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> Laurie Boussaguet
Renaud Dehousse
Sophie Jacquot

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LAURIE BOUSSAGUET, RENAUD DEHOUSSE, SOPHIE JACQUOT

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Laurie Boussaguet *is assistant professor in political science at the University of Versailles-Saint-Quentin-en-Yvelines and research fellow at the CESDIP (Centre de recherches sociologiques sur le droit et les institutions pénales). She was awarded a PhD in political science from Sciences Po in 2007. Her main work has been on policy analysis, transnational convergence, agenda-setting, lay people's participation and European governance. She has co-edited the Dictionnaire des politiques publiques (Presses de Science Po, 2010 – with Sophie Jacquot and Pauline Ravinet) and recently published La pédophilie, problème public. France, Belgique, Angleterre (Dalloz, 2008) and "Too big to fly? A review of the first EU citizens' conferences" (Science and Public Policy, 36(10), December 2009, pp. 777-789 – with Renaud Dehousse).*

Contact: laurie.boussaguet@uvsq.fr

Renaud Dehousse *is Jean Monnet Professor of European Law and Politics at Sciences Po, where he directs the Centre d'études européennes. Prior to joining Sciences Po in 1999, he was a Professor at the University of Pisa and at the European University Institute in Florence where he co-directed the Academy of European Law. He has been a visiting professor at the University of Florence (Cesare Alfieri), the University of Lausanne, the University of Michigan Law School and the College of Europe. His work focuses on the European Union's institutions and its political system.*

Contact: renaud.dehousse@sciences-po.fr

Sophie Jacquot *is research fellow and scientific coordinator of the Centre d'études européennes at Sciences Po. She is a specialist of sociology of policy analysis and European integration studies and her research activities are concerned with the transformation of EU public action, especially in the social and anti-discrimination field. She has recently published "The Paradox of Gender Mainstreaming. The Unanticipated Effects of New Modes of Governance in the Gender Equality Domain",* West European Politics*, vol. 33, n° 1, pp. 118-135, 2010, and "Using Europe : Strategic Action in Multi-Level Politics",* Comparative European Politics*, vol. 8, n° 1, pp. 110-126, 2010 (with Cornelia Woll). She currently coordinates a comparative European project on the usages of Europe in domestic social policy reforms, involving 12 countries (with Paolo Graziano and Bruno Palier, FP7 network of excellence RECWOWE – Reconciling Work and Welfare).*

Contact: sophie.jacquot@sciences-po.fr

Change and Continuity in European Governance

Keywords: directives, European law, governance, legitimacy, multilevel governance, open coordination, policy coordination, soft law

Abstract:
Since the mid 1990s, European governance has evolved substantially, particularly in the direction of fewer constraints: flexibility, coordination, peer monitoring, and soft law have become fashionable themes. The literature on "new modes of governance" (or NMGs) has flourished alongside these transformations. But is the existence of "new" instruments of governance necessarily synonymous with an innovative way of doing things? Is it really the case that NMGs now play a central role in EU policy-making? Are we witnessing the emergence of an entirely new system of governance at the European level? In order to address these questions, this paper begins by briefly making the point that the concept of governance is better suited to describing the way public policy is conducted in the European Union, than that of government. It then moves to a discussion of the main trends that are identified as NMGs in order to assess to what extent they can properly be described as "new". This is followed by an overview of more traditional forms of EU action, which shows that "old" governance has far from disappeared.
The European system of governance is thus a good example of change in continuity: "old" and "new" are not mutually exclusive and this hybrid situation may in part be due to the great contiguity that exists between new modes of governance and their forerunners. New modes of governance are best analysed as an accentuation of the original features of the system, rather than as outright innovations. Both were largely conceived to respond to the same need, to provide a framework for interstate cooperation without leading to an unwanted degree of centralisation. This is not without analogy with the metaphor of the "marble cake", used over a century ago by Morton Grodzins to describe the coexistence of several varieties of federalism in American government. Pure innovations are rare in the world of governance.

Résumé:
Depuis le milieu des années 1990, la gouvernance européenne a profondément évolué, notamment dans le sens d'un abaissement du niveau de contrainte. Des termes comme flexibilité, coordination, surveillance par les pairs ou « soft law » sont devenus à la mode. Dans la lignée de ces transformations, une littérature florissante sur les nouveaux modes de gouvernance (NMG) a émergé. Mais l'existence de « nouveaux » instruments de gouvernance est-elle nécessairement synonyme d'innovation ? Les NMG jouent-ils réellement un rôle central dans les modes d'action publique de l'UE ? Assiste-t-on vraiment à l'émergence d'un nouveau système de gouvernance au niveau européen ? Afin de répondre à ces questions, cette contribution revient tout d'abord sur le terme de gouvernance afin d'analyser pourquoi il est le plus pertinent pour décrire le fonctionnement du système politique de l'UE. Elle propose ensuite une typologie visant à identifier les tendances principales sur lesquelles s'appuient les NMG et s'interroge sur la « nouveauté » de leur caractère, avant d'analyser les formes plus traditionnelles d'action de l'UE et de montrer ainsi que l'« ancienne » gouvernance est loin d'avoir disparue.

