

Environmental Governance in Europe

EEAC

the network of

European Environmental
Advisory Councils



LEMMA

EEAC Statement

“European Governance for the environment”

**Proceedings
of the EEAC
Annual Conference
2003, Florence**

**Selected contributions
from within the network**

BACKGROUND STUDY

**Editors: Louis Meuleman, Ingeborg Niestroy
and Christian Hey**

Environmental Governance in Europe

The Hague, December 2003

**Eds.:
Louis Meuleman,
Ingeborg Niestroy and
Christian Hey**

Colophon

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About the RMNO publications

The Advisory Council for Research on Spatial Planning, Nature and the Environment (RMNO) offers two series of publications, issued by Lemma Publishers, Utrecht, The Netherlands:

A Advice

V Preliminary studies and background studies

These series were launched in October 2003.

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V.01 (2003) **Niet bang voor onzekerheid** (Not afraid of uncertainties), a preliminary study.

In the Advice series no publication was issued yet.

December, 2003

Foreword

The Advisory Council for Research on Spatial Planning, Nature and the Environment (RMNO) of the Netherlands considers itself as a modest broker between the world of science and the political realm. Environment and nature belong to the domains in which RMNO is active. In these domains the impact of European policies and legislation is huge: it is estimated that nowadays around 80 percent is decided in Brussels. Nevertheless, Europe still does not play a very prominent role in the public and political debate in the Netherlands.

RMNO understands that it can only perform adequately if it develops intensive relations with European colleagues and public bodies. Therefore RMNO is a.o. an active member of the network of European Environmental Advisory Councils (EEAC) and momentarily hosts its Focal Point, from which we have been learning how active and valuable this network is. Working together with other EEAC partners raised our awareness that we on top need to develop further our contacts with other European organisations and public bodies. We believe this is necessary to perform better as a knowledge broker between science, politics and society.

In October 2003 EEAC and RMNO jointly organised the eleventh annual EEAC conference, which focused on Environmental Governance. And where could that conference have taken place better than in Florence, the home city of Niccolò Machiavelli, the originator of governance? Our meeting in Florence showed what cooperation in a true European spirit means. We very much enjoyed this special occasion, which broadened and deepened our views on the actual developments of environmental governance in Europe.

With pleasure we hereby present the proceedings of the conference, other work of EEAC councils and a number of background articles of council members and staff.

Roeland J. in 't Veld,

RMNO chairman.



Preface

The debate on European Governance has a direct impact on environmental policy making in Europe. Legislative processes have become more participatory and transparent. The requirements to adopt a legislative path have become more demanding, namely as a consequence of extensive impact assessments and stakeholder consultations. Finally new, more cooperative and consensual approaches for addressing public goods, such as public health and the environment, have been promoted by the European Commission, such as voluntary agreements and new tools of coregulation or other non-legislative measures. At the same time the structure of environmental problems is shifting from those, which can easily be solved by technical fixes to those, which are persistent, complex or controversially discussed. So there is at the same time a gradual change in the approaches of environmental governance and a need for new approaches to govern the environment.

Against this background EEAC in 2002 decided to establish a working group to reflect those developments, to assess if the new governance approaches properly address the new challenges and to give advice for an appropriate choice of governance modes. The working group produced a statement, which was discussed at the Annual Conference of EEAC, 11th of October 2003 in Florence. The conference was organised and hosted by the Dutch EEAC member RMNO (Advisory Council for Research on Spatial Planning, Nature and the Environment). While the statement only contains the key messages and results of a rich debate, this book offers insight in all the background material, which lead to the conclusions of the statement on European Governance for the Environment. Work so far has focused on the EU level, but will be carried on with also looking at developments in member states and impacts of the European proposals.

The book compiles different types of contributions:

1. the EEAC statement and the working group report (chapter I.),
2. the presentations and speeches given at the EEAC Annual Conference (chapter II.),
3. a selection and documentation of statements and reports of EEAC members related to governance for the environment (chapter III.),
4. analysis and background papers of individuals from within the EEAC network on different aspects of environmental governance (chapter IV.).

This deep insight into the reflections of Councils and individuals, which belong to the EEAC network shows plurality and consensus. Some contributions emphasise more the potential of consensual and cooperative approaches, while others emphasise the strengths of a more legalistic and state centred approach. Within this plurality there is also a strong consensus that the governance debate should not be about substitution of one approach by another, but about broadening the spectrum of options and a

more rational, problem-solution oriented choice of approaches. EEAC members share the concern, that capacities for the more traditional approaches should not be reduced, because they have been very effective for certain types of problems, but they also insist on the need for modernising governance. Target oriented approaches, which offer space for flexible and cooperative implementation, should play a more prominent role in European environmental policies.

We hope that this book will enrich the debate on governance for the environment in Europe.

