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Abstract

The aim of this paper is to summarize the main findings of our empirical case studies and discuss them in light of our theoretical expectations. Most importantly, the paper seeks to find an explanation for the scarce emergence of new modes of governance in the accession process drawing on insights from the theoretical literature and the empirical cases of our study. The first part briefly outlines the theoretical and analytical framework on which the research project has been based. The second part explains the selection of our six countries and four environmental directives and summarizes the empirical findings of the 24 case studies. The paper concludes with some considerations on why our theoretical expectations have not been fully met and discusses the implication for future research on new modes of governance in European enlargement.

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I. Introduction

Accession appears to be both a blessing and a curse to transition countries aspiring to become members of the European Union. On the one hand, the implementation of the *acquis* supports their transformation from authoritarian regimes with state controlled 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. Since these countries are “weak” states that often lack the absorption capacity (resources) rather than the willingness to effectively implement EU policies, accession problems cannot simply be solved in the “shadow of hierarchy” (command and control). Alternative modes of governance based on non-hierarchical steering that systematically involve private actors in policy-making could be more effective in helping to ensure the adaptation of and adoption to the *acquis*.

Our research project¹ “Coping with Accession: New Modes of Governance and European Enlargement” compares the accession of the three Southern European countries, Greece, Spain and Portugal, to the European Community (EC) in the 1980s with the accession of Poland, Hungary and Romania to the European Union (EU) in this decade. Given our focus on new modes of governance, we seek to explore the relevance of the non-hierarchical involvement of private actor in policy-making for the effective implementation of the *acquis communautaire*. 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 resulted 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?

In the first step of our project, we developed a framework to conceptualize the role of new modes of governance in the accession of Southern, Central and Eastern European countries. More specifically, we sought to tackle the question to what extent new modes of governance can facilitate the implementation EU Law. We developed a governance typology to identify different modes of governance in the accession process and defined criteria to study the effectiveness of governance modes in facilitating the adoption of and adaptation to the *acquis communautaire*.

In the second step, we applied this framework to the adoption of and adaptation to EU environmental policies in the accession process of Greece, Spain, and Portugal – which became members in the 1980s –, and Hungary, Poland as well as Romania, of which the first two joined in 2004 and the latter will join the EU in the years to come. Our case studies on the legal harmonization and implementation of four EU Environmental directives only partially support our initial assumptions. While we found evidence of some new modes of governance

¹ The Research Project “Coping with Accession: New Modes of Governance and Enlargement” (COPA) is co-funded by the European Commission within the Sixth Framework Programme, Priority 7 – Citizens and Governance in the Knowledge-based Society, Project no. CITI-CT-2004-506392, for further information see <http://www.eu-newgov.org/>. The case studies on Poland, Hungary and Romania are coordinated by Tanja A. Börzel at the Freie Universität Berlin, while a team led by Nuria Font Borrás at the Universitat Autònoma de Barcelona is responsible for Spain and Portugal. The Greece case study is conducted by Charalampos Koutalakis at the University of Athens.

in all six countries, these remain unstable and cannot necessarily be regarded as typical. The traditional command and control approach still prevails both in the South and the East of the European Union.

The aim of this paper is to summarize the main findings of our empirical case studies and discuss them in light of our theoretical expectations. Most importantly, the paper seeks to find an explanation for the scarce emergence of new modes of governance in the accession process drawing on insights from the theoretical literature and the empirical cases of our study. The first part briefly outlines the theoretical and analytical framework on which the research project has been based. The second part explains the selection of our six countries and four environmental directives and summarizes the empirical findings of the 24 case studies. The paper concludes with some considerations on why our theoretical expectations have not been fully met and discusses the implication for future research on new modes of governance in European enlargement.

II. New Modes of Governance – What Are They and Why Bother?

II.1 Towards an Operational Definition

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, 1998²). 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 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.

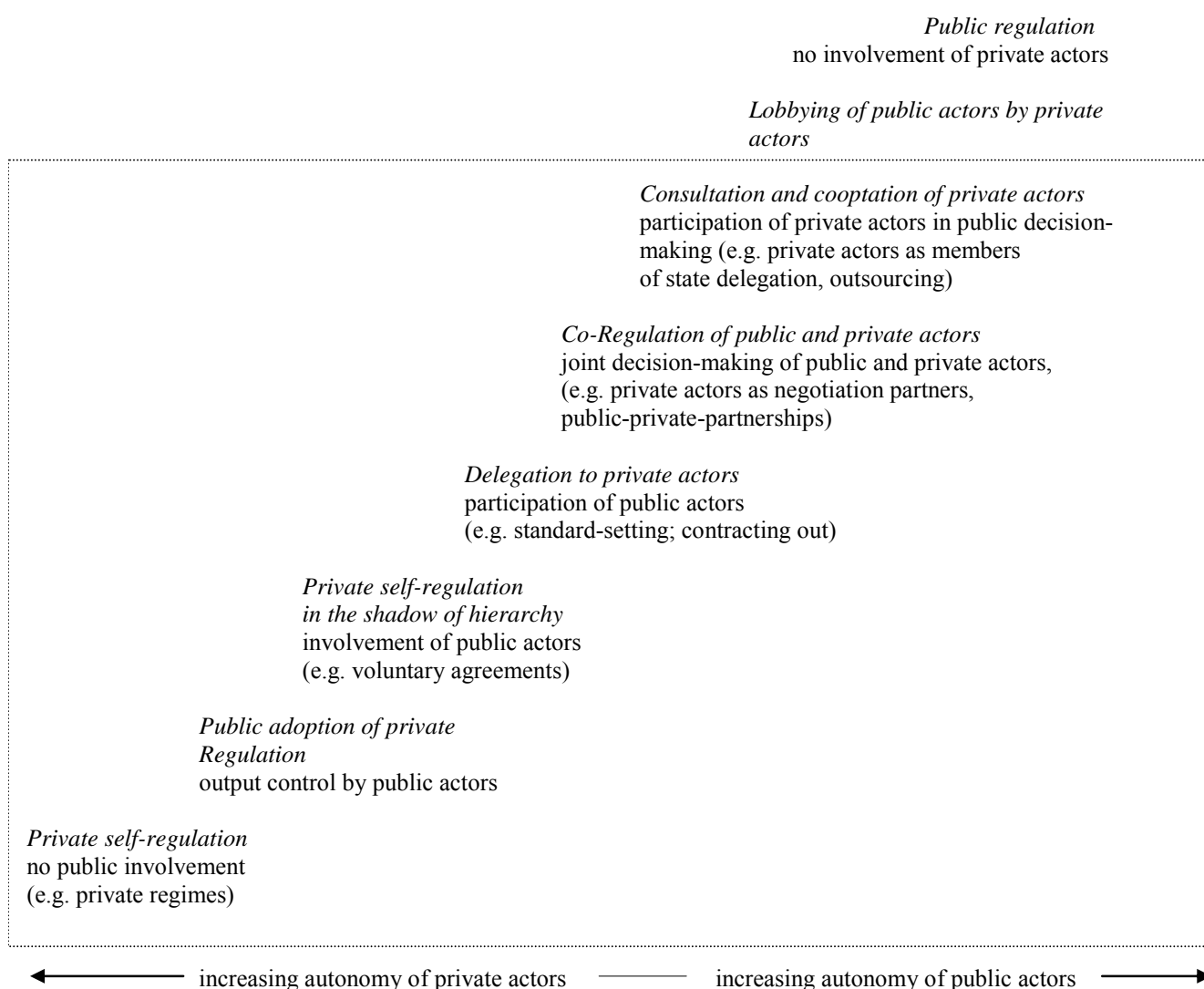
Understanding new modes of governance as the involvement of private actors in public policy-making through non-hierarchical coordination covers a wide range of potential arrangements. In order to avoid concept stretching, however, certain forms remain outside this defini-

