The European Union and State Building in the Western Balkans

Andrew Taylor
Department of Politics,
University of Sheffield,
Sheffield S10 2TU

a.j.taylor@sheffield.ac.uk

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Introduction

This paper’s starting point Zielonka’s (2006) thesis that EU governance is fundamentally flawed because it is dominated by a statist paradigm. The EU’s response to complexity and heterogeneity is to aspire to become even more state-like (Barroso 2013; Rehn 2013) but the EU’s structural and processual complexity (‘a polycentric system of government, multiple overlapping jurisdictions, striking cultural and economic heterogeneity, fuzzy borders, and divided sovereignty’ 2006: vii) makes this unrealisable. Zielonka concludes that the EU should explicitly develop ‘neo-medieval governance’ which is appropriate to its complexity and heterogeneity. The result would look something like network governance.

So we have a conundrum. On the one hand, the EU appears suited to network governance, (to which the EU is also normatively committed), but enlargement (and changes flowing from the euro zone crisis) pulls in the opposite direction, towards hierarchical governance.  

Mitigating complexity and heterogeneity to boost the EU’s economic and political coherence via hierarchy, paradoxically can exacerbate complexity and heterogeneity (amplified by tensions within the EU) thereby undermining these efforts. Network governance is unlikely to deliver the transformation thought by many necessary to address EU governance.

External governance refers to the EU’s influence on third countries; the most obvious example is enlargement. External governance refers to the creation of order by by-passing the anarchy of international relations and hierarchy in domestic politics. Lavenex and Schimmelfennig (2009) see external governance as promoting coordination and collectively binding agreements, combining legalisation and socialisation. External governance involves

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1 The empirical and theoretical issues discussed in this paper are taken from, and explored further in, Taylor, Geddes and Lees (2012). My co-authors are not responsible for my interpretation.
a mix of hierarchy and networks and revolves around the extension of the acquis to non-members. A distinction must be drawn between states with a membership perspective (as in the Western Balkans) and states without (such as the ENP states): the former have a different incentive structure and the Commission is far more visible in domestic politics. In enlargement hierarchy is far more significant, the result being closer to external government than external governance.

The trend in the study of governance is to declare the victory of networks over hierarchy. This paper does not deny the significance of networks, rather it challenges the propositions that networks are, first, a new form of governance; second, that networks have supplanted hierarchy; and third, networks encourage a diffuse distribution of power, reducing the centrality of the state. My argument is that networks (multi-level and horizontal) are an inevitable response to complexity, describe political reality, and do not necessarily signal a shift in the distribution of power. Indeed, the opposite can be the case. I argue that enlargement (and changes flowing from the Euro zone crisis) points to an even more complex, differentiated (and divided) EU in which hierarchy dominates.

We have a puzzle: enlargement is hierarchical but the EU has an expectation of network governance. What does the coexistence of hierarchy and networks mean for the distribution of power? Enlargement and policy complexity explain why networks form, do they explain their operation? This paper does not regard networks per se as a new form of governance; networks describe complexity they do not necessarily describe the distribution of power. If enlargement is dominated by hierarchy and if, from a path dependency perspective, initial conditions are critical, does the emphasis on hierarchy undermine the EU’s preference for a more diffuse, responsive, and accountable power structure? In enlargement, hierarchy is
both functionally superior and necessary because of the national government’s centrality in satisfying EU conditionality; government therefore mandates actions and defines the nature of network interaction. All this takes place ‘under the shadow of hierarchical authority’ (Scharpf 1994, 40-41).

The governance revolution

The rise of governance was predicated on the assumption that from the 1980s there was decline in governing capacity (Kooiman 1993: 2, for example). Governing, or government, refers to purposeful actions to guide, steer, control or manage using hierarchy and the capacity and capability to adopt and enforce decisions. Governance is the non-hierarchical coordination of state-society interaction based on the active involvement of non-state actors in making and implementing policy in which non-state actors enjoy considerable autonomy. A preoccupation of political science is the (apparent) shift from government to governance, whose characteristic institution is the network. A concomitant is the ‘rolling-back’ of the state (Ansell 2006: 76). For the purposes of this paper ‘network’ refers to a cluster of public and private actors in a policy sector that persists over time and whose members’ engage in making and implementing policy. This is characteristic of the EU as a highly differentiated polity. The explosion of work exploring multilevel (vertical) and horizontal (network) connections has made ‘network’ into perhaps the most common descriptor in EU studies and seems well suited to understanding the EU’s consensual-bargaining approach to policy (for example, Eising and Kohler-Koch 1999: 3-13; Kohler-Koch and Rittberger 2006: 27-49; Börzel 2011: 53-54).

