

# Chapter 7

## The Market Turn in EU Governance – The Emergence of Public-Private Collaboration

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### Introduction

The governance turn in the EU is often interpreted as a turn towards decision-making and policy-making process that is socially inclusive. Soft law and other soft forms of regulations aim at a more participatory style of governance (European Commission 2001; Caporaso and Wittenbrinck 2006). The governance turn in the EU is also characterised as part of an “ideological shift from politics towards the market” (Pierre and Peters, 2000: p.55). These two interpretations of EU governance entail very different understandings of legitimacy. In the participatory interpretation of governance legitimacy has to do with the democratic process – input legitimacy – whereas the market interpretation emphasises the importance of efficiency – output legitimacy (Scharpf 1999).

This paper analyses the relationship between the public sphere (= the democratic process) and the private sphere (= efficiency) by studying three cases of European collaboration between public and private actors: the European satellite navigation programme (Galileo), the European Investment

Bank and health and the European Financial market, especially the Lamfalussy model. Although the legal framework varies between the cases, they all entail the crucial question of which part of public service can be handled by the private sector and how this private authority should be regulated and controlled by the public actors. The overall aim is to analyse what the balance between managerial autonomy and democratic accountability looks like in these three cases of European public-private collaborations. The main justification for close collaboration between public and private actors is that they can be effective which gives them a certain managerial autonomy from political control. Whether or not they are efficient is not analysed in this paper. Such collaborations must also be democratically legitimate. This requires political control, and is a question on which this paper focuses.

We are living in a time when borders between the public and private spheres are being re-evaluated, transferred and are becoming more porous (Drache 2001). The strain on public finances has underpinned an ideological change in notions of what is appropriate for the state and the private sphere to do. During the 1980s and the 1990s the political economy of the EU underwent major changes. The New Public Management (NPM) reform introduced a range of private sector management instruments into the public sector (Pollitt and Bruckaert 2004). Indeed, the main goal of NMP is to raise efficiency in the provision of goods and services by using various private sector mechanisms (Lane 2001). Public-Private Partnerships (PPPs), defined as a mutually beneficial contractual relationship between equal partners, is one case in point. PPPs are not a new phenomenon. Indeed, it is difficult to imagine a time when there were no partnerships or other forms of close public-private collaborations. This is especially true for economic and urban/rural development at the local and regional level (Carroll and Steane 2000). The United Kingdom has Europe's largest programme of PPPs covering all major civil procurement sectors and in the early 1990s started the Private Finance Initiative (PFI). The Lisbon process in the early 2000s –

making the EU the world's most competitive and dynamic economy through the liberalisation of services markets – has emphasised the importance of more market reforms of public services. Already in 1992 at the European Council meeting in Edinburgh, when the reform package for “better regulation” was formally initiated, it was quite clear that the political ambition was to make the EU more performance-oriented (Radaelli 2007; Renda 2006). In 1990 the number of PPP projects in the European Investment Bank (EIB) was almost zero, in 1995 the figure was over 500 and in 2000 the figure had risen to 3000 signatures (EIB 2004). Formerly closed markets are now open for private contractors and various public companies have been partially or completely privatised.

In sum, we are witnessing a change from an emphasis on process and on relations based on confidence to a situation in which results and contractual relationships dominate the public sector (Hood 1995). A consequence of this change is that accountability increases as one of the most important democratic values. The liberal constitutionalists' emphasis on constitutions, laws and hence the formal hierarchical order of command and control, become more important than participation and deliberation (Dryzek 2000). Hence, such a system of command and control requires clear and stable instrumental goals from collaboration and that control mechanisms are set up by the public actors. My research questions are, therefore, the following: are there clear goals for collaboration and how is collaboration organised in order to control private actors? I argue that a system of command and control is easier said than done, particularly in a collaboration in which the actors are assumed to be equal partners. The emergence of private and public partnerships and other forms of cross-sectional collaborations between private and public actors make the borders between the two spheres rather problematic from a democratic point of view. This should not surprise us. What is perhaps surprising is that democratic theory, especially the liberal and representative way of thinking about democracy,

makes a clear distinction between the two (Geuss 2003). This constitutes a dilemma for public actors, especially for the officials who are often those who negotiate with the private actors, on the one hand, and have to secure deals in line with political goals and processes, on the other. Indeed, the virtue of democratic accountability becomes a problem when public authority is shared with rather than delegated to private actors. I am interested in how this discrepancy between normative ideals and social practice is handled. Or to put it differently, what happens when government (the hierarchical chain of command and control) meets governance (networks)?

The paper is organised as follows: the next section discusses the academic literature on the distinction between public-private and how this distinction is made in the literature on public-private partnerships. The focus on PPPs, rather than on public-private collaborations in general, is motivated by the fact that the general problem inherent in public-private collaborations is most acute in these cases. This section concludes with a discussion of how the EU is built upon two systems of authority and how this affects the requirement for democratic accountability in public-private collaborations. The second section presents an empirical analysis on three cases of European public-private collaborations and what these cases tell us about the relationship between government and governance in the EU.<sup>1</sup> The third and last section presents five paradoxes on European public-private collaborations.

