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## **NEWGOV**

### **New Modes of Governance**

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#### **New Modes of Governance and Enlargement – The Paradox of Double Weakness**

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## Summary

This paper argues that the accession countries of the Southern and Eastern enlargements have lacked two fundamental preconditions for the emergence and effectiveness of new modes of governance: state and non-state actors with sufficient resources to engage in non-hierarchical coordination to improve the effectiveness of public policy. This “governance capacity” has been largely taken for granted by the governance literature since it has almost exclusively focused on Western democracies. In order to develop the argument about governance capacity as a fundamental precondition for new modes of governance, the paper proceeds in the following steps. The first part will lay out the empirical puzzle and the theoretical challenge it poses to the literature on (new modes of) governance. It will also explain the research design of the empirical study and provide the analytical framework that will guide the comparative case studies. Finally, the major findings of the comparative case studies will be briefly summarized and their implications for the literature on (new modes of) governance discussed. The double weakness of transition countries results in a serious paradox for governance research – the stronger the need for non-hierarchical modes of governance, the less favourable are the conditions for their emergence and effectiveness.

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## 1. Introduction

In recent years, the literature on governance within and beyond the state has focussed on a specific mode of governance based on non-hierarchical coordination and the involvement of private actors in the formulation and implementation of public policies. In the 1970s, the comparative policy and politics literature already showed that non-hierarchical modes of governance might help to overcome problems of state failure (for a good overview of the literature see Mayntz and Scharpf 1995a; Scharpf 1997). The direct participation of non-state actors in public policy-making would improve both the quality of public policies and the effectiveness of their implementation since target groups could bring in their expertise and their interests. 20 years later, this argument was reintroduced into the governance literature by students of International Relations and European Politics, who discuss “new modes of governance” as functional equivalents to the traditional top-down, command-and-control approach of hierarchical steering (Rosenau and Czempiel 1992; Jachtenfuchs 1995; Héri-tier 2002).

New modes of governance seem to be particularly appropriate for the study of international and European politics, which are essentially non-hierarchical. Unlike within the nation state, policy makers can hardly rely on majoritarian decision-making and coercive power to make effective and legitimate policies (Hix 1998; Kohler-Koch and Rittberger 2006). Yet, empirical research on new modes of governance in Europe clearly demonstrates that non-hierarchical coordination and the involvement of non-state actors does not necessarily increase either the effectiveness or the legitimacy of public policy-making. Moreover, new modes of governance are far less prevalent in European policy-making than the limited powers of the European Union would lead us to expect.<sup>1</sup> This is also true for the previous enlargements of the EU to Southern and Central and Eastern Europe, which appear to be most likely cases for the emergence of new modes of governance. On the one hand, the EU cannot hierarchically impose the *acquis communautaire* on accession countries. Before they join, their relationship with the EU remains in the realm of classic diplomacy and international negotiations. 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. On the other hand, the Southern, Central and Eastern European (CEE) countries have been limited in their capacity to hierarchically coordinate the adoption of and adaptation to the *acquis*. The implementation of the *acquis communautaire* created an enormous policy load, which met with limited resources (expertise, money, personnel) that were already strained by managing the transition from authoritarian and socialist rule, respectively. Given the limited capacity of both the EU and the accession countries, it would be only rational for public actors to seek the cooperation with private actors to share or shift the burden by pooling resources and delegating certain tasks. Private actors, in turn, could exchange their resources for influence on policies which would significantly affect them. Finally, the European Commission strongly encouraged accession countries to involve non-state actors in the adoption of and adaptation to the *acquis* to ensure both greater effectiveness and legitimacy of the accession process.

The governance literature leads us to assume that 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

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<sup>1</sup> See the result of the Integrated Project „New Modes of Governance“, funded by the EU’s 6th Framework Programme and coordinated by the European University Institute in Florence (CITI-CT-2004-506392), <http://www.eu-newgov.org/public/Research.asp>, last access: May, 29, 2007.

necessary to make EU policies work. Yet, as our empirical studies will show there is only limited evidence for the emergence of new modes of governance in the accession process. If at all, we find nascent forms of cooperation between state and non-state actors that hardly go beyond consultation. Moreover, they are most likely to emerge if EU directives explicitly require the involvement of the public. Traditional command-and-control approaches appear to prevail both in Southern and Central and Eastern European accession countries.

To address the puzzle, we argue that the literature has neglected an important finding of the early research on political steering. The work of Renate Mayntz and Fritz Scharpf, in particular, has shown that non-hierarchical modes of governance may produce better policy outcomes – but only if policy makers have the option to hierarchically impose the policy, i.e. have the capacity to adopt and enforce it without the involvement and against the opposition of private actors (Mayntz and Scharpf 1995a; Scharpf 1997; Héritier 2003). This “shadow of hierarchy” has a crucial impact on the incentives of both public and private actors to engage in non-hierarchical coordination. It helps explain why we have found so little evidence on new modes of governance in accession countries. Their state capacities have often been too limited to cast a credible shadow of hierarchy providing sufficient incentives for non-state actors to cooperate. Moreover, state actors that command only limited resources have been themselves reluctant to cooperate with non-state actors for fear of agency capture. Finally, weak states are mirrored by weak societies – like state capacities, the degree of societal organization is significantly lower in Southern European and Central and Eastern European (CEE) countries compared to the liberal democracies in Northern and Western Europe (Howard 2003; Sissenich 2007).

In a nutshell, we argue that the accession countries of the Southern and Eastern enlargements have lacked two fundamental preconditions for the emergence and effectiveness of new modes of governance: state and non-state actors with sufficient resources to engage in non-hierarchical coordination to improve the effectiveness of public policy. This “governance capacity” has been largely taken for granted by the governance literature since it has almost exclusively focused on Western democracies.

