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Introduction

Eastern enlargement of the European Union (EU) has often been described as a major challenge for EU environmental policy (Carius/Homeyer/Bär 2000; EC 1998a). In the Agenda 2000 the European Commission concluded that "none of the [Central and Eastern European] Accession Countries can be expected to comply fully with the [environmental] *acquis* in the near future, given their present environmental problems and the need for massive investments" (EC 1997, 67). This view begs the question why the failure of the Accession Countries to fully imlpement EU environmental legislation at the date of accession should pose a major challenge. After all, the Accession Countries could still complete implementation after accession.

To answer this question it is necessary to take a closer look at EU environmental policy and to study challenges from a perspective which takes additional factors into account. More specifically, it is only possible to analyse the implications of enlargement for EU environmental policy if one has an idea of the central elements which characterise policy-making in this field. This paper therefore begins with an analysis of three basic characteristics of contemporary EU environmental policy. In a second step, I look at the implications of enlargement for these characteristics.

It has almost become a commonplace to note that the EU went from having no environmental policy in the early 1970 to "having some of the most progressive environmental policies of any state in the world although it is not a state" (Jordan 1999, 1). The first factor which has a crucial impact on the development of EU environmental policy is the so called leader-laggard dynamic, primarily because this mechanism to a considerable extent accounts for the "tremendous expansion of environmental policies" (Zito 1999, 19). The leader-laggard dynamic implies that environmental pacesetters among the Member States and regulatory competition propel EU environmental policy forward.

EU environmental policy is also characterised by serious implementation problems (Richardson 1996, 284). Although other areas of policy-making are plagued by similar problems, the deficit appears to be particularly serious in the case of environmental legislation (Jordan 1999a, 83; Collins/Earnshaw 1992). To some extent the implementation deficit reflects the success of European environmental policy at the legislative level. Those Member States which failed to influence EU environmental policy as either pacesetters or latecomers at the legislative stage – and for which implementation may be associated with relatively high financial costs or administrative problems – are particularly prone to delayed or incomplete implementation (Börzel 2001, 13-14).

However, the implementation deficit is not the only problem which casts doubt on the record of EU environmental policy. It is becoming increasingly evident that despite the proliferation of EU environmental legislation, the overall state of the environment in the Member States has not significantly improved (EEA 1999, 23-37). Therefore the third characteristic relates to efforts to reform EU environmental policy, in particular initiatives to integrate environmental concerns into sectoral policies. These activities may be interpreted as a reaction to the fact that EU environmental policy has so far failed to halt overall environmental degradation and to achieve sustainable development, in particular with respect to "new" environmental problems, such as those associated with the transport sector or intensive agricultural practices.

These three characteristics only provide a somewhat sketchy picture of EU environmental policy. Nevertheless, they constitute crucial parameters for further development. This appears to be particularly true on the eve of enlargement, which may lead to a slow down, or even a reversal, of the leader-laggard dynamic and threatens to further increase the implementation deficit. Given that limited financial resources and administrative capacities are coupled with rapid economic development in the Accession Countries, it will be necessary to counteract these trends by further intensifying efforts at the European level to integrate environmental concerns into the sectoral policies which cause environmental degradation. As illustrated below, the enlargement process not only increases the necessity but, in conjunction with the more general transformation process, also creates new opportunities to promote sectoral environmental integration and sustainable development.

The next section sets out the basic framework for this argument. It focuses on the leader-laggard dynamic as the major driving force of EU environmental policy. The third section discusses the extent, the causes, and some of the implications of the implementation deficit. Section four highlights the initiatives to integrate environmental concerns into sectoral policies. Against this background, section five focuses on the implications of enlargement for each of the three characteristics of European environmental policy.

Regulatory Competition

In a seminal article on the "joint decision trap" Scharpf provided an explanation for the difficulties encountered by actors attempting to reform inefficient EU policies, in particular the Common Agricultural Policy (CAP) (Scharpf, 1988). According to Scharpf, voting rules in the Council and the institutional self-interests of Member State governments account for failures to adopt new, or reform existing policies. Unanimous voting rules make it difficult to adopt European legislation which exceeds the lowest common denominator of

Member State interests. At the same time the institutional self-interest of Member State governments in retaining their veto rights prevents a reform of decision-making. As a result, stagnation and inefficient policies dominate EU policy-making.

Scharpf's account of EU decision-making obviously cannot explain the dynamic evolution of a comprehensive body of European environmental legislation.[1] Although several explanations have been proposed, competitive interaction among Member States is generally considered to be one of the most significant factors.[2] As early as the beginning of the 1980s analysts classified the Member States according to their support for ambitious environmental standards and proffered tentative explanations of EU environmental policy-making in terms of the relative influence of pacesetters and latecomers.[3] It is possible to distinguish ecological, economic, administrative, and political influences on the interests of Member States in EU environmental policy formation.[4]

Ecological determinants of Member State interests reflect various factors influencing the state of the environment. Geographical conditions or basic characteristics of the economic structure of a Member State tend to be particularly relevant. For example, Germany and other Member States in the north-east of the EU generally tend to prefer uniform European emission standards over environmental quality standards because they suffer from transboundary pollution as a result of geographical and climatic factors. In contrast, the western Member States often prefer quality standards because they face considerably less transboundary pollution due to more favourable conditions (Golub 1996, 707-709). Uniform emission standards would have the effect of forcing these countries to comply with a relatively high level of environmental protection which responds to the needs of the more heavily polluted north-eastern Member States. The use of environmental quality standards allows such countries to fully benefit from their geographical and climatic advantages.

Ecological influences on Member State interests also result from differing economic structures. For example, due to heavy industrialisation many northern Member States have a stronger interest in combating industrial pollution than the less industrialised southern countries (Börzel 2001, 17-18; Holzinger 1994, 77).

Political factors explain why environmental problems do not always lead to political responses. As a result of interests in preserving the status quo, institutional rigidities, insufficient resources and capacities etc. there is often a considerable mismatch between the degree of environmental pollution and the level of political attention which the pollution receives. In fact, political action

frequently occurs in situations in which environmental pollution is relatively low or decreasing, while more severe environmental problems may receive less attention (Prittwitz 1990).

However, political influences may also be important in overcoming economic and other interests which mitigate against measures to protect the environment (Scharpf 1998, 129-132). Several factors, such as the party system, the presence of an environmental movement, influential environmental interest groups or parties, and wide-spread environmental consciousness all have an influence on whether and how environmental problems are translated into Member State interests. The German position at the EU level on the planned introduction of significantly stricter emission limits for large combustion plants and cars in the 1980s exemplifies the relevance of domestic politics. While such measures had previously been strictly opposed by the German government, the first electoral successes of the Green party fundamentally changed the German position (Boehmer-Christiansen/Skea 1991, Andersen 1997, 213; Sbragia 1996, 248-249).

Economic factors play a major role in the formation of Member State interests. Scharpf supplemented his argument regarding the joint decision trap to incorporate factors which explain why certain EU environmental standards are relatively stringent. He distinguishes between environmental "product" and "process" standards. Regarding product standards, it is unlikely that European regulations reflect the lowest common denominator of Member State interests because the economic advantages of a single standard are an incentive for environmental latecomers to enter into a compromise with environmental pacesetters to achieve harmonisation, in particular in cases where the pacesetters control export markets important for the latecomers (cf. Scharpf 1994, 233-234).[5]

However, regarding process standards, there are usually only few economic incentives for latecomers to adjust their standards upwards because it is much more difficult for leader countries to keep goods which were produced subject to low process standards from entering their markets.[6] On the contrary, if lower standards have a significant effect on production costs, economic competition may result in a "race to the bottom" where Member States compete for the lowest production standards in order to promote their industries (ibid., 234-235; Scharpf 1998, 131-132).

Similarly, the debate about emission vs. quality standards is not only motivated by different levels of transboundary pollution but also by economic considerations. For example, British opposition to emission standards is to some extent based on the view that compliance with relatively stringent emission

standards means that British industry is burdened with higher costs (Golub 1996, 707-708). Conversely, Member States which have adopted, or plan to adopt, high emission standards have an economic interest in other countries adopting the same standards in order to prevent their own industries from becoming less economically competitive (Scharpf 1997, 20; Weizsäcker 1990, 44).

Finally, different levels of economic development also constitute an important influence on Member State interests in EU environmental policy. Although a high level of environmental protection may in the long term frequently be associated more with economic advantages than with higher costs (cf. OTA, 1994), the financial requirements of implementation can be substantial in the short and medium term. As a result, less economically developed countries tend to be latecomers which oppose the adoption of stringent environmental standards at the EU level (Scharpf 1996, 15; Sbragia 1996, 249; Holzinger 1994, 77). In fact, the poorer Member States, such as Portugal, Spain, Greece and Ireland, are usually counted as environmental latecomers (Börzel 2001, 12-13).

National *administrative traditions* also shape Member States' interests in EU environmental policy. German and British interests have so far been particularly strongly associated with the promotion and diffusion of these traditions. Administrative practices in these two countries are diametrically opposed with regard to the use of emission as opposed to quality standards, hierarchical substantive regulation as opposed to procedural self-regulation or formal as opposed to informal interest intermediation (Knill/Lenschow 1997, 1, 5). These differences contributed to competition between these two countries to influence EU environmental policy.

