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Summary

The paper assesses the regulatory effects of participatory environmental networks on the patterns of non-state actors' involvement and the emerging forms of coordination in the context of regulatory policy making. It analyses the case of the IPPC technical working groups as a prominent case of delegation of regulatory competencies to participatory networks. The IPPC directive provides for the institutionalisation of several technical working groups that undertake significant regulatory competencies regarding the definition of best available technology based emission limit values (BAT-Based ELVs) for a wide variety of sectoral industrial activities. Although BAT-based ELVs have no binding character per se, they have a strong normative influence on national permitting systems since they serve as reference documents for domestic permitting systems. Given the highly divergent environmental, economic and technological conditions in different member states and industrial sectors in Europe, the challenges imposed by IPPC participatory demands are high. How do different public and private actors articulate their preferences and interests into these novel policy making structures? What are the emerging modes of coordination between multiple actors with highly divergent preferences over the level of regulatory stringency?

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I. Introduction

The paper draws on the preliminary findings of our previous deliverable (14/D02) that assesses the regulatory effects of participatory environmental networks on the patterns of non-state actors' involvement and the emerging forms of coordination in the context of regulatory policy making. It analyses the case of the IPPC technical working groups as a prominent case of delegation of regulatory competencies to participatory networks. Although several EU directives provide for institutionalised participation of non-state actors at the domestic level, the so-called Seville process is indeed one of the few examples of a systematic involvement of non-state actors into regulatory policy making at the EU level. The IPPC directive provides for the institutionalisation of several technical working groups that undertake significant regulatory competencies regarding the definition of best available technology based emission limit values (BAT-Based ELVs) for a wide variety of sectoral industrial activities. Although BAT-based ELVs have no binding character per se, they have a strong normative influence on national permitting systems since they serve as reference documents for domestic permitting systems. In order to comply with the IPPC directive the latter have to demonstrate that industrial permits for emissions into air, soil, water and energy consumption are equivalent to BAT-based ELVs adjusted to local environmental, technological and economic conditions. Given the highly divergent environmental, economic and technological conditions in different member states and industrial sectors in Europe, the challenges imposed by IPPC participatory demands are high.

Most studies about the role of independent agencies and regulatory networks focus on the conditions for the establishment of delegation. However interesting, these studies tend to disregard the question of input legitimacy as a necessary condition for political effectiveness and policy efficiency of regulatory networks in the post delegation phase. Principal/agent framework that dominates studies of delegation to non-majoritarian institutions proposes that given the complexity of socio-economic phenomena, the acceleration of scientific and technological developments and the growth of international interdependence, delegation to regulatory agencies and networks is proposed as an efficient and effective means of achieving regulatory outcomes. Regulatory agencies and networks as depoliticized bodies pave the way for a closer incorporation of diverse interests into policy formulation and can better function as intermediary institutions between the state, civil society and market actors seeking solutions to common issues at stake. The paper seeks to assess the extent to which delegation of regulatory competencies to participatory regulatory networks is a sufficient condition for the emergence of highly inclusive modes of policy making. It analyses the ways in which public and private actors articulate their interests into these novel regulatory networks and the emerging modes of coordination between them and generate input legitimacy to regulatory policy making. Mobilization of all existing knowledge relevant to public decision making requires a stable relational context among peers that minimizes bureaucratic or political bias during deliberations and guarantees legitimacy at the input phase of regulatory policy making. Procedural credibility is therefore an essential institutional property that contributes to policy effectiveness and political efficiency in terms of the ability of emerging participatory structures to accommodate diversity of highly heterogeneous preferences at the input phase of the decision making process and generate consensual policy outcomes. It argues that in such a complex regulatory environment such as emissions control characterised by highly divergent interests and preferences over the desirable level of regulatory stringency, delegation is a necessary but not sufficient condition for the emergence of novel participatory forms of regulatory policy making. Although the institutionalisation of regulatory forums such as the IPPC Seville process is a powerful signal to private stakeholders, their willingness to contribute their resources in terms of knowledge and expertise into transnational policy making largely depends upon

their incentives and anticipated material and cognitive benefits. The paper argues that although functional pressures facing principals may well-explain the emergence of those participatory networks, their post-delegation functionality in a multi-level regulatory environment such as the EU is largely contingent upon domestic institutional conditions that affect private actors' preference formation of in favour or against participation to regulatory networks. The capacity of the state to mobilise private actors' resources towards effective application of the directive is a crucial explanatory factor of post-delegation functionality of regulatory networks. Pre-existing traditions of interest intermediation in environmental policies and domestic regulatory requirements attached to the IPPC directive can penetrate and alter private actors' initial preferences towards participation.

The paper is divided into five parts. The following part provides essential background information regarding the IPPC directive. It reviews the procedural characteristics of technical working groups and the requirements for public and private participation into the definition of BAT-Based ELVs. Part three recapitulates on the theoretical work on delegation to regulatory regimes with the view at identifying the domestic scope conditions that affect the policy effectiveness and political efficiency of delegation to regulatory networks. We argue that participation of domestic actors into translational regulatory networks largely depends on the capacity of state actors to mobilise disperse private resources which are essential for input and output legitimacy in the post-delegation phase. Parts four and five present our preliminary findings from the cases of Hungary, Poland and Greece.

