

## **Policy Transfer in the European Union: An Institutionalist Perspective**

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Although the concept of policy transfer attracts growing attention in political science, its application to the European Union remains underdeveloped. This article offers a comprehensive conceptual account of EU policy transfer. It starts from the institutionalist premise that transfer processes and outcomes will vary between differently constituted governance regimes. Three forms of EU governance are identified; hierarchy, negotiation and ‘facilitated unilateralism’. The article develops hypotheses about the linkages between institutional variables and transfer outcomes, assessed on a scale from emulation to influence. Hypotheses are set against empirical evidence drawn from a variety of policy areas. We find evidence to support the general hypothesis that stronger forms of policy transfer occur in more highly institutionalized governance regimes. The evidence also points to *micro-institutional* variables shaping transfer outcomes: the powers accruing to supra-national institutions; decision rules; and the density of exchange between national actors.

Although exchange within international organizations is seen as an important factor in the transfer of policy between countries,<sup>1</sup> the policy transfer literature has tended to neglect the European Union. Conversely, EU scholarship has neglected the concept of policy transfer. Recently, however, as EU studies have gravitated towards ‘mainstream’ political science,<sup>2</sup> there have been some attempts to apply the concept of policy transfer to the European arena. The European Union is increasingly portrayed as a ‘massive transfer platform’,<sup>3</sup> or ‘supranational idea hopper’<sup>4</sup> for the exchange of policy between member states. It is generally agreed that the transfer potential of the European Union lies in its multi-level character, and the scope that exists for moving policy up or down between the supra-national, national and sub-national levels of governance.<sup>5</sup> Beyond this, however, there is little consensus over how the processes work. It is the purpose of this article to provide an analytical framework for understanding policy transfer in the EU context, and at the same time to generate insights that will help to inform mainstream study of the concept.

One of the main contentions of the article is that the diversity of governance structures

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<sup>1</sup> David Dolowitz and David Marsh, ‘Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making’, *Governance*, 13 (2000), 5–24, pp. 6–7.

<sup>2</sup> Helen Wallace, ‘Analysing and Explaining Policies’, in H. Wallace and W. Wallace, eds, *Policy-Making in the European Union*, 4th edn (Oxford: Oxford University Press, 2000), pp. 65–81, at p. 68.

<sup>3</sup> Claudio M. Radaelli, ‘Policy Transfer in the European Union; Institutional Isomorphism as a Source of Legitimacy’, *Governance*, 13 (2000), 25–43, p. 26.

<sup>4</sup> Elizabeth Bomberg and John Peterson, ‘Policy Transfer and Europeanization: Passing the Heineken Test?’ (Queen’s Papers on Europeanization, No. 2/2000, at <http://www.qub.ac.uk/ies/>), p. 7.

<sup>5</sup> Andrew Jordan, Rüdiger Würzel and A. Zito, ‘Innovating with “New” Environmental Policy Instruments: Convergence or Divergence in the European Union?’ (paper presented to the Annual Meeting of the American Political Science Association, Los Angeles, 2000), p. 7; Bomberg and Peterson, ‘Policy Transfer and Europeanization’, p. 6.

that coexist within the European Union can be expected to generate a variety of transfer types. Indeed, it is this diversity that makes the European Union such a valuable laboratory for developing the concept of policy transfer. We identify three distinctive forms of EU governance. *Hierarchical* governance is prevalent in policy areas like the single market, where EU institutions exercise supranational authority leading to *coercive* forms of transfer. A second form of governance occurs where the European Union seeks to agree common rules or norms by common (or majority) consent. It is not uncommon to find EU norms modelled on those of one or more member state(s) in a form of transfer by *negotiation*. Finally, where member states retain sovereignty but co-ordinate policy via EU institutions (as in Justice and Home Affairs), policy transfer will take the form of unilateral, *voluntary* exchange facilitated by the European Union. We term this form of transfer ‘facilitated unilateralism’.<sup>6</sup>

In investigating these three forms of transfer, we aim to redress the over-concentration both in the mainstream and EU policy transfer literatures on *voluntary* forms of transfer at the expense of the *coercive* or negotiated variants. Studies of EU policy transfer have hitherto focused on the so-called ‘Open Method of Co-ordination’ (OMC), an essentially voluntary mode of governance based on ‘persuasion’ or ‘diffusion’,<sup>7</sup> in which hard obligations are replaced by ‘soft incentives’ – guidelines, benchmarks and targets. Here the policy process is primarily ‘non-hierarchical’,<sup>8</sup> and policy transfer takes the forms of horizontal exchange between national actors. The pre-occupation with OMC has meant that the potential of supranational EU institutions for coercive transfer is widely neglected. For instance:

When policy transfer is the preferred methodology, the EU’s institutions are effectively stripped of their most powerful resources.<sup>9</sup>

Or, to take another illustration:

The Commission merely serves as a ‘bourse’ of interests and ideas, ‘inseminating solutions into national political systems’.<sup>10</sup>

Beyond passing reference, the transfer potential of the European Court of Justice (ECJ) is consistently ignored. Our more extensive perspective is intended to counter this narrow view, providing a comprehensive conceptual account of EU policy transfer.

Another of our objectives is show how transfer processes and outcomes are shaped by the institutional settings in which they take place. Having defined the different modes of governance that coexist in the differentiated EU polity, we hypothesize about the specific institutional arrangements that facilitate or impede transfer under each type of governance. In the final part of the article, the hypotheses about linkages between institutional variables and transfer outcomes are set against empirical evidence drawn from a range of EU policy areas.

<sup>6</sup> This categorization of the modes of governance derives from Fritz Scharpf, *Games Real Actors Play: Actor-Centred Institutionalism in Policy Research* (Boulder, Colo.: Westview, 1997).

<sup>7</sup> Wolfgang Streeck, ‘Neo-Voluntarism: A New European Social Policy Regime?’ in Gary Marks, Fritz Scharpf, Philippe Schmitter and Wolfgang Streeck, eds, *Governance in the European Union* (London: Sage, 1996), pp. 644–94, at p. 77.

<sup>8</sup> Radaelli, ‘Policy Transfer in the European Union’, p. 29.

<sup>9</sup> Bomberg and Peterson, ‘Policy Transfer and Europeanization’, p. 12.

<sup>10</sup> Radaelli, ‘Policy Transfer in the European Union’, p. 29; p. 25.

#### THE FRAMEWORK OF ANALYSIS

Our basic definition of EU policy transfer is derived from Dolowitz and Marsh as follows: a process by which ideas, policy, administrative arrangements or institutions in one political setting influence policy development in another political setting, mediated by the institutional system of the EU.<sup>11</sup>

In investigating the process we adopt an institutionalist perspective. The fundamental premise is that institutions matter, shaping actor preferences and structuring both the processes of policy making and substantive policy.<sup>12</sup> Transfer processes and outcomes will thus be shaped by the institutional settings in which they take place. One of the central assumptions of the article is that the differently constituted institutional systems that coexist within the EU polity will generate a variety of types of transfer.<sup>13</sup> Our purpose is to show how the processes and outcomes of policy transfer vary across the three modes of EU governance. Institutional settings thus constitute the independent variable in our analysis, with transfer outcomes the dependent variable.

A useful starting point in conceptualizing the linkage between institutional arrangements and transfer processes is the distinction between coercive and voluntary transfer.<sup>14</sup> Coercive transfer occurs via the exercise of transnational or supranational authority; a state is obliged to adopt policy as a condition of membership in an international organization, or as a condition of financial assistance from the latter. It can be expected to occur in the *hierarchical* mode of EU governance in which supranational institutions exercise command and control functions under powers granted by the treaties. Transfer typically takes the form of European Court of Justice (ECJ) judgments and Commission acts that serve to redefine the domestic 'policy space'. Hierarchical transfer corresponds to the traditional Community method found in 'negative' integration and typified by 'market making' through the abolition of restrictive national measures.

Negotiation is intrinsic to multi-national organizations that seek agreement over common policy norms. Whilst the policy transfer literature tends to neglect this variant, EU scholarship provides stronger theoretical foundations. Negotiation occurs in a variety of EU contexts, with agreements taking a variety of forms, ranging from binding legal rules to informal understandings. The ubiquity of this form of governance, along with the highly institutionalized settings in which it takes place, leads some observers to characterize the European Union as a 'negotiated order'.<sup>15</sup> Negotiated transfer occurs where policy models

<sup>11</sup> David Dolowitz and David Marsh, 'Who Learns What and From Whom? A Review of the Policy Transfer Literature', *Political Studies*, 44 (1996), 343–57, at p. 344.

<sup>12</sup> See P. A. Hall, 'The Movement from Keynesianism to Monetarism: Institutional Analysis and British Economic Policy in the 1970s', in S. Steinmo, K. Thelen and F. Longstreth, eds, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press, 1992), pp. 90–113, at p. 91; M. Jachtenfuchs, 'Conceptualizing European Governance', in K. E. Jørgensen, ed., *Reflective Approaches to European Governance* (Basingstoke, Hants.: Macmillan, 1997), pp. 39–50, at p. 46; J. March and J. P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press, 1989); P. A. Hall and C. R. Taylor 'Political Science and the Three New Institutionalisms', *Political Studies*, 44 (1996), 936–58; B. Rosamond, *Theories of European Integration* (Basingstoke, Hants.: Macmillan, 2000), pp. 109–12.

<sup>13</sup> It is now widely accepted that no single policy-making model can capture the multiple forms of EU governance. See John Peterson, 'Decision-Making in the European Union: Towards a Framework for Analysis', *Journal of European Public Policy*, 2 (1995), 69–93; John Peterson and Elizabeth Bomberg, *Decision-Making in the European Union* (Basingstoke, Hants.: Macmillan, 1999).

<sup>14</sup> For instance, Dolowitz and Marsh, 'Who Learns What and From Whom?'.

