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Original Article

Governing EU accession in transition countries: The role of non-state actors

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Abstract Accession appears to be both a blessing and a curse to transition countries. On the one hand, EU membership supports their transformation from authoritarian regimes with centralized planning economies into liberal democracies with market economies. On the other hand, the accession countries face great difficulties in restructuring their economic and political institutions in order to meet the conditions for EU membership. The systematic involvement of non-state actors in the adoption of and adaptation to EU requirements was thought to be a remedy for the problems of European Enlargement towards ‘weak’ transition countries. Companies and civil society organizations could provide the governments of the accession countries with important resources (money, information, expertise and support) that are necessary to make EU policies work. The article explores the role of non-state actors in governing the double challenge of transition and accession. Focusing on the field of environmental policy, we seek to find out to what extent accession has empowered non-state actors by giving them a voice in the adoption of and adaptation to the EU’s green *acquis*. Our study on the implementation of EU environmental policies in Poland, Hungary and Romania shows that accession left little room for the involvement of non-state actors into the policy process. The article argues that both state and non-state actors in transition countries were often too weak to make cooperation work during the accession period. The double weakness of transition countries and a political culture hostile to public involvement seriously constrained the empowering of non-state actors by ‘Europeanization through accession’.

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Keywords: Europeanization; EU enlargement; civil society; environmental policy



Introduction

Accession appeared to be both a blessing and a curse to transition countries in Central and Eastern Europe (CEE). It posed a serious challenge to the capacities of CEE candidate countries, but carried at the same time the potential to empower non-state actors. On the one hand, the implementation of the *acquis* supported the transformation from authoritarian regimes with centralized planning economies into liberal democracies with market economies. These changes provided the necessary conditions for non-state actors to organize and act free from political control. On the other hand, the accession countries faced great difficulties in restructuring their economic and political institutions in order to meet the conditions for EU membership. The adoption of and adaptation to the *acquis* ran into serious problems concerning both the effectiveness and the legitimacy of EU policies. These problems could not simply be solved by imposing the *acquis*, as these countries were 'weak' states that often lacked the funding, the expertise and the administrative capacity rather than the willingness to effectively implement EU policies. Enlisting the help of business and civil society to pool resources and share the costs appeared to be one way to cope with the challenge of accession that was strongly encouraged by the EU. Next to tapping into the resources of non-state actors, their participation in the policy process would help to ensure effective implementation. The more the actors affected by a policy have a say in decision-making, the more likely they are to accept the policy outcome to be implemented, even if their interests may not have been fully accommodated. In short, involving non-state actors can significantly strengthen the capacity of state actors in public policymaking. At the same time, non-states actors become empowered by getting (additional) access to and influence on public policymaking in exchange for their resources.

This article analyzes how three CEE accession countries coped with the challenge of adopting and adapting the EU's environmental *acquis*. We are interested in finding out to what extent non-state actors were empowered by becoming involved in the implementation of EU environmental policies. Our comparative study on Hungary, Poland and Romania shows that EU accession did provide a political opportunity structure offering additional resources to non-state actors that they could use to advance their goals in public policymaking. Nevertheless, this hardly resulted in the empowerment of civil society organizations and business. We argue that it is precisely the weak capacities of state and non-state actors that often prevented them from engaging in the pooling of resources to make EU policies work. While civil societies and business were often too weak to exploit the opportunities offered by EU accession, government and administration did not appear as credible partners capable of delivering policy outcomes due to political instability and



lacking enforcement capacities. Next to weak capacities, the involvement of non-state actors in public policymaking was further impaired by their unwillingness to engage with each other. Administrative traditions and a political culture antagonistic towards the involvement of non-state actors in public policymaking as well as the fear of agency captured by private interests made state actors reluctant to seek the cooperation with civil society and business. Likewise, non-state actors shied away from engaging with state actors because of public skepticism against their involvement in the policy process outside majoritarian institutions, often considered as a continuation of traditional clientelistic networks. Moreover, many civil society organizations still saw themselves as ‘watchdogs’ rather than partners of the state in public policymaking.

In order to state our argument, the article proceeds in four steps. The first part develops a theoretical framework, which allows to identify conditions under which EU accession is (un)likely to empower non-state actors. The second part argues that the huge costs incurred by the implementation of the ‘green’ *acquis* and the participatory requirements it often entails render EU environmental policy a most-likely case for the empowerment of non-state actors. In the third part, we present findings of a comparative case study on Poland, Hungary and Romania in the field of environmental policy, which shows that state and non-state actors often lacked both the capacity and the willingness to cooperate in the implementation of EU environmental policies. While the three CEE accession countries differ significantly with regard to their political, economic and social domestic structures, the capacities of their state and non-state actors have been equally weak and they share a common heritage of state socialism hostile to non-state actor involvement in public policymaking. As expected by our theoretical model, we find little evidence for an empowerment of non-state actors through public involvement in any of the three countries. The article concludes with a discussion of our findings. EU accession has the potential to empower civil society by fostering their involvement in the policy process. But, state and non-state actors have to be capable and willing to engage with each other. If these conditions are absent, non-state actors might still get empowered – by gaining capacity to oppose rather than cooperate with the state.

Law, Funds and Expertise: Enlargement and the Empowerment of Non-state Actors

The literature on Europeanization and domestic change yields important insights in how EU institutions, policies and political processes have affected the relationship between state and society in the member states (cf Bulmer



and Lequesne, 2005). Studies on the domestic impact of enlargement (cf Schimmelfennig and Sedelmeier, 2005) have extended the research on the EU's potential to empower non-state actors to accession countries. Both strands of literature have identified the implementation of EU policies as a major mechanism through which civil society and business are strengthened in pursuing their goals in public policymaking. Particularly, the accession conditionality, that is, the implementation of the *acquis* as a precondition for membership, provided a political opportunity structure that changed the legal settings (*law*), financial resources (*funds*) and cognitive capacities (*expertise*) available for civil society organizations and business actors in CEE candidate countries.

