The role of the EU in the (trans)formation of Corporate Governance Regulation in Central Eastern Europe
– the Case of the Czech Republic

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Paper prepared for the 3rd ECPR Conference, Budapest
8-10 September 2005

Draft version, please do not quote
Comments very welcome

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Abstract

The EU has had a crucial influence on the institutional development of corporate governance structures in Central Eastern Europe, most importantly with the accession conditions laid out in the *acquis communautaire*. As most political forces in the region favoured a quick entry to the EU, an asymmetrical power balance between European regulators and national socio-economic configurations has come about. These developments, however, are not well investigated in political science, neither in the (economic) transition literature nor in the existing literature on EU enlargement and integration.

As we argue, identifying the EU's objectives and strategy - as expressed in the *acquis communautaire* and other enlargement documents - with regard to the restructuring of corporate governance in CEE is crucial to understanding the role it is playing within the transformation of corporate governance structures in CEE. Here, our focus is on the case of the Czech Republic, in particular the changes in the banking and finance sector. We contend that the EU is indeed asserting a strong influence on the trajectories of institutional change in the field of corporate governance. These changes can not be accounted for by comparative analysis on the national level, but rather have to be perceived within the structural changes of the transnational political economy in the EU and CEE.

This research is part of a research programme on 'The Transnational Political Economy of Corporate Governance Regulation', funded by the Netherland's Organisation for Scientific Research (NWO). For more information see the website of the Amsterdam Research Centre for Corporate Governance Regulation, www.arccgor.nl

1. Introduction

The institutional development of corporate governance structures and regulation in the transition process of Central Eastern Europe (CEE) has only been taking place after the stabilisation of a capitalist market system and the privatisation of the hitherto nationalized industries and firms. This has led to severe problems resulting in market failures in the newly established markets (for instance, fraud, exploitation of minority shareholders, management entrenchment). Corporate governance regulation has thus become an important issue in the restructuring of the CEE economies in the context of EU enlargement. The European Union (EU) has been one of the predominant actors pushing for the development of effective corporate governance regimes in the CEE economies.

This paper sets out the discuss the influence of EU on the establishment of a new system of corporate governance regulation in Central Eastern Europe, in particular in the Czech Republic. Although the transformation of corporate governance in CEE has increasingly come to the attention of scholars, in the economic transition literature as well as in political economy approaches, most of the literature still takes on the developments with a path-dependency and/or a predominantly domestic politics approach (Havrda 2001, Neuman and Egan 1999, Palda 1997). As corporate governance structures are embedded in and influenced by the broader process of the transition and the domestic discussions on the set-up of the new economic system, institutional change is, of course, to a large degree influenced and shaped by these factors. Yet, as we argue, the transformation of corporate governance structures in CEE cannot be understood without taking into account the inherently transnational nature of the transition process in the region as it becomes increasingly locked into the world economy, and the role that international actors, such as the International Monetary Fund, the World Bank or the EU have been playing during more than a decade.

Although international financial institutions like the IMF and the WB still play a part in the economic reform of the region, ever since the prospect of EU accession has dawned on the CEE countries the EU has been most influential in the process of restructuring the socio-economic configuration of CEE. The EU has influenced policy making in the Czech Republic in a fundamental way. Through the Accession Treaties and the *acquis*' conditionality, the EU has shaped 'the entire range of public policies' (Schimmelfennig and Sedelmeier 2004: 661) during the last decade, especially after the signing of the Accession Treaties in 1998. EU influence has been 'broader and deeper in scope' (Grabbe 2003: 302) with regard to the Central and East European accession states than during former enlargement rounds of the European Union.

Yet as Grabbe contends, 'the literature on corporate governance in Central and Eastern Europe (CEE) has so far made little connection with that on EU integration' (Grabbe 2003:

247). Grabbe's own analysis on the role and influence of the EU on corporate governance regulation in CEE constitutes a valuable exception in this regard. Here, we want to follow up on her analysis on an empirically smaller scope in an attempt to put more flesh to the already existing theoretical bones of how the EU influences corporate governance regulation in CEE. The aim of the paper is twofold. On the one hand, the developments and changes pertaining to corporate governance regulation in the Czech Republic will be mapped in order to show where and in how far the EU's conditionality has influenced the transformation process. This, then, allows us to engage with the EU's objectives and agenda with regard to the restructuring of corporate governance in CEE.

