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NEWGOV

New Modes of Governance

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

Cluster Three Workshop: Assessing the Effectiveness, Capacity and Legitimacy of New Modes of Governance

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Summary

The workshop aimed at discussing the major findings of the projects along the main questions of Cluster 3. The cluster focuses on the role of new modes of governance (NMG) for the implementation of EU policies and EU primary Law in different types of states, “weak states” in particular, including Southern European member states, Central and Eastern European (CEE) candidate countries and associated states in the former Soviet Union and Northern Africa. Thus, the findings of the projects are most relevant to addressing the first and the third “E” (emergence and evaluation). The central focus of Cluster 3 is to explore the role of governance capacity for the emergence, effectiveness and legitimacy of NMG. The workshop took place from 31 January to 2 February 2008 at the Center for European Integration of the Freie Universität Berlin.

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I. Introduction

The workshop aimed at discussing the major findings of the projects along the main questions of Cluster 3. The cluster focuses on the role of new modes of governance (NMG) for the implementation of EU policies and EU primary Law in different types of states, “weak states” in particular, including Southern European member states, Central and Eastern European (CEE) candidate countries and associated states in the former Soviet Union and Northern Africa. Thus, the findings of the projects are most relevant to addressing the first and the third “E” (emergence and evaluation). The central focus of Cluster 3 is to explore the role of governance capacity for the emergence, effectiveness and legitimacy of NMG.

II. Seek and ye shall find? Evidence on the emergence of New Modes of Governance

The six projects in Cluster 3, which focus on the domestic level and explore NMG in nine different countries in Southern, Central and Eastern Europe, have found only limited evidence for the emergence of new modes of governance. This is even true if we adopt a less demanding definition that focuses on non-hierarchical modes of coordination and does not necessarily require the (equal) involvement of private actors and that includes policy implementation as well as binding policy outcomes. There is a clear dominance of traditional modes of governance, in which state actors resort to command and control regulation to adopt and adapt to EU policies. Consultation, outsourcing, and to a lesser extent voluntary agreements are the only NMG we find that involve private actors. Moreover, NMG are usually embedded in old modes. Thus, the shadow of hierarchy often looms in the background. Likewise, NMG in the EU’s external relations with third countries frequently occur in conjunction with intergovernmental and hegemonic cooperation.

While the findings of scarce and only weak forms of NMG apply across all nine countries, the Southern European countries show some interesting change over time. Spain and Portugal in particular has seen some first inceptions of NMG after accession.

The two projects (13, 17) that focus on governance in the context of EU Treaty law and on EU relations with third countries have been more successful in tracing NMG. They have adopted a somewhat broader definition of NMG, which encompasses purely public forms of NMG. Project 17, which focuses on the EU’s relation with associated neighbourhood countries, identifies transgovernmental networks and networks of regulators, partly organized around European agencies as NMG (see also project 14). Project 13 explores how the European Court of Justice and the Commission have been able to establish the principle of mutual recognition or state aid soft law in situations in which the Member states could not agree upon further integration.

III. Why do they (not) emerge? Factors fostering and impairing NMG

The findings of scarce and only weak forms of NMG for the nine countries are all the more remarkable since they 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 NMG. Hungary, Poland, Czech Republic, Estonia, Lithuania, Rumania, 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 NMG but are unfavourable for their emergence.

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. The weak capacities of transition countries may render NMG an important way to cope with the challenge of accession by pooling resources and sharing costs with non-state actors. Moreover, the European Commission has promoted NMG as a means to make the implementation of the *acquis communautaire* more effective. Nevertheless, we have found only scattered and weak forms of NMG. Our projects have identified several factors that have fostered and impaired the emergence of NMG. These factors impact upon the willingness and the capacity of state and non-state actors to engage in cooperation with each other. They are located both at the European and the domestic level.

At the domestic level, **state capacity** has provided an important incentive for both, state and non-state actors to engage in cooperation. Accession and transition require immense resources, a demand that is hardly met by the weak governance capacities of the candidate countries. 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. Finally, after decades of authoritarian statism, institutions that provide an arena for exchange between state and non-state actors are only emerging. In the absence of a credible shadow of hierarchy (see project 12, 14, and Cluster 2), 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 (project 12), or are indeed captured by powerful private interests (see project 17).

The **capacity of non-state actors** tends to be even weaker. Particularly civil society organizations do not have sufficient organizational capacities to offer themselves as reliable partners to state actors. Or they lack resources to exchange to begin with (project 12, 14, 17). Business actors also appear to be rather weak, with regard to both their financial resources and organizational capacities. Yet, there is significant variation between sectors, which also affects the willingness of business to collaborate with state administration. Highly productive industries, which are usually strongly export-oriented and attract foreign direct investments, tend to possess relevant capacities, which are lacking, particularly with small and medium size enterprises. They also take an interest in fostering the regulatory capacity of states in order to reduce legal uncertainty (project 12, 14).