Law

The implementation of the *acquis communautaire* as the major precondition for joining the EU provided a powerful incentive for state and non-state actors to cooperate. Resource-dependency approaches in the governance and implementation literature¹ would lead us to expect that state actors, whose capacities are already stretched thin by managing the transition process, seek to enlist the resources of non-state actors to cope with the immense policy load. Civil society and business offer public authorities information, expertise, financial means or political support, which the latter need to implement EU policies. In exchange, non-state actors receive substantive policy influence as state actors are unlikely to adopt and implement policies against the interest of the non-state actors on whose resources they depend. Next to providing public authorities with additional or necessary resources to make 'good' policies, the involvement of non-state actors in the policy process helps to ensure effective implementation of EU policies. The more the actors affected by a policy have a say in decision-making, the more likely they are to accept the policy outcome to be implemented, even if their interests may not have been fully accommodated.

Besides functional imperatives of making EU policies work, the EU explicitly required the involvement of non-state actors in the implementation of EU policies. The European Commission insisted that social partners (business and labor) were included in the preparation of the government positions on the various chapters of the *acquis*. It also encouraged the creation of economic and social councils in the accession countries, modeled after the European Economic and Social Council, to facilitate civic dialogue on economic and social developments, respective national legislation and strategic planning (cf Sissenich, 2007; Iankova, 2009). Moreover, several EU policies explicitly prescribe public participation, access to information and transparency. In the field of environmental policy, for instance, the Fauna–Flora–Habitats



(FFH) Directive calls for public access to environmental information and the involvement of stakeholders in decision-making, providing non-state actors with additional access to the policy process. If non-state actors were refused access, they could lodge a complaint to the European Commission. Legal or political pressure from ‘above’ might not only force state actors to open up the policy process. The latter themselves could involve societal and business actors in order to avoid litigation or conflict with other stakeholders in the first place (Börzel, 2006). Finally, pre-accession funding was made subject to the partnership principle that the Commission had introduced in the 1980s to open up the bilateral relations between the national governments and their regions at the domestic level. National and subnational governments of accession countries were asked to cooperate with the business and the non-governmental organizations (NGOs) to achieve development goals (Bruszt, 2008; Niemiec-Gasior in this volume).

In short, EU legal requirements should increase the willingness of state actors to engage with non-state actors in the implementation of EU policies in order to gain access to EU funding or to avoid negative consequences, such as delays in the accession process (accession conditionality) or public and legal conflicts with non-state actors. At the same time, non-state actors should have an incentive to make use of the participatory rights granted by the EU, and exchange their resources against more influence on the ways in which EU policies were implemented.

Funds and expertise

Beyond setting positive and negative incentives for the involvement of non-state actors in the implementation of EU policies, the EU transfer of money and expertise provided state as well as non-state actors with additional resources to exchange. The participation in EU pre-accession programs (for example, PHARE, SAPARD and ISPA) and twinning projects strengthened the capacities of municipalities, firms, NGOs and universities to participate in the implementation of EU policies (Schimmelfennig, 2005; Sissenich, 2007; Bruszt, 2008). Likewise, transnational regulatory networks, such as the Pan-European Regulatory Forum on Pharmaceuticals, the ‘Seville Process’ under the Integrated Pollution Prevention and Control (IPPC) Directive or the Network for the Implementation and Enforcement of Environmental Law (AC-IMPEL) fostered the building-up of technical knowledge as well as trust among regulatory authorities, firms and consumer and health organizations from accession countries (Koutalakis, 2008; Sissenich, 2008). EU-pre-accession funding schemes also targeted civil society organizations and companies directly (Andonova, 2004; Sissenich, 2007; Iankova, 2009). The different programs



included extensive references to ‘participation’ or ‘joint ownership’ (Smismans, 2006). Capacity-building should not only foster the effective adoption of and adaptation to the *aquis communautaire*. The stronger involvement of non-state actors was part of the Commission’s effort both to achieve higher effectiveness of EU policies by tapping into the knowledge base of non-state actors and to address criticism concerning the democratic deficit of the EU (Finke, 2007). Finally, the European Commission encouraged the participation of NGOs and business associations from CEE accession countries in transnational networks and European umbrella organizations (Euro-groups) to learn how to shape and implement EU policies (Andonova, 2004; Pleines in this volume).

In sum, the implementation of EU policies provided a series of opportunities, both in terms of incentives and resources for state and non-state actors. By shaping the willingness and the capacity of both type of actors, the EU accession process had the potential to empower civil society organizations and business through fostering their involvement in the policy process (Table 1).

