



Organising for EU Enlargement

A challenge for member states and candidate countries

MULTILEVEL GOVERNANCE

The Implementation of the Habitats Directive in Hungary
Missing Details Behind the Big Picture

OEUE PHASE II
Occasional Paper 5.3 – 08.04

József Mocsári

Budapest Corvinus University
[Budapest University of Economic Sciences and Public Administration]



FIFTH FRAMEWORK PROGRAMME



Dublin European Institute
A Jean Monnet Centre of Excellence



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ORGANISING FOR EU ENLARGEMENT:

Challenge for the Member States and the Candidate Countries

The Dublin European Institute, University College Dublin,¹ was awarded, in 2001, a research contract under the EU's Fifth Framework Programme² to carry out a comparative study of the impact of the EU on the structures and processes of public policy in six small countries: **Ireland, Greece, Finland, Estonia, Hungary** and **Slovenia**. The Project's partnership, under the direction of Professor Brigid Laffan, Dublin European Institute, University College Dublin³, includes: Professor Dr. Wolfgang Drechsler, University of Tartu; Professor Teija Tiilkainen, University of Helsinki; Professor Calliope Spanou, University of Athens; Professor Attila Ágh, Budapest University of Economic Sciences and Public Administration; and Professor Danica Fink-Hafner, University of Ljubljana.

The aim of the research project was to deepen our understanding of the processes of Europeanisation in a number of the existing member states and some of the candidate states.

The research project encompassed the following three objectives:

- The conduct of research which offers immediate policy relevance to key stakeholders in the enlarging Union;
- The conduct comparative, theoretical and empirical research on the management of EU public policy making in three existing member states – Ireland, Greece and Finland – and three candidate states – Estonia, Hungary and Slovenia;
- The shedding light on the capacity of smaller states to adjust and to adapt to the increasing demands of Europeanisation on their systems of public policy-making and thus to identify the barriers to effective, efficient and accountable management of EU business.

Research Strategy

The research design consisted of two phases and within each phase, two levels of analysis. **Phase I** analysed the management of EU business at the macro level of the core executive and was complemented by a micro case study of a recent policy negotiation using decision analysis. **Phase II** of the research broadened the analytical focus to encompass other levels of government – the EU and sub-state – through multi-levelled governance. Here attention was centred upon the emergence of policy networks and the interaction between public actors and the wider civil society in specific, discrete policy sectors.

¹ National University of Ireland, Dublin (University College Dublin).

² European Commission, Community Research Fifth Framework Programme (Socio-Economic Research)

³ This project forms part of the Governance Research Programme, Institute for the Study of Social Change, University College Dublin, www.ucd.ie/issc/ and www.ucd.ie/govern/intex.htm.

Methodology

The study employed two specific methodologies: historical institutionalism and rational institutionalism in a new and innovative fashion. The use of combined perspectives provided a theoretically innovative and new approach to the study of the Europeanisation process. Both approaches could be used as they were applied to different elements of the empirical research.

Academic and Policy Implications

This study's findings provide insight into the manner in which diverse state traditions, institutions and political and administrative cultures influence national adaptation to EU governance and how the interface between national policy processes and the Brussels arena is managed. It is expected that these findings will assist those making and managing policy, thus facilitating adjustments to the changing European Union while also contributing to the growing academic debate on Europeanisation.

At various stages during the course of this project the research findings and analysis were presented to a range of stakeholders and academics to facilitate feedback and enhance the analytical process. Further details about the Organising for EU Enlargement (OEUE) project are available on the project web site www.oeue.net, along with i) the Project Report, ii) the OEUE Occasional Papers and iii) a selection of papers by the research partners which draw on various aspects their project research.

ABSTRACT

Hungary's national environmental strategy had already incorporated features of EU environmental policy prior to the transposition of the detailed legislation of the *acquis communautaire*. A factor which distinguished the experiences of implementation between the new and old member states. The examination of the implementation of the Habitats Directive in Hungary, analysed in this paper, reveals an incomplete process whose pattern is not unfamiliar in the national system. The broad framework acts were agreed through the formal legislative channels to the exclusion of the social stakeholders and without the politicization of the issue. However, the absence of detailed implementing measures left the process incomplete. A number of underlying issues suggest the possibility of the politicization of these details as the implementation of the Habitats Directive is completed.

INTRODUCTION

The aim of the paper is to analyse the application of Habitats directive in Hungary, which is a problematical issue not only in the new Member States, but in the old ones as well. The application of the directive makes claims on Hungary from legal, institutional and policy content points of view, and the paper tries to map these obligations and analyse how Hungary prepared to fulfil its tasks concerning Natura 2000 network of habitats and protected species. In the first section of the paper I will examine the degree of mis-fit between what was demanded by Habitats directive and the pre-existing Hungarian environment policy regulations, legal situation and institutional fabric, namely whether the implementation of Habitats Directive demands major changes in policy, law and institutional framework. Then I will go on to examine the adoption of laws in Hungary for the transposition of the Directive, and finally analyse how the process of site designation has proceeded. I will explore the already existing and the future potential problems of implementation, along with the impact of Natura 2000 sites on farmers and land-owners.

The Habitats Directive

The EU Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna) was first proposed in 1988 and, after many significant changes to the original proposal, was finally adopted in July 1992. The Directive is an advancement of existing legislation as it seeks the protection of certain types of habitats for their own sake rather than because they harbour valued species. The stated aim of the Directive is to contribute to the maintenance of biodiversity within the European territory of the Member States through the conservation of natural habitats and of wild fauna and flora of Community interest. To do this, a network of protected areas across the EU, known as 'Natura 2000', is to be created and will consist of special areas of conservation (SACs) designated under both the Habitats Directive and special protection areas (SPAs) designated under the EU Habitats Directive. Member States are required to maintain or restore at 'favourable conservation status' the habitats and species of Community importance listed in Annexes I and II of the Directive. The concept of 'favourable conservation status' is a central tenet of the Directive and is only broadly defined for both habitats and species (Mitchell, 1998).