Networks are a normal feature of policy-making but governance goes further. Governability problems flowed from social complexity that facilitated resistance to central political
guidance and networks developed to improve policy and limit the potential for resistance (Mayntz 1993: 20). Governance (and network) theory holds that ‘No single actor, public or private, has all knowledge and information required to solve complex, dynamic and diversified problems’ (Kooiman 1993: 3). Policy and politics are invariably driven by public-private interaction (when was a single actor ever totally dominant?) but network theory stresses not interaction but interdependence of such a character that it reduces government to just another actor because of its dependence on these actors. Government, or ‘the state’s competence to rule through hierarchy’ (Offe 2009: 551), is no longer sufficient or dominant and government must develop strategies for managing networks. Governability problems were both stimulated by, and their solution required, public and private actor engagement in such complex ways that interaction became interdependence but in portraying interaction as interdependence, it was assumed societal actors possessed and exploited their resources and strategic location to neutralise government. Therefore ‘Reciprocity and bargaining rather than hierarchy describes the way the service delivery system functions’ (Sharpe 1985: 380).

As a concept governance has several flaws, notably ‘governance is apparently something that can be observed and experienced, but nobody can in fact do it’ (Offe 2009: 550 original emphasis). Confusion is increased by linking ‘governance’ and ‘network’ to a degree that they become synonymous and, furthermore, the literature avoids a substantive discussion of power, focussing on power ‘to’ not power ‘over’. Governance embraces a vast field of interaction between non-state actors and government, becoming a near catch-all category. The problem is that ‘control deficits’ and ‘implementation gaps’ always exist and ‘The only leak-proof system ... is where the instigator and executor are one person’ (Sharpe 1985:}
This creates space for hierarchy (Offe 2009: 551) so ‘Empirically, only hybrid forms may be found since one mode of governance always entails elements of other modes of governance. Otherwise, effective steering and co-ordination would not be possible’ (Treib, Bähr and Falkner 2007: 3).

That hierarchy and network co-exist is an inevitable feature of institutional life and the task of government is to facilitate and manage socio-political interaction in different policy sectors (which may require the government’s withdrawal from, or intervention in, a policy sector). Governments need knowledge to grasp problems, identify solutions, allocate and define responsibilities, and apply sanctions. Interaction is inevitable but need not challenge power relations and the search for improved effectiveness is inherent in government be it supra-national or national. Governance is therefore vulnerable to ‘grandiose semantic overstretch’ and can justify both the extension and the substitution of the state (Offe 2009: 553 and 556). The EU combines, as do national governments, ‘old’ (hierarchy) and ‘new’ (network) governance but the intergovernmental nature of the EU (and the complexity of national politics) means that the Commission (and national governments) ‘steer’ change and exploit networks. Societal actors can be viewed as impediments or as assets and the Commission encourages their formation (Sbragia 2000: 234 and 241). Lavenex and Schimmelfennig offer several variants of governance and the most relevant here is hierarchical governance: ‘the production of collectively binding prescriptions and proscriptions ... The vertical relationship between ‘rulers’ and ‘ruled’ implies that influence is exerted in an asymmetric manner. At the sectoral level [it] describes a form of steering based on precise rules that are non-negotiable and legally binding as well as enforceable upon actors’ (2009: 797). Network creation is seldom given is as much attention as network
evolution. Networks are taken as a given but in, for example, enlargement, the transposition of the _acquis_, and the chapter negotiations are often concerned with creating networks where none hitherto existed or radically changing existing networks.

Lavenex and Schimmelfennig’s concept of hierarchical governance stresses domination and subordination in the production of collectively binding decisions via hierarchy (their formulation of network governance assumes the formal equality of actors), which is clearly relevant to enlargement (2009: 797). Network actors certainly possess resources that government values but government has resources needed by network actors, resources that give governments important advantages in any interaction. Whether interaction becomes interdependence depends on, first, the importance of actor resources; and second, the degree to which resource supply is a monopoly. Interaction becomes interdependence when valuable resources are controlled by a few; interdependence is unlikely when there are many suppliers or if the supply (and quality of the resource) is poor. The Commission and states, either members or those seeking membership, have a special interest in government effectiveness so governments – and therefore hierarchy – are central to network dynamics. What are hierarchy’s resources? I think we can identify three: authoritative and legitimate decision-making, the coordination of complexity, and the ability to create networks. Hierarchy’s primary function, then, is the coordination of complexity.

