

**Environmental Harmonization in Central
Eastern Europe
Lessons from the Southern Enlargement**

Charalampos Koutalakis

July 2004

The Hellenic Observatory

The European Institute

London School of Economics & Political Science

Table of Contents

<i>Abstract</i>	3
<i>Introduction</i>	4
<i>Flexibility or Rigidity? Assessing the nature of the EU system of legal enforcement</i>	7
<i>Flexible Harmonization? A Temporal Perspective</i>	12
<i>Concluding Remarks: Do we really need more flexibility?</i>	19
<i>References</i>	21
<i>About the Author</i>	25

Abstract

One of the biggest challenges facing Central Eastern European countries (CEECs) regarding their EU membership is the effective implementation and compliance with EU environmental legislation. Implementing the environmental *acquis* will expose their domestic institutional and administrative structures and patterns of policy making to significant pressures for adjustment to the new regulatory regime. Diverse economic, political and ecological conditions impose considerable burdens on a homogenous application of EU environmental legislation. A number of authors argue that harmonization is at odds with ecologic, economic or democratic normative criteria. These views, implicitly or explicitly, maintain that the current EU system of legal monitoring and enforcement is rigid and, in effect, fails to produce optimum policy outcomes in terms of balancing imperatives emanating from sustainable development with costs of environmental protection. This paper analyses the experience of past enlargements, with emphasis on the southern enlargement (Greece 1981, Spain and Portugal 1986) with the aim of assessing the extent to which the current system of EU legal monitoring and enforcement allows such flexible deviations from a uniform application of environmental legislation according to specific national and sub-national conditions. In order to do so, I draw on data on all infringement cases opened by the European Commission against southern member states. What lessons can we learn from the application of EU environmental law in member states with equally weak domestic institutional and administrative capacities regarding effective harmonization in the EU?

Introduction

The recent EU enlargement included the accession of ten new member states characterised by wide divergences in their institutional and administrative traditions in environmental policies presents both opportunities and threats for EU environmental policies in their current shape. On the one hand, the full adoption of the environmental *aquis communautaire* represents a unique opportunity to modernize the domestic regulatory regimes of the CEECs and expand their economic orientation to western European markets through the upgrade of their product standards to EU requirements. On the other hand, the lack of long term tradition in pro-active environmental policies in the CEECs generates scepticism regarding their capacity to effectively internalise the existing environmental *acquis* into their domestic regulatory regimes. Implementing the *acquis* will not only be an expensive attempt due to requirements for investment in physical and administrative infrastructure.¹ It will also expose pre-existing domestic institutional structures and patterns of policy making to significant pressures for adjustment in order to facilitate effective implementation and compliance with EU environmental laws. Like the southern EU member states during the 1980s, CEECs concentrate a number of unfavourable socio-political and administrative conditions that are likely to generate considerable problems in the process of legal internalisation of EU environmental laws in their domestic regulatory regimes. The legacies of the common Communist experience such as excessive centralism in planning, weak administrative capacities, feeble civic culture and low policy priorities on environmental protection are likely to impede effective integration of domestic environmental policy traditions into the EU regulatory regime (Baker and Jehlicka 1998; Waller 1998).² Moreover, a number of recent developments associated with the abrupt transition to a market economy without well established regulatory mechanisms, including extremely widespread corruption, increases reservations regarding the effectiveness of monitoring and enforcement mechanisms to facilitate effective compliance with EU rules. Despite intensive pre-

¹ Commission's reports estimate the costs of environmental harmonization in the CEECs between € 100 and 200 billion.

² For country studies see Miko, 2000; Zyllicz and Holzinger, 2000; O'Toole and Hanf, K 1998; Fagin and Jehlicka, 1998; Podoba, 1998; Millard, 1998.

accession negotiations and the application by the European Commission, for the first time, of a strict interpretation of conditionality to ensure effective incorporation of the *aquis communautaire* in these member states, both the academic community and policy practitioners share the view that effective harmonization will only be possible in the long term (CEC 2000). Given these modest assessments, there is a general apprehension that the inclusion of ten new member states with low policy priorities in environmental protection will further increase the existing implementation deficit in the application of existing laws by the member states and lead to a lowering of EU environmental standards (Baker, 2000; Carius *et al.* 2000; Homeyer, 2004).³ A number of scholars question the effectiveness of harmonization as the core method of enlargement calling for the introduction of novel regulatory approaches that allow flexible responses to specific national and/or sub-national conditions that render harmonization infeasible (Holzinger and Knoepfel, 1999; Carius *et al.* 1999 Holzinger, 1999; Homeyer *et al.* 2000).

Are these allegedly endemic socio-political institutional and administrative deficiencies common in all the southern and central eastern member states likely to undermine effective implementation of EU environmental legislation, producing an ever growing compliance deficit that threatens the legitimacy and effectiveness of EU policy making? This paper seeks to approach eastern enlargement through the lenses of past experience of the southern enlargement. Southern member states provide a critical case for drawing lessons for the CEECs. The current debate on the institutional and administrative deficiencies of the CEECs in adjusting to the requirements for an effective integration to the EU environmental regulatory regime harks back to a similar discourse that goes on from the end of the 1980s regarding the effects of southern enlargement on EU environmental policy. The debate summarised under the label Mediterranean Syndrome (MS), or the Southern Problem (SP), departs from the assumption of a poor compliance record of southern member states with EU environmental legislation. Proponents of both the MS and SP approaches identify a number of endemic deficiencies inherent in the socio-political and administrative structures of southern member states

³ However, others challenge these views by arguing that after the fall of communist regimes most of the CEECs placed significant emphasis on pro-active environmental policies. These trends were halted by the top-down imperatives of environmental harmonization with EU laws (Jehlicka 2002; Jehlicka and Trickle 2004; Schreurs 2004).

that are believed to account for their profound incapacity to adjust to the underlying logic and the specific requirements of EU environmental policies. Compared to their north European counterparts in the EU, the southern countries have a weak civil culture plagued by corruption and clientelism, which impedes the emergence of co-operative compliant behaviour. Fragmented administrative structures that lack essential organizational resources (funding, personnel and know-how) to engage in effective monitoring and enforcement of environmental policies and a party-dominated legislative process hinder the enactment of effective public good regulations (Aguilar Fernandez, 1994; La Spina and Sciortino, 1993; Pridham, 1996; Pridham and Cini, 1994).

