

NEWGOV Events in Spring

With the final months of the New Modes of Governance Project approaching, dissemination of project results is at the core of the activities of the NEWGOV Consortium.

The main dissemination conference took place on 10 April 2008 in Brussels at the Commission's Directorate-General for Research. The conference "Governance in the EU: Are we on the right track?" was jointly organised with NEWGOV's 'sister' Network of Excellence "CONNEX—Connecting Excellence on European Governance", co-ordinated by the Mannheim Centre for European Social Research. The aim of the conference was to present the main achievements of the CONNEX Network and the NEWGOV project to practitioners and stakeholders in the Brussels arena. The conference attracted more than 50 participants.

The conference covered common research topics of both CONEX and NEWGOV, such as representation, accountability, accession, and effectiveness of governance modes. Speakers included Tanja A. Börzel, Cees van der Eijk, Yannis Papadopoulos, and Waltraud Schelkle. Discussants were, among others, Nikiforos Diamandouros, European Ombusmann, Monica Frassoni, MEP, and Jérôme Vignon and Paolo Ponzano from the European Commission. The presentations given at the conference are available at the project website www.eu-newgov.org.

In addition to this central event, various NEWGOV projects organise conferences or workshops to

discuss the research output from the Consortium with practitioners and stakeholders. The events cover subject areas such as "Civil Society, New Modes of Governance and Enlargement" (8-10 May in Berlin); "National Supreme Courts and European Private Law" (23-24 May at the EUI in Florence), with the participation of judges from the European Court of Justice and National Supreme Courts; "Governance and Social Pacts in Comparative Perspective" (29-31 May in Lisbon at the European Commission Representation and the Friedrich Ebert Foundation); and "European Networks of Regulatory Agencies: Current Solutions and Future Models of Regulatory Network Governance" (10 June in Brussels at The Centre). Further information on these events can be found on the project website.

The fourth and final [annual conference](#) of the NEWGOV Consortium will take place in Florence at the European University Institute on 5 and 6 June 2008. Researchers from all clusters, projects and task force will discuss their final research results, focussing on the emergence, execution, evolution and evaluation of new modes of governance. The results of the conference will contribute to the main synthesis report of the NEWGOV project which is currently in preparation. This report will mainly focus on policy relevant questions addressed and answered by the NEWGOV project. A final version of the report should be available by the end of the year 2008.

NEWGOV's External Newsletter

The aim of the NEWGOV Project is to examine the transformation of governance in Europe (and beyond) by mapping, evaluating and analysing the emergence, execution, and evolution of what we refer to as 'New Modes of Governance' (NMG).

The pan-European Project is funded by the European Union under the Sixth Framework Programme from 2004 up to 2008. NEWGOV includes 24 projects and 2 transversal task forces and has around 120 participating researchers from some 35 institutions in Western and Eastern Europe.

The Newsletter can be downloaded at the project website www.eu-newgov.org (fully hyperlinked) and is sent to a special email distribution list. To subscribe to this Newsletter, please send an email to: NEWGOV@eui.eu.

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NEWGOV Cluster 3

Effectiveness, Capacity and Legitimacy

The cluster focuses on the role of new modes of governance (NMG) in the implementation of EU policies and EU primary law in different types of states, “weak states” in particular. We include Southern European member states, CEE candidate countries and associated states in the former Soviet Union and Northern Africa.

1. 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 true even if we adopt a less demanding definition that focuses on non-hierarchical modes of coordination without necessarily requiring 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 have seen some first inceptions of NMG after accession.

The two projects (13 – “The Domestic Impact of European Law”, 17 – “Democratisation, Capture of the State and New Forms of Governance in CEE countries”) 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 – “Smoothing Eastern Enlargement:

Independent Regulatory Agencies and Non-Hierarchical Steering”). Project 13 explores how the European Court of Justice and the Commission have been able to establish the principle of mutual recognition or state aided soft law in situations in which the Member states could not agree upon further integration.

