



Project no. CIT1-CT-2004-506392

NEWGOV **New Modes of Governance**

Integrated Project
Priority 7 – Citizens and Governance in the Knowledge-based Society

Conceptualizing New Modes of Governance in EU Enlargement Reference number: 12/D1

Due date of deliverable: January 31, 2005
Actual submission date: February 7, 2005

Start date of project: 1 September 2004

Duration: 48 months

Organisation name of lead contractor for this deliverable:
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Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)		
Dissemination Level		
PU	Public	X
PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	
CO	Confidential, only for members of the consortium (including the Commission Services)	

Abstract

This paper seeks to conceptualize the role of new modes of governance in the accession of Central and Eastern European countries to the EU. More specifically, it will tackle the question to what extent new modes of governance can facilitate the adoption of and adaptation to EU Law as major a prerequisite for membership. The paper proceeds in four steps. The first part develops a governance typology that shall help to identify different modes of governance in the accession process. In the second part, criteria are defined to study the effectiveness of governance modes in facilitating the adoption of and adaptation to the *acquis communautaire*. The third part reviews the research on enlargement for insights on conditions for the effective implementation of EU policies in accession countries. The literature has found little evidence on the role of new modes of governance in the accession process. This raises an interesting puzzle. Since the EU cannot resort to hierarchical steering yet, and the accession countries themselves have only limited capacities for hierarchical steering in the adoption of and adaptation to the *acquis communautaire*, new modes of governance should have been likely to emerge. The paper concludes with some considerations on how the puzzle could be solved.

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1. Introduction

Accession appears to be both a blessing and a curse to transition countries in Central and Eastern Europe. On the one hand, the implementation of the *acquis* supports their transformation from authoritarian regimes with centralized planning economies into liberal democracies with market economies. On the other hand, the accession countries face great difficulties in restructuring their economic and political institutions in order to meet the conditions for EU membership. The adoption of and adaptation to the *acquis* run into serious problems concerning both the effectiveness and the legitimacy of EU policies. These problems cannot simply be solved in the “shadow of hierarchy” (command and control) since these countries are “weak” states that often lack the capacity (resources) rather than the willingness to effectively implement EU policies. Therefore, alternative modes of governance that are based on non-hierarchical steering and systematically involve private actors in policy-making might be more appropriate to ensure the effective adaptation of and adoption to the *acquis*.

But how important have non-hierarchical modes of governance really been in the accession process? Have voluntary agreements, financial assistance, benchmarking, naming and shaming, technology-transfers, information exchange, and processes of (public) persuasion result in more effective implementation than command and control regulations? Which role have public-private partnerships played between public authorities, on the one hand, and policy consultancies, companies and NGOs, on the other hand? Have there been attempts of economic and (transnational) societal actors to compensate weak state capacities by establishing private regimes, and have they been effective?

This paper seeks to conceptualize the role of new modes of governance in the accession of Central and Eastern European countries to the EU. More specifically, it will tackle the question to what extent new modes of governance can facilitate the adoption of and adaptation to EU Law as major a prerequisite for membership. This is the first step in a larger research project that compares the Southern enlargement of the EC with the Eastern enlargement of the EU focusing on the relevance of the non-hierarchical involvement of private actor in policy-making for the effective implementation of the *acquis communautaire*.

The paper proceeds in four steps. The first part develops a governance typology that shall help to identify different modes of governance in the accession process. In the second part, criteria are defined to study the effectiveness of governance modes in facilitating the adoption of and adaptation to the *acquis communautaire*. The third part reviews the research on enlargement for insights on conditions for the effective implementation of EU policies in accession countries. The literature has found little evidence on the role of new modes of governance in the accession process. This raises an interesting puzzle. Since the EU cannot resort to hierarchical steering yet, and the accession countries themselves have only limited capacities for hierarchical steering in the adoption of and adaptation to the *acquis communautaire*, new modes of governance should have been likely to emerge. The paper concludes with some considerations on how the puzzle could be solved.