More specifically, in the early 1980s successive German governments tried to "europeanise" German environmental policy by means of political initiatives at the EU level and in other international organisations (Boehmer-Christiansen/Skea 1991, 193; Sbragia 1996, 240). In addition to an economic interest in avoiding competitive disadvantages for German industry due to more stringent environmental legislation in Germany, this strategy of "up-loading" of German environmental policy aimed at minimising the administrative adjustment costs which were expected to follow from European regulations (Héritier/Knill/Mingers 1996, 175-176; see also Zito 1999, 26). The "greening" of the German government in the early 1980s was followed by a similar development in the UK in the late 1980s (Golub 1996, 711). Britain copied the German strategy and managed to export its regulatory approach via the EU to the other Member States (Héritier 1995, 294).

Diverse ecological, political, economic and administrative factors influence the formation of Member State interests in EU environmental policy. It has nevertheless been possible to identify several environmental pace-setters: Austria, Denmark, Finland, Germany, the Netherlands, and Sweden frequently support the adoption of stringent EU environmental legislation. With respect to these countries several conditions which tend to support an interest in high-level EU environmental protection converge. These factors include a high GDP, advanced industrialisation, high affectedness by transboundary and/or domestically caused pollution, wide-spread environmental consciousness, and relatively high domestic political relevance of environmental policy (cf. Holzinger 1994, 78-79). Conversely, factors supporting a Member State's opposition to stringent EU environmental legislation – e.g. a lower GDP, lower industrialisation and pollution levels etc. – converge in the case of the environmental latecomers Greece, Ireland, Portugal, and Spain.

Interestingly, the UK – until recently a latecomer – differs from the rest of the group with regard to several factors. Britain's initial reluctance to support high EU environmental standards may be attributed to its special geographical situation, particularly severe economic difficulties in the 1980s, and a regulatory approach which differs sharply from the German administrative tradition. However, the same factors may also explain why the UK has adopted a more constructive attitude towards EU environmental policy since the late 1980s: Not only has the economic situation drastically improved, but administrative requirements of EU environmental policy are much more similar to British administrative practice than they used to be.[7]

The remaining Member States – e.g. Belgium, France, Italy, and Luxembourg – either choose to support environmental pacesetters or latecomers on a case-by-case basis or opt for a medium level of EU environmental regulation (Holzinger 1994, 78).

The fact that Member States can be classified as environmental pacesetters and laggards does not in itself imply that the joint decision trap can be easily overcome, in particular because coalitions between pacesetters or latecomers are not permanent but have to be negotiated on an *ad hoc* basis (Liefferink/Andersen 1998, 264). The various factors which account for Member State interests in EU environmental policy merely suggest that the institutional self-interest in retaining decision-making powers at the national level may be offset by a host of other interests associated, in particular, with regulatory competition and first-mover advantages.

Institutional Factors

Various institutional arrangements at the European level also contribute to overcoming the decision-making constraints of the joint decision trap.[8] Highly complex institutions, such as the multi-level decision-making system of the EU (Marks 1993; Hooghe 1996), not only provide for veto points which enable actors to block decisions (Immergut 1992, 226-244) but also offer multiple channels for sufficiently resourceful and motivated actors to push their preferred solution through the decision-making system (Imbusch 2001, 5-9; Mazey/Richardson 1993, 112; Peters 1992, 118). As pointed out by Héritier (1998, 4), the deadlock-prone formal decision-making system of the EU has developed more or less informal "second-order" institutions which allow actors to overcome deadlock. The ability of environmental pacesetters to exert disproportionate influence on EU environmental policy frequently depends on the availability of such channels.

The introduction of qualified majority voting (QMV) which covers more and more areas of environmental decision-making is generally seen as a particularly important factor in overcoming resistance by latecomers to stringent EU environmental legislation. However, even under QMV it is relatively easy for environmental latecomers to block legislative proposals by leader countries (Andersen 1997, 218). Moreover, if pacesetters are unable to form a blocking minority, they may even be forced to accept a legislative outcome which reflects the lowest common denominator of the interests of a coalition of latecomers and some of the neutral countries (Holzinger 1994, 466-468; Golub 1996a).

Several other institutional arrangements at the EU level further increase the influence of pacesetters. The Commission's agenda setting power (cf. Pollack 1999) is an important factor. Due to the fact that the Commission has relatively few staff and lacks in-house expertise, it is heavily dependent on Member State experts in its numerous advisory committees (Héritier/Knill/Mingers 1996, 152-153). The Commission also employs temporary national experts, who are seconded from their home administrations. Member States frequently use this opportunity to "parachute" experts into strategic positions in the Commission to advance their domestic regulatory approach and standards (Liefferink/Andersen 1998).[9] In addition, there are effective channels for Member States to submit written proposals for EU environmental legislation to the Commission, for example through the Environmental Policy Review Group (EPRG) in which high level Member State officials are represented (Liefferink/Andersen, 1998, 264-266).

These channels of access to the Commission would only be of relatively minor importance for environmental pacesetters if they were not coupled with a specific set of institutionally shaped preferences of the Commission. First, as the "motor of integration" the Commission has an institutional self-interest in expanding its regulatory competencies (Majone 1994, 31-33). It is therefore more likely to accept policy proposals by Member States if these proposals offer opportunities for an expansion of its competencies. Such proposals tend to come from highly regulated environmental pacesetters. In addition, the Commission is particularly receptive to proposals by Member States for stringent EU environmental legislation because it is afraid that corresponding legislation at the national level might have a negative impact on the Internal Market (Sbragia 2000, 240).

In contrast, latecomers frequently try to block the adoption of EU environmental legislation.[10] Even if environmental latecomers are not principally opposed to the adoption of new legislation, they tend to prefer low environmental standards which leave little room for the Commission to positively influence environmental policy. This is particularly important in terms of the Commission's second main institutional interest stemming from the strong functional sectoralisation of the Commission as an organisation (Peters 1992, 117-119). In particular in the case of environmental policy, which cuts across other policy areas, sectoralisation leads to intensive competition and "turf battles" between DGs, each of which wants to maximise its influence. Member State proposals for environmental legislation are therefore more likely to be accepted by DG Environment if they reflect a relatively high standard of environmental protection, and thus concord with its own preferences, rather than with those of competing DGs which usually prefer lower standards (Peterson/Bomberg 1999, 189-192; Mazey/Richardson 1993, 121-122).

The institutional structure of the Council also offers opportunities for environmental pacesetters to push their legislative agenda. Leaders have used their respective Council presidencies to give their preferred policy proposals priority treatment on the Council agenda (Sbragia 1996, 247). Of course, laggard countries may equally use the presidency to delay discussion of environmental legislation. However, on balance, the gains in decision-making efficiency accruing from the agenda-setting power of the presidency should be expected to reduce non-decision-making, and work in favour of the adoption of environmental legislation.

The functional differentiation of the Council provides pacesetters with particularly good opportunities to promote their policies. The Environment Council, which adopts most EU environmental legislation, is more sympathetic to environmental concerns than other Council formations or the General

Council. Perhaps more importantly, environment ministries, which generally tend to be relatively weak *vis-á-vis* other national ministries, may use the Environment Council to outmanoeuvre rival ministries in a "two-level game". Given that national rivals are not represented on the Environment Council, environment ministries can promote stringent environmental legislation at the EU level, which they were unable to push through at the national level due to resistance by other ministries. This may explain why certain pieces of EU environmental legislation are more stringent than any pre-existing national legislation (Sbragia 1996, 247).

Environmental pacesetters frequently also command superior resources which they employ to exploit the institutional opportunities to influence EU policy-making (Börzel 2001, 7-8). The significance of expertise often works in their favour. In drafting legislation the Commission is assisted by advisory committees staffed with Member State experts. Interactions in these committees are shaped by legal and technical discussions (Majone 1994, 56-57). In the committee meetings representatives from environmental pacesetters frequently dominate deliberations because their countries tend to be more economically and technically advanced than the latecomers. Furthermore, they have frequently already gained extensive experience with environmental regulation in the field under discussion (cf. Eichner 1995; Andersen 1997, 222).

A similar logic applies to the institutional sub-structure of the Council. Discussions in the Council Working Group on Environment, which prepares the Council meetings, often include technical experts from national administrations. *Ad hoc* expert groups may also be established. Pacesetters, such as Denmark and Sweden, try to influence discussions in these bodies by providing well prepared substantive input (Liefferink/Andersen 1998, 261-262). Nevertheless, in the case of the Council the overall influence on policy outcomes of discussions at the more technical level appear to be quite limited due to the dominant role of the political bodies, e.g. the Council and the Committee of Permanent Representatives (COREPER) (Andersen 1997, 221).

Finally, the European Parliament (EP) is an increasingly influential "green player" among the major EU institutions. Since the mid-1980s the legislative role of the EP in EU environmental policy has been strengthened in successive Treaty reforms. Not only do Members of the European Parliament (MEPs) generally appear to be more responsive to environmental concerns than their national counterparts, but the EP Environment Committee has managed to carve out an exceptionally influential role for itself in internal EP decision-making (cf. Judge/Earnshaw/Cowan 1994; Judge/Earnshaw 1992). Being in close contact with environmental NGOs and DG Environment, the Committee is part of what might be seen as the EU's "green triangle".