Coordination needs networks of separate but interacting organisations to amplify collective capabilities and improve problem-solving. The central issue, therefore, is ‘how does the central government coordinate the fragmented system so that its policies are achieved’ (Sharpe 1985: 364)? Government cannot rely on self-regulation or self-organisation; neither, as liberal democracies, can they employ coercion, which leaves interaction (especially in the
hyper-compound EU polity) and external pressure (the conditionality inherent in enlargement). However, ‘Central governments are, in formal terms, the principal agents for major allocations to an operating ideology since, in the last resort, they can legislate for the necessary change’ (Sharpe 1985: 372, emphasis added). How issues are resolved – hierarchy, markets, network – can vary over time and by policy sector but in all cases the centre dominates. The result is that ‘government and governance ... are actually much more intertwined than is implies by some governance theorists’ (Jordan et al 2005: 484) so producing hybrid modes. The centre is responsible for coordination, and interaction need not become interdependence. ‘Not to put too fine a point on it’, Sharpe concluded, ‘government is not just another organization’ (1985: 381).

The EU governance puzzle and Enlargement

The EU stresses effectiveness but what is effective? Effectiveness is essentially a state’s ability to formulate and implement policies, in cooperation with society, in pursuit of collective goals. Under the Treaty on the European Union any European (not defined) country may apply for membership if it respects the democratic values of the EU and is committed to promoting them. The 1993 Copenhagen European Council defined the accession criteria (the Copenhagen criteria) thus: countries must have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces in the EU; and the ability to take on and implement the obligations of membership, including adherence to the aims of political, economic and monetary union. The EU decides when candidate countries can join. Satisfying these criteria is only one element; the EU also needs to be able to integrate new members. Accession is determined by the candidate's adoption, implementation and enforcement of all current EU rules (the
acquis) which are divided into thirty-five policy chapters, whose content is not negotiable. The Commission monitors progress, gives advice and guidance, as well as assuring current (see http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm) member that conditionality is being applied. ‘Effective’, then, is where a country can demonstrate an ability to play a full part as members by complying with the EU’s standards and rules, has secured the consent of the EU institutions and member states, and of citizens via their parliament or referendum. In any group of states there will be variations in effectiveness.

Measuring effectiveness is not easy. I employ Government Effectiveness (GE), one of the six measures comprising the World Bank’s Worldwide Governance Indicators data set to estimate the ‘effectiveness gap’ between states. This indicator captures ‘perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies’ (Kaufmann, Kraay and Mastruzzi 2010: 4). The measures generated are composites of various perception measures, expressed in units of a standard normal distribution, with a mean of zero, a standard deviation of one, with a range between -2.5 to 2.5, with higher values corresponding to better governance. I have omitted states in the EEA and Iceland as being already close to the EU model, and Turkey, whose Islamic culture poses a set of different issues for the EU. I identify two main groups: the Enlargement 12 (those Central and East European States that joined in 2004/2007 and the seven Western Balkan states and entities (WB7) seeking membership or, in Croatia’s case, about to accede. The first WGI data is for
1996 and this is the base-line for the (then) EU15 that represents the ‘target’ for enlargement states.\footnote{EU15 = Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom. Enlargement 12 = Cyprus, Estonia, Malta, Slovenia, Czech Republic, Slovak Republic, Latvia, Hungary, Poland, Lithuania, Bulgaria (2007), Romania (2007). WB7 = Croatia, Montenegro, Macedonia, Serbia, Albania, Kosovo, Bosnia and Herzegovina.} Ratings for 2011 provide comparison. Thus:

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<td>1.64</td>
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<td>Enlargement 12</td>
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This narrowing effectiveness gap indicates some convergence between the EU15 and the Enlargement 12 but the picture becomes more complicated when the WB7 are included. It is difficult to identify a base-line date for the WB7 (1996 is unrealistic as all were in the throes of post-communist/Yugoslavia’s break-up and transition); the signing of a Stabilisation and Association Agreement (SAA) with the EU marking the start of a formal interaction is a good starting point but these came into operation at different times (2 in 2001, 1 in 2006, 3 in 2008) so I have taken 2004.

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This indicates no significant convergence (the WB7/EU15 gap closed because of decline in the latter not improvement in the former) and indicates considerable variation in effectiveness. The 2011 data for the Enlargement 12 and WB7 suggests two groups: states (excluding Bulgaria and Romania but including Croatia) with an average GE of 0.66 (Croatia’s is 0.60) and those (including Bulgaria and Romania but excluding Croatia) with an average GE of 0.51, Bulgaria’s and Romania’s scores are 0.49 and 0.48 respectively. The GE for the EU15 is 1.46. A further level of complexity is the variation within the EU 15: in 2011 Finland scores 2.25, Italy is the lowest at 0.45 (Greece, invariably presented as the EU’s basket-case, is 0.48). What are the implications of this variation for governance?