## **The Grand Dichotomy**

The distinction between public and private has a long history in Western thought and is one of the major dichotomies in social science (Arendt 1958; Elshtain 1997). There is no agreement on where to draw the line between the two spheres or on what is meant by public and private. There are basically four academic debates and issues that the literature on private and public covers. The first debate concerns the question of how to define politics

(Arendt 1958). The public realm is often regarded as political whereas the private sphere belongs to the family and to the non-political arena. The second debate has to do with the importance of a public domain or realm, often interpreted as political, and democracy. Drawing on the works of de Tocqueville, Richard Sennett argues in the famous book *The Fall of Public Man* that secularisation and industrial capitalism has slowly destroyed the public realm and the political sphere (Sennett 1974). Erving Goffmann draws the radical conclusion that the private realm is always more authentic than the public arena (“front stage” and “back stage”, Goffmann 1959), whereas Jurgen Habermas’s conception of an authentic public sphere is a cornerstone in his theory of deliberative democracy (1989). In the third debate the private and public distinctions stand for market, especially private enterprises, and state respectively (Weintraub 1997). This debate is central in political economy, nationally, as well as in internationally oriented studies (Polyani 1944; Gilpin 1987; Strange 1988, 1996; Grieco and Ikenberry 2003). Within this tradition there is a literature on the way in which two spheres of social organisation – markets and hierarchies – entail different expectations and roles and how reforms in the public sector during the 1980s have made the public administration more market-oriented (Pierre 1999; Rhodes 1997). There is also a literature that focuses on change within the market sector – from a rather secluded economic sphere to more active private enterprises in social affairs (Strange and Stopford 1991; Sahlin-Andersson 2006).

The fourth and last debate concerns the emergence of a public domain in which there is no traditional distinction between what is private and what is public (Drache 2001; Ruggie 2004). This debate is linked to the literature on governance and network society (Kjear 2004; Castells 1996). There is a focus on opportunities for new types of legitimate authority, particularly on institutionalised forms of power that are recognised by those who are regulated by them (Hall and Biersteker 2002; Shelton 2000; Goldstein et al 2000). Indeed, authority is found not only in systems of government – the

traditional system of command and control – but also in governance. Governance is here defined in terms of multiple authorities, horizontal networks and voluntary rules (Ruggie 1975; Krasner 1983; Rosenau and Czempiel 1992; Young 1999; Hirst 2000; Pierre 2000).

Although the four debates and issues can be separated they also are closely interlinked. They all concern how the borders are drawn between private and public actors and the political and democratic implications of this boundary. The classic analysis on states and markets is perhaps most relevant to this paper on how profit-oriented firms and public actors collaborate within a public service. What is interesting about PPPs and other close forms of collaboration between public and private actors is that they epitomise states and markets (Gilpin 1987). Hierarchies are linked to states, coercion and authority, whereas markets are linked to society and voluntary exchange relations (Lindblom 1977). Hierarchy means that an authoritative centre issues rules and orders whereas buyers and sellers coordinate their activities by exchanging services etc (Brunsson 2000). PPPs are hierarchical in the sense that public actors take part in these collaborations and that these public actors are part of the democratic chain of command and control. PPPs are also characterised as loose forms of cooperation between private and public actors without the familiar paternalism of hierarchy (Grimsey and Lewis 2004). Contracting involves bargaining and reciprocity and not domination by one part. PPPs, therefore, can neither be characterised as markets nor as hierarchies. In addition, PPPs are more than a contractual arrangement. They are also a relational form of social organisation based on trust and on a rather long-term commitment in which legitimacy and other non-commercial values play an important role for the private enterprises. PPPs can therefore be regarded as a reflection of a more general transformation of changed borders between business, state and civil (Sahlin-Andersson 2006).

These transformed boundaries can partly be explained by new demands on the three sectors and spheres. Modern society places many demands on

private companies and on public actors (Meyer and Rowman 1977; Meyer et al 1997). Modern states are placing more emphasis on the “use of authority, rules and standard-setting, partially displacing an earlier emphasis on public ownership, public subsidies, and directly provided services” (Jordana and Levi-Faur 2004: p.8). The state has a regulatory role (Majone 1997), a service-providing role (Olsen 1988) and a contracting role (Lane 2000). Bresser-Pereira formulates the change from the Social-Democratic State to the Social-Liberal State; “In bureaucratic public administration, the major political concerns were social order and administrative effectiveness. In the new state that is emerging, citizens or voters assume that the political regime achieved political stability and is reasonably effective in enforcing law. Now, the major political concerns are democratic accountability and administrative efficiency. The challenge is to extend to social services the economic efficiency which business enterprises assure in the production of goods and services, while maintaining their public character” (2004: p.109).

I am following up that citation from Bresser-Pereira on how the two requirements and values – democratic accountability and efficiency – can be combined when public service is conducted through close collaboration between public and private actors. In the next section I argue that these two requirements in public–private collaborations are hard to combine because of a gap between democratic ideals and social practice.

