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Summary

This paper identifies factors that have promoted and impeded the effective adoption of and adaptation to the *acquis communautaire* in accession countries. Our comparative case studies on the implementation of six EU environmental policies in Greece, Portugal, Spain, Hungary, Poland, and Rumania show that the adoption of and adaptation to the EU *acquis communautaire* has given rise to significant problems of effectiveness in all six countries. Implementation problems, first of all, result from the serious misfit, which many EU policies cause at the domestic level. Misfit, however, is only a necessary condition for implementation problems. The effective implementation of the EU directives in Southern and Central and Eastern Europe is ultimately dependent on state and non-state actor capacities and varies across time.

Despite high costs and weak capacities, accession countries did not systematically resort to new modes of governance to address the mounting implementation problems. If they did, however, the involvement of non-state actors indeed improved effectiveness. However, due to the scarce emergence of new modes of governance, other factors have been more important. As expected by our model developed in D 11, EU capacity building and EU compliance pressure have been detrimental in promoting the more effective implementation of EU environmental policies. On the one hand, EU infringement proceedings put pressure on state actors to step up their efforts in implementing EU policies and empower non-state actors by offering new political and legal opportunities, particularly through the participatory requirements of directives, such as the FFH, WFD, EIA, and IPPC. On the other hand, EU technical and financial assistance has helped build the capacities of state and non-state actors necessary to make cooperation work.

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I. Introduction

The project explores how transition countries in Southern Europe and Central and Eastern Europe have coped with the challenge of accession. In particular, the study set out to analyze the role of New Modes of Governance in the adoption of and adaptation to selected EU policies in the field of environment as an example of positive integration which imposes significant costs on and requires considerable capacities of accession countries.

Given the scarce emergence of NMG (*deliverables 2 and 3*), we decided to broaden our focus on policy effectiveness beyond the role of New Modes of Governance. Our case studies have found improvements in the implementation of environmental policies in our six accession countries. However, this is not always due to the emergence of New Modes of Governance through which state actors seek to pool resources and share costs with private actors.

In order to identify scope conditions for the effective implementation of EU policies in accession countries, we developed a conceptual framework that focuses on compliance pressure and capacity-building by both EU and domestic actors (*deliverable 11*). The framework has been used to systematically analyze and explain the differential effectiveness in the implementation of six environmental directives in Spain, Portugal, and Greece (*deliverable 12*) and Poland, Hungary, and Rumania (*deliverable 13*). This paper will summarize the major findings of the case studies and discuss them in light of our theoretical framework.

The paper proceeds in three steps. First, we will briefly recapture the argument about the role of new modes of governance for the effective adoption of and adaptation to the *acquis communautaire* in accession countries. Second, we will provide a short summary of the model we developed (*deliverable 11*) identifying factors that may influence both the capacity and the willingness of state actors to effectively implement EU policies. Third, and most importantly, the paper will summarize and discuss the findings on the implementation of our six environmental directives in Spain, Portugal, and Greece (*deliverable 12*) and Poland, Hungary, and Rumania (*deliverable 13*).

II. New Modes of Governance, Accession and Effectiveness

As we have argued elsewhere (*deliverable 11*), New Modes of Governance can help increase effectiveness in the adoption of and adaptation to the *acquis communautaire* by:

- (1) strengthening the capacity of public actors to transpose European Directives into national law and to build-up the administrative and judicial institutions (norms, rules, procedures) to practically apply and enforce EU policies, and by
- (2) fostering voluntary compliance with EU policies by involving those affected in the policy-making process.

Effectiveness relates to the timely, complete and correct implementation of EU environmental legislation. We consider an EU policy as effectively implemented and complied with if: 1) the directive is completely and correctly incorporated into national legislation and conflicting national rules are amended or repealed (formal implementation), 2) the administrative infrastructure and resources are provided to put the objectives of the policy into practice and to monitor the rule-consistent behavior of the target actors (practical application), and 3) the competent authorities are equipped to encourage or compel rule-consistent behaviour of the target actors by effective monitoring, positive and negative sanctions, and compulsory corrective measures (monitoring and enforcement).

