



Organising for EU Enlargement

A challenge for member states and candidate countries

MULTILEVEL GOVERNANCE

Shielding Implementation from Politicisation?
Implementation of the Habitats Directive in Slovenia

OEUE PHASE II
Occasional Paper 6.3 – 08.04

Tomaž Boh

University of Ljubljana



FIFTH FRAMEWORK PROGRAMME



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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** analyses 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 broadens the analytical focus to encompass other levels of government – the EU and sub-state – through multi-levelled governance. Here attention is 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.

AUTHOR

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Tomaž Boh is a Research Assistant and PhD candidate at the Centre for Political Research, Faculty of Social Science, University of Ljubljana. His research interests include the EU policy process, EU environmental policy and the transformation of the nation state as a result of European integration. The subject of his PhD research is the Europeanisation and implementation of common European environmental policy in Slovenia. Tomaz Boh's publications include, (edited with Danica Fink-Hafner) *Parlamentarne volitve* (Lublaň: Fakulteta za družbene vede, 2000).

ABSTRACT

Shielding Implementation from Politicisation? Implementation of the Habitats Directive in Slovenia

This paper examines the extent of adaptational pressure, in the field of environmental policy, placed on Slovenia, as an EU accession state, by observing the institutional, legal and policy misfit under the implementation of the provisions of the EU Bird and Habitat directives in respect to the designation of the Natura 2000 network areas. It is argued that first, the pressure to adapt has been extensive, second, the implementation has been administratively driven involving a significant role for epistemic communities and third, the exclusion of non experts (notably local communities) as equal partners merely postpones potential conflict until the late stage of 'real (practical) implementation'.

The problem in Slovenia is that development plans are prepared at the local level but, in contrast, the designation of Natura 2000 was a centralised project wherein in cases of any conflict of interest the local authorities and democratic way of legitimating could not override the technocratic procedure. It follows from the case study that Natura 2000 was a case of administrative implementation as far as the whole process was planned and executed in the narrow circle of the team within the Ministry of the Environment and Spatial Planning. Politicisation increased extremely immediately after the Natura 2000 areas were announced and it seems that in the near future Slovenia will encounter extensive problems with the implementation of Natura 2000.

INTRODUCTION⁴

Cooperation among the different levels of governance associated with environmental policy is essential for the fulfilment of the EU's environmental protection objectives. Over the last three decades the EU member states have negotiated a significant body of environmental measures with which the new member states had to comply, through institutional and legislative reforms, prior to joining the Union (Fink-Hafner and Lajh 2003). The significant legislative form of EU environmental policy, representative of positive integration (Scharpf 1996), exposes the member states to pressure from the EU level along with the consequent financial cost of compliance. EU environmental policy pertaining to nature conservation involves complex implementation procedures. Although there has been a tradition of nature conservation in Slovenia, the EU's policy requirements differ significantly in approach. In order to understand the extent of the challenge posed by the transposition of EU legislative measures it is necessary to note the key features of Slovenia's natural environment and experience of conservation.

Slovenia occupies 0.004% of the world's surface area and 0.014% of the world's mainland area while its population accounts for 0.033% of that of the world's. In contrast to Slovenia's relatively small size and population, over 1% of the world's known species and 2% of land species inhabit the country (Sovinc 2004). Its geographical location at the meeting point of the Mediterranean, Continental and Alpine climatic areas combined with biological factors including its landscape have fostered the extent of its natural biodiversity (Sovinc 2004). Among the EU member states Slovenia is ranked second in the index of biodiversity, with a value of 0.558 (Kolar-Planinšič 2003: 5). The relatively well preserved natural environment, without 'black spots' of environmental destruction, is a great responsibility necessitating responsible policy and planning which impose restrictions on certain types of economic development.

In common with all the new member states Slovenia was obliged to designate, by the 1 May 2004, the date of accession, 'special protected areas' (SPAs) under the Bird Directive and 'proposed sites of community importance' (pSCIs) under the Habitat Directive. Protected areas were designated for 41 bird species under the Bird Directive and for 56 habitat types and 111 fauna and flora species under the Habitat Directive (MESPE 2004a:9). As a result, we can legitimately talk of Slovenia as being a *biotic park*. The twenty six 'special protected areas' designated by the government under the Bird Directive cover 25% of Slovenia's surface area, while the 260 'proposed sites of community importance' under the Habitat Directive cover 32%. However, the designated areas under the two Directives overlap greatly with the result that just over 35% of the country's total surface area⁵ is designated under Natura 2000. While approximately 20% of the Natura 2000 areas are within existing protected areas notably 27% of the areas correspond with economically viable areas and the restrictions connected with

⁴ I would like to thank to Prof. Brigid Laffan, Prof. Danica Fink Hafner and Damjan Lajh for their comments on an early draft of this article. Nonetheless, I emphasise that I am solely responsible for the entire contents of the article.

⁵ The EU15 average is about 18%.

nature conservation involve significant limits to the permissible forms of economic development (MESPE 2004a: 20). This could present a cause of significant conflict between the economic interests of a given area and the state's nature conservation obligations. The designation of Natura 2000 areas changes the pre-conditions for development of many local communities, on the one hand placing restrictions on the non-sustainable use of natural resources but, on the other offering new challenges and opportunities for economic development. Given Slovenia's obligations to fulfil the requirements under the Bird and Habitat directives along with Natura 2000 the critical political question is not whether the positive effects of the designation prevail over the negative ones, but how to take advantage of the new opportunities (MESPE 2004a, 20).

This paper examines the extent of adaptational pressure, in the field of environmental policy, placed on Slovenia, as an EU accession state, by observing the institutional, legal and policy misfit under the implementation of the provisions of the EU Bird and Habitat directives in respect to the designation of the Natura 2000 network areas. It is argued that first, the pressure to adapt has been extensive, second, the implementation has been administratively driven involving a significant role for epistemic communities and third, the exclusion of non experts (notably local communities) as equal partners merely postpones potential conflict until the late stage of 'real (practical) implementation'.

This paper opens by conceptualising the adaptation pressure and the 'goodness of fit'. The Natura 2000 project involves the implementation of part of the requirements under the Habitat and Bird Directives and is observed through the lens of three types of misfit (institutional, legal and policy). The paper analyses the point of departure and resolution of all three kinds of misfit by first, reviewing the negotiations on the two directives; second, noting the technical amendments to the directives' annexes proposed by Slovenia and accepted during the course of the negotiations; third, examining the transposition of the aforementioned directives and their application under which Slovenia designated the areas for special protection in a process necessitating expert knowledge and harbouring potential conflict. The formal and informal policy networks associated with Natura 2000 illustrate the relations among the actors. Finally, the paper concludes by identifying the lessons to be drawn from the experience of area designation and which might be applied in other cases of implementation.

