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European Rule Adoption in Central and Eastern Europe: a comparative analysis of Agricultural Water Regulation in Serbia

Abstract

Regulation of agriculture's use of water in Serbia is comparatively analysed as a basis for engaging in a wider debate on European rule adoption. The paper assesses the validity of three models (external incentives, policy learning / lesson drawing and Mediterranean syndrome), which seek to explain patterns of (non)compliance. While such models tend to be presented as competing frameworks, evidence suggests that this is inappropriate. Survey and interview data reveal a substantial implementation deficit for environmental regulation in Serbia, bearing several common characteristics with the Mediterranean syndrome. In this case problems of compliance with European rules cannot be divorced from domestic regulatory failure.

Introduction

Europeanisation has been defined broadly as a 'process by which states adopt EU rules' (Schimmelfennig and Sedelmeier, 2005a, p.7). The accession of countries from Central and Eastern Europe (CEE), due to the number of states, their relatively lower levels of economic development and historical legacy of state socialism, represents the most ambitious exercise in Europeanisation to date. While the ability of Europeanisation to stimulate domestic change or transformation has been extensively studied, the focus has largely been restricted to existing

Member States (i.e. post accession). This is despite the fact that external requirements have shaped profoundly the accession process (Schimmelfennig, 2002), with the ability to join dependent on reforms prior to membership. Specifically, progress in accession negotiations between the CEE states and the EU has been measured in terms of harmonisation with the *acquis communautaire*, the EU's legislative corpus. The *acquis* is divided into 31 chapters, providing the structure for accession negotiations, with formal offers of membership not being extended until negotiations on adopting the entire *acquis communautaire* have been concluded. Notwithstanding some bargaining over transition periods, accession negotiations are thus 'negotiations only by name' (Schimmelfennig and Sedelmeier, 2005b, p.224) and the bulk of legal harmonisation (approximation) should occur prior to actual membership (Gorton *et al.* 2005).

Enlargement to the east remains uncompleted. The first wave occurred in 2004 with eight states from CEE joining the EU. In 2007, Bulgaria and Romania also acceded, and Stabilisation and Association Agreements have been signed or are being negotiated with Western Balkan states, designed to foster their integration into EU structures. If these plans are realised all of the successor states of the pre-1991 Yugoslavia will become members of the EU. This would imply an EU with in excess of thirty Member States (MS). The incorporation of countries from the Western Balkans has been perceived as the most challenging, and potentially most rewarding given their recent history of ethnic conflict, war and economic collapse.

For most of the 1990s Serbia, for instance, was a pariah state, ostracised by the international community and starved of external funding.¹ With the downfall of the Milošević regime, many contend that political stability and economic recovery in Serbia and the wider region can be best achieved via EU membership (Gowan, 2007). The process of EU accession has been initiated: a Stabilisation and Association Agreement with the EU was signed in April 2008. However, the post-Milošević era has not witnessed the radical break or clear emergence of

¹ Until 1991, Serbia was one of six republics that comprised the Socialist Federal Republic of Yugoslavia (SFRY). Following the break up of the SFRY, a Federal Republic of Yugoslavia was established in 1992. The latter comprised Serbia (including the autonomous provinces of Vojvodina and Kosovo) and Montenegro. Serbia became an independent entity after Montenegro declared independence in 2006.

a new pro-European political consensus that optimists envisaged. As a consequence, many doubt Serbia's ability to meet the obligations of EU membership (Boonstra, 2006) and fear that much of its population remains enthralled to a reactionary nationalism that blames the West for its current ills. EU policy makers thus face a thorny dilemma. On the one hand, Serbia's precarious political situation makes the need for locking it into peaceful internal and external political relationships a pressing requirement, giving momentum to EU accession negotiations. On the other hand, there are real concerns about admitting an insufficiently reformed new MS, incapable of accepting the obligations of membership, thus threatening to dilute the legitimacy of the European project.

An illuminating policy domain for studying Europeanisation is that of agricultural water management as it is a field where European competence is advanced and goes to the heart of the EU as a 'regulatory state' (Majone, 1996). In general, environmental policy has been seen as one of the most problematic for acceding states, in terms of both the costs of compliance and need for administrative capacity building (Holzinger and Knoepfel, 2000; Jehlička and Tickle, 2004; Skjærseth and Wettstad, 2002; World Bank, 2000). In this paper we analyse the degree to which Serbia's agricultural water policy has been Europeanised. The analysis draws on three models (external incentives, policy learning / lesson drawing and Mediterranean syndrome) which seek to explain the degree of compliance / non-compliance with EU rules. To pin down the evaluation and elaborate the theory, the Serbian situation is compared with evidence for CEE states which acceded to the EU in 2004 (referred to collectively as CEEC2004). Serbia was chosen as an exemplary case that exhibits some tendencies which are common to most CEE countries (such as low salience of environmental policy and ministries) but also a unique problem of international socialisation. Our aim is not to provide a detailed review of EU policy, but rather to analyse the ability of competing models of European rule compliance to explain variations in outcomes between the Serbian and other CEE cases.

Models of European Rule Adoption

To date no consensus has emerged as to the mechanisms and conditions under which non-, new and existing MS adopt EU rules. We therefore draw on three models of European rule adoption, which are summarised in Table 1.

