

Institutional Twinning: Undiscovered Effects of Administrative 'Trinity'

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UDK

35.071.01:341.171(4)EU

339.923:061.1>(4)EU

Review scientific paper / pregledni znanstveni rad

Received / primljeno: 27. 9. 2012.

Accepted / prihvaćeno: 22. 7. 2013.

The paper sheds light on the undiscovered effects of twinning instrument. It explores whether the candidate countries are but mere 'importers' of Europeanization in the framework of institutional twinning and what the object of importation really is. The paper is based on two main assumptions: implementation of twinning projects enables imposed transposition of the EU acquis and it opens space for additional voluntary transfer of member states' laws and institutions into candidate country's legal and administrative system. It may be concluded that voluntary transposition of sophisticated objects, such as administrative procedures and methodologies, managerial styles and strategies and 'ways of doing things', is the most common result of horizontal twinning cooperation. Practice, though, reveals that the principle of administrative cooperation between twinning partners is misbalanced, which disturbs

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the triangular administrative model. 'Twinners' focus more on transposition of institutional 'non-acquis' based on diverse domestic administrative solutions than on the transfer of legal obligations stipulated in the EU Directive.

Key words: institutional twinning, horizontal and vertical cooperation, legal and institutional transfer

1. Introduction¹

An inevitable *terminus a quo* for the analysis of institutional twinning is the EU enlargement, as an environment for twinning projects,² and Europeanization, here observed as a process of »construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms, which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic discourse, political structures and public choices« (Radaelli 2003: 30).

Conclusions of the 1993 Copenhagen Summit³ complemented with a key element of the 1995 Madrid Summit⁴ – the institutional capacity – considered as the fourth accession criteria, established an obligation for candidate countries (CCs) to develop administrative and judicial institutions able to transpose, implement and enforce the *acquis*. It was, however, paradoxical that the Union requested from future member states (MSs) to reform their national administrations »without offering the comprehensive institutional template needed to shape institutions into EU mo-

¹ Paper presented at the EGPA Annual Conference, 5-8 September 2012, Bergen, Norway. It is a part of doctoral research project »EU Enlargement as a Method of Legal Transplantation«. The author is grateful to Prof. Antonina Bakardjieva Engelbrekt, Prof. Christophe Hillion and two anonymous reviewers for their suggestions and useful comments. All views and errors are the author's alone.

² Twinning is also introduced as an institution-building cooperation instrument for the ENPI (the European Neighbourhood and Partnership Instrument) countries to implement the ENP (European Neighbourhood Policy) Association Agreements/Partnership and Cooperation Agreements.

³ Conclusions of the Presidency – Copenhagen, June 21 – 22, 1993. pp. 11–12. available at: http://www.europarl.europa.eu/summits/copenhagen/co_en.pdf

⁴ Conclusions of the Presidency – Madrid, December 15 – 16, 1995. available at: http://www.europarl.europa.eu/summits/mad1_en.htm

uld« (Grabbe, 2001). The Union generally does not have competence over the administrative structures and procedures of MSs; thus, it was too politically sensitive to prescribe a European model explicitly (*ibid.*). The lack of 'institutional' *acquis* and simultaneous existence of a mosaic of administrative traditions and practices across existing MSs, triggered a change of paradigm in the European external cooperation policy. The Commission revamped the accession assistance by introducing new methods of governance in the EU's relations with the CCs, such as the Open Method of Coordination (OMC) based on the notion of partnership and ownership, the use of guidelines and 'best practice', benchmarking techniques and peer review. Further, the PHARE programme, which was the main channel for the EU's financial and technical cooperation with Central and Eastern European Countries (CEECs), became decentralised and changed its orientation from demand-driven to accession-driven programme. After the 1997/98 reform,⁵ the PHARE budget allocated⁶ 70% of funds for investment⁷ and 30% for institution-building.

In 1998, the Commission launched institutional twinning (financed under the PHARE) as a manifestation of the above-mentioned goals and tendencies. The fundamental idea behind this administrative innovation is transfer of knowledge, expertise and best practice performed on a daily basis between professionals in the same sector, which cannot be achieved through classical technical assistance (TA). The overall objective of each twinning project is to assist candidate states »to strengthen their administrative and judicial capacity to implement EU legislation as future Member States of the European Union« (Twinning Manual, 2012: 11); therefore, to build up the institutional capacity. This leads to the question of model/s used for strengthening public administrations (PAs) in CCs.

Before conditionality entered the European agenda, most MSs used their assistance policy towards CEECs for the promotion of national norms (Tulmets, 2005: 65); afterwards, they refocused on the promotion of the *acquis*. What really aimed at changing their national assistance policy was not the principle of conditionality, but the use of OMC, particularly the use of twinning as a crucial element of the reinforced pre-accession stra-

⁵ The reform was designed and decided upon in 1997, and implemented in 1998.

⁶ This was achieved on average across the CCs. In 1998, in some countries (the Czech Republic and Slovakia), the share of institution building was more than 70%.

⁷ Investment projects include EU norms, structural actions and large-scale infrastructure.

tegy. It was believed that twinning, due to its peculiar design based on tripartite partnership between the Commission, MS and CC's administrations, could merge the *acquis* and diverse national institutional models for its implementation.

Institutional twinning, as the most innovative Commission's instrument for targeted European administrative cooperation,⁸ is based on extremely complex inter-administrative constellations that sometimes hamper the efficiency and effectiveness of the project. It can be described as an administrative 'trinity' based on horizontal cooperation between national administrations – Member States (MSs) and Candidate Countries (CCs), and vertical cooperation between the Commission and national administrations in MSs and CCs. This creates an institutional triangle established on co-dependent and cooperative administrative actions between twinning partners; thus, a triangle that aims to be equilateral. Practice, however, reveals that due to a limited and rather obscured cooperation between the Commission and state administrations participating in twinning projects, this triangular partnership resembles more to a scalene⁹ than to an equilateral triangle. It is further anticipated that dysfunctional administrative cooperation between twinning partners adversely affects the correct implementation and application of EU law and, in the long run, it undermines better consistency in EU policy.

Institutional twinning has to be *acquis*-related. It is assumed that twinning as such serves as a mechanism for exporting Europeanization (Papadimitriou and Phinnemore, 2003: 15). The paper, thus, seeks to identify whether the CCs are (no more than) importers of Europeanization in the framework of this instrument, or, better to say, whether twinning serves as a *conduit* for Europeanization in CCs. Some scholars observe Europeanization as a two-way process »where the MSs create European rules which are then re-imported to transform the national setting« (Papadimitriou and Phinnemore, 2003: 8). Since CCs are not involved in this process of the *acquis* creation, they actually do not decide about the content of their Europeanization.