POINTS OF DEPARTURE:

'GOODNESS OF FIT,' ADAPTATION PRESSURE AND THE NEGOTIATING PROCESS

Three types of misfits

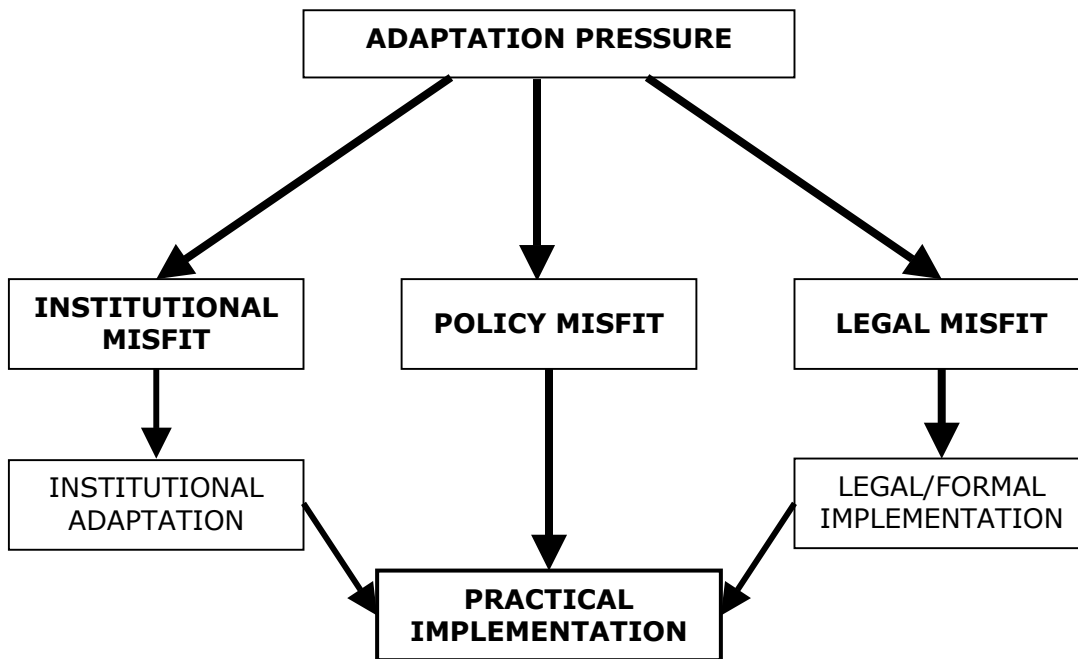
The European integration process caused a change in the policy paradigms of nation-states and they have thus had to adjust their national systems to EU norms. Despite Olsen's argument that domestic institutional structures, along with the values, norms, interests and power distributions in which they are embedded, are monuments of historical battles, joint problem-solving and peaceful conflict resolution (Olsen 2002: 944), in nearly every case Europeanisation⁶ has led to distinct and identifiable changes in member-states' domestic institutional structures (Cowles et al. 2001: 1). The lower the compatibility between European and domestic procedures, policies and institutions (the degree of (mis)fit), the higher the pressure for adaptation. This pressure is clearly a necessary precondition for domestic change yet it is not a sufficient factor. The first question on which the degree of adaptation pressure depends is how closely the changes induced by the EU level fit with what already exists at the domestic level. There are three interconnected aspects of misfits by which Europeanisation exerts adaptation pressure on member states. First, we can speak of a *legal misfit* in the situation where the 'formal/paper' component of the misfit appears to be important (Falkner 2003: 4). This kind of misfit is especially notable in the case of accession states whose first step towards the EU was to transpose the *acquis communautaire* into the domestic legal order. Second, we can identify an *institutional misfit*⁷ that challenges domestic institutions and procedures and the collective understandings attached to them (Börzel, Risse 2000, 5; Knill 2001). A country whose domestic institutions are perfectly compatible with Europeanisation requirements would experience no adaptation pressure on the institutional structure and, hence, no domestic institutional change would be expected (Cowles et al. 2001, 1).⁸ The answer to institutional misfit is seen as a change in domestic institutions. Finally, there is *policy misfit*, which refers to differences between national and European rules and regulations. Europeanisation can thus be of a qualitative kind (more or less of an existing policy) or a quantitative kind (new or replacement national institutions or structures) (Falkner 200: 3). It also refers to changes in the existing paradigm and the practical implementation of a certain policy at the national level. The easing of a policy misfit depends largely on the interplay of institutional adaptation and legal implementation, yet it goes a step further for it depends on the 'real' results of the given policy.

⁶ Europeanisation is in this case understood as the influence of the EU level on national procedures, institutions and policies.

⁷ Falkner terms it as a politics/polity misfit (Falkner 2003: 4).

⁸ Risse, Cowles and Caporaso define the term 'goodness of fit' between the Europeanisation process on one hand and national institutional settings, rules and practices on the other. For a more detailed explanation, see Risse, Cowles, Caporaso 2001: 6-12.

Figure1: Adaptation pressure and three misfits



While the implications of European legislation usually differ from domestic arrangements, the effectiveness of implementation can be expected to increase as domestic structures adapt to European policy requirements (Knill 2001: 17). Policy misfit and the nation-states' obligation to implement common European policies lead to a domestic change in institutions and procedures. For new member-states the priority has been the elimination of institutional and legal gaps, while the practical implementation of directives (elimination of policy misfit) is normally a longer process, extending beyond the date of accession.

Legal, institutional and policy misfits in Slovenia and their resolution

Environmental policy is one of the most successful common European policies seeing some 80% of the related legislation being prepared at the supranational level (McCormick 2001). As a result, members states are under significant pressure to transpose and implement these requirements within their domestic legal systems. The pressure on prospective new member states was even greater since they had to harmonise their systems even before EU membership. In the field of nature conservation Slovenia was exposed to a high level of adaptation pressure, given that the European Commission clearly stated there was no place for any derogations, exceptions or transition periods. Furthermore, Slovenia's was obliged to designate the Natura 2000 areas (SPAs and pSCIs) by the day of accession (1 May 2004). The combined complexities involved in the designation process and the short timescale available represented considerable pressure for adaptation.

a) Legal Misfit

Despite the fact that a form of nature conservation was in place in Slovenia since late 1970, the gap between the Slovenian system of nature protection and the EU's requirements was at the beginning of the accession process quite wide given the need to accept a whole set of new legal rules. The Slovenian Environmental Protection Act⁹, adopted in 1993, established new environmental principles and the legal basis for protection in line with the country's changed economic and political conditions. The Act stipulates the general principles for application through decrees, orders and other binding secondary legislation (NP, 1999, 2). In 1998 a strategic document *Environmental Accession Strategy for Slovenian Integration with the European Union* was adopted which determined the timetable for the transposition of EU legislative measures.

Slovenia's negotiating positions stated that the country's existing environmental legislation partly conformed with the *acquis*. The protection of wild birds was provided for in the Decree on the Protection of Endangered Animal Species¹⁰ and the Protection, Breeding, Hunting and Hunting Grounds Management Act¹¹. However, this legislation was insufficient to accommodate the provisions of the EU Bird and Habitat Directives and their transposition into Slovenian law necessitated new legislation, the Nature Conservation Act. This key Act, most recently amended in March 2004, provides a sound legal basis for environmental legislation including secondary legislative measures. Among the Acts relevant provisions are those that provide for cooperation with and role of local authorities in the process of designating and managing Natura 2000 areas. The most important secondary pieces of legislation are the *Decree on types of natural values*¹² and the *Decree on habitat types*¹³. On the basis of the amended Act, documents on the designated sites were issued just a few days before the deadline. The *Decree on special protected sites – sites of Natura 2000*¹⁴ provides a detailed list of Natura 2000 areas and the *Plan for assessing the consequences of Natura 2000 areas and the designation of development provisions* states the government has to accept the provisions for ascertaining the consequences of implementing such areas. Shortly afterwards there followed Decrees on species of wild flora¹⁵ and wild animals¹⁶ and all of the aforementioned decrees represent the operationalisation of the Nature Conservation Act. This whole 'package' of legislative measures represents the transposition of the Habitat and Bird Directives into Slovenia's legal order and the fulfilment of the requirements under the *acquis*. While, the legal misfit may have been eliminated this merely represents one stage in the implementation process and is followed by the 'real implementation' as the legal provisions are put into practice.

