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EU Enlargement and Environmental Policy

The Bright Side

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FNI Report 14/2006

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August 2006



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Title

EU Enlargement and Environmental Policy: The Bright Side

Publication Type and Number

FNI report 14/2006

Pages

23

Authors

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ISBN

82-7613-500-5

Programme or Project

EU Enlargement and Norway – Challenges to the Effectiveness of Energy and Environmental Policy (02)

ISSN

0801-2431

Abstract

It is commonly expected that as the EU expands to include the Central- and East-European (CEE) countries, its capacity to adopt and implement environmental policy will be negatively affected. The traditional thinking is that the CEE countries will take on the role of laggards, thus slowing down or even reversing progress in environmental policymaking. This report questions the grounds for this reasoning and argues that a less pessimistic view emerges when the analysis considers the following: 1) that business and industry are likely to take a more proactive role; 2) that the CEE countries are unlikely to vote as a bloc on environmental issues because their interests and values vary, and 3) that the flexibility and capacity of EU institutions to adopt and implement environmental policy has increased. This positive picture is further enhanced if we shift the analytical focus from short-term decision making to long-term problem solving because the disadvantages of the anticipated slower decision-making may be outweighed by the positive environmental consequences of greater institutional effectiveness achieved by implementing the aquis in the new Member States.

Key Words

European Union, EU enlargement, Environmental Policy

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1. Introduction

The European Union now has ten new members: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Accession is planned for Bulgaria, Romania, and Turkey. This will essentially double the size of the EU and present a host of new challenges to and opportunities for EU's environmental policy and the state of Europe's environment.

The EU has been described as 'having the most progressive environmental policies of any state in the world although it is not a state' (Jordan 1999: 1). Correct or not, it does lead one to wonder whether an expanded EU will be able to sustain, let alone develop, this 'progressive' policy. Analysts have so far mainly painted a gloomy picture of the consequences of enlargement for EU environmental policy. Enlargement is expected to slow down or even reverse EU environmental policy (see e.g. Pellegroni 1997; Baker 2000; Holzinger and Knoepfel 2000; and Wilkinson et al 2004).

These expectations tend to be based, more or less explicitly, on the following line of argument: First, declining social demand for environmental quality, weak green organisations and low administrative capacity produce weak environmental policy in the new Member States. Second, weak policy compounded with low GDP levels will entail that the new Member States will adopt 'laggard' positions in EU decision-making bodies. Third, because institutional reforms at the EU level are inadequate to cope with the new situation, EU decision making will slow down.

The purpose of this report is to take a critical look at the grounds for this line of reasoning. More specifically, we explore the underlying variables and discuss the extent to which the appreciable literature on enlargement and the environment succeeds in capturing the essence of the nature of EU environmental policy and enlargement.¹ We argue that a far less pessimistic view emerges if the assumptions in the traditional view are looked at more closely.²

Nobody knows the extent to which and how the recent enlargement will affect EU environmental policy in the future. What we can do from a social science perspective is to identify the factors and conditions that are nevertheless likely to influence developments. There are essentially two viable strategies here: we can take as our point of departure either our knowledge of previous EU enlargements or our knowledge of how EU environmental policy is made and implemented. The first strategy entails focusing on lessons learned from previous enlargements that had a profound impact on the dynamics of EU environmental policy making (Andersen and Liefferink 1997; Soveroski 2001; Christiansen and Tangen 2002; Schreurs 2004).³ However, the recent enlargement is significantly different in terms of number, types and diversity of the new Member States. Moreover, the sheer volume of the environmental *acquis* that have been adopted by the new members is far more extensive than in previous enlargements: The new Member States have transposed nearly

100 per cent of the environmental *acquis*, comprising about 300 environmental directives, into national law. The difference from previous enlargements and the extent of environmental policy that will automatically pass on to the new Member States thus suggest that the second strategy might be more fruitful. Thus we will take our point of departure in how EU environmental policy is made and implemented, and then consider the potential impact of enlargement. We will draw from a review of the literature on enlargement and the environment and limit our discussion to the eight Central- and East-European (CEE) countries, leaving aside Malta and Cyprus. Empirical examples are mainly drawn from the field of air pollution, which represents a major challenge for the EU as well as the new Member States.

The report is structured in line with the arguments presented above: In section two, we discuss the domestic environmental policy in the new Member States. The third section explores new alliances at the EU level and to what extent new Member States are likely to act as laggards, while the fourth section presents an analysis of EU institutional reforms with regard to collective decision-making and implementation. In the fifth section, we discuss how the predominant focus on slowdown in EU decision-making obscures issues of institutional effectiveness in the context of enlargement. Finally, we conclude by suggesting various modifications in present approaches with regard to both dependent and independent variables.

2. The Environmental Policies of the New Member States

The emphasis on a weak domestic base for environmental policy in the new Member States is based on a supply and demand model of environmental policy. National environmental policy can be seen as a function of social demand for environmental quality and governmental supply of policies to protect the environment (Underdal and Hanf 2000).⁴ Social demand is determined by public opinion on environmental protection, often as expressed through the agents of public sentiment, the green NGO lobby. Governments can supply environmental policy either 'upstream', by formulating national position in EU decision-making bodies, or downstream, by building administrative capacity to implement both national and EU policy. In democratic systems, social demand represents a significant force in shaping public policy. In the context of enlargement and environment, this means that high social demand for environmental quality is a prerequisite for a viable environmental policy. Public policy, however, is not only driven by social demand. Governments have both their own views and the capacity to act independently. The enlargement process has been repeatedly criticised for reinforcing the power of the governmental 'elites' in the Central- and East European (CEE) countries (Baker 2001).