The low governance capacities of both state and non-state actors (“low equilibrium trap”, project 15;) as a major impediment for the emergence of NMG are in line with an argument of the governance literature that new modes of governance require both, a strong state and a strong society (Renate Mayntz refers to a modernization deficit of Central Eastern European countries; cf. project 12). The findings on the importance of governance capacities, and the shadow of hierarchy in particular, for the emergence of NMG are also corroborated by the projects which focus on NMG in the context of EU Treaty Law. Trust among Member states in each other’s monitoring and enforcement capacities has proven to be a major pre-condition for the functioning of mutual recognition (project 13). In the EU’s external relations with third countries, NMG are more likely to emerge where both sides display a similar level of governance capacity (project 17).

The impairing effect of weak governance capacity is reinforced by a **state tradition** which is hostile to the involvement of non-state actors in public policy-making. Not only are NMG in-

compatible with the legacy of authoritarianism and socialism. NMG do not necessarily correspond to the newly established institutions of representative democracies. Thus, 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 (project 12, 17). Likewise, the **civil society tradition** in the transition countries does not always resonate with NMG either. Civil society largely emerged in opposition to the authoritarian state. Many civil society organizations still see themselves as “watchdogs” rather than partners of the state in public policy-making (see project 24 in Cluster 4).

Finally, **domestic political and economic changes** have had a major influence on the emergence of NMG over time by affecting the capacity and willingness of state and non-state actors to cooperate. Decentralization in Spain, Poland and Hungary, for instance, provided non-state actors with additional access points to the policy process. On a more general level, the consolidation of democracy in the accession countries helped strengthen participatory institutions, which facilitated the interaction between state and non-state actors and helped foster trust and a culture of cooperation.

Domestic factors have largely impaired the emergence of NMG in accession countries. Europeanization, by contrast, has played a prominent role for the timid emergence of NMG in all our countries.

First, **EU pressure** induced state actors to resort to NMG. 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 NMG 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 NMG – it is the “EU way of doing business” (project 12, 17). The Commission has actively promoted the idea of NMG as a means to help countries cope with the challenge of accession.

Second, the EU does not only provide incentives and governance paradigms that may favour NMG. 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. These processes also foster policy learning and trust building (project 12, 15, 16, 17). 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. State actors may resort to NMG in order to accommodate the interests of non-state actors and avoid complaints to the Commission or legal proceedings (project 12, 13, 14).

While Europeanization has fostered the emergence of NMG, it can also have the **opposite effect**. First, the EU has not always been consistent in its approach to governing accession. In structural policy, the prioritizing of the absorption capacity has fostered centralization and, hence, counteracted the emphasis of the principle of partnership for the involvement of subnational and private actors (project 15, 16).

Second, Europeanization has helped strengthening the capacity of both state and non-state actors. However, the building of governance capacities has been unequal, favouring state over non-state actors. Not only has the down-loading of a vast number of EU policies in a rather short period of time not allowed for the involvement of private actors. Accession conditionality and the focus of the Commission on the absorption capacity of the candidate countries

have strengthened the autonomy and the resources 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 (see projects 15, 17). While state actors have become more open to the involvement of non-state actors, they have managed to stay in control of the policy process. The asymmetrical relationship to a large extent explains why we only find weak forms of NMG, which largely operate under the shadow of hierarchy (project 12, 15, 16).

Next to the EU, the projects identified several factors at the domestic level that fostered and impaired the emergence of NMG.

IV. Handle with care: The effect(iveness) of NMG

Since we have only found scarce and weak forms of NMG, it is difficult to explore the extent to which they can contribute to the effectiveness and legitimacy of public policy.

The empirical evidence allows for some insights, though. Effectiveness in cluster 3 relates mostly to the effective that is timely, complete and correct implementation of EU policies. Legitimacy is defined as the voluntary acceptance of a policy by the rule targets because the policy and its making conform to pre-established norms (see the key note speech of Philippe Schmitter at the Consortium Conference in May, 2007). The projects present mixed results. NMG may increase the effectiveness of implementation by providing additional resources (money, expertise), reducing costs and helping to resolve conflicts among actors involved (project 12, 13, 14, 17). However, they can also have the opposite effect e.g. by decreasing the capacity of accession countries to absorb EU funds (project 16). Moreover, the effectiveness of NMG may depend on some scope conditions, such as the capacity of the state to provide additional incentive to non-state actors to participate in regulatory networks of national agencies (project 14). The impact of NMG on the legitimacy of public policies is equally ambivalent. While NMG may increase the acceptance of a policy by involving affected parties and mediating conflicts of interest, they can also generate opposition and resentment because NMG are seen as clientelistic, intransparent, exclusive, and, thus, undemocratic (projects 12, 17). Thus, instead of helping to deal with ‘tough’ policy problems, NMG can also create additional policy problems.

In the context of EU Treaty law, NMG, such as mutual recognition or state aid soft law, have been found to considerably impact on Member states’ policies. While these NMG may have increased output-legitimacy in terms of overall levels of trade and competition in the EU, both their input- and output-legitimacy are questionable from a national or subnational perspective (project 13).