The empirical focus will mainly be on EU funded programmes aimed at the financial and banking sector (under the Phare framework), which have been running in the Czech Republic from 2000 onwards. There are no explicit corporate governance reform programmes as of yet – but since corporate financing is one of the core elements of corporate governance systems, financial sector and banking reform constitute important developments for the field of corporate governance. Common to all these programmes is that they are designed to provide technical assistance to Czech state officials and policy makers in the three most influential financial authorities - the Ministry of Finance (MoF), the Czech National Bank (CNB) and the Czech Securities Commission (SEC). Technical assistance in the seven programmes is primarily focussing on the implementation of the *acquis* and subsequent EU Directives. The programmes define weaknesses in the current Czech legislation and in this sense provide us with evidence for what the Commission considers to be relevant fields of legislation and clues on what kind of regulation it envisages.

The paper proceeds as follows. For conceptual clarification, and to position our research theoretically, we will first provide an overview of some of the main approaches to the transformation of corporate governance in CEE. Then, we will briefly map the development of corporate governance in the Czech economy, in particular with regard to the later years of the transition process just up to the accession of the Czech Republic to the EU on May 1st 2004. Here, it will become clear that the influence of EU conditionality and technical as well as financial assistance is of fundamental importance. Subsequently the focus will be on how this influence has been transposed into the institutionalisation of the Czech corporate governance system, and in how far this has to be seen as part of the *transnational* process of European Integration.

2. Varieties of Capitalism and European Integration - Approaches to Corporate Governance in CEE

Corporate governance, pertaining to the practices that define the power relations between the various stakeholders of a firm, lies at the heart of the capitalist market system. Within the field of comparative political economy, the Varieties of Capitalism approach (VoC) provides an innovative approach to corporate governance as a crucial feature of the different varieties of capitalism (Albert 1991, Hall and Soskice 2001). The VoC acknowledges the institutional variety of capitalist socio-economic organisation, and perceives of corporate governance as an element of the functionally interdependent configuration. A broad distinction is made between liberal market economies (i.e. of the 'Anglo-Saxon' type, in which shareholding is dispersed, corporate finance is organised through a disintermediated market system, and corporate governance systems are mainly outsider systems), and coordinated market economies (i.e. of the 'Rhineland' variety, in which family/blockownership prevails, banks provide financing and corporate governance systems are predominantly insider systems). Yet the VoC's explicitly state-centric focus fails to take into account of the transnational nature of these transformation processes - the process of accession and integration of CEE into the EU is not taken into consideration. It fails to grasp the transnational context in which national economies function and the social purpose of the reforms implemented in the region. As it prioritises the 'national,' it does not come to terms with the question of how the different varieties are embedded in, and fundamentally co-determined by, transnational contexts and forces.

With regard to the economic restructuring in the CEE region during the transition period, it is striking that the various national corporate governance practices in CEE show a remarkably high level of resemblance, despite different initial institutional choices regarding the mode and speed of the privatisation process (see Table 1).

Table 1 - Main corporate governance features in CEE

	CZECH REPUBLIC	**POLAND**	**HUNGARY**	**SLOVAKIA**	**SLOVENIA**
Ownership	Initially Dispersed, now concentratin g	Initially Dispersed, now concentratin g	Concentrate d	Initially Dispersed, now concentratin g	Initially Dispersed, now concentratin g
Control	Insider	Insider	Insider	Insider	Insider
Dominance of 1 or 2 tier system	Two tier	Two tier	Two tier	Two tier	Two tier
Market capitalisatio n	16,5	17,2	18,7	3,5	23,3

Market Capitalisation as % of GDP for 2003 Source: Hungarian National Bank

It seems that different starting points and initial policy choices have nevertheless led to more or less similar outcomes. Except for the Hungarian case, where direct sales to foreign investors have led to concentrated ownership, all other ECE countries initially demonstrated dispersed ownership that is now rapidly concentrating. In this respect we see a tendency towards insider control, a two-tier system and a relatively low market capitalisation. Here, the Varieties of Capitalism approach, with its explanatory power to a high degree based on path-dependent dynamics of institutional change or persistence, fails to account for what explains the changing trajectories of corporate governance structures in CEE.