While accession offered state and non-state actors important opportunities to exchange their resources, they also faced some serious constraints that largely prevented them from engaging. Conditionality and the pressure to meet the deadlines set by the EU resulted in a rather top-down adoption of and adaptation to the *acquis*, which hardly allowed for the empowering non-state actors during the accession process (Raik, 2006). Quite on the contrary, some authors argued that accession strengthened the core executives in the candidate states (cf Zubek, 2008). We propose in this article that weak capacities of both state and non-state actors can also work as a disincentive to cooperate. The lack of resources may make state actors shy away from involving civil society and business because they fear agency loss or even agency capture (Hellman, Jones and Kaufmann, 2000). Moreover, the interest of non-state actors in offering their resources depends on the capacity of state actors to impose

Table 1: The political opportunity structure of EU accession

	<i>State actors/non-state actors</i>	
	<i>Opportunities</i>	<i>Constraints</i>
<i>Willingness</i> (incentives)	<ul style="list-style-type: none"> + Policy influence (accession conditionality) + EU law (participatory requirements) + additional funds (pre-accession funding and twinning) 	<ul style="list-style-type: none"> – Agency capture (capture of/ by the state) – Administrative culture/public skepticism (authoritarian legacy/clientelism)
<i>Capacity</i> (resources)	<ul style="list-style-type: none"> + Funds + Expertise (pre-accession funding and twinning) 	<ul style="list-style-type: none"> – Policy overload – Insufficient resources (funds, personnel and expertise)



a policy unilaterally (in the ‘shadow of hierarchy’) and turn a joint agreement into a formal decision, respectively (cf Scharpf, 1997; Héritier and Eckert, 2008). If state actors do not have the administrative (expertise, personnel and funding) and political (stable majorities in parliament, strong standing within the government) resources, they can neither credibly threaten non-state actors into cooperation nor reward them in return for offering their expertise or financial and political supports. In short, state actors have to possess sufficient capacities so that non-state actors have an incentive to exchange their resources (Peters and Pierre, 2004, p. 85). Likewise, state actors must be capable of organizing stable relations with non-state actors to exchange resources without being afraid of being captured (Streeck and Schmitter, 1985; Evans, 1995; Weiss, 1998).

In a similar vein, non-state actors must also have the necessary resources to exploit the opportunities offered by accession. On the one hand, they need sufficient personnel, information, expertise, money and organizational resources to make strategic decisions, to act as reliable negotiation partners and to offer state actors something in exchange for becoming involved in the policy process. On the other hand, non-state actors have to have the necessary autonomy in order to act free from political control (Mayntz, 1993). While the autonomy of societal actors is no longer an issue in CEE countries, civil societies are still weak (see Sissenich in this volume). Membership in voluntary associations (except for trade unions) is low, so is the number and strength of organized interests in general, the scope of protest actions and the willingness to engage in volunteer work (Howard, 2003; see Sissenich in this volume).

Even if state and non-state actors have sufficient resources to engage, the literature points to a final impediment that may prevent them from exchanging their resources. The – often informal – involvement of non-state actors in public policymaking requires an administrative or state culture that renders the cooperation with non-state actors an appropriate means to ensure good governance (Kohler-Koch, 2000). This is often not the case in countries with an authoritarian legacy and no sustained tradition of institutionalized state-society relations (Linz and Stepan, 1996). Moreover, in post-socialist countries, civil society largely emerged in opposition to the authoritarian state (Falk, 2003). As a result, many civil society organizations still often see themselves as ‘watchdogs’ rather than partners of the state in public policymaking (Fagan, 2004, chapter 4; Obradovic and Alonso Vizcaino, 2007; Nicholson, 2008). The involvement of non-state actors is often perceived as undemocratic and prone to corruption and state capture. Thus, NGOs appear often to be particularly skeptical of new modes of governance, also because they do not want to be seen by their supporters as captured by the state.

To sum up, while EU accession provided a formidable opportunity structure, its effect on the empowerment of non-state actors in CEE countries



is ambivalent. In order to explore the domestic impact of the opportunities and constraints entailed in accession, we compare the implementation of EU environmental policies in Hungary, Poland and Romania. Isolating the causal impact of capacity and culture would require a case selection following the logic of a most similar systems design where countries share more or less the same political, social and economic structures but differ with regard to the state and societal capacities and their political culture. This is clearly not the case for any subset of the 10 CEE countries that joined the EU in 2004 and 2007, respectively (see the contributions by Sissenich, Grosse and Carmin in this issue). The capacities of state and non-state actors may vary indeed, but they do so between as much as within individual countries (Burada and Berceanu, 2005; Glinski and Koziarek, 2008; Móra, 2008). While our study finds only limited variation with regard to the empowerment of civil society in Hungary, Poland, and Romania, the country selection does not really satisfy the requirements for a most different systems design either – precisely because the CEE share important features of their domestic structures as post-socialist transition and EU accession countries. Therefore, we opted for a ‘backward looking approach’ (cf Scharpf, 1997, chapter 2) that starts with mapping the dependent variable and subsequently traces the factors that promoted or impaired the involvement of non-state actors in public policymaking focusing on the role of capacity and culture on a case-by-case basis. In order to explore to what extent they mitigated the empowering effect of EU accession, we focus on environmental policy.

The Greening of the East: Making EU Environmental Policies Work

The adoption of and adaptation to the EU environmental *acquis* met a complex environmental situation in CEE. On the one hand, the CEE countries enriched the EU with large spots of untouched nature. But at the same time, they also suffered from the socialist legacy of forced and intensive industrialization leading to a significant number of environmental hotspots in the region (Turnock, 2001; Auer, 2004). After the regime changes and during market liberalization, most CEE countries witnessed a period of ‘natural clean-up’ due to the breakdown of their economies. With economic growth taking up in the second half of the nineties, however, they started to experience similar environmental problems as the old member states did decades before (Pavlinek and Pickles, 2000). While most of the CEE countries had developed environmental regulations back in the 1970s, their effectiveness remained limited and did not meet the requirements of the environmental *acquis*. Environmental policymaking was largely carried out by using reactive end-of-pipe approaches and was generally based on command-and-control regulation resonating well



with the long-standing traditions of an authoritarian state (Caddy, 2000; Archibald *et al.*, 2004).

