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Implementing Capacity and EU Adaptation in a Postcommunist Context

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LUND UNIVERSITY

PO Box 117
221 00 Lund
+46 46-222 00 00

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Implementing Capacity and EU
Adaptation in a Postcommunist Context



Ulrika Jerre

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Lund University

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To my parents

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Lund, March 2005

Ulrika Jerre

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INTRODUCTION

Since the mid 1990s a lack of state capacity has been identified by practitioners and academics alike as the major impediment to social and economic development in a postcommunist context. An expression like “vicious circles of state weakness” is widely used to describe a dynamics where states or policy sectors get caught in patterns of self-serving elite behavior, societal disengagement in policy-making, and bureaucratic inertia. There are of course considerable variations between different countries and sectors in this regard. The countries of East Central Europe (ECE) that have been engaged in a process of accession to the European Union (EU) have managed to carry out a remarkably broad range of reforms.¹ Since May 2004 seven of these countries are members of the EU, whereas Romanian and Bulgaria are laggards in reforms and have been left for a second round of eastward enlargement. This notwithstanding, corruption and other phenomena associated with a weak state are lingering problems in the whole region. In the EU candidate countries, faced with demanding reform agendas, large implementation gaps have become a special concern.

Another significant feature of the period following the fall of the communist regimes is internationalization processes. Postcommunism is not just characterized by complex and simultaneous processes of democratization, marketization, and state transformation, but the collapse of the communist regimes also unleashed dramatic internationalization.

1 The postcommunist countries that have been/are candidates to the EU are the Czech Republic, Slovakia, Slovenia, Poland, Hungary, Estonia, Latvia, Lithuania, Bulgaria, and Romania.

Countries that were previously more or less closed to external intervention and influence from outside the communist bloc opened up practically overnight. Reform agendas have been set under influence of international organizations through mechanisms of conditionality. This dynamics takes on a special significance in the case of the EU candidate countries. The content and pace of the transformation projects have been motivated by the desire to become a member of the EU and governments have given up a substantial part of their autonomy in policy-making. At the same time as the countries have managed to carry out broad reform agendas set by EU standards, the strengthening of state capabilities necessary for implementation has been slow. This raises important questions about the relationship between efforts to adapt to EU structures on the one hand and the dynamics of implementing capacity on the other hand. It is a common assumption in the academic debate that the EU accession process has significant consequences for state transformation, but we know little about how these effects come about and even less about under what conditions implementing capacity may be strengthened or weakened.

THE RESEARCH PROBLEM

A basic argument in this study is that the EU accession process is a major reshaping force and may have significant effects on implementing capacity in postcommunist candidate countries. It sets out to further our understanding of the process through which effects may come about and why EU adaptation may strengthen or weaken implementing capacity. Implementing capacity is defined as *the ability of decision-makers to ensure steering and coordination in the implementation of public policy*.

The impact of the EU accession must be seen in light of the formative period in the development of the state in these countries as well as their great eagerness to become members. The first point refers to the fact that policy-making structures – normally characterized by only incremental change – are under rapid transformation as a consequence of the fall of the communist regimes and of the ambitious programs to restructure

the political, economic, and societal systems. The second point implies that there are very strong incentives for the governments to comply and to give an image as prospective members. Radical reforms that are an answer to the demands of the accession are likely to alter policy-making structures and hence the conditions for implementation. This study argues that significant effects on implementing capacity come about as an often unintended product of efforts to adopt the legislation of the Union and to live up to its economic and political criteria.

In what direction efforts to meet EU conditionality affects implementing capacity in a policy sector or subsector is likely to vary between contexts. It is investigated in the study if and when there is a potential contradiction between an EU adaptation logic and a postcommunist implementing capacity-building logic. EU adaptation, on the one hand, calls for swift reforms that often force governments to concentrate resources and policy-making procedures. Major government interventions are a challenge anywhere as evidenced in the extensive literature on governance failures in the mature democracies in the West.² In countries with severely resource-constrained states and weakly organized societies the challenges are, however, ever more demanding and the measures that need to be taken by governments can be assumed to be all the more radical. It has been suggested in the literature on EU enlargement, as well as in studies of international conditionality effects in other regions such as Latin America, that efforts to live up to external demands lead to the creation of *islands of efficiency*. This phenomenon and its consequences for implementation will be central to the analysis.

It is argued in the study that an enhancement of implementing capacity, on the other hand, is likely to call for a development of effective channels of interaction and the mobilization of resources and policy contributions of a broad range of public and private actors. This stems

2 See for example Rhodes (1997), Lindblom and Woodhouse (1993), or Bovens and Hart (1998) for a discussion about implementation problems in the economically advanced democracies in the West.

from the postcommunist situation of a legacy of over-centralized and highly fragmented policy-making structures, at the same time as these societies are characterized by ever more complex interdependencies and policy problems. Measures needed to meet EU membership requirements may thus be in conflict with measures needed to enhance the ability to steer and coordinate implementation in this context.

THE AIM OF THE STUDY

Since there is no existing theory to build on that links international conditionality in general and the demands of the EU accession in particular to implementing capacity, *a first aim of the study is to develop a theoretical framework for the analysis of how and why the EU accession process may affect implementing capacity in a postcommunist context.* A framework of this kind needs to account for a chain of events that starts with the demands of the EU accession and ends with effects on implementing capacity. The task is both to conceptualize the links in the chain of events and to present arguments about the likely relationships between these elements. This implies opening up the “black box” of the state³. The intervening links at the focus of attention are reform responses of domestic governments and alterations in policy-making structures that follow. In this we must examine EU conditionality and implementing capacity in particular sectors or subsectors instead of trying to generalize about a macro-level process. EU conditionality and government responses concern particular policies and implementing capacity is conditioned by the character of policy-making structures in a sector. Hence, the primary unit of analysis in this study is not countries but policy sectors or subsectors.

3 The concept “state” is used here to refer to public actors and institutions at all levels of government. In most of the analysis I, however, do not talk about the state in a unitary way but about the central government, bureaucratic agencies, local governments and so forth, which all have their different perspectives and interests.

A second aim is to make an in-depth study of a particular policy subsector that has been exposed to strong EU conditionality, namely child protection in Romania. We all remember the horrible pictures from Romanian orphanages that shocked the world in the immediate aftermath of the fall of Ceausescu. In spite of intense international attention and assistance successive Romanian governments took no real measures to reform the system until EU put it at the top of the agenda for accession negotiations. Child protection reform has been linked to the democratic criteria of the accession and EU pressure has at times been exerted through semi-veiled threats to delay the negotiations. The subsequent radical reform has centered on closing the large-scale institutions for children and providing for alternative care, reducing the number of children abandoned by their parents, and controlling inter-country adoption practices that have been plagued by severe malpractices, abuses of children, and corruption. The reform has been highly complex from an implementation perspective (e.g. multiple actors involved and bad starting conditions) and has been marked by some remarkable reform accomplishments but also setbacks. In this development focus falls on how decision-makers have responded to EU pressure, how policy-making structures have been altered and what effects this has on the ability to steer and coordinate implementation in the subsector. The concept of island of efficiency turns out to capture the development in the policy subsector, which gives an opportunity to study this phenomenon, why it emerges and how it influences implementing capacity.

Two overall research questions will accordingly guide the study: *How can we conceptually and theoretically understand the impact of the EU accession process on implementing capacity in a postcommunist context? How and why have the demands of the EU accession affected implementing capacity in the subsector of child protection in Romania?* More specifically I advance some ideas about why efforts to meet EU accession requirements may strengthen or weaken implementing capacity in a postcommunist context. This issue will be explored in the course of the development of the theoretical framework and investigated empirically in the case study and in the concluding chapter I summarize arguments on this account.

CONTRIBUTIONS MADE BY THE STUDY

Beyond these aims of the study it will hopefully be of interest to the more general literature on state capacity and on implementing capacity in particular, since it pays attention to some questions that have tended to be neglected. (The relationship between the more generic concept of state capacity and implementing capacity will be elaborated in Chapter 2.) In particular, it is often argued that the literature fails to address the question of why capacity is strengthened or weakened.⁴ This study deals with the dynamics of implementing capacity in the short and medium term and the postcommunist context provides a fertile ground to study processes of change since policy-making structures are relatively volatile.

Moreover, the study will contribute to bridging the gap between research on domestic politics and international factors. It is indeed puzzling – considering the general awareness of the importance of “internationalization”, “globalization”, and “Europeanization” – that so few studies systematically look at domestic responses and effects on policy-making.⁵ This gap in the literature is particularly striking and unfortunate in the case of the EU applicant countries. In a 2003 special issue of *East European Politics and Societies* about the eastward enlargement, the editors hold it as a serious shortcoming that scholars of

4 For this critique see for example Grindle (1996:8), Frøhlund Thomsen *et al.* (2002:17), and Geddes (1994:14). It can also be noted that there are few empirical studies of the dynamics of state capacity in a postcommunist context. As pointed out by for example Ganev (2001:1), it is a paradox that there is a great scholarly interest in state capacity – state incapacity and state weakness have indeed become catch-all explanations in analyses about postcommunist politics – but few systematic empirical studies.

5 Many authors have noted the lack of contributions that systematically study effects of international factors on domestic policy-making (see e.g. Knill, 1998:15-17; Howlett & Ramesh, 2002). Studies in comparative political economy and governance approaches have made interesting contributions, investigating the effects of international factors on domestic state capacities and on the way states relate to their citizens (see e.g. Evans, 1995; Grindle, 1996; Weiss, 1998). Focus in these studies, however, often falls on sectors that are obviously international, i.e. large-scale industry.

postcommunist transformation have tended to neglect the great impact of the EU enlargement on domestic politics and processes of change (Ekiert & Zielonka, 2003:7,10; cf. Goetz, 2001:1034). Research that explicitly deals with the EU enlargement has, on the other hand, not paid proper attention to the particular postcommunist dynamics and variations in responses and effects between different countries and policy sectors (cf. Dimitrova, 2002:172). There are contributions that explore the transposition of EU legislation in candidate countries (see e.g. Connaughton *et al.*, 2004; Bågenholm, 2005) and works on how the central executive is transformed in the accession countries (see e.g. Nunberg, 1999; *Journal of European Public Policy*, 2001, no. 6; Johannsen, 2004). From the perspective in this study it can, however, be noted there are very few studies that investigate effects on issues of state capacity.

Related to this it should be noted that the research problem in the study is not an exclusively postcommunist one. External pressure and international conditionality affecting weak states trying to catch up are critical features of the current historical context (cf. Fukuyama, 2004). State capacity and “good governance” have become key concerns also in the broader policy debate on developing and transition countries. However, the reason for developing the theoretical framework with a focus on a postcommunist EU accession context is twofold. Firstly, the influence of EU on governance in applicant countries in general and in the postcommunist ones in particular is unparalleled in most other cases of international conditionality. Secondly, the ECE countries grapple with extraordinary transformation tasks and experience severe problems of implementation. If we take these factors into consideration we may reach a more meaningful precision in the theoretical discussion. In the last chapter I will return to a discussion about whether some parts of the theoretical framework and specific arguments may have a more general relevance.

The critical reader may ask why we should study effects of the accession when the large majority of the postcommunist candidate countries are already members of the Union. The first answer to this objection is that this study focuses on processes that may have long-term consequences for policy-making. Moreover, as of writing new countries are lining up and

aspire to membership. Hence, this is a highly pressing research topic both in order to understand the development in the new or soon-to-be member states and to illuminate aspects that should be taken into consideration in future rounds of enlargement.

LIMITATIONS OF THE STUDY

It is important to note some particular limitations of the study. Firstly, the theoretical framework and the empirical study do not aspire to explore the “total effect” of the EU accession process on the ability to implement public policy in policy sectors. To approximate this it would be necessary to analyze for example the effects of EUs support to general public administration reforms (e.g. civil services reform) and the overall balance of policy-making resources as an effect of the accession. The study does, however, aspire to further the understanding of a key process and source of impact on implementing capacity. Secondly, the study does not analyze implementing capacity and the EU enlargement process from a normative democratic perspective. Implementing capacity is about the ability to translate policies into practice and I do not elaborate on the highly important issue of whose interests these policies serve or who may influence policy content during the implementation phase from a democratic perspective. Studies of the capacity of democratic states are based on an assumption that policy-making effectiveness is an important part of a functioning democracy. Effectiveness is, however, not a democratic value in itself and is far from the sole purpose of government. But considering the great attention devoted to problems of incapacity in policy debates, issues of state capacity merit sustained attention. In a similar way, the essential question of democratic aspects of the EU accession process – i.e. whether the accession processes works in the same direction as democratization – is not within the scope of this study.⁶

⁶ Authors who have examined the accession process from a democratic perspective have emphasized that Europeanization and democratization may pull in different directions. See for example Mair (2003), Pridham (2002), and Raik (2004).

METHODOLOGICAL CONSIDERATIONS

In this section I elaborate on the methodological approach of the study, starting with the theoretical framework followed by an account of the case study method. I then present the reasons for choosing child protection in Romania and elaborate on the role of the empirical study in the thesis. The section concludes with a discussion of the material the case study draws on.

THE THEORETICAL FRAMEWORK

Since this study is concerned with a process that has hardly been theorized before and with a long chain of events, the theoretical framework⁷ will by necessity have an eclectic character in the sense that it draws on insights and concepts from various literatures. The study makes use of the literatures on historical institutionalism, state capacity, the postcommunist state, implementation, public policy, organization theory, and the EU enlargement. In order to avoid potential pitfalls of working in an eclectic manner (cf. Lundquist, 1993:79; Badersten, 2002:71), I present in the final part of this chapter the underlying perspective on change and continuity of the state that structures the study.

In this study focus falls on a particular influence relation, i.e. the one between the demands of the EU accession and implementing capacity. Hence, the aim is not to explain certain levels of implementing capacity, but to investigate the process through which efforts to meet EU requirements may affect the latter. This can be related to the distinction between a backward-looking and a forward-looking design. The approach in this study is in contrast to studies that start with a known outcome and

⁷ It may be pertinent to note that I do not use the term framework in a common sense that can be represented by Ostrom's definition. Ostrom refers to theoretical perspectives on a high level of abstraction that "provide a metatheoretical language that can be used to compare theories" (Ostrom, 1999:40). Instead, I use the term framework to signify that I synthesize concepts and arguments from various literatures and that it is a broad construction.

look for causes, that is, they have a backward-looking design (cf. Scharpf, 1997:25). This study is instead of a forward-looking character, where I am interested in the effects of a certain factor and under what contingent conditions this may lead to different outcomes (cf. Bennett & George, 1997:16).⁸ The task is to reconstruct a process rather than for example to control for competing explanations or assess how much of a total outcome is caused by the factor of interests. The main methodological hurdle is to trace this process and produce convincing arguments why the relationship exists.⁹ Given the cognitive bias to see patterns also in random processes (George & McKeown, 1985:37) it is important to explicate the method and techniques used, which will be elaborated further below.

It may be relevant to note that this study cannot be readily classified as either inductive or deductive. Even if the theoretical framework has pointed out the elements of interest, ideas about the relationships are still relatively vague and I will specify them during the course of the study. This brings us to the empirical part of the study.

THE CASE STUDY METHOD

This study uses a case study method and it is widely recognized that this is appropriate when the phenomenon under study is not properly researched and concepts and hypotheses are under-developed. Under these circumstances it is wise to retain analytical openness, which is feasible

8 King, Keohane, and Verba (1994) are famous proponents of a forward-looking approach. Also Scharpf has argued for the advantages, based on the fact that we only have to investigate one chain of events and there are less intervening variables to control for. In a backward-looking design, where one asks for the causes of a particular outcome, one normally has to investigate a large number of chains of causation and cannot “arbitrarily shorten” this chain but must continue until we have found the relevant independent variable (1997:24-26).

9 It is commonly argued that it is not enough to establish causal relations, i.e. that one factor affects another, but a satisfying explanation must also entail an account of why factor A affects factor B (Bennett & George, 1997:1-2; Esaiasson *et al.*, 2003:37; Munck & Verkuilen, 2004:8). This has been elaborated most notably in the literature on causal mechanisms (see e.g. Bennett & George, 1997; Hedström & Swedberg, 1998).

when we study cases as wholes (rather than take some variables out of context from the start). Case studies provide good conditions for a dialogue between the investigator's ideas and data, which creates flexibility necessary when we know little about the processes at work (cf. Stenelo, 1984:24; Ragin, 1987:49). They have if properly designed a potential to generate new insights (Bennett, 2001:1513; Orum, 2001:1510; Esaiasson *et al.*, 2003:122; Munck & Verkuilen, 2004:10). The choice of the case study method is also motivated by the fact that the process under study is highly contingent on context. The links between the elements of interest can only be understood in close relation to the historical context (Ragin, 1987:iv). Moreover, when a major question is how and why a factor affects another we have to account for the role of human agency, which is facilitated by in-depth studies (Munck & Verkuilen, 2004:8).

In order to analyze if, how, and why the demands of the EU accession have affected implementing capacity in the particular case I will use the obvious approach to reconstruct the chain of events. George and his co-workers have labeled this process tracing (George, 1979; George & McKeown, 1985; Bennett & George, 1997). Process-tracing is intimately linked with the case study method since it raises great demands for information (Bennett & George, 1997:18). Apart from generating and analyzing data on the process the empirical study will in fact have a comparative design in order to facilitate an analysis of the influence relation. The study contains a comparison of the child protection subsector and implementing capacity at three points in time: before the presence of mechanisms of EU conditionality, after a period of moderate EU conditionality, and finally after a period of strong EU pressure. In relation to a comparison across space – e.g. of one policy subsector where EU pressure has been present and one where it has not – this design offers the important advantage that a number of contingent factors (but of course not all) can be held constant. A key to assessment of an influence relation is a careful analysis of the timing of the various events, that is, in my case that EU pressure indeed precedes reform responses of governments, which is followed by alterations in policy-making structures and in the level of implementing capacity, which is facilitated by this design (cf. Esaiasson *et al.*, 2003:73).

This notwithstanding, it would of course be desirable to combine this with comparison across different policy subsectors. This would have helped to create a more rigorous design and a better ground for the generation of hypotheses (cf. Bennett, 2001:1514). The reason for not doing this is simply because of limited time and resources. Case studies are time-consuming endeavors, making it difficult for a single researcher to go beyond the study of one or a few cases.

CHILD PROTECTION IN ROMANIA

Why then is child protection in Romania chosen for an in-depth study and what role does the empirical study play? The basic idea has been to find a case where the process of interests is readily observable. It may seem controversial to select a case of strong EU conditionality where we can expect real effects and it would indeed have been problematical if the purpose had been to draw conclusions about how much or in how many cases implementing capacity is affected in accession countries. This is, however, not the case. There are obvious reasons to choose a case where the process and effects are likely to be visible when we know little of the phenomenon under study. With this in mind, child protection in Romania – a subsector that has been exposed to very strong EU pressure – is a highly appropriate case. But there is also another reason for choosing this subsector in Romania. Romania is as mentioned a laggard in the EU enlargement process, also falling behind Bulgaria in adaptation accomplishments, and is generally considered as the weakest among the ECE states. In addition, child protection reform has been highly complex, since there has been a great discrepancy between EU requirements and the situation in the subsector. This implies that if there exists a potential conflict between EU adaptation and capacity-building as discussed earlier, it is likely to be observable in this case. Hence, if it cannot be established that the demands of the accession and subsequent radical reform have affected implementing capacity in this case, the very relationship that the framework builds on will have to be called in question. In a similar way, if a contradiction between EU adaptation and capacity-

building as advanced in the study cannot be identified, the argument will have to be reformulated.¹⁰

The discussion can be related to Arend Lijphart's (1971) and Harry Eckstein's (1992) influential classifications of case studies. The case study in this thesis of a particular policy subsector that has been exposed to EU pressure serves different purposes and cannot be neatly placed in one of these categories. It serves to evaluate the usefulness of the framework and on the most basic level to investigate whether the relationship of interest indeed exists (cf. Lijphart's theory-confirming and Eckstein's crucial case study). Interest also falls on the case in itself and the empirical analysis is structured by the theoretical framework elaborated in the previous chapters (cf. Lijphart's interpretive and Eckstein's disciplined-configurative case study). Moreover, the case study will hopefully also serve a heuristic purpose, that is, to help generate insights (cf. Lijphart's hypothesis generating and Eckstein's heuristic case study). It is important to point out that the findings of the case study cannot be generalized to other cases. By studying the process and mechanisms at work in the particular case, I may, however, be able to refine the arguments of the theoretical framework. Taken together this may serve to generate some ideas about why positive and negative effects come about that can be confronted with other empirical cases.

MATERIAL

Gathering material for the case study has been about finding information about the child protection subsector, about the role of the EU, the subsequent reform, and implementation obstacles and accomplishments. It has been a major challenge to go beyond the formal aspects of policy-making and find out about actual practices and achievements. In fact, even studying the formal aspects has been far from easy, since the environment has been highly volatile. Other factors have, however, facilitated my task. Child

10 This can be described as a "most likely" design of the case study in relation to the theoretical framework (cf. Esaiasson *et al.*, 2003:179).

protection has been under international scrutiny, which means that there are several reports about the state of reform and that much information has been available in English.¹¹

The case study builds on three types of material. Firstly, I have used primary sources by way of public documents and statements, such as government strategy documents, reports about the state of reform, and speeches by key figures of the government and administration. Since there have been strong incentives for the government to show progress vis-à-vis EU, it has been essential to check government reports and statements against other sources. I have therefore also used secondary sources by way of reports of international organizations like UNICEF, the UN Committee on the Rights of the Child, Save the Children Romania, the EU Commission, the European Parliament, and USAID. There are also a few Romanian and foreign academic articles written about the reform.

But this material has not had the same perspective on the reform as the one in this study and it has been necessary to complement it with interviews with people with informed knowledge about the process. I have conducted around thirty interviews in Romania about the child protection reform, the majority of them in 2004 and a few in 2001 and 2002.¹² Using interviews as a source of information is of course problematic and calls for a critical awareness (cf. Alvesson & Deetz, 2000:216; Esaiasson *et al.*, 2003:254, 304). It is important to acknowledge the fact that informants have interests and biases based on their role in the process. As a response to this I have interviewed people with various perspectives. I have also been careful to double-check important information acquired from one interviewee with other sources, i.e. additional interviews or documents and reports.

11 It should be pointed out that my knowledge of Romanian is only rudimentary.

12 In 2001 and 2002 I conducted around thirty more interviews about other EU-related reforms. These interviews are only on a few occasions used in the study, but they have been important for the formulation of my research problem and the decision to focus on child protection.

Two principles have accordingly guided the selection of interviewees: I have looked for people who have informed knowledge about the subsector *and* who represented different perspectives. I have identified people of interest by reading reports about the reform and by asking the advice of my early interviewees. Interviewees have been selected from four broad groups: EU officials – i.e. at the Delegation of the Commission in Bucharest and officials in EU twinning projects in Romania (representing the authorities of an EU country rather than an EU institution) –, Romanian officials from national and local authorities, representatives of NGOs, and finally experts in international organization and in the academia.

The interviews had a semi-structured character (cf. Stenelo, 1984:29-30). It was necessary to leave opportunity for interviewees to elaborate on their subjects since I have been seeking information about a subsector and process that I in the beginning had limited knowledge about. The first interviews conducted in 2001 and 2002 had more of an open-ended and heuristic character and in the last interviews in 2004 I was more precise about what information I was seeking. The questionnaire consisted of around ten broad questions centered on five themes: the character of the subsector, the role of EU, the content of the reform, implementation accomplishments, and what has facilitated or obstructed implementation. The precise questions have been adapted to the individual respondents, but with the same five themes guiding the interviews.

The large majority of the interviews has been conducted in English – it is an interesting observation in itself how few of those involved do not speak fluent English compared to other policy sectors in the country – but on a few occasions I have used a translator.¹³ All the interviews have been conducted in Bucharest, but some of the Romanian local officials and NGO representatives at the time worked in other parts of the country or had done so at an earlier point. This limitation of the interview material has been complemented by studies of local differences in the implementation of the

13 The interviews in 2004 have been conducted with a tape recorder while I took notes during the earlier ones.

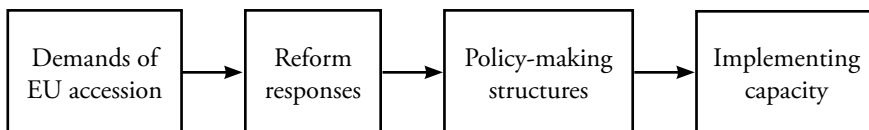
reform as well as by interviews with people with thorough knowledge on this matter. To make a contribution of one's own here would have required extensive resources.

A number of my interviewees have asked for anonymity. This of course has to be respected and it has led me to the decision to codify all my interview references. Anyway, the important information is which of the four groups presented above interviewees belong to. Hence, I have labeled the references EU interviewee, state interviewee, NGO interviewee, and a/e interviewee (i.e. academic/expert in international organization). All my interviewees are, however, presented in the list of references apart from one (conducted in 2004 at an international organization) who asked for complete anonymity.

PLAN OF THE STUDY

The theoretical framework can on the most abstract level be illustrated by the figure below.

Figure 1. A sketch of the theoretical framework



In Chapter 2 the study starts by focusing on the right-hand side of this model, that is, the relationship between policy-making structures and capacity. The chapter explores the literature on state capacity and positions the study. The reason for starting in this general literature, rather than with the more limited concept of implementing capacity, is that there is a rich academic debate to build on and many of these contributions focus implicitly on the implementation functions of the state. The chapter serves two overall purposes: One is to investigate how policy-making structures can be conceptualized and what dimensions the literature holds

as important in analysis of state capacity. A second purpose is to identify arguments about what type of policy-making structures – i.e. what values on these dimensions – enhance capacity and how this issue is related to the particular environment. Based on this I identify two ideal types of the state, the *insulated* and *embedded* state, both of which have been advanced as shaping effective policy-making but in different environments.

One of the conclusions in Chapter 2 is that what type of policy-making structures promotes capacity is a context dependent issue. Chapter 3 serves to explore the postcommunist environment with a focus on the development in the EU applicant countries. It investigates the development path of the postcommunist state – i.e. the communist state and the transformation process – and the relationship between policy-making structures and state capacity in this context. There are of course substantial differences between the ECE countries and the discussion is thus placed on an abstract level and when necessary I elaborate on important variations. I also advance some broad ideas about what changes in policy-making structures are a key to enhance capacity in this context.

Chapter 4 again investigates the right side of the figure above, but this time I elaborated the concept of implementing capacity and move the discussion about policy-making structures to the level of policy sectors or subsectors. This chapter together with Chapter 5 develops the more specific and operational theoretical framework that will be used in the case study. In Chapter 5 the left-hand side of the model is elaborated, but it also takes a broader perspective and explicates ideas about the whole chain of events in Figure 1. I discuss the EU accession process and present possible responses of decision-makers to EU conditionality. I then link this discussion to the one in Chapter 4 and present some ideas about possible effects on policy-making structures and on implementing capacity. The literature on the eastward enlargement has advanced the concept of islands of efficiency and I investigate this phenomenon in relation to the theoretical framework. In the concluding section I examine the question whether there may be a conflict in the postcommunist applicant countries between measures needed to fulfill EU requirements on the one hand and to enhance implementing capacity on the other.

Chapter 6 and 7 contain the empirical study of child protection in Romania. Chapter 6 begins with a brief discussion of the Romanian state and in this relates to the general discussion in Chapter 3. I then turn to the child protection subsector, which is studied at three points in time: before the presence of EU conditionality (up until 1997), after a period of moderate EU membership incentives and harsh criticism from EU actors concerning the development in the subsector (1997-2000), and finally after a period of strong membership incentives and continued strong demands (2001-2004). I analyze responses of decision-makers and effects on policy-making structures in the latter two periods. Chapter 7 analyzes how and why the demands of the accession have affected implementing capacity in child protection in Romania. It is established that an island-of-efficiency-like structure has emerged and I analyze the implications for implementing capacity and how this development is linked to the demands of the EU accession. The chapter also engages in a more speculative discussion about what is likely to happen with this structure in a longer run. In the conclusion I analyze whether efforts to meet EU requirements have had positive or negative effects on implementing capacity and why this is so.

The study is concluded in Chapter 8. I summarize the answer to the empirical question in the study. The chapter returns to a general discussion about why EU adaptation and implementing capacity-building may be in conflict or be mutually reinforcing and explicates some arguments about factors behind positive and negative effects. I also discuss whether the theoretical framework has proven useful in the empirical study and what other cases it might be applied to.

Before beginning this journey I will briefly elaborate on the perspective on change and continuity of the state that the study rests on.

CHANGE AND CONTINUITY OF THE STATE

This study puts stress on reform responses of governments as a key to explain why EU conditionality may have effects on implementing capacity. The reader may associate this with a voluntaristic perspective on state-building, i.e. that reform outcomes follow the intent of policymakers. I, however, make no assumptions that alterations follow automatically from reforms or that they are the intended consequences of the same. On the contrary, the very focus of this study – i.e. effects on policy-making structures of government efforts to live up to EU standards – implies that we are entering the realm of often unforeseen consequences.

A voluntaristic perspective is based on a metatheoretical assumption that actors are autonomous in relation to structures, i.e. they have perfect freedom of choice as well as capacity to act vis-à-vis structures. Most observers of the world ought to agree that this is not the case. The present study rests on the far from original metatheoretical standpoint that actors¹⁴ and structures¹⁵ are mutually dependent (cf. Giddens, 1979; Lundquist, 1987; Rothstein, 1988). Actors can reflect on their situation, act intentionally and have considerable autonomy to make choices, but cannot do so independent of structures. Structures have a limiting and enabling effect on perceptions and actions, that is, they condition the choice of alternatives and the feasibility of various courses of action.

14 In this study focus falls on collective actors, like a government or an implementing agency, but it is of course always individuals that make decisions and take action. When possible I will, however, stay at the collective level and only resort to individual behavior when necessary, i.e. when a relevant act is carried out by an individual who does not act principally in the role of a member of the group or organization.

15 With structures I refer broadly to patterns of ideas and behavior and the resources that are tied to these (cf. Lundquist, 1987:40). Structures are stable to different degrees, e.g. patterns at the system level or more readily modified institutions. Institutions are incorporated in the generic concept and can be defined as “the rules of the game in society, or more formally, the humanly devised constraints that shape human interaction” (North, 1990:3). Institutions can both be formal and informal (e.g. norms and codes of behavior) and organizations can be seen as carriers of institutions (cf. Jepperson, 1991:150).

Since actors are not perfectly informed and capable vis-à-vis structures the outcome of their actions will often not coincide with intent. Structures are reproduced or changed as an effect of a constant interaction between actors and structures. Change is, however, always carried out by actors, i.e. state institutions never change automatically but as a consequence of the actions and reaction of officials.¹⁶

This implies that state structures are marked by inertia or “stickiness”. That states are characterized only by incremental change and that “history matters” is of course a theme in many theoretical perspectives, whereas there are different ideas how best to understand the stabilizing factors.¹⁷ This study rests on a historical institutionalist understanding of change and continuity. At the heart of this perspective is the concept of *path dependence*, which implies that social processes are characterized by increasing returns – i.e. once a country or organization has started down a track the costs of reversal are high. This does not imply that there are no choices of action or that the “past neatly predicts the future” (North, 1990:99), but change is bounded. According to Pierson (2000a:252):¹⁸

In an increasing returns process, the probability of further steps along the same path increases with each move down the path. This is because the *relative* benefits of the current activity compared to other possible options increases over time. To put it in a different way, the costs of exit – of switching to some previously plausible alternative – rise.

16 For a more elaborate discussion of an actor-structure approach see e.g. Johnson (2003:215-223).

17 For example sociological institutionalism emphasizes norms and a “logic of appropriateness” as factors of stability (see e.g. March & Olsen, 1989), whereas in one strand of the actor-centered institutionalism it is argued that institutions persist as long as they serve the interests of dominant actors (see e.g. Knight, 1995).

18 The perspective on path dependence advanced by Pierson among others can be called a narrow conception, whereas there is a dominant broader version where path dependence refers simply to the fact that preceding stages have a causal relevance for outcomes or that “history matters”, which leaves us with a blunt analytical instrument.