II. The IPPC directive. The emergence of hybrid co-regulatory networks at the EU level

The IPPC Directive (61/1996) introduces significant policy innovations related both to the policy content and the procedural approaches applied to the adoption of environmental standards, their monitoring and implementation.¹ It is the first time that EU environmental policies depart from media-specific regulations to pollution abatement by introducing an integrated approach that provides for a single permit system covering all pollutant activities of industry, water, air, and land and the efficient use of energy. The IPPC Directive has therefore a strong procedural character. Instead of prescribing harmonised emission limit values (ELVs), it provides for co-regulatory processes to identify and diffuse best practices and techniques taking into account local environmental, technical and economic conditions. Single permits are to be based on BAT defined at sectoral and sub-sectoral level. The new permit system applies to new installations from October 1999, while for existing facilities it has a binding effect from October 2007. The definition of BAT is delegated to ad-hoc co-regulatory sectoral and sub-sectoral Technical Working Groups (TWGs). The Directive also provides for an Information Exchange Forum (IEF) that comprises representatives of the member states, large associations and the Commission. IEF has an overview of the process, especially regarding potential impacts of the Directive on industrial competitiveness and employment and agrees on the thematic areas covered by TWGs. TWGs are designed to comprise a large number of actors such as the Commission, representatives from member state governments, enterprise associations, individual firms, environmental organisations, research institutes, universities, national and EU environmental agencies. These networks operate under the auspices of an EIPPCB in Seville that serves as the network coordinator/facilitator. They facilitate the diffusion of information on BAT based on benchmarking of best practices defined in periodically issued and updated Best Available Technology Reference Documents (BREFs). BREFs

¹ OJ L 257 October 10, 1996.

have no binding character. They rather serve as the indicative basis for the adoption of ELVs to be included in single permits issued for each industrial installation covered by the Directive by national permitting authorities. The decentralised permitting system allows considerable leverage to domestic authorities to interpret BAT and define ELVs according to local environmental and geographical conditions, as well as the technical characteristics of the installation. The technical nature of BREFs and the lack of technical expertise on the part of the Commission to evaluate the compatibility of adopted BAT-based ELVs with broad environmental objectives denote the considerable policy relevance of TWG workings. The following sections will approach the nature of regulatory policy making in the framework of EIPPCB TWGs by focusing on two fundamental institutional properties, namely, the constellation of actors and the steering modes governing their interaction.

Our preliminary findings (14/D02) highlight the particular characteristics of co-regulatory networks organised under the auspices of the EIPPCB regarding both the actor dimension and the steering modes that facilitate interactions between participants. Since their establishment in 1996 the EIPPCB TWGs have attracted the attention of a wide range of public and private actors from different countries and industrial sectors. In the first eight years of their operation thirty three (33) BAT reference documents (BREFs) were discussed. These cover a wide variety of policy sectors and ‘horizontal’ activities such as energy efficiency, waste treatments (recovery and disposal activities), monitoring systems and economic cross-media issues. Information provided by the EIPPCB regarding the participants in various TWGs refers to a total number of 2027 public and private actors. Given the multiplicity of actors with divergent sectoral economic, national and political preferences and interests over the identification of BATs, it is remarkable that network interactions are governed predominately by informal rules with no formal conflict resolution mechanisms. The EIPPCB serves as the network moderator. It undertakes all administrative preparatory work.² There are neither majoritarian decision-making rules applied in cases of conflicts over the adoption of neither BAT emission thresholds nor formal arbitration mechanisms. On the contrary, there is an explicit attempt to seek consensual decision making through informal unanimity practices based scientific argumentation and persuasion. At the informal level there are three steering mechanisms that arbitrate in cases of profound disagreements and conflicts over the content of BREFs. At the first instance, the EIPPCB plays a central role in reducing potential conflicts, especially during the process of drafting and revising the content of the BREFs. At this stage, the EIPPCB acts as a mediator by contributing to the finding of compromises in difficult issue areas. Through its political independence it manages to ‘neutralise’ disagreements by distilling the content of the BREFs from political statements and confining the discourse in purely scientific points related to the validity, accuracy and credibility of data (Sórup, 2000). Significant disagreements and political conflicts are also discussed in the IEF that comprises a higher level of representation.

Despite those favourable institutional properties our analysis reveals that although national composition of TWGs tend to be rather balanced between high and low emitting member states, with the exemption of new CEE member states where participation is very low, approx. 5%, there are significant variations regarding the functional composition of TWGs.³ The vast majority of participants to the TWGs, approximately 44.4% percent, represent governmental departments responsible for industrial permits. Business and industrial associations, with 19.7% and 18.4 percent respectively are the second largest group of participants. Finally, research institutes and environmental organisations are the types of actors with the lowest par-

² The EIPPCB’s staff comprises experts temporarily detached from national ministries and the Commission.

³ For a detailed analysis of those figures see our previous deliverable 14/D02.

ticipation rates with 8.7 and 2.5 percent respectively. The analysis of the actor dimension of EIPPCB TWGs reveals considerable imbalances in the functional composition of EIPPCB TWGs. Industrial actors (individual firms and industrial associations) are the most visible group of private actors and the second largest category after governmental representatives. On the contrary, research institutes and NGOs are rather underrepresented. These imbalances are largely attributed to the framing of the policy problem addressed by the so-called Seville process. BAT identification is a technical issue that requires enormous amount of resources by private actors seeking to participate in TWGs.⁴ The problem is particularly pertinent to NGOs that face considerable barriers to participate in the process due to lack of essential resources in terms of knowledge and expertise in relation to BAT in different industrial sectors.⁵ NGOs often compensate for their weak resource base through alliances with environmental research institutes. However, their participation is also limited. These considerable functional imbalances raise the issue of winners and losers in the process of regulatory policy making in the framework of EIPPCB TWGs. Although industry is the most influential private actor in the process, it does not constitute an actor with homogeneous preferences over the type of BAT adopted and the corresponding ELV thresholds. Our analysis does not indicate a systematic over-representation in the process of industrial associations and individual firms neither from high nor from low emitting countries. On the contrary, industrial actors' participation is much more balanced compared to all other types of actors.

