New Modes of Governance in Accession Countries.

The Role of Private Actors

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Abstract

Accession appears to be both a blessing and a curse to transition countries. On the one hand, EU membership supports their transformation from authoritarian regimes with centralized planning economies into liberal democracies with market economies. On the other hand, the accession countries face great difficulties in restructuring their economic and political institutions in order to meet the conditions for EU membership. The systematic involvement of private actors in the adoption of and adaptation to EU requirements was thought to be a remedy for the problems of European Enlargement towards “weak” transition countries. Companies and civil society organizations could provide the governments of the accession countries with important resources (money, information, expertise, support) that are necessary to make EU policies work. The paper explores the role of private actors in governing the double challenge of transition and accession. A comparative study of implementation of environmental policies in Poland, Hungary and Romania shows that the accession of the three transition countries was mainly shaped by the shadow of the past. State actors were harking back on command and control regulation that left little room for public involvement. Even where the policy process was successfully opened up for new actors, the shadow of hierarchy was maintained. The paper argues that both state and non-state actors in transition countries are often too weak to make new modes of governance work. The double weakness of transition countries seriously constrains the empowering of non-state actors by “Europeanization through accession”.

1. Introduction

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

New modes of governance seem to be particularly appropriate for the study of international and European politics, which are essentially non-hierarchical. Unlike within the nation state, policy makers can hardly rely on majoritarian decision-making and coercive power to make effective and legitimate policies (Hix, 1998; Kohler-Koch and Rittberger, 2006). Yet, empirical research on new modes of governance in Europe clearly demonstrates that non-hierarchical coordination and the involvement of non-state actors does not necessarily increase either the effectiveness or the legitimacy of public policy-making. Moreover, new modes of governance are far less prevalent in European policy-making than the limited powers of the European Union would lead us to expect. This is also true for the previous enlargements of the EU to Southern and Central and Eastern Europe, which appear to be most likely cases for the emergence of new modes of governance. On the one hand, the EU cannot hierarchically impose the acquis communautaire on accession countries. Before they join, their relationship with the EU remains in the realm of classic diplomacy and international negotiations. The EU’s supranational institutions do not even cast a shadow of hierarchy, yet, since the supremacy of EU law and its direct effect which empower domestic courts to enforce EU Law without the consent of national governments only take effect after accession. On the other hand, Central and Eastern European (CEE) countries have been limited in their capacity to hierarchically coordinate the adoption of and adaptation to the acquis. The implementation of the acquis communautaire created an enormous policy load, which met with limited resources (expertise, money, personnel) that were already strained by managing the transition from authoritarian and socialist rule, respectively. Given the limited capacity of both the EU and the accession countries, it would be only rational for public actors to seek the cooperation with private actors to share or shift the burden by pooling resources and delegating certain tasks. Private actors, in turn, could exchange their resources for influence on policies which would significantly affect them. Finally, the European Commission strongly encouraged accession countries to involve private actors in the adoption of and adaptation to the acquis to ensure both greater effectiveness and legitimacy of the accession process.

The governance literature leads us to assume that new modes of governance could compensate for the weak hierarchical steering capacity of both the EU and the accession countries in the implementation of EU policies since private actors can provide the governments of the accession countries with important resources (money, information, expertise, support) that are necessary to make EU policies work. Yet, as our empirical studies will show there is only limited evidence for the emergence of new modes of governance in the accession process. If at all, we find nascent forms of cooperation between state and non-state actors that hardly go beyond consultation.

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Moreover, they are most likely to emerge if EU directives explicitly require the involvement of the public. Traditional command-and-control approaches appear to prevail in Central and Eastern European accession countries.

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

In a nutshell, we argue that the accession countries of the Eastern enlargements have lacked two fundamental preconditions for the emergence and effectiveness of new modes of governance: state and non-state actors with sufficient resources to engage in non-hierarchical coordination to improve the effectiveness of public policy. This “governance capacity” has been largely taken for granted by the governance literature since it has almost exclusive focused on Western democracies. Thus, analyzing governance capacity requires disentangling specific state and non-state actor’s capacities in order to understand the emerging modes of governance. While our recent work has focused on state capacities (Börzel, 2007, Börzel, Buzogány and Guttenbrunner, 2008), in this paper we take a more explicit look on the role of private actors in coping with the challenge of accession. New Modes of Governance provide an important way through which private actors can get empowered in the Europeanization of accession countries. They constitute institutionalized forms of interest intermediation that go beyond lobbying and clientelistic networks, changing the balance of power between state and society. We seek to explore to what extent the accession process has provided business and civil society actors with new opportunities to inject their interests into the policy process giving rise to NMG.

In the next section we give a short introduction into the debate around new modes of governance (NMG) and present a working definition (2). Based on theoretical assumptions of the governance literature, we then outline the promise of NMGs for the accession states and their potential to change state-society relations (3). We focus on the Europeanization of environmental policy-making and its impact on private actors in three CEE accession countries. Environmental policy provides a most likely case for the emergence of NMG given the high compliance costs involved and the participatory requirements of many directives (4). Our case studies analyze private actor involvement in three CEE accession countries (Hungary, Poland and Romania) in two subfields of environmental policy: industrial pollution and nature protection. While the three countries differ with regard to their domestic structures, they equally suffer from weak governance capacities as a result of the transition process and a shared legacy of state socialism (5).
2. **New Modes of Governance and the Shadow of Hierarchy**

Governance has become a catch-all phrase both among practitioners and social scientists (Pierre and Peters, 2005). Arguably, the vagueness of the concept has become one of its main secrets of success. If it is already difficult to define governance, distinguishing “new” from “old” modes has become even more challenging. Part of the confusion in the literature is related to the existence of a broad and a narrow understanding of governance, the latter of which is identical with what is usually understood as “new” modes of governance (cf. Börzel, forthcoming). For the purpose of studying the role of new modes of governance in EU enlargement, in this paper we adopt the following definition Börzel, Guttenbrunner and Seper, 2005. New modes of governance (NMG) refer to the making and implementation of collectively binding decisions (based or not based on legislation) that are a) not hierarchically imposed, i.e. each actor involved has a formal or de facto veto in policy-making and voluntarily complies with the decisions made, and b) systematically involve private actors, for profit (e.g. firms) and not for profit (e.g. non-governmental organizations) in policy formulation and/or implementation.

