

**The 'old and the 'new'. Transformations in water resource  
governance in Spain**

to be presented by  
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at the Session 3 of the

**Workshop: Problems of Polycentric Governance in the growing EU**  
Berlin, Humboldt University  
16-17 June, 2005

## Introduction

Spain accession to the EU in 1986 had important consequences for governance. On the one hand, Spain benefited from EU distributive policies in the field of infrastructures and regional development, among others, for almost two decades. To this respect, EU membership contributed to the acceleration of the country's modernization. On the other hand, Spain and Portugal had to face the difficulties of the adoption of and adaptation to EU regulation in a wide range of fields. These difficulties were particularly relevant in the institutional and political dimensions. At the institutional level, Spain was a young democracy and presented weak administrative structures, hierarchical and elite-oriented governing styles, apathy political cultures and low levels of civic engagement. At the policy level, at the time of accession Spain was facing the challenge of developing welfare policies and advancing in the implementation of decentralized institutional structures, whereas some other policy fields, for instance environmental protection, remained low in the policy agenda. While the traditional modes of governance based on hierarchical control and steering proved to be deficient in order to ensure the adoption of and adaptation to the *acquis communitaire*, this paper explores whether modes of governance based on non-hierarchical control and the regular involvement of a wide range of non-public actors have emerged in Spain and which role are they playing in contributing to improve the adaptation to EU policies with special attention to the field of water.

This research is a work in progress. This paper presents some of the theoretical foundations and preliminary results of the NewGov research project particularly its 13th subproject.: 'Coping with Accession: New Modes of Governance and European Enlargement (COPA) <sup>1</sup>.'. The aim of the project is to trace the new modes of governance in the accession process and its impact on the successful implementation of the *acquis*. The project intends to explore how transition countries in Southern (Greece, Spain and Portugal) and Central and Eastern Europe have coped and are coping with the challenge of accession. In particular the study will analyze the role of new modes of governance in the adoption of an adaptation to environmental EU policies (Börzel, 2005).

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<sup>1</sup> This paper is a revision of a working paper elaborated by Núria Font, Meritxell Costejà, Pau Mas-Codina & Marina DiMasso for the New Modes of Governance project (New Gov) . The New Gov research project is financially supported by the EU's 6th Framework programme (project no. CITI-CT-2004-506392) and co-ordinated by the European University Institute (Italy). [www.eu-newgov.org](http://www.eu-newgov.org)

This paper is divided into three sections. The first one presents a brief review of some of the recent theoretical insights and typologies on the concept of governance and attempts at suggesting a minimal operative definition. The second section attempts to identify new modes of governance vis-à-vis the traditional ones in the processes of adaptation of EU environmental regulation in Spain. Finally, the last section presents the most recent developments of the water regime in Spain and identifies some examples of the transformations in the modes of governing water resources.

## **1. Concept of Governance**

The rapid changes in the social, political, economic, technological and natural environment are challenging the traditional structures of European governments. In response, over the last years, the concept of governance has entered the agenda in Political Science and provoked renewed interests among scholars from different subfields, namely, political theory, public policy, comparative policy or European studies. The new interest on governance mostly responds to the need of understanding and analyzing some of the transformations of the modes of providing common rules that are taking place in Western societies. However, the concept of governance is anything but new. The traditional notion of governance, that some authors have renamed as 'old governance' (see for instance Peters, 2000), has to do with the idea of political steering and control or, in other words, with governments ability to govern. To some respect, the old notion of governance, that appears in the sixties and broadly refers to the studies on planning, has much in common with a broad notion of government. It has a clear top-down dimension and refers to the governments' capacity to exercise the direction of societies. New governance, instead, refers to the latest ways that are being introduced by European elites to manage the domestic arena. The concept presents at least three trends that make it different from traditional governance. First, the provision of public goods does not lay on the resource to authority and sanction. Instead, public powers play the role of resource mobilizing, incentive generation and leadership, but less and less are the full providers of collective rules and services. Second, new modes of governance are articulated through horizontal relations of interdependence among a wide range of actors: State actors, private actors and non-profit actors sharing resources and shaping relatively autonomous, informal and stable networks (Rhodes, 1996 y 2000; Stoker, 1998). Thus it includes the participation of private actors (profit and non-profit) in policy formulation.