The literature on path dependence has presented the twin-concept of “formative moments” or “critical junctures” (Jepperson, 1991; Thelen, 1999:388-392; Pierson, 2000a:263). These concepts refer to those branching points when critical choices are made, i.e. events that become subject to increasing returns processes. Institutional arrangements that emerge during formative moments may have far-reaching consequences and are likely to become more resistant to change at a later point. Central to arguments about path dependence is that timing and sequencing of events are essential since earlier events matter more than later ones and that “large consequences may result from relatively ‘small’ or contingent events” (Pierson, 2000a:251). There are thus good reasons to pay particular attention to formative moments (Pierson, 2000a:263). On the macro-level of the state formative moments are typically related to some type of major crisis when the existing institutional set-up is at odds with a rapidly changing situation. This implies that the very macro-structures of the state are under change and there is more freedom of choice for actors and radical reforms typically become a critical feature. It is generally argued in the institutionalist literature that the period following the dismantling of the communist regimes is a textbook example of a formative moment or a period of “extraordinary politics” (Kitschelt, 2001; Haggard & Kaufman, 2001:1; Knill, 2001:32; Johnson, 2001:275).

Within this overall understanding of change and continuity the focus in this study falls on, in this perspective, short processes. The causes and effects sought for are located relatively closely in time. From this follows that the role of actors has to be put to the fore in the theoretical framework.¹⁹ The discussion above about formative moments gives us good reasons to investigate this period in the development of the postcommunist state, to focus on radical reforms, and to suspect that patterns that emerge – also from “small” events – may have far-reaching consequences. With

19 From a pragmatic point of view it is evident that the importance of certain acts, and thus of constellations of actors, is related to how closely we located the consequences of interests (cf. Knill, 2001:4, 21-23).

radical reform I refer to reforms that encompass both major policy change and alteration of procedural and institutional aspects of policy-making. The assumption of the significance of radical reforms is in line with the historical institutionalist literature on policy feedback, where it is argued that changes in state structures most importantly are set in motion by major state interventions or government programs (see e.g. Pierson, 1994:39-46; Skocpol & Weir, 1985:119-121; Pierson, 2000a:259). When assessing the consequences for implementing capacity in the long-term we can only speculate, but the perspective of increasing returns may help qualify a discussion about more enduring effects.

STUDYING STATE CAPACITY

The ability of the state to pursue collective interests, e.g. to ensure economic growth, environmental protection or provide for public health care, has received steadily increasing attention in the academic debate. State capacity refers to the ability of the state to perform its key tasks, that is, to formulate and implement public policy. This chapter investigates the right side of the figure presented in the previous chapter, that is, the relationship between policy-making structures and capacity. Although the study is about the ability to implement public policy, this chapter explores the literature on state capacity. The reason for starting in this broader perspective is that there is an extensive literature to build on and the implementation function of the state is central in many contributions. The broad perspective advanced in studies of state capacity provides interesting insights that are not elaborated to the same extent in the implementation literature. The choice to subsequently focus on a more specific capacity – which will be elaborated in Chapter 4 – has strong support in the academic debate. It is often recognized that it is essential to define and delimit particular capacities and the broad concept is analytically too vague to guide empirical studies.²⁰ It is also important to note that, in

20 Some authors work with a number of different state capacities (see e.g. Grindle, 1996:8; Rockman & Weaver, 1993a:6; Lundquist, 1987:106), classified according to for example whether they are domestic or international in character or whether they are associated with the input side of the state (e.g. revenue extraction or policy formation) or the output side (e.g. implementation). It is widely recognized that it is difficult to make the general concept of state capacity operational. There is no agreement how to define state capacity or how to measure it. It is commonplace to assess state capacity according to some type of policy output – for example, economic growth or the level of public expenditure – but

line with many authors, I argue that we must examine policy-making in particular sectors or subsectors instead of trying to generalize about the overall capacity of the state. The same states are often strong in some areas and weak in others and the same type of institutional arrangement that induces effectiveness in one sector may impede capacity in another (Rockman & Weaver, 1993b:447; Weiss, 1998:4, 15-17; Peters, 2000:42; Howlett & Ramesh, 2003:62). This notwithstanding, the literature that I make an inventory of in this chapter, using the general concept of state capacity – incorporating both the formation and execution of policies, with different emphasis on one or the other function – and focusing on the macro-structures of the state, is useful to help identify key dimensions of the state to consider in the analysis and the main arguments about what type of structures promotes capacity.

It can also be established that state capacity – or implementing capacity for that matter – is a highly elusive phenomenon to examine. It alludes to an *ability* rather than to some specific characteristics of the state. Most studies focus on how various political systems and institutional arrangements affect the state's ability to act, recognizing, however, that these characteristics alone do not determine state capacity (cf. Rockman & Weaver, 1993b:446-447).²¹ This focus is partly motivated by the fact that these are factors that are influenced by institutional design, i.e. they can be altered through political decision-making and we are thus in the heartland of the subject matter of political science. This general perspective suits this study well, investigating radical reforms and alterations in policy-making structures as intervening links between external pressure and implementing capacity. There is, however, no consensus in the literature over what type of structures enhances capacity and it is generally recognized that the issue

studies often fail to take into consideration the ambition of governments (cf. Rockman & Weaver, 1993a:5-6). This casts doubt on whether we are actually measuring state capacity and makes it difficult to compare across cases.

21 Other factors that are commonly brought forth as important for state capacity are for example a skilled bureaucracy or financial resources (cf. Pierson, 1994:36; Geddes, 1994:14-15).

is highly context dependent (Rockman & Weaver, 1993a:39).²² The same type of state that shapes effective policy-making in Sweden, with well-organized groups in society and stability in the macro structures of the state, may not be appropriate in under-organized societies and a context of high institutional uncertainty.

This chapter has two overall purposes. Firstly, it serves to investigate what dimensions of the state and its relations with the environment the literature holds as important in analysis of state capacity and introduces the perspective in the study that will be further elaborated in Chapter 4. Secondly, it explores what values on these dimensions can be assumed to enhance state capacity in particular environments.

In the next section I give an overview of the literature on state capacity and position the study. Thereafter I construct two ideal types of the state – the embedded and the insulated state – based on arguments about the type of policy-making structures that promotes state capacity. This is followed by an elaboration of how these arguments are based on different assumptions about the environment.

“BRINGING THE STATE BACK IN”

The current wave of great interest in the state’s control and steering can be dated back to the so-called *statist literature* of the late 1970s and 1980s (see e.g. Krasner, 1978; Nordlinger, 1981; Skocpol, 1985). This literature was part of a more encompassing reaction in political science against the post-war behavioralist turn in the discipline. Instead of focusing on behavioral aspects of politics and individual level attributes behind political outcomes, political science started to return to some of its roots and investigate the

22 Since the early days of organization theory (see e.g. Barnard, 1968; Simon, 1997) until today’s literature on state capacity there has been a lively debate on which organizational structures are most conducive to collective action endeavors. As early as 1945, Herbert Simon argued that what institutional arrangements are most appropriate depends on the particular context and that it is a fruitless task to look for universal prescriptions.

impact of institutions and formal structures. Many of these works that highlight the importance of structures that condition individual behavior have been grouped under the label of *new institutionalism*.²³ The statist call to “bring the state back in” implied that the state should be treated as an explanatory variable and as an independent actor in political processes. The main concern is the autonomy of the state, i.e. the freedom of state elites to formulate policies independently of self-serving and conflicting interests in society. A central concept in this literature is state strength and a strong state in this perspective is an autonomous state that can overcome opposition and impose its preferences on society (for a discussion see e.g. Frøhlund Thomsen *et al.*, 2002:11; Weiss, 1998:26-28). This approach was soon met with criticism, most notably against the practice of treating the state as a unitary actor with coherent interests and preferences for policy (Peters, 2000:45). Focus falls on state structures at the expense of an account of styles of interaction and different interests within the state (Putnam, 1988:432).

More recent works in the state-centered tradition have been classified as *neostatist* (cf. Frølund Thomsen *et al.*, 2002), since they depart from and modify some of the assumptions in the earlier works. This perspective has been advanced most notably in the comparative political economy literature, focusing on the state’s capacity to foster economic development and its relations with the powerful economic groups (see e.g. Evans, 1995; Weiss, 1998; Gamble, 2000). It is argued that the relationship between autonomy and capacity is more complex than the statist maintained. Indeed, history shows that many autonomous states lack state capacity (tsarist Russia being an illustrative example) and that close ties with groups in society characterize many capable states (e.g. the Asian “Tigers”) (Weiss, 1998:55). The state’s ability to formulate and implement policy is

23 This focus on institutions reemerged not only in political science but also gained salience in other social science disciplines, in particular in sociology and economics. It is commonplace to divide the new institutionalism into three strands: the sociological, the rational-choice, and the historical variant.

enhanced if both the state and society are strong with close links between the two. We must pay attention to the character and quality of state-society relations. Instead of asking questions of “how much” state intervention and autonomy, we should focus on “what kind” or the style of interaction (Evans, 1995:10; Leander, 1997:7).

This neo-statist literature could be seen as part of the broader governance perspective, where a key concern is what happens to the ability of the state to be a vehicle for the pursuit of collective interests in a context of increasing globalization and private-public interdependencies. Focusing on the well-established democracies in the West, it is argued that the state is at best still in control of critical resources, such as a legitimate political mandate, which makes it a unique actor in public policy-making, but for most societal actors these types of resources are becoming less critical and the state is increasingly resource-constrained. The role of the state in modern complex societies is described in at times contradictory ways in this rather heterogeneous body of literature. Peters (2000) distinguishes between “old governance” and “new governance”, where the former is more state-centric, looking at the state’s capacity to steer complex interdependent systems (e.g. Peters & Pierre, 2000), and the latter more society-centered, focusing on the role of coordination and self-governance in networks (e.g. Rhodes, 1997).²⁴

This study is state-centric, looking at the ability of state actors to steer and coordinate implementation. It draws on these more recent accounts of the state in a sense that to understand issues of state capacity it is not enough to consider the formal organization of the state, but we must also inquire into actual behavioral patterns internal and external to the

24 Governance approaches have emerged from and are a part of various perspectives on the state (e.g. implementation literature, comparative political economy, public administration). The concept of governance has acquired many different meanings. There is an agreement that there has been an “erosion of traditional bases of political power”, but there is a debate on whether we are witnessing a decline of state capabilities or a transformation towards new types of governing resources (Peters & Pierre, 2000:195-196; Pierre, 2000:1-3).

state. The concept of policy-making structures refers to interrelations between actors (both central and local public actors and private actors) that are involved in policy-making, including formal structures as well as behavioral patterns. At the center of attention is accordingly how various actors are linked in policy-making endeavors. It can be noted that when I classify states as strong or weak I refer to the degree to which policy-making structures promote capacity as well as autonomy from self-serving interests.

THE EMBEDDED AND THE INSULATED STATE

Within the literature on state capacity there are opposing ideas about what type of state enhances capacity. At the heart of this debate is whether political authority should be concentrated or deconcentrated. The traditional view has been that concentration of authority and responsibilities promotes capacity. In a system where powers are not shared between branches of the central state and levels of government there is less risk that policies will be blocked or become watered down versions of what was originally intended than in systems where authority is decentralized and dispersed (cf. Rockman & Weaver, 1993b:454). As will be demonstrated below, arguments that bring forth the capacity-enhancing potential in more deconcentrated arrangements of the state are, however, ever more common in the literature. This disagreement may seem puzzling and discouraging at a first glance, but is related to what aspects of state capacity – or what functions of the state – are at the focus of attention and the type of environment that is taken into consideration.

Based on this debate, two ideal types of the state can be constructed. These are based on extremes in the literature and most contributions are of course more moderate in their arguments.²⁵ The *insulated type* is associated with works in the original statist literature and with what is often called

25 An ideal type in the tradition of Weber is an analytical abstraction that does not capture a phenomenon as it is in the real world, but certain characteristics are picked

“the conventional view on government”. In the insulated state, authority is concentrated to the central executive, which leaves few formal veto-points in the policy-making process that various groups can use to block or slow down reforms (Knill, 1998:7).²⁶ The fact that formal powers are not shared between levels of government or arms of the central state is believed to ensure coherent and effective policy-making and make the state stronger vis-à-vis external actors. Policy-making in the insulated state is exclusive towards societal groups. When there are few points of contact between state and society there is from this perspective less risk that specific interests will capture policy-making and draw it away from the “societal needs” (for a discussion see Cummings & Nørgaard, 2003:2; cf. Migdal, 1988). Decision-makers are assumed to influence public and private actors through hierarchical top-down command. Subordinate actors comply even in the case of conflicts of interests because they hold this power as legitimate or they are forced to comply by a threat of sanctions.

The *embedded type* is based on works in the neo-statist and governance literature. The two most influential works in the neo-statist literature are Peter Evans’ *Embedded Autonomy* (1995) and Linda Weiss’ *The Myth of the Powerless State* (1998). Evans, writing about developmental states in East Asia, introduces the concept “embedded autonomy” and argues that

out and purified by the researcher. In this study it serves to capture two opposite poles in the debate and in the empirical analysis it can be used as a yardstick that gives structure to the comparison of states. This may facilitate the identification of relevant variations over time and space and help structure an analysis of the relationship between policy-making structures and capacity. In reality, any mix of these types may of course create fertile conditions for policy-making.

26 For example a unitary system like France is from this perspective assumed to be more capable than a federal system like the United States since it exhibits clear hierarchies and lines of command. In the latter, levels of government are not linked in a straightforward chain of command, which may inhibit coherence in policy-making. Similar arguments are made about parliamentary systems that are assumed to be more capacity-enhancing than presidential systems characterized by a separation of the executive and legislative branches (the United States again being an archetype of a pure presidential system whereas countries like France have a mix between the two systems) (Howlett & Ramesh, 2003:62-63).

capable states have close ties with certain parts of society. States have to be able to mobilize cooperation with and resources from society. Weiss elaborates the concept of “governed interdependence”, referring to specific types of institutionalized links between state and society. By sharing authority with industry while keeping a coordinating role, the state gains power to implement and enforce economic policies. Institutionalized negotiations facilitate compliance in implementation and a sharing of resources.²⁷ Evans and Weiss point out that state-society linkages do not by themselves foster state capacity and in some contexts these may breed rent-seeking. The authors hold that the state must be “both distant and close” (Weiss, 1998:64). The core of the bureaucracy should be insulated from whims of political leaders and direct pressure from interests in society in order to ensure coherence in policy-making (Geddes, 1994:20-21; Evans, 1995:244; Weiss, 1998:49).

In the ideal type embedded state public authority is vertically and horizontally deconcentrated, which is assumed to facilitate specialization and expertise in policy-making as well as flexible exchanges with external actors. An inclusionary policy-making process provides fertile conditions for the mobilization of resources and consent of private and public stakeholders (Orenstein, 2002:14-15). By giving up some of their autonomy in policy formation governments gain capacity in implementation, since stakeholders that might otherwise have opposed implementation are co-opted. From this perspective, if power is concentrated in a few governmental agencies, the state is more vulnerable to capture than when power is dispersed among institutions, creating a system of checks and balances. Deconcentration may enhance the overall capacity to change

27 These arguments are related Michael Mann’s (1988) analysis of the evolution of the modern state and the contrast between “despotic” and “infrastructural power”. Despotic power implies that the state can take action without negotiating the terms with society. Infrastructural power is the ability to mobilize society to ensure coordination and effective implementation. Whereas pre-industrial states could rely on despotic powers, modern states have to develop their infrastructural powers in order to be strong.

conditions in the environment. By empowering public authorities closer to societal actors, the loss of control at the center may be less substantial than the gain of power vis-à-vis the environment at lower levels (Peters & Pierre, 2000:49, 78). From this perspective a strong state is not a state that can impose its preferences on society, but a state that can coordinate joint projects and mobilize resources for its purpose.

The two ideal types are summarized in Figure 2. The first two dimensions in the figure measure what has earlier been referred to as the degree of concentration of political authority. The first dimension concerns the vertical concentration of authority, that is, the degree of *decentralization/centralization* to the national level. The second is the degree of horizontal concentration of authority, i.e. whether competences are *dispersed* within the national level between several state bodies or *concentrated* in one or a few (cf. Pierson, 1994:32-33; Knill, 1998:5). The third dimension concerns the character of state-society relations and whether the policy-making processes is *exclusive* or *inclusive* in relation to societal groups. The final dimension is the dominant mode of interaction from the perspective of decision-makers at the center. A distinction can be made according to whether decision-makers *cooperate* and negotiate with public and private actors in the formation and implementation of public policy or whether these groups receive *commands* from above or the center. In the case of cooperation actors have an opportunity to influence policy-making and compliance is relatively voluntary, whereas in command type of interactions they can only comply or obstruct and influence strategies are backed by coercive resources. These are of course very crude categorizations and for example within arguments for inclusion of societal groups are differences as to whether the state should cooperate with a few large organizations or with a multitude of different groups.

Figure 2. Ideal types of the state

	The embedded state	The insulated state
Vertical distribution of authority	Decentralized	Centralized
Horizontal distribution of authority	Dispersed	Concentrated
State-society relations	Inclusive	Exclusive
Modes of interaction	Cooperation	Command

THE IDEAL TYPES AND THE IMPORTANCE OF CONTEXT

Arguments behind the two ideal types are based on different assumptions about relations of dependence in policy-making and the strength of the central state vis-à-vis other public actors and societal groups. Interrelations in policy-making are characterized by interdependencies, which emerge since in an environment where there is a scarcity of most resources all actors are dependent on resources of other actors in order to influence policy-making (Rhodes, 1997:36-37; Scharpf, 1978; Coleman, 1990:29). A seemingly dominant party in terms of hierarchical authority or control over monetary resources can be highly dependent on subordinate groups, for example for information or skills (Scharpf, 1978:359). If nothing else, the former is always dependent on the compliance of the latter. Interdependencies may, however, be more or less symmetrical.

In the insulated state, interdependencies are highly asymmetrical in favor of central state actors. Arguments that an insulated state shapes effective policy-making are based on an assumption about “institutional insulation

and homogeneity” of the state (Peters & Pierre, 2000:81). State actors do not have to engage in bargaining and partnerships with societal actors in order to execute their tasks and achieve their goals. The embedded state is characterized by more symmetrical relations. A basic assumption is that central state actors are dependent on the resources of private and public actors for effective policy-making. Based on this reciprocity in dependence relations cooperative influence strategies are needed to ensure effective policy-making rather than top-down command.²⁸ In the embedded state that promotes capacity society is strong in the sense that interests are organized in cohesive groups.²⁹ It relies on the existence of a meso-level of organizations (e.g. umbrella organizations of interest groups, professional associations, associations between local governments, political parties etc.), where interests in society and conflicts are mediated.³⁰ The embedded type is also based on the assumption that local governments have resources that can be mobilized for policy-making endeavors.

The insulated state relies on authoritative and coercive resources and a Weberian-type bureaucracy (i.e. strict functional and hierarchical division of labor, a professional career civil service, principles of legality and impartiality, and a strong public service ethos). In the embedded state other bureaucratic competences like brokerage abilities and communication skills are valued (Peters & Pierre, 2000:198). In the insulated state vertical channels of interaction – where influence strategies and exchanges are

28 Within this different emphasis on hierarchical or horizontal channels of interaction it may be pertinent to point out that authority structures are basic to all state action, but policy-making can rely more or less heavily on authority modes of steering.

29 The strongest case for the importance of a “strong society” for governing capacity may be Robert D. Putnam’s *Making Democracy Work* (1994). Putnam argues that a well-organized and vibrant civil society is essential for the capacity to solve collective action problems in the public realm.

30 Mancur Olson has argued this point persuasively. If there are many encompassing groups in society, conflicting and narrow self-serving interests will be mediated to a degree before they enter the public realm (Howlett & Ramesh, 2003:70 with reference to Olson, 1982).

communicated in a one-dimensional chain of command – are well-established, whereas the embedded state relies more on developed horizontal channels, i.e. across units that are not organized in a simple hierarchy. It can be noted that the literature on the insulated state tends to be more focused on establishing autonomy in policy formulation than on the complexity of implementation (cf. Geddes, 1994:114), whereas the literature on the embedded state is more concerned with the ability to implement and change conditions in the environment.

Both a concentrated state that is exclusive towards societal groups and a deconcentrated state that has intense exchanges with society can be highly ineffective. If a concentrated structure is not matched by the features described above – where the center is relatively independent from other groups and has resources and means to influence these – it will be very difficult for decision-makers at the top to manage effective policy-making. In a similar way, in a deconcentrated state where government structures are porous but interests and conflicts in society are not mediated to some extent, there is a risk that reform efforts will be blocked and policy-making become a zero-sum game. Both a concentrated and a deconcentrated system may be subject to state capture, where special interests have an undue influence on policy-making and gain control over state resources. In a concentrated structure a lack of a system of checks and balances may be a fertile ground for capture, whereas in a deconcentrated system with multiple points of access parts of the state may come under the control of particular interests leaving a fragmented system and an incoherent policy-making process.

Considering that societies of today, at least in the developed world, bear more resemblance to the conditions that have been described in relation to the embedded state, it seems plausible to assume that states are likely to have to feature some embedded traits in order to ensure effective policy-making. The profound implications of increasing complexity, where society is ever more differentiated and collective action depends on the contributions of multiple actors who are increasingly interdependent, have received extensive attention during the last decades (Thompson, 1967: ch. 6; La Porte, 1975:ch. 1; Lundquist, 1987:65; Pierson, 2000b:483).

A common line of argument in the literature on state capacity has been that in well-organized societies flexibility and decentralization strengthen the capacity of the state, whereas in developing societies authority should be concentrated at the center until some coherence and resources for control and steering have been established (Peters & Pierre, 2000:83). A relaxation of institutional coherence and an increased number of points of access for societal groups may in this environment be detrimental and breed rent-seeking. In designing institutional arrangements a paramount task in this type of countries is often to ensure that conflicting and self-serving pressures do not afflict the state and considerations for effective implementation can only come second to this (cf. Rockman & Weaver, 1993b:466). In more recent accounts it is, however, often stressed that also other states than those in the West are situated in a historical context that is becoming ever more complex. This implies that policy problems require more expertise and coordination and relations of dependence are becoming ever less straightforward (i.e. not ordered in a chain of command). Concentration of authority at the center was for example part of the explanation for the remarkable strengthening of the German and Japanese states in the immediate post-war period, but states that have become stronger more recently have been characterized by more differentiated authority structures (Peters & Pierre, 2000:167-168). Peters and Pierre (2000:172) suggest that:

[B]uilding state strength through centralization or decentralization – to the extent that there is a real choice here – are not current choices. The two state models are logically embedded in different external environments and therefore strength is derived from different institutional configurations at different points in time.

To take this discussion further we clearly have to investigate a more specific environment, which will be done in the next chapter about a postcommunist context.

CONCLUSION

The discussion in this chapter has been abstract since it makes little sense to deepen the perspective until the more specific state capacity has been elaborated. This will be done in Chapter 4, where the discussion is also moved to the level of policy sectors or subsectors. Implementation is a key function of the state and in studies that use the broader concept of state capacity this function is generally included. This does not mean that there is a straightforward relation between state capacity and implementing capacity in the sense that from a study of implementing capacity we can draw conclusions about the overall level of state capacity. Firstly, states may have high capacity to perform certain functions, but low capacity in other regards. Just because a government is successful in implementation steering, one cannot assume that it is equally able to innovate or formulate effective and collectively desirable policies. Secondly, the level of capacity is likely to vary between policy sectors of the state and we can accordingly not simply generalize the result from a study of a particular sector. It can also be noted that the same institutional arrangements that enhance capacity in one sector may be less appropriate in another, due to the character of the policy problems and the relations of dependence (cf. Rockman & Weaver, 1993b:447).

This inquiry into the literature on state capacity has served two purposes. Firstly, it has investigated what features of the state we need to consider in order to understand issues of state capacity. Focus falls on how public and private collective actors are linked in policy-making endeavors. A key to state capacity is how formal structures and modes of steering and coordination match underlying patterns of dependence. Secondly, the chapter has presented two ideal types of the state both of which have been advanced as creating opportunities for effective policy-making. A concentrated structure of top-down steering is likely to be effective in a system where the center is strong vis-à-vis other policy-making actors and where hierarchical authority channels are institutionalized, whereas a deconcentrated structure and cooperative modes of interaction are effective in a system of symmetrical dependence relations and well-established

horizontal channels of interaction. The concepts of the embedded and insulated state refer to these broader types of policy-making structure rather than only to the formal aspects of the system.

A POSTCOMMUNIST CONTEXT

Countries under transformation from some type of authoritarian regime towards a democratic political system face special policy challenges and problems of policy-making. These challenges do not just materialize in the immediate transition phase when formal democratic institutions are installed, but also in the longer-term process of consolidation and of reshaping various public sectors. In relation to other countries under transformation the former communist ones share some common structural legacies and extraordinary demanding transformation tasks. The overall purpose of this chapter is to explore postcommunist policy-making structures from the state capacity perspective that was introduced in the previous chapter. The natural reaction to any attempt to generalize about communism and postcommunism is that these countries are far from uniform, but have different precommunist and communist traditions and face different postcommunist environments and challenges. This objection is indeed justified and has implications for the discussion in this chapter. The analysis is kept on a rather abstract level – investigating overall development paths and state-building challenges that are likely to be pronounced in this environment – and when necessary I elaborate on important variations between countries. Focus falls on the EU applicant countries in East Central Europe, where similar external environments and policy goals have shaped the postcommunist transformation path, i.e. democratization, marketization, and EU accession. In empirical studies one of course has to investigate the particular conditions in countries and sectors, which in my case will be done in Chapter 6 and 7.

The chapter starts with a characterization of the communist state, followed by sections about the transformation process and postcommunist policy-making structures and state capacity. In the conclusion I elaborate some broad arguments about what changes in policy-making structures that are likely to be necessary to enhance capacity in this context.

THE COMMUNIST STATE

When the dramatic but yet surprisingly peaceful revolutions swept the Soviet Union and the satellite countries in the late 1980s and early 1990s all the countries had the same type of system of governance, although with substantial variations. State structures were originally designed to serve the strategic and developmental goals of communism as formulated in the Soviet Union. When discussing the communist state one must make a distinction between the state during the first decades of communism and the state as it evolved starting from the destalinization period, which encompassed a weakening of communist institutions.

The political systems all over communist Europe were constructed after the model of the Soviet Union. The all-encompassing goal of the Leninist State was world revolution and the party was “the modern priesthood” interpreting the Marxist-Leninist ideology (Janos, 1996:5). After the death of Lenin in 1924 Stalin consolidated power after an intense struggle over the goals and means of the ideology. The fundamental purpose of the Stalinist State was not only to promote communism worldwide but also massive and forced industrialization (Janos, 1996:8). A precondition for the radical restructuring project was an extreme insulation from societal groups, who had to bear the immense costs of the communist transition (Geddes, 1994:5). The Stalinist State is often classified as *totalitarian* (Rigby, 1992). A totalitarian state is designed to promote the goals of the ideology and its domination over the economic and social sectors is next to total. State-society linkages are created to repress and control society (cf. Tarschys, 1976:325). The principle of “democratic centralism” came to be characterized by extreme centralization with strict hierarchical authority

chains – decisions were communicated from the top of the hierarchy downwards through the chain of command (Kullberg, 2001:10). The separation and insulation of different state institutions became a principal control strategy. Equally characteristic was the merger between the state and the Communist Party, where the machinery of the party controlled all levels of state administration. T. H. Rigby (1982:10) has characterized this system as “mono-organizational” and this was a consequence of the political leadership’s attempt to exercise total control.

In the destalinization period the means and goals of the regime became more incremental and pragmatic and the reach of political authority began to recede (Janos, 2000:ch. 6). The arbitrariness of the leadership was to some degree replaced by more formalized and predictable administrative procedures. This notwithstanding, the party still performed the functions that in a democratic system are expected to be carried out by a non-partisan administration and courts. The changes created some autonomy for subordinates and the citizenry. Andrew Janos talks about a “third worldization” of the communist state, meaning that officials used the increased freedom of action to enrich themselves at the expense of the population at large (Janos, 1996:13).

The satellite countries were before the communist take-over very different types of societies in terms of cultural and political traditions and economic development levels. The spread of Soviet-type communism was an attempt to standardize the countries of the region and the strongly centralized state was implemented at the end of the 1940s. When the pressure from the imperial center was somewhat relaxed in the mid-1950s, differences between the countries could come into the open. The Soviet interventions in Hungary and Czechoslovakia, however, marked the limits to the newfound freedom. At the dusk of state socialism the countries in East Central Europe differed substantially with regard to for example the scope and intrusiveness of political authority (Poland and Hungary manifesting more relaxed systems), the degree of arbitrariness and personalization of the regimes (Romania and to some extent Bulgaria being the main examples of arbitrary as opposed to quasi-legal regimes), and the degree of independent

organizational life in society (Poland and Hungary having the least weak societies) (Janos, 1996; Linz & Stepan, 1996).

POLICY-MAKING STRUCTURES AND STATE CAPACITY

From the perspective of state capacity, two overall features of the communist state deserve particular attention. The first concerns a dimension that has not been elaborated in the previous chapter, namely the scope of the state. The political system in the shape of the party-state apparatus was unprecedented in scope and spread out at the expense of organized groups in the economic sector and civil society (cf. Lundquist, 2001:49).³¹ Hence, collective action took place within the party-state machinery, which monopolized power and organizational life. Society was very weak and “pulverized into small fragments” as individuals sought to establish some autonomy from an arbitrary and ineffective state (Kullberg, 2001:13). Attitudes in society were dominated by low levels of trust and contempt for politics and authority.

The second overall feature is related to the discussion in Chapter 2. The communist state had some very strong insulated features, i.e. authority structures were extremely concentrated and policy-making was exclusive towards societal interests and relied on top-down command. In spite of the differences between the postcommunist countries, they all share a legacy of hierarchical and centralized state structures created as instruments of control and repression. The system was horizontally highly fragmented and there was a lack of institutionalized linkages and mediating institutions (O’Toole, 1997:3-4). Behind the formal system of the all-powerful and uniform hierarchy of the communist party-state a different reality existed, however (Kullberg, 2001:10). The informal networks and personalized circles that evolved were effects of the shortcomings and incentives of the

31 In most of the study I analyze policy-making in terms of state and society (or public and private actors), but at this point it is appropriate to differentiate the concept of society into an economic sector (consisting of private companies) and a civil society (consisting of private non-commercial organizations) in order to capture the particularities of the communist state.

formal system. The hierarchical and relatively arbitrary system, as well as the enormous privileges offered to central office-holders and the very serious personal consequences for individuals that were rejected, created a culture of insecurity and made politics a zero-sum game of intense personal struggles. To erect a buffer against the threat of banishment (and to keep the highly inefficient system going in its day-to-day activities), officials formed personalized circles and had strong incentives to obtain control over resources.

Turning to implications for state capacity, the late communist state is generally recognized as having had meager capacity to act and ensure effective policy-making. The weakness of the state could be observed in for example the development of considerable informal networks between state institutions, in the massive shortages of consumer goods, and the spread of rent-seeking behavior among party-state officials (cf. Nørgaard & Hansen, 2000:14). This can be related to both features described above. Firstly, the party's effort to achieve a monopoly of power created a highly inefficient state. The late communist state had considerable control over its citizens, but weak capacity to carry out economic and societal goals. As recognized in most literature on state capacity, scope and intrusiveness of political authority do not necessarily enhance state capacity (cf. Fukuyama, 2004). The fact that the state monopolizes power does not mean that it is "all-powerful". Certain groups can simply accumulate power by denying it to others and in this reduce the overall capacity to carry through change (Gross, 1989:208). Secondly, the late communist state lacked some basic conditions, which would have served to make this highly concentrated system effective, for example effective hierarchical channels of interaction. In addition, there was a relatively low degree of institutionalization – i.e. a mismatch between formal structures and actual behavioral patterns – as well as problems of self-serving behavior among state officials. Decision-makers at the top of the hierarchy thus lacked the means to make the party-state effective in its day-to-day activities and there was no organized activity outside of the party-state apparatus that could be mobilized for policy-making endeavors.

THE TRANSFORMATION PROCESS

The fall of the communist regimes in Europe was followed by great enthusiasm and optimism about the prospects for a swift transition to fully-fledged democracies and competitive market economies. Governments and international organizations from the West were quick to use the unexpected window of opportunity to assist the new friends in the East and to lay out the prospect of membership in various international organizations. The collapse of communism in Europe became the starting point of some of the most thoroughgoing reform projects in modern times, as well as of massive “export” of policy models and assistance projects from the West. The first years of optimism about the possibilities of the political elite to transform the systems according to specific blueprints was towards the second half of the 1990s gradually replaced by more sober accounts.