In sum, the fact that Member States are not only motivated by their institutional self-interest in retaining competencies at the national level but also by a host of other ecological, political, economic, and administrative conditions increases the potential for reaching an agreement on common policies which exceeds the lowest common denominator. Environmental pacesetters have disproportionate influence on EU environmental policy-making as a result of various institutional factors. The most important of these factors are the accessibility of the Commission to input from Member State officials, the institutionally set preferences of the Commission, the "green" influence of the EP, strong sectoralisation of EU decision-making and, to a lesser degree, opportunities to influence policy-making at the European level on the basis of expertise and other resources.

Problems of Implementation

Although there is broad agreement among analysts that EU environmental policy suffers from a serious implementation deficit, little is known about the exact extent of the deficit. This may be attributed to at least two general factors: First, there is no agreement on how to define and measure the implementation deficit. While the Commission has developed detailed guidelines and indicators for the implementation of specific legal acts, including EU environmental legislation, it has not generalised the criteria which could determine when full implementation has been achieved. Consequently, it is difficult to compare and aggregate instances of implementation failure. One of the reasons for this is, that the Commission cannot interfere with the competencies of Member States, which are responsible for implementation (Nicolaides 1999, 23-24).

Second, there is a lack of information on the implementation of European legislation, in particular regarding practical implementation on the ground (McCormick 1994, 200; Collins and Earnshaw 1992, 236). When assessing implementation, the Commission focuses mainly on legal issues of transposition of European legislation into national legislation and on complaints from businesses and citizens about breaches of EU law, rather than on more systematic methods of inquiry (cf. EC 1999, 9; Nicolaides 1999, 24). This and other factors, such as the Commission's difficulties in assessing whether complaints about practical implementation are justified,[11] mean that the data provides only a very sketchy picture of the implementation of EU legislation (Jordan 1999a, 80-81).

Taking these limitations into account, the Commission's data nevertheless convey the impression that the implementation deficit is particularly large in the environmental field (or, at least, that the Commission perceives the implementation problems of EU environmental policy to be particularly

significant). For example, in the Commission's 1999 Report on Monitoring the Application of Community Law (EC 1999) the chapter on the environment takes up 37 pages. The second largest chapter – on Internal Market legislation – counts 35 pages, while each of the remaining chapters has less than 10 pages. These figures are particularly striking given that the number of applicable environmental directives was 145, whereas at 745 the corresponding number for the Internal Market was almost five times higher. Although the number of directives in most sectoral policies was significantly smaller than in the environmental field, it should also be pointed out that the report only contains five pages on legislation concerning agriculture despite there being 398 directives.

The number of times the Commission applied to the European Court of Justice (ECJ) for penalties for failure to implement legislation also indicates that the Commission is particularly concerned about the implementation deficit of EU environmental legislation: Of fourteen ECJ judgements regarding penalties given up to December 1998, nine concerned environmental directives (EC 1999).

Implementation problems arise at different stages of the process of implementing European law. First, EU directives might not be transposed correctly into national law (failure of legal transposition). Second, implementation might fail if the necessary administrative rules and institutional practices are not established (failure of administrative implementation). Finally, there might be a lack of technical, financial or personnel resources which hinders full application and enforcement (failure of practical application).[12]

The various stages at which implementation problems arise suggest that the implementation deficit has several causes. Legislation may be difficult to implement because it is incoherent and/or vague, reflecting the political compromises reached by Member States. Incoherence and/or vagueness may lead to problems of legal transposition or administrative implementation. Legislation may also be difficult to implement practically. For example, there may be a lack of sufficiently qualified staff or the costs of implementation may have been underestimated. Insufficient consideration of implementation capacity sometimes results from the fact that the Commission, which drafts EU legislation, is not responsible for implementation, which falls to the Member States alone (cf. Jordan 1999a, 78-79). Majone (1994, 66) argues that "over-regulation" results from this division of labour: Because the costs of implementation are borne by those who have to comply, rather than by the Commission, the latter has few incentives to regulate efficiently.

It has also been argued that the fact that EU environmental legislation tends to reflect the preferences of environmental pacesetters may explain the implementation deficit. According to this view, the interests and administrative traditions of certain Member States are not sufficiently incorporated into EU environmental legislation. These countries are then more likely to cause implementation problems (Börzel 1999; see also Jordan 1999, 76-77). More specifically, the southern Member States often have a worse implementation record than their northern partners. These countries lack the financial and administrative resources which are needed for the practical application of the environmental standards championed by the pacesetters. In addition, domestic supporters of environmental protection, such as non-governmental organisations (NGOs) or industries which gain from the application of stringent standards tend to be weak in these countries (Börzel 1999).[13]

Regulatory reform

In the late 1980s the implementation deficit received growing attention from the Commission (cf. Jordan 1999a, 76-77) which adjusted its regulatory approach. The adoption of the 1992 Fifth Environmental Action Programme marked a turning point (cf. Héritier/Knill/Mingers 1996, 162). As a legislative framework for European environmental policy was firmly in place, the Commission proclaimed a new phase of consolidating the legislative achievements. To improve the implementation record, the Commission proposed involving national, sub-national and societal actors more strongly in the process of implementation ("partnership"), improving the quality of, and access to, environmental information, simplifying legislation, and using more flexible regulatory instruments (EC 1996, 3). These measures were expected to reduce implementation costs while increasing the adaptability of legislation to local conditions and needs (cf. Knill/Lenschow 1999, 597).

In the following years several institutions were created which contributed to implementing the action programme. These include the European Environment Agency (EEA) to improve the quality of information, the EPRG, the European Consultative Forum for the Environment and Sustainable Development, comprising various societal actors, and the Implementation Network for European Environmental Legislation (IMPEL) as a forum for national enforcement agencies.

The Commission also developed more flexible regulatory instruments based on procedural requirements and self-regulation. Directives on access to environmental information and environmental impact assessment established new procedural requirements; Legislation on environmental management and audit systems (EMAS) and eco-labelling aims at creating incentives for self-regulation. In addition, the Commission is now making increasing use of

framework directives which are based on an integrated view of environmental problems. These directives allow for more flexible implementation, taking local conditions and interdependencies between environmental problems into account. They also combine emission standards and the requirement of Best Available Technique (BAT) – a more flexible version of the older concept of Best Available Technology – with quality standards and procedural requirements. The Integrated Pollution Prevention and Control (IPPC) Directive and the Water Framework Directive exemplify this approach (cf. Scott 2000; Hey 2000; Matthews 1999).

While it may still be too early to judge whether the new regulatory approach has improved the overall effectiveness of European environmental policy, hopes that the new regulations would reduce implementation problems because of increased flexibility have so far been disappointed. Some Member States, such as Germany, have severe difficulties in implementing flexible directives which conform more to traditional British than to German administrative practices. In addition, partly motivated by problems of administrative implementation, some Member States have abused flexibility to circumvent or water down European requirements (Börzel 2000, 35; Knill/Lenschow 1999).

Although the implementation deficit was one of the reasons why the Commission proposed a new regulatory approach, other factors were relevant, too. The Fifth Environmental Action Programme also reflected more fundamental concerns about the adequacy of traditional regulatory instruments to achieve sustainable development, about cost effectiveness, and about the centralisation of decision-making in Brussels. In conjunction with implementation problems, these concerns gave rise to the call for integration of environmental concerns into sectoral policies.

Environmental Integration

The compatibility of environmental protection with economic development and democracy was widely discussed at national and international levels in the late 1980s. The issue came up forcefully in the context of the rise of global environmental problems, such as climate change and the loss of biodiversity. It became increasingly necessary to consider how these problems could be solved without sacrificing economic development and democracy, in particular in developing countries. A preliminary answer was given in the Brundtland Report, which introduced the concept of sustainable development (cf. Weizsäcker 1990).

The Fifth Environmental Action Programme reflected these debates and applied them to the European context (Baker 1997, 96-98). The Commission recognised that a more preventive strategy was needed, allowing curative "end-of-pipe" measures to be replaced by the integration of environmental concerns into the sectors which cause environmental problems, such as industry, agriculture, transport (Weizsäcker 1990, 223-235). Not least the extended political struggles of the 1980s over legislation to combat air pollution by prescribing end-of-pipe solutions - catalytic converters or desulphurisation technology (Boehmer-Christiansen/Skea 1991; Holzinger 1994) - had demonstrated that curative measures were too expensive as a basis for a practicable European approach to environmental policy. In particular for the economically and technologically less developed Member States the existing approach had proved politically untenable. The EU had therefore been forced to allow these countries to temporarily derogate from certain particularly expensive directives.[14] In addition to these measures, the Cohesion Fund was partly established as a redistributive instrument to support the large investment in the environmental infrastructure of the four poorest Member States which were necessary to practically implement EU environmental legislation in these countries (Börzel 2001, 13)

In addition to the relationship between environmental protection and economic development, the Action Programme also dealt with the issues of participation and democracy. In the EU discussion of these issues not only coincided with, but was also to some extent substantively linked to, political efforts to promote and apply the principle of subsidiarity. In the first half of the 1990s the UK, Germany and Denmark invoked the subsidiarity principle enshrined in the Maastricht Treaty to complain that the EU undermined the legitimate competencies of Member States and regions. On this view, environmental policy was dictated by Brussels and certain competencies should therefore be "renationalised" (Collier 1996, 12).

