

## Handle with Care: New Modes of Governance and Accession to the EU

Tanja A. Börzel and Aron Buzogány (Free University Berlin)

Our research project compares the accession of the three Southern European countries, Greece, Spain and Portugal, to the European Community (EC) in the 1980s with the accession of Poland, Hungary and Romania to the European Union (EU). We seek to explore the relevance of the involvement of non-state actors, such as business and civil society, for the effective implementation of the *acquis communautaire*. This policy paper evaluates the emergence and effectiveness of these “new modes of governance” (NMG), which systematically involve state and non-state actors into the policy process, based on our insights from the environmental policy field in three Central and Eastern European accession countries.

### 1. Coping with Accession: Sharing and Shifting the Burden

Given the extraordinary financial and administrative burden imposed by the implementation of the environmental *acquis*, on the one hand, and the relatively limited state capacities of the three transition countries, on the other, we would expect to find a significant number of NMG to emerge. It would only be rational for state actors to seek cooperation with non-state actors to share or shift the burden by, respectively, pooling resources and delegating certain tasks. Likewise, non-state actors would have a significant incentive to get involved in the implementation of the environmental *acquis* because they would be able exchange their resources for influence on the policies by which they would be affected. Finally, the European Commission has advocated NMG as a means to foster the effective adoption of and adaptation to the *acquis communautaire* in the candidate countries and new member states.

Yet our comparative case studies on the adoption of and adaptation to six different EU environmental policies in the accession process with regard to Hungary, Poland, and Romania only partially support these expectations. While we found evidence of some new modes of governance in all 18 case studies, these are scattered, remain unstable and cannot be regarded as typical. Traditional top-down approaches still prevail during transposition and implementation of EU directives in the Eastern part of the European Union. This is even true for EU policies such as the Integrated Pollution Control Directive, which explicitly provides for cooperation with industry in implementation, or the Water Framework Directive, which requires the involvement of stakeholders.

The implementation and application of the EU’s environmental *acquis* has imposed significant costs on the accession countries. Next to the financial burden, particularly the application of technical sophisticated policies, such as the Integrated Pollution Prevention and Control, the Fauna Flora Habitat, and the Water Framework Directive, require significant personnel with the necessary legal, scientific and technical expertise. Thus, state actors had an incentive to seek 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.

But although state and non-state actors often had incentives to cooperate, non-state actors hardly got involved in public policy-making. Even where new modes of governance emerged, they have not gone 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, are practically absent in the three CEE countries. This is mostly due to low governance capacity, i.e. the overall weakness of both state and non-state actors in the three countries. Civil society actors often lack sufficient organizational capacities to serve as a reliable partner in 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 the still-unconsolidated regulatory framework, unstable majorities in parliaments 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 does industry have little incentive to offer its resources for the making of policies that impose 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 might resonate with negative features of the socialist legacy (clientelistic networks) and are often seen in contradiction to majoritarian 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.

### NEWGOV Policy Briefs

NEWGOV Policy Briefs are produced by the Integrated Project “New Modes of Governance – NEWGOV”. The pan-European project examines the transformation of governance in and beyond Europe by mapping, evaluating and analysing new modes of governance. It is funded by the European Union under the Sixth Framework Programme from 2004 up to 2008. NEWGOV includes 24 projects and 3 transversal task forces and has more than 100 participating researchers from 35 institutions in Western and Eastern Europe.

Turn to our website [www.eu-newgov.org](http://www.eu-newgov.org) which offers topical information concerning the project, in particular publications, re-ports, articles and working papers of the Research Consortium for download, links to other information sources relating to the project's research fields, as well as regularly updated information on events organised in the framework of NEWGOV.

Our findings hardly vary across the three countries. While new modes of governance appear to be slightly more prevalent in Hungary, its governance capacities are also somewhat stronger than in the other two countries. In 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 the EU more than two years later than Hungary and Poland. The findings in relation to 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, non-rewarding and as a further obstacle in taking decisions that are not geared towards particularistic interests. Even if new modes of governance may help to increase effective implementation, they may often not be seen as a legitimate means of policy-making due to their often informal character and the selective inclusion of non-state actors.

## 2. The Double Curse of Weak Governance Capacities

Our comparative case studies on the adoption of and adaptation to the EU environmental *acquis* find only limited evidence of new modes of governance in our three accession countries. The scarce emergence of only weak forms of new modes of governance is all the more remarkable since the three 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, and Romania are at the same time accession and transition countries.

### Further reading

This policy brief is based on research carried out within the NEWGOV project no. 12 on “Coping with Accession: New Forms of Governance and European Enlargement (COPA)”. The scientific objective of this project is to explore how transition countries in Southern Europe and Central and Eastern Europe have coped with the challenge of accession. In particular, the study sets out to analyse the role of New Modes of Governance in the adoption of and adaptation to selected EU policies in the field of environment as an example of positive integration which imposes significant costs on and requires considerable capacities of accession countries. The COPA project systematically compares the Southern enlargement of the EC with the Eastern enlargement of the EU.

Further information can be found on the NEWGOV Website in the [special section](#) of project no. 12.

The combination of both factors results in conditions that, somewhat 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 ‘download’ a vast number of EU policies in a rather short period of time has generally 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 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. 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 also often shy away from cooperating with non-state actors, either because they are afraid of being captured or they 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. Either 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.

New modes of governance require both a strong state and a strong society. In our three countries, weak governance capacity is complemented by a state tradition that is mostly 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.

### 3. Escaping the Low Capacity Trap

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 accession countries. As a result, there is a clear dominance of traditional command and control regulation. Nevertheless, we have found some 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, respectively, to avoid punishment and to receive rewards by the Commission (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”.

Second, the EU does not only provide incentives and governance paradigms that may facilitate new modes of governance. It also helps to strengthen 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. 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 new modes of governance in order to accommodate the interests of non-state actors and avoid complaints to the Commission or legal proceedings.

### 4. Policy implications

Our findings have important implications for practical policy-making regarding (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: the lower the capacity of a state, the greater the need for new modes of governance to compensate for state weakness - 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 is implicitly assumed or explicitly claimed by the governance literature.

Our analysis shows that while NMG can increase the effectiveness of the implementation and enforcement of the environmental *acquis*, they do so only under certain conditions. Relevant state and non-state actor capacities, mutual trust among the stakeholders involved and constant and credible external pressure by the EU appear to be indispensable. In most of the cases we have analysed, these conditions are not fulfilled. Consequently, these findings mute the high-flying expectations set into NMG in European policy-making in the last decade, also with regard to enlargement. At least when applied in accession (and in the future possibly also neighbourhood policy) countries, which typically have both weak state and non-state actors capacities, the hopes in NMGs remain bleak. At the same time, these findings underscore the importance of other means to increase the effectiveness of European legislation in acceding and new member states, including *capacity-building* oriented towards both state and non-state actors.