

Coping with Accession to the EC: New Modes of Environmental Governance

by

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Abstract

Eastern enlargement has been celebrated as the success story of the “transformative power of Europe”. Indeed, accession to the EU significantly reinforced the processes of democratic transition and socio-economic modernization in Central and Eastern Europe. So it had for Spain and Portugal 20 years before. At the same time, accession posed a formidable challenge to transition countries. Policy overload and tremendous implementation costs met with weak state capacities largely tied up in managing the political and economic transition process. This paper examines how Spain and Portugal have coped with the adoption of and adaptation to European environmental policy when they joined the EC in 1986. We explore to what extent the governments of the two Southern European accession countries sought to enlist the help of business and civil society in taking on the environmental *acquis communautaire* giving rise to the emergence of so called new modes of governance. The comparison reveals a positive, albeit limited effect of EC membership on the capacities of both state and non-state actors not only in the implementation of EU policies but also in the making of their own environmental regulation.

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1. Introduction¹

Eastern enlargement has been celebrated as the success story of the transformative power of Europe (Grabbe, 2006; cf. Börzel and Risse, 2009). Indeed, accession to the EU significantly reinforced the processes of democratic transition and socio-economic modernization in Central and Eastern Europe. So it had done for Greece, Spain and Portugal two decades before. The conditions for accession, however, differed significantly in the Southern and Eastern enlargement. The *acquis communautaire* doubled over the 20 years that laid in-between the two accession processes. When Greece, Portugal and Spain joined the EC (European Community), there was no enabling legislation related to the completion of the Single European Market, not to mention the Common Currency, the political cooperation on Justice and Home Affairs, and the Common Foreign and Security Policy. Moreover, accession conditionality was only introduced with Eastern enlargement. Finally, the EC was much more generous in granting temporary derogations than the EU. Despite these differences, Southern and Eastern candidate countries faced similar challenges in coping with accession due to their limited governance capacities. Greece, Portugal and Spain only felt the main burden after they had joined the EC. The CEE countries, by contrast, had to do their homework first before they were allowed in.

This paper examines the particular challenges Spain and Portugal faced when they joined the EC in 1986. The focus is on the field of environmental policy as an area of positive, market correcting integration that imposes significant costs in the implementation rather than in the decision-making stage. The challenge at the EU level is for the member states to agree on common standards to reduce and prevent environmental pollution traveling across national borders and to avoid market distortions. As environmental latecomers, the two Southern European countries have not only suffered from increasing environmental pollution as a negative externality of striving for economic growth. Their lower levels of environmental regulations also gave them a competitive advantage over EU member states whose industry has had to heavily invest in abatement technologies to meet EU environmental standards. If,

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however, strict EU environmental regulations are adopted, the latecomers face huge implementation cost having to adapt their legal and administrative structures and help industry cope with the necessary investments (cf. Börzel, 2003).

The implementation of the environmental *acquis communautaire* created an enormous policy load, which met with limited resources (expertise, money, personnel) that were already strained by managing the transition from authoritarian and socialist rule. Given the limited capacity of both the EU and the accession countries, it would have been only rational for public actors to seek the cooperation with private actors to share or shift the burden by pooling resources and delegating certain tasks. Private actors, in turn, could exchange their resources for influence on policies which would significantly affect them. Finally, the European Commission strongly encouraged accession countries to involve non-state actors in the adoption of and adaptation to the *acquis* to ensure both greater effectiveness and legitimacy of the accession process. This paper explores to what extent have non-state actors assisted the governments of Southern European accession countries in adopting and adapting to the *acquis communautaire* giving rise to the emergence of so called new modes of governance?

2. The greening of the South: The EC meets the ‘Mediterranean Syndrome’

Like the post-socialist countries of Central and Eastern Europe, applying for EC membership meant a ‘return to Europe’ for Greece, Portugal and Spain (Paraskevopoulos, Panagiotis and Rees, 2006). Accession allowed CEE and the three Southern states to ‘lock-in’ their transition process. Committing themselves to the political and economic principles of European integration helped the governments to consolidate democratic and economic reforms (Pridham, 1991a; Morlino, 2002; Royo, 2003). At the same time, accession also entailed serious challenges. The three Southern states were economically in a similar position as the CEE accession countries in the 1990s, although their GDP per capita at around 60 to 70 per cent of the EU average was still twice as high as the GDP per capita of their CEE cousins. Macroeconomic constraints and profound political, institutional and administrative weaknesses appeared to be at odds with the economic and legal harmonization with the EC member states.