The editorial team

*Den Haag / Berlin
December 2003*



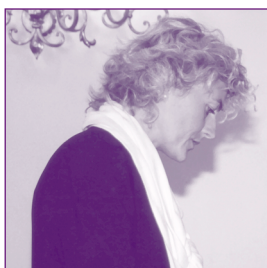
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I Joint EEAC work

1. EEAC STATEMENT

“EUROPEAN GOVERNANCE FOR THE ENVIRONMENT” (2003)

First EEAC Statement on Governance

1.1 INTRODUCTION

1. Governance has become a key word in recent debates on environmental policy. The common core of the governance debate in the public sector is the search for a new role of the state, the region and the European Union. Governance is about pursuing public goals in an international multi-level and multi-sector setting and in co-operation with a wide range of non-governmental actors.

This statement has its primary focus on the EU level, where among others in the view of enlargement, new approaches for European governance are being discussed, proposed and promoted. The reflections within the statement may inform national and other levels as well.

1.2 KEY MESSAGE

2. In 2001 the European Commission launched a White Paper on European Governance. The White Paper and a number of follow-up communications and other policy processes have important consequences for environmental governance. The central theme of the governance debate at EU level is about relieving the legislator, streamlining and reducing the overall volume of legislation and about strengthening the participation and the responsibility of interest organisations.

3. While some of those processes are to be welcomed, EEAC cautions the EU and national governments against an imbalanced move towards devolution and deregulation in environmental policy. It calls for a differentiated, problem-based and solution-oriented choice of strategies and instruments. This involves maintaining existing capacities for direct regulation as well as developing additional capacities for strategic target-setting, economic regulation, and the coordination and monitoring of processes of decentralised implementation, co-regulation and self-regulation.

In the current process of reforming European governance, the European Commission and Parliament as well as the leaders of the EU member states need to be careful not to inadvertently reduce their future capacities for effectively solving environmental problems in an integrated and multidisciplinary manner.

They should opt for a twofold strategy of:

- * careful and problem-based experimentation with new modes of environmental governance
- * while at the same time maintaining the traditional capacity for direct

regulatory intervention.

The traditional capacity for direct regulation will continually be necessary in order to quickly react to or avoid problems of imminent danger. This capacity is also necessary as a fallback option in the case that other, more decentralised and flexible steering modes fail to produce the desired effects.

Ultimately, successful environmental governance depends on increasing, not shifting the political system's capacity for environmental protection, supported by a deepened public participation.

1.3 A FRAMEWORK FOR ENVIRONMENTAL DECISION-MAKING

4. Effective environmental governance requires a differentiated decision-making process which takes into account differences in the type of environmental problem to be addressed as well as varying institutional framework conditions and actor constellations within the European multi-level system. Problems are not only environmental issues, but they reflect a complex social structure, including their visibility, their dynamics and the complexity of potential solutions. Based on these considerations EEAC proposes a heuristic framework that can help decision-makers to systematise available governance options and prospectively evaluate them with regard to their problem-solving potential (Figure 1).

Figure 1: A Framework for Environmental Decision-making

	Problems of imminent danger	Persistent problems	Emerging problems/ complex local problems
Mode of governance	Direct Regulation	Target led, flexible mix of instruments	Reflexive social learning (self-regulation within incentive structure)
Actors	Government	Government and target groups	Target groups and government
Filter conditions that affect the choice of steering modes: <ul style="list-style-type: none">- Structure of target groups,- Structure of sources of environmental degradation,- Level of ambition,- Political opportunity structures in the European multi-level system.- Structure of ecosystems (natural conditions)			

Differentiated, Problem-Based and Solution-Oriented Strategies

5. Policy choices in the field of environmental protection have to be based on the structure of the particular problems to be solved. Environmental problems may reach from problems of imminent danger to persistent deterioration of the natural environment and, finally, to newly emerging challenges with largely unknown consequences. Over time, if uncertainty decreases and the weight of evidence increases, emerging problems may switch to problems that may require precautionary action. So the above suggested typology is a dynamic one. Therefore EEAC advises national and European policymakers to strive for a maximum of strategic capacity to cope with these different type of problems.

This includes:

- * applying new instruments for dealing with complexity and uncertainty
- * preserving and reinforcing regulatory capacity to successfully tackle problems of imminent danger
- * with regard to persistent environmental problems, it means strengthening the governments' strategic and scientific capacity to set adequate targets and effectively steer and monitor implementation.

Legitimation of Decisions

6. EEAC generally welcomes the Commission commitments towards structured participation of stakeholders and improved communication tools to "civil society" in its White Paper on European Governance.

EEAC appreciates the White Paper on European Governance as far as it develops a complementary perspective to strategies for improving inter-governmental cooperation (e.g. Open Method of Coordination, Burden Sharing, Closer Cooperation) and for strengthening the codecision-powers of the European Parliament (e.g. in agriculture, transport and taxation issues).

EEAC signals that mechanisms and opportunities for participation are fairly advanced within DG Environment. Care should be taken, that this acquis of good governance is maintained and further improved, especially as regards joint documents of different DGs and environmentally relevant documents of other Directorate Generals.

7. EEAC however perceives limits of a strategy to relieve the legislator in the environmental policy field. First, as regards environmental policies, the most essential issues often are formulated in technical details. Weakening the traditional legislator, in having a say about such details, would be problematic from a democratic and from an environmental policy perspective.

