Original Article

EU governance in times of crisis: Inclusiveness and effectiveness beyond the 'hard' and 'soft' law divide

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Abstract   Far from reopening classic debates on EU modes of governance, this special issue uses the governance notion as an organizing concept in order to examine the governing of the EU in times of crisis. More specifically, we argue that focusing on modes of governance contributes to the understanding of 'where the power lies in the EU system' especially when an external shock – such as the crisis – hits the EU governance system. A systematic investigation is not possible given the limitation on space, but this introductory article highlights some of the aspects that we consider have been at the heart of the new political challenges to the EU. Our main hypothesis is that the 2008 crisis has offered a new opportunity for the intergovernmental mode of decision-making to prevail, left marginal space for further including citizens in decision-making processes and has provided a very narrow definition of effectiveness. This change of context calls for a re-examination of forms of governing in the EU, and more specifically the so-called 'softening narrative', in order to go beyond a mere distinction between 'hard' and 'soft' law and focus more on the governing processes that are in place in various institutional and policy areas.
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The study of European Union (EU) governance, how it operates and who contributes to it, is essential to our understanding of the functioning of this political system. This is particularly true in the aftermath of the 2008 financial crisis, which deeply challenged existing forms of decision-making and redistribution mechanisms

(Streeck and Schäfer, 2013). Possibly, the EU has never been so effective in imposing decisions on member states and societies. In this critical context, the long-term structuring impact of the policy tools and modes of governance that had been introduced in order to define a new approach to governance were made visible. By exploring this initial assumption both theoretically and empirically, this special issue sheds new light on current debates regarding the impact of the 2008 financial crisis on EU governance. Following the 2001 *White Paper on European Governance*, a series of new modes of governance and policy tools have been designed and implemented across EU policy domains in order to address simultaneously the problem-solving capacity of EU institutions and the need to strengthen the participation of civil society (Héritier and Rhodes, 2011). Managerial reforms within the EU Commission and policies justified the need for softer modes of governance such as regulatory networks, benchmarking and tools through which policy and state performance could be measured and compared. By providing more participative and negotiated ways of decision-making, these softer modes of governance increased the political and administrative governability of the EU (Coletti and Radaelli, 2013); yet, which actors and organizations benefited most from this new governance approach as well as its contribution to increasing the system's political accountability and democratic legiti-macy remains a contested issue (Bellamy, 2011). The supposed superiority of new modes of governance – in terms of both inclusiveness and effectiveness – has been hotly debated in the EU literature. Following the changes brought since the 2008 crisis to the socio-economic and the fiscal governance regimes, these softer modes of governance have developed into harder, more coercive forms of decision-making, thus justifying the need to re-examine the 'softening narrative', which dominated academic and practitioners' debates about EU governance over the past 15 years.

Far from reopening classic debates on EU modes of governance, this special issue uses the governance notion as an organizing concept in order to examine the governing of the EU in times of crisis. More specifically, we argue that focusing on modes of governance contributes to the understanding of 'where the power lies in the EU system' especially when an external shock – such as the crisis – hits the EU governance system. In our analysis, looking at 'power' implies looking at influence, that is, the capacity of actors to obtain decisions that are in line with their specific preferences. This introductory article highlights some of the aspects that we consider have been at the heart of the new political challenges to the EU in terms of governance. But before we turn to the discussion of such traits, we will briefly situate our analysis in the broader (and 'classic') spectrum of the studies on European integration.

The Debate on EU Integration: New Challenges

Scholars of European integration have always been interested in how the European political organization was governed. Since the early debates between

neofunctionalists and intergovernmentalists, one of the main key research questions was – to put it simply – who was governing what today has become the EU. Was decision-making primarily in the hands of a supranational body (the European Commission alone first, in combination with the European Parliament later) or in the governmental representatives formally in command European decision-making? Although decades have passed since the first studies were conducted, the research question remains crucial in order to assess power relations within the EU.

More recently, this question has been explored through different perspectives (Saurugger, 2014). This large body of literature progressively shifted from a research question on the nature of the EU (*What is the EU?*) to a question regarding the way through which integration occurred (*How does EU integration evolve?*), thus increasingly focusing on the functioning and the governing of the EU understood as a hybrid political system (Kohler-Koch and Rittberger, 2006; Benz and Dose, 2010). Drawing on extensive theoretical and empirical findings, the existing work has supported the need for new conceptualization or the relevance of traditional political analysis tools (Political Science, Comparative Politics). By looking more closely at the dynamics of EU integration, these studies hoped to deepen their understanding of the EU as a political system, seen primarily as an outcome that needed further characterization. In other words, exploring EU integration process was and still is another way to ask whether or not EU institutions, as a governing body and rule-making authority, have benefited or not from the accumulation of resources *vis-à-vis* Member States.