2. Why do they (not) emerge? Factors fostering and hindering NMG

The findings of scarce and only weak forms of NMG for all the nine countries are even more remarkable, given their significant differences in terms of 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,

Projects of Cluster Three:

12. [Coping with Accession: New Forms of Governance and European Enlargement](#)
Project leaders: Tanja A. Börzel (Berlin Free University), Nuria Font (Autonomous University of Barcelona)
13. [The Domestic Impact of European Law](#)
Project leader: Susanne Schmidt (Bremen University)
14. [Smoothing Eastern Enlargement: Independent Regulatory Agencies and Non-Hierarchical Steering](#)
Project leader: Charalampos Koutalakis (Berlin Free University, Athens University)
15. [Evolving Regional Governance Regimes: Challenges for Institution Building in the Central and Eastern European Countries](#)
Project leader: László Bruszt (Central European University, Budapest; European University Institute, Florence)
16. [Inside-Out: New Modes of Governance in Relations with Non-Member States](#)
Project leaders: Sandra Lavenex (Lucerne University), Elena Belokurova (European University at St. Petersburg)
17. [Democratisation, Capture of the State and New Forms of Governance in Central and Eastern European countries](#)
Project leader: Lena Kolarska Bobinska (Institute of Public Affairs, Warsaw)

Lithuania, Rumania, as well as Greece, Portugal and Spain are both accession and transition countries during the period of analysis. 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 a 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 hindered 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 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 just now emerging. In the absence of a credible shadow of hierarchy (see project 12 – “Coping with Accession: New Forms of Governance and European Enlargement”, 14, and Cluster 2 – “Delegation, Hierarchy and Accountability”), 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. In particular, 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 particularly lacking in 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 – “Evolving Regional Governance Regimes: Challenges for Institution Building in the CEE Coun-

tries”) as a major impediment for the emergence of NMG are in line with the argument found in 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 en-



Cluster Leader Tanja A. Börzel

forcement 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 incompatible with the legacy of authoritarianism and socialism, but 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 – “Democratization/Participation of Civil Society in New Modes of Governance” 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 or-

der 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 to strengthen the 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 – “Inside-Out: New Modes of Governance in Relations with Non-Member States”, 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 strengthen the capacity of

both state and non-state actors. However, the building of governance capacities has been unequal, favouring state over non-state actors. The down-loading of a vast number of EU policies in a rather short period of time has not allowed for the involvement of private actors. Furthermore, 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).

The projects identified several factors also at the domestic level that fostered and impaired the emergence of NMG:

3. 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 mostly implies 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 (projects 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 incentives to non-state actors to participate in the 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 have considerable 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).

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

In tracing the structural impact of NMG on power relations, it is difficult to isolate the effects 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 transitions. 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

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NEWGOV Policy Briefs

The NEWGOV Policy Brief Series has been set up to aid the dissemination of research results to a broader academic and especially practitioner community beyond the Consortium. Briefing papers are short executive type summaries of Working Papers or articles written by NEWGOV partners, or they can be related to specific and topical events. The [Policy Briefs](#) can be downloaded from the NEWGOV Website (section [publications](#)).

Mar Fernández, Nuria Font, and Charalampos Koutalakis, *Governance in the Environmental Sector: Specificities of Southern Europe*, NEWGOV [Policy Brief no. 12](#), Winter 2007/2008.

Tanja A. Börzel and Aron Buzogány, *Handle with Care: New Modes of Governance and Accession to the EU*, NEWGOV [Policy Brief no. 13](#), Winter 2007/2008.

Colin Shaw, *Between Political Rocks and Economic Hard Places: Developments in EU Research Policy*, NEWGOV [Policy Brief no. 14](#), Winter 2007/08.

Thomas Risse and Mareike Kleine, *Assessing the Le-*

gitimacy of the EU's Treaty Revision Methods, NEWGOV [Policy Brief no. 15](#), Spring 2008.

Kálmán Dezséri and Krisztina Vida, *New Modes of Governance within Cohesion Policy at the European and new Member States' Level*, NEWGOV [Policy Brief no. 16](#), Spring 2008.

László Bruszt, *Multi-Level Governance – The Eastern Versions*, NEWGOV [Policy Brief no. 17](#), Spring 2008.

Paolo Graziano and Patrik Vesan, *Explaining Local Partnership Consolidation*, NEWGOV [Policy Brief no. 18](#), Spring 2008.

(cont. from page 5)

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 these states. On the contrary, NMG may reinforce some of their pathologies 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).