Democratic legitimation of EU policies has to rely on all three pillars of legitimation:

1. the indirect legitimation by national governments, through the Council of Ministers,
2. the direct one by the European Parliament, and
3. the issue specific legitimation by the consultation of and debate with stakeholders.

None of these will be sufficient as a source of legitimisation as a stand-alone.

8. The strengths of EU environmental policies of recent years derive from the existence of dynamic coalitions of environmental policy makers from the Commission, national governments and the European Parliament. While accommodating economic concerns, this triangle was effective in overcoming national and political differences, and developing powerful and innovative environmental policies. The rules of the Treaty have offered a favourable opportunity structure for environmental concerns and for the rapid diffusion of national environmental policy innovations to the European level. This structure has been successful in putting in place policy measures and programmes to reduce the burden of direct pollution and risks to health. Any strategy for environmental governance should make use of this favourable institutional context and not try to weaken or to substitute it.

More specifically EEAC assesses EU policy developments as regards the multi-sector, the multi-level and multi-actor dimensions of governance as follows:

1.4 ASSESSMENT OF NEW EU POLICY TRENDS

1.4.1 The Multi-Sector Dimension of European Environmental Governance

Environmental Policy Integration and Sustainable Development

9. EEAC observes that the European SD agenda and the Cardiff Process have considerably lost momentum. In this context EEAC regrets that the White Paper on European Governance and its follow-up process offer little innovation with regard to key persistent challenges to environmental policymaking, namely environmental policy integration and securing more sustainable development.

10. EEAC is relieved that in the final draft for a European Constitution the *acquis* of the present Treaty regarding the definition of sustainable development, environmental protection and the integration of environmental requirements into other sectors was restored. EEAC asks the IGC to reconsider the placement of the environmental integration requirement in Part I of the Constitution and to review the outdated and obsolete objectives namely for agriculture and transport policies.

11. The Cardiff Process and the SD agenda suffered from governance shortcomings, which need to be readdressed in order to regain momentum. In general those processes were characterised by a lack of focus, an insufficient administrative and scientific resource basis, insufficient commitment from political leaders and a too strong reliance on Council formations, which are specialised in negotiating proposals, but not necessarily in drafting themselves innovative proposals. Also earlier attempts of the

Commission towards environmental policy integration and SD largely failed, because they relied too heavily on Commission leadership only.

Environmental policy integration may regain momentum, if:

- * adequate resources (in terms of staff and research) are invested into the process by the Commission,
- * the strategies have a problem oriented focus on few key persistent problems, whereas DG Environment and environmental ministries have a key responsibility to prioritise and to challenge the sectors with the problems they cause,
- * clear and unambiguous targets are being agreed,
- * more systematically national policy innovation in environmental policy integration and sustainable development is used as basis for EU policy proposals, and
- * effective coordination mechanisms between environmental and sectoral departments are established, which allow for better participation and consultation, assessment of sectoral policy proposals and accommodation of sectoral and environmental targets and even joint problem solving (e.g. transition strategies for sectors); the potential of the new impact assessment should be used to the greatest extent possible, and
- * learning from regional innovations, and better cooperation with the regional and local level can be achieved.

Target Led Environmental Policies

12. Persistent environmental problems can best be tackled by a combination of binding targets with timetables and a flexible mix of instruments to achieve those targets. Target oriented approaches are a preferable approach to manage diversity in an enlarged Europe to open-ended networking processes with high levels of uncertainty about the environmental outcomes. They give clearer and politically legitimated orientation for the level of ambition of policies for other sectors, for industry, other private actors and regions than unpredictable results from consensus in networks. For key technological choices such binding long-term commitment are an indispensable driver of innovation.

EEAC suggests that DG Environment should resume and intensify the target oriented approach when implementing the 6th EAP through thematic strategies.

Regulatory Impact Assessment

13. As a response to the Gothenburg Summit's call for a Sustainability Impact Assessment, the Commission presented in June 2002 a general approach, a Regulatory Impact Assessment, which would cover all the various implications of policies including business and environmental impacts. EEAC recognizes that consolidating such impact assessments into one single procedure could lead to procedural convenience, but is concerned that there would then be a real danger of environmental considerations taking second place, and for trade-offs to be made that are neither transparent nor explicit. If it proceeds down this path, therefore, the

Commission must put in place safeguards to ensure that the environmental appraisal is explicitly discrete within the overall assessment, and that the full involvement of DG Environment is secured in all policy assessment.

1.4.2 The Multi-Level Dimension

Wider Use of Framework Directives

14. The White Paper suggests a wider use of framework directives in EU legislation. As regards environmental legislation the EU has already made much experience with framework directives. Framework directives establish general objectives, working procedures, instruments and launch a work programme. On the basis of experience made with different types of environmental framework directives, EEAC suggests, that:

- * Care should be taken, that the objectives and principles are formulated in a clear, unambiguous and committing way. Vagueness at the programming level shifts conflicts and decisions to secondary levels, e.g. information exchange networks or committees. Some of those secondary levels however are not designed and legitimated to make such decisions.
- * Any decisions on environmental performance levels and targets should be made by a political mechanism (e.g. daughter directives) and not by a technical mechanism.
- * Framework directives should contain a review and supervision mechanism, whereby the political levels can correct and repeal decisions made at the technical levels. So technical committees work in the shadow of potential repeal and have an incentive to move within the mandate given to them.