Turning at the overall national composition of TWGs, there is a clear variation between northern European member states, on the one hand, and the rest of the member states from Southern and CEE regions. With some exemptions the first category concentrates much higher levels of participation of non-state actors (individual firms and industrial associations and research institutes).⁶ ENGO participation demonstrates divergent patterns, dominated by one umbrella association, the European Environmental Bureau and with only German NGOs comprising a distinctive category of participants concentrating 29 percent of participants in the several TWGs. The rest of the countries do not exceed the threshold of 8 percent divided between France, Spain Poland, Greece and the Czech Republic. Those imbalances both regarding the national and functional composition of the TWGs are particularly revealing of the challenges inherent in the attempt to articulate multiple actors from heterogeneous regulatory traditions into a single regulatory forum organised around functional imperatives. They challenge major assumptions of functionally driven hypotheses regarding the policy effectiveness and political efficiency of delegation to independent non-majoritarian. Despite common functional and sectoral pressures and challenges facing industrial actors across Europe, the latter demonstrate considerable variations in their willingness to commit their resources into transnational regulatory policy making. In turn, these variations are particularly pertinent since they affect the networks' post-delegation functionality in terms of input legitimacy and, in effect, its political effectiveness and policy efficiency. The following section will recapitulate theoretical work on delegation with the aim at establishing a link between post-delegation functionality of regulatory networks with the engaging capacity of the state to generate positive incentives for private actors to commit their resources cooperative policy making processes.

⁴ A report from an industrial association estimates the requirements for effective participation to the relevant TWG at approximately €1,000,000.

⁵ The EEB has campaigned for financial support by the European Commission in order to compensate for imbalanced participation to TWGs (Hey 2000).

⁶ See Koutalakis, 14/D02, pp. 12.

III. Delegating regulatory competencies to environmental networks. Input and output legitimacy perspectives

In its White Paper on Governance, the European Commission attributes an important role to agencies and regulatory networks for the better application of EU rules (European Commission, 2001: 23f). The bulk of the literature on delegation focuses on the driving forces that condition the incentives of political actors to delegate policy-making competencies to regulatory networks operating under their auspices, their institutional design and the consequences of delegation for democratic accountability and control. Rational choice approaches conceptualise delegation as a response to powerful functional pressures emanating from the expansion of the regulatory role of the state as a distinctive mode of social coordination (Majone, 1994; 1997a). The principal/agent framework that dominates studies of delegation to non-majoritarian institutions, stresses four common explanations why delegation to independent regulatory agencies and/or networks might be beneficial for political efficiency. First, delegation is used to reduce political transaction costs emerging at the stage of negotiation between political actors (cf. Epstein/O'Halloran 2000; Héritier 2003: 203). Second, delegation to specialized bodies is expected to facilitate policy continuity given the complexity of socio-economic phenomena, the acceleration of scientific and technological developments and the growth of international interdependence. Everson et al. (1999: 21) indicate that “a reason for proposing the creation of European agencies in several areas of economic and social regulation is the perception of EU citizens and economic actors alike, that the present system – with its heavy concentration on rule making and its weak control of the enforcement process – is no longer able to cope with the regulatory challenges of global markets”. The high collective stakes attached to these challenges demand continuity of public action, which is not always achieved by political actors because of short-term electoral constraints (Majone 2001; 1997b). Third, the increasing technical and scientific complexity of many regulatory issues has led to the establishment of agencies and public/private networks which contribute expertise in these substantive matters (Héritier 2003: 203). Mobilization of all knowledge relevant to public decision making requires a stable relational context among peers that minimizes bureaucratic or political bias during deliberations (Moe 1990; 1995). Such a framework is hard to find within public administrations. Finally, agencies and regulatory networks may pave the way for a closer incorporation of civil society into governmental institutions. Everson et al. (1999: 32) argue that separateness from government may make them a preferred mechanism for co-opting certain groups into the decision-making process. Thus, agencies and networks function as intermediary institutions between state and civil society. Additionally, as depoliticized bodies eager to improve their own public reputation, agencies and regulatory networks contribute credibility and reliability as well as public confidence in regulatory processes and outcomes (Pollack 1997).

Cross – media pollution prevention policies concentrate all the above functional pressures that encourage political actors to seek alternative to traditional legislation steering modes in policy formulation and implementation. Available technology enables or constrains policy options, especially regarding the stringency of environmental standards and the instruments of monitoring and enforcement. The generation and diffusion of new technologies across a wide spectrum of sectoral economic activities requires rapid regulatory responses that enhance learning capacities and diffusion in those economic sectors and countries with weak economic and knowledge resource base. Knowledge gaps and uncertainties regarding the causes of environmental damage, its real dimensions and the effective remedies require stable continuous interaction between policy makers, economic actors and epistemic communities. Diverse ecologic conditions within the EU render the adoption of uniform pollution abatement standards

ineffective. Variations in the absorption capacities of different geographical areas result in significant regulatory distortions with considerable economic effects between different polluting activities (Holzinger 1999). Moreover, in contrast to product standards, economic actors, especially from member states with comparatively weak environmental regulatory regimes may, in the short term, face strong disincentives to comply with environmental process standards that reduce their competitiveness (Sharpf, 1994). As a result, the adoption of environmental standards and the definition of procedural requirements for their implementation have triggered intense competitive pressures between EU member states seeking to avoid high adjustment costs by uploading their domestic regulatory models and traditions at the EU level. Given the persistent economic disparities between EU member states and the scale of required administrative adjustments and financial investments, regulatory competition has generated a leaders/laggards dynamics in EU environmental policies (Börzel, 2003). The accession of southern European member states (Greece 1981 and Spain and Portugal 1986) with weak institutional and administrative capacities and limited or even no prior experience in pro-active environmental policies, coupled with an acceleration of legislative output that followed the launch of the internal market programme, have fostered the emergence of a deficit in member state compliance with environmental legislation (Börzel 2003; Mendrinou 1996; Tallberg 1999). The same holds for the recent eastern enlargement. As latecomers to the EU, the Central Eastern European countries (CEECs) face two serious problems regarding the adoption of EU legislation. First, they never had the possibility to influence European regulation according to their preferences and policy traditions. Second, they often lack adequate institutional structures and capacities to effectively implement and enforce European regulations. This double disadvantage for European latecomers has led to concerns in the new member countries about the full implementation of all EU environmental directives (Baker, 2000; Carius et. al., 2000; Homeyer, 2004). Wide disparities between domestic economic and administrative capacities highlight the limits to the harmonization approach.