## **Two systems of authority in the EU**

Authority, defined as legitimate power, can be based on government or governance. These two authority systems are ideal types and are in practice often interlinked and dependent on each other (see figure 1). It is, however, important to make a distinction analytically between them. This is so because the two authority systems are based on diverse ideas about regulation, both with regards to who should be the legitimate regulators and what kind of

regulation should be used. They are also based on different ideas of democracy.

**Figure 1:  
Two Systems of Authority**

	Government	Governance
Modes of Regulation	Hard Law Public Law	Soft Law Private Law
Regulators	Public Actors	Public and Private Actors
Democratic Model	Representative and State-Centric	Deliberative and Based in Society
Democratic Reforms	Hierarchy and Parliamentarisation	Open Structures and Network-Building

## Government

The authority system of government is based on rules that are coercive – hard law – and are decided by elected politicians, especially parliaments. Thus, traditional authority is characterised by the domination of hierarchy and monopoly for rule-setters, which are the state and other public actors. The democratic legitimacy for this authority system is based on representative and liberal democracy – a democratic model that emphasises the importance of a hierarchical chain of power and accountability. The democratic procedure is aggregative, which means that the individuals' votes are aggregated in national elections (majoritarian democracy). People's opinions are thus expressed in general parliamentary elections. Thus, democratic reforms are focused on hierarchy and parliamentarisation (figure 1, Olsen 2003). Consequently, it is essential to make a distinction between the public and the private sphere. The public sphere, often coterminous with the state, is the authoritative rule-maker and legislator.

The European Union is to a large extent based on the authority system of government. The democratic legitimacy of the EU's decision-making is based on national representative democracy (national parliament) and on the emerging European representative democratic system (the European parliament). The Union's perceived democratic problems are met by reforms that strengthen the hierarchical chain of command and control and that either give more powers to national parliaments or to the European parliament (figure 1). The reforms are focused on the Union's formal legislative process – the Community Method – by means of the presentation of a legislative act by the European Commission. The Council of Ministers (the governments of Member States) and the European Parliament will then pass the act as the Union's legislative powers.

How can PPPs and other close public-private collaborations, in which hierarchy is more or less replaced by contracts, live up to democratically accountable standards that are based on the very idea of a hierarchical chain of power and accountability? In a general sense accountability can be defined in terms of how an agent “is held to answer for performance that involves some delegation of authority to act”.<sup>2</sup> During recent years there has been a rather intense focus on accountability, both in national, European and global politics (Przeworski et al 1999; Schmitter 2000; Behn 2001; Strom et al 2003; Lord 2004; Keohane and Grant 2005; Koenig-Archibugi 2005). However, the concept is rather slippery. There are several types of accountabilities – political, legal, administrative, professional and social (Bovens 2006). Bovens argues that the concept “has become less useful for analytical purposes, and today resembles a garbage can filled with good intentions, loosely defined concepts, and vague images of good governance” (*Ibid*: p.7). Accountability has, for instance, been equated with transparency, liability, controllability and the imposition of sanctions in case of malperformance.

Bovens presents what he calls a narrow definition of accountability. Accountability is a relationship between two actors, often described in terms of principals and agents. The literature on delegation and accountability that is perhaps most elaborated is found in texts on principal-agent theory (PA theory). With a clear rational choice perspective the theory seeks to explain how and why principals, often equated with governments, solve collective action problems by delegating functions to various agents. In order to be sure that the agents don't perform activities that were not prescribed by the principals, the latter have a variety of mechanisms put in place to monitor and control the agents' behaviour. Robert Behn describes the problem in the following way – “The proponents of a new public management paradigm emphasise performance – the ability of their strategy to produce results. But they cannot ignore the troubling question of political accountability. They must develop a process, a mechanism, a system, a concept, a something that not only permits public agencies – and their collaborators on the for-profit and non-profit sectors – to produce better results but also ensure accountability to citizens” (Behn 2001: p.33). Indeed, the trick is to combine accountability with performance. The basic idea is that the agents are held accountable to their principals and that the principals are held accountable according to the system of representative democracy. The PA-theory, in different variants, has had a huge impact in the ongoing discussion of the democratic deficit in the EU (Majone 1996; Tallberg 1999; Pollack 2003).

The attraction of the theory seems to be its normative message, namely that the democratic deficit in the EU can be resolved by a stricter and more specified delegation of functions to the European Commission and other supranational institutions and by establishing an effective system of monitoring and control mechanisms. In this way the EU gets its democratic legitimacy from the national parliamentary democratic system and from an intergovernmental system of governance in the EU. Furthermore, by giving the agents clear tasks to perform in a certain policy sector, for instance by the

European Central Bank in monetary affairs, the short-sighted politicians are restrained from ‘interfering’ in the long term policy area (Majone 1996).