Table 1: Explanatory models of European rule adoption

	External incentives model	Policy learning / lesson drawing model	Mediterranean syndrome
Conceptualisation	Rationalist bargaining model: government adopts EU rules if benefits exceed adoption costs	Social constructivism. Government adopts EU rules if persuaded of the appropriateness of EU rules	States fundamentally vary in their ability to maintain public goods
Unit of analysis	Legal harmonisation	Rule adoption	Practical implementation / enforcement of rules by the nation state
Factors affecting compliance	The balance of costs and benefits of compliance	Degree to which EU rules are seen domestically as superior, legitimate, and achievable. Influence of EU centred “epistemic communities”	(Non)-compliance depends on nature of ‘civic culture’, and the probity of administrative structures and traditions
Assumptions	Rule adjustment is costly. Domestic equilibrium is upset by incentives EU provides	Learning prompted by domestic disequilibrium, favouring departure from status quo. Discursive adoption is sincere so that formal and behavioural adoption follow suit	Failure to effectively implement European legislation is rooted in domestic institutional failure and political culture.

Source: own construction

External incentive model

This approach assumes that states make a rational choice as to whether to adopt EU-rules based on the perceived costs and benefits of compliance. From this two implications can be derived. First, the relative magnitude of costs and benefits varies between states and it is these variations which explain whether MS are leaders, laggards or ‘refuseniks’ in complying with EU rules. Secondly, compliance costs will be lower where there is an initial high degree of fit between domestic and EU rules. This has been conceptualised by Börzel (2000; 2003) as ‘the goodness of fit’ between national political-administrative arrangements and EU requirements. Compliance will be less likely, therefore, where adaptation pressure, defined by Knill (1998: p.24) as ‘the

degree of institutional incompatibility between national structures or practices and supernational requirements', is higher.

Following this model, the EU can influence a state's actions by altering the costs and benefits of compliance. For non-Member States, the EU's ultimate sanction is withholding membership but it can also apply conditions to aid and then withholds 'rewards' if a particular state fails to comply - what Schimmelfennig and Sedelmeier (2005a: p.4) term 'reinforcement by punishment'. Conversely, compliant states may receive additional benefits in the form of improved access to EU funds (reinforcement by support). The EU's ability to improve compliance therefore depends on the credibility of its conditionality.

This analytical approach has largely been followed by International Relations scholars, who study choices as the adjustment of domestic laws. However, legal harmonisation is only a very partial measure of domestic impact that ignores practical adherence and enforcement. This is problematic as it is typically practical enforcement which accounts for the majority of the costs of rule adoption. Moreover, an analysis of practical adherence to EU rules requires 'on the ground' scrutiny which 'is something that the International Relations and EU scholars...are rarely prepared or equipped to do' (Schimmelfennig and Sedelmeier, 2005a: p.4). The model does not consider whether implementation deficits of both domestic and EU rules are generated by common causal factors.

Policy learning / lesson drawing model

Informed by social constructivism, the policy learning model conceptualises rule adoption as depending on the degree to which aspiring and actual MS identify with the EU and regard it as legitimate. A government will therefore adopt EU rules if it is persuaded that they are appropriate (Schimmelfennig and Sedelmeier, 2005a). The persuasiveness of the EU will depend on the extent to which a MS shares the constitutive norms and values of the Union and regards its institutions as legitimate rule-making entities. For Checkel (2001) the decision making of CEE states cannot be reduced to a pure bargaining model but rather depends on the EU being

regarded as an 'aspiration group' to which others want to belong. Under this approach the EU will strengthen compliance by improving the transparency and fairness of rule-making procedures, although deep integration ultimately depends upon a mindset of shared values and identity.

As the policy learning model is predicated on a process of arguing and persuasion, it assumes that adoption will be initially discursive but where this is sincere, 'formal and behavioural adoption should follow suit quickly' (Schimmelfennig and Sedelmeier, 2005a, p.20). Similarly, Risse *et al.* (1999) conceptualise the dynamics of international socialisation as a 'spiral model' of change, whereby discursive interaction leads to formal adoption, followed by rule-consistent behaviour (behavioural effect).

Bomberg (2007) distinguishes three types of learning: political, instrumental and social. Political learning focuses on the creation of sophisticated policy advocates, while instrumental learning is more targeted, focusing on specific policy instruments. Social learning is less direct than the latter, shaping the climate (agendas and processes) in a particular policy field. The learning process involves both pupils and teachers. Lesson drawing which is often used interchangeably with policy learning, differs from the latter in that it focuses on 'informal or more institutionalized exchanges through which policy-makers, dissatisfied with current policy or practice... mimic best practise employed elsewhere' (Bomberg, 2007, p.255). In the context of Europeanisation, it therefore pertains to states voluntarily copying EU rules to meet *domestic* needs and problems, rather than through EU activities *per se* (Schimmelfennig and Sedelmeier, 2005a). Faced with domestic difficulties, policy-makers evaluate alternative policies and rules and assess whether they can be plausibly transferred (Rose, 1991). Lesson drawing may result in copying (direct transfer), emulation (adoption with adjustment to different circumstances), combination (mixtures of policies from different places) and inspiration (non-domestic policies stimulating reform but not the final outcome) (Jacoby, 2004).