2. New Modes of Governance – E Pluribus Unum?

There is a Babylonian variety of definitions and understandings of what new modes of governance are and what makes them really new as compared to traditional modes. Part of the confusion is related to the existence of a broad and a narrow understanding of governance, the latter of which is identical with what is usually understood as “new” modes of governance. This is not the place to rehearse the entire debate (for an overview see Börzel 1998). Suffice to say that the broad definition of governance draws on transaction economics and refers to

structures of social order. Next to markets and hierarchies (Williamson 1979; Lindblom 1977), communities/clans (Ouchi 1980), associations (Streeck and Schmitter 1985a, and networks (Powell 1990) have been identified as a third form of social order. While hierarchies coordinate social action by using command and control mechanisms, markets are spontaneous orders that emerge from the self-coordination of autonomous actors. Networks, associations, communities and clans function by non-hierarchical coordination based on the exchange of resources and/or trust. Political scientists have adopted this typology in studying political structures and processes. Here, governance refers to the setting and implementation of collectively binding norms and rules for the provision of public goods and services. While public actors have the power to impose such norms and rules hierarchically, private actors engage in voluntary self-regulation. In networks, finally, public and private actors cooperate on a non-hierarchical basis in the making of public policies.

The narrow governance definition, by contrast, limits itself to non-hierarchical coordination between public and private actors, on the one hand, and among private actors only, on the other. Governance involves the “[f]ormulation and implementation of collectively binding decisions through the participation of state and non-state actors in public/private networks (Mayntz 2002: 21). These forms of “governance without government” (Rosenau and Czemi-
piel 1992) have become referred to as “cooperative” (Mayntz 1998), “modern” (Kooiman 1993), “interactive” (Kohler-Koch 1997) or simply “new” (Héritier 2002b). New modes of governance are characterized by the direct involvement of private actors in the provision of collective goods and services. While some (Héritier 2002b; NEWGOV scientific statement) limit the role of private actors to policy formulation, others also include implementation (Linder and Rosenau Vaillancourt 2000; Kooiman 1993; Rhodes 1997; Börzel and Risse 2005). Finally, most definitions emphasize the process of non-hierarchical coordination as the main feature of new modes of governance. The literature on European governance, however, tends to focus on outcomes that are not based on legislation (Héritier 2002b; NEWGOV scientific statement; Eberlein and Kerwer 2004).

There is no authoritative definition of New Modes of Governance. But to organize the Babylonian variety of understandings and concepts, it may be helpful to distinguish between *governance as structure* and *governance as process*.

Governance as Structure

Governance structures emerge from the actors involved and their relationships. Markets are structures of spontaneous order, in which (private) actors stand on equal footing and autonomously coordinate their actions (no structural coupling). States/bureaucracies, by contrast, are characterized by relationships of domination and subordination between (public) actors which substantially constrain actors’ autonomy of action (tight coupling). Unlike markets, states/bureaucracies are able to act intentionally by hierarchically coordinating the actions of (private) actors based on the possibility to use force. In networks, finally, public and private actors enjoy equal status. There are three types of networks: (1) inter-/transgovernmental networks involving public actors only, which may be located at different levels of government (international, European, federal, regional, local), (2) societal networks of private actors only, coming from the private sector (firms) and/or civil society (non-governmental organizations), and (3) public-private networks, in which both public and private actors cooperate on equal basis. As already mentioned, a narrow understanding of governance limits itself to public-private networks.

In (public-private) networks, public actors have the power to impose decisions on private actors. Yet, they refrain from hierarchical coordination and resort to the non-hierarchical exchange of resources instead. Private actors offer public actors information, expertise, financial

means, or political support, which the latter need to make and enforce collectively binding norms and rules. In exchange, private actors receive substantive policy influence since public actors do not adopt policies against the interest of the private actors involved.

Governance as Process

There are two types of governance processes: hierarchical and non-hierarchical coordination or steering. Hierarchical coordination involves authoritative decisions, which can be imposed on actors against their will. Those decisions can be unilateral, e.g. by administrative order or judicial ruling, but they also include majority voting, since the minority has to bend to the will of the majority (Scharpf 1992). According to the two theories of social action, two forms of non-hierarchical coordination can be distinguished. Rationalist theories point to positive (side payments) and negative (sanctions) incentives or negotiated compromise on the basis of fixed preferences (*bargaining*). Sociological approaches, by contrast, emphasize non-manipulative processes of learning and persuasion, in which actors are socialized into new norms and rules and change their preferences accordingly (Checkel 2001; Börzel and Risse 2005).