² See also “Conceptualizing New Modes of Governance in EU Enlargement”, http://www.eu-newgov.org/datalists/deliverables_detail.asp?Project_ID=12.

tion (figure 1). 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 1: New Modes of Governance – the Non-hierarchical Involvement of Private Actors



Reasons for why state actors seek to involve non-state actors in public policy-making are usually derived from three different strands of theory. Transaction cost theory argues that state actors delegate public tasks because they want to reduce transaction costs imposed by lengthy decision-making processes in the parliament or within the government itself (Epstein and O'Halloran, 1999). Principle-agent theory emphasizes the lack of information, expertise and/or time of the state principal in dealing with complex problems. Delegation does not only help the state to compensate for its weak capacities. It also allows to lock-in policies and protect them from changing political majorities (Moe, 1987). Network approaches emphasize the functional interdependence of public and private actors in policy-making (cf. Börzel, 1998, Mayntz, 1997). Governments become increasingly dependent upon the cooperation and joint resource mobilization of policy actors outside their hierarchical control. Involving non-state actors in the policy process allows state actors to establish “webs of relatively stable and ongoing relationships which mobilize and pool dispersed resources so that collective (or parallel) action can be orchestrated toward the solution of a common policy” (Kenis and Schneider, 1991: 36). Next to tapping into the resources of non-state actors, their participation in the policy process helps to ensure effective implementation. The more the actors affected by a policy have a say in decision-making, the more likely they are to accept the policy outcome to be implemented, even if their interests may not have been fully accommodated. In sum, New Modes of Governance can significantly strengthen the capacity of state actors in public policy-making (cf. Héritier, 2003). The main incentive for non-state actors to get involved in the public policy-making is the exchange of their resources for influence on the policies by which they are affected.

II.2 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 (cf. Börzel, 2005). 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 constrained, 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 (money, information, expertise, support) that are necessary to make EU policies work.

III. 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 defined by the Copenhagen criteria, which also include “the acceptance of the TEU prescriptions, the adoption of the *acquis* and the administrative and judicial capacity to apply it”. This so called *acquis* conditionality (Schimmelfennig and Sedelmeier, 2002) forms the research focus of our project. 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 absorption 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 implementation burden by sharing it with private actors. But to what extent have the accession countries really 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 answer these questions, we looked at six different accession countries in the field of environmental policy. While our sample covers all three Southern European countries that joined the EC in the 1980s, we selected Poland and Hungary as two accession states that became members in 2004 and also included Romania, which is to join in the next years to come (for the design of the comparison see below). Thus, we will not only be able to make a comparison between the Southern and the Eastern enlargement but can also compare two enlargement rounds within Eastern enlargement.

Comparing the Southern with the Eastern enlargement will allow us to explore whether the emergence and effectiveness of New Modes of Governance differ across the Southern and Central Eastern European accession countries given their different historical trajectories, levels of socio-economic development, and political institutions. Moreover, later in the project, we will be able to study whether the accession of Greece, Spain, and Portugal in the 1980s differs from the accession of Central and Eastern candidate countries 20 years later. Has the Commission changed its strategy for facilitating the adoption of and adaptation to the *acquis* in the accession countries? In particular, what role did New Modes of Governance play? Did their use increase in Eastern enlargement as a result of the experience with Southern enlargement?

Our empirical investigation focuses on environmental policy as an area of positive, market correcting integration that imposes significant costs in the implementation rather than in the decision-making stage. We look at two sets of policies:

- a) Traditional command-and-control policies, such as the Directives on Drinking Water and Large Combustion Plants (LCP). These policies impose considerable costs of domestic adaptation, especially on firms that have to internalize compliance costs to their production. Thus, both public and private actors may have an incentive to cooperate in order to share or shift the costs.
- b) New environmental instruments, such as the Directives on Fauna, Flora, Habitats (FFH) and the Environmental Impact Assessment (EIA). The application of these directives may stipulate the emergence of New Modes of Governance because their procedural regulations directly provide for private actors' participation in the policy process.

In the following two sections, we will trace the emergence and effectiveness of New Modes of Governance in the implementation and application of the four environmental directives in the six countries under investigation.

III.1 New Modes of Governance in the East: Adopting EU Environmental Policy in Poland, Hungary, and Romania³

After the breakdown of the communist regime, most of the Central and Eastern European (CEE) countries immediately aspired to become members of the European Union. With their capacities already weak, the CEE countries had to stretch their limited resources managing their political, social and economic transition and implementing several hundred laws covering everything from milk quota, drinking water quality to equal treatment at work. Thus, the CEE countries seem to be “a most likely case” for the emergence of New Modes of Governance, also because the European Commission herself promoted the idea of involving non-state actors in the accession process in order to improve the effectiveness.

We selected three CEE accession countries to trace the emergence and effectiveness of New Modes of Governance in the implementation of the environmental *acquis*. Poland, Hungary, and Romania share a common heritage of state socialism but have chosen different paths of economic and political transformation and have diverging histories of civil society involvement, including environmental mobilization. Poland and Hungary took the fast track of economic transition. But unlike Hungary, Poland has been more reluctant to open its economy and has only done it step-by-step over the years. Industries of “strategic importance”, most notably energy, have remained protected from foreign investors. Also, due to partisan politics (high number of parties, uncertain coalitions), social policy was not as restrictive as the initial economic program of the “father of Polish economic miracle”, Balcerowicz, suggested. Hungary, in turn, swiftly opened its economy, particularly to EU companies. Both party blocs, which took turns in leading the government after every single election, followed policies of political austerity and economic liberalization. By the end of the 1990s, the country attracted most foreign direct investments in Central and Eastern Europe and had a serious part of its industry under foreign ownership. In a nutshell, Poland seems to follow more the French model while Hungary leans toward the Anglo-Saxon model of economic governance.

Unlike Hungary and Poland, Romania has been more reluctant to liberalize its economy. Another structural difference concerns state-society relations: while Hungary and Poland have started their “negotiated” political transformation already back in the 1980s and had a rather politically influential “green” social movement, civil society in Romania is still in the process of development as political changes were delayed during the 1990s.

³ For more details see Tanja A. Börzel, Aron Buzogany, and Sonja Guttenbrunner (2006) “Mapping the application of NMG to facilitate the implementation of environmental policy in Poland, Hungary, and Romania”, which can be obtained from the authors of this paper.

