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Why there is No Southern Problem.  
On Environmental Leaders and Laggards  
in the European Union

TANJA A. BÖRZEL

RSC No. 99/16

EUI WORKING PAPERS



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On Environmental Leaders  
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**BADIA FIESOLANA, SAN DOMENICO (FI)**

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## ABSTRACT<sup>1</sup>

Non-compliance with EU (environmental) law is often considered to be a 'southern' problem. Because of specific features of their political systems, which all four southern European member states allegedly share, they are believed to lack the capacity for effectively implementing EU policies. In contrast, I argue in this paper that, first, there is significant variation in compliance with EU environmental laws across the four southern European member states. Second, non-compliance is not simply systemic to the political systems of the member states. Nor is it an exclusive feature of EU environmental policy-making. As the comparative study on the implementation of six different EU environmental policies in Spain and Germany will show, both countries implement some policies better than others. My empirical findings do not only challenge the assumption that the southern European member states are in general incapable of complying with EU environmental law. They also indicate that compliance may vary across different policies *within* one country. The paper puts forward a model which allows to explain variation across both member states and policies by combining European and domestic factors. It is argued that non-compliance is most likely if an EU policy causes a significant 'policy misfit' *and* there is no mobilisation of domestic actors pressuring public authorities to bear the costs of implementing the 'misfitting' policy.

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<sup>1</sup> I would like to thank Andrea Lenschow, Christoph Knill, Adrienne Héritier, Christian Joerges, Geoffrey Pridham, Dieter Wolf, and Michael Zürn for their comments on earlier versions of this paper. The empirical results are drawn from my dissertation. The data were partly collected within a research project which Christoph Knill conducted at the European University Institute in 1997 and which was funded by the legal unit of DG XI of the European Commission.





## INTRODUCTION

Whereas the overall compliance of the member states with EU environmental law is rather low,<sup>2</sup> the southern member states have the reputation of being particular laggards. The poor implementation record of these countries is usually attributed to systemic deficiencies of their political and administrative institutions. Lacking administrative capacity, a civic culture inclined to individualism, clientelism, and corruption, and the fragmented, reactive and party-dominated legislative processes are believed to undermine the public willingness and ability to comply with EU environmental law. The difficulties of southern European countries in protecting their environment, have been also referred to as the 'Mediterranean Syndrome' (La Spina and Sciortino 1993). The Mediterranean member states do face considerable problems in the implementation of EU environmental policies. Yet, blaming the 'Southern Problem' (Pridham and Cini 1994) on certain 'Mediterranean' characteristics of these countries does not only neglect the considerable differences among them. This view reproduces specific northern European images of southern European politics and ignores the general causes of implementation failure and non-compliance arising from the nature and content of EU policies (Pridham 1996).

I argue in this paper that, first, there is significant variation in compliance with EU environmental laws across the four southern European member states. Second, non-compliance is not simply systemic to the political systems of the member states. Nor is it an exclusive feature of EU environmental policy-making. As the comparative study on the implementation of six different EU environmental policies in Spain and Germany will show, some policies are implemented while others are not, or only insufficiently. My empirical findings do not only challenge the assumption that southern European member states are in general incapable of complying with EU environmental law. They also indicate that compliance may vary across different policies *within* one country. This variation cannot be accounted for by either European or domestic factors only, as such factors are constant across all six cases under investigation. Rather, compliance problems result from an interplay between European and domestic factors. If an EU policy challenges existing domestic policies, its practical application and enforcement impose considerable costs, which the public administration is often not inclined to bear. Compliance problems should therefore only be expected, if there is a significant 'misfit' between the EU policy and a corresponding national policy. Such policy misfits, however, do not necessarily lead to implementation failure and non-compliance. The

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<sup>2</sup> Environmental policy accounts for over 20% of registered infringements of European law (Commission of the European Communities 1996; Jordan 1999; Mendrinou 1996).

mobilisation of domestic actors who pressure public administration to effectively apply an EU policy may significantly improve the level of compliance.

In order to support my argument about the relevance of policy misfit and domestic mobilisation in explaining the level of compliance with EU law, I proceed in three steps. First, I use the annual implementation reports of the Commission to show that there is significant variation between the different member states in their compliance with European environmental law. This variation clearly cuts across the north-south divide. Dominant models of the implementation of EU environmental policies have difficulties in accounting for such variation. Second, I develop an alternative model, which systematically links domestic and European factors. Third, I employ this model to explain compliance problems of Spain and Germany in the area of environmental policy. The empirical findings of the comparison demonstrate that environmental leaders and laggards alike face problems in complying with European environmental law. German authorities are as little inclined as Spanish authorities to comply with EU environmental policies, which do not fit the domestic regulatory structures. Significant mobilisation of domestic actors (environmental organisations, citizen groups etc.), however, can improve the compliance of recalcitrant member state administrations. I conclude with a summary of my major findings and some considerations on their implications for the research on (improving) compliance.

## **EXPLAINING THE 'SOUTHERN PROBLEM'**

### **The Doctor says it is the 'Mediterranean Syndrome'**

The literature which argues that implementation failure and non-compliance with EU environmental law is a specific 'Southern Problem' argues that the southern European member states share some features of their political and administrative systems which render them largely incapable of effectively implementing EU environmental policies. First, these countries are said to suffer from a considerable horizontal and vertical fragmentation of their administrative structures (Pridham 1996: 52). Environmental functions are dispersed between a range of national ministries, among which the Ministry of the Environment plays a rather weak role. This lack of horizontal co-ordination is complemented by a vertical fragmentation in Spain and Italy, where the regions dispose of considerable responsibilities in environmental policy.

Second, it is argued that southern European member states lack the administrative capacity to effectively implement European policies. Policy-making in these countries is reactive in policy style, which often contradicts the proactive approach embodied in EU environmental policies (Aguilar Fernandez 1994; Pridham 1996: 53). Moreover, southern administrations often do not possess sufficient technical expertise, staff, and infrastructure to effectively apply and enforce EU environmental legislation (Commission 1991: 213; Pridham 1994: 89/90; La Spina and Sciortino 1993: 224).

Third, it is suggested that the lower level of economic development in southern European states often renders the implementation of European environmental policies prohibitive due to powerful economic interests and the need to preserve and create employment (Pridham and Cini 1994: 255/256).

Finally, it is stated that political activism and environmental awareness are only emerging in southern European societies. Public support for environmental protection is low. And environmentalist interests have only limited access to public policy-making. With the exception of Italy, which has a proper ecologist party (*I Verdi*), the main parties have given attention to environmental matters only on an *ad hoc* basis (Pridham and Cini 1994: 262). The promotion of economic development is still a priority of both administration and the public (Yearley et al. 1994). It is argued that Mediterranean countries often do not implement EU environmental policy to improve environmental quality per se, but "to be seen as good Europeans, (...) to avoid censure, to qualify for advantageous funds" (Yearley et al. 1994: 14). Some authors push this cultural argument even further. They imply that the problems of the southern member states in implementing EU environmental policy can be understood as the result of a fundamental 'clash' of political cultures. Southern European countries have political systems traditionally dominated by patronage, clientelism and disrespect for public authority. This Mediterranean political culture contradicts the northern European political culture, which is built on corporate forms of social organisation and on which EU environmental policies are based (La Spina and Sciortino 1993; Lewanski 1993; Aguilar Fernandez 1994; Pridham and Cini 1994).

There can be no doubt that the southern European countries have considerable problems in complying with EU environmental policies. But these problems are not part of a homogenous phenomenon or a "disease called Mediterranean Syndrome" (Pridham 1994: 268), like some authors suggest (La Spina and Sciortino 1993). In contrast, I argue in this paper that, first, the southern European countries are diverse with respect to their political and administrative institutions. In Greece, environmental policy is centralised,

whereas Italian and Spanish regions enjoy considerable competencies in this area. Spain, Italy and Portugal have proper ministries for environmental policy, which are rather small, while in Greece, the environment is adjunct to a large ministry comprising other areas. Unlike Greece and Italy, the public administration in Spain is rather efficient (Pridham 1996: 68). Spain and especially Italy, which has the forth-largest economy in the EU, are more industrialised than Portugal and Greece.<sup>3</sup> Clientelism and administrative lethargy might still prevail in some Mediterranean regions, notably in the South of Italy (Grote 1997). But it would be difficult to make this argument for the whole of Italy or Spain.