Of course, governance structures and processes are causally linked. While states can steer hierarchically and non-hierarchically, networks, by definition, are based on non-hierarchical coordination. Markets, by contrast, are not able to steer or govern at all since they are unable to act intentionally. Therefore, market are not a mode of governance but can only serve as steering instruments if market principles (e.g. price mechanisms) are invoked to influence actors' behaviour (Mayntz 1997: 190f.).

It is difficult to develop a common understanding of new modes of governance. But we should at least be explicit and clear about what we mean and how we want to study it. Moreover, we should try to avoid methodological fallacies, such as concept stretching and tautology. If the definition of new modes of governance is too broad, e.g. by including any forms that involve private actors, we will not be able to discriminate against alternative modes. If, however, the definition is too narrow, e.g. by limiting it to the involvement of private actors in policy formulation, we may exclude forms of governance that may still differ from traditional modes of governance, such as the cooperation between multinational corporate actors and transnational civil society (in the implementation of EU policies).

Figure 1: Governance as Structure and Process

<i>Actors involved</i> Steering Modes	<i>Public Actors only</i>	<i>Public and Private Actors</i>	<i>Private Actors only</i>
<i>Hierarchical</i> Coercion hierarchical imposition majority decisions	- traditional state - independent regulatory agencies - supranational institutions (EU, partly WTO)		
Non-Hierarchical: Positive and negative incentives (bargaining) non-manipulative persuasion (learning, arguing etc.)	Inter-/transgovernmental cooperation - international regimes - international organizations - inter-/ transgovernmental bargaining systems (inter- and intrastate)	Cooperation between public and private actors - tripartite bargaining systems - public-private networks (informal) and partnerships (formal)	Private self-regulation - private interest government / private regimes - private-private partnerships (NGOs-companies)
		Publicly regulated/delegated self-regulation - collective bargaining of social partners - professional associations - technical standard-setting	

Shaded area: narrow definition of governance = new modes of governance

Towards an Operational Definition of New Modes of Governance

For the purpose of studying the role of new modes of governance in EU enlargement, we adopt the following definition. New modes of governance refer to the making and implementation of collectively binding decisions (based or not based on legislation) that:

1. are not hierarchically imposed, i.e. each actor involved has a formal or de facto veto in policy-making and voluntarily complies with the decisions made, **and**
2. systematically involve private actors, for profit (e.g. firms) and not for profit (e.g. non-governmental organizations) in policy formulation and/or implementation.

Non-hierarchical coordination is constitutive for new modes of governance. It is “governance without government” (Rosenau and Czempiel 1992), which refers less to the non-involvement of governmental actors but to a mode of political steering that does not authoritatively impose policies but is based on voluntary cooperation.

We can distinguish between two forms of non-hierarchical steering or modes to *voluntarily* engage actors in a particular behaviour that is deemed necessary to address a policy problem:

- the setting of positive and negative incentives, e.g. through side-payments, issue-linkage or sanctions, which changes the cost-benefit calculations of actors in favour of the desired behaviour, without affecting their preferences over outcomes;
- non-manipulative persuasion and social learning through which actors are convinced to change their preferences over outcomes in a way that concurs to the desired behaviour.