Here twinning gives a new perspective. Considering the above-mentioned overall objective of every twinning project, it seems that the outcome of this instrument is taken for granted. It is anticipated that CCs

⁸ The notion of administrative cooperation covers many different forms of cooperation between the EU and national administrations.

⁹ In mathematics – a triangle having three unequal sides.

as twinning beneficiaries transpose specific part of the *acquis* into their national systems. On the other hand, since secondments of long-term MSs experts to CCs administrations form the 'backbone' of twinning projects, it is intuitively assumed that twinning additionally (besides the *acquis* transposition!) generates a voluntary selective transfer of MSs' laws and institutions. One has to inquire about this voluntary selection: what do the CCs actually 'download' into their national legal and administrative systems through project implementation (the objects of importation)? Why do they choose specific solutions and models – European and/or MSs (motives for transfer)? Does the instrument positively stimulate the fusion between the *acquis* and institutional 'non-acquis' established on different administrative domestic solutions¹⁰ (EC, 2003: 24)?

The paper focuses on the complex results of twinning cooperation. It is structured along the following assumptions: a) expected imposed transposition of the *acquis* as a result of vertical twinning cooperation; b) unexpected (or even unintended?) voluntary transposition of domestic laws and institutions as a result of horizontal twinning cooperation. Due to the limited methodological design elaborated in the following paragraph, the paper concentrates on voluntary transposition by testing the second assumption on completed environmental twinning projects from the CEECs pre-accession period.

The research methodology employed in the paper relies on a desktop study of secondary literature and available reports and documents about completed twinning projects written by the Commission, the Court of Auditors, MSs and independent evaluators, and a comparative analysis that discusses a range of similarities and differences between the Integrated Pollution Prevention and Control systems in the Czech Republic and Germany in order to better comprehend potential legal and institutional transfers within the chosen projects. It is very difficult to make a precise evaluation of specific projects based on limited documentation that only emphasises the positive elements of twinning. The main objective of this paper, thus, is not to provide tangible evidence for imposed and voluntary transfer between twinning partners, but to illustrate possible scenarios within the twinning instrument on the basis of the case study findings.

¹⁰ The term institutional 'non-acquis' is inspired by *PHARE ex post evaluation of country support implemented from 1997–1998 to 2000–2001, Consolidated Summary Report*, which discusses »the non-acquis administrative impacts« in terms of improved PAs reform in the CCs. The report has been launched by the EC and carried out by a private consortium consisting of PLS RAMBOLL Management (Denmark) and Eureval-C3E (France).

The above-mentioned hypothesis on vertical and horizontal administrative cooperation needs to be refined and further explored in a large-scale comparative study that utilizes a mixed-methods approach.

The paper proceeds in six steps: the first section of the theoretical part introduces different perspectives on Europeanization and interlinks the theory with potential twinning outcomes. The second section approaches twinning in the context of the composite European administration by analysing the existence of cooperative elements within this instrument. Section three describes the concept of imposed and voluntary transfer and suggests potential objects of transposition. The empirical part starts with justification of the choice of twinning projects. It elaborates why the IPPCD¹¹ is chosen for this study and explains the selection of twinning partners. The next section compares the main characteristics of the German and Czech IPPC regimes. It further describes the twinning project CZ/2000/IB/EN/01 and twinning light CZ01/IB/EN1-TL. The last section revisits the theoretical arguments presented beforehand.

2. Theoretical Background

2.1. Europeanization: 'Imported' or Not?

Ab initio the paper presents several approaches to Europeanization¹² interlinked with different twinning outcomes. It is anticipated that, depending on the extent of cooperative elements within the twinning framework, limited vertical cooperation brings forth imposed transfer, while extensive horizontal cooperation generates voluntary transposition. These potential results of twinning cooperation can also be elaborated by consulting other theories; in particular, the constructivist and sociological institutionalism literature (Schimmelfennig & Sedelmeier, 2005) including the theory on policy transfer and institutional isomorphism (March and Olsen, 1984; Di Maggio & Powel, 1983; Dolowitz and Marsh; 2000, Checkel, 1997).

¹¹ The Integrated Pollution Prevention Control Directive (IPPCD).

¹² There are at least four perspectives on Europeanization: a 'top-down' approach, combination of a 'top-down' and a 'bottom-up' approach, a 'horizontal' approach and a perspective synonymous with institution-building and policy-making at the EU level (a term sometimes substituted for European integration) (Cini et al., 2007: 407).

To explain limited and extensive twinning cooperation in the context of Europeanization theory, the most relevant perspectives seem to be a 'top-down' approach concerning the impact of the EU on the MSs (Börzel and Risse, 2003) sometimes described as »downloading of EU policy into the national polity« (Börzel, 1999), and a 'horizontal' approach – a less common definition which is not EU-centred and which »sees change occurring from country to country with little, if any, mediation or intervention from the EU institutions« (Radaelli, 2003).

A 'top-down' perspective is used to describe the effects of vertical twinning cooperation. It is connected with a 'pushy' profile of the Union and its Janus-faced character that influence the entire EU relations and activities with CEECs and *pro tempore* applicants. In the light of the Eastern enlargement, on one hand, the EU acted as an aid donor supporting the CEECs policy change, administrative innovation and modernization, but on the other hand, it directed these countries towards membership by imposing the rules of the game. The progressive development of the EU demands towards CEECs tightened accession conditionality and focused aid exclusively on accession requirements (Grabbe, 1999). Conditions introduced for areas at the heart of domestic policy-making pressured the CEECs leadership to »choose EU models because of the incentives and constraints imposed by the EU accession process« (Grabbe, 2002: 262; see also Schimmelfennig and Sedelmeier, 2005: 10). This actually signifies the Union's controversial position in donor-recipient correlation and further widens a well-known dispute – is it possible to reconcile the Union's role as a donor with its intrusive image?

In a similar manner, one can speculate about the true nature of the EU's instruments for accession assistance. The bulk of the literature on Europeanization identifies that accession negotiations and pre-accession instruments (as well as institutional twinning) strongly reflect a 'top-down' approach, which produces rather limited or even artificial cooperation between the contractual parties. For instance, the PHARE programme was strongly criticized due to asymmetry in policy relation. According to Caddy (1997: 322), »overall framework of PHARE project [and the policy in question] was exclusively of EU design; expert inputs into projects were predominantly of EU origin and ultimate decision-making power rested with the EU as a donor«. Institutional twinning has been equally 'condemned'; project resources, project strategy and twinning advisors and experts were perceived as excessively pro-European.