The CEE countries enrich the EU with vast areas of pristine wilderness, large spots of untouched nature and an impressively high biodiversity. At the same time, they suffer from the socialist legacy of forced and intensive industrialization that caused a significant number of environmental hotspots. After transition, most CEE countries witnessed a period of “natural clean-up” due to the breakdown of the state economy. With economic growth taking-up in the second half of the 1990s, however, they started to experience similar environmental problems as the old member states did decades before. While some of the CEE countries had developed some pieces of environmental regulation that date back to the 1970s, their effectiveness remained limited and to a large extent did not meet the requirements of the environmental *acquis communautaire*. As a result, Hungary, Poland, and Romania have been confronted with the challenge of implementing some 80 environmental directives imposing heavy costs on their weakened capacities amounting to an average of three to five percent of their GDP (OECD countries spend on an average between one and two percent of their GDP on environmental policy).

a. Poland

Polish environmental policy making is predominantly characterized by a command and control approach. At the same time, the Polish administration faces significant capacity problems. Beside financial constraints, it lacks skills concerning the technical and the administrative details of (EU) environmental regulation. Yet, contrary to our expectation, we find that the more limited the expertise of Polish administrators is for a given policy sector/directive, the more likely they are to rely on a command and control approach. This is also true for the new environmental instruments built into the *FFH* and *EIA Directives*, which do not necessarily give rise to the emergence of non-hierarchical steering modes. In case of the *FFH Directive*, it was only the external pressure from the EU Commission that made the Polish administration cooperate with non-state actors. After environmental groups (WWF Poland, Polish Society for the Protection of Birds, Naturalist Club and Polish Society for Protection of Nature "Salamandra") had prepared a “shadow list”, the European Commission demanded a revision of the national Natura 2000 site list. As a consequence NGOs received some first contracts for preparing the inventory because the Ministry of the Environment recognized their superior expertise. Furthermore, in some policy areas, NGOs established a good communication basis with the relevant state actors, whereas in other policy areas, particularly the older generation of administrators are still resistant to cooperate with non-state actors. The weak involvement of non-state actors in the application of the *EIA Directive* is largely explained by the resistance of public authorities to open-up the process to the public as required by the directive, on the one hand, and the high scepticism of the public towards the EIA fuelled by several corruption cases, in which NGOs accepted payments by companies for giving favourable assessments of environmentally harmful projects. Another important reason why the EIA procedure is still not fully incorporated in the Polish environmental legislation is the process of the environmental law-making in Poland itself. Due to changing government majorities, the legislation process witnessed great delays. The Environmental Legislation Act, the main document regulating the environment in Poland, only came into force in 2004. The EIA procedure, however, was quickly transposed in the late 1990s in order to secure EU funding. The hasty transposition, however, led to a rather “chaotic” implementation process.

The LCP Directive and the Drinking Water Directive are among the most costly EU policies to be implemented. In case of the *Drinking Water Directive*, the costs have to be born to a large extent by the municipalities, which were put in charge of water and waste water utilities in the early 1990s. The involvement of profit-oriented non-state actors could help local governments to cope with the necessary investments. While Polish law provides for the possibil-

ity of minority shareholding and joint ownership of water companies, many municipalities have retained 100% ownership even in those cases where companies operate under commercial law. Despite the growing financial pressures, local decision-makers are not very inclined to cooperate with private companies. Their reluctance mirrors the general scepticism of the public towards private investments in the water sector. Yet, the privatization of the water sector has set it. It remains to be seen whether the new law on public-private partnerships in Poland will lead to an increase of these forms and in how far the involvement of NGOs might help to reduce scepticism on corporate investment in these areas. In case of the *LCP Directive*, public authorities are equally resistant to the involvement of non-state actors. Despite or rather because of their limited expertise on the technical details of the directive (e.g. concerning the Best Available Technology) and their weak monitoring capacities, civil servants are afraid of being “captured” by corporate interests. Public authorities have difficulties in finding “reliable partners” whom they can trust. Business and civil society actors are not well organized in Poland, which impedes their capacity to “speak with one voice”. Moreover, they often do not trust the state either given the cumbersome decision-making processes and the frequently changing political majorities weaken the capacity of state actors to deliver the policy results agreed upon with non-state actors.

b. Hungary

The Hungarian case study provides a mixed picture. The main finding is that Hungarian environmental policy-making is still largely dominated by the classical, command and control approach of hierarchical steering. This can be attributed both to the institutional path-dependency as well as low administrative state capacities which, like in Poland, induces the harking back on traditional instruments in cases of institutional flux and new challenges posed by EU requirements. However, we have found some evidence for non-hierarchical steering methods. Basically, all four directives show some traces of non-traditional involvement of non-state actors, albeit at very different levels of intensity. The transposition of the *EIA Directive* was outsourced from the ministry to specialized non-state actors (Environmental Management and Law Association and Öko Inc.) holding high expertise in this domain. Non-state actors’ involvement is also high in the implementation of the *FFH Directive*, where environmental stakeholders participate at all levels of the process. Thus, MME/BirdLife Hungary was actively involved in the designation of protected areas while local NGOs helped providing expertise and data. This has not led, however, to a more effective designation process, which can be attributed mainly to adjustment problems within the administration and the fact that certain societal interests, such as farmers, hunters, and fishermen, have been excluded.

The *LCP Directive* witnessed several attempts to introduce non-hierarchical steering methods into pollution control, such as voluntary agreements, which stopped shortly before they could materialize, mostly because of a general lack of experience and concerns about legal uncertainty. However, intensive informal self-regulatory processes, e.g. concerning “best practice” for industry in saving energy, have been underway in close cooperation with the Hungarian administration and transnational NGOs, such as US-based Alliance to Save Energy. The *Drinking Water Directive* shows the clearest sign of non-state actor involvement as up to 30% of Hungarian drinking water is provided through private water companies, mostly international water multinationals, which received their concession already in the mid-1990s, when public utilities became the responsibility of local governments. Yet, this is part of the ongoing privatization rather than the emergence of New Modes of Governance.

c. Romania

Like in Hungary and Poland, the accession process in Romania has been mainly carried out relying on hierarchical steering. As Romania is a “late-comer” and still a candidate country, it has not finalized its institutional consolidation to the extent the other two countries have. Due to extremely weak state capacities, including staffing on the national, regional and local levels, constant institutional and legal re-shuffling processes and the tight deadlines dictated by the EU, the public administration has largely chosen to “muddle-through” the adaptation and implementation process. Systematically involving non-state actors is perceived mainly as time-consuming and non-rewarding. If pressure is exercised to include non-state actors, either from the EU or in accordance to the legislation in place, also by domestic actors, there are signs of a more inclusive involvement of non-state actors. However, public administration often merely pays lip-service to EU requirements for public participation. At the same time, we witness several notable differences between the directives under review. While the legal implementation of the *EIA Directive* happened under time pressure and by command and control measures, there seems to be more openness in practical application since the EU exerts pressure to support the process. This might open doors to more systematic collaboration with non-state sector, as some of the NGOs already possess relevant knowledge and are involved in spreading the information on EIA. They are increasingly using EIA to oppose controversial projects. In case of the *FFH Directive*, which also entails strong elements of public participation, the collaboration between public administration and non-state actors is contractual, selective and ad-hoc. While public authorities have repeatedly consulted research institutions and NGOs for their expertise on biodiversity, civil society actors complain about not being systematically involved in the preparation of NATURA 2000. Part of the problem has to do with the weak capacities of NGOs. SOR/BirdLife Romania is the only NGO that has been able to formally participate in the designation process of NATURA 2000 sites under the framework of a partnership agreement signed with the Ministry of the Environment. In order to increase their political weight, some NGOs have started to organize themselves in the “NGO coalition on NATURA 2000”.

