strategies in dealing with European state aid control.

#### *Field Report - Bilateral cooperation between old and new Member states concerning the freedom of services*

*Wendelmoet van den Nouland*

This deliverable builds upon deliverable D3b, in which the empirical basis of the research project ‘the domestic impact of European law’ has been laid down. An expansion and elaboration of the empirical ground work presented in D3b, this deliverable shows that primary law (in this case the mutual recognition of services) has a powerful effect on the Member states. Not only because it causes regulatory competition, as has often been suggested in the literature, but also because it causes mutual adaptational processes which are based on attempts to mitigate ruinous competition between them. States may act unilaterally, each on its own accord, or they may enter into informal bilateral talks or even formal agreements, in which they agree upon common goals and practices. These state responses, both unilateral and bilateral, to the challenge posed by mutual recognition constitute a new form of Europeanisation ‘beyond implementation’.

#### *Draft article: Mutual Recognition as a New Mode of Governance*

*Susanne K. Schmidt*

Mutual recognition is generally not mentioned in debates about new modes of governance, though it is an important alternative to hierarchical steering in the form of harmonization. Next to its broad use in the single market, mutual recognition has been transferred to Justice and Home Affairs, and becomes relevant also beyond the European Union. This article discusses in how far mutual recognition meets the criteria of new modes of governance. Comparing mutual recognition to its alternative – harmonization and national treatment – it gives an introductory overview of the characteristics of the principle. Mutual recognition, it is shown, faces significant preconditions as rules to be mutually recognized have to be equivalent; moreover, rules with a high degree of input legitimacy are difficult to be transferred. Yet, mutual recognition also offers significant advantages over its alternatives, making it an important topic for governance research.

The article will appear in the *Journal of Public Policy*, Special Issue May 2007.

#### [Special Issue of the Journal of European Public Policy: Mutual Recognition as a New Mode of Governance\\*](#)

*Susanne K. Schmidt (editor)*

Mutual recognition is generally not mentioned in debates about new modes of governance, though it is an important alternative to hierarchical steering in the form of harmonization. Next to its broad use in the single market, mutual recognition has been transferred to justice and home affairs, and becomes relevant also beyond the European Union. This article discusses how far mutual recognition meets the criteria of new modes of governance. Comparing mutual recognition to its alternative

– harmonization and national treatment – it gives an introductory overview of the characteristics of the principle. Mutual recognition, it is shown, faces significant preconditions as rules to be mutually recognized have to be equivalent; moreover, rules with a high degree of input legitimacy are difficult to transfer. Yet, mutual recognition also offers significant advantages over its alternatives, making it an important topic for governance research.

[\*Article: Mutual recognition 'on trial': the long road to services liberalization\\*\*](#)

*Kalypto Nicolaidis and Susanne K. Schmidt*

In his 1986 White Paper on completing the single market, Lord Cockfield hailed mutual recognition as the miracle formula for the much needed liberalization of services markets. Twenty years later, the European Union is passing a services directive where the principle of mutual recognition is conspicuously absent, at a time when effective liberalization seems ever more necessary. How do we explain this puzzle? Why has mutual recognition been put 'on trial'? We make three interrelated arguments. First, the initial draft directive overlooked the EU's prior experience in this area, which is one of 'managed' mutual recognition. Second, the political context had changed significantly, with enlargement exacerbating the distributional consequences of the adoption of mutual recognition. Third, the final compromise succeeded precisely because it recovers the spirit of managed mutual recognition, albeit in a minimalist form. Nevertheless, final agreement has come at a price: the symbolic sacrifice of the principle of mutual recognition itself. Article appeared in: *Journal of European Public Policy*, 14:5 August 2007, pp. 717 – 734.

Project 14: Smoothing Eastern Enlargement: Independent Regulatory Agencies and Non-Hierarchical Steering

[\*Does delegation to regulatory networks stimulate private participation? - Insights from the IPPC regulatory networks in Greece, Hungary and Poland\\*\*](#)

*Charalampos Koutalakis*

The paper assesses the regulatory effects of participatory environmental networks on the patterns of non-state actors' involvement and the emerging forms of coordination in the context of regulatory policy making. It analyses the case of the IPPC technical working groups as a prominent case of delegation of regulatory competencies to participatory networks. The IPPC directive provides for the institutionalisation of several technical working groups that undertake significant regulatory competencies regarding the definition of best available technology based emission limit values (BAT-Based ELVs) for a wide variety of sectoral industrial activities. Although BAT-based ELVs have no binding character per se, they have a strong normative influence on national permitting systems since they serve as reference documents for domestic permitting systems. Given the highly divergent environmental, economic and technological conditions in different member states and industrial sectors in Europe, the challenges imposed by IPPC participatory demands are high. How do different public and private actors articulate their preferences and interests into these novel policy making structures? What are the emerging modes of coordination between multiple actors with highly divergent preferences over the level of regulatory stringency?

[\*Final Report\\*\*](#)

*Charalampos Koutalakis*

The paper summarises the major findings of the SEEIRA project. The project analyses the role of independent regulatory agencies (IRAs) and networks in rendering the adoption of and adaptation to EU policies in Central Eastern European (CEE) and Southern member states smoother i.e. reducing the risks of implementation conflicts in 'weak' countries already during the pre-accession phase and after accession. Delegation of regulatory competencies to IRAs and networks lies at the core of current innovations in EU governance and experimentation with novel modes of governance that depart from traditional command-and-control uniformly binding regulatory approaches. While the aim

of the project is to identify the conditions under which the departure from traditional modes of conducting pre-accession negotiations is a viable alternative in order to secure effective and efficient internalisation of legal and policy requirements emanating from the *acquis communautaire* in candidate member states it also raises questions related to the emergence of delegation to participatory networks in different policy areas.

### Project 15: Evolving Regional Governance Regimes: Challenges for Institution Building in the CEE Countries

#### [Workshop on the expected effects of the Structural Funds regulations on the evolution of new modes of governing regional development](#)\*

*Laszlo Bruszt*

The Workshop “Governing Regional Development – The governance of regional development and the new Structural Funds regulations in the old and new peripheries of Europe” took place at the European University Institute on 8 and 9 March, 2007, jointly organized by European University Institute SPS Department and the Istituto di Scienze Umane (Firenze). The goal was to have an overall view of what directions the new regulations are taking Structural Funds (SF) policies in terms of the evolution of regional development regimes in CEE countries. Structural Funds regulations have been playing a central role in shaping the evolution of the mode of governing sub-national development by influencing the balance of forces among the actors participating in sub-national development policy and shaping the rules of collaboration among them. The most important lesson of the workshop is that the research has to focus more on the domestic sub-national factors of variation in the mode of governance like the organization and capabilities of diverse non-state actors or the coming about and evolution of different sub-national developmental alliances.

#### *Integration and Association: Varieties of Governing Regional Development and the evolution of regional project networks - The survey method for the quantitative analysis*

*Laszlo Bruszt, Gerard McDermott*

In the second stage of our research we turn to the study of the interplay between different hybrid modes of regional development governance and the emerging forms of project cooperation among diverse sub national actors. At this stage of the research we focus on the properties of project networks: on their associativeness, on their combinatorics, their transnationalization, their scope and the prevalence of public private partnerships in them. Our question is whether and in what way does the characteristics of the modes of regional development governing effect the properties of emerging regional project networks. Does move towards less hierarchical modes of governance has effect on the ecology of developmental projects? Will we find in countries with more inclusive regional development policy making richer variety of experimental forms of collaborative projecting? This deliverable documents the survey that is used for the data collection.

### Project 16: Inside-Out: New Modes of Governance in Relations with Non-Member States

#### *Survey data and collected documents made ready for analysis – List of Interviews*

*Sandra Lavenex*

Deliverable 6 consists of the complete list of interviews that have been conducted for our NEW-GOV project. The interview information has been transcribed and is currently feeding into the output activities that we are producing.

#### *First review of the literature EU-Russia relations*

*Elena Belokurova, Maria Nozhenko, Natalia Yargomskaya*

This paper illustrates the development and transformation of the EU-Russia relations. For this purpose, the most important political decisions taken by the European Union regarding Russia and vice

versa in 1990-2000s are being analysed. The paper focuses on causes and consequences of the decision-making, and conditions under which the decisions are taken. Particular attention is paid to the issues of interaction, which is widely discussed in the Russian literature. The second part of the paper is dedicated to individual issues of the European Studies in Russia.

*New modes of governance in the EU policies towards Russia – Working paper summarizing first investigation results*

*Elena Belokurova, Maria Nozhenko, Maria Safonova*

This paper presents the first results of empirical analysis on different cases of EU-Russian co-operation with the special emphasis on new modes of governance. The latter were developed in the European Union for internal governance goals, but possibly were tried to be widespread also on the external dimension of the EU policies. In order to define whether EU policies towards Russia contains some elements of new modes of governance, it is necessary to understand general mechanisms of the EU-Russian co-operation, then to select cases of sectoral co-operation and analyze their history, mechanisms and modes of governance.

Project 17: Democratisation, Capture of the State and New Forms of Governance in CEE countries

[Agency System in Poland after 1989 - Background paper to Phase Two of the IPA study\\*](#)

*Olga Napiontek*

The objective of this article is to show how the elements of the agency system work in Poland and why agencies are created. It is also meant to draw attention to the assessment of the effectiveness of agency-type institutions over the past 17 years. State agencies have long been criticized in Poland and so the article also points out widespread pathologies in agency operations. The article focuses on a limited segment of the agency system in Poland and analyzes the performance of two agency types: state-run appropriated funds and so-called “state agencies”. This restriction of the field of interest is due, on one hand, to the concern for the usefulness of this article to future studies conducted within the IPA project on the Agriculture Restructuring and Modernization Agency (ARMA) and, on the other, to the fact that in specialized literature agencies and appropriated funds are very often discussed together because of their commonality in terms of functioning and problems associated therewith.

[Challenges of the Common Agricultural Policy Management. The Role of Agencies. Conditions of Implementing CAP in Poland\\*](#)

*Barbara Wieliczko*

This paper is aimed at analysing the formal and informal requirements towards management system of the common agricultural policy that the New Member States entering the EU in 2004 were faced with. The focal point of this paper is the presentation of the EU regulations dealing with the shape of the CAP implementation system at the national level.

[Case Study of an Executive Agency in Poland: Between Political Culture, Europeanization and Modernization Challenges\\*](#)

*Mateusz Falkowski, Tomasz Grzegorz Grosse, Ewelina Skwarczyńska*

In consequence of the European Union enlargement we have been observing in Poland a process of transformation of public institutions and establishment of new institutions appointed specifically for the purpose of delivering EU policies. There is arguably no other policy area where the EU enlargement has impacted the governance process in Poland that evokes more interest than the Common Agricultural Policy and the ability of Polish public administration to effectively manage EU direct farm subsidies and structural agricultural programs. Dispersed agriculture, its substantial contribution to Polish economy combined with low productivity, huge rural electorate and significant modernization challenges – all this has contributed to the great deal of interest paid by politi-

cians, the media and, finally, farming communities - beneficiaries of that assistance - to the activities of the Agency for Restructuring and Modernisation of Agriculture (ARMA), which implements EU agricultural assistance programmes in Poland.

The study conducted by the Institute of Public Affairs (IPA) aimed at analysing different processes of Europeanization of Polish administration, that is changes that are introduced in the functioning and organization of public institutions as a result of the execution of EU policies and implementation of EU laws. Moreover, we were interested in learning whether Europeanization processes were introducing new modes of governance into the practical conduct of Polish administration. Consequently, one of the main questions asked in this study is how the processes of Europeanization of an implementing agency connect with domestic factors that shape the way that public administration functions. The issue is associated primarily with the influence of local and political culture, including tradition stemming from the socialist period. How does this tradition modify the impact of Europeanization?