Still, twinning has evolved significantly since its creation, so it needs to be observed in the evolutionary context. In its early days, the instrument

was perceived as an »initiative from the above«; it was met with distrust and lack of interest on both sides (Königova, 2003: 26). Advisors from the first generation of twinning (1998–1999) had a strong image of 'Brussels' ambassadors' or 'spies from Brussels' appointed by the Commission (Königova, 2007: 12). A hostile attitude towards this instrument was alleviated, though not completely, in the second generation of twinning (2000–2001). CEECs were especially critical of certain parts of the instrument: twinning was not flexible like TAs since they could not send back twinning advisors as they could do with private consultants; experts' salaries were shocking, but that was the only way to attract them to the CCs for a longer period; twinning advisors were often unaware of the CCs actual needs and traditions (Tulmets, 2005: 76). Nowadays, twinning is widely accepted and 'twinners' are keen to cooperate and to learn from each other.

A peculiarity of twinning is its establishment on the principles of partnership and ownership – the concepts that actually mitigate the perception of imposition. This, however, does not change the fact that the »overall [twinning] philosophy was not discussed and agreed with the Accession States« and twinning was actually imposed »without adequate consultation and explanation of [its] philosophy« (Cooper and Johansen, 2003). The result of that imposition was weak cooperation between twinning partners. In contrast, some scholars claim that twinning exercise is an »expression of free will, voluntary assisted adaptation and true effort on the part of the CCs to meet their pre-accession obligations and join the EU as soon as possible« (Königova, 2003: 22).

The literature on policy transfer differentiates between voluntary (e.g. the lesson-drawing model) and coercive/imposed forms of transfer (the external incentives model).¹³ The best example of coercive form is the principle of conditionality which requires from future members to accept the entirety of the *acquis* without participating in its construction, and »yet it is this *acquis* that sets the main framework for their Europeanization« (Papadimitriou and Phinnemore, 2003: 15). In this sense, CCs are perceived as importers of Europeanization and not its co-determinants and »any EU rule is likely to have stigma of foreign imposition« (Schimmelfennig and Sedelmeier, 2005: 18).

Thus, the first hypothesis suggests:

¹³ See more about these models in Schimmelfennig and Sedelmeier, 2005.

Due to a 'trespassing' nature of vertical twinning constellation (between the Commission and CCs) essentially characterized as limited cooperation, these countries – twinning beneficiaries – are by and large importers of Europeanization. The objects of this particular import are EU's laws, standards and procedures, and it is further detected as imposed transplant.

It has to be stressed that this paper focuses on another kind of transfer which, with some exceptions (Königova, 2003), has been neglected by legal scholars and political scientists; that is unexpected transposition born out of horizontal 'wedlock' (between the MSs and CCs). To explain this transfer, a 'horizontal' approach to Europeanization needs to be taken into consideration. This approach emphasizes the EU non-involvement (or its silent presence) and the urgency for horizontal cooperation between the MSs and CCs. Hence, Europeanization is here defined¹⁴ as a process by which »institutions, policies and policy-making in one member state are transferred, replicated, imported, and/or exported to other member states [or candidate states], without any top-down involvement from the EU institutions«(Cini et al., 2007: 407).

Institutional twinning resonates with this definition to a large extent since it is based on cooperation between public administrations of MSs and CCs. During the project performance, these countries work together in clearly defined projects, tailored to the national framework (Bægenholm, 2006). Primarily, twinning supports an exchange of *know-how* related to the *acquis* adoption, and it further promotes 'good or best practices' at the level of administrative and judicial capacities where there is no *acquis* to provide for guidance, due to the principles of institutional and procedural autonomy. However, close horizontal cooperation also facilitates exchange of practical domestic solutions, which means that MSs' institutions, policies and policy-making can be easily transferred within this instrument, all due to the fact that certain procedures of enlargement »like the ones of the twinning instrument, introduced a considerable leeway for CCs« (e.g. selection of twinning partners; free choice of administrative or sector-oriented models and solutions for the transposition of Directives into national law) (Tulmets, 2005: 74).

At the same time, as explained by Grabbe (2001), »the existing MSs implement the EU law by different means, and they can help the CCs to do the same, but without imposing any particular system«. This implies that

¹⁴ This definition relies on the literature on policy transfer, institutional isomorphism and institutional and policy convergence (Cini et al., 2007: 407).

MS twinning advisors teach their CC counterparts 'how to do things the MS' way', in combination with, or instead of, 'how to do things the EU way'. Twinning is apparently used by MSs not only for the *acquis* promotion, but also for the promotion of their national norms (Tulmets, 2005: 65).

The second hypothesis, thus, states:

National particularities of the corresponding administrations in MSs and CCs travel along the horizontal twinning axis that (may!) result in voluntary transfer of MS' laws and institutions. The twinning partners emphasize their national features during the project implementation, which irritates the triangular twinning prototype and drives the 'threesome' in unpredictable direction.

As for the object of voluntary transposition, »twinning fosters institutional transfer for the adoption of formal norms of the *acquis* through legal advice, but also transfer of informal norms through training ...« (Tulmets, 2005: 668). More specifically, twinning delivers 'unseen' and less tangible, but valuable benefits such as changes in organisational practice and culture, improvements in managerial styles, better communication and coordination between the CCs ministries (Cooper and Johansen, 2003).

Here one should notice the paradox of twinning; on one hand, MSs' solutions serve as a reference point and inputs given by the MSs representatives are of essential importance. On the other hand, their advice and expertise are not centrally directed and controlled by the Commission, which means that the EU's risk of losing control over the content of the projects is high. At the same time, as significantly remarked by the independent evaluators (EC, 2000: 8): »whereas PAAs¹⁵ and their home administration is the primary source of knowledge, the Commission should be aware of its role in interpreting the *acquis* and assisting with advice during the approximation of the CCs legislation«. Due to the fact that the content of MSs' advice is not controlled, it is very likely that the *acquis* interpretation and advice on legal approximation also comes from MSs representatives. A large number of twinning participants (unpredictably!) involved in the *acquis* interpretation produces diffused impact on the CCs and causes limited Europeanization of their national systems.

Following from this, the paper proposes possible byproducts of the administrative trinity. According to Tulmets (2005: 673) twinning beneficiaries

¹⁵ Abbreviation for Pre-accession advisor.

»develop various ways of formally respecting the *acquis*, but also of bypassing [!] it in practice.« A leeway given to CCs (in terms of flexible choices of MS partner and models) and MSs (in terms of uncontrolled advice and expertise) can facilitate bypassing the *acquis*. The paper, thus, concludes that the implementation of twinning projects enables imposed transposition of the EU *acquis* (with possible bypassing effects), but it also, simultaneously, makes room for additional voluntary transfer of MS's laws and institutions into the CC's system (with possible diversifying effects).

It further suggests that CCs as beneficiaries are not only importers of Europeanization (the 'top-down' perspective); they can achieve the project's mandatory results¹⁶ with some 'extra luggage' containing concrete administrative and legal solutions transferred from the corresponding MS. The imported foreign elements may unintentionally undermine harmonization of CC's laws with the *acquis*, especially if national example chosen by the CC does not mirror the EU model (such as the German IPPC system presented in the empirical part). A crucial question, thus, is whether horizontal cooperation between twinning partners works *pro* or *contra* legal harmonization (or perhaps *pro et contra*).