And third, actors' types of interactions within the networks include co-operation, delegation and competition (Jessop, 1998).

While these trends broadly feature new modes of governance, there is no common agreement on the different meanings of the concept and on that different ways of providing collectively binding decisions fall under this category. Some authors distinguish between a broad and a narrow definition of governance, referring the former to broad social structures (hierarchies, market and networks) and the latter to public-private networks (Börzel, 2005). Some scholars go beyond and suggest that governance theories are to a certain extent inspired on systems theories (Peters, 2000). Others place emphasis on how the State progressively abandons its monopoly on its responsibilities on the provision of public goods and shares them with the market and society. The hollowing-out the State thesis refers to the way in which the State becomes more porous, whereas political and administrative systems tend to be fragmented into actors' communities that are articulated around interests (Pierre, 2000; Hirst, 2000; Rhodes, 1996; 2000). To this respect, some approaches highlight the co-operative, autonomous and self-organized nature of networks (Rhodes, 2000).

For the purpose of the NewGov research, by New Modes of Governance (NMG) we mean 'the range of innovation and transformation that has been and continues to occur in the instruments, methods, modes and systems of governance in contemporary polities and economies, and especially within the European Union (EU) and its member states' (Rhodes, 2005). More particularly, the NMG could be defined as the ways in which collective decisions are adopted and/or collective problems are solved: a) in a non-hierarchical mode, so that no actor—including State actors—has veto power; and b) with the systematic involvement of private actors—profit and non-profit—in the formulation and implementation of policies (Börzel, 2005). Some of the policy areas where in which new modes of governance are being applied include, for instance, economic reform, public service provision, environment, taxation, education and others.

If we accept this broad definition, new modes of governance include a wide range of policy processes such as voluntary accords, standard setting and bench-marking, regulatory networks, public-private partnerships, a wide range of delegation—agencies, co-management, contracting out—,self regulation and informal agreements, to mention but a few. It also include new forms of policy experimentation in different economic sectors, where either new mixes of public and private goods are sought, and/or where innovative forms of policy processes including public and private actors

(or only private) have been put in place to deal with new policy problems (Rhodes, 2005). They all are forms of producing public goods that are not based on non-hierarchical patterns but on multi-actor networks. However, beyond common trends, differences among them are also noticeable and some efforts to elaborate typologies have been made. Hirst (2000), for instance, identifies five meanings of governance and Rhodes identifies seven. While not entering the debate on different conceptual families, we propose a broader typology encompassing three broad categories of new governance: governance as networks, governance as delegation and governance by private actors only. The distinction of these three categories is a broad one and to some respect imprecise. However, the three of them are modes of providing public rules and goods alternative to hierarchies and involving a wide range of public and non public actors but differing on: the types of actors involved, the types of dominant interaction and the role of the State (see Table 2).

**Table 2.: Broad classification of NMG**

<b>Broad categories of NMG</b>			
Modes of providing collective goods	<b>Public-private network</b>	<b>Delegation</b>	<b>Private actors only</b>
Specific trends of the process			
<b>Type of actors involved</b>	Public Profit Non-profit	Public Profit Non-profit	Profit Non-profit
<b>Dominant types of interaction</b>	Co-operation Co-ordination	Delegation Contractual Modes of co-	Co-operation
<b>Role of the State</b>	One more actor in an autonomous and self-regulated network  No veto power	Leads Fixes objectives Co-ordinates  Shadow of hierarchy	State: Spectator Incentive provider  Shadow of hierarchy

Source.: Font, N.; M. Costejà, P. Mas-Codina & M. DiMasso (2005) (unpublished). "Accession Governance". New Gov project. Internal working paper.

Governance as networks<sup>2</sup> has its roots in the abundant literature on policy networks. Some scholars reconceptualise the notion of networks as governance, at least in three ways: networks themselves, co-government formulae and strategic interactions. All of

<sup>2</sup> The conception of new modes of governance as public-private networks is the one adopted to this stage by the COPA project.

them prescribe modes of assigning collective goods that are alternative to market and bureaucracies and are based on horizontal interactions among public and private actors. However, they have their own specificity. Mayntz, for instance, connects the concept of governance to the notion of interorganizational networks (1993; 1997), while Marsh and Rhodes (1992) elaborate a typology of networks taking as a criterion mutual dependency and interactions density. To them, networks involve public, private and societal actors, and operate in an autonomous, informal and self-organized fashion. For Kooiman (1993, 2000) instead, governance is the result of the interaction and mutual adjustment between the necessities and capacities of government and society. Such adjustments are articulated through mechanisms based on co-operation, co-ordination and co-management. Finally, some scholars, for instance Scharpf (1993), also consider networks as a mode of governance, but being it a result of strategic interactions.