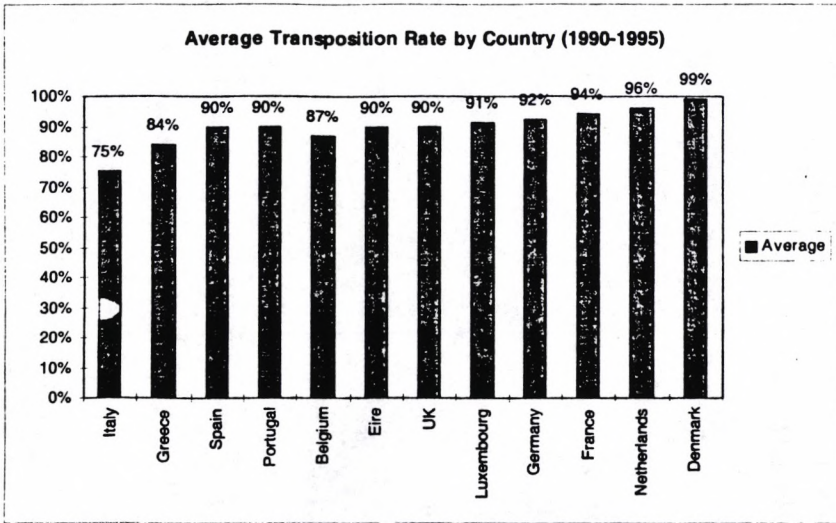
Second, if there exists something like a 'Southern Problem' or a 'Mediterranean Syndrome', why do we find considerable variation in compliance among and within the southern European member states in the area of EU environmental policy? For example, the average transposition rate of Spain (90%) and Portugal (90%) compares well against the UK (90%), Luxembourg (91%), Germany (92%), and France (94%), and is only topped by the Netherlands (96%) and Denmark (99%). At the same time, Greece (84%) and Italy (75%) find themselves on the very bottom of the list. When it comes to the infringement proceedings, Greece and Italy account for the highest number of both Article 169 warning letters and reasoned opinions. Spain also received a high number of Article 169 warning letters but was issued far less reasoned opinions than Greece and Italy. Portugal has the fifth lowest number of Article 169 letters (after Denmark, Luxembourg, the Netherlands, and France) and the second lowest number of reasoned opinions (after Denmark). Whereas Italy together with Belgium, tops the list of references to the ECJ and judgements, Greece and Spain score better than Germany and the Netherlands. Portugal accounts for the lowest number of references to the European Court of Justice together with Denmark.

In sum, there is no consistent outcome with respect to the compliance of the four southern European countries with EU environmental law. The figures for Greece and Italy indicate an overall low level of compliance, whereas Portugal puts up with the leader countries. Spain finally, seems to oscillate between the laggards and the leaders. This cross-national variation, which cuts across both the Mediterranean countries and the 'North-South divide', does not only challenge the Mediterranean Syndrome assumption but the whole North-South dichotomy along which implementation and compliance problems are discussed in the literature.

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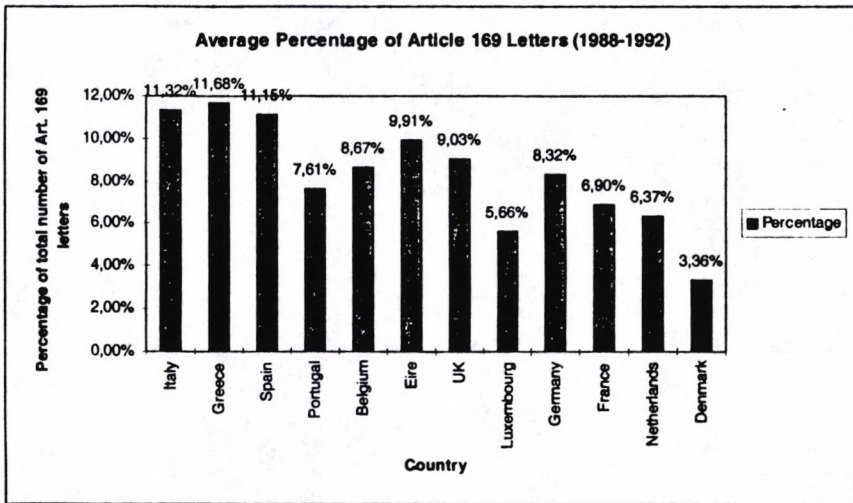
<sup>3</sup> The per capita income in Italy is twice as big as in Greece and Portugal, whereas Spain lies in between (*International Herald Tribune*, September 19, 1997, p. 7).

**Figure 1: Average Transposition Rate (1990-1995)**



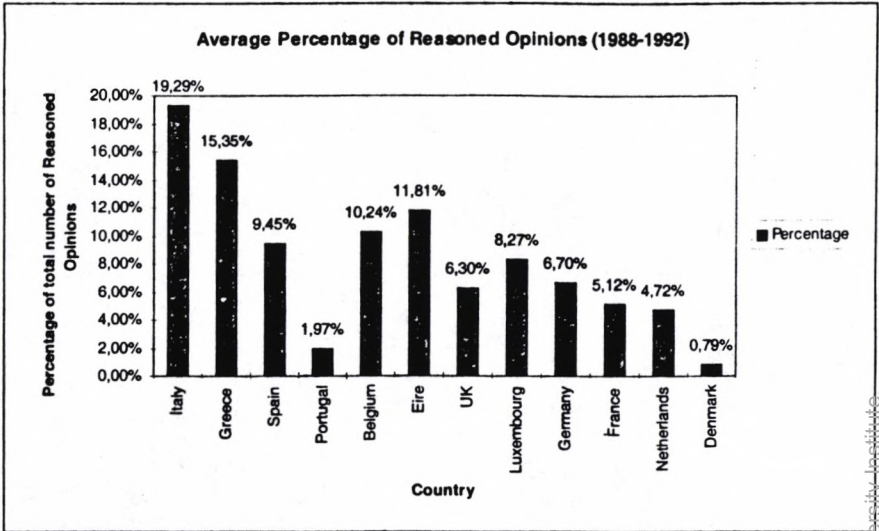
Sources: Commission 1993, 1995.

**Figure 2: Average Percentage of Article 169 Letters (1988-1992)**



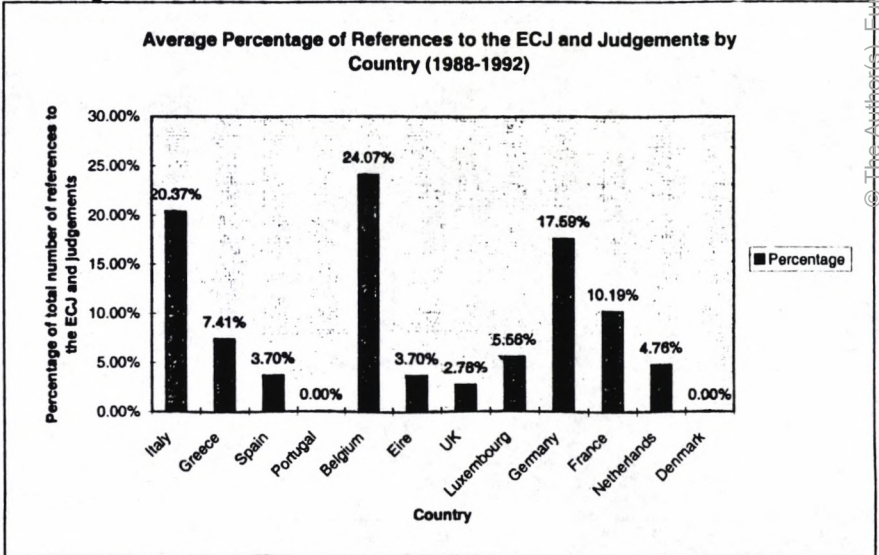
Sources: Commission 1993, 1995.