Those listed habitats and species which are considered in most danger of disappearing are accorded 'priority' status. The Habitats Directive lists 253 natural habitat types and 632 plant and animal species in Europe whose habitats must be protected. Member States are to designate Natura 2000 sites in proportion to the representation in their territories of listed habitats and habitats of listed species. A designation procedure is defined. Firstly, on the basis of scientific criteria defined in Annex III of the Directive, each Member State must compile a list of areas containing the habitat types and species included in Annexes I and II. The criteria include representativeness, area and condition of the site, size and density of species populations, and a 'global assessment of the value of the site'. There is a particular obligation on Member States to identify those sites containing priority habitats and species.

The specific requirements of Directive 92/43/EEC are grouped under the two subsequent chapters. The first is entitled 'Conservation of natural habitats and habitats of species' and comprises Articles 3 to 11 inclusive. The second is entitled 'Protection of species' and comprises Articles 12 to 16 inclusive. The 'Conservation of natural habitats and habitats of species' chapter addresses the most ambitious and far-reaching challenge of the directive — the establishment and conservation of the network of sites known as Natura 2000 (European Commission 2000: 8). Within this chapter, Article 6 sets out provisions which govern the conservation and management of Natura 2000 sites. Seen in a wider context, that of the Treaty establishing the European Community, Article 6 can be regarded as a key framework for giving effect to the principle of integration, since it encourages Member States to manage the protected areas in a sustainable way and since it sets the limits of activities which can impact negatively on protected areas while allowing some derogations in specific circumstances (European Commission 2000: 9). Seen in an international context, Article 6 helps achieve the aims of relevant international nature conservation conventions such as the Berne Convention and the Biodiversity Convention, while at the same time creating a more detailed framework for site conservation and protection than these conventions themselves do (European Commission 2000: 10).

According to Article 1(l), *special area of conservation* (SAC) means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated. Annexes I (Natural habitat types of Community interest – presenting outstanding examples of typical characteristics of one or more of the five following biogeographical regions: Alpine, Atlantic, Continental, Macaronesian and Mediterranean) and II (Animal and plant species of Community interest) of the Directive list the habitats and species whose conservation requires the designation of special areas of conservation. Article 4 sets out the designation of SACs in three stages. Following the criteria set out in the annexes, each Member State must draw up a list of sites, which include natural habitats and wild fauna and flora. On the basis of the national lists and by agreement with the Member States, the Commission will then adopt a list of sites of Community importance. The Member State concerned must designate the sites of Community importance selected as special protection areas within six years. Hungary is in the first stage of this process.

In cases where natural habitats or a priority species may be omitted from a national list, Article 5 provides for the initiation of a bilateral consultation procedure between the Member State and the Commission. If the result of the consultation is unsatisfactory, the Commission may forward a proposal to the Council relating to the selection of the site as a site of Community importance. According to Article 6, Member States must take all the necessary measures to guarantee the conservation of habitats in SACs and to avoid their deterioration. The Directive provides for the co-financing of conservation measures by the EU.

As in the past, the main problems with the implementation of Directives 79/409/EEC and 92/43/EEC relate to its *bad application*, namely the insufficient classification of special protection

areas (SPA) for birds and the insufficient selection of the proposed sites of Community importance (SCI) for habitats for inclusion in the Natura 2000 network, or to the protection of such sites. Existing SPAs for birds in a number of Member States are still too few in number or cover too small an area. The Commission's strategy revolves around initiating general infringement proceedings, rather than infringement proceedings on a site-by-site basis. As regards SCI's, the Commission continued infringement proceedings against several Member States whose selection of sites is either not satisfactory or is under assessment subject to the results of bio-geographical seminars (European Commission 2003: 13-14).

THE DYNAMICS OF MISFIT IN TRANSPOSITION

Hungary's characteristic natural geographic features gave way to the creation of variegated landscapes, valuable geological and surface geographical assets, and rich natural flora and fauna. However, relatively unspoiled areas in the country have declined to 15 per cent of the total area and formerly contiguous habitats with gradual transitions became significantly fragmented as a consequence of agricultural land use for over one thousand years. A number of plant communities and about 20-25 per cent of animal species in Hungary have become endangered. As a result of the economic revival, the number and extension of greenfield investments is further growing and there is a boost in the construction of new roads and motorways. 695 plant species and 965 animal species are protected by law, 63 plant and 137 animal species of which are under enhanced protection. In 2002, 9.9 per cent of the area of the country was protected as nature conservation areas, including 1.2 per cent under increased protection as nature conservation areas. There are 10 national parks, 36 landscape protection areas and 140 nature conservation areas of nationwide significance. By 2008, legal protection will extend to 11 to 12 per cent of the area of the country. As part of the *Pan-European Ecological Network* (PEEN) programme, initiated by the Council of Europe, Hungary designated its National Ecological Network in 1999 (MET, 2003). According to plans, the extent of Natura 2000 network sites will be 1,94 million acre (approximately 21 per cent of country area), namely by the establishment of Natura 2000, further 1,2 million acre land will be under nature protection supervision. The biodiversity of Hungary represents a remarkable value in a European comparison. Upon the accession of Hungary, the heritage of the European Union has been enriched by a region constituting an individual bio-geographical unit, the Pannon region (Pannonicum). The proportion of natural values and habitats near to nature is also considerably higher in Hungary than in some European countries.

The accession negotiations on the environmental acquis

The accession negotiations between the EU and Hungary started in March 1998, and the negotiating position of Hungary on the environment chapter was given to the EU in July 1998. Environment policy was one of the most sensitive issues during the accession negotiations. The first phase of negotiations on the environment chapter (acquis screening process) was conveyed within the framework of multilateral and bilateral appointments in the first quarter of 1999. After the approval of the EU common environmental position, the meritorious phase of actual negotiations started in December 1999. The agenda was set by the National Programme for the Adoption of the Acquis (NPAA) according to the environment chapter of the screening list, which comprises approximately 200 legal acts. After successfully closing all chapters of the negotiations, Hungary became a full member of the European Union in May 2004. It means that Hungary fulfilled the obligation of legal harmonization, of course apart from derogations. However, it is important to mention that there are policy fields, where Hungary is in delay regarding the transposition of Community law. Such a sensitive policy field within the environment policy is nature protection, more concretely the implementation of the Habitats Directive and the establishment of Natura 2000 network.