In the EU accession process, the CEE countries were confronted with the challenge of implementing some 200 environmental directives. This transfer of European environmental policy did only impose heavy costs on their weak fiscal capacities, swallowing 2–3 per cent of their GDP (EDC, 1997; DANCEE, 2001; Homeyer, 2001; Schreurs, 2004).² It also meant to implement regulations that were mostly alien to their political and economic systems as they clashed with the legacies of the socialist period (Gille, 2004; Pavlinek and Pickles, 2005). Next to the immense financial burden, the adoption of the green *acquis* and the adaptation of national law required comprehensive administrative capacity as well as scientific and technical expertise in order to transpose EU requirements and ensure their practical application, monitoring of compliance and enforcement on the ground. Given their overall weak resources, the accession countries faced a serious capacity gap. Not only did they lack financial resources to acquire additional personnel, expertise and technical equipment. State actors were also unable to compensate potential losers of a policy. Finally, public administration often suffered from difficulties in pooling and coordinating the scarce existing resources (ECOTEC, 2000), particularly if they were dispersed among various public agencies and levels of government (DANCEE, 2001). These capacity problems were aggravated by the inherently weak standing of environmental administrations within governments that often prioritized economic development (Archibald *et al.*, 2004).

Next to state capacities, the implementation of costly EU environmental policy often lacked the support of its target groups. While the level of environmental mobilization had been high during the 1980s, the level of environmental engagement (Greenspan Bell, 2004) and awareness of environmental problems remained low and even decreased in the early 1990s (Homeyer, 2004). Citizens were more concerned with socio-economic issues, such as employment and income security (Gerhards and Lengfeld, 2008). Against this background, state actors would have required the capacity to engage different societal actors in the formulation and implementation of environmental policies – not only to get hold of their resources but also to ensure voluntary compliance (Table 2).

The case studies in the next section will show that the necessity to implement EU environmental directives before joining the EU (accession conditionality), on the one hand, and the EU resource transfer, on the other, provided state and non-state actors with an important incentive to exchange their resources in making EU policies work on the ground. Yet, due to their limited capacities and a political culture hostile to the involvement of non-state actors in public policymaking, both sides were often unable and unwilling to engage and cooperate. The high compliance costs involved and the participatory requirements of many directives make EU environmental policy a most likely

**Table 2:** Costs and capacities of environmental accessionin

	<i>Estimated costs (in € billion)</i>	<i>Average organizational membership (2004)</i>	<i>Number of ENGOS (2001)</i>	<i>Bureaucratic capacity (2003)</i>	<i>Environmental regulatory capacity (2005)</i>
Bulgaria	8.6	0.36	191	-0.20	44.9
Czech Republic	9.4	1.04	643	0.72	66.8
Estonia	4.4	0.51	82	0.85	67.6
Hungary	10	0.45	505	0.79	67
Latvia	2.2	0.41	94	0.70	63
Lithuania	1.6	0.26	57	0.65	61.2
Poland	42.8	0.39	397	0.64	64.6
Romania	29.9	0.31	125	-0.30	45.3
Slovakia	4.8	1.13	76	0.43	65.4
Slovenia	2.4	0.98	103	0.89	73.9

Sources: Environmental costs of EU integration are based on data from DANCEE (2001). Average Organizational Membership is based on European Value Survey Data (EVS/WVS 2004). The Number of ENGOS (environmental NGOs) is based on the non-governmental organization (NGO) Directory maintained by the Regional Environmental Centre in Szentendre, Hungary (online version). Bureaucratic capacity is based on the data set Governance Matters V: Governance Indicators for 1996–2005 by D. Kaufmann, A. Kraay and M. Mastruzzi. Environmental regulatory capacity is calculated based on the Social and Institutional components of the Environmental Sustainability Index (Esty *et al.*, 2005).



case for empowering non-state actors. We selected three directives that explicitly prescribe the involvement of non-state actors in the policy process but differ with regard to the state holders likely to be empowered. While the IPPC (96/61/EEC) is most relevant to business actors as the main regulatory target, the Directives on FFH (92/43/EEC), and Wild Birds Directive (79/409/EEC), which together form the core of the EU's Natura 2000 Network, are likely to empower civil society organizations.

Coping with the Challenge of Accession in CEE: Non-State Actors on the Rise?

Implementing the IPPC directive

The aim of the EU's IPPC is to minimize pollution from various industrial and agricultural sources. The Directive envisions an integrated, cross-media approach that is based on non-binding guidelines, recommendations and the exchange of best practice rather than traditional command-of-control regulation (Bohne, 2006; Lange, 2008). Polluting installations require an integrated permit, which is to be issued by the competent authority based on the 'best available techniques' (BATs). Member states have to adapt BAT Reference Documents (BREFs) formulated by Technical Working Groups at the European level to the conditions on the ground. To issue a permit, public authorities have to be able to cooperate with industry to determine what BAT demands on a case-by-case basis. Thus, the IPPC Directive explicitly requires the participation of non-state actors. But state actors also have an incentive to include business actors to use their technical know-how and human resources and to increase the acceptance of the new procedures. Business actors, in turn, have an interest in offering their resources since they can shape the conditions they will have to comply with. Moreover, they avoid legal uncertainty and economic disadvantages – including the closure of their plants – which they may face if pollution standards are not adopted within the time frame set by the Directive. While state and business both had incentives to cooperate, business actors got hardly involved in the implementation and application of the IPPC Directive in the three countries under investigation.