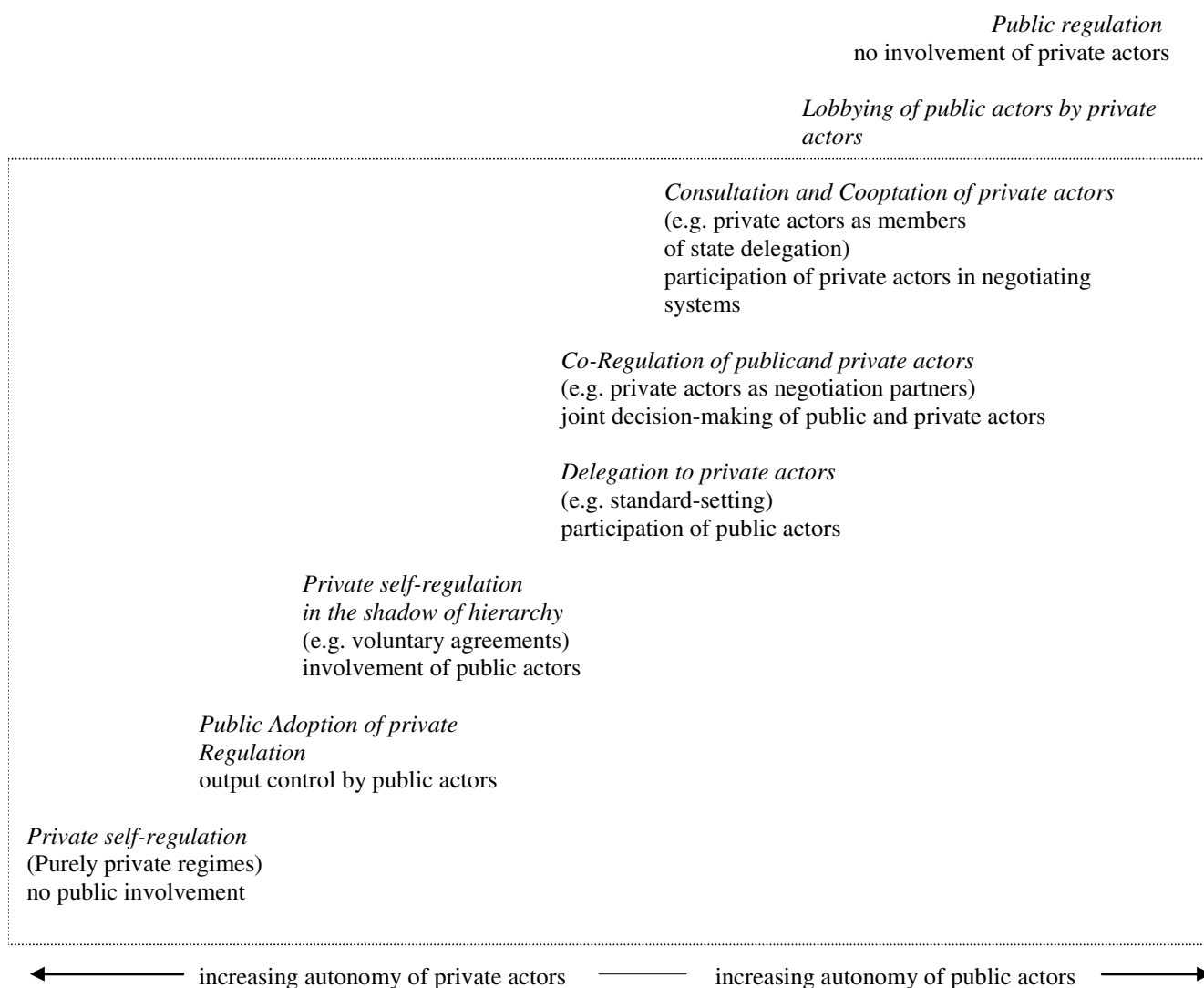
In domestic politics, the state monopoly of force casts at least a shadow of hierarchy. International politics, by contrast, evolves under anarchy, i.e. in the absence of a central enforcement power and, hence, has to exclusively rely on non-hierarchical steering.

While cooperation and coordination among public actors is non-hierarchical, it falls in the classical realm of international relations. As long as governments have been existing, they

have been cooperating (see e.g. the Sea League of Attica 477 B.C). It is not surprising, therefore, that the concept of new modes of governance emerged in domestic rather than international politics. What has been considered new about non-hierarchical steering concerns the relationship between public and private actors, which by default is hierarchical since the state monopoly of force – within certain limits, of course – empowers public actors to impose policies upon private actors. Yet, in the 1970s it became increasingly evident that states were no longer able to effectively provide collective goods and services and had to rely on private actors for resources, such as information, expertise, money, political support to address societal problems. In exchange for these resources, private actors receive substantial influence on policy formulation and implementation. By giving private actors a strong say in policy-making, public policies are more adequately designed to address problems on the grounds and are more effectively implemented since those who have to comply with the policies can bring in both their expertise and their interests (Mayntz 1997: 193-198).