⁹ The Environmental Protection Act 1993, OJ. No. 32/93 and Amended 1/96.

¹⁰ Decree on the Protection of Endangered Animal Species, OJ 57/93, 61/93.

¹¹ Protection, Breeding, Hunting and Hunting Grounds Management Act, OJ 25/76.

¹² Decree on types of natural values, OJ 52/02, 67/03.

¹³ Decree on habitat types, OJ.113/03.

¹⁴ Decree on special protected sites – sites of Natura 2000, OJ. 45/04.

¹⁵ Decree on wild flora species OJ. 46/04.

¹⁶ Decree on wild animal species OJ 46/04.

The transposition of the Habitat and Bird directives into Slovenia's domestic legal order was characterised by a low level of politicisation. A relatively closed working group with the Ministry for the Environment along with some experts prepared for the legislation and specifications. The Nature Conservation Act had been adopted by the Slovenian Parliament along with the subsequent amendments providing the legal basis for the decrees and role of local communities in the designation of sites. However, given that the proposals had been prepared by experts in the subject area and involved specialist specifications they were unopposed by the members of the parliament who had limited knowledge of the subject matter. The government was responsible for the adoption of the decrees on the designated areas and Parliament was only informed in April 2004. The government's proposals which involved the extension of the existing National Conservation Areas meet with no challenges by the MP and were accepted by a large majority (44 in favour and 8 against).

b) Institutional Misfit

In accordance with Falkner's classification of institutional misfit we can classify the Slovenian institutional harmony with the EU requirements at the beginning of the process as low since there was a need to change crucial domestic institutions and procedures (Falkner 2003: 5). The way of eliminating this misfit has been in keeping with the incremental-transformation type (Fink-Hafner and Lajh, 2003: 56) since some institutions already existed, albeit most were re-arranged, merged and given more resources. Although are some new (or fundamentally reformed) institutions (the Environmental Agency, the Nature Protection Administration) they are in some way successors of pre-existing institutions. All of the European Commission's Regular Reports on Slovenia's progress towards accession (1998, 1999, 2000, 2001, 2002) stressed the significant shortage of staff that would have to be eliminated if the effective implementation of environmental provisions was to be achieved.

The main 'in-house' expert institution of the Ministry of the Environment is the Environment Agency (EA), established in 2001, with the transformation of pre-existing services. Its structure and procedures are greatly influenced by the requirements of the European Environment Agency (EEA), with which it cooperates with on an expert basis. In 1999, under the Nature Conservation Act, the Nature Protection Administration of the Republic of Slovenia was established, yet it only formally started work at the beginning of 2002. It brought the existing *Regional Offices for the Preservation of Natural and Cultural Heritage* (7 units) into one organisational structure. The Nature Protection Administration is a highly professional and expert institution whose aim is to monitor the state of Slovenia's natural environment, prepare expert opinions and provide other expert information. To date, institutional misfit has largely been eliminated. At the level of the Ministry of the Environment, a group of 'in-house experts' specialised in Natura 2000 operates, led by the deputy-state secretary¹⁷. Furthermore, the Nature Protection Agency has been consolidated and together with the Environment Agency, it provides the core of expertise on nature conservation system in Slovenia.

¹⁷ The Natura 2000 team works as part of the office for the Environment – Nature Conservation Department.

c) Policy Misfit

At the time of the opening of the accession negotiations a significant degree of policy misfit existed between Slovenia's approach to environmental protection and that of the EU. While Slovenian policy focused on nature conservation the EU had replaced an emphasis on conservation with measures incorporating sustainable development and that simultaneously accommodate economic and environmental needs. Furthermore, the EU measures involved an increase in the area of protected territory, Slovenia's conservation policy focused on 10% of the national territory, predominantly in the Alpine area (MESPE 2004b: 1), whereas the EU's policy is more widely directed and attempts to ensure the co-existence of all interests thus posing a challenge to the existing scope and ambition of nature conservation.

If in the past the requirements of nature conservation were seen as a burden and an obstacle to economic development and protected areas had the status of national or regional parks (Triglav National Park, Škocjanske Jame Regional Park), then the implementation of Natura 2000 primarily means new opportunities especially for local communities to develop in a more sustainable way.

Hence, it was stated that the biggest loss in the process is non-taking measures from the state and local authorities (MESPE 2004a: 21). Another important element of well-being is 'environmental capital' which is not directly expressed with a materialised value. The status of a Natura 2000 area enables all potential commercial and non-commercial users of that ecological capital to co-decide on ways to use it. Outside areas of such protection decisions on the use of the nature are almost exclusively decided on the basis of commercial or monetarily expressed values (MESPE 2004a: 13). With the need to adapt the national nature conservation system in line with that of the EU, the old 'conservatory' protection was upgraded to more acceptable and developmentally oriented protection. Given that thorough changes in society are necessary for the elimination of policy misfits, its resolution is not finished and will continue now Slovenia is a member of the EU.

The negotiating process

The process of negotiating on the environment chapter, as a whole was complicated, and given the specific requirements of the environmental field problematic. Due to the detailed knowledge needed for designating Natura 2000 areas, and especially because Slovenia's extreme biodiversity resulted in the need to designate a significant part of the country as Natura 2000 areas, negotiations on the Habitat and Bird Directives were complex. Because of the country's relatively well-preserved nature, some species on the 'red list' in the EU are relatively numerous in Slovenia. Especially problematic were provisions about the protection of wild animals (brown bear, wolf and lynx). The brown bear population in Slovenia is strong and vital, with bear numbers ranging between 300 and 350. Its core habitat covers more than one-quarter of the national territory. There is quite a similar situation regarding the population size and habitats of the wolf and lynx (NP, 1999). Given the extensiveness of their living areas all three wild animal species involve a potential conflict, especially with the agriculture sector. To minimise any

conflict and to regulate populations through exceptional culling by shooting (which had been the practice in Slovenia since 1966) Slovenia asked for an interpretation of Article 16 of the Habitat Directive. Slovenia believed this could provide the basis for regulating population numbers. In addition, it was stated that if it were impossible to balance populations of the abovementioned species using this method the Republic of Slovenia would request a derogation concerning the provisions of Annex IV of the Habitat Directive on the conservation of the natural habitats and wild fauna and flora for the brown bear, wolf and lynx (NP 1999: 25). The European Commission's position was that a derogation was impossible and that the said populations could be regulated under Article 16 of the Habitat Directive.

Designating a potential protected area is a very exacting area of work in which inter-institutional co-operation and the inclusion of different profiles of experts is necessary. Due to the fact that Slovenia was in a position of adapting its legal system to the EU requirements and that transposition of the *acquis* was predominantly a 'one-way' process, there was a very limited opportunity to include the Slovenian solutions in the existing European legal order. Slovenia does in fact incorporate the EU's body of legislation in its domestic law system. But, the country's abovementioned biodiversity and especially the fact that it brings to the EU a new region with specific biological features (Dinaric-Karst region) led to the need to include some technical adaptations to both Directives.