Compliance problems point to a fundamental paradox in the current EU regulatory regime. The substantial expansion of EU's regulatory competencies from the 1980s onwards has not been accompanied neither by a parallel expansion of the EU's own implementing structures nor by potent enforcement and monitoring capacities. The Commission's DG Environment has rather weak monitoring and enforcement capacities compared to other Directorates General, such as DG Competition (Macrory, 1996). The Commission's access to information regarding member states' compliance performance depends on a rather weak system that involves three main alerting mechanisms: complaints by citizens, business, environmental NGOs, the Commission's own investigations, and petitions and questions by the European Parliament (Koutalakis, 2004). Given the dependency of the Commission on domestic administrations and private actors that are rarely granted institutionalised opportunities to participate in the decision-making process, their systematic inclusion into the policy process seems to provide a viable alternative to the legislative process. The creation of regulatory networks and forums that facilitate exchange of experience, learning and diffusion of best practices between public and private stakeholders reduces the regulatory gap that stems from the unequal distribution of 'say' and 'pay' in EU multi-level governance (Eberlein and Grande, 2005; Dehouse, 1997).

The intensity of the functional pressures analysed above determines the Commission's preferences on the institutional design of regulatory networks. Principals seeking to maximize their influence over policy outcomes, attempt to optimise the equilibrium between delegation and control in order to minimize losses from the network's tendency to gain political and bureaucratic autonomy. The higher the functional pressures experienced by principals in a given policy area the more powers they will delegate to regulatory networks and the weaker will be the

control mechanisms. Institutional design of regulatory networks facilitates or hinders certain regulatory policy outcomes. Institutional approaches point to two fundamental properties of the institutional design of regulatory networks that enhance effectiveness and efficiency in policy formulation and implementation. First, they include “non-state actors, such as firms, private interest groups, or non-governmental organizations (NGOs) in governance arrangements (actor dimension)”; and second they put “an emphasis on non-hierarchical modes of steering (steering dimension)” (Risse, 2004: 291). In line with theories of deliberative democracy, it is expected that the more inclusive regulatory networks are of diverse interests, the more transparent, effective and efficient will be their policy outcomes (Porte and Nanz, 2004). In multi-level systems that manifest high levels of local and regional diversity such as the EU, participatory network structures that facilitate horizontal coordination and steering between multiple public and private actors are expected to strengthen institutional capacity, especially in complex problems with cross – border effects such as environmental pollution (Heritier, 2002). Non-hierarchical, non-manipulative steering modes, for example, ‘arguing’ and ‘persuasion’ instead of ‘bargaining’, are accomplished through a departure from majority rules of decision making (Risse, 2004). These institutional properties are expected to pave the way to consensual decision making in policies where consensus between affected interests is difficult to achieve. Non-majoritarian decision-making rules and non-hierarchical policy instruments (learning, arguing, persuasion) have greater potential to shape domestic actors’ initial preferences and compliance incentives since implementing actors participate in both the target setting and the selection of policy instruments to achieve them (Héritier, 2001: 9). In effect, they reduce administrative costs of monitoring and enforcement by public bodies since participants are committed to voluntary self-regulation. These conditions facilitate learning and the diffusion of best regulatory practices, especially in conditions of uncertainty regarding both the causes and the optimal solutions and technologies to complex problems (Radaelli, 2000).

Most studies about the role of independent agencies and regulatory networks in the EU focus on the conditions for the establishment of delegation. Principal agent theories by pointing on functional pressures that constitutive actors face suggest that potential stakeholder participants identify mutual benefits over delegation of regulatory competencies to participatory networks. However interesting, these studies have tended to disregard the question of the legitimacy of regulatory networks in the post delegation phase. Beyond agency creation, there is growing evidence that the political clout of independent agencies to fulfil their mandate cannot be narrowly derived from their formal mandate or critical junctures in the agencies operation that call for a re-negotiation of delegation between principals and agents to avoid agency drift, but is at least partly dependent on the interaction with their regulatory environment and relevant social actors. Beyond functional needs, which may be identical or vary across different policy areas, the willingness of non-state actors in a given policy area to provide essential resources such as technical knowledge and to form coalitions engineering consensual policy making are two factors determining the constitutive actors’ preferences in favour of delegation (Eberlein and Kerwer, 2002: 5; Grande 2000: 20). In turn these properties determine the long term functionality of transnational regulatory networks since they generate conditions of input legitimacy through a balanced and unbiased representation of heterogeneous interests into policy making processes, reduce the likelihood of agency loses i.e. the gradual emergence of divergent preferences and agendas from the ones initially delegated by the principals in the policy area and, in effect, legitimate regulatory outputs. However, in complex multilevel regulatory areas such as the EU such conditions are difficult to find.

Major stakeholders face contradictory incentives to commit their resources into policy making. Technologically advanced firms might lose competitive advantages by revealing regulatory information to their competitors. However, the opportunity to influence BAT-based ELV

definitions in high levels might be beneficial to such firms that gain competitive advantages over higher emitting competitors. The latter will have to commit significant financial resources to the modernization of their production base in order to comply with higher ELV standards. Firms specialised in green technologies see the opportunity to diffusion their innovations to potential consumer firms through the influence of BAT-based ELVs. Firms with weak investment capacity in new technologies and high emission records also face both positive and negative incentives to participate in regulatory policy making. Through their participation have the opportunity to influence BAT-based ELVs into lower standards. At the same time, by revealing regulatory information they increase their vulnerability to both competitors and domestic regulators.

Therefore, functionally-driven and/or market incentive-based explanations cannot alone lead to sufficient account of private actors' choices to commit their resources to regulatory policy making. Apart from a rather limited group of firms, those producing green technologies, industrial actors face not only incentives but also powerful disincentives to commit their resources to participatory regulatory networks. Those properties are especially pertinent to member states and industrial sectors that have weak economic capacity to modernise their industrial base through the adoption of BAT and/or have limited experience in the application of the BAT concept in their domestic permitting systems. The inconclusiveness functional pressures and market incentives as a driving force of transnational cooperation between stakeholders in emissions control point to the central role of the state as an important explanatory factor upon which input legitimacy of regulatory networks is based. Since the Commission has no means to reach directly industrial firms companies affected by the directive, stakeholder participation largely depends on the capacity of the state as the locus of regulatory power that affects private actors' preference formation by generating positive or negative incentives to stakeholder participation.