Treib, Bähr and Falkner (2007: 3-4, 5-10, and 15) identify three dimensions of governance: politics (decision making is divided between government and private actors), polity (institution different from markets and hierarchies), and policy (a mode of political steering). Treib et al then combine legal instruments (legally binding statements versus soft law) and implementation (rigid versus flexible), which they describe as ‘the most critical’ features, to develop a four-fold typology of modes of governance. Interestingly both legal and instruments and implementation are characteristics of the policy dimension which emphasises steering and hierarchy. The most relevant mode is framework regulation (binding legal instruments combined with flexible integration) because it comes closest to capturing enlargement as a centrally (at the European and domestic level) mandated process in which national governments are responsible for implementation. As a mode of governance as framework regulation indicates the primacy of hierarchy but coupled with the significance of networks (see also Nicolaides 2012).
A core EU objective in enlargement is to reduce variation between states by policy transfer and norm diffusion, a combination of legalisation and socialisation (Lavenex and Schimmelfennig 2009: 794-95). Enlargement places states under massive downwards pressure to adapt and create the capacity needed to satisfy the obligations of membership. This is *hierarchy*, but the EU (theoretically) favours *network* governance. Enlargement is driven by inter- and trans-governmental negotiations to ensure compliance; enlargement is dominated by hierarchy to achieve effectiveness. On the other hand, the ‘network’ permeates the EU’s view of what constitutes ‘good’ governance. The EU aspires to opening up policy making and implementation to publics, non-state organisations and civil society; Member States are urged to adopt five principles – openness, participation, accountability, effectiveness and coherence – at all levels of governance these are most likely to be secured through networks (CEC 2001a, 18). The principles underpinning enlargement are unchanged and constitute the bedrock of values that permeate the enlargement since Europe’s post-Cold War ‘reunification’. These principles are exactly that: principles. They offer no detailed guidance and therefore, the task of the Commission, other European institutions and, of course, the Member States (Avery 2007: 258-59). The devil is in the detail.

Enlargement in 2004/2007 was a critical juncture in EU history as it broadened membership away from the prosperous states of Western Europe, and expansion into the Western Balkans poses significant problems for the EU. Commission officials reiterate frequently these states have a credible membership perspective (dating from the Zagreb Summit in 2000) but accession is a long way off, which reduces EU leverage, and accession entails a price for the EU and its members and as a result the accession process became progressively longer, more intensive and intrusive and extending beyond accession to ‘post-accession
conditionality’ (Gateva 2010). Enlargement poses complex problems for EU institutions and imposes great domestic strains; the EU, in line with the general provisions governing enlargement, uses conditionality, monitoring, and rule transfer to push polities towards ‘the European model’ of market, liberal-democratic states. The EU and Commission stress this is not a coercive process; states are not obliged to undertake these reforms but if they are not undertaken to the satisfaction of the Commission membership will not be forthcoming. The Western Balkans will also be affected by changing economic governance in the EU as a result of the euro zone crisis. This progressive tightening of the policing of the enlargement process was the result of the Commission’s assessment of its experience in Central and Eastern Europe and also the changing political and economic environment in which enlargement is located. This includes enlargement fatigue and recognition that the countries seeking membership pose problems that make the ‘big bang’ enlargement of 2004 (for example) look comparatively straightforward. The general attitude of enlargement countries remains, irrespective of specific complaints and grumbling about the length of the process is one of ‘better in than out’. Given the broad consensus that the EU is ‘the only game in town’, one can understand why a high priority is accorded membership. Although the costs of adaptation are high and the process long, and requires surrendering (or pooling) sovereignty, membership is perceived to be in the national interest.

To navigate enlargement, countries must possess sufficient personnel, knowledge, expertise, and implement and coordinate complex tasks in state building and integration, tasks which offer opportunities to veto-players. EU preferences and the bulk of governance theory sees the involvement (and neutralisation?) of potential veto-players as simple prudence in addition to improving effectiveness and compliance; improving a state’s ability
to govern through (Mann’s [1984] infrastructural power) rather than over society to realise collective goals. This implies an enabling state, a state ‘steering not rowing’ and interacting extensively with non-state actors to exchange information, accumulate expertise, enhance trust and improve problem-solving (Scharpf 1993: 76-77). However, accession states lack capacities and capabilities that, when combined with conditionality, increase state autonomy and shift the emphasis to hierarchy. Equally, the default response to any domestic opposition, or threat, to accession is to assert hierarchy and centralise power.

Hierarchy remains dominant. Networks develop because of policy complexity and downwards pressure from both the EU and the domestic governments; so the presence of networks indicates neither network governance nor a diffusion of power. Engagement with the EU empowers state actors; the state is not as hollow as we think.