In public-private collaborations the division of labour that is so crucial for a successful principal-agent relationship is often hard to establish since no delegation of authority seems to occur between them (Koenig-Archibugi 2005) It is a far more complex case of authority-relationship than that of a public-public relationship. Kettl formulates the complexities in the following way; “When a government implements a program directly, through the bureaucracy, goals can be adjusted. In a contracting relationship, however, goals must be specified far more clearly, in advance, and reduced to legally enforceable language. For the government, the principal, the job is difficult because public goals rarely stand still long enough to allow precise formulation. For the government contractor, such fuzzy and shifting goals make it hard to know what the government expects. And without legally enforceable goals specified in the contract, there are no clear standards against which to measure the contractor’s performance. Defining goals are thus at one the most important and the most elusive element of the principal-agent relationship” (Kettl 1993: p.26). Furthermore, the control mechanisms do not follow a public-public chain of delegation. Potential conflicts between the public and private actors are mainly solved through private law conflict resolution and not through public law.

My interpretation is that although the democratic legitimacy for PPPs is based on government, we are dealing with horizontal relationships between equal partners that have voluntarily agreed to a contract. Public-private collaborations are assumed to be democratically legitimate through the authority system of government and yet, these collaborations seem to take place within the authority system of governance.

## Governance

Governance rests upon multiple authorities. This means that the traditional distinction between the private and the public spheres that are so fundamental in the liberal thinking on democracy can be questioned (Hirst 1997). The public sphere is not necessarily state-based but can consist of private actors, non-profit organisations and profit organisations. Hirst argues that “In fact both state and civil society are made up of large complex organisations, and the boundary between the two is not at all clear” (*Ibid*: p.117). The public domain cannot be analysed in terms of states and interstate relations but as a domain in which states are embedded in a broader “institutionalised arena concerned with the production of global public goods” (Ruggie 2004: 500). Thus, various private actors take part in authoritative regulatory processes (c.f. Cutler et al 1999; Hall and Biersteker 2002). The regulatory processes in systems of governance often result in soft law. The latter can be of several types but the main characteristic is that they lack the possibility of legal sanctions.

The democratic model behind the authority system of governance is deliberative and socially-based. People’s opinions are formed in ongoing public dialogues and discussions. Indeed, one important rationale for questioning liberal and representative democracy is the fact that the political issues change (Barnett 1996). Drawing on Beck’s argument of the risk society the party politics of representative democracy were constructed to deal with non-reflexive issues and not with the new modernity of how the risk society is reflexive. In a society in which complex issues must be balanced against each other – economic concerns (growth, wealth etc), social concerns (for instance inclusion), ecological sustainability and political democratic concerns (for instance accountability, participation) – “it is less obvious who are the experts and how to adjudicate the necessary trade-offs involved” (Olsen 2003: p.6). Thus, the fact that issues change and require more participation

from ordinary people challenges the traditional democratic system of hierarchy and parliamentarisation. Democratic reforms in systems of governance are therefore focused on open structures and network building (figure 1, Olsen 2003).

The democratic base of the authority system of governance is very little developed in the EU. Some initiatives have been taken in order to strengthen the participation of civil society. One case in point is the introduction of the Open-Method of Coordination (OMC). This reform was legitimised by deliberative democracy rather than being one that focused on hierarchy and parliamentarisation (de la Porte and Nanz 2004). It can also be argued that the OMC has very little to do with deliberative democracy. The OMC has been described as a case of technocratic deliberation (Eriksen 2007). In the case of PPPs and other forms of public-private collaborations it is difficult to argue that they can be democratically legitimised by deliberation. One reason is that they often include an exclusive group of participants consisting of companies and other for-profit actors. Yet, they could still be argued to belong to European governance because the relationship is based on voluntary agreements between equal partners. Paradoxically, the European governance turn can be interpreted as change from government to governance in the sense that there is more emphasis on steering through networks than through hierarchies. It is also a change from a more procedure-oriented administration to more market-friendly alternatives to command and control. My interpretation of European governance is that it is a multifaceted change in how decisions are made but that the democratic legitimisation of these decisions has not changed. They are still dependent on democratic accountability mechanisms according to the hierarchical system of command and control.

We will now turn to how these two authority systems meet each other in three cases of European public-private collaborations and how the

requirement of efficiency, on the one hand, is balanced against the requirement of democratic accountability on the other.

### **Three cases of European Public-private collaborations**

In every case study five questions were asked. I am not making a clear distinction between control and accountability or what many researchers define as *ex ante* or *ex post*. Accountability clearly has more to do with *ex post* whereas control can be both *ex ante* or *ex post*. The development towards more public-private collaborations has put an emphasis on *ex post* accountability and control mechanisms (OECD 2005). However, the two types of control mechanisms intersect and are dependent. My questions in the empirical case-studies are therefore a combination of both *ex ante* and *ex post* control and accountability mechanisms.

Are there clear goals with the collaboration?

How is the collaboration organised?

Who participates in the decisions concerning the collaboration?

Is there a clear division of labour between the partners?

How are the private actors monitored by the public actors?