*Case Study: The National Paying Agency in Lithuania\**

*Rita Stafejeva*

The focus of this paper rests on the analysis of the new modes of governance with reference to the rural development policy, with particular consideration given to the programmes making use of the EU funds. The study offers an evaluation of task performance in the context of rural development and the allocation of the EU funds, taking into account the policy implemented during the accession period. The paper is based on the field research conducted in Lithuania in summer 2006. The research was concerned with the institution responsible for the realization of the rural development policy, namely, the National Paying Agency (Nacionalinė mokejimo agentūra; further in the text referred as the NPA). The paper concentrates on the new modes of governance introduced in the discussed institution. Also of key importance here is the analysis of the influence of methods related to the allocation of the EU funds. The research focused on the analysis of changes in the functioning of policy implementing institution and the effectiveness in the context of the European and national policies. The important part of the research comprised an analysis of the social participation, i.e. the influence the social partners exert on the functioning of the Agency.

*Case Study: The Agricultural Paying Agency, Slovakia\**

*Miroslav Beblavý*

This case study is focused on the analysis of the new modes of governance with reference to the rural development policy, with particular consideration given to the programmes making use of the EU funds. Its subject is the Agricultural Paying Agency in Slovakia as a good and internationally comparable example of agency on which the EU accession has had important and sustained influence. In terms of overall performance of the agency, the conclusion is that the Agricultural Paying Agency has been successful. EU accession and EU funds meant a significant change in how the business was done though and the new APA model is based on a bureaucratic, Weberian logic, where individual civil servants are responsible for specific steps in evaluating documents and the final decision is made based on aggregation of all evaluations in a formula-based fashion. In terms of its establishment, technical complexity, lack of experience, existence of outside authority (EC) and high political importance meant a curious combination of technocrats working with political support but limited interference. As a result, power seeped away from ministry downwards to APA and upwards to the European Union, particularly European Council and European Commission. The key stakeholders were not the traditional social partners, but lobbyist associations of agricultural producers and their role was limited to practical feedback with very little power sharing on strategic issues. These conclusions are subject to some change as a new government brings new political equilibrium and politicians and ministerial civil servants lose some of their awe towards the agency.

[New modes of governance in agencies implementing EU policies: examples of Europeanization in three new EU member states\\*](#)

*Tomasz Grzegorz Grosse*

This report sums up a study conducted by the Institute of Public Affairs (IPA) within the NEWGOV Cluster 3 consortium dedicated to analyzing governance in agencies implementing the EU Common Agricultural Policy (CAP) and the rural area development policy. The study was conducted in 2006/2007 in three new EU member states: Lithuania, Slovakia and Poland. It aimed at analyzing the process of Europeanization of public administration - of changes in public institutions occurred as a result of the execution of EU policies and implementation of EU laws. We also wanted to find out if Europeanization processes introduced new modes of governance into the administrative practice.

One of the study's main conclusions was that processes associated with Europeanization clashed with strong local community interests and administrative culture and tradition. In other words, new modes of governance were passed through the sieve of local administrative tradition and culture, and were confronted with dominant local interests. As a result, for example in Poland, European Union assistance funds earmarked for the agricultural policy and rural area development policy served to a large extent the purpose of agency capture, i.e. exploiting the power in executive agencies for particularistic ends. Thus, Europeanization and application of new modes of governance did little to eliminate pathologies in administration rooted in local political culture and nurtured by dominant local interest groups.

[Report on the Final Seminar of the project: Delegation of public tasks to independent agencies in EU member states: Poland and Lithuania\\*](#)

*Lena Kolarska-Bobińska, Jacek Kucharczyk, Tomasz Grzegorz Grosse*

The seminar took place on 29 August 2007 at the Foundation Institute of Public Affairs in Warsaw. This seminar was devoted to presenting results of the two last projects: one concerned the Agency for Restructuring and Modernisation of Agriculture in Poland and the second concerned the National Paying Agency in Lithuania. In the perspective of the international conference planned for the end of October 2007 it was suggested that the two reports should be merged into one presentation, which would be structured around similarities and differences between the two studied cases.

#### **Cluster 4: Learning, Experimental Governance and Participation**

*Workshop: New Approaches to Socio-Economic Governance*

*Martin Rhodes and Jelle Visser*

The aim of this workshop, which took place at the Amsterdam Institute for Advanced Labour Studies on 7 and 8 December, 2006, was to allow for reflection on common themes across the projects of the NEWGOV cluster 4 and stimulate methodological and conceptual cross-fertilisation on the topic of 'new approaches to socio-economic governance'. It also served as an internal review system on work produced so far, with the cluster leaders and people from different projects assessing each others work.

*Cluster 4 Workshop at the NEWGOV Consortium Conference*

*Martin Rhodes and Jelle Visser*

The meeting took place during the 3rd NEWGOV Consortium Conference, 31 May – 1 June 2007. The aim of this workshop was to continue the process of reflection on common themes across the projects of the cluster and stimulate sharing of results. Like previous cluster workshops, it served as an internal review system on work produced so far, with the cluster leaders and people from different projects assessing each others work. Even though not all of the cluster's projects could be present at this workshop, the variety was such as to prevent ready generalisations across the presenta-

tions. But one theme that did emerge was the fact that the ‘new modes of governance’ template fits poorly with most of the cluster’s projects, throwing the cluster participants back on the use of more conventional frameworks to make sense of the analyses.

### Project 18a: Distributive Politics, Learning and Reform: Emergence and Evolution of National Social Pacts

#### *Database*

*Jelle Visser*

For the purpose of the comparative – quantitative and qualitative – analysis of social pacts and related agreements and “new” forms of governance between public authorities, unions and employers, the University of Amsterdam has developed a database covering economic, political and institutional data in 26 advanced economies over a range of 45 years. The economic and political data are from international sources like the OECD, United Nations, ILO and Worldbank. The institutional data, with measurements for various types and forms of social pacts and agreements, was developed specifically for the project and is based on new data, using the 7 national reports as well as various other sources for other countries. The database is meant to be a “public source” for the use of researchers and policy-makers – as a source of documentation and as an analytical instrument. The research team foresees measures allowing interactive use of the database. We intend to have the database ready for (unrestricted) public use per 1-1-2008.

#### *Revised Country Report: The Emergence and Evolution of Social Pacts: Ireland*

*Rory O’Donnell, Maura Adshead and Damian Thomas*

This report provides an account of the emergence and evolution of social pacts in Ireland. Section II provides a brief description of the seven social pacts in Ireland in the period since 1987. Section III describes the main actors and institutions in place at the time of Ireland’s first social partnership agreement in 1987. The emergence of that first pact is described and analysed in Section IV. That section finishes with a summary discussion of the bargaining dynamics, identifying the role of bounded rationality, context-specific preferences, non-unitary actors and perceptions of power shifts. Section V describes and analyses the institutionalisation of social pacts in Ireland. We argue that there have been two broad trajectories of institutionalisation in Ireland’s twenty-year experience with social partnership. The first was the institutionalisation of a ‘partnership’ approach to public policy and governance in a wide range of policy areas. The second was the transition to a new regime of wage bargaining and industrial relations. Section V finishes with a discussion of the mechanisms of institutionalisation. We suggest that all five mechanisms of institutionalisation identified by Avdagic et al (2005) we relevant. The significant degree of institutionalisation, documented in Section V, would seem to have been driven by functionality, outcomes, networks, norms and power factors. In the conclusion, Section VI, we return to some of the themes arising in the analysis. In particular we discuss institutionalisation in the sphere public policy rather than of employer-union relations, the concept of ‘shared understanding’ and a possible ‘small country effect’.

### Project 18b: Distributive Politics, Learning and Reform: Emergence and Evolution of Administrative Partnerships

#### *Territorial Pacts and Local Level Concertation in Europe. A Multi-Level Governance Perspective*

*Ida Regalia*

The paper is organized as follows. It first makes some preliminary and general specifications concerning the topic examined. It then concentrates on the subnational level of concertation, discussing the reasons for the emergence and spread through Europe of local partnerships and pacts, and presenting the forms identified in the empirical literature. Particular attention will be paid to territorial pacts for employment and development (European and of local/national origin) with reference being

made to Italy and Spain, as the countries in which territorial pacts have developed to the greatest extent. The concluding section sets out proposals for the future development of the inquiry and provides some preliminary concluding remarks.

*Local Partnership Consolidation in Italy – Analytical framework, research strategy and case selection*

*Patrik Vesan, Matteo Bassoli, Valeria Sparano*

The main aim of this report is to present a framework for analysis which will be used for partnership case studies. In particular, we will address our attention to one specific aspect of the development of cooperative experiences, i.e. their consolidation process, with a particular focus on Italian public-private partnerships aimed at territorial development regulation. First, an articulate definition of partnership - derived from the existing literature on the topic - will be provided; second, a more specific framework for analysis will be presented and some research hypotheses will be formulated; third, a preliminary selection of cases will be presented and discussed; finally, some brief remarks on the continuation of the research will conclude the paper.

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*Paolo Graziano; Maurizio Ferrera; Patrik Vesan, Matteo Bassoli, Valeria Sparano*

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Project 19a: New Approaches to Economic Governance in the EU

*Paper on “Contested meanings of transparency in central banking”*\*

*Iain Begg*

Over the last two decades, there have been far-reaching transformations in the ways central banks operate, especially in regard to how openly they communicate with other actors. Transparency in central banking has two quite distinct motivations. The first is to provide a means of holding the central bankers to account, while the second is about the efficiency of their policy-making. These two motivations for transparency reflect contestable norms about the choices central banks make. The paper discusses how transparency in central banking functions and explores how the underlying norms might be open to contestation. A typology showing the rationale for, and effects of, different

forms of transparency is constructed and its implications assessed. Published in: *Comparative European Politics* (2007) 5, 36–52.

[Paper on “Is there a convincing rationale for the Lisbon strategy?”\\*](#)

*Iain Begg*

The aim of this paper is to discuss the rationale for the Lisbon strategy and to examine whether, given that the economies of the EU member states manifestly face different reform challenges, it is sufficiently compelling to justify an elaborate process. This paper explores possible bases for such a rationale, which include policy learning, an external process as an incentivating mechanism (especially where entrenched interests constitute an obstacle to change), as well as more traditional spill-over arguments. A key question that is explored is whether an external analysis, together with the procedures that have emerged under the open method of co-ordination, is conducive to economic reform or whether countries tend to know what needs to be done if only they could muster the political will to achieve it. Paper presented at EUSA biennial conference, Montreal, 19th May 2007.

[Paper on “Is stability necessary for growth?”\\*](#)

*Iain Begg*

Over the last two decades, the emphasis in macroeconomic policy has shifted decisively to one that focuses on stability rather than active demand management. This was, arguably, needed to counter growing budget deficits and a propensity to inflation, but the chapter suggests that this policy position has been pushed too far. Too little attention to growth has adverse social consequences, because it entrenches high unemployment, leads to pressures to cut spending on social aims, and may lock countries into a vicious cycle. Although stability-orientated policies are rule-based and thus appear to be objective, the chapter points out that the policy approach does have distributive consequences, so that the normative dimension of stability cannot be ignored. Stability may be helpful for long-run growth and need not be incompatible with social solidarity, but it should be seen as part of a wider policy mix, not an end in itself. Forthcoming in: Magnusson, L. and Strath, B. eds *European Solidarity*.

[Paper on “EU Fiscal Governance: Hard Law in the Shadow of Soft Law”\\*](#)

*Waltraud Schelkle*

A key element of economic governance in the European Union, the Stability and Growth Pact (Pact), underwent a major revision in March 2005. The many critics of this change claim that what was once a hard law institution for fiscal surveillance has now become so soft as to jeopardize its functioning. This Article examines, first, how exactly the fiscal rules have changed, using a framework which distinguishes hard law from soft law along a continuum in three dimensions of governance: obligation, delegation, and precision. Then it reviews the experience of the first round of surveillance after the revision which so far suggests that the revised Pact is more effectively constraining countries that are officially in “excessive deficit,” contrary to expectations. Finally, the Article offers an interpretation of why the revised Pact may work more effectively. This interpretation suggests that the weakening of obligation has been compensated by changes in the other two dimensions, delegation and precision, casting a shadow of soft law on the operation of the Excessive Deficit Procedure. The argument is based on a theory of precautionary commitment by democratically elected governments that combines credibility with flexibility. Fiscal governance after the Pact revisions is now arguably better equipped to address major contingencies of fiscal policymaking. Published in: *The Columbia Journal of European Law* vol.13, No.3, pp.705-731.

*Annual Periodic Report - Year 3*

*Iain Begg, Waltraud Schelkle*

The deliverable provides a summary of the research activities carried out in the third project year. It feeds into the general annual project report of the NEWGOV project.