Reform of the Comitology

15. In December 2002 the Commission has made a new proposal to reform the Council decision on Comitology of 1999.

EEAC welcomes the intention of the Commission to put the European Parliament on equal footing with member states committees, as regards their right to comment and to reject Commission proposals.

EEAC regrets however that the Commission stops half way in offering new rights to the European Parliament as regards the supervision of technical adaptation decisions. The European Parliament has a right to comment and to reject, but unfortunately not to modify. Furthermore, if Parliament or Council do not adopt a Commission proposal, the Commission may either adopt its modified decision or suggest a legislative proposal.

EEAC suggests, that in case of severe reservations expressed by member states or the European Parliament the Commission should see this as an indicator for the need of a political mechanism (i.e. a directive or regulation by the European Parliament and the European Council). In such cases the committee is no more the appropriate level of decision making.

Tripartite Partnerships

16. In December 2002 the Commission published a Communication on Tripartite Partnerships aimed at promoting negotiated agreements with individual regions and the respective member states on the implementation of Community policies. The Commission has expressed its intention to apply this instrument on a pilot project basis on the environment.

EEAC supports the new instrument, as far as it strengthens regional commitments on environmental policies, where there is need for action but limited Community competence, e.g. in the case of tourism, spatial planning, and coastal management. Agreements in those fields may deliver added value for the environment. The new instrument however requires a strong financial resource basis in order to create strong incentives for regional cooperation and strong staff capacities on the side of the Commission in order to monitor negotiated progress. Both may be not easily mobilised for a broad application beyond the pilot project phase. EEAC warns against reduction of staff capacities in other fields in order to promote tripartite partnerships.

17. EEAC also warns against any tripartite partnership involving regulatory relief to a region if this is not combined with very clear targets and preconditions. This would undermine the credibility and strength of EU environmental legislation. Legal obligations should apply to everyone. If the Commission can accept less reporting, monitoring in negotiations with one region, why not for all regions in the form of simplified legislation?

1.4.3 The Multi-Actor Dimension of Environmental Governance

Aarhus Convention

18. EEAC welcomes the present steps to transpose the Aarhus Convention into European law. It urges the Commission to improve the incorporation of public participation requirements in decisions on plans, programs, policies and laws relating to the environment and to better integrate the results of the Aarhus Convention with the new European pollutant release and transfer register. EEAC welcomes the proposal of the Commission on access to justice for citizens' organisations both at national and EU levels. This is an important step for the better enforcement of environmental legislation and the better control of public administrations by citizens. As regards access to information and standards for participation at European level EEAC however cautions that the Aarhus Convention adopts a citizen rights based approach. Commitments for good practice on transparency and participation are welcome, but in itself not sufficient.

The Target of Reducing the Volume of EU Legislation by 25%

19. In 2001 the Mandelkern Group presented a report on the simplification and better regulation to the Commission. This report suggested a 40% reduction of the volume of EU legislation. In subsequent communications the Commission endorsed the report with a slightly more moderate target of 25%.

EEAC considers this type of quantitative target as inappropriate for environmental policies. The quantity and level of detail of legislation cannot be determined without the specific context, the type of environmental problem addressed, the instruments applied and the complexity of the specific situation. Overall targets, without such a problem specific qualification, risk to become part and parcel of a deregulatory agenda.

Coregulation

20. In 2002 and 2003 the Commission has suggested two specific models for coregulation, combining legislative and self-regulatory elements of governance, one on negotiated agreements, the other on the wider use of European Standardisation for Integrated Product Policies (European Commission 2003a and b). EEAC welcomes hybrid instruments if they effectively combine the strengths of governance by legislation with the strengths of voluntary action and self-regulation. It is necessary that general objectives, quantitative targets and timetables, monitoring mechanisms, requirements for balanced participation, sanctions and mechanisms of peer review and supervision should be under the responsibility of the legislator. In this respect both models partially meet such requirements, but still offer too many loopholes, opt-out rules and hurdles for effective steering by the legislator.

Governance and Knowledge

21. The new ideas of governance have been translated by the European Commission into principles and guidelines to improve the knowledge base of policy-making. Implicitly, the Commission advocates a dialogue model of interactions between scientists, policy-makers and interested parties when dealing with contentious issues in the face of significant uncertainty. A broadening of the spectrum of actors involved in knowledge production is not only apt but even necessary to deal with lack of consensus about relevant knowledge and differences in values.

For long term transitions to sustainable systems of agriculture, energy production, transport, etc. there is a need to explore the feasibility of a new kind of demand driven innovation policy on a European scale. The dominant governance system in the EU is of crucial importance for the success or failure of such an innovation policy based on sustainable development.

