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NEWGOV

New Modes of Governance

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

Workshop Report

New Modes of Governance and Enlargement

When Theory Meets Reality

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Summary

The workshop took place at the Fondation Universitaire in Brussels, on June 7, 2006. Its main goal was to present the major findings of the project on the emergence and effectiveness of New Modes of Governance in the implementation of four environmental directives in three Southern European and three Central and Eastern European countries. The major results were summarized in an interim report and discussed with policy experts and practitioners participating in the workshop.

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I. Goal and Structure of the Workshop

The workshop took place at the Fondation Universitaire in Brussels, on June 7, 2006. Its main goal was to present the major findings of the project on the emergence and effectiveness of New Modes of Governance in the implementation of four environmental directives in three Southern European and three Central and Eastern European countries. The major results were summarized in an interim report (D 04) and discussed with policy experts and practitioners participating in the workshop.

The workshop brought together members of DG Environment and DG Enlargement and one representative of Ecologic, an environmental policy consultancy that specializes on Central and Eastern Europe.

The workshop started with a presentation by the project coordinator introducing the theoretical and analytical approach on which the project has been based. In particular, the concept of New Modes of governance was clarified and the theoretical assumptions outlined that led us to expect the emergence of New Modes of Governance in the implementation of the environmental *acquis communautaire* in Southern and Central and Eastern European accession countries. Finally, the research design of the project was specified explaining the selection of our six countries and four environmental directives.

The conceptual part was followed by the presentation of the empirical results of our case studies on the implementation of the *environmental acquis* in the three Southern European countries, Greece, Spain, and Portugal, which joined the EC in the 1980s.

After lunch the workshop continued with the presentation of the case studies on Poland, Hungary, and Romania. The workshop concluded with a general discussion on the main findings and further steps to be taken.

II. Results

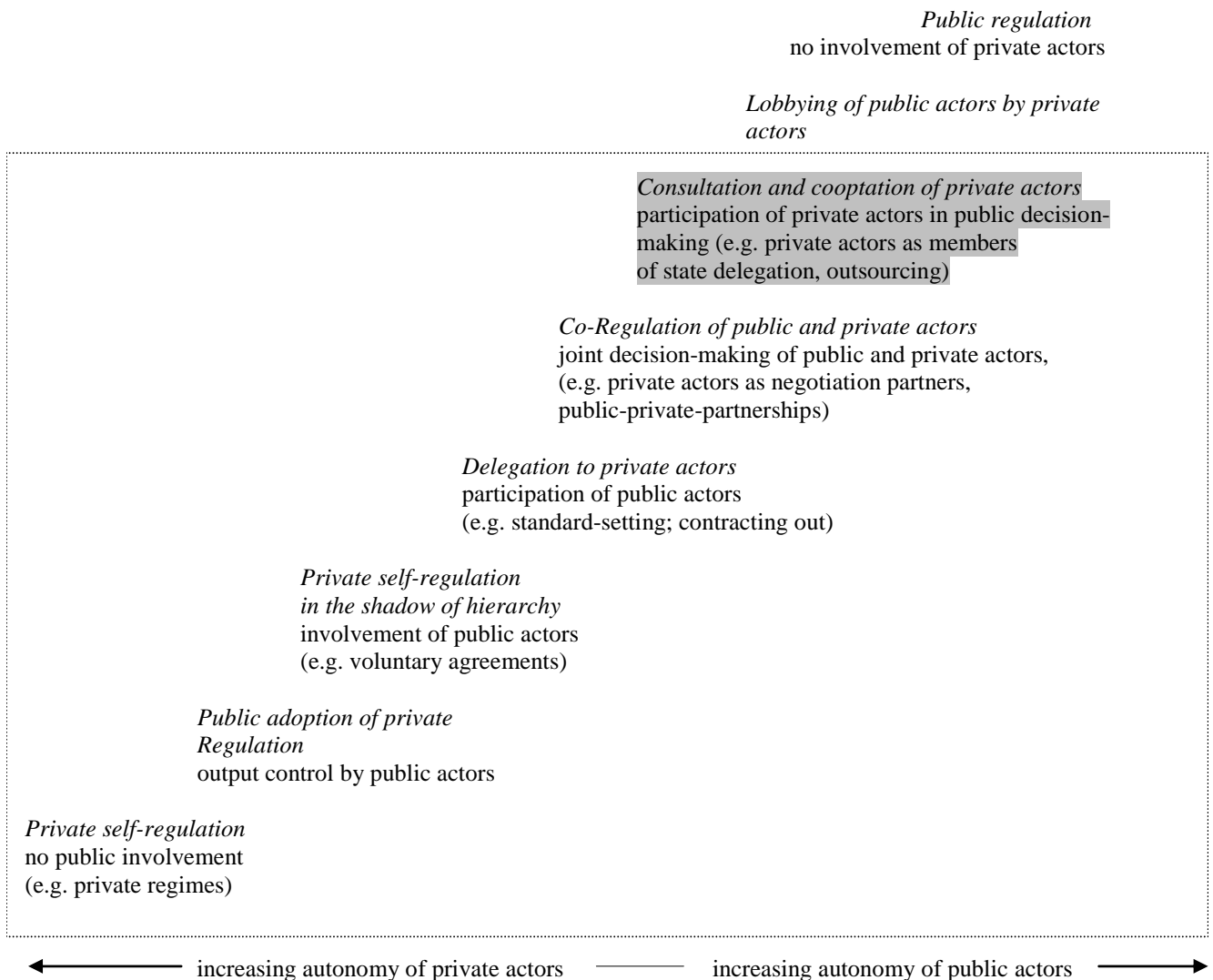
II.1 The Definition of New Modes of Governance