Yet, political considerations prevailed over concerns regarding the capacities of the three Southern newcomers to catch-up with Europe. Thus, the EC set only some broad political criteria as conditions for membership, including respect for human rights and democracy (Pridham, 1991a).

Consequently, accession negotiations for Spain and Portugal focused on a number of sensitive areas of interest to both sides. They were mostly about agriculture, and also fisheries in case of Spain, due to the scale of agricultural output which was expected to exacerbate competitive pressures on existing member states, particularly France and Italy. To facilitate approximation, the EC awarded transition periods, for example for the establishment of a common market in industrial (textile) and agricultural products (Roy and Kanner, 2001; Maraveyas, 1994).

Market-correcting policies, such as the environment, received little attention, although it was in the areas of regulatory policy where the economic and administrative capacities of the two Southern countries were the weakest regarding the effective harmonization with EC standards. Nor did the EC evaluate the institutional and administrative capacities of Portugal and Spain to implement the *acquis*. Only slowly did they adjust their domestic institutions to the requirements of EC membership. The Europeanization of environmental policy epitomizes the challenges with which Portugal and Spain had to cope in joining the EC.

When Portugal and Spain became members in 1986, their environmental policies were only weakly developed. While they had regulated some aspects of water management, air pollution and nature conservation, environmental legislation had remained largely ineffective (Börzel, 2003). Accession thus became the determining factor of their environmental regulatory structures, mainly through the downloading of EC policies. While the environmental *acquis* at the time was much smaller, it challenged the administrative traditions and regulatory structures of the two Southern European transition countries. They quickly ran into serious compliance problems and earned themselves the reputation of being the environmental laggards of Europe (Börzel, 2003). Capacity shortcomings largely impaired the effective adoption of and adaptation to the environmental *acquis* during the years following accession. A strong preference for generating economic growth and employment put environmental policy on the bottom of the

political agenda and severely restricted funding for building-up environmental governance structures (Pridham, 1991b). There was not enough money and policy expertise to ensure the correct and complete transposition of often highly complex EC environmental laws whose integrative problem-solving approach and participatory policy instruments were alien to regulatory traditions characterized by reactive, legalistic and command-and-control patterns of policy-making (Aguilar Fernández, 1994; Börzel, 2003). The institutionalization of environmental policy used to be weak and fragmented. Only in the 1990s did the two Southern European countries follow the example of other EU member states and establish environmental ministries to help coordinate environmental responsibilities across different sectors and levels of government (Fernández and Font, 2009; Font and Fernandez, 2009). But their financial, administrative and cognitive resources to establish new administrative units, procedures, and technologies for the practical application and enforcement of European policies remained weak. Understaffed environmental administrations lacked the expertise to interpret technical EU environmental regulation, which became ever more complex. At the same time, formal and informal patterns of interest intermediation were largely absent and public participation in environmental policy almost inexistent (Fernández and Font, 2009; Font and Fernandez, 2009). This has not only created additional pressure in adapting to EU requirements for public involvement. Closed political opportunity structures and low levels of socio-economic development have resulted in weak public support for environmental issues and tended to discourage societal mobilization in favor of environmental protection (Börzel, 2003: 51-53).

The poor performance of the two Southern European countries as well as of Greece and Italy with regard to the adoption of and adaptation to the (environmental) *acquis* became so prevalent that a debate emerged in the literature on the extent to which the EU was suffering from a peculiar 'Southern problem' (Pridham and Cini, 1994). Insufficient administrative capacity, a civic culture inclined to individualism, clientelism, and corruption, and a fragmented, reactive and party-dominated policy process are believed to undermine the willingness and capacity of Portugal, Spain, Greece and Italy to effectively implement EU environmental law. Some have even gone so far to argue that the Southern European member states suffer from a

particular disease called the 'Mediterranean Syndrome', which renders their political systems and societies largely unable to engage in collective action (La Spina and Sciortino, 1993; for a discussion of the argument see Börzel, 2003). A civic culture, which is characterized by 'amoral familism' (Banfield, 1958) and is void of social capital (Putnam, 1993) renders both state and non-state actors unlikely to engage in mutual cooperation to provide collective goods, such as a clean environment. While part of the diagnosis is correct, the cultural determinism underlying the Mediterranean Syndrome hardly stands against empirical evidence. Whatever the sources of the weak governance capacities may be, the comparison with the Central and Eastern European countries shows that there is nothing endemic to the problems of Southern Europe (cf. Börzel, 2009).