The inevitability of hierarchy

Enlargement entails extensive state-building in polities with both a history of centralisation and weak civil societies (Mazower 2000: 116-142), that, together with the Commission’s emphasis on creating an effective state, inevitably prioritises hierarchy over network. The state is not being by-passed or transcended but changed and the change ‘increase the intervention capacity of the state by bringing non-state actors into the making and implementation of public policy’ (Offe 2009: 555) but, and here I depart from Offe, this involvement need not increase interdependence. Treib, Bähr and Falkner, for example, argue ‘there is no mode of governance that includes either only public or only private actors. It can only be stated that a certain type of actor is predominant’ (2007: 9 emphasis added). Networks combine structure (who does what), process (how it operates) and outcomes (what is produced). EU governance, indeed all governance, is obviously and
necessarily multilevel and the complexity of public policy and coordination and networks are a universal feature of governance but the EU, in the final analysis, is dominated by governments. In enlargement the Commission is an authoritative allocator of value. The EU may be governed through networks but not necessarily by networks as governments play a critical role as gatekeepers and authoritative decision-makers. Hierarchy remains dominant and in enlargement this dominance is reinforced by conditionality. Hierarchy precedes network.

Renner and Trauner (2009; see also Trauner 2009) find engagement with the EU has stimulated extensive rule adoption in SEE. The EU’s enlargement strategy provides incentives to adapt and the Commission monitors closely progress. This is a rationalist process but enlargement is also a deliberative and communicative process so how does this process appear on the ground? The study on which this paper draws, makes extensive use of interviews and one of its primary objectives was to use this data to explore the frequency and intensity of interaction using Social Network Analysis (SNA) employing UCINET/Netdraw (see www.analytictech.com/ucinet) to penetrate politics, polity and policy (Taylor et al 2012: 26-29). We mapped policy networks (cohesion, environment, and border security and migration in Greece, Slovenia, Croatia and Macedonia) of varying architecture but all were recognisably policy networks. The acquis must be transposed, so there is a high-level of downwards adjustment pressure, but many of participants regarded the changes in institutions and norms as intrinsically worthwhile as part of a wider modernisation, as well as necessary in instrumental terms. After allowing for sectoral and country differences we found three common elements: first, SNA identified a ‘core’ (or ‘strategic’) group of actors within the wider network, central was the responsible sectoral ministry; second, over time
network relations became increasingly complex (more members) and more intense (scale of interaction). This was allied to a belief by actors that ‘pluralisation’ per se offered the possibility of better policy in terms of content, legitimacy, and implementation. Third, there was no direct connection between pluralisation and power diffusion. The centre remained dominant; interaction did not become interdependence.

EU governance norms and preferences, as well as policy, pass through a filter – the national government – which is responsible for transposition and implementation and the overall effect is to sustain centralised power and hierarchy. We conceptualised this as a ‘capacity bargain’ whose functional, political and administrative dimensions constitute the cutting-edge of Europeanization. In The European Union and South East Europe we employed the capacity bargain to explore the impact and implications of engagement with the EU in policy networks with different mixes of resources and actors, but structured by the requirements of EU policy and demands of domestic implementation (Taylor, et al 2012: 17-21). The capacity bargain is not about ‘filling’ a state with capacity as if it were an empty vessel; rather the acquis and the 35 chapters pose specific, sectoral issues of institutional creation and adaptation. Capacity bargains, being sectoral, are analogous to policy networks but are focussed on enlargement; they promote ‘state-effectiveness’ because of EU membership requires the creation of an effective state (see Geddes and Taylor 2013: 51-70). We found no instances of interviewees rejecting network governance (either on grounds of principle or utility), we did find scepticism about the suitability and feasibility of network governance because of policy complexity, a lack of resources and expertise, competing political loyalties, and the primacy of accession.
Early patterns of network engagement and resource distribution are difficult to alter; networks are ‘hardened’ power reflecting a set of relationship and rewards and are resilient, requiring a powerful exogenous shock to stimulate change. An obvious vehicle for a continuing shock is conditionality but our evidence is that the Commission will trade network for hierarchy thereby reinforcing central power. Engagement with the EU stimulates change in governance (whether this is transformative is a matter of empirical analysis), but towards hierarchy.