V. Strengthening rather than transforming the state: The structural impact of NMG

Tracing the structural impact of NMG on power relations is difficult to isolate the effect of NMG. Not only are they limited in number, their emergence coincides with other changes induced by accession to and approximation with the EU. Moreover, for Southern, Central and Eastern European countries, accession to the EU has overlapped with their still ongoing political and socio-economic transition. The same is true for the neighbourhood countries of the Former Soviet Union.

So far, our empirical evidence seems to imply that the impact of NMG on (domestic) power relations is at best differential. NMG may empower non-state actors and local authorities vis-

à-vis their central governments if they have the capacities to exploit the opportunities offered to them for participating in the policy process. Thus, Spanish and Hungarian environmental groups, often supported by transnational organizations, have been more successful in getting involved than their Greek and Rumanian counterparts, partly because environmental mobilization in Greece and Romania is much more localized (project 12). In a similar vein, Polish regional actors have been more involved in regional governance regimes than their counterparts in Hungary where the degree of territorial decentralization is still weak (project 15). But the overall finding so far seems to be that NMG have reinforced rather than changed existing domestic structures, particularly with regard to the dominance of executive actors at the national but also at the EU level (all projects). Thus, the introduction of social dialogue institutions in Poland, Estonia and Lithuania has done little to transform the socialist legacy of the administrative state towards a more “Western-type” network model. Somewhat paradoxically, NMG seem to reinforce hierarchical governance structures by strengthening the capacity of state actors to make and implement public policies. Indeed, state actors have made instrumental use of NMG to strengthen their central position in policy-making rather than to devolve or share power with business, civil society organizations, subnational authorities, and regulatory agencies. Given the relative weakness of non-state actors, state actors have largely managed to stay in control of the policy process limiting involvement to consultation. This is also true for the EU level, where the Parliament and societal interests have little say on the way in which the EU conducts its external relations with third countries (project 17) and applies the principle of mutual recognition and soft law, respectively (project 13).

The structural impact of NMG has not only been limited due to weak governance capacities and the low resonance with the administrative and civic culture in the accession countries. The EU has also started to turn away from attempts to directly interfere with the domestic institutions of its member states, emphasizing competition and subsidiarity (project 16).

In sum, NMG have done little to transform the state. On the contrary, NMG may reinforce some of the pathologies of these states by undermining “classical” modes of democratic legitimation allowing state actors to circumvent majoritarian institutions (project 17). Mutual recognition is another example where NMG erode democratic legitimation without providing compensation through alternative modes, such as deliberation (project 13).

VI. Workshop Programme

Thursday, 31st of January

19:00 Informal Dinner in Central Berlin

Friday, 1st of February

- 9:00-9:15 **Opening of the Cluster Conference**
Tanja A. Börzel, FU Berlin
- Reporting Project Results I**
Chair: *László Bruszt, EUI*
- 9:15-10:15 **Project 12: Coping with Accession (COPA)**
Ana Mar Fernandez, U Autonoma Barcelona / Charalampos Koutalakis, University of Athens and FU Berlin
Aron Buzogány, FU Berlin
- 10:15-11:15 **Project 13: The Domestic Impact of European Law**
Michael Blauburger, U Bremen
- 11:15-11:30 Coffee Break
- 11:30-12:30 **Project 14: Smoothing Eastern Enlargement: Independent Regulatory Agencies and Non-Hierarchical Steering**
Charalampos Koutalakis, University of Athens and FU Berlin
- 12:30-14:00 Lunch Break
- Reporting Project Results II**
Chair: *Tanja A. Börzel, FU Berlin*
- 14:00-15:00 **Project 15: Evolving Regional Governance Regimes: Challenges for Institution Building in the CEE Countries (EVOLVIN)**
László Bruszt, EUI Florence
- 15:00-16:00 **Project 17: Democratisation, Capture of the State and New Forms of Governance in CEE countries**
Tomasz Grzegorz Grosse, IPA Warsaw
- 16:00-16:30 Coffee Break
- Reporting Project Results III**
Chair: *Charalampos Koutalakis, University of Athens and FU Berlin*
- 16:30-17:30 **Summarizing Cluster Findings**
Tanja A. Börzel, FU Berlin
- 17:30-18:30 **Where Do We Go From Here: Next Steps and Outlook**
Tanja A. Börzel, FU Berlin
- 19:30 Conference Dinner in Dahlem

VII. List of Participants

<u>Participants</u>	<u>Project</u>
Michael Blauburger	The Domestic Impact of European Law, Bremen
Tanja Börzel	Coping with Accession. New Modes of Governance and European Enlargement, Berlin
László Bruszt	Evolving Regional Governance Regimes: Challenges for Institution Building in the CEE Countries (EVOLVIN), Florence
Aron Buzogany	Coping with Accession. New Modes of Governance and European Enlargement, Berlin
Tomasz Grzegorz Grosse	Democratisation, Capture of the State and New Forms of Governance in CEE countries, IPA, Warsaw
Charalampos Koutalakis	'Smoothing' Eastern Enlargements: Independent Regulatory Agencies and Non-Hierarchical Steering, Berlin
Ana Mar Fernandez	Coping with Accession (COPA), U Autònoma Barcelona