2.2. Institutional Twinning as a Challenge for European Composite Administration

The concept of European composite administration, described as a 'hierarchy with a cooperative cushioning' with apparent core function of the Commission (Jansen et al., 2011: 7), certainly evokes doubts about 'who does what in Europe' and strongly challenges the principle of (administrative) cooperation.

In particular, institutional twinning, which is a perfect illustration of European composite administration, reflects archetypical patterns of 'fusion administration' that struggles with divergent structural hierarchical and cooperative elements. A clear-cut description of participants' roles in the Twinning Manual does not prevent failures coming from disproportional 'cooperative cushioning'.

¹⁶ The concept of mandatory results is a key feature of twinning. It may be described as 'limited and well-defined institutional targets' and/or 'intermediate benchmarks which constitute a specific criterion in relation to administrative capacity as long as there is a jointly agreed, measurable, and precise target' (Twinning Manual, 2012: 15).

On one hand, roles are defined: the Commission's general function is to »set the legal, financial and procedural framework for twinning projects« and to »act as a facilitator and guardian of fair, transparent and consistent application of twinning rules« (Twinning Manual, 2012: 21). The Commission, therefore, has a final responsibility for twinning, but it is not directly involved in the project management.

On the other hand, practical twinning experience reveals that the Commission misleadingly interprets its core function as a 'hierarchy without (!) cooperative cushioning'. The Court of Auditors (EC, 2003)¹⁷ identified the occasional (?) prevalence of the non-cooperative elements in the Commission's interaction with the CCs: »The Commission did not always respect the preferences of the CC, one of the fundamental requirements of the twinning rules (the principle of partnership): it heavily promoted twinning even in situations when the CC was convinced that twinning could not offer the best solution«. Also, it »did not always make sufficient effort to counteract the political pressure by MSs, with the result that the choice of the twinning partner was not entirely left to the CC« (Paragraph 26c). Similar report (Cooper and Johansen, 2003) depicts the Commission's insistence on twinning as 'the only game in town'.

With regard to horizontal cooperation between the MS and CC, the EU is aware of the potential danger of this, perhaps too close, relationship since the Manual stipulates that »a twinning project does NOT aim at replicating a particular MS administrative system but rather strives to help introduce EU wide best practices in connection with EU legislation« (Twinning Manual, 2012: 16). The Commission, thus, advocates a 'varied approach' in choosing twinning partners.

The CCs are free to »forge ties with MSs whose systems best suits their culture, organization and national interests« (Papadimitriou and Phinmore 2003: 12). Very often, they select their counterparts on the basis of geographical and cultural proximity, or the selection process is affected by political considerations and the lobbying activities of the MS's embassy. Their choice may further be influenced by the history of previous bilateral cooperation (EC, 2000: 25), as in the case of the Czech Republic and Germany described in the empirical part.

Nevertheless, as shown in practice, the Commission finds its ways to manipulate the choice of twinning partners, which signalizes the existence

¹⁷ The Court of Auditors has released a special audit report (2003/C 167/02) on twinning.

of strong hierarchical component and confirms a scalene shape of the administrative triangle.

2.3. A Short Contemplation on Potential Transposition

Most twinning projects in the environmental field, as those analysed in the paper, are related to the transposition of the EU environmental legislation (Fellmer, 2004: 115). The *Guide to the Approximation of European Union Environmental Legislation* informs that the vast majority of EU environment legislation is in the form of Directives »designed to be implemented in ways which are adjusted to the unique circumstances of each Member State«. In this respect, Article 249 of the TEU further prescribes that »a Directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods« (Tatham, 2009: 349).

The implementation of Directive, thus, »gives freedom to the Member States regarding the choice of form and methods« (Örücü et al., 1996: 308–309), so »the only choice open to them [MSs and CCs] is HOW to implement and not WHETHER to implement« (*ibid.*, 309). Örücü further explains that »choice means taking one option as opposed to another and the existence of choice is what differentiates a [voluntary] reception from an imposition« (Örücü, 1999: 59).

The presented twinning projects serve as concrete examples for illustration; the Czech Republic as twinning beneficiary had to transpose the IPPCD (no choice whether to implement; thus, simply speaking, the transfer is imposed), but at the same time, it relied on German expertise about the way of implementing the IPPCD (how to implement?). The German 'choice of form and methods' was imported by the Czech administration to the extent that could satisfy their national preferences. Hence, the replica of German implementation model was based on voluntary selection by the Czech beneficiary.

The paper presupposes that imposed and voluntary twinning transfers do not have the same object. As previously explained, the object of imposed transposition is the *acquis*, while voluntary exchange mainly takes place around informal rules (though, transfer of formal rules may occur as well). Thus, it is of vital importance to investigate potential objects of transposition. Several inspiring definitions are proposed by legal and political scientists. Famous legal historian Alan Watson emphasizes that objects of transfer (or in his words, objects of 'legal transplant') are not only rules: »It is

rules – not just statutory rules – institutions, legal concepts and structures that are borrowed ...» (Watson, 2000). William Twining also claims that »legal rules and concepts are not the only or even the main objects of diffusion« (Twining, 2004: 38). The literature on Europeanization defines potential objects of transfer within the enlargement framework. The main distinction is made between 'hard' transfer, as transfer of EU rules, procedures and policy paradigm, and 'soft' transfer which means transfer of styles, 'ways of doing things', shared beliefs and norms. Tulmets (2005: 666) distinguishes between 'formal or formalised' written norms such as constitution, law, regulation, directive and contract, and 'informal or secondary' norms such as codes of conducts, routines, customs and *know-how*, and further emphasizes that the adoption of formal rules triggers adoption of the corresponding informal rules.

Below-presented empirical study indicates which of these objects are incorporated from the German into the Czech system.

3. Empirical Study

3.1. Selection of Twinning Projects

The paper explores twinning projects related to the implementation of the Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC).¹⁸ The projects have been selected for the following reasons: a) the Directive is a flexible framework instrument that gives more freedom to MSs and CCs HOW to implement, and, therefore, there are more opportunities for voluntary transfer of national laws and institutions; b) in the 1990s, Germany and the Czech Republic established environmental cooperation, which resulted in voluntary transposition of the German environmental legislation. This partnership (probably) influenced the choice of Germany as a senior twinning partner and further contributed to successful horizontal twinning cooperation; c) The IPPCD is an example of the British model of pollution control, which is »flexible, pragmatic and allows for the adaptation of pollution control standards to specific circumstances ..., and has aspiration for an integrated approach« (Lange

¹⁸ It was subsequently amended by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ L 24, 29. 1. 2008) (previously amended by Directive 2003/35/EC, Directive 2003/87/EC and Regulation 166/2006).