Le système européen de gouvernance est ainsi un exemple intéressant de changement dans la continuité : l'« ancien » et le « nouveau » ne sont pas mutuellement exclusifs et l'explication de cette situation hybride est certainement à rechercher dans leur caractère contigu. Les NMG sont bien plus le résultat d'accentuation des spécificités du système d'origine que de pures innovations. Ces instruments, « anciens » et « nouveaux » ayant tous été conçus afin de répondre à un même besoin : offrir un cadre de coopération interétatique sans mener pour autant à un degré de centralisation non désiré. Ceci n'est pas sans analogie avec la métaphore du « gâteau marbré », évoquée au siècle dernier par Morton Grodzins afin de décrire la coexistence de plusieurs variétés de fédéralisme au sein du gouvernement américain. Les pures innovations sont rares dans le monde la gouvernance.

Change and Continuity in European Governance

Introduction

Since those distant days that saw the launching of the European Coal and Steel Community, European integration has had its own particular *modus operandi*, the "Community Method". In spite of fifty years of debate on how to construct Europe, so great is its originality that it is still much misunderstood, even by its most zealous supporters. This notwithstanding, today the Community Method is widely regarded as being in crisis. Not only do many transformations that have followed the Maastricht Treaty depart from the initial model, but the former is often presented as "an idea whose time has passed", to use the words of former British Prime Minister John Major, echoed by many British think-tanks (see e.g. Leonard, 1999), or even as an instrument of "integration by stealth", in those of Giandomenico Majone (2005).

Indeed, since the beginning of the 1990s, European integration seems to have entered a new phase. National governments began to show signs of growing impatience with what they saw as an unlimited increase in the powers of the EU and therefore of the Commission. It is for this reason that recent years have seen an increasing number of counterweights to this power. The 'pillar structure' of the Maastricht treaty was undoubtedly the first expression of this new tendency and institutional counterweights to the Commission have multiplied ever since. At the same time, a strong dose of parliamentarianism has been injected at the European level. At each Treaty reform, the European Parliament's financial, legislative and supervisory powers have been strengthened. Its increase in power has been achieved largely to the detriment of the Commission, which has been forced to accept a number of new demands. National governments are much more assertive than they have ever been: witness the overt Franco-leadership in the current financial crisis or the theorizing of a new "Union method", in which the Commission is relegated to a back seat, by Chancelor Merkel in an address at the College of Europe. [1]

The same kind of phenomenon can be observed at the level of policy instruments. Since the mid 1990s, European governance has evolved substantially, particularly in the direction of fewer constraints: flexibility, coordination, peer monitoring, and soft law have become fashionable themes. The literature on new modes of governance (or NMGs) has flourished alongside these transformations[2]. Some authors have referred to a "governance turn" in European studies (Kohler-Koch and Rittberger, 2006). The analysis of the nature,

[1] See the full text at http://www.coleurope.eu/file/content/news/Speeches/Europakolleg%20Brügge%20Mitschrift%20englisch.pdf/

[2] See the literature review in Kohler-Koch and Rittberger (2006); Bähr, Falkner, Treib (2005), Olsen (2008), Eberlein, B. and Kerwer, D. (2002), Tömmel, I. and Verdun, A. (eds.) (2009).

significance and impact of this "new" governance has indeed created a scholarly movement in its own right (with its "stars", a specific language, quasi-specialised reviews, a multiplication of large-scale research programs, etc.). NMGs are defined, more or less implicitly, in opposition to the Community Method. Despite occasional doubts regarding their legitimacy (Georgakakis and de la Salle, 2008) or their effectiveness (Idema and Kelemen, 2006), they tend to be viewed as occupying an increasing place in EU policy-making.

Taken together, these moves reflect a desire to break with the broad delegation of powers that is distinctive of the Community method. But is the existence of "new" instruments of governance necessarily synonymous with an innovative way of doing things? Is it really the case that NMGs now play a central role in EU policy-making? Are we witnessing the emergence of an entirely new system of governance at the European level? Our aim in this contribution is to answer these questions. To that end, we will begin by briefly making the point that the concept of governance is better suited to describing the way public policy is conducted in the European Union, than that of government (1). We will then move to a discussion of the main trends that are identified as New Modes of Governance (2) in order to assess to what extent they can properly be described as "new" (3). This will be followed by an overview of more traditional forms of EU action, which will lead us to support the idea that "old" governance has far from disappeared (4). In conclusion, we ague that the EU system of governance is a good example of change in continuity: "old" and "new" are not mutually exclusive but tend to mix in an ever complexifying marble cake.