The governance literature has heavily drawn on resource dependency approaches to explain the emergence of new modes of governance (cf. Mayntz, 1997, Scharpf, 1978, Rhodes, 1997). To make policies work, state actors become increasingly dependent upon the cooperation and joint resource mobilization of non-state actors, which are outside their hierarchical control. New modes of governance allow state actors to establish “webs of relatively stable and ongoing relationships which mobilize and pool dispersed resources so that collective (or parallel) action can be orchestrated toward the solution of a common policy” (Kenis and Schneider, 1991: 36). Next to tapping into the resources of non-state actors, their participation in the policy process helps to ensure effective implementation. The more the actors affected by a policy have a say in decision-making, the more likely they are to accept the policy outcome to be implemented, even if their interests may not have been fully accommodated. In short, new modes of governance can significantly strengthen the capacity of state actors in public policy-making (cf. Héritier, 2003).

The main incentive for non-state actors to get involved in the public policy-making is the exchange of their resources for influence on the policies by which they are affected. Arguments why delegation and/or co-ordination takes place can be derived from transaction cost theory and the principal-agent theory (cf. Héritier 2003). The central argument of the transaction cost theory is that delegation takes place to reduce the costs imposed by lengthy negotiations and discussions Eppstein and O'Halloran, 1999. This may be an incentive for both, state and non-state actors, to co-operate. Principal agent theory builds its arguments on the lack of expertise and/or time of the principal to deal with complex problems. Furthermore, the principal can try to discharge policy formulation from the changing preferences of the constituencies and governments Moe, 1987. These may become incentives for state actors to engage non-state actors in the formulation as well as in the implementation process and even allow them to gain important influence over other concerned actors. For non-state actors the incentive of being involved into the policy process, while holding costs for them, also provides the overall incentive of gaining access to the creation of rules they later have to obey (Héritier, 2003). While offering clear-cut explanations on co-operation, principal agent theory also gives hints on some “risks” that might arise of delegation (see Table 1).
Table 1: Costs and Benefits of Cooperation

<table>
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<tr>
<th>Benefits</th>
<th>Risks/Costs</th>
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<tr>
<td><strong>State Actors</strong></td>
<td>Information asymmetries</td>
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<tr>
<td>Know how</td>
<td>Defection (of non-state actors)</td>
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<td>Effectiveness</td>
<td>Loss of autonomy</td>
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<td>Legitimacy</td>
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<td>Rule shaping (influence),</td>
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<td>Lower Compliance Costs</td>
<td>Shirking (of other non-state actors)</td>
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<td>Know how</td>
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There are, however, some theoretical arguments that may cast doubts about the effectiveness, accountability and legitimacy of new modes of governance (Papadopoulos and Warin, 2007, Swyngedouw, 2005). Private actors can certainly provide public actors with important resources to make public policies work. However, it is unclear whether the mutual resource dependency of public and private actors actually leads to a net increase in the problem-solving capacity of new modes of governance. If states are so weak that they have to share authority with non-state actors, this can easily result in problem-shifting or agency capture (Hellman, Jones and Kaufmann, 2000). In many cases, NMG arrangements are simply neoliberal solutions in disguise; that is, they amount to the privatization and de-regulation of formerly public services rather than the adoption of effective public policies. Moreover, states with weak regulatory capacities do not have the ability to reassume responsibility for delegated tasks in cases of private failures as functions were delegated because they were not capable of delivering them in the first place. Likewise, weak state actors may not be able to resist the pressure of private actors to adopt policies that are serving the public interest, or, worse, are not able to judge what policies may be in the public interest since they lack the necessary information and expertise. Finally, the inclusion of private actors as the primary rule-targets in the process of rule-making can certainly increase the problem-solving capacity by ensuring compliance. Yet, including private rule targets in public policy-making might simply lead to “lowest common denominator” solutions or even result in deadlock. If those who have to bear the costs of compliance are involved in the negotiating process, they may attempt to weaken rules and regulations or prevent them altogether (Héritier 2003).

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

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

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

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

Figure 1: The Shadow of Hierarchy and Reverse Incentives for Cooperation for State and Non-state Actors

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

Sufficient resources and autonomy are also deemed necessary but not sufficient for the state to engage with or embed itself in society (Evans, 1995, Weiss, 1998, Migdal, 1988). The literature identifies at least two sufficient conditions. First, an administrative or state culture is required that renders the cooperation with non-state actors an appropriate means to ensure good governance (Kohler-Koch, 2000). Thus, new modes of governance may not always be compatible with the dominant view of state actors on how to make effective and legitimate policies. This is particularly true for countries with an authoritarian legacy and no sustained tradition of institutionalized state-society relations (Börzel, 2003, Linz and Stepan, 1996). But even consolidated democracies differ significantly with regard to state tradition and policy style.
Moreover, in post-socialist countries, new modes of governance are often seen as undemocratic since they circumvent the parliamentary arena and are prone to corruption and state capture.² Non-governmental organizations often appear to be particularly sceptical of new modes of governance, also because they do not want to be seen by their supporters as co-opted by the state. Finally, it has been argued that precisely because post-communist states are weak, they should build-up their institutional capacity and autonomy rather than give their powers away to non-state actors (Dimitrova, 2002; Jerre, 2005). This argument resonates well with considerations about the “shadow of hierarchy” as a scope condition for the emergence of new modes of governance.

Second, non-state actors must also have the necessary action capacity and autonomy to engage in new modes of governance. On the one hand, they need sufficient personnel, information, expertise, money and organizational resources to make strategic decisions, to act as reliable negotiation partners and to offer state actors something in exchange for becoming involved in the policy process. On the other hand, non-state actors have to have the necessary autonomy in order to act free from political control (Mayntz, 1993, Mayntz, 1996: 157-158). While the autonomy of societal actors is no longer the issue in Central and Eastern European countries, civil society is still weak. Membership in voluntary associations (except for trade unions) is still significantly lower as is the number and strength of organized interests in general (Howard, 2003, Rose-Ackermann, 2007).³ This is even more pronounced in CEE and other postcommunist countries, where average organizational membership is 50% lower than in postauthoritarian states as we find them in Southern Europe (Sissenich 2007; Howard, 2003, Linz and Stepan, 1996).

To conclude, NMG promise to help increase the effectiveness and legitimacy of public policy-making, in general, and the adoption of and adaptation to EU policies, in particular – but only if certain premises are met: Cooperation between state and non-state actors is most likely to emerge if both are neither too strong nor too weak. If this assumption holds, accession countries face a serious dilemma or even paradox: their low governance capacities create a demand for new modes of governance to cope with accession, which is, however, unlikely to be met precisely because neither state nor state actors have sufficient capacities to engage.