Whereas some Member States used the subsidiarity principle to argue for a return of EU competencies to the national level, the Action Programme gives a different, more participatory interpretation. It quotes Article A of the Maastricht Treaty, stating the aim of creating an ever closer union "in which decisions are taken as closely as possible to the citizen" (EC 1993, 78). The programme apparently took this aim to mean that the subsidiarity principle should be embedded within a broader concept of "shared responsibility", according to which various state and societal actors, such as Member State authorities and regional governments, the business sector, the general public and consumers, should co-operate and participate in EU decision-making.

Despite the fact that sustainable development has become the official guiding principle of EU environmental policy and - according to Article 2 TEU and Article 2 TEC - is now one of the principal aims of the Union, only Article 6 TEC contains statements which may be read as an operational definition of sustainable development (Kraemer/Mazurek 1999, 5-6; see also EC 1998, 3). The article calls for the integration of environmental concerns into the formulation and implementation of sectoral policies to achieve sustainable development. It may be interpreted as a requirement to promote integration at three different levels: in the societal and administrative spheres, and in the field of political decision-making.

Sustainable development requires direct integration of environmental concerns into economic activities through technical and social innovation. The European Auto-Oil Programme, which was launched in 1993 and is now in its second phase, exemplifies aspects of *societal integration*. It takes a long-term approach to the problem of car emissions. The aim is to achieve a reduction of emissions by 70 per cent by 2010. The programme focuses on the establishment of a scientific basis for determining the extent to which emissions of pollutants should be reduced and on elaborating the most efficient ways to achieve the necessary reductions (EC n.d.)

Initially, the Environment, Industry and Energy Directorates General and the European associations of car manufacturers (ACEA) and of the oil industry (EUROPIA) co-operated in the implementation of the programme. As there is a close interdependence between technologies to reduce car emissions, such as catalytic converters, and the improvement of fuel quality, participation by the respective industrial sectors was crucial. Additional actors – e.g. other relevant industries, NGOs, Member State representatives, and research institutes – have been included in the second phase of the programme. Elaborating reduction strategies on the basis of scientific expertise and in co-operation with producers – other stakeholders function mainly as "watchdogs" – the Auto-Oil Programme aims at ensuring that environmental concerns are fed into the long term technical development of the affected industries.[15]

Initiatives to create a European Integrated Product Policy (IPP) also attempt to improve societal integration. The Commission has recently published a Green Paper on IPP (EC 2001a). According to the document, IPP aims, among other things, at encouraging "life-cycle thinking", stimulating consumer demand for environmentally friendly products, and establishing "product panels" in which stakeholders work on ways to improve the environmental performance of products.

The second aspect of environmental integration is closely linked to implementation problems and flexible regulations. The fact that the Commission increasingly uses framework directives which cover a wide range of environmental problems and regulatory instruments and allow for more flexible implementation reflects efforts to improve *administrative integration*. The IPPC Directive is a particularly important example because it seeks to integrate a wide range of diverse directives listed in its annexes into a single licensing procedure. It also combines different instruments, such as emission standards, BAT, quality standards, delegation of decision making, public information and participation. This broadly based approach aims at a better integration of sectoral economic, technical, local, and grass-roots concerns into administrative decision-making (Scott 2000).

As pointed out above, flexible regulations have frequently been as difficult to implement as traditional regulations, mainly because of specific administrative requirements or lack of support for effective implementation. If administrative integration is to enhance implementation it may therefore often be necessary to improve societal integration, too, in order to create some of the pre-conditions for an effective implementation of flexible regulations. The Auto-Oil Programme is a case in point. The programme led to the adoption of new, significantly more stringent, but also more flexible regulations for fuels. For example, the 1998 Directive on the Quality of Petrol and Diesel Fuels contains temporally and substantively flexible requirements, allowing a Member State to delay full compliance if it can demonstrate that otherwise "severe difficulties would ensue for its industries" (Article 3). The directive also permits adoption of stricter standards in certain regions if "atmospheric pollution [...] can reasonably be expected to constitute a serious and recurrent problem" (Article 6(1)). The Auto-Oil Programme complements the directive by signalling to industry in countries which invoke the temporary derogation that companies will be expected to comply with even stricter standards in the near future. Industry therefore has an incentive to use the time gained as a result of the derogation to introduce the necessary changes. In turn, this adaptive behaviour reduces the risk of implementation deficits.

The third dimension of integration concerns political decision-making structures. Reform of the institutional foundations of decision-making is necessary if less radical efforts to deal with environmental problems are insufficient. As mentioned in the introduction, despite the adoption of stringent EU environmental legislation, the overall state of the environment has not improved. Given the limited success of "softer" instruments, *political integration* has gained in importance in recent years. Calling on the Transport, Agriculture, and Energy Councils to prepare reports on the integration of environmental concerns into their respective fields of activity, the 1998

European Summit in Cardiff initiated the so-called Cardiff Process which so far remains the most important effort to implement the environmental integration requirement of Article 6. Subsequent European Councils also asked the Development, Industry, Internal Market, Ecofin, General Affairs, and Fisheries Councils to report on, and present strategies to improve, environmental integration.

However, the Cardiff Process is only a first step towards environmental integration. First, the sectoral reports need further refinement as they are not based on a common approach, differ in quality, and have no sufficient strategic component, such as concrete quantitative targets and timetables. Second, the reports must be implemented. Among other things, this may require the development and refinement of general and detailed guidelines and indicators for integration, the setting-up of reporting and review mechanisms, the establishment of a secretariat to co-ordinate and support integration activities, the formation of cross-sectoral working groups etc. Third, the Cardiff Process only deals with the Council. However, to effectively promote political integration other EU institutions, such as the Commission and the EP, must also take systematic action (Fergusson et al. 2001).

The Commission has established diverse mechanisms for environmental integration, but progress differs significantly among the services. Mechanisms include special units dedicated to environment in several DGs, the Joint Working Group under the European Climate Change Programme and the Expert Group on Transport and Environment (ibid., Annex 5; see also EC 1998). In addition to considerable further efforts by the sectoral services, institutional integration also requires major changes in DG Environment which "will have a new role in assisting, pushing and monitoring the progress [of environmental integration]" (EC 1999a, 8).

The Impact of Enlargement

The improvement of the state of the environment in the Accession Countries will form an integral part of EU environmental policy in an enlarged Union. In addition to the three characteristics of EU environmental policy, an assessment of the consequences of enlargement must therefore also take the environmental situation, and in particular future environmental trends, in Central and Eastern Europe (CEE) into account. Enlargement is in many respects a challenge to EU environmental policy. Nevertheless, it also offers important environmental opportunities (Carius/Homeyer/Bär 2000, 146-147) and, as argued below, an environmentally successful enlargement must aim at exploiting these opportunities.

The state of the environment in CEE is still characterised by a sharp contrast between heavily polluted so-called environmental hot-spots and large, unspoilt areas possessing a rich biodiversity (EEA 1998, 149; REC 1994, 10). This situation can mostly be attributed to the way in which the system of central planning operated in the era of communist rule. The population and industrial production, in particular heavy industries, were concentrated in a small number of regions close to cheap – and often "dirty" – sources of energy. At the same time, many areas between these agglomerations remained relatively untouched. Similarly, although CEECs were plagued by severe industrial pollution, environmental degradation caused by environmentally harmful consumption patterns was relatively low.

Since the political upheaval of the late 1980s and early 1990s there has been a clear trend towards convergence between environmental conditions in the EU and in CEECs. While this has brought considerable improvements to the environmental hot spots, convergence accentuates the challenge of sustainable development in that "CEECs could end up making the same mistakes as the west *after* the west has made them" (T&E 2000). Given that in the years ahead economic growth in CEECs is expected to be significantly higher than in present EU Member States, it seems reasonable to assume that CEECs will increasingly suffer from the same environmental trends which already pose the most challenging problems for EU environmental policy, for example environmental degradation caused by sharply increasing road traffic. Therefore, the challenge and the opportunity for EU environmental policy is to limit, as far as possible, the tendency towards convergence in those areas where convergence results in a repetition of developments which are presently recognised in the EU as unsustainable.[16]

The general framework of EU environmental policy-making in which many of the relevant decisions will be made is characterised by the leader-laggard dynamic, the implementation deficit, and the ongoing efforts to promote sustainable development by integrating environmental concerns into sectoral policies. Against this background I argue, first, that to retain the dynamic development of EU environmental policy as a pre-condition for successful environmental policy-making and to prevent a growing implementation deficit after enlargement, it will be necessary to further increase the flexibility of EU environmental legislation. Second, such a strategy will only be successful in the longer run if the EU also increases its efforts to assist CEECs, in particular in creating effective structures for the integration of environmental concerns into sectoral policies. Third, although EU assistance helps the Accession Countries to implement the environmental *acquis*, environmental integration has so far been neglected in the EU pre-accession strategy.