For the purpose of studying the role of new modes of governance in EU enlargement, the project adopted 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.

The practitioners accepted the definition as useful but pointed out that the concept was very demanding making it unlikely to find New Modes of Governance on a larger scale. They thus anticipated the main findings of our empirical case studies. We agreed to broaden our definition in order to also include consultation and cooptation of private actors (see figure 1). This will allow to capture the outsourcing of certain non-regulatory tasks to non-state actors and their consultation and cooptation in the policy process. At the same time, there was a consensus to exclude form of privatization from the definition of New Modes of Governance.

Figure 1: New Modes of Governance – the Non-hierarchical Involvement of Private Actors



II.1 The Emergence and Effectiveness of New Modes of Governance

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 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.

The practitioners agreed with our assumptions that the accession countries do not have sufficient capacity to effectively implement EU policies and that non-state actors could play a crucial role in strengthening state capacities.

II.2 New Modes of Governance and Accession: Much Ado about Nothing?

Emergence

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.

Table 1: NMG in East and South compared

	Poland	Hungary	Romania	Greece	Spain	Portugal
FFH	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing	public regulation consultation/ outsourcing
EIA	public regulation	public regulation consultation/ outsourcing	public regulation	public regulation	public regulation consultation	public regulation consultation
Drinking Water	public regulation contracting out	public regulation contracting out	public regulation contracting out	public regulation	public regulation contracting out	public regulation contracting out
LCP	public regulation	public regulation	public regulation	public regulation	public regulation	public regulation

Effectiveness

The adoption of and adaptation to our four EU environmental directives has been slowly improving in our six countries. 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.

II.3 Back to the Drawing Board: Explaining the (Non-)Emergence of New Modes of Governance

The practitioners confirmed our empirical findings regarding the weak relevance of New Modes of Governance. Our case studies identified several factors impeding the emergence of NMG:

1. 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.