Domestic regulators play a crucial role in private actors' preference formation. First through their administrative capacities such qualified personnel, effective enforcement mechanisms and financial incentives to mitigate compliance cost to industry can guarantee effective enforcement regulatory outcomes of network interactions. High levels of administrative capacity to effectively enforce the directive stimulate additional incentives for private actors to participate into transnational regulatory networks since they can influence the precise requirements upon which domestic regulators exercise their enforcement mandate. Low levels of administrative capacity might generate disincentives for private actor participation since they recognize the inability of domestic regulators to effectively enforce the regulatory requirements of the directive. Given the low possibilities to face negative sanctions from domestic regulators in case of non-compliance private actors are unwilling to bear the costs of participation in transnational attempts to loosely coordinate their production processes. The case of the IPPC directive points to a second important property of the state that also affects the incentives of private actor participation into transnational regulatory networks. Since decisions in those network interactions are not binding, public regulators have considerable leverage in specifying those BAT-based ELVs according to national, regional and local environmental, economic and technological conditions. Therefore the directive leaves considerable space for bargaining between public regulators and private firms at the domestic level for the specification of precise requirements for industrial plants affected by the directive. Even if domestic regulators possess significant administrative resources they are dependent on private actors for essential regulatory information related to production processes that is often protected by intellectual property rules. The capacity of the state to mobilise private resources in terms of knowledge and expertise related to the interpretation of BAT-based ELVs in light of the specific conditions of affected industry is crucial for the effective application of the directive.

Therefore, the capacity of the state to uphold property rights and generate trust in its interactions with industrial actors are crucial determinants of the incentives of private actors to commit their resources into regulatory policy making. Factors such as state traditions, constellation of interests in different regulatory domains, political leadership, compatibility with wider reform agendas and learning capacities of organizational actors have been identified as institutional and political properties that enable or hinder the emergence of IRAs as effective organizational responses to functional needs (Thatcher and Stone Sweet, 2002: 13). These domestic institutional properties resonate with current discussions within the principal-agent approach that doubt about the objectivity of functional pressures driving the creation of agencies arguing that the establishment of agencies is contingent on socially constructed perceptions and legitimacy beliefs, institutional path dependency and actor-related arguments (constellations, resources, knowledge). This leads to the assumption that the daily operation of agencies, and their effectiveness and legitimacy, can therefore hardly be decoupled from their social and political environment. This observation opens the way for the argument both about the relevance of studies about the post-delegation phase and the issue of credibility when examining input and output legitimacy. High levels of engaging capacity of the state stimulate private incentives to commit their resources since the latter are accustomed to stable repetitive interactions at the domestic level that enable mutual understanding and consensual policy decisions. Low engaging capacities of the state isolate private actors that are unwilling to commit resources and reveal important regulatory information to public regulators since they face uncertainties on their use at the domestic level. The following table seeks to map the ways in which state capacities affect private actors incentives and willingness to commit their resources into transnational regulatory policy making.

Table 1: Mapping state capacities

	High administrative capacity	Low administrative capacity
High engaging capacity	PP+	PP-
Low engaging capacity	PP+	PP-

The following parts of the paper examine the conditions under which such regulatory networks might enjoy input and output legitimacy in the post-delegation phase. It argues that input and output legitimacy is contingent upon the capacity of state actors to mobilise dispersed private resources that contribute essential technocratic legitimacy to the input and output phases of regulatory networks' operation. Conceptualising state capacity as an independent variable challenges conventional geographically bound generalisations regarding the absence of specific scope conditions such as a minimum of political and administrative resources or pre-existing systems of interest intermediation (civil society, corporatist business-government relations both in southern and central eastern European member states (also, Börzel 2007). Our analysis focuses on three member states, Greece, Hungary and Poland with rank between the countries with the lowest participation in the IPPC TWGs. Those countries have considerably divergent paths of industrial development and traditions in environmental policy making at the domestic level. The IPPC directive imposes considerable costs of adaptation both to domestic public administration that lack experience and expertise in integrated permitting systems based on BAT ELVs and to private actors manifesting low investment potential in new technologies. The following sections will provide an account of the strategies followed by domestic regulators to stimulate private participation in the IPPC TWGs.

IV. Poland and Hungary

Poland and Hungary as new comers to the EU face similar pressures for the adaptation to the IPPC regulatory requirements. In both countries a single permitting system of industrial installations did not exist prior to their entry into the EU. Therefore, the incorporation of their directive into their national regulatory regimes required the adaptation of administrative capacities at the central and regional levels that undertake issuing of permits, monitoring and enforcement of permitting conditions. Similar challenges are imposed by the directive's opportunities for non-state actors' involvement into the definition of BAT-based BREFs. Although during the post-1989, external financial assistance has stimulated the creation of a large number of NGOs active in environmental issues, their involvement into regulatory policy making has remained largely symbolic. The same holds for the relationships between the state and business. Economic transformation and privatisations was not accompanied with the creation of forums that favour a systematic dialogue between state regulators and the industry.

Despite these general similarities, there are considerable variations in the extent to which compliance with the IPPC directive imposes costs to industrial actors. Since there is no study on the direct compliance costs we use information from the European Pollutant Emission Register (EPER) as a general indicator of the level of industrial emission in each country.