Literature on environmental harmonization in the EU focuses on the identification of domestic institutional factors that facilitate or impede compliance with rules (Börzel, 2003; Knill and Lenschow, 1998; Haverland, 1999). However, little attention has been drawn to the strategies of the European Commission in dealing with compliance problems in those member states. Moreover, there are only a limited amount of studies that seek to assess the effectiveness of current monitoring and enforcement mechanisms at the EU level, especially regarding the Commission's ability to respond to specific national and sub-national geographical, demographic, political, institutional and economic conditions that render effective harmonization unattainable. This paper seeks to address this problematique by elaborating on quantitative data that highlights the extent to which legal monitoring and enforcement at the EU level allows such flexible deviations from a uniform application of environmental legislation.

The paper is divided in four sections. The following part draws on the main theoretical perspectives on member state compliance with EU laws. It elaborates on a set of hypotheses regarding the nature of the current monitoring and enforcement mechanisms, the corresponding strategies, and legal and political instruments at the disposal of the European Commission when dealing with national governments seeking to deviate from common environmental standards at the EU. Part three suggests a quantitative approach that allows an assessment of the current EU system of monitoring and legal enforcement. It analyses the temporal dimension of infringement proceedings in order to assess the degree of flexibility or rigidity of the application of the relevant Treaty provisions by the Commission against non-compliant member states. In light of

quantitative analysis, the final part revisits current debates calling for the introduction of novel, flexible instruments at the EU level.

Flexibility or Rigidity? Assessing the nature of the EU system of legal enforcement

Literature on member state (non)compliance with EU law focuses on two antithetical theoretical perspectives regarding the nature of interactions between national and supranational institutions in the course of national governments' applying internationally agreed commitments. Rational choice approaches focus on cost-benefit considerations of national actors regarding their compliance with EU laws. Their fundamental assertion is that domestic actors' compliance performance is contingent upon their perceptions regarding the adjustment costs involved in applying EU laws to their domestic legal, political and administrative systems. Implementation of EU policies (application and enforcement) depends on domestic institutional and administrative structures. EU institutions are lacking their own implementing structures. By means of the constitutional doctrines of supremacy and direct effect, EU policies penetrate well established domestic institutional and administrative arrangements, notions of appropriate action as well as structures and patterns of societal involvement in the policy process. EU environmental policies, in particular, often prescribe detailed administrative arrangements for their implementation monitoring and enforcement. Such arrangements have significant repercussions for pre-existing domestic institutional and administrative structures and patterns of policy making. The "goodness of fit" between EU requirements for effective implementation of environmental policies with pre-existing domestic structures and patterns of policy making is a crucial precondition that shapes domestic preferences regarding compliance (Duina, 1997; Knill, 1998; Börzel, 2000; 2003a; Cowles *et al.* 2001).

Adjustment costs imposed by EU policies shape the incentives of domestic actors to undermine effective domestic implementation of EU policies. Voluntary non-compliance largely depends on such cost/benefit considerations of domestic actors (Börzel, 2003b). The fundamental remedy for compliance problems offered by rational

choice approaches is that international organizations can strengthen the potential of a number of counter-factors that increase domestic actors' incentives to comply with their legal obligations and/or raise the costs or compensate the benefits of non-compliance. There is a variety of such counter-factors. International organizations can raise the costs of non-compliance by establishing effective monitoring and enforcement mechanisms. International financial aid also plays a crucial role especially when it explicitly targets policy areas characterised by high costs of legal harmonization.

The EU uses both enforcement and compensatory mechanisms (Tallberg, 2002). Compared to conventional international organizations, the former has much more effective enforcement mechanisms at its disposal. The Commission, as guardian of the EC Treaty under article 211, has the right to initiate legal action against member states for non-compliance with EU law. Infringement proceedings can lead to the European Court of Justice (ECJ) and the imposition of penalties in cases of persistent non-compliance with EU laws (Article 226 TEU) or prior negative ECJ decisions (Article 228 TEU – post litigation non-compliance). However, the Commission's capacity to effectively monitor the compliance performance of each member state is largely constrained by the lack of its own monitoring mechanisms. Börzel (2001), in one of her first systematic accounts of infringement proceedings opened by the European Commission against member states, argues that given the reliance of the European Commission on decentralized monitoring and enforcement, infringement proceedings cover only cases which have been detected by the latter. Such deficiencies provide ample space for undetected non-compliance that, in effect, increases informal elements of flexible application of EU legal harmonization requirements.

The Commission's Directorate General for Environmental Policy (DG-ENVI) has rather weak monitoring and enforcement capacities compared to other Directorates General, such as Competition Policy (Macrory 1996).⁴ The Commission's access to information regarding member states' compliance performance depends on a rather weak system that involves three main alerting mechanisms: complaints by citizens, business

⁴ The European Commission recently announced that it will examine the possibility of establishing networks of national watchdogs to improve information flows on compliance performance, especially in internal market legislation (Financial Times, April 23, 2003, p. 1).

and environmental organizations; the Commission's own initiatives; petitions and questions by the European Parliament. Complaints and petitions to the European Parliament are the most important source of information regarding the actual status of a member state's compliance with EU laws. Non-state actors' activism in using these opportunity structures can have catalytic effects on domestic compliance capacities, since it alters the distribution of costs and benefits increasing domestic actors' willingness to comply (Koutalakis, forthcoming). Non-state actors' activism is also a crucial factor that affects cost/benefit considerations of domestic actors regarding compliance with EU law by increasing the costs of non-compliance by mobilising domestic support for policy change (Börzel, 2003a). This can be achieved not only through the use of pressure activities such as media campaigns, protests and lobbying but also through the use of domestic institutional avenues such as litigation, procedural complaints, referenda, petitions and legislative initiatives.