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Project 14: Smoothing Eastern Enlargement: Independent Regulatory Agencies & Non-Hierarchical Steering

1. Project Objectives and Scope

In recent years, most enlargement research focused on theorizing the process of eastern enlargement, analysing the incentives for both the EU and candidate states to initiate a gradual process of legal and policy harmonisation/proximity. In the context of recent EU enlargement, literature largely focuses on the candidates states' capacity to fulfil membership criteria specified in the 1993 Copenhagen and 1995 Madrid Councils, with emphasis on democratic institutions, human rights and the rule of law, credible and functioning structures and institutions and the development of administrative and judicial powers to implement the *acquis communautaire*. One of the biggest challenges for Central East European Countries (CEECs) is the effective implementation of EU rules, which significantly pressure their domestic institutional and regulatory structures to adjust. Given the depth and breadth of required adaptations, the academic literature has focused on the EU's application of novel policy instruments to assist candidate member states with meeting EU membership challenges by building up their administrative capacities as well as increasing the effectiveness of evolving systems of domestic coordination. However, literature on pre-accession negotiations rarely goes beyond traditional negotiating modes between the Commission and core executives from candidate member states.

This project questions whether the European Commission has widened the scope of involvement for other types of actors beyond the core executive in pre-accession

negotiations, so as to ensure the legitimacy of the process and to improve effective adoption of the *acquis communautaire* in the new member states. It addresses a number of pertinent questions focusing mainly on the *effectiveness* and *efficiency* of alternative modes of pre-accession negotiations in various areas of the *acquis* Under which conditions does the EU reach domestic actors beyond the core executives? What are the emerging institutional properties of these alternative modes of pre-accession negotiations? Under which conditions do they enhance efficiency and effectiveness in the adoption of and adaptation to the *acquis communautaire*? Which actors are involved at different stages of the policy process (e.g. national/European agencies; national/European associations; national/transnational NGOs; enterprise representatives; European Commission; national civil servants)? Which are the incentives of non-executive and private actors to commit their resources to co-regulatory networks? Which steering modes are used (e.g. arguing; learning; persuasion; economic incentives) and are they efficient in reducing conflicts with regard to the adoption of the *acquis communautaire* in new member states?

In terms of empirical focus the project covers two important areas: the environment and pharmaceuticals. In these two areas, a wide range of institutions share regulatory competences both at the EU level (Independent regulatory agencies and regulatory networks such as the European Medicines Agency – EMEA and the European Environmental Agency - EEA) and the national level (domestic agencies for the authorisation of medical products and

environmental agencies owe different tasks (i.e., information or regulation) and varying degrees of decision-making power). Moreover, both areas of EU regulatory activity witness a wide range of institutional experimentation with novel modes of policy making that often complement (and depart) from the community method. This novel regulatory environment is expected to affect the patterns of negotiations, providing new paradigms of more effective, efficient and legitimate policy making for both EU and domestic policy actors. Moreover, these novel patterns of regulatory policy-making processes point to current policies that are not adequately captured by traditional modes of pre-accession negotiations between the Commission and core executives. The territorial dimension of our empirical studies focuses on old and new member states. It compares two CEECs, Poland and Hungary, with one Southern European member state, Greece.

2. Major Findings

2.1 Factors fostering the emergence of novel forms of pre-accession negotiation

Literature on the emergence of NMG focuses on the driving forces that motivate political actors to delegate policy making competencies to participatory non-hierarchical structures, their design and the consequences of delegation for democratic accountability and control. Rational choice approaches conceptualise delegation to regulatory networks as a response to powerful functional pressures emanating from the expansion of the regulatory role of the state. The principal/agent framework, that dominates studies of delegation, stresses four common explanations why delegation to agencies might be beneficial for political efficiency. First, delegation is used to reduce politi-

cal transaction costs emerging at the stage of negotiation. Second, delegation to a specialized agency is expected to facilitate policy continuity of public action which is not always achieved by political actors because of short-term electoral constraints. Third, the increasing technical and scientific complexity of many regulatory issues has led to the establishment of agencies which contribute expertise in these matters, especially when it is hard to find within public administrations. Finally, agencies may pave the way for a closer incorporation of civil society into governmental institutions, which turns them into intermediary institutions between state and civil society. Additionally, as depoliticized bodies eager to improve their own public reputation, agencies contribute credibility and reliability as well as public confidence in regulatory processes and outcomes. The intensity of those functional pressures determines principals' incentives to delegate regulatory functions to regulatory networks, their preferences on their institutional design as well as the incentives of non-state actors to participate in regulatory policy making.