In the field of environment policy Hungary proposed nine requests for transitional arrangements in its initial negotiating position in 1999. By February of 2001, the number of requests was reduced to four as a result of assessments and consultations with EU officials (among others, two requests in the area of horizontal legislation (IPPC, SEVESO II) were withdrawn). Besides this, the extent of three of the four remaining requests was also reduced. (Only the request for incineration of hazardous waste remained unchanged.) The terms of transitional arrangements are not longer than the transitional arrangements of old Member States on the implementation of EU directives.

The negotiating chapter on environment was provisionally closed on 1 June 2001. Hungary was granted the following transitional arrangements:

- *Incineration of hazardous waste* until 2005;
- *Treatment of urban waste water* until 2015;
- *Air pollution from large combustion plants* until 2004;
- *Recovery and recycling of packaging waste* until 2005.

The EU emphasized from the very beginning of the negotiations that transitional measures will not be granted on: transposition (as opposed to implementation); framework legislation (air, waste, water, impact assessment, access to information); *nature protection (habitat, birds)*; essentials of the internal market (all product-related legislation); new installations. In case of Hungary, only one of the transitional arrangements (treatment of urban waste water) has no direct connection to the internal market. As regards incineration of hazardous waste and packaging waste, the Hungarian request was related mostly to government investments. Margot Wallström, the European Commissioner in charge of environment policy, has several times declared that transition periods maybe granted to the new member states only in cases where substantial adaptation of infrastructure is required which definitely has to spread over a longer time period. Requests for transitional measures needed to be justified by detailed implementation plans ensuring that compliance with the *acquis* will be reached over time.

According to governmental estimates, ensuring compliance with the environment *acquis* requires at least HUF 1500 billion (EUR 6 billion). Approximately HUF 800 billion (EUR 3,2 billion) is required only for the treatment of urban wastewater. According to estimates, with an annual economic growth of 4-5% and growing environmental expenditures, the objectives can be accomplished as laid down in the Hungarian Environment Programme. Measures concerning legislation on environment entail impositions on enterprisers and citizens. The previous decade brought about favourable environmental changes in Hungary. However, the current state is not yet satisfactory. In Hungary a considerable number of indicators characterising environmental conditions are nearing the average of the Member States of the European Union but in some areas considerable efforts are still needed to comply with EU standards (European Commission 2002a).

The environmental *acquis* comprises over 200 legal acts covering horizontal legislation, water and air pollution, management of waste and chemicals, biotechnology, nature protection, industrial

pollution and risk management, noise, and radiation protection. According to the Monitoring Report of 2003, Hungary is “essentially meeting the commitments and requirements arising from the accession negotiations and is expected to be in a position to implement the *acquis* in most of the areas of environment policy by accession” (European Commission 2003a). However, this report emphasized that Hungary is partially meeting the commitments and requirements in two areas, namely nature protection and industrial pollution. More concretely, in order to complete preparations for membership, enhanced efforts are required to comply with the *acquis* in the area of nature protection, to prepare the lists of proposed nature protection sites and special bird protection areas, to complete consultations of stakeholders and to strengthen the administrative capacity. Basically, in the field of nature protection, legislation is in place and is in line with the *acquis*, except for implementing legislation on habitats and birds, including the authorisation for site designation.

The establishment of Natura 2000 network of habitats and species only complements the national nature protection policies, and does not displace or replace them. It does not deal with nature protection policy in its entirety, only one of its sectors. In this context, it is worth comparing what is demanded by habitats with pre-existing Hungarian policies, legal situation and institutional fabric and examining whether the implementation of habitats demand major changes in policy, law and institutional framework or not.

Hungary’s environment policy is based on two framework acts, namely the *Act LIII of 1995 on the General Rules of Environmental Protection* and the *Act LIII of 1996 on the Protection of Nature*. The Environmental Act was intended to define the issues of importance, and arranged already existing legal instruments into a comprehensive system. This Act serves as a framework, involving the principles of environmental protection, detailing the duties and obligations of the state, the parliament, the government and other institutional actors in the field of environmental protection. Furthermore, it also established the regulatory framework for the economic basis of environmental policy and environmental management. The *Act on the Protection of Nature* was passed because the above mentioned act - Act LIII of 1995 on the general rules of Environmental protection - does not regulate an important field belonging to environment policy: the conservation of nature. The reason for this is that the regulation of nature conservation is laid down in a separate act, the structure of which is similar to the Act on the general rules of environmental protection.

For full compliance, two government decrees entered into force concerning Natura 2000 in autumn 2004, each based on the provisions of the Habitats directive. One of these deals with the designation process, and the other is on the rules of Natura 2000 sites. The latter decree contains provisions and regulations which ensure the protection of habitats and species in these sites. It prohibits the activities endangering the condition of Natura 2000 sites and empowers the national park directorates to authorize for preserving the Natura 2000 sites. The comparison of the above mentioned framework laws with the Habitats directive leads to the conclusion that the framework acts completely comply with the directive and the two government decrees on Natura 2000 based on the directive, hence the degree of mis-fit concerning the legal situation is minimal, negligible (Zsikla 2004: 1-4; Bándi et al 1998: 27). In addition to that, the establishment of Natura 2000

network does not influence the pre-existing practices and processes of declaring protection for certain species of flora or fauna.