Following the work done by a first generation of EU scholars that focused on the role of law and EJC rulings as a main integration factor, a second generation of EU scholars became increasingly interested in softer integration modes, understood here as less hierarchical in nature but with the potential of effectiveness and democratization (Cini and Rhodes, 2007). Indeed, and in connection with the evolution and expansion of the EU, a new wave of studies focussing on 'new modes of governance' has tried to look even more deeply into such topic by examining alternative and innovative ways of decision-making in the EU. For example, one of the most explored 'new modes of governance' has focused on sectoral governance where a limited space ('the shadow of hierarchy') has been left for public institutions, be they intergovernmental settings or supranational ones (Héritier and Lehmkuhl, 2008). More in general, the 'new modes of governance' literature has highlighted – to some degree following the neoinstitutionalist turn in European studies (Saurugger, 2014) – the fact that governance settings are much more relevant than discussed both in the intergovernmentalist and in the neofunctionalist perspective in understanding who the major actors are in EU decision-making. We could also add that understanding the 'new modes of governance' requires us to take into consideration the changes introduced by the Lisbon Treaty in 2009, especially with reference to the increased co-decision powers for the European Parliament (for a critical assessment, see Burns *et al*, 2013; Hosli *et al*, 2013; Lord, 2013).

Beyond the assessment of the institutional balances, the new modes of governance literature has also tried to focus on the analysis of emerging forms of self-regulation (Héritier and Lehmkuhl, 2008, 2011) and greater involvement of citizens in EU decision-making, often however not reaching conclusive findings, focusing therefore more on the notion on innovativeness rather than inclusiveness (Kröger, 2009). Furthermore, the 'new modes of governance' literature focused on specific policy tools and instruments. They mapped out the way in which, since the early 1990s, the governing of the EU had been characterized by a growing diversity in forms of policy making. More specifically, after a decade of innovations and new policy developments, from a political perspective the introduction of new types of 'modes of governance' aimed at both rationalizing public policies and democratizing forms of policy making has become a central issue in EU policy making (Jordan and Schout, 2006). Extensive work was done on a series of meta-instruments of coordination, in the sense given by Hood (2007), whose introduction aimed at increasing coordination when other mechanisms had failed. Such tools (for example, organization charts, framework agreements, Open Method of Coordination (OMC), the Bologna process, sectoral governance instruments, and so on), which are characterized by their non-hierarchical nature, seek direct involvement from a large variety of social groups and provide – at least in principle – new political opportunities for EU institutions.

Summing up, the main focus of the literature on the 'new modes of governance' (Dehousse, 2004; Eberlein and Kerwer, 2004; Caporaso and Wittenbrinck, 2006; Cini and Rhodes, 2007; Treib *et al*, 2007; Kröger, 2009; Héritier and Lehmkuhl, 2008; Héritier and Lehmkuhl, 2011) has been threefold: (i) providing a conceptual and theoretical clarification; (ii) setting the links between the 'new modes of governance' and political authority; (iii) assessing the operational and delegation features of the 'new modes of governance'.

Nevertheless, although increasing, the 'new modes of governance' literature has recently shown signs of 'fatigue', owing to the difficulty in grasping analytically the ever-changing nature of processes such as the OMC and (post-)Lisbon Strategy (such as Europe 2020), and the persistence of key features of the 'old' Community Method in current EU forms of governance. Furthermore, scholarly work also showed how such political opportunities have not always increased the coordination capacity of European institutions (again, *in primis* the European Commission), nor has the decision-making process been effectively more open with respect to civil society (Saurugger, 2014).

Notwithstanding the existing important contributions on the 'new modes of governance', what seems to be still lacking in the academic debates is a comprehensive analysis regarding broad political dimension, more specifically the inclusiveness and the effectiveness dimensions, of such modes of governance. We understand the notion of political dimension as the ability of EU institutions to act as legitimate authorities in effectively regulating activities and groups, that is, to resolve conflicts,