In order to develop this argument about governance capacity as a fundamental precondition for new modes of governance, the symposium proceeds in the following steps. The remainder of this paper will lay out the empirical puzzle and the theoretical challenge it poses to the literature on (new modes of) governance. It will also explain the research design of the empirical study and provide the analytical framework that will guide the comparative case studies. Finally, the major findings of the comparative case studies will be briefly summarized and their implications for the literature on (new modes of) governance discussed. The double weakness of transition countries results in a serious paradox for governance research – the stronger the need for non-hierarchical modes of governance, the less favourable are the conditions for their emergence and effectiveness.

The paper by Ana Mar Fernández, Nuria Font and Charalampos Koutalakis provides a comparative analysis of the implementation of EU environmental policies in the three Southern European countries that joined in the 1980s. Greece, Portugal, and Spain faced huge costs in the adoption of and adaptation to the environmental *acquis* that met with relatively weak capacities. Yet, both state and non-state actors had been initially too weak to pool resources. Only when EU membership helped to strengthen state capacities and transformed political opportunity structures for non-state actors did new modes of governance start to emerge. Yet, they present only “timid deviations” from the tradition command-and-control approach that still prevails in all three Southern European countries.

The paper by Aron Buzogány and Sonja Guttenbrunner finds as limited empirical evidence for the emergence of new modes of governance in the Eastern enlargement process as the three case studies on Greece, Portugal, and Spain at the time of their accession. The capacities of Hungary, Poland, and Romania have been weaker than those of their Southern counterparts in the 1980s. At the same time, the demands for capacity were higher since the *acquis* had doubled in the meantime and EU conditionality imposed strict pressure both in terms of time and compliance. As expected, new modes of governance are scarce and have only emerged where state actors possess sufficient capacities to remain in charge of the policy process.

## 2. Coping with Accession: New Modes of Governance and State Capacity

Accession appears to have been 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, 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 rather than the willingness to effectively implement EU policies, accession problems cannot simply be solved in the “shadow of hierarchy” (command and control). Alternative or “new” 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*.

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

There is a Babylonian variety of definitions and understandings of what new modes of governance are and what makes them really new as compared to traditional modes. Part of the confusion is related to the existence of a broad and a narrow understanding of governance, the latter of which is identical with what is usually understood as “new” modes of governance. This is not the place to rehearse the entire debate (for an overview see Börzel 1998). 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/or not for profit (e.g. non-governmental organizations) in policy formulation and/or implementation.

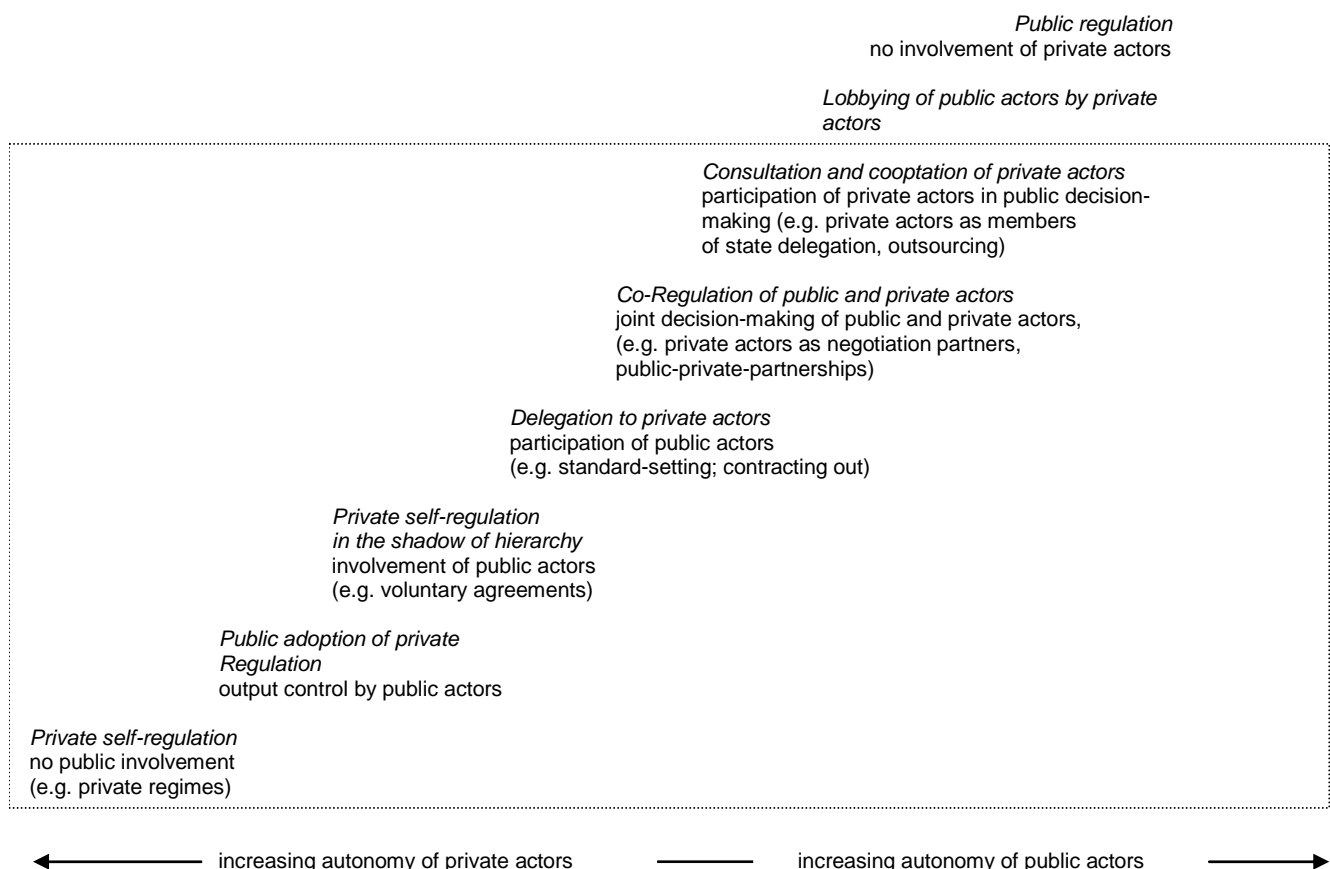
Non-hierarchical coordination is constitutive for new modes of governance. It is “governance without government” (Rosenau and Czempiel 1992), which refers to a mode of political steering that does not authoritatively impose policies but is based on voluntary cooperation. We can distinguish between two forms of non-hierarchical steering or modes to *voluntarily* engage actors in a particular action 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 conceptual overstretch, however, certain forms remain outside this definition (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**



## 2.2 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 1985), 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 most international organizations, 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. The CEE accession countries faced the tremendous task of implementing more than 10.000 legal acts before joining the EU. While the challenge for the three Southern European countries was less formidable, they still faced huge problems of policy overload, particularly in areas where they had hardly had any legislation in place, such as the environment (cf. Börzel 2003).