**Figure 3: Average Percentage of Reasoned Opinions (1988-1992)**



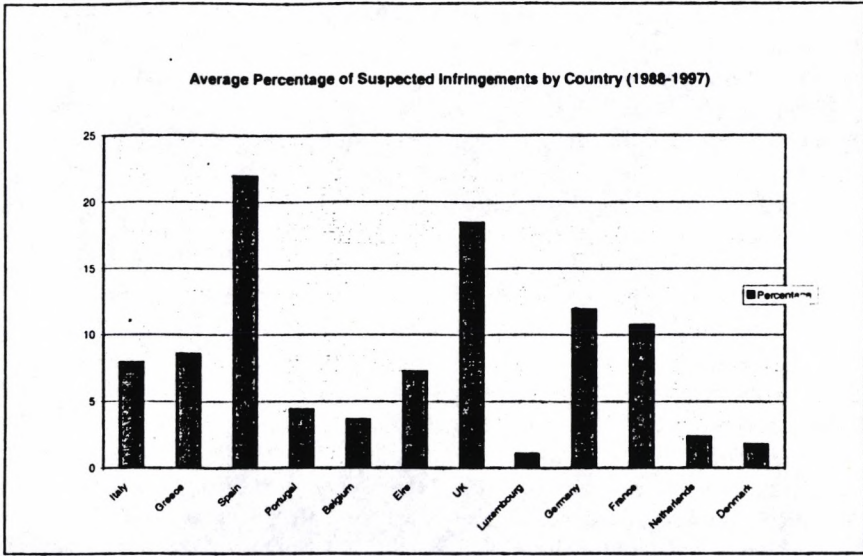
Sources: Commission 1993, 1995.

**Figure 4: Average Percentage of References to the European Court of Justice and Judgements (1988-1992)**



Sources: Commission 1993, 1995.

**Figure 5: Average Percentage of Suspected Infringements\* (1988-1997)**



Sources: Commission 1993, 1998

\* Suspected infringements refer to complaints to the Commission, questions and petitions made to the European Parliament, as well as to cases detected by the Commission

## TOWARDS A GENERAL APPROACH OF NON-COMPLIANCE

There have been several attempts to develop more general models of effective implementation in EU environmental policy, which reach beyond a simplistic North-South dichotomy. Such models draw on two groups of factors, which Geoffrey Pridham distinguished as *genetic* and *systemic* causes of implementation problems (Pridham 1996). *Genetic* causes arise from the specific structural character of EU environmental policy-making. Firstly, EU environmental policies deal with matters of high legal and technical complexity giving rise to questions of interpretation and issues of technical application, as well as difficulties in co-ordinating the different national authorities in the implementation process. The imprecision of many EU directives, ambiguous objectives, open texture, and the freedom of the member states to enact transposing legislation in the form most appropriate to their national conditions have often allowed member states to delay implementation or to make exceptions (Pridham 1996; Collins and Earnshaw 1992; Macrory 1992; Jordan 1999). Secondly, the EU does not have effective monitoring and enforcement mechanisms. The Commission has the power to bring infringement proceedings against member states under Art. 169 of the Treaty. And the new Art. 171 of the Maastricht Treaty introduces fines against the member states not complying with EU environmental legislation. However, the Commission itself recognises that infringement proceedings and fines are not an effective means for enforcing EU environmental policies (Commission of the European Communities 1996: 5; cf. Pridham 1996; Macrory 1992; Haas 1998; Jordan 1999).

*Systemic* or domestic accounts of implementation problems refer to the specific features of the political and administrative institutions of the individual member state. Pridham identifies four types of systemic or domestic causes of implementation problems. 1) *political/structural variables* referring to problems of institutional fragmentation (horizontal and vertical); 2) *administrative/procedural variables* drawing attention to questions of administrative style and administrative culture as well as of the efficiency of monitoring systems and the degree of technical expertise; 3) *economic variables* pointing at the relevance of the costs of applying a policy together with the interests of those affected by it; and 4) *cultural/attitudinal variables* referring to the problem of how different conceptual approaches of national administrations can lead to different interpretations of EU policies in the implementation (Pridham 1996; cf. Reh binder and Stewart 1985).

*Genetic* and *systemic* factors alone do not explain implementation failure. If implementation problems essentially arose from the specific nature of EU environmental policy-making, all member states should exhibit similar



implementation deficiencies, which is clearly not the case (see Figure 1-5). The 'systemic' or domestic variation of the EU member states with respect to the fragmentation of their political systems, their administrative capacity, their level of socio-economic development, or their environmental activism do not match the variation in their implementation records which we observe in Figure 1-5 either. There is no direct correlation between certain political/structural, administrative/procedural, economic or cultural/attitudinal characteristics of the member states and their compliance record. For example, Belgium, Germany, Spain, and Italy have strongly decentralised territorial structures. Whereas vertical fragmentation is discussed as a problem for implementation in Belgium and Italy, it is not in Germany (Haigh 1986; Pridham and Cini 1994), and to a lesser extent in Spain (Pridham 1996: 53). Although environmental policy is horizontally co-ordinated by a national ministry in Portugal and in Greece, both countries find themselves at opposite ends of the implementation ranking list. Italy has the fourth largest economy in the EU and the worst implementation record. Portugal and Greece qualify as the poorest EU member states, but Portugal joins the leaders and Greece the laggards. Belgium and above all, the UK possess a higher administrative capacity than Greece and Italy. But their implementation records look in some respects very similar. More importantly, systemic factors cannot account for intra-state variation across different policies. Why do countries like Spain, Germany, or the UK comply with some EU environmental policies better than with others?<sup>4</sup>

Some scholars strive to integrate generic and systemic factors in explaining the level of member state compliance with EU environmental law (Pridham 1996; Mendrinou 1996; Haas 1998). Yet, such 'integrative' approaches to implementation failure and non-compliance hardly specify how European and domestic factors interact. Nor can they explain the variation in effective implementation and compliance across different policies within one single country as found in the empirical study of this paper.

In sum, we need a model, which does not only allow to explain variation in compliance among the different EU member states, especially across the North-South divide. It must also be able to explain variation in compliance with different policies within a single member state. The next section attempts to develop such a model by systematically linking European and domestic factors in the implementation of EU policies.

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<sup>4</sup> For the UK see Knill 1998.

## Pressure from Above and from Below: The Pull-and-Push Model

The 'Pull-and-Push Model' is based on two major propositions. First, compliance problems only arise if the implementation of European policies impose considerable costs<sup>5</sup> for the public administrations of the member states. The less a European policy fits the legal and administrative structure of a member state, the higher the adaptational costs in implementation and the lower the willingness of the public administration to comply. Second, the willingness and/or ability of the public administration to bear the costs of implementing poorly fitting EU policies is influenced by additional pressure for adaptation from 'below' where societal actors may mobilise against ineffective implementation at the domestic level (pull), and from 'above' where the European Commission may introduce infringement proceedings (push).

### *External Pressure for Adaptation: Policy Misfit as the Necessary Cause of Non-Compliance*

EU environmental policy making is strongly influenced by the regulatory competition among highly regulated countries such as Germany, the Netherlands, Denmark, or the UK. These member states seek to bring EU policies in line with their own administrative traditions and regulatory standards in order to minimise costs of institutional adjustment and to avoid disadvantages for their economies (Héritier 1996). This regulatory competition has given rise to a 'patchwork' of EU environmental policies (ibid.), where different regulatory approaches are often linked even within one single policy. As there is no consistent regulatory framework in EU environmental policy, the individual member states face different levels of pressure for adaptation depending on the extent to which an EU policy 'fits' the national approach and standards. The more an EU policy challenges or contradicts the corresponding policy at the national level, the higher the need for a member state to adapt its legal and administrative structures in the implementation process (Knill 1997: 19). Legal and administrative changes involve high costs, both material and political, which public authorities are hardly inclined to bear.

It is assumed that compliance problems only occur if there is pressure for adaptation. If an EU policy fits the problem solving approach, policy instruments and policy standards adopted at the national level, there is no reason why public administration should resist implementation. The EU

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<sup>5</sup> Costs are not merely understood in economic terms. They can be also political, e.g. with respect to public support (endangering jobs), or political credibility and reputation (being a 'good European' or an 'ecological leader').

legislation can be easily absorbed into the existing legal and administrative structure. Only if the implementation of an EU policy requires considerable legal and administrative changes imposing economic and political costs on the public administration, non-compliance should be expected. Thus, there is hardly any incentive for a local administration to practically apply environmental standards if monitoring requires considerable financial and human resources, or if enforcement challenges powerful economic interests.