*Conference Volume: The theory and practice of economic governance in EMU revisited - Special Issue of the Journal of Common Market Studies*

*Waltraud Schelkle (editor)*

European integration is a fast changing subject and requires those who study it to do research very close to the present. While this makes the field both fascinating and relevant to policymakers' concerns, it also makes it susceptible to academic fads and fashions. The scientific community in the field hardly ever finds the time to look back to evaluate self-critically whether the predictions made in the past and the policy advice put forward then have stood the test of time. The JCMS special issue asks commentators who made seminal contributions to our understanding of the theory and practice of economic governance in the 1980s and 1990s to revisit their analyses with the benefit of hindsight. The special issue includes articles by: Waltraud Schelkle, Willem H. Buiter, Paul de Grauwe, John Driffill, C.A.E. Goodhart, Christian Joerges, Kathleen R. McNamara, Jean Pisani-Ferry, and Fritz W. Scharpf.

Journal of Common Market Studies special issue (edited by Waltraud Schelkle), vol.44/No.4, pp.669-864.

Project 19b: New Approaches to Economic Governance in the EU: The Politics of Central Bank Accountability in the Age of Globalization

*Draft Working Paper: Rediscovering Accountability - Monetary Politics in the US, the EU, and Japan*

*Nicolas Jabko*

The worldwide trend toward central bank independence signals a remarkable transformation of the modern democratic state. As elected officials lose their control of economic decision-making, serious questions arise with regard to the accountability of newly independent agencies and, more generally, the capacity of global capitalism to live up to democratic ideals. In this paper, I argue that accountability has become the field of a new and manifold political contest on a global scale. The contest usually pits independent central bankers on one side and politicians and bureaucrats on the other side. Once we envision accountability not as just a normative ideal but also as a field of contest, it makes little sense to search for a universally accurate checklist of accountability mechanisms. Instead, the crucial task is to assess different distributions of institutional and political resource endowments. The paper illustrates this argument in the European, American, and Japanese cases. Final version of this paper will be Deliverable no 4.

Project 20: 'Varieties of Capitalism' and Economic Governance in CE Europe (STACEE)

*Explanatory note on the Database*

*Robert Hancké*

This database, which covers deliverable D04, is a first complete version of basic economic and production indicators in Central and East European (CEE) economies organised along the lines of the analytical framework that underlies the NEWGOV/STACEE project. The database is organised along the 'Leading sectors' framework as originally developed by Greskovits (2005), which combines two dimensions: the intensity in skills and capital (operationalised as heavy v. light industry) and the complexity of the production process (basic v. complex). The structure of the database is relatively simple: per ACC-10 country the database groups industrial sectors in four categories: heavy-basic, heavy-complex, light-basic and light-complex. The database has two main purposes. The first is to systematise the material along these analytical lines, and assess to what extent different patterns of specialisation are emerging among the member-states in CEE. The second purpose of the database, which reflects the next stage of its development, is to relate these patterns of specialisation to different modes of coordination in the different CEE economies. By January 2008, the database will be nearing completion, and the key hypothesis can be tested systematically (possibly

through regression or Boolean analysis) and reported in a comparative research paper which will be integrated in the final report.

#### *Country Interim Reports – Part One*

*Alexandra Janovskaia, Robert Hancké*

The goal of the paper “National production models and the automotive industry” is to embed the evolution of industrial capabilities in Central Europe in the literature on national production models and varieties of capitalism. The paper starts by presenting the main hypothesis of the research project, namely that the process of industrial upgrading is under way in Central European car manufacturing. In the second step, the paper tries to make sense of the paradox of upgrading and understand its internal logic. To do that the discussion on upgrading is related to the debate on the sustainability of the diversified quality production paradigm, on the one hand, and to the sectoral political economy literature, on the other. The common feature of these two strings of literature that also forms the analytical framework of this paper is their conceptualization of capital-labour compromise. In the third step, main development trends in the Central European car industry are presented. The paper concludes by explaining why automotive industry is an useful case study for understanding the emerging capital-labour compromise in Central Europe.

The paper “The political economy of industrial upgrading in the Czech Republic: the case of the automotive industry” looks at the main trends in industrial and human capital development in the Czech car industry. It considers the empirical evidence looking at two distinctive levels: the sectoral and the firm level. It argues that the car manufacturing that is emerging in the country has some characteristics of a ‘high road’ in terms of industrial but also skill and employment upgrading. Using a case study of Skoda Auto, the leading car assembly plant in the country, it elaborates the evolution of production policies and supplier related strategies as well as managerial and employment practices.

The deliverable includes a list of interviews by the STACEE project, carried out during December 2006 and June 2007.

#### Project 21: Towards New Corporate Governance Regimes in Europe

##### [A Corporate Governance Index: Convergence and Diversity of National Corporate Governance Regulations](#)\*

*Marina Martynova and Luc Renneboog*

In this paper we address the limitations of the corporate governance indices triggered by the seminal work of La Porta, Lopez-de-Silanes, Shleifer and Vishny (hereafter LLSV). First, we develop three new corporate governance indices that reflect the quality of national laws aimed at protecting (i) corporate shareholders from being expropriated by the firm’s management, (ii) minority shareholders from being expropriated by the large blockholder, and (iii) creditors from being expropriated by the firm’s shareholders.

Second, we empirically document the evolution of corporate governance regulations for all (30) European countries and the US. We analyse whether regulatory convergence has been started, and, if so, detect the main patterns of the converge process. Using the three indices we examine how corporate governance regulation has changed in countries over the past 15 years. The database is based on studying various corporate legislations, a questionnaire sent to leading corporate governance specialists as well as direct interview with these specialists. The questionnaire is on the various aspects of the corporate governance regimes and their evolution since the early 1990s. The questionnaire contains 55 questions that cover the most important provisions of company law, stock exchange rules, and bankruptcy and reorganization law at both the national and supranational level.

The paper is organized as follows. Section 2 discusses the role of corporate regulation. Section 3 describes our unique database on corporate law reforms in 30 European countries and the US. Section 4 discloses the compositions of the corporate governance indices. Section 5 documents the dy-

namics of corporate governance regulation reforms and predicts the consequences of these reforms for the (lack of) evolution towards a single corporate governance system. Section 6 concludes.

### [Sources of Transaction Financing in Corporate Takeovers\\*](#)

*Marina Martynova and Luc Renneboog*

While the means of payment in takeovers has been a focal point in the takeover literature, what has been ignored is the analysis of how the takeover bid is financed and what its impact is on the expected value creation of the takeover. This paper investigates the sources of transaction financing in European corporate takeovers launched during the period 1993-2001 (the fifth takeover wave). Using a unique dataset, we show that the external sources of financing (debt and equity) are frequently employed in takeovers involving cash and mixed payments. Acquisitions with the same means of payment but different sources of transaction funding are quite different. For instance, the market reaction to the announcements of acquisitions fully paid with cash but financed by equity issues is similar to the market reaction to the announcements of acquisitions fully paid with equity. Moreover, a negative price revision follows the announcement of any corporate takeover involving equity financing (including cash-paid and mixed-paid takeovers). In contrast, this price correction that takes place subsequent to the debt-financed bids is insignificant. The multinomial logit and nested logit analyses show that the decisions regarding the payment method and sources of takeover financing (conditional on the chosen means of payment) do not coincide. Instead, these decisions are made to solve different problems. We also document that the financing choices are very sensitive to the differences in the legal environment (regarding shareholder, creditor and minority shareholder protection as well as corporate transparency) across countries.

### [Corporate Restructuring and Bondholder Wealth\\*](#)

*Luc Renneboog and Peter G. Szilagyi*

This paper provides an overview of existing research on how corporate restructuring affects the wealth of bondholders. Restructuring is defined as any transaction that affects the firm's underlying capital structure. Thus, it reaches well beyond asset restructuring and includes transactions such as leveraged buyouts, security issues and exchanges, and the issuance of stock options. We identify significant gaps in the literature, emphasize the potential differences between bondholder wealth changes in market- and stakeholder-oriented governance systems, and provide valuable insights into methodological advances. Many issues obviously remain, as empirical evidence is still incomplete and focuses almost exclusively on the US. In stakeholder-oriented regimes, the potential for research remains constrained by the lesser development of bond markets that disclose information on creditor wealth shocks. Still, on-going debt securitization should now allow for the investigation of at least some critical issues. This is imperative, as the position of creditors in the firm differs substantially across governance systems despite the gradual convergence of these regimes across the world.

### [Bondholder Wealth in M&As: Evidence on the Impact and Spillover of Governance and Legal Standards\\*](#)

*Luc Renneboog and Peter G. Szilagyi*

This paper demonstrates that the bondholder wealth effects of M&As are strongly affected by cross-country variations in governance and legal standards. We examine deals that involve European firms with outstanding Eurobonds, and find that governance considerations are in fact better predictors of bond performance than either deal or firm characteristics. Firstly, bond returns in both bidding and target firms are systematically higher in M&As that involve firms from the stakeholder-oriented governance regimes of Continental Europe. Secondly, cross-border deals tend to induce lower bond returns. However, bondholders reap considerably higher gains if the deal exposes their firm to a jurisdiction with better creditor rights and claims enforcement. This suggests that cross-border M&As provide much greater scope for the functional spillover of creditor protection than

has been previously assumed. Finally, bond performance is driven by both asset and financial risk changes, the merging firms' relative size, as well as a negative listing effect.

[\*Legal Options: Toward Better EC Company Law Regulation\\*\*](#)

*Gerard Hertig and Joseph A McCahery*

In this paper, we lay out the structure of the regulatory competition argument and consider how the structure of EC company law has become more responsive to the market-place as a consequence of decisions by the ECJ and the corporate law-making process in the EU. We also assess the advantages of the pro-choice approach over the mandatory EC company law regime. Furthermore, we show the legal options model which develops menus of default rules to regulate transparency, accounts and director liability. This paper argues that a step-by-step approach implementing options is likely to yield higher benefits than mandatory corporate law provisions. We recommend a limited number of opt-in and opt-out provisions that would reduce conflict and perhaps be socially optimal.

[\*The incentive to give incentives: on the relative seniority of debt claims and managerial compensation\\*\*](#)

*Riccardo Calcagno and Luc Renneboog*

We show that the relative seniority of debt and managerial compensation has important implications for the design of remuneration contracts. Whereas the traditional literature assumes that debt is senior to remuneration, there are in reality many cases in which remuneration contracts are de facto senior to debt claims in financially distressed firms and in workouts. We theoretically show that risky debt changes the incentive to provide the manager with performance-related incentives (a "contract substitution" effect). In other words, the relative degree of seniority of managers' claims and creditors' claims in case a bankruptcy procedure starts is crucial to determine the optimal incentive contract ex-ante. If managerial compensation is more senior than debt, higher leverage leads to lower power incentive schemes (lower bonuses and option grants) and a higher base salary. In contrast, when compensation is junior, we expect more emphasis on pay-for-performance incentives in highly-levered firms.

Article to appear in: *Journal of Banking and Finance*, 2007 forthcoming.

[\*Is Ethical Money Financially Smart?\\*\*](#)

*Luc Renneboog, Jenke Ter Horst, and Chendi Zhang*

Little is known about how investors select socially responsible investment (SRI) funds. Investors in SRI funds may care more about social or ethical issues in their investment decisions than about fund performance. This paper studies the money-flows into and out of the SRI funds around the world. We find that ethical money chases past returns. In contrast to conventional funds' investors, SRI investors care less about the funds' fees. Funds characterized by shareholder activism and by in-house SRI research attract more stable investors. Membership of a large SRI fund family creates higher flow volatility due to the lower fees to reallocate money within the fund family. SRI funds receiving most of the money-inflows perform worse in the future, which is consistent with theories of decreasing returns to scale in the mutual fund industry. Finally, funds employing a higher number of SRI screens to model their investment universe receive larger money-inflows and perform better in the future than funds with few screens.