The organisational Challenge

22. In order to be able to implement the rationale EEAC proposes for making decisions on the best governance style for each environmental policy issue, and maintain or enforce the European Commission's credibility, due attention should be paid to its organisational implications, such as the European Commission directorates' working style, attitude (culture) and staff competencies (process management skills, networking abilities).

1.4.4 Conclusions

23. With this statement, EEAC cautions the EU and national governments against an imbalanced move towards devolution and deregulation in environmental policy. It calls for a differentiated, problem-oriented choice of strategies and instruments. This involves maintaining existing capacities for direct regulation as well as developing additional capacities for strategic target-setting, economic regulation, and the coordination and monitoring of processes of decentralised implementation, co-regulation and self-regulation. In the current process of reforming European governance, the European Commission and Parliament as well as the leaders of the EU member states need to be careful not to involuntarily reduce their future capacities for effectively solving environmental problems in an integrated and multidisciplinary manner.

24. They should opt for a twofold strategy of careful, problem-based and solution-oriented experimentation with new modes of environmental governance while at the same time maintaining the traditional capacity for direct regulatory intervention. On the one hand, this capacity will continually be necessary in order to quickly avoid imminent danger. On the other hand, and maybe more importantly, this capacity will become increasingly necessary as a fallback option in the case that other, more decentralised and flexible steering modes fail to produce the desired effects. Ultimately, successful environmental governance depends on increasing, not shifting the political system's capacity for environmental protection, supported by a deepened public participation.

*The following EEAC councils have endorsed the statement
(by 11 October 2003)*

Belgium	Environmental and Nature Council of Flanders (MiNa-Raad)
Finland	Finnish Council for Natural Resources (FCNR)
Germany	Advisory Council on the Environment (SRU)
Hungary	National Council on the Environment (OKT)
Netherlands	Council for the Rural Area (RLG)
	Advisory Council for Research on Spatial Planning, Nature and the Environment (RMNO)
	Wadden Sea Council
Portugal	National Council on Environment and Sustainable Development (CNADS)
Poland	State Environmental Council of Poland (PROS)
Slovenia	Council for Environmental Protection (CEPRS)
United Kingdom	Royal Commission on Environmental Pollution (RCEP)
	Countryside Council for Wales (CCW)
	English Nature (EN)
	Scottish Natural Heritage (SNH)



2. WORKING GROUP REPORT: ENVIRONMENTAL GOVERNANCE IN THE EUROPEAN UNION (2003)

Background Document by the EEAC Working Group (EEAC WG), October 2003

2.1 NEW CHALLENGES FOR ENVIRONMENTAL GOVERNANCE IN EUROPE

1. Throughout the past decade environmental policymaking has been confronted with a fundamental change of the structure and nature of the key environmental problems it has to deal with. Today's most pressing environmental problems are in their large majority highly complex. Often they are not as visible or not as directly discernible as have been earlier types of environmental degradation. Technical standard answers to these environmental threats are often either impracticable (as in the case of excessive land-use) or not yet available (as in the case of climate change) and win-win solutions are not always achievable. While some of today's predominant environmental threats have only recently been placed on the political agenda, others can be characterised as "persistent", meaning that over a longer period of time political attempts to solve them have failed or have not shown the intended effect (SRU, 2002). Examples of new environmental problems include endocrine disrupters or the control of genetically modified organisms (GMOs), and persistent threats include loss of biodiversity, climate change and unrelenting land-use. The severity of both new and "persistent problems" is aggravated by a limited acceptance of far-reaching environmental protection measures affecting lifestyles or redistributing income, such as for example the introduction of CO₂-taxes. This insufficient acceptance, in turn, which results from a number of factors including conflicting stimuli from different policy fields and conflicts with market economies that prioritise consumption and growth over the environment, is reinforced by the environmental successes of past decades concerning highly visible problems such as urban air pollution or the contamination of surface waters.

2. Almost simultaneously to the change of environmental problems the politico-institutional framework conditions for environmental policymaking are also experiencing a major transformation. At the core of this transformation of environmental governance are two major developments (Hooghe and Marks, 2001):

- * a broadening of the spectrum of actors involved in political decision-making, i.e. a gradual dispersal of authority away from the nation state and central government and toward a plurality of state and non-state actors in a multi-level setting (from local to international);
- * a broadening of steering modes from a strong focus on traditional command-and-control regulation towards a greater inclusion of economic, informational or self-regulatory approaches.