Slovenia proposed supplementing Annex I of the Bird Directive with a new species, namely the Kentish plover (*Charadrius alexandrinus*)¹⁸. The Commission accepted the proposal and the new species was included in the Treaty of Accession. The second technical adaptation was Slovenia's proposal to list four bird species in Annex II/2 of the Bird Directive, which permits the use of some species because their population is vital and big enough so that those species would not be endangered. This proposal was also accepted and all four species are today listed as exceptions from the Bird Directive. Because of the new region being included in the EU via Slovenia's membership, a few technical adaptations to the Habitat Directive were also proposed. Slovenia requested five new habitats be added to Annex I and 28 species to Annexes II and IV. The results are shown in Table 1.

¹⁸ An explanation is available in the document: Negotiating positions of the Republic of Slovenia on Chapter 22 – the Environment, page 26

Table 1: Proposed and accepted technical adaptations

	79/409/EEC		92/43/EEC	
	proposed	accepted	proposed	accepted
Annex I – protected species	1	1		
Annex II/2 – allowed to use	4	4		
Annex I – habitats			5	5
Annex II			28	16
Annex IV			16	10

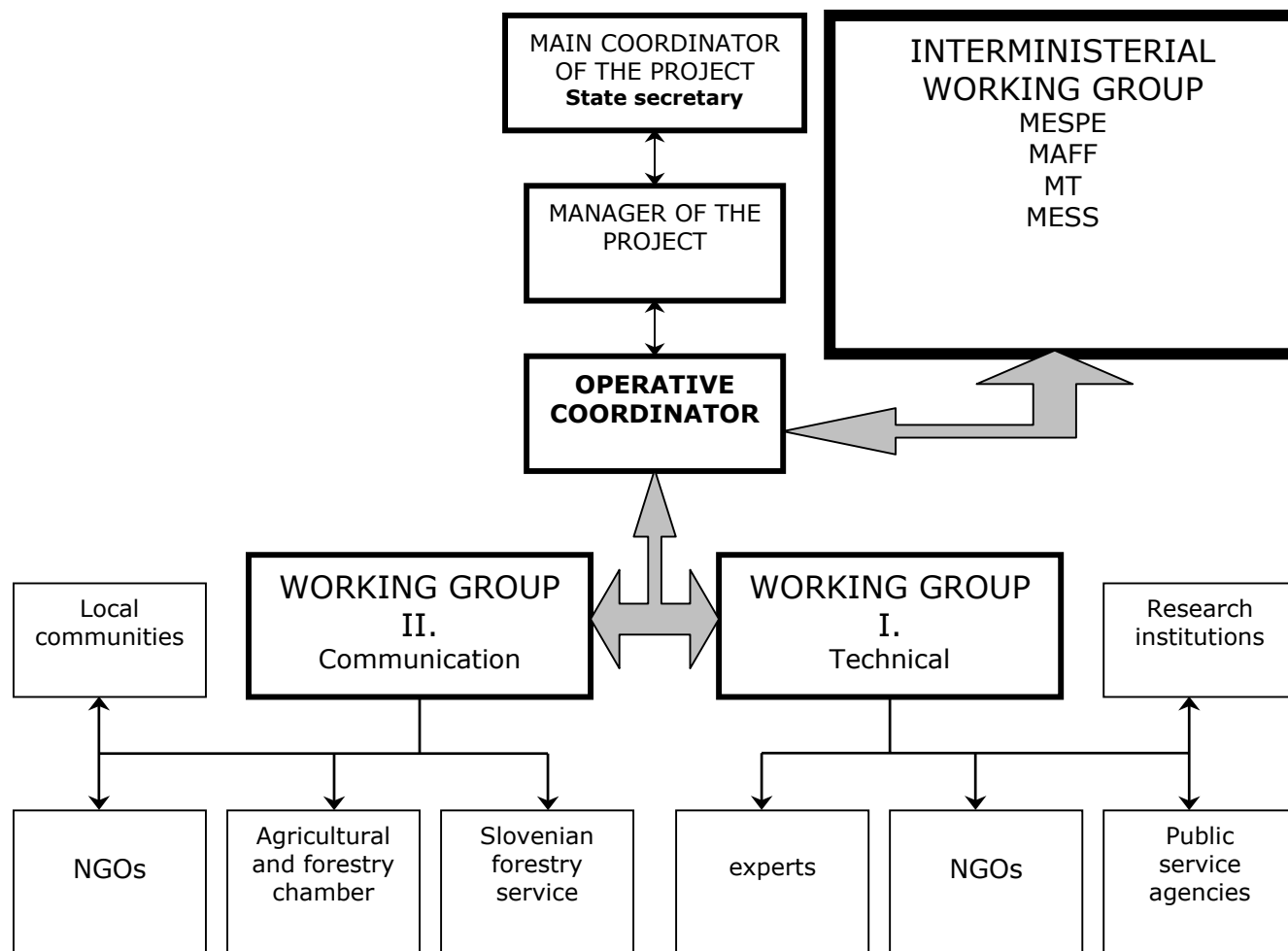
Source: Skoberne (2002: 324), Skoberne (2001: 102-104)

As we can see in Table 1 all Slovenian proposals for technical adapting the Bird Directive were accepted, along with a relatively large share of requests for adaptations of the Habitat Directive. The ability of EU accession-states to amend the existing *acquis* via technical adaptations is one of the few options available to 'upload' the national preferences of nation-states to the EU level. Slovenia succeeded in incorporating its vital features within the EU's legal system.

APPLICATION OF THE DIRECTIVES – THE DESIGNATION OF SITES

The process of designating Natura 2000 areas followed the negotiating process and the process of transposition of requirements from the Habitat Directive. Since the processes of designating Natura 2000 areas, the first step in the application of the Habitat Directive provisions involving a complex task, a transparent institutional structure of the project was introduced. The environment ministry is the central institution and site of preparations and co-ordination of the whole process. The task of designating Natura 2000 areas was entrusted to a special department in the ministry (Nature Conservation Department) and was led by a state secretary.

Figure 1: Organisational (operating) structure of the Natura 2000 project in Slovenia



Source: Skoberne, Peter (2003): Metoda opredeljevanja potencialnih območij narave ekološkega omrežja Natura 2000 v Sloveniji, Inačica 2.1, Agencija za varstvo okolja, Ljubljana.

Three working groups were established for the designation of Natura 2000 areas. Their work was co-ordinated by the operative co-ordinator of the project, which is within the environment ministry. The highest political level of co-operation was formalised in the interministerial working group. Besides the environment ministry the working group was composed of representatives of the Ministry of Agriculture, Forestry and Food, the Ministry of Transport and the Ministry of Education, Science and Sport (Kolar-Planinšič 2004: 29). The interministerial working group met just a few times and their work was concentrated in the last month before the designation deadline. The task of the interministerial working group was to harmonise the proposed Natura 2000 areas between different ministries before any announcement of the sites. The other two working groups were more operative and hence more active. The communication working group (working group II) was established within the environment ministry and its role was to communicate with different publics. Its aim was to prepare the communication strategy and it was responsible for training the participants and the broad public. It was also responsible for ensuring harmonisation in the public appearances of all co-operators. Since the process of designating Natura 2000 areas was an expert-driven project in which socio-economic factors were excluded the communication group's task was crucial. It presented the core concept of nature conservation within both directives and tried to present the advantages and new development opportunities to various publics.