In the first years, scholars conceptualized the complexity of post-communist transformation in terms of a dual transition of the political and economic systems, or of democratization and marketization. In addition, some of the countries confronted the task of consolidating new borders of the state and the hurdles of (re)building a national identity (cf. the countries of former Yugoslavia and the Soviet Union) (Offe, 1991). Since the mid-90s it has, however, been increasingly recognized that the political elites have an additional and fundamental transformation task to grapple with, which is indeed a precondition for the success in democratization and marketization projects, namely that of reforming the state apparatus (Kochanowicz, 1994; Cirtautas, 1995; Nunberg, 1999:1; Fritz, 2004b:2). The collapse of the Communist Party meant that the extensive party apparatus fell apart leaving a dysfunctional state administration at all levels of government. The party had served to coordinate policy-making structures and in its absence authority structures were confused and responsibilities overlapping (Nørgaard & Hansen, 2000:15).

As a part of this development researchers and practitioners have as noted in the introduction identified a lack of state capacity as the most serious obstacle to social and economic development in the postcommunist countries. According to Ganey (2001:1):

More than ten years after the spectacular collapse of state socialism, a consensus has coalesced around the following view: all countries that formerly belonged to the Soviet bloc have been afflicted by an acute crisis of state capacity.

The first years of the 1990s were characterized by state decline (Bruszt, 2002). Firstly, the scope of the state was reduced, which was indeed both necessary and desirable considering the legacy of the all-encompassing communist state. The development was driven both by spontaneous processes and by political efforts to privatize and liberalize the state. Secondly, the capacity of the state to perform basic functions – e.g. to uphold rules and rights in society, to resist capture by self-serving groups, to regulate the economy, and implement reforms – was generally very weak.

The countries of ECE that have been engaged in the EU accession process have in many respects accomplished transformation remarkably well and today liberal democratic constitutions, main structures of political-administrative machinery, and functioning market economies are in place. The new EU members since May 2004 stand out within this group as successful reformers, whereas the two Balkan countries, Bulgaria and Romania, have experienced more troublesome transformation processes, in particular Romania. In spite of these important accomplishments, the countries have been plagued by lingering problems of large implementation gaps and unintended consequences of reforms. This has impeded the “second generation” of reforms comprising different public sectors, following the “first generation” of reforms comprising state withdrawal and constitution-making.³² Since 2000 the EU Commission has put particular emphasis in its yearly reports on the progress in the applicant countries on problems in implementing the *acquis communautaire* and related reforms (cf. Pridham, 2002:959, 962).

32 These two types of reforms are of course partly overlapping in time. Reforms of state withdrawal can be assumed to require less state capacity than reforms to restructure public sectors (Kitschelt, 2001; Johnson, 2001).

THE DEBATE ABOUT THE ROLE OF THE STATE

Before investigating postcommunist policy-making structures and state capacity it is appropriate to elaborate further on the ideas and policy debate that have guided the transformation projects. The first years of postcommunism were dominated by neo-liberal ideas about a minimal and concentrated state (Nørgaard, 2000:1-2; Fukuyama, 2004). The evils of communism were diagnosed as having been caused by the all-embracing state and transition to modern competitive democracies was about downsizing the state and letting loose market forces. Privatization and liberalization were believed to cure the problems of postcommunism. This initial strong focus on reducing the role of the state and strengthen actors in the economic sector and in civil society has been explained as a reaction to the domineering role of the state under communism. The strong influence of neo-liberal policy advisors from the West is also emphasized in the literature. The general belief at this time was that the market was the appropriate mechanism to ensure transition to Western type systems as opposed to state-led transformation (cf. Linz & Stephan, 1996:9; Holmes, 1997; Nørgaard & Hansen, 2000:17).

In the mid 1990s critical voices started to be heard that the complexity of postcommunism had been underestimated. The measures taken so far had in general proven inadequate and liberalization and privatization reforms did not trigger the positive responses that had been expected. As a consequence of experiences of unexpected and undesirable outcomes and an increasing importance attached to the political goal to integrate with regional political and economic structures, it became evident the state had an important role to play (Nørgaard & Hansen, 2000:17; Goetz, 2001:1035). In the ECE countries, caught up in a highly complex EU accession process, the acute need to increase the role of the state became ever more pressing (cf. Bruszt, 2002). In order to qualify for EU membership and continue the transformation of various public sectors, the countries urgently had to increase the ability of the state to carry through reforms. In what could seem like a great historical paradox – considering the aspirations of the Soviet type state – the postcommunist state was too weak to guide a

transformation project, to enforce public policy, and protect the rule of law. In line with the discussion in the previous section it is often argued that the legacy of communism was weak states and that state capacity was further weakened by the policy choices made at the outset of transition as well as by spontaneous developments. Stephen Holmes (1997:32) brings matters to a head: “Destatization is not the solution; it is the problem”.

Since the late 1990s the discourse on the postcommunist state has thus centered on the importance of a *capable state*, i.e. a state with policy-making structures that promote capacity. The main issue is how to strengthen state capacities needed to perform new functions, rather than to diminish the role of the state. These ideas have been promoted in Brussels, but have also gained salience in the domestic policy debates and in the broader international discourse (cf. the ideas promoted by the World Bank). The question is of course what a capable state looks like, that is, what character policy-making structures should have in order to enhance state capacity in this context. It should come as no surprise that there is no agreement in policy circles on this issue. The EU, as the most important external source of influence in the ECE countries (Nunberg, 1999:262), does not officially promote a particular model of the state, but it is generally recognized that the enlargement process has far-reaching effects on state transformation. The criteria of the European Union for institution-building are, however, vaguely defined (Dimitrova, 2002:179). As put by Grzymala-Busse and Innes (2003:71):

For their part, the commissioners and EU member states insist that what they are exporting is not a ‘model of the state’ at all (because that would be close to imperialism) but simply technical ‘best practice,’ which happens to cover almost all areas of public policy.

In the official EU rhetoric, concepts like decentralization and public-private partnerships are ever present. A capable state here is a state that can promote specific policy goals in close cooperation with selected parts of society, that is, a state with some features that have been associated with the embedded

ideal type (cf. Nørgaard & Hansen, 2000:17). It is often argued, however, that in practice the EU promotes a technocratic regulatory state model and a state that has the ability to adopt effectively the legislation of the Union. This model is far from coherent but varies considerably between sectors (Grzymala-Busse & Innes; 2003:71; Moravcsik & Vacudova, 2003:46; Bruszt & Stark, 2003:82). In practice this implies a state with some features that are associated with the insulated state, e.g. a strong center and a Weberian type bureaucracy rather than a more differentiated and flexible organization (Goetz, 2001:1035; Dimitrova, 2002:179).³³

POSTCOMMUNIST CHALLENGES

In order to understand the dynamics of the postcommunist state and problems of state capacity one has to consider two interrelated processes. Firstly, postcommunist transformation entails scaling down the state and providing fertile conditions for actors in the economic sector and in civil society and establishing transparent relations between these three sectors. Secondly, state structures need to be restructured in order to be adjusted to the postcommunist environment and its policy challenges. In this section I will consider these two processes and implications for policy-making structures in turn and then elaborate on consequences for state capacity.

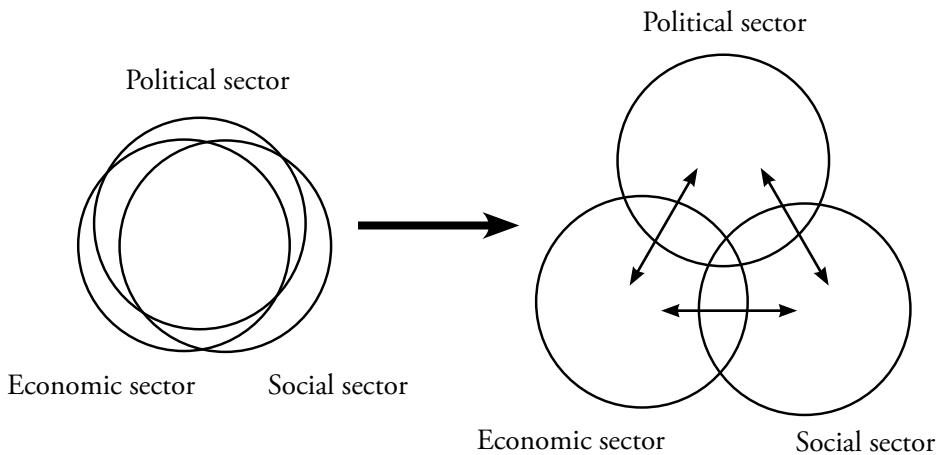
FROM AN ALL-ENCOMPASSING STATE TO A PLURALIST SYSTEM

Democratic political systems are characterized by a limited state, or sphere of political authority, and independent organizations in the economic sector and in civil society. The relationships between these sectors are essential for the governing of a country (cf. Lundquist, 2001:49). As discussed in Chapter 2 both public actors and private actors are often involved

33 This emphasis, which is in contrast to the recent trends of administrative reforms in EU countries (cf. new-public management practices), can partly be understood as a response to the substantial problems of politization of the bureaucracy in the postcommunist countries (Dimitrova, 2002:179).

in policy-making in pluralist systems and a key to state capacity is how actors are interrelated in policy-making endeavors. From this perspective postcommunist transformation can be illustrated with Figure 3. In an ideal type totalitarian system the state subjugates both the economic sector and civil society and democratization and marketization is about downsizing the state and creating benign conditions for organizations in the economic and social sector. The interrelations that emerge through spontaneous or politically controlled processes may be new but are more likely to build on old structures of interaction.³⁴

Figure 3. Transition from a totalitarian to a pluralist system



³⁴ Also in a pluralist system these sectors are of course partly overlapping – e.g. an organization may belong to more than one system, there are gray-zones between, actors from different sectors may be involved with similar functions, e.g. as social service providers etc. – and in the real world one can of course not separate three distinct sectors.

In East Central Europe the state has been scaled down, civil society groups have mushroomed, and the economic sector has been largely privatized. Compared to the situation in developing countries in the Third World, the ECE countries are economically and socially advanced (e.g. the level of education). Still, in relation to the situation in well-established democracies, groups in society have, particularly during the first years of postcommunism, often been under-organized and under-resourced. The meso-level of more broad-based organizations has been lacking, creating problems of mediation of interests (O'Toole, 1997:7-8). The weakness of society in this sense has had adverse effects on the potential for cooperative relations in policy-making. The slow emergence of effective and institutionalized linkages between private and public actors in policy-making – e.g. negotiation and consultation procedures or public-private partnerships in implementation – has been equally troublesome. As pointed out by numerous authors, there has continued to be a lack of cooperative relations and low levels of trust between state and society (see e.g. Rose, 1994; Smolar, 1996; Rose-Ackerman, 2001).

At the same time, interrelations in policy-making have in many contexts been characterized by blurred boundaries between private and public. Relating back to the figure, this can on an analytical level be understood in terms that the separation of the sectors or the emergence of a public-private divide is flawed. The strong communist time informal networks are generally perceived to have been partly dismantled together with the system and partly to have survived in new shapes. Through networks of former nomenklatura members, managers of state-owned companies, and other groups that profited from initial privatizations, self-serving interests are held to have penetrated state sectors in many countries (cf. Tucker, 2000; Ganev, 2000).³⁵ These problems of course plague postcommunist

35 In a book about economic reforms, Bruszt and Stark have argued that some communist time networks have a potentially positive effect on policy-making as “agencies of development” (1998:129). This argument has, however, been met with fierce criticism for not being empirically anchored and sufficiently elaborated as to under which conditions these networks can be turned into resources (Ganev, 2000; Tucker, 2000; Brabant, 2000).

countries to different degrees. In the worst-off countries, particularly in some former Soviet republics but also to some degree in a democratic country like Romania where the late communist system had totalitarian features (Linz & Stepan, 1996:347), the concept of state capture has been used to describe a situation when policy-making and state resources are controlled by particularistic interests (see e.g. Hellman *et al.*, 2000; SAR, 2003; 2004). In these cases interactions have been based on personal exchanges, where state officials have gained resources by “privatizing their business”, and outside actors gained non-transparent access to policy-making. Hence, in a postcommunist context state capture has often been effectuated by self-serving interests within the state.

Both these interrelated features – i.e. a lack of cooperative relations and institutionalized linkages in public policy-making and personalistic and predatory networks – are highly problematic from the perspective of state capacity and can be understood in the light of the legacy and the great complexity of traveling from a communist party-state to a pluralist order.

REFORMING THE STATE

Just as necessary as to reduce the scope of the state has it been to reform the state apparatus. It is important to recognize that the restructuring of the state has taken place simultaneously with a broad range of radical reforms inherent to the transformation process. Reforms of the state apparatus have typically not been a first priority and have often had an ad-hoc and agency-by-agency character rather than being the result of a coherent reform strategy (Nunberg, 1999:247; Goetz, 2001:1039). The task has consisted in restructuring communist-time organizations and institutions as well as in creating new ones – where the former practice has been the dominant feature (cf. Nunberg, 1999:245).

From the extremely concentrated features of the communist state a main movement has been towards a more deconcentrated structure. At the national level authority structures have been dispersed when for example the legislator and constitutional court have been empowered. Responsibilities have also been moved from the central ministries to the regional and local offices of the same. At the decentralized level, local

governments – which under communism were far from independent but served to execute decisions from above – have been granted substantial formal responsibilities and autonomy in the ECE countries. Still, subnational governments have generally had a weak resources base and have constituted relatively weak cooperation partners in policy-making (O’Toole, 1997:11). The relationships between the national government and local governments have often been unclear and contradictory and few links between the tiers have been forged. Steering from the center has remained a sensitive political issue and there is a much-testified problem of de-legitimization of the state (O’Toole, 1997:8; Ekiert, 1999:2).

But parallel to this efforts have been devoted to concentrate responsibilities by strengthening the functions of the central government to formulate policies and steer and coordinate policy-making. Reforms have for example aimed to create clearer definitions of roles for different actors within the machinery of the central government and improve mechanisms of policy coordination. The efficiency of authority structures has been circumscribed by overlapping and confusing arrangements. Barbara Nunberg in a comparative study of administrative reforms in the region argues that there has been “extreme informality and parallelism” (Nunberg, 1999:241). Decision-makers have often opted for faster informal channels and formal veto-players been bypassed in the policy process. “Bureaucratic layering” has been a response to coordination problems, i.e. a new structure is created such as ministers with “super-portfolios” responsible for broad policy themes in order to compensate for the rigidity of the ministries (Nunberg, 2000:19). At the central level a key task has been to adapt the line ministries – that before were directly involved in productive activities – to the new tasks, i.e. to regulate and steer policy sectors. According to Nunberg (1999:245), “structural conservatism and incrementalism have again been the rule” and ministries have been plagued by old dysfunctional practices. In administrative reforms, governments have generally opted for traditional Weberian-type models of centralized hierarchies, rather than a structure that is more decentralized and flexible in exchanges with other state agencies and the environment (Nunberg, 1999:264; Goetz, 2001:1034). In a comparative study of the Czech Republic, Estonia, and Hungary

from 2000 the same author suggests that though policy coordination has improved in the core of the central government, coordination across policy sectors and bureaucratic agencies has remained problematic (Nunberg, 2000; cf. Johannsen, 2004). Horizontal channels of interaction, that were highly underdeveloped during communism, have been slow to emerge and the state apparatus has remained fragmented.

THE RELATIONSHIP BETWEEN POLICY-MAKING STRUCTURES AND STATE CAPACITY

The weak capacity of the postcommunist state should come as no surprise considering these features of policy-making structures. Relating back to the discussion in Chapter 2, problems of state capacity in ECE can be understood in terms of a mismatch between arrangements of the state and actual patterns of interdependence. The postcommunist state is in general still relatively centralized although moving in the direction of more decentralization. Features that would have served to make a concentrated structure effective have, however, been lacking, that is, considerable policy-making resources at the center and effective and institutionalized hierarchical authority structures. Interdependencies in policy-making have become ever more complex when the central state has been weakened and other actors have emerged and grown increasingly stronger, leaving more symmetrical dependence relations than before. From this perspective it is clear that the move towards a more deconcentrated structure is necessary. But conditions that would serve to make state structures more embedded have been slow to emerge, i.e. resourceful local governments, coherent societal organizations, and horizontal channels of interaction. At the national level there have been tendencies towards re-concentration – often through informal measures and parallel arrangements – but there has still been an acute lack of real coordination. All this can be assumed to have contributed to problems of incoherence in policy formation and deadlock in implementation.

Problems of state capacity in a postcommunist context are also related to dimensions of policy-making structures that were not discussed in Chapter 2, namely the degree of institutional uncertainty and the degree to which

policy-making is inflicted by self-serving interests. In countries where the old system is being dismantled and new formal rules and organizations rapidly introduced, institutional turmoil is typically the result.³⁶ It is widely recognized that state capacity relies heavily on the level of institutionalization³⁷ of the arrangements of the state, be they concentrated or deconcentrated in character (Grindle, 1996:4; Weiss, 1998:18; Scharpf, 1997:136). The characteristics described above – where old structures, structures under change, and new ones overlap and informalism prevails – can be described as a situation of high uncertainty. Compared to other transformational contexts, the postcommunist one has been characterized by a “qualitatively higher level of uncertainty” (Johnson, 2001:262). This must be seen in perspective of the legacy of the *ancien régime* and the unprecedented scope of the transformation project. This type of situation of rapid change of the very macro-level arrangements of the state (cf. the concept of formative moments as discussed in Chapter 1) has created more freedom of choice for political elites, which was further exacerbated by the initial lack of organized interests that they had to negotiate terms with. It has, however, left a weak capacity for action or to control outcomes, since it becomes more difficult to organize collective action projects in a deinstitutionalized context (Johnson, 2001:257; Kullberg, 2001; cf. Brunsson & Olsen, 1990:15-16). The running of the day-to-day activities of the state requires that routine procedures are established and relies on a degree of predictability in the system.

Related to this, when office holders have more individual discretion they can act more arbitrarily (Blomkvist, 1988:312; Rose-Ackerman, 1999:177; Potucek, 1999). It is a well-known phenomenon that interactions are

36 This does not imply that these systems constitute institutional vacuums, but decision-makers are still restricted in their choices and actions by the existing institutional set-up and by resource endowments (cf. Bruszt & Stark, 1998:82; Nørgaard, 2000:8; Kullberg, 2001; Johnson, 2001:260).

37 The concept of institutionalization refers to the degree to which formal rules govern actual behavioral patterns (cf. Lundquist, 2001:136).

personalized when formal rules are out of play and the level of power struggles tends to increase (cf. Crozier, 1964; Pfeffer & Salancik, 1978; Pfeffer, 1981). In a situation of institutional uncertainty there are less incentives for public officials to be oriented towards policy-making ends and more opportunities for self-serving behavior, which is likely to impede effective policy-making. The spread of corruption in many postcommunist countries (cf. Transparency International's Corruption perception index) and the phenomenon of state capture provide evidence that this problem has been real.

It is important to point out that these features and problems of state capacity have varied greatly between the countries. The discussion here gives a generalized and static picture. It serves, however, to identify some structural legacies, constraints, and policy tasks that all governments have had to grapple with, although to different degrees and over various long periods of time. In some countries these features characterized the first years of postcommunism and conditions for effective policy-making have gradually improved. The countries of ECE have clearly moved beyond the period of fundamental political uncertainty (Haggard & Kaufman, 2001:6; Fritz, 2004a; Johnson, 2001:253). This implies that the freedom of choice in policy formation is increasingly restricted and routine procedures and formal rules start framing policy-making leaving a more stable environment, which can be assumed to enhance state capacity (Haggard & Kaufman, 2001:10; Johnson, 2001:271).

A BRIEF DETOUR ABOUT VARIATIONS OVER TIME AND SPACE

Although the purpose of this study is not to explain variations in state capacity this section will be devoted to a brief glance at how differences between postcommunist countries have been explained in the academic debate. This may help to shed further light on the relationship between policy-making structures and state capacity in this context. Based on the ideas that have been advanced in relation to Figure 3, it is plausible to assume that the problems discussed above are more pronounced in countries where the communist time system featured extreme state domination over a weak society, than in countries with a less intrusive state and a degree of

independent organizational life. In the first type of context of totalitarian features – Romania being an example among the ECE countries – elites have been more unconstrained and there have been weak incentives to build up policy-making structures and to strengthen state capacity. There has also been a more severe lack of policy-making resources and institutional “raw-material” to support state-building. In countries like Hungary and Poland where the state was less all-encompassing and intrusive and a degree of independent organizational life existed under communism, there have according to this line of thinking been more constraints on elite behavior and there has been a better starting point in state-building (cf. Fritz, 2004a:8).

Comparative empirical studies of state capacity and reform success in a postcommunist context support this perspective and highlight the importance of elite constraints and the type of state-society relations in order to understand variations over space and time. To give a few examples from the literature³⁸, in an article dealing with the South East European countries

38 It can be noted that there are several contributions in the literature that either blame political elites for the “weak-state-syndrome” or resort to pure legacy-based explanations. In agency-centered or voluntaristic accounts it is assumed that if the political elites had made the right policy choices at the outset of transition and in the right order, legacies of the past could have been overcome. For a discussion of the agency-centered perspective as a dominant strand in the literature see for example Hanson (1998), Roberts & Sherlock (1999), and Ganev (2001). The crisis of governance is caused by lack of political will and flawed political strategies. Hence, the differences in the success of economic reforms between Poland and Russia could be explained in the terms that the Polish Finance Minister Balcerowicz carried through radical economic reforms whereas President Yeltsin of Russia failed to adopt similar policies (Johnson, 2001:254). Since the mid 1990s the agency-centered perspective has been most vigorously represented by a “blame-the-neo-liberals” paradigm (Ganev, 2001:3). The embracement of neo-liberal ideology led to neglect of state building. Contrary to this, in structure-based explanation it is argued that political will and choices of design are of little relevance. For structure-based explanations see for example Jowitt (1992), Ganev (2001), and Cirtautas (1995). The weakening of state structures came about irrespective of particular reform strategies (Ganev, 2001:5). Cultural patterns, institutional legacies, and starting conditions are the keys to understanding the general problems of state capacity as well as the differences between the countries. Hence, Yeltsin

(including Bulgaria and Romania), Krastev talks about the “reproductive power of the current state weakness” and partly ascribes vicious circles to societal disengagement in politics (2002:17-18). Krastev argues that there is a growing gap between the public and the political elite and that elites in the Balkans “have the extraction of the state as their dominant project” (2002:20-21). Bruszt argues that in the worst-off countries, networks of predatory groups inside and outside the state got a grip of the development due to the great uncertainties in the first years of the 1990s. The key to building state capacity is to strengthen mechanisms of accountability and representation that force decision-makers to “take diverse representations of the public good into account” (Bruszt, 2002:133). Broad based comparative studies of the postcommunist countries show that the most advanced reformers are those with most developed state-society linkages and political competition (see e.g. Fish, 1998). The European Bank for Reconstruction and Development’s comparative studies of reforms in the postcommunist region have found a strong correlation between the level of democracy and competition in the political system and reform accomplishments in for example the agricultural sector. It is argued that higher levels of political openness, transparency, and elite contestation create more checks on government and have increased the ability to resist clientelistic pressure as well as the efficiency in policy-making (EBRD, 2002: ch. 4).

In the few studies that focus more immediately on implementing capacity similar conclusions have been reached and arguments often explicitly run in the direction of the merits of a more embedded structure. Bruszt and Stark (1998:ch. 7) hold that a key to understanding variations in implementing capacity is the level of accountability and horizontal linkages, which increase coordination and legitimacy of reform. O’Toole (1997:8) in a study of Hungary concludes that although other factors are

failed where Balcerowicz succeeded not because of flawed strategies, but because of Russia’s much deeper erosion of state structures and the particular cultural and institutional legacy (Johnson, 2001:254).

likely to have caused implementation problems (e.g. scarcity of financial resources and lack of expertise), lack of interorganizational coordination and linkages have been the key impediment to implementation. In a study by Johannsen and Nørgaard (2004) based on an extensive interview material of officials in fifteen postcommunist countries, the authors show that lack of coordination and information is the second most commonly identified obstacle to implementation.³⁹

CONCLUSION

What changes of policy-making structures are essential to enhance capacity in this context? In Chapter 1 I referred to a postcommunist implementing capacity-building logic and the questions is what arguments can be made on this account. To elaborate on this with precision it would be necessary to look at a more concrete context and the phenomenon of implementing capacity has not yet been properly elaborated. Based on the discussion in this and the previous chapter one may, however, make some very general suggestions. Considering the structures inherited from the *ancien régime* – i.e. highly centralized, hierarchical, and fragmented – and the postcommunist situation in the ECE countries – i.e. more symmetrical interdependencies and an environment and policy tasks that are ever more similar to the situation in well-established democracies – a key to building capacity is to ensure the mobilization of a broad range of actors for policy-making ends and to strengthen channels of policy coordination. The EU candidate countries have since several years passed an acute state of transitional turmoil and are faced with the problem of implementing radical reforms. The great need to improve implementation functions has become evident in the course of the EU enlargement. Relating to the

39 The problem most referred to is inadequate resources and it is concluded that: “This partly reflects the realities of transition and the dire state of the economies, and partly the automatic response of administrators and politicians when questioned about policy failures” (Johannsen & Nørgaard, 2004:10).

distinction between the insulated and embedded state, with a focus on implementation and in the light of the changes that have already occurred it can be argued that reforms targeted on strengthening embedded features are likely to be vital. This may entail taking real decentralization measures and strengthening horizontal linkages between actors. In studies of state capacity in this context we also need to take into consideration problems of institutional uncertainty and self-serving interests in policy-making. A key to enhance state capacity in this context is to bring order in institutional arrangements and to induce commitment to policy-making ends. The great relevance of these dimensions for state capacity is recognized also in the more general theoretical literature.

This chapter has focused on some structural conditions and state-building challenges in a postcommunist context. The responses to these challenges have of course varied between different countries and sectors, which has shaped the development (cf. Nunberg, 1999:237). A key argument in this study is that EU accession has had an important influence on the reform measures of the governments. In the study from 1999 Nunberg concludes that the EU accession process is likely to have a great impact on the restructuring of the state apparatus (Nunberg, 1999:262), but this issue has received scarce attention in the literature. Before investigating this process in Chapter 5, it is now time to elaborate the more specific and operational approach to the study of implementing capacity, which will be done in the following chapter.

IMPLEMENTING CAPACITY

I have argued that it is necessary to analyze the ability of the state to perform more specific functions and this chapter elaborates the concept of implementing capacity. This focus is motivated empirically by the great problems of implementation gaps in the ECE countries. It has also been argued that we have to study capacity in particular sectors rather than to try to generalize about the overall capacity of the state. As a consequence, this chapter moves the discussion from the macro-structures of the state to the level of policy systems or subsystems. We are again investigating the right side of the process illustrated in Figure 1, that is, the relationship between policy-making structures and implementing capacity. In relation to Chapter 2 this chapter develops the more specific theoretical framework that will guide the empirical study. In this it also takes into consideration some factors that have been discussed in the previous chapter about a postcommunist context.

It can be noted that implementation studies have gone through a similar development as the literature discussed in Chapter 2, that is, from a conventional view on government to a governance turn since the beginning of the 1990s. Implementation was for long regarded as rather unproblematic by social scientists; once a decision was made it was assumed that the public administration would put into practice the exact intent of politicians. Implementation was seen as a task of appointed and elected officials. The traditional view was already challenged in the 1970s, with Pressman and Wildavsky's (1973) seminal work *Implementation: How great expectations in Washington are dashed in Oakland* as the most notable contribution. The book is a story about how political intentions at the center are not realized by lower levels of government. In the 1980s

there was an upswing of studies of implementation. The debate in the literature was to a large extent devoted to the relative merits of a “bottom-up” (e.g. Lipsky, 1971; Hjern, 1982) versus a “top-down” perspective (e.g. Bardach, 1977; Mazmanian & Sabatier, 1981) – a fact that has been seen as rather unfortunate in hindsight. The top-down approach focuses on implementation steering from the center. In the bottom-up or the “street-level” approach it is argued that the appropriate analytic focus is to study the actors actually involved in implementation on the ground and both informal and formal relations affecting implementation. This approach highlights the fact that networks of state and societal actors play a key role not only in policy formation but also in implementation. More recent observers agree that the two approaches are indeed not contradictory but complementary (Sabatier, 1993). During the 1990s implementation scholars have set out to develop more encompassing approaches that synthesize or leave the top-down/bottom-up debate behind (see e.g. Goggin *et al.*, 1990; Palumbo & Calista, 1990). It is generally recognized that systems of both public and private actors are involved in implementation and that it is often not a straightforward top-down process.

In line with what was said in Chapter 2, interest in this study falls on inter-organizational relations between public actors at different levels of government as well as private actors. At the center of attention is implementation processes from above, i.e. the implementation of policies where overall decisions have been made at the national level and the final responsibility for implementation rests with the central executive.

This chapter starts with a section about the policy-making process in order to clarify some points about implementation. Thereafter I elaborate the concept of implementing capacity, which is followed by a discussion about the relation between policy-making structures and implementing capacity. The final section presents how implementing capacity will be studied empirically.

THE POLICY-MAKING PROCESS

It is commonplace to make an analytical division of the policy-making process into different stages and on the most general level one can distinguish a formation phase (including policy formulation and decision-making) and an implementation phase. The latter refers to the process whereby overall policy decisions are translated into practice. It is important to note that this is an analytical distinction and in the real world these are of course not strictly separate processes (cf. deLeon, 1999). Formation and implementation may overlap in time, actors may be involved in both, and policy intent is often changed in the implementation phase. Although overall policies are shaped in the formation process, many decisions are often left to the implementation phase.

The character of policy formation is of great significance for the difficulties of implementation. As a result, we cannot study implementation in isolation from policy formulation and decision-making (Winter, 1990). This is related to two concerns: Firstly, the character of the policy that governments are to put into practice is of fundamental importance. The complexity of implementation is conditioned by the nature of the policy problem and by the extent of changes that are required for implementation. For example, a decision to open a new public library is more straightforward than a decision to reduce the number of people living under the poverty level. It can be noted that in the second case decision-makers will be more dependent on various actors with the necessary expertise and resources than in the first case (Howlett & Ramesh, 2003:192). Related to this, policies and the manner in which these are formulated can be more or less ambiguous. When a policy is formulated with high precision there is no discretionary power for implementers or room for negotiation and bargaining in the implementation phase (Matland, 1995).

Secondly, the nature of the formation process is of significance. If conflicts over policy content and implementation procedures are solved in the formation phase, there is less likely to be resistance in implementation (Matland, 1995). Actors whose compliance and resources are needed for implementation but have not been able to influence policy content

may continue their struggle in the latter phase and pose blockages to reform (Hill, 1997:134; Orenstein, 2002:14-15). This can be related to the discussion in Chapter 2, where it was established that studies of state capacity where a main concern is effective implementation have tended to emphasize the importance of an inclusionary formation phase.

Policy-making can be understood as interactions over influence and ideas of different actors. Policy-making takes place within *policy systems* or *subsystems*, which consist of public and private actors who are actively concerned with the policy issues in a sector (e.g. social policy) or subsectors (e.g. child protection) and whose resources or compliance are valued in that domain (cf. Howlett & Ramesh, 2003:53-54). Actors in a policy subsystem are called *stakeholders* and these do not always have to be directly involved in policy-making but may be bypassed by the dominant parties. Some of these are intimately involved in the policy process while others are only marginally so (cf. O'Toole, 1997:3). Hence, with policy-making structures at this level I refer to the actors in the subsystem and the interrelations in between them.⁴⁰ The character of these policy-making structures is a key to explaining the ability to steer and coordinate implementation. As put by Hanf and O'Toole (1992:213):

One of the most significant factors involved – indeed the one that, more than any other, is directly connected to the difficulties of steering – is the inter-organizational nature of the politico-administrative world.

40 The concept of network is often used to describe these kinds of inter-organizational systems of actors who are bound together by exchanges and interdependence (see e.g. Kickert *et al.*, 1997; Hanf & O'Toole, 1992). I choose not to use this metaphor since it leads us to think about a system where there are no central actors or hierarchical features and since the concept has been given so many different meanings that it has become analytically obscure.

THE CONCEPT DEFINED

Implementing capacity is the ability of decision-makers to ensure steering and coordination in the implementation of public policy. The last section of this chapter elaborates how this capacity will be studied empirically. At this point it can be noted that a common approach is to measure some type of policy outcome, that is, whether policy outcome follows policy intent. It is, however, analytically meaningless to classify everything that has to do with policy-making outcomes as symptoms of implementing capacity and problematic to use this as the only indicator of implementing capacity. In the type of countries at the focus of attention in this study, reform outcomes can for example be partly ensured by international assistance. In this case, implementation may have been “artificially enhanced” (cf. Johnson, 2001:262), that is, reform accomplishments are not related to the resources and structures of the state or to resources of actors outside the public realm that are mobilized for policy-making through more stable interrelations. Instead, accomplishments are due to external resources that have not been channeled through domestic policy-making procedures and have not built up policy-making capabilities, i.e. that have been suddenly added and can be equally sudden withdrawn.