Yet, accession does not only draw capacities. It may also empower both state and non state actors. Much has been written about how Europeanization has strengthened the central executives, both of old and new member states (cf. Moravcsik, 1994; Goetz, 2000; Börzel and Sedelmeier, 2006). The impact on non-state actors appears to be more ambivalent, as we will see in the next section.

3. Europeanization, New Modes of Governance and the Empowerment of Private Actors

Europeanization processes have significant effects on state-society relations (cf. Ladrech, 2005; Eising, 2007). EU-integration provides domestic non-state actors with the opportunity to circumvent their national governments and become either directly involved with policy-making in Brussels or put pressure on their governments at the domestic level. This is particularly visible in

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² See NewGov Project 17: Democratisation, Capture of the State and New Forms of Governance in CEE countries, especially the Inception Report: Democratisation, Capture of the State and New Forms of Governance in CEE countries by Tomasz Grzegorz Grosse and the paper on Tripartite Commission, Effectiveness, Legitimacy and Pathologies of Weak States: Case Study Report Poland by Mateusz Falkowski.

the implementation of EU policies. Private actors, both for profit and not-for profit, can provide
the Commission with information on violations of EU law, bring legal cases before national
courts and mobilize the public (Borzel, 2006, Hilson, 2002).

The accession process as provided private not-for-profit actors in the CEE candidate countries
with a similar opportunity structure (Borragán 2004; Hicks 2004). First, several EU policies
explicitly prescribe public participation, access to information and transparency. Second, accession
conditionality made governments more exposed and vulnerable to criticism by non-state actors,
which often informally provided the Delegations of Commission with information needed for
the preparation of the Annual Monitoring Reports. Third, EU-pre-accession funding schemes
became available for societal groups. Societal capacity-building should not only foster the
effective adoption of and adaptation to the *aquis communautaire*. The stronger involvement of civil
society is part of the Commission's effort to address the democratic deficit of the EU. Technical
assistance programs of the EU as well as the funding lines especially set up for promoting civil
society (ACCES) included extensive references to “participation” or “joint ownership”
(Smismans 2006). The accession process has also provided NGOs from the CEE countries with
connections to like-minded organizations in the old member states as well as interest groups and
transnational networks active at the EU-level. Finally, Europeanization coincides with and
reinforces the endogenously driven professionalization and institutionalization of civil society
groups (Stark, Bruszt et al. 2006; Szabó 2007).

Though less explicitly discussed in the literature dealing with Europeanization in the accession
states (but see Borragán 2004), the impact of the EU on business actors in CEE has been also
considerable, even if it did not took that easily trackable forms as described in the case of non-
profit actors. Arguably, major influences exerted by the accession process were the economic
possibilities and pressures for business actors to participate in the EU’s single market. At the
same time, the accession process was paralleled by massive inflow of FDI into the CEE, resulting
in changing ownership structures and technological upgrade in different industrial sectors.
Finally, the accession process has provided access of CEE business actors such as employers’
organizations or sectoral lobbies to participation in EU – level professional confederations.

Yet, EU-accession has not only created new oppportunities for non-state actors. The „top-down”
nature of „Europeanization through accession” and the focus of the Commission on
strengthening the absorption capacities of the candidate countries often intercepted with the
empowerment of non-state actors (Goetz, 2006 ). Moreover, the increasing reliance on external
donors led in some cases to the detachment of civil society organizations, such as environmental
groups, from their root constituencies (Fagan 2006). At the same time, weak organizational
capacities and the absence of domestic and supranational lobbying experience hinder societal
groups from CEE to actively use the opportunities provided by the EU multilevel system
(Hallstrom 2004). Rather than empowering non-state actors, external dependency, the emergence
of new cleavages and inequalities due to liberalization and deregulation, combined with the
communist legacies led to a decline in political participation and the weakening of civil society
(Howard 2003). These findings contradict the assessment of some studies, which contrast the low
level of political participation a measured on the individual basis with the rapid growth of civic
organizations, some of which demonstrate significant policy and mobilizing capacities (Petrova
and Tarrow 2007).

In short, the impact of Europeanization on the balance of power between state and society
appears to be ambivalent and it is likely to be differential. Even if accession has provided a new
political opportunity structure, research on old member states clearly indicates that Europeanization has not always resulted in changes of domestic power structures or repertoires
of action available to political actors (Andretta and Caiani 2005; Eising and Kohler-Koch 2005; Della Porta and Caiani 2006; Kriesi, Tresch et al. 2007).

Our paper seeks to explore the extent to which non-state actors have benefitted from accession by getting more involved in the policy process. Since NMG constitute institutionalized forms of non-state actors’ involvement in the making and implementation of EU policies, we see them as an important indicator for a change in state-society relations.

4. The Greening of the East: Making EU Environmental Policies Work

The starting assumption for our empirical case studies is that accession has posed a serious challenge to the CEE candidate countries that has the potential to empower non-state actors. On the one hand, the implementation of the acquis supports the transformation from authoritarian regimes with centralized planning economies into liberal democracies with market economies. These changes provide the necessary conditions for non-state actors to organize and act free from political control. On the other hand, the accession countries face great difficulties in restructuring their economic and political institutions in order to meet the conditions for EU membership. The adoption of and adaptation to the acquis run into serious problems concerning both the effectiveness and the legitimacy of EU policies. These problems cannot simply be solved in the “shadow of hierarchy” (command and control) since these countries are “weak” states that often lack the capacity (resources) rather than the willingness to effectively implement EU policies. Therefore, it is only rational for state actors to enlist the help of business and civil society to pool resources and share the costs.