In case of the *LCP directive*, which is a classical example of regulative policy, non-hierarchical relations between public and private actors are prevented by the ownership structure of large combustion plants which are still largely state-owned. State actors are mostly concerned about protecting their interest vis-à-vis the requirements imposed by Brussels. Finally, the *Drinking Water Directive* is an example where the role of non-state actors has increased, without, however, giving necessarily rise to the emergence of New Modes of Governance. Like in Hungary, national and local governments have actively sought private investments particularly from foreign companies to fund the reconstruction and development of treatment and distribution facilities. Four water companies have been privatized so far under a concession agreement for 25 to 49 years. Moreover, the EU and other external actors, such as the World Bank, actively support the privatization of the water sector by providing funding to the Romanian government for privatizing public companies into. This tendency is likely to proliferate, since start-up funding through concessions has become instrumental to kick-start investments in applications for EU funding. At the same time, however, the service provision by private (transnational) companies, such as Vivendi or Suez-Lyonnaise des Eaux, has been increasingly criticized for the poor quality of the water and the dysfunctional sewage system.

This negative experience⁴ with the privatization of the water utility sector could also impede the emergence of New Modes of Governance.

Summing up the case studies on the three Central and Eastern European countries, we can identify the following modes of governance (for a more detailed version see Annex 1):

Figure 2: New Modes of Governance in the East

	Poland	Hungary	Romania
FFH	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing
EIA	public regulation	public regulation consultation/ outsourcing	public regulation
Drinking Water	public regulation	public regulation	public regulation
LCP	public regulation	public regulation	public regulation

III.2 New Modes of Governance in the South: Making EU Environmental Policy Work in Greece, Spain, and Portugal

Like Poland, Hungary, and Romania, the three Southern European countries share a legacy of an authoritarian state that heavily intervened in society and economy. Their ‘return to Europe’ meant to reinforce or “lock-in” their transition process to liberal democracies and market economies. Yet, unlike in Eastern enlargement, the full incorporation of the *acquis* was a condition of accession but the Commission did not pursue a strict pre-accession monitoring and enforcement strategy as it has done in Eastern enlargement. Nor were the institutional capacities of Greece, Spain and Portugal to implement the *acquis* evaluated. Moreover, Greece and Portugal obtained transition periods of several years. It was only in the early 1990s, when the Commission started to put systematic pressure on the three Southern European countries to effectively implement the (environmental) *acquis*. Most importantly, Southern enlargement took place in a period when important policies that dominate the current EU agenda had not yet materialized. The adoption of the Single Market Program and the European Monetary Union (EMU) has fundamentally altered the scope and the pace of European integration posing unprecedented obligations to member states. While EMU is the most prominent example, other sectoral policies adopted since 1986 have also placed considerable demands on the member states to harmonize not only substantial policy measures but also to systematically involve non-state actors in the policy process. For all these reasons, the Southern countries started to feel the main burden of coping with accession *after* rather than *before* they joined the EC. Consequently, we decided to extend the time period of our analysis to the post-accession stage, which also allows for a more direct comparison with the Central and Eastern European countries, particularly regarding the four environmental policies under investigation, of which only the Drinking Water Directive had been in force before the three Southern

⁴ The 2005 Commission Report on Romania warningly mentions “A number of cases in the past showed misuse of public-private partnership forms and a disregard of procurement rules: this must cease. Significant efforts are needed to strengthen administrative capacities both at central and operational levels in the relevant procuring entities” (EC, 2005).

European joined. The EIA Directive was adopted in 1985, the LCP Directive in 1988, and the FFH Directive in 1992.

Greece, Spain, and Portugal are industrial and environmental latecomers. Like the Central and Eastern European countries, they possess vast areas of untouched nature and great biodiversity. The three Southern European countries account for about 25% of the areas protected under NATURA 2000. At the same time, they have sought to catch-up with the socio-economic development of the Northern and Western European countries experiencing similar environmental problems caused by accelerated industrialization and rapid economic growth like the Central and Eastern European countries currently do.

At the time of accession, their environmental policy was poorly developed and the institutional infrastructure for applying and enforcing environmental regulations was deficient or non-existent. Like Poland, Hungary, and Romania, the three Southern European countries have been and still are policy-takers since they have lacked the policies and capacities to actively shape EU environmental legislation (cf. Börzel, 2003).

a. Greece

Although we identify considerable variation across different policy areas, patterns of non-state actors' involvement display some basic commonalities. Most importantly, the emergence of new modes of governance is not endogenously driven. The Greek public administration does not resort to cooperation with non-state actors in order to share the burden of compliance and increase the effectiveness of implementation.

The implementation of the *Drinking Water Directive* does not involve any non-state actors. Like in the CEE countries, the water sector becomes increasingly, albeit more reluctantly, privatized. Privatization, however, has not given rise to the emergence of New Modes of Governance. The distribution and quality inspections in the largest urban centres, Athens and Thessaloniki, lie in the responsibility of two private companies, in which the state is still a major share holder. And in the rest of Greece, the local state authorities (prefectures) are still in charge. Moreover, while private companies have to comply with public regulations on drinking water, they are neither involved in the setting of standards nor in their application and enforcement. The situation is similar in case of the *LCP Directive* since the Greek energy market is still very much controlled by the state – the Public Electricity Company (DEH), which is by far the biggest polluter (it accounts for more than 55% of the Kyoto Protocol emissions), is a private company, in which the Greek government controls the majority of shares.

If there is any participation of non-state actors in the policy process, it is mostly stimulated by EU legislative requirements as entailed in the *FFH and the EIA Directives*. But even in these cases, non-state actors' involvement is fragmented with the state retaining a dominant role in the process. Non-state actors have made intensive use of EIA to litigate against environmentally harmful projects. But rather than seeking to cooperate with them to accommodate their claims, the Greek government tries to curb their access to court by changing the legal system. This is even true for the *FFH Directive*, where the inclusion of universities, research institutes and non-governmental organization in the designation of certain protected areas as well as the establishment and management of nature protection regimes has helped to improve implementation. The institutionalized participation of non-state actors in the national and local management bodies of the Greek NATURA 2000 network is merely consultative. Even where the management of a protected area has been contracted out, the management authority has no regulatory and enforcement power. An interesting, although still unique type of private actors' involvement in the implementation of the FFH Directive is the private conservation regime of WWF-Hellas. The transnational NGO purchased, with financial support of DG Environment,

a beach area that should be but was not designated as a NATURA 2000 site to protect the breeding ground of the famous carretta-carretta sea turtle.