Governance as delegation. There is abundant literature on the delegation of tasks by the State to third parties as conceptualized as a new mode of governance (see for instance H ritier, 2003; Hix, 1998). Through delegation, State actors fix objectives, lead and co-ordinate the policy processes, but delegate the functions of effective provision of public services to third actors. This broad category includes different types of delegation, for instance to independent agencies, contracting-out of services, public-private partnerships and, in general, those market-oriented mechanisms falling under the category of new public management. To this respect, most issues raised by the literature deal the tension between efficiency and accountability. However, while it meets the condition of non-hierarchy, one might pose the question on whether it systematically involves private actors. To this respect, the latter condition must be understood in a broad sense, meaning that the involvement of an agency, even though the policy takes place in a very technical and non-inclusive arenas, implies a systematic involvement of a private actor.

Finally, governance can be provided by private actors only. Literature on community involvement and private actors initiatives has scarcely referred to the notion of governance. Besides, the systematic involvement of private actors is a necessary but not sufficient condition of the new modes of governance (we could think for example in traditional pluralist patterns of governance or tripartite corporatist bargaining as traditional ways of involving private actors). However, new governance shares the assumption that societal involvement in the provision of collective binding decisions is a prerequisite of governance (see for instance Skocpol *et al*, 2000).

### **The 'old and the 'new'**

What is really new about the concept of 'New Governance'? The distinction between 'old' and 'new' governance is found in the literature and, instrumentally, helps us think/focus our attention on the innovative forms of distributing power and solving collective problems. However we should look at this distinction with critical eyes and leave the relationship between the 'old' and the 'new' somewhat open. It is difficult to draw clear boundaries between the old and the new. And as Rhodes points out, 'the most fascinating puzzles may be found at the boundaries of governing modes, both old and new, where they overlap, merge into one another and develop hybrid forms' (Rhodes, 2005).

We should have in mind that NMG are usually produced by traditional governments (that is 'old' government structures and forms of authority). In this sense, most of what we classify as 'new' may be a reformulation of the 'old' (*same old book but with a new cover?*). Or It may be instruments or modes that have a novel approach when designed, but end up being perverted by the existing institutional inertia (traditional hierarchy, top-down regulation, existing power struggles) when implemented. NMG may have problems to overcome certain rooted policy interests and institutional inertia. This may also be explained because the governments want to solve problems at the EU level but don't want to give too much sovereignty. In order not to miss relevant developments it is important to not only look at new or novel instruments and modes of governance but also at the reforms and innovations introduced in the traditional modes to face rapid changes and increasing complexity at national and EU institutional context. In this sense, a useful approach is to do a dynamic analysis of the transformation of the traditional or 'old' types of power and authority.

Time and context are two crucial dimensions of this analysis. The time is important for policy for two main reasons. On the one hand, the effects on implementation/adaptation of the EU policies of the NMG may differ depending on the phase on the accession process. On the other hand, different sets of questions arise regarding the life-cycle of NMG:

1. how are they created? What are the causing mechanism or explanatory cause that give rise to NMG?
2. How are they implemented and what are they effects? What are their outcomes in terms of effectiveness and legitimacy of policy making, implementation of EU policies and regulation, redistribution aspects and/or

fostering economic transition? What effects do NMG have in power distribution, redistribution aspects?

3. How do they evolve/transform? What characterises persistence in time?

NMG are also context specific. New modes are nested amongst 'older'/traditional policy instruments and therefore the analysis of the context in which they emerge and develop becomes crucial. EU enlargements face different society (different cultures, traditions), State (types of governments, institutional structures, power distributions) and economic context (market structures, ...) Some questions arise regarding the scope conditions: Can NMG empower social actors? What are the possible role of NMG in enhancing the capacity of the State to improve the implementation of policies? Or in helping economic transition? Are there some necessary conditions for the NMG to emerge? Can some factors favour their implementation?