3. Coping with accession in the South: New modes of governance as a panacea?²

The implementation and application of the environmental *acquis* has imposed significant costs on accession countries. Next to the financial burden, the application of technical sophisticated policies, such as Natura 2000, the Integrated Pollution Prevention and Control and the Water Framework Directives, require significant personnel with the necessary legal, scientific and technical expertise. Such resources, however, have been lacking in the Southern European countries, whose scarce capacities were already stretched thin by managing the transition of their political and economic systems.

Thus, state actors had an incentive to seek the cooperation with companies, scientific experts, and environmental groups, who could offer resources, such as technical know-how and scientific expertise. Likewise, non-state actors had an interest in exchanging these resources against influence on the legal and administrative application of the directives since their transposition into domestic law did not leave much leeway. While companies sought to reduce compliance costs by increasing flexibility and receiving derogations, environmental organizations wanted to secure the strict application of EU requirements.

² This section heavily draws on the case studies by Font and Fernandez, 2009 and Fernández and Font, 2009.

Yet, as we will see in the next section, state actors initially did not rely on non-state actors' resources in an attempt to compensate resource shortcomings. Business and civil society only played a marginal role in the adoption and adaptation to the environmental *acquis*.

Adoption of and adaptation to the environmental acquis in Spain³

In Spain, weak governance capacities at the time of accession hindered the emergence of inclusive modes of governance (cf. Font and Fernandez, 2009). There has been a great deal of reluctance to do so for at least three reasons. First, the European Commission did at first not exert much compliance pressure on the Spanish government in the post-accession period. As a result, state actors were little concerned with the fulfilling the obligations contained in EU environmental regulation. For instance, practical implementation of core directives, such as environmental impact assessment, air pollution control, or water quality was either absent or seriously flawed, particularly with regard to the issuing of permits for industrial plants. Second, the epistemic community within the Ministry of Public Works and Transports, on which most environmental competences depended from accession till the mid-1990s, was dominated by civil engineers, whose technical orientation made them largely hostile to societal engagement. And third, state and non-state actors often had few incentives to cooperate in order to improve compliance. As the implementation of the Large Combustion Plants Directive reveals, public administration and industry have generally been unwilling to cooperate in the enforcement of a policy whose costs are high and must be paid by a strategic economic sector. Likewise, water users in Andalusia have hardly found incentives to cooperate with state actors in order to implement the Water Framework Directive as they oppose the principle that water should be paid for at the full cost recovery prices. Moreover, along with industry, state actors did not trust environmental groups, who at that time, were perceived as radical activists. Societal actors were not enthusiastic about cooperating with the state either. Until the late 1980s, environmental groups were pursuing a strategy of confrontation and social protest.

While new modes of governance have hardly emerged after accession, the 1990s witnessed a slow strengthening of state capacity that helped improve the conditions for the cooperation

³ This section summarizes the case study on Spain conducted by Nuria Font. See (Font and Fernandez, 2009) for further references.

between state and non-state actors. First of all, institutional capacities were enhanced in a number of ways. The creation of the Ministry of Environment in 1996 ended long-standing interdepartmental conflicts and attempted to make environmental protection a more cohesive policy area. Second, the Sectoral Conference on Environment, activated in 1992, improved the vertical coordination between the central state and the Autonomous Communities. Third, environmental protection gained budgetary saliency, with public expenditure on environment rising from 1.78 per cent of total public expenditure to 2.39 per cent between 1987 and 1992. In addition, EU funding, notably the Cohesion Fund, has contributed to improve the implementation of EU environmental policy. Remarkably, around 28 per cent of the total Cohesion Funds for the period 1993-1999 funded environmental projects in Spain, among which water supply and treatment as well as quality control projects have been prioritized. The availability of such financial resources has generated incentives for public authorities to deploy coordination capacities, largely in relation to regional and local administrations. In addition, state actors have gradually been less reluctant to mobilize key actors providing information and scientific knowledge to cover them. As it regards environmental groups, state actors confrontational strategy shifted to one of negotiation and problem-solving giving them a voice in the decision-making process through new advisory institutions, such as the National Environmental Council.