Previous analysis looks mainly at the eight, or a subset of the eight CEE countries. These countries are significantly different with regard to size, state of reform, economies and environmental challenges. However, they also share a number of similarities thanks to their common post-socialist

history (Homeyer 2004). The following sections describe some of the similarities between the CEE countries in both social demand for and governmental supply of environmental policy.

2.1 Social Demand: Weak NGOs, but Underestimated Business and Industry

Post-socialist Europe inherited huge environmental challenges along with certain positive environmental practices. Heavily polluted regions co-existed with expanses of unspoiled terrain that covers about 30 per cent of the region (Pavlinek and Pickles 2004). Before 1989, air pollution was a major problem particularly in the northern region (Poland, the Czech Republic and former East Germany) due to heavy industry and reliance on brown coal for energy. Water pollution in the form of hazardous substances and nutrients affected all CEE countries, and soil degradation remains a problem in most of them. The environmental situation improved during the 1990s as an effect of socio-economic advances and environmental policy reforms. For instance, in Poland SO₂ emissions were cut by more than half between 1990 and 2000. Czech SO₂ emissions fell by 75 per cent in the same period (Acid News 2002). Shifts in the energy structure to energy sources other than coal and the economic downturn that hit the polluting industries were as important as the new and more stringent regulation. Economic and social restructuring has, however, led to fresh problems particularly related to mass consumerism – including an increase in transport and sharp rises in consumer waste. As Pavlinek and Pickles (2004: 252) reported, private car ownership grew quickly across the new member countries in the 1990s.

In the early 1990s, the CEE country governments and public opinion were highly attuned to the dangers facing the environment. After 1992, however, public concern for environmental quality declined (Jehlicka and Ticle 2002; Homeyer 2004). The combined memberships of environmental NGOs in e.g. Hungary, Czech Republic, Poland and Slovakia at the end of the 1990s were lower than in the late 1980s (Jehlicka and Ticle 2002: 12). The drop was related partly to the improved environmental situation of the 1990s and partly to new priorities adopted during the EU harmonisation process of the 1990s. CEEs now concentrated on minimising the impact of environmental reforms on economic growth and competitiveness (*ibid.*). Declining public and political interest in environmental issues left the environmental NGOs in the CEE countries somewhat at a loss. Today, most observers seem to agree that the environmental NGOs are facing an uphill task when it comes to influencing domestic policy and, particularly, EU environmental policies (Beckman 2002; Hicks 2004; Greenspan Bell 2004; Hallstrom 2004). Despite increased willingness of EU officials to consult with NGOs from the CEE countries in the 1990s, the flow of information remains largely from Brussels to the NGOs, not the other way around (Hallstrom 2004). The environmental NGOs lack broad-based memberships, staff, financial resources and adequate expertise. In addition, they lack access to decision making in the ministries of environment and tend to be politically passive. Their influence is therefore amputated even in those cases where access is granted (Homeyer 2004).

However, the adoption of the comprehensive environmental *aquis* and the transitional periods granted will probably heighten the determination of CEE governments to reach adopted EU commitment targets in the foreseeable future. This situation gives NGOs an opportunity to act as implementation watchdogs by putting pressure on both governments and target groups. The NGOs' ability to perform this role was strengthened by EU participation in the Aarhus Convention, which led to revisions in the EU Directive on environmental information (see e.g. Greenspan Bell 2004: 207).

Whereas most observers seem to agree that social demand for environmental quality has declined and that the domestic base of NGO pressure in the CEE countries is relatively weak, few have related this trend to the history of the environmental movement in Western Europe which shows that dips like this can be temporary. According to Downs (1972), environmental concern, like other political objects of concern, follows an 'issue-attention cycle'. Environmental issues will lose the interest of the public over time and be replaced by new issues, regardless of whether the problems actually have been solved or not. The decline in public concern for the environment, particularly after the 1992 Rio Summit, appears to reflect a general European trend.⁵ There also seem to be significant differences in the success NGOs have had in mobilizing across different issue areas. In general, NGOs tend to mobilise more successfully when they have 'visible' point sources of pollution on the agenda than when they have more diffuse sources. This helps us to understand why a significant greening of industry has taken place since the 1970s, whereas agriculture evaded environmental pressure almost entirely until the late 1980s. In the CEE countries, more NGO attention has been paid to air pollution than to other comparable problems, due to these countries' records on pollution hot spots and visible point source pollution. It is interesting to note that in connection with the recent round of EU consultation on the Clean Air for Europe (CAFÉ) programme a comparatively high rate of response was recorded from the CEE countries (ENDS 2005).

Whereas analysts have devoted much time and energy to the environmental movement in the CEE countries, business and industry have received relatively scant attention.⁶ This is somewhat surprising in light of the crucial role played by companies in environmental policy.⁷ One could perhaps say that environmental policy is formed and implemented by governments at the often tense interface between NGO mobilisation and the interests and strategies of target groups. Accordingly, the key to understanding environmental policy may in some cases lie in the relative influence of NGOs and target groups. Past EU-15 history does indicate that green NGOs tend to be outmatched by industry interests. Even though the pressure of environmental groups did accelerate the development of EU policy, business and industry have won many of the key battles (Grant et al 2000). This means that the greening of industry itself is important for a viable environmental policy.