External pressure for adaptation arises from a 'misfit' or incompatibility of the problem solving approach, policy instruments and/or policy standards of an EU policy and the corresponding policy at the national level. Only if an EU environmental policy challenges one (two, or all) of these three elements, i.e. imposes significant costs of adaptation, its implementation gives rise to problems for the national administrations.

a) *Problem solving approach* refers to the general understanding of an administration how to tackle problems of environmental pollution. Two ideal types of problem solving approaches can be conceptualised:<sup>6</sup>

- *a precautionary, technology- and emission based approach*, which is based on imposing legally binding standards to be uniformly applied by all polluters irrespective of the differing local quality of the environment and the application of the available technology irrespective of the cost involved compared to the potential benefit for the environment
- *a reactive, cost/benefit- and quality based approach*, which builds on the setting of quality standards for a certain area and on balancing the costs of a technology against potential environmental improvements

b) *Policy instruments* refer to the 'techniques' applied to reach a policy goal by inducing certain behaviour in actors. They can be classified according to the following dimensions:

- *regulatory, command and control instruments*, which regulate behaviour through prescriptions and prohibitions threatening negative sanctions in case of non-compliance vs. *market-oriented*: offering financial incentives and *participatory, communicative*: providing information, encouraging public participation, deliberation
- *substantial regulation* by legally binding standards vs. *procedural regulation* through procedures, such as the balancing of costs and benefits or the public

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<sup>6</sup> The classification draws on the categories developed in a research project on the impact of national administrative traditions on the implementation of EU environmental policy conducted at European University Institute, Florence in April 1997 (Knill 1997; cf. Héritier, Knill, and Mingers 1996).

participation in authorisation procedures.

c) *Policy standards*, which can be quantitative or qualitative in nature (see above), refer to the guiding values set by a policy, e.g. for air or water quality. Yet, policy misfit causing external pressure for adaptation does not necessarily lead to implementation failure and non-compliance. The mobilisation of domestic actors who pull the policy down to the domestic level by pressuring the public administration to properly apply it, may persuade national public actors "to give priority to environmental policy and to embrace new directions" (Pridham 1994: 84). Legal action or public campaigns of environmental groups against the member state administration denouncing it for not complying with EU legislation, often provide an additional 'incentive' for better compliance. Such domestic mobilisation very often triggers additional external pressure for adaptation from 'above' by the European Commission which opens infringement proceedings against recalcitrant member states.

### *Domestic Pressure for Adaptation from 'below': The Pull-and-Push-Factor*

Internal pressure for adaptation arises from domestic mobilisation. EU policies usually have direct effects on domestic actors, imposing constraints for some and offering opportunities to others. It is typical for (EU) regulatory policies (like environmental policy) that their costs are allocated to those actors who are in charge of implementation and to those who are the target group of the policy. The domestic actors (public and private) who have to bear the costs of EU environmental policies (often subnational authorities and economic actors), tend to resist the practical application and enforcement of a policy. This resistance, however, can be counterbalanced by other domestic actors who strive to 'pull down' an EU policy to the domestic level by pressuring the public administration to practically apply and enforce it. This domestic pressure can be exercised through various channels (Pridham 1994: 94-98). First, political parties can raise concerns about the proper implementation of policies vis-à-vis the government, like the Catalan socialists did in 1989, when they questioned the non-application of the Environmental Impact Assessment Directive in the authorisation of a motorway cutting through a nature reserve.<sup>7</sup> Second, environmental organisations can act as a 'watchdog' drawing the attention of both public authorities (national and European) and the public opinion on

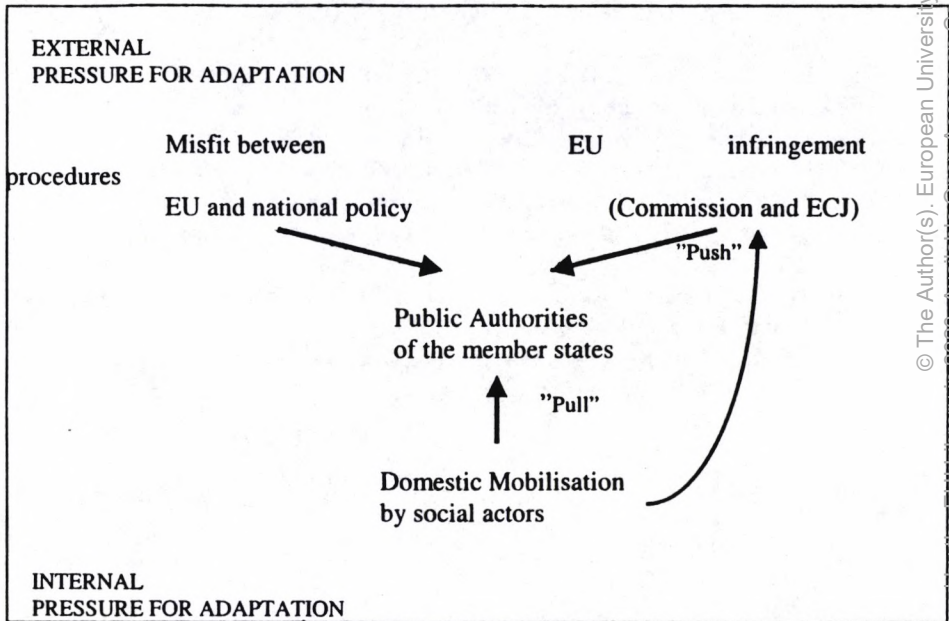
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<sup>7</sup> First, the socialists raised the issue in the Catalan parliament and subsequently made a complaint to the Commission and the European Parliament. The Commission decided to freeze the loan granted to the promoter of the project by the European Bank for Investment and Reconstruction and asked for the elaboration of an environmental impact assessment including corrective measures (Font Borrás 1996, 137).

incidents of non-compliance with EU environmental legislation. Third, the media can play a crucial role for domestic mobilisation. Media coverage often decides whether an environmental issue gains public attention and support. And fourth, business and industry can mobilise in favour of compliance with a policy. The Eco-Audit Regulation is an example for economic interests promoting rather than obstructing the effective implementation of a misfitting EU environmental policy. Domestic mobilisation is most effective if it is able to link-up with European institutions, reinforcing external pressure for adaptation due to policy misfit by initiating infringement proceedings.

In sum, if public authorities get 'sandwiched' between adaptational pressure from above (EU) and below (domestic actors), EU environmental policies have a good chance to be more effectively implemented, even if implementation involves high costs due to policy misfit.

**Figure 6: The Pull-and-Push Model**



This Pull-and-Push Model generates the following hypothesis about when non-compliance is most likely to occur:

*The higher the pressure for adaptation and the lower the level of domestic mobilisation, the more likely is non-compliance.*

## THE IMPLEMENTATION OF EU ENVIRONMENTAL POLICY IN SPAIN AND GERMANY

For the empirical case study, six different EU environmental policies were selected:

- The Drinking Water Directive,<sup>8</sup>
- The Directive on the Combating of Air Pollution of Industrial Plants,<sup>9</sup>
- The Large Combustion Plant Directive,<sup>10</sup>
- The Access to Information Directive,<sup>11</sup>
- The Environmental Impact Assessment Directive,<sup>12</sup>
- The Eco-Audit Regulation.<sup>13</sup>

The six policies exert different degrees of pressure for adaptation on the legal and administrative structures of Spain and Germany.

In order to assess Spain's and Germany's compliance with these six policies, I will analyse legal transposition, practical application and enforcement in each case. A policy will be considered as effectively implemented and complied with if 1) it is completely and correctly transposed into national law, 2) conflicting national provisions were amended or repealed, 3) the administrative infrastructure and resources were provided to put the objective of the policy into practice, and 4) the competent authorities encourage or compel others to comply with the legislation by monitoring, positive and negative sanctions, and compulsory corrective measures.<sup>14</sup>

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<sup>8</sup> 80/778/EEC.

<sup>9</sup> 84/360/EEC.

<sup>10</sup> 88/609/EEC.