Both policy areas generate high adaptation costs: for the Commission, which faces uncertainties regarding the compliance capacity of candidate states; for national regulators, who face financial, cognitive and administrative limitations to adapt to the EU requirements; and for private actors, who are affected by the new regulatory environment. Regarding the pharmaceutical sector, from the outset of pre-accession negotiations the Commission emphasized that legislative alignment was progressing at a slower pace than expected, due to significant differences between CEECs' regulatory traditions and EU law. The central node of network governance in pharmaceuticals is the European Medicines Agency (EMA), which has the role of coor-

inating collaborative arrangements between independent national agencies. Yet, in the context of divergent traditions and capacities of domestic regulators, the agency increasingly employs soft law such as good manufacturing, laboratory and clinical practices.

The environmental policy area is also characterised by high functional pressures for adaptation. Implementing the environmental *acquis* will be an expensive endeavour for CEEC, given that the bulk of these legal acts impose considerable costs in infrastructure. In addition, domestic institutional and administrative struc-



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tures will have to face significant adjustment pressures needed to implement EU environmental policies. Despite recent experimentation with new flexible policy instruments such as voluntary agreements, tradable permits, deposit refund systems and tax incentives, environmental harmonization does not significantly depart from the traditional Community method of regulation, namely transnational cooperation at the stage of policy formulation and decentralization in favour of the national level of implementation. The accession of southern European member states with weak institu-

tional and administrative capacities and limited or even no prior experience in pro-active environmental policies have also fostered the emergence of a persistent deficit in member states' compliance with environmental legislation.

Empirical evidence hardly confirms the emergence of new modes of governance in the first place. Despite common functional pressures experienced by EU and domestic regulators as well as private actors affected by legal harmonization, the Commission adopted various pre-accession strategies in the area of pharmaceutical and environmental regulations. Delegation to participatory regulatory networks is more likely to emerge in policy areas characterised by closed policy communities and actors that have the potential to insulate pressures for politicization and generate consensual policy outcomes. The prevalence of traditional modes of pre-accession negotiations in the area of environmental policies led us to rethink our initial case selection. Instead of abandoning the environmental case we decided to redirect our empirical analysis to a case where delegation of regulatory competencies to a participatory network emerges not as an *ad hoc* practice but as a novel institutional arrangement to be internalised as a part of the environmental *acquis communautaire*.

2.2 Factors fostering effectiveness and efficiency at the post-delegation phase

The project defines political effectiveness and policy efficiency as the ability of domestic actors to adapt to the requirements emanating from the *acquis communautaire*, accounting for the number of transition periods negotiated and granted to candidate member states at the pre-accession stage. The main objective is, therefore, to assess the extent to which delegation of regula-

tory competences is a sufficient condition for the emergence of inclusive modes of policy making that are capable of smoothing the enlargement process reducing the risks of conflicts at the pre- and post-accession phases. Procedural credibility is therefore an essential institutional property that contributes to policy effectiveness and political efficiency in terms of the ability of emerging participatory structures to accommodate a variety of highly heterogeneous preferences at the input phase of the decision making process and generate consensual policy outcomes.

In line with literature on new modes of governance, the project identifies two institutional facets of regulatory networks that generate procedural credibility and efficient and effective policy outcomes. First is the actor dimension and the extent to which the participation of several public and private actors is balanced along territorial and functional characteristics. Second is the steering mode of interactions between participants with emphasis on the extent to which they facilitate non-hierarchical modes of interaction based on learning and persuasion.