3. This changing governance structure is challenging the state's traditional sources of power, policy capacity, institutional capabilities, and legitimacy in the environmental as well as in other policy areas (Pierre, 2002: 2). At the same time, however, these developments may open up new ways of dealing with those new or persistent environmental problems which the more traditional modes of regulation have not been able to solve satisfactorily.
4. Furthermore the policy agenda has been broadened by a move from a sectoralised to a more integrated approach towards solving problems which finds its conceptual expression in the idea of sustainable development. While sustainable development has become a central and fundamental goal of the European Union (Art. 2 TEC) it still remains to be integrated into mainstream EU business through the Cardiff and Lisbon processes. Nevertheless, considerations on environmental governance have to be considered in relation to this concept, and more specifically, to the EU Strategy for Sustainable Development (European Commission, 2001a), that should systematically integrate linkages among social, economic and environmental concerns. One argument for this integration task is that unsustainable trends are due to economic growth depleting natural resources. As EEAC has pointed out in a joint statement (EEAC, 2001), this leads to the search for more environmentally sustainable pathways as, "... in the longer term, a healthy environment is fundamental to economic development and human welfare" (Macrory, 2001). Hence, environmental governance can be seen as a fundamental element of the broader search for governance for sustainable development.
5. Finally, the EEAC WG notices that the upcoming enlargement of the European Union has important consequences also for environmental policy-making which need to be dealt with in a strategic manner.
6. The ambiguous nature of these changes in (environmental) policymaking - being at the same time a threat to traditional modes of regulation, which effectively addressed some environmental problems in the past and will continue to do so in future, and an opportunity for successfully solving new and persistent problems - is not adequately taken into consideration by recent governance concepts, most notably by the European Commission's White Paper on European Governance (European Commission, 2001b). The central theme of the governance debate at EU level is about relieving the legislator, streamlining and reducing the overall volume of legislation and about strengthening the participation and the responsibility of interest organisations.
7. Instead of providing a differentiated assessment of the strengths and weaknesses of different modes of governance, these concepts thus have an imbalanced preference for a shift of political authority away from the state and towards private actors and for a general intensification of more

decentralised forms of co-regulation and self-regulation. Such a heavy reliance on one single pattern of governance, however, is inadequate for dealing with the great variety of unresolved and persistent, old and new, environmental problems that the European Union and its member states are currently confronted with. In order to be effective, environmental governance has to make use of the whole range of available steering mechanisms instead of relying predominantly on one single strategic option. This broad range of steering mechanisms must be implemented in a differentiated way, in the first place based upon the type of environmental problem at cause. In some problem areas this may indeed involve greater flexibility, decentralisation or self-regulation. In others, however, effective and legitimate governance will require a continuous leading role of the democratically accountable institutions of parliament and government.

8. This functional need to preserve the whole repertoire of strategic and instrumental options when confronted with unresolved environmental problems is reflected in past political practice where, in spite of the rise of new actors and steering modes, governments have until today continued to be the single most important actors in (environmental) policymaking, and regulation has remained their single most important mode of exerting control (Holzinger et al., 2002). In fact, rather than being constrained, governments' options regarding both the formation of strategic alliances with other actors and the choice of steering modes have significantly increased in the past years and the European Union as well as national governments will increasingly be confronted with the difficult task of choosing among different strategic and instrumental options those that best fit specific problems and at the same time offer a favourable opportunity structure for environmental concerns to be actually enforced.

9. The EEAC WG therefore asserts that it is important to have as diverse a range of policy tools as possible throughout the EU and its member states. This is essential in order to effectively manage the wide range of threats to our environment. But preserving a wide range of policy options ranging is also necessary to ensure a flexible approach that takes account of geographical variations so that policy solutions fit local problems. The heuristic approach advocated here is particularly relevant to the acceding countries of Central and Eastern Europe. In this light it is essential to be able to draw upon a diverse range of policy tools to address the widening spectrum of environmental problems inherited through EU enlargement. Among others, this 'inheritance' will comprise basic industrial air and surface water pollution - problems that can best be solved through direct and hierarchical regulation.

10. Based on the notion expressed here, that different types of policy problems require different strategic and instrumental approaches, the EEAC WG proposes a heuristic scheme that can aid policy makers in deciding which steering modes and actor constellations are most adequate in order

to solve specific types of environmental problems. On this basis, the EEAC WG critically assesses whether and to what extent current trends in European environmental policymaking expressed in the White Paper on European Governance and related Commission documents can live up to these challenges.

2.2 KEY ELEMENTS OF SUSTAINABLE ENVIRONMENTAL GOVERNANCE

2.2.1 A Framework for Environmental Decision-making

11. Effective environmental governance requires a differentiated decision-making process which takes into account differences in the type of environmental problem to be addressed as well as varying institutional framework conditions and actor constellations within the European multi-level system. Problems are not only environmental issues, but they reflect a complex social structure, including their visibility, their dynamics and the complexity of potential solutions. Based on these considerations EEAC proposes a heuristic framework that can help decision-makers to systematise available governance options and prospectively evaluate them with regard to their problem-solving potential (Figure 1).