1. The Community Method as a mode of governance

It is difficult to regard the Community Method as the way a would-be "government of Europe" would act given the absence of a powerful executive, able to assign clear programmatic goals to the Union and to see to it that action is undertaken to reach those goals, and able to impose its views on other actors if need be. Despite recurrent complaints about the Brussels bureaucracy or the ghost of a "European super state", the Union lacks several of the classical features of the State. True, EU law claims to be supreme over conflicting national rules, but the Union is deprived of hierarchical authority over lower levels; it lacks any coercive power and is therefore dependent on national authorities to see its decisions enforced. The complex balance of power associated with the Community Method has clearly impeded the emergence of a strong central government. Although it might be somewhat far-fetched to argue that "Europe has made a principle of powerlessness" (Revel, 2003), there is little doubt that this result was not accidental. The whole system was indeed constructed to lock member countries into a virtuous scheme of cooperation in which efficiency gains could be made, rather than to create a new, imperial power, to which they would be subjected.

There is therefore some irony in the fact that the Community Method is increasingly criticised for its alleged inclination towards intrusive regulation and its lack of flexibility. Several of the elements associated with new modes of governance may help us make sense of its main features. Thus, using the classification proposed by Oliver Treib, Holger Bähr and

Gerda Falkner (2005), one could say that the Community Method is but one of the many modes of governance used by the Union. Admittedly, it entails more constraints than other methods, since it rests on legally binding and enforceable actions taken according to institutionalised procedures in a system characterised by a high dispersion of authority. It may lead to a broader variety of outputs than is commonly acknowledged however, as decisions adopted according to the Community Method do not necessarily result in the adoption of rigid approaches to implementation. Indeed, the use of directives or opt-out clauses may result in a fair degree of diversity. Similarly, EU rules may include material or procedural regulations (i.e. forcing national governments to notify measures that may hamper free movement to the Commission or to other member states before they are adopted). Moreover, even though the main decisions are formally adopted by public bodies, EU policy-making processes may (and often do) provide ample space for private interests; witness the important role attributed to social partners in social policy or to industry representatives in standardisation procedures. In other words, contrary to widespread opinion (see e.g. Majone 2007), what is characteristic of the Community Method is the *process* whereby decisions are made, rather than the outcomes of this process. Though processes and outcomes may of course be related, the point needs to be made that the Community Method does not necessarily lead to a centralisation of authority in the hands of bureaucrats, eager to impose an inflexible solution to any problem. Indeed, as has just been suggested, there are many examples to the contrary.

In short, whereas the concept of government is characterised by a hierarchical and centralised type of authority, the European political system was conceived and has operated differently from the very beginning. If one accepts that the defining feature of governance consists "in the interaction of a plurality of 'governing' actors who are not all state nor even public ones" (Leca, 1996, p. 339, our translation), then the Community Method can be defined as a mode of governance. What then, is so special about the new modes of governance that have appeared lately?

2. A tentative typology of new modes of governance

New European governance has multiple faces and many systems of classification have been put forward as a result. In this paper however, we focus on four categories of instruments which in our view illustrate the variety of ambitions and techniques that have led to the development of the governance movement: governance by implication, by delegation, by reputation, and by integration.

Governance by implication

This first type of instruments calls for opening European policymaking to civil society and involves an increasingly broad range of actors. The Commission itself proposed such a development in its White Paper on governance, citing as a model the extensive consultations that were organised between 1998 and 2000 before the adoption of the "Telecoms Package":

"what is needed is a reinforced culture of consultation and dialogue" (Commission 2001, p. 16), a strategy which it has followed systematically in areas where its legitimacy to act was questioned (Cram, 2011). The willingness of other institutions to foster transnational debate on EU policies appears equally strong, the Economic and Social Committee having been particularly active on this front (Smismans, 2000). In recent times, the Commission has displayed a keen interest in more innovative forms of dialogue. In the framework of the "Plan D", for instance, launched after the rejection of the draft constitutional treaty by the French and Dutch referenda, the Commission supported the organisation of experiments of transnational deliberation inspired by direct democracy techniques, such as citizens' conferences or deliberative polls. However, the impact of those participatory devices on decision-making is at best questionable and they involve numerous difficulties, be it in terms of language, or because the size of the sample required and its diversity make it difficult to achieve real deliberation (Boussaguet and Dehousse, 2009).

Governance through delegation

The second process consists of delegating a number of prerogatives to autonomous administrative structures operating at the European level. Although the first Community-level agencies were created in the 1970s, their number grew significantly during the 1990s and the 2000s, in the wake of the single market programme (Majone, 1996). The basic idea behind this move was that the development of the EU's regulatory capacity was necessary to reconcile free movement of goods with protection imperatives (in fields such as environmental or consumer protection, public health, workers' health and safety, etc.). This led to the setting up of autonomous structures in which expertise could be developed and which were vested with (generally limited) organisational powers (data collection, establishment of transnational networks, organisation of discussions on best practices, etc), as well as (more rarely) the power to make individual decisions, or to issue rules considered to be outside the legal reach of agencies. This compromise allowed for the management of a number of issues to be Europeanised without fully expelling national administrations from the field concerned, since as a rule they are directly associated with the agencies' activities. Despite significant differences in their respective status, most of these structures have become or are becoming centres for experience-sharing, socialisation, learning, and developing common solutions. These all contribute to the creation of shared representations for European and national actors involved in the same policy area.

