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Closing the Deception Gap: Accession to
the European Union and Environmental
Standards in East Central Europe

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Closing the Deception Gap: Accession to the European Union and Environmental Standards in East Central Europe

Abstract

This paper examines the impact of accession to the European Union on environmental standards in three candidate countries: Poland, Hungary, and the Czech Republic. It argues that we must look beyond adoption of environmental standards to their implementation, and suggests that there is a “deception gap” between what is said on paper and what is actually done in practice. Two sets of factors internal to the East Central European countries work against closing this deception gap: their historical legacy of environmental practice, and the interests of domestic producers and environmental groups. Pressure from the EU is the main force in attempting to close the gap, that is, to foster compliance with environmental standards. Domestic producers in East Central Europe could potentially be a force for closing the gap as well.

KEYWORDS:

Introduction

This paper explores the mechanism of convergence via legal institution in the policy area of environmental standards. The context is the impact of accession to the European Union on environmental standards in three candidate countries — Poland, Hungary, and the Czech Republic.

Since 1989, European Union (EU) member states have struggled over whether, and how fast, to admit the countries of East Central Europe (ECE). EU membership is highly sought after by ECE countries for reasons both symbolic (representing a chance to join the West) and practical (the potential for trade and economic growth).¹ For the EU, the incorporation of ECE countries is an opportunity, but also a tremendous challenge. One of the major stumbling blocks to enlargement has been environmental protection. The EU views its relationship with ECE as a commitment not just to the internal market, but rather a path to a broader set of objectives, including “balanced and sustainable growth respecting the environment.”² Part of this process is for countries in East Central Europe to adopt the entire body of EU environmental legislation, along with other EU legislation, as a condition of becoming a member.

The environmental dynamics of enlargement encompass different arenas and varying levels of analysis. Some of these have generated significant attention in academic analyses, especially the international agreements and institutions that are the backbone of the enlargement process, and the role of domestic interests — both for and against enlargement — within the member states of the European Union.³ But other aspects of enlargement have been overlooked. In particular, an understanding of government capacity and of sub-national pressures — domestic interests — in these countries is critical to understanding how enlargement will work.

The focus on capacity and sub-national pressures in these countries leads to a concern with implementation. The recent closure of the environmental chapter in the accession negotiations for Poland, Hungary, and the Czech Republic does not also close the question of implementation. This is because adopting EU environmental legislation is not the same as implementing it. One observer has even referred to the enlargement process as “Potemkin harmonization.”⁴ A very basic question to ask is, who wins and who loses from enlargement? Who brings pressure to close the gap between adoption and implementation, and who pressures to maintain the gap? I argue that domestic producers and environmental non-governmental organizations are both critical to answering this question. In particular, I suggest that environmental groups may lose the power to set the agenda in their own countries by acceding to the demands of their more powerful European Union counterparts, who are driving the agenda in terms of enlargement concerns. Second, I argue that ECE domestic producers may in fact constitute a force for closing the gap.

My analysis commences with a section on the theoretical framework of the article that considers pressures for “race to the bottom” and “race to the top” in environmental standards and international trade, and suggests a way of conceptualizing the gap between adoption and implementation of legislation. The next section briefly reviews the history of enlargement with a particular focus on aspects of environmental protection. Then, I examine enlargement from the perspective of Poland, Hungary, and the Czech Republic. First, I argue that there is an historical legacy of environmental protection in the post-World War II era in these countries that affects government capacity today. Second, I focus on domestic interests internal to the countries under study, recognizing that an understanding of implementation cannot be complete without a picture

of pressures outside the government for and against implementation. Finally, I conclude with some policy implications and questions for further research.

Framework for Analysis

Much of the research on the relationship between trade and the environment focuses on the impact on environmental standards in wealthy nations, most often the US and northern European states, from free trade with countries which have comparatively lower environmental standards.⁵ This literature argues that trade pressures lead to a convergence toward either higher standards (a “race to the top”) or lower standards (a “race to the bottom”).⁶ Within relationships among wealthy nations and between wealthy and non-wealthy nations, however, many analysts agree that the “race to the bottom” argument has become irrelevant due to the increasing pressure “green” states place on their less “green” counterparts through international institutions and agreements, and because the conditions rarely exist under which the “race to the bottom” is supposed to occur.⁷

Convergence toward more stringent standards, on the other hand, can occur when “green” states impose their environmental standards on others as a condition of market access.⁸ International institutions and agreements promoting stronger environmental standards are important in this regard, as is the support of domestic public interest groups, sometimes in conjunction with domestic producers for whom stricter regulations are a source of competitive advantage.⁹ These conditions exist in the case examined here: the EU is a strong international institution, and both environmental groups and domestic producers within the EU favor strong environmental standards for the applicant countries. According to this viewpoint, then, accession to the EU should lead to higher environmental standards in East Central Europe.