The degree to which a state engages in policy learning will be determined by three factors. First, the level of dissatisfaction with current domestic rules determines the urgency with

which states search for alternative solutions. Second, the *capacity* of policy makers to understand and engage with alternative models is critical. Particularly in fields depending on technical expertise and specialist knowledge, ‘epistemic communities’ provide an important bridge for policy learning. Haas (1992, p.3) defines an epistemic community as a ‘network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area.’ Finally, policy makers have to assess positively that the alternative approaches of others would be successful in dealing with domestic problems, i.e. that conditions are similar enough. According to this approach, compliance with EU rules in CEE will therefore depend on the level of domestic dissatisfaction, engagement in epistemic communities and perceived transferability.

‘Mediterranean syndrome’

An early and controversial contribution to the debate on implementation of EU rules, specifically addressing common environmental policy, was made by La Spina and Sciortino (1993), who argued that a ‘Mediterranean Syndrome’ pervaded the Southern MS, which militated against effective environmental policies. La Spina and Sciortino (1993) argued that there are three aspects to the ‘Mediterranean Syndrome’ which lead to non-compliance with both domestic and EU rules: a ‘civic culture’ that sanctions non-cooperative and non-compliant behaviour, administrative structures and traditions that undermine the enforcement of regulative policies, and a fragmented, reactive and party-dominated administration populated with delegitimised bureaucrats permeable ‘to clientelism and corruption’ (p.220). States characterised by the Mediterranean Syndrome suffer from significant implementation deficits at the local level. To reveal the true picture of non-compliance requires the study of ‘real regulation’: what happens after the enactment of legislation, how it is implemented and enforced in practice (Henderson, 2003).

Regulatory failure was particularly likely to occur, according to La Spina and Sciortino, as many beneficial environmental resources are public goods, the existence of which depends on

an organisational structure capable of promoting collective action. While not seeing collective action as entirely dependent on the state, La Spina and Sciortino argue that government is often essential in providing and enforcing positive and negative incentives. To provide effective incentives, states require detailed technical knowledge and administrative capacity. While introducing the Mediterranean Syndrome as an ‘ideal type’, the authors argue Southern states had repeatedly failed to deliver effective incentives and ensure the production of environmental public goods. These difficulties were perceived to be endemic. Failure to effectively implement European legislation parallels the experience with similar national initiatives and is rooted in domestic institutional failure and political culture.

Methods, data and sources

The analysis is split into three periods: the socialist era, the early to mid-1990s, and the late 1990s onwards. For the socialist era, the analysis considers the former Yugoslavia as a whole, given Serbia’s then status as a republic of SFRY. For the latter eras, (the early to mid-1990s, and the late 1990s onwards) we restrict the focus to Serbia. For the late 1990s onwards, the paper considers recent evidence on rule adoption at the farm level in Serbia, combining interviews with elite actors and survey responses from farmers on their water management practices. Interviews were conducted with 17 key policy actors (current and former officials of the Ministry of Agriculture, Forestry and Water Management, Ministry of Science and Environmental Protection, the Water Inspectorate and other Serbian institutes, European agencies and commercial producers). These are supplemented by responses from 165 Serbian farmers to a face-to-face survey of their water and environmental management practices, conducted in 2005/6. This combination of elite and ‘on the ground perspectives’ is designed to capture both the formal process of legal transposition and international harmonisation and practical enforcement. The methodology is consistent therefore with the scope recommended by Henderson (2003) for studying real regulation.

The Serbian situation is compared with evidence for the CEEC2004, drawing on material from an earlier EU funded project on Sustainable Agriculture in Central and Eastern Europe (CEESA - project no QLK5-1999-01611), which is described in greater detail elsewhere (Karaczun, 2003; Kováč *et al.* 2003; Zemeckis *et al.* 2003; Zellei *et al.* 2005; Gorton *et al.* 2005). As in the Serbian study, the research focused on the Europeanisation of agricultural water management, drawing on documentary evidence and interviews with a range of key actors (Ministry officials, specialist agencies, farmers etc.). The CEEC2004 cases are not presented in depth but are drawn on for comparative purposes as part of the evaluation of theory. For each of the three eras the paper assesses the validity of the models to explain compliance / non-compliance with European rules.

Comparative Analysis of European rule adoption in Serbia

The socialist era

Regarding environmental rule adoption, both similarities and contrasts between Yugoslavia and the CEEC2004 during the socialist era can be drawn. Compared to other CEE states, Yugoslav environmental law was better developed (Jancar, 1987; Clarke, 2001). For instance, by the mid-1980s environmental protection in Yugoslavia was subject to some 400 laws and about 1000 local, regional, state and federal regulations (Federal Coordinating Council on the Environment, 1989; Pravdić, 1992a). Every republic of the former Yugoslavia had by the mid 1970s environmental legislation covering all the main policy domains (air, water, soil, chemical and toxic waste, natural and cultural heritage protection, and spatial planning). In fact by the 1980s, the legal framework for environmental management in Yugoslavia was far better developed than in the Southern European states, prior to their accession to the EU. For example Spanish environmental policy ‘owes its existence to EU membership’ (Aguilar Fernández, 2004, p.172) and prior to membership, Portugal lacked ‘any consistent legislative framework to cover even the classic goals of *ex post* pollution control and waste disposal’ (La Spina and Sciortino, 1993, p.222). Accession in these southern cases was thus largely the trigger for the adoption of

environmental regulations rather than as in CEE where accession led to the extensive replacement or revision of existing laws.