In the experience of other countries, a well-weighted communication strategy is needed in disputes among the broader public at the stage of further implementation of the means of conservation. Local communication groups are established to communicate with the public and stakeholders at the local level. For communication with different publics the ministry invited three partners into the communication group, namely the Nature Protection Agency, which was the most consolidated expert institution and because of its network of regional offices an important actor, possessing knowledge about local particularities. The other two were the Slovenian Forestry Service and the Agricultural and Forestry Chamber whose role was to communicate with landowners and farmers. Direct communication with local communities was necessary because of the exclusion of local authorities from the designation process.¹⁹ But even the local level was insufficiently informed about the Natura 2000 provisions. In 2003 and 2004 communication was made with 100 out of 192 municipalities (Kolar-Planinšič 2004: 20). But it is important to stress this was mainly one-way communication. After the preparation of potential areas for interministerial harmonisation (in April 2004), the communication group began with a presentation of individual fields to groups connected with these territories (local authorities, land owners...). The third component of the institutional structure for applying Nature 2000 was an expert-technical working group (working group I). It consisted of environment ministry 'in-house' experts, the Environmental Agency and the Nature Protection Agency. It was responsible for the expert preparation of the designation process, autonomous in

¹⁹ About 50% of local communities did not respond to attempts of the communication group to establish communication. About 5% are extremely 'hostile' to the project and are strict opponents of the protected areas. The remaining 45% of local communities were sensitive and co-operative in the communication with the communication group (Kolar-Planinšič – stakeholders' meeting).

its co-operation with external expert partners and was responsible for commissioning expert evaluations from NGOs and other sources of expert knowledge. At the end of the process an expert committee composed of representatives of academia (universities of Ljubljana and Maribor), the Museum of Natural History, the Academy of Arts and Sciences, and the Forest Institute verified the designated areas (Kolar-Planinšič 2004: 16). This was important because of the external 'end-control' and for lending additional expert legitimation to the whole project.

Public consultation in the process of designating SPAs does not give the same answer in all the states. The Directive does not lay down rules regarding the consultation process to be followed in selecting sites. Member-states decide by themselves in accordance with their administrative traditions (MESPE 2004c: 3). The EU's requirement for a fully expert-driven procedure finds its basis in judgements of the ECJ, where it has clearly stated that socio-economic factors have no weight in the process of designating protected areas.²⁰ Slovenia decided to use a technocratic – centrally driven procedure for designating Natura 2000 sites and only the Natura 2000 team (all three working groups) had any overview of the whole process. The communication group tried to present Natura 2000 to different publics as well as possible, but there was no intention to include them in the preparation process (MESPE 2004b: 3). Local authorities were only acquainted with the protected areas falling within their territories in April 2004, and hence they were practically unable to prepare any detailed, expertly justified annotations. The last amendments to the Nature Conservation Act determined the obligatory opinion of local authorities, but the provision was issued in April 2004 just a month before the deadline for the transfer of sites to the Commission and this provision has thus had very limited practical value.

Given the nature of environmental policy it requires extensive expert knowledge, a commodity usually monopolised by groups of experts. This is why the process at EU level, and similarly at the national level, is usually technocratic. The emergence of 'epistemic communities'²¹ is an explanation revealing that experts are important driving forces of domestic change especially in complex policy fields such as nature conservation. Opinions in the EU legislative process are often based on so-called expert judgements and ideas (Winn 1998: 125). This runs the risk of being called a political system ruled by technocrats who ignore the basic principles of democracy (Radaelli 1999: 1). Technocratic policy-making is one possible solution to potential conflicts between different interests and traditions. Whilst democracy is based on legitimate consensus, free elections and participation, technocracy recognises expertise as the sole basis of authority and power (Radaelli 1999b: 1). The EU is more a technocracy than a democracy in that political hegemony cannot be established by fighting ideological battles in the political market-place and power is usually a function of resources that help solve problems: expert knowledge, political

²⁰ Judgements of the ECJ, which show that socio-economic factors cannot be of any relevance in the process of designating a protected area (Commission vs. the Kingdom of the Netherlands, case C-3/96, 19 May 1998, Commission vs. Ireland - C-67/99, Commission vs. Germany - C-71/99, Commission vs. France C220/99).

²¹ The term 'epistemic community' refers to a community of experts and identifies 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 (Hass 1992 in Radaelli 1999, 41).

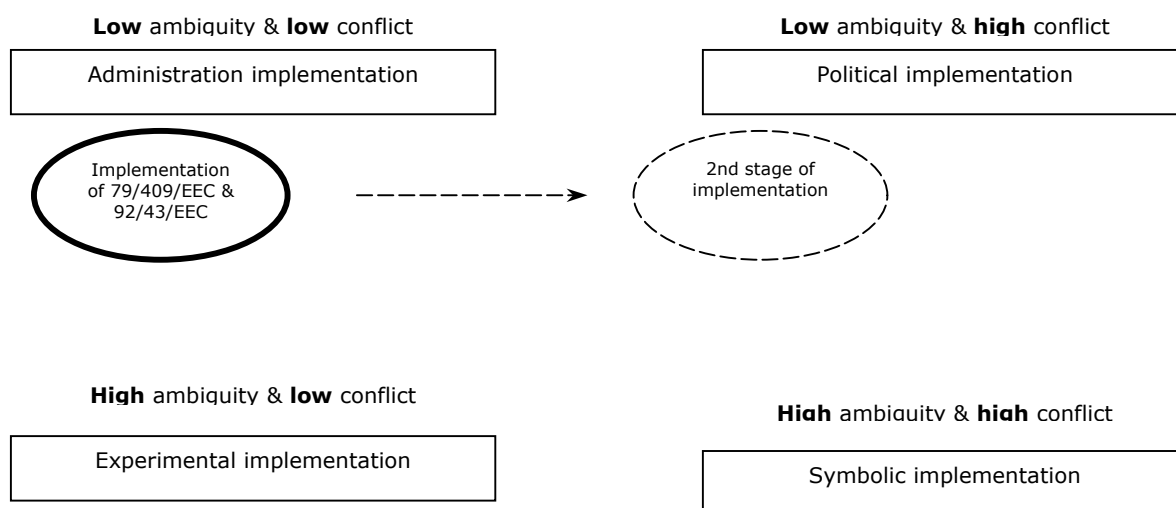
insight, and bargaining experience (Koler-Koch in Peterson, Bomberg 1999: 23). The application of nature conservation provisions of Natura 2000 is one of the most controversial areas.