<sup>11</sup> 90/313/EEC.

<sup>12</sup> 85/337/EEC.

<sup>13</sup> 1836/93/EEC.

<sup>14</sup> Hence the concern of the case study lies with the output rather than the outcome of the different EU environmental policies.

## The Drinking Water Directive: Spanish Fit and German Misfit?

The Directive on the Quality of Water on Human Consumption (Drinking Water Directive) adopted in 1980, establishes legally binding, substantive standards to reach a certain level of drinking water quality. It also sets procedural regulations of how often and by what means the monitoring of the water quality is to be carried out.

### *Spain: Neither Pull nor Push*

At first sight, the Drinking Water Directive does not produce any substantial policy misfit in Spain. Four years before its accession to the EC, Spain systematically enacted a list of binding standards for drinking water quality and set up procedures for monitoring compliance. The Spanish legislation anticipated most of the European regulations and requirements for drinking water. Consequently, the actual implementation of the Drinking Water Directive after Spain's accession to the EC did not produce any significant pressure for adaptation. No major implementation costs appeared to be involved. The legal and administrative structures for regulating and monitoring the quality of drinking water had already been in place for some years.

In how far Spain is practically applying the Directive, however, is difficult to assess. Neither the Spanish authorities and the local water suppliers nor the European Commission and the Spanish environmentalists report any problems in complying with the standards of the Drinking Water Directive. But data on water quality are hardly available. Spanish authorities admit that the municipalities often lack the technical and financial resources for properly monitoring the drinking water quality. While Spain formally complies with the requirements of the Directive, monitoring suffers from an uneven geographical distribution of measurement stations and a measurement technology which is often not up to standard (OECD 1997; Instituto para la Política Ambiental Europea 1997). The measurement of some parameters set by the Drinking Water Directive, for instance, requires a sophisticated technological equipment that is not only expensive but also demands manpower and expertise which often lacks at the subnational level. Both the Commission and the Spanish authorities are aware of the problem. But as domestic actors, including environmentalists, do not consider compliance with the quality standards of the Drinking Water Directive to be a problem (interviews, 3/97), Spain has not faced any internal or external pressure which would have forced public authorities to address the problem of inefficient monitoring.

## Germany: Push without Pull

The Drinking Water Directive in principle corresponds to the German approach in drinking water policy. But some of the standards as well as certain procedural requirements of the Directive produced a certain policy misfit. First, unlike the German Drinking Water Ordinance, the quality standards of the Drinking Water Directive do not only account for public health requirements but also aim at protecting the environment. As a result, the Drinking Water Ordinance of 1980, which is exclusively oriented towards public health concerns, does not regulate many of the European parameters. Second, particularly the European limit values for pesticides are for more stringent than German regulations. The direct enforcement of the directive would have required the immediate closure of numerous wells in Germany (Müller-Brandeck-Bocquet 1990: 143). As a result of these misfits, Germany transposed the directive only with a six years delay in 1986. But the revision of the Drinking Water Ordinance still omitted almost half of the parameters listed in the Directive. Moreover, *Bund* and the *Länder* agreed to enforce the pesticide standards only from 1989 on in order to give agriculture some time for adjustment. The *Länder* also had the discretion to grant exemptions for certain limit values if this did not constitute a risk for public health. While German environmental group supported this gradual adaptation to European standards (interviews, 1/97), the Commission referred what it considered an incomplete transposition of the Directive to the European Court of Justice (ECJ) in 1989. Facing a conviction by the ECJ, Germany finally gave in and revised its drinking water policy in 1990. Despite formal compliance, administrative practice has not changed much. Compliance with certain limit values remains a problem (Länderarbeitsgemeinschaft Wasser 1997) as a result of which the *Länder* administrations still negotiate temporary exemptions with the water suppliers.

In sum, the Drinking Water Directive caused misfits for both Spain and Germany which resulted in problems of compliance. Spain, however, has not faced any additional pressure for adaptation, neither internal nor external, to upgrade its monitoring system. Spanish environmental groups do not perceive water quality as a problem. And the Commission has not denounced Spain for any infringements of the Directive either. Germany did not face any internal pressure for adaptation either as environmentalists largely supported the gradual adaptation to European standards. But the Commission exerted considerable external pressure for adaptation due to the obviously incomplete transposition of the Directive. This 'push without pull' brought Germany finally in formal compliance with the Drinking Water Directive. In lack of domestic mobilisation, however, full compliance in practical application and enforcement remains unlikely.



## **The Air Pollution Directives: German Fit and Spanish Misfit**

The Industrial Plant Directive, adopted by the Council in 1984, provides a procedural framework regulation for preventing and reducing air pollution caused from industrial plants. The authorisation of a new plant, or of the substantial modification of an already existing plant is only to be granted if 1) all appropriate preventive measures against air pollution were taken, including the application of the best available technology not entailing excessive costs, 2) the emission of the plant will not cause any significant air pollution, and 3) none of the emission or air quality limit values applicable will be exceeded.

The Large Combustion Plant Directive (LCP) of 1988 extends the requirement of the best available technology, though not exceeding excessive costs (BATNEEC), to the measuring methods used for monitoring compliance with air pollution standards. Most importantly, the LCP provides an annual reduction target for emissions the member states have to comply with.

### *Germany: Complete Fit*

The two directives on air pollution control were very much modeled on the German emission and technology based approach in combating environmental pollution, as a result of which they did not produce any kind of adaptational pressure for Germany (Héritier et al. 1996).

### *Spain: Complete Misfit*

#### The Industrial Plant Directive: Neither Pull nor Push

At first sight, Spanish legislation on combating air pollution appears to fulfil the major requirements of the Industrial Plant Directive. A closer look at the regulations, however, reveals important deficiencies. First, the formal requirements of the impact assessment as well as the consideration of corrective measures are certainly not sufficient to meet the respective regulations of the Directive. Second, dispersion measures do not really qualify as appropriate preventive measures against air pollution. Third, the importance of technological progress in combating air pollution is acknowledged in Spanish legislation. But any reference to available technology is linked to considerations about how environmental legislation must always be a compromise between public health considerations on the one hand, and economic imperatives and the available technology on the other hand. Moreover, the criterion of "best available technology" (BAT) is nowhere defined nor is its application explicitly required.

Due to these considerable misfits between the problem solving approaches in the EU legislation and Spanish regulatory practice, the Industrial Plant Directive has never been transposed into Spanish law. Thus, it does not come as a surprise that those parts which do not correspond to Spanish legislation are not practically applied either because of the high costs involved. In order to avoid additional working load and to escape opposition of industry, public administration has refrained from systematically considering preventive measures in the authorisation of industrial plants. Nor is BAT enforced on Spanish industrial plants. Environmental groups have been aware of the ineffective implementation of the Industrial Plant Directive. But they refrained from mobilising against public administration because they strive to concentrate their resources on more "important issues" (interviews, 3/97). Air pollution is not a high ranking issue neither in the public opinion nor on the political agenda of the environmentalists. The Commission in turn, has apparently accepted Spain's claim that existing legislation already comply with the requirements of the directive.

#### The Large Combustion Plant Directive: Pull without Push

Spanish legislation provides both quality and emission standards in order to control air pollution. It also sets requirements for progressively reducing the level total emissions. Yet, the SO<sub>2</sub> emission limit values for old as well as for new combustion plants were nowhere near the limit of the LCP Directive. In other words, there was a clear misfit between European and Spanish substantial air pollution standards. Moreover, as Spain did not implement the Industrial Plant Directive, Spanish air pollution control legislation was still missing the precautionary and technology-based problem solving approach adopted by the LCP Directive.

In order to bring Spanish emission limit values for combustion plants up to European standards, and to incorporate the total emission reduction levels for existing plants, Spain transposed the LCP Directive into Spanish law. The legal text is almost a literal copy of the Directive. It is to simply replace existing national legislation in all the parts in which it is not conform with the Directive. The 'automatic' suspension of conflicting national provisions brought Spain in formal compliance with the LCP Directive. But it resulted in a lack of domestic regulations which would operationalise certain regulations of the Directive, such as the application of BATNEEC in reducing emissions and monitoring compliance.