allocate resources ,and organize larger debates on purposes and coercion (Kooiman, 1993; Benz and Dose, 2010). In other words, we argue that focusing on modes of governance, as a meso-level of analysis, contributes to the understanding of 'where the power lies in the EU system'. However, this requires a shift from a highly contextualized understanding of modes of governance that was grounded in the somewhat normative and academic debates regarding the innovative dimension of modes of governance (Bellamy and Castiglione, 2003, 2013; Papadopoulos and Warin, 2007; Bellamy, 2011), toward a more analytic understanding of the notion, which needs to be grounded in specific sub-dimensions such as inclusiveness and effectiveness. In other words and following Treib *et al* (2007, p. 2) we suggest abandoning the novelty dimension in order to focus on the more narrow political dimensions of new modes of governance. Indeed, the debate between 'old' and 'new' has little analytic value. Similarly, we reject the narrative according to which there is a growing tendency to introduce soft modes of governance, that is, non-hierarchical rules and norms, as opposed to classic modes of governance. Rather, we assume the continuous blurring between hard and soft, in which imposition and direct decision-making softens increasingly, while soft modes of governance, such as persuasion, naming and shaming, incentives and so on, become harder and prove more or less innovative and effective under specific circumstances. To be sure, this does not lead us to discard completely the question of how different 'hard' and 'soft' modes of governance may be, but simply we focus rather on the everlasting coexistence of these modes and focus on the political dimension of governance in terms of inclusiveness and effectiveness. Although we share the idea raised by Sabel and Zeitlin (2008, 2010) that innovation in EU governance lays the combination of existing policy tools and instruments, we do however, question their pragmatist approach to power as diffuse and dynamic. Exploring the political dimension of governance in terms of both inclusiveness and exclusiveness contributes to the understanding of where the power lies in the EU system. To be sure, conceptually, effectiveness and inclusiveness can be strongly related (depending on the definitions, see below), but empirically the two notions may be decoupled or very loosely coupled. In other words, we posit that – although often coupled also in the political discourses of EU institutions – inclusiveness and effectiveness may be quite different in reality. For this reason, we leave the question of their relationship open and ask the authors of the various contributions to this special issue to answer it.

Finally, we are less interested in the design of such tools than in their implementation and long-term effects in terms of both democratization and rationalization. More specifically, we believe that a greater understanding of the impact of the new forms of governance on democratization (specifically in terms of inclusiveness) and rationalization (in terms of effectiveness). Indeed, we assume that a shift in the way power is exerted at EU level may have a specific impact on EU integration process and EU governing in terms of providing legitimation, inclusiveness and effectiveness.

The Crisis and Its Challenges to EU Governance

Our main hypothesis is that the 2008 crisis has offered a new opportunity for the intergovernmental mode of decision-making to prevail, left marginal space for further including citizens in decision-making processes and has provided a very narrow definition of effectiveness (Streeck and Schäfer, 2013). This has been made possible by the increasing predominance of economic multi-level governance, which has increasingly shaped the relationship of almost all other European policies and measures. Additional support in favor of such policy and instrumentation choices was justified in the name of austerity understood as both a set of policies and an ideology (Blyth, 2013; see also CEP symposium, 2013). To begin with, from a legal perspective, in analyzing reforms to EU law and institutional structure – such as the establishment of the ESM, the growing influence of the European Council and the creation of a stand-alone Fiscal Compact – it can be argued that such reforms 'are likely to have a lasting impact on the ability of the EU to mediate conflicting interests in all three areas. By undermining its constitutional balance, the response to the crisis is likely to dampen the long-term stability and legitimacy of the EU project' (Dawson and de Witte, 2013). Clearly, legal analysis must be also tested by empirical research, but we argue that as a starting point there is legalistic evidence concerning a broad reorientation of EU decision-making more in line with an accentuation of the powers of (some) Member States on European supranational institutions such as the European Commission and the European Parliament. As a result, we believe this change of context calls for a re-examination of forms of governing in the EU, and more specifically the so-called 'softening narrative', in order to go beyond a mere distinction between 'hard' and 'soft' law and focus more on the governing processes which are in place in various institutional and policy areas.

For such purpose, we suggest to introduce an analytic distinction between three following notions: policy tools or instruments, modes of governance, and regimes of governance. This will help us deepen our ability to highlight the typical properties of governing modes at EU level rather than refer to their first introduction in a specific empirical context and therefore understand broader regularities of such governing modes beyond their empirical specification (Howlett, 2011, p. 54). More specifically, we define the three notions as follow:

1. Policy tools or instruments can be defined as a set of governing techniques (budgets, practices, norms and standards) that are often dissociated from the political game. Yet, the rationales at work in the choice and selection of the concrete modalities through which policy objectives are made operational, like other processes of implementation or evaluation, are deeply political both in their elaboration and in their effects (Lascoumes and Le Galès, 2007). In this special issue we focus on the effects of policy tools understood in terms of both inclusiveness and effectiveness.

2. Modes of governance refer to the way through which different types of policy instruments – often pertaining to both binding, sanctioning tools and persuasive, informative tools – are combined with one another at EU level in order to both constrain and enable collective action and the setting of common goals. By narrowing the definition of modes of governance to the interplay of policy instruments, we go beyond the static view of hard versus soft law and try to test whether there has been convergence (or not) through policy areas in terms of instrument combination and/or their outcome in terms of inclusiveness and effectiveness.