Hungary had transposed the IPPC Directive well on time. But, public administration often lacked the capacity to properly apply it on the ground (cf Buzogány, 2009a). The requirements for an integrated permit increased the administrative workload, particularly of the regional inspectorates, which issued the permits. During the accession period, the applications for permits doubled, while the number of staff of the inspectorates only slightly increased (Jávör and Németh, 2007). Existing staff often did not have the necessary



expertise and technical resources to monitor and enforce the complex requirements of the Directive (Gyulai, 2004). To compensate for the lack of funding and expertise, Hungary benefitted from several EU programs under PHARE and bilateral twinning projects, for example, with United Kingdom's Department for International Development (DFID) Know-How Fund or the Dutch 'Exploring New Approaches in Regulating Industrial Installations Initiative (ENAP)' (KÜM, 2004, pp. 175–181). Public actors were much more reluctant to seek the cooperation with industry. The public was skeptical of the involvement of business in the policy process, which was often perceived as the continuation of clientelistic practices from the socialist past.³ Thus, environmental inspectors shied away from negotiating derogation periods or phasing-in arrangements with industry to facilitate implementation to avoid allegations of corruption (CES, 2003). Moreover, guidance documents, such as BREFs, were alien to Hungarian administrative culture as they did not hold immediate direct legal effects and compromise the role of the state as the main regulator (Mayer and Dragos, 2005).⁴ In the absence of a corporatist tradition, state actors had little trust in the collaboration of business and expected defection (Greenspan Bell, 2004).

Business was equally reluctant to engage with public authorities to shape the implementation of the IPPC Directive. The coexistence of the integrated permitting system based on BAT with the older Hungarian sectoral legislation with its strict emission limit values increased legal uncertainty and complicated the permitting process. The lack of qualified personnel often resulted in serious delays in the permitting procedure, which in some cases were seen as the cause of businesses going bankrupt (Romhányi, 2004). In order to speed up the process despite capacity shortcomings, regional inspectorates often relinquished some of the requirements of the IPPC Directive (Kohlheb and Pataki, 2002). But, differential application of the Directive across regions and business sectors gave rise to fears of distorted competition among business (CES, 2003). As a result, the latter preferred strict regulatory standards of the previous sectoral legislation over the more flexible and at times less demanding BAT requirements to be negotiated with public authorities, for which many companies lacked the necessary expertise and technical resources to begin with (Mayer and Dragos, 2005).⁵ Only the more export-oriented business sectors had the necessary capacity to use the opportunities offered by the IPPC Directive.⁶ The highly competitive pharmaceutical industry, for instance, had acquired production technology that satisfied the requirements of BAT. Thus, the Hungarian Pharmaceutical Manufacturers Association could not only offer to formulate the relevant BREFs early on, but did also participate at the European level Technical Working Groups under the 'Seville Process' to determine the BAT norms in the pharmaceutical sector (Népszabadság Online, 2005 July 14; Koutalakis, 2008).



Poland, which simply translated the IPPC Directive into a Polish law, was as overburdened with the practical application as Hungary. The Ministry of the Environment suffered from a serious shortage of sufficiently qualified staff to set up the institutional framework necessary to apply and enforce the Directive (Guttenbrunner, forthcoming). The regional authorities responsible for issuing the permits had hardly any experience in interpreting the technical details of the IPPC Directive either and felt unprepared to negotiate with business actors (Krochmal, 2004). Insufficient foreign language skills created further problems in deciphering the BREF guidelines.⁷ In order to tackle these problems, the Ministry of Environment was eager to secure external expertise, for example, through cooperative projects run by the Danish Cooperation for Environment in Eastern Europe (DANCEE) and by the Technical Assistance Information Exchange Unit (TAIEX) of the European Commission.⁸

Business actors equally suffered from capacity problems in meeting expensive BAT requirements. Many sectors were unaware of the complexity and time exigencies of the new permitting system and started preparations very late (Ehrke, 2009, p. 195). In some cases, industrial associations and policy consultants participated in drafting national guidance documents as required by the Directive. For instance, the Polish Steel Association successfully bargained longer transition periods (until 2010) for receiving integrated permits and, in return, financed the training of public administrators to help strengthen the administrative capacities of state actors necessary to apply and enforce the Directive.⁹ The still state-controlled chemical industry, by contrast, was not able to negotiate a similar arrangement, mostly due to frequent changes in government that resulted in repeated reshufflings of the board of directors.¹⁰ Moreover, given the superior expertise and technical know-how of industry, public authorities often feared to be 'captured' by economic interests, which further prevented a broader cooperation between state and industry in the implementation of the IPPC Directive.¹¹ Overall, the opportunities offered by the IPPC Directive were hardly used and did not empower business by a greater involvement in the policy process.

For Romania, the IPPC Directive turned out to be one of the most important stumble blocks in the adoption and adaptation to the environmental *acquis*. Due to the lack of progress in the implementation, the European Commission even threatened to postpone its accession (European Commission, 2005b, p. 65). Romania restructured its environmental administration several times during the accession process, as a result of which it failed to establish the institutional framework necessary to apply and enforce the IPPC Directive (DANCEE, 2003; European Commission, 2005a). An unclear division of competencies, the absence of legal and administrative guidelines of how to apply the Directive, an underdeveloped monitoring system on the regional level and the lack of sufficiently qualified personnel that could handle the technical



requirements of the integrated permitting procedure are largely responsible for the problems Romania faced (cf Buzogány, 2009b). Under increasing pressure from the Commission to meet the accession deadline, the environmental administration heavily invested in additional staff and asked the EU for financial and technical assistance to cover the costs (MEWM, 2004; European Commission, 2005a). Enlisting the help of business, by contrast, was considered as too time-consuming at that stage.¹² Even if public authorities sought the cooperation of business in the setting-up of integrated permitting procedures, they had difficulties in finding reliable partners. Business associations were still weak in most sectors, and Romania lacked experience with corporatist policymaking. Moreover, many industries were still state-owned or had only started to become privatized. In light of the enormous implementation and compliance costs, state and business actors joined forces in seeking longer derogation periods of up to 10 years from the European Commission to gain time and seek further financial assistance (Barariu, 2005) rather than pooling their scarce resources to improve implementation.¹³