In contrast to other parts of CEE, Yugoslavia engaged in policy learning from the west and senior environmental officials were much more likely to be part of western / international epistemic communities. By the mid-1980s, 37 international environmental protocols and conventions had been ratified by Yugoslavia (Pravdić, 1992a). Water legislation and quality standards followed the recommendations of the World Health Organisation and the European Community (what is now the EU) (see CEC, 1976). There was much interest in harmonizing Yugoslav standards of water quality and wastewater treatment with the EU directives, in part because of the economic importance of tourists from the EU countries (Pravdić, 1992a). In the northern republics, particularly Slovenia, environmental activism and NGO membership was high and this formed the basis of a nascent green movement that became an important political force at the time of independence (Elliott, 2005). Environmental officials, like most of the Yugoslav political-administrative elite, were relatively well educated and travelled. This was aided by Yugoslavia's non-aligned status.

Similar to the rest of CEE, however, Yugoslavia was characterised by a widespread implementation deficit of environmental laws (Jancar, 1985; Jancar, 1987; Pravdić, 1992b). Common to other CEE states, environmental goals were subordinate to production objectives (Pavlínek and Pickles, 2000; Greenspan Bell, 2004; Schreurs, 2004). There was little official recognition that agriculture could be a major source of water pollution, with a widespread belief that agri-environmental policy was unwarranted and could only be implemented at the expense of food production. Such attitudes were not restricted to CEE but common to many Western Ministries of Agriculture and related bodies in the 1970s and early 1980s (Lowe *et al.* 1997). Although Yugoslav legislation, in common with most other CEE countries, mandated fines for improper disposal of animal wastes by farms this was rarely enforced. In any case, penalties were minor and did not act as a deterrent (Zellei *et al.* 2005; Jancar-Webster, 1993).

Yugoslavia's implementation deficit differed, however, from the rest of CEE in that it was aggravated by its dysfunctional federalism and unique system of self-management (Jancar, 1985; Jancar-Webster, 1993). The 1974 Yugoslav constitution gave limited federal jurisdiction and substantial republican power. Environmental protection became a republican matter, so no federal authority was empowered to enforce laws, check standards or recommend common criteria (Assembly of Yugoslavia, 1987; Pravdić, 1992b) with inter-republican agencies unable to impose environmental obligations on unwilling republics (Jancar-Webster, 1993). Each republic developed its own standards and laws so that there was no unified approach to environmental protection. Problems stemming from dispersed responsibilities were witnessed, for example in waste disposal, with leaching from widely scattered waste-disposal sites leading to contamination of aquifers and the water supply of some urban areas (Pravdić, 1992b).

Self-management also gave considerable scope to districts for the protection of the local environment through the passing of regulations, the planning and implementation of pollution control measures, and the organisation of their own environmental inspection systems (Jancar-Webster, 1993). However, every local government unit was required by law to be self-supporting: in other words it had to raise the money to fund local social welfare programmes (pensions, public transport, water systems etc.). Environmental protection was not a mandated public service so that each programme had to seek its own funding. As a result special relationships tended to develop between local industry and local government with the latter guaranteeing the former's survival through such means as dubious bank loans and lax enforcement of regulations, in order that the former might guarantee the latter's ability to meet its mandated budget. In rural areas, eutrophication and pollution from inappropriate animal waste disposal were not tackled as local authorities did not want to jeopardise the viability of large farms, which provided much needed employment and revenue.

Reviewing environmental regulation during the socialist era in the light of the models of Europeanisation, reveals that policy learning was critical for Yugoslavia, creating a rather well developed formal legal framework. Policy learning depended on a relatively well funded

epistemic community, which looked west rather than east, for inspiration. However this community while influential in shaping legislation was unable to prevent a substantial implementation deficit, which stemmed from political priorities and Yugoslavia's specific political-administrative structure. In contrast to a common assumption of policy learning models, discursive adoption of European rules failed to lead to a commensurate adjustment in behaviour. External incentives in relation to agricultural water management were minimal during this era. While La Spina and Sciortino's (1993) theory was not developed for socialist states some commonalities with the Mediterranean syndrome can be drawn. A significant implementation deficit characterised Yugoslavia and other CEE states, rooted in a civic culture in which environmental rules were routinely overridden. In common with the Mediterranean syndrome, Yugoslavia's administrative structures undermined compliance. However, regulatory failure also reflected the greater weight given to other, largely production, objectives by a party - industrial elite, rather than a complete inability to produce environmental public goods *per se*. For instance, Yugoslavia had a network of reasonably well protected national parks and nature reserves (Zellei *et al.* 2005).

The early and mid 1990s

After 1989, the CEEC2004 shared the higher order political goal of 'returning to Europe', specifically membership of the EU and NATO. Regarding the environment, socialist era policy was widely seen as a failure, generating an interest in western models of governance which were seen as in keeping with a broader process of democratisation (Andonova, 2005). In these countries the identification with, and desire for 'reintegration' with, Western Europe increased the salience of EU rules for policy learning (Andonova, 2005).