Yet, our comparative case studies on the adoption of and adaptation to six different EU environmental policies in the accession process of Hungary, Poland, Romania, Greece, Portugal, and Spain (*deliverables 2, 3, 6, 7*) only partially support our expectations. While we found evidence of some new modes of governance in all 36 case studies, these are scattered, remain unstable and cannot be regarded as typical. Traditional command-and-control approaches still prevail both in the South and the East of the European Union. This is even true for EU policies, such as the Integrated Pollution Control Directive, which explicitly provides for the cooperation with industry in implementation, or the Water Framework Directive, which requires the involvement of stakeholders.

To address the empirical puzzle, we argue that the accession countries of the Southern and Eastern enlargements have lacked two fundamental preconditions for the emergence and effectiveness of new modes of governance: state and non-state actors with sufficient resources to engage in non-hierarchical coordination to improve the effectiveness of public policy. This “governance capacity” has been largely taken for granted by the governance literature since it has almost exclusively focused on Western democracies (*deliverable 8*). The explanatory power of our theoretical framework is demonstrated by our 36 case studies on the implementation of six environmental policies in the three Southern European and three Central and Eastern European accession countries (*deliverables 9 and 10*).

Given the scarce emergence of NMG and in order to systematically explore their impact, we have focused on policy effectiveness beyond the role of New Modes of Governance and asked the more broader question: Which factors – both NMGs, or other than NMG – do help promote the effective adoption of and adaptation to the *acquis communautaire* in our six accession countries?

III. New Modes of Governance and Beyond: The Push-and-Pull-Model

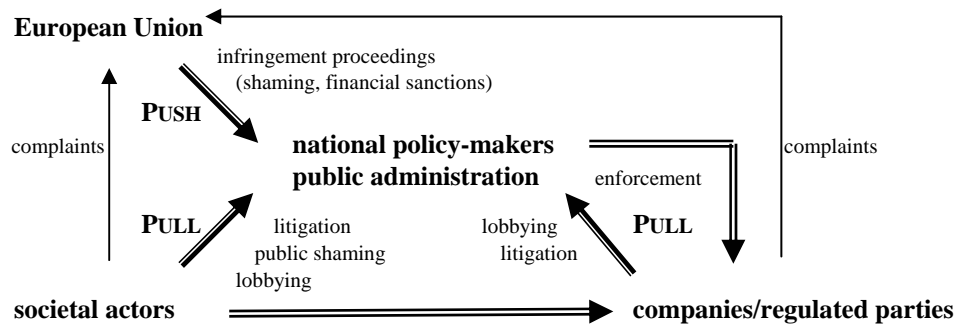
The Pull-and-Push Model as developed in *deliverable 11* is based on two major propositions. First, problems of effectiveness only arise if the implementation of European policies imposes considerable costs for the member states. The less a European policy fits the regulatory structure of the accession countries, the higher the adaptational costs in implementation and the lower the willingness of public and private actors to comply. Second, the willingness and/or ability of public and private actors to bear the costs of implementing poorly fitting EU policies is influenced by pressure for adaptation from ‘below’, where domestic actors mobilize against ineffective implementation (pull), and from ‘above’, where the European Commission opens infringement proceedings (push).

Policy Misfit is the result of incompatibilities between European and national policies. The more EU policies challenge or contradict corresponding policies at the national level, the higher the misfit and the greater the need for a member state to adapt its legal and administrative structures in the implementation process. Such legal and administrative changes may incur high costs, both material and immaterial, which public and private actors are hardly inclined to bear. The higher the costs of adaptation (misfit), the more likely are compliance problems to occur due to the resistance of domestic actors to deal with the costs. In case of fit, by contrast, the EU policy can be easily absorbed into the existing legal and administrative structure and does not give rise to any compliance problems.

Yet, policy misfit causing costs of adaptation does not necessarily lead to implementation failure. The mobilization of domestic actors may pull the policy down to the domestic level by pressuring the public administration to properly apply and enforce it. Legal action or public campaigns, in which environmental groups denounce a member state administration

for not complying with EU legislation, provide an additional incentive for better compliance. Such domestic mobilization often triggers external pressure for adaptation from ‘above’ by the European Commission, which opens infringement proceedings against recalcitrant member states. The EU push may be reinforced by systematic attempts at external capacity-building through EU financial and technical assistance.

