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# **EUI Working Papers**

RSCAS 2007/37

**Institutionalization of Imported Rules in the  
European Union's New Member States:  
Bringing Politics Back in the Research Agenda**

**Antoaneta Dimitrova**

**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**  
**ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES**

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Bringing Politics Back in the Research Agenda*

**ANTOANETA DIMITROVA**

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ISSN 1028-3625

© 2007 Antoaneta Dimitrova

Printed in Italy in December 2007

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

Italy

[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)

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## **Abstract**

This paper sets out to explore the puzzle of possible institutionalization or reversal of rules ‘imported’ by new member states from Central and Eastern Europe during their preparation for accession to the EU. It argues that the institutionalization of formal rules adopted as part of enlargement requirements is not automatic post accession. New formal rules can be reversed, supported by secondary rules and institutionalized or ignored and not implemented. The paper proposes a politics framework that suggests that these different outcomes will be influenced by the environment of weak post communist states and will depend on the area specific configuration of formal and informal veto players and on the EU’s ability to impose sanctions. In the case of non *acquis* imported rules, reversal of formal rules would be possible without sanctions whereas in the case of *acquis* rules, the likely outcomes are institutionalization or ‘empty shells’. Another outcome, ‘capture’ of the new rules is likely in areas with distributive implications.

## **Keywords**

Enlargement, Central and Eastern Europe, *acquis communautaire*, institutionalisation, administrative adaptation



## Introduction\*

In October 2006, the (former) Kaczynski government in Poland passed a law giving politicians more power to influence the appointment of senior civil servants. A similar amendment, passed in June 2006 in Slovakia, increased political control of the civil service. In the same year, the Czech government, after years of delay, postponed further regulating appointments in the civil service which were meant to be in force in 2004 (*The Economist*, 2006). Strengthening the trend, independent Civil Service authorities, the agencies meant to ensure the professionalization of civil services in the new member states, have been abolished in Slovakia and Poland in 2006. The Czech Republic has delayed the creation of such a body until 2009. These developments, reversing important pre-accession legislation adopted in response to European Union conditionality, made *The Economist* wonder what would happen when new member states unpick some of the reforms they made during their accession preparation.

At first sight, such reversals should be rare: the European Union has sufficient institutional means to punish non compliant members and especially monitors new member states. The European Commission, having led the last enlargement in terms of expertise, developed in the process an ever increasing number of tools for inducing adoption of the numerous pages of *acquis communautaire* and monitoring non compliance. The European Court of Justice ensures that the ultimate threat of sanctions backs up the Commission's warnings. The last and future enlargements, however, are no longer only about the *acquis communautaire*<sup>1</sup>, the rules adopted and applied by existing member states. The transformations that took place in the course of preparation for accession in post communist states have involved more than adopting the impressive amount of EU legislation, norms and legal precedents embodied by the EU *acquis*. Next to the *acquis*, the candidates have also adopted the less defined but no less important enlargement *acquis*, a whole array of legislation promoted by the EU with the aim to facilitate democratic consolidation and market reforms. The question raised by *The Economist* with regard to civil services is part of the larger question regarding fate of all of these 'imported rules' adopted at some speed by the post communist new member states of the Union.

The process whereby EU conditionality has been employed to transfer EU rules to candidate states has been theorized and documented by a growing literature (among others see Schmitter, 1995; Grabbe, 1999, 2001, Dimitrova 2002, 2004, Mattli and Plümper, 2002; Schimmelfennig and Sedelmeier 2004, 2005; Vachudova, 2002, 2005, Steunenberg and Dimitrova 2007). Despite a variety of approaches, a consensus has emerged in this literature that EU conditionality has had a considerable, albeit mediated by domestic institutions, impact on successful rule adoption in candidate states. The adopted rules, however, have been formal rules, primary and secondary legislation. A couple of years after the 2004 enlargement, the question arises whether behavioural adoption has followed formal adoption (Schimmelfennig and Sedelmeier, 2005) or, in the somewhat different interpretation adopted here, whether the adopted formal rules have led to changes in informal rules and practices, that is, whether they have been institutionalized. To paraphrase the question raised above, what happens after the new member states have joined and are no longer obliged to stick to the rules which have adopted in order to accede to the EU?

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\* This paper was written during my stay at the Robert Schuman Centre for Advanced Studies at the European University Institute. I gratefully acknowledge the RSCAS support through the Jean Monnet fellowship which I received between September 2006 and February 2007.

1 Also referred to hereafter as the *acquis* of the Union or just the *acquis*.



## 1. Imported Rules and Institutionalization in CEE: A Puzzle and A Research Agenda

Why expect that there would be a considerable discrepancy between formal rules and rules in use in the new EU member states? The specific puzzle posited here has both theoretical justification and empirical foundations in the already observable variation of the institutionalization of the imported rules.