<sup>15</sup> For a review of the literature on governance by negotiation in the EU, see Ole Elgström and Michael Smith, 'Introduction: Negotiation and Policy-Making in the European Union: Process, System and Order', *Journal of European Public Policy*, 7 (2000), 673–83.

or ideas from one or more member state(s) are incorporated in EU norms. It has been particularly prevalent, for instance, in environmental legislation, where policy leaders have been instrumental in shaping the EU agenda.

Facilitated unilateralism – as we term it – corresponds to the ‘voluntary’ variant identified in the policy transfer literature. Voluntary transfer occurs when a sovereign state unilaterally adopts policy from an external source. The literature points to particular institutional settings which promote policy diffusion across states; systems of functional interdependence between jurisdictions, or social systems that relate policy actors across geographical boundaries.<sup>16</sup> This type of governance occurs in the European Union where member states retain competence, but agree to co-operate and co-ordinate policy within loosely constituted institutional settings. Whilst facilitated unilateralism is typified by the Open Method of Co-ordination, it has a much older provenance in foreign policy and justice and home affairs. In place of binding rules, it employs guidelines and benchmarks to persuade member states to reassess their policy practices. It is distinguished from what happens when member states engage in unilateral ‘policy shopping’ by virtue of the facilitating role of the European Union.<sup>17</sup>

It is our general contention that hierarchy, negotiation and facilitated unilateralism will generate qualitatively different types of policy transfer, resulting in different transfer outcomes. In evaluating transfer outcomes we use a typology adapted from Rose and from Dolowitz and Marsh.<sup>18</sup> *Emulation* or copying is the strongest form of transfer, entailing ‘borrowing’ a policy model more or less intact from another jurisdiction (inevitably there will be some adaptation to accommodate contextual differences). *Synthesis* involves combining elements of policy from two or more different jurisdictions. *Influence* suggests a weak form of transfer in which the external exemplar(s) serve(s) merely as an inspiration for a new policy, but where institutional design occurs either *tabula rasa* or draws on extant domestic policy norms. Finally, the *abortive* variant occurs where a putative transfer is blocked by veto actors in the borrower jurisdiction.

Our general hypothesis is that hierarchy will generate the strongest form of policy transfer, with outcomes falling within the range from emulation to synthesis. Negotiation may produce emulation (European Monetary Union, for instance, was essentially based on the German monetary model). Usually, however, competition between member states to shape EU policy according to domestic norms will result in *synthesis* or mere *influence*. Facilitated unilateralism will, we argue, be restricted to a diffuse form of mutual *influence* between member states, or in the worst case, *abortive* transfer.

Whilst hypothesizing about variations in transfer processes and outcomes *across* different modes of EU governance, we will also investigate variations *within* the different modes. Thus, under each mode of governance we identify the *micro*-institutional variables shaping transfer outcomes: the powers accruing to supra-national institutions; decision rules; the density of exchange networks between national actors, etc. Before hypothesizing

<sup>16</sup> Michael Mintrom, ‘Policy Entrepreneurs and the Diffusion of Innovation’, *American Journal of Political Science*, 41 (1997), 738–70; J. L. Walker, ‘The Diffusion of Innovation Among the American States’, *American Political Science Review*, 63 (1969), 880–99.

<sup>17</sup> An example of unilateral policy-shopping is the transfer from Wisconsin to Britain of aspects of child-support policy. See David Dolowitz and David Marsh, ‘Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making’, *Governance*, 13 (2000), 5–24, pp. 17–21.

<sup>18</sup> Richard Rose, *Lesson Drawing in Public Policy: A Guide to Learning Across Time and Space* (Chatham, N. J.: Chatham House, 1993), pp. 30–1; Dolowitz and Marsh, ‘Learning from Abroad’, p. 13.

at this level, however, we need a more elaborated conceptual account of the three modes of governance and the associated transfer processes, and it is to this that we now turn.

#### EU GOVERNANCE AND POLICY TRANSFER

This section of the article defines three modes of EU governance; *hierarchy, negotiation and facilitation*. It explores the types of transfer occurring under each mode, hypothesizing about the linkages between institutional arrangements and transfer processes and outcomes. The schema is summarized in Table 1.

TABLE 1 *Mode of Governance, Institutional Variables and Transfer Outcomes*

Mode of governance	Institutional variables	Range of likely transfer outcomes
Hierarchy	Authority/normative mandate accruing to EU institutions Density of rules Availability of sanctions/incentives	Emulation–Synthesis
Negotiation	Decision rules/Mode of negotiation: QMV + problem solving Unanimity + bargaining	Emulation–Synthesis Synthesis – Abortive
Facilitation	Institutionalization: Treaty incorporation of objectives Specificity of guidelines Quantifiable benchmarks Density of exchange networks	Influence – Abortive

#### *Hierarchical Governance*

Governance by hierarchy encompasses the ‘Community method’ of regulation, emphasizing supranational authority and the application of European law to facilitate the enforcement of agreements. As shown in Table 1, this form of governance is characterized by the high level of *institutionalization*. Stone Sweet and Sandholtz conceive of institutionalization in terms of three inter-related dimensions; the rules (formal and informal), which impose constraints on actors; the supranational institutions that produce, execute and interpret EU rules; and transnational society (non-governmental actors engaged in EU policy making).<sup>19</sup> Hierarchy is characterized by dense systems of supranational treaty rules backed up by the European Court of Justice. EU organizations are well endowed with institutional resources, such as executive powers delegated to the Commission. Finally, there is a strong institutional ‘pull’ on non-governmental actors to focus their organization at supranational level. Under this form of governance, policy

<sup>19</sup> A. Stone Sweet and W. Sandholtz, ‘Integration, Supranational Governance, and the Institutionalization of the European Polity’, in W. Sandholtz and A. Stone Sweet, eds., *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), p. 9. We point out that, unlike Stone Sweet and Sandholtz, we are not concerned with the dynamics of integration but simply with taking snapshots to locate particular governance regimes in terms of their institutionalization.

transfer occurs vertically through the application of rules, or institutional arrangements, by authoritative supranational actors to lower levels of governance.

Hierarchical governance employs a range of coercive mechanisms, the source of which lies in the treaties, European legislation, supranational European law more widely construed, and the powers delegated to supranational institutions.<sup>20</sup> It occurs, first, where the judicial process clarifies the treaties or other legal instruments, enunciating principles that have direct effect in the member states and are superior to national law.<sup>21</sup> A second variant occurs where the Commission utilizes the quasi-judicial powers delegated to it, such as in competition policy. Occasionally such a ruling may have broad policy-transfer consequences, similar to some Court judgements. As Fritz Scharpf has noted, these variants of hierarchical governance are particularly pronounced in areas of ‘negative integration’, i.e. where discriminatory barriers to inter-state trade are removed by legal provisions.<sup>22</sup> The provisions for removing barriers to the functioning of a European single market have been delegated to the supranational institutions, drawing upon interpretations of the treaties. Negative integration is the ‘purest’ form of governance by hierarchy. ‘Since [it] can be derived from the obligations undertaken by governments in the original treaties, it can indeed be imposed by decisions and directives of the European Commission and by the judgements and preliminary rulings of the European Court of Justice’.<sup>23</sup>

A ‘softer’ form of hierarchical governance arises from secondary legislation. Occurring typically in positive integration, the most common instrument is the directive, adopted by negotiation between member states in the Council of Ministers and transposed in the member states. The latter are thus key players in this transfer process, transposing and implementing legally-binding European policy,<sup>24</sup> acting as ‘subordinated operating arms of the agreed common regime’.<sup>25</sup> The Commission and the Court oversee the transposition process, seeking to ensure that policy agreed under negotiated transfer is given effect at domestic level and that member states ‘learn’ the nature of supranational policy. There are three reasons, however, why the transfer outcomes are likely to be weaker and more conditioned by pre-existing domestic practice than those occurring under harder forms of hierarchical governance. First, directives allow member states discretion over *how* policy is implemented. Member states can exploit this discretion to ‘domesticate’ the legislation. Secondly, the legal sanctions tend to be softer and less precise. Thirdly, where oversight relies on delegated authority, the latter tends to be much more localized in policy terms, although the terms of the legislation may not be very specific.<sup>26</sup>

The final form of hierarchical governance is financial conditionality, occurring where

<sup>20</sup> For a review of institutional instruments, see Simon Bulmer, ‘The Governance of the European Union: A New Institutional Approach’, *Journal of Public Policy*, 13 (1994), 364–70.

<sup>21</sup> For an account of how these principles transformed the European judicial order, see Joseph Weiler, ‘The Transformation of Europe’, *Yale Law Journal*, 100 (1991), 2405–83.

<sup>22</sup> Scharpf, *Games Real Actors Play*, pp. 211–12.

<sup>23</sup> Scharpf, *Games Real Actors Play*, pp. 210–11.

<sup>24</sup> We concentrate on the situation where nation states are the ‘addressees’ of hierarchical rules but recognize that, in reality, other tiers of government as well as private actors are placed in this position.

<sup>25</sup> H. Wallace, ‘The Institutional Setting: Five Variations on a Theme’, in Wallace and Wallace, eds, *Policy-making in the European Union*, pp. 3–37, at p. 29.

<sup>26</sup> It is worth noting that, in policy areas affected by positive integration, the Commission’s policy initiation powers (and to a much lesser extent the Parliament’s legislative authority) give it resources to become a player in the policy-transfer process. It may articulate its own policy model or institutional arrangements, perhaps drawing on experience in other sectors, and seek to have these form the basis of the transfer. However, this role is played out under governance by negotiation.

funding arrangements are conditional on the adoption of policy or administrative arrangements. It relies typically on legislation, delegated authority and specific fiscal incentives. Financial conditionality is often linked to procedural issues rather than policy content. EU financial support, for instance, may be conditional on matched funding, or on the introduction of particular administrative arrangements. It has tended to be more restricted in its impact than other forms of hierarchical governance.