Figure 1 The Pull-and-Push Model



Source: cf. Börzel 2003

IV. Coping with Accession: The Case of the Environmental *Acquis*

To explore the role New Modes of Governance have played compared to other factors, such as EU compliance pressure and capacity building, in making EU policies more effective in accession countries the empirical validity of the pull-and-push model, we have analyzed how our six accession countries have coped with the challenge of adopting and adapting the EU environmental *acquis* (*deliverables 12 and 13*).

The comparative case studies focus on environmental policy as an area of positive, market correcting integration that imposes significant costs in the implementation rather than in the decision-making stage. We look at two sets of policies:

- a) Traditional command-and-control policies, such as the Directives on Drinking Water (DW; 80/778/EEC) and Large Combustion Plants (LCP; 88/609/EEC; 2001/80/EEC). These policies impose considerable costs of domestic adaptation, especially on firms that have to internalize compliance costs to their production. Thus, both public and private actors may have an incentive to cooperate in order to share or shift the costs.
- b) New environmental instruments, such as the Directives on Fauna, Flora, Habitats (FFH; 92/43/EEC), the Environmental Impact Assessment (EIA; 85/337/EEC; 97/11/EEC), the Integrated Pollution Prevention and Control Directive (IPPC; 96/61/EEC), and the Water Framework Directive (WF; 2000/60/EEC). The application of these directives may stipulate the emergence of new modes of governance because their procedural regulations directly provide for private actors' participation in the policy process.

Both, the directives entailing new and old instruments, are most likely cases for the emergence of new modes of governance, because they impose significant compliance costs creating incentives for state actors to involve non-state actors in order to share or shift the burden. The emergence of new modes of governance becomes even more likely if the directives explicitly require the involvement of private actors.

Our findings, which are fully documented in *deliverables 12 and 13*, demonstrate that the adoption of and adaptation to the EU *acquis communautaire* has given rise to significant problems of effectiveness in all six countries. Transposition problems appear to be more pronounced in the SE, while accession conditionality has ensured at least the timely incorporation of EU policies into national law. Formal transposition has dominated the accession agenda and the CEEs ministries in charge of accession have often become law-making factories. Moreover, like the Southern Europeans, the CEEs have received some transition periods (LCP, DW, IPPC) Nevertheless, legal implementation has not always been complete and correct. The FFH directive is a striking example of deficient transposition in all three CEE countries under investigation. But the real issue has been practical application and enforcement. Much more reluctantly, legal changes have been followed by the establishment of new administrative structures in order to monitor and enforce the policies. Often, this step has led to a differential empowerment within the state administration by redistributing competencies both among different ministries and within different levels of the environmental administrations. For instance, introducing new permitting procedures due to the requirements of the EIA or the IPPC directives has significantly increased the workload of the regional tiers of the environmental administration.

IV.1 The Importance of (Mis)Fit

Implementation problems, first of all, result from the serious misfit, which many EU policies cause at the domestic level. Traditional command and control policies, such as DW and LCP, ‘only’ conflict with regulatory standards. Our countries have either no or lower standards. Implementation involves the introduction of stricter pollution standards and the establishment of monitoring and enforcement procedures. This in turn requires investments in new measurement technologies and qualified personnel. Progressive policies, by contrast, are based on a precautionary integrative, cross-media approach which entails systematic requirements for the participation of non-state actors. They are, thus, not compatible with the dominant problem-solving approach, policy instrument and standards in our six countries, which all share a legacy of state authoritarianism. The misfit for policies, such as EIA, FFH, WFD, IPPC, is bigger and more comprehensive than in case of the DW and LCP directives. Implementation requires the setting-up of new procedures to involve different department and levels of government, on the one hand, and stakeholders, on the other. This does not only impose administrative (more qualified personnel) but also cognitive costs (change of mind, particularly given the lack of engaging capacity and trust).