Rational choice approaches challenge conventional claims often found in the literature that attributes the poor performance of southern member states to endemic characteristics of their political cultures and institutional and administrative systems. Non-compliance in these member states is not a cultural phenomenon but a rational choice of political actors depending on their cost/benefit considerations regarding the application of EU laws to their domestic regulatory regimes. However, rational choice approaches fail to conceptualise and explain cases where member states are willing to comply but lack the necessary administrative resources to effectively undertake the complex tasks provided by EU laws. This is particularly the case with southern and central eastern European member states that, prior to their EU accession, had weak environmental regulatory regimes compared to those of their north western European counterparts. Although the former often realise that EU policies provide an indispensable frame of reference for the modernization of their domestic regulatory regimes, they suffer from limited economic resources, personnel and expertise to effectively monitor and enforce environmental regulations. In these cases of involuntary non-compliance, strict enforcement strategies with the imposition of penalties on member states that fail to comply with EU rules are counter-productive (Börzel, 2003b). The latter not only fail to solve compliance disputes arising from the lack of domestic administrative capacities to

effectively undertake monitoring and enforcement, but also de-legitimize the potential benefits of modernizing national institutions by transmitting authoritative top-down signals of the nature of EU integration process and foster an attitude of disregard for the law rather than providing incentives for institutional adaptation (Zylicz and Holzinger, 2000: 222). Constructivist approaches offer an alternative logic of influencing member states' non-compliant behaviour in cases when the latter are struggling with a lack of administrative capacities. This effort involves management of the relevant disputes, transfer of experience, capacity building with funding programs and dissemination of lessons from best practices. International organizations play a central role in this process since they provide the institutional framework for facilitating such interactions between member states that lead to a socialisation of national actors with legal obligations, internalisation of their underlining logic and, in effect, a redefinition of their preferences and interests in favour of compliance. In comparison to conventional international organizations, the EU offers a wide range of formal and informal institutional frameworks for socialization between national actors both at the stage of policy formulation and implementation through numerous committees of experts. Moreover, it is much more actively committed to building up domestic institutional capacities using structural funds that explicitly target environmental policy objectives.

The infringement proceedings initiated by the European Commission against member states have been studied as a favourable institutional framework for testing the fundamental claims of the two theoretical perspectives briefly presented above. The bulk of these studies adopt a comparative qualitative case study methodological approach that offers significant insight into the difficulties experienced by different member states in implementing different EU directives (Börzel, 2003; Knill and Lenschow, 1998; Haverland, 1999). A second strand in the literature employs comparative quantitative analyses in order to identify the domestic institutional factors that enable or impede effective adaptation of domestic regulatory regimes to EU legal provisions (Mbaye 2001; Laminen and Uusikylä 1998; Guiliani 2003; Sverdrup 2004). These studies offer an abundance of explanatory factors that influence domestic compliance performance in different political and administrative settings. However, their cumulative impact does not yet account for reliable conclusions regarding the fundamental characteristics of the EU

system of legal monitoring and enforcement, the corresponding strategies followed by the European Commission in dealing with non-compliant member states and their effects on legal (environmental) harmonization across the EU.

The study seeks to contribute to existing literature by elaborating on a quantitative approach that seeks to assess the fundamental characteristics of legal enforcement in the EU. What is the degree of rigidity of the current system of EU legal enforcement? Conversely, is the system flexible enough to respond to the challenges emanating from the inclusion of eight new member states with limited capacities to embark upon effective environmental harmonization? In order to do so, I focus on the experience of the southern enlargement that included member states with, at the time of their accession, equally weak institutional and administrative capacities to embark upon effective harmonization of their domestic environmental regulatory regimes to EU legislation. How has the Commission responded to a relevant challenge in the past? Drawing on the theoretical perspectives presented above we elaborate on two main hypotheses that we seek to test against data related to all infringement cases opened by the European Commission against member states during the period 1978-1999.

Hypothesis A

Drawing from rational choice theoretical perspectives that emphasise enforcement we hypothesise that the European Commission, when dealing with southern member states, seeks to raise their costs of non-compliance by increasing the level of rigidity in the enforcement proceedings. Detected infringement cases are more aggressively pursued and prosecuted to the ECJ. In this case the EU system of legal enforcement is applied in a legalistic way that disregards national institutional specificities that render effective harmonization unattainable.

Hypothesis B

Given the realisation on the part of the European Commission that southern member states face considerable problems in adjusting to the underlying logic and the precise policy requirements emanating from EU environmental legislative acts due to the lack of domestic administrative capacities, it adopts a loose stance in its dealings with those

member states. It pursues the detected cases less aggressively via the ECJ thus giving considerable time for domestic compliance actors to benefit from management mechanisms that facilitate policy transfer, capacity building with funding and transfer of experience and expertise. In this case the EU system of legal enforcement demonstrates a considerable degree of flexibility towards diverse domestic institutional conditions that render high pace harmonization unattainable.

Flexible Harmonization? A Temporal Perspective

This paper tests these hypotheses by means of quantitative analysis of all environmental infringement cases initiated by the Commission against member states during the period 1981-1999.⁵ This strategy disregards normative assessments concerning the optimal degree of flexibility in the EU policy making process according to ecological, economic and democratic criteria (Holzinger, 2000). Moreover, it does not account for the problem of undetected non-compliance that introduces an interesting, informal, yet extremely difficult to determine, potential of national deviations from harmonisation requirements (Börzel, 2001). In turn, it seeks to account for the application of the existing system of legal enforcement by the European Commission. It focuses on the temporal dimension of infringement proceedings opened by the European Commission against member states under Article 226 of the Treaty. These include the following steps: Following the Commission's own investigations, complaints, petitions or questions by the European Parliament, the former sends a Formal Letter of Notice to the member states bringing to their attention a *suspected* case of violation of EU law. After an unsatisfactory reply by the member state, the Commission officially opens an infringement case by sending a Reasoned Opinion that establishes the legal basis and reviews evidence of violation found against the member state. Reasoned opinions often provide specific deadlines to member states in order to fulfil their legal obligations and fully comply with the law. In cases that member states fail to undertake all necessary legal actions in order to comply, the European Commission presents the case to the ECJ.

⁵ The author wishes to thank Tanja Börzel for providing access to a dataset of infringement cases opened by the European Commission during the period 1974-2000.