Finally, in order to be effective, all these coercive mechanisms rely upon a set of shared political norms; solidarity amongst member states and respect for executive and judicial supranationalism. These values endow hierarchical governance with a kind of normative legitimacy (legitimacy through law).<sup>27</sup> All three of these variants of hierarchical governance are designed to ensure a top-down process of emulation. The obligation that goes with this form of governance is specifically designed to bring about common rules amongst the member states, inevitably entailing policy transfer effects. We hypothesize that the exercise of supranational authority, the availability of coercive instruments and the high institutional density in hierarchical governance will entail coercive forms of policy transfer, obliging member states to emulate EU ‘models’.

### *Governance by Negotiation*

Governance by negotiation is the process by which common rules and norms are agreed by the member states and adopted by the European Union. The requirement of common or majority consent means that the adoption of rules necessarily entails negotiation to accommodate diverse actor preferences. Under this form of governance, transfer takes the form of the ‘uploading’ to EU level of policy models or ideas drawn from one or more member state(s).<sup>28</sup> Self-interested member states can be expected to compete to shape EU norms according to domestic preferences and practices, thereby reducing the subsequent adaptation pressures. Transfer processes will reflect the institutional arrangements within which negotiations occur. We focus on two institutional variables: decision rules and the mode of negotiation (see Table 1).

The effects of decision rules on the process and outcomes of EU legislation has attracted a copious literature. There is a broad consensus that qualified majority voting (QMV), or the ‘shadow of the vote’, liberates the legislative process from the stifling effects of unanimity by reducing the potential for blocking vetoes.<sup>29</sup> QMV creates a more permissive environment for negotiated policy transfer, reducing the veto opportunities that member states can exploit to moderate the influence of a particular national ‘model’, and to ‘saddle’ it with their own policy preferences.<sup>30</sup> We therefore hypothesize that QMV has the

<sup>27</sup> Although these norms are sometimes honoured in the breach, governance by hierarchy will not generally function without them.

<sup>28</sup> T. Börzel, ‘Pace-Setting, Foot-Dragging, and Fence-Sitting: Member State Responses to Europeanization’, *Journal of Common Market Studies*, 40 (2002), 193–214, pp. 195–6.

<sup>29</sup> George Tsebelis, ‘Decision-Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartism’, *British Journal of Political Science*, 25 (1995), 289–325, p. 289; Geoffrey Garrett and George Tsebelis, ‘An Institutional Critique of Intergovernmentalism’, *International Organization*, 50 (1996), 533–60; George Tsebelis and Geoffrey Garrett, ‘Legislative Politics in the European Union’, *European Union Politics*, 1 (2000), 9–36, p. 14; Mikko Mattila and Jan-Erik Lane, ‘Why Unanimity in the Council? A Roll Call Analysis of Council Voting’, *European Union Politics* 2 (2001), 31–52; Jonathan Golub, ‘In the Shadow of the Vote? Decision Making in the European Community’, *International Organization*, 43 (1999), 733–64, p. 752.

<sup>30</sup> Adrienne Héritier, ‘The Accommodation of Diversity in European Policy-Making and Its Outcomes: Regulatory Policy as a Patchwork’, *Journal of European Public Policy*, 3 (1996), 149–67, pp. 158–9.

potential for stronger forms of transfer (in the range from *emulation* to *synthesis*). Unanimity, by contrast, will be characterized by the weaker form of *influence*.

Our second postulate is that *the processes and outcomes of policy transfer are dependent on the mode of negotiation employed*. We employ the distinction commonly deployed in the conceptualization of EU decision making between *bargaining* and *problem solving*.<sup>31</sup> Bargaining is defined by the pursuit of actor self-interest and adversarial exchange, with outcomes characterized either by deadlock or lowest common denominator solutions. In problem-solving negotiations, by contrast, the pursuit of self-interest is offset by an orientation towards common interests, adherence to ‘fairness norms’, and an emphasis on joint opportunities and mutual gains which broaden the zone of agreement.<sup>32</sup> As Scharpf puts it, ‘negotiation regimes … work best in constellations resembling games of pure coordination where the interests of all member governments are convergent, and they work least well in policy areas characterized by high levels of conflict among member states’.<sup>33</sup>

The key characteristic of problem-solving negotiation is its capacity for shaping the preferences of member states. It promotes an exchange of information amongst the participants, during which member states ‘get the facts right and acquire common knowledge’.<sup>34</sup> Providing opportunities and incentives for national actors to re-evaluate their initial positions, it opens them up to policy models drawn from other member states, and thereby creates the conditions for *emulative* policy transfer. By contrast, the bargaining mode will be unconducive to emulation. Bargaining is likely to emphasize competition between national preferences, with resistance to ‘alien’ policy models drawn from another member state. Transfer outcomes are more likely to correspond to the weaker forms of synthesis or influence, with a relatively high incidence of abortive transfer. Thus whilst problem solving under QMV (or under the shadow of the vote) provides optimal institutional conditions for stronger forms of EU policy transfer, bargained negotiation under unanimity inhibits the transfer process leading to outcomes at the weaker end of the spectrum.

### *Facilitated Unilateralism*

Under facilitated unilateralism sovereignty remains vested in national arenas, but is overlaid by interaction between national policy makers *facilitated* by the EU. There is no explicit requirement to adopt a single European model: hence the unilateralism. In place of hierarchical compliance mechanisms, facilitated unilateralism employs soft or flexible rules to persuade member states to reassess their policy practices. EU institutions act merely as enablers of exchange amongst member states, with non-governmental actors largely absent. Under this form of governance, transfer operates horizontally through the diffusion of policy between member states. The low level of institutionalization in facilitated unilateralism, it is hypothesized, means that policy transfer will be restricted to influence, with a relatively high incidence of abortive transfer.

<sup>31</sup> Fritz Scharpf, ‘The Joint Decision Trap: Lessons from German Federalism and European Integration’, *Public Administration*, 66 (1988), 239–78; Adrienne Héritier, *Policy-Making and Diversity in Europe: Escape from Deadlock* (Cambridge: Cambridge University Press, 1999), pp. 19–20.

<sup>32</sup> Ole Elström and Christer Jönsson, ‘Negotiation in the European Union: Bargaining or Problem-Solving’, *Journal of European Public Policy*, 7, Special Issue (2000), 684–704, p. 688.

<sup>33</sup> Scharpf, *Games Real Actors Play*, p. 211.

<sup>34</sup> Rainer Eising, ‘Policy Learning in Embedded Negotiations: Explaining EU Electricity Liberalization’, *International Organization*, 56 (2002), 87–122, p. 93.

Facilitated unilateralism can be traced to the original Treaty of Rome commitment to co-ordinate economic policy. It is illustrated by the Common European Security and Defence Policy (CESDP), Judicial and Police Co-operation in the so-called Third Pillar of the Maastricht Treaty and their respective antecedents.<sup>35</sup> The normal practice in all of these policy areas has been: to merely co-ordinate; to eschew supranational legal instruments; and to accommodate national practice. More recently it has been identified with OMC. In contrast to hierarchical forms of governance the structures of OMC are characterized by heterarchy and the fragmentation of authority in ‘fluid systems of power sharing’.<sup>36</sup> In place of prescription it employs ‘soft’ or flexible rules alongside systems of benchmarking and performance monitoring to persuade national actors to reassess their policy practices. This type of governance has been applied in employment policy, macro-economic policy, social inclusion, the information society, research and development, education, and pensions.<sup>37</sup> In temporal terms facilitated unilateralism has gained momentum with the post-Maastricht concern with subsidiarity.

Under facilitated unilateralism, policy transfer operates horizontally across the member states through a process of diffusion, in which the EU acts as a facilitating arena. Diffusion has been conceptualized as ‘mimetic isomorphism’ (the imitation of counterparts that are perceived to be more successful or legitimate),<sup>38</sup> or in terms of ‘cognitive assimilation’,<sup>39</sup> arising out of socialization processes occurring in iterative interaction. We contend that this weakly institutionalized form of governance has significantly less transfer potential than hierarchical variants, and will only rarely produce *emulative* transfer. Nevertheless, there may be some scope for reciprocal *influence* between member states. This will be maximized by the incorporation of objectives and guidelines in the treaties and by robust procedures that oblige national actors to evaluate domestic policy performance against quantifiable targets based on best practice in other member states. Such procedures may lead to cognitive assimilation by ‘destabilizing existing understandings’<sup>40</sup> and obliging national actors to reassess domestic policy.

### *Hypotheses*

Having elaborated the linkages between institutional arrangements and transfer outcomes

<sup>35</sup> Dermot Hodson and Imelda Maher, ‘The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Coordination’, *Journal of Common Market Studies*, 39 (2001), 719–46, pp. 720–1.

<sup>36</sup> Joanne Scott and David Trubek, ‘Mind the Gap: Law and New Approaches to Governance in the European Union’, *European Law Journal*, 8 (2002), 1–21, p. 8; Hodson and Maher, ‘The Open Method as a New Mode of Governance’, p. 728.

<sup>37</sup> Hodson and Maher, ‘The Open Method as a New Mode of Governance’, p. 726; Caroline de la Porte, ‘Is the Open Method of Coordination Appropriate for Organising Activities at the European Level in Sensitive Policy Areas?’ *European Law Journal*, 8 (2002), 38–58, p. 40.

<sup>38</sup> Paul J. Di Maggio and Walter W. Powell, ‘The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields’, *American Sociological Review*, 48 (1983), 47–60.

<sup>39</sup> Frank Vandenbroucke, ‘Open Coordination on Pensions and the Future of Europe’s Social Model’ (paper presented to the ‘Towards a New Architecture for Europe’s Social Model’ Conference, Leuven, 2001, available at [www.vandenbroucke.fgov.be](http://www.vandenbroucke.fgov.be)).