The problem with the viewpoint outlined above is that it does not take into account sub-national pressures in the countries applying for admission to the EU. The EU requires that ECE countries adopt EU environmental law, but what forces in ECE countries will pressure their governments to implement the law, and what forces may be opposed to implementing the law? Simmons’ analysis of the internationalization of global capital markets provides a model for this EU-ECE dynamic.¹⁰ Her work begins by assuming that the regulators in the dominant financial market will move first by adopting a new regulation. The dominant market will then decide whether to impose the regulation on other countries; if it does, then the follower countries must decide how to respond. Followers’ response is determined by their temptation to defect from the regulation; in return the negative externalities experienced by the dominant financial center if the follower countries do not comply drive its determination to impose the regulation on those countries. That is, if the temptation to defect is high, and if the dominant market suffers if follower countries do not adopt the regulation, then the dominant market must exert centralized pressure on the follower countries.

In the case here, defection—that is, not going through with the process of acceding to the EU—appears extremely unlikely to be initiated from the side of the applicant countries, because of the tremendous benefits, symbolic and material, that come with EU membership. I argue that rather than asking what might lead the “follower” countries (that is, the countries applying for admission to the EU) to defect, a more useful question is asking what might lead them to deceive, that is, adopt but not implement the law? Before continuing, I should point out that deception is not intended to be a malicious or pejorative description of the behavior of governments from ECE. In many cases, they may not have the capacity to implement the laws

that are enacted.¹¹ Rather, this is a question of who benefits. Others have maintained that deception is at the heart of the EU-EC legal approximation process. Jacoby, for instance, describes the process as encouraging the East European to build “Janus-faced organizations in which one element works for an organization’s domestic clients while the other is maintained for the purpose of pacifying its EU patrons.”¹² Public opinion polls indicate that, especially in the Czech Republic and Poland, the question of whether the EU or the candidate countries will benefit more from accession is still open.¹³

Here, I will examine pressure to maintain this “deception gap”—the gap between what is said on paper and what is actually done in practice—and pressure to close that gap, that is, to foster compliance with environmental laws and regulations. There are two linked sets of explanations. The first is prior institutional legacies. EU environmental laws for the most part do not appear on a “cleanslate”: countries’ histories with enacting and enforcing environmental legislation will shape their current efforts.¹⁴ Moreover, lack of capacity affects government in all of the countries in this study. The second explanation looks to actors, in particular to domestic producers and non-governmental organizations. In environmental policy in particular, observers see external pressure—particularly from the EU, but also from other international aid agencies—as the main source of preferences in EC countries for increased stringency of environmental standards.¹⁵ This is coupled with a decline in internal pressure for changes as non-governmental organizations (NGOs) in the region become less radical, more professionalized, and more dependent on external funding.¹⁶ What are the implications for policies that are passed because of external pressures, but have no internal constituency to support them?

European Union Enlargement and East Central Europe —The Process

EU relations with East Central Europe over the last decade have been marked by uncertainty and debate internal to the EU over the merits of expanding EU membership (“widening”) versus an emphasis on “deepening” relations among existing members. The EU has been reticent to lay out exactly under what conditions it will accept EC candidates for membership, and the debate continues. The environment has been a main sticking point in negotiations. The official Accession Process was launched only in 1998, nine years after the election of democratic governments throughout the region. Analysts of EC have termed the EU-EC relationship an “asymmetric dependency” where “the terms of the policy dialogue are...skewed heavily in favor of the EU, leaving little room for consideration of the policy experience of EC countries.”¹⁷ The road has been rocky.

In 1993, the European Council in Copenhagen announced that accession should be the long-term goal for the EU in its relationship with East Central Europe. Among the general criteria for accession, candidate countries are expected to possess the capacity to adopt the *acquis communautaire*, or legal acts of the European Union. The adoption of the *acquis* is the most important part of integration with respect to environmental issues. The EU derives its formal authority to pass regulations on environmental issues from the Single European Act (SEA), adopted by EU member states in 1987. In order to create a single European market, the SEA facilitated the harmonization of national environmental regulations to avoid charges of protectionism or undercutting environmental laws. By the early 1990s, the EU had harmonized standards for a wider range of environmental regulations, including air and water pollution, noise pollution, and conservation. The Maastricht Treaty, ratified in 1993, further aids the

harmonization of environmental policy among EU members by strengthening the EU's authority over environmental issues.

In assessing progress toward the goal of accession, the EU has stressed the importance of not engaging in "merely formal transposition of legislation," but rather "establishment of adequate structures for implementation and enforcement."¹⁸ In July 1997, the Commission presented Agenda 2000, the first comprehensive assessment of countries applying for membership in the EU.¹⁹ Agenda 2000 devotes a significant portion of its discussion to progress in non-economic policy areas, including environment. Generally, it notes that ECE countries focus more on "end-of-the-pipe" solutions whereas the EU promotes a preventive strategy that also focuses on non-industrial, non-point sources of pollution. It points out the need for "considerable EU technical and financial assistance" to bring the countries close to the EU level, particularly in the areas of water and energy-related issues, as well as health-related environmental issues. The gap between the ECE countries and the present member states in terms of environmental standards draws particular comment in Agenda 2000, which points out that "national long-term development strategies based on the competitive advantages of low environmental standards would be unacceptable within the Union." Agenda 2000 also requires the Commission to report annually to the European Council on the progress made by candidate countries in preparing themselves for membership.