Figure 1: EPER registered facilities

Hungary	96	0,84%
Poland	459	4,02%
EU-15	10134	88,76%
EU-25 except HU & PO	10862	95,14%
EU-25	11417	100,00%

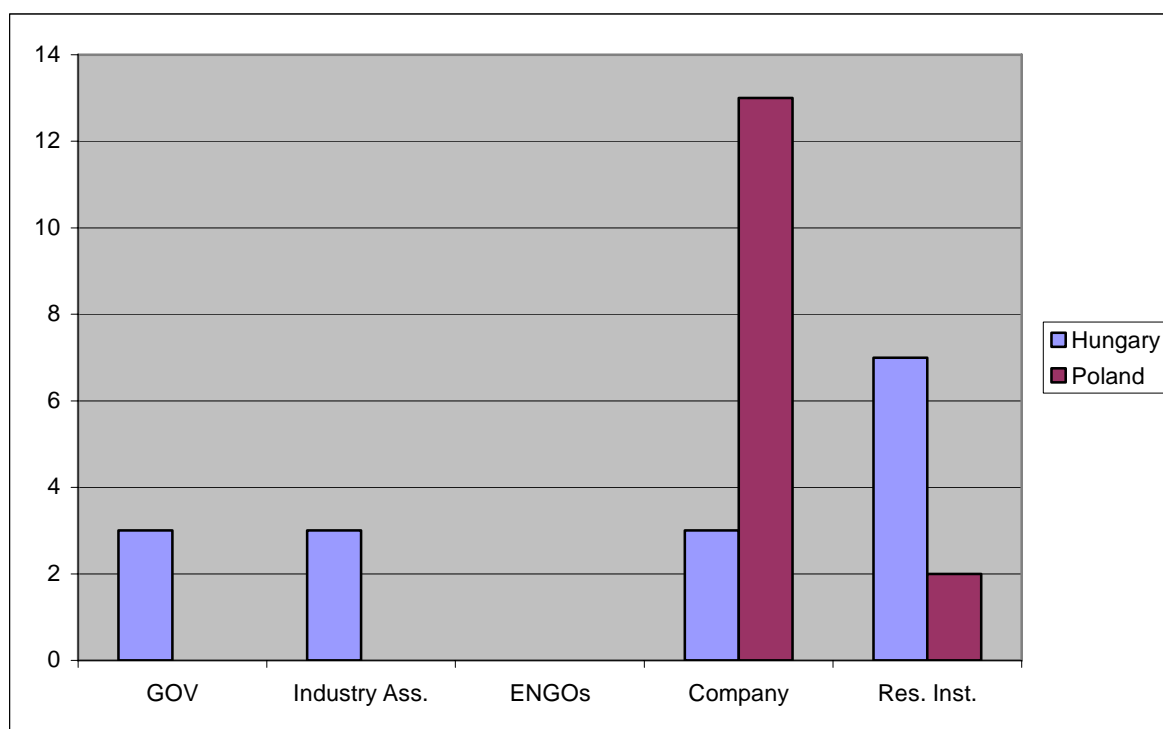
Source: EPER, www.eper.cec.eu.int/eper/

Although, Hungary with only 96 installations has considerably fewer industrial installations reporting to EPER than Poland (459) overall participation into various TWGs is remarkably identical in absolute numbers. Both countries score the highest rates of participation comparing with their CEE counterparts with 16 participants to various TWGs each accounting for the 17,60 percent of participants from that region.

However, turning into the functional composition of national representations into various TWGs we identify considerable variations between the two countries especially regarding business participation. Hungarian business participation is mainly channelled through large industrial sectoral associations that dominate the respective sectors. Most prominent examples are the Hungarian Steel association, the Hungarian Cement Association, the Association of Hungarian Aluminium Industry, the Hungarian Association of Foundries, the Federation of Hungarian Food Industries and the Environmental Committee of Hungarian Pharmaceutical Manufacturers Association. The engagement of large industrial association in the process enabled the diffusion of information regarding regulatory requirements for BAT-based ELVs to individual firms. On the contrary, Polish participation in various TWGs is dominated by individual companies, the vast majority of which are belonging to joint venture schemes with the participation of foreign investors and large energy producer companies such as the Electricity

Plants of Krakow and Belchatow. However, these forms of private participation are fragmented with limited added value for the industrial sector as a whole. Most of these firms participate in single sectoral TWG. The ones that concentrate the highest interest of Polish firms are Glass, Live Stock Farming and Large Combustion Plants. Interesting enough there is no Polish government representatives in any TWG. The hold with research institutes and universities that have much lower participation comparing to their Hungarian counterparts.

Figure 2: Functional representation, Hungary-Poland



Source: Source: Own elaboration based on information provided by the EIPPCB (<http://eippcb.jrc.es/pages/FActivities.htm>).

According to empirical findings of our project that are also converge with those from COPA these differences reflect considerable variation in domestic modes of environmental governance in Hungary and Poland (Börzel et al, 2007:29). In Hungary there is a stronger tradition in cooperation between the Ministry of Environment and Water with industrial associations such as the Hungarian Chamber of Commerce and Industry and the Hungarian Association of Industrialists in the framework of several consultative councils. The same holds for Hungarian environmental NGOs that in the post 1989 period have gained institutionalised access to this policy field through an environmental consultative forum. Those ties between the state and stakeholders have increased the capacity of Hungarian state to adapt to the requirements of the IPPC directive. A central issue was the mitigation of compliance costs to the industry. The two large representative organisations organised meetings and workshops, funded by Phare program to build up compliance capacities of individual business and sectoral industrial associations. The incorporation of IPPC compliance costs to available funding was also beneficial for those associations having an interest in direct participation to several TWGs. On the contrary, the weak capacity of Polish environmental ministry to mobilise essential private resources that would contribute input legitimacy into the policy process generated considerable problems to business seeking to participate into the Seville process. Industrial actors high-

lighted as one of the major impediments for their active participation into TWGs the high costs involved in hiring personnel or contracting it out to private consultants.

V. Greece

The IPPC directive caused considerable adaptation problems in Greece. The transposition of the IPPC Directive in Greece was considerably delayed. It took almost four years after the deadline for transposing the Directive (30th October 1999) and an ECJ judgement for delayed transposition in 2002 (C-64/01) to persuade Greek government to transpose the Directive. Finally, the directive was transposed in 2002 (Law 3010/2002). However, implementing measures were adopted much later by three ministerial decrees issued in 2002 and 2003 which define the detailed requirements for issuing single permits to new and existing industrial installations and the distribution of competencies between central government departments and sub-national authorities sharing responsibilities over industrial activities. One of the key problems that caused delays in the transposition of the directive was the lack of data on industrial installations covered by the directive.