<sup>40</sup> David Trubek and James Mosher, ‘New Governance, EU Employment Policy, and the European Social Model’ (Working Paper 6/01, Symposium: Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance, New York University School of Law, 2001), available at [www.jeanmonnetprogram.org/papers/01-11501.html](http://www.jeanmonnetprogram.org/papers/01-11501.html)

under the three modes of EU governance we are now in a position to summarize our hypotheses.

- HYPOTHESIS 1 Under hierarchical governance transfer potential will depend on the degree of authority accruing to supranational institutions, the density of rules and the availability of sanctions/incentives. Transfer outcomes will range from emulation to synthesis.
- HYPOTHESIS 2 QMV and/or ‘problem-solving’ negotiation is more likely to lead to stronger forms of transfer (emulation – synthesis). Unanimity rules and/or ‘bargaining’ will produce weaker transfer outcomes (synthesis – influence with instances of abortive transfer).
- HYPOTHESIS 3 Under facilitated unilateralism, policy transfer will be dependent on the institutionalization of objectives, guidelines, benchmarks and monitoring procedures. Outcomes will be restricted largely to influence, with a significant incidence of abortive transfer.

#### EU POLICY TRANSFER: REVIEWING THE EVIDENCE

The remainder of this article consists of empirical illustrations of the hypotheses set out above. Space constraints prevent the sort of comprehensive review of policy areas that would be involved in empirical ‘testing’. Our selection combines policy areas that seem from reputation to be relatively *rich* in examples of policy transfer with those that appear rather *barren*. This ‘most different case’ method of selection provides at least a preliminary test of our hypotheses about the sort of institutional variables that promote or impede EU policy transfer.

#### *Transfer by Hierarchy*

Hierarchy is the most productive form of EU governance for policy transfer. We would expect to find transfer outcomes at the stronger end of the spectrum (emulation or synthesis). We hypothesize that outcomes will be subject to variation, depending on the authority and normative mandate accruing to supranational institutions, the density of rules and the strength of sanctions or incentives (see Table 1). Transfer potential will be maximized in ECJ jurisprudence or where executive powers are delegated to the Commission. It will be significantly weaker in secondary legislation where the role of the Commission and Court is restricted to supervision of transposition and implementation in the member states, and where there is a tendency for ‘domestication’ of EU policy.

Supranational authority is at its height in ECJ jurisprudence interpreting or clarifying the treaties. Court judgments have far-reaching potential for transforming domestic policy. As observed above, this form of hierarchical governance is prevalent above all in the sort of negative integration involved in the single market. The celebrated *Cassis de Dijon* case is one of the most prominent examples of this type of transfer.<sup>41</sup> It established the principle of mutual recognition, i.e. that if goods are placed on the market in one member state, there should be an assumption – on the basis of functional equivalence – that they would comply

<sup>41</sup> Case 120/78, *Rewe-Zentral AC v Bundesmonopol für Branntwein*. We draw here on Armstrong and Bulmer, *The Governance of the Single European Market*, pp. 149–50. See also K. Alter and S. Meunier-Aitsahalia, ‘Judicial Politics in the European Community: European Integration and the Pathbreaking *Cassis de Dijon* Decision’, *Comparative Political Studies*, 26 (1994), 535–61.

with rules in any importing member state. The judgment departed from the prevailing mode of single-market governance: technical regulation by the time-consuming development of harmonizing legislation. *Cassis de Dijon* served notice on national authorities that they could not create arbitrary barriers to trade within the European Union. Although there was no direct policy effect from the ruling, it set in train a new approach to single-market harmonization.<sup>42</sup> The key to ensuring policy-transfer effects was the exploitation of this ruling by the European Commission, which grasped the broad significance of the ruling and built a new approach to technical harmonization upon it. The *Cassis de Dijon* ruling required member states to conform to principles of mutual recognition, thereby emulating the principle established by the ECJ (reiterated in subsequent judgments) and given much broader meaning by the Commission's consequent internal market programme.

A similar instance of member governments being forced to recast domestic policy in line with an ECJ judgment occurred with the *Nouvelles Frontières* ruling (1986). The Court judgment that existing bilateral air transport agreements between member states breached European competition law<sup>43</sup> required an extensive recalibration of existing domestic practices.<sup>44</sup> This case also exemplifies the way in which Court rulings can increase the density of rules in a policy area. The judgment was subsequently elaborated (in a way that a court ruling can only do imperfectly) in a new supranational regime comprising three packages of legislation. Legislation entailed further (negotiated) transfer, with additional 'lesson-learning' when the regime was implemented. However, the range of options was sharply delineated by the content of the court ruling and arguably engendered a stronger problem-solving norm in subsequent negotiations. Without the authoritative ECJ ruling it is doubtful whether policy transfer would have taken place.

Another striking instance of transfer by judicial rule-making is sex equality provision, under Article 119 (now 141 TEC) EEC, on equal pay for equal work. Here, the ECJ constructed a supranational space that grew beyond the immediate issue and extended into rights for pregnant workers.<sup>45</sup> On the narrower issue of equal pay, additional rights were bestowed on women without any requirement for legislation, although directives were subsequently passed on pregnancy and maternity matters.<sup>46</sup> An unfolding reaction of national policy learning occurred as authorities came to terms with the consequences of ECJ rulings. On health and safety, women's employment rights and maternity benefits, national authorities have had to adjust domestic policy in line with supranational provision. All this in a policy area where member governments have been reluctant to give up their powers. Much of the policy adjustment has come about without specific prior negotiation, thus reinforcing its coercive nature.

The second variant of hierarchical transfer derives from the quasi-judicial powers delegated to the Commission (principally in relation to 'market making'). Under the

<sup>42</sup> Alter and Meunier-Aitsahalia, 'Judicial Politics in the European Community'.

<sup>43</sup> Joined cases 209–213/84, *Ministère Public v. Asjes and Others*.

<sup>44</sup> See K. Armstrong and S. Bulmer, *The Governance of the Single European Market* (Manchester: Manchester University Press, 1998), chap. 7; D. O'Reilly and A. Stone Sweet, 'The Liberalization and European Reregulation of Air Transport', in Sandholtz and Stone Sweet, *European Integration and Supranational Governance*, pp. 164–87; H. Kassim, 'Air Transport', in H. Kassim and A. Menon, eds, *The European Union and National Industrial Policy* (London: Routledge, 1996), pp. 106–31.

<sup>45</sup> R. Cichowski, 'Judicial Rulemaking and the Institutionalization of European Union Sex Equality Policy', in A. Stone Sweet, W. Sandholtz and N. Fligstein, eds, *The Institutionalization of Europe* (Oxford: Oxford University Press, 2001), pp. 113–36.

<sup>46</sup> Cichowski, 'Judicial Rulemaking'; also see the account on the emergence of the Maternity Directive in Armstrong and Bulmer, *The Governance of the Single European Market*, chap. 9.

treaties, the Commission has powers to stop (even to demand repayment of) state aid in the form of industrial subsidies or regional assistance schemes that are perceived as distorting competition. The onus is upon national authorities to challenge such orders before the Court. After a period of inactivity, the single-market programme provoked the Commission to take a much closer look at state aids. In the Rover, Renault, Crédit Lyonnais and the French '*plan textile*' cases, repayments of aid were required by DG IV (now DG Competition). Following airline liberalization subsequent to the *Nouvelles Frontières* ruling, aid to national flag-carriers came under the microscope.<sup>47</sup> In some cases industry competitors actually lobbied the Commission for approval of aid to be withheld, as British Airways did with a proposed package from the French government for Air France.<sup>48</sup> Regional aid by national and subnational authorities was also put under sharper scrutiny and made subject to transparent rules. How, then, did hard coercion come about in this context?

DG IV's more systematic approach led to an escalation in the number of state aid cases referred to the Commission.<sup>49</sup> By 1996 Germany was – perhaps surprisingly – the member state addressed by the largest number of Commission decisions, although unification played a part in the figures. France, however, represents an interesting case of policy transfer.<sup>50</sup> In a number of 'high-profile cases involving large financial stakes'<sup>51</sup> a political clash emerged between the European Union and France, with a group of '*souverainistes*' in centre-right governments resisting supranational incursions into French powers of interventionism. In two separate instances (industrial aid to the textile industry and regional aid) the European Commission '[taught] the French administration a lesson', resulting in a climb-down by the new socialist government under Jospin in 1997:

sections of the French administration were ignorant and/or dismissive of European rules. Within a few years, a large body of European rules came to be taken for granted by national actors; national modes of governance had seriously changed.<sup>52</sup>

The fact that the Commission was exercising quasi-judicial powers placed the onus on the French government to have DG IV's decision overruled by the ECJ. In the textiles case the French government lost in the ECJ and in the others it retreated after political negotiations. The consequences bear out the observation by another observer of state aid policy, Mitchell Smith: 'The evidence suggests that Member States over time increasingly have had to adapt their industrial policies in significant ways to take account of DG IV's state aid policies'.<sup>53</sup>

Where the Commission and Court exercise less direct forms of supranational authority we would expect to find weaker forms of transfer. Whilst 'harder' forms of hierarchical governance typically operate via directly effective regulations, a 'softer' variant relies on

<sup>47</sup> State aid to airlines is not policed by DG IV but by that for transport (formerly DG VII, now DG TREN).

<sup>48</sup> P. Le Galès, 'Est maître des lieux celui qui les organise? How Rules Change When National and European Policy Domains Collide', in Stone Sweet, Sandholtz and Fligstein, *The Institutionalization of Europe*, pp. 137–54, at p. 143.

<sup>49</sup> See Le Galès, 'Est maître des lieux ... ?', p. 140.