One of the first studies that seeks to quantitatively assess the nature of the European Commission's legal enforcement strategies Tallberg (1999; 2002) demonstrates that both formal enforcement mechanisms and managerial strategies are used by the latter in a complementary way. Quantitative data demonstrates that a significant percentage of infringement cases opened by the Commission against member states are resolved at the pre-litigation stage in the framework of management strategies employed by the European Commission in its interaction with national compliance actors (Tallberg 2002: 618). This is the outcome of a combined use by the European Commission of managerial conflict resolution mechanisms that seek to confront problems of lack of expertise, ambiguity of legal provisions and lack of resources under the 'shadow of sanction' such as the threat of economic penalties and 'name-and-shame' strategies (Snyder 1993; Börzel 2003a). The predominance of informal negotiating modes of conflict resolution between the European Commission and the member states reflects the reluctance on the part of the latter to grant strong enforcement powers to EU institutions. Only in the mid 1990s did such a hesitant approach to enforcement significantly change. The realisation of the internal market programme elevated legal harmonization as a fundamental imperative. The Maastricht Treaty (1993) provided for a reinforced enforcement strategy and the possibility of imposing penalties for member states failing to comply with ECJ decisions (Art. 228 TEU). Economic sanctions are indeed an effective deterrent mechanism that increases the costs of non-compliance by member states leading to a considerable reduction in the number of infringement cases before their referral to the ECJ (Tallberg, 619).

Analysing the temporal dimension of infringement proceedings provides an indication of the strategies employed by the Commission in dealing with different member states. Such a dimension has attracted only limited attention of scholars of EU (environmental) harmonization. The bulk of studies that explicitly emphasise such a perspective focus on temporary derogations granted to certain member states during their pre-accession negotiations or during the process of the adoption of certain legislative acts. Such temporary derogations provide a period of flexible adjustment for member

states facing considerable problems in incorporating legal obligations into their domestic regulatory regimes.⁶

In order to assess whether the Commission adopts a differentiated/flexible strategy in enforcing EU law in southern, ‘laggard’ member states compared to their northern, ‘leader’ EU counterparts, I embark upon cross country comparisons. I test the two hypotheses by accounting for two indicators:

a) the **average time from suspected to established infringements**, namely the length of time from the point that the European Commission has notified a member state for a potential (suspected) case of violation of EU law by sending a Formal Letter of Notice until the time that it establishes an infringement case by sending a Reasoned Opinion. This indicator reveals the flexible or rigid dimension of enforcement proceedings. The longer it takes the Commission to establish an infringement proceeding the more flexible the application of enforcement mechanisms since member states are allowed more time to adjust to the requirements for effective implementation of EU laws.

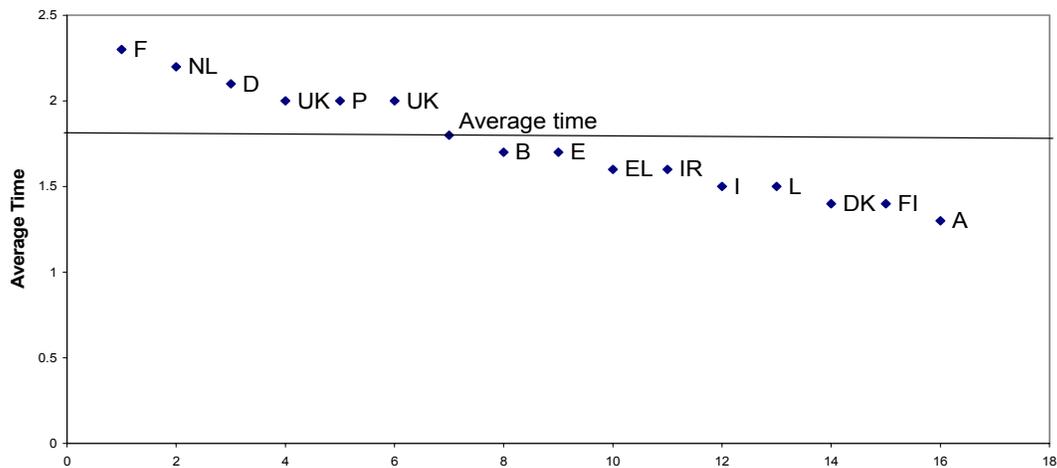
b) **the average length of infringement proceedings**, namely the length of time from the point that the Commission has established an infringement proceeding by sending a Reasoned Opinion until the time that the case is terminated either at the pre-litigation stage or by an ECJ judgement. The longer it takes the Commission to resolve an infringement case either by referring the case to the ECJ or by actively pursuing pre-litigation agreements the more flexible the application of enforcement mechanisms provided by Art. 226 TEU. In these cases member states are granted long periods of ‘grace’ in order to adjust to the requirements for the effective implementation of EU legal provisions.

Our data refers to 951 infringement cases opened by the European Commission against member states for violating environmental law during the period 1981-1999.

⁶ While in previous accession negotiations the adoption of the *acquis* was just a condition of accession, in the current enlargement the implementation of the *acquis* by the prospective member states was a matter to be verified before accession. In its reinforced pre-accession strategy, the European Commission conducted assessments of the negotiation position prepared by candidate countries on each of the thirty one negotiation chapters which consist of the legal instruments for approximation (CEC, 1997). CEECs were granted only limited derogations in the area of environmental law (http://europa.eu.int/comm/enlargement/negotiations/pdf/negotiations_report_to_ep.pdf). For a comparison between eastern and southern enlargements see Koutalakis, 2003).

Cross-country comparisons regarding the average time from suspected to established infringements reveal wide variations in the way the Commission pursues infringement cases against different member states.