In its assessment of individual countries' progress thus far, Agenda 2000 noted that Poland was the first country in the region to develop a comprehensive environmental policy in the immediate aftermath of the downfall of the Communist government. The policy was reviewed and assessed in 1995, and a new environmental protection law was passed in 1996. It pointed out that Poland's air pollution standards are higher than those of the EU — "unrealistically high," in the EU's opinion. Secondly, it pointed out that Polish authorities have reviewed legislation for its compatibility with EU legislations since 1991, thus attempting to fulfill their responsibility of ensuring approximation of legislation. It cautioned that the Polish approach to air pollution of regulation primarily through economic instruments needed to be backed up by legislation. Some issues — particularly urban wastewater treatment, drinking water, and some subset of waste management and air pollution — were highlighted as unlikely to be in compliance until the long term.

With respect to Hungary, Agenda 2000 pointed out that a new environmental policy act was adopted in 1995, which aimed primarily to approximate Hungarian legislation to that of the EU. Water pollution, waste management, and air quality were the three major areas where Agenda 2000 saw deficiencies. While Agenda 2000 praised the extent of the approximation process of environmental legislation in Hungary, it noted that compliance was still a substantial problem. Inadequate supervision and enforcement were cited as the main issues in compliance with legislation. Agenda 2000 also criticized the lack of implementation timetables in the Hungarian environmental accession strategy. As with Poland, urban wastewater treatment, drinking water, waste management and air pollution were deemed to need enough attention that they would only come into compliance in "the long to very long term."

Finally, Agenda 2000's assessment of the Czech Republic noted that air pollution and hazardous and solid waste management posed particular problems. The Czech Republic adopted a framework environmental policy act in 1992 and its level of environmental expenditure in percentage of GDP (gross domestic product) exceeds most of the EU member states. The same

problems were mentioned (urban wastewater treatment, etc.) as being achievable only in the long term.

The problems highlighted by Agenda 2000 with respect to the environmental portions of the *acquis* initiated a series of efforts at the EU level. Shortly after putting together Agenda 2000, the European Commission issued a Communication on Accession Strategies for Environment.²⁰ This Communication was designed to help all ten East Central European candidate countries develop a special strategy for environmental approximation, and also determine what the EU's assistance would be to those countries. It estimated total costs for all ten countries of meeting the environmental *acquis* at 100 -120 billion ECU, and promised a number of funding mechanisms from the EU, which will assist countries in approximating their environmental legislation. There were also programs for technical advice and assistance.

The Communication also listed a series of steps to be followed in developing and implementing a national pre-accession strategy for the environment. First, states are to determine the requirements of the environmental portions of the *acquis*, based on an EU - published *Guide to the Approximation of European Union Environmental Legislation*. States are next to analyze their own legislation and determine where it does not meet the *acquis*. This step is called a "legal gap analysis" and uses "tables of concordance" to determine where domestic and EU legislation diverge. Additional steps require analyzing institutional and administrative needs, as well as developing a long-term national strategy to adopt the entire environmental *acquis*. Lastly, states are to set up an implementation timetable and establish formal and structured systems for monitoring, communication and reporting.

A year after *Agenda 2000* was issued, in March 1998, the EU launched the official Accession Process at a meeting in Brussels. As part of that process, the European Commission issued draft Accession Partnerships for Poland, Hungary, and the Czech Republic in 1998 and 1999, and also stipulated that each of the applicant countries must provide a plan indicating how they will go about aligning their legislation with that of the EU. Progress reports on accession issued by the EU in both 1999 and 2000 indicated a number of areas for improvement in terms of environmental protection, and in some cases noted that "little legislative progress" had been made on accession in terms of the environment.²¹ But the 2001 reports for the three countries discussed here indicated significant progress in the environmental area of accession.

In 2001, the environmental chapter of the accession negotiations was provisionally closed for all three countries. Each country has transitional periods for several measures, such as urban wastewater and packaging waste. Poland has the largest number of transitional periods, at nine. But just because the environmental chapters have been closed does not mean that questions of implementation have been resolved. It is this gap between adoption and implementation that the remainder of this paper examines.

East Central Europe — Threats to Deceive

Environmental pollution has been and continues to be a problem for the Central and East European region. Rapid industrialization coupled with tremendously inefficient energy use in the post-World War II era led to significant environmental degradation. In the 1980s, levels of sulfur dioxide and nitrogen oxides in Poland and Czechoslovakia ranged far above levels in countries of the Organization for Economic Cooperation and Development (OECD).²² Emissions of sulfur dioxide per unit of GDP are still the highest in the OECD for all three

countries (now OECD members). As recently as 1998, the Czech Republic and Poland were the highest emitters of carbon dioxide per unit of gross domestic product (GDP) among OECD states; however, all three countries also showed among the steepest declines from 1980 to 1998 in carbon dioxide emissions per capita.²³ In the early 1990s, heavy metal contamination in some parts of Poland was two to five times higher than World Health Organization guidelines.²⁴ Wasted disposal of land, fresh water, and groundwater contamination are also significant problems.