Gradual improvements in state capacities along the 1990s have resulted in the emergence of albeit weak forms of new modes of governance, including consultation of, as well as outsourcing and delegation of certain tasks to policy experts, environmental organizations, and private companies. Consultation through well-established procedures has been the most regular way of involving non-state actors during the transposition of EU environmental directives, whereas outsourcing and delegation tend to emerge in their practical application. It is at this stage of the policy when state actors most need to mobilize external resources, namely knowledge and consensus. The implementation of the NATURA 2000 and the Integrated Pollution Prevention and Control (IPPC) Directives, both of which legally prescribe non-state actors' involvement, exemplify the mobilization of private actors' resources. Relying on EU

funding, the Ministry of Environment has engaged more than thirty research centres and several environmental groups, namely the Spanish Society of Ornithology-Bird Life and Adena-WWF, for data collection, mapping and inventorying in order to elaborate a List of Areas of Community Interest. Equally important, the elaboration of the List has required the coordination and political consensus of all the Autonomous Communities. With regard to the IPPC directive, the involvement of non state actors is reflected in three main aspects. Firstly, external actors as universities, research institutes, industry organizations and individual companies have been involved in the definition of BAT guides at the national and sub-national level. Secondly, in some Autonomous Communities, non state agencies have been involved in the inspection and control systems through the delegation and under supervision of the regional governments. And finally, the scientific community and industry have been involved in the elaboration of guidelines on the best available technologies. Particularly, in contrast to Greece and Portugal, environmental arrangements have been created among public authorities and industrial associations for defining quality standards, monitoring systems and technical prescriptions. As a result, public authorities have largely been dependent on the consensus with industry, whereas the industrial sector has developed a feeling of co-responsibility in the implementation of EU requirements. Some Autonomous Communities have also delegated inspection and control tasks to non-state agencies under the supervision of regional governments.

EU infringement proceedings and the legal requirements of EU environmental directives have increased the willingness of state actors to seek the cooperation with non-state actors. Both industry and environmental groups have been relatively willing to use these new opportunities and cooperate with state actors, although this still takes place on an irregular basis. For instance, the Spanish Association of Water Suppliers has provided information to the Ministry of Environment in the implementation of the Drinking Water directive. Yet, this cooperative approach does not apply to all industrial sectors. In the implementation of the Large Combustion Plant Directive, for instance, relations between government and industry rely on traditional channels of (informal) consultation from which environmental groups and other non-state actors are excluded.

Next to providing them with additional access to the policy process, EU membership has also helped to strengthen the financial capacity of non-state actors, environmental groups in particular. In 2005, for instance, 68 per cent of the income of Adena/WWF, one of the most powerful environmental groups in Spain, came from national and European financial subsidies. However, environmental groups still do not constitute a homogeneous group as their capacities are uneven. Perhaps more importantly, their involvement as knowledge providers does not rule out confrontational forms of participation. Like their Portuguese counterparts, Spanish NGOs often pursue a dual strategy. For instance, SEO-Bird Life has elaborated studies for the Ministry of Environment for the implementation of the Habitats directive while at the same time filed complaints to the European Commission denouncing the failure to designate Special Protected Areas in order to fulfill the objectives of the directive.

The timid emergence of more inclusive schemes of governance can be largely attributed to EU pressure and capacity-building. EU membership has altered the rules of the game and the opportunity structure for non-state actors and created new constraints and expectations. The opening of new access points has provided legal and political resources for non-state actors to, for instance, circumvent national authorities and litigate in the EU arena. Such practice has mostly served to denounce alleged infringements of environmental regulation directly or indirectly related to territory and nature conservation – namely the Environmental Impact Assessment, Habitats and Wild Birds directives. In some cases, EU complaints filed by domestic groups have had outstanding consequences. In 1993, for instance, the ECJ convicted Spain for failing to comply with the provisions of the Wild Birds Directive since public authorities did not classify the Santoña marshes as a Special Protected Area and not taking the appropriate measures to protect them (Case C-355/90). The sentence, which had its origins on a complaint filed by SEO-Bird Life, revealed non-state actors' emerging capacity to influence domestic environmental policies through litigation at the EU level. Additionally, the ECJ ruling itself may also contribute to fostering public involvement. For instance, in 2006 the Court condemned Spain for failing to fulfill the Environmental Impact Assessment Directive (Case C-332/04). The case had its origins in a complaint to the European Commission Adena/WWF