A significant greening of industry has taken place in Western Europe. In some cases, such as the EU Emissions Trading Directive, green NGOs and industry worked toward the same goal. In fact, the proactive

approaches of the oil majors BP and Shell proved important for the adoption of this directive (Wettstad 2005).⁸ A growing body of literature argues that the static view with regard to a fixed trade-off between ecology and economy is simply wrong, since it ignores the more important offsetting productivity benefits of *innovation*. In this view, properly designed environmental standards make companies more competitive, not less, since innovations allow companies to make more productive use of a range of inputs, from raw materials to energy and labour (see e.g. Porter and Linde 1995).

In the CEE countries, an important distinction divides large multinational export companies from domestic companies (Botcheva-Andonova 2002; 2004). Large export-oriented companies have adopted, and will probably continue to adopt, more proactive environmental strategies for at least three reasons. First, such companies participate in European business federations where environmental matters are high on the agenda. Even though members of various business organisations are motivated by profit and survival, there are many ways to make money. Such organisations tend to highlight and encourage energy saving, energy-friendly technology development, and waste minimisation in addition to protecting their economic interests.

Second, new export markets in the EU and the OECD developed in the 1990s exposed CEE industries to a higher level of environmental scrutiny by consumers and NGOs. Green consumerism became a significant force in OECD countries, with a capacity to kindle or stifle product markets. There are at least two mechanisms through which consumer interests can affect corporate strategies. First, consumer campaigns initiated by e.g. the green movement can damage company reputations and affect market shares. Second, in their choice of environmental strategy, companies may be responding to the willingness of environmentally concerned consumers to pay a higher price for clean products, such as clean energy. While the latter mechanism provides companies with new opportunities, the former puts pressure on them. According to Greenspan Bell (2004: 210), ISO 14000 certification has already had some impact in central Europe.

Third, governmental regulation has been seen as an important factor behind the greening of industry since the UN Conference on Human Development in Stockholm in 1972 (Falkner 1996). This mechanism is also likely to apply in the CEE countries for both domestic and export-oriented industries as a result of the transposition of the environmental *aquis*. The targets and measures included in the about 300 environmental directives transposed by the new Member States are not open to discussion with industry and other target groups. For example, the Integrated Pollution Prevention and Control (IPPC) Directive requires the issuing of permits for existing installations by 2007. In the case of Poland and pressure emanating from the Large Combustion Plant Directive, Kudelo and Suwala (2003: 742) note that 'EU regulation on air pollutants brought into force in 2001 and 2002 can prove extremely significant and costly'.

Note that these mechanisms work in two mutually reinforcing ways. First, CEE companies with activities in the EU and OECD region face higher environmental demands than they used to. Second, West European

multinational companies operating in the CEE countries set higher standards for local industries. In contrast to a country, a multinational company can require its branch offices around the world to comply with its corporate strategy.

It is well documented that enlargement has led to the inclusion of new Member States with low and declining public concern for the environment and weak green NGOs. This situation may, however, gradually change with EU membership. First, declining public demand for environmental quality and support for the green movement may simply mirror the fluctuations we have also seen in West Europe, and may thus change rapidly. Increased public concern for the environment will increase the prospects of more ambitious positions in EU decision-making bodies and implementation. Second, there is a strong likelihood that particularly export-oriented and multinational companies in the CEEs will become more proactive. Greening of industry and other target groups in the CEE countries is just as important for strengthening environmental policy as a strong green movement.

2.2 Government Supply of Environmental Policies: Assistance and Openness to New Instruments?

The administrative capacity of the CEE countries is described as weak, and the prospects of them actively participating at EU level bleak (Jehlicka and Tickle 2002; 2004). This observation corresponds well with low demand for environmental policy. The ministries of the environment and their departments of EU integration are understaffed and lack appropriately trained experts. Environmental ministries often perform only a coordinating and consultative role and lack administrative capacity to implement and enforce environmental regulation (Homeyer 2001; Kramer 2002). This problem is regarded as most acute at regional and local levels. Moreover, the emphasis of EU environmental policy has shifted towards tackling the underlying causes of environmental damage. The 'cure' suggested is sector integration, meaning that environmental considerations are integrated into the decision making process in the problematic sectors themselves like energy, transport and agriculture. According to the European Environment Agency (EEA 2003), integration initiatives at the EU level have so far only had a minor impact on the more fundamental problems awaiting resolution. At the member-state level, few strategies have so far demonstrated unequivocally positive outcomes. The CEE countries are, according to the EEA, at an even earlier stage and tend to lack the resources to carry forward strategies, not to mention their implementation. A case study of Hungarian implementation of the Environmental Impact Assessment Directive (EIA) provides a trenchant example (Støle 2003). While the newest Hungarian EIA Decree fully complies with the EU Directive and formally complies with the EU, the fragmented organisation of the administration makes vertical as well as horizontal implementation difficult in practice.

The weak administrative capacity of the new Member States appears just as well documented as the declining public concern for the environment and weak green NGOs. Two other factors point, however, in a more positive direction. First, administrative capacity is expected to improve as a result of the countries' own efforts and particularly EU assistance pro-

grammes. Pre-accession instruments such as Instrument for Structural Policies for pre-Accession (ISPA), Special Accession Programme for Agriculture and Rural Development (SAPARD) and particularly the Phare Programme have been launched to strengthen administrative capacity. After accession, assistance in the environmental field to the CEE countries will almost triple (see below).