[\*Socially Responsible Investments: Methodology, Risk Exposure and Performance\\*\*](#)

*Luc Renneboog, Jenke ter Horst, Chendi Zhang*

This paper surveys the literature on socially responsible investments (SRI). Over the past decade, SRI has experienced an explosive growth around the world. Particular to the SRI funds is that both financial goals and social objectives are pursued. While corporate social responsibility (CSR) - defined as good corporate governance, sound environmental standards, and good management towards stakeholder relations - may create value for shareholders, participating in other social and

ethical issues is likely to destroy shareholder value. Furthermore, the risk-adjusted returns of SRI funds in the US and UK are not significantly different from those of conventional funds, whereas SRI funds in Continental Europe and Asia-Pacific strongly underperform benchmark portfolios. Finally, the volatility of money-flows is lower in SRI funds than of conventional funds, and SRI investors' decisions to invest in an SRI fund are less affected by management fees than the decisions by conventional fund investors.

#### [The Price of Ethics: Evidence from Socially Responsible Mutual Funds\\*](#)

*Luc Renneboog, Jenke ter Horst, Chendi Zhang*

This paper estimates the price of ethics by studying the risk-return relation in socially responsible investment (SRI) funds. Consistent with investors paying a price for ethics, SRI funds in many European and Asia-Pacific countries strongly underperform domestic benchmark portfolios by about 5% per annum, although UK and US SRI funds do not significantly underperform their benchmarks. The underperformance of SRI funds does not seem to be driven by the loadings on an ethical risk factor. SRI funds do not suffer a cost of reduced selectivity nor do SRI funds managers time the market. There is mixed evidence of a smart money effect: SRI investors are unable to identify the funds that will outperform in the future, whereas they show some fund-selection ability in identifying ethical funds that will perform poorly. The screening activities of SRI funds have a significant impact on funds' risk-adjusted returns and loadings on risk factors: corporate governance and social screens generate better risk-adjusted returns whereas other screens (e.g. environmental ones) yield significantly lower returns.

#### [How Relevant is Dividend Policy under Low Shareholder Protection?\\*](#)

*Luc Renneboog and Peter G. Szilagyi*

This paper reopens the debate on the substitutability of dividends and shareholder control in mitigating free cash flow concerns, by examining dividend behavior when shareholder control is restricted in the firm. We consider the stakeholder-oriented governance regime of the Netherlands, where shareholdings are concentrated, but shareholder rights are often severely restricted by a legally imposed governance regime and anti-shareholder devices such as Dutch-style poison pills. We find that dividend payouts are generally low, unresponsive to earnings changes and show little relationship with size, leverage, and investment opportunities. Shareholder power restrictions affect dividend behavior to varying degrees, but those that do are used by the vast majority of Dutch listed firms. Once accounting for these, we find no evidence that strong shareholders would allow firms to relax their dividend policy, as has been proposed in the existing literature. As shareholders, institutional investors and managers actually force higher payouts. Thus, it seems that dividends often complement rather than substitute shareholders' efforts to alleviate agency concerns. This finding is unlikely to be specific to the Netherlands, and could possibly be extended to other stakeholder-oriented governance regimes.

#### [Control Structures and Payout Policy\\*](#)

*Luc Renneboog and Grzegorz Trojanowski*

This paper examines the payout policies of UK firms listed on the London Stock Exchange during the 1990s. It complements the existing literature by analyzing the trends in both dividends and total payouts (including share repurchases). In a dynamic panel data regression setting, we relate target payout ratios to control structure variables. Profitability drives payout decisions of the UK companies, but the presence of strong block holders or block holder coalitions considerably weakens the relationship between corporate earnings and payout dynamics. While the impact of the voting power of shareholders' coalitions on payout ratios is found to be always negative, the magnitude of this effect differs across different categories of block holders (i.e. industrial firms, outside individuals, directors, financial institutions). The controlling shareholders appear to trade off the agency problems of free cash flow against the risk of underinvestment, and try to enforce payout policies

that optimally balance these two costs. Finally, the paper improves upon some methodological flaws of the recent empirical studies of payout policy.

[Patterns in Payout Policy and Payout Channel Choice of UK Firms\\*](#)

*Luc Renneboog and Grzegorz Trojanowski*

The paper examines the payout policy of UK firms listed on the London Stock Exchange during the period 1992-2004. We complement the existing payout literature studies by analyzing jointly the trends in dividends and share repurchases. We find that the US case with a decreasing propensity to distribute funds to shareholders over the 1990s and reappearing dividends since the stock market decline of 2000 cannot be transposed to the UK. The importance of share repurchases in the UK is increasing, and dividends still constitute a vast proportion of the total payout. Usually, firms repurchasing shares pay dividends as well. We also document that there is a relationship between the presence of blockholders and the choice of the payout channel: firms with concentrated ownership held by individuals tend to opt for dividends rather than share repurchases. We argue that the presence of stringent insider trading regulation affects the attractiveness of repurchases (as opposed to dividends) for large shareholders (and directors, in particular). Interestingly, the opposite relation holds for the voting power of industrial firms: the presence of powerful blockholders of this type reduces the probability that earnings are paid out. This suggests that in firms with strong blockholders of this type, there is less need for a payout policy as a precommitment device. The management does not need to signal their commitment to corporate value creation when large corporate shareholders are monitoring the firm closely. Finally, there is some evidence (albeit not very strong) that the control power of financial institutions translates into a higher probability of dividend payments (as opposed to no payout at all).

[Why are the French so different from the Germans? Underpricing of IPOs on the Euro New Markets\\*](#)

*Marc Goergen, Arif Khurshed, and Luc Renneboog*

IPOs on the EuroNMs have shown very high underpricing. The majority of these IPOs possess specific characteristics such as lock-up agreements, venture-capital financing, ownership by the underwriter and over-allotment options. We study how these characteristics influence the underpricing of firms listed on the two largest EuroNM stock exchanges, the Neuer Markt of Germany and the Nouveau Marché of France. We find that the high underpricing in these two markets – contrary to the evidence on the US – is not driven by insiders' selling behaviour. However, the large underpricing is caused by the high degree of riskiness of the issuing firms and by the partial adjustment phenomenon of offer prices to compensate institutional investors for the truthful revelation of their demand for the shares. In contrast, venture-capital involvement does not affect underpricing. For France, lock-up agreements act as substitutes to underpricing, but not so for Germany. We also explore the reasons for the large difference in underpricing between the German and the French IPOs: German firms are more underpriced because they are more risky, have larger price revisions, have less stringent VC lock-up contracts and mostly go public during the hot issue period when the general level of underpricing in all IPO markets is substantially higher.

[Project 22: Changing Governance Architecture of International Taxation – TAXGOV](#)

[Final Dissemination Report\\*](#)

*Claudio M. Radaelli*

This report summarizes the dissemination activities of NEWGOV Project 22 ‘The Changing Governance Architecture of International Taxation’ during the duration of the Project from October 2004 to July 2007. A full list of activities can be found in section 2.

### [Final Project Report\\*](#)

*Claudio M. Radaelli and Ulrike S. Kraemer*

This report presents the findings of the project on The Changing Architecture of International Tax Governance. In part 1 we introduce the key research questions that have led us to the choice of a specific theoretical framework, that is, strategic constructivism. Part 1 also shows how this theoretical framework is applied to EU and OECD tax coordination issues, and the substantive findings. Part 2 provides more details on the segment of our research project dedicated to the EU. Instead of looking at tax policy instruments such as tax rates or corporate tax structures, we take a governance approach to the analysis of tax coordination. Our major result is the explanation of why policy makers choose to differentiate among different governance arenas in order to process issues of tax policy that cannot be dealt with at the systemic level. Part 3 carries on with our governance approach to tax coordination and introduces the theme of policy learning in order to interpret recent dynamics at the OECD level. Both part 2 and part 3 explore new modes of governance across time and arenas – the main argument being that in order to understand shifting modes of governance, one has to look at the political logic (in turn, both ideational and material-distributive) around which governance arenas are built.

### Project 24: Democratisation/Participation of Civil Society in New Modes of Governance

#### [Eastern Europe as an accountability constituency in the Commission consultations\\*](#)

*Daniela Obradovic and José M. Alonso Vizcaíno*

Although civil interest groups have been involved in the governance of the EU since its creation, their structured incorporation into the European policy formation process is of relatively recent origin. The Commission formalised the dialogue with civic groups by virtue of the adoption of general principles and minimum standards for consulting interested parties (hereafter the minimum standards). The Commission defines consultations as those processes through which it wishes to trigger input from interested parties for the shaping of policy prior to a decision by the Commission. ‘Interested parties’ means all who wish to participate in consultations run by the Commission, whether they are organisations, profit or non-profit or private citizens. The participation of various parties in the Commission consultations should endow the Commission with the accountability attributes. The Commission emphasised that those standards are intended that all parties affected by particular EU decisions are properly addressed and consulted on those measures and that an adequate balance is struck between them, depending on their social or economic character, size, specific target groups and country of origin since not only European level interest organisations are consulted, but also those operating at national level.

The paper examines the level of the participation of interest groups originating in the member states of Eastern Europe as an accountability constituency in the Commission consultations and the significance of thereof for this process.

#### [Participation of Civil Society in New Modes of Governance. The Case of the New EU Member States - Part 3: Involvement at the EU Level\\*](#)

*Various; editor: Heiko Pleines*

This working paper is the third and final part of a series presenting the first results of a research team examining the impact of the 2004 EU enlargement on governance structures involving the participation of civil society organisations. Starting from the thorough analysis of the situation at the national level, in this working paper we examine the engagement of civil society organisations from post-socialist member states in EU governance. The contributions cover the respective EU regulations as well as informal practices and focus on the capacity, impact and accountability of the civil society actors involved.

The first contribution, written by Brigitte Krech, gives an introductory overview of how civil society organisations from new post-socialist member countries have been integrated into different

modes of governance at the EU level. The second contribution by Daniela Obradovic and Jose M. Alonso Vizcaino, presents the regulatory framework developed by the EU to organise the different forms of governance involving civil society actors. The following five contributions then present case studies designed to obtain a better understanding of the capacities, impact and accountability of civil society organisations from new post-socialist member states. The case study by Kristýna Bušková and Heiko Pleines examines the experiences of Czech environmental NGOs with EU governance, while the contribution by Gesine Fuchs focuses on Polish women's NGOs. The following two case studies by Zdenka Mansfeldová and Joanna Einbock analyse the involvement of Czech and Polish trade unions and employers' associations in the EU social dialogue. The final case study by Heiko Pleines examines the role of the Polish agricultural lobby in EU governance.

## Task Forces

### Democracy Task Force

#### [Forms of control and accountability in the politics of delegation](#)\*

*Dario Castiglione*

This report analyses the way in which the development of 'new modes of governance,' particularly in the form of 'guardian' institutions and networks governance, poses a problem for democratic accountability. This more informal, non-hierarchical and 'private' forms of governance can be justified in a variety of ways, on the basis of the fact that they seem to be better adapted to meet some of the standards of good governance that the demands of a complex society requires. However, their multilevel nature makes it more difficult for the traditional forms of democratic control and accountability to operate. Besides analyzing the reasons underlying the legitimacy of non-democratic forms of decision making, this report suggests that it may, however, be possible to maintain a balance between non-democratic and democratic decision making in our societies, so to counteract some of the elitist tendencies intrinsic to some of the new forms of governance and regulation that rely on experts rather than popular voice and control. This is possible by analysing the way in which guardian institutions and networks of governance operate, either within or outside the political system, and by devising a series of mechanisms of horizontal and vertical control, and checks and balance, so to keep a democratic presence in the social and political process of decision making.

#### [On accountability and legitimacy in the EU: Facing the issue of Assurance](#)\*

*Andreas Føllesdal*

This report lays out a unified account of the complex and confusing relationship between legitimacy, democracy and accountability. The reasons we have to value accountability mechanisms and democratic arrangements also lend support to some modes of accountability that lack strong enforcement mechanisms or ultimate electoral accountability, and that all of these forms may further the normative legitimacy of a political order. They may help address the manifold needs of assurance among citizens regarded as 'contingent compliers,' - willing to do their share in just schemes, if they are assured that others act likewise. This general perspective is brought to bear on some salient features of the 'Constitutional Treaty' of the European Union that might have enhanced the normative legitimacy of the EU: Democratic accountability of EU bodies toward European and national parliaments, accountability for subsidiarity toward national parliaments; and accountability of national and EU bodies to international courts with regard to human rights. Such accountability mechanisms, democratic and otherwise, may assure citizens that the institutions and offices satisfy the appropriate standards of legitimacy, and that most other citizens and officials actually do their share.