Figure 1. Average Time from Suspected to Established Infringements - EU 15 - ENVI



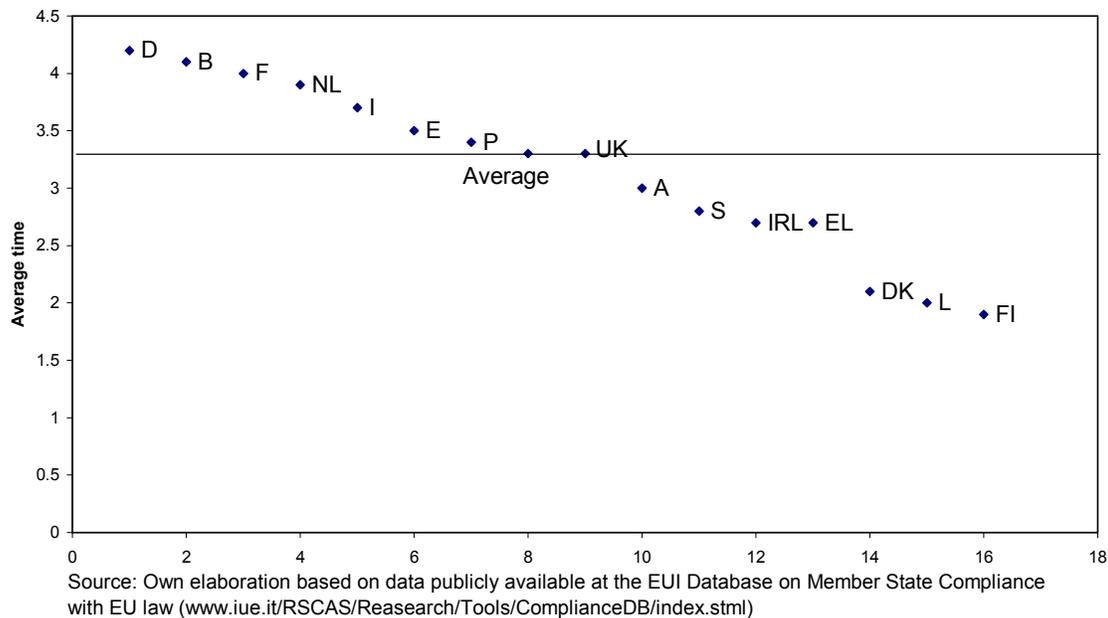
Source: Own elaboration based on data publicly available at the EUI Database on Member State Compliance with EU law (www.iue.it/RSCAS/Research/Tools/ComplianceDB/index.shtml)

However, such variations do not reveal a differentiated approach of the Commission in dealing with southern member states nor do they reflect the leaders/laggards dichotomy often found in the literature. The average time it takes the Commission to initiate infringement proceedings is 1.8 years. Figure I reveals that the Commission pursues infringement cases more aggressively in southern member states than in their northern EU counterparts. Of the southern member states only Portugal, with a measure of 2 years, scores above the average accompanied by France with 2.3, and a group of countries belonging to the ‘leaders’ group comprised by the Netherlands with 2.2, Germany with 2.1 and the UK with 2 years. Greece, Spain and Italy with 1.7, 1.6 and 1.5 years respectively accompanied by Belgium with 1.7, Ireland with 1.6 and a group of countries belonging to the ‘leaders’ group such as Luxemburg with 1.5, Denmark and Finland with

1.4 and Austria with 1.3 years, comprise the group of member states against which the Commission pursues infringement cases more aggressively.⁷

A slightly differentiated outcome appears when accounting for the second indicator, namely the average length of infringement proceedings.

Figure II. Average Length of Infringement Proceedings (1978-2000) - Environment - EU 15

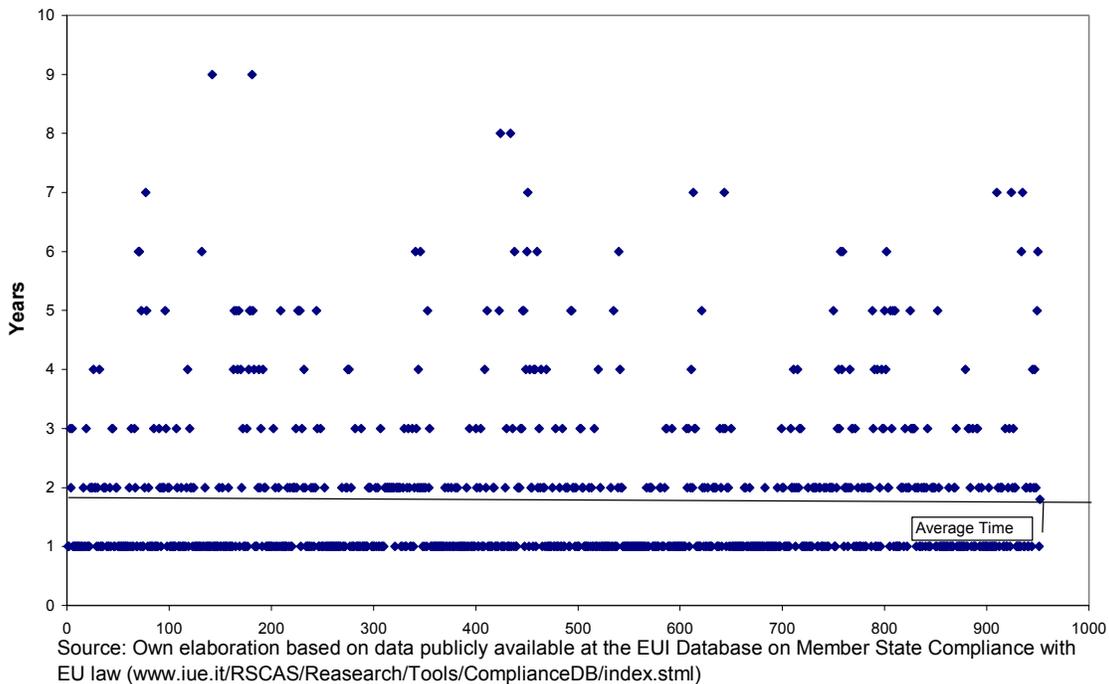


The average length of infringement proceedings is 3.3 years. Italy with 3.7, Spain with 3.5 and Portugal with 3.4 score just above the average. Among the member states with the longer average length of infringement proceedings are Germany with 4.2, Belgium with 4.1, France with 4.0 and the Netherlands with 3.9 years, which comprises the group of countries that benefit the most from long periods of ‘grace’ regarding the termination of cases. From the ‘laggards’ group only Greece with 2.7 years scores much below the average accompanied by member states belonging to the ‘leaders’ group such as the UK with 3.3, Austria with 3.0, Sweden with 2.8, Ireland with 2.7, Denmark with 2.1 Luxembourg with 2.0 and Finland with 1.9 years.