3. Regime of governance, understood as a set of arrangements that ensures power allocation among EU institutions and Member States. This notion helps us in characterizing the EU's political ability to produce a basic form of social order (Mayntz, 2003), by effectively regulating activities and groups according to evolving relationships between EU institutions and member states on the one hand, and between public and private actors on the other hand (Kohler-Koch and Eising, 1999; Benz and Papadopoulos, 2006). In other words, we ask where the power lies in the EU system, by focusing on the way in which groups and activities are politically regulated (or not). More specifically, by focusing on the inclusiveness and effectiveness dimensions, we are interested in both the governing and the governability of the EU (Kassim and Le Galès, 2010).

We believe that this special issue provides a comprehensive analysis of why and how the continuous blurring between 'hard' and 'soft' shapes the *inclusiveness* and the *effectiveness* of EU forms of governance. Indeed, the context of the crisis has further put under pressure the existing modes of governance by requiring more tight supranational control over EU policy implementation (Schmidt and Thatcher, 2013; Crespy and Ravinet, 2014). Policy tools aiming at rationalizing public policies, investments and programmes (that is, impact assessment, better governance, and so on.) have been systematically introduced (Coletti and Radaelli, 2013). They contribute over time to reorganizing the functioning of the EU both substantially and procedurally. Recent negotiations on the next programming period (2014–2020), and the setting of policy priorities in preparation of Europe 2020, show how such rationalizing policy instruments shape evolving relationships in the EU, both vertically and horizontally. Indeed, the papers gathered in this special issue illustrate the constant interplay between 'hard' and 'soft', rather than opposition between two clearly demarcated approaches to exerting power and constraint. In a large number of policy areas, new modes of governance are increasingly used in close combination with traditional 'harder' modes of governance. The recourse to sanctioning and disciplining takes over another major priority, namely to further democratize the EU policy. This process does not rely on the introduction of new policy instruments as such, but rather it shows how the systematic combination between old and new modes of governance creates additional opportunities for intergovernmentalist tendencies.

Such phenomenon has wider implications for the understanding of EU integration, as suggested by the intertwining of three mechanisms through which power is exerted: first, the recourse to hard mechanisms, such as sanction and norms, that are imposed through direct decision-making; second, the use of softer mechanisms that prove more effective in some cases in order to persuade and convince actors to comply with given rules and norms; and third, learning as a major mechanism of power that shapes evolving relationships between EU institutions and member states. In the following sections of this article, we situate the special issue by focussing on the challenges on the ongoing relevance – even more so in the wake of the economic and financial crisis – of the neglected dimensions of the 'new modes of governance' literature: inclusiveness and effectiveness.

Inclusiveness

Together with the effectiveness dimension, inclusiveness has traditionally been a concern for both EU policy makers and scholars (Metz, 2014). More specifically, due to the specific and quite unique setting of the EU multilevel political system, the aim of an inclusive EU has been on the political agenda at least since the introduction of direct election of the European Parliament in 1979 and even more relevant after Maastricht (Kröger and Friedrich, 2013). Together with the European Parliament, the European Commission has increasingly been concerned with inclusiveness issues, as the *White Paper on European Governance* (2001) clearly stated: 'Today, political leaders throughout Europe are facing a real paradox. On the one hand, Europeans want them to find solutions to the major problems confronting our societies. On the other hand, people increasingly distrust institutions and politics or are simply not interested in them. The problem is acknowledged by national parliaments and governments alike. It is particularly acute at the level of the European Union. Many people are losing confidence in a poorly understood and complex system to deliver the policies that they want. The Union is often seen as remote and at the same time too intrusive.' (European Commission, 2001, p. 3). The European Commission identified five key areas (of principles of 'good governance'), which would have contributed to solving the 'loss of confidence' in EU institutions: openness, participation, accountability, effectiveness and coherence. In policy terms, the following decade has been a period that has been labeled as a 'participatory turn' (Saurugger, 2010), which was characterized by the fact that EU decision-making had to be more accessible to civil society and be only secluded to institutional relationships (Saurugger, 2010, p. 483).

Even prior to the empirical analysis of inclusiveness, what seems to be lacking in the overall debate regarding the inclusiveness of EU decision-making, however, is a clear distinction between types of inclusion. For example, scholars such as König and Bräuninger (1998) have been primarily interested in the inclusion of institutional

actors such as the European Parliament, whereas others have focused on the inclusion of non-institutional actors such as civil society representatives (Saurugger, 2010; Quittkat, 2011). Overall, the empirical evidence shows that – although increasing inclusiveness has occurred formally – in more substantial terms the picture is much more nuanced.