## **2. Accession governance: the Spanish case**

Spanish membership to the EU took place just a few years following the democratization of the political system. Three broad trends trace the Spanish process of Europeanization. First, institutional structures and political culture were those characterizing young democracies: the transition was the result of far-reaching agreements among the political elite without the active involvement of citizens or a wide range of societal groups; there was a poor tradition on consultation and societal involvement in the formulation and implementation of public policies; and there were comparative low levels of civic engagement (Torcal and Montero, 2000). Second, even though administrative structures were weak, the public sector had an outstanding role along the dictatorship and the transition (Subirats and Gomà, 1998). To this respect, for instance, economic agents operated in a scarcely competitive, protected and over-regulated environment, and State companies in key strategic fields, for instance telecommunications, were operating in a monopolized regime (Closa, 2001). The effects of EU membership and the need to liberalize the economy and make it more competitive within the European context was interconnected. The economic and monetary paradigm as well as the need to cope with a global economy led to important changes in macroeconomic policy (Alberola, 2001). Therefore, liberalisation was not a response to an 'overloaded' State, as in other Western democracies, but an exogenous demand to overcome an over-protective, over-regulated and scarcely competitive economy. Third, there was important cross-policy variation regarding the impact of

Europeanisation. While a few national policies only had to make marginal adaptations to secure the adoption of and adaptation to the *aquis* —for instance in education or agriculture—, most policy fields, including competition, environmental protection and telecommunications, were highly inconsistent with or insufficient vis-a-vis EU policies (Subirats and Gomà, 1998). And finally, EU membership opened windows of opportunities for actors traditionally excluded from policy-making processes. This applied both in regulatory and distributive policies, for instance environmental protection, agriculture or regional policies. By means of generating regulatory constraints and providing material resources, EU membership had the indirect effect of empowering private actors, for instance environmental groups, that already had significant technical and cognitive resources (Luaces, 2002; Font, 2001). As a result, some domestic policy areas became more porous to the involvement of private actors.

These general trends make consistent the characterisation of Spain —and probably Portugal— at the time of entering the EU as a weak State. The combination of the young democracy trends, the overprotective role of the State and the EU-national policy gap increased difficulties in the adoption of and adaptation to the *aquis*. Along the years following accession, national responses often consisted of legal transposition of EU directives and regulations without the adoption of the administrative and judicial instruments to effectively implement them. Within this context, the hypothesis considered is whether the absence of strong administrative structures to implement the *aquis* generated the conditions favourable to the involvement of non public actors to cope with EU obligations. The main reason to support such hypothesis is the NMG are expected to facilitate consensus-building among a wide range of actors and make implementation more effective (Héritier, 2003). To this respect, however, a critical argument may be risen. The systematic involvement of private actors departs from the assumption that this involvement reduces the costs of interaction, but does not consider that involvement of private actors is often unequal, biased and conflictual at the different stages of the processes. In addition, the hypothesis implicitly assumes that private actors —profit and non profit— have both the willingness and the resources necessary to cope with EU policies.

But the emergence of NMG must not be taken for granted. In order to look for the extent to which NMG trends have emerged and, if so, they have contributed to improve the adaptation to and adoption of the *aquis*, a previous issue must be firstly addressed before focusing on the effectiveness of the policy: whether in the late eighties Spain presented the necessary conditions for the emergence of patterns of new governance.

That is to say, whether trends in the ways of providing public goods —being them in response to EU obligations or not— were changing from hierarchical and exclusive to non-hierarchical and inclusive. We suggest that, as a general trend, such conditions were mostly lacking. The long standing tradition of the burden of public sector, on the one hand, and the scarce tradition on consultation, delegation and civic engagement, on the other, seemed not to conform favourable conditions for the emergence of patterns of governance. The consolidation of welfare policies —employment, retirement, education and health— as well as the contention of inflation and the reduction of unemployment were the policy priorities at that time. In addition, these social and macroeconomic policy goals were interconnected with the pressure of liberalization to reduce the protective role of the State. If we focus on environmental policy, this issue was not a priority and a poor sense of obligation regarding EU directives was a general trend.

