

Holding Governments Accountable through Information: Multilevel Education Assessments by Private and Public Institutions

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Abstract: This paper explores the accountability of two types of multilevel education assessments, the public-law based OECD PISA study and the private-law based assessments carried out by the International Association for the Evaluation of Educational Achievement (IEA). These assessments can be understood as “governance by information”, an innovative and powerful type of governance instrument for holding national policy-makers accountable. Since they constitute an exercise of public power, they need to be accountable in order to be legitimate. An analysis of the accountability mechanisms constraining both types of education assessment on the basis of a model proposed by Grant and Keohane reveals a complex accountability pattern. However, only some of the existing accountability mechanisms are legally institutionalized. Whether this is sufficient, remains an open normative question.

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I. Transnational Private and Public Governance in Educational Matters

Regulatory¹ competencies in the field of school education have largely remained in the hands of states or even sub-state governments.² The explicit exclusion of harmonizing measures in this field in the EC Treaty³ illustrates the reluctance of states to cede such competencies to transnational⁴ levels. With the exception of human rights law,⁵ binding international law in the field of education is rare,⁶ addressing mostly questions of degree recognition.⁷ Of course, unlike international trade or air pollution, school education is no transboundary process *ipso facto*.

But with some insight, the scarce examples of transnational regulation reveal only as the tip of an iceberg of governance⁸ activities of transnational public and private institutions. Germans are particularly familiar with the OECD's Program for International Student Assessment (PISA), whose acronym has found its way into the vernacular.⁹ Besides PISA, the OECD has served as a forum for exchange among national education specialists since the 1960s. Another important player is UNESCO. It carries out diverse activities in the field covering everything from primary to higher education. Many of them consist in assisting developing countries in implementing action programs funded by international donors, but UNESCO also functions as an information hub on education. For example, the UNESCO Institute for Statistics (UIS) provides data on education for all activities of the organization and its member states. Together with the OECD it carries out the World Indicators Project, a student assessment in 19 middle-income countries,

¹ The terms "regulatory"/"regulation" are used in a narrow sense, referring to "the promulgation of an authoritative set of rules, accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance with these rules", R. Baldwin, C. Scott and C. Hood, 'Introduction', in: *idem* (eds), *A Reader on Regulation* (1998), 3.

² In quite some states, in particular in federal ones, education policy is not the competence of the national government. This is *i.a.* the case in Belgium, Canada, Germany, Spain (shared responsibility of both the national government and the autonomous communities), Switzerland, the UK, and the United States.

³ Cf. Art. 149 (4) EC.

⁴ The term "transnational" is used here to address institutions operating beyond the national level, including the supranational level, but not necessarily on a global (= worldwide) level.

⁵ Cf. Art. 13 ICESCR; 1960 UNESCO Convention against Discrimination in Education; Article 28 Convention on the Rights of the Child; Art. 2 First Protocol to the ECHR; Art. 17(1) African Charter on Human and Peoples' Rights. Concrete obligations are the exception, though. One such exception is the right to free primary education, Art. 28(1)(a) Convention on the Rights of the Child.

⁶ Cf. the 1989 UNESCO Convention on Technical and Vocational Training.

⁷ Cf. the 1967 Council of Europe/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region and related law of the Council of Europe.

⁸ "Governance" is here understood as activities, which, as opposed to regulation, are "backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance.", cf. J.N. Rosenau, 'Governance, Order, and Change in World Politics', in: *id./E.-O. Czempiel* (eds), *Governance without Government* (1992), 1-29, at 4; see also C. Joerges, 'Constitutionalism and Transnational Governance', in *idem/ I.-J. Sand/ G. Teubner*, *Transnational Governance and Constitutionalism*, 339-375, at 340 et seq.

⁹ This is a result of the national shock caused by Germany's mediocre PISA results. Today, the acronym "PISA" is used in German in many ways, frequently with an ironic undertone, pointing to something which a person should know in order not to come off badly. For example, in a satirical radio broadcast called "PISA-Polizei" (= PISA police), random people are called and tested for their knowledge on various issues.

funded by the World Bank. Moreover, the Special Rapporteur of the UN Human Rights Commission (UNCHR) recently visited five countries in order to investigate the status of realization of the right to education.¹⁰ On the regional level, European Ministers of Education have spurred the so-called Bologna Process for higher education.¹¹ The Council of Europe serves as a platform for the development of best practices concerning the contents of education.¹² And the European Community began to thematize education long before the introduction of article 149 EC,¹³ establishing *i.a.* an information network on education.¹⁴

Besides public institutions, a number of private or semi-private associations facilitate information exchange and the development of best practices in the field. The International Association for the Evaluation of Educational Achievement (IEA), a private Belgian association with Dutch headquarters, was the pioneer of transnational student assessments. National education inspectorates founded the Standing International Conference of Central and General Inspectorates of Education, a Dutch association with a Belfast based secretariat, to share experience. Several private actors offering services for empirical education assessments have become important players in the field.¹⁵ Overlapping memberships and numerous formal and informal relationships between all these institutions contribute to the formation of a veritable governance network¹⁶ of experts and policy-makers on various levels.

The preceding overview reveals that there is a certain prevalence of governance instruments which work by the collection, processing and dissemination of structured information on education. This is what I call “governance by information” (II.1). It needs to be distinguished from purely private activities, which do not constitute an exercise of public power (II.2). The accountability mechanisms to which two particularly influential instruments are exposed, the predominantly international law based OECD PISA policy and the private-law based IEA assessments (II.3), will therefore be scrutinized (III.). The

¹⁰ For the mandate of the Special Rapporteur cf. Resolution 1998/33 of the UN Commission on Human Rights, Doc. E/CN.4/RES/1998/33 of 17 April 1998 (several renewals).

¹¹ Cf. the Bologna Declaration, available at http://www.bologna-berlin2003.de/pdf/bologna_declaration.pdf (last visited 28 April 2006).

¹² Cf. http://www.coe.int/T/DG4/HigherEducation/Resources/Recommendations_EN.asp#TopOfPage (last visited 28 April 2006).

¹³ Cf. Council and the Ministers of Education meeting within the Council, Resolution including a Programme of Action on Education, 9 February 1976, Official Journal C 38 of 19 February 1976; see further A. Augenti/ L. Amatucci, *Le organizzazioni internazionali e le politiche educative* (1998), 125-188.