In sum, the implementation of the IPPC Directive in Hungary, Poland, and Romania shows that both state and business actors were overwhelmed by the complex requirements of the EU policy. State administration lacked the personnel, expertise and technical resources to establish and apply the integrated permitting procedure. The weak capacities of state actors often prevented the involvement of business in the implementation of the IPPC Directive, particularly if business lacked the capacity to cooperate, too. Moreover, an administrative tradition and public culture hostile to corporatist patterns of policymaking further impaired the empowerment of business through a greater involvement in the policy process.

Establishing the Natura 2000 network

The Flora-Fauna-Habitat (FFH) and the Wild Birds Directives together establish the EU's Natura 2000 Network and are among the most visible – and controversial – EU environmental policies. They affect a high number of actors and open possibilities for public participation of environmental NGOs and other stake holders in the policy process (Fairbrass and Jordan, 2001; Rauschmayer *et al*, 2009). In essence, Natura 2000 provides a comprehensive protection scheme for a wide range of species and plants as well as for a selection of habitat types. To meet the objectives of the FFH Directive, the member states have to prepare a national list of sites for evaluation in order to form a European network of Sites of Community Importance (SCIs). Once adopted, these are designated by the member states as Special Areas of Conservation (SACs), along with Special Protection Areas (SPAs) classified



under the Wild Birds Directive. Member state authorities need to have sufficiently qualified personnel and the necessary information to draw up inventories of habitats, animals and plants that are covered by the directive. A national authority should provide the public with information and mediate between the stake holders, particularly with regard to the national list of protected habitats, animals and plants and the national implementation reports. Thus, fulfilling the EU's requirements regarding the Natura 2000 Network required establishing of new coordination and consultation mechanisms between the participating institutions and in the various stake holders in nature protection. While state actors are legally obliged to open the policy process up for civil society, they also have an incentive to do so, not only to benefit from their expertise but also to prevent conflict in the application of the Directive.

Hungary faced serious shortcomings in implementing the Natura 2000 Directives, mainly due to the lack of sufficiently qualified personnel and the weak coordination between the different ministerial branches. Site designation had been delayed by several months, as a result of which Hungary was the only of the 10 candidates to join the without having the Natura 2000 Network in place (MTI-Econews, 10. June 2004). Conflicts between the environmental and agricultural administration became a major bottleneck for implementation (Mocsári, 2004b). In order to put the negotiations back on track, the European Commission highlighted the shortcomings of the legislation or threatened to withhold funding from the Structural Funds after accession, if the list of designated territories was not completed on time. Non-state actors were only sporadically involved in the designation process. The government did not make the list of proposed sites available for review since it feared that early publication might lead to a wave of political complaints and public protest (Mocsári, 2004a; Buzogány, 2009a). After the designation process had come to an end, a coalition of four major environmental NGOs organized an awareness-raising campaign in order to increase the knowledge and acceptance of Natura 2000 among other stake holders (landowners, land users, hunters or fishermen), who had not been involved in the process to avoid conflict and further delays (Bozsó and Nagy, 2005; Neven and Kistenkas, 2005). The secrecy of the designation process, together with the lack of information about the implications of the site designation for landowners, led to conflicts when the list of designated sites had finally become public. When the government postponed compensation payments for landowners – who nevertheless were forced to stop agricultural activities in the protected sites – the NGO coalition found itself in a difficult position.¹⁴ Reports filed by the NGOs on gaps in implementation process additionally soured their relationship with the environmental administration, particularly when the European Commission started to initiate legal action against Hungary.¹⁵ Controversies around site designations



led to a rapid increase of litigation before domestic courts both from affected landowners and environmental organizations.¹⁶ Thus, the Natura 2000 Directives did empower civil society in Hungary by opening the possibility to take legal action and mobilize the public (Vay, 2005). To what extent this more conflictive strategy will result in a greater involvement of civil society in public policymaking in order to avoid further conflict remains to be seen. Despite some success, environmental groups have lost most court cases, since the Natura 2000 legislation remains contradictory and the judiciary is lacking specific training which leads to inconsistent interpretations of the requirements in comparable cases (Grubek, 2008).¹⁷