Due to a considerable policy misfit with respect to policy standards and BATNEEC requirements, the practical application and enforcement of the LCP Directive imposes considerable costs. First, Spain will have to cut its total SO<sub>2</sub>

and NO<sub>x</sub> emission by half till 2003. And second, Spain has to up-grade its measurement technology in order to meet the BATNEEC requirements.

Spain is the third largest SO<sub>2</sub> emitter in OECD Europe (after Germany and the UK). Compliance problems with (SO<sub>2</sub>) emission standards of the LCP Directive for existing plants have been basically limited to Spain's two largest central power stations, As Pontes (Galicia) and Andorra (Aragón), which account for more than half of the total SO<sub>2</sub> emissions in Spain. Andorra is considered the second most contaminating central power station in Europe. Following the requirements of the LCP Directive, the Ministry of Industry and Energy developed a National Plan, whose foreseen reductions went well beyond those required by the LCP Directive and could only be achieved by systematically applying BAT, or, by importing better quality coal (interview, 6/98). Both central power stations burn to 80 percent indigenous high sulphur coal, and coal mining is the major source of socio-economic development in the areas where the central stations are located. This was the reason why the Spanish administration initially did not take any measures to practically apply and enforce the ambitious emission reductions of the National Plan.

Yet, at the beginning of the 1990s, massive *Waldsterben* (forest dying) was observed in the neighbouring provinces of the Andorra plant. Local municipalities, environmental groups (among others Greenpeace), trade unions and political parties started to mobilise against the pollution caused by the central power station. After a fierce public campaign, which included a environmental liability law suit (cf. Font Borrás 1996, 250-71), the management of the Andorra power station agreed to implement an environmental plan which anticipates SO<sub>2</sub> emission reductions that supersede those required by the LCP Directive by 40 percent. This *over-compliance* with the Directive is explained by the continued domestic mobilisation due to massive environmental deterioration which linked to the pollution caused by the power station. According to a recent OECD report, Spain succeeded in significantly reducing its SO<sub>2</sub> emission over the last years. The reduction, however, has been mainly achieved by substituting indigenous low quality coal through higher quality imports, not by introducing BAT (OECD 1997). Spanish administration and industry alike justify the *non-introduction* of BAT on the grounds of too extensive costs as most of the existing combustion plants date back to the 1960s and 1970s (interviews, 3/97). The considerable costs involved have also prevented the necessary upgrading of the Spanish system for monitoring air quality in order to make it comply with the BAT requirement of the Directive.

To conclude, while the two European directive on combating air pollution fit the corresponding German policies, they exert considerable pressure for

adaptation on Spanish air pollution policy. The required modernisation of Spanish industrial plants imposes high costs which neither industry nor public authorities are inclined to bear. As a result, the Industrial Plant Directive has not been implemented at all. The LCP Directive has simply been absorbed into the Spanish system leaving substantial parts non-applied. Only when societal actors mobilised for a more effective air pollution control, Spanish industry and public authorities started to take action as a result of which Spain has considerably reduced its emissions over the last years.

### **The Environmental Impact Assessment Directive: Misfit in Spain and Germany**

Environmental Impact Assessment (EIA) constitutes an instrument of procedural regulation, which assesses in a systematic and cross-sectoral way the potential impact of certain public and private projects on the environment. The basic principle of the EIA Directive is that any project which is likely to have significant effects on the environment is subject to an environmental impact assessment prior to authorisation by the competent authority, in which the concerned public may participate and whose results have to be made public.

#### *Spain: Diffuse Pull and Reluctant Push*

Before the EIA Directive, there was no comprehensive environmental impact procedure in Spain. Different sectoral environmental regulations required the assessment of certain environmental impacts of a planned project. But the Spanish EIA lacked the explicit precautionary approach of the Directive. The requirements for information to be provided by the developer are much less demanding. The period of public information and consultation is shorter. Requirements for corrective measures are lax to non-existent. Cross-media effects are not systematically considered. Due to these misfits between European and Spanish EIA regulations, Spain transposed the EIA Directive by a proper law.

Yet, the new Spanish law does not correctly transpose the EIA Directive. The Commission has repeatedly reprimanded Spain for not defining conditions under which projects listed in Annex II of the Directive have to be made subject to an EIA (Commission 1995: 63). After the Commission had sent a Reasoned Opinion in 1992, the Spanish government finally agreed to remedy the matter by 1994. Yet, the Spanish EIA legislation has not been modified so far. As a result the Commission is considering to (re)open the infringement proceedings which it suspended in 1992.

While legal transposition is already incomplete, practical application has also been little effective. Administrative changes have been small. The EIA procedure was incorporated into the existing administrative procedures. Consequently, there is a lack of sufficient manpower and expertise, especially if the relatively short time period for the assessment and the cross-media approach of the Directive is taken into account. Environmental authorities do not ensure the good quality of Environmental Impact Studies which the promoter of a project has to provide (discussion of alternatives e.g.). Nor are the competent authorities willing to mobilise additional resources to adequately assess the Environmental Impact Studies and enforce corrective measures. The vast number of the solicited projects receive a positive EIA, and many projects still proceed without any authorisation, or only ask for it when they are already implemented. Local authorities, in charge of monitoring, often cover up for this 'circumvention' of authorisation procedures in order not to suffer socio-economic disadvantages.

Domestic actors have been mobilising against the ineffective application of the EIA Directive trying to pull the policy down to the domestic level. Environmentalists and citizen groups, often in coalition with local administration, increasingly use EIA to oppose the authorisation of public and private projects. Denouncements and petitions made to the Spanish parliament with respect to infringements of the EIA regulations account for about 30% of the total number in the environmental sector. Together with the Habitat and the Wild Bird Directive, EIA also represents the highest number of Spanish complaints to the Commission (about 30%). In a number of cases, domestic mobilisation led to the imposition of corrective measures, and sometimes even to the rejection of a project. Yet, environmental and citizen groups have only limited resources. Domestic mobilisation is usually restricted to issues which seriously affect the 'backyard' of a large group of people at the local level. As a result, the internal pressure for adaptation has so far been too diffuse to systematically improve compliance with the EIA Directive.

#### *Germany: Combined Pull and Push*

In Germany, the concept of EIA forms part of sectoral authorisation procedures, such as in air pollution. Yet, the highly sectorised German legislation does not fit the integrated, cross-media approach of the EIA Directive. Nevertheless, German administrators have considered the transposition of the directive unnecessary claiming that existing legislation already covered all the provisions of the Directive even going beyond some requirements. Transposition was delayed by two years. As a result, several environmental organisations filed complaints with the Commission claiming direct effect of the EIA, which was

confirmed by the European Court of Justice. When Germany finally enacted a law in 1990, transposition was still incomplete as more than one third of the Annex II projects were omitted. In light of several rulings of the European Court of Justice and the revision of the EIA Directive in 1997, Germany is currently revising its EIA legislation to bring it in formal compliance with EU regulations.

While approaching formal compliance, practical application and enforcement is still deficient. The administrative directive (*Verwaltungsvorschrift*) regulating the practical application of EIA in Germany only came in 1995, 10 years after the EIA Directive had been passed. Moreover, the administrative directive waters down the cross-media, interdisciplinary approach of the EIA Directive as well as the requirements for public participation. As a result, practical application of EIA is reduced to compliance with environmental standards which exist for the different media (Bohne forthcoming). Changes to administrative practice have been marginal.

The ineffective application of the EIA procedure has provoked the opposition of domestic actors. Yet, like in Spain, environmentalists and citizen groups lack the resources to systematically appeal against the deficient application of the EIA regulations. And even if they succeed in bringing cases to the court, German jurisdiction tends to support the restrictive interpretation of the EIA followed by the public administration.

In sum, the EIA Directive has produced considerable policy misfit in Spain and Germany, which resulted in problems of compliance in both countries. Spanish and German environmentalists alike mobilised against the ineffective implementation of the EIA Directive. While Spanish environmental groups have been less successful in inducing the Commission to exert additional pressure for adaptation, several infringement proceedings forced Germany to remedy its incomplete transposition legislation. Given the limited resources of local environmental and citizen groups in both countries, domestic adaptational pressure for improving practical application and enforcement of the EIA procedure is still diffuse and hence not very effective.