While pollution levels — particularly air pollution — have fallen in recent years, this is usually attributed to a reduction in industrial output. As output climbs again, emissions could re-emerge as a significant problem.²⁵ Also, increasing use of private automobiles presents different kinds of air pollution abatement challenges than point-source factory emissions. The number of cars per capita from 1994 to 1998 rose by 25% in the Czech Republic and 24% in Hungary; the amount of roadways grew in the same period by 27% in the Czech Republic and a whopping 53% in Poland.²⁶ Prague now has more cars per capita than Vienna.²⁷ Also in the Czech Republic, the share of public transportation declined in the period 1990 to 1996 from 65% to 45%.²⁸ Although Hungary is among the most energy efficient of EC countries, it still uses energy at approximately twice the rate of Western European countries.²⁹

The environmental picture in these countries, however, is not uniformly negative. Along with a standing tradition of environmental conservation exists in East Central Europe, and much environmental activism in the 1980s centered on conservation issues. Poland in 1989 had 17 national parks totaling 415,000 acres, and one of the last primeval forests in Europe outside of Scandinavia.³⁰ The total area of national parks in Poland almost doubled from 1989 to 1994.³¹ These protected areas are now under threat both from air pollution and economic pressures, which may encourage them to develop the areas or open them up to poaching. In the accession process, the value of these protected areas is noted by some Western NGOs, who have called on the EU to make biodiversity protection part of EU enlargement.³²

The point of painting this environmental portrait of the region is neither to suggest a lack of effort at improvement, nor to aver that it has deteriorated significantly since 1990. Many efforts have been made — nationally and internationally, and by government, environmental groups, and industry — to abate pollution and reap the “win-win” benefit of improving the economy and the environment simultaneously. What these indicators are intended to point out is that the state of the environment in these countries is still quite far behind the bulk of EU member states, and that there is reason for concern about how their entry might affect environmental standards in the EU. For these reasons, it is important to the EU that the environmental portion of the *acquis* be adopted.

Two broad factors shape the response of East Central European governments to the environmental aspects of the EU accession process. The first is the historical legacy of environmental law in these countries, and the second is the role of domestic interest groups. EU legislation is not being transposed onto a blank slate. Poland, Hungary, and the Czech Republic, along with most of the other countries in East Central Europe, have developed their own environmental legislation over the past half-century to varying degrees of comprehensiveness. The division of authority and enforcement mechanisms in the law continues to affect the transposition and harmonization process of the *acquis* today.

Environmental legislation passed in the 1970s and 80s in Poland, Hungary and the Czech Republic primarily focused on end-of-the-pipe measures designed to capture and mitigate

pollution after its creation, rather than focusing on pollution prevention. These policies generally emphasized fines as an enforcement mechanism, but the fines were often set so low that they did not function as incentives to reduce pollution. In addition, standards were sometimes set so high³³ as to be technically unachievable.³⁴ This only reinforced the tendency for industries to budget for the fines imposed for non-attainment of standards, rather than attempt to reduce pollution. The problem of ineffective fines persists today, coupled with a lack of experience in administering pollution prevention programs. A related problem is that authors of legislation are unused to including a compliance strategy or timetable, and thus while good principles may exist on paper, there are no concrete plans to implement them.³⁵

The conflict of interests at the state level is another legacy of environmental law. Under the Communist regimes, the state was both the source of pollution, through economic activity, and responsible for its prevention, through environmental regulation. In Poland, for example, environmental measures could be suspended for reasons deemed "important," such as achieving a five-year plan goal. Moreover, environmental administrators did not participate in the decision-making of important economic sectors, such as mining and construction. This conflicting set of goals is still salient for government officials today, who may see environmental protection as a subsidiary goal to that of economic recovery and growth. In addition, fragmented authority for environmental protection—both in the administration and in legislation—meant unclear jurisdiction and patchwork responses to environmental problems.³⁶

Hungary provides examples of such conflicts of interest and fragmentation today. For instance, environmental inspectors often supplement small salaries by working as private contractors. Yet this can create problems when, say, the Environmental Inspectorate reviews an environmental impact assessment which one of the inspectors was privately hired to prepare in the first place. National authority for environmental issues in Hungary is divided into several functional authorities, leading to fragmentation in policy making. For example, standards for indoor air pollution and outdoor air pollution are set by different agencies.³⁷

These implementation problems can be conceptualized as a "vertical disintegration of policy"³⁸: governments in the region are woefully inexperienced at translating general commitments into specific tasks, and particularly at distinguishing costs and benefits of environmental vis-à-vis, for example, economic-oriented legislation. Moreover, whatever capacity for implementation has been developed over the past decade is threatened to be overwhelmed by the tremendous volume of laws these countries are required to adopt to prepare for accession to the EU: roughly 10,000 laws across all sectors. Finally, the past centralization of environmental decision-making has left today's local governments unprepared for adopting the responsibility of environmental enforcement, and left them understaffed as well. The EU has applied pressure to increase capacity, but compliance problems will continue to arise as a result of these already-routinized procedures.