Considering Serbia solely, rather than all of the six former republics of the SFRY, such conditions were not present as the higher order political goal was the preservation of Yugoslavia or, at the very least, 'Greater Serbia'. While Serbia did introduce a raft of new laws on environmental protection (Nos. 66/91, 83/92, 67/93, 48/94), water (46/91), protection of forests

(46/91, 83/92), national parks (39/93, 44/93) and the protection of agricultural land (49/92, 53/93), these did not incorporate new mechanisms for environment management but were concerned with territorial jurisdiction. As such these laws enshrined a principle specified in the 1990 constitution: that Serbia had competence for environmental protection. Responsibilities were transferred from local authorities to republican ministries and their subsidiary agencies.² The system of self-management was abandoned.

During the early 1990s the main mechanism for the transfer of European or other Western models of environmental management to the CEEC2004 was policy learning through newly established internal and external information exchange networks. A multitude of external agents established networks which sought to improve environmental governance in CEE. For instance, the 'Environment for Europe' process, a series of biannual meetings for European environmental ministries and donor agencies was inaugurated in 1991. The U.S. Agency for International Development and U.S. Environmental Protection Agency (EPA) founded a Regional Environmental Center for Central and Eastern Europe (REC). The U.S. EPA also funded research on, amongst other environmental studies, farm pollution in Poland (Karaczun, 2003). Scandinavian countries were particularly active in establishing linkages with the newly independent Baltic States, funding a range of forums on environmental matters and projects to reduce agricultural run-off. Technical assistance was provided to newly established Ministries of the Environment in the Baltic States (Gorton *et al.* 2005). In terms of Bomberg's (2007) typology, most schemes focused largely on *social learning*, seeking to promote, often inconsistently, the principles of a market economy, sustainable development and good agricultural practices.

Despite in many regards being best placed to assume a leading role in such policy networks - through their greater contacts with, and previous lesson drawing from, the west - Serbian environmental officials and academics were largely excluded. An ambitious plan for the

² In part this reflected that most of the opposition toward Milošević came from Belgrade and the provincial cities, so by transferring power to central government, assets and resources were kept out of the hands of opposition elements.

development of an environmental information system was drawn up by the Serbian Ministry of the Environment (Gburcik, 1993) and some initial funding was forthcoming from the EC and USA for environmental projects. However with the imposition of UN sanctions in 1992 access to international funding was lost and plans for the expansion of environmental agencies were abandoned. Serbia's pariah status led to its exclusion from nascent post-socialist epistemic communities.

Assessing the early and late 1990s in the light of the models for European rule adoption is revealing due to the absence of significant external incentives for CEE. While for the CEEC2004 a 'return to Europe' remained a higher order political goal, EU membership remained too distant a possibility to impact significantly on domestic legislation. The flow of financial resources from the EU to the CEEC2004 was minor compared against later pre-accession instruments (Jacoby, 2004). Moreover, networks aimed to assist policy learning failed to instigate widespread reform of domestic environmental governance (Andonova, 2005). This stemmed in part from a lack, in the midst of a severe economic recession, of substantial funding from external donors and domestic budgets, and bottom up support from citizens for environmental reform (Hicks, 2004; Homeyer, 2004). However such networks provided the basis for epistemic policy communities that played an important part in the later EU accession process. They also provided funding and status for a small number of 'policy entrepreneurs' in CEE who championed agri-environmental policy (Gorton *et al.* 2005).

Sharp falls in the real budgets afforded to environmental protection agencies exacerbated enforcement problems in the early to mid-1990s. In CEE many state monitoring agencies, designed for a system of collectivised agriculture, were ill-equipped for dealing with a far more fragmented structure of farming. Production of environmental public goods became increasingly problematic as economic output and living standards shrank (Zellei *et al.* 2005). Serbia's government, confronted with international sanctions, 'officially sanctioned' non-cooperation with its own environmental rules, given its objective to become self-sufficient in food production. During the Milošević era, Serbia increasingly resembled the 'ideal type' of the

Mediterranean syndrome. The probity of administrative structures declined, becoming increasingly characterised by clientelism and what Begovic (2005) terms institutionalised corruption. Compliance with environmental rules collapsed.

Late 1990s onwards

If the early and mid 1990s in CEE were characterised by a multitude of environmental networks being established by an array of often competing international agencies and donor countries, the late 1990s onwards witnessed the emergence of the EU as the focal actor (VanDeveer and Carmin, 2004). Policy transfer to the CEEC2004 was governed by their higher order aim of gaining membership and the accession process which was largely based on adoption of the *acquis*. The legal transposition process was managed by small groups of senior civil servants and selected experts and little engaged national parliaments. The European Commission ignored calls for a more flexible approach from the World Bank (2000), which objected that the environmental chapter placed excessive burdens on applicant countries. The consequence was significant legal reform: for example all of the CEEC2004 states introduced stricter national water protection laws as part of the legal harmonisation with the EU (Gorton *et al.* 2005).

While adoption of the *acquis* was non-negotiable, applicant states could apply for the implementation of specific EU directives to be delayed (known as a transitional period). In the environmental field all of the CEEC2004 states have been granted a transitional period for at least one directive (the most common being for treatment of urban waste water) (Skjærseth and Wettestad, 2007). However, regarding the directives that are most specific to agri-environmental matters, such as the Nitrates and Habitats Directives, no transitional periods have been granted. Acceding states also have a degree of flexibility regarding how directives are implemented as they lack detailed administrative templates. To date there is no clear picture of particular New Member States being habitual leaders or laggards regarding their responses to environmental Directives (Skjærseth and Wettestad, 2007).