On one hand, we can speak of great uncertainty in the policy formulation stage since political actors are dependant on experts and epistemic communities because the highly 'technical' area involved calls for extensive knowledge of the subject area. However, on the other hand, environmental policy is one area with a low level of ambiguity. It is a 'mature' policy area in which the EU has developed a large *acquis* over many years that has already been implemented by member-states. Therefore, the agenda is fairly certain, although some uncertainty might remain about timing, and the tasks are relatively clear given the solid legal basis and established case law (Grabbe 2003: 319). The low level of institutional discretion emerges from the fact that the European Union generally prescribes distinctive institutional requirements for domestic compliance (Knill, Lenschow 2000: 17). Given the split between the low level of ambiguity about the policy's aims and the high level of uncertainty about how to actually achieve this, Slovenia as a new member-state finds implementation of the Habitat (92/43/EEC) and Bird Directives to be quite problematic. Uncertainty gives rise to demands for information and considerable scientific and technical expertise (Richardson 2001: 16). The complexity of the problem, the very specific knowledge needed for a designation and the European Commission's clear vision of the need for experts increased their role. They were included in the process through two channels. Firstly, some leading experts are included in governmental structures as leaders of some departments of a responsible ministry. Secondly, the ministry responsible for the environment commissioned experts to designate areas of special protection and, given their influence on the early stage of preparing proposals, their role is extremely important. Due to the great biodiversity and poor knowledge of some species and areas, extensive research efforts were needed. Through the commissioning of expert evaluations a wide range of experts was included in the process. The most important of these are the Association for the Observation and Study of Birds, which is a leading bird protection organisation and also the partner of Life Bird International in Slovenia. It was almost exclusively empowered to prepare the expert basis for SPAs. Other important actors that mostly provided the information necessary for pSCIs under the Habitat Directive were the Centre for the Cartography of Fauna and Flora, the Slovenian Museum of Natural History, the Biological Institute at the Slovenian Academy of Sciences and Arts, the Fishery Research Institute of Slovenia, the universities of Ljubljana and Maribor and certain other NGOs and individual experts. The result was that an epistemic community of experts played an important role in providing the information, thereby reducing uncertainty in the process and providing a high level of expert legitimacy.

The designation process has so far been characterised by low levels of politicisation, relatively little controversy and the inclusion of different non-governmental (environmental) groups but almost exclusively for the purpose of acquiring the knowledge needed to designate areas and scientific legitimation for their decisions. The representatives of NGOs argued that the non-governmental actors co-operating in the process were almost exclusively expert associations in a specific field (reptiles, birds) and that environmental NGOs of a 'broader orientation' had no

opportunity to participate. Because experts drove the related procedure the designation of SPAs and pSCIs was characterised by a technocratic procedure. The communication group works with different publics (local authorities, land owners, the broad public...) but this communication is more focused on informing them about the possibilities and expected problems and restrictions than on actually including them in the process. In fact, all organised interest holders, except environmental ones who contributed an important share of knowledge, were merely the targets of the ministry's communication strategies. During the process the data about protected areas were not accessible to potential stakeholders and they were not informed about the planned inclusions of their territory within the Natura 2000 area. Due to this approach broader interests were not expressed and 'contra' interests were not clearly articulated in the stage of preparing a list of potentially protected areas. Hence, the level of controversy has been very limited so far. A low level of controversy and low level of politicisation are, according to Matland's classification, features of an administrative type of implementation. The very clear statement by the European Commission and consequences in the case of non-compliance and, on the other hand, the technocratic style of designating the areas created a situation in which implementation was excessively characterised by the exclusion of any 'contra' interests. This part of society was merely included as a target of the communication strategy introduced so as to inform affected groups and convince them to change their positions to thereby support the conservation project.

Figure 2: The impact of conflict and ambiguity on implementation



Source: adopted from Matland in Hill & Hupe 2002, 76

Administrative implementation is the ideal situation of the top-down model. There is a low level of conflict/politicisation and little ambiguity about the policy. Another solution is political implementation where the crucial element of implementation is the possession of power. There is a great level of conflict but still very little ambiguity. In the case of experimental

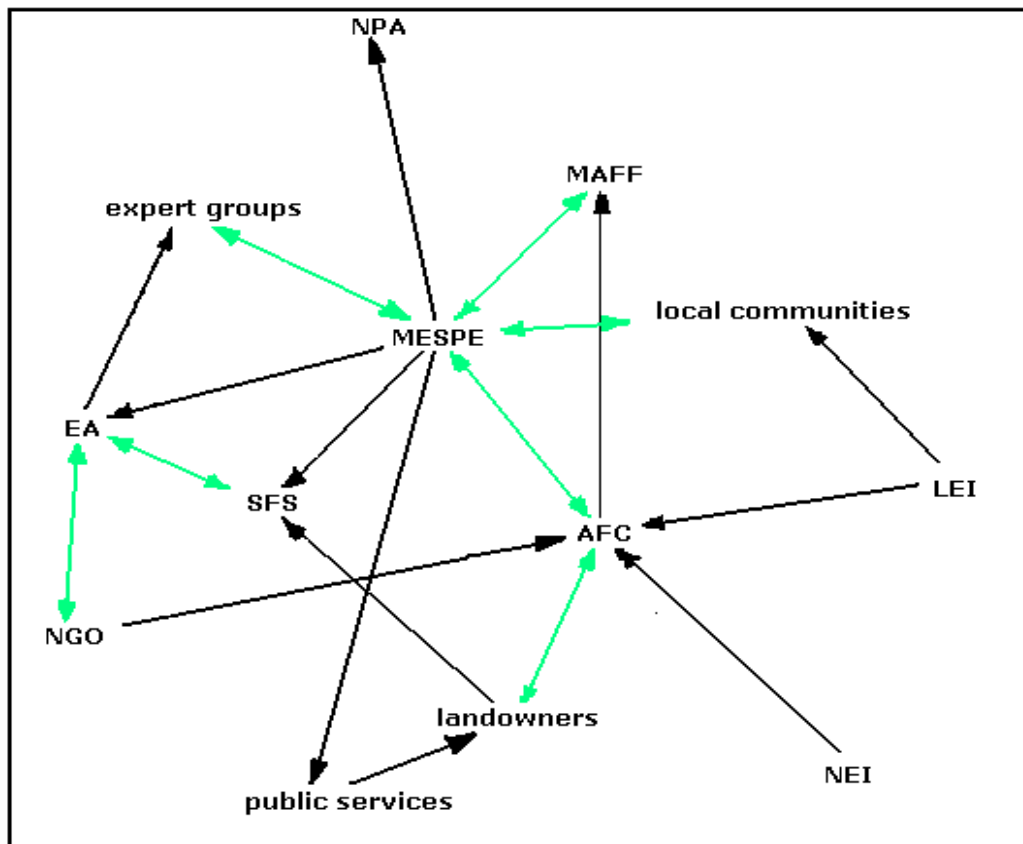
implementation the context is very important. The last version is symbolic implementation, where high levels of ambiguity and conflict are involved and which denote serious obstacles to efficient implementation.

THE HABITAT DIRECTIVE POLICY NETWORK

Natura 2000 is a project with very long-term consequences mostly challenging developing opportunities of local communities. As we have already mentioned the process of implementing Natura 2000 (designating the sites) in Slovenia was highly centralised and technocratically oriented. Despite the central role of environment ministry considerable number of actors participated in the process – formally, especially those with expert knowledge, which was necessary base for designation of SPAs and pSCIs or informally through the intensive contacts with policy-makers, experts or broader public. Figures 3 and 4 present the Natura 2000 networks of formal and informal relations among actors, participating in the process.²² From the figures we could see interesting and illustrative features of the Natura 2000 process and stressed duality of formal/informal relations.

²² This presentation of the actors involved in the Natura 2000 project was generated using NetQuest survey, which was filled in by the operative co-ordinator of the MESPE project. Based on the results of the questionnaire a multi-scaling analysis was used to visualise the contacts between the actors in the network. In the questionnaire we asked about the nature of the connection (formal/informal) and the direction of the influence (one-way/two-way). We did not ask about the strength of the connection/influence and, hence, differences in the intensity of connections are not presented. That is one reason why the method is predominantly useful as an illustration of the situation. On the diagrams the one-way connections are marked with black (dark) colour, while the two-way influence has a green (bright) one. I would like to thank Dr. Diane Paine from the University College Dublin for processing the data and plotting the networks.