Regulatory Competition

The main ecological, political, economic, and administrative factors which shape Member States' interests in EU environmental policy predominantly suggest that most CEECs will belong to the group of latecomers after accession. This holds, in particular, for economic and political factors. Although economic growth rates in CEECs will probably be higher than in present Member States, it will nevertheless take decades for the Accession Countries to catch up. This is particularly true for the least economically developed applicants, such as Bulgaria and Romania (Chalmers 2000, 24). The future Member States may therefore be expected to be less willing to bear the short and medium term costs of a high level of environmental protection.

Despite the wave of environmental reforms in the early 1990s in most Accession Countries, today environmental protection ranks low on the political agenda in CEE, where economic and social problems of transition tend to dominate politics (Baker/Jehlicka 1998, 9-11). Even the fact that several of the wealthier Accession Countries spend a significantly larger share of their GDP on environmental pollution abatement than most western European countries do (OECD 1999, 130) offers little consolation for environmental pacesetters. This higher spending can be attributed, first, to particularly severe environmental problems caused by the legacy of environmental damage and a still relatively large share of unsustainable production technologies which these countries have inherited from the past and, second, to external pressure, in particular from the EU in the context of accession. The second factor is underlined by the fact that the EU has repeatedly stressed that it expects Accession Countries not only to have completed the formal transposition of EU environmental legislation into national law by the date of accession but, also, to be able to effectively apply and enforce the respective requirements. The EU declared that it will only accept transitional periods for the practical implementation of EU environmental legislation in well-defined, exceptional cases.[17]

These basic conditions suggest that with respect to economic and political factors, the situation in the Accession Countries resembles the one in the environmental latecomers Greece, Spain and Portugal at the time when these countries joined the EU. In some of the poorest Accession Countries the degree of economic development is in fact significantly lower than it was in the three southern Member States (Chalmers 2000, 24).

In the short and medium term, administrative problems also abound. Accession Countries lack administrative capacities to implement and enforce European environmental legislation, in particular at the local and regional levels. However, in the longer run administrative capacity in the CEECs can be

expected to improve. The Accession Countries' own efforts to meet the requirements of the EU and EU assistance, in particular through the Phare institutional capacity building programme, are likely to lead to significant improvements. Perhaps more importantly, the CEECs are still going through a process of economic and political transformation. This ongoing process, coupled with the need to adapt to EU requirements, may create exceptional opportunities to overcome the institutional rigidities which usually tend to stifle administrative reforms (cf. Soil and Water Ltd. 1999, 61-69). Despite the lack of administrative capacities in Accession Countries, resistance to the introduction of more flexible regulations may therefore be weaker than in some of the old Member States, such as Germany. The fact that in the aftermath of the wave of political reforms in the early 1990s several CEECs adopted procedural regulations on public access to environmental information and environmental impact assessment - in some cases even "strategic" environmental assessment of plans and policies - may also be helpful (cf. Caddy 1998). In addition, most Accession Countries already made use of environmental charges and taxes in the 1970s and 1980s (Klarer/Lehoczki 1999, 33). It remains to be seen to which extent these traditions will help to outweigh the lack of administrative capacities.

While administrative factors are, if anything, only likely to contribute in the medium to long term to the emergence of a more accommodating position of Accession Countries on high EU environmental standards, ecological influences may in certain countries be expected to do so sooner. Regarding ecological factors, it seems useful to distinguish between those Accession Countries which are strongly affected by problems of transboundary pollution and border on present environmental pacesetters and the remaining Accession Countries for which these criteria do not apply. All things being equal, the first group is obviously more likely to develop an interest in higher EU environmental standards than the second. First, transboundary pollution can often be reduced more effectively by a European than by bi- or multinational efforts. The interests of individual Accession Countries in higher common standards are, however, likely to vary according to the predominant kind of transboundary pollution. For example, Hungary suffers considerably more from transboundary water than from transboundary air pollution (cf. OECD 2000, 129-132). Second, even if transboundary pollution is not a serious problem, the fact that a particular country borders on a pacesetter may create political incentives - for example, in terms of bilateral financial and technical assistance or more general efforts to improve the political climate - for this country to support a higher level of environmental protection than it would otherwise have opted for.

With the exception of Romania and Bulgaria, all Central and Eastern European Accession Countries have something approaching a common border with environmental pacesetters. Although Estonia, Latvia and Lithuania do not

directly share a border with these countries, they do border on the Baltic Sea. Against the background that some environmental pacesetters, in particular Sweden and Denmark, pursue a very active environmental policy to protect the Baltic Sea (Haas 1993), these countries may have a similar influence on the Baltic States as if they actually shared a border with them.

In addition, the ecological challenges which the Accession Countries have to confront are, in general, more similar to those of the northern European pacesetters than to those of the southern latecomers. Unlike the southern Member States, the Accession Countries have a long history of severe industrial pollution which may increase their support for the adoption of relatively stringent environmental standards at the European level.

This cursory review of the factors which are likely to influence the interests of Accession Countries suggests that most Accession Countries would tend to oppose a high level of environmental protection once they became members of the EU. Economic, political, and, at least in the short and medium term, administrative factors account for this hypothesis. Ecological and certain geographical aspects - in particular affectedness by transboundary pollution, geographical proximity to environmental pacesetters, and severe environmental problems which are qualitatively similar to those of the pacesetters - may somewhat compensate for the mostly negative impact of political, economic and administrative factors.

If a group of countries which frequently adopts positions that are close to those of the present environmental latecomers, joined the EU,[18] the leader-laggard dynamic should be expected to suffer. Under these conditions, it would be significantly easier for a growing group of latecomers to block EU legislation aiming at a high level of environmental protection. Latecomers could also succeed more easily in getting lax EU environmental standards adopted. Finally, it would generally be more difficult to agree on decisions at the EU level at all due to the dramatic increase in the number and diversity of Member States as a result of enlargement (Homeyer/Carius/Bär 2000, 357).

However, whether enlargement will actually undermine the leader-laggard dynamic does not entirely depend on the interests and the number of Member States. Environmental pacesetters already are a minority in a Community of fifteen Member States. Their disproportionate influence on EU environmental policy to a considerable extent results from their superior resources and capacities and from the fact that they benefit from the institutional characteristics of the Union and the availability of secondary institutional channels to promote their interests. It is extremely difficult to predict the effects of enlargement on these factors. On the one hand, a further increase in the

complexity of European decision-making which is likely to result from a larger number of Member States, may lead to additional co-ordination problems. Consequently, the insulation of environmental policy-making from rival interests may grow. As argued above, so far the adoption of stringent environmental standards seems to have benefited from relatively strong insulation of environmental policy-making at the EU level. On the other hand, efforts to limit the number of Commissioners and to centralise decision-making within the Commission may lead to an increasing hierarchy among Commission services which is likely to reduce the relative influence of DG Environment.[19]

On balance, it seems difficult to prevent enlargement from reducing decision-making efficiency and undermining the leader-laggard dynamic, given the factors mentioned above and the simple but highly important fact that the number of EU Member States will increase by two thirds when all ten Central and Eastern European Accession Countries have joined the Union. In anticipation of the resulting problems, the option of flexible integration has increasingly been discussed in recent years. More specifically, the Amsterdam Treaty introduced the possibility for a group of Member States to use the European institutions to engage in Closer Co-operation (now: Enhanced Co-operation). Although the respective provisions have not been applied so far, they have already been amended by the Nice Treaty, in particular by abolishing the *de facto* veto right which individual Member States held so far. At least eight Member States may under certain conditions agree on common measures which are more far-reaching than existing Community legislation but are only binding for those Member States which participate in that particular instance of co-operation. DG Environment has already considered the possibility that Enhanced Co-operation may be usefully employed by environmental pacesetters to forestall stagnation of EU environmental policy as a result of enlargement (EC, 1999b, 46. See also Bär/Homeyer/Klasing 2001; Bär *et al.* 2000).

Enhanced Co-operation can help to preserve the leader-laggard dynamic after enlargement. More specifically, there appear to be several incentives for the "outs" which do not initially take part in an instance of Enhanced Co-operation employing more stringent environmental standards to join at a later stage. Although those Member States which do not take part in an Enhanced Co-operation may in some cases enjoy an economic competitive advantage *vis-á-vis* the participants, the reverse may frequently also be true. For example, the members of an Enhanced Co-operation could become technological and institutional pace-setters who have the opportunity to unilaterally determine the standards and procedures with which the non-members would have to comply once they decided to increase their level of environmental protection. In this case the "outs" would have little choice but to join the Enhanced Co-operation whose standards and procedures would already be firmly entrenched at the EU

level by the Commission and the founding members of the Enhanced Co-operation.

In other cases purely domestic incentives for the non-members to adopt higher standards may be permanently too weak. However, even in these cases there appears to be a high probability that the "outs" would eventually join an existing Enhanced Co-operation. First, the Commission has a strong interest in preventing permanently differing standards between groups of Member States and may therefore propose measures to assist the latecomers in catching up. Second, Member States already participating in an Enhanced Co-operation may also have an interest in assisting the non-members to join, in particular if joining would contribute to the elimination of an economic competitive advantage for the non-members. Finally, in certain cases, for example if it seems likely that the members of an Enhanced Co-operation would benefit from first mover advantages, environmental pacesetters may use the option of establishing an Enhanced Co-operation merely as a threat to induce latecomers to agree to common higher standards.