The first question, whether or not there are clear goals, gives us an indication of the complexities and difficulties of a democratic model of command and control. If the goals are vague or conflicting it is difficult to uphold democratic accountability. This question also gives an indication of how specific or general are the political guidelines to the officials who are often those who negotiate with the private actors. To find out the goals intended by the collaboration is not an easy empirical task, especially if you are interested in 'hidden agendas'. Collaboration may resemble a complementary

relationship but it may also disguise the diverse goals and interests of the partners (Macdonald and Chrisp 2005). My analysis was initially fairly simple, beginning with looking at formal statements on the collaboration, especially by the public actors. The interviews with key officials provided me with a more vivid picture of the goals and what kind of political guidelines were given to the officials.

Questions on the organisation of the collaboration give us information about what kind of public apparatus is established in order to administer and monitor the collaborations. The third question has to do with whether the collaboration has any direct contact with the legislatures or other political decision-makers or if a special agency has been set up to monitor the collaboration. The former case would suggest a less complex chain of delegation and control whereas the latter would suggest a complex relationship between officials, politicians and private actors. The fourth and fifth questions are also included in order to establish the complexity of the relations between the actors involved and thus the potential for democratic accountability.

## Galileo

Galileo is a joint initiative of the European Commission and ESA (European Space Agency) on a global civilian controlled satellite navigation system under civil control. The system will allow users to pinpoint their location at any time with a high degree of accuracy. It will also offer satellite navigation products and services (GJU Home Page 2004). Galileo can be regarded as an improved version of the American GPS, accurate to within less than a metre. It is, furthermore, a service outside the control of the Pentagon. When fully deployed the system will consist of 30 satellites in three orbits offering a range of multiple applications, products, and services to be deployed for use in transport, telecommunications etc. The economic aspects of Galileo are

gigantic. The world market in satellite navigation products and services in 2005 reached EUR 60 billion. In 2020 it is estimated that the annual worldwide turnover of these markets will reach EUR 300 billion (EC 2006a). According to the European Commission, 150,000 jobs will be created within the European Union, primarily in the high-tech sectors, as a result of the Galileo project (*Ibid.*). The Council in the EU has since the inception of the Galileo programme advocated that Galileo should be a PPP (Council Regulation 1321/2004, para 6). This means that a private organisation will get the exclusive rights to exploit the infrastructure for a period of 20 years. In return for this concession contract the private organisation must bear at least at two thirds of the deployment cost for the system (EC 2006a).

The Galileo programme consists of four phases. The first is the definition phase that took place from 1999 to 2001 (EC 2006b). During this phase the system architecture was developed and the services to be offered were determined. The second phase is development and validation, 2002–2009. This phase covers the development of the satellites and the system's ground components, as well as its validation in orbit (*Ibid.*). The third phase is Deployment, presently foreseen in the period 2010–2012. This phase covers the manufacture and launch of the satellites in the constellation and the installation of all ground components. The fourth and last phase is the commercial operating phase, planned to commence at the end of 2012.

## The EIB and health

The second case concerns the European Investment Bank (EIB) and health PPPs. The PPPs in the health sector, particularly in health care, are often national and decided by national public and private actors. However, PPPs in health care are increasingly handled by the EIB, a central institution within the European Union. The EIB has been working with health projects for

over a decade and these projects are nowadays one of the priority sectors of the bank. The formal mandate for the bank to be involved in the health sector was stated in the Bank's "Amsterdam Special Action Programme" (ASAP) in November 1997. It was a pro-active response to the Resolution of the Heads of State or Government on Growth and Employment adopted at the European Council meeting in Amsterdam in June 1997. Later on, healthcare projects were more linked to a perceived increasing need for human capital considered to be crucial for supporting growth and development according to the Lisbon strategy.

In general the bank emphasises refocusing public expenditure towards growth-enhancing areas *without* increasing public budgets and has thus encouraged greater private sector financing of public infrastructure (EIB 2004). The main goal of the EIB is to create value-for-money (*Ibid*). This goal has been given a special name in the EIB and in other PPP-oriented national authorities – VFM. The VFM principle implies that it is not merely the efficiency of hospital services, and other health care sectors, that should increase but also that quality should improve.

### The Lamfalussy model

The third case is the emerging financial services market in the EU. This case represents a non-contractual public – private collaboration. The financial sector is seldom the subject of political controversy. This is a paradoxical situation at a time when private banks and investors handle important public welfare services, such as pension funds. At the end of the 1990s the European Commission stated that the EU's financial market was fragmented and in need of major changes. In 1998 the EU leaders in Cardiff decided to push for the integration of markets. In May 1999 the Commission presented the Financial Services Action Plan (FSAP) consisting of 42 measures covering sectors such as banking, insurance and securities (EC 1999b). The Action

Plan was adopted in March 2000 with the goal of creating a single market for financial services by 2005. A new legislative model was presented in 2001 by the Lamfalussy Report that proposed a division of the decision-making into four levels that, according to the report, would enhance the interaction between private and public actors (Lamfalussy 2001). The new decision-making process was considered to be both democratic and effective, especially since the private actors would be given a crucial consultative role in the committees and working groups. This model of decision-making was politically approved in the EU and extended to other policy sectors in the union. The main results of the empirical analysis are summarised in table 1.