Second, EU harmonisation of environmental policy has been protracted by different *policy styles* deeply rooted in the history of each country (Vogel 1986). For example, British pollution control can be traced back to the establishment of the Alkali inspectorate in 1863 – regarded as the world's first pollution control agency. Policy styles refer to supposedly distinct approaches to regulation. Prominent examples include the UK's preference for environmental quality standards and the Dutch desire to adopt voluntary agreements. Different policy styles make reform towards common environmental administrative principles difficult. They include principles such as those laid out in the 1992 Fifth Environmental Action Programme pointing to shared responsibility with non-state actors, access to environmental information, more flexible policy instruments and sector integration. The CEE countries also had a type of environmental policy prior to 1990, in the shape of, for instance, national quality standards and pollution permits. In the 1990s, however, virtually all new environmental policy principles were imported from the West (Jehlicka and Tickle 2004). These countries are now undergoing major economic and political transformation, a process that could actually represent an opportunity to avoid past mistakes and to take new principles on board at an early stage (Homeyer 2001). The CEE countries have, for example, shown a preference for new policy instruments, such as market-based instruments and self regulation (Jehlicka and Tickle 2002).⁹ For instance Poland has been developing an emissions trading system for major air pollutants and CO₂ (Kudelko and Suwala 2003: 746-747).

3. Member-state Positions and New Alliances at the EU Level

Analysts tend to assume that the new Member States will coordinate their positions with the current group of laggards, and try to block the adoption of new legislation or press for lower standards. The leader–laggard dynamic within the EU has been identified as one important driving force behind the expansion of EU environmental policy (e.g. Andersen and Liefferink 1997). Its core mechanism is that environmental frontrunners and regulatory competition drive EU environmental policy forward (Homeyer 2001). The Netherlands, Sweden, Denmark, Finland, Germany and Austria tend to be placed in the leader category, whereas Greece, Spain, Portugal and Ireland are frequently placed in the laggard group.¹⁰ In between we find Belgium, Italy, Luxemburg and France, whose support varies on a case-by-case basis. The UK represents a special case inasmuch as it left the laggard group in the late 1980s and edged towards the leader group. These groups are distinguished by demand and supply for environmental policy and GDP levels. It is important to note, however, that these groups do not represent stable coalitions; they are loose alliances that have to be (re-)negotiated on a case-by-case basis (Liefferink and Andersen 1998: 264).

According to Jehlicka and Tickle (2002), full EU membership and economic growth have been the overriding goals of the CEE countries in the negotiations with the EU, and the environment is an example of a policy area with non-articulated interests among the new Member States that could lead to unpredictable outcomes. But EU membership is likely to make the new Member States more aware of their interests. After the closure of negotiations on the environmental chapter of the *aquis*, the new Member States will have more resources and political opportunities to pursue their own interests. This will make a cost-benefit line of reasoning more relevant for predicting positions and alliances.

The GDP levels of the CEE countries suggest that they will fall into the laggard group: The combined GDP of all the CEE countries is less than that of the Netherlands alone (Garvey 2002: 55).¹¹ However, there are also significant benefits from pollution control that pull in the opposite direction. Although the costs of complying with the environmental *aquis* has been estimated at approximately 50–80 billion Euros for the ten new Member States, which represents an average of between 2 and 3 per cent of GDP (EU Commission 2004), the benefits in health, resources and eco-systems could be considerable for all the new Member States. By 2020, the cumulative benefits are expected to amount to between 130 and 681 billion Euros, depending on the scenarios (Garvey 2002). Benefits from implementing the *aquis* may also lead to a more positive stance on new EU policy and legislation.

The differences in economic interests with regard to the transboundary dimension of pollution problems in the CEEs have received scant attention so far in analysis on the consequences of enlargement. To get a more nuanced picture, it is important to capture the 'import/export' dimension of pollution problems. In political terms, a perfectly benign collective problem can be defined by identical preferences among the Member States. The further we get from this state of harmony, the more malign the problem becomes. The constellation of preferences may be caused by economic interests and/or values (Underdal 2002: 15). First, the relationship between abatement costs, damage costs and the 'balance of pollution exchange' in relation to other states may become more important for the positions of the CEEs in EU decision making. In general, we can assume that highly affected net importers facing low abatement costs have the strongest incentives to push for higher standards. They can easily reduce their own emissions, but they also rely on the reductions of other exporters' to really improve their own environmental conditions. A classic example is the 'vulnerable net importer' position of Norway and Sweden in the case of acid rain.

Conversely, net exporters facing low damage costs and high abatement costs have incentives to push for lower standards. The obvious example is the 'dirty man of Europe', the UK, in the case of acid rain in the 1980s. Such countries export their pollution to others, and low standards mean more or less business as usual. Transboundary pollution problems can be particularly hard to solve at the EU level to the extent they are characterised by *cumulative cleavages* among the CEE countries (Underdal 2002). Cleavages are cumulative to the extent that most or all of the new Member States find themselves in the same situation across all dimen-

sions or issues, so that those with incentives to align themselves with the laggards on one dimension will also have incentives to do so on other dimensions. The expectations that the CEE countries will behave as laggards are probably partly rooted in this line of thought.

A more likely expectation is that the consequences of enlargement will vary widely across different issue areas such as air pollution, regulation of chemicals, and water pollution, which involve different constellations of interests, values and alliances among the new Member States. Even though nine of the ten new Member States have been granted transitional arrangements on air pollution (mostly with regard to the Large Combustion Plant directive), the Czech Republic, Slovakia, and Poland stand out with a largely coal-based industry. Poland has been a major net exporter of air pollutants (SO₂) mainly to Scandinavia (OECD 2003). Slovakia exports air pollution to Poland and imports air pollution from Hungary. Adding variation in abatement costs, the constellation of interests on air pollution among the CEEs is likely to vary widely when such interests become more articulated.