¹⁴ Council and Ministers for Education, meeting within the Council, Resolution concerning the EURYDICE Education Information Network in the European Community, 6 December 1990, Official Journal C 329 of 31 December 1990.

¹⁵ Among these are the Boston College; the Australian Council for Educational Research (ACER) a private limited corporation; the Netherlands National Institute of Educational Measurement, an originally state-owned, now privatized institute; Westat Inc., an employee-owned, US-based private company; and the Educational Testing Service (ETS), an independent, non-profit organization from the USA.

¹⁶ For many others: A.-M. Slaughter, *A New World Order* (2004), 36 et seq.

concluding section will look at the results of this scrutiny from a normative perspective (IV.).

II. Multilevel Education Assessments as Governance by Information

1. Governance by Information: Creating Accountability as an Alternative to Regulation

Many of the above-mentioned transnational governance instruments in the field of education are characteristic for what I call “governance by information”. In contrast to regulation, this type of governance instrument operates through the collection, processing and dissemination of structured information. Two basic types of governance by information can be distinguished: the first aims at influencing the behavior of citizens by public recommendations or warnings.¹⁷ If it refers to private activities, this type of governance by information requires a balancing with the constitutional rights of the suppliers of products or services.¹⁸ The second type of governance by information comprises activities designed to meet the demand of policy-makers for reliable information. The instruments considered here come under the latter type. Examples for this type of governance by information are numerous, stemming from various policy fields.¹⁹ Although it may very well have repercussions for individual rights (in particular: data protection issues), this type of governance by information does not directly aim at influencing the behavior of citizens. In a multilevel context, it allows for comparative policy evaluation, involving benchmarking and country rankings. Hence, such governance by information can *create* some kind of accountability for policy-makers on “lower”²⁰ levels. They are put under external pressure to review their policies.²¹ This effect is amplified by the periodicity with which some mechanisms are carried out, making it a political necessity to achieve improvement within a given period of time.

At the same time, this type of governance by information can entail some degree of policy harmonization, as “best practices” emerge in the course of repeated analysis. Recent visits of politicians from OECD member states to PISA champion Finland

¹⁷ E.g. the warning letters issued by the US Food and Drug Administration, available at <http://www.fda.gov/foi/warning.htm> (last access July 2006).

¹⁸ E.g. Bundesverwaltungsgericht, Case 3 C 34/84 (“Transparenzliste”), judgment of 18 April 1985, 71 BVerwGE 183; Case 3 C 2/88 (“Diethylenglykol”), judgment of 18 October 1990, 87 BVerwGE 37. See, however, the decision of the Bundesverfassungsgericht in the same case, 1 BvR 558/91 et al., 26 June 2002, *NJW* (2002) 2621, which seems to deny fundamental rights protection to suppliers affected by measures of governance by information, unless the information was wrong, not objective or issued by an incompetent authority.

¹⁹ Beyond the field of education cf. *i.a.* the UNDP *Human Development Index*, the monitoring activities of Human Rights bodies, or the African Union’s New Partnership for African Development (NEPAD). Generally, peer review mechanisms constitute a particular form of governance by information. On peer review mechanisms within the OECD cf. R. Pagani, ‘Peer Review: A Tool for Co-operation and Change’, OECD document SG/LEG(2002)1; cf. also the paper by Philipp Dann, at III.2. Election monitoring would be another example. Further, governance by information resembles the Open Method of Coordination insofar as the transnational level sets incentives for reform through the facilitation of information exchange and the establishment of best practices.

²⁰ The use of the term “lower” is heuristic and does not necessarily indicate a hierarchical relationship.

²¹ Grant and Keohane call this “public reputational accountability”, cf. R.W. Grant/R.O. Keohane, ‘Accountability and Abuses of Power in World Politics’, 99 *American Political Science Review* (2005) 29-43.

indicate that there could be such a development in the field of school education. There should not be significantly less of a “compliance pull”²² on states to strive towards implementing such best practices as there is one to implement (binding or non-binding) international rules in domestic law: Instead of coercion, “reputation enforcement” occurs.²³ From this viewpoint, governance by information is not much different from “soft law”.²⁴

What are the incentives for policy-makers on state and sub-state levels to expose themselves to this external scrutiny? First, it offers an alternative to regulation, which might sometimes be more efficient in bringing about policy change.²⁵ The success of PISA in transforming educational policy in Germany from a normative, ideology-ridden matter into a result-oriented process is an impressive illustration of the power of governance by information. Second, in contrast to transnational regulation, governance by information leaves the “lower” levels full discretion to decide whether and how to react to the information received. Third, governance by information could be considered a particularly attractive way for state and sub-state levels to integrate expert knowledge into policy-making: If the expertise is created on the transnational level, it might be more immune against bias resulting from the particular national context. And the multilevel structure ensures that expertise is created at some distance to the policy-making process. Perhaps this allows for a more reflexive integration of expertise (which is always somehow contingent)²⁶ into the policy-making process than if expertise stems from one’s own administration. Locating the provision of expert analysis and policy-making on different levels might therefore mitigate fears – well-founded or not – that democracy would be transformed into “expertocracy”.

2. Governance by Information as an Exercise of Public Power?

Governance by information does not involve the setting of legal rules. This is what makes it so attractive for transnational forms of organization, since it allows them to carry out successful policies even in the absence of regulatory competencies for the subject matter

²² Cf. T. Franck, *The Power of Legitimacy Among Nations* (1990), 42.

²³ Cf. G. Majone, ‘Delegation of Regulatory Powers in a Mixed Polity’, 8 *European Law Journal* (2002) 319-39, at 337; J.S. Nye, *Soft Power: The Means to Success in World Politics* (2004).

²⁴ Cf. O. Schachter, ‘The Twilight Existence of Nonbinding International Agreements’, 71 *American Journal of International Law* (1977) 296-304; recently C. Möllers, ‘Transnationale Behördenkooperation’, 65 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2005) 351-89, at 378.

²⁵ On this in a European context cf. C. Knill/ A. Lenschow, ‘Compliance, Competition and Communication: Different Approaches of European Governance and their Impact on National Institutions’, 43 *Journal of Common Market Studies* (2005) 583-606.

²⁶ Insofar the various critics of the “objectivity” of expert knowledge agree. Cf. only P. Feyerabend, *Against method. Outline of an Anarchistic Theory of Knowledge* (1975); M. Shapiro, ‘Will the Globe Echo the E.U.?’ , 68 *Law and Contemporary Problems* (2005) 341-356 .

concerned.²⁷ But private actors can also collect, process and disseminate information. Indeed, the necessary expertise is often not only available within public authorities, and numerous private actors engage in such activities, the media as well as NGOs.²⁸ While governance by information opens new opportunities for public authorities, they do not enjoy a monopoly over the instruments used – unlike in the case of regulation.