Theoretically speaking, it is clear that domestic informal rules may differ from imported formal rules. If the adoption of formal rules is not followed by informal rules and norms, we can expect that there would be no institutionalization. In search of the puzzle of institutionalization, a definition is in order. Using a mid range definition of institutions as consisting at least of rules and norms, I define rules, following Ostrom, as ‘shared prescriptions that are mutually understood and predictably enforced in particular situations by agents responsible for conduct or monitoring sanctions’, (Ostrom, 1999:37), and *norms* as ‘standards of appropriate behaviour’, (Finnemore and Sikkink 1999). This does not resolve the difficult question of how, in operational terms, how we recognize an institution and define institutionalization. The difficulty stems from the fact that the term institution refers to many different kinds of entities including both organisations and rules, and from the realisation that institutions are fundamentally shared concepts, existing in the minds of participants and therefore, in a certain sense, invisible, implicitly assumed (Ostrom, 1999:36-37). Ostrom’s suggestion is that scholars should focus on rules-in-use rather than rules-in-form in order to identify the presence of an institution (1999:38). However, since the study of rules-in-use requires extensive ground work which may not be always possible for a wide range of institutions, two intermediary steps can be formulated to serve as indicators for institutionalization: first, the creation of *secondary rules* (legislation such as decrees, ministerial orders, or more informal codes of conduct) supporting the main imported rule and second the *use* of the rules, or legislation, by political actors. The process whereby the new adopted legislative rules would be supported by secondary legislation or soft law, called upon by various political and societal actors and resulting in clear changes in patterns of behaviour is what I would call institutionalization.

Empirically, even though the paradox of the discrepancy between law and policies as created on paper and implementation is not new,<sup>2</sup> the transfer of rules from created in another context by different sets of actors gives this problem a new twist. In the case of the Union’s new (post communist) member states it is the specific problem of how actors would accept rules of the (political) game made elsewhere. Rules created for a different set of preferences, economic conditions, values, different historical and cultural contexts, are, in the enlargement process ‘exported’ to candidate states, adding a new layer to the transformational puzzle that characterizes post communist social and market orders. Most of the perspectives united by the common label of new institutionalism, rational and sociological institutionalism, seem to assume rules and norms and other elements of an institution<sup>3</sup> are created in the polity where the institutions function.

Yet the importation of sets of institutional rules is a widespread practice in the international arena today, in the form of democracy promotion, IMF and World Bank conditionality or in the adoption of rules coming from the European Union (EU) by states aiming to join the Union. It is by now well documented that the European Commission made ‘institution building’ a central component of the enlargement strategy for Central and Eastern European candidates post 1997. For this purpose, EU conditions, enforced by the Commission, included new components beyond adopting EU policy rules: the so called institution building component covered democratic governance and human rights, administrative reform, competition and regulatory bodies among others (Dimitrova, 2004, Schimmelfennig and Sedelmeier, 2005).

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2 This may be an understatement – rather, viewed at a more abstract level, this is one of the oldest dilemmas of law and social sciences as Stefano Bartolini has kindly pointed out. However, I believe the mid-range focus taken here justifies taken a closer look at one small part of this big puzzle.

3 Such as, for a ‘thicker’ definition of institutions used in sociological accounts, beliefs, practices, symbols.

It is important to make a differentiation between the transfers of, on the one hand, policy rules, which make up the bulk of the EU *acquis* and, on the other, the rules that were part of these pre-accession efforts at institution building. Institutionalization, the subject of this paper, pertains to the creation of new institutions around the 'imported' rules, rather than implementation of policies. The distinction between institutionalization and implementation, which are similar processes, is in the nature of the imported rules. In contrast to the EU's own *acquis*,<sup>4</sup> the enlargement *acquis* contained a number of requirements for introducing international norms or horizontal reform supported by other international organizations.<sup>5</sup> For example, early on in the CEE transformations, the adoption of human rights legislation was 'promoted' by the Council of Europe (Piana, 2006:98). The rules and legislation related to democracy and human rights which originated with the Council of Europe and international conventions, became later part of the EU's own democracy criterion (the first Copenhagen criterion). Later in the enlargement process there emerged other EU conditions related to institutional rules such as civil service legislation, which I have discussed elsewhere (Dimitrova 2002, 2005), provisions for anti discrimination commissions, setting up of regulatory agencies. For enlargement *acquis* rules the question of institutionalization versus potential reversal is especially valid, since enforcement mechanisms are not available once conditionality expires close to accession.<sup>6</sup>

It is important to give separate attention to the fate of such sets of rules, not because they constitute the bulk of the rules which have been imported – in fact we can assume they do not – but because of their considerable potential impact by creating institutional foundations rather than transferring policies.<sup>7</sup> Institution building requirements were introduced in order to secure the implementation of the policy based *acquis*. This provides us with additional incentives to follow the developments related to the new rules and their institutionalization, as presumably if they fail so will the implementation of the policies which they are meant to support.