2008: 14). While the UK implementation replicates essential part of the Directive, Germany, due to the fact that its legalistic IPPC system sufficiently differs from the British model, does not apply a holistic approach towards permitting.

It has to be emphasized that Germany was a pioneer in environmental protection in the EU and, consequently, it became the most popular twinning partner among the CCs and the most desirable model in the field of environment. In the selected projects, Germany promoted a regime that was not absolutely aligned with European standards. On the other hand, the Czech Republic, being closer to the continental European group of statist public law and legalistic regimes, could not easily make the flexible Anglo-Saxon/European IPPC model operational, despite its intentions and efforts to fully embrace the Directive.¹⁹ The chosen example, thus, illustrates 'uploading' and 'downloading' (disharmonizing?) effects of different models offered within the twinning framework.

3.2. A Few Words about the IPPCD

The IPPCD aims to achieve an integrated system of pollution prevention and control for industrial activities specified in the Annex I of the Directive. *Handbook on the Implementation of EC Environmental Legislation*, Section 7, explains fundamental concepts in the Directive: integrated means that pollution of all environmental media, which includes air, water, land, solid waste and noise, must be minimized; prevention means that pollution should be reduced at source as well as at the point of discharge. The concept of the 'best available techniques' (BAT)²⁰ to prevent and reduce pollution encompasses both the technology and the way in which it is used.

The IPPCD, further, is a framework Directive that imposes key legal obligations upon MSs in a rather general and unspecified manner. MSs are delegated with more responsibilities related to the implementation

¹⁹ The literature on the role of legacies of the past and path dependencies may offer an explanation for that. See, for example, Stark (1992).

²⁰ Article 2/12 of the IPPCD prescribes: 'best available techniques' means the most effective and advanced stage in the development of activities and their methods of operation, which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole.

mechanisms and practices of the Directive at the domestic level (Lange, 2008). The Directive represents the EU's turn towards the use of soft environmental legislation (Koutalakis and Buzogany, 2010: 8). While some parts of the IPPCD are 'hard' law generated through the classic community method (e.g. MSs are required to issue an integrated permit for all of the installations in Annex I), other components are 'soft' law such as the BAT technology standards and a possibility given to MSs to modify the threshold values related to Annex I of the Directive (Lange, 2008).

The implementation of such a Directive through the flexible instrument of institutional twinning further accentuates the necessity of horizontal twinning cooperation and highlights the possibility of mutual legal and administrative exchange.

3.3. Environmental Cooperation between Germany and the Czech Republic

In the 1990s, former Czechoslovakia, as one of the most industrialized socialist economies, struggled with the environmental effects of the communist-era industrialization. Parts of Northern Bohemia in the Czech Republic, Lower Silesia in Poland and Saxony in East Germany, represented the infamous 'Black Triangle' which caused the heaviest concentration of air pollutants in Europe (Andonova, 2005: 147).

The Czechoslovak proactive and eco-friendly government prioritized the pollution problem-solving. In 1991, the Clean Air Act was adopted borrowing to a large extent from the German law on air pollution known as one of the most rigorous in the whole of Europe. The German 'command and control' technology based standards were evaluated as the most suitable for the Czechoslovak national preference for speedy reduction in air polluting emissions (*ibid.*, 148.). This was the beginning of productive bilateral environmental cooperation.

The concrete example reveals that the German and Czech bilateral partnership had already experienced successful (!) voluntary transfer of environmental rules and standards. Hence, previous positive experience and similar environmental problems²¹ created a strong base for future par-

²¹ Both countries had to tackle an acid rain problem of a similar magnitude.

tnerships and further generated transferability of legal rules and administrative procedures between these countries.

3.4. The IPPC Regimes in Germany and the Czech Republic: A Comparative Study²²

A sketchy comparison between the Czech and German IPPC systems reveals existing administrative problems and legal lacunas.

The characteristics of the Czech and German IPPC regimes are as follows:

Number of the IPPC installations: While the Czech Republic has 1100 existing installations, Germany has 8068.²³

General Binding Rules (GBRs): Article 9(8) of the Directive prescribes that MSs are allowed to establish certain requirements for certain categories of installations in the form of General Binding Rules (GBRs)²⁴ instead of including them in individual permit conditions. German permitting authorities have to fully apply national laws containing the GBRs. In contrast, the GBRs are not used directly in the Czech legislation.

Permit: The IPPCD prescribes that permits issued for the installations enumerated in Annex I must be 'integrated', which means that all relevant impacts on the environment have to be taken into account. In contrast to this holistic approach to permitting, separate parts of the German environmental administrations established standards for emissions into air, water and land that are further regulated by separate legal provisions (media-specific environmental statutes). Contrary to the German coordinated permitting system, the Czech legislation has opted for the integrated permit in accordance with the IPPCD. Still, the Act on Integrated Prevention²⁵ has introduced a complicated system, which does not enable authorities to issue a properly integrated permit. A major obstacle to integration is the fact that, similar to Germany, responsibilities for air and water emissions are different.

²² Data based on Lange (2008), IEEP & Ecologic (2003) Policy Brief 01/2003, EC (2004) Capacity Review Report, Czech Republic.

²³ See more in IEEP and Ecologic (2003) Policy Brief 01/03.

²⁴ GBRs are limit values or other conditions (direct conditions or minimum standards) usually defined in environmental laws, regulations and orders that are given with the intention to be used directly to set permit conditions.

²⁵ Act 76/2002 S.B is in effect from 1 January 2003.

Following from this, the Czech integrated permit seems to be much closer to the German coordinated approach due to complex administrative procedures and diverse institutional responsibilities.²⁶ Furthermore, as in Germany, the Czech legislation comprises several legal acts, such as the Water Act, the Waste Act and the Air Pollution Prevention Act, which are further coordinated with the IPPC Act.

Responsible authorities and procedures: As indicated earlier, Germany has media-specific regulatory authorities and coordinated procedures. The Directive stipulates that an integrated approach to permitting requires only coordination of the conditions and procedure for the granting of IPPC permits, where more than one competent authority is involved. Hence, Germany has taken an advantage of this provision and has founded a multi-level IPPC licensing authority. This authority has to ensure a full coordination of the media-specific licensing procedures and the conditions affecting different environmental media in IPPC license. The Czech Republic has complex administrative structures and problematic coordination. The implementation of the Act on integrated prevention is highly demanding from administrative point of view. As already described, it has produced a complex system involving a range of authorities leading to confusion and capacity problems.

Best Available Techniques (BATs) standards: In Germany, the BAT standards are parts of media specific technical instructions (TAs).²⁷ They are not national 'best available techniques' guidance documents, but media specific technical instructions (TAs) that are binding upon permitting authorities. TA prescribes how to prevent detrimental impacts on the environment by employing the best available techniques ('*Stand der Technik*'). In the Czech Republic, the BAT standards are incorporated in national sector-specific guidance. This national BAT guidance is prepared in the frame of national information exchange system (Forum for Information Exchange). They are guidance and not legislation.