## Legal Issues Task Force ‘New Modes of Governance and the relevance for EU law’

### [Introduction to Special Issue](#)

*Gráinne de Búrca and Joanne Scott*

Introduction to the Special Issue of the Columbia Journal of European Law: The collection of essays in this special Journal issue represents the results of a conference held in London in 2006. The aim of the conference was to develop a better understanding of how the increasing use of ‘new governance’ in the European Union has affected our understanding of law and the role of law. In so doing, we hoped also to bring more clarity to the discussion of these categories. In particular, we aimed to re-examine what we assume to be distinctive and important about law, and about legal values and functions, and to think about how these values and functions are affected by or pursued within new governance mechanisms. We set out to address these questions both abstractly and concretely: through reflection on the concepts themselves, and through their operation in a range of policy contexts. The papers develop and build on a number of existing, overlapping research projects on new and experimental modes of governance which have been undertaken by various of the authors separately, together and in collaboration with others.

### [Freedom to provide health care services within the EU: An opportunity for a Transformative Directive\\*](#)

*Tamara Hervey and Louise Trubek*

In the context of free movement of health care services, “the classic Community method” (CCM) of regulation through harmonized internal market law, underpinned by Treaty-based litigation, has failed. At the same time, a plethora of new governance activities concerned with health care have grown up in the EU. This article argues that the current situation represents an opportunity to develop and design, ex ante, a new Transformative Directive on health care services. The Transformative Directive would articulate the formal legal rules on cross-border receipt and provision of health care services in the EU. At the same time, the Directive would set up a framework for creating non-binding norms through participatory mechanisms, such as those found in new governance processes that already exist in other areas of EU law. The Directive would represent an example of a transformative relationship between law (the CCM) and new governance, where the procedures and institutions of new governance and traditional law are structurally designed as an integrated system, each element of which relies on the other for its success.

### [EU fiscal governance: Hard law in the shadow of soft law?\\*](#)

*Waltraud Schelkle*

A key element of economic governance in the EU, the Stability and Growth Pact, underwent a major revision in March 2005. The many critics of this change claim that what was once a hard law institution for fiscal surveillance has now become so soft as to jeopardize its functioning. This article examines, first, how exactly the fiscal rules have changed, using the framework of Abbott et al (2000) which distinguishes hard law from soft law along a continuum in three dimensions of governance: obligation, delegation and precision. Then it reviews the experience of the first round of surveillance after the revision which so far suggests that the revised Pact is more effectively constraining countries that are officially in ‘excessive deficit’, contrary to expectations. Finally, the article offers an interpretation why the revised Pact may work more effectively. This interpretation suggests that the weakening of obligation has been compensated by changes in the other two dimensions, delegation and precision, casting a shadow of soft law on the operation of the Excessive Deficit Procedure. The argument is based on a theory of precautionary commitment by democratically elected governments that combines credibility with flexibility (Elster 1979, Lohmann 2000). Fiscal governance after the Pact revisions is now arguably better equipped to address major contingencies of fiscal policymaking.

[New governance, the solution for active European citizenship? Or the end of citizenship?\\*](#)*Stijn Smismans*

With its focus on decentralised participation, new governance may appear as strengthening active citizenship. It may, therefore, provide a solution for European citizenship that until now has mainly been defined as a rights-based status. However, while new governance may contribute to the participatory dimension of citizenship it may be at odds with the rights and the identity dimension of the concept. The article shows the difficulties of the European political debate to link the idea of participatory governance to the concept of European citizenship. It subsequently analyses how new governance relates to the three constitutive elements of citizenship: participation, rights and belonging.

[Law, Governance or New Governance? The Changing Open Method of Co-ordination\\*](#)*Kenneth Armstrong and Claire Kilpatrick*

As a novel technique of governance within the European Union, the “open method of coordination” (OMC) has attracted a significant degree of attention from the political science and legal community. Typically, analyses of the OMC characterise it with regard to two dominant conceptual reference points: the dichotomies of old/new governance and of hard/soft law. In this paper, the authors signal their dissatisfaction with the explicit or implicit deployment of these binary classifications: while these dichotomies function as a shorthand for change, absent the prop of comparison, they provide little explanatory purchase on the nature of different coordination processes, differences across processes and changes within process. The paper develops its extended critique of the EU governance literature through the use of case-studies on the European Employment Strategy and the OMC on Social Protection and Social Inclusion.

[New Governance and Legal Regulation: Complementarity, Rivalry or Transformation\\*](#)*David M. Trubek and Louise G. Trubek*

New approaches to regulation have emerged to deal with inadequacies of traditional command and control systems. Such “new governance” mechanisms are designed to increase flexibility, improve participation, foster experimentation and deliberation, and accommodate complex multi-level systems. In many cases these mechanisms co-exist with conventional forms of regulation. As new forms of governance emerge in arenas regulated by conventional legal processes, a wide range of configurations is possible. The purpose of this paper is to provide a preliminary mapping of such relationships using examples drawn from the European Union and the United States. When the two processes are yoked together in a hybrid form, we might speak of a real transformation in the law. In other cases, the two systems may exist in parallel but not fuse together in a single system. Where both systems co-exist but do not fuse, there are numerous possible configurations and relationships among them. Thus, one might simply be used to launch the other, as when formal law is used to mandate a new approach. Or, they might operate independently yet both may have an effect on the same policy domain. Finally, in some areas one system may take over the field, either because new governance methods replace traditional law altogether, or because opposition to innovation halts efforts to employ new approaches.

[Economic Governance: Hybridity, Accountability and Control\\*](#)*Imelda Maher*

The aim of this Article is to explore the challenges posed for conventional accountability mechanisms by new governance understood as the wide range of processes with a normative dimension that do not operate through the formal mechanism of traditional legal institutions. It examines at what level of government and to what extent there should be accountability mechanisms and what those mechanisms should be, taking economic (meaning fiscal) governance as a case study. Economic governance in European Economic and Monetary Union is hybrid in form in many senses, including the way it combines ‘old’ and ‘new’ governance. This binary classification is examined as

a starting point for the analysis of the framing function of law in governance before turning to an outline of the original and revised economic governance structures under Economic and Monetary Union (EMU), in particular the Stability and Growth Pact (SGP). The Article then asks what forms of accountability are to be found or should be found within this governance structure where there are clear legal frameworks in the Treaty and legislation with procedures supported by case law and yet where the emphasis is on soft law governance designed to push strict procedures, time limits and sanctions into the background. Having reviewed current debates about the nature of accountability, the article engages in a largely functional exercise using Mashaw's questions to ask: (1) who is accountable? (2) To whom? (3) According to what standards? (4) About what? (5) Through what processes? (6) With what effects? The nature of the accountability regime—public, market or community—in economic governance is also addressed. The article concludes that in economic governance we see both a hybridity of governance processes and of accountability regimes—this is to be expected given the mix of hard and soft norms and their re-balancing following reforms. What is not articulated by the legal provisions and is emerging organically is the extent to which law can or cannot wholly identify standards, roles, responsibilities and accountability mechanisms that underpin the values and goals articulated in economic governance.

### [Courts as Catalysts: Re-Thinking the Judicial Role in New Governance](#)\*

*Joanne Scott and Susan Sturm*

This Article offers a step forward in developing a theory of judicial role within new governance, drawing on the emerging practice in both the United States and Europe as a basis for this reconceptualization. The traditional conception of the role of the judiciary--as norm elaborators and enforcers--is both descriptively and normatively incomplete, and thus needs to be rethought. There is a significant but limited role for courts as catalysts. In areas of normative uncertainty or complexity, courts prompt and create occasions for normatively motivated and accountable inquiry and remediation by actors involved in new governance processes. Catalysts thus facilitate the realization of process values and principles that are crucial to new governance's legitimacy and efficacy by the institutional actors responsible for norm elaboration within new governance. The relationship between courts and governance is dynamic and reciprocal: courts both draw upon the practice of governance in their construction of the criteria they apply to their judgments; and provide an incentive structure for participation, transparency, principled decision-making, and accountability which in turn shapes, directly and indirectly, the political and deliberative process. This Article elaborates three crucial aspects of the catalyst role, drawing on examples from the European Union ("E.U.") to illustrate how courts can exercise their decision-making authority to enhance the capacity of other actors to make legitimate and effective decisions. First, courts prompt new governance institutions to provide for full and fair participation by those affected by or responsible for new governance processes. We focus in this Article upon the courts' role in evaluating standing in the European courts (*locus standi*). Second, courts monitor the adequacy of the epistemic or information base for decision-making within new governance. We explore this role through the example of the European court's construction and interpretation of benchmarks for legality in judicial review. Finally, courts foster principled decision-making in new governance processes through requiring transparency and accountability as an essential element of enforceability. We illustrate this role through examples where the European courts evaluate the adequacy of deliberative processes by whether they have identified, justified, and applied criteria guiding their decisions.

### [Reconceiving Law and New Governance](#)\*

*Neil Walker and Gráinne de Búrca*

This essay re-examines the concepts of Law and New Governance with a view to pursuing three cumulative objectives. First, it emphasizes that both law and new governance are deeply contested concepts whose meaning and inter-relationship cannot just be assumed or taken for granted, as is the tendency in some empirical studies of their interconnection. Second, it suggests that both con-

cepts be situated and understood within an explicitly normative framework, one that takes account of the different implicit value assumptions underpinning many existing definitions. Thirdly, from this starting point it seeks to sketch a new framework of the relationship between Law and New Governance. This framework notes first, the tendency of Law to give priority to the meta-value of "social regularity" and of New Governance to give priority to the meta-value of "social responsiveness"; but it notes also the inevitability of some balanced recognition of both of these overarching values within all species of normative order, including Law and New Governance.

[\*Special Issue of Columbia Journal of European Law – Narrowing the gap? Law and new approaches to governance in the EU\\*\*](#)

*Gráinne de Búrca*

The collection of essays in the special issue of the Columbia Journal of European Law (issue 31.3, 2007) represents the results of a conference held in London in 2006. The aim of the conference was to develop a better understanding of how the increasing use of 'new governance' in the European Union has affected our understanding of law and the role of law. In so doing, we hoped also to bring more clarity to the discussion of these categories. In particular, we aimed to re-examine what we assume to be distinctive and important about law, and about legal values and functions, and to think about how these values and functions are affected by or pursued within new governance mechanisms. We set out to address these questions both abstractly and concretely: through reflection on the concepts themselves, and through their operation in a range of policy contexts. The papers develop and build on a number of existing, overlapping research projects on new and experimental modes of governance which have been undertaken by various of the authors separately, together and in collaboration with others.

[Legal Issues Task Force 'Which governance structures for European private law?'](#)

*Book Proposals – "Regulatory strategies in European Private Law" and "Governance in European Private Law"*

*Fabrizio Cafaggi*

The two books we are presenting for publication constitute the result of a European research project on new modes of governance in European private law, taking place within the broader research project "NEWGOV – New modes of governance". While we propose to publish two separate and independent books, the methodological approach and the set of questions addressed are unitary. Even more, they both reflect a strong concern about the missing link between the substantive and institutional development of European private law.

The current debate on desirability and modes of formation of European private law is engaging a wide number of scholars and institutions. Current work concerns the search for common core of European private law, rationalisation of *acquis communautaire*, design of a European Civil Code. These ongoing projects raise at least two related questions concerning the challenges to Europeanisation of private law: (1) What is the often implicit definition of private law standing behind the debate about the creation of European Private law? (2) Does the process of creation of European private law need some type of governance structure? The two books we would like to publish try to fill gaps in contemporary legal thinking. First methodology wise, they adopt a multi-disciplinary approach by linking four perspectives: private law, regulation, private international law, and governance. Second content wise, they expand the current debate by focusing on fields often neglected by conventional private lawyers. Third, they aim at making proposals for law reform both at the institutional and policy levels.

### [Self-Regulation as a Regulatory Strategy – A Comparative Law Perspective: Introduction\\*](#)

*Fabrizio Cafaggi*

This introduction addresses the research questions as well as the methodology applied by the national reports on self-regulation as a regulatory strategy. It outlines the four main fields of research: constitutional aspects of self-regulation, delegability of legislative and administrative powers, limits to delegation, nature of regulatory body and its consequence, judicial review and liability of private regulators.