The emphasis on steering and coordination in the definition draws our attention to the modes of interaction and, more broadly, to the character of inter-organizational linkages. Implementing capacity is about ensuring steering of and coordination between stakeholders who often have different perspectives, interests, and ideas about public policy. Coordination could be seen as a type of steering, if steering refers to all attempts by decision-makers to affect public and private stakeholders (cf. Lundquist, 1987:35). I choose, however, to talk about both steering and coordination, where the second concept refers to attempts to foster concerted and cooperative action between interdependent actors, rather than to influence separate actors to carry out the substance of a policy decision.

As elaborated by Lundquist (1987:35), implementation steering takes place in complex chains: “politicians affecting bureaucrats, higher bureaucrats affecting lower bureaucrats, and the state affecting members in

society”. It would not serve this study to examine these complex relations in-depth on this theoretical level. It suffices to establish that steering measures can come directly from the central executive, where politicians can use the authority vested in them to different degrees depending on for example the political importance of the particular policy. The de facto main actors in implementation are typically ministries and bureaucratic agencies. These are empowered to make regulations and control enforcement after overall policy-decisions have been taken (Howlett & Ramesh, 2003:69, 187). This notwithstanding, the final responsibility for implementation rests with the central executive.⁴¹ Interest in this study falls on steering and coordination that are targeted towards collective actors in the subsystem (but it is of course always individuals within organizations that respond) and it leaves out the enforcement vis-à-vis ultimate target groups (like citizens applying for social benefits).

The number and type of stakeholders and the nature of interrelations in a subsystem are related to the particular policy subsector (Scharpf, 1978:363). Some policies are rather straightforward and can be handled effectively in a one-dimensional chain of command. The implementation of a new regulation may be carried out by a bureaucratic agency and the task of steering is straightforward. Others are more complex and require the participation of many different types of actors, creating task interdependence across formal organizations. In contemporary societies most implementation tasks take coordination between public actors at the national level, i.e. various ministries and bureaucratic agencies, between public actors at different levels of government, and between public and private actors. The need for coordination will be high if implementation of a policy requires the cooperation and contributions of many separate actors, that is, if task interdependencies are multiple and run across organizational units (Scharpf, 1978:350). In many cases, effective policy-making relies

41 There are of course other types of implementation processes than that of interests here and where authority does not rest with the central executive but with for example local governments.

on a degree of spontaneous coordination or mutual adjustments, since it is highly costly to control directly from above. Implementing capacity cannot only be understood in terms of direct steering and coordination measures from the center, but it is also important whether policy-making structures provide fertile conditions for routine procedures and, when necessary, spontaneous coordination.

INTERRELATIONS AT THE SUBSYSTEM LEVEL

What aspects of policy-making structures should to be taken into consideration in a study of implementing capacity? In this section I will adjust the discussion in Chapter 2 to the issue of implementing capacity and the level of policy systems or subsystems. Again, important dimensions are how public authority is vertically and horizontally distributed, the type of state-society relations and the dominant mode of interaction.

CONCENTRATION AND DECONCENTRATION

Implementation can as discussed above be handled by a single bureaucratic agency directly subordinated to the government or interdependencies may run across organizational units and the central government may be dependent on local governments for implementation. Just like on the overall level of the state, authority and responsibility for a policy subsector can be *horizontally dispersed* or *concentrated* and *vertically centralized* or *decentralized*. In a concentrated system (i.e. both horizontally and vertically) there is less need for coordination and steering takes place in a structure of non-overlapping hierarchies. A deconcentrated structure (i.e. both horizontally and vertically) requires more coordination and the task of steering becomes more complex. When large organizations like central ministries are involved in implementation, it may be of relevance to take into consideration also intra-organizational relations. A ministry can be highly coherent and hierarchical or more fragmented and flexible towards the environment, with implications for policy-making.

STATE-SOCIETY RELATIONS

Societal groups may be involved in implementation through private-public partnerships where a private actor becomes an implementing agency (e.g. a private company that is made responsible for an information campaign). But relationships may also be subtler where private actors are performing similar functions as state actors and coordination would have facilitated more effective implementation (e.g. a human rights NGO that works to promote equal rights for men and women parallel to a government reform). Public actors may mobilize the expertise, organizational resources, or clientele contacts of private actors for implementation tasks (e.g. NGOs, research organizations, and mass media) in order to make implementation more effective. Private actors are of course also often a target group of a policy, e.g. private schools that have to follow some new regulations. The terms *inclusion* and *exclusion* can again be used to capture the degree of private-public cooperation in implementation, although these concepts do not refer to steering measures towards final target groups.

MODES OF STEERING AND COORDINATION

In Chapter 2 I made a very crude distinction between two modes of interaction. At this level it is necessary to elaborate a more detailed classification scheme. What different instruments may decision-makers use to steer and coordinate implementation? There are numerous suggestions in the literature how to classify these (see for example Etzioni, 1961; Lindblom, 1977; Lundquist, 1987; Stoker, 1991). On the most abstract level influence forms can be sorted on a coercion–consensus continuum. Coercion implies that B complies with the steering measure of A because she/he has to, whereas at the other end of the continuum compliance is voluntary (cf. hard vs. soft influence forms). A common more elaborate way to classify influence forms is according to the main resources these draw on. Based on this three types can be distinguished (although this classification does not exhaust all possible types); instruments can rely mainly on authoritative resources, on financial resources, and on informational resources. *Authority instruments* refer on a more concrete level to the use of commands, e.g.

laws, executive orders, standards, and prohibitions and are basic to all state action. Other types of influence forms are generally highly costly and without authority modes of influence – where compliance is ensured by the legitimacy vested in the government or by the threat of sanctions that do not usually have to be put in force – the day-to-day activities that uphold the public sector would be impossible. If authority instruments have to be backed by a use of sanctions on a regular basis because of a lack of legitimacy, it will, however, be highly costly to ensure compliance (cf. Lundquist, 1987:113; Coleman, 1990:68). *Financial instruments* can take the shape of financial transfers or incentives and disincentives and are often sorted under the more abstract concept of exchange modes of interaction. While the final choice is left to the individuals, the costs and benefits of various alternatives are manipulated. Finally, *information instruments* are often sorted under the concept of persuasion modes of influence, where A tries to change B's perceptions of reality. More concrete instruments are for example information campaigns or manipulation of information flows. Authority modes of interaction are generally close to the coercion end of the continuum, backed by threats of sanction, whereas financial and information instruments are typically more consensus based influence forms in a democracy. Persuasion can, however, be a relatively hard instrument if A is in control over a substantial part of B's information and the same is true for financial instruments when B relies heavily on the financial resources of A.

Influence strategies can also be sorted according to whether they aim to affect policy output directly or only indirectly by altering the policy process (e.g. the creation of corporative channels of interests representation or the manipulation of information flows). *Substantive instruments* aim to affect the substance of policy output and *procedural instruments* are directed towards altering or manipulating aspects of the policy process (Howlett & Ramesh, 2003:196). The classification scheme is summarized in Figure 4.

Figure 4. Modes of steering and coordination

		Steering content	
		Substantive instruments	Procedural instruments
Influence forms	Authority instruments		
	Financial instruments		
	Information instruments		

EMBEDDEDNESS AND INSULATION REVISITED

What type of policy-making structures can be assumed to be conducive to implementing capacity? The ideal type conceptions of embeddedness and insulation are useful analytical devices also at this level, although the discussion has to be refined. In the literature one can find arguments both for a concentrated and deconcentrated implementation structure. It is for example commonly argued that the difficulties of implementation increase if the central government relies on local governments in implementation. Local governments often have different objectives and are not directly subordinated to the center. In a similar way, if many state actors are involved at the national level and societal groups have access to the implementation process there is greater risk that policies will be implemented in an uncoordinated fashion or blocked (Rockman & Weaver, 1993b:456-457; Feigenbaum *et al.*, 1993:49, 105). In other studies it is emphasized that effective implementation in modern societies requires the cooperation of and mobilization of resources from many different types of actors in the public and private realm. Hence, the traditional model of hierarchies and commands is not sufficient to ensure effective implementation, but formal

structures should be deconcentrated and decision-makers have to use more consensus-based instruments of steering and coordination (Hanf, 1978:2-3).

To bring order in this discussion and advance some ideas about how policy-making structures should be organized we need to elaborate further on the concept of *task interdependence*, which has been introduced in organization theory (cf. Thompson, 1967:54-55). As discussed earlier, depending on the character of policy problems as well as the underlying dependence relations – i.e. the resourcefulness and coherence of the center vis-à-vis other actors in the system – effective implementation may require more or less coordination and participation of different actors. Task interdependence emerges when the execution of a policy requires resources and competences of more than one organization. In a policy subsystem interdependence exists around clusters of policies. As stated before, a policy may be effectively handled within a one-dimensional chain of command or task interdependence may cut across organizations that do not constitute a simple hierarchy. In the first case a concentrated structure and authority instruments are likely to be appropriate in order to ensure effective implementation. In the second case a more deconcentrated authority structure is likely to be necessary and a major task will be to coordinate the contributions of various actors and induce cooperation. Authority modes of interaction have to be complemented by financial and information instruments under these conditions (cf. Scharpf, 1997:176-177). In order to capture the insulated and embedded system that can be assumed to enhance capacity under different circumstances, the issue of task interdependence thus has to be taken into consideration (see Figure 5). The ideal types presented below again represent two opposed extremes and it is of course likely that in reality a mix of the two may create fertile conditions. Considering that most policy problems today require competences and resources from many sources and that underlying dependence relations are becoming ever more complex, it can be assumed that most policy subsystems are likely to have to come closer to the embedded than the insulated pole for effective implementation.

Figure 5. *The embedded and insulated policy subsystem*

	The insulated subsystem	The embedded subsystem
Task interdependence	Within one-dimensional hierarchy	Across formal organizations and hierarchies
Formal authority structures	Vertically and horizontally concentrated	Vertically and horizontally deconcentrated
State-society relations	Exclusion	Inclusion
Dominant mode of steering and coordination	Authority instruments	Financial and information instruments

Even if decision-makers could restructure a policy subsystem according to their will (cf. the discussion in Chapter 1 about limits of instrumental action and the incremental character of change), there is accordingly no free choice of efficiency enhancing models. Task interdependence may, however, be manipulated to some degree, e.g. the “stake” of an actor or the resource that is needed in implementation can be expropriated (e.g. by reorganizing formal structures through procedural instruments) or substituted by that of another actor (e.g. by transferring an area of responsibility from a public actor to a private one) (cf. Shleifer & Treisman, 2002:8-9). The problem from an implementing capacity perspective emerges if stakeholders are excluded from the policy-making process, for example in order to avoid conflicts, but their resources or consent would have facilitated effective implementation (cf. Hanf, 1978:13). Implementation may also be slowed down and confused if actors are included, but their resources are not actually valued in implementation (cf. the problem of excessive bureaucracies). Moreover, it is essential that channels of interaction – through which steering and coordination measures can be exerted and exchanges communicated – between stakeholders are effective and well-established. The insulated system relies on vertical channels (e.g. procedures

of monitoring and control) and the embedded system on horizontal ones (across units that are not organized in a hierarchy, e.g. joint meetings, advisory boards, and shared computer bases).

The most straightforward situation is of course if task interdependence is confined within a formal organization. According to Scharpf (1978:365):

[I]t seems reasonable to postulate that organizational boundaries should be drawn in such a way that actors who are likely to be frequently involved in policy networks should be associated in integrated organizational units which are as congruent as possible with the prevailing clusters of task interdependence.

If this is not possible because the policy problem and underlying dependence relations are too complex, formal organizations may impede rather than facilitate interactions. Under these circumstances it is likely to be better if organizational structures are flexible to facilitate interaction across units.

The complexity of a subsystem from the perspective of implementation is thus not simply shaped by the number of actors involved, but is dependent on the type of interrelations between stakeholders (cf. Hanf & O'Toole, 1992:221). If multiple actors are involved complexity can be reduced if there are well-established channels of interaction for coordination, exchanges, and interest mediation.⁴²

When analyzing the relationship between policy-making structures and implementing capacity, apart from this discussion about task interdependence, two more dimensions need to be taken into consideration. These were identified in the previous chapter with a reference to the postcommunist state. The first is the degree of institutional uncertainty. If organizations have overlapping responsibilities, officials are uncertain about which formal rules need to be followed, and there is a lack of restraints on the behavior of officials the result is often severe coordination problems,

42 The terms tightly and loosely coupled are widely used in organization theory to capture the continuity and intensity in interrelations (cf. Weick, 1982:380).

disrespect for authority structures (cf. de-legitimization) and, in the end, deadlock in implementation. Secondly, and related to this, implementing capacity is likely to be adversely affected if policy-making is dominated by narrow self-interests. On a small scale this may entail officials putting self-fulfillment over role-fulfillment (their role as public servants) and behavior is oriented towards private interests rather than broader organizational ones or *esprit de corps* (cf. Thompson, 1961). The result may be a lack of commitment to policy-making ends but also more serious problems of rent-seeking. It is widely recognized that the difficulties of reform increase if state actors act according to narrow personal interests (Blomkvist, 1988:312; Geddes, 1994:15). As discussed in Chapter 3 this problem has been significant in a postcommunist context where new borders between the public and private sphere have to be established and the countries undergo rapid transformation processes. On a larger scale state capture may take place when special interests get control over state organizations and can ensure that implementation furthers their interests. This phenomenon may arise in core decision-making bodies, but also in subsectors where influence is exerted in the implementation phase. In a weak state the real struggle for power and distribution of gains often takes place in implementation. It makes little sense to influence policy decisions if these are not likely to be translated into practice (Blomkvist, 1988:240, 249). It should accordingly be added to the above that close interrelations in a policy subsystem is not always positive from the perspective of implementing capacity, but if based on narrow interests that are not mediated through the process of interaction these may be the very cause of low implementing capacity.

IMPLEMENTING CAPACITY IN EMPIRICAL STUDIES

Now, how should we go about studying implementing capacity empirically? The question in the case study of child protection in Romania is how implementing capacity is affected by efforts to meet EU membership requirements. Hence, interest falls on changes in the level of capacity rather than estimating whether capacity is high or low according to certain

criteria.⁴³ As discussed in the introduction I will analyze implementing capacity in the subsector before and after the presence of strong EU conditionality and radical reform on the part of the Romanian government and study the chain of events in depth in order to assess the relationship between these factors. But how do we know if and in what direction implementing capacity has changed?

I will use two parallel approaches to estimate this, one is to study implementation output and the other to assess changes in policy-making structures, and I argue that this combination is necessary. Concerning the first approach I investigate policy output before and after EU pressure and radical reform. In this I compare policy output with policy intent as stated in government strategies and laws. By focusing on output (in my case for example the number of institutions for children that have been closed) rather than ultimate outcomes (e.g. whether changes are really in the best interests of the child), I reduce the problem of measuring factors that are not relevant from the perspective of implementing capacity.⁴⁴ This will give me an indicator of whether implementing capacity has been strengthened or weakened. If implementation is timelier and more in accordance with policy intent after the presence of EU pressure and radical reform it is an indicator that capacity has been strengthened.

There is, however, still a risk that we do not measure changes in implementing capacity, but that reform accomplishments are related to for example international resources as discussed in the beginning of the chapter. The output approach will thus be complemented by an evaluation of changes in the policy-making structures. This approach is less straightforward and is based on a qualitative assessment of changes in the

43 To evaluate whether an empirical case represents high or low values on a certain phenomenon, in this case implementing capacity, is indeed fraught with problems and is in the end often based on stipulations by the researcher. From this perspective it is less problematic to analyze change over time since this is less dependent on the discretion of the researcher (Esaiasson *et al.*, 2003:161).

44 See Hill and Hupe (2002:143-144) for a discussion of the pros and cons of outcome and output studies.

subsystem that have occurred as an effect of responses to EU conditionality. With the help of the concepts and arguments developed in this chapter, and through an in-depth study of the case, I will analyze whether alterations can be assumed to enhance or impede implementing capacity. For example, if task interdependence is still complex but the changes entail a drastic concentration of authority and responsibility we have reason to believe that this is bad news from the perspective of implementing capacity. If, on the other hand, concentration of authority and responsibility results in that actors that are not necessary for effective implementation are excluded, capacity is likely to be enhanced. In a similar way, if responses to the demands of EU accession lead to more institutional uncertainty in the shape of overlapping and confusing arrangements, we can assume that this has negative effects on the ability to steer and coordinate implementation. As an integral part of this I will study actual steering and coordination measures and assess whether these have been effective.

An important gain from studying policy-making structures is that it facilitates an analysis of the process at work, that is, how and why changes in implementing capacity come about. If the sole approach was to analyze policy output we could only make more or less qualified assumptions about what has caused the changes. Now, we can follow the chain of events, i.e. account for actions and reactions of officials, alterations in policy-making structures, and how this affects implementation.

CONCLUSION

This chapter has argued that we cannot study implementation without taking into consideration the character of the formation phase. In empirical analysis this implies that to understand issues of implementing capacity we may have to investigate not only interrelations in implementation but also in policy formation and of particular significance is the question of who is included in formation and whether conflicts are resolved.

It has also elaborated aspects of policy-making structures that should be taken into consideration in an analysis of implementing capacity. This includes vertical and horizontal distribution of authority and responsibilities, state-society relations, and dominant modes of steering and coordination. In order to assess whether there are fertile conditions for implementation we have to relate these features to the character of task interdependence around the cluster of policies in the subsector. Apart from these dimensions we need to consider the degree of institutional uncertainty and whether interactions in implementation are based on narrow self-interests or are oriented towards policy-making ends. The first factor can be studied empirically by investigating whether responsibilities and rules are overlapping and to what extent these govern actual interactions. Empirical indicators of the second factor are for example the spread of corruption or more subtle forms of disobedience of commands and rules. It may also be possible to identify whether special interests have been able to influence implementation (e.g. if secondary legislation on tariffs for the import of cars has been tailored to favor a specific company and there is an obvious link between officials and this company).

EU ACCESSION AND DOMESTIC RESPONSES

[E]nlargement is not just a trivial bureaucratic exercise; it is a powerful generator of profound historical change in the region. (Ekiert & Zielonka, 2003:10)

The quotation above illustrates a widespread recognition in the literature that the EU accession process is likely to have far-reaching consequences in the ECE countries. The process and direction of these effects on state structures are still relatively poorly understood however. It is now time to turn to the left-hand side of the figure presented in Chapter 1, that is, the demands of EU accession and responses of decision-makers. I will also relate back the previous chapter and discuss what relevant effects various responses may leave on policy-making structures. This chapter thus conceptualizes and presents arguments about the overall process of interests in the study, that is, how and why the demands of accession may affect implementing capacity.

This chapter consists of four parts. The first part introduces the EU enlargement process and investigates the sources, content, and forms of EU influence in the candidate countries. In the second part I turn to domestic responses and conceptualize some possible strategies of decision-makers. I then elaborate on effects on policy-making structures and implementing capacity. This includes a brief overview of the empirical literature on the enlargement. In this the concept of islands of efficiency has been advanced and I incorporate this concept in my own theoretical discussion. In the last section I explore whether there may be a conflict between an EU accession logic and an implementing capacity-building logic in the ECE countries.

EU ENLARGEMENT

The European Union had an influence on policy-making in the ECE countries long before the start of actual accession negotiations (Lippert *et al.*, 2001:981). The strong desire to become a member creates processes of anticipatory adaptation before mandatory adaptation sets in. The Europeanization process or, more precisely, “EU-ization” (Ekiert & Zielonka, 2003:22) has been shaping elite strategies and policy choices since the early 1990s and the relationships with the EU have been intense. In 1993 the Copenhagen criteria were adopted, making the overall demands on future members explicit. The Copenhagen conditions lay down that (European Council, 1993):

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

The EU signed Europe Agreements with the ECE countries, offering deepened cooperation in some areas and an explicit membership perspective. The provisions for membership were made more concrete in the pre-accession process that started in 1994 and the Commission began to present opinions (*avis*) on the progress of the countries. Countries had to fulfill a number of non-negotiable criteria in order to qualify for accession negotiations. The actual negotiations started in 1998 for the first group of countries (Poland, Hungary, the Czech Republic, Estonia, Slovenia), and in 2000 for the second group (Bulgaria, Latvia, Slovakia, Romania, Lithuania). These have centered on the body of EU legislation and regulations that candidates have to adopt, the so called *acquis communautaire*, and progress has been monitored most importantly in the annual regular reports of

the Commission. In May 2004 the first group and Latvia, Lithuania, and Slovakia became members⁴⁵, whereas Romania and Bulgaria were left for a second round of eastward enlargement (scheduled for 2007). In June 2004 Bulgaria had closed all the chapters of the *acquis* whereas Romania still had a few key chapters left. In December 2004 negotiations with Romania were formally closed, but with some reservation on the part of the Commission.

In the more general Europeanization and internationalization literature the international dimension is often considered as an adaptation pressure that circumscribes the autonomy of governments to different degrees. In the case of EU applicant countries the influence of the EU is much more complex. The EU has effects on the beliefs and choices of domestic actors as a model and as a set of structures that facilitate or inhibit certain courses of action. But the EU also has to be conceived of as an actor that often participates directly on the political arena together with domestic actors. EU does not only actively exert political pressure for policy measures, e.g. through reports, public speeches, and joint meetings, but also gives assistance in shape of financial aid and technical advice. To treat the EU as a unitary actor is only feasible on the most abstract level. In concrete processes it may be of importance which actors within the EU machinery exert influence and these may even put conflicting pressure. Hence, in empirical analysis one has to examine the role played by specific EU institutions, e.g. the Commission and its representation in the candidate countries (the Delegation) and the European Parliament, and be open to consideration of the activities of individual EU officials. The Commission is the key player in the accession process in elaborating the enlargement strategy and monitoring progress in candidate countries, but for example the Parliament also evaluates the development in the countries.

45 Apart from these postcommunist countries Malta and Cyprus became members in 2004.

It may be appropriate to mention that even if “EU-ization” is without doubt the most important external pressure shaping politics in the East Central European countries, it is of course not the only one (cf. for example the globalization of markets and “Americanization”). Other sources of external influence may or may not work in the same direction as EU pressure. To give one example, in economically weak countries like Romania, the costly conditions for EU accession have at times conflicted with the demands of the International Monetary Fund to cut public spending and deregulate the state (Grzymala-Busse & Innes, 2003:68; Ekiert & Zielonka, 2003:22). In empirical analysis we can thus not study the effects of the enlargement in isolation from other international factors.

SOURCES OF EU INFLUENCE

It is generally perceived that the impact of the EU is far greater in the eastward enlargement than in the previous rounds (see e.g. Grzymala-Busse & Innes, 2003:64; Moravcsik & Vacudova, 2003; Ekiert & Zielonka, 2003).⁴⁶ Apart from the great scope of the accession agenda, which will be elaborated below, there are two overall sources of this impact, which makes the eastward enlargement more than a “normal” case of EU-convergence. First of all, as a consequence of the fact that the countries have been engaged in radical transformation from the communist system they have been highly receptive to EU models. Old beliefs and norms have been undermined and formal institutions eroded, which provides a more open field to the design of new policies and institutions. These countries are adapting to the EU simultaneously as the complex processes of democratization, marketization, and state transformation take place. This implies that there is a gap to fill and the ECE elites look to the EU for models (Grabbe, 2001:1014; Dimitrova, 2002:174).

46 The eastern enlargement (including Malta and Cyprus) is the fifth in the series of EU enlargements.

A second source of EU influence is the strong incentives for the ECE elites to meet EU requirements (which were admittedly also strong in the southern enlargement). The all-pervading policy goal of these countries is membership of the Union and it is thus of great importance for governments to show progress in meeting the requirements both to the EU and the electorates (Grabbe, 2001:1015). The governments are relatively powerless in the negotiations with Brussels because of the strong desire to become members of the EU and their small economies and weak institutional structures. It is generally believed that the postcommunist countries will benefit much more from enlargement than the current member states (Moravcsik & Vacudova, 2003:46; Holmes, 2003:108). These asymmetrical relations of dependence give the EU a very strong leverage on the development in the candidate countries and the accession negotiations a take-it-or-leave-it-character (Moravcsik & Vacudova, 2003:44; Ekiert & Zielonka, 2003:17).

THE CONTENT OF EU INFLUENCE

The scope of the accession agenda goes far beyond the direct transposition of the *acquis*, which for its part covers most public sectors. First of all there are the political and economic conditions as formulated at the Copenhagen summit that have to be met before accession. Apart from this the EU exerts pressure and support for institution-building and applicant countries should develop administrative structures necessary to take on the obligations of membership (Dimitrova, 2002:171). In Agenda 2000, which was introduced in 1997, administrative capacity was made a necessary condition for accession and has since then been a central pillar of the enlargement strategy.

The influence of the EU on governance in the ECE candidate countries has gone well beyond that in the EU member states (that is, in the EU-15) (Grabbe, 2001:1015). This should be seen in the light of the fact that the ECE countries have been in a state of transformation and that they were far behind the member states in almost all public sectors. As put by Dimitrova (2002:175):

EU conditionality goes far beyond ensuring that the Union's institutional rules and norms are established. For this purpose, it would have been sufficient to ensure the transposition of the *acquis*. Instead, EU conditions have been partially designed to address transformation problems and weaknesses of the candidates.

Outside the direct transposition of the *acquis*, the direction of EU influence is rather diffuse, which leaves a lot of discretion to EU actors in the process (Grabbe, 2001:1025; Ekiert & Zielonka, 2003:10). Of particular relevance for this study (since child protection reform has been tied to the political criteria) is the fact that the content and standards of the political criteria – defined as that “membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities” – have evolved considerably over time in an incremental and often ad hoc fashion (Pridham, 2002:959). The political conditions have since the Copenhagen summit been further elaborated in the *avis* and later in the annual regular reports, but have also taken shape in the programs of financial assistance and the accession partnerships.⁴⁷ One prominent example of changes over time is the inclusion of the fight against corruption as a condition for membership. According to Pridham (2002:957):

This explains the seeming ambiguity in the annual regular reports which invariably say that given countries ‘fulfill the Copenhagen political criteria’ but still need to make progress in meeting particular conditions.

47 In June 1997 all the ECE candidate countries were said to have qualified for the political criteria – with the partial exception of Slovakia – with the reservation that they have to continue to make progress with regard to democracy and the protection of minorities and human rights. In the annual regular reports it has in the past years been established that all the countries have made substantial progress in these areas, although concerns about corruption, the judiciary, and minority rights have been raised.

The Commission has paid growing attention to the implementation of the *acquis* and political, economic, and administrative conditions as a response to troublesome implementation gaps (see the regular reports of the EU Commission, particularly since 2000). Some conditions may be fulfilled rather quickly by formal measures of the government or a bureaucratic agency and others have to involve a multitude of actors and require changes on the ground. The most complex reforms do not just encompass legislative and organizational changes, but also an altering of human behavior like anti-corruption and human rights reforms (e.g. the protection of and respect for the Roma population). In practice, the Commission has accepted that far-going implementation in all areas of conditionality is not feasible before membership and acceptable levels seem to be judged on a case-to-case basis (Pridham, 2002:960).

FORMS OF INFLUENCE

Despite the “moving goalposts” character of many accession conditions, the EU provides real and strong pressure for reforms in most areas of public policy. The key instrument of EU actors is *conditionality* (Dimitrova, 2002:175; Schimmelfennig *et al.*, 2003; Schimmelfennig, 2004). Conditionality “is achieved by specifying conditions or even preconditions for support, involving either promise of material aid or political opportunities” (Pridham, 2002:956). Conditionality was used in the first agreements with the ECE countries, where suspension clauses manifested a threat of termination.⁴⁸ It was further developed in the pre-accession process, when countries have to satisfy the Copenhagen criteria before they are given a green light for negotiations, and later in the actual negotiations when conditions are updated, specified further, and monitored in the regular reports. In the pre-accession process conditionality is backed by a threat to

48 The EU has only suspended existing agreements in a few cases (Romania 1989 and Yugoslavia 1991) (Schimmelfennig *et al.*, 2003:497).

delay a country's entry to negotiations.⁴⁹ During the negotiations, the EU decides when a country is ready for accession (most clearly manifested in the condition to adopt all the chapters of the *acquis*), but can also interrupt or terminate negotiations if there is a serious violation of conditions (Pridham, 2002:958). This pressure is exerted through the annual regular reports of the Commission and the accession partnerships, but also in other types of documents like the European Parliament's annual reports on the candidate countries and in various joint meetings and public speeches.

Relating back to the discussion about modes of steering in the previous chapter, accession negotiations do not take place within an authority structure, but conditionality can be understood as a type of exchange mode of influence where the dependence relation is highly asymmetrical in favor of the EU. If applicants live up to the demands of the EU they are rewarded with institutional ties – in the end EU membership – but also financial and technical assistance. In cases of non-compliance the EU punishes candidates by withholding the reward. The threat of denying the upgrading of institutional ties and assistance can be more or less explicitly stated (Schimmelfennig *et al.*, 2003:496, 497).⁵⁰

As part of the enlargement strategy the EU has offered financial aid (where the PHARE program is most important in the ECE countries) and technical assistance. Most of the concrete programs are accompanied by a conditionality clause. The EU does not only contribute with resources through these programs, but also gives policy advice on a broad range of issues (Grabbe, 2001:1022). As a reaction to the problems with the

49 This threat was realized in the case of Slovakia under the Meciar government with reference to the political conditions. More recently, this mechanism has been used to pressure Croatia to send persons indicted for war crimes to the Hague tribunal.

50 Schimmelfennig *et al.* call this form of influence “reinforcement by reward” and distinguish this from “reinforcement by punishment” – where the dominant party do not just withhold the reward but also inflict extra costs – and “reinforcement by support”, i.e. unconditional assistance. They conclude that reinforcement by reward has been the all-dominant mode of influence in the ECE countries (2003:497).

implementation of EU related reforms, the instrument of twinning projects was launched in 1999. Based on the experiences from the first years there was a perceived need to follow and monitor reforms in order to ensure implementation. The aim is to assist the countries in developing new institutions and the administrative capacity necessary for EU membership (EU interviewee F; EU interviewee G).^{51 52}

EU CONDITIONALITY AND RESPONSES

But how then may the demands of accession affect implementing capacity? This study is not an evaluation of EUs support to general public administration reforms, such as civil service or anti-corruption reforms. Focus falls on effects on policy-making structures resulting from government efforts to meet the requirements of EU in various policy subsectors. Effects on the inter-organizational nature of a policy subsystem will thus often be a “by-product” of efforts to meet EU policy standards. This latter process of influence is indeed likely to be more decisive than effects resulting from the more limited number of EU-related public administration reforms. The argument is of course not that EU conditionality explains changes on its own, but it provokes responses of domestic actors. It is obvious that the central government is the key actor in the accession process. EU actors negotiate with the central governments that bear the responsibility for compliance with the conditions for membership. Conditionality forces governments to initiate radical reforms in many public sectors and to allocate scarce resources to these areas. Child protection in Romania has been linked to

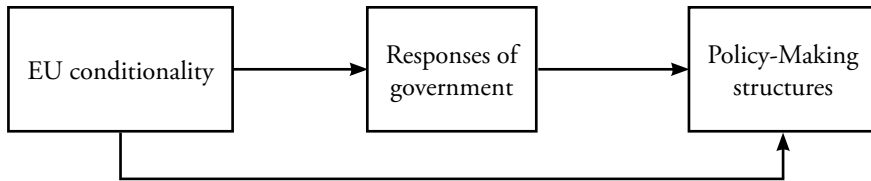
51 Twinning projects are carried out in cooperation between officials from the EU member states and the candidate countries in corresponding state institutions. This means that the concrete model in a twinning project is dependent on the EU countries involved (Grabbe, 2001:1024).

52 Apart from these forms of exerting influence in the candidate countries, the EU of course has a strong ideational impact. The EU as an example of prosperity and stability effects the beliefs and expectations of actors in the candidate countries (Lippert *et al.*, 2001:981; Dimitrova, 2002:174).

the political criteria, but the theoretical discussion in this chapter is broader in scope and may be relevant also for reforms motivated by the economic conditions and the adoption of the *acquis*. Some EU-related policies can be carried out by for example changing some regulations without significant intended or unintended effects on policy-making structures. Many others require a restructuring of the procedures and institutions of policy-making and these radical reforms are the focus of attention.