In order to better focus on the inclusiveness dimensions, we suggest that a clear distinction among types of inclusion must be made. Such a distinction would allow us to better understand differences between *formal* (in its two variants, institutional and non-institutional) and *substantive* inclusiveness. Institutional formal inclusiveness regards the openness of institutional decision-making. The key actors are EU decision-making institutions, that is, the Council of European Ministers, the European Commission and the European Parliament. Beyond neofunctionalist or intergovernmentalist accounts of European integration, there is sufficient shared consensus that EU decision-making has increasingly been open via the transformation of the European Parliament as a full co-legislator: in the words of Rittberger, '[b]estowed with only a few nominal powers at the outset, the EP has undergone a remarkable process of institutional empowerment' (Rittberger, 2012, p. 18). This empowerment may not make the European Parliament fully equal to the Council of European Ministers (Costello and Thompson, 2013), but still it signals a changing power balance within the institutional functioning of the EU. Put differently, in institutional terms the inclusiveness of the EU has clearly gone a long way in the development of European integration – even though the crisis seems to have boosted intergovernmental power within most recent patterns of EU decision-making. From the civil society (that is, formal non-institutional), inclusiveness has also increased significantly over the past decade although we should be aware of the fact that 'discursive agreement [on the inclusion of civil society] does not entail that there exists a homogenous entity that one could label "civil society", or that the principle of the participative standard is universally applied' (Saurugger, 2010, p. 489). For these and other caveats which will be derived from the empirical findings presented in this special issue, we would claim that formal (or procedural) inclusiveness has been granted over the past decade to civil society organizations, that is, to well-organized and -established organizations that claim to act in the name and in the interest of society as opposed to citizens themselves (Kohler-Koch, 2008; see also Boussaguet in this special issue). This feature seems to be even more true in the light of the European governance of the crisis, which has offered greater opportunities for intergovernmentalist decision-making (Dawson and de Witte, 2013) and, consequently, limited the space of intervention for both supranational institutions and civil society actors. Less evidence can be found of a *substantive* (and generalized) empowerment of civil society – although some recent data has cast some doubts on the more conventional interpretation that business interests are stronger than collective interests (Dür *et al*, 2013). Also, the case studies presented in this special issue provide interesting evidence that substantive inclusiveness has been

particularly limited since – as in the case of the OMC – procedural participation has expanded the most. Put differently, the 'participatory turn' of EU governance seems to be better applied to formal inclusiveness rather than to substantive inclusiveness. And, as the articles in this special issue show, the responses to the crisis further limited the reach of inclusion – reducing also formal (both institutional and non-institutional) inclusiveness.

Effectiveness

Since the White Paper on Governance, also effectiveness has been a key word within the redefinition of the European institutions' role in the EU multilevel political system. More specifically, the effectiveness dimension represented a key feature of the so-called 'output legitimacy' or 'output democracy' model, which, according to some authors (Scharpf, 1999), characterizes the European Union. But where lies the effectiveness problem within the EU? In principle, we should distinguish between two types of effectiveness: *policy* effectiveness and *political* effectiveness. The first type of effectiveness is linked to the need that the policies designed, adopted and implemented at the EU level are effective in the sense that they are (at least) producing the expected results; the second, broader type of effectiveness is linked to the legitimacy needs of the EU multilevel political system, following the understanding that EU institutions will be politically effective when the overall support ('legitimacy') within the affected political community is favorable. More specifically, with respect to policy effectiveness, the European institutions, and the European Commission in particular, have the task to cover 28 member states and oversee policy formulation and implementation, which is applied to over 500 million EU citizens. As Metz rightly notices, '[o]ften policy makers do not possess sufficient in-house expertise to formulate adequate problem solutions (…). [T]his (…) is particularly pronounced in the European Union, where governing institutions are both highly understaffed and geographically detached from domestic settings to which EU regulation applies' (Metz, 2014, p. 263). EU institutions tried to mobilize external expertise in order to fill knowledge gaps, and this resulted in the so-called 'committee system' (with over 1000 expert groups assembling more than 30 000 experts, advising especially the less-than-23 000 staff of the European Commission (Metz, 2014, p. 264). However, the role of experts is ambiguous in terms of potential power unbalances since they may be strategically used by the Commission (Rimkuté and Haverland, 2013) or some experts may systematically prevail over others (Metz, 2014) and often there is a strong bais in their selection (ALTER-EU, AK Europa and ŐGB Europabűro, 2013). To be sure, this ambiguity regards rather the nature of inclusiveness and openness of EU decision-making and not the capacity to reach the fixed policy goals.