However, in June 2004 the two government decrees on Natura 2000 were not approved yet, hence the transposition of Habitats Directive was not complete until October 2004. Moreover, in the last days of June, Miklós Persányi, Hungarian environment minister, met Margot Wallström, European Commissioner on environment, in Budapest, and they discussed the situation of environment legal harmonization in Hungary. Margot Wallström emphasized that Hungary has made great efforts to completely finish the task of transposition, however there is still remained a few important fields where additional efforts are required: she underlined the establishment of the Natura 2000 from these (MTI, 24 June 2004).

The early implementation of Natura 2000 in candidate countries is important in order to ensure that future developments in these countries take full account of their rich natural heritage. Therefore, as mentioned above, no transition periods have been agreed on with candidate countries for the creation of Natura 2000 network and they will be required to designate Special Protection Areas under the Birds Directive and propose Sites of Community Interest under the Habitats Directive at the time of Accession. The National Programme for the Adoption of the Acquis in Hungary (NPAA) contained plans for the measures regarding transposition and application of the two directives and creating a programme on institution building for Natura 2000. Among others, the government decrees on Natura 2000 were planned to be proposed for the beginning of 2002, however, as discussed later, the approval of the decrees were in serious delay. The survey of areas for designation of the Natura 2000 network started in 2000, and the National Park Directorates made their first proposals on the designation of Special Protection Areas (SPA) under the Birds Directive in March 2000. A draft list of SPAs was prepared by the autumn of 2003 on the basis of proposals made by National Park Directorates.

The objective of the two main EU Directives on nature protection (79/409/EEC and 92/43/EEC), i.e. maintaining biological diversity by ensuring protection of endangered natural habitats and species, is identical to the objectives of the Hungarian nature protection legislation, and can be found in the underpinning philosophy of these legal instruments. The Regular Report of the EC in 1999 stated that in the area of nature protection a good level of protection had been already achieved (enshrined in the Law on Nature Protection) with an important part of territory being protected under various statutes. Since Hungarian laws in the past in the field of the protection of plant and animal species referred only those endangered species, which were present in Hungary or whose protection was required under international conventions, it was necessary to supplement domestic laws on the protection of animal species living on the wild with species having importance from a Community point of view, which previously had not been specifically protected under Hungarian laws. The surveys on the sites of Community Interests, the spread of species in Hungary and the Hungarian complement of species were finished in 2002. On the basis of these surveys, the drawing up of the list of Natura 2000 sites started and the selection of these sites begun. The proposal of SPAs designated under the Birds Directive was approved, and the draft list of SCIs designated under the Habitats Directive was planned to be finished by the end of 2002 (MFA,

2002). The NPAA drew up a deadline for implementation of the Habitats Directive, however Hungary was unable to keep to the deadline. The NPAA foreshadowed the problem, that if the staff of the Office for Nature Conservation and National Park Directorates were not increased, the implementation of the Directive would be delayed, and Hungary would lag behind the schedule.

Beside the designation of sites, other important tasks arising from the obligation of legal harmonization are the transposition of definition of Natura 2000 sites, rules of designation, preservation obligation, the system of state compensations and the obligation of assessment into national law. Although, many provisions of the Directive were transposed, a coherent rule has not been approved yet. Most of the transposed provisions appear in *the Act on Nature Protection*, however, compliance with the EU legislation is not complete. Annex III details the rules by which the provisions of the Directive are spread out as well as the paragraphs and principles that are not transposed. (Annex III shows the situation in April 2003.) The situation regarding the species protected in the EU is better, because these species are protected too in Hungary by the *Annex IV of the Government Decree No. 13/2001*.

BUILDING ADMINISTRATIVE CAPACITY

The fields of environmental protection and nature conservation have been under ministerial control since April 1988, when the Ministry for Environmental Protection and Water Management was established by the merger of the National Office of Water Management and the Office of National Environmental Protection and Nature Conservation. In the last 14 years, the competencies and structure of ministry have changed several times: the most problematic field is the water sector, which belonged to various ministries in this period.

In the summer of 1990, water management was separated from environmental protection and was transferred to the newly established Ministry of Transport, Communication and Water Management. Afterwards, in the autumn of 1990, as the Ministry of Environment and Regional Development was enlarged by housing and construction, the protection of historical monuments, and by the field of regional planning. Regional policy was administered by the Ministry of Environment and Regional Development, as well as regional and local bodies in the period of 1990-1998. After the change of government in 1994, the Horn government did not reorganize the ministry responsible for environment, thus the Ministry of Environment and Regional Development operated within the same scope of duties and authority until 1998. After the parliamentary elections in 1998, the cabinet was restructured and housing, construction and regional planning were transferred to the Ministry of Agriculture and Rural Development, while the protection of monuments was transferred to the Ministry of Cultural Heritage, hereby the Ministry of Environment was established. Thus the Ministry worked within a clear scope of environmental duties in the period of the Orbán government. After the change of government in 2002, the Ministry was again restructured. Water management (previously belonging to the Ministry of Transport) and air quality monitoring (previously belonging to the Ministry of Health) have been reassigned to the Ministry of Environment, which was thus renamed as Ministry of Environment and Water Management.

The institutional framework of nature protection has a relatively long history with a stable institutional background. In 1977, the National Office of Nature Conservation, established in 1962, merged into the National Office of Environmental Protection. The fields of environmental protection and nature conservation have been under ministerial control since April 1988, when the Ministry for Environmental Protection and Water Management was established by the merger of the National Office of Water Management (NOWM) and the National Office of Environmental Protection and Nature Conservation (NOEPNC). In that year, there was significant change in the functional work of nature conservation regarding the organizations of implementation. Inspectorates for nature conservation (along with the task of environmental protection added later) were established at first in five then in seven regions, and National Park Directorates started operating in the range of the newly established national parks. After 1988, directorates of environmental protection and water management were established by the merger of the inspectorates of NOEPNC and the directorates of NOWM. This eventful period and the institutional system of nature conservation continued after the systemic change in 1989. In 1990, the Ministry of Environment and Regional Development was established and the National Park Directorates started operating by the severance of environment inspectorates. *The Act on the Nature Conservation* was approved in 1996. It contains modern

measures as it provides aspects of nature conservation not only for the preserved sites, but the not to be preserved nature areas and lands too. The government decrees and ministerial decrees on the implementation of Act LIII of 1996 were approved and five new national parks were established. In addition, the National Plan for Nature Conservation was approved as part of the National Environment Protection Programme.