The role and influence of the EU in shaping these developments is crucial to understanding these processes. European integration theories, however, are still struggling to accommodate the enlargement process in their theoretical focus (Schimmelfennig and Sedelmeier 2004, Friis and Murphy 1999). Rather than interpreting the accession as an intergovernmental bargaining process or an instance of neo-functional spillover (Niemann 1998), the transnational nature and inherently neo-liberal character of the enlargement process have to be accounted for. In this regard, we follow neo-gramscian approaches to the integration of CEE into the EU (Bohle 2002, Holman 2001, Shields 2004). We understand the influence of the EU on the development of corporate governance structures in CEE as part of a political project aimed at exporting the EU's agenda into CEE. Grabbe outlines the influence of the EU in the socio-economic restructuring as

> a set of processes through which the EU changes the logic of political behaviour at national level, by becoming part of domestic discourse, political structures, and public policies. Europeanization in the context of CEE corporate governance is seen as a process whereby the EU exports models of market regulation to CEE, and it affects the relations between firms, the state, and trade unions (Grabbe 2003: 247-8)

In contrast to the burgeoning 'Europeanization' literature (Radaelli 2000, Cowles et al 2001), however, we argue for an understanding of the transformation processes that does not only take into account *how* these changes take place, but *why*. Perceiving of the EU, and in particular the Commission as the predominant policy entrepreneur, as a transnational actor renders it possible to identify the underlying rationale of the accession conditionality and the restructuring programmes.

3. Czech Corporate Governance in Transition

The transition process of the Czech economy is a particularly interesting and instructive case of the (trans)formation of corporate governance structures in CEE. In the first phase of the economic transition process, priority was given to the liberalisation of prices and the imposition of financial disposition. As a second step, the focus shifted towards the restructuring of property right. Privatisation was at the heart of the debate – as the former Czech minister for Privatisation put it, 'privatization is not just one of many items on the economic program. It is the transformation itself' (cited in Nellis 2002: 19). Yet the Czech method of voucher privatisation lead to considerable problems in the field of corporate control and caused chaos in financial structures. International financial institutions and policy-makers favoured a clear-cut break between the socialist era and the post-socialist period, and thus focussed primarily on the opening up of new markets. Voucher privatisation provided the primary mechanism as it was expected to create ‘an active capital market as in the United States’, while at the same it was recognized that ‘individual citizens would have neither the capacity nor the incentive to provide any meaningful governance, so they accepted the necessity of capital aggregation in the hands of financial intermediaries (Fitzsimmons 2002: 6).

The Czech form of voucher privatisation thus resulted in an initially dispersed distribution of ownership, which then gradually (re)concentrated in the hands of investment funds and banks. As Grabbe argues, the Czech strategy under the right-wing Klaus government was seen as more radical, moving toward a market-oriented rather than a network-oriented system ‘but the aggressive rhetoric used by the government hid a lack of institutional development and the growth of informal networks of insider ownership’ (Grabbe 2003: 249). The concentration of share ownership, combined with the virtual absence of corporate governance regulation, led to market failures and contributed to the economic recession which hit the Czech Republic in 1997. Privatisation without underlying corporate governance mechanisms does not ‘solve the problem of having well-identified private owners who actually control and govern newly privatised entreprises. […] Qualitative privatisation could only be achieved by coming to grips with the corporate governance issues‘ (Andreff 1996: 59-60). It became clear to policy-makers that it would that it would be necessary to ‘reform the reform’ (Dragneva and Simons 2001:94). In particular the Czech banking sector, which had been left ‘intentionally nonprivatized’ (Havrda 2003: 133) in the privatisation process, was subject to criticism from the EU, international financial institutions and transnational investors. The Economist even called it ‘parochial and politicised (Economist 1997: 65), and the EU identified the financial sector as a ‘key weakness’ in the Czech Republic’s accession efforts (European Commission 1999: 24).