Therefore, we shall focus on the latter, knowing that a general analysis of EU policy making is out of the reach of this contribution. For our purposes, it should

suffice to say that policy effectiveness depends heavily on the policy sector – and both horizontal and vertical power relations within that sector – and over the past years policy effectiveness concerns have been particularly relevant in terms of responding to the economic crisis via the tightening of domestic budgetary constraints rather than fixing more ambitious goals in other policy areas – such as social policy. Put differently, policy effectiveness has overridden the search for political effectiveness, especially in a context of austerity during which the increased shrinking of public authorities' discretionary power further restrains their redistributive capacity (Streeck and Schäfer, 2013).

Although we shall see in the various contributions to this special issue how policy effectiveness has varied, we consider political effectiveness more relevant since it regards the political system as such and does not merely pertain to specific policy sectors. In this respect, the systemic attempt to obtain 'output legitimacy' in an overall context characterized by limited 'input legitimacy' (Scharpf, 1999) seems to be even more salient since it can tell us something about how European integration is perceived by the potential beneficiaries of its overall functioning – the members of the EU political community – beyond specific policy sectors of which large parts of the populations may not even be aware of. Furthermore, 'system effectiveness' has been a greater concern for scholars of democracy beyond the EU (Dahl, 2004), providing stronger scientific legitimacy to our selective choice. It allows linking the debate on spaces of modes of governance together with a larger debate on the EU integration process.

In order to measure the political effectiveness of the EU we consider two indicators as particularly relevant: voter turnout and trust in the EU (as measured by the standard Eurobarometer questionnaire). The first is a crude indicator of how important EU institutions are perceived, the second is a less crude indicator of the levels of trust in EU institutions. We are well aware of the relative inaccuracy of the indicators, but for the moment no valid alternative of 'system' or political effectiveness operationalization seems to be in sight. In terms of voter turnout, the trend has been increasingly negative: from 62 per cent in 1979 to slightly more than 43 per cent in 2014. Breaking down the data, it is even more striking that with the exception of Latvia and Estonia all the other new Central-Eastern members underperformed with respect to the EU average – and after the crisis exploded voter turnout has diminished also in 'old' member states. If we turn to the level of trust, the past ten years have witnessed a rapid decline in the overall trust – from 42 per cent of EU citizens who 'tend(ed) to trust' EU institutions in 2003 to 29 per cent in 2013 (Figure 1), and from 42 per cent who 'tend(ed) not to trust' to 58 per cent in 2013. Also in this case, after the crisis exploded trust has further declined (see Figure 1) – although causal links are difficult to pin down in general terms (whereas for more specific policy-based accounts, see the various contributions to this special issue).

Clearly, we are not supporting any causal inference, nor are we trying to link policy effectiveness and political effectiveness, but for the purposes of our discussion
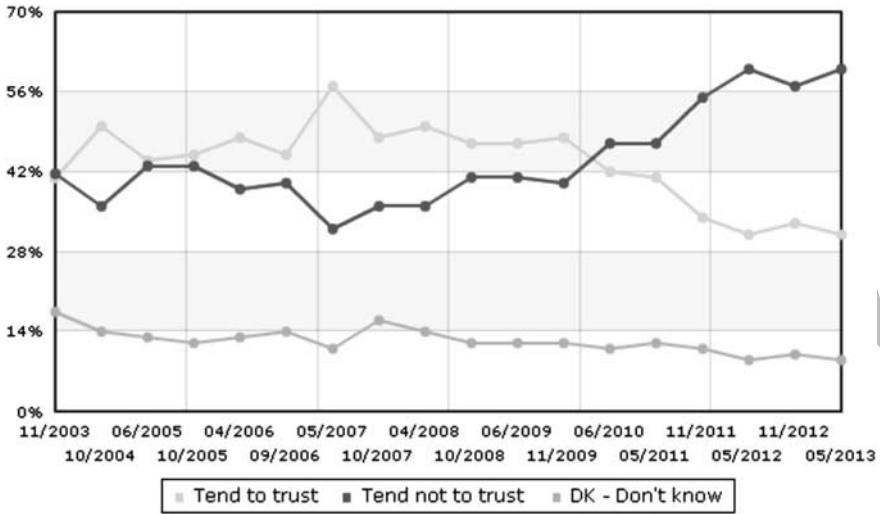
Figure 1: Trust in EU's institutions (1985–2010).

on the missing (or underdeveloped) dimensions of analysis with respect to the governance debate we think that these indicators are more than evocative. In other terms, we consider that a systematic consideration of the effectiveness dimension – and not primarily the policy dimension but rather the political one – needs to be assessed when EU governance is scrutinized. In the various articles of the special issue we will deal more specifically with policy effectiveness, but in this introductory article we wanted to devote specific attention to the importance of 'system' or 'political' effectiveness as a crucial yardstick which allows us to better understand how the past decade has changed the relationship between the governance actors (especially EU institutions) and the potential beneficiaries of their activity (the members of the EU political community). Notwithstanding the 'new modes of governance', 'system' or 'political effectiveness' has significantly declined over the past decade.