One might therefore wonder whether the second type of governance by information is an exercise of public power at all. How can it be distinguished from private activities protected by civil liberties? For only insofar as public power is exercised through it, the need for legitimacy arises and public law concepts regulating the exercise of power, like accountability, are applicable.²⁹ And only insofar is the activity of interest for global administrative law. Defining public power exactly might sometimes be difficult, but it can be assumed that activities in which public authorities engage within their competence and which are publicly funded, constitute an exercise of public power.³⁰ From national public law we know that private law instruments and private law forms of organization alone do not necessarily exclude an activity from the realm of public power.³¹ Although the peculiarities of each activity need to be taken into account, it can be said in a general way that the collection and evaluation of information on policy outcomes is an indispensable task of public authorities.³² Today, much of the capacity of public authorities to govern depends on the availability of information and the capacity to use this information.³³ The OECD was founded particularly for supplying public authorities with information. Thus, if public authorities mandate or organize and finance activities of second-type governance by information, there is a presumption that they engage in an exercise of public power.³⁴

²⁷ For the distinction between regulatory and non-regulatory competencies in the law of the European Union cf. A. von Bogdandy/J. Bast, 'Die vertikale Kompetenzordnung der Europäischen Union', 28 *Europäische Grundrechte-Zeitschrift* (2001) 441-458, at 451.

²⁸ Rights and good governance oriented NGOs regularly use the dissemination of information as their most powerful tool. Transparency International's *Global Corruption Report* is a well-known example.

²⁹ Cf. the categorical distinction drawn by Schmidt-Aßmann between the control of administrative entities and the control of private economic actors, E. Schmidt-Aßmann, *Das allgemeine Verwaltungsrecht als Ordnungsidee*, 2nd ed. (2004), 233; and between private and public law, *ibid.*, 284 et seq.

³⁰ This assumption seems to hold true for many national legal systems. For Italy cf. S. Cassese, *Le basi del diritto amministrativo*, 6th ed. (2000), 19; for Germany cf. H.J. Wolff/O. Bachof/ R. Stober, *Verwaltungsrecht*, vol. 1, 10th ed. (1994), 33; H.-U. Erichsen, 'Das Verwaltungshandeln', in *idem* (ed.) *Allgemeines Verwaltungsrecht*, 11th edition (1998) 223-462, at 451-2; for France cf. R. Chapus, *Droit administratif général*, 9th edition (1995) 3.

³¹ Cf. Dirk Ehlers, 'Verwaltung und Verwaltungsrecht', in Erichsen (ed.), see note Errore: sorgente del riferimento non trovata, 2-125, at 66.

³² The US administration has been carrying out empirical education assessments since 1969.

³³ On the legal implications of this dependency cf. R. Pitschas, *Allgemeines Verwaltungsrecht als Teil der öffentlichen Informationsordnung*, in: W. Hoffmann-Riem/E. Schmidt-Aßmann/G.F. Schuppert (eds.), *Reform des Allgemeinen Verwaltungsrechts* (1993), 219-305; E. Schmidt-Aßmann, *Das allgemeine Verwaltungsrecht als Ordnungsidee*, 2nd ed. (2004), 278; B.G. Mattarella, *Informazione e comunicazione amministrativa*, 55 *Rivista Trimestrale di Diritto Pubblico* (2005), 1-21.

³⁴ Cf. Erichsen, see note Errore: sorgente del riferimento non trovata, at 452.

3. Two Examples: Multilevel Education Assessments by Public and Private Institutions

This analysis is confined to two prominent types of empirical education assessment, namely the OECD PISA study and the IEA assessments. Not only has their prominence called for this choice, but also the fact that this allows to juxtapose a predominantly public to a predominantly private form of organization. It might also have some bearing on our expectations concerning accountability whether an instrument includes the drawing of policy-relevant conclusions from the data surveyed, like PISA, or whether it confines itself to describing the surveyed data in a more technical manner, like the IEA assessments.

a. The OECD PISA Policy

In the late 1980s, national policy-makers meeting within the frame of the OECD realized a need for comparative information on the performance of educational systems. The available data provided by national authorities was incommensurate to the complexity of the issues. This led to the idea to carry out a large-scale international empirical student assessment. The project was developed by INES Network A, an informal OECD committee composed of government representatives of 29 member states, chaired and financed by the US government. INES Network A and its *ad hoc* subcommittees arose from the OECD project “International Indicators of Education Systems” (INES), nowadays a project of both the OECD Education Committee³⁵ and the OECD Centre for Educational Research and Innovation (CERI).³⁶ It is coordinated by the INES Strategic Management Group, which reports to a joint session of the OECD Education Committee and the CERI Governing Board.³⁷

INES Network A produced a comprehensive “data strategy”, the blueprint for PISA.³⁸ After it had been approved by the OECD Education Committee and CERI Governing Board, states exchanged notes with the OECD Secretariat indicating their intention to participate in the project.³⁹ Once a sufficient number of participating states had been secured, the OECD Council adopted PISA as an OECD project in September 1997.⁴⁰

³⁵ OECD Council Resolution C(70)134, 22 July 1970. The mandate has been renewed periodically.

³⁶ The legal basis of CERI, which was founded in 1967, is currently the Decision of the OECD Council concerning a Programme on Educational Research and Innovation, C(81)53(Final), 24 July 1981.

³⁷ Decision of the Education Committee DEELSA/ED/M(2000)2, para. 18; decision of the CERI Governing Board CERI/CD/M(2000)2 para. 42.

³⁸ OECD, International Indicators of Educational Systems. Network A Strategy for Student Achievement Outcomes, DEELSA/ED/CERI/CD(97)4, 28 March 1997.

³⁹ OECD, A Strategy for Producing Student Achievement Indicators on a Regular Basis, Summary of Decisions Taken, Meeting in Budapest, Hungary, 7-8 May 1997, DEELSA/ED/CERI/CD(97)7, 19 August 1997, para. 19.

⁴⁰ OECD, Resolution of the Council C(97)176/FINAL, 26 September 1997.