The second issue focuses on the specific trends of NMG in the Spanish context. If we look at the two conditions defining NMG — systematic involvement of private actors and non-hierarchical modes of steering—, some particular trends can be observed. Regarding the former, involvement of private actors in the policy-making processes was not systematic. However, over the last two decades an incensement of the number and type of actors regularly involved in certain policy areas can be observed. Along this period, the State has lost the monopoly of policy resources anymore and has progressively come to share them with both profit and non-profit actors. They provide knowledge and expertise, legitimacy, support (or not), access to the media, alliances at a supranational level, money, and so on. The process of Europeanization has accelerated such a tendency. EU membership has progressively generated new constrains and opportunities, opened new access points to the policy process, favored the Europeanization of national agendas and generated incentives for the redefinition of strategies by non public actors. In the field of environmental protection, for instance, EU membership activated the involvement of environmental groups in the sense that they improved coordination and exchange of information, entered the EU arena and acted as informal agents of monitoring of the implementation of environmental regulation. The process of Europeanisation, then, has contributed to the emergence of one of the two conditions of new governance, that is to say, it has indirectly contributed to the gradual replacement of exclusive and closed patterns of policy-making to more inclusive and opened ones. The second of the conditions —non hierarchical modes of steering— is less evident. Hierarchy not only exists but is central in the process of adaptation of and adaptation to the *acquis*. The State continues to have a prominent

role in steering and controlling the design, formulation and implementation of policies. At most, the shadow of hierarchy is present through a State general framework. For instance, it may initiate consultative process or even delegate tasks to third parties, but this does not mean that it does not have the control over the process and has no veto power anymore.

NMG in Spain present a few distinctive patters. First, a more of less systematic involvement of private actors is more or less given, but non-hierarchical modes of steering are hardly observed (see Table 3). To this respect, current NMG seem to be in a premature stage. Second, the most common types of NMG observed are those in which hierarchy —or the shadow of hierarchy— is still present, for instance delegation or private actors’ governance. Third, NMG in the way observed (high involvement of private actors, hardly non-hierarchical steering) are mostly observed at the implementation level rather than adoption of administrative or judicial structures. They emerge very selectively, often at the local level, and appear with relatively low levels of intensity. And finally, important intra-policy and even intra-subpolicy variations are observed.

**Table 3.:** Patterns of NMG in environmental policy

<b>Patterns of NMG Environmental policy – Spain</b>	
Systematic involvement of private —profit and non-profit— actors	Observed (but inter and intra-policy variations)
Non-hierarchical modes of steering	Hardly observed

Source.: Font, N.; M. Costejà, P. Mas-Codina & M. DiMasso (2005) (unpublished). “Accession Governance”. New Gov project. Internal working paper.

Taking such considerations into account, we expect to find the following patterns of NMG in the field of environmental protection:

**Table 4:** Broad categories of NMG in environmental policy

<b>Broad categories of NMG Environmental policy</b>			
Modes of providing public goods			

Specific trends of the process	<b>Public-private network</b>	<b>Delegation</b>	<b>Private actors only</b>
<b>Type of actors involved</b>	Public / semi-public Companies Environmental groups Experts (multilevel)	Public / semi-public Companies Environmental groups Experts	Companies Environmental groups Experts (multilevel)
<b>Dominant type of interaction</b>	Co-operation Co-ordination	Delegation Contractual Modes of co-	Co-operation
<b>Role of the State</b>	State: Not just one more actor in the network	Shadow of hierarchy State: Leads Fixes objectives Co-ordinates	Shadow of hierarchy State: Spectator Incentive provider
<b>Example (tentative)</b>	Conservation networks Water network	State societies (water, waste) Contracting out of waste and water services Agencies	Environ. Networks (naming and shaming, information exchange) Sectoral agreements Private sponsorship
<b>Intensity observed (tentative)</b>	Low		Low-medium

Source.: Font, N.; M. Costejà, P. Mas-Codina & M. DiMasso (2005) (unpublished). "Accession Governance". New Gov project. Internal working paper.

### 3. Towards a new water governance in Spain?

Water policy is a good example of the patterns that NMG are suggested to follow in Spain. As we mentioned before, at the moment of entering the EU, environmental issues\_and also water\_ were low in the national agenda. However, the Europeanization process has led and is still leading to important developments of the water governance regime.