It is not only the historical legacy of poor environmental enforcement that affects the countries of East Central Europe today. Public support for the environment has tapered off as the hardships of post-Communist life have set in, and EU pressure now is the primary driving force behind government prioritization of environmental policy. "Environmental problems are nowhere seen as a high priority and only remain on national policy agendas because of external pressure."³⁹ Here the "horizontal disintegration of policy" is of concern: "the ability of central government to involve important sectors of the public in policy discussions and, potentially, in mobilizing support for new initiatives."⁴⁰

One important sector of the public is non-governmental environmental groups. Environmental groups are often credited with being visible and influential proponents of democracy in the late 1980s and the immediate period following 1989; they enjoyed broad support from the general public. Numerous analyses give environmental groups partial credit for bringing about the changes that brought down the Communist regimes.⁴¹ By the early 1990s, though, the environmental movements splintered. Today, small, pragmatic, and professional organizations are much more the norm than large grassroots-supported campaigns. A major factor behind this change is increased funding from the EU, the United States, and Western foundations. These new organizations, which receive much of their funding from Western governments and non-governmental organizations, generally adopt a less confrontational attitude in their dealings with government officials than their predecessors.⁴²

This shift may have serious implications for the ability of environmental groups to pressure the government to implement EU environmental legislation. In particular, Barbara Jancar-Webster, long time analyst of environmental issues in Eastern Europe, sees an impoverishment of the political discourse, maintaining that “[t]he great weakness of the development of NGOs today is that they are organized, nurtured and sustained by the West in the name of democracy building.... Professionals who head the more successful NGOs risk alienating themselves from a public that no longer sees them as representatives of its interests, but rather as hierarchy and part of the power structure.”⁴³ Moreover, the increased professionalism and pragmatism has not paid off in increased government influence. Whereas in the late 1980s, NGO influence derived largely from the ability to marshal crowds onto the streets, now NGOs neither command that ability nor are they permitted to play a role in setting the government’s environmental agenda.⁴⁴

Environmental groups may also resent the EU-driven agenda. In the past few years, the language of EU environmental assistance programs has shifted from “demand-driven” aid to “accession-driven.” When Austria recently held the presidency of the EU, the Austrian Environment Minister stated that the countries of East Central Europe should give priority to environmental projects that are needed to fulfill EU legislative requirements, particularly environmental infrastructure, investments in drinking water and wastewater installations, air pollution abatement and solid and hazardous waste management.⁴⁵ He notably did not refer to the specific needs or priorities of the countries themselves. At a meeting of environmental groups from both EU and potential member countries, the ECE environmentalists expressed concern that the EU was pushing the environmental approximation process too fast.⁴⁶

Another important sector of the public is domestic producers. Domestic producers can play an important role in stimulating more stringent government regulation if it is to their competitive advantage. In Hungary at least, there is hope that industry will step into fill this role. Environmental views among business executives and managers in Hungary to be “comparable” to views of business managers elsewhere—the implication is that Hungarian business executives are more advanced and progressive compared to business people in other countries of East Central Europe. The Hungarian Chamber of Commerce, for instance, has created an environmental position to address environmental issues.⁴⁷

In another study, industrial managers interviewed in the Czech Republic and Poland accepted the objective of overall harmonization with EU environmental policy as part of the process of integration with Europe.⁴⁸ At the very least these managers indicated that they do not become involved in systematic lobbying either for or against environmental issues, leading the

study' s author to conclude that policy making takes place "in a virtual political vacuum."⁴⁹ Another study conducted by the Regional Environment Center put hope in the role of industry: "Representatives of various businesses are among those who exert the most aggressive pressure to accelerate the approximation process in the environmental field,"⁵⁰ precisely because of competitiveness issues.

Yet the support among domestic producers for coming into compliance with EU law may in fact be threatened by actions on the part of the EU. Since the beginning of the ECE enlargement process, there has been a deep ambivalence within the EU over incorporating East Central European countries. The original mandate given by the European Council to the Commission excluded any reference to potential membership of ECE countries. While the East Europeans always viewed the Europe Agreements as a transitional instrument on the way to full membership, within the European Union there was disagreement over whether they were along-term agreement in and of themselves. There are two major sets of concerns on the part of the EU: the first is about competitiveness of European industry in the face of cheaper labor; the second is about less stringent environmental standards. The Danish Environmental Protection Agency has warned of economic competitiveness costs to the EU if ECE countries are not required to come into full compliance by the time they accede.⁵¹ This ambivalence could threaten the support among industrial producers in ECE countries for integration with the Union.