⁷ By no means does this imply that the Commission systematically favours certain member states over others. There is no evidence to suggest such a finding. The distribution of member states in Figure I, does not allow such inferences. In both groups can be found wealth and poor member states, high and low populated member states with high and low voting power in the European Council respectively as well as net contributors to EU budget and net receivers.

Both figures do not reveal a differentiated approach on the part of the Commission to the emergence of leader/laggards dynamics in the application of EU environmental law based on general territorial criteria. However, analysing the same indicators on a case-to-case basis reveals that such a flexible enforcement strategy is followed by the European Commission not along general territorial but rather functional criteria by allowing considerable delays in the application of Art 226 TEU provisions in cases where member states face considerable problems in adjusting to the precise requirements of certain legislative acts. The following figures III and IV analyse the temporal dimension of each of the 951 environmental infringement cases opened by the Commission against member states during the period 1981-1999.

Figure III. Average time from Suspected to Established Infringements - Individual Cases - EU 15 - ENVI

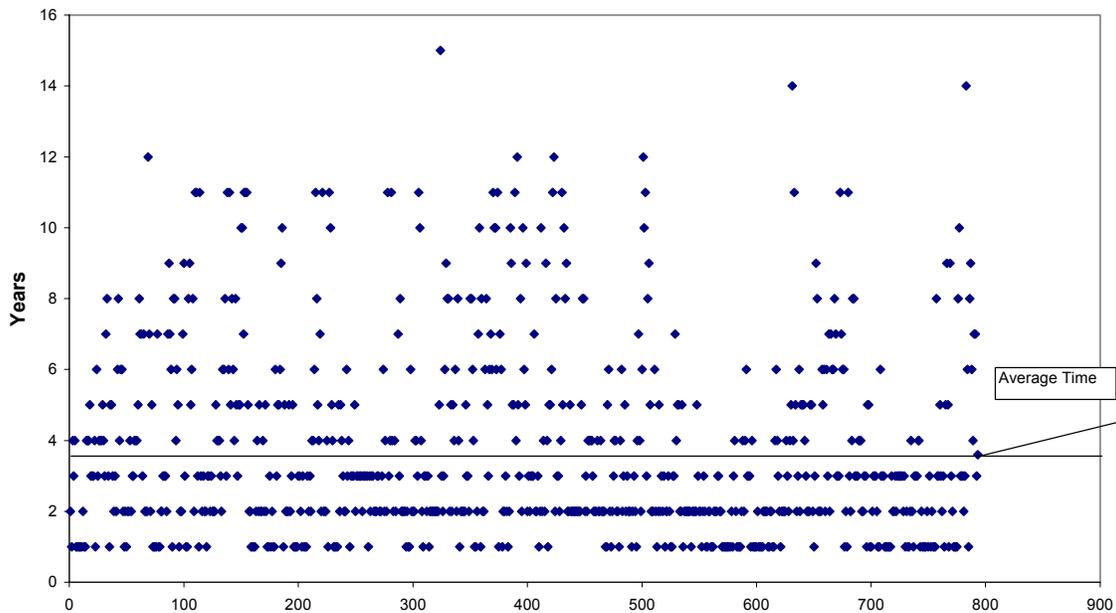


Our analysis reveals that, out of the 951 suspected infringements, the vast majority of *suspected* violations (778) are pursued by the Commission to subsequent stages by sending a Reasoned Opinion within 1 or 2 years time (average 1.8 years). The rest of the cases comprise three main groups. In 8.4% of the cases (80) it takes the Commission three years from the time it suspects a violation of EU laws to actually initiate formal infringement proceedings against member states; 3.7% of the cases (36) are initiated in 4

years time and 3.3% of the cases (32) in 5 years. Beyond these three groups there are number of outstanding cases scattered well above the average with delays ranging from 6 to 9 years.

Long delays in the infringement proceedings provide considerable time for the member states to embark upon necessary institutional and administrative adjustments in order to comply with EU law. Accounting for the length of infringement proceedings in individual cases allows a more accurate view of functional differentiation as the outcome of the Commission’s strategy in dealing with infringement cases in different member states.

Figure IV. Time for Terminating Individual Cases - EU 15 - ENVI



Source: Own elaboration based on data publicly available at the EUI Database on Member State Compliance with EU law (www.iue.it/RSCAS/Reasearch/Tools/ComplianceDB/index.shtml)

Figure IV refers to 792 infringement cases that were terminated by the European Commission at the pre-litigation stage or after a relevant decision of the ECJ. 72.3% of these cases (573) are terminated in a period below or closely above the average of 3.6 years. The rest of the cases are scattered across three main groups. 13.2% of the cases (105) are terminated within 5 to 6 years while 7.07% of the cases (56) in 7 to 8 years. Finally, a less homogenous group is comprised of 7.3% of outstanding cases (58) that are terminated in long periods of time that span from 9 to 15 years.

Concluding Remarks: Do we really need more flexibility?

As in the case of the southern enlargement, the expansion of the EU in central eastern Europe was mainly dictated by macro-political considerations. EU membership accentuated CEECs' efforts to consolidate newly established democratic institutions, attain economic progress, escape isolationism and regain international respectability after the collapse of authoritarian regimes. As in the case of southern member states, CEECs European aspirations reflect cognitive, political and legal elements essential for their transitional phase. Their 'return to Europe' provides an indispensable frame of reference and source of cognitive ideas which helped newcomers to define their position and rights. EU membership endows their political ambitions with the necessary concepts, ideas, and functions as a frame of reference and basis for evaluating the domestic state of affairs in their path to social, political and economic modernization.

The prevalence of macro-political considerations introduces considerable risks for the effective internalization of EU laws in a number of policy areas. Environmental policy is among the policy areas invoking high costs of institutional and administrative adjustment. Macro-economic limitations, political, institutional and administrative weaknesses are at odds with imperatives of effective environmental harmonization in the CEECs. In its reinforced pre-accession strategy, the Commission has attempted for the first time to minimize potential risks by combining several soft instruments aiming at building up domestic administrative capacities, such as the twinning programmes, with a strict application of conditionality criteria. However, excessive costs of environmental harmonization coupled with limited EU financial resources evoke considerable reservations regarding the CEECs' actual pace of becoming integrated in the EU environmental regime.