Apart from effects that work through the responses of governments – which could be called indirect effects on policy-making structures – EU conditionality in a subsector may have more direct effects on policy-making structures (see Figure 6). EU assistance programs may be targeted directly towards public and private stakeholders in a subsystem and provide incentives and disincentives for various courses of action. Financial programs are for example sometimes designed so as to require partnership relations between local governments and groups in civil society. Dependence relations may also be altered when some actors are strengthened through technical assistance or intense cooperation with EU actors. Moreover, EU conditionality and scrutiny may affect the commitment of stakeholders to cooperate and comply with reform measures. This notwithstanding, compared to the effects that work through the responses of decision-makers, these direct effects are likely to be of less significance. In empirical studies, both of these processes may have to be taken into consideration, but on this theoretical level I devote efforts to conceptualize the first type of effects.

Figure 6. Direct and indirect effects of EU conditionality



Key questions then become how governments may respond and why they may respond in a certain way. Studies of for example responses to the democratic conditions for membership have elaborated why governments sometimes comply with EU requirements and other times not (see e.g. Schimmelfennig *et al.*, 2003; Schimmelfennig, 2004), but the perspective in this study is accordingly different. At the focus of attention is not the *if* and *when* of responses but the *how* of the same. The significance of this perspective ought to be evident considering that a large part of the reform agenda in these countries is related to the accession.

CONDITIONS THAT HAVE AN IMPACT ON RESPONSES

Before turning to the responses of decision-makers I will elaborate in brief on factors that can be assumed to condition these. In order to analyze responses to demands of the accession not only the character of EU conditionality has to be taken into consideration, but also domestic policy-making resources and the extent of changes needed in the subsector. The aim is not to give a full account of factors that are likely to shape elite strategies, but merely to advance a broad framework that may further our understanding of some general aspects of the process.

Starting with EU conditionality, responses are influenced by the character and credibility of promises and threats. On a general level this concerns the credibility of membership incentives. Studies have shown that governments are more likely to be committed to fulfill EU requirements if they deem membership as feasible in the foreseeable future. Governments that are close to EU membership are more prone to take real measures to

ensure comprehensive change (cf. Nunberg, 1999:47; Ekiert & Zielonka, 2003:14; Schimmelfennig *et al.*, 2003; Schimmelfennig, 2004). Concerning threats of withholding rewards (i.e. institutional ties or assistance), the credibility of these can be assumed to be relatively high overall due to the asymmetrical dependence relations as discussed above (Schimmelfennig, 2004:5). From an implementation perspective there may, however, be some uncertainty concerning how far-going is the implementation that is needed for compliance. If demands are vague on this account, the government may conclude that it will receive the reward even in the case of merely formal changes rather than actual implementation. A distinctive feature of EU conditionality is the speed at which conditions have to be fulfilled. The radical nature of EU adaptation in the ECE countries is thus not just related to the scope of the restructuring tasks, but also the urgency with which these have to be carried out (Grabbe, 2001:1014; Goetz, 2001:1042). The degree to which compliance is urgent varies depending on the particular track of a country – the closer a country comes to accession the more it is likely to become subject to intense pressure to reform (Raik, 2004:16) – but also the measures taken by EU actors concerning specific reforms.

In addition to this, responses are likely to be affected by the policy-making resources decision-makers have at their disposal – either under their direct control or that they can mobilize from other actors. By policy-making resources I mean broadly resources that are needed to execute policies, e.g. authoritative, financial, information resources, a skilled bureaucracy, and channels of interaction through which exchanges and influence strategies can be communicated. Reforms are expensive and highly complex endeavors considering the inherent inertia in state structures and limits to instrumental change. In the ECE applicant countries the reform burden is immense, due to parallel transformation and EU adaptation tasks. As discussed in Chapter 3, the postcommunist states are relatively weak and under these conditions reforms will be all the more demanding. In the literature referred to in this section one talks about the “crippling overload” of EU reform tasks. If governments lack policy-making resources and the ability to mobilize stakeholders for reform they are of course less able to fully comply and it will affect the content of their responses.

Finally, of great significance are also various factors that are related to the particular policy subsector. In this theoretical discussion focus falls on the scope of changes needed to fulfill EU requirements. If there is a considerable discrepancy between the state of development in a policy subsector and the standards of the EU, the costs and difficulties of reform will of course be greater. This may include both formal changes of policy and organizational structures and alterations of practices and behavioral patterns. We will see below how these factors may affect the responses and strategies of governments.⁵³

GOVERNMENT RESPONSES AND STRATEGIC OPTIONS

In this section I discuss how governments may respond and what strategic options they have in designing radical reforms. In this I relate to the dimensions in Chapter 4 in order to identify responses that are relevant from the perspective of implementing capacity. Two overall features need to be considered: the commitment to reform and the procedural content of reform.

First of all we have to look at the commitment to carry out an accession-related policy. An analytical distinction can be made between responses that have a *defensive* and an *offensive* character. Defensive measures imply that governments respond in a reactive manner to EU conditionality. Radical reforms are introduced in order to demonstrate good will and activity to the EU, but the commitment to ensure implementation of the substance of the policy is lacking. Offensive responses on the other hand are proactive and the government considers the design of the reform from the perspective of implementation and the conditions in the particular

53 It should be pointed out that in the theoretical discussion I omit an explicit attention to the *understanding* of political actors. How decision-makers understand a situation and a problem is of course of vital importance for their reactions. Focus instead falls on the *will* (i.e. commitment) and *capability* (resources) of decision-makers (cf. Lundquist, 1987:42-43). This kind of simplification is essential in any research project, not least in one that covers a long chain of events like this. Following this I do not theorize for example about the importance of social learning and identity.

context. It is notoriously difficult to study the motive behind a course of action and in this case decision-makers are not likely to make statements that can shed any light (cf. Hadenius, 1984; Esaiasson *et al.*, 2003:ch. 16). Instead, in empirical analysis one has to resort to relatively blunt empirical indicators and look at the actions taken – such as if the government present strategies for implementation and ensure the provision of adequate resources – and one may be able to draw on statements by actors who have not been directly involved in decisions, but who have informed knowledge about the process.

Defensive responses are more likely when the possibility of membership is relatively far away or when there are uncertainties whether implementation is needed for compliance. In addition, reforms may have a defensive character when governments are discouraged or incapacitated by a lack of policy-making resources. This is all the more likely when the changes called for require fundamental restructuring, that is, when there is a considerable discrepancy between what exists and what is aimed for.

Turning to the content of radical reforms, a first distinction can be made between *concentration* and *deconcentration strategies*, which on a more concrete level can be divided into centralization vs. decentralization (vertical distribution) and concentration vs. dispersion (horizontal distribution). Concentration strategies imply that authority, responsibilities, or resources are moved to the center – either from local governments to the national level or from different bodies at the national level to a single one. This can be done by changes in for example the formal arrangements of the subsystem or by redirecting various resources like the allocation of financial resources. One concentration strategy, that may be tempting when faced with an old bureaucracy that is ill-suited to deal with radical external demands, is to create a new organization or structure that takes on the responsibility of urgent changes in a policy subsector. This structure can be more or less focused on satisfying external demands and hence more or less isolated from the state at large (cf. Brunsson & Olsen, 1990:20). Concentration strategies may for example be chosen in order to manage EU accession reforms when there is great urgency to satisfy EU demands, when there are problems of excessive bureaucracy, or when the changes

aimed for are radical in relation to the existing institutional set-up and one can expect considerable resistance to change. These strategies can both be of an offensive and a defensive character. In the first case, the government may hope that the capacity to steer and coordinate reform will increase and in the second case they want to give an appearance of firm action vis-à-vis EU actors.

Deconcentration strategies on the other hand imply that authority, responsibilities, or resources are decentralized to the local level or dispersed to state actors at the central level. As discussed earlier these are assumed to be appropriate responses when there are complex interdependencies at work and the central state needs to mobilize resources and consent of stakeholders (cf. Haggard & Kaufman, 2001:19). If these measures have an offensive character, governments may hope that by transferring authority and competences, actors distanced from the government will develop capabilities that can be mobilized for reform. This may be a response if for example EU membership incentives are credible and conditionality is linked to real implementation. Deconcentration strategies may, however, also be used with a defensive purpose. Decentralization can be a means to shift the blame for reform failure or to obscure the responsibility for reform outcomes (cf. Pierson, 1994:8, 16).

In a similar vein decision-makers may respond to EU conditionality by including or excluding societal groups from the policy-making process. *Exclusion and inclusion strategies* can be understood in the same terms as concentration and deconcentration. Exclusion strategies – e.g. to halt consultations with private stakeholders – can for example be a response to a sense of urgency to fulfill EU requirements and inclusion – e.g. to carry out implementation through public-private partnerships – may be motivated by concerns for more effective policy-making or may have the purpose of giving an appearance of consensus and legitimacy vis-à-vis the EU.

Of relevance from an implementing capacity perspective is also whether radical reforms incorporate efforts to strengthen channels of interaction. Governments may respond to EU pressure by increasing exchanges and communication with stakeholders or by decreasing the continuity and

intensity of exchanges. This may entail the creation or strengthening of both hierarchical channels, e.g. systems of monitoring and control of implementing agencies, and horizontal channels, e.g. deconcentration measures are accompanied by the creation of formal negotiation procedures between stakeholders. If governments act in a proactive manner and consider the reform from the perspective of implementation it is more likely that they will strengthen channels of interaction. If the government lacks policy-making resources or there is a strong sense of urgency it may, however, be unable to do this or it may neglect this type of measures if it is not committed to real changes. This aspect of responses can be called a *weakening or strengthening of channels of interaction*.

EFFECTS ON POLICY-MAKING STRUCTURES

When analyzing the effects various combinations of responses may have on policy-making structures and in the end on the conditions for implementation, focus falls on how changes that come about are related to the issue of task interdependence. I will also return to the issue of institutional uncertainty and the commitment to policy-making ends. Figure 7 summarizes conditions, responses, and effects on policy-making structures that need to be taken into consideration in an analysis of the demands of the accession and implementing capacity. The figure does not include any arguments about the relations between these factors. The discussion in this chapter gives some general suggestions on this account and in the case study I investigate how these factors are linked in a particular case and in Chapter 8 I will summarize and further elaborate some key arguments.

Figure 7. Factors to take into consideration in analysis of the EU accession process and implementing capacity

Conditions	Responses	Effects
Character of EU conditionality	Defensive/offensive	Increasing/decreasing congruence between task interdependence and policy-making structures
Policy-making resources that can be mobilized by the government	Concentration/deconcentration	
Extent of changes needed in subsector to fulfill EU requirements	Exclusion/inclusion	Increasing/decreasing institutional uncertainty
	Strengthening/weakening of channels of interaction	Increasing/decreasing commitment to policy-making ends

Before elaborating on effects I will investigate findings on this account in the empirical literature on the eastward enlargement.

EFFORTS TO ADAPT AND ISLANDS OF EFFICIENCY

In studies of the eastern enlargement it is generally argued that the long-term gains are likely to be considerable, but that there are some important short-term costs (see e.g. Moravcsik & Vacudova, 2003:47; Kolarska-Bobinska, 2003:91). There is a consensus that there are fundamental effects on the formulation of policies and on decision-making. Critical voices are heard that the high dependence on Brussels has made governments unresponsive to demands from citizens and sectoral interests. Through the EU accession process policy packages are decided beforehand down to the very details. Policy-making has been about adjustment to EU standards rather than about domestic consensus-building and dialogue (cf. Appel, 2002; Dimitrova, 2002:172; Cameron, 2003:25; Mair, 2003; Grzymala-Busse & Innes, 2003). Issues that are normally politicized are not so in

candidate countries. Due to the high speed of the accession process, few groups outside the core executive are consulted and there is a tendency towards technocratization, where political actors directly accountable to the electorate have lost power to the executive (Ekiert & Zielonka, 2003:15). The need for central coordination in managing the EU accession process has contributed to the development of a relatively small team in the central executive responsible for EU accession and in this for large parts of the political agenda (Grabbe, 2001:1017; Lippert *et al.*, 2001:1004). This dynamics is held to have had some efficiency-enhancing effects. Studies suggest that the coordination of policy formation – which as discussed in Chapter 3 has been a major problem in postcommunist countries – has been improved at the center of the government as a consequence of the great requirements on this account in order to manage the accession (Nunberg, 2000:18; Johannsen, 2004; Johannsen & Nørgaard, 2004). The flip side of the coin is that, as formulated by Nunberg (2000:20): “The focus on legal harmonization and on meeting specific European Commission requirements has obscured attention to institutional and implementation issues”.

This leads us to implementation and some authors argue that there are important positive effects. Most obviously, EU conditionality often implies that the political elite increases efforts to push reform. Studies have suggested that EU is a strong “external policy anchor” enhancing credibility of and commitment to reform. The accession process may not only affect political elites but also the commitment of stakeholders, providing a better ground for cooperation around specific policy tasks (Roberts & Sherlock, 1999:492; Johnson, 2001:262; EBRD, 2002:ch. 4).⁵⁴ Moreover, it has been suggested (although not really investigated empirically) that EU pressure

54 Others have suggested that the overall credibility of political elites may be undermined by the lack of political debate. As elaborated by Grzymala-Busse and Innes (2003:66-67), elites have had “little competitive leeway but to dispute each others *competencies* in achieving the desired result”. Hence, public debate has centered on issues like corruption and personal competence and more substantive policy issues have been absent, fostering distrust and providing a breeding-ground for populism.

might counteract tendencies toward rent-seeking elite behavior and state capture (see e.g. Moravcsik & Vacudova, 2003:48). EU conditionality “ties the hands” of governments and hence increases their autonomy vis-à-vis vested interests and decreases the bargaining space and opportunities of special interests, which may be positive in certain contexts (cf. Putnam, 1988).

Others stress that concentrated and exclusive policy formation have negative effects on implementation. If stakeholders excluded from policy formation have resources (if only in the shape of their compliance) that are needed in implementation, these may pose blockages and slow down reform. Actors may use the implementation phase as an opportunity to win back what was lost in policy formation or they may simply disregard new commands. Studies suggest that a key to the problem with implementation gaps in the candidate countries lies in the exclusionary character of the policy-making process (cf. Orenstein, 2002; Dimitrova, 2002:186).

Studies that focus on effects on policy-making structures have argued that the EU enlargement processes may lead to the creation of islands of efficiency (cf. “islands of excellence” or “enclaves of professionalism”) (Grabbe, 2001:1018; Goetz, 2001:1043-1044; Appel, 2002; Johnson, 2002). Some parts of the state have very intense contacts with EU institutions and are allocated plenty of domestic resources and are empowered at the expense of other parts. The term “islands” captures the fact that these do not tend to spread to other parts of the bureaucracy; part of the reason for their success is precisely their isolation from the state at large. Authors studying transformation processes in Latin America and Southern Europe have pointed at a similar dynamics (Goetz, 2001:1043). In studies of Latin America Evans (1995:61) identifies “pockets of efficiency” and Geddes (1994:23) “islands of competence” that emerge when governments face radical transformation tasks in a context of weak state capacity and ineffective bureaucracies. Rather than taking on reform of the state apparatus certain parts are secluded and induced with professionalism. In the ECE countries these strategies have thus been linked to the EU accession process. Islands of efficiency have been created in order to manage EU negotiations and the implementation of the *acquis*, often under the direct

authority of the core executive (Goetz, 2001:1044; Grabbe, 2001:1018). There are potential problems in this kind of development where certain state actors through intense international contacts, training, and extra resources become alienated from the state at large. According to Goetz (2001:1038):

European integration appears to contribute to the creation of ‘enclaves’, whose effectiveness at connecting with international institutions is not matched by the quality of their linkages with domestic actors.

They also tend to “deplete government of scarce human and financial resources” (Goetz, 2001:1045; cf. Grabbe, 2001:1018; Nunberg, 2000:21). It is suggested that there is a considerable risk that these kinds of enclaves are destroyed quickly when international contacts become less intense. The very reforms that were carried through in this structure may also end up being contested and reversed when conditions are normalized and stakeholders have new opportunities to block reform (cf. Haggard & Kaufman, 2001:12; Dimitrova, 2002:186). This also implies that EU conditionality has effects on the distribution of budgetary resources as between public sectors. As put by Moravcsik and Vacudova (2003:47): “applicants have had to divert their meager resources from health and education to implementing an *acquis* devoted primarily to the regulation of economic protection”.

EFFECTS FROM THE PERSPECTIVE OF IMPLEMENTING CAPACITY

Radical reforms alter the formal aspects of the policy-making process, but may also set more thoroughgoing changes in motion. The importance of new policies and large government interventions has been elaborated most notably in the literature on policy feedback. Models of policy feedback build on E.E. Schattsneider’s decades-old insight that “new policies create a new politics” (Pierson, 1994:39). According to Hanf and O’Toole (1992:220): “The evidence that policies can affect inter-unit action is now overwhelming”. Reforms are thus likely to have significant effects on

interrelations between stakeholders, but these will often be unintended since it is notoriously difficult to foresee the reactions of actors. In this section I will first present ideas about effects of the responses discussed above and then turn to how these may play out in the longer run.

Starting with responses of a defensive character, these will often lead to merely formal changes that are not translated into alterations of behavioral patterns. It is a well-known phenomenon that organizations are resistant to new models. It takes considerable commitment and resources at the center to bring forth real change, particularly when the changes aimed for are drastic in relation to existing practices (Brunsson & Olsen, 1990:17). But defensive measures may still have adverse effects on implementing capacity. When the design of reforms is motivated by concerns to satisfy external demands, disregarding actual implementation issues, there is a risk that alterations will confuse policy-making structures, which may add to problems of institutional uncertainty. A mismatch may also emerge between formal structures and the resources decision-makers have at their disposal to steer and coordinate implementation. For example if authority is decentralized to local governments, but the center lacks resources and channels of interaction needed to influence these and coordinate policy-making, the result may be dead-lock in implementation.

From the perspective in this study offensive strategies may potentially have significant positive effects. EU conditionality and credible membership incentives may be the necessary trigger for efforts to enhance implementing capacity. If reformers, due to strong commitment to meet EU requirements, have real implementation in mind and allocate adequate resources, there is a potential that circles of bureaucratic inertia are broken, cooperation around policy tasks increase, and institutional turmoil may be reduced. Concentration measures may for example serve to bring order to confused structures of authority and responsibility and deconcentration measures may bring policy-making procedures more in line with prevailing clusters of task interdependence, depending on the particular situation. In the first case the formal authority of a certain actor can for example be expropriated, creating a more uni-dimensional or – with the terminology of the previous chapter – insulated structure that may leave better conditions for steering.

In the second case, deconcentration measures can be accompanied by new horizontal channels of interaction, e.g. an agency where various stakeholders are represented, creating a more embedded subsystem improving the conditions for steering and coordination. It is also important to note that EU accession has a potential to increase the commitment to reform, not only of the top-leadership, but also of various stakeholders. This brings us to what was called direct effects and EU conditionality may motivate stakeholders to comply with reform measures and to coordinate their activities.

But also responses of an offensive character may have adverse effects on implementing capacity and under these circumstances, when governments are committed to reforms, changes may also be more thoroughgoing. The effects on the ability to implement policies in a subsector can be assumed to be negative if policy-making structures are altered in a way that is less congruent with task interdependencies. For example, if as a response to great urgency to meet EU requirements a concentrated structure is created and successful implementation is dependent on the policy contributions of actors that are now formally or informally excluded, implementation is at risk of being flawed. The concept of islands of efficiency captures an important potential “EU effect” on policy-making structures. It is not negative in itself that certain parts of the state are strengthened through extra resources and intense exchanges with international actors. It can neither be assumed automatically that it is harmful that these have weak linkages with the state at large. An island of efficiency is likely to have adverse effects from an implementation perspective if exchanges and channels of interaction that center on the policy task are undermined. This type of structures may not only create problems of a lack of communication and coordination between interdependent actors, but may also increase the level of uncertainty, which is related to the problem of “parallelism” discussed in Chapter 3. When agencies are installed to handle external demands without proper coordination with the state machinery, the result may be overlapping structures and uncertainty in the day-to-day activities of the state.

How may alterations that come about in this chain of events play out in the longer run? Although we can only speculate about the medium and long-term effects of the preparations for membership, it is of interest to put the study in this perspective. Changes may as discussed above stay only on the formal level. This can be related to the defensive character of measures taken or to the fact that the changes aimed for are at odds with the existing institutional set-up. If actors in a policy subsystem are tightly coupled and formal arrangements institutionalized there is likely to be more resistance to change than if actors have not made heavy investments in certain interrelations and practices. Of importance for understanding the scope of effects and the development over time is also whether reforms and external pressure stretch over long periods of time. If EU conditionality can only be fulfilled by durable interventions it is more likely to have significant effects on the behavior of actors. Another factor that may be of relevance is the visibility of the behavior of individual actors. It is more likely that actors will cooperate and make commitments rather than obstruct if their actions are visible to a wider community that takes interest in the reform. From this perspective, there is indeed good reason to assume that the enlargement process will have significant effects that cannot be reversed easily at a later point. As discussed earlier the fall of the communist regimes is generally argued to have created a “formative moment” or a period of “extraordinary politics” (cf. Kitschelt, 2001; Haggard & Kaufman, 2001:1; Knill, 2001:32), which implies a low degree of institutionalization and hence more opportunities to change as discussed above. In addition, the EU accession process has been accompanied by intense and systematic scrutiny from Brussels, with repercussions in domestic debates, which leaves a reshaping potential. But from the above it is also obvious that this matter is likely to vary greatly between different countries and policy sectors.

If under these extraordinary circumstances practices and interrelations are actually altered, these may become more resistant to change at a later point. Increasing returns processes come about when actors due to new incentives make investments out of limited material or cognitive resources in certain interactions and practices. This leaves decreasing costs for

continuing this path and increasing costs for switching to another (cf. Pierson 1994:40-44). Also ad hoc measures and small events may have large consequences when the costs of reversing a path increase. This can create both virtuous and vicious circles from the perspective of implementing capacity. For example, if the accession process creates strong incentives for certain public-private partnerships, actors make investments in these exchanges, which is likely to feedback into later choices of interaction strategies. This may create a more embedded policy subsystem, which is positive from the perspective of implementing capacity. If, however, some cooperative relations in a policy subsystem are cut off because of a new organization created to manage an urgent EU-related reform, these relations may be difficult to rebuild at a later point. Under these circumstances the potential that efficiency gains will spread to other parts of the state is also minimized (cf. Goetz, 2001:1044).

A CASE OF CONFLICTING LOGICS?

Is there on a theoretical level a potential conflict between implementing capacity-building and EU adaptation in the postcommunist candidate countries? By “capacity-building logic” I refer to changes needed to enhance implementing capacity and by “EU adaptation logic” to changes needed to comply with EU conditionality. Already on a more general level one can identify a conflict between typical measures to ensure urgent and radical reforms and measures needed to enhance implementing capacity in modern complex societies. In the first case the response is often to concentrate authority, responsibility, and resources and to exclude societal interests and “losers” in reform that can pose blockages (cf. Pierson, 1994:33; Geddes, 1994:5; Hellman, 1998). Contrary to this, successful implementation in most cases requires that effective and durable channels of interaction are created, where policy contributions of various stakeholders can be mobilized and coordinated. When making policy choices this conflict is related to the problem of short time horizons fundamental to politics. It is a well-known fact that capacity-building, which is by necessity a long-

term project, is often not a top priority of politicians (Rockman & Weaver, 1993b:465; Pierson, 2000b:497).

There is, however, a risk that this conflict is all the more pronounced in the case of interest here. This stems both from the character of EU accession and from the conditions in postcommunist countries. The high speed of the accession process and overload of reforms in combination with generally weak policy-making resources can be assumed to increase the incentives to concentrate resources and simplify policy-making procedures (cf. Raik, 2004). To this should be added the exclusiveness of policy formation inherent to the accession process. There is a risk that these factors and the responses they provoke will create policy-making structures that impede steering and coordination. As elaborated in Chapter 3, a strengthening of implementing capacity in a postcommunist context would require more cooperative relations around policy tasks and a mobilization of both private and public actors for policy-making ends. These states start out from very low standards on these accounts at the same time as policy problems and interdependencies are becoming more complex. This development is unlikely to take place if a policy subsector goes through a period of highly exclusive policy formation and if reforms are designed to fulfill external demands in a short period of time. Moreover, adaptation efforts may add to problems of bureaucratic layering.

But as discussed above there are other factors that may resolve this conflict and where EU adaptation may be a trigger for positive change. Indeed, without the EU accession process there are reasons to assume that change would only be incremental and that adverse conditions for policy-making would persist. The essential question is under what conditions we can expect the conflict to be real and when, on the contrary, efforts to become members may strengthen capacity.

CONCLUSION

This chapter has elaborated a number of conditions, responses, and effects that need to be taken into consideration in an analysis of the relationship between the demands of EU accession and implementing capacity, summarized in Figure 7. It has also given some general suggestions about how to understand positive and negative effects on implementing capacity and I will return to this issue in Chapter 8 and elaborate some more specific arguments that can be made on this account. The next two chapters are devoted to an in-depth study of a policy subsector that has been exposed to strong EU conditionality. At the center of attention is how the chain of events that has been theorized is played out in a concrete context.

ROMANIA AND THE CHILD PROTECTION SUBSECTOR

The events in 1989, the only violent revolution in East Central Europe, which culminated in the execution of Elena and Nicolae Ceausescu, attracted a large number of international journalists whose attention was soon drawn to the alarming situation in Romanian orphanages. The great number of institutionalized children in appalling conditions was a consequence of Ceausescu's ambitions to create a strong and independent nation. It is indeed a stroke of faith that today the main political goal of the country – to become a member of the European Union – has again had drastic and direct consequences for this the weakest group in society: Romania's future membership of the EU has been explicitly conditioned on the solution of the problems in the area of child protection.

The spontaneous reactions during my interviews in Romania have often been: "Why child protection? This does not represent everyday policy-making in Romania!" or "Not another foreigner interested in this issue!". I can indeed appreciate these reactions and I am inclined to join the line of criticism against the international focus on child protection at the expense of many other urgent problems in the country, not least in the area of social policy. But as discussed in the introduction, the reason for choosing to examine this policy subsector is exactly because of the strong conditionality exerted by the EU. By doing an in-depth study of this case we have an opportunity to study the process that is set in motion by efforts to meet EU membership requirements and possible effects on implementing capacity. On the most basic level, if one can find no trace that the demands of the accession have affected implementing capacity in this case, the basis of the theoretical framework will have to be put into question. Moreover, if there

is a potential conflict between an EU adaptation logic and an implementing capacity-building logic, this is likely to be observable in this case. This should be seen in the light of the fact that Romania is the weakest among the ECE states and the changes called for in the policy subsector are highly radical in nature. According to the reasoning in the previous chapter, this implies that there are strong incentives for the government to concentrate and simplify policy-making procedures and in the worst case to respond in a defensive manner. The concept island of efficiency turns out with some modifications to capture the development in the subsector and we thus have an opportunity to study why this emerges and what the effects are on implementing capacity.

The first part of the chapter elaborates in brief on the development in Romania and conditions for policy-making and in this relates to the general discussion about postcommunism in Chapter 3. After this child protection is introduced with a discussion about the communist-time system and the broad lines of postcommunist child protection policy. Based on changes in EU conditionality and government responses one can identify three periods that will be studied separately with a focus on the latter two: before 1997, which is a period of very low membership incentives and a lack of real reform initiatives on the part of the government, 1997-2000, characterized by intensified relations with EU and stronger but still relatively low membership incentives and radical reform in child protection, and 2001-2004, which entailed strong membership incentives and renewed radical reform. These periods also coincide with changes of government. First I investigate the subsystem before 1997 in brief in order to have a reference point against which to analyze the subsequent changes. I then discuss the development of EU conditionality since the beginning of the 1990s and also relate to the activities of other international actors. The rest of the chapter is devoted to government responses to EU conditionality and effects on policy-making structures in the two reform periods. Chapter 7 turns more explicitly to the question in the study – i.e. how and why the demands of EU accession have affected implementing capacity in the subsector.

ROMANIA'S GO-SLOW TRANSFORMATION

I have repeatedly referred to Romania as the weakest among the EU applicants, which is in line with the general assessment of the countries. This is true both in studies that make a qualitative evaluation of policy-making structures (see e.g. Nunberg, 1999:53-54) and in analyses based on quantitative indicators like the level of corruption.⁵⁵ Much of the literature on Romania has been devoted to explain the “Romanian exceptionalism”, both in terms of the communist-time system, the more violent regime termination, and the slower pace of postcommunist transformation (see e.g. Gallagher, 1995; Linz & Stepan, 1996; Pasti, 1997; Roper, 2000).

The postcommunist development path must be seen in the perspective of the particularities of the Ceausescu regime that lasted from 1965 to 1989. In relation to the other countries of the Soviet bloc, the regime had strong totalitarian features but it was also highly personalistic, or “sultanistic” as it was called by Linz and Stephan (1996:349).⁵⁶ The first feature entailed that the state repressed all forms of opposition and independent organizational

55 For a broad based comparison see for example the World Bank's governance index (www.worldbank.org/wbi/governance) where Romania has been continuously ranked as the weakest among the ECE states, more so even than its Balkan neighbor Bulgaria. This index measures accountability, government effectiveness, regulatory quality, rule of law, control of corruption, and political stability. Moreover, the country has manifested the smallest improvement in performance between 1998 and 2002 (Kaufman & Kraay, 2003). For the level of corruption see the Corruption perception index of Transparency International, where Romania is ranked as the most corrupt country among the candidate countries. As regards these indicators Romania and Bulgaria have often had more in common with their Balkan neighbors, than with the Central European countries.

56 Another special feature of the Ceausescu regime was that it distanced itself from the Soviet Union, had a strong nationalistic flavor, and an independent foreign policy. At the same time, it adhered to a stalinistic model also after the system was relaxed in most of the countries of the region, which left a form of “anti-Soviet Stalinism” (Linz & Stepan, 1996:348). The country's subsequent highly troublesome economic development must be seen in the light of the continued focus on massive and forced industrialization (Janos, 1996:15).

life and intruded into the most private areas of social life. The system was similar to that in the other countries in that the Communist Party penetrated and controlled all levels of the administration. The second aspect implied, however, that the party was dominated by one man. Ceausescu created a system where members of the family occupied the key positions in the party-state machinery. The exercise of political authority was highly arbitrary and officials lived under the constant threat of being subject to the leader's interventions.

Because of the strong totalitarian features the problems of postcommunist transformation discussed in Chapter 3 have been very pronounced in Romania. The postcommunist regime inherited dysfunctional state structures (e.g. highly centralized and fragmented) and civil society was extremely weak and there was great mistrust of central control (Linz & Stepan, 1996:346; Bruszt & Stark, 1998:16). Romania had the largest machinery of state at the end of communist rule among the Soviet bloc countries (Nunberg, 1999:55). The personalistic component implied that the institutions that were most associated with the dictator were thoroughly de-legitimized, but communist-time structures that could be disassociated from the dictator were not seriously challenged. This also meant that the postcommunist elite could build legitimacy by representing a real break with the Ceausescu clan, but without serious efforts to distance themselves from other communist-time structures. The Romanian state transformation has thus been "an awkward combination of rapid innovation, sluggish continuity, and a kind of go-slow modernization" (Nunberg, 1999:53).

From this perspective it should come as no surprise that the Romanian political system has been the least competitive among the ECE countries, i.e. the postcommunist party in its different forms (FSN, FDSN, PSDR, and now PSD)⁵⁷ has had the longest term in office and the opposition has been the weakest. This party, with President Ion Iliescu as the strong man, was

57 This party has not run in the elections as a successor of the Communist Party but is generally classified as postcommunist mainly because of the composition of its leadership and strong ties with communist-time elite networks.

in power until 1996, which implied that structural reforms were delayed in Romania and that the relations with EU and other Western actors were frostier on both sides compared to the other ECE countries (Gallager, 2001). The victory of the democratic opposition (the Democratic Convention of Romania) and its presidential candidate Emil Constantinescu that year was hailed in the West. Hopes of a faster reform track were soon replaced by disappointment when it became increasingly clear that the government was crippled by fights between the coalition partners. This “coalition of coalitions” was unable to take on real reform and control the bureaucracy in spite of a strong rhetorical commitment to transformation and integration with the West (Gallager, 2001; Sellin, 2001; Mungiu-Pippidi, 2002). In the end of 2000 a disillusioned electorate voted the postcommunists back in power. In the West there were worries about authoritarian returns (particularly on account of President Ion Iliescu and less so concerning the more reform-minded Prime Minister Adrian Nastase) but in general EU and other international actors have recognized the firm commitment of this government to continued transformation and to EU membership.