The EU has relied on economic incentives to promote compliance in the CEEC2004 (in keeping with the external incentives model). The ‘benefit’ of membership has been conditional on adoption of the *acquis* with additional resources provided to support implementation. The funds available have been significant: between 1999 and 2004, under the ISPA pre-accession instrument approximately €500 million was allocated per year for environmental projects, principally for waste and water infrastructure (European Commission, 2004). A further €1 billion was dispersed to environmental related projects between 1990 and 2002 under the PHARE pre-accession instrument (Auer, 2004). In addition, ‘soft mechanisms’ (Bieber and Vaerini, 2004) to improve compliance were introduced, such as twinning arrangements. The latter is designed for those in existing MS who apply the *acquis* to share expertise with their counterparts in acceding countries. This aided legal transposition and capacity building within national Ministries (Elliott, 2005). However, both Elliott (2005) and Kružíková (2004) question the ability of twinning schemes and other learning programmes specifically designed to aid adoption of the *acquis* to alter practices and mindsets outside a rather small group of key civil servants.

During this period, Serbia remained outside of the accession process. Since the end of the Milošević era, Serbia has been able to access some international resources but these are minor compared to the CEEC2004. For instance, the EU’s European Agency for Reconstruction in Serbia allocated €13 million to the environment sector between 2000 and 2002. This resource has gone mainly to the establishment of an Environmental Protection Agency and ‘green awareness-raising’ activities. Legislative reform has stumbled due to a lack of wider political salience for environmental matters and, in contrast to the CEEC2004, absence of the pressing necessity to adopt the *acquis*. This has prolonged underinvestment in, and maintenance of, environmental systems and infrastructure, particularly in wastewater treatment and water purification, which ultimately has led to a worsening of river and drinking water quality since 1990 (UNECE, 2005).

In the post-Milošević era, the only widespread national environmental debate has concerned the long-term effects of the NATO bombing in 1999 (Clarke, 2001). While clearly an

important topic, the preoccupation with this issue has eclipsed problems arising from domestic sources of environmental degradation or the possible challenges of EU membership. Funding has continued to be severely limited, and following reforms commenced in October 2000, the then Federal Ministry for Science, Development and the Environment and the Republic of Serbia's Ministry for Environmental Protection were both abolished. In the latter case four levels of senior staff were removed (Minister, Deputy Minister, Director for Environmental Protection and all Assistant Directors). The responsibilities of the Ministry were initially incorporated into a Directorate for Environmental Protection within the Ministry of Health (REC, 2001).

Environmental protection was again elevated to ministerial status in 2003 with the formation of a new Ministry for Protection of Natural Resources and Environmental Protection, which in 2004 merged with a smaller ministry for science, becoming the Ministry of Science and Environmental Protection (MSEP). However the MSEP has a limited remit by international standards, principally concerned with forestry, protected areas such as national parks and the growing problem of illegal dumping of hazardous wastes. Agricultural pollution is seen as a minor issue within the Ministry. Interviews conducted in 2004 in the MSEP revealed that officials had little knowledge or control over the restructuring of administrative frameworks and were demoralised. The next sub-section assesses compliance at the farm level before evaluating all evidence for the late 1990s onwards, in the light of the models of Europeanisation.

Rule Adoption at the Farm Level in Serbia

The most important domestic legislation governing agricultural water management remains the 1991 Water Law. It regulates: the use and management of waters as a public resource; protection of water sources; and the criteria and methods for water management, organization and financing. This law drew on earlier domestic and international experiences and should have provided the legal framework for basic water protection and control of use (UN, 2004). It gives strict powers to the Ministry of Agriculture, Forestry and Water Management to immediately stop or close down organisations which are in breach of the law. The law

centralised authority and resources to the republican level, replacing the previous system of self-management.

The Water Inspectorate is charged with identifying violations of the Water Law and can impose restraining orders (*resenje*) on violators and prepare court cases. However this agency is chronically under-funded. In 2006, the inspectorate had 68 planned positions but due to budget cuts only 35 inspectors were in place. These water inspectors are charged with investigating individual cases of legal breaches at the local level. In general there is one inspector per *opština*³, with two for the city of Belgrade. Inspectors cover both agricultural and industrial sources of water pollution, along with, if relevant, household cases. Their remit covers the use of water, water pollution control, extraction of sand and gravel, preservation of river banks and facilities in the water sector (i.e. drainage channels, dams, pumping stations). By January 2007 the Inspectorate had 27 Yugo cars, which were unsuitable for visiting off-road sites. This meant that some inspectors had no private vehicle and could only follow up reported cases that could be reached by public transport. On several occasions, the inspectorate had insufficient money to pay for petrol so inspectors were confined to their offices. Due to insufficient staffing there is no effective supervision or checking of the activities of inspectors. For example there have been several cases of illegal sand and gravel extraction, to which inspectors have turned a ‘blind eye’⁴ and this has led to calls for a new tier of super-inspectors who would supervise and monitor activities.

Inspectors each conduct around 125 visits per year based on information provided by members of the public, local authorities and the monitoring activities of the *Hydrometeorological Zavod*.⁵ Given the spectrum of activities covered by water inspectors only approximately five per cent of their time is spent on agricultural issues, mainly larger animal farms and dairy processors. Approximately a quarter of site visits result in the notification of orders to individuals or companies (about 1000-1100 per year for the whole Inspectorate), of

³ Each *opština* is around 2500 km² in size.