<sup>50</sup> For the case of Germany, see Simon Bulmer, David Dolowitz, Peter Humphreys and Stephen Padgett, 'Electricity and Telecommunications: Fit for the European Union?' in K. Dyson and K. Goetz, eds, *Germany, Europe and the Politics of Constraint* (London: British Academy/Oxford University Press, 2003), pp. 251–70.

<sup>51</sup> Le Galès, 'Est maître des lieux ... ?', p. 140.

<sup>52</sup> For the cases, see Le Galès, 'Est maître des lieux ... ?', pp. 145–50; for the quote, p. 151.

<sup>53</sup> M. P. Smith, 'Autonomy by the Rules: The European Commission and the Development of State Aid Policy', *Journal of Common Market Studies*, 36 (1998), 57–78, p. 57.

directives. Directives may be weakened by ‘domestication’ during transposition and implementation, either deliberately or through neglect, leading to synthetic forms of transfer. The domestication of directives is exemplified by the liberalization of the utility sectors. Whilst regulatory regimes in the member states fulfilled the requirements of EU legislation, they also bear the hallmarks of domestic regulatory norms. Comparison between the two sectors underlines the importance of the second institutional variable: the density of rules. Whilst telecommunications directives include very specific rules defining the regulatory responsibilities of member states, the electricity directive was more flexible, allowing a significantly wider margin of national discretion.<sup>54</sup> The contrast is reflected in outcomes. Legislative flexibility in electricity resulted in cross-national diversity of regulatory regimes and a more pronounced tendency towards domestication. Similarly, in the transport sectors, Héritier *et al.* found significant cross-national variation in national policy outcomes.<sup>55</sup> Whilst EU legislation was an important facilitator of domestic policy change in Germany and the Netherlands, institutional barriers and an adverse coalition of political forces in Italy resulted in abortive transfer. This type of outcome is exceptional under hierarchical governance, but cannot be excluded where directives leave rules unspecified.

Domestic implementation, however, may not be the end of the story if legal procedures are subsequently introduced. The Commission might invoke the Article 226 infraction procedure to try to persuade the national authorities to bring policy into line. Infraction proceedings are a daily fact of life in the European Union. At 31 December 2001 the Commission had no fewer than 3,360 such cases under examination.<sup>56</sup> The ultimate sanction is Article 228, whereby the Commission may ask the ECJ to impose a fine for failure to act on an adverse Article 226 judgment. Alternatively, transfer effects may occur through legal action at the domestic level to demonstrate ‘harm’ through improper transposition. This occurred in the Francovich ruling, which established the principle that the adoption of an EU directive bestowed rights on individuals even if a member state should fail to transpose the directive properly or at all. In this way it was underlined to authorities across the European Union that it was not just the Commission which could penalize abortive implementation.<sup>57</sup> Thus, abortive policy transfer at the end of transposition/implementation does not necessarily exclude it occurring through subsequent judicial or quasi-judicial action.<sup>58</sup>

Our final form of hierarchical governance is financial conditionality. The requirement

<sup>54</sup> David Levi-Faur, ‘The Governance of Competition: The Interplay of Technology, Economics, and Politics in European Union Electricity and Telecom Regimes’, *Journal of Public Policy*, 19 (1999), 188–93.

<sup>55</sup> A. Héritier *et al.*, *Differential Europe: The European Union Impact on National Policymaking* (Lanham, Md.: Rowman and Littlefield, 2001).

<sup>56</sup> The Article 226 procedure works in three stages. First, the Commission writes an Article 226 letter, setting out its case against the member state. Secondly, it sends a reasoned opinion, which presents the more legal case that would be tabled at the third stage. Thirdly, there is full reference to the ECJ. Not surprisingly the number of full references is smaller than the number of Article 226 letters. As illustration, at 31 December 2001 the Commission had 3,360 cases under examination; 1,669 cases (49.67 per cent) had reached the opening of infringement proceedings; for 934 cases (27.80 per cent) a reasoned opinion had been sent; 347 cases (10.33 per cent) had been referred to the ECJ. Source: [http://europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/index\\_en.htm](http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm), accessed 4 February 2003.

<sup>57</sup> This principle was established in the 1992 judgment in *Francovich and Bonifaci v. Italy* (joined cases 6/90 and 9/90).

<sup>58</sup> The continuation of the transfer process after transposition raises a wider methodological question; at what point in the policy cycle is a transfer outcome to be evaluated?

of matched funding as a requirement of support from EU structural funds is widely perceived as promoting partnership arrangements between government and non-government actors, as well as encouraging local authorities to work collectively at regional level. In the North West of England, for instance, the partnership principle had a galvanizing effect on the policy practices of regional actors.<sup>59</sup> Similarly, development aid under the Lomé/Kotonou Conventions is conditional on the commitment of African, Caribbean and Pacific states to integration into the world economy, the promotion of the private sector, and the principles of democracy and human rights.<sup>60</sup> European Monetary Union (EMU) provides more substantive examples of policy transfer by financial conditionality. The Maastricht convergence criteria required aspirant members to conform to monetary and public expenditure rules. The Stability and Growth Pact entails similar requirements of budgetary discipline across the euro-zone,<sup>61</sup> with sanctions ranging from Commission warnings (already administered to Portugal and Germany) and possible fines acting as a form of coercion. External discipline, it has been argued, has been a major factor in Italian policy adjustment, offsetting the effects of weakness in domestic institutions.<sup>62</sup>

Whilst these illustrations are necessarily selective, the empirical evidence adduced above supports our hypotheses. The exercise of supranational authority in hierarchical governance entails strong forms of policy transfer, typically the emulation of an EU model. Judicial rule making is rich in transfer potential. Emulation is often effected through negotiation subsequent to ECJ judgments, since the principles enunciated in judicial rulings leave a legislative vacuum that puts the onus upon national negotiators to find a solution within newly-defined policy terms. The quasi-judicial powers of the Commission can also produce emulation, albeit in a relatively narrow range of policy areas. Transfer also occurs under less direct forms of hierarchical governance involving directives. Here, however, there is a strong tendency to synthesis with existing domestic practice, although Commission infraction proceedings can limit domestication. The scope for domestication can also be minimized by the incorporation of specific rules in the directive. Financial conditionality has considerable potential for effecting *procedural* transfer, although robust examples of *substantive* policy transfer by this method are the exception rather than the rule.

### *Negotiated Transfer*

Earlier in this article we postulated two institutional variables that we would expect to shape the processes and outcomes of negotiated transfer; *decision rules* and the *mode of negotiation*. Both of these it was argued, would be mediated by the configuration of member state preferences and the incentives to adjust preferences. It was hypothesized that QMV and a 'problem solving' mode of negotiation would facilitate stronger forms of transfer than unanimity and 'bargaining'. Here we shall submit these postulates to

<sup>59</sup> M. Burch and I. Holliday, 'Institutional Emergence: The Case of the North West Region of England', *Regional Politics and Policy*, 3 (1993), 29–50.

<sup>60</sup> See K. Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' *European Foreign Affairs Review*, 3 (1998), 253–74.

<sup>61</sup> Negotiated in 1996, and designed to incorporate Germany's traditional fiscal prudence into euro-zone practice after Stage 3 of EMU, the Stability and Growth Pact was agreed as a resolution at the June 1997 Amsterdam European Council, with legislation following.

<sup>62</sup> K. Dyson and K. Featherstone, *The Road to Maastricht: Negotiating Economic and Monetary Union* (Oxford: Oxford University Press, 1999), chap. 10.

empirical testing, using environment policy, social policy and utilities regulation as our case studies.

In environmental policy, *decision rules* have changed with successive treaty amendments. Since 1987, QMV has been available for legislation linked to trade harmonization under the Single European Act (Art. 100a). The Treaty on European Union extended QMV to legislation linked to public health and consumer protection (Art. 130). Although decisions are rarely taken to a vote, it has been suggested that ‘the shadow of the vote has increased the ability of green member states to extract concessions from the others’.<sup>63</sup> The mode of *negotiation* is generally one of problem solving, geared to ‘coalition building and interest accommodation’.<sup>64</sup> A key element in this is incrementalism, building consensus whilst postponing conflicts to a later stage in negotiation.<sup>65</sup> Member states have strong incentives to reach agreement on common standards, since uneven national standards prejudice the single market. Additional incentives were derived from domestic green constituencies and international pressures.<sup>66</sup>

Environmental policy is relatively rich in examples of policy transfer with a strong ‘leader–laggard dynamic’.<sup>67</sup> Germany, the Netherlands and Denmark have been the policy leaders, joined in 1995 by Austria, Finland and Sweden. More recently, the United Kingdom has developed into an ‘occasional leader’, whilst Germany has adopted a more recalcitrant approach.<sup>68</sup> The laggards are Spain, Greece, Portugal and Ireland. There are a number of examples of EU legislation emulating that of policy leaders (although it must be acknowledged that not all occurred under QMV). The 1984 framework directive on industrial emissions (adopted under unanimity) is a classic case of emulation. A German official in DG XI ‘was simply given the German law and told to translate it into Euro-speak’.<sup>69</sup> Negotiations were concluded relatively smoothly and Germany was successful in ensuring that the principles of domestic legislation (the precautionary principle and best available technology requirements) were anchored in the directive. It should be added, however, that in the subsequent 1988 directive on large combustion plants (adopted under unanimity despite the availability of QMV), the German model was significantly weakened by ‘prolonged and bitter conflict’ resulting in the relaxation of

<sup>63</sup> Tanja A. Börzel, ‘Pace Setting, Foot Dragging, and Fence Sitting’, p. 199.

<sup>64</sup> Börzel, ‘Pace Setting, Foot Dragging, and Fence Sitting’, p. 199.

<sup>65</sup> Héritier, ‘The Accommodation of Diversity’, pp. 162–3.

