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Between politics and administration : compliance with EU Law in Central and Eastern Europe

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CHAPTER 10

PROTECTING THE ENVIRONMENT

The previous chapters presented in detail the transposition and implementation of information society and working conditions legislation in five new member states from Central and Eastern Europe. Information society policy embodies a specific regulatory approach and is part of the core internal market policies of the EU. The conclusions we have reached about compliance in that policy area important for compliance of the new member states with internal market policies. In this chapter, I am going to analyze compliance in a third policy area – environment, and nature protection in particular. The third and final set of case studies will provide insights about transposition patterns in areas of positive integration and will deliver even more empirical data for cross-country and cross-sectoral comparisons.

10.1 Nature protection policy in the EU

The second policy area I focus attention on is nature protection – part of the European environmental policy. There are two main directives in the field – Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds. The former directive establishes a network of ‘specific areas of conservation’ designated by the member states. The latter directive envisages the establishment of ‘special protection areas’ which provide an appropriate legal protection regime capable of achieving the conservation objectives for species and habitat. Together, they form the NATURA 2000 ecological network.

Special areas of conservation are designated in three stages. First, member states draw up a list of sites hosting natural habitats and wild fauna and flora. On the basis of the national lists and by agreement with the member states, the Commission will then adopt a list of sites of Community importance. No later than six years after the selection of a site

of Community importance, the member state concerned must designate it as a special area of conservation. The Habitats Directive states that as soon as a site is placed on a Community list of protected areas, it is subject to the protection regime. This includes the prior assessment of potentially damaging plans and projects, the requirement that these plans and projects be approved only if they represent an overriding interest and only if no alternative solution exists, and measures for providing compensatory habitats. The transposition and implementation of the two directives has been a matter of grave difficulties for the 'old' 15 member states: to give a glimpse of the extent of the problem, in 2005 there were 94 infringement procedures for bad application of these laws.

Table 10.1 Transposition delay in CEE in regard to nature protection legislation

	Transposition delay (in months)
Czech Republic	0 (partial transp.)
Estonia	1
Hungary	8 (partial transp.)
Latvia	8
Lithuania	0 (partial transp.)
Poland	0
Slovakia	0 (partial transp.)
Slovenia	0

It is no surprise that the new member states also experienced serious problems with the transposition and implementation of the nature protection regulatory framework. In fact, it is difficult even to assess when the transposition process was completed in each individual country. As the directives require the adoption of numerous secondary and tertiary legislation in addition to one or two main primary legislative acts, it is hard to pin

down the exact date of transposition. Often, the new member states incorporated the basic principles of EU nature protection legislation prior to the moment of accession, but the necessary secondary legislation was adopted over a period stretching far beyond the date of accession. Table 10.1 gives an overview of the timing of transposition of the *main* provisions of the directives in the countries from CEE. The reported delay does not reflect the time until complete transposition but until essential incorporation of the EU rules in national law. This is one of the reasons why the ranking in terms of delay does not match perfectly our ranking in terms of compliance according to the infringement procedures started by the Commission. In the next sections, I will describe in detail the adoption of the national implementing legislation in the Czech Republic, Estonia, Hungary, Latvia, and Slovakia.

10.2 The Czech Republic: a success?

The Czech Republic has been quite successful in the transposition and, to a lesser extent, with the implementation of nature protection legislation. The new Law for Nature and Landscape protection came into force on the 28th of April 2004. Although the transposition was not completed by this act and an important annex to the legislation was adopted considerably later, the timeliness of the adoption of the law comes as a surprise given the rather poor performance of the country in most of the rest of the policy sectors. What accounts for the lack of delay? First of all, there was considerable political support for the legislation from the minister of environment and the higher civil servants (interview 9). Although not great, the administrative capacity of the ministry was sufficient (interview 9). NGOs and interest groups were closely involved in the policy-making process. Interestingly, this fostered an informal coalition between the Ministry of Environment, the Commission, and the NGOs versus other ministries (like Agriculture and Economy) (interview 9). Although it is not directly stated, it appears that the collaboration was instrumental in overcoming resistance to the nature protection legislation within the government.

The general societal and political salience of the NATURA 2000 network was low. Despite some efforts to communicate about the policy, citizens had little knowledge and interest in the network. On the other hand, there were numerous national and

international non-governmental organizations that closely scrutinized and participated in the application of the legislation.

The conflict between the ministries of environment and agriculture/economy/industry is a recurring theme in all the case studies in this policy area. In the Czech Republic, the Ministry of Environment, established in 1991, was known to be especially strong despite the minister being isolated even in his own party. A lack of co-ordination between the ministries of environment and agriculture in regard to payments received in rural areas was also pointed out. The conflict made its way into parliamentary discussions (interview 9). Ultimately, the parliament approved changes to the draft law that weakened the powers of nature protection bodies. These amendments were advocated by economic interests during the course of the discussions.