#### The 'old'

Since its creation with the adoption of the first Water act in 1866, the Spanish water regime has undergone deep transformations both regarding property rights and policy design. Since then, the uses of water have increased and the scope of uses regulated has expanded. During the 20<sup>th</sup> century, and specially, from the 1950s, water uses diversified due to the quick development of industry and the tourist sector. However,

although new uses are introduced, regulations and policy decisions are adopted with low levels of policy coordination and by close policy communities (irrigation is the most significant example). Along the 60s and 70s, strong supply-oriented policies through the creation of large hydraulic works subsidized by the State, inherited from the end of the XIXth century, characterize the policy responses to the water problems.

By the end of the 70s, the increase of water demand for heterogeneous uses, the situations of water scarcity, together with the end of the Spanish dictatorship and the upcoming of democracy, push changes in the water regime governance. The democratization of the Spanish political system creates a decentralized model in which powers are distributed between the State, autonomous communities and, to a lesser extent, municipalities. While the provisions of the 1978 Constitution have direct consequences on water management, water policy at the beginning of the eighties presents some contradictions as it coexist with the 'old' regulative system (1866/79 Water Act). This situation results in a process of reform of the water legislation which ends with the adoption of the 29/85 Water Act. The Spanish entry to the European Community in 1986 also introduces elements of change and has a progressive impact on the water (both regulative framework and policy)

The 1985 Water Act attempts to introduce some components of integration both regarding the uses regulated and property rights. Regarding the former, it integrates several uses\_ irrigation, water treatment, drinking water, hydropower production and nature protection\_ within a common legal framework. Regarding the latter, it states that all continental (surface and ground) waters are of public domain, even though it establishes transitory processes that in practice leave the door open to keep many situations of water abuse unchanged (Costejà et al, 2004).

In spite of the objectives established by the 1985 Water Act, the type of regime along the eighties and nineties can be characterised as a complex one (Costejà et al.). Two main reasons account for it: policy fragmentation and plurality of interests. The first reason relates to the politico-administrative fragmentation of water regime. On the one hand, it is horizontally fragmented as, given the increase of the level of complexity, new issues related with water policy (i.e. water quality) emerge and lead to the creation of new administrative units at the State level. The creation of the Ministry of Environment in 1996 could be interpreted as a signal of transition into a more integrated regime, as this department holds powers on both environmental protection and water policy. On the other hand, the policy is vertically fragmented due to the involvement of both the

European and regional policies: the European Union introduces integration criteria with the 2000/60/CE Water Framework Directive (WFD)<sup>3</sup> and the Autonomous Communities are increasingly involved as formal and informal actor in the policy process in an attempt to defend their territorial interests. Regarding the second reason, a plurality of interests enters the policy arena and openly clash with the traditional approaches on water policy.

The following table includes the main phases in the development of the Spanish Water regime and the main features characterizing the regulative framework and the water policy.

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<sup>3</sup> The Water Framework Directive (WFD) establishes a framework for Community action in the field of water policy. More precisely, the directive aims at achieving good water status for all waters (inland surface waters, transitional water, coastal waters and groundwater) by 2015. The directive establishes a calendar of actions that Member States need to take in order to achieve the objectives of preventing further deterioration, protect and enhance the status of water resources