Governance by reputation

Although the Maastricht Treaty rules on the convergence for macro-economic policies provided a blueprint for governance by reputation, the paradigm was only formalised with the launching of the Open Method of Coordination (OMC) by the Lisbon European Council in spring 2000. The OMC was in fact the starting point for the theorisation of new modes of governance and served as the basis for further conceptualisation of European governance.

Although the ambitions of the Lisbon Strategy were quite far-reaching, any transfer of additional powers to the European level was deliberately avoided. The Open Method of Coordination defined on that occasion consists above all in establishing procedural routines

– the definition of guidelines and indicators, periodic monitoring of national policies, exchange of best practices – intended to promote mutual emulation and learning. Mutual emulation rather than Community control mechanisms was seen as the key to success under this new strategy. The Commission was relegated to a secondary role and the heads of state and government assumed an overall role of guidance and control (Rodriguez, 2002; De la Porte and Pochet, 2002; Dehousse, 2004). This strategy reflected a political compromise between extending European influence into new political domains and eschewing challenges to member state sovereignty, particularly in social matters.

Since the OMC was systematised in 2000, new coordination processes have developed in the social realm (e.g. retirement, social protection and inclusion, health and access to long-term care) and in other sectors where it was thought that the EU should primarily play a support role (e.g. research and innovation, education, youth, information society). The term OMC thus in fact designates a working method rather than a particular process, since the instruments used tend to vary from one area to the other: drawing up of national action plans, setting of quantitative objectives, elaboration of individual recommendations.

Governance by reputation in general, and the OMC in particular, does not lead to the definition of common rules, but rather to forms of cognitive and normative harmonisation practices, where convergence is sought at the level of problem analysis and of solutions, but diversity in national implementation schemes is allowed (Palier, 2000). The cognitive dimension is therefore central; emulation and reputation have emerged as drivers, supplanting legal requirements, and the networking of national actors is the principal vehicle for European public policymaking.

Governance by integration

Governance by integration, which has especially thrived since the 1990s, aims to manage the complexity and multidimensionality of some of the problems for which the EU is responsible. It refers to what is most often called “mainstreaming”, “integrated approaches”, or “integration principle”. Under this approach, certain policy concerns are injected into a broad range of sectoral policy domains instead of being treated as stand-alone areas.

An early example of this type of governance involves environmental concerns, which are addressed systematically in a broad range of Community policies. The integration principle first appeared in the Single European Act of 1986 (article 130 R. 2) and was subsequently reaffirmed. A second example is gender mainstreaming, or integration of the gender dimension. Article 3.2, which was added under the Treaty of Amsterdam, states that “in all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women”.

Mainstreaming processes have multiplied informally in many domains since the end of the 1990s (e.g., handicap, discrimination, urban issues, etc.). They were reinforced by the European constitutional project and the Lisbon Treaty, which confirmed this development by defining “provisions of general application” to EU policies (Title II of the Treaty on the functioning of the European Union, Articles 8 to 13) that stipulate specific “requirements” to be taken into account in the definition, management, and implementation of all policies, including gender equality, social protection, combating exclusion, environmental protection

and sustainable development, consumer protection and animal well-being (Halpern, Jacquot et Le Galès, 2008).

Governance by integration is being put into practice through a variety of tools. Some, like Commission inter-service groups, are organisational: they attempt to coordinate affected activities and actors. Others are meant to provide decision-makers with analytical tools (statistics, indicators, follow-up or impact studies, etc.). Finally, "awareness tools", such as training, or compiling best practices, seek to raise actors' consciousness about the different impact that policies may have on selected social groups, the environment, etc. (Jacquot, 2010).

The new modes of governance thus employ a wide range of instruments and practices. Each of the categories discussed here represents, in its own way and to varying degrees, an approach that differs from traditional "government". Together they display some key features that are traditionally associated with the governance turn: a greater role for private actors, a growing polycentricism, or preference given to more limited constraints. However, one may wonder to what extent this actually reflects a radical departure from earlier approaches pursued at the EU level.

3. *New* governance or "*déjà vu*"?

Many interpretations of the evolution in the European political system tend to pit new governance against the old, represented by the Community Method, leading to a series of dichotomous oppositions: binding *vs.* non-binding instruments, top-down *vs.* bottom-up approaches, uniformity *vs.* diversity, rigidity *vs.* flexibility, closed *vs.* open processes, hierarchical relationships *vs.* cooperative ones, centralised *vs.* decentralised policy-making, majority rule *vs.* deliberation, hard law v. soft law, etc. Yet a closer look reveals that new governance and its instruments are not systematically at odds with the traditional Community Method. The novelty in this does not in fact signify a fundamental transformation of the existing system, but rather an elaboration of certain features inherent to European governance and its hybrid, "unidentified" political system, to use Jacques Delors' now classic expression. This section will show that for several of the characteristic traits associated with new governance, antecedents can be identified in earlier policy-making.