lodged five years before denouncing that the legislation transposing the directive had not stipulated that the final decisions concerning project permits had to be subject to public information. In the wake of rising litigation, state actors have sought the cooperation with civil society organizations to prevent further conflict in the application of EU environmental policies.

In addition to EU compliance pressure, the requirements to enhance participation contained in some environmental directives have stimulated non-state actors' involvement, especially since the mid-1990s. The implementation of the Water Framework directive is a good example. With the creation of Water District Councils, state actors have promoted public participation among representatives of national, regional and local governments, business and environmental associations in the planning and management of inter-regional River Basin Districts. However, like in Greece, this has not meant that state actors have lost the control over the policy process, as non-state actors do not possess any formal or informal veto right in the decision-making process.

Finally, the quasi-federal structure of the political system has also fostered changes in environmental governance. The vertical division of policy tasks has favoured unilateral initiatives in those Autonomous Communities with stronger capacities. For instance, the Catalan administration adopted the IPPC regulation in 1998, four years before the national administration, and later on delegated management tasks to non-state organisations. Beyond regional differentiation, the multilevel architecture of environmental policy has facilitated the emergence of complex patterns of multilevel governance involving state and non-state actors exchanging resources. Again, the implementation of the Habitats Directive provides a good example. For instance, in the 1990s, *Lliga per la Defensa del Patrimoni Natural*, a Catalan environmental organization, implemented a sustainability plan for the Punta de la Mora coastal area in Tarragona, which was proposed as a Site of Community Interest. The plan was financed by EU-LIFE program, the Ministry of Environment, the Catalan departments of Environment and Agriculture, the Tarragona municipal administration and the conservationist group itself.

To conclude, Spanish state actors initially had few incentives to tap into non-state actors' resources, mostly because they did not feel any pressure to effectively implement EU

environmental policies and to compensate for the weak capacities. Yet, in the 1990s, increasing EU compliance pressure coupled with the transfer of financial and cognitive resources, on the one hand, and progressing territorial decentralization in the State of the Autonomies, on the other, started to improve the conditions for involving non-state actors in public policy-making, slowly fostering the emergence of more cooperative modes of governance.

Adoption of and adaptation to the environmental acquis in Portugal⁴

Following accession, ineffective implementation caused by state actors' scarce resources was the rule rather than the exception in Portugal (cf. Fernández and Font, 2009). In spite of capacity shortcomings, state actors did not seek to involve non-state actors as potential resource providers facilitating compliance for at least three reasons. First, while Portugal had started to adopt environmental regulation after accession, the concern of public authorities' for the need to comply with EU environmental policy remained weak. Second, similar to Spain, non-state actors, and in particular the scientific community, did not have sufficient capacities to provide state actors with qualified input. And third, the prevailing culture of public intervention, which has been characterized as non-pluralistic, together with low levels of environmental activism, hindered cooperation among state and non-state actors. Like in Spain, state actors had hardly any incentives to involve private actors in the implementation of EU environmental policy. For instance, the practical application of the Environmental Impact Assessment Directive allowed for little participation in spite of the provisions contained in the directive. Moreover, the low degree of integration of EIA requirements to spatial planning and the non-binding character of assessments for public administration kept public confidence in the procedure low.

This situation slowly changed throughout the 1990s with gradual progress in capacity-building. Administrative reforms, which resulted in the creation of the Ministry of Environment and National Resources, elevated the political profile of environmental policy and improved the coordination capacity. Next to institutional upgrading, Portugal made considerable improvements in the integration of environmental concerns in the decision-making process which resulted, for instance, in the adoption of the first National Plan of Environmental Policy in

⁴ This section summarizes the case study on Spain conducted by Anna Fernandez. See Fernández and Font, 2009 for further references.