Coordination of the Directive is undertaken by the Department of Industry, Directorate of Environment, YPEXODE. The Department is staffed by only 12 full time employees (11 engineers and 1 lawyer). Apart from the IPPC directive, the department is also responsible for EIA for Category A' investment plans and all other EU directives for industrial emissions including national plans for Kyoto emissions. Limited administrative resources have stimulated the emergence of a network of cooperation mainly with other public research institutes located in the two largest Polytechnic Schools of Athens and Thessalonica and the Institute for Environmental Research and Sustainable Development of the National Observatory of Athens, the Technical Chamber of Greece and the Hellenic Association of Chemical Engineers. From the 1980s onwards, this cooperation takes the form of a stable epistemic community dealing with technical issues related to monitoring air quality in the framework of numerous projects supported by the structural funds and national resources for ETERPS, a national environmental fund financed by a tax on fuel consumption⁷.

At the initial stage, even before the transposition of the directive, the most pressing problem was the lack of administrative capacities to undertake preparatory actions for the application of the directive. Data on industrial installations covered by the directive and their productive techniques in relation to international bibliographic references on BAT in different industrial sectors did not exist. It has to be noted that at these initial stages, early 1999, the process of defining BAT reference documents in Seville had not started yet. However, national authorities had to prepare national sectoral reports to serve as the basis for defining BAT at the European level. Given the lack of data, YPEXODE contracted out a study, to a consortium of five environmental consultancies⁸. The study was coordinated by the National Observatory of Athens and was financed by the operational program 'Environment' of the 2nd Community Support Framework. It was initiated in April 1999 until October 2001 with the aim at developing an inventory regarding emission from statutory pollution sources, the collection of data used for the definition of BAT-Based ELVs used as a reference for IPPC licensing of industrial installations. The study collected data from 1000 industrial facilities from energy, metal

⁷ The first attempts to initiate a program for monitoring atmospheric pollution in Athens date back to 1974 with a WHO program (PERPA). This program was implemented by the Ministry of Health (now is administered by YPEXODE) and included the establishment of monitoring systems, which today cover the country's whole territory.

⁸ These are: LDK Ltd, EPEM Ltd, ENVECO SA, SYVILLA Ltd and EXERGIA SA.

processing, mineral, and chemical, paper, food and waste management facilities. This approach reveals a number of limitations emanating from the lack of pre-existing structures and patterns of cooperation with industry. The main problem encountered during the elaboration of the inventory was the low interest of the Greek companies and the lack of trust towards any procedure that is directly or indirectly related to data provision for regulatory purposes. Moreover, small and medium enterprises often lack the qualified personnel and data in simple issues, such as their productive capacity (Interviews, 11/11/2006, environmental consultants, EPEM LtD).

These limitations lead to a departure from the main method of contracting out, which was employed for initializing the implementation of IPPC directive in Greece. Although the studies provided essential information for registering IPPC firms, additional strategies had to be employed in order to facilitate direct involvement of industrial actors into the definition of BAT-based ELVs for domestic facilities in different sectors that would serve as national reference documents in the Seville process. so as to compensate the lack of data and expertise on the part of YPEXODE. Initially, seven studies were contracted out to consultant companies. These companies collaborated closely with YPEXODE, individual firms and industrial associations in the framework of the elaboration of detailed BAT reference documents for different sectors. These collaborations signified a departure from YPEXODE's traditional approach based on command-and-control instruments for the definition of ELVs, monitoring and inspections. Numerous conferences and sectoral workshops facilitated the gradual deployment of an epistemic community, the generation of trust and mutual exchange of information that serves as a basis for the elaboration of national reference documents. Participants differed according to the composition of individual sectors. It has to be noted that in Greece, approximately 663 IPPC industrial facilities have been identified, 50% of which are located in the greater Athens area.

Figure 3: IPPC facilities in Greece

Industrial Sector	Total IPPC facilities in Greece
Energy industry	27
Production and processing of metals	22
Mineral industries	104
Chemical industries	45
Paper/board industries, tanneries and textile industries	35
Waste management facilities	80
Food sector industries	~350 ¹
TOTAL	~663

Source: EPEM Environmental Consultants LtD, 2002.

The vast majority of these firms are large enterprises that dominate domestic sectoral activity. These firms directly participated in the formulation of national BAT-reference documents. These are the Public Power Corporation (DEI), the Hellenic Petroleum, a public owned refinery listed in the stock exchange market, TITAN cement Company SA and Aluminium of Greece. From small and medium enterprises YPEXODE cooperated closely with industrial sectoral associations such as the Association of Metal Processing Industries, the Greek Can-

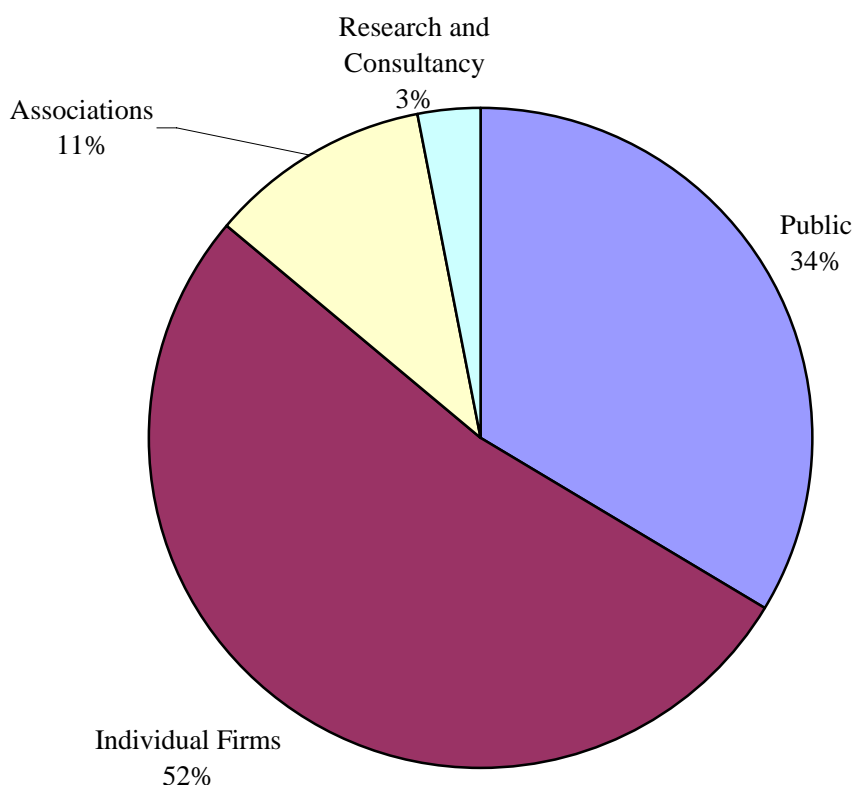
ners Association, the Hellenic Association of Chemical Industries, the Hellenic Slaughterhouse-meat Federation and the Hellenic Steel Makers Union.