The shifting public/private border

As we saw above, new modes of governance have been conducive to strengthening the role of private actors in public policy. Openness to civil society has grown, further implicating the latter in the European decision-making process through consultation and deliberation, whether this be through NGOs already present in Brussels, or civil society as a whole (Commission 2001). As a result there is growing pluralism involved in the Commission's relationships with interest groups.

Whereas in the initial phases of European policymaking, the Commission and affected sectors operated within a structured co-management setup, the tendency since the

beginning of the 1990s is towards flexibility and diversification, with the Commission seeking to increase and multiply its contacts.

Evolution in the agricultural sector is instructive in this respect (Garzon, 2006). At first, a form of agricultural corporatism existed which was modelled on the joint planning mechanisms between producers and public powers that were operating in member states at the time. The Commission and affected sectors operated within a structured co-management setup. This strongly encouraged the formation of a unique transnational committee of organisations representing agricultural interests (COPA) that became the Commission's privileged interlocutor on agricultural matters. In exchange for supporting the CAP, this committee obtained a quasi-monopolistic consultation position. However, this modus operandi was progressively challenged beginning in the mid-1980s, when the Commission started to extend its consultations to new interlocutors (i.e., agro-alimentary industry, other agricultural confederations, commercial sectors, etc.). Furthermore, more flexible forms of dialogue, such as informal and occasional meetings (seminars, hearings, consultations, etc.) were used to complete and/or compete with the traditional consultative committees. To sum up, in the past two decades, in the agricultural sector, as in environmental policy, gender equality and many other areas, the tendency has been towards flexibility and diversification, with the Commission seeking to increase and multiply its contacts. The initial model, based on the narrow association of a small number of organised actors, with clear corporatist leanings, was gradually replaced by a pluralist pattern of more fluid and flexible consultations with a growing number of groups. But that evolution was detected long before the debate on NMGs was initiated (Streeck and Schmitter, 1991). Moreover, in some areas the reliance on private actors has been even stronger: technical standards have long been drafted by the industry, while NGOs are important agents in EU development policy. NMGs therefore appear to have simply reinforced a trend that was already well established.

Admittedly, the opening up of the European decision-making process today concerns civil society as a whole, not just interest groups. The goal is to reinforce interaction with sub national actors and more importantly to directly involve European citizens through extensive consultation. European institutions display a clear intention to open discussions up to the public, including "lay" people. But these innovations are mostly of an instrumental nature and cannot be depicted as a major departure from past practice.

The accentuation of "institutional polycentrism"

Another characteristic of new modes of governance has to do with institutional complexity. There are multiple loci of power, decision-making and administration involving a large number of players, and there are many ways to get stakeholders involved. New governance has accentuated the fragmentation of power by including new actors in the institutional system and calling on them to play an important role in European policies. The "agencification" wave of the last two decades is a good example. The newly established regulatory structures undeniably contribute to increasing the complexity of the European system. Even though this movement largely coincided with a period of relative weakening of

the Commission (Kassim and Menon), a closer look at the actual operation of agencies helps us to nuance this picture.

One thing is clear: none of them can be described as a powerful supranational regulator. Some of the early comments on agencification (see e.g. Shapiro, 1997), hypothesized a gradual transfer of political resources to agencies by a Commission weakened by national governments' hostility. Yet this scenario does not seem to have materialized. Though the legality of agencies is not openly contested, the lack of a strong treaty basis is recurrently invoked to explain that their prerogatives are to remain limited. Admittedly, some of the more recently established bodies, like the airlines safety agency (EASA) or the chemicals agency (ECHA), have been endowed with greater regulatory powers than the earlier ones. But the contorted way in which this has been done, and the multiple controls to which those powers are subjected, show that it was not intended to grant them a clear hierarchical authority over their national counterparts, as is the case for instance in competition policy after the 2003 reform (Woll, 2009). Moreover, experience has shown that even a strong agency like EASA may find it difficult to exercise the whole range of powers it has at its disposal; it is therefore best described as a "subsidiarity-based network organisation" (Schout, 2011).

Hybridity is a key attribute of these new regulatory structures, which undoubtedly contribute to the compound character of the European executive order described by Johan Olsen (2008. Subject to close control by the Commission (particularly when they lack financial resources of their own), they are also meant to work in collaboration with national administrations and/or agencies, to which they are connected in multiple networks. Their management boards, on which all member states are generally represented, are supposed to be the real steering bodies. On the whole, therefore, "Regulation by networks" (Dehousse, 1997) seems to remain a valid descriptor in a majority of cases.