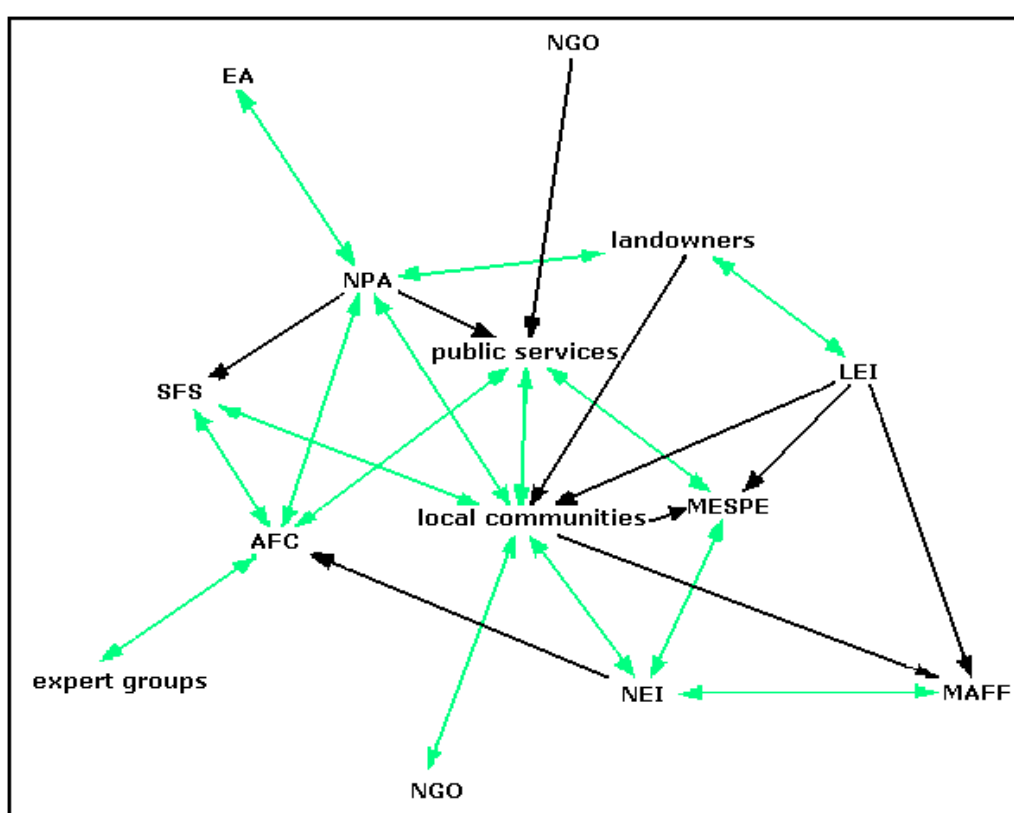
Figure 3: Formal network of Natura 2000 in Slovenia



The whole process of applying Natura 2000 was centralised, involving the key role of the environment ministry. From Figure 3 we can see that the environment ministry is located in the centre of the diagram with the most emphasised role. It has one-way connections with the NPA, EA, SFS and public services. As the central actor it is the source of influence and in no case is it the target of a one-way formal relation. The actors who are targets of the ministry's one-way relations are predominantly the sources of information (contractual partners) necessary for the designation of sites. The Ministry has a two-way relation with the agriculture ministry while, due to the fact that Natura 2000 significantly interferes with agricultural policy the co-operation on the MESPE-MAFF axis is crucial to success. For the same reason, the MESPE relation with the Agricultural and Forestry Chamber (AFC) is important for the chamber is an institution representing the interests of farmers, potentially the group most affected by Natura 2000. On the other hand, a second important actor and focal point of the formal network is AFC. But in contrast with the MESPE the AFC is predominantly the target of one-way relations. It is influenced by local economic interests (LEI), national economic interests (NEI) (mostly agricultural ones) and NGOs. The AFC represents these interests and is thus obliged to act in accordance with them. The AFC has a two-way relationship with the MESPE and landowners and influences the MAFF.

The formal network is characterised by the concentration of relations around two actors. One of these is the MESPE as the central actor and a source of influence and the other is the AFC as the main target of influences. The third, smaller cluster of relations appears around the expert groups, environment agency (EA) and environmental NGOs, which are included *via* some projects and provide a pool of very specific expert knowledge. We can see that the local communities are largely excluded from the process at the formal level, for they just have a one-way connection with local economic interests (their representatives on the bodies of local governments) and mutual relations with the MESPE, while they are supposed to give their consent to the finally proposed Natura 2000 areas.

Figure 4: The informal network of Natura 2000 in Slovenia



The picture of the informal network differs drastically from that of the formal network. Local communities - peripheral actors in the first figure - hold a central position in the informal network. They are exposed to informal pressure from local economic interests and landowners, and they exert pressure on both ministries involved (MESPE, MAFF), but all other connections are two-way in their nature. We can see that agencies as expert semi-state actors are more active like in the case of the formal network (NPA, SFS, public services). On the other side, the role of the MESPE is far weaker than in the first case. It is exposed to local and national economic interests (NEI, LEI) and pressure from the local communities. Public services as an actor that »works in practice« with nature conservation issues is also an important focal point of the informal network. The nature protection agency (NPA) and environmental NGOs are a

source of one-way pressure on public services while with all the other actors a two-way, co-operative relation is established.

So what can we conclude on the basis of the formal and informal Natura 2000 networks? On one hand, we can confirm our previous conclusions on the dominant role of the MESPE in the formal process. It is the most important source of formal/one-way influence in the system, while it decides about the contracting partners for preparing the expert basis. At the same time, local communities are just a minor actor with little capacity to influence the formal basis. Yet, on the informal side of the coin it appears that the interactions are much more lively. The fact is that the restrictions of Natura 2000 will affect the local communities and their development plans and it seems as if they have tried to compensate for their lack of formal power by undertaking intensive informal activities with practically all important actors. The second difference between the formal/informal network is, that on the formal side, we can see many more one-way connections (66%), while on the informal side most of the relations are two-way (60%), indicating the more co-operative and interactive relationships in the informal network. The minor role of the ministries in the informal network may be explained by their domination of the formal one, while the formal framework is designated by the governmental strategy that is quite centralistic while, on the contrary, the informal network is the result of the interests and activities of stakeholders, independently of the legal framework.

LESSONS FROM THE CASE STUDY

The process of implementing Natura 2000 in Slovenia can be split into a few phases. The first one is the legal implementation and transposition of both directives into the Slovenian domestic legal system. The framework law was passed in 1999 and revised for the last time in 2004. This phase was characterised by a low level of politicisation and little ambiguity and set the legal basis for further activity. In that phase, the process can be defined in Matland's classification as 'administrative implementation'. In that very first stage predominantly '*in-house experts*' of the environment ministry and some of the most influential environmental NGOs were involved and the outcome was the result of European requirements and Slovenian specifics in the field of nature protection. The second stage was the application of both directives and national framework legislation concerning the designation of the Natura 2000 areas network. In that stage, the epistemic community was included in the process. The basis for designation was built on expert opinions. Hence, a wide range of experts was included in the process. The most important ones were institutions from the academic field and NGOs specialising in certain nature conservation sub-fields with their related extensive knowledge. But the role of these groups was predominantly limited to the transfer of knowledge in the phase of preparing the expert grounds for designating Natura 2000 areas. The government was obliged to consider their findings and the final decision on protected areas was largely in accordance with their findings. Because of Slovenia's extreme biodiversity, according to the most rigorous expert findings about 60% of Slovenia's surface area should have been designated as part of Natura 2000 but in the final list of sites this share was reduced to 35%. This was made in the last month before the transfer of

list of sites to the Commission and was a result of the reduction of sites to the minimum professional acceptable size. This was the outcome of negotiations inside the interministerial working group. But at the end of the process we faced another 'reduction' of protected areas, which can be identified as the third phase of the process. Some smaller areas were 'cut out' from the Natura 2000 sites for clearly political and economic reasons (about 3% of the national territory).