The Ministry of Environment and Water Management is the central administrative institution of environmental protection, nature conservation and water management. There are currently five Deputy State Secretaries, each assigned to a certain policy field, under the supervision of the Administrative State Secretary. Three of them are responsible for a specific field belonging to environment policy: the Office of Environment Protection, the Office of Nature Conservation, and the Office of Water Management. The National Inspectorate for Environment and Nature Conservation under the supervision of the Ministry and its regional bodies (ten National Park Directorates) fulfil the administrative duties of nature protection of regional importance. (However, the national park directorates do not coincide with the borders of the administrative planning-statistical regions or counties.) It is important to mention that the Department of Natura 2000 belonging to the Division for the Preservation of Nature is responsible for the implementation of the Habitats directive.

The national institutional system of the nature protection authority, including the Office for Nature Conservation of the Ministry of Environment and Water Management and its regional bodies, the ten National Park Directorates, complies with the implementation of EC Directives. The operative and professional staff of the Office for Nature Conservation of the Ministry of Environment and Water Management and the National Park Directorates have to be increased in order to survey and designate areas to be registered in the Natura 2000 network, prepare management plans, to perform monitoring and to ensure the fulfilment of periodical reporting obligations for the Commission, and to control the trade of endangered animals living on the wild. According to NPAA, the Ministry of Environment and the National Park Directorates are the authorities responsible for the implementation of the Habitats directive (MFA, 2002).

The competent authorities at regional level regarding the implementation of the Habitats Directive are the ten National Park Directorates. The competent authority at national level is the Ministry of Environment and Water Management (precisely the Department of Natura 2000), which also coordinates the work of National Park Directorates. Currently four people are working for the Department of Natura 2000 in the Ministry, but their number is far from the satisfactory level. By the establishment of Natura 2000, the territory under the supervision of national park directorates will significantly increase. According to estimates the staff number need to be increased by approximately 200 people (mainly guards), who should be working in the national park directorates. Besides these, it is necessary to increase the number of professional employees in the national park directorates and the ministry as well. As a summary, one may conclude that the institutional framework is satisfactory to fulfil the tasks of operating Natura 2000 network, the only administrative problem is the lack of qualified staff either in the Ministry or the national park directorates (Zsikla 2004: 1-4; Bándi et al. 1998: 27).

NATIONAL ENVIRONMENTAL PROGRAMMES IN HUNGARY

This section provides an analysis of the programmes and plans which are related to the application of the Habitats Directive and the implementation of Natura 2000, namely the second National Environmental Protection Programme, the National Plan for Nature Conservation and the Environment Protection and Infrastructure Operational Programme (EIOP) of the National Development Plan.

National environment protection programme 2003-2008

The second *National Environment Protection Programme* (NEPP-II) for the period between 2003 and 2008 and the *National Plan for Nature Conservation* provide the direction for environmental policy of Hungary for the period when Hungary is a full member of the European Union. The main objective of the Programme is to ensure that social and economic policies are formulated with environmental aspects taken into account in the coming six years. The NEPP-II specifies Hungary's objectives arising from its national characteristics, position, and interests. Their implementation is an integral part of the accession process and subsequent membership responsibilities.

The NEPP-II contains several groups of tasks all aiming at ensuring a healthy environment and preserving natural heritage. The objectives of the programmes are served by more efficient resource management, promotion of cleaner, and more competitive production, prevention, reduction of environmental load and pollution, and the conservation of natural values. In the period of the first NEPP, the degree of environmental load was reduced in Hungary; yet, serious environmental problems need to be eliminated in the years to come.

The main objectives of NEPP-II were set in line with national characteristics and the main objectives of the Sixth Environmental action programme of the European Union for the period between 2000 and 2010. The major goals regarding nature protection are:

- *Protection of ecosystems*: taking into consideration the principles of sustainable development in the management of natural resources; economical utilisation of natural resources considered to be vital elements (water, earth, air), to protect their value and preserve them for coming generations, taking their quantity and quality features into account as well; preserving and ensuring the survival of natural systems and assets; preserving the variegated nature of the biosphere; preserving information hidden in natural processes.
- *Improvement of knowledge, awareness, and co-operation as related to environmental processes, effects, as well as environment protection and nature preservation*: monitoring and evaluating changes in environmental conditions, environmental effects, and the environmental impact of various measures; making transparent domestic and international decision-making processes affecting the environment and improving the corresponding publicity; measuring changes in environmental conditions and the impact of measures by appropriate indicators; and in the spirit of mutual global environmental dependency – the improvement of co-ordination and information at all levels, with the

participation of stakeholders from all sectors, NGOs, and interest representation groups concerned.

In order to eliminate environmental problems and to preserve values, NEPP-II specifies the objectives of crucial importance, on the basis of which the tasks to be done, as related to areas requiring special care, can be formulated. Development of the environmental awareness of society can be deemed as a comprehensive objective of the six-year programme; results achieved in this field may arise indirectly in the efficiency of reaching targets.

The Sixth Environmental Action Programme of the EU has four main areas for action: life quality and environment protection, biological and landscape diversity, sustainable use of natural resources, climate change. The above indicate priority axes. The backbone of NEPP-II is represented by the *thematic action programmes* aimed to solve complex environmental problems. The elaboration and implementation of thematic action programmes provide opportunities for concentrating resources, sectoral co-operation, and a more intensive integration of environmental and special policies.

Action programme for the protection of biological diversity and landscape conservation objectives are to:

- Protect natural systems and values;
- Preserve biodiversity;
- Use natural resources in a sustainable manner;
- Establish a harmonious relationship between society and the environment.