**Table 1:**  
**Five questions on three European Public-Private collaborations**

<b>Questions:</b>	<b>Galileo</b>	<b>The EIB/Health</b>	<b>The Financial Market/Lamfalussy</b>
<b>Goals</b>	Multiple and competing	Multiple and competing	Multiple and competing
<b>Organisation</b>	A formal separation between public and private actors	A formal separation between public and private actors	A formal separation between public and private actors
<b>Decision-making</b>	Dominance by officials	Dominance by officials	Dominance by officials
<b>Division of labour</b>	Formally: clear Informally: unclear	Formally: clear Informally: unclear	Formally: clear Informally: unclear
<b>Public monitoring</b>	Double roles	Double Hats	Still in the making

## Goals

The overall goal with Galileo is to deliver a European satellite navigation system (EC 1999, 2006). Apart from this overall goal there were other functions and goals attached to Galileo and the proposed PPP. The system was officially emphasised as civilian and the military usefulness of the system seemed to be part of a hidden agenda, and perhaps the very driving force behind the system. Later on this military and not-strictly civilian purpose of Galileo was explicitly pronounced and it became more evident that the participation of private actors in a dual-use technological project was problematic (Council 2004). Even when the project was announced as strictly civilian the system's usefulness in combating fraud and in other policing activities made it very unclear what role within these functions the private actors had. So with Galileo there was a clear goal but under the surface there were multiple functions attached to the system that were not necessarily easy to combine. It was difficult to see how the commercial interests for which the private actors in the system were approached, could be united with policing and other sensitive public tasks in which the private actors were not considered to take part. The military functions are even harder to combine with a commercial use of the system (interviews with Christer Barner, Paul Verhoef and Simon Barnes). Yet the private actors were expected to invest a huge amount of money with the promise of making Galileo into a profitable business for selling information on navigation.

The goals of PPPs in the health sector seemed to be a rather straightforward collaboration. The private actors are not involved in the clinical services but take care of laundry and other non-clinical services in hospitals (EIB 2004) The EIB acts on the political mandate to get more PPPs in the health sector, or what they call the need to increase human capital, and to get value for money (interviews with Hugh Goldsmith, Nicholas Jennett and Angus Macrae). Under the surface the partnerships were more

complicated. There is no sharp distinction between clinical and non-clinical services and the EIB mantra – value for money – entailed the goals of both increased efficiency and quality without spending any more public money. So, although the overall goal with the partnerships was apparent, once again we saw that there were many expectations attached to the partnership – for example, that it would increase efficiency and the quality of the non-clinical services without increasing public expenditure. It seemed that the price tag of the PPP was the overall criterion and that the economists at the EIB and the private actors were more comfortable in discussing price – value for money – than other criteria (interview with Stephen Wright).

The third and last case concerned the formation of a European financial market. The private actors were given an important role in the legislative process, the Lamfalussy model. The overall goal was to establish an efficient financial market. This time efficiency was directed towards the decision-making process with the ambition of creating a financial market quickly. Under the surface there were vague goals about the purpose of the consultation between the public and private actors. The expression “learning by doing”, as I also saw in the case of the EIB and health, was very much how things were done. There were many expectations linked to the Lamfalussy model. It was supposed both to increase efficiency and to be more transparent and democratically legitimate (Lamfalussy 2001). The formal decision-making structure seemed at first fairly easy to understand, but it soon became clear that this structure was more a case of wishful thinking than a reflection of what was really going on.

In the case of Galileo there was a frustration among the officials over the uncertainty regarding the planned contract with the private actors. The officials were negotiating with the private actors, on the one hand, and received vague or inconsistent political signals, on the other (interview with Paul Verhoef). The close relationship between the space industry and the governments made the situation for the officials quite hard because they were

not always informed about what was going on. Yet they had the task of negotiating the contract and monitoring the partnership. In the case of EIB and health, the officials had a rather clear idea of their role in the process. They did not seem to reflect on what they should or should not do. Their job was to see to it that the negotiation resulted in a good affair for the public actors. This is what the EIB is all about. However, the close relationship they developed with the private actors because of the professional affinity between them raises questions regarding for whom the partnership was a good affair. In contrast with the case of Galileo there is an impression that the highly structured organisation of the EIB, and the way in which the officials formally worked with partnerships, made the officials rather isolated from the political bodies both at the highest level of the EIB and in the EU.

In the case of the financial market, the position of the officials appeared very complex. On paper their role was to present how the legislation was to be implemented. In practice, their work seemed to be very much more complicated. The politicians seemed to be occupied with the Lisbon process and the financial market was regarded as highly important in achieving the strongest economy in the world. In addition, the financial market was also part of the reform package of Better regulation. Indeed, the Lamfalussy model was established because it was regarded as a more efficient way of reaching decisions in contrast to the traditional slow and tiresome Community method (interview with Johnny Åkerholm). How this was organised and carried out in practice seemed of less political interest. Several of the informants told me that the problem with the Lamfalussy model was not the lack of political goals and guidelines, but the lack of legal harmonisation between the different financial systems in the member states (interview with Ingrid Bonde). Nonetheless, this problem of harmonisation entails political issues, such as how and what should be regulated, with what means (laws or self-regulation) and the private actors' role in the financial market. The political interest in the Lamfalussy model seems to have come mainly from the European

Parliament, which feared that it would lose power when the political issues moved from the traditional legislators to the world of the committees.