Objective physical impacts such as the import/export dimension do not speak for themselves, instead they feed into the decision making environment the decision makers need to unravel (Underdal 2002: 18). Decision makers may have mixed motives extending beyond environmental matters, or be environmentally motivated by values instead of costs and benefits (March and Olsen 1996). For example, the premium Norwegian decision makers put on whales has at least as much to do with their attractiveness as a consumable or item of food, whereas other states tend to value them for their beauty and place in nature. The extent to which the new Member States incline towards the leader or laggard camp may be affected by how decision makers in the CEEs perceive the physical environment. In addition to financial and technical assistance, these countries could be motivated by a desire to improve the political climate and raise environmental standards over and above what the objective physical situation would lead one to expect (Homeyer 2001). Most of the new CEE Member States share borders with environmental leader states. Estonia, Lithuania and Latvia, while not immediate neighbours of the leaders, have been part of the Baltic Sea cooperation together with Sweden and Denmark. The new Baltic Member States may perhaps navigate towards the Scandinavian EU members for political reasons.

More articulated environmental interests and variation in such interests and values among the CEEs point in the direction of no stable laggard coalitions and significantly different positions in different issue areas. A study based on interviews with experts in Poland, Hungary, Czech Republic and Slovakia supports this view. It shows that these countries did not engage in any form of systematic cooperation on the environment in the accession negotiations despite similar histories, environmental problems and EU membership objectives (Jehlicka and Tickle 2002). The study also shows that alliances with the southern laggard states are ruled out, and that the lack of coordination is likely to continue in the post-accession period. The individual countries would vote on an ad hoc basis in the Council of Ministers. Values and interests related to specific issue areas may therefore have a greater effect on the environmental positions

of the CEEs than the 'strength' of domestic supply and demand of environmental policies. This suggests that the CEE countries will adopt diverse positions in EU decision-making bodies.

4. The Institutional Dimension of How Enlargement May Influence Decision Making and Implementation

The impact of the EU on the environmental policies of the CEE states has been strong, owing to the formal transposition of the environmental *aquis*. As these states are now EU members, the one-way flow of influence from Brussels will be affected and fresh challenges arise, particularly with regard to decision making and implementation.¹²

4.1 EU Environmental Decision Making: Increasing Flexibility

The EU is a supranational institution with significantly more competence in decision making than traditional environmental regimes (Skjærseth and Wettestad 2002). The EU differs particularly from traditional regimes in its power to adopt legislation by qualified majority that is directly binding on the Member States without further review or ratification by national authorities. The 'law of the least enthusiastic actor' represents a major challenge in traditional environmental cooperation under conditions of unanimity and absence of issue linkages (Underdal 1980). In the EU, the same mechanism has been referred to as the 'joint decision trap', preventing necessary reforms in EU policies (Scharpf 1988). The EU has, however, developed a number of institutional arrangements to overcome this trap in a series of institutional reforms resulting in the 1987 Single European Act, the 1993 Maastricht Treaty, the 1999 Treaty of Amsterdam and the Treaty of Nice, which came into effect in 2003. Designed to prepare for the current enlargement, the Treaty of Nice introduced new institutional reforms that have been introduced in various steps throughout 2004.

The institutional changes introduced since the Single European Act have generally improved EU decision making effectiveness in the area of the environment (although decision making has also become more complex). The continued strengthening of EU environmental policy over the past 30 years is expected to diminish as a result of enlargement (see e.g. Wilkinson et al 2004). This expectation is partly based on the expected reluctant positions of the new Member States and partly on the new institutional reforms introduced by the Nice Treaty and future institutional changes.

There are at least two different institutional *functions* that are crucial for maintaining the decision making effectiveness of the EU: First, the aggregation capacity of EU decision making, which is largely determined by decision rules and procedures; and second, institutional flexibility in the form of 'fast track' options for the environmental leaders.

The introduction and expansion of qualified majority voting (QMV) since the Single European Act in the Council of Ministers is generally seen as an effective means to overcome the resistance of the laggard states.¹³ As of 1 November 2004, the total number of votes in the Council amount to 321 (see table 1 for a breakdown by country).¹⁴

Table I Number of votes in the Council per country as of 1 November 2004

Votes	29	27	13	12	10	7	4	3
Member States	Germany	Spain	Netherlands	Greece	Sweden	Slovakia	Latvia	Malta
	UK	Poland		Czech R.	Austria	Denmark	Slovenia	
	France			Belgium		Finland	Estonia	
	Italy			Hungary		Ireland	Cyprus	
				Portugal		Lithuania	Luxemburg	

Source: Haigh (2003)

A qualified majority will be 232 votes out of 321 (72.3 per cent) cast by a simple majority of Member States (i.e. 13 of 25).¹⁵ This means that 90 votes representing three big countries and one small can block a decision. The 10 new Member States account for 80 votes. The Treaty of Nice does not change the areas that are still subject to unanimity: provisions of a fiscal nature, town and country planning, land-use (except general measures and waste management), management of water resources, and measures significantly affecting a Member State's choice of energy sources and the structure of energy supply.