This paper sets out to explore possible scenarios for institutionalization post conditionality and suggest an explanatory framework for further comparative research. It takes, as a starting point, not the conditionality literature mentioned above, but analyses and insights related to state building and weak states in the post communist context. It proposes a framework labelled 'politics of institutionalization' and discusses how this framework compares to alternative explanations for institutionalization and implementation post accession. Finally, I present some already available evidence for differential outcomes of institutionalization which suggests that there is scope for comparative testing of this framework and other existing explanations.

## **2. Changing Perspectives Post Conditionality: The Role of Domestic Context for Institutionalization**

One of the most interesting contributions of the literature on conditionality which goes beyond the area of Central and Eastern European studies is the ever more sophisticated conceptualization of how external and internal factors may interact when external actors export their norms and rules. Post conditionality, we find similar themes in the Europeanization literature which seems to be a logical

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4 Where, as Jacques Ziller has kindly reminded me, specific institutional requirements are few and far between, since EU law is mostly functional.

5 For example, early EU enlargement conditionality concerned the signing and ratification of Council of Europe monitored conventions, while some of the criteria for administrative reform were developed in OECD's SIGMA unit.

6 A similar point is made in Sedelmeier, 2006.

7 Policy rules of course make up the bulk of the EU *acquis*, but their transfer is better studied and arguably, subject to a different set of mechanisms and influences. For one thing, their transfer, issues of compliance and implementation depend on the underlying institutional framework (for example Knill, 2004). In contrast, I aim to look at the framework itself.

source of inspiration when trying to develop frameworks for understanding institutionalization and implementation in the new member states.

The mixed model of Europeanization by H eritier, Knill and Mingers (1996) identified domestic institutional structures as one of the crucial mediating factor for external policies entering the domestic arena. H eritier (2001) developed the concept of the reform state of a policy as an important factor playing a role in Europeanization dynamics. Knill's (2001) study of Europeanization of domestic administrations in the UK, Britain and Germany posits domestic administrative traditions and core institutions as central for the understanding of how European influences filter into the domestic arena. He argues that institutional change as part of Europeanisation depends on the structural capacity for reform in each country which in turn depends on a stable macro institutional context of national administrative state and traditions. Such second generation Europeanisation studies offer sophisticated arguments that go well beyond the much criticized concepts of adaptation pressures and goodness of fit between European and domestic arrangements.

There are, however, good reasons why it is difficult to build on these arguments to develop frameworks that would help us understand what happens in new member states at the stage of implementation and institutionalization. A crucial difference with post communist, post transformation Central and Eastern European states is that institutions in the CEE context are still very much in flux and creating much less, if any, institutional inertia which can have an impact on the imported sets of rules. Simply, the very existence of administrative core or strong state traditions in post communist European states is disputable.

Assuming that the state and its administrative structures, even traditions and core rules are similar to the state in Western Europe would be misleading at the very least. On the contrary, as Grzymala-Busse and Jones Luong (2002:529) have stressed, the need to re-construct public authority, to re-build the state, has been the real common denominator across Central and Eastern Europe and further afield. They point out that post communist states are still engaged in the project of creating their new legal orders, impartial bureaucracies and, crucially, 'the networks of security, redistribution and market regulation that characterize the modern state' (2002:530). This process of state building can be conceptualized as *rapid* state building characterized by a (re-)combination of formal and informal institutions (2002:535).

While this state re-building has been taking place, a particular kind of state weakness could be witnessed in the course of the 1990s in post communist settings. As the organizational structures and capabilities of the communist party have been removed from state structures, post communist states became much less able to control and distribute appropriated resources and provide crucial public services, thus acquiring a form of what Migdal has defined as 'state weakness' (1988: 261). Even though state weakness has not taken the extreme forms highlighted by Migdal in the Third World, an essential element of his definition, namely the weakened control of resources is present and defines the key feature of post communist weak states.

The phenomenon of weak statehood in the period of post communist transformations became the focus of attention relatively late in the transitions in CEE as it was initially assumed that dismantling the authoritarian and totalitarian structures of the old, communist state would be sufficient to end up with a 'lighter' organizational framework capable of supporting democracy. This has been a staggering failure to appreciate the role of the state and statehood for successful democratization. The subsequent shift in scholarly attention<sup>8</sup> explored several aspects of weak statehood which are relevant for the analysis made here. First, the process of state building was conceptualized as a competition between post communist elites (Grzymala-Busse and Jones Luong, 2002:537), while state weakness

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8 For this shift see references to the overlooked importance of stateness in Linz and Stepan, (1996), the work of Stark and Bruszt (1998), and the analyses in the special issue edited by Grzymala-Busse and Jones Luong, (2002) as well as Ganey, 2001a,b, (2005).

was defined, following Migdal (1988) as an inability to implement policy visions and regulate society (Krastev, 2002). Second, the process of weakening of the post communist states capabilities and the role of certain categories of actors has been explored (Hellman, 1998, Ganev, 2001a, 2001b, 2005).