There is a parallel between the Czech BAT notes and German technical instructions (TAs) in terms that both documents cover specific sectors,

²⁶ See more in *Environmental Policy in the Candidate Countries*, Draft Final Report (2000), ECOTEC in Association with the IEEP, FEI and experts across the Candidate Countries

²⁷ There are technical instructions (TA) that develop BAT standards for air, water, waste management, hazardous waste, household waste and noise emissions.

but the main difference is that the Czech BAT notes are not prepared for sectors or installation categories in a systematic way.

BREFs (Best Available Techniques Reference Documents): The EU BREF documents, which are the key element for determination, dissemination and harmonization of the BAT standards across the EU, play different roles in the permitting regimes of different member states. BREF documents may be directly taken into account in IPPC permitting, but this is not the case in Germany. They are regarded as different from and potentially incompatible with the traditional German technical instructions and, thus, they have the peripheral role in German IPPC licensing procedures. Contrary to the German system, the Czech IPPC legislation is based on direct use of BREFs and it is focused on the application of the translated (existing) BREFs.

Threshold values: Many EU Member States have included installations and processes under the national IPPC scheme, even though not required to do so by the IPPCD. MSs can modify thresholds by making them more demanding (in Germany, e.g. extensions of the waste management sector) and by including additional sectors (e.g. in Germany, vehicle manufacturing, tar distillation, sawmills, quarries, grain storage and motor racing facilities). In Germany, thus, threshold values are different from the IPPCD. In the Czech Republic, these values are identical to the IPPCD. The list of categories of industry in Annex 1 of the IPPC Act is identical to Annex I of the Directive.

Concluding remarks: Germany's implementation of the IPPC Directive is an example of an approach to permitting that is not fully integrated (Lange, 2008). Practical application reveals that due to the complexity of the responsible permitting authorities and their lack of coordination, the IPPC licensing in the Czech Republic is not integrated either. However, while the German coordinated approach is an intentional domestic choice, the Czech 'aiming-to-be-integrated' system is a result of improper application and weak administrative structures. This, in general, highly overshadows the IPPCD implementation.

3.5. Twinning Projects between Germany and the Czech Republic Related to the IPPCD Implementation

In total, the Czech Ministry of Environment participated in three IPPC projects in 2000, one project in 2001 and four projects in 2002. The pa-

per concentrates on two projects: Twinning project CZ/2000/IB/EN01 »Implementation Structures for IPPC and IRZ Register« and Twinning Light Project CZ01/IB/EN1-TL »Strengthening of the Application of the Directive 96/61/EC on IPPC« with Germany as senior twinning partner. Here is their presentation:²⁸

Twinning project CZ/2000/IB/EN01 »Implementation Structures for IPPC and IRZ Register«: Twinning partners in this project were the Czech Ministry of Environment, the German Ministry for Environment, Nature Conservation and Nuclear Safety and the Danish Copenhagen County. The paper only examines horizontal cooperation between the German and Czech public administrations.

The overall objective of this project was to assist the Czech Republic to adjust its national laws with the IPPC Directive, and to ensure full institutional capacity necessary for the IPPCD requirements (Ellermann, 2004: 137). In particular, the project aimed at supporting the Czech administrative bodies in the enforcement and implementation of regulatory procedures as stipulated by the Act on IPPC. Assistance was further provided for the establishment and maintenance of the Integrated Pollution Register (IRZ) and for the creation of a flexible system for the BREFs application.

The project contained ten 'working packages'; working package 2, 5 and 8 are briefly outlined.

Working package 2: Institutional Assessment; Gap Analysis of the Czech legislative situation and institutional and administrative structures (state and condition) in the area of industrial pollution control: The most significant benchmarks of the package were: draft report about the Czech legal, institutional and administrative structures concerning the IPPCD including recommendations for improvement based on German experience of IPPC implementation; materials on institutional set up from Germany (such as the IPPC national legislation and institutional framework); developed, consulted and finalized implementation plan concerning the IPPCD, including comparison with the German situation.

Working package 5: Permit issuing (pilot project): The aim was to simulate the issuing of permits for three individual installations from different industrial branches (glass industry, chemical industry and waste management).

²⁸ Data based on Schmidt, Michael and Knopp, Lothar (2004) and Draft Final Report dated 21/7/2003: European Union Twinning Light Project CZ01/IB/EN1-TL »Strengthening of the Application of the Directive 96/61/EC on IPPC«

Additionally, it was planned to develop guidance documents and templates (e.g. application form, content of permits, content and structure of statements) on methodologies and administrative procedures. German experts supported the Czech operators participating in the pilot projects in filling out the permit and they provided *ad hoc* assistance for the issuing of an IPPC permit for new installations. A further step was a training session on BAT and BREF with regard to glass manufacture (including the study visit to Germany). It was necessary to prepare the background training materials on practical application of BREF (about glass manufacture) in Germany (interpretation of BREF in Germany, current and foreseen role of BREF in permit condition settings and application preparation, recommendation on application of the 'glass' BREF). The next activity was a training seminar on BAT and BREF application including a German case study. The desired outputs were technical documents on BAT in glass manufacture applied in MSs and training materials on glass manufacture application (including examples of technical solutions in Germany).

Working package 8: Information exchange on the application of BAT and BREF: The aim was to transfer knowledge on BATs and BREFs from Germany to the Czech beneficiary. The expected results included recommendations how to interpret Annex I of the IPPCD based on the German experience. The package was inspired by several important sources of information including the documents on German interpretation of Annex I according to German business practice (legislation, guidance, consultation papers, practical experience), German guidelines and recommendation on the role and utilization of BAT in permit application preparation and issuing of a permit (interpretation in German regulatory system), and German guidance on application of several BREFs (national guidance and training documents). The most important activities were information exchange between the MS and the Czech experts on threshold interpretation and application in deciding whether the IPPCD applies to specific activity operation (here, special emphasis was put on applications for former socialist large capacity plants in east Germany), and review and comparison of existing information on BAT utilization in the Czech Republic and Germany (including gap analysis).

*Twinning Light*²⁹ Project CZ01/IB/EN1-TL »Strengthening of the Application of the Directive 96/61/EC on IPPC«: Twinning partners in this project were

²⁹ Twinning Light (TWL) refers to projects which last up to 6 months only (or 8 months, in exceptional cases). The total budget of TWL cannot be higher than EUR 250,000.

the Czech Ministry of Environment and the German Ministry for Environment, Nature Conservation and Nuclear Safety.