The Governance Mix: Overview of the Findings Presented in the Special Issue

By bringing together scholars currently conducting research on different dimensions of EU governance, this special issue examines the evolving role of modes of governance in shaping the governing of the EU and the mechanism through which power is exerted at EU level. We focus more specifically on the challenges that the crisis has posed to both the neglected dimensions of the 'new modes of governance'

literature: inclusiveness and effectiveness. The findings of the case studies are considered in the following section in relation to the sets of questions outlined above. Although it is not possible to pursue all the lines of inquiry suggested, the cases offer many important insights.

Going beyond the softening narrative offers new understandings of the EU and the way through which mixed, multi-faceted forms of governance have emerged over time and more particularly following the crisis. In several instances, the contributors assembled here challenge accepted wisdoms in the existing literature. Dehousse and Falkner demonstrate the weak explanatory role of the softening narrative in order to highlight shifts of power in the EU. Not only do they empirically demonstrate the continued blurring between 'hard' and 'soft', but they also suggest to focus more on existing governing processes in order to map out their restructuring in a context of crisis. In its discussion of recent evidence from EU legislative activity, Dehousse critically re-examines the shift to 'new governance'. He shows that in strategic areas such as economic policy coordination or banking regulation, the severity of the financial crisis has resulted in a tightening of European rules and in stronger control mechanisms. Similarly, Falkner shows how the recent introduction of fines as a new policy tool of EU law enforcement against member States results in weakening the softening and the 'innovativeness' narratives.

Going beyond an understanding of resistances as forms of non-compliance, Saurugger and Terpan provide further evidence on the continued blurring between hard and soft law. They argue that resistance to soft law is as frequent as that to hard law – even if less empirically observable – thus confirming the policy effectiveness of soft law and the profound changes in governance structures and power allocation it may lead to over time. Interestingly, they make the case that increasing resistances to EU law should not be understood in terms of un-governability but rather as a proof of its growing normalization and acceptance as an effective rule-making authority.

Another finding shared by many of the contributors is that shifts of power in the EU are by no means unidirectional. This has major implications for the literature on the effectiveness of EU governance. It also contributes to current debates about if and how the EU Commission has been a beneficiary of the crisis (Bickerton *et al*, 2014). In spite of growing anti-European sentiments in the EU and increasingly assertive governments, the strengthening of European rules – sometimes based on the strategic usages of the 'soft' instruments at its disposal – has enhanced its authority across policy domains (see Dehousse's contribution). This is done by adding hierarchy and increasing the sanctions attached with cross-sectoral and cross-national policy performances. In this sense, the systematic use of collaborative, non-coercive and informal modes of governance does not just result in the weakening of EU institutions and governing capacity. Indeed, standardized measurement procedures, detailed surveillance mechanisms and systematic assessment of national/sectoral performance strengthen – in theory – the steering capacity of EU institutions over member states and societies.

This process is most certainly detrimental to the European and member states' Parliaments, but whether or not it benefits the European Commission largely varies from one case to the other as argued by Falkner. She shows that 'the Commission considers the opportunity to combine quite different instruments of great importance in its efforts to ensure compliance with EU law' (Falkner, in this special issue). Taking a different view on non-compliance to EU law, Saurugger and Terpan argue that the effectiveness of soft law is best understood in relationship with social – as opposed to legal – sanctions, but proves no less effective in terms of the EU's governing capacity. In the case of financial markets, Kudrna examines how evolving forms of governance in the financial market regulation domain led to hardening soft modes of governance. Following the 2008 crisis, successive reforms strengthened the role played by the EU level, through the continued reinforcing of independent agencies and specialized committees. Yet, the process through which 'the governance of the financial market regulation in general and of banking in particular, evolved from the most generic community method to a multi-level process centred around independent agencies' does not automatically benefit to EU institutions – the Commission, the Council and the Parliament – since these newly created bodies are 'better positioned to balance disparate interests than either the Commission or national authorities by virtue of combining both national and supranational points of view.' (Kudrna, in this special issue).