With respect to economic reforms, Hellman (1998:233) has shown that early winners of the first stages of reform have been responsible for obstructing later stage reforms. He identifies the early winners as veto players obstructing further reform and change: 'Actors who enjoyed extraordinary gains from the distortions of a partially reformed economy have fought to preserve those gains by maintaining the imbalances of partial reforms over time'.

Ganev's insightful analyses (2001b, 2005) shed light on the actual mechanisms whereby early winners undermined further reforms. His analysis of the relationship between property redistribution and politics in post communist Bulgaria illustrates how informal networks of previously established elites played a negative role in the post communist context. He describes a two stage process of a clash between state agencies and (former communist) elite networks which first 'join' forces with state agencies to transfer public assets and later, at a second stage, clash with these agencies when the state tries to reassert control over these assets (Ganev, 2001b). Thereby, they weaken the state, undermine its democratic legitimacy and deprive it of assets which it needs to support democratic and economic governance.

Based on this work, I argue that institution building, especially post conditionality, should be analyzed in the context of the weak state and its significance as an environment for institutionalization of imported formal rules. The argument that state weakness would matter for institutionalization is, however, emphatically not one of legacy. First of all, the state weakness in question is a transition, post communist phenomenon. Secondly, rather than argue, as many have done, that the communist legacies somehow shape present day institutional arrangements in a historical institutionalist, path dependent manner, I argue that state weakness influences the *environment* in which actors compete for resources and bargain over institutional outcomes. Simply put, the post communist states have been relatively weak and political and societal actors (politicians, entrepreneurs) have been relatively strong which means that the state has not been able to guarantee the permanence of rules already adopted and bargains reached.

Defining state weakness as an environment for strategic bargaining over institutions avoids the sweeping generalization of some legacy oriented explanations and highlights several features of state weakness as significant for institutionalization of the new rules.

First of those is the importance of networks of early winners. The analyses of weak statehood mentioned above focused on the relatively early stages of post communist transformation. After the initial stages of this process, there is evidence that the weak states have reasserted some of their control, strengthened though the process towards EU membership with its requirements for increasing administrative capacity. However, it is not a great leap of the imagination to assume that networks which have once come together to take advantage of state assets would be interested to take part in the post accession distribution of EU funds.

This assumption, if correct, would also have implications for the institutionalization of the new rules. At first sight, anti-discrimination commissions and freedom of information legislation have little, if any, re-distributive consequences and implications for EU funds. However, just like the initial actions of elites undermined the post communist state across the board, even in areas where there were no direct gains to be made, non state actors intent on using state structures to capture EU funds may become active in any area of EU policies with re-distributive aspects or regulatory consequences – in terms of re-distribution mostly, agriculture and structural funds. Old winners, in Hellman's terminology may have an interest in undermining new regulators and competition authorities, overturning civil service laws as a way to position their own candidates in administrations and so on.

Another important and lasting characteristic of the post communist weak states is a policy style that is so flexible (weak) in enforcement of implementation that it allows actors to re-visit bargains after adoption. It is a characteristic of policy making in polities where the rule of law is not strongly established and administrative systems weak in their policy making capacity. Ioniță's analysis (2004) of the Romanian administration for example,<sup>9</sup> provides an illustration of renegotiation at the implementation stage as the classical 'malaise' of public policy making in the post communist context.

What implications the above features of weak statehood have for strategic bargaining over institutions in the new member states will be shown in the next section of this paper presenting a theoretical framework of 'politics in institution building'.

### 3. Institutionalization as Politics: A Strategic Framework

Developing this analysis of the post communist, post accession domestic context further, I would suggest that we should expect a new round of bargaining over imported rules in the new member states among the relevant state and non state actors. There are several reasons to assume that the new rules would be re-examined. First, the demise of conditionality invites the return of politics. There are few who would disagree that the adoption of EU rules under conditionality was on the surface at least, a-political – because of asymmetry, speed and other features of enlargement governance. What we can expect to happen is for politics to reassert itself post accession. This would not mean, as some have suggested, a rejection of the rules adopted 'under duress' by political actors. It would however, mean that, when important changes in domestic opportunities are at stake, actors would re-negotiate the new set of rules even after the rules have been formally adopted. This re-negotiation or competition can have a variety of outcomes depending on the number of veto players concerned with a particular set of rules and their configuration and preferences.

I propose therefore, that the best framework to study institutionalization of imported rules and explain why some imported rules have institutionalized while others have remained empty shells is a strategic bargaining framework of actors competing to shape institutions around the new rules. It can be labelled the 'politics in institution building' framework. This framework would not only suggest that the crucial factors which would determine if a set of 'imported' rules would become institutionalized are political but more specifically, given the insights of the debate on state weakness above, it would expect that the political competition would be one over resources and power. Further I would expect that institutionalization would depend on the number and configuration of veto players in the crucial period after accession. To define the framework, I will discuss first the environment and then the actors that play a role in these processes.