The challenge of “downloading” vast numbers of policies met with weak capacities of the accession countries. State actors often lacked the necessary resources, the capacity to mobilize them and/or the autonomy to introduce policy change to effectively cope with the *acquis* as a result of which their capacity for hierarchically imposing EU policies was severely constrained. As we will see in the next section, the governance capacity of the Southern and Central Eastern European accession countries has been considerable weaker than those of the Northern and Western European member states.

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, public actors, both at the European and the national level, may promote and seek the cooperation with private actors to share or shift the burden of implementing and applying the *acquis*. In other words, new modes of governance could compensate for the weak hierarchical steering capacity of the EU and the accession countries in the *implementation* of EU policies since private actors may provide the governments of the accession countries with important resources (money, information, expertise, support) that are necessary to make EU policies work.

### 2.3 State Capacity: An Elusive Concept?

Like ‘new modes of governance’, the concept of ‘state capacity’ is not used uniformly in the literature and its operationalization differs as well. First of all, we can distinguish between performance- or output-related concepts, on the one hand, and input-oriented concepts, on the other (cf. Honadle 1981).<sup>2</sup> The former focus on the ability of the state to formulate and implement policies that pursue collective interests, e.g. economic growth, environmental protection, or public health care (DEMSTAR 2002: 7). State capacity is treated as the dependent variable, defined as the effective policy output of a state and measured in terms of performance indicators, such as GDP or GDP per capita, economic growth rates, public deficits, crime rates, or the level of environmental regulation (*inter alia* Colton and Holmes 2006; Fritz 2004, Hellman et al. 2000; DEMSTAR 2002). The political science literature largely discusses state capacity as a product of state institutions and of the relationship between state and society.

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<sup>2</sup> Note that there is an abundant literature on state capacity. Due to reasons of scope and the particular focus of the COPA project, this paper concentrates on the literature on the transition countries in Central and Eastern Europe (CEE).

The debate centres around the question whether an “insulated” or “embedded” state is the better performer.<sup>3</sup>

Even though the European Union has adopted a more performance-related approach (cf. Dimitrova 2002; Sissenich 2005; Sissenich 2007), equating state capacity with the effective implementation or absorption of EU policies, exploring the causal relationship between state capacity and new modes of governance in European enlargement requires a different, input-oriented concept. This concept conceptualizes state capacity as a factor that explains the success and failure of accession countries in effectively adopting and adapting to the *acquis communautaire*. Treating state capacity as a means to reach certain ends (independent variable) avoids the fallacy of circular reasoning to which many studies tend to fall pray when they equate state capacity with state performance. Moreover, it allows controlling for alternative explanations not related to state capacity that may account for effective policy implementation, such as competitive market pressure or societal and industrial norm entrepreneurship. Input-oriented concepts can be organized around three different prongs, focusing on different dimensions of state capacity.

Resource-centred approaches define capacity as a state’s ability to act, i.e. the sum of its legal authority and financial, military, and human *resources* (Przeworski 1990; Zürn 1997; Haas 1998; Simmons 1998). In order to effectively implement EU policies, accession countries need sufficient and adequately qualified personnel. State actors must have legal knowledge of the precise behavioural requirements which result from regulations as well as the technical expertise on the practical application of the law and the monitoring of compliance. Financial resources do not only allow for the acquisition of additional personnel, expertise and technical equipment. They can also help pay off the delegation of implementation tasks to third actors (outsourcing) and compensate potential losers of a policy (cf. Börzel 2003). Yet, even if a state has sufficient resources, its administration may still have difficulties in pooling and coordinating them, particularly if the required resources are dispersed among various public agencies (e.g. ministries) and levels of government. We therefore introduce a second, resource-centred capacity variable that relates to the efficiency of a state bureaucracy to mobilize and channel resources into the implementation process (Mbaye 2001; Börzel 2003).

Neo-institutionalist approaches, by contrast, argue that the domestic institutional structure influences the degree of a state’s capacity to act and its *autonomy* to make decisions (Olson 1982, Evans 1995, Katzenstein 1978). Domestic veto players can block the implementation of international rules because of the costs they have to (co-) bear (Putnam 1988, Duina 1997, Haverland 2000). A high number of veto players reduce a state’s capacity to make the necessary changes to the *status quo* for the implementation of costly rules (Alesina and Rosenthal 1995, Tsebelis 2002). At the same time, however, the implementation literature has argued that the involvement of those affected by public policies in the decision-making may increase

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<sup>3</sup> Inter alia Evans, Peter, Dietrich Rueschemeyer, and Theda Skocpol, eds. (1985). *Bringing the State Back In*. Cambridge: Cambridge University Press, Lijphart, Arend (1999). *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven and London: Yale University Press, Evans, Peter B. (1995). *Embedded Autonomy: States and Industrial Transformation*, Princeton NJ: Princeton University Press, Weiss, Linda (1998). *The Myth of the Powerless State*, Oxford: Polity Press, Katzenstein, Peter J. (1985). *Small States in World Markets. Industrial Policy in Europe*, Ithaca and London: Cornell University Press, Putnam, Robert D. (1993). *Making Democracy Work: Civic Traditions in Modern Italy*, Princeton, NJ: Princeton University Press., Bruszt, Laszlo (2002). "Making Markets and Eastern Enlargement: Diverging Convergence", *West European Politics*, 25:2, 121-140., Stark, David, and Laszlo Bruszt (1998). *Post Socialist Pathways. Transforming Politics and Property in Eastern Europe*, Cambridge: Cambridge University Press..

compliance and effectiveness by accommodating diverse interests and fostering the acceptance of the policy (Mayntz 1983; Héritier 2003; Franck 1990; see also Lijphart 1999). Another critique of the concept of state autonomy or the “insulated state” comes from the more recent development studies literature, which points to the differential success of authoritarian, i.e. “insulated” regimes in promoting economic growth (East Asia vs. Latin America, cf. Evans 1995, Amsden 1989).