Figure 1: A Framework for Environmental Decision-making

	Problems of imminent danger	Persistent problems	Emerging problems/ complex local problems
Mode of governance	Direct Regulation	Target led, flexible mix of instruments	Reflexive social learning (self-regulation within incentive structure)
Actors	Government	Government and target groups	Target groups and government
<div>Filter conditions that affect the choice of steering modes:</div> <div><div>- Structure of target groups,</div><div>- Structure of sources of environmental degradation,</div><div>- Level of ambition,</div><div>- Political opportunity structures in the European multi-level system.</div><div>- Structure of ecosystems (natural conditions)</div></div>			

12. Environmental problems are not homogeneous. They can be divided into three categories:

- * problems of imminent danger and threat to human health,
- * persistent problems,
- * newly emerging problems, and
- * complex local problems

Due to their particular characteristics which will be sketched out in the following paragraphs, each of these problem-types can be linked to a particular mode of environmental policymaking:

13. Problems of the first type - for example uncontrolled dumping of hazardous wastes or hazardous discharges into surface waters - pose a direct threat to human health and require immediate action to avert this danger. Typically, this will be done by traditional regulation (i.e. licenses or bans). Economic instruments can be an alternative only if they are accompanied by concrete emissions limits and if provisions are taken to exclude the occurrence of “hot spots”. The key actors in this type of prescriptive danger-avoidance are national governments or the supranational institutions of the European Union. Non-state actors may play an important role in the process of agenda-setting and will be consulted in the course of the decision-making process. The ultimate responsibility for the design and implementation of policies in the field of danger avoidance, however, rests with the democratically legitimised institutions of the national or supranational state. Problems of imminent danger to human health have been the main focus of environmental policy during the 1970s, but as recent moves in the field of chemicals policy show, are still on the policy agenda.

14. As more and more environmental problems of the first type have been “solved” or mitigated by successful environmental policy, the remaining problems appear to be highly resistant against political intervention and control. These “persistent” problems - which make up the second category - include such diverse issues as CO₂-emissions and climate change, loss of biodiversity, unrelenting land-use, noise, and unsustainable agricultural practices. Their common thread lies in the fact that current environmental policy measures seem to be insufficient to attain the environmental targets that are widely regarded as necessary and which are laid down in numerous programmatic policy statements. Persistent problems are difficult to solve as they typically are highly complex, less visible than problems of the first type, they often lack quick technological fixes and their cause-effect relationships are often scientifically disputed. In addition, they are characterised by their potentially wide-ranging impacts and negative trends on the one hand and intricate cross-sectoral and transnational relations on the other hand which makes them very difficult to tackle for policy-makers.

The apparent difficulties in successfully tackling persistent problems may be due either to a lack of acceptance or an active resistance against policy measures on the part of strong and influential target groups, or

they may result from an insufficient integration of environmental policy measures in other sector policies on a national or international level. In both cases, government will have to play an important part in the solution of the problem, as persistent problems by definition will not get solved by the individually rational actions of private actors. While it will therefore be the essential responsibility of governments to set clear and adequate policy targets which are binding for all actors, the realization of these goals may allow for greater strategic and instrumental flexibility on the part of the target groups. Leaving greater leeway to the polluting sectors as to the concrete ways in which they will reach the goals of environmental policy will most likely increase their willingness to accept the necessary steps in environmental protection and open the way for more efficient solutions. In order to effectively tackle persistent problems, it is however essential that governments retain ultimate responsibility for setting the targets and thoroughly monitor and control the process of implementation.

Box 1: Persistent Problems: The Case of Sustainable Mobility

In many European countries, policy interventions aimed at reducing the use of private cars do not bring about sufficient results from an environmental policy point of view. It seems, politicians do not want to risk their political necks introducing drastic, but effective measures. More drastic policy measures are not feasible for several reasons: problem perceptions in society differ from those of environmental policy-makers, there are substantial uncertainties linked to climate change and climate policy (CO₂), and directly tangible or visible positive stimuli for the individuals are lacking. The dominant culture in society may be so strong as to block effectively any policy intervention in favour of an environmentally more sound option. The culture of “freedom, independence and privacy” (Grin et al., 2003) which is predominant in Western society is one of the key elements promoting the private car transport system and blocking the success of policy measures to stimulate other modes of transport. The whole transport system in Western societies is based on the private car. From a technological and societal point of view, one can say there is a lock-in situation.

Policy-makers can either try to enforce new regulations (expensive licenses as in Singapore) or apply stricter policy measures (parking, tollage) or start thinking of innovation of the transport system as a whole, making it more sustainable in future. Of course, the barriers to innovation are strong, as they are culturally determined. But on the other hand these barriers can be considered as reverse salient factors that should be incorporated in the design of alternatives.

15. Finally, reversible or emerging problems of the third type frequently allow for a more reflexive and learning-oriented approach. In this case, business, representatives from civil society and experts should be more actively involved in all phases of the policy process from problem definition and target setting to the design of appropriate measures, while national governments or the European Commission essentially need to provide for a basic incentive structure - for example the credible threat of regulatory intervention in case of inaction on the part of the target groups.

2.2.2 Terms of Reference for a Rational Choice of Governance Modes

16. Policy choices in the field of environmental protection cannot be made without systematically taking into account the structure of the particular problems to be solved. In view of the broad range of environmental problems - reaching from problems of imminent danger to persistent deterioration of the natural environment and, finally, to newly emerging challenges with largely unknown consequences - The EEAC WG advises national and European policymakers to strive for a maximum of strategic capacity to cope with these problems. This includes applying new instruments for dealing with complexity and uncertainty as well as preserving and reinforcing regulatory capacity to successfully tackle problems of imminent danger.