The environment is the weak state discussed above. In contrast to the general discussion, from the multiple aspects of weak statehood, two are relevant here: the weak enforcement capabilities and the informational environment. The weakness of post communist states in terms of enforcement means that actors do not expect deals to be enforced successfully or at least they have little trust that state institutions will uphold existing deals. Secondly, the density and quality of existing institutions has a positive influence on the information structure for bargaining between actors (Lake and Powell, 1999:8). Both of these features make networks of any kind in which actors might participate especially valuable and important – as alternative means for providing information.

Stark and Bruszt have suggested that informal networks of coordination can be facilitating institutions strengthening states and markets in the making (Stark and Bruszt, 1998:6-9). Departing from a different point of view highlighting the potentially disruptive role the early winners networks can play in the establishing of democratic institutions (Hellman, 1998, Ganev, 2001b, 2005), I suggest

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9 His general framework is illustrated by a study of how rules on access to information are applied under Romania's Freedom of Information law.

that informal networks can privilege some actors and disadvantage others in the renegotiation of the new rules.

This leads to the question of which actors can be expected to take part in the re-shaping of the new institutions.

The politics-in-institution-building framework proposed here is an actor centered approach which defines the bargaining, preferences and configuration of *formal and informal* actors as the main determinants of successful institutionalization. An important aspect of specifying this politics framework further relates to the identification and location of the relevant veto players. Well established approaches to veto players search for them in the formal configuration of the political system. Political parties in parliament and government coalitions are players in such a formal framework. Following this approach, I would expect that an important role is played by structural, institutional veto points as conceptualized by Immergut (1992) and those defined by the political party system and the outcomes of elections (Tsebelis, 2002).

There are good arguments, however, that in the post communist setting, informal veto players would also play an important role. Grzymala-Busse and Jones Luong (2002:533), stress that the institutional location of crucial actors in state building cannot be assumed but may vary from country to country and that formal and caution to take into account both formal and informal practices. Hellman (1999) explicitly identifies the early winners as informal veto players. Following Minxin Pei<sup>10</sup> (1996), Ganey (2001) suggests that veto power in the post communist context may be specified as a power to create bottlenecks in *implementation*. The last statement may not necessarily remain true as the state institutions and procedures offer non state actors plenty of opportunities to use formal channels to block policies. In fact, what we may expect is that dominant non-state actors are practical and strategic and will use any channels available to them, whether they are formal or informal. The crucial point, however, is that informal actors and networks will play a role next to the institutional actors we can identify based on the formal structure of the political system.

Among the observable implications of the politics framework would be: stability associated with multiple veto players in government, as established by Tsebelis (2002), diversity of outcomes, explicit political bargaining over the reach and prerogatives of organizational structures created by the new rules and a general absence of path dependent trajectories.

Diversity of outcomes, in particular, would be an important observable implication of the processes that this framework seeks to capture. It means variation in the institutionalization of sets of rules in different issue areas in the same country. In other words, it is possible that one institution would take root in, for example, Romania while another would be ignored or the imported rules reversed. This would be an effect of state weakness and fragmentation as well as a feature of the actor driven mechanism which I expect to see at play. As Grzymala-Busse and Jones Luong (2002:533) put it, 'No one single agent has uniform influence or authority across all state sectors, and state action is neither centralized nor coherent. The emerging states in the post communist world, therefore, are best characterized as having multiple centres of authority-building, each with different sectoral capabilities and degrees of influence.'

A number of possible outcomes can be specified for institutionalization, namely:<sup>11</sup>

- **Reversal**, a simple, straightforward change in the rules by political elites in power when their preferences diverge from the status quo represented by the imported rule.

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10 He points to the definition of Minxin Pei (1996) of veto power under socialism as the ability of strategically located actors to resist the implementation of policies which they perceive as threatening by, for example, withholding information or causing procedural delays.

11 This section benefits from an earlier discussion in Dimitrova, (2006).

- **Institutionalization**, that is an alignment of rules and informal rules, norms and practices, ultimately witnessed in a change of behaviour of relevant actors.
- **Empty shells**: Ignoring the new rules, either by disregarding formal rules and not making use of them or by devising strategies whereby they are circumvented.
- **Capture**, a process whereby the new rules can be used for different purposes from the originally intended. Just like state capture, capturing the new rules would be part of strategy of certain part of the elites seeking material benefits – in this case, EU funds related benefits. Prospective secondary rules and organizational structures would be defined in such a way as to make this possible.

The four types of outcomes specified above represent the whole spectrum of possibilities with regard to imported rules. Based on the model presented here and the insights on weak states discussed above, some propositions can be formulated as to under what conditions we can expect these outcomes to materialize:

*1. When imported rules are not part of the acquis of the EU, reversal, capture or institutionalization are equally possible based on the preferences of relevant actors.*

Actors would not be subject to any sanctions from the EU, so they would not need to devise strategies for circumventing formal rules, but can either reverse or follow them depending on their preferences.

*2. When imported rules are part of the acquis, the most likely outcomes are institutionalization or empty shells.*

Reversal would imply additional costs which actors can avoid by devising strategies to ignore the rules.