The *National Plan for Nature Conservation*, a part of the NEPP-II, provides detailed recommendations to preserve and utilise the Hungarian natural heritage.

- Hungary's areas of Community importance, amounting to at least 15% of the territory of the country, will be integrated into the ecological network named NATURA 2000 of the European Union.
- By the end of the NEPP-II period, eleven per cent of the country's territory will be declared to be protected natural areas as being the most endangered, most valuable areas. The proportion of areas covered by forests subject to the obligation of forest renovation will be increased to twenty per cent. Our objective is to gradually increase the proportion of forest areas covered with indigenous species of trees. Besides special measures assisting the survival of natural values, new types of nature and land use are intended to be realised to ensure co-ordinated conservation and farming.
- By means of agro-environmental protection, rural development, and nature conservation measures reinforcing each other, it is intended to increase the retaining capacity of rural areas. Programmes on ecological farming, as well as farming programmes to be introduced in wetland and grasslands, pertaining to high-priority agro-environmental programmes, as well as farming programmes launched in sensitive

natural areas will be realised in the aggregate on half of Hungary's productive areas (approx. three million hectares).

- By establishing a system of sensitive natural areas pertaining to the extensive agricultural zone, twenty-eight per cent of the country's lands will offer the opportunity for landowners to be granted subsidies for environmental use and produce healthy, competitive products.
- The envisaged cleaner and nicer environment as well as the animal and plant species considered as rarities in other countries greatly contribute to enhancing the ecotourism attraction of Hungary and the equalisation of the spatial discrepancies present in the level of the development of regions.

National Development Plan – EIOP

Upon becoming a full member of the EU, Hungary became eligible for support from the EU Structural Funds and Cohesion Fund. In order to be able to use support from the funds Member States falling under the scope of objective 1 and having underdeveloped regions must elaborate and submit to the European Commission their development objectives and priorities in the framework of a National Development Plan (NDP). Therefore the National Development Plan is a medium-term national strategic document.

The Environment protection and Infrastructure Operational Programme (EIOP) is one of the five operational programmes of the Hungarian NDP for 2004-2006. Essential elements for the successful implementation of the NDP include environment protection and infrastructure development. A basic aim of the EIOP is to promote environmentally friendly development.

In line with the investments financed from the Cohesion Fund, the EIOP has set the objective to improve the environmental conditions of the country by establishing environmental infrastructure, increasing environmental safety, and investing into nature conservation. It also aims at investing into the improvement of transport infrastructure by building motorways and bypasses around large cities.

The EIOP, and the NEPP-II as well, are linked to the following Community policies:

- Sixth Environmental Action Programme
- Sustainable Development Strategy
- European Spatial Development Perspectives
- Transport Policy

The thematic structure of the Programme and its integration into the NDP is in line with the Sixth Environmental Action Programme of the EU and the EU Sustainable Development Strategy structure. The EIOP reflects the expectations of the EU and Hungarian policies, and contributes to the development of programmes in the area of climatic change, protection of environmental quality

in cities, biological diversity and nature conservation, protection and sustainable use of internal waters, waste management and environmental safety.

One of the seven measures of the environmental priority of EIOP is: nature conservation and sustainable flood management. Strengthening nature conservation efforts by creating Hungary's NATURA 2000 network and reducing and overcoming the danger of flood of the River Tisza by implementing the Improved Vásárhelyi Plan are great opportunities for the nature conservation and the flood management in the catchment area of Tisza, which has a high share of the regional population in the Tisza river basin. They will also help meeting Hungary's obligations under some EU directives and they also support each other simultaneously and improve the potential for economic development. These synergies along with the potential in the regional for economic and nature development, led to the design and scope of measure.

One of two components of the measure is 'Strengthening nature conservation efforts', that will support the purchase of land that will improve nature conservation management in the NATURA 2000 sites. The criteria for purchasing the areas that are necessary to the nature conservation property management are in accordance with the points included in Commission Regulation (EC) No 1685/2000, and with those activities that serve environment preservation.

Therefore the main activities of nature conservation component are:

- Implementing investments within NATURA 2000 network, in the river basin of Tisza with particular regard to wetlands; characteristically habitats of Pannon region (as in Hungarian proposal) and grasslands,
- The natural reconstruction, protection, presentation and complex development in the territories under the NATURA 2000 programme,
- Wetland restoration and rehabilitation (mortlakes, oxbows, reservoirs); creation of new wetlands in the frame of landscape rehabilitation linked to flood management and NATURA 2000.

The beneficiaries of the support that can be granted under this measure are not business enterprises but non-profit organisations; therefore the support does not have any impacts on economic competition. In addition to that, the benefits provided by the development actions implemented from this support can be enjoyed by the whole community without restriction. According to the above, this measure is not a state grant in the terminology of the Competition Policy of the European Union. The responsible Authority regarding this aid is the Ministry of Environment and Water Management, Structural Funds Management Unit. The final beneficiaries are the central budgetary entities and their institutions, local governments and their institutions, public benefit companies, business companies with majority municipality ownership. The share of these measures from OP budget is three to five per cent.

Finally, it is interesting that the Programme Complement Document of EIOP states that: "ensuring the favourable natural state of these areas can only be carried out by buying them and by the

execution of active handling and habitat reconstruction.” However, the impact assessment commissioned by the Ministry and the two government decrees (Zsikla 2004) does not deal with the purchase of these sites, and therefore no budget was set up for this either.

IMPLEMENTATION

Designation of sites

Concerning deadline, Hungary had to submit the list of SPAs and the SAC documentation to the Commission by 1 May 2004, when the procedure between the Member State and the Commission detailed in the Habitats Directive starts, and the result of this process the Natura 2000 sites will be finally designated in Hungary. The selection of Natura 2000 sites is based exclusively on scientific criteria, such as the size and density of population of target species and the ecological quality and area of target habitat types present in the site. The Directive does not lay down rules regarding the consultation process to be followed in selecting the sites, which is up for the Member States to determine in accordance with their administrative systems. The procedures for public consultation have varied considerably between Member States. In some countries, identification of the sites has been accompanied by detailed discussion with owners and users on management measures but in other cases there has been little or no consultation with stakeholders. This has given rise to considerable controversy in some Member States with a variety of administrative and legal challenges, which have delayed the submission of proposals. The Commission is not involved at this stage and has no powers to intervene in the differing procedures followed in Member States.