The specific objective of this project was to support the implementation of Articles 9, 10, and 11 (application of the BATs) and Article 17 (transboundary effects) through the application of three selected BREF Documents in the Czech Republic on slaughterhouses and animal by-products, food and milk processes, and textile processing.

Article 17: This activity resulted in the analysis of the application of Article 17 and its transposition into national law in the Czech Republic and Germany. The information exchange on the transboundary effects of environmentally relevant projects and plans was emphasized. For that purpose, the German experts reported on the development and current practice of the transboundary cooperation between Germany, France and Switzerland on the Upper Rhine. Further, they gave a number of examples of actual cases of information exchange between Germany and France and between Germany and Switzerland in order to demonstrate day-to-day practice of transboundary participation on the Upper Rhine. It was agreed that further details regarding the implementation of Article 17 have to be developed for the co-operation between the Czech Republic and Germany, in particular with the German border-states Bavaria and Saxony. The above-mentioned example of the Upper Rhine region was proposed as a model for their future work.

Articles 9, 10, and 11: This activity aimed to develop guidance materials on the IPPC permitting procedure for three installations, in cooperation with the German partners. German experience was used for preparation of the guideline on application of BAT/BREF on textile processing, slaughterhouses and animal by-products, food and milk. The following results have been expected and they were generally achieved: guidance materials on BAT/BREF application for the above-mentioned areas; final Czech version of BREFs in these areas; guidance materials on preparing applications for integrated permits, filled application forms, pilot permits for three IPPC installations.

More responsibility is shifted on the Beneficiary Country. »Classical« Twinning projects last between 12 and 18 months or, in some cases, even longer and they rely on the person of a Resident Twinning Adviser (RTA) residing in the Beneficiary Country (Königova, 2007: 13).

4. Concluding Remarks

At first glance, a comparison between the Czech and German IPPC regimes demonstrates different perspectives towards the implementation of the Directive. While Germany took advantage of the IPPCD inherent flexibility and actually did not approach permitting system in an integrated manner, the Czech Republic transposed the Directive by mirroring its provisions. Briefly, the Czech legislation has opted for the integrated permit issued in accordance with the IPPCD, BREFs are directly applied in permitting system and threshold values are identical with the IPPCD (Annex I).

There are several reasons that can explain their contradictory positions. Germany has a long experience in preventing the environment from detrimental pollution effects with already established pollution prevention system, though in separated legal acts (media-sector statutes). Consequently, Germany adjusted the IPPCD to the national context as much as possible (and not *vice versa!*), and it used the Directive's flexibility to a maximal degree. In contrast, the Czech government, being unpractised in pollution prevention, structured their IPPC system in line with the European standards. Königova adds (2003: 12) that countries in transition are »more open, receptive and vulnerable [than existing MSs, at that time, the EU-15] *vis-a-vis* external influence».

The selected cases presented in the paper advocate that twinning projects facilitate both types of transfer; transfer of the *acquis*, which in this particular case means the IPPCD transposition, and transfer of German laws and institutions into the Czech IPPC system.

Assumption 1: The first assumption is not surprising at all. Twinning is always related to the *acquis* so its transposition is expectable. We can observe this transfer as imposed for several reasons already elaborated in the first part of the paper. To recap the most relevant arguments, i.e., the CCs' non-participation in the creation of the *acquis*, which is an essential ingredient of their Europeanization, and their non-involvement in the discussion about the philosophy of twinning instrument. Thus, the instrument for transfer, twinning, and the object of transposition, the *acquis* – the IPPCD, are perceived as imposed parts of the pre-accession 'take it all or leave it' strategy. Despite the CCs inferior position, in many cases (and probably in the presented Czech example) twinning comes as a rational choice for the CCs because very often its implementation is used as an excuse for closing the related negotiating chapter and it is actually

a way to show their accomplishment of the formal part of membership requirements.

In relation to the analysed cases, one should advert to the non-negotiable nature of 'hard' parts of the (generally 'soft') IPPC Directive. As elaborated by Örücü, MSs do not have a choice regarding the 'hard' provisions on integrated permit. National IPPC regimes in all MSs and CCs are (expected to be) 'Europeanized' in that sense. However, the Directive only demands a permit without prescribing HOW to achieve its integrated outlook. The fact that the Czech Republic did not take advantage of the Directive's 'soft' provisions suggests that its national IPPC regime strives to be 'Europeanized' to a higher degree than actually required by the Directive. Still, according to evaluating reports, its implementation and enforcement did not succeed for several reasons.

One should ask whether limited vertical cooperation has contributed to that failure. The available research material consulted in the paper does not inform about the quality and quantity of vertical twinning cooperation between the Commission and the Czech twinning beneficiary. Thus, it remains unclear whether this cooperation was limited or not. Assuming that it was indeed limited, one explanation could be that vertical cooperation simply reflects general attitude of the EU towards newcomers.

It may further be presumed that because of the previously established strong environmental bonds between Germany and the Czech Republic, and their intensive twinning cooperation, the Commission did not have to interfere and it somehow stayed aside being involved primarily in the monitoring of the projects and their final results, exactly according to its role defined in the Twinning Manual. This specific case (probably?) represents a 'hierarchy with cooperative cushioning'. Another reason why the Commission did not have to intervene was the Czech eagerness to transfer the provisions of the IPPCD to its national system; thus, there was no intention to bypass the *acquis*.

However, these somewhat oversimplified statements need to be further explored based on different research methods than those employed in the paper (e.g. cross-sectoral large-scale comparative analysis plus interviews with project participants).

Assumption 2: One cannot claim that twinning beneficiary, the Czech Republic, was by and large a consumer of Europeanization, or, better to say, it was not only a consumer of Europeanization. The empirical study reveals that besides the IPPCD provisions (imperfectly!) implemented throughout the projects, national administrative procedures and metho-

dologies also travelled between the twinning partners. The outcome of horizontal cooperation between twinners was primarily 'soft' law transfer or, in Radaelli's words, transfer of »styles, 'ways of doing things', shared beliefs and norms«.

In the project CZ/2000/IB/EN01, recommendations for improvement, based on German experience from IPPC implementation, were made in the working package 2. Working package 5, related to glass manufacture, resulted in the development of guidance documents and templates on methodologies and administrative procedures (for applications and permits), again based on German *know-how*. Further activity in this package was a pilot project where German operators explained their 'ways of filling a permit' to the Czech counterparts. Furthermore, technical solutions in Germany served as examples for the Czech technical documents on BAT in glass manufacture. In the working package 8, recommendations (how to interpret Annex I of the IPPCD) were made based on German experience. German guidance and recommendation on the role and utilization of BAT in permit application preparation and issuing of permits, and German guidance on application of several BREFs were further consulted. In the twinning light project CZ01/IB/EN1-TL the guidelines on the application of BAT/BREF for three installations were prepared in cooperation with German experts. In the same project, with regard to implementation of Article 17, German advisors demonstrated day-to-day practice in trans-boundary participation on the Upper Rhine, and further proposed German information exchange routines as a model for future transboundary cooperation between Bavaria and Saxony in Germany and the Czech Republic. This was later accepted by the Czech-German Environment Commission. It further evidences that one of the most significant benefits of this instrument is the establishment of long-term bilateral cooperation even after the project finalization. Finally, sophisticated objects of voluntary transfer, such as non-binding administrative procedures, decision-processes, methodologies, managerial styles and 'ways of doing things' were the most common result of the Czech – German extensive horizontal twinning cooperation.