These results highlight the structuring effect of new modes of governance on the EU governance regime, in terms of both its inclusiveness and its effectiveness. By favouring increased institutional inclusiveness, these processes contribute to enhancing the complexity of EU decision-making. They contribute to multiplying the number of veto points and players, policy-making arenas and opportunities to resist and circumvent EU norms and rules. Over time, the sedimentation of new modes of governance and policy instruments also result in shifting policy priorities to the detriment of inclusiveness. This is particularly true in times of crisis, during which the functioning of existing modes of governance enhanced the EU's policy effectiveness. This is less true, however, with regard to political effectiveness, as these findings also confirm the political dimension of instrumentation choices. Indeed, specific combinations of policy tools and the ability to seize – or not – the opportunities expected from a given mode of governance does not result from an automatic process alone, but is also shaped by politics. As shown by Falkner, in some cases of large-scale and visible non-compliance, soft pressurizing may be more effective than penalization and public shaming.

The findings also hold some implications for EU governance and democracy. They empirically challenge the contribution of new modes of governance, such as impact assessments, to redefining the EU governance regime and enhancing the EU's democratic credentials. Some contributions do so by focusing on specific policy instruments and their implementation over time, thus confirming the widening gap between increased forms of formal (especially institutional) inclusiveness and

substantial inclusiveness. Focusing on impact assessments as one of the concrete devices through which inclusiveness has been made operational at EU level, Bozzini and Smismans explore the usages made by the European Commission's DGs of this mode of governance over time. They highlight different patterns of participation, and why and how it was primarily understood by DGs as an opportunity to enhance coordination by building intra-institutional relationships as opposed to ensuring neutral expertise and increasing input legitimacy. They first show that DGs tend to include a limited amount of actors in impact assessments and the variations observed depend less on the density of interest groups in a given policy field than on processes of learning within each DG. A related point, made by Boussaguet, concerns the usages that were developed of the participatory instruments that were introduced at EU level in order to enhance the inclusiveness of the decision-making system. Since the early 2000s, a series of specific policy instruments such as citizens' conferences, deliberative polls, regular consultations and, last but not least, the European Citizens' Initiative were introduced in order to include the ordinary citizen as opposed to the organized civil society. Her findings confirm the little use made of such policy instruments by the ordinary citizen. Yet she also argues that the impact of such a symbolic reform should be assessed less in terms of policy outputs or levels of inclusiveness, but rather in terms of their political effectiveness since they demonstrate the EU's continued attempts to engage in a structured dialog with citizens. Nevertheless, the evidence presented by Boussaguet confirms that political effectiveness is still lacking, notwithstanding the symbolic relevance of the new initiatives aimed at increasing the inclusiveness dimensions.

By contrast, other contributors chose to focus on a specific policy domain and the extent to which new modes of governance did contribute – or not – to increasing institutional inclusiveness. Examining the case of financial market regulation, Kudrna provides some insights on the functioning of new modes of governance and policy instruments in the context of the 2008 crisis. He argues that such forms of cooperation prove less effective in these extreme circumstances, thus justifying another governance reform that primarily relies on expert committees and independent agencies. By opening additional space for policy coordination, new modes of governance shaped a continued shift toward a more regulatory approach to financial market regulation and the emergence of a multi-level governance system in which legitimacy is increasingly constrained by the expansion of technocratic policy-making.

Conclusion

The focus on dimensions of inclusiveness and effectiveness brings out dimensions of policy making that have hitherto remained hidden and highlights the characteristics of the ways through which the EU is governed that have been relatively unexplored.

The governing of the EU is increasingly complex, that characteristic having been considerably increased through the sedimentation of successive layers of new policy tools and modes of governance. By opening successive space for interest mobilization and representation, they did contribute to enhancing the institutional inclusiveness of the governance regime as a whole, as well as to the policy effectiveness in some specific cases. However, their effects in terms of substantive inclusiveness and political effectiveness appear to be extremely limited. This is particularly true since the 2008 crisis, which appears to have led to the hardening of pre-existing sets of policy tools and modes of governance as a way to increase coordination. From the analytical point of view, the results presented in this special issue clearly show the limits of the narratives that explained new directions in EU governance in terms of their 'softening' and a 'new governance' approach. These analytic frameworks fail to explain recent changes in the EU governance regime, inasmuch as they are unable to explain the hardening of existing policy tools and the multiplication of autonomous spaces. Focusing on policy tools, and analyzing the way they are combined – somewhat uneasily – with one another in relation to the notions of inclusiveness and effectiveness properly understood, offers fruitful avenues for the understanding of the EU political system, the way and limitations of how it is governed.

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© 2015 Macmillan Publishers Ltd. 1472-4790 **Comparative European Politics** 1–19

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