### [Self-Regulation in England and Wales\\*](#)

*Richard Mumford and Jaime Arancibia*

The United Kingdom (which includes the jurisdiction of England and Wales) has long been seen as the home of a flourishing culture of self-regulation. Statutory intervention to place self-regulatory bodies (SRBs) on a firm footing, as well as the widening application of the Human Rights Act 1998, have to a great extent made up for an initial reluctance by the courts to subject their activities to the same sort of review as would apply to government departments. The overall result is an increasingly mature and well-established network of SRBs which are likely to continue in their respective roles for some time to come.

### [Self-Regulation in Finland\\*](#)

*Ellinoora Peltonen*

The purpose of this study is to give an overview of how self-regulation is framed in the Finnish legal system. This study is a partial contribution to a comprehensive comparative study of self-regulatory practices across Europe. Three specific questions are addressed: Firstly, how the Constitutional values inhibit or enable self-regulation; secondly, which are the legal rights and responsibilities of self-regulatory activities; and thirdly, what are the liability rules attached to self-regulators. As what comes to Finnish legal system, one can construct “a test” that either points to public or private law regime under which an individual self-regulator operates. Consecutively, the applicable regime gives an indication of the: constitutional and legal rights and responsibilities, as well as, liability rules that the self-regulator is expected to comply with in its regulatory activities. The study finds that, normally, self-regulator is to comply only with private law regime and constitutional values envisaged for private actors and entities. However, in case that the self-regulator has been delegated specific regulatory powers through a statute (co-regulation), she might be subject to public law regime, instead. Yet, in case of statutory delegation, also the actual regulatory tasks performed by the (self-or co-)regulator have a role in determining whether the public law regime applies instead of the privatelaw regime. Thus, the Finnish “regime test” for self-regulators needs to be based on both: formal and material criteria.

### [Self-Regulation in Italy\\*](#)

*Simona Rodriquez*

The paper was study is aimed at giving an overview of the evolution of the self-regulatory mechanisms in Italy.

A brief overview of the Italian system of sources of law show that the model of the sources of law rooted in the Italian constitution is typically positivistic and centred on the pivotal role of the Parliament, the only body empowered to make legislation, either directly or by delegation of its normative powers to the Government, within expressly specified limits.

What space, if any, does exist for the self-regulatory rules?

If one of the most interesting aims of the research was to analyse to what extent the self-regulatory phenomenon is compatible with the undisputed Parliament’s sovereignty and with the linked principle of rule of law, it should be clear that rules made by private actors (i.e. self-regulatory rules), which pretend to have external effects (binding erga omnes), can be considered as law and, as such, as sources of law, as long as they can be “incorporated” and recognized into some of the formal

sources of Italian law. This seems the only possible and constitutional compatible interpretation of a phenomenon (such is self-regulation) which, instead, could potentially be able to put the formal hierarchy of sources of law in jeopardy.

On the other hand, the results of the study make clear that, even when the Parliament confers its normative powers to any other bodies (i.e. either independent administrative authorities or professional orders, or, more in general, any self-regulatory associations), it will unlikely give up fixing the limits within which those normative powers have to be exercised. Some authors actually consider this sort of “delegated legislation” as a mean for the State to reassert its sovereignty.

Anyway, this new pluralistic “architecture” will undoubtedly let the legislator to keep some exclusive duties: firstly and foremost, the power to prescribe the institutional conditions founding the «private self-regulatory governments’» basis, as well as the aims of their future normative action; secondly, to intervene in order to correct, if necessary, the new consensual rules.

### [Self-Regulation in The Netherlands\\*](#)

*Z.D. Laclé & A.C.M. Meuwese*

This chapter on self-regulation in the Netherlands aims to give an overview of how self-regulatory mechanisms are embedded in the Dutch legal system. Part I explains the general legal framework for self-regulation, dealing with constitutional aspects, the public/private nature of self-regulatory bodies and acts and liability respectively. Part II looks at selected case studies, exploring the Dutch style of (self-) regulation of professionals, financial markets, sports, media, environment and the Internet.

The overarching picture emerging from the Dutch legal system and in particular its case law is the persisting strong division between public law regulation (unilateral and therefore bound by constitutional norms) and self-regulation (assumed to be bilateral and therefore positioned in the realm of private law).

Furthermore a growing popularity of public law mechanisms at the expense of (pure) self-regulatory mechanisms can be observed. This is partly because in the current legal structure the voluntary nature of many self-regulatory arrangements is not always protected or acknowledged. Due to the dynamics of the litigation structure (both in public and in private law) dissatisfaction with self-regulation or co-regulation does not often find expression in court rooms.

### [Self-Regulation in Spain\\*](#)

*Joan Rius*

The Spanish report outlines the role played by self-regulation as a regulatory strategy within the Spanish legal system. The study of self-regulation from this perspective has only recently been tackled by Spanish legal literature, which has captured this idea under the concept of “regulated self-regulation”.

In order to develop and illustrate this concept, the report is structured in three parts. The first part presents the ideas leading to the concept of “regulated self-regulation”. The second part places the self-regulatory phenomenon within the general legal framework of Spain, covering its constitutional aspects, the institutional forms under which self-regulation takes place and operates, as well as the external effect which self-regulation gives rise to. This general legal framework is finally tested, in the third part, on five sectors where self-regulatory manifestations are important either because of historical reasons or because of the increasing European promotion of self-regulation as a regulatory strategy.

### [Self-Regulation as a Regulatory Strategy – A Comparative Law Perspective: Table of findings\\*](#)

*Fabrizio Cafaggi*

This last report approaches the comparison among the data provided by the preceding national reports. It will stress the reciprocal difference and correspondences through concise presentations and open questions following the four main fields of research: constitutional aspects of self-regulation,

delegability of legislative and administrative powers, limits to delegation, nature of regulatory body and its consequence, judicial review and liability of private regulators. In the comparison tables, the answers to the aforementioned questions will be presented, facilitating the analysis of each national system in relation to the others.

#### Legal Issues Task Force ‘Litigating EU Law’

##### [The European Court and Enforcement Actions: Codebook and Dataset on Infringement Proceedings \(Art. 226\), 1958-2005\\*](#)

*Alec Stone Sweet and Thomas L. Brunell*

This data set contains the first 2,647 Art. 226 infringement proceedings (enforcement actions) filed. In these, the European Commission raised 5,002 separate claims that Member States were in violation of one or more provisions of EC law (see the discussion of legal domains [matters] in Appendix C below). The last claim in our dataset is case 50 filed in 2006. The data set, available at this website, includes information on, among others, date, the target Member State, the legal domain or subject matter (e.g., competition, environmental protection, free movement of goods), and the official docket number given to the case by the European Court of Justice.

##### [The European Court and National Courts: Codebook and Dataset on Preliminary References in EC Law \(Art. 234\), 1961-2006\\*](#)

*Alec Stone Sweet and Thomas L. Brunell*

The data set, which is made accessible here, contains information on all of the Art. 234 preliminary references filed with the European Court since the first reference in 1961. The most recently collected data are complete through 2006. The data set, which we make accessible here, contains the first 5,424 references filed, which invoke 8,638 separate claims of EC law. The data set includes information on, among others, date, member state, court of referral, legal domain or subject matter (e.g., competition, environmental protection, free movement of goods), and the official European Court Reports citation.

##### [The European Court and Actions for Annulment: Codebook and Data Set on Actions under Article 230, 1954-2006\\*](#)

*Alec Stone Sweet and Thomas L. Brunell*

The data set, which is made accessible here, contains the first 5,143 Art. 230 actions for annulment – applications for the judicial review of the legality of Community acts – filed with the European Court of Justice. Taken together, applicants invoked 11,973 separate claims involving one or more provisions of EC law (see the discussion of legal domains in Appendix C below). The last application in our dataset is case 535, filed in 2006. We believe that the data set is complete through 2006. The data set, available at this website, includes information on, among others, date, the target Member State, the legal domain or subject matter (e.g., competition, environmental protection, free movement of goods), and the official docket number given to the case by the European Court of Justice.

## V. Dissemination Activities

The “Plan for Using and Disseminating Knowledge” of the NEWGOV Project mainly includes the dissemination of knowledge by effective communication means. Naturally, this social science project neither intends to produce exploitable results which have the potential for industrial or commercial application, nor can the scientific written output be defined as a product or service in the strict sense.

As a result, our strategy mainly focuses on the effective dissemination of the generated knowledge. We rely on a two-tier strategy which includes (a) activities coordinated and implemented on the Consortium level, and (b) activities which are implemented by the individual partners and projects.

### *V.1. Dissemination of knowledge on the Consortium Level*

#### *V.1.1 Website*

The Consortium web-site [www.eu-negvow.org](http://www.eu-negvow.org) is the primary tool for disseminating the results of the research conducted by the Consortium and for diffusing them to all relevant scientific and practitioner communities. The website exclusively dedicated to the NEWGOV project was launched on 1 February, 2005. A first project website was already available on the server of the Robert Schuman Centre in September 2004.

The public section of the website contains topical information concerning the project. In particular, it contains publications, reports, articles and working papers of the Consortium. Links to other information sources relating to the project’s research fields are provided, as well as regularly updated information on events organised in the framework of NEWGOV. The section ‘Research’ in the public area is dedicated to the work of the clusters and projects. With links to the web-server’s database, visitors can immediately access the outline of a project or cluster, deliverables and other documents, and the researchers involved in the project/cluster.

Publicly available deliverables as well as other project outputs can be downloaded from the website. This offer is widely used with the number of downloads increasing steadily.

After a starting period, the website has now between 3.500 and 4.750 visits per month. According to the website statistics, visitors come predominately from Europe and the US but also from other continents. A good percentage of those visitors that can be identified come from higher education institutions. At the same time, also practitioners visit the websites, be they from institutions (European Commission, European Court of Justice, national ministries, IMF, etc.) or from companies and organisations.

After the successful establishment of the website in year one, the management of the web site in years 2 and 3 dealt with the updating of the various web site components. The idea of a web-based forum, publicly accessible, was abandoned, because experiences of other international research projects were mostly negative. Finally, the successful leaflet produced in the first year was updated in year 3. The leaflet is a spin-off of the information provided on the homepage.

#### *V.1.2 Working Papers*

The working papers of the Project are published in the peer-reviewed working paper series EU-ROGOV, the joint series of the CONNEX and NEWGOV networks. This series is a tool for sharing knowledge across the Consortium itself, but also a crucial means of spreading this knowledge much more widely to the rest of the European and international scientific communities.

NEWGOV working papers are submitted via the scientific director and the relevant cluster leader. Once the internal NEWGOV refereeing process has been concluded, the proposed paper will also be subject to the EUROGOV peer-review process. Papers already accepted by a journal are not publishable in the EUROGOV paper series. EUROGOV is managed by the CONNEX Network. The NEWGOV project is represented in the Editorial Board of EUROGOV by Gerda Falkner, researcher within project 1.

During the first three project years, six working paper coming from the NEWGOV project have been published, with another two in the review process. Around 50 Working Papers are foreseen to be published during the duration of the two projects (NEWGOV and CONNEX). The website of the Working Papers series is: [www.connex-network.org/eurogov](http://www.connex-network.org/eurogov).

### *V.1.3 Active Relaying to Scientific Community*

Relaying the results of the research to the scientific community and strengthening the integration of the research carried out on the cluster and project level are the main tasks at the Consortium level. In order to reach these objectives, a number of Consortium-level workshops are being organised, each of them focussing on specific analytical themes and / or empirical topics. The workshops bring together researchers from across the Consortium with access for scholars from the wider circle of associated institutions, in particular from other FP5 and FP6 projects. As such, they are also an element of the plan for using and disseminating knowledge.