In the case of Hungary the list is approved in two steps, and currently this process is after the closing of the first stage. The designation of sites started in 1998, however, during the Orbán government the process slowed down, and until 2002 almost nothing happened. Then thanks to the strung work of about 500 professionals, the scientific, professional part of the designation process finished by January 2004. Hence, the first draft of the list was approved, which list was drawn up strictly by professional considerations and with the help of professionals, but with the exclusion of interest groups. One can say that the issue network was wide but patchy, because the land owners, foresters, farmers, agricultural business organizations, etc. were not involved in this stage, moreover, they were not informed about the designation process, its consequences and the purposes of establishing the Natura 2000 sites.

The task of drawing up the list of regional importance was coordinated by the National Park Directorates, then the coherent, nation-wide aggregated document came before the “Natura 2000 Advisory Board” (Natura 2000 Tanácsadó Testület) for assessment. This Board contains twelve environmental professionals delegated by the Office for Nature Conservation, and these professionals represent every habitat-type. After the first, professional-dominated stage, in the framework of the next step, the Office for Nature Conservation will agree with the proprietors of the sites selected for the list and other ministries regarding the designation of Natura 2000 sites. Thus, in this stage the land-owners, who may be natural persons, local self-governments, etc., join the process of designating Natura 2000 sites. However, this stage will not start until transposition

is complete by the approval of the decrees on Natura 2000, because the concrete rules and specifics will be laid down in this piece of legislation.

Hungary along with other new member states did not submit its list of sites on time (at the time of Accession). In order to force Hungary to comply and provide the list, in June 2004 the European Commission sent an informal notice to the Hungarian government. In this letter the Commission threatened to hold back all structural funds support unless the list of site is submitted. The reason for delay may be partly that the first effective contact between the Ministry of Environment and the National Park Directorates regarding the designation of Natura 2000 sites was taken up only in October 2002 (Interview materials). If we take into account the fact that it took more than a decade for the old Member States to fully comply with the directive, the circa 18 months that passed between October 2002 and May 2004 seems quite insufficient. The other reason for delay was the conflicts within the government, namely on the one hand, between the Ministry of Environment and Ministry of Defence, on the other hand, between the Ministry of Environment and Ministry of Economic Affairs and Transport. In both cases, the problem was that some of the designate sites were the property of the above mentioned ministries, and they attempted to reject to abandon these sites.

According to the Habitats Directive, any plan or project not directly connected with or necessary for the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's "conservation objectives". Because the above mentioned decrees on Natura 2000 are not approved, which will contain this procedure of revision, there have not been instances for this kind of examination, precisely there is one case, but it is not closed yet. (According to plans, one stage of Highway Three in the pipeline will go through a Natura 2000 site.) After the first stage of designation of Natura 2000 sites, these areas are handled as they are already the part of the Natura 2000 network by the National Park Directorates, and the Directorates proceed accordingly in problematic cases.

Hungarian nature conservation policy received significant assistance from the EU, in the framework of the Phare programme; these supports were expanded to modernization of the monitoring system, habitat reconstruction and structural investments (MFA, 2003). It must be emphasized, that co-financing may be demanded from the EU for designation and maintenance of Narura 2000 sites. One of the most significant sources of this is the LIFE Nature Fund. Hungary won several LIFE-applications for programmes of preserving species and habitat-reconstruction. Regarding monitoring procedures, there are no uniform provisions and methods in the EU, neither are there in Hungary. However in Hungary the processes of expansion applied in the framework of National Biodiversity Monitoring System, operating from 1997, provide a good basis for monitoring the Natura 2000 sites.

The issue network of implementation

The network of implementation provided a good basis to promote the scientific interest in the designation process, however, it broke the basic framework of classic public policy, namely by not

involving the interest groups in the decision making process. Interest groups here mean: landowners, farmers, etc., who are heavily impacted by the Natura 2000.

Research institutes, academic departments, national parks and conservationist civil organizations (playing an especially active role: the WWF Hungary, National Society of Conservationists (Magyar Természetvédők Szövetsége), Hungarian Association for Ornithology and Nature Conservation (Magyar Madártani és Természetvédelmi Egyesület), and the Central and East European Working Group for the Enhancement of Biodiversity (CEEWEB)) are participating in the process of designation of Natura 2000 sites (MFA, 2003). The following ministries are interested in the discussions on the proposed sites drawn up by professional aspects: Ministry of Agriculture and Rural Development, Ministry of Defence, Ministry of Economy and Transport, Ministry of Foreign Affairs and Ministry of Justice. After accession to the EU, there is tighter cooperation with the first three ministries mentioned above.

During the year of 2001, there was botanical and zoological investigation (data collection) in the framework of a Phare project regarding the spread of species and habitat-types listed in the annexes of the Habitats Directive. Professionals made a proposal for sites to Natura 2000. In the framework of this project, the Hungarian Association for Ornithology and Nature Conservation (Hungarian abbreviation: MME) co-operated with the Office for Nature Conservation in drawing up the list of SPAs. A consortium (its members: ÖKO Rt., MME, Institute of Ecology and Botany and Institute of Geodesy, Cartography and Remote Sensing) was charged to implement this Phare project. The colleges of the animal repository of the Hungarian Natural Science Museum participated in drawing up the Hungarian draft of the list of species in order to enlarge the list of species of the Habitats Directive. The performance of the task of National Park Directorates regarding the composition their proposals was helped by several researchers. The members of the above-mentioned Natura 2000 Advisory Board are from the following institutions: University of Debrecen, Museum Mátra, Directorate of Museums of Somogy County, animal repository of Hungarian Natural Science Museum, Eötvös Loránd University, Szent István University, Plant and Soil Protection Service of BAZ County, Directorate of Hortobágy National Park (Interview material).