Hence, a common theme in the three cases is that the overall goal seemed pretty uncomplicated but at the same time very indistinct. The EU Member States set the goals of a European satellite navigation system, more of private investors in the health sector and a functioning European financial market. How these should be accomplished was quite fuzzy. The officials seemed to handle this situation of uncertainty with frustration and by setting up a strict bureaucratic organisation. Interestingly, they seemed less interested in following their own agenda, if indeed they had one. Instead, they seemed eager to act upon the political mandate and try to act in accordance with what they believed were the political expectations.

### Organisation, decision-making and division of labour

The organisation of the collaboration looked rather similar in the three cases. There was structured and hierarchical organisation both of levels of decision-making and of what the actors were supposed to do. This was particularly clear in the EIB case and in the case of the financial market. This finding is very much in line with the reform of New Public Management, which entails more control and accountability mechanisms. One conclusion that can be drawn from this is that the organisation is transparent and hence the participation and division of labour between the actors is too. The chain of delegation between public-public actors is visible, although not without its problems. On the other hand, the participation of the private actors in these collaborations is less visible. Their part in the collaboration is less clear in the highly structured Lamfalussy model or the work within the EIB. The private actors were not part of the formal decision-making in all three cases. Yet, they were crucial actors in establishing the collaborations and in pursuing the political projects of Galileo, health PPPs and the financial market in the first

place. They remained present somewhere behind the scenes. An example of one such scenario is the way in which the private actors were involved in setting up the banking directive in the EU: not by working in the EU but in the international standard organisation in Basel (The Bank for International Settlements, BIS). This directive was then incorporated in the EU and presented as an EU directive.

### Public monitoring

The Galileo case shows that the private actors are monitored by the same authority that is negotiating the contract (EC 2007). The double role of the authority is also found in the case of the EIB and the health PPPs. The EIB officials talk about their dual hats and how they must change hats depending on whom they are talking to (interviews with Hugh Goldsmith, Nicholas Jennett and Angus Macrae). In the case of Lamfalussy the hybrid character of the public control mechanisms was less evident. The special Inter-Institutional Monitoring Group on the Lamfalussy process was focused on the overall success of the process and did not monitor the private actors in particular. A European supervisory structure within the financial market is still in the making (interviews with Tereza Vyborna and Daniel Kosicki).

### The balance

The balance between efficiency and democratic accountability is kept by making the formal structure of the collaboration into a public concern rather than a situation in which authority is shared between public and private actors. Moreover, the public-public relations are weak. Political participation is most explicit in the Lamfalussy model in which there is a revised comitology procedure. The political participation in the Galileo case is more random. The EIB case suggests that political participation is less specific

within the EIB and at the EU level but that it might be much more comprehensive in the national context in which the health service takes place.

Efficiency is at the forefront of the collaborations and democratic accountability is assumed to take place because there is a formal chain of delegation. My interpretation of this balance is that there is a clear tension between efficiency and democratic accountability but that this tension is never really handled by the politicians or the officials. The ambition to control and to set up accountability mechanisms is evident but it is unclear what these should control. This is because the goals of the collaborations are quite vague and they also seemed to change over time. Indeed, the public-private collaborations seem to have lives of their own. They take shape in a complex policy-making process that includes both strategic and instrumental thinking but also a lot of improvisations. There is a delicate balance between how the collaborations should be organised and regulated, on the one hand, and the need for flexibility, on the other. This tension and dilemma between the need for clear 'rules of the game' and political room for manoeuvre is particularly apparent in the European Union. The increasing use of framework directives and soft law illustrate how the enlarged Union handles complexity. It is by being vague that you are able to reach decisions that everyone can agree upon. The problem from a democratic perspective is twofold. The first problem is that policy-making and politics is done by people further down in the political system, often by officials and experts, and by actors outside the remit of democratic accountability, that is the private actors. The potential conflict and disagreement with the private actors is a legal and not a political affair. The second problem is that making politics and policies through processes does not really square with the hierarchical and top-down-oriented democratic ideal. Yet, this is what the EU emphasises as its main democratic ideal – the authority system of government. The democratic reforms in the EU are often about parliamentarisation, that is

increased power to the European and/or the national parliamentarians. However, the three cases of public-private collaborations show that it is often governments, if any politicians are involved at all, and not the parliamentarians that are the most active in setting up the goals and being part of a system of control. Indeed, the European governance turn has very little to do with a strengthened European parliament. It is therefore not surprising that it is the European Parliament which is perhaps most sceptical and critical towards the increased use of framework directives, soft law and other regulatory forms that more or less exclude the European Parliament.