Since then, two cycles of student assessments have been carried out in 2000 and 2003, and a third one is to follow in 2006, each with a different thematic focus. The implementation of PISA is steered by the PISA Governing Board (PGB), formerly Board of Participating Countries, composed of one representative per participating country. It was set up by the OECD Council with the resolution establishing PISA. Decisions of the PGB, if brought to a vote, require a two-thirds majority of the members of the board. Changes to the PISA framework are exempt from majority votes.⁴¹ In practice, consensus prevails. Decisions are also taken between sessions by e-mail communication. The PGB exercises considerable decision-making power. For example, it decides on the assessment design of each cycle, or approves of each international PISA report sentence-by-sentence by consensus. Most of the workload of the implementation is, however, shouldered by private contractors selected in an international tendering process. This comprises *i.a.* the production of assessment materials, the selection of schools and students to be tested according to defined criteria, and the data collection and processing. For each cycle, the Australian Council for Educational Research (ACER) was chosen as the main international contractor, along with other private and hybrid contractors. Each participating state appointed a national coordinator, who is not necessarily part of its administration, and selected public or private contractors for the technical implementation of the assessment. Further, several Functional Expert Groups and a Technical Advisory Group were established in order to ensure a high level of expertise and help establish consensus within their issue area. Their members were appointed by the OECD Secretariat after consultation with the main international contractor and the PGB.

b. The Assessment Activities of the IEA

The IEA emerged in 1958 from expert consultations at the UNESCO Institute for Education (Hamburg) as an informal working group. Unlike other experts at the time, its founders, 14 individuals from the US and Western Europe, shared the conviction that not only the inputs to, but also the outcomes of education needed scholarly attention. A groundbreaking pilot assessment of school achievements was carried out in 12 countries between 1959 and 1962. In 1967, the IEA was incorporated as an international scientific non-profit association under Belgian law⁴² with tax-exempt status, with its statutory seat in Liège, Belgium. Such associations need to have their seat⁴³ in Belgium and have at least one Belgian sitting on their board. Its membership is heterogeneous, comprising each one institutional member from today 62 countries. Some countries are represented

⁴¹ OECD Council, Operational Role of the Board of Participating Countries, C(97)176, 10 September 1997, appendix, para. 8.

⁴² Cf. Loi tendant à accorder la personnification civile aux associations internationales à but scientifiques, 25 October 1919 (Moniteur Belge (1919) 5872), modified 6 December 1954 (Moniteur Belge (1954) 8488).

⁴³ Under Belgian corporate law, this has to be understood as the social seat, since Belgian international private law follows the theory of the social seat. See. G. Schwarz, *Europäisches Gesellschaftsrecht* (2000), marginal note 164. But see also article 8 of the said law (note Errore: sorgente del riferimento non trovata).

by university departments, others by government ministries or independent research institutes.⁴⁴ The IEA General Assembly, which holds an ordinary meeting each year, is the supreme decision-making body. It elects the seven-member Standing Committee. Decisions are taken by majority, although consensus seems to prevail in practice. The Hague-based Secretariat of the IEA has a separate legal personality as a tax-exempt foundation under Dutch law. It is headed by the IEA executive director and employs some staff members. The IEA Data Processing Center in Hamburg is part of the IEA foundation. The legal link between the IEA foundation and the IEA association is established by a statutory provision ensuring that the foundation's board of directors is composed of members of the IEA association's Standing Committee. The IEA foundation holds all financial rights and obligations of the IEA association.

Over time, the IEA has carried out a range of education assessments. Currently, six different large-scale assessments are under way,⁴⁵ comprising between 18 and over 60 participating states, developed and developing ones alike. In some cases, not the entire state, but only some provinces take part in a study. The decision to carry out a study is taken by the IEA General Assembly on recommendation of the Standing Committee. One or more institutes are contracted for developing and implementing a study. The contracts are concluded by the IEA foundation on behalf of the IEA association under Dutch law. In the same way, the participating states or provinces conclude contracts under Dutch law with the IEA association. The contracts also stipulate the share of the costs. The study is directed by staff members of the principal contractor. Each participating state appoints a national coordinator, which might be either the ministry itself or a department for education, or a research institute. Notably, the national coordinator is not always identical with the institution holding membership in the IEA association. The national coordinators meet several times in order to review and endorse assessment frameworks, receive training, and review draft reports. Sometimes working groups on special issues are formed from among the national coordinators, and external advisors are consulted.

Since IEA assessments are solicited and financed by the participating states for their own purposes, they cannot be put on a par with purely "private" activities of, e.g., the media. Rather, they constitute an exercise of public power, irrespective of the private law basis of the organizational framework.

⁴⁴ See www.iea.nl (last visited 1 May 2006).

⁴⁵ Those are the International Civic and Citizenship Education Study 2008 (ICCES); Trends in International Mathematics and Science Study 2007 (TIMSS); the TIMSS Advanced Mathematics and Physics 2008; Second Information on technology in Education Study 2006 (SITES); Teacher Education and Development Study – Mathematics (TEDS-M); and Progress in International Reading Literacy Study 2006 (PIRLS).

III. The Accountability of Governance by Information: Private vs. Public Law Frameworks

1. Accountability: An Emerging Concept

Assessing the accountability of the selected instruments requires as a methodological starting point a reflection on the nature and content of the concept of “accountability”. Accountability as a legal and political concept, which has its origins in US administrative law⁴⁶ and British constitutional law,⁴⁷ emerged in the debate about global governance to address a bunch of concerns about controlling global governance mechanisms.⁴⁸ Accountability is generally understood as encompassing *ex post* mechanisms of review and control, by which sanctions can be imposed for failure to meet certain standards.⁴⁹ Alongside input-oriented mechanisms for ensuring democratic participation or procedural regularity,⁵⁰ accountability mechanisms are widely considered as indispensable for the legitimacy of governance in liberal-democratic societies.⁵¹ Because of the close link to legitimacy, accountability eventually needs to be a normative concept,⁵² obliging power-wielders to undergo *certain forms of scrutiny by certain accountability holders*. However, in the absence of a constitutional framework on the international level enshrining accountability standards by which global governance institutions could be measured, it is difficult to say who should hold whom to account according to which standards.⁵³ With comparative research on accountability in domestic and transnational legal orders being at an early stage, it seems difficult to postulate *a priori* a normative concept of accountability for global governance institutions.⁵⁴

⁴⁶ R. Mulgan, ‘“Accountability”: An Ever-Expanding Concept?’ 78 *Public Administration* (2000) 555-573, at 557.