*3. Outcomes would also be issue dependent: Capture is the most likely outcome when the newly adopted formal rules refer to distributive areas allowing access to European Union funds.*

This is an area where networks of early winners or political-business groups would be particularly active. The capture of rules and structures is also a costly enterprise and makes sense when actors expect that there are gains to be made.

*4. The outcomes for institutionalization of non-distributive sets of rules would be broadly dependent on the configuration of veto players among which state actors but also NGOs. Institutionalization is more likely when there are NGO active in the sector or area which can augment EU's monitoring capacity and trigger enforcement mechanisms.*

The NGOs would not be, strictly speaking, formal veto players, but their presence would change the informational environment and make sanctions more likely if government actors try to ignore or capture the new rules.

These propositions and the expected variation within country, which empirical testing can easily establish, would allow testing of this framework against other frameworks placing variables such as culture, legacy or organizational capacity at the centre. I deliberately do not include variables which are considered important in the post communist context, such as organizational capacity (in terms of financial or manpower resources of the administrations), political and organizational culture and trust in institutions. These variables have been central in other studies of implementation and will be examined in the next section so as to specify alternative explanations for success or failure of institutionalization and implementation in the CEE context.

#### 4. Alternative Explanations

The management perspective has been identified as a prominent and influential perspective in international relations studies of compliance. At the level of states, this perspective tends to emphasize states' inability to comply with international treaties. Talberg (2002:613) stresses that according to management scholars, non compliance is inadvertent, due to political or economic limitations or lack of normative clarity. This conceptualization is somewhat too broad and implicitly includes politics by suggesting that states may not be able to make political actors comply. A more specific and precise application of the management approach to implementation in CEE is offered by Hille and Knill (2006), who conducted a large scale study of the performance of the candidate states between 1999 and 2003. Hille and Knill find that the implementation of the *acquis* in the candidates states has been a question of bureaucratic capacity (administrative reform and financial resources) and not if veto players. Apart from the fact that they would find no argument in the conditionality literature which had already established the lack of a role for veto players during enlargement (Dimitrova, 2004, Schimmelfennig and Sedelmeier, 2005, Héritier in the same volume), Hille and Knill make an important point about resources as a crucial factor in implementation. This point remains valid after accession and may even, in contrast to veto players, gain in salience given the drain of experts from CEE administration towards the EU institutions.

The empirical analysis of pre-accession compliance made by Hille and Knill leads them to explicitly reject political capacity as a factor in implementation. Instead, they highlight the importance of bureaucracy, which they operationalize as an indicator comprised of government resources<sup>12</sup> and general strength of the bureaucracy, its autonomy and accountability.<sup>13</sup> They conclude that, 'Where bureaucratic strength is high and bureaucratic action is less dependent on possibly unstable political input, the process of alignment towards the EU, once started, can go ahead smoothly' (2006:549).

There is an argument to be made that even before accession, non *acquis* conditions set as part of the adjustment process could be negated for political reasons.<sup>14</sup> Any criticism of this approach has to take into account that Hille and Knill's focus is clearly on the pre-accession period when, as several studies have argued (Dimitrova 2002, Schimmelfennig and Sedelmeier, 2005), politics and veto players played little role.

Frameworks which have focused on organizational efficiency have already been prominent in the early phases of EU implementation research (Treibb, 2006). The seminal study by Siedentopf and Ziller (1988), for example, presented administrative structures as factors for implementation success. Implementation approaches focusing on administrative efficiency have also loomed large in post communist administrations and this makes the management approach a good contender for a rival explanatory framework for institutionalization. Numerous expert and comparative accounts have sought to establish the implications of administrative weakness of the CEE administrations for implementation of the *acquis* (e.g. Verheijen, 2000, Agh and Ferenc, 2006). Recent research by Falkner *et al* (2005:302) also suggests some significance of capacity in terms of administrative and financial resources.

These can serve as a basis for the formulation of a framework in which the main variable influencing institutionalization is administrative capacity, including resources. Such a model would expect that the fewer financial and administrative resources a new member state would have at its disposal, the less likely would it be to have functioning new institutions based on the imported rules.

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12 Based on data on yearly government expenditures (2006:544)

13 Based on the World Bank's index *Governance Matters IV: Governance Indicators for 1996–2004*. This indicator may partly coincide with the European Commission's regular reports assessments analyzed as an indicator for implementation success, creating a certain overlap between the independent and the dependent variable indicators.

14 As was the case, for example, with administrative reform legislation in the Czech Republic, as shown in Dimitrova, (2005).



The main difference with the framework above is that this model would focus on financial and administrative resources, (e.g. human resources) and would have less, if any, attention for political factors. Its observable implications would include a more uniform failure or success of implementation or institutionalization based on the development of administrative capacity in the country in question. Financial resources would also play a role although they could be operationalized in different ways.