The Bird and Habitat Directives do not prescribe the style of designation and it therefore depends on each state involved. Slovenia chose a closed-centralised model with an extremely expert-driven procedure. It was decided that the process of expert-driven procedures for designation would be closed to the broader public and potential stakeholders. Because of the acute deficiency of data about some species and habitats an extensive amount of researches was commissioned. The protected areas were designated on the basis of the results of these expert valuations. But due to the fact that research in the field was complicated and that the time for completion of the expert reports was very short the areas of protection were designated even before all the projects were finished. Instead of co-operation, a communication strategy was prepared to inform the stakeholders of the advantages of Natura 2000 and new opportunities for development. The proposals of Natura 2000 areas were available to local authorities from the beginning of April and the deadline set by the environment ministry for their comments and their objections was 13 April. Local authorities had just 11 days to prepare expert justified comments. Besides the extremely short time available for reaction the other restricting factor was the shortage of personnel qualified for environmental questions at the local level. The problem is especially acute in small municipalities. In just 14% of municipalities a special employee is responsible for the environment, while in 60% of municipalities that role is played by a part-time environmental employee (Šot-Pavlovič 2000: 278). It is obvious that municipalities were unable to articulate their claims and prepare any expertly justified comments on the proposed solutions. At the same time, the local authorities did not articulate their common interest and because of that every single municipality bargained with the state, making their position *vis-à-vis* the state even worse. The Natura 2000 anticipates restrictions of some economic activities, but by the time of releasing details of the proposed areas it was unclear what kind of restrictions they would be and, especially importantly, who would pay for the restricted exploitation of people's property. The government did not prepare any financial instruments to deal with the expected restrictions. In the last amendment of the NCA it is determined that the government has to gain the consent of local authorities (Article 33/2) but as we learned from one of our interviews at the local level that was simply not the case in all municipalities.

Despite claims made almost to the end of the process that it was wholly 'expert driven' and that the EU provisions had been followed in full, given the large share of proposed areas some additional exceptions were introduced in the very last stage that cannot be justified by any expert arguments ('cut outs'). These are just economically induced solutions. There are a few such areas connected with the development of ski resorts and the construction of wind power

plants. If we say that the reduction of the share of protected areas from 60% to 38% had a sufficient expert base, then the 'cutting out' of some of the economically most attractive parts from those protected areas was purely political (the final share is 35%). For this second stage we can say that the process of designation was characterised by great uncertainty where only experts were able to provide the necessary knowledge basis for designation and they hence gained extensive influence. But it is obvious, especially with the 'cutting out' of areas via political arguments, that their main role was to provide information and that their opinions were overridden by other, politically and economically stimulated interests. It is therefore incorrect to say that the epistemic community with its knowledge and expert potential dominated over political actors in this stage of the process. In the final decision about the designation of Natura 2000 areas, the implementation process already moved away from the administration-implementation quadrant of Matlands' matrix and drew close to political implementation with a low level of ambiguity but a high level of politicisation.

CONCLUSION

Why is a case study of implementation of the Natura 2000 project illustrative for the Europeanisation process in Slovenia and can it be expanded to illustrate certain types of domestic change? The implementation of Natura 2000 is, like almost all environmental provisions of EU environmental policy, very complex and complicated. Hence, we can identify the emergence of 'epistemic communities' with a monopoly over expert knowledge. The expert arguments and position of the European Commission that only these arguments would be acceptable minimised the level of controversy of an otherwise very conflicting topic. However, it is important to stress that at that stage implementation affected 'real life interests' to a very limited extent for all the solutions and implementation were in the 'paper stage' and had no direct implications for economic interests. The exclusion of local authorities from the process of designating protected areas is extremely problematic. The crucial dilemma remains of how to include different (especially local) stakeholders in the process. The whole procedure seemed extremely lowly politicised almost until the end, while information about the areas was unavailable to a broad range of interests. In the opinion of different stakeholders the process had two main deficiencies. On one side, NGOs claim that only specialised NGOs were included in the process, and that general environmental organisations were not included in the process. On the other side, local authorities claimed their exclusion and the undefined restrictions and possible financial subsidies for the exploitation of the property discriminate against the inhabitants of municipalities. They have foreshadowed proceedings in the Constitutional Court of the Republic of Slovenia based on alleged breaches of the Constitution, while people living within the Natura 2000 areas are discriminated in comparison to others because the attractiveness of investing in such areas is restricted by the complicated procedures. They criticise the state for having used non-democratic procedures and negating local self-government. The question remains of whether the 'cut outs' are substitutes for the exclusion of local and economically strong interests and an attempt to minimise the expected reaction of the broader public.

We can say that the prevalence of technocracy seen in preparing the proposals has merely postponed the emergence of conflict that still remains unresolved. The technocratic procedure and decisive role of epistemic communities is in any case a good basis for managing a certain area but, at the same time, it is insufficient. Especially in sensitive areas where the interests of certain groups could be seriously affected the inclusion of the societal/political component in the process seems inevitable. It seems that the technocratic procedure (largely 'downloaded' from the EU level) does not offer a sufficient substitute for a democratic procedure, even in the case of intensive communication with affected publics. The problem in Slovenia is that development plans are prepared at the local level but, in contrast, the designation of Natura 2000 was a centralised project wherein in cases of any conflict of interest the local authorities and democratic way of legitimating could not override the technocratic procedure. It follows from the case study that Natura 2000 was a case of administrative implementation as far as the whole process was planned and executed in the narrow circle of the team within the Ministry of the Environment and Spatial Planning. Politicisation increased extremely immediately after the Natura 2000 areas were announced and it seems that in the near future Slovenia will encounter extensive problems with the implementation of Natura 2000. It is obvious that a technocratic policy style is no guarantee of avoiding conflict in implementation even where the specific topic is of great complexity. Issues affecting broad interests should be managed in a democratic way otherwise emerging conflict cannot be resolved but will merely be postponed to the future.

We can conclude that the role of experts is crucial in the phase where extensive expert knowledge is needed and when there is great need for advocacy of certain decisions. The technocratic policy style that is mainly characteristic of the European policy process was in the case of Natura 2000 (mainly because of its complexity) 'downloaded' to the national level. But the final decision remains in the hands of political actors and hence some corrections to the expert-driven proposals were made. Nevertheless, despite the extensive external pressure seen in the last stage of the process, pressure from the sub-national and NGOs spheres the nation-state remains the main actor in the process which decides on who the partners in a certain stage of the process are, and the extent to which their opinions will be accepted.

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- Franc Potočnik; Ministry of Agriculture, Forestry and Food, April 2004.
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