Romania is according to the 1991 constitution a semi-presidential system where executive power is shared between the government and the president. The legislature is bicameral and all laws have to pass through both chambers. There are two tiers of local governments, 41 county councils and more than 2900 local councils (municipalities, towns, and communes), both of which are elected in direct election. The central government has a strong representation at the local levels, i.e. the ministries are represented through the deconcentrated authorities and services and there is the Prefect who represents the national government (Iancu, 2003:50-52). The local arms of the central government have been strengthened during the postcommunist period, which is evidenced for example by a considerable increase in the employment figures (Nunberg, 1999:68-69). The local government framework that has emerged gradually with major legislative acts from 1991, 1996, 1998, and 2001 is generally regarded as modern and by and large adequate and the key problem is seriously flawed implementation of the regulations. Major impediments to local government autonomy and capacity are discretionary resource

allocations – i.e. lack of transparency and predictability in the dispersion of funds from the national level – low ability to raise local revenues, and lack of clarity concerning the division of competencies between the levels of government (Nunberg, 1999:66; Weber, 2001:232-233; Iancu, 2003; SAR, 2003:11, 16; Commission, 2003:17; Commission, 2004:18). Local governments have relied on earmarked funds and have thus in reality had limited autonomy and decentralization has been more formal than real (Iancu, 2003:58).

At a national level problems of policy formation have been manifested by the continuous use of emergency ordinances where the parliament is sidestepped. This must be seen in the perspective of the cumbersome legislative process and complex formal procedures. There has also been a problem of delegation where the cabinet has dealt with detailed decisions often at the expense of overall strategic decisions (Nunberg, 1999:58; SAR, 2003:18). The pressure of urgent reforms and a situation of weak policy-making resources has created a severe problem of short-term thinking in policy-making and a tendency towards re-concentration, often on an informal basis (Nunberg, 1999:57-59). In spite of numerous postcommunist reshufflings of the central government structure and the creation of a number of inter-ministerial bodies, particularly since 2001, the ministries have continued to be resistant to outside interference. Policy-making has been seriously impeded by fragmented policy-making structures and lack of coordination between state agencies (SAR, 2003:17; Commission, 2001:15; Commission, 2003:16; 2004:16).

Apart from these problems of centralized and fragmented state structures and parallelism and informalism, the lack of a clear break with the past has led to that groups that were privileged during communism have been able to “hold a disproportionate control of all opportunities” (SAR, 2004:5).⁵⁸ The problems of blurred boundaries between public and private discussed

58 In this light, the latest turn in the elections in November 2004 when the major opposition parties, the Democrats (PD) and the Liberals (PNL), united and won both the parliamentary and the presidential election can be seen as an important step forward.

in Chapter 3 have been pronounced in Romania. The borders between the political and economic elite have been vague and powerful economic figures that profited from privatization deals have had strong political connections and have got special treatment (e.g. “rescheduling” of debts) by the authorities (SAR, 2003:31). To this should be added the problem of widespread corruption, which has reached to the highest levels of the state.

The political agenda has been heavily focused on qualifying for EU membership and other international “rewards” and the governments have tried to present a plausible image as a prospective member of the EU. There is a troublesome tendency for governments to pass legislation in order to satisfy conditionality with no real commitment to implementation (cf. defensive strategies). It is generally perceived that the gap between policy intent and actual implementation is particularly large in Romania (Gallager, 2001:401). As expressed in one report concerning the need to increase implementation efforts (SAR, 2003:16):

Otherwise, non-enforced EU-compatible laws will continue to accumulate and contribute to the legislative Potemkin village erected by the authorities, in the heroic effort to build the new Romania.

The bad starting conditions and slow pace of reform are evidenced by the fact that the country was the last to finish the EU accession negotiations in the final days of 2004 as well as to receive the status of “functional market economy”. It has received the harshest criticism in the regular reports of the Commission about the state of public administration reform, flawed policy formation, and the slow pace of implementation (see Commission, 2002; 2003; 2004).

COMMUNIST-TIME CHILD PROTECTION

The Political Executive Committee of the Central Committee of the Romanian Communist Party appeals to the entire population, to urban and village workers, to understand that to ensure normal demographic growth it is a great honor and patriotic obligation for every family and for all people...to have enduring families with many children, raised with love, and by so doing, to guarantee the vitality, youth, and vigor of the entire nation. Today, more than ever, we have the utmost obligation to assure our patrie of new generations that will contribute to the flourishing of our socialist nation, to the triumph of socialism and communism in Romania. (Political Executive Committee of the Romanian Communist Party, in Kligman, 1998:8-9)

The communist systems in general and the Romanian one in particular were characterized by extensive state control of the most intimate areas of private life. Communist ideology viewed the family with suspicion and put great faith in the capacity of the state to take on the fostering of children in difficult circumstances (UNICEF, 2001:93). Aggressive pronatalist policies were a part of Ceausescu's nationalistic goals of a strong and independent Romania. Abortions and contraceptives were banned and the state demanded that women should give birth to four or five children (Kligman, 1998:12).⁵⁹ Another backbone of Ceausescu's paternalistic policies was that the state took on children when parents could not fulfill their roles. Disinformation was spread about the generosity of the state to these children (Kligman, 1998:225). The immense role of the state in

59 This resulted in extremely high numbers of illegal abortions (the average Romanian woman had between five and seven abortions) and by far the highest maternal mortality rate in Europe (Kligman, 1998:213). Many children were left without mothers or were abandoned by parents in economic distress.

social life left no space for initiatives and responsibility on the part of the local community.

The Ceausescu-time childcare system was medically based and the professionals involved had medical training. The services in orphanages and boarding schools were highly non-personalized. Social workers and similar professions did not exist during communism and there were no traditions or skills for dealing with social and economic problems in families. The system was highly uniform and hierarchical and childcare services were under the direct responsibility of the central state. In the Soviet model, which was also implemented in Romania, infants were placed in infant homes (run by the Ministry of Health) and then if healthy transferred to homes for orphans and abandoned children (run by the Ministry of Education). There were also boarding schools, which provided education on the site and where children were often separated from their families for the duration of childhood. Children that were marked as “unrecoverable” were separated from the rest and placed under the responsibility of the Ministry of Labor (UNICEF, 2001:99; Kligman, 1998:226).⁶⁰ Hence, authority and responsibilities over children in need of protection were extremely centralized – for example the rare cases of inter-country adoption had to be authorized by the dictator himself (Dickens, 2002:77) – but functionally split or dispersed at the national level between a number of ministries.

60 The Ministry of Labor did not have professional skills to deal with these children many of whom had different disabilities. The result was inhuman conditions and a lack of basic resources and human contact. In 1989 when Western experts came to the country it was obvious that many of these children could have had a positive development if given proper care (Kligman, 1998:227).

POSTCOMMUNIST CHILD PROTECTION POLICY

In 1989 the new regime inherited an extensive infrastructure of institutions for infants and children. More than 100,000 children were in residential care at the end of communism and childcare services were under the direct responsibility of the central state. Since the fall of Ceausescu, Romania's image abroad has been linked to these issues and the appalling situation of Romanian "orphans"⁶¹ has received worldwide attention. The content of child protection policy has been guided by international norms in the field and centered on reducing the number of children abandoned by their parents, improving the conditions in childcare institutions and subsequently closing these, and providing for family-type care⁶² for children that are unable to stay with their parents. Due to the great demand for Romanian babies abroad and the corrupt system and illegal practices that soon emerged, the issue of inter-country adoption has become an important part of the reform. When referring to the child protection subsector, this includes all these policies and the subsystem consists of public and private actors that are actively concerned with these issues and whose resources are valued in this domain.

Starting from the end of 1996, child protection reform has been radical in nature, encompassing both policy change and alteration of procedural and institutional arrangements. It was the first policy subsector to be decentralized in a country with a long tradition of centralization (*Romania and the UN Convention on the Rights of the Child*, 2003:1-11). It has been a complex reform from an implementation perspective according to all possible criteria. Firstly, the changes aimed for have been highly

61 The majority of children in institutions were not actual orphans, but had been placed in institutions by their parents due to economic hardships and other problems (cf. the concept of social orphans).

62 This refers to for example foster care, professional maternity assistants, adoption, or, for certain children with for example sever disabilities, residential care in smaller units with a family-type environment.

advanced considering the bad starting conditions – i.e. great numbers of abandoned children and a tradition of over-reliance on institutional care. The situation in the social sector in general deteriorated from already low levels during the first decade of postcommunism and resulting economic and social distress. Reform efforts have aimed to alter the very core of child protection policy (e.g. from state-centered to family-centered services) and sweeping changes have been needed. This has not just included formal changes, but also a change of the practices on the ground and in the end of the attitudes of individuals involved (e.g. from encouraging families in precarious situations to leave their children to public care to family support to prevent abandonment).

Secondly, the policy subsystem has involved a number of different types of actors. Local governments have played a key role in implementation and numerous state bodies at the national level have had a stake in child protection issues, making the task of steering and coordination a great challenge for decision-makers at the center. Furthermore, there have been – for Romanian conditions – resourceful NGOs active in the subsystem as well as a number of international organizations. These conditions have placed great demands on coordination and may as discussed in Chapter 4 both be an asset and an impediment to reform depending on the type of interrelations in the subsystem.

THE SUBSYSTEM UP UNTIL 1997

In the beginning of the 1990s NGOs, international organizations, and private persons that wanted to save the Romanian orphans flocked into the country. The government took no real measures to reform the system and child protection was generally perceived as a “foreign question” (EU interviewee B). The EU Commission has criticized the situation in Romanian childcare institutions since the first reports on Romania’s qualification for the political criteria. Even if the government’s relations with EU were gradually intensified in this period, the possibility of membership was far away and it is as discussed before generally recognized that this

postcommunist government's commitment to EU membership was low. A number of legislative acts were introduced but formed an incoherent body of legislation where new and old laws existed in parallel (Save the Children Romania, 2003:2; Greenwell, 2001:1). A controversial part of this was the abandonment law of 1993 – that came about under pressure from international adoption interests – according to which authorities could declare a child abandoned and eligible for adoption if parents have shown “evident lack of interest in the child” for six months (Kligman, 1998:233-234). The government committed itself to reform on a rhetorical level and signed a number of international conventions and international norms were incorporated into the Romanian legislation.⁶³

This left a system that was highly centralized and child protection services – still dominated by large-scale residential institutions – were part of the central public services under the direct responsibility of the ministries (a/e interviewee A; a/e interviewee E). At the national level, child protection issues were dispersed between a number of ministries⁶⁴ leading to a duplication of work, overlapping structures of responsibility, waste of resources, and a very low level of services (Kligman, 1998:228; EU Commission, 1999; Coman, 2003a; a/e interviewee A). The government created the National Committee for Child Protection, with coordinating functions, as well as the Romanian Adoption Committee, but these had

63 Romania has ratified a number of international conventions in the field: the UN Convention on the Rights of the Child (ratified by Law no. 18/1990); the Hague Convention on the Protection of Children and Co-operation in the Respect of Intercountry Adoption (ratified through Law no. 84/1994); Recommendation of the Parliamentary Assembly of the Council of Europe no. 1286 (1996) on a European Strategy for Children; Resolution no. (77) 33 of the Council of Europe on Placement of Children; Recommendation no. (94) 14 of the Council of Europe on Coherent and Integrated Family Policies (Save the Children Romania, 2003:7).

64 At the national level the Ministry of Labor and Social Solidarity, Ministry of Health, Ministry of Education, Ministry of Justice, and a State Secretariat for Persons with Handicap all had responsibilities of child protection services.

very limited authority and resources (Dickens, 2002:77). This resulted in an acute lack of coordination and cooperation on child protection issues.

At the same time, there was an upsurge of private actors in the shape of NGOs as well as increasing activities by international organizations. In 1994 there were more than 300 NGOs working in the field (Kligman, 1998:228). All NGOs have to register as Romanian entities but the large majority has foreign sponsors. The NGO community was highly fragmented and activities were not carried out in formal cooperation with the authorities. Private and international actors contributed with substantial resources often directly to the services on the ground and increasingly complex interdependencies evolved in the subsystem out of central control. The inter-country adoption practices and networks that emerged were highly worrisome. There was a great demand for Romanian babies from well-intended foreigners from the West and adoption agencies mushroomed (many of the 300 NGOs dealt with inter-country adoption) and Romanian officials and private persons found ways to satisfy this demand, often outside the law. Corruption spread when public officials and staff of residential institutions “privatized” their activities (cf. Dickens, 2002:77; Ambrose & Coburn, 2001:5; Kligman, 1998:231-234).

To conclude, even if the government had committed to real change – which was not the case – it is clear from the perspective in this study that there were adverse conditions for implementation. This also constituted the starting point for the new and more reform-committed government at the end of 1996. First of all, policy-making structures were not changed but mirrored the communist system and were at odds with the new situation. The centralized system was highly ineffective and there was a lack of coordination between stakeholders at the national level. Task interdependencies were complex, running across organizational units with a lack of channels of interaction between. Moreover, there were overlapping structures and confusion about laws and regulations, leaving a situation of institutional uncertainty. As a consequence of this vacuum in control and institutionalization and the opportunities created by international money, there were in addition to this accelerating problems of rule-breaking behavior on the part of officials.

EU CONDITIONALITY

Child protection represents more of a concern for the international community than for the Romanian society. (Prime Minister Nastase, 2001a)

The European Union clearly stands out among international actors active in the field of child protection, foremost in terms of the unparalleled pressure exerted on the government, but also in the scope of assistance programs. EU membership has been an overriding policy goal of the governments since 1996 and in the course of the accession process EU actors have pushed the reform through conditionality and semi-veiled threats of delaying membership negotiations. Romania has been considered to have met the political criteria since 1997. This notwithstanding, the Commission has specifically brought up child protection as an area where the government has to make further efforts and show progress (Micklewright & Stewart, 2000:2). In the 1997 Opinion on Romania's application for EU membership and in the 1998 Regular Report the Commission welcomed the radical reform initiatives of the new government, but commented that efforts were needed to ensure implementation (Commission 1997; Commission, 1998:10). In 1999 the criticism by the Commission took on a new dimension, following a crisis of funding that erupted and seriously deteriorating conditions in the residential institutions. The Commission (1999:77) stated that:

[A]t the moment, Romania still fulfills the Copenhagen political criteria although the position will need to be re-examined if the authorities do not continue to give priority to dealing with the crisis in their childcare institutions.

In this context this was a strong formulation and the country's prospect for membership was in effect declared conditional on progress in the subsector (Micklewright & Stewart, 2000:2). The Commission elaborated

in some length in the Regular Report on the changes needed and in strong words assigned the responsibility to the central government (Commission, 1999:15-16). It also stated that it would closely monitor the development and in the 1999 Accession Partnership it was identified as a priority to address these issues (Commission, 1999:77). Accession negotiations with Romania were formally launched on the 15 of February 2000 and in the Regular Report in that year the Commission noted improvements in childcare services and confirmed that Romania continued to meet the political conditions. It scrutinized the development in the subsector in some length and stated that (2000:87):

The Commission will continue to monitor the situation closely to ensure that these positive policy developments result in a comprehensive reform as well as an improvement in actual living conditions in the institutions concerned.

It also expressed concerns that the legislation on adoption appeared to allow other considerations than the best interests of the child to influence decisions (Commission, 2000:20).

In May 2001 EU pressure again increased drastically, this time through the activities of the rapporteur on Romania for the European Parliament. The nub of the *Draft report on Romania's application for membership of the European Union and the state of Negotiations* by Baroness Emma Nicholson of Winterbourne was that if progress in the field remained unsatisfactory, Romania's membership negotiations might be compromised (European Parliament, 2001a). The report brought up questions of persistent abandonment of children, child trafficking, organ theft, abuse and neglect, and called for a ban on inter-country adoption. It also referred to problems of government malpractice, corruption, and vested interests (European Parliament, 2001a). The importance of child protection reform for membership negotiations was at this point made clear also by direct correspondence between the Commissioner for Enlargement Verheugen, the Romanian Prime Minister Nastase, and Emma Nicholson (European

Parliament, 2001b:22, Annex).⁶⁵ In the final report approved by the European Parliament in July 2001 – and after radical measures initiated by the Romanian Prime Minister – the rapporteur recognized the firm commitment of the new government. In the 2001 Regular Report the development in the sector was again closely monitored and the conclusion reached was that: “Reform of the childcare system is well under way” (Commission, 2001:101). According to the report, further progress was needed in implementation and the government still had to develop the appropriate administrative structures and capacity in order to ensure that decisions were made in the best interests of the child (2001:24). In 2002 the Commission noted further progress, but emphasized in particular the problem of large regional differences in implementation (Commission, 2002:30). In February 2004 a new crisis erupted that again put the issue of inter-country adoption in Romania high on the EU’s accession negotiation agenda. Emma Nicholson raised serious criticisms and it was again communicated that negotiations might be delayed, since the moratorium on inter-country adoption that was imposed in 2001 had according to her not been respected.⁶⁶

Concerning the content of EU pressure, it can be noted that the harshest criticism has concerned the situation in the residential institutions. For example the threat of reconsidering Romania’s qualification for the political criteria in 1999 was tied to the crisis in the institutions. The Commission

65 There has been fierce criticism of Nicholson’s interference in the Romanian child protection reform, e.g. from NGOs, officials, and from Romanian journalists. She is accused of having an unrealistic view of child welfare matters in the country and of making unsubstantiated allegations about irregularities (Press conference Bucharest 12 March 2004; NGO interviewee E; state interviewee A).

66 During the moratorium about 1000 children had been adopted abroad. The moratorium made an exception for cases that were already in the process of being adopted, but EU officials suspected that also other children had been included under strong pressure from foreign officials. The factor that triggered the scandal was that the Italian Prime Minister Berlusconi had managed to persuade Prime Minister Nastase to release about 100 children to Italy, all this during the Italian Presidency of the EU.

has, however, had the closing of these facilities as a key demand and this has not just included finding alternative care for institutionalized children, but also preventing the abandonment of new children. The issue of inter-country adoption has been put high on the agenda through the activities of the rapporteur of the European Parliament, but it has also been brought up in the regular reports since 2000. The Commission has raised strong demands for implementation, particularly since 1999. It has put emphasis on the need to concentrate the responsibility for child protection policy to a national authority (Commission, 1999; 2000; 2001), but also to strengthen the responsibility of the county councils (Commission, 2000:20). Since 2000 it has been stressed that childcare policy needed to be integrated with the social welfare system at large in order to prevent abandonment (Commission, 2000; 2001:24).

Conditionality has also been exerted through assistance programs. The EU has been the largest provider of aid and has contributed with technical assistance, for example through twinning projects. In an official report from 2002 it was stated that the EU had spent about 100 million Euros, first on improving the conditions in institutions and later on “preparing and funding reform policy and projects” (Mihailescu & Scheele, 2002:7). For example the 1999 PHARE program “Children First” (amounting to 25 million euros) was allocated to local authorities for projects to close institutions and develop alternative services. This was followed by the 2001 PHARE program (10 million euros), directed to similar aims (Nastase, 2001a; Coman, 2003a). The EU has also, starting from 2001, initiated and funded a nationwide public awareness campaign called “A Children’s Home is not a Real Home” with the aim of informing people of the alternatives to institutionalization.

Moreover, EU actors have given extensive policy advice and have assisted the authorities in developing new legislation and procedures. A special cooperation structure between the government and the EU and other international donors was set up with the aim to assist in policy formation and monitoring of the reform and to bring Romania closer to EU membership (Commission, 2001:24; Mihailescu & Scheele, 2002:7). The so called High Level Group was initiated in 2000 by Emma Nicholson, consisting

of herself, Prime Minister Nastase and other members of the government, the European Commissioner for Enlargement, and representatives of other international organizations. The High Level Group and various subgroups have become important actors in the formulation of new policies.

THE ACTIVITIES OF THE DONOR COMMUNITY

Apart from the EU, organizations like the World Bank, the Development Bank of the Council of Europe, and the UNICEF have allocated substantial resources to child protection in Romania and Great Britain (DFID), France, and the United States (USAID) have major bilateral assistance programs (Coman, 2003a). The assistance of other international organizations is generally framed in a context of Romanian qualification for EU accession. In the first half of the 1990s the activities of donors were focused on aid to improve the conditions in the residential institutions. Since 1997 international efforts have also been directed towards helping the Romanian government to restructure the system of public care (Rotaru, 2002). Whereas money was first allocated to NGOs, donors have increasingly cooperated with local authorities usually on condition that they form partnership relations with NGOs.

The contributions by donors and NGOs have been uncoordinated, although the situation has improved since the change of government in 2000 (a/e interviewee C). This notwithstanding, on an overall level activities have been working in the same direction, because of the leading role of the EU and since there is a relatively strong international regime on child protection, centered around the UN Convention on the Rights of the Child.⁶⁷ In the area of inter-country adoption there has, however, been conflicting pressure from various external actors (IGIAA, 2002; Bainham, 2003:225; a/e interviewee C; EU interviewee H). The international norm

67 The basic principle is that “best interest of the child” should guide child and family policy and all decisions that concern children. Children should always be brought up in family-type care.

is that inter-country adoption should be a last-resort care solution.⁶⁸ Adoption agencies and foreign officials, not least from the United States but also some EU countries, have put pressure on the authorities to create smooth adoption procedures. As opposed to this, representatives of the EU and for example the UN Committee on the Rights of the Child and the Secretariat of the Hague Convention have tried to influence decision-makers to restrict inter-country adoption in order to ensure control, that national alternatives are a first option in practice, and in order for child protection policy to work in the best interest of the child rather than to serve economic interests (*Romania and the UN Convention on the Rights of the Child*, 2003:174). EU representatives as well as Romanian experts in the field claim that there are powerful adoption networks with channels into the administration. These have devoted a lot of resources to public opinion molding to boost the demand for Romanian babies abroad and to affect policy-makers in Romania (EU interviewee A; EU interviewee B; EU interviewee C; EU interviewee H; a/e interviewee G; NGO interviewee A).⁶⁹

68 Adoption implies a definitive legal separation of the child from its birth parents and should only be a solution for the few children that are permanently unable to stay with their parents. Measures to help families stay together as well as domestic options should when possible be used instead. Domestic adoption is preferred over inter-country ones. These norms are laid down among others in the 1993 Hague Convention on Intercountry Adoption and in Article 21 of the UN Convention on the Rights of the Child (UNICEF, 2003:23).

69 Interviewees that were involved in the measures taken in 2001 that resulted in the temporary stop for inter-country adoptions, testify to the immense pressure exerted on the authorities from adoption networks and officials from countries like US, Israel, France, Italy, and Spain (EU interviewee H; a/e interviewee G). The “Berlusconi-incident” in early 2004 was an instance of this strong high-level pressure. Also, when Prime Minister Nastase met with President Bush in July 2004, the President of the United States devoted some of the scarce time to criticize the moratorium (RFE/RL Newline, 23 July 2004).

RESPONSES AND EFFECTS ON POLICY-MAKING STRUCTURES

Considering the weakness of the Romanian state as well as the radical changes needed to raise the system to EU standards, it should come as no surprise that Romanian governments have been reluctant to embark on a radical reform. This may also be seen in the light of the general tendency to give low priority to the social sector in countries that face an overload of pressing transformation tasks. This in spite of the fact that, as expressed by one official at the center of the reform, “all the world saw Romania from this point of view” (state interviewee F). There is an overwhelming consensus in my interviews that EU conditionality has been the necessary trigger for reform efforts. It is also quite obvious to an observer that reform measures have followed the actions taken by the EU, which will be demonstrated in the text below. The important role of the EU is also illustrated in official statements and strategies where one often explicitly addresses EU actors. Against the backdrop of increasingly credible membership incentives – with year 2000 when membership negotiations started as the most obvious watershed – the EU has as discussed above actively pushed the reform through various measures. The term “crisis” keeps coming up during my interviews and when asked to elaborate, it is clear that this sense of crisis is related to EU pressure rather than directly to the problems on the ground. Reform measures have been a response to this pressure and to “scandals” that have erupted, framed most importantly by EU actors. The role of the EU must of course be seen in a broader context of international attention. The criticism by the EU and the content of programs of assistance have taken shape in communication with other international actors and NGOs. But although these other actors have been supporting the subsector and thus had some direct effects on stakeholders, they have had little influence on the reform responses of the governments.

RESPONSES BY THE GOVERNMENT 1997-2000

Starting with the political commitment in the first reform period, the government was slow to take real measures for implementation and responses had a predominantly defensive character (Pridham, 2002:969). At the end of 1996 there was strong pressure on the new government to reform the subsector in order to show commitment to EU membership and improve relations with the EU. In 1997, the government initiated a reform encompassing ambitious new laws and a restructuring of institutional arrangements. The commitment of the government and the new policy initiatives were hailed in EU reports (Commission 1998:10). Still, the government did not take on the implementation of the reform, i.e. it did not elaborate a strategy for implementation and take measures to ensure coordination and financing as will be demonstrated below.

Turning to the procedural content of the reform, it was dominated by a decentralization strategy as well as some moderate efforts to concentrate responsibilities at the national level. The responsibility of most child protection services was decentralized from the ministries to the county councils. At the national level the government created the Department of Child Protection with the task of elaborating national policies and coordinate and monitor implementation. This body was, however, not vested with clear authority and adequate resources.

At the county (judet) level, Commissions for Child Protection and specialized public services for child protection, called Directorates for Protecting the Rights of the Child (DPC), were set up in each of Romania's 41 judets and the six administrative sectors in the capital of Bucharest. The DPCs were made responsible for a range of childcare services including residential institutions, prevention of abandonment, adoption, and alternative services like foster care.⁷⁰ Child protection was the first area to

70 The DPC is the executive in child protection at the judet level. The Commission for Child Protection is led by the secretary of the County Council, and other members are representatives of the deconcentrated arms of the ministries (e.g. the Labor directorate, the Education inspectorate, the Public health directorate) and some specialists and representatives of NGOs (NGO interviewee E).

be decentralized in Romania and other areas of social policy like health, education, and social assistance were still under the responsibility of ministries. The decentralization process was, however, incomplete since ministries still had responsibilities for some types of child protection services.⁷¹ The reform coincided with new general laws on the relationship between the tiers of government including fiscal decentralization in 1998 and the government took the opportunity to move the responsibility for the financing of child protection services to the county councils.

Decentralization stopped at the judet level, which deserves some attention since it is generally argued that social protection services are best dealt with at the lowest level of government closest to the community (a/e interviewee A; a/e interviewee C). The government's argument was that the local councils in Romania did not have the capacity and revenue base to take on the responsibility for child protection services (apart from emergency matters) (a/e interviewee A; a/e interviewee G). Also the strengthening of the judet level started out from a very low level, but in this way it has been easier for the national level to keep some control over the process and the funds of the EU and other donors. At the county level the ministries are represented through the deconcentrated authorities and services and there is the Prefect who represents the national government. To decentralize to the judet level was basically a faster and easier measure than to empower the local councils (a/e interviewee E; NGO interviewee E; a/e interviewee A). It should also be noted in this context that EU actors have encouraged the decentralization to the county councils.

Another important element of the reform in this period was new adoption procedures, which entailed inclusion of selected private actors. Through the new "point system" private actors got an important role in the enforcement of adoption regulations. The Romanian Adoption Committee (RAC) allocated children to the adoption agencies based on what resources

71 Some services were under the Ministry of Education, Ministry of Health, and the Secretariat for Persons with Handicap up until 2000 (Commission, 1999:16; Coman, 2003a).

they contributed to the Romanian childcare system. The more points an agency got the more children it was allocated (IGIAA, 2002; Dickens, 2002; Bainham, 2003; EU interviewee B).

It can also be noted that policy formation in the subsector was not coordinated with the various stakeholders at the national level and the government introduced new regulations through government decisions and emergency ordinances. This followed the general pattern in Romania and can be seen as a response to the rigidity of the system and a sense of urgency to show firm action. Due to the vague formulation of new laws much discretion was left to the newly created Department of Child Protection in formulating secondary legislation. It is often argued that a few NGOs with interests in inter-country adoption had a strong influence on the regulations concerning adoption procedures (IGIAA, 2002:22; NGO interviewee A; EU interviewee C).⁷²

In 1999 a “humanitarian crisis” emerged when the county councils did not have enough resources to provide for the children in public care. (1998 was a transition year and funds were also provided from the national budget.) EU gave aid to solve the acute situation and demanded that the national level should ensure that children were treated in a unitary way (Commission, 1999:15; EU interviewee B).⁷³ The Commission (1999:16) states that:

72 The State Secretary at the Department of Child Protection was the former director of one of the largest NGOs, pointed out as an important player in the adoption networks, although the organization itself denies this role (EU interviewee D; EU interviewee H; NGO interviewee E). The rapporteur for the European Parliament brings this up as a factor in the formulation of flawed secondary legislation: “The 1997 Hague Convention-related legislation framed and brought in by Dr. Cristian Tabacaru (then State Secretary for Child Protection, now Director of the NGO SERA) effectively legalized child trafficking” (European Parliament, 2001a:18).

73 Many NGOs in Romania warned about the emerging crisis before 1999, but the government did not respond until EU put it on the top of the agenda (NGO interviewee A).

It is now of crucial importance that the Government, as it has been repeatedly requested by the Commission, gives priority to child protection and accepts that it has the primary responsibility for the well-being of all children in care. [...] Child protection, including implementation of policy reform, can no longer be made structurally dependent on international assistance.

The government had not seen to it that there were proper financial mechanisms and funding and had not put in order the distribution of responsibilities (Commission, 1999:16; EU interviewee B; EU interviewee C). As a response to the threats by the EU to reconsider the qualification of the country for the political criteria – and to that EU clearly assigned the responsibility of reform to the central government – the government initiated some new concentration measures. The National Agency for the Protection of Children's Rights was set up, taking over responsibility from the Department of Child Protection and more national resources were allocated to child protection. The Agency was subordinated directly to the office of the Prime Minister, which implied that it had considerable independence from the ministries. The Prime Minister's office had around 40 similar agencies under its authority, giving it insufficient time and resources to control and communicate with the agency. Hence, the agency lacked representation at a ministerial level and real channels into the government. Later in 2000 the responsibility for institutionalized children was decentralized from the Ministry of Education, Ministry of Health, and the Secretariat for Persons with Handicap to the county councils. The government adopted a National Strategy on the Reform of the Childcare System in June 2000, in which the overall goals are to reduce the number of institutionalized children and the number of children at the risk of being institutionalized (Commission, 2000:20). The government also initiated the National Interests Programs, i.e. funds for specific child protection reform purposes that the DPCs could apply for, which gave the central level an instrument to steer the reform at the local level.

EFFECTS ON POLICY-MAKING STRUCTURES 1997-2000

As a result of the reform, the number of stakeholders in the subsystem increased. At the national level the Department of Child Protection and the RAC were created at the same time as the ministries preserved a stake in child protection. The creation of the Department of Child Protection did not make very much difference at first. The existing interests lines were preserved and the Department was weak in relation to the ministries (a/e interviewee A). Hence, there was still confusion over responsibilities. At the decentralized level the county councils and the various child protection bodies emerged as key actors in implementation. In parallel with this a spontaneous development took place of increasingly active NGOs and international organizations.

Meanwhile, the government did not ensure mechanisms of steering and coordination and there was an acute lack of linkages between stakeholders (cf. Commission 1999; 2000). The DPCs at the judet level are subordinated to the county councils and the national level had little communication with these and weak instruments of steering. The leadership in the Department for Child Protection did not coordinate issues with the ministries or with the government (EU interviewee C; EU interviewee H). A specialized child protection structure emerged both at the national and judet level in relative isolation from other state actors, particularly at the national level, and was gradually strengthened by resources of and interactions with international and private actors, but also by a regrouping of resources within the Romanian state (a/e interviewee A).

In a vacuum in control and regulations and due to a lack of financial resources, local child protection entities have entered into exchanges with external actors, which resulted in increasingly complex public-private interdependencies at arms-length from the government as well as a dependence on international actors. In the field of adoption the point system implied that the large NGOs became even larger (EU interviewee B).⁷⁴ Moreover, inter-country adoption became a source of income for the

⁷⁴ In many cases, adoption agencies were making a profit, which runs against Romanian law (Ambrose & Coburn, 2001:11). A troubling tendency, according to observers, was

authorities. Much needed money went into the Romanian childcare system, but inter-country adoptions became normalized and indeed a preferred form by officials – quite contrary to the intentions of the law (Ambrose & Coburn, 2001:2).⁷⁵ Local governments continued to be weak in this period and a positive dynamics at the judet level was generally inhibited by institutional uncertainty and lack of own resources (cf. Commission, 1999:15; 2000:20).