The paper analyzes how three Eastern European accession countries have coped with the challenge of adopting and adapting the EU environmental acquis. More specifically, we are interested in finding out to what extent non-state actors have been empowered by becoming involved in the implementation of EU environmental policies. We selected Poland and Hungary as two accession states that became members in 2004 and also included Romania, which joined in 2007. The three CEE countries share a common heritage of state socialism but have chosen different paths of economic and political transformation and have diverging histories of civil society involvement. The selection of the countries follows a most similar systems design. While sharing similar legal and administrative traditions, the three countries differ on terms of traditions of environmental mobilization and the pathways taken during economic transformation. By effectively using the space provided by the legalization of free associations and the rise of public concern on environmental damages for political mobilization, environmentalist groups became the main drivers of democratic transition in Hungary, providing a safe haven also for other opposition groups (Enyedi and Szirmai 1998; Berg 1999). After the regime change, the importance of the movement decreased but it is still the best organized segment of Hungarian civil society with a considerable number of professionalized groups actively engaging both in policy-making and protest (Rose-Ackermann 2005; Kerényi and Szabó 2006). As in Hungary, environmental activism was one of the few societal activities, which the communist regime had tolerated in Poland (REC 1997; Andersson 2002). In 1989, an ecological “sub-table” was established at the round table talks between Solidarity and the communist regime. Unlike in the two other countries, where environmental issues were central to the protest movements of the late 1980s, in Romania the strongly authoritarian political system prevented the existence of any kind of societal organizations. Although the environmental movement could recover after 1989, it is still mostly organized at the local level, financially dependent on external donors and remains often passive in lobbying or influencing policy-making (Olearius 2006). Economically, both Poland and Hungary were among the fast movers regarding the dismantling of state socialist heritages, even though they differed in speed and openness towards foreign investors (Bohle and
Greskovits 2001). Romania, in turn, embraced economic liberalism rather reluctantly only in the mid-1990s (Gallagher 2005; Cernat 2006; Pasti 2006). What they have in common, however, are that they all have been accession countries whose governance capacities were and still are much weaker compared to the Northern and Western European states. The dual weakness of state and non-state actors can be traced back to a joint legacy of state authoritarianism. For our paper this is also relevant to the extent that three countries share an administrative culture that tends to be hostile to the involvement of non-state actors in public policy-making. At the same time, non-state actors face different opportunity structures since economic and political transition evolved along different paths.

In our comparative case studies we focus on environmental policy as an area of positive, market correcting integration that imposes significant costs in the implementation rather than in the decision-making stage. We look at three different EU environmental policies that explicitly prescribe the involvement of non-state actors in the policy process but differ with regard to the state holders likely to be empowered. While the Integrated Pollution Prevention and Control Directive (IPPC; 96/61/EEC) is most relevant to industry as the main regulatory target, the Directives on Fauna, Flora, Habitats (FFH; 92/43/EEC), and Wild Birds Directive (79/409/EEC) are likely to empower civil society organizations.

4.1 The Challenge of Accession

The adoption of and adaptation to the EU environmental acquis met with a multi-faceted environmental situation in Central and Eastern Europe. On the one hand, the CEE countries enrich the EU with vast areas of pristine wilderness, large spots of untouched nature, and a high biodiversity. At the same time, they suffer from the socialist legacy of forced and intensive industrialization leading to a significant number of environmental hotspots in the region (Turnock 2001; Auer 2004). After the regime changes and during market liberalization, most CEE countries witnessed a period of “natural clean-up” due to the breakdown of the state economy. With economic growth taking up in the second half of the nineties, however, they started to experience similar environmental problems as the old member states did decades before (Pavlinek and Pickles 2000). While some of the CEE countries had developed environmental regulations back in the 1970s, their effectiveness remained limited and did not meet the requirements of the environmental acquis. Environmental policy-making has been largely carried out by using reactive end of pipe approaches and has been generally based on command-and-control regulation resonating well with the long standing traditions of an authoritarian state (Caddy 2000; Archibald, Banu et al. 2004).

In the EU accession process, the CEE countries were confronted with the challenge of implementing some 200 environmental directives. This transfer of European environmental policy has not only imposed heavy costs on their weak fiscal capacities, swallowing two to three percent of their GDP (EDC 1997; DANCEE 2001; Homeyer, Bär et al. 2001; Schreurs 2004). It also meant to implement regulations that were mostly alien to their political and economic systems as they clashed with the legacies of the socialist period (Pavlinek and Pickles 2005). Next to the immense financial burden, the adoption of the green acquis and the adaptation of national law required comprehensive administrative capacity as well as scientific expertise and technical expertise in order to transpose EU requirements and ensure their practical application, monitoring of compliance and enforcement on the grounds. Given their overall weak resources, which were already largely tight-up in managing the transition process, the accession countries faced a serious capacity gap. Not only did they lack financial resources to acquire additional

personnel, expertise and technical equipment. State actors were also unable to compensate potential losers of a policy. Finally, public administration has often suffered from difficulties in pooling and coordinating the scarce existing resources (ECOTEC 2000), particularly if they have been dispersed among various public agencies and levels of government. These capacity problems have been aggravated by the inherently weak standing of environmental administrations within governments that often prioritized economic development (Archibald, Banu et al. 2004).

Next to state capacities, the implementation of costly EU environmental policy has also often lacked the support of its target groups. While the degree of environmental mobilization was high during the 1980s, the level of environmental engagement (Greenspan Bell 2004; Hallstrom 2004; Hicks 2004) and awareness of environmental problems has remained low and even decreased in the early 1990s (Homeyer 2004). Citizens have been more concerned with socio-economic issues, such as employment and income security (Lee and Norris 2000; Gerhards and Lengfeld 2006). Against this background, state actors would have required the capacity to engage different societal actors in the formulation and implementation of environmental policies – not only to get hold of their resources but also to ensure voluntary compliance.

4.2 Coping with the Challenge: Private Actors on the Rise?

4.2.1 Hungary

With environmental administration fighting an uphill battle against more influential departments, such as economy, transport or agriculture, EU accession emerged as a welcome opportunity both to further integrate and upgrade Hungarian environmental policy and legislation, as well as to secure additional financing for environmental projects (Greenspan Bell 2004). The adoption and adaptation to the EU environmental acquis did not only bring new regulations. It often came with the need to change national or regional level institutional settings of the environmental administration, altering the institutional balance within the structure of the administration. On the national level, new focal points had to be established in order to coordinate the workflow and manage the communication between regional, national and EU administrations. On the regional level, the increased number of environmental permitting procedures established by various directives created a major bottleneck beyond the legal transposition of directives since the different permits had been traditionally granted by single media authorities.

For state administration, institutional restructuring together with the huge policy overload resulted in a quasi-permanent state of emergency during the accession period, which was absorbing most of the state capacities available (Interview Ministry of the Environment, Budapest, 29/11/2005). The perception of constant flux was further aggravated by the changing composition of the environmental unit, which undertook a veritable odyssey through different parts of the state administration, becoming consecutively united with transport, water management, agriculture and regional development. These changes have often resulted in serious tensions between the different policy communities that have been forced to work closely together (Mocsári 2004). Next to administrative fragmentation and conflict, high turnover rates within public administration due to its politicization (Meyer-Sahling 2006) and uncompetitive salaries were hindering the consolidation within the departments and the stabilization of external ties. EU membership did not lead to a consolidation of the civil service either, as the post-accession administrative reform endorsing a “lean state” has been accompanied both by budget cuttings and suspension of up to 30% of staff employed in the regional level environmental administration and the national park directorates (Jávor and Németh 2007).