Although our findings indicate a tentative trend towards increased effectiveness in the domestic application of EU rules through the involvement of non-state actors, this is far from being a dominant pattern of environmental governance in Greece.

b. Spain

After accession, the Spanish government progressively incorporated EU regulatory standards in a number of policy areas. However, the absence of environmental consciousness and tradition as well as weak state capacity generated problems of ineffective implementation of EU environmental directives. Under increasing EU pressure in the early 1990s, Spanish administration progressively sought to improve implementation. These attempts were largely based on the traditional command-and-control approach. The second half of the 1990s, however, witnessed the emergence of some involvement of private actors in the adoption of and adaptation to EU environmental standards. NMG, however, did not emerge on a general basis, and significantly vary across policies. Nature conservation seems to be the area in which NMG have emerged most prominently. Two main types of NMG can be observed in the implementation of the *FFH Directive*. On the one hand, issue networks serve as information exchange arenas as well as pressure platforms. On the other hand, the state has outsourced knowledge-related tasks, such as the elaboration of biodiversity inventories, to the scientific community and environmental groups. In addition, the Spanish government has created governing boards (*patronatos rectores*) in order to involve non-state actors in the management of National Parks and other protected areas under NATURA 2000. These cooperative arrangements have helped to strengthen the capacity of the Spanish administration to implement the *FFH Directive*. The *EIA Directive*, in turn, has given rise to the involvement of non-state actors in a different fashion. As a general trend, it has opened the doors for the involvement of a wide range of actors often bringing action against project promoters, being them public or private. Consultancies, experts and environmental groups have also found opportunities to become involved in the evaluation of the environmental impact of projects. However, such involvement has not been as systematic and stable as in the case of the *FFH Directive*.

The *Drinking Water Directive* has not been a policy in which NMG have emerged on a regular basis either. There is some sporadic experience of cooperation between private companies and local governments, which has not, however, resulted in public-private partnerships so far. Moreover, like in the CEE countries, the water sector is increasingly privatized, even though there are still some public companies. Thus, by far the largest water supply company in Spain is private (AGBAR, which operates in Barcelona), whereas in mid-size population areas private municipal companies or mixed inter-municipal consorcies have been created. Such companies have also received long term concessions. In the implementation of the directive itself, non-state actors are largely absent, however, or at most are involved in an informal and *ad hoc* manner, although they often could provide valuable expertise and knowledge. Beyond the implementation of the *Drinking Water Directive*, some NMG have emerged in relation to broad water policy. In some regions, partnerships between hydrological confederations and companies have been established to manage and modernize control networks as well as to commission the study of dangerous substances. While the Spanish government seems to be still reluctant to share or delegate public tasks to private actors, it sought to improve effectiveness by creating state companies (*sociedades estatales*), such as Acuamed and Hidroguadiana, in order to manage the construction and exploitation of hydraulic facilities run by the Spanish state. The EU financially supports their work. Finally, the implementation of

the *LCP Directive* does not present patterns of NMG but conforms to classic patterns of lobbying and informal consultations. The energy sector becomes increasingly privatized with the state retaining certain control.

In sum, effective implementation for all four directives has slowly improved throughout the 1990s and beyond. While the number and type of actors involved in the policy process has in general increased, the state keeps playing a dominant role controlling the process and hierarchical modes of governance still prevail. NMG have helped to increase state capacity in some areas but, as a general trend, EU pressure rather than NMG better account for improving effectiveness.

c. Portugal

Like Spain and Greece, Portugal faced serious problems in effectively implementing EU environmental policies. Improvements became more evident only in the late 1990s. Yet, like in Spain and Greece, this has mainly been due to increasing EU pressure rather than the emergence of New Modes of Governance. If non-state actors get involved in the policy process, it happens on a selective basis. In case of the *FFH Directive*, public administration sporadically consults NGOs for their expertise and has occasionally outsourced to universities and environmental groups the preparation of maps and inventories. Moreover, NGOs have increasingly used the participatory elements of the directive to exert pressure on the Portuguese public administration to promote the designation and protection of NATURA 2000 sites. The same can be observed in the implementation of the *EIA Directive*, which has stimulated the involvement of a wide number of different actors in a more confrontational way since non-state actors can resort to litigation before national courts and complaints to the European Commission in order to oppose the authorization of environmentally harmful projects.

In case of the *Drinking Water Directive*, the Portuguese government has sought to increase effectiveness by improving the coordination between the different levels of government and management bodies involved in the regulation and implementation of drinking water standards rather than trying to get non-state actors involved. Thus, the Institute for Regulating Water and Waste was created and the establishment of inter-municipal consortiums has been encouraged. The Portuguese government has also given concessions to private companies but remains largely in control of the water market. Thus, Aguas de Portugal has undergone a privatization process. Like in Spain and Greece, the implementation of the *LCP Directive* keeps being characterized by the traditional command-and-control approach despite the evolving privatization of the energy sector. Also, as in the other Southern countries, the electricity sector initiated a privatization process in the late nineties.

Summing up the case studies on the three Southern European countries, we can identify the following modes of governance (for a more detailed version see Annex 2):

Figure 3: New Modes of Governance in South

	Greece	Spain	Portugal
FFH	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing
EIA	public regulation	public regulation consultation	public regulation consultation
Drinking Water	public regulation	public regulation	public regulation
LCP	public regulation	public regulation	public regulation

IV. New Modes of Governance in Accession: Much Ado about Nothing?

The aim of the empirical analysis in the previous sections was to map the emergence and effectiveness of New Modes of Governance in the accession of three Southern European and three Central and Eastern European countries in the area of environmental policy. In light of the extraordinary financial and administrative burden imposed by the implementation of the environmental *acquis*, on the one hand, and the relatively limited state capacities of six transition countries, on the other, we expected to find a significant number of NMG to emerge. It would only be rational for state actors to seek the cooperation with non-state actors to share or shift the burden by pooling resources and delegating certain tasks, respectively. Therefore, the main research focus of our project was not the emergence but the effectiveness of NMG in enlargement; we initially set out to explore the extent to which NMG help improve the adoption of and adaptation to the *acquis communautaire*. Yet, the empirical evidence from our 24 case studies does not confirm our expectations. We have found only scattered evidence of NMG in the six countries. Where the non-hierarchical involvement of non-state actors emerged, it has remained unstable and cannot be regarded as an established mode of governance co-existing with – not to mention substituting for – the traditional command-and-control approach. Moreover, despite the differences between the six countries, the similarities with regard to the (non-) emergence of NMG are striking.

The *Fauna, Flora, Habitats Directive* is the only case in which our theoretical expectations were somehow met – in all six countries! Given their limited expertise, state actors have outsourced the drawing up of inventories of protected species or maps of protected sites, to universities, research institutes and environmental groups. In Spain, non-state actors have been also coopted into the management boards of some NATURA 2000 areas. In Greece, the state has even delegated the management of certain areas to universities, public research institutes and non-governmental organizations, although the management boards do not possess any regulatory or enforcement powers. In all six countries, we find state-driven processes of resource exchange where the government is outsourcing or contracting-out non-regulatory tasks to non-state actors. The involvement of relevant and highly specialized stake-holder organizations into the policy process does not only strengthen the capacity of the state to effectively implement the FFH Directive; the consultation of the scientific community and NGOs also fosters the legitimacy of government decisions, especially on such controversial issues such as the designation of protected areas that upset powerful interest groups, such as farmers, hunters, fisherman, and landowners.