### **Concluding remarks**

The paper has raised fundamental normative questions on European public-private collaborations and the overall conclusion is rather expected – European politics are multifaceted. Let me conclude the paper by formulating five paradoxes that the research on European public-private collaborations has resulted in and that motivate further studies: Politics and at the same time not politics; Public and yet private; More politics but not more democracy; Governance and still government; Profound shift and yet business as usual.

#### **Politics and at the same time not politics**

The question of how crucial public services should be financed, run and organised concerns a fundamental political issue in the welfare state. What should the state do? Should it be a regulator or the provider of the public services? At the same time PPPs seem mainly to concern the contracting relationship and the economic and legal complexities. The actors involved are mostly experts and not politicians. Indeed, PPPs are about politics but are at the same time handled as if they were merely about an economic means toward political ends. Highly nationally politicised projects, like the European

satellite navigation programme, were organised as if the programme concerned technical and economic issues.

### Public and yet private

The importance of private actors in providing public services is not reflected in how the collaboration is formally organised. They are not part of the democratic chain of delegation and are therefore more or less excluded from the formal decision-making process. The private actors negotiate, and have close consultations and dialogues with the public actors but are not democratically accountable for the decisions they take part in. The PPP is organised as if it was a merely public affair and yet there is a strong presence of private actors.

### More politics but not more democracy

Paradoxically, what the development of PPPs and other forms of public-private collaborations seems to illustrate is that it is possible to separate between political and other issues. Politics is defined in a rather narrow way. It is also assumed that political goals can be decided a long time ahead. Democracy has to do with elections and competition among the political parties. My interpretation of the case studies is that politics is everywhere but that democracy remains state-centred and focused on the parliamentary chain of command and control. The realm of the political sphere expands but the democratic realm only concerns some of the public actors. This could lead to a situation in which those who have power are not democratically accountable for the decisions they make and those who can be democratically accountable have no power.

### Governance and still government

The European governance turn is about new ways of reaching decisions and about how the EU can be the best economy in the world. Nonetheless, these

new regulatory methods and the overall economic goal are perceived to be democratically legitimate within the traditional system of representative democracy. The emerging private authority belongs to the authority system of governance but is supposed to be democratically legitimate in the authority system of government. It is a governance turn and yet it is still government.

### Profound shift and yet business as usual

The paradox of governance and yet government suggests that there are profound changes in how the EU regulates and makes decisions but that at the same time it is very much business as usual. Political labels or reforms play an important role in each of the three empirical cases. The Lisbon goal of making Europe into a strong economy, the reform for Better regulation and the EIB mantra of value for money seem to function as a way of mobilising actors and making things happen. The case of the European reform package for Better regulation suggests that a general political malaise in the European project triggered reform activities that initially had social ambitions. These ambitions were taken over by performance goals and economic competitiveness. Nonetheless, the main goal of the reform was to inject some activism and positive thinking into European integration. Whether this “politics by labelling” entails profound changes in how the institutions and organisations work is another question. It could be argued that performance and economic competitiveness have been always important in the European political project. Indeed, the very core of the project is the creation of the internal market. So even the shift from governance to government is perhaps not a shift in any profound way but merely a way of making things happen in a political project that recurrently faces political deadlocks and legitimacy crises.

## Notes

<sup>1</sup> The empirical analysis and presentation is based on a research project on European public-private collaborations.

<sup>2</sup> Barbara Romzek and Melvin Dubnik, "Accountability", In Jay Sharfritz (ed.), *International Encyclopaedia of Public Policy and Administration*, Boulder, Colorado: Westview Press, 1998, quoted in Robert Behn, *Rethinking Democratic Accountability*, Washington, D.C.: Brookings Institution, 2001, p. 4.

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Mr Johnny Åkerholm, President and Chief Executive Officer, The Nordic Investment Bank (Chairman of Inter-Institutional Monitoring Group of the Lamfalussy Process) (19 February 2007).

Mr Simon Barnes, Deputy Head of Division, Business Support for Lending Operations, The European Investment Bank (The EIB's expert on Galileo) (21 May 2007).

Mr Christer Berner, Swedish National Space Board (18 April 2007).

Ms Ingrid Bonde, Generaldirektör (Director General), Swedish Financial Supervisory Authority (25 April 2007).

Mr Hugh Goldsmith, PPP Coordinator, Projects Directorate, The European Investment Bank (21 May 2007).

Mr Nicholas Jennett, Energy and Environment, Structured Finance and Advisory, The European Investment Bank (21 May 2007).

Mr Daniel Kosicki, Financial Services policy and Financial Markets, European Commission, Internal Market and Services (15 March 2007).

Mr Angus Macrae, The European Investment Bank (21 May 2007).

Mr Paul Verhof, Head of Unit, European Commission, TREN DG (Galileo), (15 March 2007).

Ms Tereza Vyborna, Financial Services policy and Financial Markets, European Commission, Internal Market and Services DG (co-author of the FSAP Evaluation Report in 2006) (15 March 2007).

Mr Stephen Wright, Associate Director, Human Capital, Projects Directorate, The European Investment Bank, (Health PPPs) (21 May 2007).

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