GOVERNMENT RESPONSES 2001-2004

Firm commitment to comprehensive change was not manifested until after the change of government in 2000, which must be seen in the light that accession negotiations started providing credible membership incentives and that EU actors continued to put child protection high on the agenda (cf. Commission, 2000; 2001; European Parliament, 2001b). According to the government strategy child protection reform became a national priority.⁷⁶ The draft report to the European Parliament by Emma Nicholson had a great impact on the subsequent high-level involvement in the reform. The report, according to Pridham (2002:969):

the large number of adoption agencies that were accredited (105 identified in 2000 by the Permanent Secretary Bureau of the Hague Conference) (Dickens, 2002:79). It should be pointed out that many adoption agencies of course were truly non-profit.

75 The point system was issued by the RAC as an internal procedure and is embodied in Government Decision no. 506 (Ambrose & Coburn, 2001:10). In practice the system was often based on contributions of money and not services, which is recognized to have had adverse effects (a/e interviewee G; NGO interviewee C). The system has been criticized for being a way to legalize and facilitate inter-country adoption and not to develop a system “in the best interests of the child” (IGIAA, 2002; Dickens, 2002; Bainham, 2003; EU interviewee H; a/e interviewee G).

76 In the Governance Program presented in January 2001 chapter V on health, family, and child welfare policy contains an ambitious program for child protection reform. The strong commitment and priority to reform was made clear in a number of speeches by the President and Prime Minister (European Parliament, July 2001:17; Nastase, 2001a; 2001b). The Government also adopted a Governmental Strategy for Child in Difficulty Protection (2001-2004).

[C]aused an immense reaction in the Romanian media and had a shock effect in government circles.[...] It had the required impact in forcing the government to act. There followed substantial increase in the budget allocation, a rise in alternative childcare services and the strengthening of local governments responsibility in this area.

The measures taken in this period to close institutions and provide alternative care have had an offensive character, where the government has increased efforts to ensure implementation and provided sufficient resources. Public statements by key officials and documents concerning the reform address the EU directly. The Prime Minister (Nastase, 2001b) for example states in a key speech concerning the reform: “We want to be able to recognize significant improvements together with our international partners, and first of all with the representatives of the EU”.

Procedural strategies have centered on concentration of authority, responsibilities, and resources at the national level as well as continued decentralization to the county councils. Efforts have also been devoted to strengthen channels of interaction and increase control at the center. Starting with the national level the government turned the national agency into the National Authority for Child Protection and Adoption (NACPA) and strengthened its responsibilities and in 2001 doubled its budget (from 42 million Euros in 2000 to 79 million in 2001). The authority was placed under the powerful Secretary General of the Government, providing it with representation at ministerial level. This meant that the government was directly involved and the Minister in charge⁷⁷ and the Prime Minister himself took on the reform (Coman, 2003b; a/e interviewee A). As a consequence the authority was still institutionally separated from the ministry that had most responsibility over social policy (i.e. the Ministry of Labor, Social Solidarity and Family). NACPA is responsible for coordinating

⁷⁷ This was a very important post in the government, at the time held by Petru Serban Mihailescu, with coordinating and far-reaching agenda-setting powers (a/e interviewee A).

the activities of various stakeholders, of national projects, and for setting rules and regulations and monitoring implementation (Pridham, 2002:969; UN Committee on the Rights of the Child, 2003). At the same time there was an increasing realization that to show real results on the ground the relationship between the levels of government had to be clarified and real powers transferred to the judet level (a/e interviewee A). The presidents of the county councils now had direct responsibility for all institutions related to child protection (Commission, 2001:23).

The government together with EU and other international partners initiated some measures to improve interaction channels, like common databases and monitoring procedures. In addition, the government strengthened the incentives for public-private cooperation (Coman, 2003a; Nastase, 2001b). This incorporated for example a change in the system of accreditation and registration of NGOs and since 2001 these have been invited to apply for the National Interests Programs if they form partnerships with public actors (UN Committee on the Rights of the Child, 2003). In the area of inter-country adoption a moratorium was imposed in 2001 and the whole point system revoked. The new regulations that are to be enforced when the moratorium is lifted are highly restrictive and private adoption agencies have lost their role in the system.⁷⁸

In this period policy formation has been more inclusionary although there is still a problem of coordination with other state actors and cooperation has been more intense with international actors. When the government set out to develop the new comprehensive Child Act (that was put into force on the 1st of January 2005), the High Level Group and its various subgroups were key actors, but there have also been consultations with the major NGOs and county level child protection entities (EU Commission, 2001:24;

78 The Prime Minister's firm commitment to reform in this area resulted among other things in that he set up the Independent Group for International Adoption Analysis (IGIAA) with the task of analyzing the system in the light of the report by Emma Nicholson. In 2002 the government approved the Strategy for Implementation of Measures from the Report of the IGIAA (Morgan *et al.*, 2002:6, 19). The Romanian government has extended the moratorium several times.

Save the Children Romania, 2003:3; *Romania and the UN Convention on the Rights of the Child*, 2003:176; a/e interviewee G; state interviewee F).⁷⁹ It is often argued that the priorities of the governments have been set as a response to EU pressure and not based on an analysis of problems and needs in the country (NGO interviewee A; NGO interviewee E).

Since 2001 the government has introduced regulations with the aim of integrating child protection with other areas of social policy – which follows the recommendations of EU (state interviewee B).⁸⁰ At the national level, the NACPA has since June 2003 been moved to the Ministry of Labor, Social Solidarity and Family. Child protection entities at the local level should according to new regulations merge with offices of social assistance (state interviewee C; state interviewee D; state interviewee F). These measures have, however, not been accompanied by strategies and support for implementation (state interviewee B; state interviewee F).

79 NGOs criticize the organized consultations for having the character of “festivities”. Cooperative initiatives have more often come from NGOs than from public actors. NGOs have for example organized meetings of experts and have provided authorities with reports and policy proposals (NGO interviewee A; NGO interviewee B; NGO interviewee C; NGO interviewee E). Since 2001 it has been regulated in law that local governments should be consulted in all decisions that concern their activities. A federation of local authorities has been established, but is still very weak. These procedures are still highly underdeveloped in practice and exchanges have more often had an informal character where the expertise of some advanced local authorities is used (a/e interviewee A; state interviewee B).

80 The Government has initiated measures to develop the system of social protection, e.g. it has presented a strategy for poverty reduction and social inclusion, a law on minimum income guarantee and a law on combating social exclusion. The most important law is no. 705/2001 which regulates the organization, operation, and funding of the national system of social assistance. There is also a Government Commission on Poverty and Social Inclusion as well as an Inter-Ministerial Commission on Social Assistance. Experts have raised concerns over the lack of linkages and coordination between the various bodies and unclear responsibility over monitoring of implementation of child related policies and implementation in these areas has been slow to come about (UN Committee on the Rights of the Child, 2003).

EFFECTS ON POLICY-MAKING STRUCTURES 2001-2004

The measures taken in this period served to strengthen further the specialized child protection entities at a national and local level through resource allocations and international cooperation. This structure became ever more advanced than other areas of social policy and the reform was now under the direct control of the government. In international reports there is criticism about deficient linkages and cooperation between various stakeholders. In the 2001 Regular Report of the EU Commission it is held as a problem that confusion prevails about the role of the NACPA and that there is a lack of coordination between state actors at the national level (2001:24). Child protection entities at the judet level as well as NGOs in the field still had to answer to a number of national bodies (state interviewee C, state interviewee D; NGO interviewee D). Save the Children Romania (2003:8) states in a report that:

Although all these laws, decrees or governmental decisions have been initiated aiming at improving the child protection system, no significant progress has been made. The factor blocking the elaboration of a coherent governmental strategy has been the spreading of child issues, often on artificial criteria, between different government departments. Thus, the issues of children in difficult circumstances have been and are administered by several ministries, commissions, local and central institutions.

The NACPA has thus been strengthened but at the expense of coordination across functional units. The authority has been characterized as a “governmental body built like an NGO” (NGO interviewee E) and considerable resources have been devoted to cooperation with international actors (NGO interviewee A).⁸¹ The coordination between international donors has in

81 The NACPA has about 60 employees and most of them work on administrative tasks and on communication with the EU and other donors and there are few experts in child protection issues (state interviewee A).

consequence improved and international organizations testify that the existence of a central authority relatively independent from bureaucracy at large has facilitated cooperation on their behalf (a/e interviewee C; NGO interviewee A).

At the local level there has been a remarkable mobilization of resources for child protection reform. 30 to 40 percent of the county budget goes to child protection services, that is, there has been a unique concentration on this task (Ambrose, 2002:8; state interviewee B). Since 2001 more responsibility for social assistance and prevention activities has been devolved to the local councils, but so far few have implemented this and set up offices (which must be seen in the light of the fact that these measures have to be financed from their own, very limited, budgets) (state interviewee A; NGO interviewee C). In the first reform period there were much-testified problems of cooperation in the judets between the county councils, the DPCs, the Commissions, and the deconcentrated bodies of the ministries. These problems have persisted in some judets but there has also been a very positive development in many places. There have been problems of lack of trust and duplication of work between public and private actors at the local level, but in many localities the situation has improved considerably and cooperation has become close and formalized (Morgan *et al.*, 2002:7-8; NGO interviewee C; NGO interviewee E; a/e interviewee A; a/e interviewee C). Interviewees argue that the moratorium has had a positive effect on the commitment to reform on the judet level. Before, exchanges were more intense with adoption agencies at the expense of cooperation centered on the reform task (state interviewee C; NGO interviewee A).⁸² At the same time it has become increasingly clear that implementation at the local level has been inhibited by the fact that decentralization has just started in other

82 It can be noted that a development has taken place out of the public realm where the fragmentation in the NGO community has been reduced, because many NGOs have left – not least after the moratorium on inter-country adoption came into being – and two federations (ProChild and FONPC) of NGOs have been organized (state interviewee B; NGO interviewee B).

areas of social policy. Child protection is at a much more advanced level of reform and child protection entities are considerably more resourceful than actors in other areas of social policy. This has inhibited coordination and a generic approach to child protection issues. There has also been resistance on the part of child protection entities to integrate with other areas, in spite of new laws and regulations in this direction (a/e interviewee B; a/e interviewee D; state interviewee B). The failure to implement these regulations must also be seen in the light of the fact that implementation efforts from the center have been limited and more detailed methodology is lacking (state interviewee B; state interviewee F).

CONCLUSION

The discussion in this chapter is summarized in Figure 8. (The categories follow those in Figure 7 of the previous chapter but the effect-side will be dealt with in Chapter 7).

Figure 8. Conditions and government responses in the child protection subsector

	1990-1996	1997-2000	2001-2004
Character of EU conditionality	Lack of membership incentives	Low membership incentives, from 1999 harsh criticism and demands for rapid implementation	High membership incentives, harsh criticism and demands for rapid implementation
Policy-making resources of government	Weak	Weak	Slightly strengthened over the period
Extent of changes needed to fulfill EU requirements	Large	Large	Large
Responses of government	No radical reform	Radical reform: Defensive strategies, more offensive after 1999; decentralization/horizontal concentration; exclusion in general but inclusion of adoption agencies; no efforts to strengthen channels of interaction	Radical reform: Offensive strategies concerning closure of institutions and alternative care; decentralization/horizontal concentration; a degree of inclusion but exclusion of adoption agencies; strengthening of channels of interaction between child protection entities

The 1990-1996 period was characterized by a lack of reform measures. The radical reform in 1997 was related to closer relations with the EU and the stronger commitment to membership of this government. EU membership was, however, relatively far away and EU actors hailed the policy development and did not increase pressure and express serious concerns about implementation until later in this period. To take real measures for implementation would have required great efforts and drastic regrouping of resources (considering weak policy-making resources and the large changes called for). A decentralization process was initiated and halfhearted measures were taken to concentrate the system at the national level. Adoption agencies became partners in the adoption practices, which brought an income to the authorities, but in general policy-making was exclusionary vis-à-vis private actors. The government took no real measures to strengthen channels of interaction within the subsystem. The measures taken in 1999 by the EU caused the government to increase efforts to ensure control and implementation. As a result of these measures a specialized child protection structure at the national and county level started to emerge, but task interdependence was not confined within this structure and there was an acute lack of cooperation and coordination within the subsystem at large.

The more offensive measures in the second reform period concerning the closure of institutions and provision for alternative care must be seen in perspective of stronger membership incentives and continued harsh criticism from the EU and demands to show fast results on the ground. Policy-making resources were still weak but were strengthened in relation to the previous period as an effect of the increased coherence of this government, a unique focus by key government figures on this task, and by extra budget allocations. Decentralization was taken further as was the concentration of responsibilities to the national authority directly under the government. The government also took measures through the moratorium to break private-public adoption networks and strengthened incentives for public-private cooperation on policy tasks. The structure of child protection entities at the national and local level was strengthened

in relative isolation from the state at large but in intense exchanges with international actors.

In the following chapter I will analyze this development and the effects from the perspective of implementing capacity.

AN ISLAND OF EFFICIENCY AND IMPLEMENTING CAPACITY

It may seem strange, or even repellent, to ask whether a process that has had positive effects on the lives of thousands of children in difficult circumstances has been positive or not from any other perspectives. But the implementing capacity approach in this study is essential in order to understand the opportunities and obstacles to carry out policies in the subsector, not only of the pressing tasks that have dominated the agenda of the last decade, but also the everyday activities of the state as well as longer-term goals. As discussed in Chapter 4 I use two approaches to estimate whether implementing capacity has been strengthened or weakened. The first is to evaluate changes in policy-making structures from the perspective of implementing capacity. A first step in this has been taken in the previous chapter where I identified what changes had taken place as an effect of efforts to meet EU requirements. In this chapter I will analyze these changes with the help of the theoretical framework. The second approach is to study policy output and whether this is more in line with policy intent after these changes have taken place. In order to facilitate an assessment of whether reform accomplishments can be linked to implementing capacity or if these are related to international activities and resources directly, the analysis also includes a section about actual steering and coordination measures.

The chapter starts with the output study followed by an investigation of the instruments of steering and coordination in the subsector. I then analyze the changes in policy-making structures from an implementing capacity perspective. It can be established that an islands-of-efficiency-like structure has emerged and I analyze why this development has taken place.

After this follows a more speculative discussion of the likely development of this structure in the longer term. In the concluding part I explicate some ideas about if and why efforts to meet EU requirements have strengthened or weakened implementing capacity.

REFORM ACCOMPLISHMENTS

Definition of success in this field is of course highly controversial. As noted in the previous chapter and following government documents and statements, like for example the National Strategy on the Reform of the Childcare System of the 1996-2000 government as well as the Governance Program from 2001 and the Governmental Strategy for Child in Difficulty Protection 2001-2004, there have been three key goals of child protection policy in Romania: to close the large-scale residential institutions and provide for family-type care, to reduce the number of children abandoned by their families, and to control adoption procedures and ensure that domestic alternatives are considered before a child is given up for inter-country adoption. When the authorities present data on the state of reform they often focus on the number of closed institutions and new alternative services (see e.g. Coman, 2003a) and in this regard there have been some remarkable accomplishments. In the reports of international organizations and in my interviews the reform is considered as an extraordinary success in some aspects. Accomplishments are particularly striking if one compares with the situation in 1997 or with the progress in other areas of social policy (EU interviewee A; NGO interviewee A). Moreover, the state of reform is highly advanced in relation to other ECE countries.⁸³ In the introduction to

83 The problem of a high rate of children in state-run residential institutions was a legacy in most of the former communist countries, that is, it was far from a particular Romanian phenomenon. According to the 2003 Social Monitor of UNICEF, the countries can be divided into three groups to capture the development in the 1990s. In one group of countries a strong tradition of institutional care in combination with the hardships of transition has resulted in continued high rates of children deprived of family upbringing during the 1990s. This situation has characterized the development in Bulgaria, Romania,

Romania and the UN Convention on the Rights of the Child: Second Periodic Report (2003), one recognizes “the profound conceptual and systematic changes that have occurred in the domain of child protection”. Important reform progresses are also recognized in the latest regular reports of the EU and in reports by the UNICEF (see e.g. UNICEF, 2002:16). Interviewees bring up the advanced administrative structure at the national and local level as well as the legislative and regulatory framework as major accomplishments. There is a consensus that there have been important changes on the ground in terms of closed institutions, the number of new services, and actual practices of more individualized care. The governments have, however, failed to reduce abandonment (i.e. the number of children that enter the system of public care) and control inter-country adoptions. I will examine reform accomplishments in these three key areas below.

CLOSURE OF INSTITUTIONS AND PROVISION FOR ALTERNATIVE CARE

Starting with the policy to close the residential institutions for children and provide for family-type care there has been a steady progress since the start of the reform in 1997. 2001 is considered as a critical year, not least because of the increased quality of the deinstitutionalization process. In the reform period 2001 to 2003 the number of children in institutions decreased by 25 percent, the number of children in substitute families increased by 43 percent, foster parents increased from 3,228 to 9,170, and the number of institutions with more than 100 children decreased from

Latvia, and the countries of western CIS. Interestingly enough, the proportion of children in public care did not grow as much in the poorest postcommunist countries (the rest of South-Eastern Europe, the Caucasus, and Central Asia), which according to the authors can be explained by stronger family traditions and a less developed system of institutional care during communism. In the Central European countries the relative wealth and more rapid recovery seem to have hindered a high abandonment rate (UNICEF, 2003:24). In 1997 the trend changed in Romania and the proportion of children in institutional care has since then slowly decreased. A similar positive development was not manifested in Bulgaria and Latvia (Romania still having the third highest rate among the ECE countries, however) (Micklewright & Stewart, 2000:2; UNICEF, 2001:93-96; UNICEF, 2003:24).

205 to 128, according to official figures (Coman, 2003a). In the beginning of 2003 the number of children in alternative care for the first time outnumbered the children in institutions (Commission, 2003:23). Figure 9 presents the data on this part of the reform and is based on the official figures for the number of children in public care under the authority of the county councils. It is important to note that the increase of children in 2000 is due to the fact that the responsibility for around 25,000 children was moved from the central level to the county councils.⁸⁴

84 There is a problem of reliable statistics about the state of reform and I have not been able to find exact figures about the overall number of children in institutions (i.e. including those under the central level) before 2000. Between 1997 and 2000 there have, however, not been any major variations in the number of children under the authority of the ministries, but it has stayed around 25,000 according to official figures. Figures presented by the EU on the state of reform are generally higher than the official figures. For example in 1999 112,000 were reported to be in institutional care (of whom 60,000 were under the responsibility of the county councils) (Commission, 1999:15). At the end of 2000 there were said to be 77,844 children in residential care (Commission, 2000:24). The figures from 2001 and 2002 are, however, similar to the official statistic in the figure (Commission, 2002:29). According to EU figures reform progress is thus all the more pronounced.

Figure 9. Number of children in residential and family-type care under the county councils (Source: Coman, 2003a)

	Children in public and private placement centers	Children in substitute families (1)	Total number of children in public care
06/12/1997	35,569	11,899	47,468
12/31/1998	38,597	17,044	55,641
12/31/1999	33,356	23,731	57,087
12/31/2000	59,181 (2)	30,572	89,753
12/31/2001	49,965	37,553	87,518
12/31/2002	43,234	43,092	86,326
28/02/2003	42,777 (3)	43,783	86,560

(1) Relatives up to the fourth degree, public and private professional caretakers, and other families.

(2) In 2000 institutions (with around 25,000 children) that were previously subordinated to the State Secretariat for Persons with Handicap, the Ministry of Health, and the Ministry of Education were transferred to the county councils.

(3) Out of these 37,225 were in public institutions and 5,552 in private.

Critical voices have been heard that the deinstitutionalization process has sometimes gone too fast and that children have been put at risk, particularly in the first years of reform. Children have been sent back to their families without a proper assessment of the situation and without services of support (Save the Children Romania, 2003:13; NGO interviewee B; a/e interviewee F). There are also concerns about the quality of alternative care services (Save the Children Romania, 2003:13; *Romania and the UN Convention on the Rights of the Child*, 2003:180). The great pressure and incentives

to close institutions has sometimes led to “creative” management, e.g. residential institutions are just given a new label or children are moved from one institution to another (NGO interviewee B; state interviewee B). A top-official at the EU Delegation in Bucharest recognizes, with some self-criticism, that the reform has been too hasty and that they have at times “put the cart before the horse” (EU interviewee A).⁸⁵

Moreover, there are substantial differences between the judets in terms of reform accomplishments (Commission, 2002:30; Ambrose, 2002:2; Morgan *et al.*, 2002:4). In some counties the reform started late and they have continued to fall behind whereas others have closed all institutions apart from those for children with special needs. These variations must be seen in the light of a “vacuum of regulations” and that decentralization measures have not been matched by proper mechanisms of financing and channels of control and monitoring. As a result, commitment to reform among key actors at the judet level and the cooperation between the same have become essential. Successful implementation at the local level has thus depended on a degree of spontaneous coordination. Interviewees single out political commitment, “human resources”, and “understanding of the reform” as the most decisive factors explaining the different states of reform (EU interviewee A; EU interviewee D; NGO interviewee A; NGO interviewee B; NGO interviewee C; a/e interviewee B; a/e interviewee G).⁸⁶ Political will and investments in human resources have enhanced the capacity to

85 There is for example a lack of professionals since the system of education and training has not developed at the same pace. This is often identified as one of the most serious problems and challenges of the reform (NGO interviewee E; a/e interviewee D; EU interviewee A; EU interviewee C).

86 There is a large group of counties in the middle and a small group of front-runners and a small group of laggards. These differences can only partly be explained by differences in economic development levels. There are some judets that are economically advanced but rather far behind in child protection reform and vice versa. Assistance from international organizations is also not an explanation in itself, since there have been open tenders and money available to all judets. Reform accomplishments are neither connected with the number of NGOs active in the judets (EU interviewee D; EU interviewee H; a/e interviewee B; a/e interviewee G; NGO interviewee B; NGO interviewee E).

attract funds, to learn from projects, and take on the ownership of the reform. Studies suggest that more formalized and cooperative relations between private and public stakeholders at the local level have also resulted in positive effects on the services provided (Morgan *et al.*, 2002).

REDUCING THE ABANDONMENT RATE

It is considered a great failure that more or less the same numbers of children are abandoned by their families today as at the start of the reform. This can be seen in the right column in Figure 9 of the total number of children in public care. In the 2001 report of the European Parliament (2001b:17) it is stated that: “Efforts to reform the system have failed to prevent infant and child abandonment”. This must of course be seen in the light of economic and social distress in the country, but it is generally argued that successive governments have also failed to take measures that would serve to remedy the situation. As put by one public servant in a county level DPC, “the abandonment rate cannot be lower within the current system” (state interviewee B). Efforts have been devoted to the children in residential institutions and measures to prevent abandonment have not been implemented (EU interviewee H). There have in practice been very few services to support families and children at risk and various allowances have been low or not distributed at all (cf. European Parliament, 2001b:17). In 1997, 16,346 families received support and counseling through public programs and in 2001 the number was 15,274 (Save the Children Romania, 2003:12). The number of services has thus slightly decreased at the same time as a key policy goal has been to reduce abandonment.⁸⁷ The EU Commission identifies problems in the system of budget allocations. According to the Commission (2002:30): “the fact that budget appropriations are calculated as a function of the number of institutionalized children tends to favour institutionalization in comparison

87 It is often argued that this type of services would not be more costly than the current services in child protection. Studies have shown that the costs of a child in his/her family are three times less than in an institution (Ambrose, 2002:6; NGO interviewee A).

to prevention of abandonment”. In addition, the “program character” of the reform, with a financial dependence on national and donor programs, has inhibited the stability and long-term thinking necessary for prevention activities (Save the Children Romania, 2003:9).⁸⁸

CONTROL OF INTER-COUNTRY ADOPTION

It is uncontroversial to classify the practices of inter-country adoption as a failure. The moratorium that the government was forced to impose in 2001 is the ultimate proof of this. The governments have failed to fight rule-breaking behavior by officials as well as to ensure the implementation of overall policy intentions. Starting with the first issue, the most important criticism has come from the rapporteur for the European Parliament. According to Emma Nicholson (European Parliament, 2001b:17):

Once declared abandoned by the State at six months or sometimes younger, these children can be swiftly drawn into a well established, financially led international trafficking system whereby they are sold for profit under the guise of fake or inappropriate adoptions worldwide.[...] Your rapporteur has unearthed hundreds of international adoption cases of children for whom no evidence apparently exists of a receiving family; others who left Romania with false, but Court accepted documentation; and worrying discrepancies with small numbers of named children in government reports and thousands unidentified officially but evidenced by other parts of the administration.

The widespread corruption and abuses of children are also recognized by the government and in independent evaluations (Nastase, 2001a; IGIAA, 2002).

88 There are many examples of also more short-term problems caused by the lack of secure funding in child protection services – e.g. projects for foster care have suddenly been halted due to a lack of resources (NGO interviewee C; a/e interviewee C).

Apart from the clearly illegal practices there have been more subtle problems of implementation. The regulatory framework created in 1997 provided that domestic adoption should be considered as a first option, but this was in practice seldom the case due to the strong financial incentives to opt for inter-country adoption (IGIAA, 2002; Bainham, 2003:226; Dickens, 2002:78; NGO interviewee B; NGO interviewee E). As a result of the reform measures in 1997, the number of inter-country adoptions started to increase and domestic adoptions to decrease (see Figure 10).⁸⁹ It is often held that the number of inter-country adoptions, including illegal ones, is higher than the official figures (Bainham, 2003:226).

89 Inter-country adoption has increased since 1989 all over the region and is a part of a global trend. However, in no other country has the share of inter-country adoptions out of total adoptions been as high as in Romania. In the early 1990s Romania totally dominated inter-country adoption from the ECE region (UNICEF, 2001:107). It is the only country in the postcommunist world where the majority of adopted children have gone abroad (UNICEF, 2003:23). Since this comparison stretches over the whole region (including also the poorer former Soviet republics), this exception cannot be explained by the level of economic and social distress.

Figure 10. Number of officially adopted children (Source: Romania and the UN Convention on the Rights of the Child, 2003:48,122)

	Total	Domestic	Inter-country
1994	4,830	2,792	2,038
1995	4,178	2,389	1,789
1996	2,320	1,005	1,315
1997	-	-	851
1998	2,857	840	2,017
1999	4,285	1,710	2,575
2000	4,326	1,291	3,035
2001 (1)	2,795	1,274	1,521

(1) Moratorium on inter-country adoption was imposed

It is argued that adoption practices in Romania have had negative effects on the child protection reform at large (Commission, 2000:20; European Parliament, 2001b; UNICEF, 2001:107; Ambrose & Coburn, 2001:7; Dickens, 2002; IGIAA, 2002; UNICEF, 2003:23). There has been a troubling connection between inter-country adoption and the residential institutions. These institutions have been important links in the adoption chains (children have to be abandoned for six months before being legally up for adoption), which is believed to have contributed to keep the institutions going. Prime Minister Nastase calls some institutions “veritable adoption plants” (Nastase, 2001a). One observer argues that without the institutions it would be more difficult to interest the international media in child issues in Romania and hence to boost the demand for Romanian babies abroad (EU interviewee B). As stated in a joint EU-government document (Mihailescu & Scheele, 2003:4):

Although no official statistics are available, it is estimated that since 1990 some 30 000 Romanian children have been adopted internationally. Even though the number may seem high, the truth is that inter-country adoption did not help to solve the problem of children in institutions. In fact the number of children in institutions increased, as many poor families were encouraged by “middlemen” to place their children in institutions. So what happened was that children who would not normally be considered for adoption, ended up in inter-country adoption, a measure that should be the last resort according to the UN Convention on the Right of the Child.

INSTRUMENTS OF IMPLEMENTATION

What concrete instruments have the governments used to ensure implementation? Since the first reform period encompassed few real efforts to steer the reform from the center focus will fall on the later period. Starting with authority modes of influence, the government has as elaborated before issued a number of laws and regulations. The center has, however, had weak coercive resources and county councils have the authority to decide about child protection services in their territory. It is identified as a major problem that the child protection body at the national level in its different forms as well as other central state actors involved have had deficient resources and instruments to monitor and control implementation (Commission, 2002:30; *Romania and the UN Convention on the Rights of the Child*, 2003:174-175; UN Committee on the Rights of the Child, 2003; a/e interviewee C; NGO interviewee A). The NACPA has not had the authority to perform inspections at the local level and issue sanctions (state interviewee A). The effectiveness of authority instruments has also been undermined by the great lack of standards and methodology from which the general laws suffer (NGO interviewee C; state interviewee B; Commission, 2002:30).

Turning to financial instruments, there has been an in Romania unique allocation of financial resources to the reform through the assistance programs of donors and from the national and local budgets. Local governments have in reality been highly dependent on the national level and donors for funding, which has reduced their discretionary power (Conway *et al.*, 2000; a/e interviewee A). According to official figures, in the year 2001 38.4 percent of the budget for child protection came from the central state in direct transfers, 35 percent from local budgets, 5.8 percent from the National Interest Programs distributed by NACPA, 16.6 percent from the EU PHARE program, and 4.1 percent from foreign loans (Coman, 2003a).⁹⁰ The governments have since 1999 used direct financial incentives, i.e. the National Interests Programs, providing a means to control the direction of the reform. Although only covering about 6 percent of the budget for child protection, these are important instruments since most of the budget of the DPCs goes to day-to-day activities and the programs have financed changes in services.⁹¹ The EU's PHARE programs and those of other donors have had the same effect to steer the reform at the local level and have been substantial in scope. Both national and international programs have had as a condition that local authorities cooperate with NGOs. Hence, financial incentives have served both to control the substance of changes and to enhance cooperation between actors at the local level. These have also helped to control the activities of private actors and to mobilize their resources for reform tasks (state interviewee C; state interviewee D).

Steering and coordination from the center have been inhibited by poor information about the conditions in the various judets (e.g. the extent of the problem, the number of children in various services, type of services

90 This does not include the resources contributed by NGOs and other international donors. EU is, however, the largest provider of aid in the policy subsector.

91 The 2002 programs were: social integration of street children, closure of old type institutions for children with handicap/special needs, training of human resources in the child protection system, and social and vocational integration of children/young persons in the care institutions that have turned 18 years old (Coman, 2003a).

provided in each locality, and the costs of services).⁹² This is a great obstacle in the work of the authority, but also for spontaneous coordination between stakeholders and for international organizations (*Romania and the UN Convention on the Rights of the Child*, 2003:175; state interviewee A; NGO interviewee C; a/e interviewee C). More lately the central state has, however, used different types of information instruments, e.g. a “best practice” competition, training programs, a public awareness campaign, and other activities that aim to enhance the sharing of information, spread of standards and methodology, and a change of attitudes (Coman, 2003b; state interviewee F). The NACPA has set out to develop minimum standards for various services in close cooperation with NGOs and donors. According to the 2003 Regular Report (Commission, 2003:23):

Work is underway to finalise national standards for child protection services that will be disseminated through training and information activities. This is a matter of urgency, as the lack of national standards hampers transparent monitoring of public and private service providers and risk allowing practices that are not in the best interests of the child.

These programs have often been initiated and funded by external partners and have all in all been considerable in scope.

It can be concluded that implementation to an in this context large extent has been ensured by financial and information instruments and that these to a significant degree have relied on the contributions of EU and other donors.

92 There are recent initiatives of foreign partners (USAID, DFID, and EU) in cooperation with the government to develop information and monitoring systems, e.g. the Child Monitoring and Tracking Information System (CMTIS) for the planning and delivery of child welfare services.

THE ABILITY TO STEER AND COORDINATE

It is obvious that there have been some extraordinary achievements in the area of child protection in Romanian. But what have efforts to meet the requirements of EU accession meant for implementing capacity? In this section I analyze the changes in policy-making structures in the two reform periods from an implementing capacity perspective – focusing on the congruence between policy-making structures and task interdependence, on the degree of institutional uncertainty, and on the commitment to policy-making ends – and I also relate the findings to the output study. This is followed by an analysis of how the development of an islands-of-efficiency-like structure is related to EU conditionality and the likely development in a medium and long-term perspective.

THE FIRST REFORM PERIOD

The alterations of policy-making structures in the first reform period at large left adverse conditions for steering and coordination. The subsystem was highly complex from an implementation perspective. A deconcentrated system emerged, i.e. at a national level responsibilities and authority were still dispersed at the same time as competences were decentralized to the judet level. The decentralization move was necessary from an implementation perspective and entailed an improvement from the previous period. But the subsystem lacked features that would serve to make a deconcentrated structure effective, for example linkages between interdependent actors and financial and information resources at the center. At the national level, task interdependencies ran across formal organizations with a lack of channels of interaction between. All this inhibited both spontaneous and controlled coordination and implied a poor management of child protection policy also when it concerns the policies that were at the very focus of attention, i.e. the management of the residential institutions. The EU Commission (1999:16) for example blames the crisis in the residential institutions in 1999 on the “unclear and complicated division of responsibilities between the 4 central authorities”. As a reaction to strong pressure exerted by EU actors in 1999 and demands for immediate improvements on the

ground, the specialized child protection structure at the national and local level was strengthened somewhat through allocation of resources and responsibilities.