The conflicting coexistence of the “old” and the “new” administrative style remains characteristic for environmental politics in Hungary and leads to a typically incremental policy process, which is
further strengthened by frequent re-structuring of the national and regional environmental administration (Mocsári 2004). While we have witnessed some examples of new modes of governance, EU accession has not systematically empowered non-state actors in Hungarian environmental policy. Conditionality and time pressure have resulted in rather top-down adoption of and adaptation to the environmental acquis. Consultation in the shadow of hierarchy has been the most typical mode of non-state actors’ involvement. Moreover, these rather weak forms of new modes of governance are often dominated by tightly knit policy-networks that bridge the state–non-state actor divide easing the EU pressure on Hungarian authorities to adopt a more participatory approach in environmental policy-making.

While Hungarian environmental policy-making is still largely dominated by state actors, there is evidence for a slow proliferation of more inclusive governance modes that involve non-state actors more systematically. This development seems to be a result of both an increasing common socialization of state and non-state actors in the policy process as well as of increasing willingness of non-state actors to provide their expertise. There has been increasing consolidation and professionalization of a quite vociferous segment of well-established environmental NGOs that from the mid-1990s on started to seek cooperation with the state administration. This was paralleled by the development of a consultancy-oriented for-profit environmental professional sector, which could readily offer its services to both state and non-state actors (Greenspan Bell 2004). EU accession strengthened governance capacities by providing additional funding possibilities, exchange of information and know-how (Kerekes and Kiss 2003; Mocsári 2004). For central level environmental administration, EU accession increased political capacities vis-à-vis other branches of government and enforced the adaptation of EU-like patterns of professionalization, “projectification” (Kovach and Kucerova 2006) but also protest among non-state actors (Kerényi and Szabó 2006). Most of the funding was channeled through PHARE financed institutional twinning projects, which brought together relevant stakeholders from old and new member states. While some of these projects remained confined to short-term achievements with regard to clearly defined policy issues, others deployed long-term effects by contributing to the establishment of trust relations between different sets of actors (Interview Ministry of Environment and Water Management, Budapest, 29/11/2005).

**Integrated Pollution Prevention and Control Directive**

The introduction of the integrated environmental permitting systems as envisioned by the Integrated Pollution Prevention and Control (IPPC) Directives required a thorough restructuring of the environmental permitting procedure in Hungary and a departure from the dominant regulatory approach. The introduction of a precautionary problems-solving approach and the concept of best available technologies (BAT), which is at the core of the IPPC Directive, implied a change from the legalistic, prescriptive approach towards one based on coordination and communication between the regulators and the regulated that was alien to Hungarian administrative practice. Moreover, it involved a process of administrative decentralization since regional authorities had to get more autonomy in setting the permit conditions. Paradoxically, while the Directive provides business actors with considerable possibilities to influence sectoral regulations, Hungarian business actors only quite reluctantly started becoming active in this field. Even though the Directive explicitly encourage case-by-case treatment in issuing environmental permits based on consultations between administration and business actors, the lack of trust by both industry and public authorities has given rise to uncertainties. Both state and non-state actors have tended to “harden” initially soft instruments for the everyday administrative use by applying stricter standards than EU legislation would require (Mayer and Dragos 2005). Public authorities have often felt too weak to monitor compliance with new and non-binding agreements. Also, business actors, such as the Federation of Hungarian Employers, did not trust
the enforcement capacities of public authorities, preferring hard regulation since soft regulatory measures are more difficult to be effectively monitored and enforced by the authorities (CES 2003). Whereas voluntary agreements are recognized as an opportunity to improve policy implementation, the lack of transparency and enforcement capacities are seen within the business community as a major obstacle to the uniform application of the IPPC Directive across different regions and sectors. While business shies away from new modes of governance to avoid distorting effects for competition, public opinion remains also skeptical of the involvement of business in the policy process for fears of corruption. Saturated with news on abuses of public resources, different derogation periods or phasing-in arrangements can easily become misinterpreted as corrupt practice and are therefore only cautiously applied by state administration (CES 2003).

At the same time, financial resources and expertise available to private business actors are crucial in shaping relations with the authorities, resulting in significant differences among industry sectors. Thus, highly competitive, mostly export-oriented industry branches, (e.g. pharmaceuticals) had no difficulties in playing a proactive role in designing the Best Available Techniques (BATs) for their industrial sector by providing the technical expertise demanded by the IPPC Directive. In these industrial sectors, the application of IPPC is both necessary and financially viable, as it is important for market access and it comes with relatively low information costs. In the case of the pharmaceutical industry, for instance, the used technologies are very up-to-date in order to survive on a highly competitive market. Another industry that started relatively early with the internal preparations for the IPPC Directive is one of the potential great polluters, the chemical industry (Bonis 2001). After a longer crisis period in the nineties, this industry re-shifted its profile partially through FDIs from western multinationals and became a good performer both in economic and environmental terms (Fonyó, Szépvölgyi et al. 1999). In contrast, small and medium enterprises, mostly from the agricultural sector are often even lacking even information on the demands of the directive and are faced with huge capacity problems they can hardly solve (Mayer and Dragos 2005; Népszabadság Online 2005 July 14).