<sup>66</sup> Philippe M. Hildebrand, ‘The European Community’s Environmental Policy 1957 to “1992”: From Incidental Measures to an International Regime?’ *Environmental Politics*, 1 (1993), 20–41, p. 21; Alberta Sbragia, ‘Institution-building from Below and Above: The European Community in Global Environmental Politics’, in A. Stone Sweet and W. Sandholz, eds, *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), 283–303; Albert Weale, ‘Environmental Rules and Rule-Making in the European Union’, *Journal of European Public Policy*, 3 (1996), 594–611; Héritier, *Policy-Making and Diversity*, p. 52; Adrienne Héritier, Christoph Knill and Susan Mingers, *Ringing the Changes in Europe: Regulation, Competition and the Transformation of the State: Britain, France and Germany* (Berlin: De Gruyter, 1996); David Wilkinson, ‘Maastricht and the Environment: The Implications for the EC’s Environment Policy of the Treaty on European Union’, *Journal of Environmental Law*, 4 (1992), 221–39.

<sup>67</sup> Duncan Liefferink and Mikael Skou Andersen, ‘Strategies of the “Green” Member States in EU Environmental Policy-making’, *Journal of European Public Policy*, 5 (1998), 254–70, p. 263.

<sup>68</sup> Börzel, ‘Pace Setting, Foot Dragging, and Fence Sitting’, p. 201.

<sup>69</sup> Weale, ‘Environmental Rules and Rule-Making’, p. 603.

standards to accommodate recalcitrant member states.<sup>70</sup> The large combustion plant directive thus represents a synthetic transfer outcome.

Environmental legislation in the 1990s provides further examples of emulation under QMV. The urban waste water and nitrate directive was closely modelled on the Danish plan for the aquatic environment, whilst EU standards for small car emissions were based on the high domestic standards of the Netherlands. More recently, directives on environmental impact assessment, access to environmental information and integrated pollution prevention can all be seen in terms of emulating the United Kingdom.<sup>71</sup>

There is, however, at least one case that deviates from the equation of QMV with emulative policy transfer. The 1994 packaging waste directive was adopted under QMV against the background of sharply divergent member state preferences. Negotiations conformed closely to the ‘bargaining’ mode, characterized by the entrenchment of national preferences, and with little willingness to compromise the Commission had little choice but to scale down proposals that had been ‘modelled ... on the ambitious ... goals of Germany and the Netherlands’. Despite QMV, the outcome was an abortive transfer, with legislation exerting little impact on the recycling practices of the ‘laggards’.<sup>72</sup>

Whilst environmental policy has been a dynamic EU policy area, social policy has been relatively sluggish.<sup>73</sup> For several decades, the requirement of unanimous votes in Council along with a bargained style of negotiation with ‘loud public fights’, meant that ambitious blueprints remained unexecuted.<sup>74</sup> Successive treaty revisions, however, have reduced the institutional constraints. The Single European Act introduced QMV for policy issues involving health and safety at work, whilst the Treaty on European Union extended it to employee information and consultation. The accompanying Agreement on Social Policy also provided for the eleven signatories to legislate without the recalcitrant United Kingdom and made provision for a ‘social dialogue’ between employers and trade unions.

The expansion of QMV facilitated social policy transfer. The maternity leave directive of 1992 was an example of previously grid-locked legislation facilitated by QMV.<sup>75</sup> Subsequently, the 1997 parental leave directive required many member states (the United Kingdom, Ireland, Belgium, the Netherlands, Spain, Greece and Portugal) to introduce either new or more generous provisions.<sup>76</sup> Yet despite the procedural innovations, negotiation still conformed to the bargaining mode, with recalcitrant member states carrying opposition to the vote.<sup>77</sup> Thus the requirements of the parental leave directive (three months paid leave) fell short of provisions in those member states with the most

<sup>70</sup> Héritier, ‘Policy-Making and Diversity’, pp. 54–5; Albert Weale, Geoffrey Pridham, Michelle Cini, Dimitrios Konstadakopoulos, Martin Porter and Brendan Flynn, *Environmental Governance in Europe: An Ever Closer Union?* (Oxford: Oxford University Press, 2000), pp. 386–97.

<sup>71</sup> Börzel, ‘Pace Setting, Foot Dragging, and Fence Sitting’, pp. 198–9.

<sup>72</sup> Jonathan Golub, ‘State Power and Institutional Influence in European Integration: Lessons from the Packaging Waste Directive’, *Journal of Common Market Studies*, 34 (1996), 313–39.

<sup>73</sup> Fritz Scharpf, *Governing Europe: Effective and Democratic?* (Oxford: Oxford University Press, 1999), pp. 112–13.

<sup>74</sup> Stephen Leibfried and Paul Pierson, ‘Social Policy; Left to Courts and Markets?’ in Wallace and Wallace, eds, *Policy Making in the European Union*, pp. 271–3.

<sup>75</sup> Armstrong and Bulmer, *The Governance of the Single European Market*, chap. 9.

<sup>76</sup> Gwennaële Bruning and Janneke Platenga, ‘Parental Leave and Equal Opportunities: Experiences in Eight European Countries’, *Journal of European Social Policy*, 9 (1999), 195–209.

<sup>77</sup> Gerda Falkner, ‘The Maastricht Protocol on Social Policy: Theory and Practice’, *Journal of European Social Policy*, 6 (1996), 3–4; Leibfried and Pierson, ‘Social Policy’, pp. 273, 290.

socially advanced policies (Sweden, Denmark, Finland and Germany).<sup>78</sup> In general, social policy appears to be characterized by synthetic transfer outcomes, with ‘best practice from many member states pieced together to form quite an interventionist structure’.<sup>79</sup>

The persistence of bargained negotiation in social policy is exemplified by the European Works Council Directive. For two decades, German attempts to export domestic codetermination legislation to the European Union<sup>80</sup> had been blocked by national employer groups and member states with different models of industrial relations. The directive brought forward in 1993 under the Social Agreement was a diluted version of previous proposals. Continued resistance on the part of the employers led to further weakening.<sup>81</sup> The directive adopted in 1994 contained three options: the German model of co-determination; workers’ committees along the lines of those in France, Italy and Belgium; and a Scandinavian variant based on agreement between management and employees.<sup>82</sup> The works council directive can thus be seen as a synthetic form of transfer, with the German model merely one influence amongst several. Despite the availability of QMV, then, transfer effects were limited by bargaining between member states and social partners with divergent policy preferences.

Utilities liberalization illustrates the difficulties that can arise in defining the mode of decision in EU negotiation. Not only was QMV available in the Council under Article 100a, but the Commission (a strong advocate of liberalization) was empowered by Article 90 (3) of the Treaty of Rome (now 86) to issue directives without Council authorization against member state violations of treaty rules on competition. Although it employed this device for several of the telecommunications directives, the political salience of liberalization in both sectors led the Commission to adopt a consensual approach geared to *de facto* unanimity.<sup>83</sup> In telecommunications the mode of negotiation conformed closely to the problem-solving model, with a decade of consensus-oriented negotiations leading to the adoption of a series of directives culminating in 1998 with the full liberalization of the sector.<sup>84</sup> In electricity, where member state preferences were sharply divergent, negotiations combined problem solving with bargaining. The procedural mode was one of protracted incremental negotiation in Council, steered by the Commission, with a series of agreements (subject to unanimity) mapping out the terms of the final compromise.<sup>85</sup>

Electricity liberalization clearly shows how the process of negotiation can serve to reshape national preferences. Laggards sensed that whilst reform could be temporarily thwarted, the momentum of the process meant that it was ultimately inevitable and that continued resistance would put them at a disadvantage in liberalized markets. This recognition was linked to changing perceptions about the threats and opportunities of

<sup>78</sup> Bruning and Platenga, ‘Parental Leave and Equal Opportunities’, p. 197.

<sup>79</sup> Leibfried and Pearson, ‘Social Policy’, p. 272.

<sup>80</sup> Robert R. Geyer, *Exporting European Social Policy* (Cambridge: Polity Press, 2000), p. 94.

<sup>81</sup> Falkner, ‘The Maastricht Protocol on Social Policy’, p. 14.

<sup>82</sup> Martin Rhodes, ‘The Future of the “Social Dimension”: Labour Market Regulation in Post-1992 Europe’, *Journal of Common Market Studies*, 30 (1992), 23–51, p. 41; Colin Gill, Michael Gold and Peter Cressey, ‘Social Europe: National Initiatives and Responses’, *Industrial Relations Journal*, 30 (1999), 313–29, p. 315.

<sup>83</sup> Mark Thatcher, ‘The Commission and National Governments as Partners: EC Regulatory Expansion in Telecommunications 1979–2000’, *Journal of European Public Policy*, 8 (2001), 558–84.

<sup>84</sup> Héritier, ‘Policy-Making and Diversity’, pp. 42–4.

<sup>85</sup> Suzanne Schmidt, ‘Commission Activism: Subsuming Telecommunications and Electricity under European Competition Law’, *Journal of European Public Policy*, 5 (1998), 169–84.

liberalization.<sup>86</sup> Laggards thus reoriented their strategies from resistance to acquiescence coupled with attempts to shape the legislation to their advantage.

EU utilities liberalization stopped well short of emulating a British model based on privatization and a root and branch restructuring of the sectors. Nevertheless, the British model had an important ‘exhibition effect’. Commission officials drew heavily on British expertise, and the United Kingdom was the principal advocate of liberalization in the Council. Legislation incorporated the core principles of the British model (non-discriminatory *access* for all market participants to transmission and distribution systems, supervised by some form of independent regulatory authority). At the same time, however, it allowed a margin of discretion in implementation. Legislative flexibility may be taken to reflect the effects of bargained decision making and the consequent weakening of the electricity directive by accommodating the preferences of recalcitrant member states.<sup>87</sup> The outcome thus fell somewhere between synthesis and influence.

The case studies outlined above support the general postulate that governance by negotiation will rarely produce emulative transfer outcomes. In social policy and utility liberalization the predominant outcomes fell in the range from synthesis to influence. Only in environment policy do we find examples of emulation. The strong incentives to reach common EU standards, it may be supposed, strengthened the negotiating position of policy leaders promoting ‘their’ models.