The *Environmental Impact Assessment Directive* has been instrumental in challenging the traditional command-and-control approach to environmental regulation in the six countries since it systematically opens the policy process to non-state actors in its implementation. Yet, our countries have been reluctant to give civil society a voice in the authorization of projects. With the exception of Hungary, where the government outsourced the drafting of the national EIA law to an NGO and has continuously consulted environmental stake-holders in the revising the EIA process, consultation of non-state actors is less driven by their superior expertise but as a means to accommodate their concerns in order to prevent them from litigating. The Greek government, by contrast, has chosen a confrontational strategy seeking to curb legal access for non-state actors. The differential empowerment of non-state actors has been less pronounced in Poland and Romania, however, which can be explained by the public scepticism against EIA and the weak organizational capacities of civil society, respectively.

The *Drinking Water Directive* is by far the most cost intensive policy in our sample since it requires heavy investments in the treatment facilities and distribution networks. While in all six states, the costs are mainly to be born by local governments, they have resorted to different strategies to cope with the costs. The three Central and Eastern European countries have sought to privatize their water sector rather than to establish NMG – well before the accession process started. Poland has been more reluctant to give up the state monopoly over the provision of drinking water due to the public scepticism against private investments in the water sector. Like in the CEE countries, the water sector in Spain, Portugal and Greece has become increasingly privatized without giving rise to the emergence of NMG.

The *Large Combustion Plant Directive* shows no signs of NMG emerging – despite the high implementation costs. Again, privatization has been the dominant strategy with states seeking to stay in control by retaining a major share holder in the water companies. Only the Hungarian government has sought to introduce some elements of self-regulation in the area of pollution control, which has failed so far, however, due to legal uncertainties. The Polish government, by contrast, clings to its traditional approach of top-down regulation precisely because of its weak capacities and the related fears of agency capture by more powerful corporate interests.

To sum up, the adoption of and adaptation to our four EU environmental directives has been slowly improving. However, this is not so much due to the systematic emergence of New Modes of Governance through which state actors seek to involve non-state actors in the implementation process in order to pool resources and share costs. The FFH Directive demonstrates that if NMG are in place, they can contribute to a more effective adoption of and adaptation to EU environmental policies. Likewise, where state actors continue to rely on hierarchical steering, implementation often remains ineffective. Yet, the scope of NMG in all six countries is too limited to have a substantial impact on the overall effectiveness. Rather, our case studies find that improvements are mainly due to the increasing pressure from the European Commission and civil society. In a more indirect way, however, this combined pressure “from above and from below” has fostered the emergence of some New Modes of Governance. The legal requirement for public participation stipulated in the EIA and the FFH Directives have helped to open up traditionally closed policy process. Nevertheless, NMG are still scarce and only take weaker forms, such as consultation, cooptation, outsourcing and contracting out. Co-regulation or private self-regulation has been completely absent.

The results of our empirical case studies are in line with the general literature on Eastern enlargement, which has found little evidence of the role of New Modes of Governance.

“EU Governance in Central and Eastern Europe is dominated by bureaucratic actors, intergovernmental or inter-bureaucratic relations, and a top-down process of rule transfer (...).” (Schimmelfennig and Sedelmeier 2005: 21-22)

This has serious implications for our research on New Modes of Governance. Rather than finding out whether and under which conditions the non-hierarchical involvement of non-state actors has helped to make EU policies work in accession countries, we are faced with the puzzle of why NMG have been of so little relevance in the first place. Apparently, our theoretical assumptions about the emergence of NMG in state with weak capacities are somehow flawed.

IV.1 Back to the Drawing Board: Explaining the (Non-)Emergence of New Modes of Governance

Before revisiting our theoretical approach, we should have a look at the factors identified by our empirical case-studies that impaired the emergence of New Modes of Governance. Most of them resonate well with the literature on Eastern enlargement (Dimitrova, 2002, Grabbe, 2001; Schimmelfennig and Sedelmeier, 2005).

First, the accession process has been characterized by a top-down approach. The strong emphasis on conditionality by the European Commission, on the one hand, and the huge policy load and the time pressure, on the other, did not leave much time and place for the systematic involvement of non-state actors in the implementation process. On the contrary, some authors even argue that the implementation of the *acquis* has strengthened the state across the board and increased its autonomy from political and societal actors (Goetz, 2005, 272).

Second, accession coincided with transition. On the one hand, managing the transition process requires a strong government to introduce and implement often costly political and economic reforms. On the other hand, the transition process entails high political and institutional uncertainties, which are reinforced by frequent changes in government and administration. This makes it difficult for non-state actors to establish stable relationships with state actors.

Third, the Southern European and the Central and Eastern European countries share an institutional legacy of an authoritarian state that heavily interfered with society and economy. The organization of societal and corporate interests used to be weak. Even after transition, structures of interest intermediation are still fragile. Thus, the approach of systematically involving non-state actors in the making and implementation of public policy does neither resonate with the traditional paradigm of a strong state nor can it build on stable state-society relations. In the Southern European countries, however, the authoritarian state legacy has been progressively transformed during the 1990s. Consequently, the involvement of the number and type of actors in the policy process increased, even on a non-systematic basis.

Fourth, and related to the third point, non-state actors are not well organized. Societal and economic interests often lack the necessary resources (money, personnel) and/or the political willingness to organize and offer themselves as reliable partners to the state. In those cases, in which they did organize, it often took the help of transnational actors, such as environmental organizations, policy consultancies, companies, or EU-level confederations.

Fifth, state actors are reluctant to cooperate with non-state actors precisely because they lack resources which non-state actors may provide. Because of their weakness, state actors are afraid of being captured by powerful economic interests, who have superior expertise regarding the making of rules, and cannot be monitored in their compliance. In those cases in which NMG have emerged in a more systematic way, such as the implementation of the FFH Direc-

tive, the willingness of the state has mostly outsourced certain non-regulatory tasks to non-state actors while retaining the control over the policy process.

If we try to link these empirical insights back to the governance literature, we could summarize them under a dictum of Renate Mayntz, who argued that New Modes of Governance require both, a strong state and a strong society (Mayntz, 1995).

IV.2 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 a “shadow of hierarchy” (Streeck and Schmitter, 1985a: 25; Mayntz, 1995: 163; Scharpf, 1993; Héritier, 2002, 2003). The threat of public actors to hierarchically impose policies provides a major incentive for non-state actors to engage themselves and their resources in voluntary cooperation with state actors or among themselves to produce collective goods and services. Likewise, the capacity of the state is crucial to discourage “shirking” of non-state actors; principal-agent theory points to the problem of informational asymmetries between the state principal and the non-state agents, which allows the latter to redefine the contracted policy in the implementation process. Therefore, the state must be able to control the performance of non-state actors. This would explain why state actors are reluctant to cooperate with non-state actors when they feel too weak to monitor and sanction. In case of co-regulation, an additional problem emerges since the state should not only be capable of enforcing an agreement negotiated with non-state actors but has to turn it into a public policy in the first place, e.g. by bringing it through the legislative process. In sum, a weak shadow of hierarchy discourages both state and non-state actors from mutual cooperation. Thus, it is precisely the weakness of our six states that may explain why we have found so little evidence on the use of new modes of governance in the accession process.