⁴ Interview with Former Minister of Agriculture (24th January, 2007).

⁵ The state body in charge of monitoring water quality.

which about a third go to court (380-500 per annum). Legal proceedings are slow, with defendants able to use several delaying tactics. Even if a company is found guilty, fines are relatively small (typically far less than introducing effective prevention measures) or are just waived, as the alternative of closing down the company is viewed as more socially damaging. While these difficulties are not unique (Faure and Heine, 2005), Serbian courts have been particularly lenient toward enterprises which violate environmental regulations.

The degree to which Serbian regulatory systems have broken down is illustrated by the farm survey data collected as part of the WATERWEB project. According to the 1991 Water Law, farmers should possess a permit or licence for water extraction from rivers, streams, bore holes and, in certain circumstances, from natural springs and wells. Survey data (Table 2) indicate that this is occurring only in a minority of cases. River or stream extraction was used as a source of water by 30 farmers, of which only 6 had a permit or licence. Similarly, bore holes were used by 25 farmers but only 6 were licensed. Natural springs or wells were utilised by 16 farmers in the sample, but only one had the requisite use permit. These breaches of the 1991 Law are unlikely to be investigated because individually they are not classified as a priority by the overstretched Water Inspectorate. However the collective impact of unregulated water extraction on groundwater resources is significant (World Bank, 2003).

Table 2: Water use by farmers and permit / license for extraction

	Number of farmers reporting use without appropriate permit / licence	Number with permit / license for extraction
River or stream extraction	24	6
Bore hole	19	6
Natural spring /wells	15	1

Source: survey data

The survey also elicited farmers’ beliefs regarding the Serbian state’s ability to effectively regulate water use and agricultural pollution. Responses reveal strikingly little faith in

the regulatory system: only 5.4 per cent of respondents agreed or strongly agreed with the statement that ‘water use is effectively controlled by the state’. A similar lack of confidence is evident regarding the use of agri-chemicals and farm pollution: only 4.8 and 3.6 per cent of respondents agreed or strongly agreed with the statements that ‘the use of agri-chemicals is effectively controlled by the state’ and ‘farm pollution is effectively monitored’ respectively.

The problems highlighted in the survey data are recognised by key policy actors and a new Water Law has been drafted, which seeks to harmonise Serbia’s regulations with the Water Framework Directive of the European Union. There is a broad consensus amongst water officials that the present arrangements are failing and that harmonisation with the EU is desirable. Although this consensus exists, passage of the law has been stalled by the general governmental and parliamentary instability that besets Serbia.

Evaluating the evidence for the late 1990s onwards with regard to the models of Europeanisation, it is apparent that for the CEEC2004 the external incentive of EU membership and its requirement to adopt the *acquis* led to wide ranging legal reform and some strengthening of administrative capacity which would not have occurred without the prospect of EU membership. As accession came closer greater importance was given to *instrumental learning*, which fitted with a rather a narrow focus on harmonisation with the *acquis*. While this type of learning supported formal compliance with EU rules, adherence in the sense of practical enforcement will prove more problematic (Kružíková, 2004).

Recent farm level data suggest that Serbia shares many of the problems associated with the Mediterranean Syndrome. While the 1991 Water Law gives significant *formal* power to the Ministry of Agriculture, Forestry and Water Management and its agencies, in practice these powers are unworkable. Regulatory failure is endemic: a whole swathe of illegal development and activities (such as blocking drainage channels, illegal access to existing water supplies, water extraction) remains unregulated. While such activities individually do not create major negative externalities, collectively their impact on public drinking supplies and waste management is pervasive. A legacy of the Milošević era is a public administration still prone to clientelism and

corruption. The full implementation of legislation, either of domestic or European origin, will founder because of weak administrative capacity at the local level.

This generates the question – to what extent could external incentives and learning networks improve compliance at the farm level? If accession negotiations progress, Serbia would be able to access greater external resources to assist with implementation of the *acquis*, for example to modernise equipment and IT, and improve training at the Water Inspectorate. This would improve the efficiency of the agency and the latter sees EU membership as a means to leverage greater funding. However, the majority of resources required by domestic institutions for harmonisation, including staff and other operating costs, must come from national funds (Jehlička and Tickle, 2004). Given its low salience, environmental protection is not a priority for domestic funding. Moreover, the current state of the Serbian legal system and a wider civil culture which works against the production of environmental public goods will limit the impact of any external resources. As Kružiková (2004) notes for the Czech Republic, meshing together European law with a domestic legal system, based on fundamentally different principles and culture, is problematic.

Several MS utilise learning networks as a mechanism for educating farmers about European legislation and to alter attitudes and practices (Kröger, 2005). The performance of such networks has been, however, patchy. As presented in Table 1, learning networks are most effective where a consensus exists that views present domestic arrangements as failing and EU rules as achievable, legitimate and superior. Serbia lacks such a consensus and is characterised by deep divisions on attitudes to the EU. There is no shared mindset of values and identity which Checkel (2001) views as critical for deep integration. Any attempt for the state to institute such networks are also likely to meet with suspicion, given farmers' lack of faith in government, as evidenced in survey data. Moreover, Serbia's fragmented farm structure – census data from 2002 indicate the country possesses 780,000 farms – makes establishing all encompassing networks logistically and financially difficult.