Understanding new modes of governance as the involvement of private actors in public policy-making through non-hierarchical coordination covers a wide range of potential arrangements. In order to avoid concept stretching, however, certain forms remain outside this definition (figure 2). We exclude the lobbying and mere advocacy activities of non-state actors aimed at governments as well as supranational and international organizations. Private actors who are not active participants in governance arrangements or negotiating systems pose few challenges to existing concepts and theories in political science and international relations. Also excluded are those arrangements among private actors that

- are based on self-coordination and do not aim at the provision of common goods and services (markets);
- produce public goods and services as unintended consequences (e.g., rating agencies) or provide public “bads” (mafia, drug cartels, transnational terrorism).

Figure 2: New Modes of Governance – the Non-hierarchical Involvement of Private Actors***New Modes of Governance in Europe: Not New But Different***

The non-hierarchical involvement of private actors in public policy-making is not new but a well known phenomenon of domestic politics that has been thoroughly studied by the research on corporatism (Lehmbruch 1996; Streeck and Schmitter 1985b), policy networks (Rhodes 1997; Börzel 1998), or the “negotiating state/administration” (Czada and Schmidt 1993; Voigt 1995; Dose 1993). Yet, while new modes of governance in Europe may not be necessarily new in *strictu sensu*, they are still different from both international and domestic politics.

Unlike an international organization, the EU has the capacity for hierarchical steering. It can adopt policies against the will of individual member states, e.g. when the Council decides by qualified majority voting. Unlike a state, however, the EU has no power to enforce its policies but ultimately has to rely on the voluntary compliance of the member states. This is even truer for the relationship between the EU and the accession countries. As long as the latter are not members, their relations with the EU fall in the realm of international diplomacy. The EU’s supranational institutions do not even cast a shadow of hierarchy, yet, since the supremacy of

EU law and its direct effect which empower domestic courts to enforce EU Law without the consent of national governments only take effect after accession. At the same time, the capacity of the accession countries for hierarchical steering is limited, too. Not only are their resources limited, they also face the tremendous task of implementing more than 10.000 legal acts. New modes of governance could compensate for the weak hierarchical steering capacity of both the EU and the accession countries in the *implementation* of EU policies since private actors can provide the governments of the accession countries with important resources (information, expertise, support) that are necessary to make EU policies work.

3. Coping with Accession: Tracing the Role of New Modes of Governance

Before they can join the European Union, the accession countries have to fulfil certain conditions, which the European Council of Copenhagen specified for the first time in 1993 and which include:

1. the capacity not only to subscribe to the principles of democracy and the rule of law, but to put them into practice in daily life, the effective respect of human rights, the protection of minorities and the respect of their rights (political criteria);
2. the existence of a functioning market economy, the capacity to withstand competitive pressure and market forces within the Union (economic criteria);
3. the acceptance of the TEU prescriptions, the adoption of the *acquis* and the administrative and judicial capacity to apply it (other obligations).

In order to limit the scope of the project, we focus on the third set of Copenhagen criteria, the so called *acquis* conditionality (Schimmelfennig and Sedelmeier 2002). We seek to explore the role of new modes of governance in facilitating:

- the transposition of the more than 10.000 pieces of EU legislation in force into national legislation, including the adaptation of existing national law to EU law;
- the building-up of the administrative and judicial institutions (norms, rules, procedures) to practically apply and enforce the *acquis*.

Due to the enormous policy load, which the implementation of the *acquis* places on the accession countries, on the one hand, and their limited state capacities, on the other, it appears to be likely that public actors seek the cooperation with private actors to share or shift the burden.

In the legal implementation of the *acquis*, we hardly expect to find co-regulation, delegation, and private self-regulation. The systematic consultation and cooptation of private actors in the policy formulation process is more conceivable. But the strongest impact of new modes of governance can be expected in the building-up of institutional structures to practically apply and enforce EU policies on the grounds. Given the limited regulatory capacities of the accession countries, co-regulation, delegation, and private self-regulation could provide ways to reduce the burden by sharing it with private actors. To what extent have the accession countries resorted to voluntary agreements, the “contracting out” of public services, technical standardization, social dialogue, regulatory fora, and public-private partnerships in building-up the administrative and judicial capacity to effectively apply the *acquis communautaire* and to adapt existing structures to EU requirements?