Another possible explanatory framework to be taken into account is the mode of pre-accession transfer. Sedelmeier (2006:157) posits the mode of pre-accession transfer as a key factor affecting post accession compliance. This model is based on the understanding that when rules have been adopted by social learning, as in the Polish Central Bank case analyzed by Epstein (2005), they have broader societal base and can be defended against political actors who challenge them. Conversely, when rules have been adopted as a result of external incentives, they are easily changed if the incentive structure changes post accession. Sedelmeier and Epstein's arguments are supported by some of the conclusions of a World Bank study (2006) of administrative reform in the new eight CEE member states, which point to the speed of change and limited societal debate in countries which have backtracked in their commitments to administrative reform.

This is an important approach that has the advantage of building on the conditionality literature, although this can also be its weakness. We can test its explanatory power, only if we already possess detailed studies of cases where social learning has taken place in CEE. Empirically, it is difficult to specify a priori observable implications of such an approach, although the presence of a large network of non governmental and transnational actors involved with a certain policy may be taken as an indicator of socialization processes.

An important alternative explanation is presented by the findings of the thoughtful and extensive qualitative studies of implementation of directives across the EU member states by Falkner *et al* (2004, 2005, 2006). Based on the results of their in depth case studies of the implementation of social policy directives they refute first generation Europeanisation frameworks such as misfit as well as veto player explanations. They also reject administrative coordination and oversight as sources of compliance even though they note in some of their cases problems of coordination did play a role (Falkner *et al*, 2005:298-301). The main variable which they identify as significant in shaping the worlds of compliance which they distinguish based on their empirical findings is national culture of digesting adaptation requirements (Falkner *et al*, 2005:319). Compliance cultures create, according to this approach, patterns of implementation that are stable over time. They also suggest that in the different worlds, that are the different groupings of countries, different factors and variables would play a role.

Recently, Falkner, Causse and Wiedermann (2006) have extended their efforts to the new member states, seeking to establish whether the new member states make their own world of compliance. This framework is not incompatible with the one proposed in this paper, since institutionalization influenced by a specific environment can be conceptualized to lead to a separate world of compliance. The similarity, however, is superficial. The framework proposed here is a politics driven one, claiming that a set of formal and informal veto players are responsible for institutionalization and expecting to find divergent outcomes in the same country. The worlds of compliance framework would imply strong country specific patterns in implementation (Treibb, 2007). Therefore, within this framework one would expect that institutionalization of imported rules would vary per country, countries with weaker rule of law tradition having more trouble making the new institutions a reality.

From the possible explanatory frameworks outlined above, the capability framework and the worlds of compliance one can be tested comparatively based on different observable implications they would have compared to the politics framework proposed here. Testing the path of adoption framework would depend on prior availability of case studies establishing transfer through learning or incentives. The next steps involve specifying the range of outcomes we can expect from

institutionalization and taking a first look at existing empirical evidence to confirm that there are, indeed, a number of different outcomes.

## 5. What Do We Know So Far?

Post enlargement expectations of institutionalization of formal rules adopted as part of the EU *acquis* or enlargement *acquis* have not been high among external experts or domestic observers. In fact, one struggles to find a scholar or expert that has an optimistic view of behavioural adoption of the rules 'imported' from Brussels. Many CEE based scholars have claimed that looking from the inside, it is almost self evident that the new rules in CEE are 'formal structures without substance' (Bugarcic, 2006). Anthropological studies have supported this view by revealing a great discrepancy between legal rules and social practice (e.g. Giordano and Kostova, 2002). Bulgarian case studies of reform projects funded by the World Bank in the Ministry of Education and Labour came to the conclusion that civil servants developed successful strategies to shirk and sabotage reform in order to avoid following new rules (Avramov *et al*, 2004).

To get an idea of the differences, if any, between pre- and post accession (formal) compliance, it is useful to look at the record of new member states in the transposition of directives. The Commission's internal market scoreboard is a useful starting point for assessing whether there is some discernible general (formal) compliance pattern in the new member states post accession. The evidence from the half yearly scoreboard updates points to an initially excellent performance: the new member states entered the EU with a good transposition record, which can, however, be attributed to the power of conditionality pre-accession. In the July 2005 update of the scoreboard, the Commission noted that the new member states performed better in transposing Internal Market directives on time than the EU-15 Member States (European Commission, 2005). For a while, the Commission even identified the new member states as the driving force behind the reduction of the EU's overall transposition deficit (European Commission, 2006:7). A year later, however, the transposition ratings in the July 2006 scoreboard show a more varied picture and a possible slowing down, even though in absolute terms, the new Member States still performed better than the EU-15, given their average transposition deficit of 1.5% compared to 2.2% for the old Member States (European Commission, 2006:7). In addition to the variation in performance in time, there is also considerable variation between the new member states with regard to formal compliance.<sup>15</sup> Whereas Lithuania, Slovenia and Hungary have stay near the top, the Czech Republic has joined states with problematic transposition at the bottom of the tables and so has newcomer Romania.