**Nature Protection Directives**

The EU’s Directives dealing with nature protection are among the most visible— and controversial – regulations, as they affect a high number of actors and open possibilities for public participation of environmental NGOs. In Hungary, EU compliance pressure generated important incentives for state actors to take the “helping hand” of non-state actors. After Hungary failed to meet the deadline for the transposition of the FFH Directive mostly due to low administrative capacities and conflicts within different branches of the government (Mocsári 2004), the ministry decided to delegate the information campaign about the designation process to the “NATURA 2000 Coalition” formed by some of the most powerful environmental NGOs, such as CEEWEB, MME/BirdLife Hungary, the National Society of Conservationists and WWF Hungary. The ministry could use the information dissemination capacities of NGOs it was lacking itself, try to increase the legitimacy of this directive, which is highly controversial among its addressees, and effectively prevent a complaint to the European Commission, which the NGO coalition threatened to file if the administration did not proceed with the designation process (CEEWEB 2005)) (Interview National Society of Conservationists, Budapest 02/12/2005). During the implementation period, site designation has led to a rapid increase of litigation both from affected landowners, environmental organizations and the environmental inspectorate. Several landmark cases, such as the Zengö Hill, where the Ministry of Defence planned to install a radar-system in a Natura 2000 site, have received wide public attention (Vay

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5 Környezetvédelmi útmutató a gyógyszeriparnak, Népszabadság Online, 2005. július 14

6 The number of legal cases concerning NATURA 2000 designation has doubled each year since 2006 (Interview, Public Servant, 28.03.2008)
Societal and legal mobilization against these plans has finally forced the Ministry to withdraw from them. Nevertheless, despite some successes, environmental groups are often likely to lose court cases, as the Natura 2000 legislation remains often contradictory and the judiciary is lacking specific training on how to interpret environmental law. Both legal decisions of the courts and the permitting procedures of the different Regional Environmental Agencies remain highly inconsistent, leading to different outcomes on comparable cases. Nevertheless, several environmental organizations are increasingly shifting towards using litigious strategies and towards providing legal training for judges and environmental organizations to explain Natura 2000 legislation. Due to their limited capacities in detecting breaches of law, collaboration between specialized environmental groups and the Environmental Inspectorate increased mostly after finalizing the designation process. Compared with early stages of transposition and implementation, which were characterized by unclear preferences and chaotic institutional set-up, the availability of legislation dealing with biodiversity and the consolidation of the role to be played by the Environmental Inspectorate has forged interest-coalitions across the state-non-state divide. As much as state administration cannot be regarded as being homogenous – the same is true also for the environmental non-state sector, which is characterized by a strong division of labour regarding applied repertoires. Only resourceful organizations, with extensive domestic and international ties, such as WWF Hungary or National Association of Conservationists have the capacities following multiple strategies. Many other groups specialize either on the local level, or acquire expertise in different forms of action, such as litigation or public protest. Most of these activities are coordinated through the long-established networks of the green movement and remain domestically focused.

To conclude, where collaborations between state and non-state actors emerged, they have been largely controlled by state actors and characterized by a high level of path-dependency. Thus, public administration has used the possibility to selectively resort to long-established, formal and informal contacts with NGOs. Environmental groups holding highly specialized specific knowledge, such as MME/BirdLife Hungary actively participated in the designation of protected areas while local NGOs helped providing expertise and data (MTVSZ 2003). The hand-picking of partners for consultation has several advantages. Most importantly, state actors can effectively mobilize information and expertise unavailable to the administration. Moreover, they are able to filter participation by involving loyal and trusted non-state actors in a timely manner without compromising the strict transposition schedules dictated by the EU. This selective inclusion of non-state actors into the implementation of EU environmental policies tends to reinforce the opportunity structures available for actors that are already part of established networks rather than empowering new actors to join in.

4.2.2 Poland

Serious capacity problems notwithstanding and less so than in Hungary, the accession has not changed the traditional approach of command-and-control regulation in Poland. Only nascent forms of non-state actor involvement, such as outsourcing, consultations and cooperation in the shadow of hierarchy have emerged during transition. Cooperation between state and non-state actors was often impaired by unstable power relations within the Polish state, leading to a slow and unreliable legislative process. It took years for the Environmental Protection Act, the main document regulating the environment in Poland, to come into force because of frequently changing majorities that needed to be accommodated. The instability of power relations does not only make it difficult for state actors to establish stable relations with non-state actors. Non-state actors are hardly inclined to exchange their resources for influence on a policy that may never be adopted or be significantly changed in the legislative process (Interview University of Wroclaw, Wroclaw, 13/10/2005; Interview Consultancy, Warsaw, 18/10/2006).
While hierarchical coordination remains still dominant in Polish environmental policy-making, specific EU requirements for the involvement of non-state actors, EU compliance pressure and EU capacity-building in form of twinning and funding as well as territorial decentralization may empower non-state actors. But weak governance capacities and missing trust relations between state and non-state actors have so far impaired a more sustained involvement of business and civil society organizations in the implementation of EU environmental policies.

*Integrated Pollution Prevention and Control Directive*

Polish public administration has not only been overburdened with the practical application of new laws transposing the environmental *acquis*. State actors have also lacked experience and know-how on how to negotiate with different kinds of non-state actors or on how to monitor and enforce informal accords or voluntary agreements (Interview, environmental think tank, Wroclaw, 14/10/2005). In the case of the IPPC Directive, companies and policy consultants have indeed participated in the preparation of national guidance documents for integrated permits as required by the directive. The incentives for state actors to include business actors are their know-how and manpower, but also their financial contributions. Business, in turn, has an incentive to offer its resources because it wants to avoid legal uncertainty and economic disadvantages they may face if the standards are not adopted within the time frame set by the directive as a result of which they would not be able to get the integrated permits required by the IPPC Directive. Building on its political influence (Trappmann and Kutter 2005), the Polish Steel Association, for instance, successfully bargained for longer transition periods (until 2010) for receiving the permits. In return, it offered expertise and financial resources of its members. Steel companies have financed the training of public administrators and other projects to help strengthen the administrative and cognitive capacities of state actors necessary to apply and enforce the directive (Interview Polish Steel Association, Warsaw, 23/10/2005). As state actors lack the expertise to interpret the technical details of the directive, they had to refrain from the possibility to use flexible standards, which could be adapted to the local conditions of individual companies. Given the superior expertise and technical know-how of industry, public authorities feared to be “captured” by economic interests in the negotiations on which standards a specific company has to comply with (Interview Consultancy, Warsaw, 9/10/2006; Interview Consultancy, Warsaw, 16/10/2006; Interview Polish Environmental Ministry, Warsaw, 11/10/2006).

*Nature Protection Directives*

Relations between state and non-state actors in the field of nature protection can be described as rather conflictive, when compared to the Hungarian case. State actors’ reluctance to cooperate with non-state actors was only to overcome with the help of EU pressure. In the case of the FFH Directive, it was the EU Commission that made the Polish administration to accept the expertise of non-state actors in drawing up the inventory of protection sites required by the Directive. After a coalition of environmental groups, including WWF Poland, the Polish Society for the Protection of Birds, the Naturalist Club and the Polish Society for Protection of Nature "Salamandra", had prepared a so-called “shadow list”, identifying far more conservation areas than included in the “official list” of the Ministry of Environment, the European Commission demanded a revision. As a consequence, the Ministry of the Environment asked the NGOs to draw up parts of the inventory (Interview Ministry of Environment, Warsaw, 12/10/2005; Interview WWF, Warsaw, 12/10/2005).