The strengthening of cross-cluster contacts and the integration of the Task Forces into the work of the clusters and projects are also aims of the workshops organised on the Consortium Level. The first workshop (month 21) was on ‘Law in New Governance’ with members of the Law Task Forces as well as other members of the NEWGOV Consortium and the CONNEX Network participating. One workshop, organised by cluster 4, took place at the Amsterdam Institute for Advanced Labour Studies on 7 and 8 December, 2006 and focused on New Approaches to Socio-Economic Governance (D9b). The main subjects of discussion at the workshop were the capacity of the European Commission to use soft laws and ‘new modes of governance’ across a range of policy areas. The participants examined its attempts to develop new forms of network governance, to use the ‘shadow of hierarchy’ to gain compliance or convergence with soft law policies and to promote cooperation among member states on new codes of governance as in direct tax policy. During the final project year, one workshop will bring together those projects dealing with issues of governance modes in new member states (month 38, D9c), another one (around month 39) will be organised together with the Democracy Task Force. In month 44 or 45, a final cross-cluster workshop will deal with the issues of civil society, new modes of governance and enlargement. These workshops are open to any other interested member of the academic community. The Consortium usually invites scholars from other relating 5th/6th framework projects and other international R&D programmes.

Furthermore, in order to link researchers from across the Consortium and to achieve a better cross-fertilisation of research, an annual Consortium wide conference is organised which includes both plenary debates and cluster workshops. During the first three project years, the Consortium Conferences were organised with different formats, including joint workshops for all four thematic clusters, thematic workshops along common topics in addition to the cluster meetings, or key note speeches on key thematic issues for NEWGOV. The final Consortium Conference will be organised in month 46. It is foreseen to present the results of the NEWGOV project to a large audience. The conference will also serve as a final input into the synthesis report for the project as a whole. The format of the conference will once more aim at enabling cross-cluster communication and to focus on thematic issues.

At the same time, dissemination to the academic community is also ensured by the numerous publications and participations in a wide range of different workshops and conferences, including the

most important ones organised by the large international associations of political scientists or sociologists (see below, 3).

The Steering Committee has asked the individual project partners to pursue a vigorous approach to relaying the results of the research to the scientific community, especially in its closing phases. It requires action both through discipline-based scientific communities (via specialised journals, professional conferences and so forth) and ‘platforms’ (the NEWGOV newsletters and briefing papers can play a role here) for disseminating the knowledge produced that crosses conventional disciplinary boundaries. As documented in the annual progress reports, NEWGOV researchers are continuously presenting initial and final results at academic conferences and will continue to do so during months 37 to 48.

Also at the Consortium level, NEWGOV will invest considerable efforts in producing project results which will try to synthesise and summarize the results of the Integrated Project as a whole. The Steering Committee will coordinate the various products produced during the final period:

- Final project outputs produced by individual sub-projects are either formal ‘final reports’ or articles, monographs, dissertations, or edited volumes in which the final results of the projects are being presented;
- Edited volumes will be produced at the level of the clusters;
- Articles will be submitted to peer-reviewed journals by cluster leaders and the Scientific Director, based on the results of the clusters and NEWGOV in general;
- The cluster leaders, the Scientific Director and the Chairperson of the Steering Committee plan to produce a joint book (about 150 pages) in which the overall results of the NEWGOV project are being synthesised. This monograph will provide answers to the main framework questions relating to the Emergence, Execution, Evaluation and Evolution (our ‘four Es’) of New Modes of Governance. We have already attracted the interest of two of the large international academic publishing houses (see below);
- Based on this overall analysis, dissemination activities are planned during the period April-July 2008 (months 44-47), including a dissemination activity to be organised in collaboration with our sister Network of Excellence CONNEX (see below), a large final Consortium Conference in Florence as well as smaller ‘spin-off’ activities and publications for the practitioners and other stakeholders. As regards the dissemination to the academic community, the Consortium also plans to utilise the large international conferences to take place in 2008 (and also in 2009, e.g. EUSA).

#### V.1.4 Dissemination to practitioners

Dissemination for practitioners is a key aim of the Consortium. In addition to these activities, the Consortium management team will ensure that the EUI activates its links with EU institutions and the network of EU agencies to ensure that the results of the research are widely diffused to them. Similarly, the Consortium team will mobilise its links to the governments that belong to the EU’s Convention, in order to achieve a dissemination of research results widely across the EU member states. The issues and briefing papers series will be especially important as a means of communication in this regard, as will ease of access to material posted on our web-site. In this sense, therefore, this project will also be piloting an additional mechanism for developing the European Research Area.

Making these tools to effective will require active communication with relevant practitioner communities as the Project develops. Achieving this will be a considerable challenge given the diversity of practitioner communities that are relevant, by sector, by country, by level of governance, and by category of institutional actors. The contacts’ database created by the Consortium management

team, will in itself constitute a kind of map of the practitioner communities to which the knowledge created by the Consortium will be relevant.

The first Consortium Practitioner Forum “Policy learning and experimentation in EU economic governance: Laboratory federalism in practice?”, aimed to further theoretical and empirical insight into the working of laboratory federalism in three policy areas that are of particular relevance to EU economic governance: policy coordination through social partnership, tax policy and macroeconomic stabilisation. The Forum was organised in collaboration with project 19a on Economic Governance (month 19). The second one (month 27) was organised by cluster 1 on the topic “Old and New Modes of Governance: Effectiveness, Efficiency, Legitimacy”, the third forum took place in month 32 on the issue of EU agencies. During the final project year, Consortium Practitioner Forum nos. 4-6 are foreseen. The first will be organised by cluster 1 on the topic “Towards an Evaluation of New Modes of Governance” (month 42), the second by project 6 on “Regulatory Networks and New Modes of Governance in the EU” (month 44), and the third by clusters 3 and 4 on “Civil Society, New Modes of Governance and Enlargement” (month 45, together with the cross-cluster workshop).

At the same time, many NEWGOV projects have organised workshops and seminars with the participation of practitioners, e.g. projects 7, 8, 11, 12, 15, 19a, 22, and 23. Project workshops specifically aiming at the dissemination of project results to the practitioner community will continue to be organised in the final period month 37-48 as numerous projects have scheduled these kind of event. This decentralised approach also secures that stakeholders from the respective policy fields can be targeted.

Furthermore, NEWGOV and CONNEX will jointly organise a dissemination conference in April 2008 in Brussels. The main aims of this joint conference is

- to present the main achievements of the CONNEX Network and the NEWGOV project to practitioners and stakeholders in the Brussels arena, that is the European Institutions and other Brussels-based institutions and NGOs.
- to present and discuss controversial findings and by doing so question conventional wisdom and dissipate erroneous assumptions
- to demonstrate the value of spending money for social science research on EU governance and legitimacy and reflecting on the merit of large research instruments such as CONNEX and NEWGOV.

It should finally be mentioned that interaction with practitioners is a two-way process in which NEWGOV researchers not only disseminate research findings to practitioners, but very actively seek information from the latter. A large number of qualitative interviews are being conducted in the individual projects in all clusters that offer immensely valuable empirical insights into how the new modes of governance are being applied in reality. Naturally, research results are also disseminated during these interviews.

#### V.1.5 Dissemination by means of the External Newsletter, Issues and Briefing Papers, Book Series

In addition to the written output in forms of deliverables, journal articles, EUROGOV papers, etc., three other instruments for disseminating the results of the research conducted by the Consortium and for diffusing these to all relevant scientific and practitioner communities are being provided on the Consortium Level. They are part of the plan for using and disseminating knowledge. It was agreed that this work package should only start in year 2 once first results from the projects and from the Consortium Level are available.

First, a research results-oriented newsletter, produced approximately every six months. It is sent to members of the broader academic and policy making communities and provides information concerning work in different parts of the Consortium. It is sent out to a larger email list in a formatted PDF-version; some printed copies are produced for promotion purposes. The Consortium makes sure that relevant other 5th and 6th framework projects, international research programmes as well as stakeholders concerned will receive this newsletter. A first issue of the External Newsletter, providing an overview on the NEWGOV project and a detailed description of the research carried out in cluster 2, was disseminated in summer 2006 (D12). The next issues of the External Newsletter are foreseen for months 40, 44, and 48 (D20).

Second, short and accessible Issues and Briefing Papers are produced to aid the dissemination of research results to a broader academic and especially practitioner community beyond the Consortium. These are related also to specific and topical events that may arise during the course of the Integrated Project and Consortium members can respond to and deploy their particular expertise. Briefing papers can also be short executive type summaries of Working Papers or topical pieces written by NEWGOV partners. Some clusters (most notably cluster one) have a series of briefing papers (or policy memoranda) as official project deliverables. In addition, PhD-students working within NEWGOV projects are invited to write briefing papers as this constitutes a good (training) exercise. The three issues of the Policy Brief series were published during years 2 and 3

- Issue No. 1 (spring 2006), “Governance of the EU Securities Sector: Impacts of the Lamfalussy Reform”, presenting key results of project no. 7.
- Issue No. 2 (summer 2007): “Pharmaceutical Harmonization in Central Eastern Europe – New Modes of Governance in the Shadow of Conditionality” by Charalampos Koutalakis (University of Athens / Free University of Berlin). The Policy Brief presents the key results of project no. 14.
- Issue No. 3 (summer 2007): “Specific factors and development trends of modes of governance in EU Justice and Home Affairs” by Jörg Monar and Anya Dahmani (Université Robert Schuman de Strasbourg). The Policy Brief presents the results of project no. 1.

During the final project year, each project not having produced a Policy Brief so far is expected to submit one issue until the end of the project.

#### V.1.6 Dissemination of scientific synthesis of project results

Finally, the Steering Committee plans to work with a publisher to produce a high quality book that will record in fully worked and elaborated form the range of the knowledge created, its empirical content, its analytical innovations, and its implications for subsequent scientific enquiry. This will be a systematic comparison of the theoretical questions and findings on Emergence, Execution, Evaluation and Evolution and will be compiled in a joint publication (D25). It will be a single monograph to be jointly produced by all cluster leaders and the chairperson of the Steering Committee. This publication could be around 150 pages.

In addition, and a number of edited volumes and monographs are produced by the different clusters (Clusters 1-3, Legal Task Force Ia). The Steering Committee decided not to aim for a ‘series’ with one publishing house. Each cluster and each project, where applicable, should seek to publish its results with the best possible publishing house/journal available on its own. This will also enable project partners to pick publishing houses or journals best suited for their respective topic/discipline. Of course, publications should have the NEWGOV logo on the front page and should make reference to the NEWGOV project and the Commission funding (contractual obligation).

## V.2. Dissemination of knowledge by project partners

The following list also includes those publications ‘in print’ and ‘under review’, and upcoming participation in conferences etc.

### V.2.1 Monographs and edited volumes

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- Castiglione, Dario and Chris Longman (eds.), (2007), *The Language Question in Europe and Diverse Societies*, Hart Publishers, Oxford.
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### V.2.2 Articles in journals and edited volumes, Working Papers

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- Weale, Albert and Deborah Savage (2006 under review) “The Normative Logic of Two-Level Games and the European Union”, submitted to *Journal of Common Market Studies*.
- Weale, Albert and Hugh Ward (2006 under review) “From Majority Rule to Majorities’ Rule”, submitted to *Ethics* 14 May 2006.
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- Wichmann, Nicole (2007 forthcoming), “The intersection between Justice and Home Affairs and the European Neighbourhood Policy: Stocktaking Logics, Objectives and Practices”, CEPS Working Paper

V.2.3 Contributions to conferences, workshops, lectures, etc.