In order to measure the effectiveness of the adoption of and adaptation to the *acquis*, we refer to the regular reports of the European Commission. The Accession Partnerships, which the EU concluded with each of the accession countries in 1997, specified the short (3 to 6 months) and long term (1 to 2 years) institutional changes that the candidate states must

achieve in order to fulfil the Copenhagen criteria. At the end of each year, the Commission assessed the progress of these reforms and published the results in an annual report presented to the Council together with recommendations for improvement. Further information on the effective implementation of the *acquis* can be obtained from the Association Councils, which brought together the governments of the EU member states and the accession countries (see below), and the Parliamentary Association Committees formed by members of the European Parliament and the national parliaments of the accession countries (cf. Dimitrova 2002). These data will allow us to compare the extent to which the accession countries met the accession requirements throughout the accession process. Once we have mapped our dependent variable, we will be able to trace back the observed variation to the potential role of new modes of governance, naturally controlling for alternative explanations such as the level of socio-economic development (Ethier 2003), the implementation costs (Schimmelfennig, Engert, and Knobel 2003) or the reform orientation of the ruling elites (Vachudova 2001).

4. New Modes of Governance in Accession: Much Ado About Nothing?

Sticks and Carrots: Accession Conditionality

There is a growing literature on the process of “enlargement governance” (Dimitrova 2002). In studying the ways in which the EU has sought to steer the accession of the 10 candidate countries that joined in May 2004, most works have focused on “conditionality” (Schimmelfennig, Engert, and Knobel 2003; Schimmelfennig, Engert, and Knobel 2005, Grabbe 2001, Dimitrova 2002, Checkel 2000; Ethier 2003; Pridham 2002). In the absence of hierarchy, conditionality is seen as the main strategy of the EU to encourage the candidate countries to comply with its requirements. The EU used conditionality as a means of “reinforcement by reward”, i.e. the EU withheld the reward if the accession country failed to comply with its conditions, but did not intervene either coercively or supportively to change the cost-benefit assessment of the target government by inflicting extra costs (“reinforcement by punishment”) or offering unconditional assistance (“reinforcement by support”).

Conditionality certainly is a mode of non-hierarchical coordination.¹ It seeks to steer actors’ behaviour through the provision of positive and negative incentives. However, conditionality is applied by the EU or international organizations to bring national governments into compliance with their policies (Checkel 2000). It does not involve private actors and, therefore, does not qualify as new modes of governance in the way it has been defined by this paper.

Research on the Europeanization of the Central and Eastern European (CEE) countries suggests that conditionality is not the only way by which the EU has sought to transfer its *acquis communautaire*. Grabbe (2003), for instance, sees five “mechanisms of Europeanization” at work, namely models (provision of legislative and institutional templates), money (aid and technical assistance), benchmarking and monitoring, advice and twinning, and gate keeping (access to negotiations and further stages in the accession process). Likewise, Schimmelfen-

¹ Given the strong asymmetry between the EU and the accession countries, some have argued that conditionality amounts to de facto hierarchy since the candidate states find themselves in a “take it or leave it position” (Dimitrova, A. 2002. Enlargement, institution-building and the EU's administrative capacity requirement. *West European Politics* 25 (4): 171-190.; Ellison 2004; Grabbe, Heather. 2003. Europeanisation goes east: power and uncertainty in the EU accession process. In *The Politics of Europeanization*, edited by K. Featherstone and C. M. Radaelli. Oxford: Oxford University Press, 303-327.). Nevertheless, this is precisely why conditionality is not hierarchical – the accession countries have a choice – they do not have to accept the conditions of the EU. Although the costs of forgoing EU membership may be high, they are by no means prohibitive.

nig and Sedelmeier (2005) contrast their incentive model of conditionality with two alternative models based on social learning and lesson drawing. Indeed, next to conditionality, the Europe-Agreements provided for alternative modes of non-hierarchical steering: persuasion and learning through political dialogue and capacity-building through financial and technical assistance.

Persuasion and Learning: The Political Dialogue

The so called political dialogues were to foster processes of persuasion and learning in the accession states. Regular bilateral meetings at the highest political level between the EU and the individual candidate countries allowed for consultations and the exchange of views on all topics of common interest related to the enlargement process. The political dialogues have been crucial to clarify the conditions for (opening negotiations for) membership. The Copenhagen European Council had left it to the Commission to elaborate on the content of accession requirements. It took the Commission several years to come up with a detailed “check list”, which it presented as the *justification* why some candidates qualified or did not qualify for the opening of membership negotiations (cf. Smith 2003).