A policy network is an arena of extended and intensive interaction and communication, embodying values so an important aspect of networks is norm transference and behavioural change (Woll and Jacquot 2010, 114). Time (Avery 2009:259) is an important element of the process, creating the opportunity for behavioural and attitude change. Croatia, for example, applied for EU membership in 2003 and the Commission recommended candidate status in early 2004, which was granted by the European Council in mid-2004. Entry negotiations (originally planned to begin in March 2005) opened in October that year, as did the screening process. Croatia completed accession negotiations on 30 June 2011 and signed the Treaty of Accession on 9 December 2011, which was approved in a national referendum on 22 January 2012 with ratification completed on 4 April 2012. Croatia will become the twenty-eighth EU member state on 1 July 2013. By January 2013, Croatia and 20 out of 27 EU members had ratified the treaty. This lengthy process is designed to establish an evolutionary trajectory, rather than signalling arrival at a destination and this is reflected in the language of the annual Progress Reports.

The Commission retains maximum flexibility in negotiations although strictly speaking chapter negotiations are not ‘negotiations’ (Interview. European Commission, 9 April 2009).
The annual Progress Reports’ purpose is to stimulate the creation of, first, effective hierarchy and second, the evolution of actor capacity and capability. There is, in other words, an important constructivist element (logic of appropriateness) that is central to enlargement. The policy networks created by engagement with the EU are new institutions and are a site for socialisation as they bring domestic and supranational actors together in repeated interaction over time, so opening up the possibility of preference change. EU engagement often creates novel domestic policy sectors and new institutions; the EU is authoritative but does not impose change, but expects domestic actors to interact in new ways reinforced by, for example, Twinning and joint projects. Networks are about communicative interaction, the transmission of ethos and policy via increasingly dense interaction over time, communicating and embedding norms and values. Slowness and vagueness are intrinsic to the learning process. However, learning rests on the creation of appropriate hierarchies able to identify, mobilise, and coordinate relevant non-state and societal actors.

Elites (and society) agree their futures lay in the EU; there is a credible membership perspective (although the length of the process may reduce the power of conditionality) and adaptive pressures are at work. Compared to CEE, enlargement is now far more individualised, the ‘rhetorical trap’ is weaker, there is no target date for accession and the Commission polices enlargement much more closely. The power asymmetry inherent in enlargement is coercive in the sense that unless an applicant follows EU prescriptions it cannot join and the Commission seeks preference change not merely strategic adaptation. Creating strategy documents, planning documents, laws, regulations and institutions is relatively straightforward, more difficult to assess is the internalisation of EU norms and the extent of compliance as opposed to implementation. Twinning and joint projects play an
important role in transferring skills and norms. Their purpose is to close the gap between the national and the supranational in a large scale and extended interaction where agent interests and identities evolve to a more ‘European’ construction. To understand this process we need a range of tools to understand the creation and evolution of the policy networks (grounded on the *acquis* chapters) that are the arenas of interaction of EU derived institutions and norms, linking actors in new ways for new purposes (Taylor 2013, for example).

Bulgaria and Romania shows the limits of the EU’s transformative power. After 2007 Romania and Bulgaria were subject to the Cooperation and Verification Mechanism (CVM) intended to address serious shortcomings in justice and home affairs, and corruption. Publicly the Commission argues CVM made a major contribution to reform. In Bulgaria CVM established six benchmarks (judicial independence, accountability, transparency and efficiency; high-level and public sector corruption; and combating organised crime) on which the Commission was to report regularly (CEC 2012a). Important progress was made in passing legislation but strategic gaps remained and the political will to deliver varied. The Commission identified a lack of direction and uncertain domestic commitment, concluding external pressure remained essential, which raises questions about the irreversibility and sustainability of change. In Romania’s case four benchmarks (judicial reform, judicial integrity, high-level, and public sector corruption) were identified (CEC 2012b). The quinquennial review was scathing. A lack of progress was combined with events that raised serious concerns about the political elites’ commitment to, or even understanding of, the rule of law. Romania, the Commission argued, was not being asked to achieve standards higher than those in other Member States but to implement what it had already agreed.
Implementation problems and the absence of a consistent developmental trajectory raised the possibility of reforms already in place being reversed; hence the continued external pressure.