2. The accession process 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. The unstable power relation within the states led to a slow and unreliable legislation process and might have its effects on the perception of the reliability of state actors. This makes it difficult for non-state actors to establish stable relationships with the state actors.
3. The CEE 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 have remained weak. 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 existing state-society relations.
4. Non-state actors are not well organized and 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. Another problem is that state actors have difficulties in finding “reliable” partners. Additionally, the awareness for environmental issues is often weak in civil society.
5. 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. This leads to a dilemma: On the one hand, the expertise of the non-state actors is needed on the other hand they are not involved in policy making because of missing trust relations. The administrations have no experience and know-how how to negotiate with different kinds of non-state actors and they do not know how to monitor informal accords or voluntary agreements. These observations go hand in hand with another important factor for the dominance of hierarchical steering modes – the missing administrative capacity. As the first empirical investigation shows there are big challenges for the administration, not only at the ministerial level, but even more so at the local level. Administrative capacity is needed for the successful application of NMG. To communicate with non-state actors, to lead discourses and to monitor agreements requires a certain expertise. Since the administration lacks this capacity, the bureaucracy in charge tends to stick to command and control methods.

The practitioners agreed with our analysis. Moreover, they emphasized the importance of trust between state and non-state actors as a basis for cooperation. Thus, the Commission has been seeking to convince state actors to see non-governmental organizations as partners rather than adversaries, who can help them cope with the burden of accession. Likewise, the Commission has tried to persuade NGOs not to merely understand themselves as “watchdogs” but to offer their expertise and political support to state actors in the implementation of EU environmental policy. This is, albeit to a lesser extent, also the case with the private sector. Companies are encouraged to actively engage in the policy process. Twinning is a key instrument for the Commission in this respect.

Another factor, the practitioners drew our attention to, were informal relations, particularly between administrators and business. Informal networks could provide an important alterna-

tive to New Modes of Governance. While state and non-state actors exchange resources, they do this on an informal level which allows for excluding certain interests, avoiding public criticism (of state actors for involving business interests) and accountability (of non-state actors for participating in the policy process).

Finally, the discussion revealed another impediment for New Modes of Governance – buying time. NMG only make implementation more effective, if actors have an interest in complying with EU policies. If either side or both hope to avoid or at least postpone implementation, co-operation is unlikely to emerge.

II.4 Where Do We Go From Here?

The practitioners pointed to a number of factors that could have biased our findings.

1. Both energy production and the provision of drinking water used to be public utilities. While increasingly subject to privatization, state actors still dominate the sectors and, hence, can rely on the shadow of hierarchy.
2. The participatory elements in the EIA Directive seek to enhance the role of non-state actors as watch dogs to improve compliance with EU environmental regulations. As a result, implementation is highly politicized and does not fit the more technocratic, problem-solving approach of NMG.
3. All our CEE cases are large countries – in smaller countries, we may be more likely to find NMG given the higher proximity of state and non-state actors.

In order to accommodate these considerations and explore the explanatory power of our inductively gained insights, we decided to enhance our sample of environmental policies (rather than starting with the second policy study). We identified two policies that could be more promising for the emergence of NMG (and hence would allow us to study their effectiveness): The Integrated Pollution Control Directive, which explicitly provides for the cooperation with industry in implementation, and the Water Framework Directive, which requires the involvement of stakeholders.

III. Workshop Programme

9:30 -10:30: Welcome

Coping with Accession: New Forms of Governance and European Enlargement

Tanja A. Börzel (Free University of Berlin)

10:30-11:00 Coffee Break

11:00-13:00 *Mapping the application of New Modes of Governance in the adoption of and adaptation to EU environmental policies in Spain, Portugal and Greece*

Nuria Font (Universitat Autònoma de Barcelona) and Charalampos Koutalakis (University of Athens)

13:00-14:00 Lunch Break

14:00-15:30 *Mapping the application of New Modes of Governance to facilitate the implementation of environmental policy in Poland, Hungary and Romania*

Aron Buzogány, Sonja Guttenbrunner (Free University of Berlin)

15:30-16:00 Coffee Break

16:00-17:00 Concluding Session

IV. List of Participants

COPA

1. Tanja A. Börzel
2. Nuria Font
3. Charalampos Koutalakis
4. Aron Buzugany
5. Sonja Guttenbrunner

DG Environment

6. Anne Burrill
7. Capucine Chamoux
8. Henriette Faergemann
9. Dagmar Kaljarikova

DG Enlargement

10. Daniele Franzone
11. Bettina Lorz

Ecologic

(Independent not-for-profit Institute for International and European Environmental Policy)

12. Ingmar von Homeyer