The empirical findings identify considerable variations in the patterns of participation and involvement of domestic actors into the post-delegation operation. Poland and Hungary face similar challenges given their incompatibilities with the EU pharmaceutical *acquis*, but they manifested considerable variations in terms of domestic regulators and the industry's commitment of resources to the functioning of transnational regulatory networks. In the pharmaceutical area, corporations from the CEE region have a high incentive to harmonize their product standards with EU requirements. However, their incentive is largely conditioned by trade patterns prevailing in the region. Hungarian industry is traditionally

Further Reading

Borrás, Susana, Koutalakis, Charalampos, and Frank Wendler (2007), "European agencies and input legitimacy: EFSA, EMeA and EPO in the post-delegation phase", *Journal of European Integration*, 29:5, pp. 583-600.

Koutalakis, Charalampos and Heiko Prange (2005), "Smoothing' Eastern Enlargement through New Modes of Governance?" In Gunnar Folke Schuppert (ed.) *Europeanization of Governance – The Challenge of Accession*" Nomos-Verlag: Baden-Baden (Schriften zur Governance-Forschung), 133-151.

Koutalakis, Charalampos (2007), *Final Project Report*, NEWGOV Deliverable 14/6, available at the NEWGOV website.

Koutalakis Charalampos (2007) Pharmaceutical Harmonization in Central eastern Europe-New Modes of Governance in the Shadow of Conditionality, European University Institute, New Modes of Governance Project, *Policy Brief 02*, available at the NEWGOV website.

Koutalakis, Charalampos (2008, forthcoming), "Regulatory Effects of Participatory Environmental Networks. The case of the 'Seville Process'", In Thomas Conzelmann and Randall Smith (eds.), *Multi-level Governance in the European Union: Taking Stock and Looking Ahead*, Nomos-Verlag: Baden-Baden.

Further information on this project and online publications can be found on the NEWGOV website, section research / project "[Smoothing Eastern Enlargement.](#)"

more integrated with the EU markets since large firms obtained foreign trading rights with the EC in the 1970s. On the contrary Polish actors face less incentive to update their product patents ac-

cording to EU requirements because their major trade partners are non-EU countries, mainly the former Soviet Republics. In both cases, functionally-driven and/or market incentive-based explanations cannot alone lead to a sufficient account of private actors' choices to commit their resources to regulatory policy making.

The project further identifies two core dimensions of the capacity of the state to mobilise private actors' resources towards effective legal and policy harmonization with EU rules: 1) the degree of institutionalisation of arenas of

interest intermediation between the state and private actors and 2) the ability of the state to provide incentives in order to alter private actors' preferences and interests in favour of harmonization with EU rules. They are both crucial domestic conditions that facilitate effective and efficient adoption of and adaptation to the *acquis communautaire*.

Overall, the empirical analysis demonstrates that institutionalisation and delegation of some elements of pre-accession negotiations to non-executive regulatory networks fosters a smooth adapta-

tion to the requirements of the *acquis communautaire*, especially of those candidate member states that have the capacity to mobilise the dispersed private resources essential for legal and policy harmonization. In these cases the institutionalisation of regulatory networks has provided a powerful incentive for domestic regulators to deploy strategies that facilitate cooperation with private actors.

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Project 17: Democratisation, Capture of the State and New Forms of Governance in CEE Countries

1. Project Objectives and Scope

This project aims to examine the political, organisational and social conditions that enable the successful implementation of new modes of governance in new member states of the EU. It questions whether and how the main features of NMG (such as informal and non-hierarchical structures, reliance on bargaining, dialogue, benchmarking and peer review, naming and shaming, to name but a few) are compatible with the political and organisational cultures in CEE countries. These cultures have been by and large shaped during the communist rule, but since 1989 have evolved during the processes of democratisation, transition to market economy and finally EU adjustment. It traces the process of Europeanization of public administration, which occurred as a result of the execution of EU policies and laws. It seeks to find out if Europeanization processes introduced new modes of governance into the administrative practice. How and to what extent were they implemented? Or is it that public administration was more in tune

with the socialist-state administrative tradition in place until now? Can it be that Europeanization processes reinforced that tradition?