Conclusions

This paper comparatively analysed Serbia's real regulation of agriculture's use of water as a basis for engaging in wider debates on compliance with EU rules. Two cases of Europeanisation of environmental regulations are identified - firstly, in Yugoslavia during the socialist era and, secondly, in the CEEC2004, in the late 1990s onwards, prior to EU membership. The principal mechanisms differ between the two cases: a voluntary process of policy learning underpinned Europeanisation as part of a wider internationalisation during the socialist era in Yugoslavia, while for the CEEC2004 the external incentive of EU membership, which was dependent on implementation of the *acquis*, dominated. There is, therefore, no single mechanism for Europeanisation. The remainder of this paper reviews, in turn, the validity of the three models of Europeanisation in the light of the empirical evidence presented.

External incentives underpinned the most significant case of Europeanisation of environmental laws, which occurred in CEEC2004 states prior to membership. Critical to the effectiveness of the process was the EU's ultimate sanction of withholding membership and progress in accession negotiations being linked to harmonisation with the *acquis*. Applicant states could not pick and choose regarding which EU rules to adopt. Notwithstanding negotiations for transition periods regarding a limited number of directives, rather than rational bargaining over specific pieces of legislation, the process depended on applicants adhering to a primary goal of membership. While effective in underpinning legal harmonisation in the case of the CEEC2004, external incentives are likely to prove less effective for Europeanisation in two other circumstances. Firstly, the EU must be, in accordance with an assumption of the policy learning approach, an 'aspiration group'. The power of external incentives fades where membership is not a priority, as in the case of Serbia during the Milošević era. Secondly, existing MS may also have greater freedom than applicant countries to be laggards or refuseniks in complying with EU rules as the ultimate sanction of withholding membership, in the

terminology of Schimmelfennig and Sedelmeier (2005a) - reinforcement by punishment, is not applicable. Finally, while concentrating responsibility in the hands of a small group of civil servants, with legislative reform effectively bypassing national parliaments, aided speedy legal harmonisation prior to membership in the CEEC2004, it may confine Europeanisation to small, elite 'islands' within national Ministries. Practical adherence requires the involvement of a much wider set of actors.

Policy learning networks were effective in Europeanising some environmental laws in socialist Yugoslavia but their impact was minimal in the early to mid-1990s in either the CEEC2004 or Serbia. According to theories based on this approach, the effectiveness of policy learning approaches for Europeanisation depends on the level of domestic dissatisfaction, engagement of epistemic communities and transferability. The paper offers some evidence to support this. Socialist Yugoslavia possessed a relatively well educated and travelled epistemic community which facilitated policy learning. This community fragmented as Yugoslavia imploded. The transfer of EU rules was also seen as more appropriate in socialist Yugoslavia, consistent with learning from other developed, scientifically advanced states in a period of relative prosperity (Jancar, 1987), than in CEE in the early to mid-1990s, when environmental matters had little traction amidst economic decline, rising unemployment and only the distant possibility of accession to the EU. Checkel's notion that decision making cannot be reduced to a pure bargaining model and that the EU must be regarded as a aspiration group for significant adoption of EU rules to occur, is critical to understanding the process of Europeanisation in CEE. However the assumption that sincere discursive adoption necessarily leads to consistent behavioural adaptation appears unfounded. For instance, Yugoslavia's epistemic community was far more effective in promoting legal harmonisation than in stimulating wider changes in operating habits that were necessary for practical adherence. As with much of the writing on external incentives, the focus of policy learning models on government adoption of EU rules is too narrow for effectively studying compliance issues. Finally regarding the policy learning model, although the most significant case of Europeanisation occurred as part of the accession

process, in the CEEC2004 states in the late 1990s onwards, which was built principally on external incentives, policy learning networks still played an important role, facilitating instrumental learning. For instance twinning arrangements assisted the exchange of knowledge on implementation of the *acquis*. In this regard rather than seeing the external incentives and policy learning models as competing approaches for Europeanisation, complementarities are apparent.

La Spina and Sciortino (1993) argue that non-compliance with both domestic and European rules is rooted in three factors that constitute the ‘Mediterranean syndrome’: a civic culture that sanctions non-compliant behaviour, administrative structures that undermine enforcement, and a delegitimised bureaucracy. In all eras considered, some commonalities between Serbia and the ideal type of the Mediterranean syndrome can be drawn. During the socialist era, administrative structures, particularly the system of self-management, undermined practical enforcement and a party-industrial elite sanctioned non-complaint behaviour with environmental rules where the latter threatened production. Compliance reached a nadir during the Milošević era when the probity of public institutions also fell sharply. As evidenced by survey data, Serbian farmers’ faith in environmental regulation remains extremely weak and non-compliance widespread. The Serbian case therefore supports the view that La Spina and Sciortino identify critical determinants of non-compliance. Such determinants are likely to affect implementation of all environmental regulation, regardless of domestic or European origin. However the model is essentially static; it does not specifically address how patterns of compliance change over time and the approach is weak on solutions. This calls for further research, studying how practical enforcement can be best engendered in inauspicious environments. However this should not detract from the important insight that studies of European rule adoption require a consideration of practical enforcement, and how this may pose similar difficulties for European and domestic generated regulation alike.

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