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Civil society organisations continued to play a central role also after the NATURA 2000 sites became designated. A major conflict, eventually leading to an ECJ infringement case against Poland, resulted from an official complaint to the European Commission sent by the Polish Society for the Protection of Birds (OTOP), WWF Poland and Polish Green Network concerning road constructions through the city of Augustow, which were crossing Special Protection Areas under the Birds Directive and should be proposed as Sites of Community Importance under the Habitats Directive. National environmental NGOs, together with Brussels-based networks actively participated also in the domestic trials against the authorisation of this road project, highlighting the obligation to comply with EU directives and consider alternative solutions (Interview, CEE Bankwatch, Brussels, 23/11/2007).

To conclude, the participatory requirements of EU environmental policies coupled with compliance pressure and capacity-building created the potential to empower non-state actors in Poland. But weak governance capacities and missing trust relations between state and non-state actors have so far impaired a more sustained involvement of business and civil society organizations in the implementation of EU environmental policies.

4.2.3 Romania

Romania was the last of the ten CEE candidate countries to open negotiations on Chapter 22 of the *acquis communautaire*. Environmental issues emerged as a major stumbling block on the countries' road towards accession. Romania received a warning “red flag” in the last regular EC Country report before accession in 2005, meaning that membership could be postponed because of the lacking progress in adapting EU-conform industrial pollution legislation (European Commission 2005). Capacity problems were listed as a primary concern, as environmental administration remained understaffed at all levels (ECOTEC 2000). In this context, new modes of governance were far from emerging as a typical feature of environmental enlargement in Romania. Severe time pressure on legal adaptation did effectively bind the limited resources available in the environmental administration. The heavily understaffed and underpaid administration on both the national and the regional level has regarded the involvement of non-state actors as a rather “time-consuming and non-rewarding exercise” (Interview Ministry of Environment and Water Management, Bucharest, 25/11/2005). In most of the cases, the perception prevailed that the drafting guidelines of the EU did not provide much leeway for domestic adaptations, but rather entailed a “downloading” of the legislation followed by the “copy-and-paste method” of transposition (Interview Consultancy, Bucharest, 12/01/2007). Institutional restructuring and conflicts within the administration, as in the case of the Fauna, Flora, Habitats Directive between the forestry department of the agricultural ministry and the biodiversity department of environmental ministry, did further weaken administrative capacities and did not leave much time to include new actors in the policy process.

Compared to Hungary and Poland, relations of not-for profit non-state actors with state administration are less intensive. Environmental NGOs have extremely weak resources, are regionally scattered and rarely hold sufficient capacities for active involvement in policy-making (Olearius 2006). Due to their high donor dependence, they often switch in their focus of interest or are rather active in redistributing external funding to other organization, which does not help them build specific policy expertise that could be used either in transposition or the application of EU environmental policies (Interview Ministry of Environment and Water Management, Bucharest, 23/11/2005). The low level of trust and conflicts among environmental NGOs does further hinder them to become regarded as serious partners by state actors. Networking among environmental groups remains weak and the lack of public support prevents them from having a high policy impact. Moreover, local level activism is increasingly adopting environmental
“watchdog” strategies that are more protest-oriented and do not seek actively to become involved in policy-making on the national level.

**Integrated Pollution Prevention and Control Directive**

Compared to Hungary and Poland, industrial restructuring in Romania has proceeded with a much slower pace. Large parts of industry remained owned or co-owned by the state when the accession process has started. This is particularly true for heavy industry and sensitive sectors, such as energy, which are main targets of the IPPC Directive. While business actors often had to bear substantial costs relating to the modernization of installations, the imposed by the new legislation, they hardly sought of institutionalized ways of asserting influence on the state administration. As close relations between business actors, politicians and administration survived the partial restructuring of Romanian industry, informal relations still remain the preferred way to influence policy outcomes (Cernat 2006). State ownership of most large combustion plants under the IPPC Directive made new modes of governance futile, as costs for fulfilling the requirements had to be carried from the state budget (Interview Ministry of Environment and Water Management, Bucharest, 25/11/2005). Therefore, collaboration between state and non-state actors has emerged to prevent or to postpone compliance with EU legislation. Mainly large combustion plants, including steel factories and power plants generating heating for public and industrial use were able to move the authorities to negotiate individual transition periods with the European Commission, hoping that necessary environmental investments could be covered after accession from the Structural Funds or through external bank credits. As a result, more than one fourth of the installations affected by EU air pollution control directives have been exempted from the requirements for a period of up to 10 years (Interview Ministry of Environment and Water Management, Bucharest, 23/11/2005 and Interview Consultancy, Bucharest, 12/01/2007).

**Nature Protection Directives**

EU accession process helped strengthening capacities of non-state actors also by providing technical and financial resources in order to fulfil some of the legal and administrative requirements of adaptation in the field of nature protection. Targeting both, state and non-state actors, PHARE twinning projects, LIFE and ISPA instruments, often stocked up with bilateral assistance from the EU member states, were partially financing new facilities or linking together policy actors. EU capacity-building has not only strengthened the capacities of state and non-state actors. It can also lead to shared ownership of policies. Professional NGOs, holding relevant and scarcely available knowledge have played a major role in the designation of protection sites. Thus, SOR/BirdLife Romania and the Milvus Group signed a partnership agreement with the Ministry for the cooperation on designating bird areas (SPAs). The partnership received funding mainly through EU programmes, such as PHARE CBC and LIFE (Papp 2006). At the same time, influential organizations with extensive external ties, such as the WWF’s Danube-Carpathian Programme could bring in its policy experience in order to speed up the NATURA 2000 designation process. External assistance was important to enable environmental NGOs to participate in nature conservation policy and increasingly develop into a push-factor facilitating implementation and enforcement of environmental legislation.