1995. In addition, public expenditure on environmental protection gradually increased and reached 0.85 per cent of GDP in 1996. Like in Spain, this was partly due to the new line of EU financial assistance through the Cohesion Fund, which involved an environmental input of € 1,559.4 million for the 1993-1999 period. The slow building of state capacities was accompanied by the institutionalization of consultative arenas for the consultation of non-state actors. The creation of the National Council for the Environment and Sustainable Development, which is a government advisory body bringing together representatives of the national and local administrations, environmental groups and experts, meant a significant increase in the capacity of public authorities to engage with non-state actors.

Capacity-building has also induced cooperation between state and non-state actors in the implementation of particular directives. For instance, the transposition of the Water Framework Directive involved public authorities as well as representatives of farmers and users through the National Water Council. The scientific community has also participated in the practical application of the directive by helping to design the River Basin Districts and is expected to maintain its privileged role when it comes to monitoring implementation. Similarly, the implementation of the Habitats Directive has involved a wide range of non-state actors. Like in Spain, environmental organizations, such as the Portuguese Society for the Study of Birds, received EU-LIFE funds to coordinate the elaboration of an inventory on marine birds in order to implement the Wild Birds Directive. Another EU-LIFE project has allowed the same organization to coordinate the recovery of the Azorean Bullfinch's habitat within a Special Protection Area. The project has been carried out in partnership with the Azores Regional Direction of Forest Resources, the Regional Secretary of Environment and Sea, the Azores University and Birdlife-UK.

Finally, like in Spain, EU-membership forced the central administration to accelerate development of environmental legislation in order to meet environmental requirements and quality standards. The transposition of EU environmental directives has altered the rules of the game, the expectations on the distribution of environmental costs and benefits as well as the number and type of potential players. The Portuguese administration has come under

continuous compliance pressure from the European Commission and the European Court of Justice (ECJ). Such pressure has, in some instances, had its origins in environmental complaints, such as the infringement procedure opened against Portugal in 2005 by the European Commission for breaching the Habitats Directive in the Sabor dam project. In other cases, the European Commission has been actively involved on its own initiative, e.g. when it recently sent a written warning to the Portuguese government asking it to comply with the ECJ ruling condemning Portugal for building a motorway linking Lisbon and the Algarve through the Castro Verde Special Protected Area (Case C-239/04). In response to the verdict, the Portuguese government initiated consultation with stakeholders to define nature compensation measures, although they appear to be in an early stage. Environmental groups fear, however, that EU compliance pressure may have unintended consequences that are detrimental to the environment. For example, the Portuguese government might not declare new Special Protected Areas, as environmental groups would expect, in relation to the Lagoa dos Salgados, before solving open infringement procedures.

In addition to EU compliance pressure, the legal provisions for participation contained in the IPPC and Water Framework Directives have fostered a weak cooperative practice, particularly during legal transposition. The intensity and level of non-state actor involvement in the implementation of both directives has varied across the different stages of the implementation. In general, transposition commonly reproduces consultation procedures or, at most, informal contacts, while modes of more inclusive governance, if any, predominantly have emerged throughout practical implementation. For instance, non-state actors were hardly involved in the transposition of the IPPC Directive, whereas the scientific community elaborated guidelines for the application of the best available technology that were later presented by the Ministry of Environment and Natural Resources.

As the above examples illustrate, non-state actors have cooperated with public authorities in the implementation of EU environmental policies. Yet, private involvement in the policy process remains limited. Non-state actors have often lacked the capacity to become effectively involved, particularly in cases of directives requiring scientific expertise, such as the Environmental

Impact Assessment and the IPPC Directives. In other cases, they have not been willing to cooperate with state actors, either. This is particularly true for industry, which, similar to Greece, is hardly interested in helping to improve the effective implementation of policies, such as the IPPC or the Large Combustion Plants Directives, since they impose significant costs on them. Likewise, environmental groups have maintained the same ambivalent attitude towards the state as their Spanish counterparts and often pursue a dual strategy of cooperation and confrontation. Thus, the Portuguese Society for the Protection of Birds has conducted studies and protection tasks in the implementation of the Wild Birds and Habitats Directives. At the same time, it has filed several complaints to the European Commission denouncing the Portuguese administration for failing to meet the objectives of the two directives.