Not all these actors were receptive of IPPC single permit requirements. Critiques focused on the additional administrative burdens emanating from the addition of a second permitting procedure that largely overlaps with existing licensing administered by the Ministry of Development (Association of Greek Industrialists, Conference Bulletin of Technical Chamber of Greece, 11/11/2002). Moreover, there was a certain degree of uncertainty related to the binding character of BAT-requirements for existing installations and costs involved for the upgrade of infrastructure in 2007. Direct financial compliance costs are not estimated until today. Several studies indicate that pre-existing policies for BAT on industrial facilities in Athens region reduce current costs since more than half of IPPC facilities are located in that region⁹. However, in order to stimulate trust within the business community as a prerequisite for their active involvement into the process of BAT national reference documents, YPEXODE in cooperation with the Ministry of Development formulated a cost containment strategy to mitigate private compliance costs for individual firms. These involved the introduction of separate measures and actions into the Operational Programme ‘Competitiveness’ incorporated into the 3rd Community Support Framework administered by the General Secretariat for Industry, Ministry of Development. Measure 2.5 ‘Technological and Organizational Modernization of Enterprises’ supports small and medium enterprises’ IPPC compliance costs through the adoption of ISO 14001 systems of environmental management and the adoption of BAT technologies. Measure 2.9 ‘Support to Entrepreneurship in Environmental Sector’ supports individual investment plans and voluntary sectoral agreements for the adoption of BAT technologies in all industrial sectors, benchmarking for assessing environmental performance and EMAS. Both measures target also administrative capacities of central and sub-national actors, especially those related to data collection, GIS systems, consultations and the creation of BAT guidelines.

Currently there is no data available for the absorption rates of the two measures mentioned before. Interviews indicate that there is a strong tendency of small and medium enterprise to mitigate direct IPPC compliance costs through their participation in voluntary commitments in the framework of EMAS and/or ISO 14001 (Interview EPEM environmental Consultants, 12/12/2006). This is manifested by the drastic increase of the number of certified firms during the last years¹⁰. The cumulative effect of cost containment strategies employed by YPEXODE and the Ministry of Development was the gradual emergence of trust between YPEXODE, the epistemic community and individual firms and sectoral associations that served as a precondition for conducting all preparatory stages in a negotiating mode dominated by arguments referred to sound scientific knowledge and the foundation of claims on international bibliography. As a matter of fact, private actors that participated into these preparatory stages also participate in various TWGs in EIPPC Bureau in Seville.

⁹ “Registry of middle and high nuisance industrial plants in the region of Athens”, Athens: National Observatory of Athens, 2004 (in Greek)

¹⁰ According to relevant registries 254 firms are ISO 14001 certified and 50 sites EMAS (Source YPEXODE 2006). It has to be noted that in Greece, no registration fees are charged for EMAS.

Figure 4: Greek participants in EIPPC TWGs

Source: Own elaboration based on information provided by the EIPPCB (<http://eippcb.jrc.es/pages/FActivities.htm>).

According to our data 52 % of participants in different TWGs represent large enterprises, 34% YPEXODE, 11% sectoral industrial associations while Greek NGOs are absent from the process.

VI. Concluding remarks

The IPPC directive imposes considerable compliance costs to domestic industry and public administration in the three countries under investigation, Poland, Hungary and Greece. The lack of experience and expertise in single permitting systems based on BAT technologies impedes domestic compliance with the requirements of the directive. Participatory requirements of the directive per se are not capable of mitigating these compliance costs through the diffusion of information of BAT between compliance actors and the establishment of technology transfer networks between industrial stakeholders. Our preliminary findings indicate that domestic institutional conditions shape the patterns of private participation into the so-called Seville process and condition their ability to benefit from their participation into transnational regulatory networks. In effect, these conditions affect the political efficiency and policy effectiveness of delegation into transnational regulatory networks in policy areas entailing high compliance costs to domestic public and private stakeholders. Pre-existing patterns of state/industry relations in environmental policies affect the capacity of the three member states to mobilize private resources that strengthen their compliance capacity with the directive. Hungary, Poland and Greece followed different paths and strategies in their attempt to mitigate compliance costs facing domestic industrial actors and the public administration itself in organizing the domestic permitting system. Hungary and Greece have strengthened their compliance capacity by mitigating compliance costs through the use of external assis-

tance directed to industrial actor mobilization. In Hungary pre-existing patterns of cooperation between the Ministry of Environment and Water and large representative organizations of industry and commerce has enabled a rapid response to the requirement of the directive. In Greece, the IPPC directive served as the pre-condition for the emergence of novel forms of cooperation with large representative organizations that actively participated in domestic working groups and the TWGs in Seville. Poland seems to have followed a different path. The weak capacity of the Polish Ministry to mobilize industrial actors by employing cost mitigation incentives has led to limited and largely fragmented modes of participation into the IPPC regulatory networks.

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