The consequences of these reforms in EU-25 are extremely difficult to predict. Most observers expect decision making to become less effective due to the expected laggard positions and the sheer number of Member States. Moreover, the relative share of votes held by the six environmental leader states will drop (Schreurs 2004: 29). The 10 new Member States plus one, say Spain, Greece or Portugal, would be enough to block new environmental legislation. As noted, however, the new Member States are not likely to vote as a block. Voting is likely to differ significantly between different issue areas according to issue-specific interests and values. Moreover, the room for informal package deals is likely to increase with more Member States. In fact, formal voting rarely takes place in the EU, but the formal possibility to do so creates pressure to make concessions – a phenomenon described as the 'shadow of the vote' (Weiler 1991).

After the Treaty of Amsterdam introduced the co-decision procedure as the standard procedure on environmental legislation, the European Parliament (EP) gained more power. Co-decision means that the Council no longer has the final say on legislative proposals. The EP has been regarded as the greenest of the EU institutions, forcing governments to accept tougher standards on sulphur in motor fuels, power station emissions and packaging waste. The rising tide of political concern in Europe over competitiveness and economic growth indicates that the parliament has reduced its environmental activism over the past few years (ENDS 2004b). A second factor that might pull in the same direction is that the number of MEPs elected in June 2004 rose by 162 from the ten new Member States. The share of seats for the former EU-15 will fall (except Germany), and the seats of the new Member States will range from 54 for Poland to 5 for Malta. This means that the combined percentage of seats held by the leader states will drop (Schreurs 2004: 29). However, a study

conducted by Friends of the Earth indicates that the MEPs from the new states will be no less green than EU-15 (ENDS 2004a). Moreover, the June 2004 election to the EP did not change the overall balance of Parliament significantly. The centre-right European Peoples' party strengthened its majority somewhat. However, a certain general weakening of pro-environment parties was noted (ENDS Report 2004a). In addition, a more practical problem which has been pointed out is the EU's new challenge of translating documents into 20 languages, rather than the previous 11 (ENDS Report 2004b).

The Commission is seen as the 'engine of integration' and its agenda setting power as particularly important for increasing the influence of the leaders on EU environmental decision making. These institutional factors include the accessibility of the Commission to input from member state officials, the Commission's preference for expanding its regulatory competencies, strong sectoralisation of EU decision making which leads to competition between the different Directorate Generals, and opportunities to influence policy making on the basis of expertise and other resources (Homeyer 2001; Wurzel 2002). The new Barroso Commission, which formally took office on 1 November 2004, comprises 25 members – one from each member state. It is too early to judge whether the new Commission will affect the institutional factors underlying the disproportionate influence of the leader Member States.

Further institutional reforms are expected on the basis of the Constitution drawn up by the Convention on the Future Europe. The draft Constitution was adopted in June 2004 by EU Heads of Government after two years of negotiations. These negotiations focused on improving the institutional set-up to cope with the new challenges of enlargement. According to the Environment Title, the EU will continue to work for the sustainable development of Europe and to ensure public participation in the protection of the environment. Even if agreed, the Constitutional Treaty would not affect some procedures until 2009 due to transition periods (Wilkinson et al 2004).

Various fast-track options for the environmental leaders have been discussed in the EU. The EU continues to pursue integration in a unified way, but calls for institutional mechanisms to respond to the diversity of the Member States have a long history within the EU (Soveroski 2001). Based on the Amsterdam Treaty, the Nice Treaty introduced a provision allowing decisions to be passed by at least eight Member States – under specific conditions – on common measures that are more ambitious than existing legislation (Enhanced Cooperation). The conditions spelled out in the Treaty mean that Enhanced Cooperation can only be used as a last resort (objectives cannot be achieved within a reasonable period), and it may not constitute a barrier to trade. Such measures will only be binding for the states voting in their favour. Enhanced cooperation could not only stimulate a continuing leader-laggard dynamic in the future, but also help resolve regional problems involving only some of the Member States (Soveroski 2001). The Constitution introduces a simplified Enhanced Cooperation mechanism. A core group can make collective decisions based on QMV in areas where the Treaty requires unanimity despite the veto of an individual member state.

The principle of subsidiarity states that the Community should act to the extent that objectives can be attained better at the EU level than at the level of the individual Member States. In the field of the environment, the various Treaties have provided opportunities for Member States to maintain or introduce more stringent standards according to specific treaty provisions. With regard to specific directives, there are derogations with regard to standards and deadlines.¹⁶ Framework directives and new policy instruments also provide flexibility. Both the IPPC and the Water Framework directives permit Member States to take local environmental conditions into account, and they combine emissions standards with quality standards and procedural requirements. New market-based policy instruments and 'voluntary agreements' based on self-regulation will also provide flexibility as compared to detailed command-and-control EU legislation.¹⁷

The consequences of enlargement for the decision making effectiveness of the EU depend heavily on the actual positions of the new Member States in specific issue areas and how institutional reforms will work in practice. Enlargement may weaken EU aggregation capacity in some issue areas in the short term, but this may be offset by a higher level of flexibility in decision making.

4.2 Consequences for Implementation: Challenges, but Substantial Funding

It is expected that in the transition period the new Member States will be preoccupied with implementing existing legislation. This may reduce their willingness and ability to support and adopt new legislation.

The new Member States will, however, have different incentives to implement environmental legislation depending on whether legislation is based on the internal market product standards or environmental process standards. According to Homeyer (2004), export-orientated CEEs will have economic incentives to comply with product standards, since other Member States can ban imports of goods that do not conform to their requirements. We should also note that the EU has given particularly high priority to the operation of the internal market after enlargement.