While these bilateral and multilateral fora dealt with general political issues, the so called Association Councils supervised the implementation of the Europe-Agreements in more detail. Here, the Commission and national governments could discuss problems and settle disputes related to the adoption of and adaptation to the *acquis*. Moreover, the annual progress reports of the Commission introduced a system of benchmarking between the accession countries. Progress in the run up for membership has above all been measured by the number of “closed chapters”, i.e. sectors in which a candidate had fully adopted the legislation in force. Standards accepted in the country that closed a chapter first implicitly became the reference point for the other candidates. Moreover, the Commission and the European Parliament would officially reprimand accession countries for cases of serious non-compliance with these principles. The publication of progress reports created “an atmosphere of permanent follow-up and contributes considerably to the enhancement in the candidate countries of an awareness that the necessary measures must be taken (...) to move forward in the accession negotiations” (Maresceau 2003: 32-34).

It is still an open question to what extent benchmarking and naming and shaming by the Commission induced processes of learning and the diffusion of best practice. But once the first round of accession had been scheduled for 2004, this provided a powerful incentive for all candidates to reinforce their efforts of political and economic reforms. The EU did not suspend membership entirely, but it could significantly delay accession. For instance, in 1997, the Commission recommended to open membership negotiations with only five (Czech Republic, Estonia, Hungary, Poland, and Slovenia, plus Cyprus) of the ten CEE applicants. While Bulgaria, Romania, Latvia, and Lithuania had failed the admissibility test on economic grounds and/or lacking administrative capacity, Slovakia was the only candidate which did not meet the political conditions. Thus, political dialogue has always taken place “in the shadow of accession” (accession conditionality).² Moreover, private actors did not figure prominently at all.

² The EU used membership conditionality to influence the domestic and foreign policies of the applicant countries beyond the Copenhagen criteria, e.g. by expressing preferences for particular reforms or even the formation of specific coalition governments (cf. Smith 2003).

Capacity-Building: Financial and Technical Assistance

In order to help accession countries comply with the Copenhagen criteria, the EU installed capacity-building mechanisms that could work as positive incentives. The PHARE programme (Poland and Hungary Aid for Economic Reconstruction)³ has provided 1,5 billion Euro per year of financial assistance to prepare the candidates for institution-building, adopting the *acquis*, and implementing Structural Funds after accession (cf. Bailey and Proprius 2004). The focus of PHARE has been on capacity-building in the public sector rather than on supporting political reforms. Its main instruments, TAIEX (Technical Assistance Information Exchange Office) and Twinning,⁴ were designed to facilitate the transfer of knowledge from member states to accession countries and to assist the candidates to build up the institutional capacities for implementing the *acquis*. ISPA (Instrument for Structural Policies for Pre-Accession) was established in 1999 to help finance environmental and transport infrastructure projects in CEE accession countries. Likewise, SAPARD (Special Accession Programme for Agricultural and Rural Development) assists them in dealing with the structural adjustments in their agricultural sectors and rural areas as well as in preparing for the system of the Common Agricultural Policy.⁵

The Accession Partnerships, concluded in 1998 with all 10 CEE candidate countries including those of the second round, were to further assist the applicants in meeting the requirements for membership. Seeking to improve the efficiency and effectiveness of programming under PHARE, the Accession Partnerships set out for each country pre-accession priorities as identified by the Commission. For their part, the candidates had to draw up a multi-annual National Programme for the Adoption of the Acquis (NPAA), outlining the timetable, the laws, regulations, and institutional changes necessary as well as the resources required to meet the pre-accession priorities. The Association Council and Committees monitored the implementation. The NPAA were also subject to the annual review by the Commission, which published the candidate's progress in regular reports (see above). PHARE provided the funds for the implementation of pre-accession priorities, focussing on institution- and capacity-building and investment support for infrastructure rebuilding.