Industrial producers in ECE have some cause to be wary of EU trade concession promises. The original Association Agreement excluded agriculture, steel, and textiles—the areas where ECE countries have a comparative advantage—from trade concessions. They also included opt-out clauses for Western European countries.⁵² In 1997, Polish environmentalists saw trade barriers behind an EU refusal to import fruit juice on the basis of impure standards.⁵³ Trade barriers and concerns about dumping continue to be part of the EU-ECE relationship.

Concerns within the EU about enlargement are not restricted to competitiveness, however. The Commission has openly acknowledged that the applicant countries will not be in full compliance with the environmental components of the *acquis* by the time they are admitted to the Union,⁵⁴ and the transition periods granted to the countries recognize this fact. Government and non-governmental actors are uneasy about the implications for the high level of environmental protection within the EU. A member of European Parliament worried that, while the political costs of leaving the ECE countries out are too high, there is a slippery slope in letting them in if they have not fully adopted the *acquis*.⁵⁵ Environmental groups have also joined in the chorus of caution: the European Environmental Bureau, an umbrella group, expressed concern that admitting the states without full compliance could slow down environmental progress in the EU.⁵⁶ EU environment ministers concurred, saying that no special exceptions should be allowed for clean up in the region.⁵⁷

Implications

In order to consider the effect of legal integration on environmental policies, it is important to look beyond the words of an agreement and examine the forces for and against implementation. This is particularly true for countries with a poor record of implementation. Most countries have learned to adopt the language of aid agencies and international donors to obtain the funding they desire, but discerning whether actual commitment to programs are being made is considerably more difficult.

From the EU perspective, a gap between adoption and implementation of environmental laws in ECE may pose each challenge, both in terms of sabotaging current efforts to make the EU even "greener," and also in terms of EU producers who may face stricter compliance efforts, and thus higher compliance costs, than their ECE counterparts. The EU has paid particular attention to implementation problems in the accession process, but its focus appears to be primarily on government capacity. One way the EU has tried to monitor the deception gap is its twinning program, begun a few years ago. This sends member state civil servants to work with their bureaucratic equivalents in ECE. But it is unclear whether EU member states have made efforts to address other parts of the implementation equation, in particular the win-lose coalitions among domestic interest groups. How much does the deception gap matter to the EU? What, if any, are the EU's other options to close the deception gap, if it cannot team up with a domestically? Further research that might shed light on these questions involves the success of the less wealthy countries that are already members of the EU in implementing EU environmental law.

Conclusion

Convergence of standards is certainly happening in the case examined here; moreover, the convergence is toward the top. Poland, Hungary and the Czech Republic are eager to gain admission to the European Union and they will comply, at least on the face of it, with EU requirements. The deception gap poses a different question, though: will the convergence of standards be followed by implementation of those standards? Previous studies have found that coalitions of domestic producers and environmental groups, so-called "baptist-bootlegger" coalitions, are responsible for promoting higher standards, and elsewhere in this volume the "baptists alone" hypothesis is shown to result in higher standards. But the "baptists" of this case, the environmental groups, are lukewarm about the harmonization process; instead it is domestic producers who, in trying to orient themselves to the EU market, could be a force for closing the deception gap.⁵⁸ Thus the mechanism by which the deception gap might be closed is yet to be determined.

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¹ Susan Baker and Petr Jehlička, "Dilemmas of Transition: The Environment, Democracy and Economic Reform in East Central Europe -- an Introduction," *Environmental Politics* 7, no. Spring (1998).

² European Commission, *White Paper: Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union* (EUDG 1A, December 1994 [cited 17 August 1999]); available from <http://europa.eu.int/comm/enlargement/index.htm>.

³ See, for example, Michael J. Baun, *A Wider Europe: The Process and Politics of European Union Enlargement* (Lanham, MD: Rowman & Littlefield Publishers, 2000).

⁴ Wade Jacoby, "Priest and Penitent: The European Union as a Force in the Domestic Politics of Eastern Europe," *East European Constitutional Review* 8, no. 1-2 (1999). The reference is to Grigori Potemkin's construction of fake villages to assure Russian Tsarina Catherine of her country's prosperity on a visit to the hinterlands.