Given this close intertwining of national and EU regulators, it is hardly a surprise to note that the role of EU agencies does not appear as clearly distinct from that of the Commission or of networks of "sister agencies" to their national interlocutors (Egeberg, Martens and Trondal, 2009). Similarly, wherever they have been established, EU agencies appear to represent less of a rupture with earlier practices than was perhaps anticipated. Involvement of the member states remaining as important as in the past, existing comitology structures have retained their central role. In such situations, bargaining among national representatives has anything but disappeared (Ghering, 2011). Thus, per se, the establishment of new administrative structure, even when endowed with in autonomous powers, does not necessarily entail a rupture with the past. They may reinforce existing modes of governance instead of inaugurating new ones.

The softening of constraint

A third characteristic of governance relates to the form of authority and degree of constraint. While government is characterised by a hierarchical and centralised authority, governance relies more on cooperative mechanisms and a softer exercise of authority. New governance indeed tends rely on softer types of instruments, in particular by developing new types of

public policy instruments that are less intrusive than the regulations or directives traditionally used in the Community Method. NMGs often rely more on emulation and peer evaluation than on formal constraints; they allow different (particularly national) responses to problems. In the OMC, for instance, formal constraints are limited and no sanctions are foreseen in the event of non compliance. The main goal of this method is the diffusion of common political objectives and cognitive principles, rather than a complete harmonisation or the centralised implementation of identical policies.

As a result, soft law is said to be on the rise. Thus, a comparison between the Commission's work during the first two years of Barroso's mandate and the first two years of Prodi's mandate has shown that *hard law* (directives, regulations, decisions) generally declined (down 2.8%), while *soft law* progressed during the same period (up 18.1%). White Papers, Green Papers and Opinions even rose by 90.1% (Kurpas, Gron and Kaczynski, 2008). Once again however, the novelty is only relative. Soft law has been widely resorted to in the past, for instance to codify the Commission's policy towards State aids (Snyder, 1994; Cini, 2001) and forms of diversity have been tolerated in a wide range of areas (Ehlermann, 1983-4; Sabel and Zeitlin, 2008). Moreover, even in areas where the propensity to resort to NMGs has been the strongest, such as in the field of social policy, hard law has far from disappeared (Pochet, 2011).

It then appears that the novelty of new modes of governance is only relative, since the final analysis suggests that they do not propose a radical departure from the governance model that has been operating at the European level from the beginning (see also Tömmel and Verdun, 2009). The innovations introduced tend to accentuate some of the "traditional" features of EU governance, like polycentrism and complexity, or contribute to trends already under way, such as the shift towards a pluralist model of relations with private actors. Where differences with past practice exist, they tend to be differences of degree, not of kind. Furthermore, if "new" governance is not that "new", the "old" governance in the form of the Community Method has certainly not disappeared, as we shall now see.

4. "Staying alive": the resilience of the Community Method

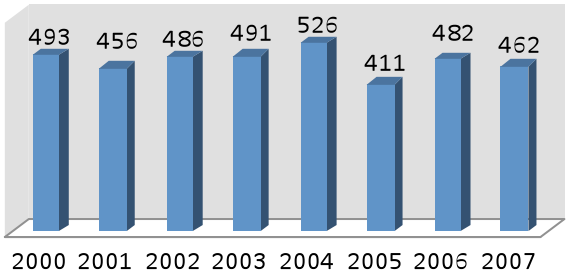
To complete our inventory of the balance between "old" and "new" governance, we now need to assess the current importance of traditional modes of governance in EU policy-making. Several elements suggest that despite repeated announcements of its imminent demise, the Community Method has been more resilient than expected.

First of all, the volume of "hard law" produced by the European institutions is far from declining[3]. As shown in Graph 1, the number of Commission proposals has remained fairly

[3] The data discussed in this section is taken from a large-scale empirical project conducted at Sciences Po in Paris, the Observatory of the European Institutions (<http://www.cee.sciences-po.fr/en/publications/oie-publications.html>).

stable after the 2004 enlargement, despite a temporary drop in 2005, which seems due to the intense activity of the year before.