- Avdagic, Sabina (2007), "Gauging the impact of tripartism on socio-economic outcomes: The cases of Poland and Slovenia". Paper presented at the 19<sup>th</sup> Annual Meeting of the Society for the Advancement of Socio-Economics (SASE), Copenhagen, 28-30 July 2007.
- Avdagic, Sabina, Jelle Visser and Martin Rhodes (2005), "The Emergence and Evolution of Social Pacts: A Provisional Framework for Comparative Analysis," *Society for the Advancement of Socio-Economics*, Budapest, 1 July 2005.
- Begg, Iain (2004), "Is the Open Method of Co-ordination Robust Enough for an Effective European Strategy to Promote Employment?" paper prepared for a conference on *Governance et expertise de l'emploi en Europe*, organised by the French Ministry of Labour and Centre d'études de l'emploi, presented on December 14th 2004
- Begg, Iain (2004), "The Economic Dimension of the Constitutional Treaty," paper prepared for the *annual conference of the Korean Society for Contemporary European Studies*. Presented in Seoul, 26th November 2004
- Begg, Iain (2004), Presentation on "Economic dimensions of the Constitutional Treaty: Not a lot to say about not a lot" at the Institut für Europäische Politik, Berlin, 23rd September 2004.
- Begg, Iain (2004), Presentation on "Ways forward: the search for more effective policy," conference organised by the Association Europe Société on *Le dialogue social sectoriel européen: quelle contribution a la réussite de la stratégie de lisbonne ? quelles pistes pour l'avenir?*.
- Begg, Iain (2005) Invited contributor to Connex workshop on contestation of norms, Queens University Belfast (September).
- Begg, Iain (2005), "Economic policy and institutional transparency: the ECB," presented at workshop at Trolleholm, Sweden 4th March 2005.
- Begg, Iain (2005), "Real convergence and EMU enlargement: The Time Dimension of Fit with the Euro Area," workshop at the British Academy, London, February 7th. Begg, Iain (2005), ETUC/SALTSA workshop on the Stability and Growth Pact and the new members, Brussels, 21st March.
- Begg, Iain (2005), "Responses to enlargement: economic perspectives", talk at British German conference, University of Birmingham, 9 December 2005.
- Begg, Iain (2005), "The future of economic policy in Europe", talk at the Dansk Industrie conference on the Future of Europe, Copenhagen, 27 September 2005.
- Begg, Iain (2005), Discussant at Connex workshop on economic governance, Sciences-Po, Paris, 11 May.
- Begg, Iain (2005), ESRC Workshop on the Lisbon Strategy, LSE, 3rd June.
- Begg, Iain (2005), Invited key-note talk at the Polish Lisbon Strategy Forum meeting, Warsaw, 1 December 2005.
- Begg, Iain (2005), Presentation on "Catch-up, the transition to full participation in EMU and financial stability," *DG Ecfm annual conference*, October 7th 2005
- Begg, Iain (2005), Presentation on "Economic and social governance: is there a future," TEPSA Austrian Presidency conference, Vienna, 2 December 2005.
- Begg, Iain (2006), "Balancing the budget", paper presented at Austrian Academy of Sciences, Presidency conference, Vienna, 22 May 2006.
- Begg, Iain (2006), "Is there a convincing rationale for the Lisbon strategy?" paper presented at the *ESRC Lisbon Strategy seminar*, Edinburgh, 28<sup>th</sup> April 2006
- Begg, Iain (2006), Invited contributor to panel on Institutions as a factor in economic development' Economic Forum, Krynica, Poland, 8 September.

- Begg, Iain (2006), Member of Federal Trust Working Group on Economic Governance, London, February-July 2006
- Begg, Iain (2006), Panellist for a roundtable on 'Eight years of the euro' 12th Croatian National Bank Dubrovnik Economic Conference, 1 July.
- Begg, Iain (2006), Presentation on "Economic impacts of enlargement: myths, realities and surprises," Europe Day conference organised by the Commission representation in Croatia and the IMO, Zagreb 9th May 2006.
- Begg, Iain (2006), Presentation on "Internal policies and the 2007 budget," to the Budgets Committee of the European Parliament, June 28th 2006
- Begg, Iain (2006), Seminar on "Whether the Lisbon strategy is delivering," Chatham House, London 4th April 2006.
- Bellamy, Richard (2004) "Constitution Making as Normal Politics," at conference on International Perspectives on Human Rights, JURA GENTIUM, Centre for Philosophy of International Law and Global Politics, Dipartimento di Teoria e Storia del Diritto, Università di Firenze.
- Bellamy, Richard (2004) "Which Constitution for What Kind of Europe?", CIDEL Conference, Birkbeck College, University of London, 12/11/04
- Bellamy, Richard (2004), 'Constitution Making as Normal Politics,' Centre de Recherche Sens, Ethique et Société (CERSES), Institut de Recherche sur les Sociétés Contemporaines (IRESCO), Paris, 29/11/04.
- Bellamy, Richard (2004), "Constitution Making as Normal Politics," European Law Centre, University of New South Wales, 7/04/05.
- Bellamy, Richard (2004), "Democracy and Constitutions: Does the One Need the Other?", School of Public Policy, UCL, 15/12/04.
- Bellamy, Richard (2004), Public Lecture, "Between Past and Future: The Democratic Limits of EU," the Institute for the Study of Europe, Columbia University (with the collaboration of the Active Citizenship Foundation) 18/11/04
- Bellamy, Richard (2005), "Between Substance and Procedure: Is there a Middle Way for Judicial Review?", 8.12.05, Conference on 'Political Reflections on Modernity' Academia Sinica, Taiwan.
- Bellamy, Richard (2005), "Democracy and Constitutions: Does the One Need the Other?", IVR World Congress, Granada, 28/05/05.
- Bellamy, Richard (2005), "Still in Deficit: Rights, Regulation and Democracy in the EU," Demcon 2005 Conference: Supranational Political Community: Substance? Conditions? Pitfalls?, 1.10.05, University of Victoria, British Columbia, Canada.
- Bellamy, Richard (2005), "Still in Deficit: Rights, Regulation and Democracy in the EU", Conference on 'Shifting Boundaries of Sovereignty: Governance and Legitimacy in the EU and Australasia", 22.03.05, National Europe Centre, ANU
- Bellamy, Richard (2005), Jean Monnet Lecture: "Between Past and Future: The Democratic Limits of EU," 16.03.05 CERC, University of Melbourne.
- Bellamy, Richard (2005), "Democracy and Constitutions: Does the One Need the Other?", Social and Political Theory Seminar, 25/02/05, ANU.
- Bellamy, Richard (2006), "Political Constitutionalism," APSA Panel on 'The Americanisation of European Politics? I: Should Europe Adopt American Style Judicial Review', 2.09.06, Philadelphia, USA.
- Bellamy, Richard (2006), "Still in Deficit: Rights, Regulation and Democracy in the EU," IPSA Panel on 'Democracy and New Modes of Governance', 10.07.06, Fukuoka, Japan.

- Bellamy, Richard (2006), "Still in Deficit: Rights, Regulation and Democracy in the EU," Jean Monnet Summer School, 11.09.06, Università di Trento
- Bellamy, Richard (2006), "Still in Deficit: Rights, Regulation and Democracy in the EU," Graduate School of Politics and International Studies, 17.02.06, University of Hull
- Bellamy, Richard (2006), "The Democratic Constitution," 10.05.06, Department of Politics, University of Newcastle
- Bellamy, Richard (2006), "The Democratic Constitution." 4.05.06, Department of Politics, University of Sheffield
- Bellamy, Richard (2006), APSA 2006 panels on 'The Americanisation of European Politics': I: 'Should Europe Adopt US Style Judicial Review?', II: 'Has Europe Adopted US Style Judicial Review?' (2 and 3. 09.06).
- Bellamy, Richard (2006), Organiser of IPSA 2006 panel on "Is the EU Constitution Dead and Should We Mourn its Passing?" (9.07.06);
- Bellamy, Richard (2006), presentation on "Between Substance and Procedure: Is there a Middle Way for Judicial Review?" Dipartimento di Diritto Pubblico - Università di Pisa
- Bellamy, Richard, (2005), "Still in Deficit: Rights, Regulation and Democracy in the EU," 9.11.05, NoSoPhi seminar, ANCo, Université Paris 1.
- Bellamy, Richard, "Still in Deficit: Rights, Regulation and Democracy in the EU," 27.03.0, Dipartimento di Teoria e Storia del Diritto, Università di Firenze
- Bellamy, Richard, Plenary Panellist (2005), "Norberto Bobbio: The Rule of Law and the Rule of Democracy," 27.05.05, Round table on Norberto Bobbio, World Congress IVR, Grenada.
- Blauberger, Michael (2006), "Making a Virtue of Necessity. Soft Law in European State Aid Control," AIAS Amsterdam: Newgov Workshop on Socio-Economic Governance (08.12.2006).
- Blauberger, Michael (2007), European State Aid Control in the New Member States. The Examples of Poland and the Czech Republic. Montreal: EUSA Tenth Biennial International Conference (18.05.2007).
- Bruszt, Laszlo (2005), Presentation of a paper on the "Evolution of Regional Developmental Regimes in the CEE countries" at the SASE conference, 30/06/05.
- Bruszt, Laszlo and McDermott, Gerald A. (2007), "International Integration Regimes as Development Programs: A Comparison of EU and NAFTA Accession Processes", paper presented at APSA Annual Meeting, Chicago, 31 August 2007.
- Buzogany, Aron (2007), "Friend or foe? The symbolic politics of framing Europe among social movements from Central and Eastern Europe", paper presented at ECPR Biannual Conference, Pisa, September 4-6, 2007.
- Buzogany, Aron (2007), "New Modes of Governance and Eastern Enlargement: Adopting EU Environmental Policy in Hungary, Poland and Romania", Cross Cluster Workshop: New Modes of Governance, Warsaw, October 26, 2007.
- Castiglione, Dario (2004), "The democratic legitimacy of non-democratic institutions in contemporary societies," University of Columbia, September 2004
- Castiglione, Dario (2004), paper presented for the Workshop on 'Democratic institutions and political parties – governance and decision making' at the CoE Barcelona Conference on "The future of democracy in Europe", 17-19 November 2004
- Castiglione, Dario (2005) Organisation of a panel on 'Changing ideas of representation and accountability' at the 3rd ECPR Conference, September 2005
- Castiglione, Dario (2005), "A community of Strangers? The ties that bind the European Union" Paper for session on 'Deep Diversity', at a conference on "Ces Liens qui Unissent/The Ties that

- Bind” Accommodating Complex Diversity in Canada and the European Union’, Brussels, November 2005
- Castiglione, Dario (2005), “A community of Strangers?” paper for a panel on ‘The EU – A Political Community?’, as part of the Symposium on ‘Sovereignty – Law – Morals. State Power in the Era of Open Statehood’, Freie Universität, Berlin, April 2005
- Castiglione, Dario (2005), “Comment on C. Joerges “Confronting Memories””, CIDEL Conference on ‘Law and democracy in Europe’s post-national constellation’, Florence 23-25 September 2005
- Castiglione, Dario (2005), “Representation re-examined: A theoretical agenda,” Seminar at the New School University, New York, April 2005
- Castiglione, Dario (2005), “Two steps backward ... one step forward?” Paper for the Montreal Workshop on Constitution-making and democracy in multinational polities,” Montreal October 2005
- Castiglione, Dario (2005), MPSA Paper on ‘Rethinking Representation: Seven Theoretical Issues’ (together with Mark Warren), Chicago, April 2005
- Castiglione, Dario (2005), Participant in a Round table on the European Constitution, 3rd ECPR Conference, September 2005
- Castiglione, Dario (2006), “Representation – A new theoretical agenda,” UBC Vancouver, May 2006
- De Visscher, Christian and O. Maiscoq, (2007), “The Lamfalussy Process and the EC Institutional Balance: From Comitology Procedures to Policy Levels”, EGPA Conference, Madrid, 19-21 September 2007.
- Falkner, Gerda and Oliver Treib (2005), “Explaining EU Policy Implementation Across Countries: Three Modes of Adaptation”. *European Union Studies Association (EUSA): Biennial Conference: 2005 (9th), March 31-April 2, 2005*, pages 6, Austin, Texas.
- Føllesdal, Andreas (2006), “7 steps toward more legitimate multi-level governance”, Expert Seminar on The Interrelation between Regulatory Activities of the European Union and other International Organizations and its Effect on the State – Legal, Political and Philosophical Dimensions of Legitimacy, Accountability and the Rule of Law, The Hague, 26-27 June.
- Føllesdal, Andreas (2006), “Accountability as a means for legitimacy in new modes of EU governance”, Connex Workshop “Accountability in the European Union Multi-level Governance System”, Lausanne, Switzerland, 23-24 June.
- Føllesdal, Andreas (2006), “Does the Constitutional Treaty give the European Union a Consistent Human Rights Policy?”, American Political Science Association 2006 Annual Meeting, Philadelphia, 3 September.
- Føllesdal, Andreas (2006), “If there was no Common and Unique European or National Identity, would we have to Create One?”, Conference on “Multiculturalism, and Nationalism in a World of Immigration”, The Danish Research Network for Equality and Pluralism, University of Copenhagen, 8-9 May 2006.
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