Direct economic incentives to implement legislation do not exist with regard to other environmental directives, which require public and private investments. The academic debate on compliance has been dominated by two approaches, the enforcement and the management approach. Enforcement is based on a coercive strategy whereas management is based on capacity building. According to Tallberg (2002), it is the combination of these approaches that makes the EU relatively successful in combating violations (compared to international environmental regimes). In the context of enlargement, the management approach is related to economic, technical and institutional assistance. Until 2006, the new Member States will receive about 8 billion Euro in the environmental field, which is more than 10 per cent of the total investment requirements. EU assistance through Structural and Cohesion funds will increase threefold after accession to a total of 21.7 billion (EU Commission 2004).

These funds are mainly directed at implementing the 'heavy' directives for which transition periods have been granted. The new Member States will also have some funding for strengthening administrative capacity through the so-called Transition Facility (420 million Euro: 2004–06). After 2006, the EU will need to ensure a new financial instrument for the environment including the new Member States. Nevertheless, the costs of compliance will be significantly higher than the economic support. The EU will therefore combine management with enforcement.

The EU has also stepped up its activities to monitor, verify and enforce legislation through the European Court of Justice (ECJ). Since 1993, the ECJ may impose fines on states who have failed to observe previous rulings of the court. The Commission is also able to exert pressure on the Member States to observe provisions of EU environmental law. The Commission has the legal right to start assessing compliance from the date of accession. According to the Commission, new Member States will not be given any special treatment in handling complaints and infringement proceedings (EU Commission 2004). The Commission has not announced any legal infringement procedures against the new Member States for failures related to transposition or implementation of environmental directives, but the first announcements are expected soon (ENDS 2005).

Implementation of existing legislation may reduce the willingness and ability of the new Member States to support and adopt new legislation. However, significant economic support has been granted and there will probably not be any specific treatment with regard to enforcement.

5. Bringing in a More Long-term Problem-solving 'Effectiveness' Perspective

The gloomy picture painted by analysts of the consequences of enlargement for EU environmental policy also depends on the nature of the focus. Most analysts base their discussion on implications for decision making with regard to *new* EU policy and legislation. What would be the implications if we replace the more short-term focus on decision making with a more long-term focus on 'effectiveness' and implications for problem-solving?

Effectiveness is a wider concept than decision-making, implementation and compliance, the latter being confined to the follow-up of a specific piece of legislation.¹⁸ It also requires causal inferences from policy to achievements.¹⁹ The EU can analytically be seen as a supranational institution that produces a chain of consequences. Effectiveness can be measured at different points along this chain.²⁰ Based on the reasonable assumption that institutions and policies are effective as long as they are able to solve the problems they were established to solve, three core dimensions can be discerned: output, outcome and impact.²¹ Output is conceived as relevant policy; outcome connotes changes in the behaviour of those subject to the provisions of this policy; while impact represents the tangible consequences for the physical problem at hand.²²

Recent research indicates a gap in the EU between what is delivered in terms of policies – or *outputs* – and what is achieved ‘on the ground’ in terms of environmental improvement – or *impact*. On the one hand, the impact assessments of the European Environmental Agency (EEA) indicate that the quality of the European environment is deteriorating (EEA 2000, 2001, 2003). On the other hand, the EU institutional machinery has produced a comprehensive environmental policy in depth and scope: about 300 environmental regulations, directives and decisions have been adopted to date. One important answer to these apparently incompatible developments lies in the crucial *outcome* dimension linking outputs and impact, since outcome points to change in behaviour by the target groups who were causing the problems in the first place, such as industry, agriculture or transport.

In essence, the focus on effectiveness opens up for the possibility that the impact of the EU and the *aquis* on target groups and environmental quality in the new Member States may outweigh the potential negative impact of the new Member States on EU decision making. Take the case of air pollution. Although EU air pollution policy-making will in the immediate future become even more complicated due to enlargement, in a more long-term perspective, the positive effects for the European environment of these countries having been brought under the EU’s institutional scope will probably more than outweigh the short-term ‘decision-making costs’. It can be noted that most of the CEE countries already comply with emission ceilings and targets set for 2010 by the 1999 Gothenburg Protocol under the Convention on Long-Range Transboundary Air Pollution (CLRTAP). In the years ahead, it is the EU that will be the most significant force pushing and helping these countries to achieve more significant emission cuts.

6. Conclusions

In this report, we have questioned the grounds for gloomy expectations regarding the consequences of enlargement for EU environmental policy. We argue that a less pessimistic view emerges when the analysis looks at the assumptions within this line of reasoning more closely. First, analysts tend to emphasise the several shortcomings of the domestic environmental policies of the CEE countries, mentioning declining social demand for environmental improvement, weak green organisations and weak administrative capacity. However, the primary focus on the ‘weak’ green movement in the domestic policies of the CEE countries should be balanced by greater emphasis on target groups, such as business and industry. Environmental problems in the CEE region, as elsewhere, tend to arise as by-products of otherwise legitimate activities, like the production of energy, food and other commodities. The greening of industry and other target groups in the new Member States will become important for strengthening environmental policy and quality.

Second, the consequences of enlargement could vary widely across different issue areas such as air pollution, regulation of chemicals, and water pollution, which involve different constellations of actor values, interests and alliances. This point may appear obvious, but the transboundary

dimension of many environmental problems has received scant attention so far. The constellation of positions spurred by different values and interests according to transboundary pollution problems may be important for future alliances in EU policy making. The CEE countries are likely to adopt diverse positions according to different issue areas in EU decision making bodies.

Third, the institutional changes that are underway to cope with the challenges of enlargement indicate that less effective decision making could, at least to some extent, be balanced out by increased institutional flexibility and capacity to facilitate and enforce implementation.