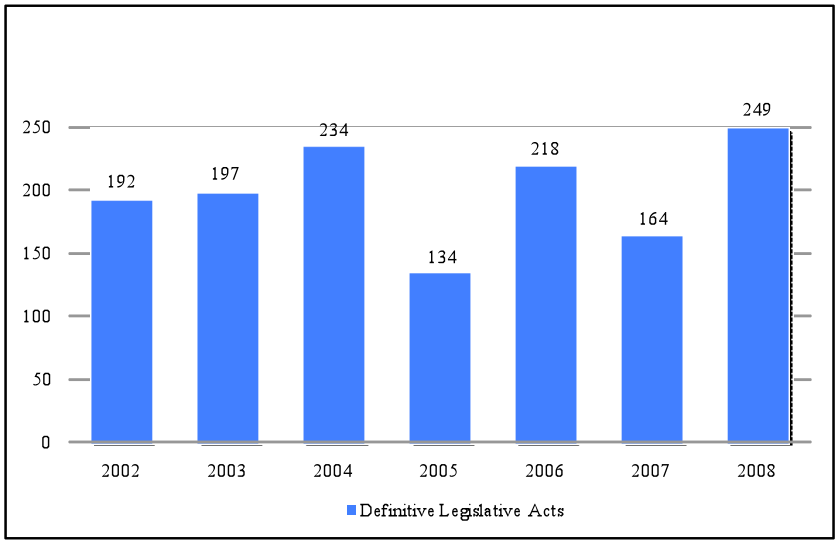
Graph 1:
Number of Commission Proposals



Source OEI data

A similar picture emerges for legislative production. Every year the Union adopts about 200 legislative texts (Graph 2). True, there was a sharp decline in 2005, right after the enlargement, but this appears to be a by-product of an acceleration registered the previous year, with a peak of 230 texts, nearly two-thirds of which were adopted in the four months that immediately preceded the arrival of the new members. Obviously, the fear of paralysis generated by the enlargement played a major role in that acceleration. Interestingly however, after the 2005 decline, legislative output tended to increase, which suggests that the EU machinery has reacted better than many observers anticipated. Even more surprisingly, decisions have been made increasingly rapidly (Dehousse, Deloche-Gaudez and Duhamel, 2006, chapter 1). The stability of legislative outputs is quite remarkable even in the social policy sector, which was the theatre of many attempts to introduce NMGs.

Graph 2:
Number of Legislative Acts adopted by the Council alone or with the EP (2002-2008) (N=1384)

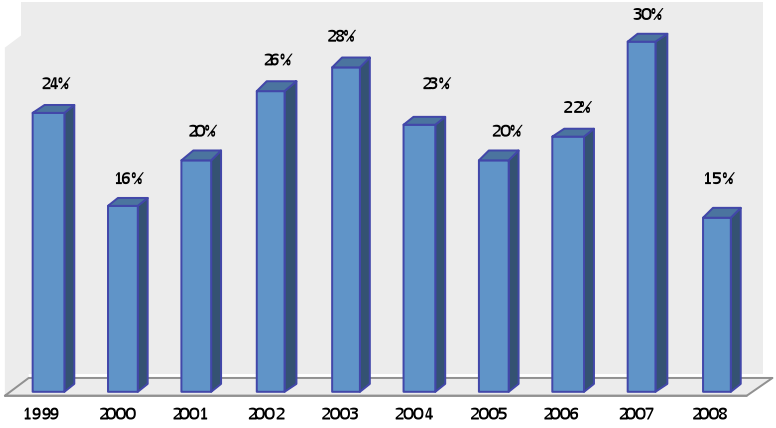


The same thing can be said for another major source of hard law: the European Courts (European Court of Justice and Court of First Instance). The number of rulings by these courts has been climbing, which is hardly a surprise since an increased number of member countries could be expected to mechanically lead to an increase in litigation. Needless to say, those figures say nothing of the normative quality of EU law or of its content (pro-integration or not). However, the enlargement has clearly not had the crippling effect on the Community law-making system that was announced.

Secondly, the resort to voting, a key feature of the Community Method, has remained at pre-enlargement levels. This is remarkable as many studies conducted in relation to the discussions on institutional reforms in the run-up to the 2004 enlargement stressed that the increase in the number of countries was likely to lead to a stalemate in the Council, given the high threshold for a qualified majority fixed by the Nice Treaty (see e.g. Tsebelis, 2006). Yet, as shown in Graph 3, after a decline observed in the enlargement period, the ratio between the number of votes registered and the number of legislative acts taken on a legal basis allowing a vote remained pretty stable. According to Hayes-Renshaw, Van Aken and Wallace (2006), the average number of votes was 20% over the period 1999-2004. In our data, the average figure is 22% over the period 2004-2008, with a 30% peak in 2007.

Graph 3:

Number of Public Votes in % of Definitive Legislative Acts Adopted under Qualified Majority Voting 1999-2008



Source: Hayes-Renshaw F., Van Aken W., Wallace H. (2006), for 1999-2001; OIE data for 2002-200 8

Interestingly, the time period before voting has tended to shorten. Prior to enlargement, it took on average almost 475 days after an act was transmitted to the Council for the ministers to decide that a vote was to be taken. This time period has now declined to around 450 days, which might help to explain the acceleration in legislative procedures. Of course, the relatively limited number of votes that took place during this period imposes a great caution in the interpretation of this data. Nevertheless, it appears that contrary to many pre-2004 forecasts, the enlarged Council is not less willing to vote than its predecessors. In broader terms, the impact of the 2004 enlargement on the functioning of the European institutions appears to be less dramatic than expected (Best, Christiansen and Settembri, 2008).