The project draws on the experience of new members and will help to assess the prospects for NMG to take root throughout the enlarged EU. It analyzes the emergence, functioning and impact of NMG in three selected countries: Poland, Lithuania, and Slovakia. The project examines the area of EU Common Agricultural Policy (CAP) and relevant rural development policy areas because they are subject to a much greater European Union control, community laws and significant EU financial resources. Therefore, there are grounds to assume that the Europeanization of the domestic institutions which execute these policies is great, as Europeanization is strongly supported by both regulatory and financial instruments. It is also possible to advance the hypothesis that Europeanization promoted experience-sharing between agencies located in different member states. Both phenomena could potentially be a reflection of

new modes of governance in the EU. The literature concerning Europeanization of new member states and transposition of European institutions is spirited and full of controversy. Applying binding EU law in practice encounters many obstacles in each of these countries. Frequent delays and changes in the implementation of European solutions are by-products of domestic determinants such as the local administrative culture, compatibility with national administrative institutions and public policies and behavior of the principal domestic actors and their interests. In contrast, soft methods of governance have a chance of being accepted and implemented more easily, particularly when they coincide with domestic determinants such as the local administrative culture, institutions and relevant actors' interests. However, when soft methods of governance do not coincide with local conditions, they prove quite ineffective indeed. In view of the present knowledge, this research develops and tests two hypotheses. First, the extent of Europeanization is greater under a hard law transposition rather than a soft law

one. Second, Europeanization is stronger in case of policies involving EU resources, because they provide greater possibilities for effectively disciplining recipients of EU assistance in case of irregularities. Moreover, it can be assumed that Europeanization will be stronger in conditions of compatibility between transposed institutions and the local administrative environment, i.e. institutional system and administrative tradition and culture.



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2. Project Findings

2.1 Europeanization of executive agencies in new member states

The Europeanization of executive agencies in new member states was only a qualified success. Delegation of tasks to a specialized agency should contribute to the professionalization of the civil service and to reduction of political interference. It instead contributed to the introduction of several new administrative measures, particularly those referring to financial and investment project management. In Lithuania, the use of a paying agency was a totally new approach to managing agricultural policy and, according to the results of the Slovak part of the study, it significantly modified the

manner of delivering public policies. At the same time, the administrative practice was expanded by a series of very complicated procedures, which were often more restrictive than what was required by EU regulations. During the initial period, they hindered effective operations or made it necessary to 'circumvent' binding regulations. Another consequence of Europeanization was that too much attention was paid to absorption of EU assistance funds at the expense of issues related to qualitative criteria of public policies, particularly those associated with overcoming obstacles to local development.

Moreover, in the studied countries, delegating tasks to a specialized agency did not eliminate the problem of administrative politicization. This was particularly apparent in Poland and Slovakia. Personnel rotation associated with party politics lowered the overall level of skills and hindered an efficient and professional execution of public tasks. This was not only a consequence of the local administrative tradition and culture, but also of foreign interference. On the one hand, it was associated with the logic of EU redistribution policies, which strengthen the position of the national government as the gate keeper for EU funds. On the other, it was linked to concepts concerning the improvement of the management of executive agencies. A good example of this is found in the suggestion to enhance systemic integration of government ministries and agencies, and the concept of their interdependency.

2.2 New modes of governance in studied agencies

The project aimed at analyzing three aspects of NMG in the practical operations of agencies implementing EU policies: non-hierarchical modes of governance; social partnership and Euro-

pean agency network.

Regarding non-hierarchical modes of governance, the study did not confirm an agency's assumed autonomy from central ministries. Ministries decide on agency budget and composition of agency top management. Agencies have some leeway in deciding their internal organization, which might conform to the idea of systemic integration of government ministries and agencies. Nevertheless, the tradition of central management and the culture of politicized administration undermined the formal dimension of agency autonomy.

In all three countries, politicians acting as agriculture ministers were most often wealthy agricultural businessmen who advanced the interests of the rich farm lobby, at times openly. In Poland and Slovakia, political interference with agency operations by the agriculture ministry was associated, therefore, with preference given to specific economic interests. Our study found no hard evidence of agency capture in Lithuania, particularly no 'top-down' appropriation of control by the agriculture ministry or the political formation associated therewith. That said, there was evidence of direct relations between agency leadership (and officials) and the interests of the largest agricultural producers. Lithuanian mass media often laid charges of irregularities and even corruption. This may confirm the earlier suggestion that reduction of political interference and increased agency autonomy is not a sufficient mechanism of protection against illicit interference with agency operations by local interest groups.