The evidence provides strong support for Hypothesis 2. QMV makes a considerable contribution to the European Union’s capacity for negotiated policy transfer, helping to break down the resistance of member states to ‘alien’ policy models. The overwhelming majority of emulative transfers were negotiated under QMV. We have, however, found some deviant cases. The 1984 framework directive on industrial emissions is a striking example of emulation under unanimity. Conversely, the packaging waste directive exemplifies abortive transfer under QMV. In each case, deviation from the equation between QMV and emulation is accounted for by our second institutional variable. The framework directive was the product of problem-solving negotiation; in the packaging waste directive, entrenched bargaining positions led to an abortive transfer.

Across all the policy areas outlined above, we found strong support for the equation between the mode of negotiation and transfer outcomes. The effect stands out particularly in utilities liberalization. A problem-solving mode of negotiation in telecommunications is reflected in a stronger form of transfer; in electricity the intrusion of bargaining in negotiations weakened the transfer outcome. More generally, utilities liberalization provides an insight into the dynamics of EU policy transfer, showing how negotiation can reshape the policy preferences, breaking down member state resistance to a policy model drawn from another national jurisdiction.

### *Transfer by Facilitated Unilateralism*

As defined in the previous section of the article, policy transfer under facilitated unilateralism operates horizontally through the diffusion of ‘best practice’. We hypothesized that *diffusion* will be maximized by robust benchmarking procedures

<sup>86</sup> Interview, former official Directorate A, DG XVII (now DG Transport and Energy), Brussels, 26 October 2000.

<sup>87</sup> Stephen Padgett, ‘Between Synthesis and Emulation: EU Policy Transfer in the Power Sector’, *Journal of European Public Policy*, 10 (2003), 227–45.

involving quantifiable targets and authoritative databases that confront national actors with the performance of foreign exemplars, obliging them to reassess domestic policy. Facilitated transfer may also take the form of ‘cognitive assimilation’ arising out of socialization processes occurring during iterative interaction in EU forums.<sup>88</sup> Assimilation will be related to the intensity of exchange between national actors, which is maximized in more highly institutionalized settings (see Table 1).

In Justice and Home Affairs (JHA) institutional developments have been marked by tensions between the need to develop a common framework for policing organized crime and regulating migration and asylum and the tendency to retain national sovereignty in highly sensitive policy areas. Attempts to resolve this tension have centred on intergovernmental co-operation at ministerial level, underpinned by networks of civil servants, police, immigration and customs officials in a shifting mosaic of working groups.<sup>89</sup> Procedures are weakly institutionalized. The absence of ‘claimable objectives’ leads to uncertainty over ‘mission and methods’. Decision making is *ad hoc* and fragmented, and compliance mechanisms are almost entirely absent. Title IV of the Amsterdam Treaty gave JHA a legal foundation, contained ‘a relatively clear catalogue of measures’ and introduced EU institutions into the process. However, it retained a bias towards unanimity and the role of EU institutions was hedged around with caveats.<sup>90</sup> A five-year ‘roll out’ means that the impact of the Amsterdam provisions is difficult to evaluate.

The most that can be claimed for JHA is that routinized interaction has led to the emergence of a ‘co-operation culture’<sup>91</sup> or ‘acclimatization’<sup>92</sup> between member state officials. Procedural acclimatization, however, does not extend to cognitive assimilation; attitudes towards asylum continue to display a pronounced ‘value pluralism’,<sup>93</sup> and the impact of conventions and guidelines on member state policy has been minimal. National procedures for processing and evaluating asylum applications, for instance, remain widely divergent.<sup>94</sup> Similarly, initiatives geared to harmonization in the fight against organized crime under Title VI TEC have produced ‘few or no reforms within national investigation and prosecution authorities’.<sup>95</sup> JHA, then, suggests that the potential for policy transfer in weakly institutionalized forms of facilitated unilateralism is rather limited.

Whilst JHA represents a longstanding method of transnational co-operation, the European Employment Strategy (EES) exemplifies the Open Method of Co-operation

<sup>88</sup> Frank Vandenbroucke, ‘Open Coordination on Pensions and the Future of Europe’s Social Model’ (paper presented to the Conference ‘Towards a New Architecture for Europe’s Social Model’, Leuven, 2001, available at [www.vandenbroucke.fgov.be](http://www.vandenbroucke.fgov.be)).

<sup>89</sup> Monica den Boer, ‘Justice and Home Affairs: Cooperation without Integration’, in Wallace and Wallace, eds, *Policy-Making in the European Union*, pp. 395–405; Stephen Stetter, ‘Regulating Migration: Authority Delegation in Justice and Home Affairs’, *Journal of European Public Policy*, 7 (2000), 81–101; Jörg Monar, ‘The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs’, *Journal of Common Market Studies*, 39 (2001), 752–60.

<sup>90</sup> Stetter, ‘Regulating Migration’, p. 91.

<sup>91</sup> Monar, ‘The Dynamics of Justice and Home Affairs’, p. 752.

<sup>92</sup> Stetter, ‘Regulating Migration’, p. 88.

<sup>93</sup> Fleur Alink, Arjen Boin and Paul ’t Hart, ‘Institutional Crises and Reforms in Policy Sectors: The Case of Asylum Policy in Europe’, *Journal of European Public Policy*, 8 (2001), 286–306, p. 296.

<sup>94</sup> Sandra Lavenex, ‘The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies’, *Journal of Common Market Studies*, 39 (2001), 851–74, p. 861; Alink *et al.* ‘Institutional Crises and Reforms’, pp. 288–9.

<sup>95</sup> Monica Den Boer, ‘The Fight Against Organized Crime in Europe: A Comparative Perspective’, *European Journal on Crime Policy and Research*, 9 (2001), 259–72, p. 272.

(OMC). Originating at the Luxembourg European Council of 1997 and incorporated in Title VIII of the Amsterdam Treaty, the European Employment Strategy was designed to reconcile the neo-corporatist concern with employment promotion with a neo-liberal drive for competitiveness.<sup>96</sup> It was recognized, however, that cross-national differences in labour market structures and policy traditions precluded binding obligations or sanctions.<sup>97</sup> Nevertheless, the EES may be regarded as marginally more institutionalized than JHA. It consists of an annual cycle of stages. The European Council agrees employment guidelines establishing priority objectives clustered under four pillars; employability, entrepreneurship, adaptability and equal opportunities. Benchmarks and performance indicators are set by expert committees, with quantified targets for overall employment rates. In response to the guidelines, member states are required to submit national action plans (NAPs) which are evaluated jointly by the Commission and Council and are subject to peer review. The Commission monitors performance annually, issuing recommendations to member states.<sup>98</sup>

Assessments of the *robustness* of these procedures indicate a number of shortcomings. First, NAPs rarely include quantifiable targets. Indeed, the only ones to do so are the Scandinavian countries which already exceed EU employment rates targets.<sup>99</sup> Secondly, learning mechanisms are weakly implemented; the reporting of best practice that member states are required to undertake in their NAPs is usually relegated to an appendix, whilst peer review sessions are truncated and superficial.<sup>100</sup> Finally, almost all observers suggest a tendency to ‘symbolic compliance’: member states often merely repackage existing policies in NAPs, imparting a ‘spin’ geared to the guidelines.<sup>101</sup>

The outcomes of OMC in employment policy are uneven. On the one hand, there is some evidence of policy diffusion across member states: active labour market measures; employment friendly tax reforms; and a shift from promoting early retirement towards retaining older employees in work (thereby easing the strain on pension systems). In other areas, however, like the regulation of working hours, national responses exhibit ongoing divergence.<sup>102</sup> One clear conclusion to be drawn in this policy area is that there is no single source of diffusion. Whilst the British and Swedish models have in the past exerted some influence, attention has now shifted to Denmark, the Netherlands, and more recently to

<sup>96</sup> Nick Adnett, ‘Modernizing the European Social Model: Developing the Guidelines’, *Journal of Common Market Studies*, 39 (2001), 353–64, p. 354.

<sup>97</sup> De la Porte, ‘Is the Open Method of Coordination Appropriate ... ?’, p. 41.

<sup>98</sup> Adnett, ‘Modernizing the European Social Model’, p. 358.

<sup>99</sup> De la Porte, ‘Is the Open Method of Coordination Appropriate ... ?’, p. 50.

<sup>100</sup> David M. Trubek and James Mosher, ‘New Governance, EU Employment Policy, and the European Social Model’ (Symposium: Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance, New York University School of Law, Working Paper No. 6/01, 2001, 5.2, available at <http://www.jeanmonnetprogramme.org/papers/01/01150.html>).

<sup>101</sup> Adnett, ‘Modernizing the European Social Model’, p. 360; Iain Begg, Jos Berghman, Yves Chassard, Pekka Kosonen, Per Kongshøj Madsen, Manos Matsaganis, David Mayes, Ruud Muffels, Robert Salais and Panos Tsakloglou, *Social Exclusion and Social Protection in the European Union: Policy Issues and Proposals for the Future Role of the EU* (London: EXSPRO, South Bank University, 2001), p. 30; De la Porte, ‘Is the Open Method of Coordination Appropriate ... ?’, p. 54.

<sup>102</sup> Trubek and Mosher, ‘New Governance’, 4.2–4.3; 5.2; Adnett, ‘Modernizing the European Social Model’, p. 360; Marco Biagi, ‘The Impact of European Employment Strategy on the Role of Labour Law and Industrial Relations’, *International Journal of Comparative Labour Law and Industrial Relations*, 16 (2000), pp. 64–8; De la Porte, ‘Is the Open Method of Coordination Appropriate ... ?’, p. 50.