Moreover, hasty and often defensive reform measures added to initial problems of confusing and overlapping structures of authority and responsibilities. New regulations were introduced at a high speed and there was no comprehensive legislative act. Both the relationships between the tiers of government and between the ministries and the child protection bodies were unclear and subject to frequent changes. This context of high institutional uncertainty hampered steering and coordination measures, but also discouraged a commitment to policy-making ends and created opportunities for corruption and the influence of special interests (Conway *et al.*, 2000; a/e interviewee A). The development in the area of inter-country adoption could indeed be interpreted in terms of state capture. The secondary legislation that was issued by the RAC served to increase the number of inter-country adoptions and there was a troublesome link between top-officials and adoption interests. Public-private interdependencies that emerged in this area worked against the intention of the reform and could only be broken by a complete restructuring of the system.

These adverse conditions for steering and coordination are also partly mirrored in the policy output of this period. There was progress in reducing the number of children in residential institutions and substituting institutional with family-type care, particularly after 1999, but the abandonment rate continued to rise and inter-country adoption was fraught with irregularities and, quite contrary to the regulations, continued to be a first choice at the expense of national adoption. There were also problems concerning the quality of the deinstitutionalization process. The results that were achieved must be seen in two perspectives, first of the new focus on child protection by the government and a modernized regulatory framework. Some actors at the local level responded positively to this and to the new authority vested in them. This all was important progress from the previous years. The second perspective is the substantial contributions of international donors and NGOs. This notwithstanding, the government and the central body that had been delegated responsibility still had a low

ability to steer and coordinate implementation of child protection policy and there were poor conditions for spontaneous coordination.

THE SECOND REFORM PERIOD

The policy-making structures that emerged in the second period provided more fertile conditions for the implementation of the part of child protection policy that focuses on the closure of institutions and provision for alternative care (i.e. child protection narrowly defined), but deficient conditions for the prevention of abandonment and more complex child protection policies (i.e. child protection broadly defined). This development started in the previous period, but now the specialized structure was further strengthened and came to feature characteristics that have been captured with the concept of island of efficiency. The fact that the system is decentralized implies that we are not talking about an island of a single formal organization, but a structure that covers both the national and judet level. This structure has had very intense exchanges with the EU and international donors at the expense of channels of interaction with domestic stakeholders. The national body was placed under the government shielding it from the ineffective ministries. The high priority of child protection reform has led to an inevitable regrouping of resources within the state (Conway *et al.*, 2000; *a/e* interviewee A). Child protection entities were strengthened through international resources, but also extra national budget allocations and an extraordinary mobilization of resources for child protection purposes at the judet level. Compared with the state of development in other areas of social policy child protection clearly stands out. As expressed by one interviewee “child protection is the diamond of the last ten years” (NGO interviewee E).

Starting with impediments to child protection broadly defined, the fact that child protection has been institutionally separated from other areas of social policy has left a misfit between policy-making structures and task interdependence. There have been incentives for public and private child protection entities to cooperate, but institutional obstacles to coordination of more complex problems related to for example social assistance, family policy, and health. These problems have been exacerbated by the fact that

other areas of social policy have been at a much earlier state of reform (a/e interviewee A; a/e interviewee B; NGO interviewee C). An expert on public administration in Romania holds that (a/e interviewee A):

The EU is asking the Romanian authorities to have a much better child protection system than the general state of social reform and what the resources and capacity of the state normally permits, inevitably at the expense of other areas of social policy. The worst is that from the whole social area you pick only this and you do not take care of the family and look at the environment that children grow up in. It is a kind of engineering where one is not looking at the bigger picture.

As discussed in Chapter 6 the problem of lack of channels of interaction has been less pronounced at the judet level. Institutionalized coordination structures have existed in the shape of the Commissions for Child Protection and more cooperative relations between various stakeholders have often emerged. Still, considerable resources have been devoted to exchanges with donors rather than to coordination with domestic stakeholders. The fact that decentralization has stopped at the judet level, where it has been easier to strengthen capacity and keep control of the reform process, is also pointed out as an obstacle to activities to prevent abandonment. For an efficient social policy it is often recognized that local councils close to the actual problems have to be empowered (a/e interviewee A; a/e interviewee B; NGO interviewee C).

Turning to the increased effectiveness in implementing child protection policies narrowly defined, this can partly be understood in the terms that the specialized structure has featured some embedded traits, that is, from this narrow policy point of view. These include decentralization, close private-public cooperation, and steering and coordination through financial and information instruments. Within this structure commitment to reform not least at the local level has indeed in many places been impressive. This must be seen in the light of the fact that the reform has been pushed from the highest political level and of the mobilization of extraordinary

resources to steer the reform. But is also related to more direct effects of EU conditionality. The strong pressure exerted by EU actors has created a sense of crisis among domestic actors and EU assistance as well as other donor programs have helped to motivate local actors and to induce cooperation around the policy task. Financial and information instruments are highly costly and have been ensured not only by the regrouping of resources within the Romanian state budget, but also by the contribution of resources from EU and other donors. Hence, within the specialized structure, effectiveness has to some extent been artificially enhanced by temporary international activities and resources. International organizations and the EU in particular have compensated for the Romanian state's inability to form alliances for reform and stakeholders have been brought together in various programs. The effectiveness built up in this structure has thus been ensured by separating it from social reform at large and from more ineffective parts of the state and by the direct involvement of key figures of the government. This has also facilitated the fertile exchanges with EU and other donors.

The measures in the second reform period have served to reduce the degree of institutional uncertainty. This concerns the clearer division of responsibilities as well as the creation of more comprehensive legislation and the elaboration and dissemination of standards. This has facilitated more effective steering and coordination from above as well as better conditions for spontaneous coordination. As elaborated above, actors have been more committed to policy-making ends and the government's crackdown on adoption practices also seems to have had positive effects in this regard.

The mixed blessing of this island-of-efficiency-like structure is mirrored in the reform accomplishments in this period. The structure has been effective in closing institutions and substituting them with family-type services, evidenced by substantial progress on these accounts. The same system has, however, been an obstacle to other aspects of child protection policy related to health, education, social assistance, and family policy, evidenced by the failure to implement measures to deal with the prevention of abandonment. The moratorium on inter-country adoption can be seen as the failure of the previous system, but it also gives evidence of the strong

commitment of this government to EU accession and its relative strength in relation to the previous one. This was indeed an extraordinary measure considering the pressure exerted by powerful international actors and vested interests that had emerged in the system.

To conclude, in this later period implementing capacity has been strengthened in child protection narrowly defined but is still low as regards other child protection policies. Within the specialized structure implementation has to some degree been artificially enhanced, that is, it has relied on the resources and activities of the EU and other international actors that may be lost as soon as the international attention to child protection in Romania fades away.

The effects on policy-making structures and implementing capacity in the two reform periods are summarized in Figure 11.

Figure 11. Effects on policy-making structures and implementing capacity

	1997-2000	2001-2004
Degree of congruence between policy-making structures and task interdependence	Low but improvement from previous period due to decentralization	Low in subsector at large, higher in child protection narrowly defined
Degree of institutional uncertainty	High	Lower
Degree of commitment to policy-making ends	Uneven and in areas spread of rent-seeking behavior	Higher
Implementing capacity	Low	Low in broad area, higher in narrow area

WHY AN ISLAND OF EFFICIENCY HAS EMERGED

The question why this type of policy-making structures has emerged has been partly addressed in the previous chapter. The reform measures that have had these intended and unintended effects on policy-making structures are of course not all related to EU conditionality, but the overall development of an island of efficiency structure is directly linked to the responses of decision-makers to these demands. As a consequence of pressure to show firm action and immediate results on the ground under the conditions of weak policy-making resources and very bad starting conditions, the governments have “over-simplified” the reform in two interrelated ways. Firstly, as demonstrated above child protection has in practice been narrowly defined in Romania. In spite of strategy documents that include all the aspects discussed in the previous section and the fact that child protection entities have formally been assigned these broader responsibilities, actual implementation efforts have focused on activities for children in residential institutions and on alternative care.⁹³ This choice of focus must be seen in the light of the fact that it is easier to show rapid results here than for example in the area of prevention and that the most severe criticism from the EU has concerned the situation in the institutions. Secondly, in order to change the system at the required speed it has been deemed necessary to create a new structure in relative isolation from the ineffective state. To restructure the old ministries would have required more efforts and resources. By creating an authority directly under the government, the problem of inertia and resistance to change was to some degree avoided. The system was decentralized from the start, shielding it

93 See Roth (2003) for a discussion of this in practice narrow definition of child protection in Romania as opposed to the approach in for example the EU countries, which is also the perspective in the official strategies in Romania. In order to live up to the UN Convention and to prevent abandonment the broader approach would have had to be implemented, in the author’s view. In the UN Committee’s Second Periodic Report on Romanian, where the reform is scrutinized from this broader perspective, the lack of coordination between various state actors and resources devoted to other areas of social policy is also severely criticized (*Romania and the UN Convention on the Rights of the Child*, 2003:174-175).

from vested interests at the center (state interviewee F). The specialized child protection entities that were created at the national and local level have thus focused on the goal of closing institutions, although prevention activities are formally under their responsibility. Hence, the subsector as defined in this study following the official approach has in reality been split on artificial criteria, which has facilitated the progress in child protection narrowly defined. Measures to integrate child protection policy with social policy at large have only recently been introduced and have not been accompanied by the same efforts at the center to ensure implementation.

It should be pointed out that this development only partly follows the policy recommendations of the EU and that EU actors have since 2000 stressed the need to integrate child protection policy with the system of social welfare. Decentralization as well as concentration to an authority at the national level is in line with strong requests made by the EU actors. But at the same time these have expressed concerns for example about the fact that the national authority has not been incorporated with a ministry of social policy. This notwithstanding, the development must be seen as a result of the governments' efforts to meet EU requirements. The need to create capable partners to handle the exchanges with the EU and other donors has contributed to this course of events. There have also been instances when EU actors have directly shaped policy-making structures, most notably through the creation of the High Level Group, which has had an impact on the character of policy formation.

THE DEVELOPMENT IN A MEDIUM AND LONG-TERM PERSPECTIVE

What is likely to happen with this structure in the medium and long term? As elaborated in Chapter 5 it has been argued that islands of efficiency risk being destroyed when conditions are normalized and international pressure and assistance fade away. In this particular case considerable investments have been made in the child protection structure over a relatively long period of time and at a formative moment in the development of the Romanian state. This, according the arguments in Chapter 5, would lead us to expect some effects on the future development path. In addition, the reform has been accompanied by extraordinary international scrutiny in

particular from the EU with repercussions in the domestic debate, which leaves potentially good conditions for changes in the behavior of actors. At the same time, the reshaping of policy-making structures has been effected with focus on a very specific policy task. This implies that the structure mirrors urgent tasks that have been shaped by EU conditionality, rather than a more generic development as a response to child protection issues under normal conditions. As elaborated above it is also widely recognized in Bucharest and Brussels that child protection policy and this structure have to merge with social policy at large and efforts have been made in this direction during the last few years. There is a risk that the efficiency that has been built up in this structure will be lost in this process. The recent measure where the NACPA has been moved to the Ministry of Labor, Social Solidarity and Family is widely welcomed. Various areas of social policy will be under the same ministry, which is perceived as a necessary condition to take the reform further.⁹⁴ It is too early to evaluate the effects of these measures, but for example a senior official at the NACPA holds that there has already been a loss of flexibility and efficiency in their work, e.g. they have failed to apply for donor money because of bureaucratic inertia (state interviewee A).

There is a risk that parts of the structure will be dismantled under normal conditions (for better or worse) and that efficiency gains will be lost. But we also have reason to believe that the patterns of interaction and practices that have emerged during almost a decade of efforts to meet EU requirements will affect the future development of policy-making structures. On the positive side investments have been made in cooperation on some child protection policies, particularly at the judet level, as an answer to strong incentives created not least by national and international

94 It is, however, often argued that it would have been better to create a new ministry of social policy and there are worries that effectiveness will be lost in the large Ministry of Labor, Social Solidarity and Family responsible for a number of policy sectors (NGO interviewee A; NGO interviewee E; state interviewee C; state interviewee D; state interviewee F; a/e interviewee B).

financial programs. Positive experiences with cooperative behavior and investments made in inter-organizational exchanges may feed back into later choices. Policy-making resources that have been built up have the potential to be mobilized in future implementation projects. But from the perspective of the central government the development at the local level is a two-edged sword. There are stronger potential partners for reform but steering and coordination become more complex. Child protection reform has relied on soft and costly influence forms and the capacity at the center to steer and coordinate by authority modes of influence is still relatively weak. This again begs questions of what will happen when conditions are normalized and EU pressure and international assistance decrease. EU pressure has served to unite actors and under normal conditions there are likely to be more conflicts of interest that may be difficult to handle in this system. A key task in the future – when policy-making is no longer guided by demands from Brussels – will be to build up an indigenous and more inclusionary policy formation process that can help to ensure compliance and a mobilization of resources under normal conditions.

Other interrelations in the subsystem have been undermined in this process. The need to coordinate the activities of the EU and other donors and incentives to focus on child protection narrowly defined imply that investments have been made in certain interactions at the expense of others that may take considerable efforts to re-build at a later point. There are as discussed earlier some signs that there is resistance on the part of child protection entities to cooperate and integrate with other more ineffective parts of the state. This implies that even if there is a political will to change the “island-part” of this arrangement, this may not be easily done when there are increasing returns for continuing the previous path.

CONCLUSION

It has been argued in this chapter that the demands of EU accession and reform responses of the government have had important effects on implementing capacity in child protection in Romania. This does far from

imply that reform measures have been determined by EU conditionality or that radical reform is the only factor causing the changes in policy-making structures. Neither is EU conditionality the only external source of influence as evidenced for example by the development in the field of adoption. EU conditionality and concomitant assistance programs have also had a direct influence on the behavior of stakeholders in the subsystem, e.g. to direct attention and induce commitment, and have worked in parallel with those of other donors. Compared to the effects that have worked through government efforts to satisfy EU requirements, these indirect effects have, however, been less decisive.

In this concluding discussion I will raise the level of abstraction and elaborate on whether or not there has been a conflict between the measures taken to meet EU requirements and a strengthening of implementing capacity. It is obvious that there is not a simple positive or negative answer to this question and that the discussion has to be broken down. On one level the measures taken have indeed been a push in the direction of policy-making structures that are more in line with what can be assumed to be required for implementation. Considering the highly centralized legacy and the character of the policy problem as well as the postcommunist development of a complex subsystem, a more decentralized system ought to be necessary for effective implementation. In a similar way, in the light of the legacy of dispersion of child protection responsibilities at the national level and the lack of resources to manage a reform, a degree of concentration ought to be a prerequisite. The radical and firm measures taken on these accounts are not likely to have come about without EU pressure and assistance. The demands for real changes on the ground have from this perspective motivated the government to move in a direction of a more capacity-enhancing system. EU conditionality has proved a powerful trigger of increased commitment to policy-making ends, not only of government actors but also among stakeholders, and has created incentives for cooperation and coordination on the policy task. In the field of adoption, EU pressure has “tied the hands” of the government, which has facilitated the radical measures taken to reduce the problem of special interests influencing the policy subsector. Moreover, new resources have

been developed and mobilized for policy-making ends. This is most vividly manifested by the development of policy-making capabilities at the local level, but also again on a more basic level by the fact that actor orientations have been redirected towards policy-making ends.

But we have also seen negative effects on implementing capacity. The study has confirmed that defensive measures impede implementation, evidenced for example by the crisis in child protection services before 1999. But also offensive responses have had adverse effects. This has been related to that decision-makers have in practice worked with a narrow definition of child protection and that a relatively isolated structure has been created. Effectiveness has been induced in child protection entities at the expense of coordination between stakeholders and strategies for a more encompassing child protection policy. These negative effects must be seen in the light of the radical nature of the changes needed to fulfill EU requirements, both in terms of speed and content, and the weak policy-making resources of the Romanian state. The fact that the Prime Minister and senior figures in the government have been directly involved in the reform is evidence not only of the high priority of the reform, but also of the weakness of the Romanian state and of the fundamental effects on the distribution of resources (including political attention) in this situation.

To conclude, in this case there has been neither a straightforward conflict nor mutual relation between efforts to live up to EU conditionality and implementing capacity-building. The study has illuminated some mechanisms behind positive and negative effects, where the former are related to an enhanced commitment to and cooperation on the policy task and development of resources to policy-making ends and the latter to a pressure to over-simplify the policy task and policy-making procedures.

CONCLUSION

It is generally recognized that EU adaptation has had profound effects on state transformation in the postcommunist applicant countries, but the process and direction of effects are poorly understood. In this study I have tried to conceptualize and present ideas about how and why the demands of EU accession may affect implementing capacity. I have also put the theoretical framework to use in a case study. This concluding chapter summarizes some key findings and arguments of the study. I start with child protection in Romania and the question of how and why the demands of accession have affected implementing capacity in this subsector. I then turn to some more general ideas concerning why efforts to meet EU requirements may strengthen or weaken the ability to implement public policy. This is followed by a discussion about the applicability of the theoretical framework. Finally, I allow myself to leave the immediate focus of the study and briefly elaborate on some ideas for future research that have emerged as a result of this study.

THE FINDINGS OF THE CASE STUDY

The study of child protection in Romania was presented as a critical case in two regards. Firstly, if the EU accession process may affect implementing capacity through the chain of events that has been conceptualized in the study, this ought to be observable in this case. Secondly, if there is a risk that measures needed to adapt to the EU are at odds with a strengthening of implementing capacity, this conflict is likely to be present. Starting with the first point, I argue that the study has shown that efforts to meet EU conditionality have had significant effects on the ability to steer and

coordinate implementation of child protection policy. Following the selection of the case this of course comes as no surprise. The development in the subsector has been marked by very strong EU conditionality in terms of the explicit link established by EU actors between EU membership and progress in child protection, the amount of assistance offered in the case of cooperation, and increasingly strong membership incentives. Moreover, fundamental changes have been needed to satisfy EU requirements. The reform has also been particularly closely monitored by Brussels and it has been highly visible in the media. This must be seen in the light of the great sensitivity of this issue due to its human rights link and the fact that the question of Romanian orphans raises very strong emotions. Considering the amount of attention and resources devoted to this question of EU and domestic actors, this case is not representative of some “average” EU accession induced change in a subsector. Still, the clear influence relation between EU accession and changes in policy-making structures gives us good reasons to expect some effects also in other cases.

More specifically, decision-makers have responded to EU pressure and assistance by taking radical reform measures that have led to the development of a structure of specialized child protection entities at a national and local level. These child protection bodies have been relatively isolated from the state at large, but have had intense exchanges with EU and other external actors. The comparison of the subsector over time and the detailed information gathered about the process has facilitated identification of the chain of events. The timing and content of reform measures have been influenced by the activities of EU actors and increasingly strong membership incentives. The effects on policy-making structures can be seen as a by-product of the pressing EU-related priorities of the reform. EU conditionality has also had a more direct influence on the behavior of stakeholders in the subsystem and in this case EU assistance has worked in parallel with that of other international donors. It should again be pointed out that I do not argue that the strategies and behavior of domestic actors that have caused the development of the subsystem over time have always been related to EU conditionality or that changes in policy-making structures are the only factor conditioning the ability to implement public

policy. I do, however, claim that I have identified a key source of change during this period.

Turning to the second point, that is, whether measures taken in order to satisfy EU conditionality have been in conflict with implementing capacity, the case study gave a mixed picture. Some responses to the demands posed by accession have had adverse effects on implementing capacity and there is a risk that the problem will become ever more evident when EU pressure and assistance decrease. The case study has thus confirmed that there is a potential conflict and we have good reasons to attend to this also in other cases. But it has also indicated a potential in this kind of externally induced change. A key concern then becomes how to understand the mechanisms at work and the factors that set one or the other movement in motion.

At a more concrete level, positive effects on implementing capacity were related to mechanisms of increased commitment to and cooperation on some policy tasks and the development of resources to child protection ends. Negative effects could be linked to mechanisms of over-simplification of reform measures. The island-of-efficiency-like structure that was the effect of these measures served to enhance the ability to steer and coordinate some specific child protection policies, but impeded implementing capacity in the subsector at large. Efficiency within this structure and intense relations with donors have been ensured at the expense of coordination and exchanges with other stakeholders. The decentralization implies that this structure is not a single unit and it is also the dynamics at the local level that has been most positive and that has the potential to bear fruit also in the longer run. When analyzing the whole period the measures taken served to reduce institutional uncertainty and to increase commitment to policy-making ends, which improved the conditions for implementation. The responses I have identified as positive and negative in this case cannot be linked to different conditionality measures thereby really classifying “good” and “bad” conditionality. But I argue that we can still distinguish some relationships of interests. A precondition for the positive development in the latter period was that membership incentives were credible (i.e. membership negotiations had started) and that EU demands clearly concerned progress in implementation rather than mere formal

changes. Moreover, EU pressure was accompanied by extensive programs of assistance, which served to mobilize the commitment of child protection entities as well as domestic resources to child protection. I argue that the negative responses of excluding stakeholders, neglecting coordination, and regrouping resources were related to a great sense of urgency in manifesting progress and the radical nature of the changes needed in a situation of an ineffective bureaucracy and weak policy-making resources.

CONFLICTING LOGICS?

These findings of the case study are in line with the arguments made in the theoretical chapters. The EU accession process may be a powerful generator of mobilization and coordination on a policy task. If the government is committed to real changes on the ground, EU conditionality may be the necessary trigger for measures to move in a direction of a more capacity-enhancing system (assuming that the government knows what this entails). If the EU accession process serves to induce the commitment also of stakeholders and mobilization of the resources of a broad range of actors for policy-making endeavors, there are unique and fertile conditions for change. If, however, the government is merely concerned with giving an appearance of action vis-à-vis EU (because it is unwilling or unable to do otherwise) or if it is forced to drastically concentrate policy-making procedures and resources because of a lack of capabilities to manage a complex reform, there is a risk that measures and effects will conflict with implementing capacity. This may entail diminishing congruence between policy-making structures and task interdependence – for example when stakeholders are sidestepped or channels of interaction undermined – or an increasing level of institutional uncertainty if for example parallel arrangements are created.

Whether positive mechanisms of commitment to and mobilization around the policy task or negative mechanisms of over-simplification come to dominate the development is dependent on the specifics of the case. It should first be pointed out that these responses are closely related. To

exclude stakeholders and neglect formal cooperation procedures may be a product of defensive reactions to EU pressure, but may also under certain circumstances be the very result of firm commitment to show real progress vis-à-vis EU. A conflict between EU adaptation and implementing capacity-building is most likely to come about in weak states with a lack of policy-making resources and where the changes called for are highly demanding. In this case there are more incentives to engage in window-dressing and if governments are still committed to reform they will have to perform “above their capacity”, which creates incentives to over-simplify. In this type of situation it is more likely that governments will concentrate the tasks of accession to certain enclaves in the state machinery and provide these with extra human and financial resources and that EU actors will encourage this development in order to have effective cooperation partners. If governments are more capable and the changes needed not as dramatic there are better conditions to take on implementation and less incentives to for example neglect coordination or exclude actors whose resources would be needed for effective implementation. This of course gives a gloomy picture where the countries that are the furthest behind are most likely to “move in the wrong direction” because of EU accession. But the balance between negative and positive responses is also related to the character of EU conditionality. Over-simplification can be assumed to be more pronounced if there is a great urgency to meet EU requirements or when demands concern formal changes but are more vague about real implementation. If governments view reform measures from the perspective of implementation they are more likely to pay attention and devote resources to other parts of the bureaucracy than small EU-related enclaves. As suggested by the case study, if programs of assistance accompany EU pressure there may be better opportunities for cooperative relations. These activities may, however, not have a straightforward positive effect on implementing capacity, since there is a risk that closer relations between actors incorporated in these programs are built up at the expense of coordination with other stakeholders.

The more concrete content of “negative” and “positive” responses is dependent on the particular situation, i.e. the starting points in the policy sector or subsector and the character of the cluster of policy problems.

In the case of child protection the creation of an island of efficiency at the national level was negative since the policy problem requires inter-sectoral coordination and since one started out from a very low level in this particular. The fact that the child protection structure has been decentralized has, however, been a move in a direction of a more capacity-enhancing system. In other cases a degree of isolation from other state agencies may be appropriate from the perspective of implementation. This may be the case if the key problem is excessive bureaucracy, i.e. if the contributions of actors that are excluded are not needed for effective policy-making. To structure an analysis of these issues I have advanced the concept of the embedded and insulated system that centers on the relationship between task interdependence and policy-making structures. I have argued that in most cases the most feasible way to strengthen implementing capacity in a postcommunist context is likely to be to move in a direction of more embeddedness, i.e. to increase coordination and have flexible exchanges between interdependent actors, and that the options to move in a direction of insulation are less realistic, i.e. to confine task interdependence within a one-dimensional chain of command. Still, this does not imply that this argument will hold in all cases and in the end these issues have to be analyzed on a case-by-case basis. Moreover, these are ideal type conceptions and in reality these relationships will be more complex and any mix between embeddedness and insulation may prove to enhance capacity.

Based on these ideas I will briefly elaborate on some very broad policy oriented implications. These are based on the implementing capacity perspective of the study and when EU conditions are formulated and politicians design reform agendas actors of course take into account a number of other factors. It may indeed be that one collectively decides on taking some costs and that for example the goal of EU accession overrides other concerns. It should also be recalled that this study does not make an overall assessment of the costs and benefits of the EU accession process but focuses on a particular process of influence. This being said, the discussion above shows the importance of carefully targeted conditionality in order to avoid both defensive responses and facing decision-makers with a dilemma

in which they have to choose between short-term considerations of EU adaptation and longer-term concerns for implementation. Since these types of major government interventions are likely to alter policy-making structures with also longer-term implications, domestic accession strategies ought to be linked to overall plans of the restructuring of the state machinery and capacity-building. Reform measures should be adjusted to the particular situation in order to avoid for example that interrelations that center on the policy task are undermined or that problems of parallelism emerge. Rapid transformation in general and the postcommunist one in particular create problems of uncertainty in shape of overlapping arrangements and informalism. During times of radical change there is also a tendency that decision-making is drastically concentrated and policy coordination and long-term thinking sacrificed, with adverse effects on implementation. There is a risk that EU adaptation prolongs this kind of dynamics and these costs should be considered when designing accession strategies. A great challenge is likely to be what happens when conditions are normalized, that is, when EU pressure and assistance no longer operate in a subsector or, on an overall level, when a country becomes a member. During accession negotiations an exclusive policy formation phase and lack of consultations may be accepted by stakeholders, due to commitment to accession, financial incentives, and close scrutiny from Brussels. Subsequently there is a risk that conflicts of interests emerge that cannot be handled properly in this type of structure. As a consequence, a major task after accession will be to build channels of interaction and a more inclusionary policy-making process.

THE APPLICABILITY OF THE THEORETICAL FRAMEWORK

The theoretical framework advanced in the study proved to be a satisfactory tool to analyze how and why the demands of the accession have affected implementing capacity in child protection in Romania. This would again come as no surprise considering that the case was selected because it was

likely that the relationship of interests would be clearly visible. In many other cases we can expect it to be more difficult to trace the process of influence. Still, the theoretical framework has the potential to structure also other case studies. The tentative ideas that have been advanced about the relationship between efforts to meet EU requirements and implementing capacity may be confronted with other cases of sectors and subsectors that have been exposed to strong EU conditionality. This does not just refer to cases in the postcommunist countries that have been engaged in the round(s) of accession discussed in this study, but also in the new ones that are lining up. It should be remembered that mechanisms of conditionality start to come into effect before the beginning of actual accession negotiations. Also a country like Turkey that is not postcommunist but starts out from a lower level of development than the member states can indeed be an interesting case to analyze from the perspective in this study. The basic components behind the dynamics of interests are strong conditionality mechanisms and incentives to become a member on the one hand and weak policy-making resources and a great scope of changes needed on the other, and these are not uniquely postcommunist phenomena.

The theoretical framework has elaborated a long chain of events and only lends itself to case studies. The empirical study has demonstrated the detailed information needed in this exercise. This approach has been the only feasible way to investigate the highly pressing question of how and why the demands of accession may affect implementing capacity and thus to account for the process of influence and change. Some of the arguments that have emerged from this study might be confronted with other cases without investigating this whole process. For example the ideas I have presented about how various responses – singled out in this study because of their relevance for implementing capacity – are related to certain domestic and EU conditions can be investigated in other cases without establishing that these responses actually result in changed levels of implementing capacity.

As evidenced by the more general literature on international conditionality (cf. the IMF and the World Bank) and on problems of state capacity in developing and transition countries, the basic relationship

investigated in this study could be fertile to analyze also in other contexts. As noted in Chapter 5, the concept of island of efficiency has indeed been developed in other situations of international conditionality effects than the postcommunist one. It should, however, be remembered that the mechanisms at work in EU accession are extraordinary in comparison with other cases of international conditionality. This is foremost related to the size of the international reward, that is, membership in an interstate community with supranational components that can be assumed to bring unparalleled benefits to states that are less developed than the average member. This creates very strong incentives to comply and to give an image as a prospective member. Still, the overall approach to link international conditionality to implementing capacity could be rewarding outside of this context.

It should also be noted that although this study has analyzed the dynamics of implementing capacity in a postcommunist context, I make no argument that the problems I have identified are unique to this context. It is indeed unfortunate that there are so few comparisons across regions, for example of state transformation processes in East Central Europe, Southern Europe, and Latin America. Problems of informalism and institutional uncertainty, of special interests that penetrate state sectors, and of fragmented policy-making structures and deficient coordination are likely to be more general to relatively poor and democratizing countries under rapid transformation. This indicates a broader relevance also of the parts of the discussion that have centered specifically on the relationship between policy-making structures and implementing capacity, which is a topic that calls for further research.

A FINAL REFLECTION

In this last section of the study I will allow myself to leave the immediate focus and elaborate on something that has puzzled me during the course of study and that is a pressing topic for future research. An implication of this study, and the argument that the EU accession process has important

consequences, is that the content of EU criteria is of major significance. Apart from the transposition of the legislation of the Union, these criteria (political, economic, and administrative) have emerged over time and are often vaguely defined. This leaves much discretion to EU actors and raises important questions about how these conditions come about and how one evaluates the extent of the problem in the various applicant countries as well as acceptable levels of implementation.

From this perspective I have been increasingly amazed during my research about the child protection reform in Romania. Having followed the news in the beginning of the 1990s I, like I imagine everyone else who merely followed these issues in the media, had the impression that the problem of institutionalized children was particularly pronounced in Romania. Having read a few UNICEF reports on the topic as part of this research project it became evident that this was not the case (see e.g. UNICEF, 2003; UNICEF, 2001). As pointed out in a UNICEF working paper (Micklewright & Stewart, 2000:2):

While the conditions in Romanian orphanages may be of particular concern, excessive institutionalization and the factors associated with it are a region-wide problem in the CEE countries. Bulgaria, rather than Romania, had the highest rate of infants aged 0-3 in institutions in 1997 (over one percent) and the growth of institutionalization among young children has been the largest in Estonia, with a rise of 75% over 1989-97, followed by Latvia with a rise of two-thirds.

Still, in the EU reports on the accession countries child protection receives extensive and repeated attention only in the case of Romania. In the reports on Bulgaria, which according to these figures has similar problems, the issue receives considerably less attention. We are left with a somewhat puzzling situation – although the problems in Romania are far from unique, it is the one country where child protection has been dealt with as a top-priority in the political criteria. EU criticism has not only concerned the quality of institutional care, but has also centered on more

quantitative aspects. An international expert I interviewed and who has worked in both Romania and Bulgaria was struck by the different states of reform in the two countries (EU interviewee E) and other interviewees with knowledge on this issue give the same picture (EU interviewee A; NGO interviewee A). In Bulgaria the reform has barely started and there is not a similar specialized structure of child protection. Interviewees singled out the actions taken by the EU in the case of Romania as the key factor behind these variations. Of particular importance is the role played by the rapporteur on Romania of the European Parliament (who had long been working in the field of child protection), whose great efforts in this field are in stark contrast to the neglect of child protection by the rapporteur on Bulgaria (EU interviewee A; NGO interviewee A; EU interviewee E). Now, I am not well enough informed to evaluate whether the actions taken by EU in one or the other case is appropriate, but this brief outlook – and in the light of the great impact the resulting child protection reform in Romania has had on the development in the subsector – raises pressing questions about how the content of the political criteria come about and how different countries are treated.

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