Overall and similar to Spain, EU membership has progressively contributed to the building of both state and non-state actors' capacity. EU funds and programmes, such as the Cohesion Funds or LIFE, helped to transfer money and expertise to state actors. At the same time, EU infringement proceedings and the legal requirements of certain directives for public involvement have strengthened non-state actors by giving them new opportunities for participation and direct action. The combined pressure on the Portuguese government both from above and from below has generated important incentives for it to invoke more cooperative modes of governance. With gradually reinforced capacities and increasing pressure to improve the implementation of EU environmental directives, state actors have been more and more willing to at least consult civil society and business. Yet, while EU pressure and capacity building have fostered changes promoting more inclusive modes of governance, they are rather weak and have not been emerging in a systematic way. Hierarchical modes of governance still prevail in the adoption of and adaptation to EU environmental policy.

4. Conclusion

Accession to the EU posed a formidable challenge to transition countries. Policy overload and tremendous implementation costs met with weak state capacities largely tied up in managing

the political and economic transition process. Nevertheless, state actors initially hardly sought to enlist the help of business and civil society to pool resources and share the burden. Non-state actors have been most actively involved where EU directives explicitly require their participation and the EU strengthened the capacities of both, state and non-state actors to engage with each other. But even where new modes of governance emerged, they have not gone beyond more or less regular consultations and the delegation of technical tasks. These forms of non-state actor involvement in public policy-making are rather 'old-fashioned'. Indeed, they barely satisfy the definition of new modes of governance as the systematic involvement of private actors in public policy-making. Voluntary agreements of business, the delegation of regulatory tasks to associations, the formal participation of stakeholders in the application of state regulations, or private self-regulation, which are typical new modes of governance in Western countries, have remained scarce in the Southern European member states.

The comparatively weak and reluctant emergence of new modes of governance is explained by the low governance capacities, i.e. the overall weakness of both state and non-state actors in transition countries. Civil society actors often did not have sufficient organizational capacities to serve as a reliable partner in the cooperation with state actors. Moreover, civil society had emerged in opposition to repressive regimes. Many non-governmental organizations (NGOs) still see their role as independent 'watchdogs' rather than interdependent partners of the state. Companies, in turn, shy away from cooperation because they doubt that state actors are capable of translating mutual agreements into policy outcomes given unstable majorities in parliament and frequent government turnovers. To avoid legal uncertainty, business tends to prefer rigid command-and-control regulation. Political instability also weakens the credibility of state actors to unilaterally adopt and impose costly policies. State actors themselves see their weakness as a major obstacle for cooperation with non-state actors. Not only has industry little incentive to offer its resources for the making of policies that incur significant costs upon them. State actors are also afraid of being captured by business due to its superior resources. Next to the fear of 'state capture', policy-makers and administrators are often faced with public skepticism against new modes of governance, which are seen as part of the Mediterranean

culture (clientelistic networks) and in contradiction to democratic institutions. This perception is reinforced by attempts of politicians to shift political decisions into multi-stakeholder fora in order to circumvent opposition or deadlock in parliamentary or party arenas. Finally, the privatization or delegation of public tasks to private actors, particularly in the area of public services (drinking water), meets strong opposition at the local level.

The case studies on environmental policy in Spain and Portugal also show, however, that EU capacity-building and compliance pressure may foster the emergence of new modes of governance. While they had been hard to find when the two Southern European countries joined in the mid-1980s, Spanish and Portuguese state actors started to resort to consultation and delegation of technical tasks when the European Commission started to open infringement proceedings for violations of European Law and the technical and financial assistance under the Structural Funds helped strengthening the capacities of state and non-state actors.

Yet, including Greece and the CEE accession countries into the picture reveals that EU capacity-building and EU compliance pressure may be necessary but not sufficient to facilitate the emergence of new modes of governance (Koutalakis, 2009; Buzogany, 2009a; Buzogany, 2009b; Guttenbrunner, 2009). On the one hand, state actors have to be capable of absorbing EU resources as non-state actors have to have the capacity to make use of the new opportunities offered by the EU. On the other hand, both have to generate trust in new modes of governance as effective means to implement EU policies. State actors often perceive the involvement of non-state actors as time-consuming and a further obstacle in taking decisions that are not geared towards particularistic interests. Even if new modes of governance may help effective implementation, they are not always seen as a legitimate way of policy-making due to their often informal character and the selective inclusion of non-state actors.

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