Ireland, Italy and Spain.<sup>103</sup> Transfer outcomes in employment policy are thus characterized by 'diffuse influence'.

The Cardiff process of economic policy co-ordination has a broader remit than the EES, relating to the *structures* of product, labour and financial markets in the member states. The process is characterized by 'informal institutionalization' (pressure to conform to the norms of the 'club').<sup>104</sup> Geared to achieving common goals without encroaching on national sovereignty,<sup>105</sup> the process is orchestrated by the Commission in tandem with the prestigious and authoritative Council of Economic and Finance Ministers (Ecofin). Domestic economic policy is evaluated against a catalogue of guidelines, benchmarks and best practice drafted annually by the Commission on the basis of dialogue with national economic actors. Deviations from the guidelines can trigger recommendations against member states, although these are non-binding and lack sanctions.<sup>106</sup> Doubts about the effectiveness of facilitated unilateralism in economic policy are raised by the defiant response of the Irish government to an adverse recommendation on its expansionary economic policy in 2001.<sup>107</sup>

In other policy areas OMC is of more recent provenance and remains very weakly institutionalized. Co-operation in social exclusion follows the EES model, with NAPs reviewed by the Commission against commonly agreed objectives. Procedures and objectives are not, however, as in employment, 'constitutionalized' by incorporation in the Treaty. Objectives and guidelines are defined only very broadly, and agreement on performance indicators has been impeded by inconsistencies and lacunae in comparative social databases.<sup>108</sup> More recent procedures in pensions policy are still weaker. In place of NAPs, member states merely report 'strategies' to meet broadly defined objectives, the process culminating in a joint report of the Commission and Council.<sup>109</sup> Still in its early stages, co-operation in research and development is restricted to a High Level Group of research ministry nominees convening four expert committees gathering data on public and private investment in R & D.<sup>110</sup> A specific objective of these exercises is 'to promote mutual learning', and 'to increase [the member states'] ability to assess their relative performance'.<sup>111</sup> It is still too early to assess the impact of OMC in these policy areas. In the face of wide divergence in national practice, however, we would not expect these institutional arrangements to result in significant transfer effects.

<sup>103</sup> Trubek and Mosher, 'New Governance', 5.2; Adnett, 'Modernizing the European Social Model', pp. 359–60.

<sup>104</sup> Hodson and Maher, 'The Open Method as a New Mode of Governance', p. 740.

<sup>105</sup> Hodson and Maher, 'The Open Method as a New Mode of Governance', p. 725.

<sup>106</sup> Hodson and Maher, 'The Open Method as a New Mode of Governance', pp. 734–5; De la Porte, 'Is the Open Method of Coordination Appropriate ... ?' pp. 40–1.

<sup>107</sup> *Financial Times*, 27/28 July 2002, p. 7.

<sup>108</sup> Caroline de la Porte, Philippe Pochet and Graham Room, 'Social Benchmarking, Policy Making and New Governance in the EU', *Journal of European Social Policy*, 11 (2001), 291–307, p. 297; Begg *et al.*, *Social Exclusion and Social Protection*, pp. 4–6.

<sup>109</sup> European Industrial Relations Observatory On-line, *Commission evaluates Member State national pension strategies*, 29 January 2003, available at [http://europa.eu.int/comm/employment\\_social/news/2002/dec/joint\\_pensions\\_report\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/dec/joint_pensions_report_en.pdf).

<sup>110</sup> EU business, *Commission Releases First R&D Benchmarking Figures*, 5 July 2001 available at <http://www.eubusiness.com/cgi-bin/item.cgi?id=51834&d=101&h=240&f=271&dateformat=%o%20%B%20%Y>.

<sup>111</sup> Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions; Draft Joint Report by the Commission and the Council on Adequate and Sustainable Pensions*, December 2002; available at [http://europa.eu.int/comm/employment\\_social/news/2002/dec/joint\\_pensions\\_report\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/dec/joint_pensions_report_en.pdf).

As we hypothesized earlier in this article, transfer outcomes under governance by facilitated unilateralism are significantly weaker than under hierarchical modes of governance. Informal rules and ‘soft’ compliance mechanisms, we may conclude, entail, at best, only the very weakest forms of transfer effect. In so far as informal pressures to conform with guidelines and benchmarks conflict with embedded national preferences, their impact is minimal. We must concede, however, that our attempt to test the hypothesized link between institutionalization and policy transfer under facilitated unilateralism has proved unsatisfactory. The amorphousness of this form of governance makes *calibrating* institutionalization in particular policy sectors highly problematical, thus undermining meaningful comparison. In support of the hypothesis we might adduce the evidence of the EES, the longest established and the most institutionalized of the OMC policy sectors, which seems to have generated diffuse reciprocal influence between member states. Against this, however, the much longer-standing JHA is almost entirely barren of transfer effects. This may point towards the conclusion that in the very weakly institutionalized mode of governance by facilitated unilateralism, extant policy preferences and practices play a more decisive role. Abortive transfer outcomes in JHA can thus be attributed to divergence between entrenched member state practices. The modest transfer effects found in employment, by contrast, may reflect cognitive assimilation and ‘a reframing of domestic discourse’,<sup>112</sup> although it may be argued that this was a *precursor* rather than a *product* of OMC.

#### CONCLUSION

Our findings confirm the general view in the literature outlined at the beginning of this article that the European Union is a powerful platform for policy transfer. By distinguishing between different modes of EU governance, however, we have been able to present a more nuanced account of the processes through which transfer occurs and the relationship between institutional arrangements and transfer outcomes. Our findings serve to correct two pervasive misconceptions in the literature. First, we have shown that EU policy transfer is not restricted, as in most accounts, to the Open Method of Co-ordination. Indeed, the strongest forms of transfer are found under the much longer standing modes of negotiated and hierarchical governance. Restricting inquiry to OMC misses the wider contribution of policy transfer to understanding the European Union. Secondly, contrary to widespread perception in the literature that EU institutions have little role to play in EU policy transfer, we have shown institutional variables are important in shaping transfer processes and outcomes. Specifically, we have shown that more densely institutionalized forms of governance have a stronger potential for policy transfer, with a greater likelihood of fidelity in transfer outcomes.

Our case studies in governance by negotiation yielded many examples of policy transfer. Transfer outcomes are heavily dependent on institutional variables. QMV makes a considerable contribution to the European Union’s capacity for negotiated transfer. Although there were some exceptions, the overwhelming majority of emulative transfers were negotiated under this mode of decision. We also found strong support for the relationship between the mode of negotiation and transfer outcomes. Problem solving tends to produce stronger forms of transfer, with some potential for reshaping national

<sup>112</sup> Hodson and Maher, ‘The Open Method as a New Mode of Governance’, pp. 739–40.

policy preferences. Bargaining results in weaker transfer outcomes, tending towards synthesis, mere influence or abortive transfer.

There is compelling evidence linking the dense institutional arrangements of hard coercion with stronger forms of policy transfer (the emulation of an EU model). Although softer forms of coercion involved in the transposition of directives may result in emulation, there is a strong tendency to synthesis with existing domestic practice, mere influence on the latter or even abortive transfer. Financial conditionality has considerable potential for effecting procedural transfer, although examples of substantive policy transfer by this method are harder to find.

Our findings confirm that the informal rules and soft compliance mechanisms of facilitated unilateralism carry a much weaker transfer potential than more hierarchical modes of governance. The difficulty of calibrating this amorphous form of governance undermined our attempt to establish a linkage between institutionalization and transfer outcome. We can, however, conclude that only the most institutionalized of OMC policy sectors (the European Employment Strategy) showed any significant potential for policy diffusion or cognitive assimilation. In other policy areas, transfer potential is limited by entrenched and divergent national policy practice. We find this conclusion unsurprising; OMC is adopted precisely because in these sensitive policy areas more coercive forms of governance are unacceptable. In evaluating the transfer potential of this form of governance we have to conclude that the jury is still out.

Beyond these conclusions we believe there are some wider implications of the article. Above all our analysis of EU policy transfer has shown how transfer processes and outcomes are institution-dependent, underlining the importance of attention to institutional context in policy transfer research. Particular attention needs to be paid to the institutions that define the relationship between policy 'lender' and 'borrower'. A relationship of asymmetrical power will tend to generate coercive forms of transfer. By opening up the discussion of EU policy transfer to include the coercive variant we hope to redress the neglect of this transfer type in the mainstream literature. The practices of the International Monetary Fund (IMF) or the World Bank may not be too distant from coercive transfer under hierarchical governance in the European Union: in particular, the role of financial conditionality. It is just that the EU states have tied their *own* hands for the purposes of building trust in joint policy, whereas the recipients of IMF or World Bank assistance have had theirs tied for them by donors.

The article also has wider implications for EU research. Whilst EU policy analysis has advanced considerably over the last decade or so, this achievement has often been at the cost of a holistic view. The tendency to identify different scales of decision making,<sup>113</sup> has served to reinforce a fragmentation of the literature resulting from the proliferation of policy-specific case studies. We have shown how a policy transfer perspective offers a purchase across the whole spectrum of EU policy and policy making. First, by linking member states and EU institutions in the policy process, it provides an escape from the 'great debate' about national versus supranational actors in the European Union. Secondly, it is capable of encompassing both the ideational dimension of policy formation and the oft-neglected outcomes resulting from the implementation stages of the policy process. It thus facilitates a more cohesive account of EU policy dynamics than has hitherto been available, linking what have often appeared to be discrete areas of policy analysis. In the

<sup>113</sup> John Peterson and Elizabeth Bomberg, *Decision-Making in the European Union* (London: Macmillan, 1999).

wider context too, the policy transfer perspective may promote a more holistic approach, resulting in a more *joined-up way of thinking about policy*. In this sense the eastern enlargement of the European Union – the largest such exercise thus far and the biggest current challenge for the European Union – would represent an ideal testing-ground for exploring the analytical insights of policy transfer.