The usefulness of looking at transposition record of the new member states for institutionalization can be questioned, arguing that they present a false picture of laws on the books, but no real policies. Yet we really do not know whether this is indeed the case. The sets of rules created to facilitate EU policy making, EU coordination systems have evolved as undisputed centres of excellence in some CEE administrations such as the Lithuanian one, praised by observers who have remained otherwise critical of post communist administrative reform (World Bank, 2006). Coordination systems in some of the new member states have institutionalized and thus provided a basis for successful implementation.

Yet again, we have areas in which rules have been imported, but not used. The above mentioned study by Sorin Ionitã (2004) of the implementation of new legislation on Freedom of Information illustrates such a scenario in Romania. A similar case of ignoring the new rules and letting them remain empty shells can be identified from media reports of the failure of the Commission for Protection of Personal Data in Bulgaria to perform the functions which it was created for. By contrast, both Bulgaria also provides several examples of new sets of rules which have institutionalized well, or

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<sup>15</sup> See also Sedelmeier's assessment of the new member states compliance efforts (2006:149).

in any case are called upon by societal actors and have not remained empty shells. Such are the rules governing anti discrimination and the relatively late ombudsmen provisions, both sets of rules being widely known and used by societal actors.

Next to the empty rules and the ones which have institutionalized, we can also find another category of imported rules, namely those who have simply been reversed by political actors. Civil service legislation in several new member states has been subject to amendments reversing the principles of civil service independence from politics promoted by the EU in the late 1990s. Meyer-Sahling (2006) analyzed the process of re-politicization of the civil service laws in Hungary. Bugarcic provides evidence of the same process of re-politicization through legislative amendment in Slovenia (2006:226). A World Bank study (2006) presents a broader comparison between eight post communist countries finding evidence of both backsliding in civil service legislation in Central Europe and consolidation of reform in the Baltic states. Intriguingly but inconclusively, the study identifies both political and socialization variables as the causes of the mixed success of the new member states.

## Conclusion

The evidence of variation in outcomes of institutionalization in the post communist member states of the EU confirms the assumption made above that there is an interesting puzzle to explain when it comes to the new rules imported in the last decade in CEE states. The cases reported above suggest variation in institutionalization both between countries, between issue areas and over time. Whether more structured comparisons will support the ‘politics in institution building’ framework or other explanations outlined in this paper is a matter of further empirical research. This paper offers the foundation of such research by making several claims that differ from the paths and arguments taken elsewhere in the literature on institutionalization and implementation in Central and Eastern Europe.

It argued that the question about the gap between formal and informal rules in post communist new member states of the European Union is a pressing one for both social scientific and practical reasons. Analysis of EU driven adaptation in CEE would lead to better understanding of the process whereby imported rules can become institutionalized domestically. In practical terms such research would provide important lessons for the future applications of European Union conditionality as a tool for inducing reform and transformation on a large scale in candidate members. Finding out how the new institutions perform in CEE is also important for our understanding of democratic consolidation since many of the new rules are aiming to establish governance structures increasing horizontal accountability (anti-discrimination, ombudsmen) while others support the market (competition authorities).

Second, this paper looks at weak statehood in post communist setting as environment of strategic bargaining over the new institutions in CEE. State weakness has a number of important implications for the process of institutionalization that has been the focus of this paper. The most important implication of weak statehood is the increased importance of non state actors – on the one hand the European Union, as an alternative source of enforcement and on the other, non state domestic actors such as networks of early winners or active NGOs.

Most importantly, this paper makes the argument that the process of institutionalization of the formally adopted rules would be essentially a political one and depend on the configuration and preferences of key actors, namely networks of early winners and non governmental organizations. The executive centres of government would still be important, yet given weak state capacity for monitoring and enforcement at the institutionalization stage, non state actors that use or ignore the new rules would make the difference between institutionalization and empty shells. This expectation marks a change from the pre—accession period in which, as several studies have shown, veto players matter little because of asymmetry and conditionality. However, we should not interpret this to mean that politics, bargaining over the rules of the game has been somehow totally ‘switched off’ during pre-

accession and reasserts itself only at present.<sup>16</sup> Rather, the call for a return to politics is for scholars analyzing the post conditionality environment in the new member states. The framework raises another interesting question, namely, whether political actors have been bargaining all along about the amount of discretion and power they would have under the new institutions. Have they been trying to neutralize the constraints which new institutions of horizontal accountability such as anti discrimination bodies would impose on their actions? These are some of the puzzles and questions for future research that have come on the research agenda formulated in this paper.

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16 I am grateful to Nicole Lindstrom and the participants of the seminar 'Beyond Conditionality' at LSE, 31- May 2007-2 June 2007, for making me appreciate this point even better.

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Dr. Antoaneta Dimitrova  
Department of Public Administration  
Leiden University  
E-mail: [Dimitrova@fsw.leidenuniv.nl](mailto:Dimitrova@fsw.leidenuniv.nl).