The preparatory work for the application of the directives had started already back in 1999. Co-ordination between the teams transposing the nature protection directives and the closely related environmental impact assessment was poor. Although both groups were working in the same ministry (of environment), co-ordination was still lacking. Co-operation with regional official was rated as satisfactory. The involvement of local *communities* was, however, insufficient. A look into the implementation shortcomings reveals that by the deadline only two-thirds of the territory of the country was mapped according to the provisions of the directives. Rather than neglect, the reason for the shortcoming was the lack of enough scientists and policy experts together with the very ambitious method chosen to complete the task (interview 9).

10.3 Estonia: selective inclusion of consultation and co-operation partners

The main transposition act of the Birds and Habitats directives in Estonia is the Nature Conservation Act approved by Parliament in April 2004. The Ministry of Environment was the co-ordinating hub of a wide-ranging network of government and non-governmental bodies involved in the process of transposition and implementation of the EU legislation. Work on the process had begun as far back as 2000 when the strategic policy document 'National Natura 2000 Programme' was published. In 2001 gathering and evaluating data already took place. Despite a one year delay (in terms of the original government program) (IUCN, 2005) numerous hearings and negotiations with

stakeholders were held in 2003 and 2004. Inter-ministerial co-ordination had taken from 2000 until 2004, just before the time of accession (Saarniit 2003). Estonia also requested a transitional period in regard to the Habitats directive (Saarniit, 2004). The request however was not successful due to the principal opposition of the European Commission to grant exceptions in that area (Buzogany, 2008; Mocsári, 2004).

The government also received support from the LIFE nature program. The involvement of local communities was insufficient. Although the government had many partners in the policy-making process (universities, Estonian Society of Ornithology, Estonian Fund for Nature, Estonian Sea Institute etc.), the general impression is that it strived to contain the applicability of the nature protection system.

10.4 Hungary: belated transposition

The transposition and implementation of EU nature protection legislation has been one of the greatest challenges in the process of legal alignment in Hungary (Vaarmari, 2006). The two main acts transposing the Birds and Habitats directives are Government Decree 275/2004 on Nature Conservation Sites of Community Importance and Government Decree 2/2005 on Environment Assessment of Certain plans and programmes. The first government decree came into force a few months after the transposition deadline. Moreover, it was soon challenged by the Commission for the way in which it transposes the legislation (IUCN, 2005). The protracted harmonization led to a meeting of the Environment Commissioner with the Hungarian Minister for Environment in order to discuss the process of adopting the EU law in the policy area in June 2004. As a result, the decree was amended in 2006.

The major actor in the transposition process was the Ministry of Environment. Most of the practical work in the preparation of national implementing measures was conducted by a consortium led by the ministry. The main reason for the delays in regard to the transposition and in the submission of the list of NATURA 2000 sites (five months) was the slow consultation process with other ministries (especially the ministries of Agriculture and Rural Development, and Defence) (Buzogany, 2008). According to Buzogany (2008) the conflict with the ministry of Environment was the major bottleneck in the adoption of the legislation.

Researchers have noticed the crucial influence of the EU the push through the legislation: '[for the ministry of environment] fighting an uphill battle against more influential departments, such as economy, transport or agriculture, EU-accession emerged as a welcome opportunity both to further integrate and upgrade environmental policy and legislation, as well as to secure financing for environmental projects' (Mocsári, 2004)

In regard to the implementation of the legislation, 'the designation of sites started in 1998, however, during the Orban government the process slowed down and until 2000 almost nothing happened' (IUCN, 2005). On the positive side, despite the delays all important areas were included in the network of protected sites, according to third-party assessment (IUCN, 2005). Still, the Commission initiated in 2007 an infringement procedure for insufficient designation of areas under the Birds directive.

10.5 Latvia: early and encompassing consultation

Essential transposition of the nature protection directives in Latvia was achieved with the amendments to the Law on Specially Protected Nature Territories approved in October 2004. Numerous other laws, regulations, and ordinances complement the regulatory framework and were adopted since the beginning of 2000. A law on the protection of species and biotopes and other laws on nature reserves and national parks were adopted in March 2000. In May 2000 the Government adopted a National Biodiversity Programme. A number of laws were adopted in 2001, particularly on microreserves, on issuing permits for non-huntable species, on compensation for damage to protected species and habitats, and on keeping wild species in captivity. A Nature Protection Board was set up, and became operational after May 2002. The amendments of the Law on Specially Protected Nature Territories in October 2004 finalized rather than marked the start of the transposition process. The list of protected nature territories of European importance was already approved by the law on Specially Protected Nature Territories. Territories for the Natura 2000 network in Latvia were selected according to the Regulations of the Cabinet of Ministers - "Criteria for Selecting Sites Eligible for Identification as Sites of Community Importance (Natura 2000) in Latvia" (Nr.199/28.05.2002) (Langenfelde, 2006). The Latvian Natura 2000 list of protected

nature territories of European importance was submitted to the European Commission in April 2004.