Since EU capacity-building was focused on the public sector, private actors got hardly involved. Moreover, technical and financial assistance were closely related to accession conditionality. Following a decision of the Luxembourg European Council 1997, PHARE linked financial assistance to the candidate's progress in implementing the *acquis*. Given its more technical orientation, however, conditionality seems to have relied more on the shadow of accession than on financial incentives. The Commission made clear that the five CEE "pre-ins" could still join the "ins" of the first round if they made adequate progress in meeting the objectives of the Accession Partnership. The carrot worked for Latvia, Lithuania, and Slovakia motivating them to improve their performance. While the Commission opened membership negotiations with all five CEE "pre-ins" in 1999, it decided in 2001 that Rumania and Bulgaria would not be part of the first round of enlargement in 2004. Accession Partnership Regulation 622/98 established a conditionality clause that allows to withhold pre-accession assistance in case of insufficient progress towards meeting the Copenhagen criteria and/or the commitments contained in the Europe Agreements.

³ Initially meant to help Poland and Hungary make the transition to market economy, PHARE was quickly extended to other transition countries preparing them for EU membership.

⁴ Twinning matches civil servants of candidate countries and member states to work together on a specific project (e.g. the implementation of a particular directive).

⁵ The idea was that PHARE would become the precursor to the Structural Funds, ISPA for the Cohesion Fund, and SAPARD the guidance section for the CAP.

In sum, the accession process was clearly dominated by conditionality. There is hardly any evidence for the relevance of modes of governance that are based on persuasion and learning. What is more, private actors do not seem to figure prominently at all. Not surprisingly, therefore, most authors conclude that the specific form of European governance in the candidate states has been characterized by features of “old governance”:

*EU Governance in Central and Eastern Europe is dominated by bu-
reaucratic actors, intergovernmental or inter-bureaucratic relations,
and a top-down process of rule transfer (...)*

Schimmelfennig and Sedelmeier 2005: 21-22

5. Conclusions

The paper sought to tackle the question whether new modes of governance have played a role in facilitating the adoption of and adaptation to the *acquis communautaire* in accession countries. Yet, if we exclude conditionality from our definition, since albeit non-hierarchical it does not involve private actors, the literature on enlargement presents hardly any evidence on new modes of governance in the first place. So rather than specifying scope conditions under which the non-hierarchical involvement of private actors has helped to make EU policies work, we might have to find out why new modes of governance have been found to be of so little relevance in the first place – despite the weak capacities of the accession countries.

Seek and Ye Shall Find

For once, the literature may have simply overlooked new modes of governance so far. Most of the studies focus on the legal implementation of the *acquis communautaire* where public actors and conditionality are found to dominate. The administrative and judicial capacity to practically apply and enforce the *acquis*, has received far less attention. But it is at this stage where we would expect the non-hierarchical involvement of private actors in policy-making to be most likely. Hence, the news about the irrelevance of new modes of governance in the accession process may be premature. To make a final judgement, we need more empirical research that systematically studies the ways in which the accession countries have sought to build-up the institutions that shall make EU policies work on the grounds.

Bringing Hierarchy Back In

New modes of governance have been conceived as a functional equivalent to the traditional modes of the interventionist state. Yet, there are both theoretical reasons and empirical evidence indicating that new modes of governance need at least the shadow of hierarchy to be effective (Streeck and Schmitter 1985a: 25; Mayntz 1995: 163; Scharpf 1993; Héritier 2002a; Héritier 2003). The threat of public actors to hierarchically impose policies provides a major incentive for private actors to engage themselves and their resources in voluntary cooperation with public actors or among themselves to produce collective goods and services. If this is the case, it may result in a major dilemma or even paradox for European governance: the lower the capacity for hierarchical steering, the greater the need for new modes of governance but the less effective they are likely to be. This holds even more for the accession process where the EU cannot resort to hierarchy yet, but the accession countries themselves have only limited capacities for hierarchical steering in the adoption of and adaptation to the *acquis communautaire*. The absence or weakness of the shadow of hierarchy may at least partly explain why the literature has found little evidence on the use of new modes of governance in the accession process

Before we engage in any further theorizing about the role of new modes of governance in the accession process, we require more empirical knowledge on the ways in which the accession process has been governed, particularly within the accession countries. Given the little evidence we have so far, we should focus on “most likely cases”, i.e. on policy areas in which the hierarchical steering capacity of public actors is limited as a result of which they should have a strong incentive to involve private actors in policy-making, e.g. the environment.

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