CVM was a response to the shortcomings of the 2004 enlargement. First, there was a perception that the historical significance of ‘the return to Europe’ could not be permitted to fail, which suggested states had been allowed to join the EU that were not ready and there had been insufficient emphasis on the EU driving domestic change. A similar process was at work in the creation of the Euro (Böll et al 2012). Second, CVM represented ‘post-accession’ conditionality and the Bulgaria and Romania cases show the limits to the Commission’s power. Third, it showed adaptation was a ‘centre-led’ process involving passing legislation, drawing up strategy documents, securing funds and spending them that rested on the creation and development of central capacity (Interview. European Commission, 31 March 2009). Change was driven by (and from) the centre and by the need to secure Commission approval that the polity is set on an evolutionary trajectory that will culminate in membership. So whilst enlargement and the Commission’s role are sometimes presented as transformative, noteworthy are the limits to external pressure. Uncertainty over accession reduces the pressure to reform but so does a premature commitment; and, once a country joins the incentives to reform incentives decline markedly. There is, furthermore, evidence of ‘back-sliding’ in public sector reform in the 2004 membership states; SIGMA (2009) found the process of public administration reform slowed after membership and that in some cases there had been a regression to previous patterns of behaviour.
CVM prompted the Commission to re-think ‘post-accession’ conditionality and the dangers of premature accession. CVM is not being applied to Croatia, which will join the EU in July 2013. The Commission will prepare six-monthly progress reports covering judiciary, fundamental rights, war crimes, corruption, and shipyard privatisation. The October 2012 report on Croatia identified five areas where increased effort was required together with twelve more specific tasks (2012d: 17). There is no explicit reference in the treaty to delaying accession in the event of any adverse report prior to accession other than empowering the Council to ‘take all appropriate measures’, lifting them when concerns have been addressed. There are three ‘safeguard clauses’ to deal with any problems encountered when Croatia become an EU member; these are a general economic safeguard clause (for adjustment difficulties); a specific clause relating to the internal market; and a specific justice and home affairs clause plus various transitional provisions. The safeguard clauses are precautionary and probationary, intended to deal with difficulties as Croatia becomes a member and allow Member States to impose protective measures or the EU to suspend specific rights up to three years after accession and to be continued as long as necessary.

Croatia’s accession (the most rigorous thus far) has, as happened after previous enlargements, stimulated a re-think. Candidate states would from now on be subject the ‘European Semester-lite’, supplemented by (for example) more specific and direct intervention (in, for example, Bosnia and Kosovo) but ‘The crucial point, however, is the change in our approach to the Chapters 23 and 24 [that are] a fundamental instrument of the transformation of the society ... they touch upon the basic principles on which the EU founded’. Chapters 23 and 24 are ‘the acquis of the acquis’ and, Füle argued, would
permeate negotiations from the start to ‘enable us to participate in the full transition to
democracy during the whole negotiation process ... the goal for the EU is not to tick the box of negotiated chapters ...’ (Füle 2012).

The emphasis accorded to justice, organised crime and corruption, security, and fundamental rights shows the change in enlargement’s context and the EU’s limits. As well as emphasising fundamental values issues these changes emphasised the centrality of the reform of public administration, to the development of an effective, modern, ‘European’ State. Public administration reform was not just institutional reform but also entailed transmitting and institutionalising values and norms such as openness, accountability, and transparency. This is apparent in the negotiating framework (June 2012) for Montenegro, which was itself direct consequence of the problems experienced with Bulgaria, Romania, and Croatia and difficulties which are anticipated with the remaining enlargement states (CEC 2012c: 2).

Even when laws were passed implementation could be delayed or even postponed because the administrative structures were insufficient or, in extreme cases, lacking. Networks can be, therefore, ‘hollow’. General progress might be identified but with marked variations across sectors, with embedded weaknesses in administrative and operational capacities persisting. Our interviewees were eager to develop network governance but transposition via hierarchy took priority ‘because we want to become an EU member’. The focus on effectiveness and hierarchy stimulated multileveled-ness but horizontal networks remained underdeveloped. Technical knowledge and working methods were transferred by EU engagement but shortages of capability and capacity and the considerable load inherent in enlargement placed a premium on hierarchy.
Policy networks operate through resource dependence and governments use networks to implement policies but this is not new. Networks can significantly increase the capacity of state actors without increasing the influence of non-state actors. A huge policy load (and EU expectations) and limited capacity dictates societal involvement in policy development and implementation but the state’s pivotal role in enlargement means limits placed on the influence of non-state actors who, in any case, often lack the resources and skill to play the role allotted them by network governance. Cooperation and interaction with non-state actors does not automatically reduce state autonomy and, given the emphasis in enlargement of effectiveness, the greater the capacity for hierarchical action, the lower the incentive for engagement with resource constrained non-state actors. The point is that turkeys do not vote for Christmas; governments will involve non-state actors to the extent that involvement enables the government to achieve its objectives, primarily EU membership. Hierarchy/network is not a binary choice because governments seek both to preserve their autonomy and enhance their ability to achieve their policy objectives. Network governance is resource intensive and coordination is complex so why move decisively away from hierarchy? A good case can be made for building up central capacity first. Our evidence showed states were often suspicious of non-state actors (and vice-versa), regarding them as ‘watchdogs’ rather than ‘partners’, as sources of friction not as partners. Non-state actors need resources and partners but they too, like the state, may value their autonomy. Network governance is unlikely to emerge quickly and certainly not during enlargement, which brings us back to the role of the EU in addressing effectiveness. *Acquis* implementation could not be achieved without first strengthening capacity and asserting hierarchy. Hence the EU’s increasing focus on public administration (Elbasani
NGOs not infrequently noted a decline in their influence, being actively courted when legislation and strategy were being developed but then being ignored when the focus shifted. This was partly a result of a lack of skills but mainly because of the focus on creating an effective state and a feeling that networks could be obstructive (Taylor et al 2012: 201). Institutions have been created and modified by EU demands and requirements; the EU has stimulated learning and extended policy engagement downwards and outwards, and actors are fully aware of the normative dimensions of this and believe involvement will influence the evolution of policy networks. What is doubtful is whether this will lead to a decisive shift from hierarchy to network, from interaction to interdependence. Consultation developed rapidly under the influence of the EU but partnership remained underdeveloped because the basic pressures were to create hierarchies.