The critique has resulted in the development of a third concept of *embedded, enabling* or *engaging* state capacity. It refers first of all to the capacity of states “to penetrate society, regulate social relationships, extract resources, and appropriate or use resources in determined ways. Strong states are those with high capabilities to complete these tasks, while weak states are on the low end of a spectrum of capabilities” (Migdal 1988: 4-5).<sup>4</sup> State actors embed themselves in tight networks with societal actors that provide information and help implement public policies (Evans 1995, Weiss 1998; Howard 2002). Note that this concept of capacity bears the danger of circular reasoning by blurring state capacity and new modes of governance – the way embedded or engaging capacity is defined comes very close to what we understand to be new modes of governance. Thus, we have to carefully define what exactly it is that enables state actors to embed themselves in and engage with society.

While embedded state capacity is indeed almost synonymous with new modes of governance, enabling state capacity focuses more on the capacity of states to provide “rooms that enable and encourage deliberative processes” (Zürn 1998: 241). The underlying assumption is that networks between state and societal actors enable the state to tap into the resources of non-state actors and foster reasoned argumentation, mutual understanding and common values as a result of which decision-making may proceed beyond self-interested bargaining (Scharpf 1993: 76-77). The state needs to create deliberative arenas to enable the exchange of information, collect expertise, create trust, and profit from the emergence of issue-related problem-solving coalitions. It also enables, facilitates and encourages the existence and flourishing of societal organizations (Padgett 2000, Levy 1999, Hall 1999). This requires the capacity for strategic reflection, internal consensus building and the formal assignment of resources that can facilitate the coming together of policy actors to deliberate in an impartial and informed way on specific issues (White 2005; Blaug 1997; Palincsar 1998). This more deliberative type of state capacity may also be relevant for the other two types of state capacity, autonomy and resources. It may help state actors to pool and coordinate resources, which are required for effective policy-making, but are dispersed among various public agencies (e.g. ministries) and levels of government. The same is true for inducing non-state actors to cooperate and offer their resources. Regarding autonomy, state actors can exert “integrated leadership” persuading actors not to invoke their veto power (Héritier 2001).

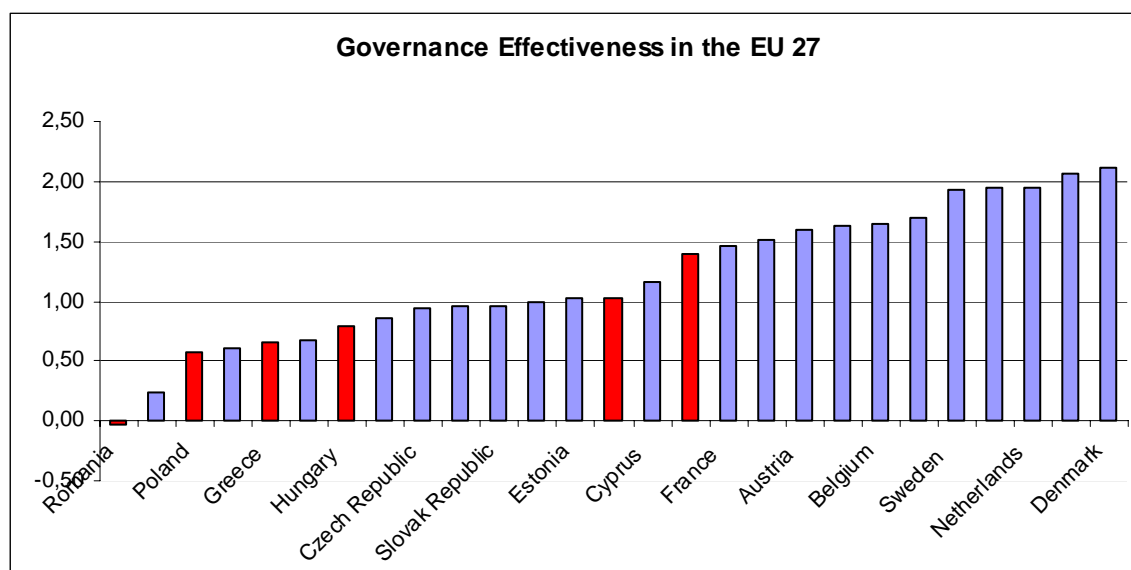
With the exception of government autonomy, the Southern European and Central Eastern European accession countries score significantly lower than their Northern and Western European countries regarding their state capacity (see table 1). While the prospect of membership and accession conditionality, respectively, tended to increase government autonomy at least in the legal implementation of EU policies, state actors often lacked the necessary resources, effective coordination mechanisms to mobilize them and/or extract them from non-

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<sup>4</sup> The notion of embedded or engaging capacity comes close to what Michael Mann defined as infrastructural power as opposed to despotic power or state autonomy (Mann, Michael (1986). "The Autonomous Power of the State: Its Origins, Mechanisms and Results", in John A. Hall (ed.), *States in History*. London: Blackwell, 109-136.: 113-119).

state actors to effectively cope with the *acquis* as a result of which their capacity for hierarchically applying and enforcing EU policies was severely constrained.