Given the weak institutional, administrative, and economic capacities of new member states to embark upon fast pace environmental harmonization and the increasingly diverse ecological, political, economic and demographic characteristics of the EU, the introduction of formal institutional arrangements that allow flexible deviations from a uniform application of EU laws emerges as an attractive alternative. However, such a perspective yields more dangers than opportunities for both 'leader' and

‘laggard’ member states in terms of environmental policy. Differential environmental regimes allowing diverse product standards across the EU would create considerable barriers to trade for the CEECs. Diverse environmental regimes offer an alternative to the top-down imposition of high environmental standards that would otherwise not be pursued in some member states. In effect they are more concurrent with democratic subsidiarity normative criteria at least as long as they do not interfere with trans-boundary environmental damages. However, such a ‘multiple speed’ or ‘variable geometry’ Europe would significantly reduce the current potential of EU policies to penetrate domestic institutional traditions and serve as a driving force of institutional modernization as well as a stimulus of real convergence in living conditions for the less environmentally advanced member states.

This paper challenges views calling for grand institutional reforms in order to formalise flexible environmental regimes in the EU. It proposes a number of quantitative indicators in order to assess the nature of the current system of EU legal monitoring and enforcement. My analysis reveals that the application of Art 226 TEU monitoring and enforcement mechanisms by the European Commission allows considerable informal temporal deviations from harmonization requirements in the area of environmental law. However, such a flexible approach does not systematically favour member states characterised by weak administrative capacities such as the group of environmental southern ‘laggards’. Rather than basing decisions on general territorial criteria, the Commission appears to adopt a functional case-to case logic in granting long informal periods of grace to non-compliant member states. Analysing the temporal dimension of infringement proceedings opened by the Commission against member states offers a promising perspective for combining quantitative and qualitative approaches in order to assess the effects of such informal flexible arrangements on effective environmental harmonization across the EU. To what extent does such a perspective offer a viable institutional alternative to politically sensitive and controversial institutional reforms that dismiss harmonization as a core imperative of European integration by allowing flexible deviations from the environmental *acquis communautaire*?

References

- Aguilar Fernandez, S. (1994), 'Spanish Pollution Control Policy and the Challenge of the European Union', *Regional Politics and Policy*, Vol.4, No.1, pp.102-117.
- Baker, S. (2000) 'Between Devil and the Deep Blue Sea: International Obligations, Enlargement and the Promotion of Sustainable Development in the European Union', *Journal of Environment and Planning*, Vol. 2, pp. 149-166.
- Baker, S. and Jechlicka, P. (1998) 'Dilemmas of Transition: The Environment, Democracy and Economic Reform in East Central Europe - An Introduction', *Environmental Politics* (special issue), vol. 7 (1), pp. 1-26.
- Baskyte, R. and Kundrotas, A. (1999) 'Environmental Policy in Lithuania and the Acquis Communautaire', in K. Holzinger. and P. Knoepfel. (eds.), *Environmental Policy in a European Union of Variable Geometry? The Challenge of the Next Enlargement* (Basel: Helbig & Lichtenhahn).
- Börzel, T. (2001) 'Non-Compliance in the European Union. Pathology or Statistical Artefact?' *Journal of European Public Policy* 8 (5), pp. 803-824.
- Börzel, T.A. (2003a), *Environmental Leaders and Laggards in the European Union. Why There is (Not) a Southern Problem*, London: Ashgate.
- Börzel, T. (2003b) 'The Politics of Enforcing European Law', in T. Börzel and R. Cichowski (eds.) *The State of the European Union vol. 6: Law, Politics and Society*, (Oxford: Oxford University Press).
- Carius, A., von Homeyer, I., and Bär, S. (1999) 'The Eastern Enlargement of the European Union and Environmental Policy: Challenges, Speed and Flexibility', in K. Holzinger. and P. Knoepfel. (eds.), *Environmental Policy in a European Union of variable geometry? The Challenge of the Next Enlargement* (Basel: Helbig & Lichtenhahn).
- Cowles, G. M. Caporaso, J.A. and Risse, T. (2001), *Transforming Europe: Europeanization and Domestic Change*, Ithaca: Cornell University Press.
- Duina, F.G. (1997), 'Explaining Legal Implementation in the European Union', *International Journal of the Sociology of Law*, Vol.25, No.2, pp.155-79.
- Epiney, A. (1999) 'Flexible Integration and Environmental Policy in the EU – Legal Aspects', in K. Holzinger. and P. Knoepfel. (eds.), *Environmental Policy in a*

- European Union of variable geometry? The Challenge of the Next Enlargement* (Basel: Helbig & Lichtenhahn).
- European Commission (1997) *Agenda 2000*, COM (97), p. 67.
- Fagin, A. and Jehlicka, P. (1998) 'Sustainable Development in the Czech Republic: A Doomed Process?', *Environmental Politics* (special issue), vol. 7 (1), pp. 113-128.
- Guiliani, M. (2003) 'Europeanization in Comparative Perspective: Institutional Fit and National Adaptation' in K. Featherstone and C. Radaelli (eds.) *The Politics of Europeanization*, (Oxford: Oxford University Press).
- Haverland, M. (1999) *National Adaptation to European Integration: The Importance of Institutional Veto Points*, EUI Working Paper, RSC No. 1999/17, (Florence: European University Institute).
- Holzinger, K. (1999) 'Optimal Regulatory Units: A Concept of Regional Differentiation of Environmental Standards in the European Union', in K. Holzinger and P. Knoepfel, (eds.), *Environmental Policy in a European Union of variable geometry? The Challenge of the Next Enlargement* (Basel: Helbig & Lichtenhahn).
- Holzinger, K. and Knoepfel, P. (1999) 'The Need for Flexibility: European Environmental Policy on the Brink of Eastern Enlargement', in K. Holzinger. and P. Knoepfel, (eds.), *Environmental Policy in a European Union of variable geometry? The Challenge of the Next Enlargement* (Basel: Helbig & Lichtenhahn).
- Homeyer, I. von (2004) 'Differential Effects of Enlargement on EU Environmental Governance', *Environmental Politics*, vol. 13 (1) (Spring 2004), pp. 52-76.
- Homeyer, I. von, Carius, A. and Bär, S. (2000) 'Flexibility or Renationalisation: Effects of Enlargement on EC Environmental Policy', in M.G. Cowles and M. Smith (eds.) *The State of the European Union: Risks, Reform, Resistance and Revival*, (Oxford: Oxford University Press), pp. 247-68.
- Jehlicka, P. (2002) 'Environmental Implications of Eastern Enlargement: The End of Progressive Environmental Policy?' *EUI Working Papers, RSC*, No. 2002/24, Florence: European University Institute.