Like Hungary, Poland faced serious difficulties in the implementation of Natura 2000. The Ministry of Environment neither had sufficiently qualified personnel nor the data necessary to identify all areas to be protected under EU legislations (cf Guttenbrunner, forthcoming). The distribution of competencies between the Ministry of Environment and the Ministry of Agriculture was as contested as in Hungary. In contrast to Hungary, local authorities initially had been involved in the designation process, whereas environmental interests were barely represented. In the end, Poland submitted a list of protected sites, which the European Commission found highly insufficient. Based on a 'shadow list' prepared by a coalition of environmental groups,¹⁸ the European Commission demanded a revision of the list from Poland and threatened to freeze the funds meant to assist Poland in implementing Natura 2000.¹⁹ Under increasing pressure, the Ministry of the Environment finally sought the cooperation with the environmental groups that had prepared the 'shadow list', charging them with drawing up parts of the inventory based on their expertise.²⁰ While the Natura 2000 Network faced increasing opposition from the central government and local communities, NGOs continued to mobilize in favor of its effective implementation after the Natura 2000 sites had finally become designated. In 2006, OTOP, WWF Polska and the Polish Green Network started to oppose road constructions through the Augustow Forest, which contains sites protected under Natura 2000. They lodged a complaint with the European Commission and initiated several court cases in Poland. Using their media contacts and the support from Brussels-linked environmental networks, the NGOs also managed to build a broad national and international coalition against the construction plans.²¹ Legal and political pressure at the national and EU level continued after accession. The newly elected – more EU-friendly – government of Donald Tusk finally initiated a 'Round Table' in mid-2008 to seek a compromise solution among Polish NGOs, representatives of ministries, the Road Agency and local authorities (cf Guttenbrunner, forthcoming). The Augustow Forest is a forceful but rare example of how EU policies can empower civil society giving them a greater voice in the policy process by confronting and collaborating with state actors.



Very much like in the other two countries, Romania's problems in implementing the Natura 2000 network resulted from weak administrative capacities (cf Buzogány, 2009b). Public authorities lacked information and expertise to effectively conduct the designation process (Krüger, 2001). Data on species and habitats were non-existent, and a consistent classification system was missing.²² Moreover, the Directorate for Biodiversity and Biosafety of the Ministry of Environment lacked sufficient qualified personnel to conduct the designation process. Nor did it have the funding to outsource such tasks. Finally, conflicts over responsibilities between the Ministry of Agriculture and the Ministry of Environment and Sustainable Development created further problems since the designation of many protected areas ran counter influential interest of forest owners and farmers represented by the Ministry of Agriculture.²³ Despite serious capacity problems, public administrators did not seek to enlist the help of civil society. They were highly skeptical of the expertise and legitimacy of the emerging civil society organizations.²⁴ At the same time, Romania's non-state environmental sector was weak and uncoordinated, focused on local issues and lacked the means to get involved in national policymaking (Dragomirescu, Muica and Turnock, 1998; Olearius, 2006). Only few groups, such as WWF and Pro Natura or the birding organizations Romanian Society of Ornithologists (SOR) and Milvus had the necessary staff and expertise to become involved into the policy process.

Things started to change in 2005, when under the combined pressure of the European Commission and environmental NGOs, the Ministry of Environment finally allocated some funds for site designation. Financial resources mostly came from EU twinning projects under LIFE and PHARE, which also involved several stakeholders, such as research institutes, local authorities and NGOs (cf Buzogány, 2009b). In order to speed-up the site designation process, the Ministry of Environment also signed a partnership agreement with two birding organizations with previous experience in a number of international projects under the coordination of BirdLife International. The Romanian SOR and Milvus Group were put in charge of carrying out and supervising the site designation process for the Important Bird Areas (IBAs). The funding they received came mostly from the EU (Papp, 2006).

EU financial and technical assistance as well as the participation in transnational networks strengthened the capacity of civil society organizations in Romania to voice their interests in the implementation of EU environmental policies. EU capacity-building measures developed around strong and influential NGOs that could already build on their experience, existing funding and external ties with other NGOs and external donors. For instance, the WWF's Danube-Carpathian Programme (WWF DCP) emerged as a central network actor by initiating and coordinating the work of the 'NGO Coalition



Natura 2000'. Since 2003, the Coalition, which includes 36 member organizations, has become increasingly involved with the designation process, awareness-raising activities as well as with lobbying both in Bucharest and in Brussels (Coalitia ONG Natura 2000 Romania, 2007). While civil society organization have sought to get more involved in the policy process, Romanian state actors have remained reluctant to engage given their weak capacities and an administrative culture hostile to public participation. As a result, NGOs have increasingly used more adversarial strategies to exploit the opportunities offered by NATURA 2000 lodging complaints with the European Commission and launching political campaigns against the ineffective implementation. So far, the Romanian government has shown little inclination to open up the policy process to avoid political and legal conflicts with civil society.

Conclusions

The adoption and adaptation to the EU's environmental *acquis* in the field of integrated pollution control and nature protection has posed serious challenges both to state and non-state actors in Hungary, Poland and Romania. Next to the financial burden, the application of technically sophisticated policies, such as the FFH and the IPPC Directives, have required significant personnel with the necessary legal, scientific and technical expertise. Thus, state actors had an incentive to seek the cooperation with companies, scientific experts and environmental groups, who could offer resources, particularly technical know-how and scientific expertise. Likewise, non-state actors had an interest in exchanging these resources against influence on the legal and administrative application of the Directives since their transposition into domestic law did not leave much leeway. While companies sought to reduce compliance costs by increasing flexibility and receiving derogations, environmental organizations wanted to secure the strict application of EU requirements.

Although state and non-state actors often shared incentives to cooperate, non-state actors hardly got involved in public policymaking. Our analysis of Hungary, Poland and Romania finds only limited evidence for the emergence of sustained cooperation with state authorities in the accession period. The main reasons hindering the involvement of non-state actors in the adoption of and adaptation to EU environmental policies are related to low administrative capacities of state actors and the weakness of private interest and civil society organizations. The accession process coincided with political and economic transition, taking up most of the already scarce state resources and entailing high institutional uncertainties, which were reinforced by frequent changes in government and administration. The instability of power relations did not only make it difficult for state actors to establish stable exchange relations with



non-state actors, who themselves faced often difficulties to organize themselves as reliable partners. To the extent that they had resources to offer, they were hardly inclined to exchange them for influence on a policy that might never be adopted or become significantly changed in the legislative process. State actors themselves saw their weakness as a major obstacle for cooperation with non-state actors since they were afraid of being captured by business, if it had superior resources.