**Table 1: State Capacity in the EU 27 Compared (2005)**



Source: Kaufman et al. 2006; Kaufmann et al. 2003.<sup>5</sup>

## 2.4 State Capacity and New Modes of Governance

The Governance literature does not only regard capacity as a crucial condition for the effective implementation of (environmental) policies of both domestic and international origin (Mayntz 1983; Chayes and Chayes 1995; Jacobsen and Weiss Brown 1995; Jänicke and Weidner 1997; Haas 1998). It is also a major factor in explaining the emergence and effectiveness of new modes of governance.

The governance literature has heavily drawn on resource dependency approaches to explain the emergence of new modes of governance (cf. Scharpf 1978; Mayntz 1997, Rhodes 1997). To make policies, state actors become increasingly dependent upon the cooperation and joint resource mobilization of non-state actors, which are outside their hierarchical control. New modes of governance allow 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

<sup>5</sup> The capacity indicators of the World Bank measure the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies. While they provide a rather crude measurement of state capacity that is more output-oriented, we always find the same capacity gap irrespective of the data and indicators we use. We acknowledge, however, that the capacity of a state may vary significantly both across time and across policies (Howlett, Michael, and M. Ramesh (2003). *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford: Oxford University Press.: 62, Weiss.: 4). Moreover, individual policies may require different types of capacity. Finally, we are aware that it is not always easy to distinguish between capacity and willingness. “Cunning states” (Randeria, Shalini (2003). “Cunning States and Unaccountable International Institutions: Legal Plurality, Social Movements and Rights of Local Communities to Common Property Resources”, *European Journal of Sociology*, 44:1, 27-60.) may blame their weakness in order to avoid the implementation of costly policies.

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 short, 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.

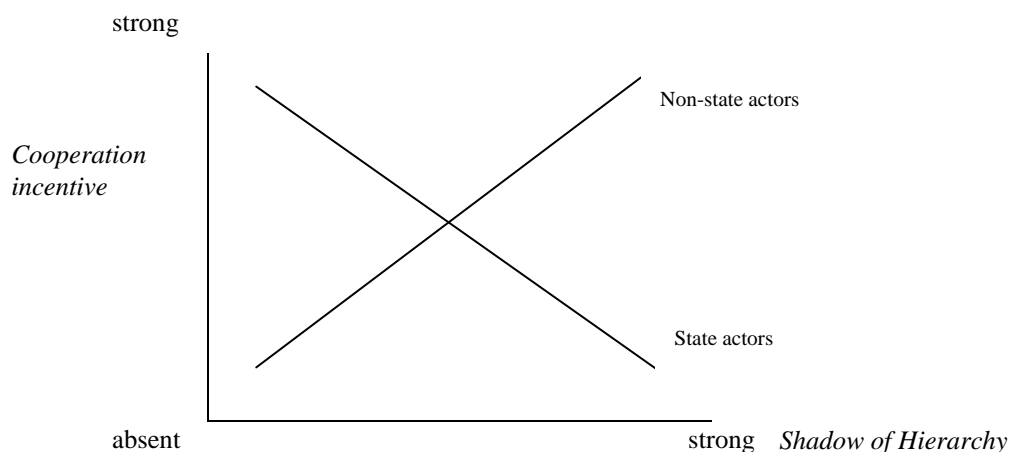
While the pooling of resources and the sharing of implementation costs provide a very important incentive for state actors to enlist non-state actors in the policy process, the governance literature also points to major countervailing factors that may make state actors shy away from new modes of governance. If state actors feel weak because they lack important resources (information, expertise, personnel, support), they are far more reluctant to seek the cooperation with non-state actors. The fear of agency loss (autonomy) or even agency capture is a powerful disincentive for resorting to new modes of governance (Hellmann et al. 2000). Moreover, the interest of non-state actors in participating in the policy process depends on the capacity of state actors to impose a policy unilaterally and turn a joint agreement into a formal decision, respectively (Mayntz and Scharpf 1995b; Héritier 2003, Scharpf 2000).

This “shadow of hierarchy” is so important for new modes of governance because it generates major incentives for cooperation for both state and non-state actors (cf. Scharpf 1997, Mayntz and Scharpf 1995b). Non-hierarchical coordination entails high transaction costs for the actors involved. If the policy outcome does not fully correspond to their preferences, it requires the threat of a hierarchically imposed decision in order to change the cost-benefit calculations in favour of a voluntary agreement. This is particularly true for the self-coordination of non-state actors. Business associations or societal networks rarely have sufficient sanctioning capacities to deter opportunistic behaviour of their members in the implementation of voluntary agreements (free-rider problem). Therefore, we hardly ever find societal self-coordination without the involvement of state actors that have the capacity for taking and enforcing unilateral decisions.

If the shadow of hierarchy provides an important incentive for non-state actors to cooperate, their willingness to engage in new modes of governance should increase with the degree to which state actors are capable of resorting to hierarchical modes of governance. For state actors it is exactly the reverse – the higher their capacity for hierarchical policy-making, the fewer incentives they have to cooperate with non-state actors. In order to avoid falling prone to what Renate Mayntz called the “functionalist fallacy of governance research” (Mayntz 2004: 71, my translation), we must assume that state actors seek to increase or at least to maintain their autonomy as well as their problem-solving capacity in the policy process. Since the cooperation with third (non-)state actors entails a significant loss of autonomy, they are only willing to engage in new modes of governance if they (re-)gain problem-solving capacity compared to using hierarchical modes of governance. The “strength of weakness” (Kohler-Koch 1996), which is also referred to as the “neue Staatsräson” in the International Relations literature (new *raison d'état*, Wolf 2000, Grande and Risse 2000) is a core feature of the modern state (Mann 1993; Scharpf 1991, Mayntz 1993).

In sum, the shadow of hierarchy provides both state and non-state actors with an important incentive for cooperation, albeit in opposite ways (see figure 1).

**Figure 2: The Shadow of Hierarchy and Reverse Incentives for Cooperation for State and Non-state Actors**



State actors have to possess sufficient capacities in terms of both resources and autonomy in order to cast a credible shadow of hierarchy so that non-state actors have an incentive to cooperate, and state actors are not afraid of being captured. But at the same time, these state capacities must not be too strong in order to provide an incentive for state actors to seek cooperation with non-state actors.