IV.2 Capacity Matters

Misfit, however, is only a necessary condition for implementation problems. The effective implementation of the EU directives in Southern and Central and Eastern Europe is ultimately dependent on state and non-state actor capacities and varies across time. State actor’s ability to set up an institutional framework in order to monitor and enforce EU legislation is crucial in this respect. The role played by the state administration varies strongly among the countries and directives we have analyzed. In some cases, the administration remains a strong and unitary actor that is able to keep a rather high level of autonomy vis-à-vis other state and non-state actors. For example, the unitary, autonomous and self-sufficient Romanian water management sector can be regarded as rather effectively coping with challenges of accession, which is not necessarily the case in countries where the water sector has been increasingly regionalized or privatized, as in Hungary or Spain. In general, state autonomy has been less of an issue, particularly if transposition took place before or shortly after accession. In all six countries, the legal adoption of the *acquis* has been delegated to special executive bodies and

often involved legislative procedures with a lower involvement of national parliaments. In the CEEs, accession conditionality further strengthened central executives vis-à-vis domestic veto players, both inside and outside government. Consequently, vertical and horizontal coordination capacities have been more relevant to the practical application. Conflicts within the administration, both between different branches and different levels, are very common causes for implementation failures, as the case of the Flora – Fauna – Habitat Directive in virtually all our countries shows. Administrative fragmentation significantly magnified the problems caused by weak or lacking financial, human and cognitive resources, which particularly plagued the implementation of the Drinking Water, the Water Framework, the IPPC and the FFH Directives.

Besides state capacities, resources of profit oriented actors also have an important role to play in the effective implementation of the directives – however, much more decisively so after the transposition process has taken place. The implementation process of cost-intensive directives, such as the Large Combustion Plants, the Drinking Water or the IPPC Directive, are essentially depending on the resources business actors (or municipalities) possess. Here, we tend to observe a high variance among the industry sectors targeted by EU environmental legislation. High performing sectors, which are usually strongly export-oriented and attract foreign direct investments as well as modern technologies in production, do not face big challenges in coping with directives such as the IPPC or the Large Combustion Plant Directive. By contrast, branches such as industrial farming, which are also subject to pollution control, are experiencing major problems due to the environmental investments they are forced to do.

Finally, the capacity of societal actors has been important to the implementation of EU environmental policy. Particularly in case of the FFH and the Water Framework Directive, the highly specialized knowledge and experience of environmental organizations, policy experts, and research institutes was badly needed. Moreover, environmental groups have been mobilizing support or provided voluntary work that helped meeting the requirements of some of the environmental directives. For example, well-organized environmentalist groups, such as the national chapters of BirdLife International, have been actively involved in designating the protection sites under the Wild Birds Directive in almost every country we analyzed. Adversely, societal actors have also been acting in opposition to state actors when these failed to correctly transpose or practically apply EU environmental legislation. In several cases, accession to the EU has provided them with opportunities to put pressure on their national governments by lodging complaints with the European Commission in cases of non-compliance with EU law (mostly in Southern Europe) or EU institutional requirements during the accession period (in Central and Eastern Europe). Yet, in all six countries, non-state actors have initially been too weak to systematically exert pressure on their governments and to engage in stable and sustainable cooperation, respectively, to make EU policies work on the grounds. They were often not willing either (see emergence). The role of civil society in CEEs resembles the situation in the three Southern European countries during the pre- and immediate post-accession period. Next to capacity constraints, they still have to find their final place in public policy-making. Pooling resources with the state requires a cooperative attitude, which conflicts with the role of civil society as a major opposition against socialist repression. Like in Southern Europe, many non-governmental organizations see themselves as independent watchdogs rather than partners of government.

In sum, the weak capacities of both state and non-state actors do not only account for the often ineffective implementation of EU environmental policies, particularly with regard to practical application and enforcement. They also largely precluded the emergence of new

modes of governance through which scarce resources could have been pooled and costs been shared. Push and pull factors have been more important in improving effectiveness.

IV.3 Push rather than Pull

One of the most important factors in fostering the effective implementation of environmental legislation has been the EU itself. By monitoring and sanctioning, on the one hand, and capacity-building, on the other, the EU has sought to push accession countries into compliance with EU environmental policies. This has happened in Southern Europe mostly by infringement procedures and financial transfers under the Cohesion Fund. During the accession period of the CEE countries, by contrast, the Commission heavily relied on its annual progress reports, in which it closely monitored implementation in each policy sub-field. Accession conditionality provided a powerful functional equivalent to infringement procedures for pushing countries towards effective implementation. In addition, the Commission was able to provide tailor-made assistance by using PHARE, ISPA or SAPARD funding. Capacity-building through these funding channels was in many cases important in providing direct technical assistance and technological know-how for both state and non-state actors. To what extent they are sustainable means of inducing compliance with EU law after accession, where practical application and enforcement becomes the real issue, remains to be seen. The experience of the Southern European countries clearly shows that capacity-building takes time to consolidate and yield results.