⁴⁷ G. Marshall, *Constitutional Conventions. The Rules and Forms of Political Accountability* (1984), in particular 77-79, 111. D. Oliver, ‘Ministerial Accountability: What and where are the Parameters?’, in D. Butler et al. (eds) *The Law, Politics and the Constitution* (1999) 78-101.

⁴⁸ See, e.g., the contributions in D. Held and M. Koenig-Archibugi (eds), *Global Governance and Public Accountability* (2005); A. Reinisch, ‘Governance Without Accountability?’ 44 *German Yb. Int’l L.* (2001) 270-306.

⁴⁹ Note that some have a more prospective understanding, according to which accountability stands for the normative standards to be observed in policy-making or decision-making processes. Cf. C. Harlow, *Accountability in the European Union* (2002), 6 et seq. A further distinction between external and internal accountability is suggested by Mulgan, see note *Errore: sorgente del riferimento non trovata*.

⁵⁰ On the latter A. von Bogdandy, ‘Legitimacy of International Economic governance: Interpretative Approaches to WTO law and the Prospects of its Proceduralization’, in S. Griller (ed.), *International Economic Governance and Non-Economic Concerns* (2003), 103-39, at 129.

⁵¹ See the references in note *Errore: sorgente del riferimento non trovata*, cf. further A. Buchanan and R.O. Keohane, ‘The Legitimacy of Global Governance Institutions’, manuscript available at http://www.wws.princeton.edu/cgg/conferences/normative/papers/Session1_Buchanan_Keohane_long_version.pdf (last access July 2006), 18-20.

⁵² Cf. R. Stewart, ‘Accountability and the Discontents of Globalization: US and EU Models for Regulatory Governance’, draft presented at the 2nd Global Administrative Law Seminar, Viterbo 2006, on file with the author, 10.

⁵³ Note that within the Global Administrative Law discourse, there are initial attempts to develop overarching material and procedural principles. Cf. B. Kingsbury, ‘Omnilateralism and Partial International Communities: Contributions of the Emerging Global Administrative Law’, 104 *Journal of International Law and Diplomacy* (2005) 98-124; see also G. della Cananea, ‘Beyond the State: the Europeanization and Globalization of Procedural Administrative Law’, *European Public Law* (2003) 563-78, at 575.

⁵⁴ Cf. Buchanan and Keohane, see note *Errore: sorgente del riferimento non trovata*.

Faced with these difficulties, this paper follows a proposal by Grant and Keohane, who, as a first heuristic step in the quest for the accountability of global governance institutions, propose a framework for the positive analysis of accountability. They identify seven accountability mechanisms, which encompass legal as well as merely factual strategies of holding someone to account and impose sanctions: hierarchical, supervisory, fiscal, legal, market, peer and public reputational accountability.⁵⁵ The distinction is based on differences in the accountability holders or the legal framework applicable to the relationship between accountability holder and the power-wielder to be held accountable.⁵⁶ Neither of these mechanisms takes *a priori* precedence, nor are they mutually exclusive. The accountability mechanisms also overlap to some extent, which is why this approach is perhaps best understood as topical, rather than systematic.

An analysis based on this sociological, non-normative understanding of accountability can comprehensively reveal the external constraints to which actors within a multilevel system are exposed. Useful as a first step, it is, however, not sufficient, given that accountability needs to be a normative concept in the end. Grant and Keohane seem to agree with Stewart that only institutionalized accountability mechanisms, under which an identified accountability holder has the *right* to hold someone to account according to certain standards and to impose certain sanctions can ensure continuous and effective accountability.⁵⁷ This is a step into the direction of a normative concept of accountability: If accountability is expected to enhance the legitimacy of governance, only standards and procedures which are themselves the manifestation of a legitimate delegation of power can serve this purpose.⁵⁸ After a positive analysis of the accountability of multilevel education assessments based on Grant and Keohane's model (III.2), it will therefore be asked, drawing on Stewart's concept, to what extent the discovered accountability mechanisms are legally institutionalized (III.3).

⁵⁵ R.W. Grant/ R.O. Keohane, 'Accountability and Abuses of Power in World Politics', 99 *American Political Science Review* (2005) 29-43.

⁵⁶ A notable alternative approach is proposed in the report of the International Law Association, *Accountability of International Organizations* (2004), where political, legal, financial and administrative accountability are distinguished (cf. the paper by Philipp Dann). Grant and Keohane's model seems to allow for a more nuanced analysis of the specific accountability structures of private or hybrid organizations.

⁵⁷ Grant and Keohane, see note *Errore: sorgente del riferimento non trovata*, at 29-30; Stewart, see note *Errore: sorgente del riferimento non trovata*, at 2, 11.

⁵⁸ The main reason for Stewart not to consider market dynamics, peer control etc. as true accountability mechanisms seems to be that there are no authoritative standards or procedures. Cf. Stewart, see note *Errore: sorgente del riferimento non trovata*, at 13.

2. The Accountability of PISA and IEA Assessments: A Positive Account

a. Hierarchical Accountability

According to the model developed by Grant and Keohane,⁵⁹ hierarchical accountability is realized through command-and-control structures within organizations, e.g. through superiors (principals) controlling their subordinates (agents).

Practically all OECD organs and committees involved report to a hierarchically superior body. The OECD Secretariat, which also functions as the Secretariat of the PGB, is subject to the instructions of the PGB. By drafting detailed rules for the dissemination of the PISA results and deciding sentence-by-sentence on policy inferences to be drawn from the data survey in the PISA reports, the PGB exercises close hierarchical control over its Secretariat.⁶⁰ According to its mandate, the INES Strategic Management Group reports to the Joint Session of the OECD Education Council and the CERI Governing Board. The latter two committees, like the PGB, are obliged to report to the OECD Council, which has the power to revise their mandates. Thus, the OECD Council emerges as the tip of the pyramid of the PISA hierarchy. All decision-making powers are delegated by the OECD Council, either directly or through intermediate committees.

Nevertheless, some limits to hierarchical accountability should not be overseen. Notably, the PISA framework was drafted by INES Network A, an “informal”⁶¹ committee, which is strictly speaking not part of the OECD hierarchy, but an informal meeting of experts of 29 OECD member states, financed by the US government. Its high level of expertise enabled it to substantially determine the decisions of the competent OECD committees. The OECD Council adopted the PISA framework developed mainly by INES Network A without modifications. In doing so, the OECD Council was factually bound by the proposed framework: in note exchanges with the OECD Secretariat, interested states had consented to participate in a project based on this framework.⁶² Had the OECD Council wished to modify the project design, the consent expressed in the notes would have become moot. The OECD Council resolution therefore conferred purely formal legitimacy upon a decided matter. Nothing is wrong with this, but it demonstrates that the capacity of hierarchical structures to actually control processes should not be overrated. Hierarchical superiority must not be confused with effective control over a certain matter.