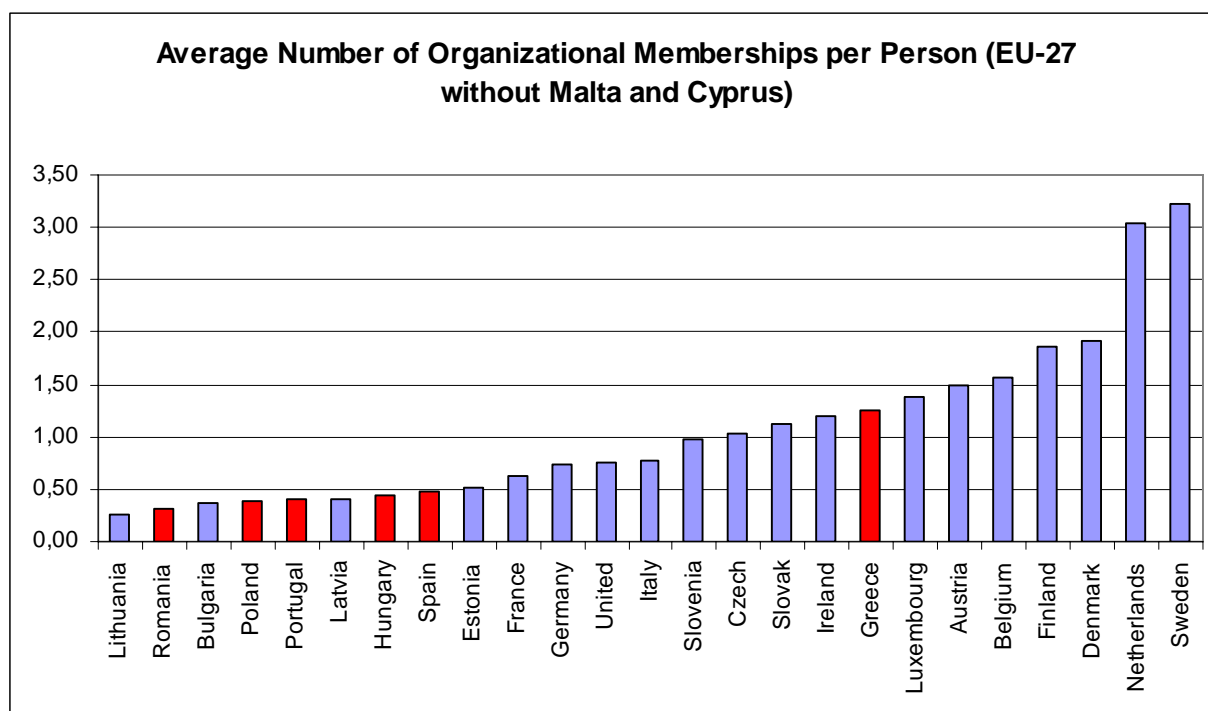
Sufficient resources and autonomy are also deemed necessary but not sufficient for the state to engage with or embed itself in society (Evans 1995, Weiss 1998, Migdal 1988). The literature identifies at least two sufficient conditions. First, an administrative or state culture is required that renders the cooperation with non-state actors an appropriate means to ensure good governance (Kohler-Koch 2000). Thus, new modes of governance may not always be compatible with the dominant view of state actors on how to make effective and legitimate policies. This is particularly true for countries with an authoritarian legacy and no sustained tradition of institutionalized state-society relations (Linz and Stepan 1996; Börzel 2003). But even consolidated democracies differ significantly with regard to state tradition and policy style (Richardson 1982, Knill 2001). Moreover, in post-socialist countries, new modes of governance are often seen as undemocratic since they circumvent the parliamentary arena and are prone to corruption and state capture.<sup>6</sup> Non-governmental organizations often appear to be particularly sceptical of new modes of governance, also because they do not want to be seen by their supporters as co-opted by the state. Finally, it has been argued that precisely because post-communist states are weak, they should build-up their institutional capacity and autonomy rather than give their powers away to non-state actors (Dimitrova 2002; Jerre 2005). This argument resonates well with considerations about the “shadow of hierarchy” as a scope condition for the emergence of new modes of governance.

Second, non-state actors must also have the necessary action capacity and autonomy to engage in new modes of governance. On the one hand, they need sufficient personnel, information, expertise, money and organizational resources to make strategic decisions, to act as reliable negotiation partners and to offer state actors something in exchange for becoming involved in the policy process. On the other hand, non-state actors have to have the necessary autonomy in order to act free from political control (Mayntz 1993, Mayntz 1996: 157-158).

<sup>6</sup> See NewGov Project 17: Democratisation, Capture of the State and New Forms of Governance in CEE countries, especially the *Inception Report: Democratization, Capture of the State and New Forms of Governance in CEE countries* by Tomasz Grzegorz Grosse and the paper on *Tripartite Commission, Effectiveness, Legitimacy and Pathologies of Weak States: Case Study Report Poland* by Mateusz Falkowski.

While the autonomy of societal actors is no longer the issue in Southern and Central and Eastern European countries, civil society is still weak. As a result of the postauthoritarian heritage, the membership in voluntary associations (except for trade unions) is on average still lower than in the Northern and Western European countries (Sissenich 2007; Howard 2003, Linz and Stepan 1996). The same applies to the number and strength of organized interests in general (Howard 2003, Rose-Ackermann 2007).<sup>7</sup>

**Table 2: Strength of Civil Society Compared**



Source: own compilation based on Sissenich 2007: 163

In sum, the accession countries face a serious governance dilemma. On the one hand, state actors often lack the capacity to effectively adopt and adapt to the EU *acquis communautaire*. As a result, they should have an incentive to seek the cooperation with non-state actors to share and shift the burden of implementation, respectively. On the other hand, however, state actors also tend to be too weak to cast a credible shadow of hierarchy in order to provide important incentives for non-state actors to engage in cooperation. At the same time, non-state actors face capacity problems, too. Not only may they lack the necessary resources to serve as reliable cooperation partners in public policy-making, their relations with state actors are often characterized by (mutual) distrust, too. Since state and society are on average weaker in the Southern European and Central Eastern European (CEE) accession countries than in the Northern and Western European member states, new modes of governance should be far less likely to emerge than resource dependency approaches would lead us to expect. This is all the more the case since the Southern and the CEE countries share a legacy of authoritarian statism that is hardly compatible with new modes of governance.