The findings on our three CEE countries confirm that EU law, funds and expertise had the potential to empower non-state actors in the accession process. However, state and non-state actors have to be capable of making use of the new opportunities offered by the EU (Börzel, 2003; Börzel, 2006). Put bluntly, the new opportunities of accession appear to be distributed among non-state actors according to the *St Matthew's principle* – those that already had, got more, but those that did not have, remained empty-handed.

But, even if they possess the necessary capacity, state and non-state actors might lack the willingness to make use of the opportunities offered. State actors often perceived the involvement of non-state actors as time consuming and a further obstacle in taking decisions not geared towards particularistic interests. And even if the involvement of non-state actors were to help increase effective implementation, it might not always be seen as a legitimate way of policy-making because of the often informal character and the selective inclusion of non-state actors. Policymakers and administrators were often faced with public scepticism particularly against the involvement of business, which was seen as part of the socialist legacy (clientelistic networks) and in contradiction to democratic institutions. At the same time, political instability and low administrative capacities undermined the confidence of non-state actors in state actors to make credible commitments and enforce them, respectively. While the weakness of state actors may be a major incentive for them to involve non-state actors, the lack thereof may have precisely the opposite effect on non-state actors. This finding is in line with a general argument of the literature on governance and corporatism: Cooperation between state and non-state actors is most likely to emerge if both are neither too strong nor too weak (Streeck and Schmitter, 1985; Mayntz and Scharpf, 1995; Scharpf, 1997). If this assumption holds, transition countries face a serious dilemma or even paradox: low state capacities create a demand for non-state actor involvement, which is, however, unlikely to be met precisely because neither state nor non-state actors have sufficient capacities and trust to engage with each other. Thus, the potential of the EU to empower civil society in (weak) accession countries is compromised. Unlike intended by the European Commission, which seeks to foster partnership and cooperation between state and society, EU accession might empower civil society and business against the state by strengthening their capacities to hold governments accountable, which is much more in line



with the self-understanding of large parts of civil society that emerged in opposition to rather than in cooperation with the state.

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Notes

- 1 *Inter alia* Marin, 1990; Marin and Mayntz, 1991; Rhodes, 1997.
- 2 OECD countries spend between 1 and 2 percent of their GDP on environmental policy cf. www.uni-mannheim.de/edz/pdf/dg4/ENVI106_EN.pdf, last access 31 May 2007.
- 3 Interview, Public Official, Ministry of Environment and Water Management, Budapest, 5 December 2006.
- 4 Interview, Public Official, General Inspectorate of Environment Protection and Water, Budapest, 3 December 2007.
- 5 Interview, Consultant, Budapest, 29 November 2007.
- 6 See Andonova, 2004 for a similar argument.
- 7 Interview, Researcher, environmental think tank, Wroclaw, 14 October 2005.
- 8 Interview, Public Official, Polish Environmental Ministry, Warsaw, 11 October 2006.
- 9 The Polish Steel Association was also among the very few Polish industrial association, which had the capacity to participate also on the European level in the 'Seville Process' (Koutalakis, 2008). Interview, Representative of the Polish Steel Association, Warsaw, 23 October 2005).
- 10 Interview, Representative of the Chamber for Chemical Industry, Warsaw, 18 October 2006.



- 11 Interview Consultancy, Warsaw, 9 October 2006; Interview Consultancy, Warsaw, 16 October 2006; Interview, Public Official, Polish Environmental Ministry, Warsaw, 11 October 2006.
- 12 Interview, Public Official, Ministry of Environment and Water Management 15 January 2007; Interview, Consultancy, Bucharest, 12 January 2007.
- 13 Interview, Public Official, Ministry of Environment and Water Management (now MMDD), Bucharest, 23 November 2005; Interview, Consultancy, Bucharest, 12 January 2007.
- 14 Népszabadság Online: Natura 2000: késik a támogatás. (Natura 2000: Compensation delayed), www.nol.hu/cikk/420049 (last access 21 February 2007). Interview, Environmental NGO representative, Budapest, 5 December 2006
- 15 Interview, Environmental NGO Representative, Budapest, 8 April 2008.
- 16 The number of legal cases concerning NATURA 2000 designation has doubled each year since 2006 (Interview, Public Official, Environmental Protection Agency, Budapest, 28 March 2008).
- 17 Interview, Environmental NGO representative, Budapest, 22 March 2008; Interview, Public Servant, Budapest, 28 March 2008
- 18 The coalition included WWF Polska, the Polish Society for the Protection of Birds (OTOP), the Naturalist Club and 'Salamandra'.
- 19 Interview, Public Official, Ministry of Environment, Warsaw, 12 October 2005; Interview, Environmental NGO Representative, Warsaw, 12 October 2005. See also www.wwf.pl/projekty/eng/natura_2000_shadow_en.php, last access 12 June 2007.
- 20 Interview, Environmental NGO Representative, Warsaw, 12 October 2005; Interview, Researcher, Institute for Sustainable Development, Warsaw, 18 October 2006.
- 21 Interview, Environmental NGO Representative, Brussels, 23 November 2007.
- 22 Interview, Environmental NGO Representative, Bucharest, 11 July 2008.
- 23 Interview, Phare Project Coordinator, Sibiu, 16/06/2008, Interview, Environmental NGO Representative, Oxford, 10 September 2007.
- 24 Interview, Public Official, Ministry of Environment and Water Management (now MMDD), Bucharest, 26 November 2005.

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