Implementation Problems

Enlargement could also increase the implementation deficit of EU environmental legislation. The findings of the Commission's 1999 Screening of the compatibility of the environmental legislation of Accession Countries with EU requirements (for example: EC 1999c), the Commission's annual reports on progress towards accession (for example: EC 2000), and the documents prepared for the accession negotiations in the field of the environment (for example, Government of the Czech Republic 1999; Council of the European Union 1999) highlight many implementation problems.

Severe difficulties exist at each stage of implementation. In most Accession Countries the process of legal transposition has been significantly slower than expected. More importantly, the applicants lack administrative and financial resources to effectively apply and enforce environmental legislation on the ground. Except for Poland the negotiations on the environmental chapter of the *acquis* were provisionally closed with the five most advanced so called Luxembourg Countries in spring 2001. The Table (below) shows the transitional periods for which the Luxembourg Countries applied during the accession negotiations. In the Table bold dates indicate those transitional arrangements on which these countries and the EU agreed. The Table illustrates the fact that if the Luxembourg Countries joined the EU according to their own ambitious plans in 2003, they would need several transitional periods of up to twelve years until they were capable of fully applying and enforcing central pieces of EU environmental legislation, in particular the Urban Waste Water Treatment

Directive (UWWTD), the IPPC Directive, and various items of waste legislation.

There are at least three major underlying problems which give rise to the need for transitional arrangements in the environmental field. First, the Accession Countries do not have sufficient financial resources for the practical application of EU environmental legislation. Recent assessments estimate the costs for implementing the environmental *acquis* at a total of 80-110 billion Euro. Thirteen directives dealing with water, air, and industrial pollution and with waste disposal have been identified as being responsible for most of the heavy investment needs (EC 2001, 6-7). Among these, implementation of the UWWTD is by far the most costly requirement. The directive requires the extension of sewerage systems and waste water treatment facilities. As indicated in the Table, all Luxembourg Countries request transitional periods for some requirements of the directive. For example, the costs of implementing the UWWTD in the Czech Republic are estimated at 1,9 billion Euro. The Czech Government has requested a transitional period until 2010. However, it seems questionable whether the country will be able to fully implement the directive by that time. According to a study commissioned by the World Bank, a „further expansion of the accession period and deadlines up to 2016-2017 will most probably be needed" (Carl Bro *et al.* 1999, 150) because sharply rising water prices would otherwise result in socially unacceptable costs for private households, industry, and agriculture (cf. ibid., 126). Slovenian plans to implement the UWWTD may therefore be more realistic. Despite the fact that Slovenia has the highest *per capita* income of all Accession Countries, it originally applied for a particularly long transitional period until 2017 which has now been reduced to 2015.

Although the implementation costs for the "expensive" environmental directives, such as the UWWTD and the IPPC-Directive, are certainly high, it should be kept in mind that the costing assessments prepared so far are fraught with methodological and other difficulties and differ in their findings (EC 2001, 7; Carius *et al.* 2000, 161-162; Soil and Water Ltd. 2000, 63). Moreover, the economic significance of the investment needs differs sharply between the Accession Countries: Whereas a "rich" Accession Country, such as the Czech Republic, will have to spend about 2% of its annual GDP on environmental investment, the figure for less wealthy Bulgaria is estimated at 11% (World Bank 2000, 8).

The lack of effective administrative structures in the Accession Countries poses a second major problem for implementing and enforcing environmental legislation. This holds, in particular, for the environmental inspectorates responsible for monitoring and enforcement and, as mentioned above, for local

and regional authorities, and in some cases even for environment ministries themselves. Institutional arrangements, such as the division of competencies, are insufficient and there is a lack of resources, such as qualified staff and technical equipment (OECD 1999, 64; EEA 1999, 401). However, due to the EU approach to the accession negotiations, these problems are often not reflected in the requests for transitional periods. According to the EU, transitional arrangements may only be justified on political or economic grounds. For example, transitional periods are admissible where huge investment is needed to implement the *acquis*, direct payments are to be made to farmers under the Common Agricultural Policy (CAP), or where the free movement of persons within the Union is concerned. By contrast, transitional periods will not usually be granted for difficulties of administrative implementation.

Against this background it seems highly questionable whether the transitional periods agreed with the Luxembourg Countries – as illustrated in the Table, the number of which is much lower than the original applications[20] – reflect a realistic assessment of the limited capacities to implement EU environmental legislation, both in financial and in administrative terms. There is a risk that, rather than promoting effective implementation on the ground, an overly restrictive approach to the accession negotiations may have the opposite effect because Accession Countries may be left with little choice but to erect "Potemkin-village" -like organisational structures to prevent further delays in the accession process as a result of their difficulties in implementing EU environmental legislation. These pretend arrangements would allow the applicants and the EU alike to maintain that the requirements for accession had been fulfilled although, in fact, the Accession Countries would still not have the administrative capacities necessary to practically apply the environmental *acquis*. Efforts by some Accession Countries to get *ex ante* approval for specific ways of implementing EU environmental legislation may therefore not only reflect uncertainty concerning implementation requirements but could also be motivated by the wish to minimise *ex post* monitoring by the Commission which would threaten to reveal the janus-face of certain administrative arrangements (cf. Jacoby 1999).

Requests by the Luxembourg Countries for Transitional Periods for Community Environmental Legislation

	C Z [a]	E ST [a]	H U [a]	P L	S VN [a]
NATURE CONSERVATION					
Habitats Directive (92/43/EEC)	1 2/2005 [b]	–	–	–	–
WATER QUALITY					
Urban Waste Water Directive (91/271/EEC)	1 **2/2010**	1 **2/2010**	1 **2/2015**	1 2/2015	1 **2/2015** [c]
Groundwater Directive (80/68/EEC)	–	1 2/2006 [b]	1 0/2007 [b]	–	–
Nitrate Pollution from Agricultural Sources (91/676/EEC)	1 2/2006 [b]	2 008 [b]	–	1 2/2010 [b]	–
Discharge of Dangerous Substances (76/464/EEC)	1 2/2008 [b]	1 2/2006 [b]	1 2/2009 [b]	2 007	–
Abstraction of Drinking Water (75/440/EEC)	–	–	–	1 2/2010 [b]	–
Drinking Water Directive (80/778/EEC)	1 2/2006 [b]	2 **013**	–	–	–
INDUSTRIAL POLLUTION AND RISK MANAGEMENT					
Integrated Pollution Prevention and Control (96/61/EC)	1 0/2012 [b]	–	[d]	1 2/2010	1 **2/2011**
Air Pollution from Industrial Plants (84/360/EEC)	–	–	1 0/2007 [b]	–	–
Large Combustion Plants (88/609/EEC)	–	–	1 **2/2004** [e]	–	–
CHEMICALS AND GENETICALLY MODIFIED ORGANISMS (GMOs)					
Control of Major Accident Hazards (Seveso II) (96/82/EC)	–	–	1 2/2004 [b]	–	–
AIR QUALITY					
Ozone Depleting Substances (EC/3093/94)	–	–	–	1 2/2005 [h]	–
VOC Emissions from Petrol (94/63/EC)	–	2 **006** [g]	–	1 2/2005	2 005 [b]
Quality of Petrol and Diesel Fuels (98/70/EC)	–	–	–	1 2/2009 [b]	1 2/2004 [b]
WASTE MANAGEMENT					
Waste Framework (75/442/EEC)	–	–	–	2 012 [b]	–
Hazardous Waste (91/689/EEC)	–	–	–	2 012 [b]	–
Hazardous Waste Incineration (94/67/EC)	–	–	6 **/2005**	–	–
Landfill (99/31/EEC)		1 **2/2009** [f]		7 /2012	–
Packaging and Packaging Waste (94/62/EC)	1 **2/2005**	–	1 **2/2005**	1 2/2007 [i]	1 **2/2007**
Shipment of Waste (EEC/259/93)	–	–	–	1 2/2012	–
Disposal of Waste Oils (75/439/EEC)	–	–	–	1 2/2005 [b]	–

As of June 2001 Bold dates: Transition periods provisionally agreed.

[a] Chapter provisionally closed.

[b] Recently withdrawn during the accession negotiations.

[c] Slovenia had originally applied for a transitional period until 12/2017.

[d] Hungary seeks to apply a different cut-off-date. This would result in a permanent derogation from certain requirements for certain installations.

[e] Hungary had applied for a transitional period until 12/2008.

[f] Estonia had applied for a transitional period until 12/2013.

[g] Estonia had applied for a transitional period until 1/2007.

[h] Withdrawal of the request for a transitional period in respect of methyl bromide, maintenance of the request in respect of HCFCs and CFCs.

[i] Withdrawal of the request for a transitional period in respect of heavy metal contents, maintenance of the transitional period for achieving recovery and recycling target rates.