Under the pressure of EU conditionality, as will be discussed below, and with the coming to office of a social-democratic minority government, the privatisation of the banking sector became one of the priorities in economic restructuring – the last publically controlled bank was eventually privatised in 2001. Banks still play a pivotal role in the Czech corporate governance system, yet it is important to acknowledge the share of foreign equity in the ownership of Czech banks (see Table 2).

Table 2 - Ownership structure of Czech banks in 2002, by share of equity in %

Year	Total Foreign	Of which EU	Of which US
1995	22.8	13. 3	Na
1998	38.7	28.6	4.6

2000	54.5	43.5	7.7

Source: Hanousek et al 2002

The Czech corporate governance system thus indeed shows characteristics of the Rhineland variety (role of banks as financial intermediators, insider corporate governance system). Yet at the same time, these arguments have to be qualified as it is mainly *foreign* banks which supply corporate financing. To view them as functionally equivalent as national banks would mean to ignore the strategic differences between transnational investment banks and more traditional national banks. Also, the concentrated share ownership is still mainly due to investment funds, which differ considerably in their corporate control objectives than, for instance, large family blockholders. Also, Czech policy makers increasingly orient themselves on the corporate governance system promoted by the OECD, which arguably promotes the outsider, market-based corporate governance system more than the insider, bank-based insider system (see, for instance, the Czech CG Code 2004).

In the following, we will turn to the role of the EU in influencing and shaping these developments in Czech corporate governance.

4. Czech accession to the EU – EU conditionality and policy export

The EU has, for more than a decade, been promoting financial market liberalisation in CEE, which is strongly conducive to bringing about a market-based outsider corporate governance system. EU influence has been 'broader and deeper in scope' (Grabbe 2003: 302) with regard to CEE accession states than during earlier enlargement rounds. Also, the relationship between the EU and the accession states is highly asymmetrical, with the EU 'exercising a degree of power that it does not enjoy either vis-à-vis its own member states or vis-à-vis external actors' (Schimmelfennig and Sedelmeier 2004: 675). With the signing of the Accession Partnerships in 1998, the EU increased its influence on corporate governance developments in CEE in that they stepped up the enlargement process by imposing strict(er) conditionalities upon the applicant states. In one of its annual assessments of the prospective member states' accession efforts, it explicitly referred to the lack of adequate corporate governance regulation (European Commission 1999: 24). In its 2000 report to the European Parliament, the Commission stressed that 'the legal and institutional frameworks do not yet provide sufficient security to investors and creditors' (Commission 2000: 10). The EU has made use of a variety of mechanisms in its accession strategy, ranging from gate-keeping, benchmarking/monitoring, provision of legislative and institutional templates, technical and financial assistance to policy advice and twinning (Grabbe 2001: 1017). Yet through the

EU's conditionality, in particular the dissemination of ideas and 'policy transfer' (Schimmelfennig and Sedelmeier 2004) of the EU's objectives to the CEE, the policy range available to the accession countries has been considerably limited. As Schimmelfennig and Sedelmeier (2004: 671) rightly point out, 'the massive benefits of EU membership being within close reach, the fulfilment of EU *acquis* conditions became the highest priority in CEE policy-making, crowding out alternative pathways and domestic obstacles'. This can be observed in particular in the highly complex area of financial market and corporate governance regulation. 'The Commission points out a problem with securities regulation in its annual report and Czech officials subsequently adopt measures designed to address that same problem' (Brenneman 2004: 52-53).

Among the EU's steering mechanisms, the Phare programme[1] has a central place in the accession strategy of the EU. Initially devised as providing predominantly food aid and technical assistance (Niemann 1998: 435), the subsequent raise of the Phare budget and its increased importance for institution-building in CEE made it a prime mechanism for exporting EU policies into the CEE. With regard to the financial sector, EU funded programmes aimed at the liberalisation and improving the role of Czech capital markets, or, as the Commission enthusiastically put it, 'Phare has provided advice, training and equipment to help Czech institutions more effectively fulfill their new role in a market economy. In particular, projects have helped in the privatisation and the restructuring process, the development of banking, and provided specialised training' (Commission 2001: The Phare programme 1990-2000). Table 3 provides an overview over the main elements of the programme.