⁵⁹ See note Errore: sorgente del riferimento non trovata.

⁶⁰ Cf. only Tenth Meeting of the BPC, Draft Summary Record, DEELSA/PISA/BPC/M(2001)1, 18 May 2001, 6-8; Eleventh Meeting of the BPC, Summary Record, DEELSA/PISA/BPC/M(2001)2, 29 August 2001, 7-9. The timing for the release of the first results was also determined, cf. Ninth Meeting of the BPC, Draft Summary of Main Outcomes, DEELSA/PISA/BPC/M(2000)2REV1, 26-27 October 2000, 8-9.

⁶¹ This terminology, which enjoys frequent usage in practice, seems in need of further doctrinal clarification. On a preliminary basis, bodies without a legally defined mandate will be considered “informal”.

⁶² Before the exchanges of notes, the PISA framework had however been approved by the OECD Education Committee and the CERI Governing Board, which provided it with some formal legitimacy.

Here and there it relies on long “transmission belts”, which a rather complex “comitology” and high level of expertise renders rather fictional.

Within the IEA, hierarchies are flatter. The staff of the IEA Secretariat is answerable to the board of the IEA foundation, and the IEA Standing Committee reports to the IEA General Assembly. The IEA General Assembly, a truly hybrid body of limited participatory or delegatory legitimacy, is at the top of the IEA decision-making pyramid and takes *i.a.* the decision to carry out a certain project. Although the National Coordinators of each study hold meetings to consult on important issues like the assessment framework, these meetings are of an informal nature and therefore have no status within the IEA hierarchy. A formally powerful, representative body like the PGB exercising hierarchical oversight is thus missing within the IEA structure.

b. Supervisory Accountability

Supervisory accountability is exercised by external actors over those to which they have delegated authority. The standard example would be member states controlling an organization. Both hierarchical and supervisory accountability run largely parallel to mechanisms of checks and balances:⁶³ if hierarchical superiors or external supervisors give instructions, this can be either a reaction to activities of the institution, or motivated by reasons external to the organization.⁶⁴

The OECD underlies a strong supervisory accountability regime by the member states, which is facilitated by the control they exercise over the OECD Council, the supreme body of the OECD hierarchy. Further, nearly all committees involved in PISA are composed of state representatives, notably the PGB. From the perspective of the OECD member states, this could be seen as balancing shortcomings in the hierarchical accountability structure due to the considerable factual independence of subsidiary committees by their expertise and long transmission belts between subsidiary committees and the OECD Council. The OECD Secretariat as well as the PGB exercise supervisory accountability over the international contractors, whereby the OECD Secretariat serves as an interlocutory for the instructions of the PGB.⁶⁵ The main international contractor further supervises the national contractors, as stipulated in each contract concluded

⁶³ Cf. Grant and Keohane, note Errore: sorgente del riferimento non trovata, at 45.

⁶⁴ Supervisory and hierarchical accountability might appear difficult to distinguish. However, different rules apply to each accountability mechanism: For example, the hierarchical accountability of staff members is regulated by (international) public service law or labor law, and the hierarchical accountability of subordinate committees or departments is restricted only by the competence of the hierarchical superior and the organization’s institutional law. Supervisory accountability, on the other hand, can be regulated by private law contracts (in case of private contractors as subordinates or in relation to private associations carrying out activities on a contractual basis for members and non-members) or by the private or public rules regulating membership (in case of international organizations or private associations as subordinates).

⁶⁵ Cf. DEELSA/ED/CERI/CD(97)4, para. 96.

between a national contractor and its government, and watches that they respect the PISA framework and the procedures and standards set up by the PGB.⁶⁶

As a private association, the IEA association is supervised by its members through the General Assembly, while the IEA foundation is supervised by the IEA association through its board composed of IEA Standing Committee members. Both the IEA Secretariat (the foundation) and the IEA General Assembly exercise supervisory accountability over the contractors. These submit progress reports to the IEA General Assembly, which puts them to a vote. However, in the absence of a fairly representative supervisory body operating on a permanent basis like the PISA PGB, the legitimizing effect of the supervisory accountability attaching to the IEA contractors seems lower by comparison to the international contractors of PISA. Further, states participating in an IEA study can exercise some supervisory accountability through the national coordinator for the study. A consensus reached by the national coordinators does not bind the contractor, but certainly has a factual impact. Participating states have the choice of either coordinating the study themselves through their officials on the national level, which enables them to exercise supervision through the coordinators' meetings, or appointing an external national coordinator, mostly a research institute, which they are free to instruct, provided that their contract so allows. Nevertheless, civil liberties might in some states provide the contractor with a minimum of protection against instructions.⁶⁷

c. *Fiscal Accountability*

Fiscal accountability addresses the power of those who provide funds to cut these in case of abuse or unsatisfactory performance. It is often exercised with the help of external and internal auditors. It differs from supervisory accountability in that the fiscal accountant and the supervisor need not be identical. Still, in international organizations, fiscal accountability often goes hand in hand with supervisory accountability, if the organizations finance themselves more or less exclusively through their members' assessed contributions. However, both PISA and IEA assessments have a financing structure independent of membership in the OECD or IEA, since both are directly funded by the *participating* states and not through the general budget of the OECD or the IEA. This gives the participating states a particular power to hold the organizations accountable, independent from membership rights and the legal framework within which national coordinators (in the PGB or the IEA national coordinators' meetings) exercise accountability. Fiscal accountability can challenge the further existence of an entire project: With the IEA assessments, participating states are free not to continue an assessment – and do so if they are not convinced that it would be a valuable investment.⁶⁸ PISA is based on a one-time decision for all three cycles. States can however withdraw

⁶⁶ DEELSA/ED/CERI/CD(97)4, para. 93.

⁶⁷ In German constitutional law, this is called the “Drittwirkung” (third-party effect) of fundamental rights.