Regarding Social Partnership, this study shows that Europeanization of executive agencies introduced the notion of social (local) partnership into the administrative practice. This was done pursuant to EU regulations, which recom-

mended the application of partnership in certain aspects of governing agricultural policies. Yet, this study shows that the partnership principle was treated rather superficially. The low level of practical influence of the social partnership institution was most perceptible during the planning stages of both policies. At that stage, activities were centralized and transferred to the level of ministries responsible for agriculture, whereas the actual influence of social partners and local governments on decision-making was as a rule very limited. The influence exerted by social partners was greater when it came to agency implementation activities, particularly to distribution of EU agricultural policy money

Controlled participant selection was the preferred partnership model in all three studied countries. Its purpose was to keep away groups which could stall or hinder an effective execution of public tasks. Thus the principal premise of this model resided in the concern for an effective performance of public duties. However, the model favours the interests of agency officials and their viewpoint on public issues. In case of agency capture, it can further weaken the control mechanisms accompanying social participation. Therefore, controlled selection of participants in social partnership in new member states leads to a superficial participation of social partners in the execution of public policies and their instrumental exploitation furthering current interests of agency officials.

As for the European agency network, Europeanization of agencies implementing EU policies promotes international contacts between the management of executive agencies in different member states. However, these cooperation networks are frail and meetings of their members are sporadic. Least frequent are meetings between executive agency representatives from old and new member states.

Consequently, the expertise acquired by more experienced countries is seldom transferred down to new member states. Respondents to our study often stressed the fundamental gap between the level of expertise in both country groups, which only confirms the difficulties associated with expertise transfer from West to East.

2.3 Factors influencing the introduction of NMG

It seems that a key role in the Europeanization of executive agencies in the studied countries was played by formal regulations governing the distribution of EU resources, hence the potential threat of losing EU financing in case of irregularities. This is why financial management was an area where the Europeanization of executive agencies and transfer of EU institutional solutions thereto was the strongest. However, the transfer of NMG was not backed by sufficiently specific EU regulations and financial or legal sanctions in case of their inadequate implementation. Issues associated with NMG were treated by EU law in a gen-

eral manner and their implementation in the administrative practice was, as a rule, left to member state governments. In some cases, an informal impact on making these modes more specific was exerted by European Commission officials during visits made to oversee the implementation of certain regulations in new member states. Terms of cooperation within the European agency network were not formalized at all under EU law, which evidently weakened the possibilities of strengthening that mode of governance.

This study confirms the thesis that hard EU law has a great deal of impact on the effectiveness of Europeanization. Meanwhile, soft law which is what usually promotes new modes of governance, makes their introduction in the administrative practice more difficult. In this situation, NMG implementation is decided by intranational factors associated to a large degree with the local political culture and administrative tradition.

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Further Reading

Further information on this project and online publications can be found on the NEWGOV website, see the [relevant project section](#).

Miroslav Beblavý (2007), [Case Study: the Agricultural Paying Agency in Slovakia](#), NEWGOV Deliverable 17/15.

Mateusz Falkowski, Tomasz Grzegorz Grosse, Ewelina Skwarczyńska (2007), [Case Study of an Executive Agency in Poland: Between Political Culture, Europeanization and Modernization Challenges](#), NEWGOV Deliverable 17/13.

Tomasz Grzegorz Grosse (2006), [Agencies and Agency System. Background Paper to Phase Two of the IPA Study](#), NEWGOV Deliverable 17/10.

Tomasz Grzegorz Grosse (2007), [New modes of governance in agencies implementing EU poli-](#)

[cies: examples of Europeanization in three new EU member states](#), NEWGOV Deliverable 17/16.

Olga Napiontek (2006), [Agency System in Poland after 1989. Background Paper to Phase two of the IPA Study](#), NEWGOV Deliverable 17/11.

Rita Stafejeva (2006), [Case Study: the National Paying Agency in Lithuania](#), NEWGOV Deliverable 17/14.

Barbara Wieliczko (2006), [Challenges of the Common Agricultural Policy Management. The Role of Agencies. Conditions of Implementation CAP in Poland](#), NEWGOV Deliverable 17/12.