<sup>7</sup> See NewGov Project 24: Democratisation/Participation of Civil Society in New Modes of Governance, especially Heiko Pleines (ed.): Participation of Civil Society in New Modes of Governance. The Case of the New EU Member States – Part 1: The State of Civil Society.

### 3. Coping with Accession: New Modes of Governance and Enlargement

To explore the empirical validity of the theoretical argument about the paradox of double weakness, we analyze how six accession countries coped with the challenge of adopting and adapting the EU environmental *acquis*.<sup>8</sup> 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 joined in 2007. The three CEE countries 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. Since the conditions for accession differed between Southern and Eastern enlargement (e.g. regarding the use of conditionality, transition periods, size of the *acquis*), we decided to extend the time period of our analysis to the post-accession stage of the Southern European countries, where they felt the main burden of coping with accession, which also allows for a more direct comparison with the Central and Eastern European countries. Overall, the selection of the countries follows a most different systems design. The six countries differ significantly with regard to their political, social, economic and cultural institutions. Spain, for instance, is a quasi-federal state, while Greece and Portugal are highly centralized. Likewise, the degree of territorial decentralization is higher in Poland as compared to Hungary and Romania. What they have in common, however, are that they all have been accession countries whose governance capacities were and still are much weaker compared to the Northern and Western European states. The dual weakness of state and non-state actors can probably be traced back to a joint legacy of state authoritarianism. But this is not the major concern of our study and is only relevant to the extent that our six countries share an administrative culture that is hostile to the involvement of non-state actors in public policy-making. We seek to find out how the weak governance capacities of the six accession countries have influenced the propensity of new modes of governance to emerge.

The comparative case studies focus 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 (DW; 80/778/EEC) and Large Combustion Plants (LCP; 88/609/EEC; 2001/80/EEC). 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; 92/43/EEC), the Environmental Impact Assessment (EIA; 85/337/EEC; 97/11/EEC), the Integrated Pollution Prevention and Control Directive (IPPC; 96/61/EEC), and the Water Framework Directive (WF; 2000/60/EEC). 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.

Both, directives entailing new and old instruments are most likely cases for the emergence of new modes of governance, because they impose significant compliance costs creating incentives for state actors to involve non-state actors in order to share or shift the burden. The emergence of new modes of governance becomes even more likely if the directives explicitly require the involvement of private actors.

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<sup>8</sup> The empirical studies are part of a three year project funded by the EU 6th Framework Programme.

Our comparative studies confirm that the implementation and application of EU environmental *acquis* has imposed significant costs on the accession countries. Next to the financial burden, particularly the application of technical sophisticated policies, such as FFH, IPPC and WFD, requires significant personnel with the necessary legal, scientific and technical expertise. Thus, state actors had an incentive to seek the cooperation with companies, scientific experts, and environmental groups, who could offer resources, such as technical know-how and scientific expertise. Likewise, non-state actors had an interest in exchanging these resources against influence on the legal and administrative application of the Directives since their transposition into domestic law did not leave much leeway. While companies sought to reduce compliance costs by increasing flexibility and receiving derogations, environmental organizations wanted to secure the strict application of EU requirements.

Although state and non-state actors often had incentives to cooperate, non-state actors hardly got involved in public policy-making. But even where new modes of governance emerged, they do not go beyond more or less regular consultations and the contracting out of public tasks. Non-state actors are most actively involved where EU directives explicitly require their participation. Voluntary agreements of business, the delegation of regulatory tasks to associations, the formal participation of stake-holders in the application of state regulations, or private self-regulation, which are typical new modes of governance in Western countries (Marin and Mayntz 1991; Kooiman 1993), are extremely scarce in the Southern European states and practically absent in the three CEE countries. This is mostly due to the low governance capacity, i.e. the overall weakness of both state and non-state actors in the six countries. Civil society actors often do not have sufficient organizational capacities to serve as a reliable partner in the cooperation with state actors. Companies, in turn, shy away from cooperation because they doubt that state actors are capable of translating mutual agreements into policy outcomes given unstable majorities in parliament and frequent government turnovers. Political instability also weakens the credibility of state actors to unilaterally adopt and impose costly policies. State actors themselves see their weakness as a major obstacle for cooperation with non-state actors. Not only has industry little incentive to offer its resources for the making of policies that incur significant costs upon them. State actors are also afraid of being captured by business, if it has superior resources. Next to the fear of “state capture”, policy-makers and administrators are often faced with public scepticism against new modes of governance, which are seen as part of the socialist legacy (clientelistic networks) and in contradiction to democratic institutions. This perception is reinforced by attempts of politicians to shift political decisions into civil society fora in order to circumvent opposition or deadlock in parliamentary or party arenas. Finally, the privatization or delegation of public tasks to private actors, particularly in the area of public services (drinking water), meets strong opposition at the local level.