Table 3 - 'Technical Assistance': EU Funded Programmes in the Czech Financial Sector

Project Name	**Funding Agency**	**Agencies involved**	**Time Period**	**Volume (million Euro)**
Strengthening Financial and Banking Sector Institutional/ Regulatory Capacity	Phare	Czech National Bank Ministry of Finance	September - December 2000	2
Strengthening Credit risk Management Methodology and Application in the Banking Sector	Phare	Czech National Bank	September 2000 – April 2002	2,7

[1] PHARE stands for 'Poland-Hungary: Aid for Restructuring of the Economies', but currently covers 10 countries: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, as well as Bulgaria and Romania.

Capital Market Legalisation & Securities Commission	Phare	Central Financing and Contracting Unit, Czech Securities Commission	September 2000 – December 2002	4,2
Czech National Bank Supervisory Diagnosis	Phare	Czech National Bank, Hanney Associates	December 2003 – July 2004	?
Capital Markets Regulation and Legislation	Phare	Phare	December 2003 – December 2004	1,5
Capital Markets- Central Depository of Securities	EU	Central Financing and Contracting Unit	January 2002 – September 2006	2,4
Strengthening the Czech Banking Sector - Application of Basle II	EU	EU, Czech National Bank	February 2004 - ?	?

Source: Commission Documents available at
http://europa.eu.int/comm/enlargement/pas/phare

The EU has put much emphasis on improving the functioning and performance of Czech capital markets, as well as on the privatisation of Czech Banks. This, it argues, is aimed at attracting foreign capital, which 'has been crucial in enhancing corporate governance and pushing forward business reorientation in the banking sector' (Commission 2002: 43). As we argue, it is important to take into account both the mode through which the Commission's policy schemes have been disseminated and implemented, as well as their actual content have to be taken into account here. They are, of course, inherently related as both aim at establishing and deepening a market-based corporate governance system in CEE.

With regard to the Twinning programmme, the finance and internal market sectors have been at the heart of the EU's policy dissemination and transfer programme. Whereas the Phare programme was initially based on foreign consultants, twinning engaged national bureaucrats in the policy transfer and implementation. Twinning means that 'bureaucrats accustomed to their own countries' methods of working and assumptions about policies and policy-making processes advise on implementation from within CEE governmental structures' (Grabbe 2003: 260). In most of the projects at least one other state institution is involved. The Czech National Bank (CNB) participates in four of the seven projects. The Czech Securities Commission (SEC) takes part in three projects. The SEC was founded in 1998 as an independent supervisory authority for the capital market. According to one of the programmes it 'requires the EU assistance for elaboration of a technical framework related to the regulation of cross-border transactions and e-business and for strengthening the effective monitoring of transactions on capital market in general' (2002/000-282.04.03). The

Commission has always favoured the establishment of this independent authority and called it ‘an important step forward’ (Commission 1997: 38)

It is quite instructive that, in the first three twinning rounds for the accession countries, the number of Twinning projects has been highest in the finance and internal market sectors, with 86 out of the 371 Twinning projects in CEE in those years having taken place in these fields (Commission 2001b: 27). The use of experts from EU Member States to familiarize bureaucrats in the Czech Republic and the CEE in general with EU policy compliance has thus lead to a potentially widespread dissemination of EU practices in the Czech financial and banking sector. As a senior officer for the EU projects implementation department at the Czech National Bank points out, ‘Phare allowed Czech experts to become familiar with common EU practice, and, at the same time, foreign experts contributed to the development of banking supervision in the Czech Republic’ (Commission 2001a: 28). In total the programmes aimed to address more than 4000 civil servants in the MoF, the CNB and the SEC. Apart from the transposition of EU directives and the Acquis, twinning is also aimed at raising ‘awareness training for the officials of the Ministry of Finance and members of professional institutions’ for the fact that participating in the EU requires ‘substantial changes, both of conceptual and implementation character’ (CZ01-04-02: 2). The transposition of EU policies into CEE corporate governance structures, and the integration of a national bureaucratic elite into the financial ‘epistemic communities’ of the EU has made it virtually impossible for the Czech Republic to take any other route to corporate governance restructuring other than the market-based and foreign investment-oriented strategy advanced by the Commission. Alternative policies, for instance a reinforcement of the banking sector towards the already emergent insider system with stable insider blockownership and low market capitalisation, are out of the Commission’s policy range.