⁶⁸ For example, the IEA Language Education Study was discontinued after the first of three phases for lack of funds.

from PISA at certain defined points, although this might have negative financial consequences for them.⁶⁹ INES Network A, on the other hand, is funded by the US government on a voluntary basis and thus strongly accountable to it. In both organizations, financial accountability is facilitated by periodic audits. The OECD is audited every year according to IAS rules both internally by its Office of the General Auditor, and externally. The IEA foundation is audited every year by an external auditor.

d. Legal Accountability

Legal accountability is exercised by courts and quasi-judicial fora where actors are judged by their adherence to legal rules. Apart from the international and national contractors, who can be sued in case of breaches of their contracts, legal accountability is largely inexistent for PISA. There is no legal remedy against the decisions of any OECD body. The statute of the IEA is currently under review, but it can be expected that the new statute will provide for mechanisms of conflict resolution among members and between members and the association, as is regularly the case with Belgian associations.⁷⁰

e. Market Accountability

Market accountability is exercised by investors and consumers who buy products based on supplier performance. The OECD and the IEA themselves could be considered to operate within a market with their assessment activities, offering their services to governments. But this kind of accountability seems to fall largely in one with fiscal accountability. It would also be misleading to overestimate the capacity of such a small market to hold the suppliers accountable. Knowledge is a precious resource in education assessments, and the realization of such groundbreaking assessments as PISA or TIMSS requires the cooperation of experts in private and public institutions, rather than competition.⁷¹

f. Peer Accountability

Peer accountability addresses such cooperation. It is exercised by peer institutions, which engage in similar activities in what might be a common market, and which observe one another. The judgment by peer institutions affects the capacity of an institution to cooperate.⁷² The difference between peer accountability and market accountability is the group of accountability-holders: in case of the latter, it is the demand side which holds the supply side accountable. In case of peer accountability, actors on the supply side hold

⁶⁹ DEELSA/ED/CERI/CD(97)4, para. 112.

⁷⁰ Cf. C. Weisbrod, *Europäisches Vereinsrecht* (1994), 171. In spite of repeated efforts, the full version of the present statute of the IEA could not be obtained.

⁷¹ There is certainly a market for assessment related services, which has been created by national and transnational assessment activities. In this market, however, accountability is exercised *through* PISA and the IEA assessments, not the other way round.

⁷² Peer accountability does not require that players voluntarily undergo a targeted scrutiny by their peers. This is characteristic of peer *review* accountability, which could be considered a special form of peer accountability.

each other accountable through mutual observation.⁷³ The standard they apply is the state-of-the-art of the discipline concerned, and all sorts of criticism or the refusal of cooperation are available sanctions.

A precondition for peer accountability between transnational institutions seems to be the existence of overlaps of competence. The more diverse a governance network composed of highly professional actors carrying out similar activities is, the better it can provide some form of quality control, and thus, accountability.⁷⁴ In such a setting, the quality and extent of inter-institutional cooperation of a particular institution could be taken as an indicator for how much peers appreciate its work.

In the field of education assessment, there is a generally high level of peer cooperation. Most institutions have a certain participatory status with others. The EU has observer status with INES Network A and the PGB. The IEA has operational relations (a status below formal observer status) with UNESCO. Cooperation between the OECD and UNESCO is intensive. The INES Technical Group, an OECD committee responsible for providing statistical data used for “Education at a Glance”, comprises UNESCO observers. The World Indicators Project is a collaborative effort of the OECD and UNESCO funded by the World Bank, gathering data on non-OECD states for the OECD publication “Education at a Glance”. The project is steered by a joint secretariat.⁷⁵ One further remarkable example of cooperation constitutes the “UOE questionnaire”. On an annual basis, it requests national governments to provide statistical data on school education. The questionnaire was designed to meet the needs of UNESCO, the OECD and the European Union. Relations between the OECD and the IEA are not based on any formal relationship, but informal consultations take place, and there is an implicit understanding that both organizations do not collect the same data, using instead the data of the other for their purposes. Recently, things seem to move towards steadier cooperation. In October 2005, the IEA General Assembly received a representative of INES Network A and decided to approach the PGB in order to form a common task force.⁷⁶

Thus, it seems that practice has produced arrangements which achieve an adequate balance between competition and cooperation. Cooperation takes various legal forms, ranging from private-law based joint ventures to international treaties concluded between international organizations. It is probably too early to explore whether some overarching rules are beginning to crystallize, such as an obligation to grant observer status to each

⁷³ Peer review (cf. note *Errore: sorgente del riferimento non trovata*) could be seen as a specific form of peer accountability, although it also involves public reputational accountability.

⁷⁴ This is what Majone calls “reputation enforcement”, see note *Errore: sorgente del riferimento non trovata*.

⁷⁵ Cf. INES Network A, Plenary Meeting of 22-24 April 1998, Meeting Record, 2.

⁷⁶ Minutes of the 46th IEA General Assembly Meeting, 10-13 October 2005, 19.

other or to consult. This would be particularly important for making peer accountability effective, since it depends on a minimum of transparency. Also, a minimal duty to cooperate seems necessary to avoid a waste of public resources. In the long run, such rules might well emerge in the form of customary international law or private customary regimes.⁷⁷

g. Transparency

The last accountability mechanism identified by Grant and Keohane is public reputational accountability, the very mechanism by which governments are held accountable *through* education assessments. It might also have an impact *on* education assessments. This is probably best examined by looking into the public *transparency* of the instruments, an important precondition for most accountability mechanisms, and in particular for public reputational accountability.⁷⁸ But like accountability, “transparency” is not a uniform concept. The question is: transparency for whom? Transparency for hierarchical superiors or supervisors needs to be distinguished from transparency for peer institutions and, eventually, for the general public, which is necessary for the functioning of “public reputational accountability”.⁷⁹

PISA has been praised for its transparency towards national governments, which is largely due to the powerful PGB, composed of state representatives. The IEA allows for transparency through national coordinators’ meetings. Peer transparency is formally facilitated through observers (see above), and informally through persons filling several positions in different institutions at a time. In contrast to this, public transparency during the development of a study is generally low. Civil society and interest groups have no access to any of the bodies involved. However, this “secrecy” seems to be justified, since, for example, the drafting of the questionnaires is a matter requiring absolute confidentiality. *Ex post* transparency should therefore be considered sufficient. In this respect, it has become usual that institutions provide free of charge online access to the database of a survey, as well as to detailed reports, including on the technical aspects of the survey. But it should not be overseen that such revelations still occur on a voluntary basis. For example, states participating in PISA formally have the right to withhold their data from publication.⁸⁰

3. Institutionalized and Non-Institutionalized Accountability Mechanisms

⁷⁷ The principal example is the *lex mercatoria*.