In contrast, if transitional periods were considered for administratively challenging directives, incentives and opportunities for this kind of "cheating" could be reduced. Pressure on Accession Countries to demonstrate compliance at the date of accession would be less severe. In addition, the Commission would be in a position to argue that it should retain its present special responsibilities for monitoring and supporting implementation beyond the date of accession in those cases in which transitional periods were granted. Such an approach might significantly reduce the long term risk of an increasing implementation deficit following enlargement.

The third factor that is in the way of an effective implementation of the environmental *acquis* is the fact that environmental NGOs and other societal actors which could politically support and assist implementation are only weakly developed in most Accession Countries (cf. OECD 1999, 81-102). In particular, they lack a strong domestic base in terms of membership, financial resources, and societal attitudes (Jehlicka 1999). Although this is not directly relevant for fulfilling EU requirements, it is nevertheless important for assessing future implementation problems. For example, similar factors contribute to implementation problems in some of the southern Member States (Börzel 1999).

If the Accession Countries do not fully implement the environmental *acquis* – or do so only after long transition periods – this may create economic and political incentives for the economically weaker present Member States to reduce their efforts to implement EU environmental legislation, too. Such a development could seriously undermine the political credibility of EU environmental policy. This could eventually lead to a partial "renationalisation" of environmental policy-making (Homeyer/Carius/Bär 2000, 358).

However, it remains difficult to predict the eventual effects of transitional periods and incomplete implementation. In particular, although financial and other capacities pose the biggest challenges in the short to medium term, the degree to which the Accession Countries will be able to implement EU environmental policies also depends on the way in which European requirements affect country specific formal and informal institutional configurations, which, in turn, shape the interests, opportunity structures and modes of interaction of relevant political, administrative and societal actors (cf. Börzel/Risse 2000; Haverland 2000; Héritier/Knill 2000). As mentioned above, these configurations are still in a flux as a result of the ongoing processes of transformation and accession in CEECs. For example, the Czech Republic, Poland and other Accession Countries are promoting decentralisation of decision-making, which could result in the creation of additional veto points in the process of implementing EU environmental legislation. In many Accession

Countries the legal transposition of EU legislation has been hampered by a highly politicised process of parliamentary ratification of legislation which resulted in the adoption of laws that failed to conform to European requirements.[21] Yet, adversarial legislative decision-making may decrease once the new democracies grow older and manage to develop more consensual norms (cf. Kielminiski 1998, 15). While additional veto points at the regional level could lead to increasing difficulties in adapting to EU requirements, the emergence of more consensual decision-making norms would probably have the opposite effect.

Another factor that is likely to influence the long-term political repercussions of transitional periods and incomplete implementation is the state of implementation in the present Member States which constitutes an important political yardstick to assess the performance of the Accession Countries. Serious implementation problems in the Member States suggest that, at the date of accession, implementation could in certain cases in fact be more advanced in the Accession Countries than in many Member States. For example, all Member States have so far failed to fully legally transpose - not to mention to practically implement - important provisions of the Habitats Directive, although the deadline for transposition was 1994 (WWF 2001).

Finally, the effect of implementation problems in the Accession Countries on EU environmental policy also depends on future developments at the EU level. If, as seems likely, the EU will address the problems caused by the increasing diversity and differences in political priorities and implementation capacities among the Member States by further increasing the flexibility of its regulatory approach, potential pressure to "renationalise" EU environmental policy might be reduced (Homeyer/Carius/Bär 2000, 363-366)

Environmental Integration

The EU has reacted to a deteriorating state of the environment resulting, in particular, from "new" environmental problems with initiatives to integrate environmental concerns into sectoral policies. If these efforts were successful and could be transferred to the Accession Countries, it might be possible to preserve many environmentally favourable conditions in CEE - such as a high level of biodiversity and an environmentally friendly split between alternative modes of transport - by avoiding some of the mistakes committed in the present Member States.

Given the limited organisational and administrative resources in the Accession Countries at societal and state levels, co-ordination between different sectoral actors to achieve environmental integration may, however, be particularly difficult to realise in CEECs. These problems are further aggravated

by the fact that many Accession Countries have a long tradition of bureaucratic policy-making which is characterised by intense rivalries among and between ministries and branches of government (Carius *et al.* 2000a, 98-103).

Despite these obstacles, the process of joining the EU, in conjunction with the ongoing transition process, may have opened a window of opportunity to promote environmental integration at the societal, administrative and political levels. Accession leads to the adoption of more effective environmental and other standards in the candidate countries and the transition process increases economic competition as a result of market liberalisation. These effects may promote environmental integration at the societal level by further accelerating the process of industrial restructuring and modernisation, e.g. the shift towards the service sector and the closure of old, inefficient, and heavily polluting industrial plants and their replacement by modern, environmentally less harmful production technologies (Hager 2000, 18).

Environmental integration at the administrative and political levels could benefit from several factors. First, the Accession Countries have a tradition of planning, for example with respect to land use and "strategic" environmental impact assessment, which is an important tool of administrative environmental integration. At least in some Accession Countries the importance of environmental integration appears to have been recognised by environmental experts and policy-makers, in particular in the framework of accession (Jehlicka 2001, 17-18). Second, the transition and accession processes tend to reduce the institutional rigidities which frequently hinder successful institutional reform, such as better inter-ministerial co-ordination and the establishment of independent and integrated environmental protection agencies. Third, accession has led to the formation of entirely new intra- and inter-sectoral co-ordination structures. For example, Slovenia has established an Office for European Integration which co-ordinates and monitors the transposition and implementation of EU legislation by the various ministries (ECE 1999, 3). Similar structures have been created in other Accession Countries. In addition to a central co-ordinating body, they usually include a European integration unit in the ministries which are most affected by the accession process. It may be possible for the Accession Countries to use their experiences in co-ordinating the accession process to design and implement measures to improve environmental integration. There may even be a possibility to use the existing co-ordination structures for this purpose during the accession process and, in particular, beyond the date of accession, when they have lost their original function.

Finally, the accession process provides the EU with the means to exert exceptionally strong influence on institutional reforms in the Accession Countries (cf. Grabbe 1999) which could be used to promote environmental integration. This opportunity appears to be particularly remarkable against the background that it is the fact that the Member States, rather than the Commission, are responsible for implementation, which partly accounts for the current implementation deficit. More specifically, the Commission has a much larger influence on how EU environmental legislation is implemented in Accession Countries than it normally has on implementation in the Member States. One of the reasons for this is that the Commission has been charged with assessing the Accession Countries' progress in the approximation of EU legislation and in implementing the Union's pre-accession strategy which supports the applicants in adopting and implementing EU legislation. The Commission's influence is further increased by a political power differential between the EU and Accession Countries which is caused by the fact that it is the Commission and, ultimately, the present Member States which will eventually decide when, and under which conditions, an Accession Country may join the Union.[22] Under these circumstances it is no exaggeration to state that "the European Commission has taken the lead in defining the *acquis communautaire* for CEE" (ibid., 24). In doing so, the Commission could place a strong emphasis on environmental integration.

Despite these opportunities, the Commission - and the EU as a whole - so far has not given priority to achieving environmental integration in the framework of the accession process. This is exemplified by the approach to negotiating transitional periods. As pointed out above, the EU refuses to grant transitional measures for administratively particularly challenging directives. Given the incentives which such an approach creates for "cheating" among the Accession Countries, this choice reveals an overly conservative approach which focuses on the formal requirements of transposing and legally implementing the existing environmental *acquis*, rather than a concern with the administrative reforms needed for effective implementation and enforcement on the ground. However, it is precisely these kinds of more structural changes which are needed to promote environmental integration.

In addition to reducing the risk of a persistent implementation deficit in the Accession Countries, admitting transitional periods for administratively challenging legislation in both the environmental and, above all, in other sectors, such as transport and agriculture, may also contribute more directly to environmental integration. Despite a certain leeway in interpreting the *acquis*, the Commission has limited means of inducing the Accession Countries to implement the integration principle of Article 6 before the date of accession because existing Community secondary legislation - which forms the bulk of the

acquis to be adopted by the applicants - so far only weakly reflects the integration principle. However, the Commission is likely to have even less influence once the Accession Countries have become regular Member States. As with implementation in general, if transitional periods for administrative requirements were granted, this would give the Commission better opportunities to promote environmental integration beyond the date of accession under an extended special pre-accession regime.

The way in which the Commission has handled the EU pre-accession strategy and the assistance programmes to support the Accession Countries also suggests that the Union has so far failed to promote environmental integration. In theory, the Phare programme could be used for this purpose. Thirty percent (about 500 million Euro) of the annual Phare budget are devoted to institutional capacity building in the Accession Countries. Yet, environmental integration so far has not been a priority. Similarly, environmental concerns have only been weakly integrated into the provisions of the Regulation on the Instrument for Structural Policies for Pre-Accession (ISPA) which govern EU support for major infrastructure investment in the transport sector in the Accession Countries. The requirements on environmental safeguards of the ISPA Regulation tend to be weaker than the corresponding rules for the Cohesion Fund on which the ISPA programme was modelled. In addition, unlike the Cohesion Fund, ISPA only supports large projects.[23] Consequently, environmentally friendly, smaller, and less capital intensive investment cannot be financed by ISPA.[24] Furthermore, the Transport Infrastructure Needs Assessment (TINA) - the Commission's main planning instrument for transport infrastructure investment in the Accession Countries - so far seems to have been subjected to less environmental impact assessment than the Trans-European Network for Transport (TEN-T), the corresponding measure for the present Member States. It remains to be seen whether the Commission will implement its intention to subject TINA to a full blown "strategic" environmental impact assessment (Fergusson 2000, 5-6).