With a closer look at the content of the conditionality pertaining to the *acquis* and the accession agreements, this becomes even more obvious. The programmes developed to enhance the implementation of the Acquis into the Czech national regulation were predominantly aimed at the improvement of the Czech capital market. Three of the four programmes explicitly named the increase of investor confidence as an ‘objectively verifiable indicator.’ In two cases the level of protection of minority shareholders was explicitly addressed. With regard to the Czech capital market, the Commission’s emphasis on the strengthening of the role of the market does not come as a surprise. In the Czech context, capital markets still play a subordinated role vis-à-vis financial intermediation through banks. Also, capital is more often than not raised through direct investments by foreign investors, not by issuing shares on the stock market. In 2002, the Economist even warned that the Czech stock market was dying out (Economist 2002). The Commission has long been critical of the development of the Czech capital market. Only after the regulatory framework for a functioning capital market had been implemented (stimulated by *acquis* conditionality) did it give a more positive assessment of the developments. In the 2001 annual report of the Commission on the Czech progress towards the full implementation of the Acquis it cautiously signalled its approval by stating that ‘the situation on the Czech capital markets is improving slowly. The Czech Securities Commission has played a more active role and progress in legislation has been made’ (Commission 2001c: 36).

The Commission’s conditionality and strategy is explicitly aimed at improving the performance of the Czech capital market. According to one of the programmes, the current capital market ‘continues to fail to fulfil its primary function as it still does not constitute an appropriate place for reallocation and acquiring of the adequate capital and does not fulfil standard price setting function’ (CZ00-04-02: 1). Reference to the EU’s broader political framework for market integration is used as justification for the market-enhancing approach – it is argued that capital market restructuring in the Czech Republic is essential since ‘Lisbon Summit also explicitly insisted on the creation of an efficient, deep and liquid securities market in Europe’ (CZ01-04-02: 1) Adressing a Czech business audience, the former Commissioner for the Internal Market, Frits Bolkestein, pointed out why a rapid integration of the Czech economy into the Internal Market is essential: ’Firstly, because it gives you [Czech business, AV] access to a very large market which should encourage you to invest more because the returns are likely to be even greater. And secondly, because it subjects you to much tougher competition – effectively forcing you to shape up and become more efficient’ (Bolkestein 2004: 3)

The integration of the Czech economy into the European Market is framed by the competitiveness and efficiency discourse as propagated by the Commission - only that, due to the bilateral negotiation character (see Bohle 2001), alternatives to the EU’s ideologically tinted market system are not an option if the accession criteria are to be fulfilled. The conditions for the establishment and deepening of capital markets are put forward as if they were very obviously the only possible policy option. The assumed self-evidence of the EU’s conditionality denies any dialogue between the accession state and the EU, and does not take into account that, in the EU-15, many of the EU’s policies are far from uncontroversial. As Grabbe contends, ‘the thrust of the agenda is neoliberal, emphasizing privatization of the means of production, a reduction in state involvement in the economy [..], and further liberalisation of the means of exchange’ (Grabbe 2003: 256).

With regard to the emerging corporate governance structure in the Czech Republic and other CEE countries, the EU’s intervention in the economic trajectories of the accession states becomes even more fundamental. As we have pointed out above, the Czech corporate governance system has been characterised by an incremental re-concentration of ownerships, on the one hand through national investment funds, and on the other hand through increased foreign share and bank ownership. With its still comparatively low market capitalisation, two-tier system and strong insider control, just to name some features, the Czech Republic would indeed rather fit the glove of a coordinated than a liberal market economy. On the day of their accession to the EU the Financial Times concluded that the capital markets in most of the new member states 'are relatively undeveloped. Hungary and the Czech Republic, for example, account for just 0.2 per cent and 0.1 per cent of total EU market capitalisation (Financial Times 2004: 25). Already in 2002, the ECB maintained that the 'gradual convergence of the Czech banking sector to the parameters of the banking sectors in EU Member States will probably be at least a medium-term process. Nevertheless, reserves allowing the efficiency of the large banks to be increased exist and the new owners of the privatised large banks will make use of these' (ECB 2002: 82).