- ⁵See, for example, Miles Kahler, "Modeling Race to the Bottom" (paper presented at the American Political Science Association, Boston, September 3-6 1998); H. Jeffrey Leonard, *Pollution and the Struggle for the World Product* (Cambridge: Cambridge University Press, 1988); Debora Spar and David B. Yoffie, "A Race to the Bottom or Governance from the Top?," in *Coping with Globalization*, ed. Aseem Prakash and Jeffrey A. Hart (London: Routledge, 2000); and David Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Cambridge, MA: Harvard University Press, 1995).
- ⁶The race to the bottom question has been recategorized by some, particularly within the debate on federal vs. state regulation of environment within the United States, as two questions: a question of laxity and a question of desirability. Revesz contends that a race towards laxity is desirable, and that environmental regulation is best left to states, which can set their own levels of protection according to their own preferences. See Richard L. Revesz, "Rehabilitating Interstate Competition: Rethinking the 'Race-to-the-Bottom' Rationale for Federal Environmental Regulation," *New York University Law Review* 67 (1992). Swire and Esty, conversely, have argued that the race toward laxity is undesirable because of public choice and measurement problems. See Daniel C. Esty, "Revitalizing Environmental Federalism," *Michigan Law Review* 95, no. 3 (1996); and Peter P. Swire, "The Race to Laxity and the Race to Undesirability: Explaining Failures in Competition among Jurisdictions in Environmental Law," *Yale Law and Policy Review* 14, no. 2 (1996).
- ⁷In particular, the costs of environmental regulations do not appear to be a major factor in firms' siting decisions. Kahler, "Modeling Race to the Bottom"; and Leonard, *Pollution and the Struggle for the World Product* ..
- ⁸These conditions assume a large domestic consumer market, which may not hold true for some ECE countries where large segments of the population do not share in the economic recovery. See Swire, "The Race to Laxity and the Race to Undesirability: Explaining Failures in Competition among Jurisdictions in Environmental Law."
- ⁹See, for example, Spar and Yoffie, "A Race to the Bottom or Governance from the Top?"; and Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy* .. Vogel terms the environmental group - domestic producer alliance a "baptist - bootlegger" coalition, referring to the Prohibition era when zealous religious groups promoted prohibition for moral reasons, while bootleggers favored the same goal out of purely economic self-interest. In the environmental case, some producers may prefer similar standards across countries where they do business to low standards in some countries and high in others.
- ¹⁰See Beth Simmons, "The International Politics of Harmonization: The Case of Capital Market Regulation," *International Organization* 55, no. 3 (2001).
- ¹¹I am grateful to an anonymous reviewer for pointing out that the EU also has reasons to be duplicitous and drag out the accession process as long as possible.
- ¹²Jacoby, "Priest and Penitent: The European Union as a Force in the Domestic Politics of Eastern Europe."
- ¹³Questions about who benefits more from relations with the EU — EU member states or the candidate countries — were either split between the two or drew a majority to answer that the EU benefited more. Central European Opinion Research Group Foundation, *Trends in EU, Czech, Hungarian, and Polish Public Opinion on Enlargement: Implications for EU Institutions and Industry. A Report to the European Parliament*. (17 October 2000 [cited November 13 2001]); available from <http://www.ceorg-europe.org/brussels2k.html>.
- ¹⁴See, for instance, Paul Pierson, "The Path to European Integration: A Historical Institutional Analysis," *Comparative Political Studies* 29, no. 2 (1996).
- ¹⁵Brian Slocock, "The Paradoxes of Environmental Policy in Eastern Europe: The Dynamics of Policy - Making in the Czech Republic," *Environmental Politics* 5, no. 3 (1996).
- ¹⁶Michael Waller, "Geopolitics and the Environment in Eastern Europe," *Environmental Politics* 7, no. Spring (1998): 29-52; and Barbara Jancar -Webster, "Environmental Movement and Social Change in the Transition Countries," *Environmental Politics* 7, no. Spring (1998): 69-90.
- ¹⁷Baker and Jehlicka, "Dilemmas of Transition" , 19.
- ¹⁸European Commission, *White Paper* .
- ¹⁹European Commission, *Agenda 2000* (EUDG 1A, 1997 [cited 16 July 1999]); available from http://europa.eu.int/comm/dg1a/enlarge/agenda2000_en.