This brings us to one finding, which is quite consistent, both in Southern and Eastern countries: effectiveness of policy implementation increases over time. This is markedly so in the Southern member states, where the longer time horizon and the EU "push" have been encouraging compliance with environmental legislation. Both, the capacities of state actors and of non-state actors (for-profit and not-for profit) have increased over time, not least due to EU capacity-building. The strengthening of governance capacity through financial and technical assistance appears to have a double impact on the effective adoption of and adaptation to the *acquis communautaire*. While additional resources directly help state actors to effectively implement EU policies, they also foster the emergence of New Modes of Governance, which in turn contribute to effectiveness. Moreover, EU infringement proceedings have put pressure on state actors to step up their efforts in implementing EU policies and empowered non-state actors by offering new political and legal opportunities, particularly through the participatory requirements of directives, such as the FFH, WFD, EIA, and IPPC.

The most progress is observed in case of the FFH, where all four factors worked together to improve effectiveness. Likewise, EU financial and technical assistance and EU infringement procedures as well as domestic mobilization and cooperation have helped to improve legal implementation and practical application of the EIA Directive, also in the CEE countries. The LCP, by contrast, has not made much progress, which may be explained by the relatively low level of both EU and domestic capacity-building and compliance pressure (Hungary, and to some extent Poland, being an exception where corporatist state-industry relations helped implementation). The effectiveness of DW has also remained limited. Improvements are mostly due to EU compliance pressure and capacity-building. The WFD and IPPC, finally, have benefited from EU and domestic capacity building while pressure at both levels has been comparatively low. Improvements in both cases have been slow.

V. Conclusion

This paper identifies factors that have promoted and impeded the effective adoption of and adaptation to the *acquis communautaire* in accession countries. Our comparative case studies on the implementation of six EU environmental policies in Greece, Portugal, Spain, Hungary, Poland, and Rumania show that the adoption of and adaptation to the EU *acquis communautaire* has given rise to significant problems of effectiveness in all six countries. Implementation problems, first of all, result from the serious misfit, which many EU policies cause at the domestic level. Misfit, however, is only a necessary condition for implementation problems. The effective implementation of the EU directives in Southern and Central and Eastern Europe is ultimately dependent on state and non-state actor capacities and varies across time.

Despite high costs and weak capacities, accession countries did not systematically resort to new modes of governance to address the mounting implementation problems. If they did, however, the involvement of non-state actors indeed improved effectiveness. However, due to the scarce emergence of new modes of governance, other factors have been more important. As expected by our push and pull model, EU capacity building and EU compliance pressure have been detrimental in promoting the more effective implementation of EU environmental policies. On the one hand, EU infringement proceedings put pressure on state actors to step up their efforts in implementing EU policies and empower non-state actors by offering new political and legal opportunities, particularly through the participatory requirements of directives, such as the FFH, WFD, EIA, and IPPC. On the other hand, EU technical and financial assistance has helped build the capacities of state and non-state actors necessary to make cooperation work.

Overall, the findings of our project show that while NMG can increase the effectiveness of the implementation and enforcement of the *environmental acquis*, they do so only under certain conditions. Relevant state and non-state actor capacities, mutual trust among the stakeholders involved and constant and credible external pressure by the EU appear to be indispensable. In most of the cases we have analyzed, these conditions are not fulfilled. Consequently, our findings mute the high-flying expectations set into NMG in European policy-making in the recent decade, also with regard to enlargement. At least when applied in accession (and in the future possibly also neighbourhood) countries, which typically have both weak state and non-state actors' capacities, the hopes in NMGs remain bleak. At the same time, these findings underscore the importance of other means to increase the effectiveness of European legislation in acceding and new member states, including *capacity-building* oriented towards both state and non-state actors.

VI. References

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