5. Conclusions

Against this background, the EU's efforts to export a corporate governance system which as such hardly exists in the old member states, illustrate the political nature of its accession strategy. The transnational integration of capital markets takes precedence over alternative political responses to the challenges of integration, while at the same time access to this market is still limited for the accession countries. Even more so, the financial market and corporate governance system strongly advocated by the EU in the accession countries is far more liberal and market-based than any corporate governance system in the EU-15, with the exception of the UK. In a neo-gramscian interpretation, we can see these developments as an expansion of the neo-liberal project of European market integration with the help of *acquis* conditionality, and, increasingly, the use of policy dissemination through expert groups, twinning etc.

Whereas its plans for the 'modernisation' of corporate governance regulation in the EU-15 has met sometimes fierce resistance from Member States (as, for instance, with the Takeover Directive, which only just about so made it in a watered-down compromise form through the Council and the European Parliament), the Commission perceived of the CEE enlargement as a good opportunity to revise its take on corporate governance, and add a stronger sense of urgency to its reform projects.

> The forthcoming enlargement of the EU to 10 new Member States is another gilt-edged reason to revisit the scope of EU company law. The new member countries will increase the diversity of the national regulatory frameworks in the EU, underlying further the importance of a principles-based approach able to maintain a high level of legal certainty in intra-Community operations. [..] initiatives to

> modernise the EU Acquis will become more urgent than ever to ease the rapid and full transition of these countries to becoming fully competitive modern market economies (European Commission 2003: 7)

The Commission is playing an essential role in pushing this market-oriented agenda. With regard to the Phare programme, Niemann points out that 'government preference formation is affected by the *ad hoc* and long-term manipulation of domestic elites […] at the decision-making level the Commission can make an impact, especially when assisted by temporary support from organized interest' (Niemann 1998: 440). In a moment of self-reflection and literary pretension, Frits Bolkestein points to the Commission's 'mission statement': 'Our overall approach is reflected in the advice given by the famous Czech writer, Franz Kafka: "*Start with what is right rather than what is acceptable*." Our job is to propose measures that we think are right for the Internal Market, and then to persuade the Council and Parliament that what we suggest should indeed be accepted' (Bolkestein 2004: 4, emphasis in original) The Commission's perception of the 'right' way to go down for the market economies of the accession states, and the EU in general, however, does not leave any room for alternatives to the further liberalisation of the new member states' market economies. Even more so, the Commission appreciates the accession of the CEE states, with their economies having been subject to *acquis* conditionality for a critical time, as an opportunity to inject the policy debates in the new EU-25 with new impulses.

> Although some of our leaders seem to be falling back on old ideas, I am not pessimistic. I believe that the arrival of the "new" Member States will re-energise discussions in Brussels [.. with] a real breath of fresh air. This is not surprising. You have been living with rapid and relentless changes for many years now. You are obviously less resistant to it. I am sure that your presence will help move the discussion forward and revitalise our economic reform agenda (Bolkestein 2004: 6)

Arguably, with the accession countries' economies having been subject to strict *acquis* conditionality, tribute to their 'lack of resistance to change' reads like a euphemism. With the strong influence the Commission has asserted during the accession process, through institution-building as well as technical and financial assistance, it aimed at modelling and forming the accession economies as far as possible in its own envisaged mould. Now that the accession has been accomplished, the new Member States could be assumed to serve the role of the paragon of liberal market economies to the old Member States. Tommaso Padoa-Schioppa, Member of the Executive Board of the ECB, has already pointed in this direction with regard to taxation policy (ECB 2004) and it is not unlikely that other fields such as corporate governance will follow. In this respect the bargaining power of the Commission vis-à-vis all the member states might well grow in the near future.

As Bruszt argues, ‘market-making is about the re-making of the state, about re-regulation of relations among economic actors, and about the re-institutionalisation of the economy’ (Bruszt 2002: 128). The EU, as an inherently market-making project, is using its influence to shape the developments of market and corporate governance structures in the CEE, and by gently but firmly pushing for an increasingly marketised socio-economic order, it seeks to widen the investment opportunities of transnational capital, while at the same time subordinating the CEE even more to the discipline of the markets.

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