IV.3 Capacity Matters – also for Non-State Actors

While state capacity provides an important incentive for non-state actors to get involved with the state, non-state actors themselves also require capacity to become attractive partners to state actors. First, non-state actors need to possess resources (expertise, money, legitimacy), which they can exchange with state actors for access to the policy process. And second, they require the organizational capacity to participate and make their voice heard in the policy process. Finally, non-state actors require legitimacy. The public is not always inclined to accept policy outcomes that have been negotiated with non-state actors who do not possess a public mandate. This is particularly the case, if state actors seek to use the cooperation with interest groups and NGOs to circumvent the legislative process.

If Renate Mayntz is right that strong capacities of both state and non-state actors are a precondition for the emergence of New Modes of Governance, this may result in a major dilemma or even paradox for European enlargement: the lower the capacity of accession countries, the greater the need for New Modes of Governance to make EU policies work but the less likely they are to emerge.

V. Annexes

Annex 1: Coping with Accession in Hungary, Poland, and Romania

	Hungary	Poland	Romania
Wild Birds / Habitats	<p>Effectiveness Due to lack of administrative capacity within the ministry the establishment of the Natura 2000 network lagged seriously behind. Intra-ministerial infightings delayed the designation process severely. Lack of public information on the process</p> <p>NMG Outsourcing of the inventory process to specialized ENGOS, but no systematic participation as state administration remains key actor; low trust between the actors. As the NATURA 2000 designation process runs into problems, the state commissions an NGO coalition with a public information campaign.</p> <p>EU EU pressure crucial.</p>	<p>Effectiveness Huge resentment against the establishment of Natura 2000 sites on the local level, the enlargement and establishment of new sites is very difficult→ negotiation processes take place at the moment</p> <p>NMG State administration as a key actor but increasing cooperation, outsourcing of the inventory process for habitat types as a result of increased EU pressure. The expertise of NGOs was only recognized by state actors after the revision of the inventory was demanded by the Commission. Good communication between administration and ENGOS</p> <p>EU EU pressure crucial.</p>	<p>Effectiveness Deficient transposition and “downloading” of the EU legislation, without securing financial and human resources for their enforcement. Designation process should be closed by January 2007. No allocations from the state budget for Natura 2000 were available until 2005, process was financed through EU funds.</p> <p>NMG State administration as a key actor, confrontation between ministry and ENGOS, partial local collaboration in the designation process.</p> <p>EU EU pressure crucial. Even more so EU funding.</p>
Drinking Water	<p>Effectiveness Accession criteria and EU funding were speeding up the modernization process which started already during state socialism. Perpetual administrative restructuring processes both on the intra-ministerial and the local level were hindering the consolidation of the sector.</p> <p>NMG The transfer of water utilities to the local level opened doors for the privatization of the water sector, resulting in the appearance of EU multinationals, accounting for about 30% of water provision. Rather low ENGO involvement.</p> <p>EU Moderate EU pressure, importance of EU funding</p>	<p>Effectiveness Implementation problems related to high costs and the transfer of administrative duties to the local level, as well as the requirement to transform the utilities into companies in commercial law.</p> <p>NMG Two models of non-state actor participation: minority shareholding and jointly owned operating companies. Not so much involvement of ENGOS</p> <p>EU Moderate EU pressure</p>	<p>Effectiveness Legislation effectively transposed but it is too early to judge on implementation. Transfer of administrative duties to the local level, massive reliance on EU funding and loans for the restructuring. Very long transition periods negotiated.</p> <p>NMG Process still mostly command and control, but high cost of the directive where pushing local administrations towards concession contracts the privatization in several cities.</p> <p>EU Moderate EU pressure, importance of EU funding</p>

	Hungary	Poland	Romania
Environmental Impact Assessment	<p>Effectiveness Legal transposition already before accession, process seen problematic since it overburdens local administration. Improvement and increase in using EIA during accession, that will be probably will be boosted after a reform of EIA in 2005, which simplifies the procedure.</p> <p>NMG Outsourcing of directive drafting to two specialized NGOs, representing the small EIA community, which has very good working relations with the administration.</p> <p>EU Moderate/low impact</p>	<p>Effectiveness Further administrative adaptations necessary. Quick legal transposition during the nineties to secure EU funding.</p> <p>NMG NMG not generalised. No NMG in the formulation of the law, a rather exclusive process. The process is seen as a very exclusive process. NMG further hindered due to corruption cases concerning the EIA in which NGOs were involved.</p> <p>EU EU pressure crucial and EU funding of infrastructures</p>	<p>Effectiveness While legal transposition was accomplished, implementation of the directive is not yet effective and the administrative structure still not clear.</p> <p>NMG Quick and top-down transposition due to time delay and high EU pressure without serious involvement of non-state actors. NGOs included in information campaign about the directive after transposition.</p> <p>EU Strong EU pressure</p>
Large Combustion Plants	<p>Effectiveness Implementation was seen as a success, with a short transition period until the end 2004, which the affected industry took with success. The approximation process started already in the mid-nineties.</p> <p>NMG Close collaboration between ministry and industry, which remained clearly personally interlinked despite the privatisation of the sector. Though several attempts were started to apply NMG, this haven't materialized, mainly due to fears of legal uncertainty of such a process.</p> <p>EU Definition of standards</p>	<p>Effectiveness High costs of implementation and high dependency of the Polish energy sector on brown and hard coal. High transition periods granted.</p> <p>NMG NMG hardly observed due to the technological approach of the directive coupled with weak administrative capacity.</p> <p>EU Definition of emission standards</p>	<p>Effectiveness High implementation costs. Extensive transition periods. Strengthening of control capacities. Lack of financial resources</p> <p>NMG Close cooperation between state administration and mostly still state-owned industry. Partial cooperation with NGOs and research institutes on technical matters.</p> <p>EU Definition of standards</p>

Annex 2: Coping with Accession in Greece, Spain, and Portugal

	Greece	Spain	Portugal
Wild Birds / Habitats	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Increase of the number of areas protected. Implementation problems, but improvements along the nineties.</p> <p>NMG State administration as a key actor Increasing cooperation and inclusiveness of actors, especially at the technical level, but still high levels of confrontation NMG increase state capacity Tendency to generalise</p> <p>EU EU pressure and funding crucial</p>	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Increase of the number of areas protected. Implementation problems, but improvements along the nineties</p> <p>NMG State administration as a key actor Increasing cooperation and inclusiveness of actors, especially at the technical level, but still high levels of confrontation NMG increase state capacity Tendency to generalise</p> <p>EU EU pressure and funding crucial</p>	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Increase of the number of areas protected. Implementation problems, but improvements along the nineties</p> <p>NMG State administration as a key actor Increasing cooperation and inclusiveness of actors, especially at the technical level, but still high levels of confrontation</p> <p>EU EU pressure and funding crucial</p>
Drinking Water	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Problems with implementation, mostly due to the poor tradition in public consultation and the high costs derived from implementation</p> <p>NMG Increase of the number and type of actors involved, NMG not generalised</p> <p>EU EU pressure and funding of infrastructures crucial</p>	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Difficulties to define a national position in Brussels. Implementation problems, mostly related to the high costs resting on supply companies and municipal administrations. Still, certain improvements</p> <p>NMG Hardly observed, with the exception of eventual partnerships between supply companies and municipalities. NMG sporadic, not generalised</p> <p>EU Moderate EU pressure</p>	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Implementation problems, mostly related to the high costs resting on supply companies and municipal administrations. Still, certain improvements</p> <p>NMG Increase involvement of the number and type of actors involved, but not on a systematic basis.</p> <p>EU Moderate EU pressure</p>