The empowerment of non-state sector in nature protection has happened through several channels. Capacity-building measures have developed around strong and influential NGOs that could build on their experience, financing and external ties. One of the most important groups is WWF Danube Carpathian Programme, that emerged as a network actor in nature conservation, by setting up and coordinating the work of the NGO Coalition Natura 2000, securing own and external financing, using experience and ties from former accession rounds and becoming increasingly involved in lobbying on nature conservation matters. Currently, the NGO Coalition
Natura 2000 includes 36 member organizations, which are organizing a range of capacity building and awareness raising activities, e.g. public consultation, elaboration of agro-environmental schemes, monitoring. The influence of the Coalition did increase both because it could effectively bring together environmental groups that were acting in different regions and secure financing through EU-programmes such as PHARE, ACCESS or bi- or multilateral aid programmes directed towards the strengthening of civil society organizations. While – often unsuccessfully – pushing towards becoming more actively involved in the policy process and developing close ties with state administration, environmental NGOs are also employing more adversarial strategies. The WWF DCP has been successfully lobbying for personal changes in the Biodiversity and Biosafety Directorate of the MESD. At the end of 2007, the General Assembly of the NGO Coalition Natura 2000 decided lodging a complaint to the European Commission and presenting a „shadow list“ of designated sites as well as alarming developments in Romanian protected areas, mostly linked to forestry and road constructions through protected areas. By contrast, legal enforcement through domestic courts, one of the most used tools in implementing the provision of the Directive in the old member states and increasingly in Hungary has received little attention until now. One reason for this lies in the low level of awareness of the Natura 2000 network as well as the short time that has passed since accession. At the same time, prevalent and endemic corruption in courts makes societal groups to refrain from this opportunity.

While environmental NGOs had been hardly involved in the rather secretive transposition process of the nature protection directives, the right to access to environmental information included in the EU directives did empower civil society actors, which are slowly starting to make use of these possibilities (Olearius 2006). The case of the Rosia Montana Gold Mine became a first major test for the empowerment of non-state actors by EU law. The gold mine is owned by a Canadian-Romanian joint venture and the Romanian state. Due to its detrimental effects on the environment, a local NGO, Alburnus Maior, has organized protest and invoked environmental impact assessment, nature protection and industrial pollution legislation to oppose the project. After Romania has joined the EU in 2007, environmental NGOs did also ask the European Commission to investigate whether the FFH Directive has been infringed upon and were successful in stopping further mining activities in the region (Baga and Buzogány forthcoming).

In sum, in Romania, new modes of governance are even less pronounced in environmental policy than in Hungary and Poland. This is due to the weaker governance capacities of state and non-state actors. Moreover, in industrial sectors not yet privatized, quasi-corporatist relations between state and business actors based on exclusive access to resources do not make the emergence of new modes of governance necessary. Finally, environmental NGOs favor more confrontational strategies seeking to act as “watchdogs” rather than partners of state actors in the implementation. The EU’s push and pull for a stronger involvement of non-state actors is often merely symbolic but may become instrumental if non-state actors hold the necessary resources to make use of the new opportunities offered by EU demands.

5. Conclusions

The adoption and adaptation to the EU’s environmental acquis in the field of integrated pollution control and nature protection has posed serious challenges both to state and non-state actors in Hungary, Poland, and Romania. The transfer of European environmental policies came with significant costs compared to the weak state capacities and meant a thorough legal and institutional reshuffling based on regulations that were often contradicting the policy-making

traditions of these states. Given the limited capacities of state actors, the inclusion of non-state actors in the transposition and practical application of EU environmental policies offered an obvious possibility to compensate for state weakness. New forms of governance, such as co-regulation, delegation or private self-regulation, provide ways to pool resources and reduce implementation costs by sharing them with private actors. Their emergence would constitute a significant empowerment of non-state actors in CEE countries.

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

Although state and non-state actors often had incentives to cooperate, non-state actors only reluctantly got involved in public policy-making. Our analysis of Hungary, Poland and Romania finds only limited evidence for the emergence of new modes of governance in the accession period. The traditional command-and-control approach has prevailed in all three countries and in some cases, especially in Romania, was even reinforced by the high time pressure and accession conditionality of the accession process. There are only some nascent forms of non-state actor involvement. Generally speaking, even these remain feeble and non-systematic entailing rather weak participative modes such as outsourcing, consultation or asymmetrical cooperation.

The main reasons hindering the emergence of new modes of governance are the limited governance capacities of the accession countries, particularly the low administrative capacities of the state and the weakness of private interest and civil society organizations. The accession process coincided with political and economic transition taking-up most of the already scarce state resources and entailing high institutional uncertainties, which have been reinforced by frequent changes in government and administration. This made it difficult for non-state actors to establish stable relationships with state actors. Furthermore, the three CEE countries share an institutional legacy of an authoritarian state that heavily interfered with society and economy. The organization of societal and corporate interests used to be weak. Even after transition, structures of interest intermediation remained fragile. Thus, systematically involving non-state actors in the making and implementation of public policy does neither resonate well with the traditional paradigm of a strong state nor can it build on stable state-society relations. Likewise, societal and economic interests tend to lack the necessary resources and/or the political willingness to organize and offer themselves as reliable partners to the state. Civil society actors often do not have sufficient organizational resources to serve as a reliable partner in the cooperation with state actors. Companies, in turn, shy away from cooperation because they doubt that state actors are capable of translating mutual agreements into policy outcomes given unstable majorities in parliament and frequent government turnovers. Political instability in turn weakens the credibility of state actors to unilaterally adopt and impose costly policies. State actors themselves see their weakness as a major obstacle for cooperation with non-state actors. Not only has industry little incentive to offer its resources for the making of policies that incur significant costs upon them. State actors are also afraid of being captured by business, if it has superior resources. Next to the fear of “state capture”, policy-makers and administrators are often faced with public scepticism.
against new modes of governance, which are seen as part of the socialist legacy (clientelistic networks) and in contradiction to democratic institutions. This perception is reinforced by attempts of politicians to shift political decisions into civil society fora in order to circumvent opposition or deadlock in parliamentary or party arenas. Finally, the privatization or delegation of public tasks to private actors meets strong opposition at the local level.

While new modes of governance appear to be slightly more prevalent in Hungary, their governance capacities are also stronger than in the other four countries. In Romania, we have found the least evidence for the empowerment of non-state actors. 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 more than two years later than Hungary and Poland. The findings on our three CEE countries confirm that (EU) capacity-building and EU compliance pressure may be necessary but not sufficient to empower non-state actors. On the one hand, state actors have to be capable of absorbing EU resources as non-state actors have to have the capacity to make use of the new opportunities offered by the EU. On the other hand, both have to generate trust in new modes of governance as effective means to implement EU policies. State actors often perceive the involvement of non-state actors as time-consuming and a further obstacle in taking decisions that are not geared towards particularistic interests. And even if new modes of governance may help increase effective implementation, they may not always be seen as a legitimate way of policy-making due to their often informal character and the selective inclusion of non-state actors.

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