### **The Access to Information Directive: Misfit in Spain and Germany**

The Access to Environmental Information Directive (AI) adopted in 1993 shall broaden public access to environmental information as to increase transparency and openness thereby encouraging citizens to participate more actively in the protection of the environment. Its procedural regulations require any public authorities holding information on the environment, or bodies with public re-

sponsibility for the environment, have to make such information available to any natural or legal person at his or her request without his or her having to prove "direct effect". The Directive defines some conditions under which information may be refused. It must be possible, however, to seek judicial and administrative review against the refusal of, or failure to provide a requested information. Beside the obligation to make environmental information available upon request, member states are called upon to actively provide general information to the public.

### *Spain: Increasing Pull and Push*

In Spain, access to information held by public authorities has traditionally been highly restricted and not freely available either to ordinary citizens or to non-governmental organisations (NGOs). Spanish legal provisions and administrative practices granted access to information only in justified cases and are thus in sharp contrast with the AI Directive which demands general access to information for anybody only to be refused in justified cases. This 'misfit' produces a high pressure for adaptation in the implementation of the AI Directive. The costs of such adaptation do not lie so much with an additional working load for the administration. Broader access to information provides the public with an effective means of controlling administrative behaviour such as monitoring compliance with environmental legislation. It also allows for more transparency in administrative decision-making. Not surprisingly, Spanish administration, not being used to public scrutiny, has shown little enthusiasm in complying with the AI Directive.

When the AI Directive had come into force in December 1992, the European Commission started receiving complaints from Spanish environmental NGOs about the non-implementation of the Directive. In March 1993, the Spanish government notified the Commission that the AI Directive had been implemented by the new Law on the Legal Regime of Public Administrations and Common Administrative Procedures passed in 1992. Yet, this law did not properly implement the AI Directive, as a result of which complaints to the Commission continued. In March 1994, the Commission opened an infringement proceeding against Spain sending an Art. 169 letter. Spanish NGOs strove to invoke the "direct effect" of the AI Directive, and the Commission also intervened in some cases of refusal of information. In view of this pressure from above and from below, the Spanish government prepared a new Draft Law on the Right of Access to Information on the Environment, which was enough for the Commission to stop the infringement proceeding. In 1995, the AI Directive was finally transposed into national law.

The transposition law closely follows the structure and content of the Directive. But it still does not fully implement the European norm. First, the right of access to information is not granted to everybody but restricted to nationals or residents of states forming part of the European Economic Area (EEA). Second, a request not answered within two months is to be considered a refusal, even if no justification is provided. Finally, authorities can make charges for supplying requested information. There is no mentioning that such charges should not exceed a reasonable cost. Each authority is free to make its own charges and there is no obligation to inform the requester in advance of the charges that will be made.

In light of the still incorrect transposition of the AI Directive, complaints of societal actors to the Commission have continued. In February 1996, Greenpeace presented a third complaint to the Commission arguing that Spanish legislation did still not effectively implement the AI Directive. This complaint resulted in another infringement proceeding against Spain. The Environmental Ministry is currently working on a revision of the transposing legislation.

Like formal transposition, practical application and enforcement has not been very effective in Spain. Practical arrangements for regulating access to information are missing. Most requests are simply not answered. Or, high charges are imposed. National environmental groups have organised nationwide campaigns against such infringements of the AI Directive. They provide information brochures which explain the rights of access to information and include standardised forms by which information can be requested as well as appeals against refusal made. Documentation centres collect cases of non-compliance with AI requirements. At the local level, however, public demand for environmental information is still low. Like in the case of the EIA Directive, local environmentalists and citizen groups have only limited resources to push their rights to information against the resistance of public administration.

### *Germany: Increasing Pull and Push*

The AI Directives constitute for Germany as much a misfit as for Spain. The comprehensive right to access to environmental information which the Directive grants irrespective of interest and procedural context completely contradicts the German administrative tradition based on the confidentiality of information in possession of public authorities. The principle of 'restricted access to records' grants the public access to information only in justified cases, that is in the context of certain administrative procedures and when third parties can claim a 'legitimate' interest. The procedural regulations of the AI Directive which aim at more transparency and public participation do not fit the regulatory



command-and-control approach of German environmental legislation and, consequently, faces strong opposition by public authorities.

The transposition of the Directive was delayed by 1,5 years. As a result, German environmental groups filed several complaints with the Commission. When the Commission opened an infringement proceeding, Germany finally enacted the Environmental Information Act (*Umweltinformationsgesetz*) which, however, does not fully comply with the Directive. First, the definition of public authorities subject to the AI regulations is far more limited than in the Directive. Second, there are no criteria according to which public authorities can declare an administrative procedure as ongoing and hence exempt it from the AI requirements. Third, the competent authority has a choice of how to supply requested information and thus does not necessarily have to grant access to records. Finally, there are no clear criteria for charges which public authorities can impose for the provision of information. In light of the incorrect transposition, complaints to the Commission continued. In 1995, the Commission opened another infringement proceeding against Germany which is still pending before the European Court of Justice. In anticipation of the ruling, German environmental authorities are already working on a revision of the Environmental Information Act.

Incorrect transposition gave rise to even lower compliance in practical application and enforcement. The vagueness of the German regulations allows public authorities to interpret them against the 'spirit' or even the wording of the Directive. Like in Spain, information is often denied or high charges imposed. German environmental groups have strongly mobilised against the ineffective application of the AI regulations. Like their Spanish counterparts, they organised information campaigns, issued publications, launched several series of systematic requests for information, collected and documented cases of refusal, lodged administrative appeals, filed law suits, and sent complaints to the Commission. Domestic mobilisation has been stronger than in Spain, given the superior resources of German environmental NGOs. But its effect has (so far) been largely restricted to an improvement in formal compliance (still to come).

The AI Directive is, like the EIA Directive, a clear example for an EU policy causing serious problems of compliance for environmental leaders and laggards alike. Spanish and German authorities resorted to similar strategies in trying to circumvent the requirements of the Directive. And Spanish and German NGOs employed similar means in their attempt to pull the AI Directive down to the domestic level. While their repeated complaints resulted in infringement proceedings which push both countries closer to formal

compliance, domestic mobilisation against ineffective practical application and enforcement is too diffuse to bring about any systematic improvements.

### **The Eco-Audit Management and Audit System Regulation: Policy Misfit But No External Pressure for Adaptation**

The Community Eco-Management and Audit Scheme (EMAS), established by a Regulation in 1993, is a voluntary instrument which is to provide incentives for enterprises to introduce an environmental management system for assessing and improving industrial activities and providing the public with adequate information. Having direct effect, the EMAS Regulation does not require transposition. However, the member states are supposed to establish a system of registration for sites which implement EMAS, as well as of accreditation of independent environmental inspectors and the supervision of their activities. Given its voluntary character, EMAS cannot really cause compliance problems. Yet, it presents an interesting case as EMAS appears to be the exception which confirms the rule.

#### *Spain: No Pull - no Push*

Despite their elements of self-regulation and communication, which do not fit the regulatory command and control approach in Spanish environmental policy, management and audit systems are not entirely new to Spain. Spain did not only adopt the ISO 14001 system. Like the UK and Ireland, it also developed a national management system. But while EMAS is far more demanding than both the international and the Spanish system, its implementation exerts no real pressure for adaptation because of its voluntary character.

Spain fully incorporated the required system of registration, accreditation and supervision into its already existing 'infrastructure for the quality and safety of industry' for ensuring certain quality and safety standards applied to industrial activities. While sites implementing EMAS have to register with the environmental authorities, accreditation and supervision of the environmental verifiers is handled by the national accreditation society ENAC (*Entidad Nacional de Acreditación*), a private non-profit organisation in which both public and private actors are represented. All in all, the implementation of EMAS gave only rise to marginal legal and administrative changes.

Spanish industry appears to be very reluctant in implementing the Eco-audit management system. Costs of implementation are high, and so are concerns of companies to reveal their degree of (non)compliance with

environmental legislation. So far, very few enterprises have registered in Spain. Those which did are predominantly multinational companies.