**Table 3.: Main phases in the development of the Spanish Water governance regime**

<b>PHASE 1</b> <b>1866/1879 - 1898</b>	<b>PHASE 2</b> <b>1898 – 1953/59</b>	<b>PHASE 3</b> <b>1953/59 – 1978</b>	<b>PHASE 4</b> <b>1978 – 1985/1986</b>	<b>PHASE 5</b> <b>1985/1986 – 1999</b>	<b>PHASE 6</b> <b>2000 →</b>
SIMPLE	SIMPLE → COMPLEX  (transition)	COMPLEX  (low complexity)	COMPLEX  (high complexity)	COMPLEX → Fragmented  (transition)	INTEGRATED vs. FRAGMENTED ??
<p><b>Regulative system (RS)</b></p> <p>Property and use rights are regulated following liberal principles</p> <p><i>Policy</i></p>	<p><b>RS</b></p> <p>Property rights unaltered</p> <p><b>Policy</b></p> <p>Deep social and economic crisis</p> <p>Need to promote large hydraulic infrastructures as a means to modernise the country</p> <p>Administrative reforms</p> <p>Failed agricultural reforms</p>	<p><b>RS</b></p> <p>Property rights unaltered (but need to review this issue)</p> <p><b>Policy</b></p> <p>Economic and demographic boom</p> <p>Increase of water uses and rivalries</p> <p>Increasing perception of water scarcity as a national problem</p> <p>Hydraulic plans to supply for the increasing demand</p> <p>Policy community (promote irrigation and hydraulic works)</p>	<p><b>RS</b></p> <p>Property rights unaltered</p> <p><b>Policy</b></p> <p>Democratisation and decentralisation</p> <p>Water scarcity as a national problem</p> <p>Perception on the need to review property rights regime</p> <p>Policy community weakening</p>	<p><b>RS</b></p> <p>Public domain and private waters (1985 Act)</p> <p><b>Policy</b></p> <p>Water scarcity as a national problem</p> <p>Territorial rivalries vs. interterritorial solidarity</p> <p>Environmental protection and water quality</p> <p>Regulation and hydraulic projects</p> <p>European Union</p> <p>Multilevel governance</p> <p>Multi-actor governance (environm. groups, regions)</p> <p>Alternative problem definitions and perspectives</p>	<p><b>RS</b></p> <p>Water markets (1999 Act)</p> <p><b>Policy</b></p> <p>Water scarcity as a national problem</p> <p>Water scarcity as a national problem</p> <p>Water policy based on territorial transfer (2001 Act)</p> <p>Environmental protection and water quality</p> <p>European Union</p> <p>Multilevel governance</p> <p>Multi-actor governance (environm. groups, regions)</p> <p>Alternative problem definitions and perspectives: sustainability and efficiency</p> <p>Policy mix: regulation, markets and hydraulic projects</p>

Source.: (Costejà, M. et al., 2004)

The failure to adopt National Hydrological Plan (NHP) in 1993 and 1994, due to territorial, social and institutional conflict, together with the increasing perception of the need to redefine water policy in more efficient and market-oriented terms, led to the reform of the 1985 Water Act in 1999. This Act introduces some changes on the water regime, mainly by regulating the so-called water markets, incorporating desalinated waters into the public domain and promoting efficiency criteria in the use of water. In spite of this, in 2001 a definite National Hydrological Plan (NHP) was approved with the opposition of some Autonomous Communities, some political parties, the environmental groups and the vast majority of the scientific community. In response to the social contestation, The NHP's main subproject (BOE, 2001a&b) which was to transfer yearly 1,050 Hm<sup>3</sup> from the Ebro River over a 900 kilometer-long aqueduct triggered great societal conflicts, has been officially repealed by the government after the national election of 2004 and previously rebuked by EU disagreements (as it was in contradiction with the European Water Framework Directive, WFD).

The civil movement representing social actors from different fronts against the traditional supply oriented policies of the government consolidated as the 'New Water Culture' (Arrojo Agudo and Martínez Gil, 1999), a new paradigm including the multiple dimensions of environmental, social, economic, political, ethical and emotional values of this vital resource. This *Nueva Cultura del Agua*, very much in agreement with the WFD, argues for a fundamental shift from "hydraulic works promotion" towards an "economic management" and demand-side strategy. <sup>4</sup>The underpinning approach of 'Demand Management' is to render the regime more flexible by reconverting programmes for more efficient uses (Naredo, 1996). From the ethical foundations laid by the *Nueva Cultura del Agua* emerged the *European Declaration for a New Water Culture* (signed in Madrid, February 18<sup>th</sup>, 2005), which recognises the different functions and values of water.

Following the principles that inspire the New Water culture and the WFD the newly formed government presented the *Programa AGUA* (WATER Program) a series of actions to be carried out in water-deficient river basins along the Mediterranean coast

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<sup>4</sup> The demand-side strategy includes: a) Infrastructure programmes (reduction of network losses) b) Savings and civil consciousness raising programmes (reduction of individual consumption, voluntary saving, modification of tariff structures, etc.) c) Efficiency programmes (technical modifications in equipments) d) Resource substitution programmes (replacing the high quality freshwater in the network by water from other origins, not yet utilised: treated wastewater, rain water, saline water, local water streams or aquifers with non-potable water, etc.)

as an alternative to the NHP. While a more modest pumping scheme south from the Tagus river may still go ahead, out of this volume, the majority will be provided by the fleet around 20 new desalination plants located in facility centers of the east coast, while around 18% originate from reutilized treated wastewaters.