Fourth, the conclusions arrived at depends on the focus for expectations. If we replace the focus on short-term decision making with long-term institutional effectiveness, it follows that we would have to weigh the anticipated slower decision making against the positive consequences from implementing the *aquis* in the new Member States.

Instead of pressing our conclusions further, we want to end this report with a reflection on an area for further research that has been ignored so far. In most areas of transboundary environmental problems there is an international environmental regime interacting with EU environmental policy. The EU participates in over 30 major international environmental agreements, spanning from the 1979 Convention of Migratory Species of Wild Animals to the 1992 United Nations Framework Convention on Climate Change. The consequences of enlargement are difficult to fathom without taking into account the possible effect on interaction between the EU and international regimes in issue areas where a core regime exists. EU environmental policy is often heavily influenced by joint international commitments that are first adopted in international environmental regimes. For example, the Esbjerg North Sea Declaration goal on the phasing out of hazardous substances within one generation has served as model for relevant sections in the Water Framework Directive. Conversely, EU directives will strengthen implementation of regime commitments since they carry more political and legal weight. EU enlargement will affect the relative balance between EU member states and member states outside the EU that participate in relevant regimes, such as the Convention on the Protection of the marine Environment of the Baltic Area (1992 Helsinki Convention) and the Convention on Long-range Transboundary Air Pollution (CLRTAP). To what extent, how and in which direction EU enlargement will affect the interaction between the EU and international regimes is an interesting topic for further scrutiny.

Notes

¹ This discussion will draw upon several strands of our expertise: the EU and regimes (e.g. Skjærseth and Wettestad 2002), corporate actors in environmental politics (e.g. Skjærseth and Skodvin 2003), and air pollution and climate change politics (e.g. Wettestad 2002).

² One weakness with our approach is that it is not based on a systematic empirical assessment of what has actually happened after enlargement. Therefore, this contribution also consists of one-sided arguments of what could happen. In order

to increase our understanding of the consequences of enlargement, we are presently working on an empirical assessment of air pollution, climate change and GMOs based on both 'essimistic' and 'optimistic' approaches.

³ Recent enlargements have led to both a 'downward' (Portugal, Spain) and 'upward' (Sweden, Finland, Austria) push in EU environmental policy.

⁴ This distinction represents merely a crude organizing device since demand and supply are sometimes intertwined in reality. Governments may articulate demands, while societal actors may supply environmental protection themselves.

⁵ In Norway, for example, 'green' attitudes dropped dramatically in the first part of the 1990s and have remained at a low level since then .

⁶ One exception is the work of Liliana Botcheva-Andonova (2002, 2004).

⁷ In the Environmental Politics Special Issue on EU Enlargement and the Environment, for example, environmental NGOs are given significantly more attention than industry.

⁸ These companies, which make their living from the causes of climate change – coal, oil and gas – had voluntarily implemented internal emissions trading schemes prior to the adoption of the EU directive.

⁹ However, the logic of voluntary and self regulating measures is based on strong civil societies and organised consumer pressure that provide an incentive to companies to deliver 'green' products.

¹⁰ Notice that the green profiles of some of the leaders have faded quite considerably. This is particularly the case in Denmark, which has cut its environmental bureaucracy dramatically and adjusted its once ambitious external environmental positions considerably. Also the Netherlands has reduced environmental policy spending considerably in the recent years (ENDS 2003).

¹¹ The average GNP per capita in the CEE countries is less than \$US 4,000 compared to \$US 25,000 in the EU-15.

¹² There is a relationship between these two phases of EU environmental policy. The specific positions of individual Member States will have consequences for their political willingness or ability to follow through and implement relevant legislation.

¹³ It is important to note that the extent to which QMV leads to higher standards depends on the constellation of positions in the Council of Ministers.

¹⁴ At the December 2003 EU Summit, disagreements erupted over the new system to be introduced in 2009. Poland and Spain want to retain the weighting of votes agreed in the Nice Treaty, while Germany and France and others would like to introduce a 'double majority' voting system with votes more weighted in accordance with population size.

¹⁵ In addition, a new populations threshold has been introduced. Any member state can request that the 13 out of 25 Member States represent at least 62 per cent of the total population in the Union.

¹⁶ For example, the LCP directive includes differential obligations for the Member States. With regard to the Auto-Oil Directive, different time frames on lead and SO² have been granted to different Member States.

¹⁷ For example, the voluntary climate policy agreement between the Commission and the car industry and environmental management and audit systems (EMAS) create incentives for self-regulation.

¹⁸ The consequences of enlargement can be evaluated according to other standards such as fairness, legitimacy or robustness. For a critical perspective, see e.g. Hovden (1999).

¹⁹ The study of effectiveness is more developed with regard to international environmental regimes than EU environmental policy. The EU is clearly different from international regimes as to its scope, depth, nature and competence (Skjørseth and Wettestad 2002).

²⁰ There are basically two alternative criteria for measuring effectiveness. First, the distance between actual policy and some notion of the 'ideal' solution, such as expert advice or official purpose. Second, a counterfactual approach: what would have happened in the absence of the policy in question.

²¹ See Skjørseth and Wettestad (2002) for a discussion of the methodological challenges involved in evaluating effectiveness.

²² These dimensions can in turn be further specified: Output can be divided into the extent to which international obligations are incorporated in national policy (output₁) and whether adequate policy instruments and measures have been adopted and implemented in accordance with relevant policy (output₂).

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