In sum, the main problem regarding the first stage of designation process was the exclusion of interest groups. The issue network was one-sided, because the farmers, agricultural business organisations, land-owners, foresters, etc., were not involved, moreover, they were not informed about the designation process and its consequences. On the basis of the above mentioned facts, one can make an easy comparison with public policy theory, more concrete one can observe a typical situation of the iron triangle. There is the agency as the ministry and the national parks, there are the professionals, and the interest groups. In this case, as I previously mentioned, one third of the equation is missing, as there was the complete exclusion of farmers and landowners, that is private interest groups, from the designation process.

Assessing the impact of Natura 2000 on farmers

One must remark that application, the establishment of Natura 2000, is not in a stage when one can see the consequences of the network for farming, hence there are only estimates and

preliminary surveys concerning the impacts. When assessing the future consequences of Natura 2000 on farming, there are two different conductions. On the one hand, there will not be stricter regulations in those lands, which are already protected by law, namely concerning this kind of Natura 2000 sites there will be status quo regarding the law abridgement. (Approximately 718 thousand acre from the Natura 2000 sites are already protected nature land.)

More problematic cases will be, when lands not protected by law will be designated as Natura 2000 sites. The proprietors of these lands will have to face the same abridgements and bindings as those who have law-protected lands. However subsidies will be paid to private landowners in the framework of agro-environmental support system, and if the change of production-structure is necessary, compensation will be paid. According to estimates, the number of this kind of cases will be marginal.

CONCLUSION

Our research findings have shown that the implementation of the Habitats Directive in Hungary has been taken into account in the formulation of the national environment strategy. Therefore the problems arising from the application of the *acquis* in this field are of a different nature than that of most of the old Member States. We found that as the process is still stuck in the 'quasi-official' phase of policy-making, the politicisation of the issue has not taken place yet.

Actually, it seems that for a long period the process had stuck in-between the two phases of public policy making, namely formulation and implementation. It is quite a typical phenomenon in Hungarian law-making that certain framework acts are approved by the parliament, yet their implementation is lagging behind. There may be several reasons for that but usually it is either because insufficient budget was allocated to the task, or because the government (or ministerial) decrees regarding the actual implementation (the rules and procedures to be followed, the appointment of the competent authorities, the clear definition of the scopes of competences etc.) are not approved by the government on time. In the latter case it is usually very hard to find out why the process has stuck, as very little information is available on this phase. The implementation of the Habitats Directive is a typical example for delayed law-making: the framework acts are in place (the big picture looks fine) but as always the devil is in the details and the two government decrees which define the procedures (and provide full transposition) were approved in delay. In the meantime one can see that there is a confusion of phases of public policy making: a mixture of policy formulation and implementation, because the designation process has already started, when the decrees on the implementation of the acts were not yet approved by the government. Hence, the implementation started without clear rules on the process and with the exclusion of the social stakeholders.

The reason for delay of the approval of two decrees may be partly that the first effective contact between the Ministry of Environment and Water Management and the National Park Directorates regarding the designation of Natura 2000 sites was taken up only in October 2002 (interview material). If one takes into account the fact that it took more than a decade for the old Member States to fully comply with the directive (or not even fully, as in the case of Greece e.g.), the circa 18 months that passed between October 2002 and May 2004 (which was the deadline for compliance) seems quite insufficient. Since the inauguration of the administrative decision-making, the stakeholders have met a couple of occasions especially in the field of Natura 2000, furthermore, the question of Natura 2000 is regularly on the agenda of the meetings of the directors (a monthly forum, in which the ten directors of the National Park Directorates and a representative of the Office for Nature Conservation participate), which shows that the competent authorities have started to catch up.

In May 2003, delegates from the EU checked the implementation of the Habitats Directive in Hungary and they pointed out the problems already detailed above, namely: the delay in the approval of the decrees on Natura 2000, delay in drawing up of the list, and the poor administrative capacity of the Ministry and the National Park Directorates too (interview material). However, Hungary has had several successful initiatives regarding the field of nature conservation

in EU policy-making. Namely, Hungary has succeeded to enlarge the annexes of the Directive. From time to time the number of species listed in the annexes of the Directive are increased by the newly entered Member States on the basis of professional considerations. There were only species and habitat-types existing on the territory of the Member States in the original version of the annexes. The accession countries as well as Hungary have made several proposals regarding the enlargement of the annexes. As a result, the Hungarian endangered natural values became part of the above mentioned annexes.

There are two further consequences as regards implementation. On the one hand, even though full transposition was not yet taken place, it did not mean that the habitats or species covered by the directive are heavily jeopardised, partly because more than half of the area of the future Natura 2000 network already belongs to the national conservation areas, and partly because no serious danger seems to be present in the new areas (even though precise surveys are not available). However, due to some anomalies, the probability of future protest increases and the potential loss of habitats is a real danger. First, the limited actual opportunities for policy formulation by the interest groups, second, the government failed to inform the public in a proper manner, and third, no negotiations took place between the Ministry and farmers, foresters, etc. On the other hand, the process of designation of the sites is not in a phase yet when real politicisation of the issue could take place, as several details, e.g. the amount of compensation to be made to the farmers etc. defined in the government decrees have no impact yet. However, this issue will surely come to the fore at a later time, as it has been the case in Ireland or Finland.

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ANNEX 1. NATIONAL PARK DIRECTORATES

Hortobágy National Park Directorate

Kiskunság National Park Directorate

Bükk National Park Directorate

Aggtelek National Park Directorate

Fertő-Hanság National Park Directorate

Duna-Ipoly National Park Directorate

Balaton-highlands National Park Directorate

Duna-Dráva National Park Directorate

Körös-Maros National Park Directorate

Órség National Park Directorate