Our findings hardly vary across the six countries. While new modes of governance appear to be slightly more prevalent in Spain and Hungary, their governance capacities are also somewhat stronger than in the other four countries. In Greece and Romania, we have found the least evidence for new modes of governance. Romania belongs to the European countries with the lowest governance capacity. Moreover, the effects of EU compliance pressure and capacity-building on practical application have been delayed since Romania joined two years later than Hungary and Poland. Greece also suffers from low state capacities and has not always been able to absorb the funds provided by the EU. Its civil society is considerably stronger than in our other five countries. But environmental activism has been much more “grass-roots” and confrontational (Kousis 1999). The adoption of a more cooperative approach is also hampered by the suspicion, both among civil society organizations and the public in general, towards new modes of governance, particularly when state actors appear to selectively involve certain actors (business, scientists) while excluding others (civil society organiza-

tions). The findings on our three CEE countries confirm that (EU) capacity-building and EU compliance pressure may be necessary but not sufficient to foster the emergence of new modes of governance. On the one hand, state actors have to be capable of absorbing EU resources as non-state actors have to have the capacity to make use of the new opportunities offered by the EU. On the other hand, both have to generate trust in new modes of governance as effective means to implement EU policies. State actors often perceive the involvement of non-state actors as time-consuming and a further obstacle in taking decisions that are not geared towards particularistic interests. Even if new modes of governance may help increase effective implementation, they may not always be seen as a legitimate way of policy-making due to their often informal character and the selective inclusion of non-state actors.

#### 4. Conclusions

The comparative case studies on the adoption of and adaptation to the EU environmental *acquis* in this symposium find only limited evidence of new modes of governance in all six accession countries. The scarce emergence of only weak forms of new modes of governance are all the more remarkable since the six countries significantly differ with regard to their political, social, economic and cultural institutions. What they have in common, however, points to some important factors in explaining the emergence of new modes of governance. Hungary, Poland, Romania, as well as Greece, Portugal and Spain are both accession and transition countries at the time when they are analyzed in the various projects. The combination of both factors results in conditions that, somehow paradoxically, may require new modes of governance but are unfavourable for their emergence.

First, the top-down nature of the accession process, in which the candidate countries have to down-load a vast number of EU policies in a rather short period of time has most of the time not allowed for the involvement of private actors. On the contrary, accession conditionality and the focus of the Commission on the absorption capacity of the candidate countries has strengthened the autonomy of central government actors in hierarchically imposing policy outcomes. This is even the case for regional and agriculture policy, in which the Commission explicitly requires and encourages the involvement of subnational and private actors.

Second, accession countries do not only have to cope with the challenge of adopting and adapting to the comprehensive *acquis communautaire*. Their governments also have to manage the still ongoing transition to democracy and market economy. Both, accession and transition, require immense resources, a demand that is hardly met by the weak governance capacities of the candidate countries. On the one hand, state actors often lack sufficient financial (money), administrative (staff) and cognitive (expertise) resources, and the capacity to mobilize existing resources (e.g. due to administrative fragmentation), respectively, to effectively adopt and enforce public policies. Moreover, given the political instability and frequently changing governments, they may not appear as reliable negotiation partners. In the absence of a credible shadow of hierarchy, non-state actors have hardly any incentives to cooperate with state actors exchanging their resources for political influence. At the same time, state actors often shy away from cooperating with non-state actors, too, because they are afraid of being captured, or are indeed captured by powerful private interests. Finally, the engaging capacity of state actors has been severely limited since institutionalized arenas for interacting with non-state actors have been largely absent. On the other hand, non-state actors are often equally weak. They do not have sufficient organizational capacities to offer themselves as reliable partners to state actors. Or they lack any resources to exchange to begin with.

These findings are in line with an argument of the governance literature that new modes of governance require both, a strong state and a strong society. In our six countries, weak governance capacity is complemented by a state tradition which is hostile to the involvement of non-state actors in public policy-making. Not only are new modes of governance incompatible with the legacy of authoritarianism and socialism. New modes of governance do not necessarily correspond to the newly established institutions of representative democracies. Non-elected interest groups and civil society organizations are not always accepted as legitimate representatives of societal interests. Moreover, their involvement in the policy process outside majoritarian institutions is often considered as a continuation of traditional clientelistic networks.

While the weak capacities of transition countries may render new modes of governance an important way to cope with the challenge of accession by pooling resources and sharing costs with non-state actors, the conditions for the emergence of new modes of governance are highly unfavourable in all six accession countries. As a result, there is a clear dominance of traditional command and control regulation. Nevertheless, we have found some albeit scattered and weak forms of new modes of governance that point to factors that may foster their emergence.

First, EU pressure is a prominent factor in inducing state actors to resort to new modes of governance. On the one hand, the EU may legally require the involvement of private actors (e.g. the principle of partnership or participatory policy instruments in environmental Directives). Thus, it may be rational for state actors to apply new modes of governance in order to avoid punishment and to receive rewards by the Commission, respectively (accession conditionality). On the other hand, there is a normative logic that may drive the emergence of new modes of governance – it is the “EU way of doing business”. The Commission has actively promoted the idea of new modes of governance as a means to help countries cope with the challenge of accession (Tulmets 2005).

Second, the EU does not only provide incentives and governance paradigms that may facilitate new modes of governance. It also helps strengthening governance capacities of accession countries. The transfer of money and expertise through Community programs and twinning processes provides state as well as non-state actors with additional resources they can exchange (Dimitrova 2002; Sissenich 2007). These processes also foster policy learning and trust building. Moreover, the monitoring and sanctioning system of the EU (accession conditionality and infringement proceedings) have empowered non-state actors by opening new opportunities for them to pursue their interests, e.g. by taking their governments to court (Börzel 2006). State actors may resort to new modes of governance in order to accommodate the interests of non-state actors and avoid complaints to the Commission or legal proceedings.

Our findings have important implications for research on (new modes of) governance. If it is correct that non-hierarchical modes of governance require both a strong state and a strong society, this results in a serious dilemma or even paradox: the lower the capacity of a state, the greater the need for new modes of governance to compensate for state weakness or state failure but the less likely they are to emerge. This is particularly true if there is indeed a dialectical relationship between the evolution of a strong state and a strong society as it is implicitly assumed or explicitly claimed by the governance literature (Tilly 1975; Mayntz 1993). Whether this is merely a fallacy of modernization theory or simply the result of a selection bias towards the OECD world in governance research, remains to be seen. We need more empirical research on countries which lack the prerequisites of a modern state to find out to what extent the governance paradox exists and how it can be eventually overcome.

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