- Jehlicka, P. and Tickle, A. (2004) 'Environmental Implications of Eastern Enlargement: The End of EU Progressive Environmental Policy?' *Environmental Politics*, vol. 13 (1) (Spring 2004), pp. 77-95
- Knill, C. (1998), 'Implementing European Policies: The Impact of National Administrative Traditions', *Journal of Public Policy*, Vol.18, No.1, pp.1-28.
- Knill, C. and Lenschow, A. (1998) 'Coping with Europe: the impact of British and German Administrations on the Implementation of EU Environmental Policy', *Journal of European Public Policy*, vol. 5 (4), pp. 595-614.
- Koutalakis, C. forthcoming, 'Environmental Compliance in Italy and Greece. The Role of Non-State Actors', *Environmental Politics*, vol. 13 (4), (Winter 2004).
- Koutalakis, C. (2003) 'From the 'Mediterranean' to the 'Iron Curtain Syndrome'. Lessons from the Southern Enlargement for Central Eastern European Accession Countries, Paper presented at the ECPR Joint Sessions of Workshops, *Explaining Environmental Policy in Central Europe*, Edinburgh, March 28 – April 2, 2003.
- La Spina and Sciortino, G. (1993), 'Common Agenda, Southern Rules: European integration and Environmental Change in the Mediterranean States', in J.D. Liefferink, P.D. Lowe and A.P.J. Moll (eds.), *European Integration and Environmental Policy*, London: Belhaven Press, pp.216-234.
- Lampinen, R. and Uusikylä, R. (1998) 'Implementation Deficit-Why Member States do not Comply with EU Directives?' *Scandinavian Politics Studies* 21 (3), pp. 231-251.
- Macrory, R. (1996), 'Community Supervision in the Field of the Environment', in H. Somsen (ed.), *Protecting the European Environment: Enforcing EC Environmental Law*, London: Blackstone Press, pp.9-21.
- Mbaye, H. (2001) 'Why National States Comply with Supranational Law. Explaining Implementation Infringements in the European Union' 1972-1993', *European Union Politics* 2 (3), pp. 259-281.
- Miko, L. (2000) 'The Czech Republic on the way to accession: Problems in the environmental field', in K. Holzinger and P. Knoepfel (eds.) *Environmental Policy of Variable Geometry? The Challenge of the Next Enlargement* (Basel/Genf/Munich: Helbing &Lichtenhahn), pp.183-213.

- Millard, F. (1998) Environmental Policy in Poland, *Environmental Politics* (special issue), vol. 7 (1), pp. 145-161.
- O'Toole, L.J. and Hanf, K. (1998) 'Hungary: Political Transformation and Environmental Challenge', *Environmental Politics* (special issue), vol. 7 (1), pp. 93-128.
- Podoba, J. (1998) 'Rejecting Green Velvet: Transition, Environment and Nationalism in Slovakia', *Environmental Politics* (special issue), vol. 7 (1), pp. 129-144.
- Pridham, G. (1996), 'Environmental Policies and Problems of European Legislation in Southern Europe', *South European Society and Politics*, Vol.1, No.1, pp.47-73.
- Pridham, G. and Cini, M. (1994), 'Enforcing Environmental Standards in the European Union: Is There a Southern Problem?', in M. Faure, J. Vervaele and A. Waele (eds.), *Environmental Standards in the EU in an Interdisciplinary Framework*, Antwerp: Maklu, pp.251-77.
- Schreus, M. (2004) 'EU Enlargement and the Environment: Institutional Change and Environmental Policy in Central and Eastern Europe', *Environmental Politics*, vol. 13 (1) (Spring 2004), pp. 27-51.
- Snyder, F. (1993) 'The Effectiveness of European Community Law. Institutions, Processes, Tools and Techniques', *Modern Law Review*, 56 (1), pp. 19-54.
- Sverdrup, U. (2004) 'Compliance and Conflict Management in the European Union: Nordic Exceptionalism', *Scandinavian Political Studies* 27 (1), pp. 23-43.
- Tallberg, J. (2002) 'Paths to Compliance: Enforcement, Management, and the European Union', *International Organization* 56 (3), pp. 609-643.
- Tallberg, J. (1999) *European Governance and Supranational Institutions. Making States Comply* (London: Routledge).
- Waller, M. (1998) 'Goepolitics and the Environment in Eastern Europe', *Environmental Politics* (special issue), vol. 7 (1), pp. 29-52.
- Zylicz, T. and Holzinger, K. (2000) 'Environmental policy in Poland and the consequences of approximation to the European Union', in K. Holzinger and P. Knoepfel (eds.) *Environmental Policy of Variable Geometry? The Challenge of the Next Enlargement* (Basel/Genf/Munchen: Helbing &Lichtenhahn), pp.215-248

About the Author

Dr. Charalampos Koutalakis is a Marie Curie Fellow at the *Institute of Social Sciences, Humboldt University of Berlin*. His current research focuses on the legal, political, administrative and economic parameters that enable or hinder governments and businesses to adjust to the requirements for effective compliance with EU environmental and public procurement law in southern and central eastern EU member states. He holds a PhD from the Department of Social and Political Sciences, European University Institute, Florence, Italy. Prior research focused on the impact of EU urban and regional development programs in Greece. Most recent publications: *Cities and the Structural Funds. The Domestic Impact of EU Initiatives for Urban Development*, 2003, Athens: Sakkoulas Publishers and *Environmental Compliance in Italy and Greece. The Role of Non-state actors*, forthcoming, *Environmental Politics*, vol. 13 (4) Winter 2004.

E-mail: charalampos.koutalakis@staff.hu-berlin.de