The transferability of 'soft' rules in the area where both countries take different standpoints appears to be contradictory. As presented earlier in the paper, while the Czech threshold values are identical with those in the IPPCD, Germany used the possibility of modification. In the working package 8, German experts gave recommendations to the Czech partners how to interpret Annex I of the Directive. These recommendations, apparently, did not refer to precise threshold values, but to a specific

decision-making process about the status of potential IPPC installation. What travelled from the German to Czech administration were practical suggestions about the 'way of interpreting and applying' these values. Likewise, different guidance on BATs for specific sectors signifies primarily the 'way technology is used', which means practical application of scientific knowledge or different applicable techniques, and not, or not only, the use of specific technology (as equipment or machinery). On the basis of these few examples of horizontal cooperation, one can timidly suggest that in some cases it is possible to merge the *acquis* and institutional non-*acquis*. Tulmets (2005: 78–79) offers the following explanation; if the *acquis* is strongly developed or is specific and technical (e.g. environment or agriculture), as in the case of the IPPCD, the twinning project concentrates on framework Directives and MS's advisors demonstrate practical and technical solutions for the transposition of Directives into their national laws. If the *acquis* is not developed, as is the case with administrative capacity or 'social' *acquis*, MSs strive to present sector-oriented policies based on domestic laws.

Still, other concrete examples of the Czech and German IPPC cooperation imply diversifying effects of that fusion. It is presupposed that the Czech operators participating in the training programmes, pilot projects and study visits to Germany, voluntarily embraced German 'way of interpreting the IPPCD', 'way of issuing a permit', 'way of applying BATs and BREFs' and similar. These German 'ways of doing things' with regard to the IPPCD implementation are not the same as the 'British ways' incorporated in the Directive. Since the German legal and administrative practices stay imprinted in the Czech guidance and similar 'soft' law documents, and the two partners continue their cooperation after the project implementation, it may be suggested that 'soft' objects of transposition produce far-reaching diversifying effects.

The main issue is whether twinning enhances the coordination of EU and MSs' policies and increases the CCs' compliance with EU norms. Due to the restricted methodological design, the presented concluding remarks provide fragmented answers; the limited consistency of transposed objects, the IPPCD, resulted in limited Europeanization of the receiving country, the Czech Republic. The possibility given to the beneficiary to freely choose their twinning partner on the basis of previous bilateral cooperation (that also continued afterwards), and a leeway given to Germany in terms of transferring objects (centrally uncontrolled!) that promote their national norms different from desirable integrated permit system, undermine the consistency of EU environmental policy. German

twinning advisors taught their counterparts in the Czech Republic 'how to do things the MS's way'. In this specific case, a learning process between the MS and the CC (and probably not limited vertical cooperation) unintentionally disturbed the balance in the triangle and interrupted its harmonizing effects.

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INSTITUTIONAL TWINNING: UNDISCOVERED EFFECTS OF ADMINISTRATIVE 'TRINITY'

Summary

The paper sheds light on the undiscovered effects of twinning instrument. It explores whether the candidate countries are but mere 'importers' of Europeanization in the framework of institutional twinning and what the object of importation really is. The paper is based on two main assumptions: implementation of twinning projects enables not only a) imposed transposition of the EU acquis (as a result of vertical twinning cooperation between the Commission and the candidate country), but also, at the same time, it opens space for b) additional voluntary transfer of member states' laws and institutions into candidate country's legal and administrative system (as a result of horizontal twinning cooperation between the member state(s) and the candidate country). By drawing upon the empirical findings, it may be concluded that voluntary transposition of sophisticated objects, such as administrative procedures and methodologies, managerial styles and strategies and 'ways of doing things', is the most common result of horizontal twinning cooperation. Practice, though, reveals that the principle of administrative cooperation between twinning partners is misbalanced which disturbs the triangular administrative model. It seems that 'twinners' focus more on transposition of institutional 'non-acquis' based on diverse domestic administrative solutions than on the transfer of legal obligations stipulated in the EU Directive. Is fusion between the acquis and institutional 'non-acquis' feasible within the twinning framework? What are the implications of that fusion on the candidate countries? Is the original aim of twinning instrument lost in the process of transposition?

Key words: institutional twinning, horizontal and vertical cooperation, legal and institutional transfer

INSTITUCIONALNI TWINNING: MANJE VIDLJIVI UČINCI UPRAVNOG »TROJSTVA«

Sažetak

Rad se bavi manje vidljivim učincima *twinning instrumenta*. Istražuje se jesu li države kandidatkinje tek puki »uvoznici« europeizacije u okviru institucionalnog *twinninga* te što je točno predmet uvoza. Rad se temelji na dvije glavne pretpostavke: provedba *twinning projekata* omogućava ne samo a) nametnutu transpoziciju zajedničke pravne stečevine EU (kao rezultat vertikalne *twinning suradnje* između Komisije i zemlje kandidatkinje), već istovremeno otvara prostor i za b) dodatni dobrovoljni transfer zakonskih rješenja i institucija država članica u pravni i upravni sustav zemlje kandidatkinje (kao rezultat horizontalne *twinning suradnje* između neke države članice i zemlje kandidatkinje). Iz empirijskih nalaza slijedi da je dobrovoljna transpozicija sofisticiranih institucija poput upravnih postupaka i metodologija, menadžerskih stilova i strategija te »uobičajenih načina obavljanja posla« najčešći rezultat horizontalne *twinning suradnje*. Praksa, međutim, pokazuje da je načelo upravne suradnje između *twinning partnera* u neravnoj jesu, što remeti trokutasti upravni model. Čini se da se sudionici *twinninga* više usredotočuju na transpoziciju institucionalne »ne-stečevine« temeljene na raznolikim unutarnjim upravnim rješenjima pojedinih država nego na transfer pravnih obveza određenih direktivama EU. Je li moguće spojiti zajedničku pravnu stečevinu i institucionalnu »ne-stečevinu« u okviru *twinninga*? Koje su posljedice takvog spajanja za zemlje kandidatkinje? Gubi li se izvorni cilj *twinning instrumenta* tijekom procesa transpozicije?

Key words: *institucionalni twinning, horizontalna i vertikalna suradnja, pravni i institucionalni transfer*