### **The 'new'?**

The process of Europeanization has contributed to the emergence of some of the conditions of 'new governance' as it nowadays combines: a) network patterns acting as information-exchange arenas and pressure platforms rather than —ideally— autonomous and self-regulated structures where the State is just one more actor (soft version of governance as networks), b) delegation patterns in which State companies have been created for the construction of public works or for urban supply; and traditional conflictual multi-actor policy patterns (Costejà et al, 2004). To this respect, the combination of such types of operative patterns —'soft' networks, delegation and pluralist confrontation— has not necessarily increased policy efficiency, but rather the contrary.

Regarding the former, the most important network of private (non-profit) created as a result of the social debate around the 2001 National Hydrographical Plan (NHP) is the New Water Culture Foundation. The foundation includes NGO's, experts, universities, interest association and business and aims at securing a fair reasonable social and efficient use of water. It does so by developing projects of interdisciplinary research and publications analyzing the most important water management problems; developing interdisciplinary networks, means of communication and technical-scientific debate (with special attention to the relationship between university, business and the Administration); promoting the social debate between scientific-technical fields and the social movements related to water.

This network integrated the different fronts of social opposition movement against the NHP and acted as a pressure platform to denounce the infractions the NHP would suppose regarding the implementation of the Water Framework directive in Spain. In this sense, the NWC Foundation has developed as a network of information exchange, coordination of activities and also as an informal watch-dog of the implementation of the EU Water Directive. At present, the Foundation is elaborating proposals that have been are advising the newly elected government in elaborating the alternatives to the NHP and set the priorities of the Spanish water policy.

Regarding the latter, Water State Companies are public companies with both public and private capital which aim at the construction, conservation and exploitation of public works associated to the regulation of water resources, desalination and waste water treatment.

Traditionally, the construction of the hydraulic works was financed and carried out by the public sector. The *Confederaciones Hidrográficas* (river basin administrations) were the planning organisms dependent on the State Administration which determined the works to be constructed. The participation of the private sector was restricted to those hydraulic works in which the private actors (mainly the agriculture sector) could benefit from their exploitation.

The Water State Societies (WSS), were created by the State Administration with the following objectives: (i) integrate the participation of the private sector in water management. Integrate the potential consumers in the funding the public hydraulic works to achieve higher efficiency in water management, (ii) introduce economic criteria in water management, (iii) apply decentralization and subsidiarity, (iv) reduce the public deficit and contribute to the achievement of convergence criteria. WSS are established by a concession contract with the State Administration and are financed with own (State) and external resources. The latter can be public but non-State funds, EU Cohesion funds (up to a 85%), and private (Autonomous Communities, local governments). In the last 3 years, 8 WSS have been created operating in 8 of the 10 river basins

However, the opportunities for private participation in decision-making that WSS include are somewhat limited. The hydraulic works are still planned by the *Confederaciones Hidrográficas* (State administration) and to some extent are only the executive hand of some measures of the State water policy. Besides, the participation of the public sector is superior to the private so that the State keeps the control of the Society. And the *Confederaciones Hidrográficas* (State administration) are a majority in the governing Board of the WSS. However, WSS are still very young and it is still to be seen how far will this innovative instrument of water governance will go.

#### **4. Concluding remarks**

The partial results obtained in the frame of the research conducted for the New governance project that have been presented in this paper can be summarised as follows. First, Spain does not present neither generalised nor deep problems related to

the legal transposition of EU environmental directives. Second, regarding the emergence of NMG, some examples can be found of certain degrees of involvement of private actors, but non-hierarchical modes of steering are hardly observed. And third, NMG are most observed at the implementation level rather than adoption of administrative or judicial structures. They emerge very selectively, and appear with low levels of intensity.

At this stage of the research, however, some difficulties arisen in the mapping of the dependent variable. The main one refers to the data used in the mapping of the dependent variable. Official data on the level of adoption of and adaptation to EU environmental policy will allow for the comparison with other member States. However, such information is somehow misleading. Reports by the Commission on the implementation of EU law or the reports of the European Ombudsman, for instance include data on infringements do not contain rich information on the dependent variable. In addition, such data is not systematic as it is mostly based on complaints and petitions. We expect to manage difficulties by conducting a first round of in-depth interviews with actors involved in environmental policy —to the expense of decreasing the chances of comparison.

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