Conclusions

In an increasingly complex, differentiated and divided EU how is order to be created and maintained? Offe suggests the governance’s literature’s focus on networks displays a ‘tendentious blindness for questions of power, distribution, and conflict’ (2009, 558). Policy is more likely to be effective when decisions are taken and implemented using a strong element of hierarchy; governments remain authoritative, but not unfettered, decision makers. Policy network analysis and governance rests on an assumption that government effectiveness has declined and can be compensated for by involving a broad range of societal actors, but involvement increases complexity, so reducing government effectiveness further. This network paradox is complicated in enlargement (the EU and Commission over national governments; and the national government over civil society) that privileges some actors over others. National governments are critical because only states can join the EU
and national administrations are responsible for putting in place, under Commission monitoring and guidance, the capacities and capabilities needed to sustain the duties and obligations of membership. Determining whether or not these actions satisfy, or are moving towards satisfying, the EU’s requirements are the responsibility of the Commission.

‘Network’, then, describes how government is done.

Enlargement and integration are a process of state building whose direction is determined and aided by the EU, reinforced by a national commitment to bear the costs of adaptation. A national government can be ‘weak’ but ‘stronger’ than sub-national governments and non-state actors so the danger is not of government being captured by society but society being captured by government. In enlargement hierarchy is functionally superior because enlargement is about creating an effective state, and whilst hierarchy may be normatively inferior to networks, normative inferiority is a secondary consideration to promoting effectiveness.

Network characteristics -- multiple actors, resource exchange, and negotiation and bargaining and the associated values of openness, accountability, representativeness, participation – are easily identified. The evidence suggests the creation of networks is inevitable but networks per se do not represent a significant move away from hierarchy. Any mode of governance will be hybrid (Treib, Bähr and Falkner 2007: 11). Path dependency would suggest that when these networks are created, if the state is the most significant actor, it is likely to remain so and so the prospects for network governance are less than rosy. There is limited evidence of the state being rolled-back or hollowed-out. What we see is the state rolling-forward and filling-in.
Behaviour and attitudes are difficult to change. This explains, in part, the new focus on Chapter 23 (judiciary, fundamental rights) and Chapter 24 (justice, freedom and security) and why these chapters have become ‘the acquis of the acquis’. Progress must be demonstrated by a track record of implementation and negotiations will be grounded on action plans developed by governments with Commission guidance. A significant innovation is the introduction of interim benchmarks set when negotiations are opened to demonstrate progress, and only when these are met will the Council set closing benchmarks. As reform objectives will be clearer, action to achieve them should be more focussed and more easily monitored, so reforms should be more sustainable.

This argument points to the enhancement of government. Enhancement occurred because, first, domestic policy was often underdeveloped and what existed differed markedly from what the EU envisaged; and second, change could not be avoided driven as it was by enlargement. States could not approximate the EU’s organisational and normative preferences without first creating appropriate hierarchies. Hierarchy is prior to network; satisfying the EU and achieving membership requires, first and foremost, an effective state, and an effective state rests on bureaucratic competence and a secure (and known) legal framework that mandates actors. This means that network governance cannot be realised during enlargement, nor can it substitute for an effective state. To reiterate: enlargement is not concerned with creating network governance but creating effective hierarchies. Participation has broadened, new ways of interacting vertically and horizontally have developed, and the language of interaction uses the vocabulary of participation. However, the situational logic of enlargement places significant obstacles in the path of preference change and the redistribution of power. These may be overcome with time but the evidence
suggests that networks are a functional response to complexity and not a new form of governance.

References


http://www.spiegel.de/europe/