⁷⁸ Grant and Keohane, see note Errore: sorgente del riferimento non trovata, at 39. Indeed, transparency is often highlighted as an important feature of accountability, cf. only M. Savino, *I comitati dell’Unione Europea* (2005), 467 et seq.

⁷⁹ Cf. note Errore: sorgente del riferimento non trovata.

⁸⁰ DEELSA/ED/CERI/CD(97)4, para. 116.

The preceding reveals a pattern of various, partly overlapping accountability mechanisms of different strength and with different accountability holders. All mechanisms have shown to be operative with respect to both public and private forms of organization, although the efficiency of each mechanism and the applicable rules vary against the legal nature of the organization. Thus, hierarchical and supervisory accountability are stronger with PISA than with the IEA. Because of the public law nature of the OECD, the accountability-holders are more representative than those of the IEA. Instead, fiscal, financial, market and peer accountability are effective with respect to IEA assessments.

Thus, there are many formal and informal ways in which power-wielders are controlled. While national governments seem to be quite powerful accountability holders of the OECD, they are not the only ones, for there are also financial, peer and market accountability. In this respect, peer accountability is of particular significance for governance by information. Indeed, this might function better with governance by information than with transnational regulation: Here, overlapping competencies of various transnational actors, a precondition for peer accountability, do not entail the risk of normative fragmentation,⁸¹ for governance by information does not imply the setting of substantive rules. The existence of a complex, polycentric multilevel governance system composed of competing actors answerable to different constituencies can thus enhance the accountability of all participants.⁸² Together with fiscal and market accountability, peer accountability provides strong incentives for those subject to it to improve their quality on a permanent basis. Further, public reputational accountability is facilitated through the means ensuring public transparency.

However, as has been pointed out above, only institutionalized, law-based accountability mechanisms, where accountability is exercised in the form of a right and a corresponding duty, can effectively contribute to the legitimacy of this exercise of power.⁸³ Only the hierarchical, supervisory and fiscal accountability mechanisms identified above satisfy these criteria, since there are clear rules giving the accountability-holders a right to be given account and to impose sanctions. Stewart considers electoral accountability as a further “hard” (=institutionalized) accountability mechanism,⁸⁴ which is also operative within education assessments: the officials of the OECD bodies, in particular the president and vice presidents of the PGB, as well as the members of the IEA standing

⁸¹ For an overview see the results of the symposium ‘Diversity or Cacophony?: New sources of Norms in International Law’, 25 *Michigan Journal of Int’l. L.* (2004) 845-1375.

⁸² Cf. S. Cassese, ‘Lo spazio giuridico globale’, 52 *Rivista trimestrale di diritto pubblico* (2002) 323-39, at 332 et seq.; N. Krisch, ‘The Pluralism of Global Administrative Law’, 17 *European J. Int’l Law* (2006) 247-78.

⁸³ See note Errore: sorgente del riferimento non trovata and accompanying text.

⁸⁴ See note Errore: sorgente del riferimento non trovata, at 11. – Electoral accountability is a good example for a control mechanism which works both *ex ante* and *ex post*.

committee are elected on a regular basis. Legal accountability, Stewart's fifth accountability mechanism,⁸⁵ only plays a marginal role.

By contrast, peer, market and public reputational accountability are very much dependent on external factors which are difficult to influence and to rely on. First, there is no guarantee that there will always be sufficiently strong peers, competitors or public "watchdogs", and that their critique will induce stakeholders to review their policies. Second, the legitimacy of the standards they apply is questionable. There might be nascent standards for transparency or the granting of observer status, but so far they have not crystallized into legal rules – let alone the question of the sources of such standards. Therefore, the informal ways in which peers, the market and the public observe and influence PISA or the IEA studies are, under any normative theory of legitimate government, unlikely to enhance their accountability in a way which fosters their legitimacy.

IV. Towards a Normative Concept of Accountability

This account of the accountability of two selected instruments of "governance by information" has shown that both with the OECD and the IEA, the actors within multilevel education assessments are subject to various kinds of external control. Only some of them are institutionalized. Still, this analysis leaves some important questions open. First, the analysis cannot indicate whether the existing accountability mechanisms provide for a *sufficient level of accountability*: There is no legal requirement in international law that certain governance instruments need to be subject to a certain level of (institutionalized) accountability, and developing such a standard in political theory would be a highly contingent undertaking. To make things more difficult, the necessary level of (institutionalized) accountability would have to be determined in consideration of other legitimizing mechanisms, such as the *ex ante* delegation of powers, participation in decision-making, or efficiency.⁸⁶ Nevertheless, some plausible preliminary normative assumptions can be made here. It could be argued that the accountability of a governance instrument should be somehow commensurate to the power exercised by it. In this respect, the fact that governance by information does not involve the making of binding rules could be considered a mitigating factor. It could perhaps compensate for the lack of legal accountability mechanisms. Further, a higher level of supervisory and hierarchical accountability with PISA could counterweight the fact that PISA reports tend to contain more policy-relevant conclusions. And the benefits for democratic decision-making of

⁸⁵ *Ibid.*

⁸⁶ On efficiency as a factor enhancing legitimacy cf. F.W. Scharpf, *Regieren in Europa* (1999), 20-31.

locating the generation of expertise on a transnational level (*infra* II.1) also need to be taken into account.

Second, besides the question of the right mix of accountability mechanisms, the question of the “*right*” *accountability holder(s)* remains an open one: Again, there is no legal or other accepted normative standard as to who should be this. The participating states exercise considerable supervisory and fiscal accountability over both PISA and the IEA assessments. However, it should not be forgotten that sub-state entities, which in many participating states are competent for educational policy,⁸⁷ lose some of their power and independence because every participating state is represented with only one voice in the steering bodies of PISA and the IEA assessments. And by transferring powers to the transnational level, the forum of decision-making is further removed from the affected citizens.

Since governance by information has benefits for both national governments and transnational institutions (*infra* II.1), it is likely to continue playing an important role in transnational governance. An interdisciplinary effort is therefore needed for exploring the normative questions pointed out in this last section. Describing and categorizing the institutional and procedural law of new governance instruments and developing standards by inductive research would be a preliminary step and an important contribution of legal scholarship to the “taming” of global governance. Eventually, the normative insecurity pervading this paper might become less inevitable.

⁸⁷ See note Errore: sorgente del riferimento non trovata.