2.4 Legitimizing function and effectiveness of agency operations

The practical experience of using social dialogue in new member states showed that it often primarily served legitimization purposes and, moreover, that higher social legitimacy was achieved at the expense of the effectiveness of public policies. At the same time, discussions concerning social dialogue were extremely important to participants in the dialogue as they allowed them to publicly demonstrate their position and gain social support for their arguments.

The second phase of the study devoted to executive agencies showed that public policies (or actors engaged therein) could be legitimized at the same time as the effectiveness of agency management was being improved. This happened in particular during the distribution of direct CAP

subsidies, where inclusion of social partners brought about a higher social acceptance of that policy and of European integration as a whole, visibly improved dissemination of information and helped to absorb EU resources.

However, all in all, the use of new modes of governance for practical purposes was weak and superficial. Moreover, in the studied countries, agency operations relied to a great degree on hierarchical and centralized management rooted in the local administrative tradition. That tradition, in turn, was reinforced by the existing norms of political and administrative culture. Consequently, in order to improve the effectiveness of management, political elites strengthened the hierarchical nature of the relationship between ministries and executive agencies, and aimed at increasing political and personal control over their operations. 'Hands-on' control of the agency by government politi-

cians, also through political appointments to management positions at the agency, was meant to guarantee a higher effectiveness of its operations, particularly a more effective spending of EU resources.

The IPA study also revealed that effective absorption of EU resources was considered the main reference point in assessing the effectiveness of the execution of public policies. Therefore, issues associated with directing EU resources to solving economic and social problems were secondary. Hence, the effectiveness of public activities had little to do with qualitative assessment criteria. Moreover, the politicized and personalized nature of control exerted by supervising ministries over subordinated agencies contributed to a further weakening of the substantive dimension of supervisory activities.

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Recent Publications

- Bähr, Holger, Oliver Treib, and Gerda Falkner (2008), "Von Hierarchie zu Kooperation? Zur Entwicklung von Governance-Formen in zwei regulativen Politikfeldern der EU", in Tömmel, Ingeborg (ed.), [Die Europäische Union. Governance und Policy-Making](#), Wiesbaden: VS Verlag, pp. 92-115.
- Begg, Iain (2008), "Is there a convincing rationale for the Lisbon Strategy?", [Journal of Common Market Studies](#), 46:2, pp. 427-435.
- Blauberger, Michael (2008), [From Negative to Positive Integration?, European State Aid Control Through Soft and Hard Law](#), MPIfG Discussion Paper 08/4, Cologne: Max Planck Institute for the Study of Societies, April 2008.
- Börzel, Tanja (2008), "European Governance – Verhandlungen und Wettbewerb im Schatten der Hierarchie", in Tömmel, Ingeborg (ed.), [Die Europäische Union. Governance und Policy-Making](#), Wiesbaden: VS Verlag, pp. 61-91.
- Burroni, Luigi, and Colin Crouch (2008), "The territorial governance of the shadow economy", [Environment and Planning C: Government and Policy](#), 26:2, pp. 455-470.
- Diedrichs, Udo (2008), "Neue Dynamik in der Europäischen Außen- und Sicherheitspolitik: auf dem Weg zu einer EU Security Governance", in Tömmel, Ingeborg (ed.), [Die Europäische Union. Governance und Policy-Making](#), Wiesbaden: VS Verlag, pp. 343-364.
- Héritier, Adrienne, and Dirk Lehmkuhl (2008), "The shadow of hierarchy and new modes of governance and. Functional governance and territorially bound democratic government", Special Issue of [Journal of Public Policy](#), 28:1.
- Kleine, Mareike (2007), "Leadership in the European Convention", [Journal of European Public Policy](#), 14:8, pp. 1227-1248.
- Lavenex, Sandra, Dirk Lehmkuhl, and Nicole Wichmann (2008), "Die Nachbarschaftspolitiken der Europäischen Union: zwischen Hegemonie und erweiterter Governance", in Ingeborg Tömmel (ed.), [Die Europäische Union: Governance und Policy-Making](#), Wiesbaden: VS-Verlag, pp. 367-388.
- Radaelli, Claudio, and Ulrike Kraemer (2008), "Governance Arenas in EU Direct Tax Policy", [Journal of Common Market Studies](#), Vol. 46:2, pp. 315-336.