Conclusions: the marble cake of European governance

In a much-discussed article written over half a century ago, Stanley Hoffman (1966) argued that despite functionalist expectations to the contrary, states were not withering away and should be expected to retain a major role in European affairs. Much the same could be said today about the Community Method. Over sixty years after the Treaty of Paris, the first to define the basic elements in the limited but strategically important coal and steel sectors, it still plays a central role in contemporary EU policy-making, notwithstanding repeated declarations about its alleged obsolescence, made by political leaders and students of

European integration alike. Year after year, the volume of EU legislation remains remarkably stable. Whatever one may think of its political orientations, the European Commission does not sit ide, but produces a steady volume of proposals. Although the number of member countries has more than doubled in twenty years, the Council does not seem to face greater difficulties in making decisions. At all these levels, the latest enlargements do not appear to be a major source of difficulty, contrary to expectations. Moreover, the very fact that rulings of the Court of Justice can be controversial – as was the case with the *Laval* and V*iking* cases, dealing with the rights of workers to collective action and the competition between national systems of social protection – is a good indicator of the fact that the Court of Justice has remained a central actor in EU policy-making – too strong an actor, some would argue (Scharpf, 2009).

However, the fact that the Community Method has not disappeared does not mean it has remained untransformed. New institutional actors have appeared; the most prominent of these being of course the European Parliament, which has acquired essential legislative prerogatives and now has a clear policy-making role in many areas. At the bureaucratic level too, a large number of more or less autonomous agencies have emerged as key actors in their respective spheres of authority. As substantial as they may be, however, these innovations can be seen as adjustments to the model rather than as radical alternatives, since they are clearly influenced by the same operating codes. Given the weakness of partisan politics at the European level, the European Parliament has not become an instrument of party government, contrary to what has happened in other political systems. Some may deplore it (see e.g. Hix 2008) but consensus remains the basic principle underpinning its internal functioning. Similarly, European agencies, with their limited regulatory powers, may be seen as adhering to the golden rule of the Community Method: avoid any concentration of power at all levels. Remarkably, these two developments, responding to idiosyncratic sources, have ended up reinforcing a decentralisation of power that is the hallmark of the Community Method. The current impression of weakness often given by the Commission should not be equated with a decline of the Community Method.

There is no doubt that the post-1992 period has seen many innovations and a clear desire to experiment with new modes of governance. The opposition between old and new governance should not be over-emphasised, however. First, several hallmarks of the new instruments – flexibility, decentralisation, deliberative policy-making etc. – already featured prominently in some EU policies well before the current governance literature started to blossom. Secondly, new modes of governance, such as dialogue with civil society, can also be used by EU institutions to enhance their influence (Cram, 2011). It has also been shown that the modes of action, and even at times the structure of the actors to which the new governance literature has directed our attention, such as non-governmental organisations, were often influenced by EU policies (Sanchez-Salgado, 2007).

Much of the ambiguity of the current situation stems from the fact that the turn to governance has developed largely to enable the EU to step into policy areas in which, for a

variety of reasons, the delegation of powers to supranational actors was deemed unacceptable – the best example being the famous Open Method of Coordination the aim of which was clearly to Europeanise one of the strongholds of modern States: their welfare systems. Although the OMC has enthusiastic supporters, a sense of disillusionment has been developing over the past years. By definition, a process of cognitive harmonisation such as the one set up by the Lisbon European Council requires time before its effects are felt. The real problem is the mismatch between the ambitious objective trumpeted in 2000 – to transform Europe into "the most dynamic and competitive knowledge-based economy in the world" – and the elaborate implementation process that was designed to attain it. But judging from the 2010 debate on the "Europe 2020" programme, meant to replace the Lisbon strategy, the lesson does not seem to have been learnt. The discussion has focused on the objectives, with little attention paid to implementation concerns.

To sum up, one must avoid simplistic oppositions between old and new patterns of governance. New modes of governance are best analysed as an accentuation of the original features of the system, rather than as outright innovations. Both were largely conceived to respond to the same need, to provide a framework for interstate cooperation without leading to an unwanted degree of centralisation. Rather than viewing the relationship between old and new governance as a tug of war in which one will eventually be called upon to prevail over the other, they should be considered as distinct but not clearly antagonistic approaches to policy-making at the European level. The EU, like most systems of contemporary governance, "normally functions through a mix of co-existing, partly inconsistent organisational and normative principles, patterns of participation, behavioural logics, standard operating procedures and legitimate resources" (Olsen, 2008, p. 7). EU governance is too complex to be captured by simple dichotomies. Rather than thinking in terms of alternatives, we should try to analyse how different modes of governance are combined and how the mixture changes over time (Tömmel and Verdun, 2009). The hybrid situation described in this paper, which belies the dominant view of the evolution of European governance, is not without analogy with the metaphor of the "marble cake", used over a century ago by Morton Grodzins (1966) to describe the coexistence of several varieties of federalism in American government. Pure innovations are rare in the world of governance.

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