One can argue to what extent EMAS fits the Spanish legal and administrative structures. The effective implementation of EMAS would have certainly required some legal and administrative changes which go beyond the mere absorption into the existing structures. There are, for instance, no clear criteria for the accreditation and supervision of the auditors. Yet, the Spanish industry shows little interest in pulling EMAS down to the domestic level. Given the absence of any domestic mobilisation in favour of an effective application of EMAS, public authorities have little incentive to undertake necessary changes.

### *Germany: Pull without Push*

The German position towards EMAS was very hostile in the first place. The principle of industrial self-regulation does not fit the German interventionist, command and control approach in environmental policy, especially as EMAS does not contain any material regulations. This was also the reason for the scepticism of German industry which was concerned that EMAS could bring more rather than less regulation at the national level. But the EMAS Regulation was finally passed. While the German Ministry of Environment strove to absorb EMAS as far as possible into the existing regulatory structures, industry insisted on an 'innovative' implementation which implied substantive legal and administrative changes. This 'pull' or domestic mobilisation by German industry, despite its initial opposition, is explained by the fact that industry increasingly perceived EMAS as a chance of substituting for state control in complying with environmental standards.

In light of the mobilisation of industry, Germany, unlike Spain, did not simply integrate the system for registration, accreditation and supervision into existing structures of state regulation. Instead, industry is in general responsible for the registration of sites implementing EMAS and the accreditation as well as the supervision of environmental verifiers. Yet, the professional criteria to be met by the verifiers for accreditation and the guidelines for their supervision are set by a pluralistic expert committee consisting of representatives of industry, trade unions, environmental organisations, and the environmental and economic administration of *Bund* and *Länder*. The mixed system of industrial self-regulation and moderate state intervention do not only go far beyond the legal and administrative changes required by the Regulation. It has also proved to be very successful. Germany accounts by far for the highest number of registered sites in the EU.

To conclude, EMAS did not fit either Spanish or German state tradition of intervention and regulation. While the voluntary character of EMAS largely precludes any compliance problems, it illustrates the importance of domestic mobilisation. In Spain, industry showed little enthusiasm for EMAS as a result of which the policy was merely absorbed into existing regulatory structures. In Germany, however, industry pulled the policy down to the domestic level pressing for an 'industry-friendly' implementation which resulted in the highest level of 'compliance' in the EU – despite the initial policy misfit.

## **CONCLUSION: ON NORTHERN LEADERS AND SOUTHERN LAGGARDS**

The case study on the implementation of six different EU environmental policies clearly indicates that environmental leaders and laggards face similar problems of compliance if an EU policy does not fit their legal and administrative structures. With the exception of the two air pollution policies in Germany, the selected policies exerted pressure for adaptation on the legal and administrative structures of Spain and Germany alike which resulted in significant compliance problems in both countries. In all 10 cases of policy misfit, Spain and Germany were very reluctant to introduce the necessary legal and administrative changes and mobilise additional resources in order to ensure complete and correct transposition as well as effective practical application and enforcement. Compliance only improved when domestic actors - in particular environmental organisations and citizen groups but also industry as we saw in the EMAS case - mobilised and exerted internal adaptational pressure on public authorities and policy-makers. Societal actors striving to pull a European policy down to the domestic level usually mobilise the Commission to push the policy from above by opening infringement proceedings. The Drinking Water Directive in Germany is the only case in which the Commission took action which was not preceded by massive complaints of NGOs. And in case of EMAS, the mobilisation of German industry was sufficient to bring about legal and administrative changes which ensure a high level of compliance. The combined adaptational pressure from above and from below explains the (albeit slowly) emerging compliance of Spain and Germany with the Access to Information and the Environmental Impact Assessment Directive, as well as Spain's 'overcompliance' with the Large Combustion Directive. In absence of both 'pull' and 'push', member state compliance with misfitting policies is likely to remain low like in case of the Industrial Plant Directive, the Drinking Water Directive and the EMAS Regulation in Spain.

**Table 1: The Relationship between Policy Misfit, Domestic Mobilisation and Compliance**

	<b>Non-Compliance</b>	<b>Improving Compliance</b>	<b>Compliance</b>
<b>Policy Misfit/ No Domestic Mobilisation</b>	- DW in Spain - Industrial Plant in Spain - EMAS in Spain	- DW in Germany	
<b>Policy Misfit/ Domestic Mobilisation</b>		- LCP in Spain - AI in Spain - AI in Germany - EIA in Spain - EIA in Germany	- EMAS in Germany
<b>No Policy Misfit/ No Domestic Mobilisation</b>			- Industrial Plants in Germany - LCP in Germany

DW = Drinking Water; LCP = Large Combustion Plant; AI = Access to Information; EIA = Environmental Impact Assessment; EMAS = Eco-Audit and Management System.

The findings of the comparative study demonstrate two important limits of existing approaches to implementation failure and problems of compliance. First, there is considerable variation, not only between states but also between different policies within one state. While Germany did not have any problems in effectively implementing the two Air Pollution Directives, its compliance with Environmental Impact Assessment and Access to Information is as poor as in Spain. I argued that this variation could only be explained by taking into account the different levels of external and internal pressure for adaptation.

Second, there is no systematic North-South dichotomy in accounting for compliance problems. It is striking how similar the implementation patterns of a 'leader' and a 'laggard' can be. Despite being an environmental leader, Germany is facing considerable misfits in the implementation of EU environmental policies. And like in Spain, German policy-makers and public authorities first respond to such pressure for adaptation by striving to absorb 'ill-fitting' policies as to avoid adaptational costs. Only when there is significant pressure from below and from above, administrative resistance against necessary legal and administrative changes is overcome. Here, Spanish and German NGOs resort to similar mobilisation strategies. And like in Spain, pull-and-push effects lead to gradual improvements of implementation rather than immediate compliance.

It is certainly true that Germany overall has a better compliance record than Spain. The only cases of persistent non-compliance are the Spanish. This variation, however, is not the result of a general incapacity of Spain to effectively implement EU policies. First, due to the regulatory competition in European policy-making (Héritier 1996), politically less powerful countries with less advanced environmental policies, like Spain, are likely to face more cases of policy misfit than more influential member states, like Germany or the UK, which often succeed in uploading their advanced policies to the European level. Regulatory competition, however, does not only mean that countries with lower environmental standards and less bargaining power will have more difficulties in down-loading EU policies. It also explains why environmental leaders and power players, such as Germany, face increasing problems in complying with EU environmental law, which once and so often reflects the more reactive, cost/benefit, quality based approach predominant in British environmental policy-making with its instruments of procedural regulation.

Second, the level of domestic mobilisation is lower in countries like Spain, where environmental organisations and citizen groups have only limited resources and environmental awareness is only emerging. As a result, domestic mobilisation is often diffuse and, hence, less effective. While (trans)national environmental NGOs become more and more influential, local groups are still weak. This is, however, a problem in Germany, too. Spanish and German NGOs have been quite successful in mobilising against the deficient transposition of misfitting EU policies. Improving formal compliance is often achieved through concentrated lobbying activities at the national and European level. Moreover, the Commission is far more able to trace failures in legal transposition. Yet, formal compliance is increasingly less a problem (see Figure 1). Public authorities often manage to circumvent or water down European regulations in practical application and enforcement, as Germany does in case of Environmental Impact Assessment and (since 1990) Drinking Water and Spain in case of Air Pollution and Drinking Water. Here, domestic actors are crucial for detecting issues of non-compliance as the Commission simply lacks the capacity to control member state compliance beyond the level of correct legal implementation. (Improving) formal compliance does not necessarily lead to (more) effective practical application and enforcement as the cases of the Drinking Water Directive in Spain and Germany clearly show. Thus, compliance with the Environmental Impact Assessment and the Access to Information Directive will only slowly improve, despite approaching formal compliance. Improvements will largely depend on the (continued) mobilisation of domestic actors.

The explanation of compliance problems as the result of significant policy misfit (adaptational costs) and the absence of domestic mobilisation in favour of effective implementation does not only systematically link European and domestic factors of implementation failure. It can also account for variations between different states as well as between different policies within individual member states. Most importantly, the 'pull-and-push' model presented in this paper provides an alternative to the North-South dichotomy in the explanation of compliance problems emphasising the general implementation problems confronted by environmental leaders and environmental laggards alike. Strengthening domestic societal actors by providing them with financial resources, information, and expertise could be a crucial factor in improving member state compliance with European law.

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