	Greece	Spain	Portugal
Environmental Impact Assessment	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Problems with implementation, mostly due to the poor tradition in public consultation and the high costs derived from implementation. Still, improvement along the nineties</p> <p>NMG Increase of the number and type of actors involved on a confrontational basis. No NMG.</p> <p>EU Crucial EU pressure and funding of infrastructures</p>	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Problems with implementation, mostly due to the poor tradition in public consultation and the high costs derived from implementation. Still, improvement along the nineties</p> <p>NMG Increase of the number and type of actors involved, either on a confrontational or on a cooperative basis. NMG not generalised</p> <p>EU Crucial EU pressure and funding of infrastructures</p>	<p>Effectiveness Deficient transposition, ex novo nature of the directive. Problems with implementation, mostly due to the poor tradition in public consultation and the high costs derived from implementation. Still, improvement along the nineties</p> <p>NMG Increase of the number and type of actors involved, either on a confrontational and on a cooperative basis</p> <p>EU Crucial EU pressure and funding of infrastructures</p>
Large Combustion Plants	<p>Effectiveness Uncertain application. High costs of implementation</p> <p>NMG Not applicable</p> <p>EU Definition of standards</p>	<p>Effectiveness Uncertain application. High costs of implementation</p> <p>NMG Classical patterns of public-private interaction based on lobby strategies. Bilateral contacts between state administration and electricity companies. NMG hardly observed</p> <p>EU Definition of emission standards</p>	<p>Effectiveness Uncertain application. High costs of implementation</p> <p>NMG Cooperation between state administration and electricity companies. No NMG observed</p> <p>EU Definition of standards</p>

Bibliography

- Börzel, T.A. (1998) 'Organising Babylon. On the Different Conceptions of Policy Networks'. *Public Administration*, 76 Vol., No. (2), pp. 253-73.
- Börzel, T.A. (2003) *Environmental Leaders and Laggards in the European Union. Why There is (Not) a Southern Problem* (London: Ashgate).
- Börzel, T.A. (2005) 'European Governance - Markt, Hierarchie oder Netzwerk?' In G.F. Schuppert, I. Pernice and U. Haltern (eds.), *Europawissenschaft* (Baden-Baden: Nomos), pp. 613-41.
- Czada, R. and Schmidt, M.G. (eds.) (1993) *Verhandlungsdemokratie, Interessenvermittlung, Regierbarkeit. Festschrift für Gerhard Lehmbruch* (Opladen: Westdeutscher Verlag).
- Dimitrova, A. (2002) 'Enlargement, institution-building and the EU's administrative capacity requirement'. *West European Politics*, 25 Vol., No. (4), pp. 171-90.
- Dose, N. (1993) *Verhandlungen mit der öffentlichen Verwaltung* (München: Beck).
- Epstein, D. and O'halloran, S. (1999) *Delegating Powers: A Transaction Cost Approach* (Cambridge: Cambridge University Press).
- Goetz, K.H. (2005) 'The New Member States and the EU: Responding to Europe.' In S. Bulmer and C. Lequesne (eds.), *The Member States of the European Union* (Oxford: Oxford University Press), pp. 254-80.
- Grabbe, H. (2001) 'How does Europeanization affect CEE Governance? Conditionality, Diffusion and Diversity'. *Journal of European Public Policy*, 8 Vol., No. (6), pp. 1013-31.
- Héritier, A. (2002) 'New Modes of Governance in Europe: Policy Making Without Legislating?' In A. Héritier (ed.), *Common Goods: Reinventing European and International Governance* (Boulder: Rowman and Littlefield), pp. 185-206.
- Héritier, A. (2003) 'New Modes of Governance in Europe: Increasing Political Capacity and Policy Effectiveness?' In T.A. Börzel and R. Cichowski (eds.), *The State of the European Union, 6 - Law, Politics, and Society* (Oxford: Oxford University Press), pp. 105-26.
- Kenis, P. and Schneider, V. (1991) 'Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox.' In B. Marin and R. Mayntz (eds.), *Policy Networks: Empirical Evidence and Theoretical Considerations* (Frankfurt a/M: Campus), pp. 25-59.
- Lehmbruch, G. (1996) 'Der Beitrag der Korporatismusforschung zur Entwicklung der Steuerungstheorie'. *Politische Vierteljahresschrift*, 37 Vol., No. (4), pp. 735-51.
- Mayntz, R. (1995) 'Politische Steuerung: Aufstieg, Niedergang und Transformation einer Theorie.' In K.V. Beyme and C. Offe (eds.), *Politische Theorien in der Ära der Transformation. PVS Sonderheft 26* (Opladen: Westdeutscher Verlag), pp. 148-68.
- Mayntz, R. (1997) *Soziale Dynamik und politische Steuerung. Theoretische und methodologische Überlegungen* (Frankfurt und New York: Campus).
- Moe, T.M. (1987) 'An Assessment of the Positive Theory of Congressional Dominance'. *Legislative Studies Quarterly*, 12 Vol., No. (4), pp. 475-520.
- Rhodes, R.A.W. (1997) *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability* (Buckingham and Philadelphia: Open University Press).
- Rosenau, J.N. and Czempiel, E.-O. (eds.) (1992) *Governance Without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press).
- Scharpf, F.W. (1993) 'Positive und negative Koordination in Verhandlungssystemen.' In A. Héritier (ed.), *Policy-Analyse. Kritik und Neuorientierung. PVS Sonderheft 24* (Opladen: Westdeutscher Verlag), pp. 57-83.

Schimmelfennig, F. and Sedelmeier, U. (2002) 'Theorizing EU Enlargement: Research Focus, Hypotheses and the state of research'. *Journal of European Public Policy*, 9 Vol., No. (4), pp. 500-28.

Schimmelfennig, F. and Sedelmeier, U. (eds.) (2005) *The Europeanization of Central and Eastern Europe* (Ithaca, NY: Cornell University Press).

Streeck, W. and Schmitter, P.C. (1985a) 'Community, Market, State - and Associations? The Prospective Contribution of Interest Governance to Social Order.' In W. Streeck and P.C. Schmitter (eds.), *Private Interest Government. Beyond Market and State* (London et al.: Sage), pp. 1-29.

Streeck, W. and Schmitter, P.C. (eds.) (1985b) *Private Interest Government. Beyond Market and State* (London et al.: Sage).

Voigt, R. (ed.) (1995) *Der kooperative Staat* (Baden-Baden: Nomos).