Finally, insufficient attention to environmental integration in the European assistance programmes is frequently duplicated at the national level in the Accession Countries. Development plans and sectoral strategies which serve as a basis for decisions on many projects co-financed by the pre-accession funds have been prepared in a rush and, in some cases, are not even publicly available. Low transparency and scarce involvement of stakeholders has contributed to the fact that the commitment to environmental integration and sustainable development remains at the purely declaratory level in many plans (cf. CEE Bankwatch Network/Friends of the Earth Europe 2001).

Conclusions

This paper has discussed several reasons why EU enlargement will increase the need to promote sustainable development by putting environmental integration into practice. First, enlargement threatens to undermine the leader-laggard dynamic because most Accession Countries will probably oppose stringent environmental standards once they have joined the EU. Environmental pacesetters may therefore increasingly make use of mechanisms of flexible integration, for example the Treaty provisions on Enhanced Co-operation. This development could preserve the leader-laggard dynamic but might also create new problems in terms of undermining a satisfactory level of environmental protection throughout the EU. Second, enlargement also threatens to further increase the implementation deficit. No matter whether the first round of enlargement takes place in 2003 or, as seems more likely, a few years later, Accession Countries lack the financial resources and administrative capacities to achieve full practical implementation of EU environmental legislation by the date of accession. Among other things, this may lead to a further increase in regulatory flexibility on the part of the EU. Finally, environmental integration promises to contribute to preserving the important positive aspects of the state of the environment in CEE by helping the Accession Countries to chose a more sustainable path of development. In addition, environmental integration may reduce the risks inherent in increasingly flexible European integration and regulations by increasing support for environmental protection among sectoral actors at the societal, administrative, and political levels.

There are at least three reasons why the conditions for promoting environmental integration in the framework of enlargement are basically favourable: First, economic and institutional structures in the Accession Countries are currently relatively malleable due to the ongoing processes of transformation and EU accession. Second, the experiences and institutional structures resulting from the need to politically and administratively co-ordinate the accession process may be used to promote environmental integration. Third, against the background of an asymmetric distribution of power in favour of the EU during the process of enlargement, the EU can exert exceptionally strong influence on the Accession Countries in the framework of the special pre-accession regime which may be used to promote environmental integration.

In view of these circumstances it might be possible to significantly promote the integration of environmental concerns into sectoral policies in the Accession Countries were this aim to become a high priority of the EU accession strategy. If successful, such an initiative could contribute significantly to turning a group of potential environmental latecomers into future environmental pacesetters. As yet, the EU has, however, made few efforts to promote environmental integration in the framework of accession.

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Notes

[1] If anything, Scharpf's model of the joint decision trap applies to EU environmental policy in the 1970s (cf. Jordan 1999, 7; Andersen 1997, 212).

[2] Andersen (1997, 222-224) stresses the importance of competitive interaction between leaders and laggards. According to Zito (1999), EU 'task expansion' can mostly be explained in terms of Member State interests and the Commission's influence on policy-making, although other explanations are relevant, too. He argues that more empirical research is needed to establish the overall explanatory value of accounts in terms of the influence of Member States *vis-á-vis* explanations which emphasise the independent role of the Commission.

[3] For a short overview, see Holzinger (1994, 76-77).

[4] For a similar classification, see Liberatore (1991, 286-289).

[5] In addition, high product standards tend to prevail if consumers prefer, are willing to pay for, and are able to recognise, high-quality products (Scharpf 1998, 126-127).

[6] Process standards do not directly affect the Internal Market. Therefore it is easier for latecomers to push for EU regulations which reflect the lowest common denominator or to block any efforts at harmonisation. Given a liberalised Internal Market, this may subject the process of adjustment of process standards to strong pressures of economic competition.

[7] Héritier (1995, 279) argues that the UK not only softened its position but also acted as a leader Member State in bringing about certain changes in the administrative requirements of EU environmental legislation.

[8] In theory, the restrictions posed by unanimous decision-making could also be overcome by issue-linkage. However, in the day-to-day EU legislative process cross-sectoral issue-linkage is rarely practised due to the strong functional sectoralisation of decision-making. Intra-sectoral issue linkage is more common but also less effective due to more limited opportunities for exchange (Golub 2000, 4-5; Golub 1996, 710).

[9] At the highest level, even the formally independent Commissioners play an important role in promoting the interests of 'their' Member States (Andersen 1997, 213, 216).

[10] In some of the more extreme cases pacesetters may also oppose EU legislation. In the early 1990s several Member States, including the UK and Denmark, invoked the subsidiarity principle to call for a repatriation of environmental competencies. In addition, some environmental pacesetters emphasise the "environmental guarantee" of Article 95(4) EC (Liefferink/Andersen 1998, 258-259). Under certain conditions this provision gives a Member State the right to exceed EU environmental standards. However, although upward deviance from common standards tends to undermine EU competencies in the short term, it may lead to renewed calls for the adoption of harmonised European regulations in the longer run.

[11] For example, on complaints regarding the Directive on Environmental Impact Assessment the Commission comments that "it is obviously difficult for Commission departments to investigate cases where the quality of impact assessment is questioned or it is contended that their findings are not properly acted upon. Although the Directive contains Articles regarding the content of impact assessments, it is difficult to verify the compliance with them by national authorities; moreover, it is not always easy to contest the merits of a choice taken by national authorities" (EC 1999, 11).

[12] There are different conceptions of how many steps are involved in the implementation of EU legislation. According to the Commission there are four steps: legal transposition, practical application, compliance, and enforcement (cf. EC 1997a). Evaluation and policy reform may be added (Nicolaides 1999, 5). Others distinguish merely between the stages of legal transposition and practical implementation (Liberatore 1991, 298-299). The threefold

distinction has the advantage that it explicitly deals with the question of resources which is relevant for the effects of enlargement on EU environmental policy.

[13]Although the UK is often regarded as a latecomer, it has a favourable record of implementing EU environmental legislation. This may partly be explained by the fact that the UK, which is one of the four large Member States, has better chances of influencing EU decision-making than smaller latecomers. In addition, the UK has more resources to implement policies than less wealthy countries. By contrast, Germany's implementation record is mixed. Economic difficulties following German unification and the fact that some of the more recent environmental directives conflict with the traditional German regulatory approach partly account for the German record (Knill/Lenschow 1999).

[14]For example, the Large Combustion Plants Directive grants Spain a special transitional period for compliance with important requirements. In addition, Article 15 of the Single European Act allows for transitional periods if certain economies are disproportionately burdened by measures to create the Internal Market (Beck 1995, 150).

[15] For details, see Young/Wallace (2000, 41-50).

[16]It is particularly alarming that the link between economic growth and environmental pollution, which has significantly decreased in most Member States, still appears to be strong in many CEECs (Jahn 2001).

[17]The EU Common Positions for the accession negotiations in the field of the environment contain statements to this extent (cf. Council of the European Union 1999, 1-2). In addition to the 1993 so-called Copenhagen Criteria for accession - among other things the ability to implement the *acquis communautaire* - the 1995 Madrid European Council emphasised the importance of the adjustment of administrative structures in the Accession Countries for membership (Mayhew 2000, 6).

[18]Apparently, environmental experts and policy-makers in some of the most advances Accession Countries see the future position of their countries on EU environmental policy much closer to the position of the pacesetters than to that of the latecomers. However, given the factors mentioned above, it remains highly questionable whether such an assessment is realistic (cf. Jehlicka 2001, 19).

[19]For a detailed analysis of the potential impact of the Nice Treaty on EU environmental policy, see Bär/Homeyer/Klasing (2001a).

[20]During the initial Screening process with the Commission, the Luxembourg Countries identified an even greater need for transitional periods than indicated in the Table. For details, see Homeyer/Kempmann/Klasing (1999).

[21] Contributions to the discussion at the workshop „Successful Environmental Policy: Building Constituencies in Central and Eastern European Accession Countries" held jointly by the Czech environment ministry and Ecologic, Institute for International and European Environmental Policy, Berlin (on behalf or the German environment ministry), 23 February 2000, Prague. More generally, see also Agh (1999, 1995); Elster (1998, 281).

[22]Although Member States ultimately decide on accession, the long-drawn out pre-accession process of monitoring and influencing the adoption and implementation of EU legislation in the Accession Countries is a highly technical exercise which is dominated by the Commission. For the case of environmental legislation, see Homeyer/Carius/Bär (2000); Caddy (1997). More generally, see Jacoby (1999); Grabbe (1999a).

[23]Following complaints by Accession Countries and environmental NGOs there are plans to relax the 5 million Euro threshold. See ENDS Daily 5 May 2000.

[24]Under certain conditions smaller projects may be bundled together in a large project.

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