Nature protection was not considered a priority. Administrative capacity was low. Five persons were working on the topic with a small budget and no experience. In Latvia the ministry used as a base for the legislative adaptation an already existing system of protected areas. Additionally 106 new protected areas and nine micro reserves were founded, and together with the existing ones they were included in Natura 2000. Financing of the European Commission LIFE – Nature Program was used in order to elaborate the nature conservation plans of the Natura 2000 territories and to implement it in Latvia

The most distinctive feature of the adaptation process in Latvia seems to be the extensive process of involvement and consultation with local communities and NGOs. In February and March 2003 numerous regional seminars explaining the regulatory approach of NATURA 2000 were organized for land owners. Partly as a result of the information campaign, there were no indications that conflict with agricultural or general economic interests hampered the transposition and implementation of the nature protection rules. Early preparation and wide-ranging consultation and information emerge as the most salient explanations of the relative success of Latvia in adopting the EU directives in this field. An information campaign was launched on the TV, radio, and other mass media. The campaign was supported by NGOs and governmental institutions. Several booklets were produced with questions and answers for land owners. A special campaign “Propose a territory!” was also conducted. Altogether 100 meetings were held – informing land owners and institutions about designation of potential protected areas, discussing about the borders and the regimes of protection (Langenfelde, 2006). There were also informative meetings for local governments after adoption of the Natura 2000 list. Despite the efforts, people were not very well informed about Natura 2000: “The message is too complicated to them. They also don’t really understand, why to protect and why for EU?” (Langenfelde, 2006).

To establish the network in Latvia, inventory of current Specially Protected Nature Territories and selection of new protected territories was performed by Latvian experts with the help of the Danish-Latvian project “Analysis of Specially Protected Nature Territories in Latvia and Establishing of EMERALD/Natura 2000 Network”.

10.6 Slovakia: early preparation, much consultation, but limited success

In regard to the openness of the consultation process and the early start of the preparation the case of Slovakia is very similar to the case of Latvia. Nevertheless, compliance in Slovakia is more problematic.

The transposition process was completed as early as 2002 (the Nature and Land Conservation Law came into force January 2003). The Ministry of Environment and the State Nature Conservancy agency started work in 1998/1999. Support from the Dutch government was provided. Similarly, the Latvians worked with Denmark (IUCN, 2005). The governmental agencies worked closely with a network of non-government actors including academic institutions, NGOs, etc. According to the Slovak legislation, the involvement of relevant stakeholders in the policy-making process is compulsory. In practice also the involvement was wide-ranging.

Final approval of the list of protected areas came only on the 17th of March 2004, however, after a gridlock lasting several months due to negotiations between the ministries of agriculture, economy and finance. Media pressure nurtured by NGOs, and the threats of the Commission to withhold support from the Structural Funds were essential in resolving the gridlock. Several areas, however, were excluded from protection of the NATURA network as a result of the inter-ministerial negotiations. Rolling the tape forwards to June 2007, the Commission still considers that Slovakia has 'major insufficiencies' in the designation of special protected areas. The EU started an infringement procedure to remedy the situation. The procedure was still outstanding at the moment of completion of the empirical research for the book (March 2008).

Completing the overview of the country case studies I will move on to discuss the cross-country comparisons.

10.7 Cross-country comparisons

The major conflict in the field of nature protection was between a coalition between the ministries of environment, NGOs and the Commission on the one hand, and the ministry of economy, agriculture and business and land-owning actors on the other hand. Where a strong minister of environment (as in the Czech Republic), or early and encompassing

involvement (as in Latvia) managed to overcome resistance, compliance was better. However, early preparation and participation of NGOs were not sufficient for success as the case of Slovakia shows. Interventions from the European Commission and local stakeholders were essential in raising the importance of timely compliance vis-à-vis the importance of the substantive policy changes that the ministries were negotiating about. Although no outright political opposition to the nature protection legislation existed, in practice the strict application of environmental rules contradicted special agricultural and economic interests supported by the governments in power. The EU nature protection legislation did not start any large scale grassroots movements in support of the rules in the five countries that I studied. The European legislation, however, fostered an inter-institutional network of national and cross-border NGOs, research institutions and advocacy coalitions, sometimes joined by parts of the Commission and the government (the ministries of environment). The policy network not only exchanged resources like scientific expertise or media access. It transformed the policy making process from a game between the national and the EU level into a more complex interactions between ad-hoc coalitions spanning governance levels and the government/non-government distinction. The dynamics of domestic adaptations in the policy field of nature protection is quite different than the one observed in the field of electronic communications. In the next chapter I will move towards a discussion of the inter-sectoral comparisons and the overall results from the various empirical investigations reported in this book.