- ²⁰ European Commission, *Accession Strategies for Environment: Meeting the Challenge of Enlargement with the Candidate Countries in Central and Eastern Europe* Com(98)294 (1998[cited 17 July 1999]); available from <http://europa.eu.int/comm/dg11/docum/98294sm.htm>.
- ²¹ See, for example, European Commission, *2000 Regular Report from the Commission on Poland's Progress Toward's Accession* (8 November 2000[cited 8 November 2001]); available from http://europa.eu.int/comm/enlargement/report_11_00/index.htm, p.68.
- ²² Hertzman, *Environment and Health in Central and Eastern Europe*, Tables 3.10 and 3.11.
- ²³ See OECD Environment Directorate, *Key Environmental Indicators* (2001 2001[cited November 8 2001]); available from <http://www.oecd.org>.
- ²⁴ Clyde Hertzman, *Environment and Health in Central and Eastern Europe: A Report for the Environmental Action Programme for Central and Eastern Europe* (Washington, DC: The World Bank, 1995), Table A5.1.
- ²⁵ Cole disputes this, citing statistics which show that as Polish industrial production began to increase again in 1992, air pollutant emissions continued to decline. Daniel H. Cole, "Poland's Progress: Environmental Protection in a Period of Transition," *2 Parker School Journal of East European Law* 279 (1995).
- ²⁶ European Commission, *1999 Regular Report from the Commission on Poland's Progress Toward's Accession*; European Commission, *1999 Regular Report from the Commission on Hungary's Progress Toward's Accession*; and European Commission, *1999 Regular Report from the Commission on Czech Republic's Progress Toward's Accession*.
- ²⁷ "Cleanup or Clearout," *The Economist*, 11 December 1999: 47.
- ²⁸ "Eastern European Transport 'Unsustainable'," *ENDS Environment Daily*, 14 November 1997.
- ²⁹ O'Toole and Hanf, "Hungary: Political Transformation."
- ³⁰ Jeffrey P. Cohn, "Central and Eastern Europe Aim to Protect Their Ecological Backbone: Western Conservationists Send Technical Aid," *BioScience* 42, no. 11 (1992).
- ³¹ Barbara Hicks, *Environmental Politics in Poland: A Social Movement between Regime and Opposition* (New York: Columbia University Press, 1996).
- ³² "NGOs Attack EU Biodiversity Failures," *ENDS Environment Daily*, 7 May 1998.
- ³³ One reason for this was probably ideological, to show that Communist states had stronger environmental protection measures than capitalist ones.
- ³⁴ See, e.g. O'Toole and Hanf, "Hungary: Political Transformation," 108.
- ³⁵ Gyula Bandi, "Competence and Harmonization Problems in Hungary," *9 Connecticut Journal of International Law* 607 (1994).
- ³⁶ Hicks, *Environmental Politics in Poland*.
- ³⁷ O'Toole and Hanf, "Hungary: Political Transformation."
- ³⁸ Ibid.
- ³⁹ Barbara Jancar - Webster, "Environmental Movement and Social Change in the Transition Countries," *Environmental Politics* 7, no. Spring (1998): 76. In Poland, even optimistic observers note that the government has been much less interested in environmental protection since 1992, and that the desire to join the EU is now one of the main motivating forces behind governmental efforts at environmental protection. See, e.g., Cole, "Poland's Progress."
- ⁴⁰ O'Toole and Hanf, "Hungary: Political Transformation," 108-9.
- ⁴¹ See, for example, Adam Fagin and Petr Jehlička, "The Impact of EU Assistance on Czech Environmental Capacities since 1990" (paper presented at the Environmental Challenges of EU Eastern Enlargement, Florence, Italy, May 25-26 2001); and Andrew Tickle and Ian Welsh, eds., *Environment and Society in Eastern Europe* (Essex: Longman, 1998).

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- ⁴² Waller, "Geopolitics."
- ⁴³ Jancar-Webster, "Environmental Movement and Social Change," 88.
- ⁴⁴ Fagin and Jehlicka, "Sustainable Development in the Czech Republic."
- ⁴⁵ Interview with Martin Bartenstein, in European Commission, "Enlarging the Environment: Newsletter from the European Commission on Environmental Approximation," (DGXI, 1998).
- ⁴⁶ "NGOs Debate EU Enlargement's Green Challenge," *ENDS Environment Daily*, 28 September 1999.
- ⁴⁷ O'Toole and Hanf, "Hungary: Political Transformation."
- ⁴⁸ Slocock, "The Paradoxes of Environmental Policy."
- ⁴⁹ Ibid, 504.
- ⁵⁰ Gyula Bandi and Stanislaw Wajda, "Approximation of European Union Environmental Legislation: Regional Overview," (Budapest: Regional Environmental Center, 1996).
- ⁵¹ "Denmark Warns on EU Enlargement," *ENDS Environment Daily*, 26 August 1997.
- ⁵² Janos Martonyi, "The Role and the Impact of the Association," in *Hungary: From Europe Agreement to a Member Status in the European Union*, ed. Ferenc Madl and Peter -Christian Mueller -Graff, European Community Studies Association -Europe (Baden -Baden, Germany: Nomos Verlagsgesellschaft, 1996); and David E. Madeo, "Environmental Contamination and World Trade Integration: The Case of the Czech Republic," *Law and Policy in International Business* 26, no. 3 (1995): 945 -977.
- ⁵³ "Wodazdrowaibezpieczna?" *Biuletyn Polskiego Klubu Ekologicznego*, April 1997, 16.
- ⁵⁴ "Environmental Impasse Feared on EU Enlargement," *ENDS Environment Daily*, 16 July 1997.
- ⁵⁵ "EU Enlargement Plan 'Contradictory,' Says MEP," *ENDS Environment Daily*, 6 October 1997.
- ⁵⁶ "Green Groups Warn of Risks of EU Enlargement," *ENDS Environment Daily*, 14 August 1997; also "NGOs Issue Austrian EU Presidency Demands," *ENDS Environment Daily*, 10 July 1998.
- ⁵⁷ "No Exceptions' for CEE Country Cleanup," *ENDS Environment Daily*, 20 July 1998; and "Accession Countries Warned on Environmental Rules," *ENDS Environment Daily*, 10 May 1999.
- ⁵⁸ Beukel's work suggests that the interests of export-oriented and domestic market-oriented producers may differ on their support of enlargement. See Erik Beukel, "Trade Liberalization and Environmental Regulation: Regional Interests and Ideas in Europe and North America," in *Racing to Regionalize: Democracy, Capitalism, and Regional Political Economy*, ed. Kenneth P. Thomas and Mary Ann Tetreault, International Political Economy Yearbook (Boulder, CO: Lynne Rienner Publishers, 1999), 113 -139.