17. Moreover, and with regard to the management of persistent environmental problems, it means strengthening the government's strategic and scientific capacity to set adequate targets and effectively steer and monitor implementation. EEAC, therefore, cautions the EU and national governments against an imbalanced move towards devolution and deregulation. It calls for a differentiated, problem-based and solution-oriented choice of strategies and instruments in environmental and sustainable development policy. This involves the maintenance of existing capacities for direct regulation as well as the development of additional capacities for strategic target-setting and the coordination and monitoring of processes of decentralised implementation and self-regulation. It has to be noted, however, that the suggested typology of environmental problems is a dynamic one. Over time, if uncertainty decreases and the weight of evidence increases, emerging problems may switch to problems which may require precautionary action.

18. While the choice of strategies that fit the type of problem to be solved is an essential determinant of policy success, other factors such as the intended level of protection within the same problem-type, the structure of and the difference within the target sectors, the type of emission-sources or the availability and costs of technological solutions may act as filters which further condition the choice of regulatory approaches and policy instruments. In addition to the problem structure, these factors need to be taken into account as well in the process of environmental

decision-making. For instance, a differentiated level of ambition within a certain environmental problem can call for a differentiated steering mode: absolute limits which must be respected to avoid severe damage need direct regulation (standards and permits); to reach a bigger reduction of environmental pressure different forms of economic or social (self)regulation may offer perspectives. In the case of pesticides, for example, a direct ban will stop the most dangerous substances, while taxes or education on efficient use can reduce the amount of less damaging substances. Heterogeneous polluting sectors or diffuse sources, for example, cannot easily be accessed by reflexive and self-regulatory instruments. Here, direct regulation or the use of economic instruments are most promising. On the other hand, powerful and homogeneous target groups may be resistant to unilateral command-and-control regulation, but have a greater capacity for self-regulation provided that governments are able to set clear and mandatory targets.

19. Finally, the potential impact of given institutional structures on policy outcomes has to be taken into account when designing new environmental policies. Favourable political opportunity structures such as the dynamic interaction between DG Environment, national environmental ministers and the Environment Committee of the European Parliament which in the past has produced high environmental protection levels in a number of areas should be taken advantage of whenever possible. Institutional structures should also be designed in a way as to facilitate policy innovation at the level of member-states and the subsequent diffusion of pioneer policies to other member states and to the EU level.

2.3 ASSESSMENT OF NEW EU POLICY TRENDS

20. The European Commission's White Paper on European Governance kicks off a number of policy processes, potentially with high relevance to environmental policy making. The White Paper claims to provide an answer to the increasing democratic deficit of the European institutions. It offers solutions which aim to improve the management of policy processes without affecting the "Community method", presently being discussed within the on the way towards a European Constitution. The strategic orientation of the White Paper is to relieve the legislator and to strengthen the executive functions of the Commission. In implementing its tasks the Commission promises to develop a more structured, transparent and participatory relationship with representatives from civil society and to experiment with new forms of governance, which more fully mobilise the self-regulatory potential of the private sector.

2.3.1 General Comments on the White Paper

21. EEAC generally welcomes the Commission commitments towards structured participation of stakeholders and improved communication tools

to “civil society” in its White Paper on European Governance.

EEAC appreciates the White Paper on European Governance as far as it develops a complementary perspective to strategies for improving inter-governmental cooperation (e.g. Open Method of Coordination, Burden Sharing, Closer Cooperation) and for strengthening the co-decision-powers of the European Parliament (e.g. in agriculture, transport and taxation issues). Mechanisms and opportunities for participation are fairly advanced with DG Environment. Care should be taken, that this *acquis* of good governance is maintained and further improved, especially as regards joint documents of different DGs and environmentally relevant documents of other Directorate Generals.

22. The EEAC WG however perceives limits of a strategy to relieve the legislator in the environmental policy field. First, as regards environmental policies, the most essential issues often are formulated in technical details. Weakening the traditional legislator, in having a say about such details, would be problematic from a democratic and from an environmental policy perspective. Democratic legitimization of EU policies has to rely on all three pillars of legitimization: the indirect legitimization by national governments, through the Council of Ministers, the direct one by the European Parliament and the issue specific legitimization by the consultation of and debate with stakeholders. None of these will be sufficient as a source of legitimization as a stand-alone.

23. The strengths of EU environmental policies of recent years derive from the existence of dynamic coalitions of environmental policy makers from the Commission, national governments and the European Parliament (Hey, 2003). While accommodating economic concerns, this triangle has found methods to reconcile national and political differences and to find agreement on powerful and innovative environmental policies. The EU offers multiple venues for environmental policy innovation - either bottom-up from member states to the European level or top-down. Frequently the European Commission is responsive to national initiatives, either to reconcile environmental and internal market aspects or to address international environmental problems. Proposals from the Commission are rarely rejected by the Environmental Council and often strengthened by the European Parliament. With the support of European legislation frequently national environmental policy makers could overcome national policy stalemate on key environmental policy issues. The decision-making rules of the European Treaty hence offer a favourable opportunity structure for environmental concerns and for the rapid diffusion of national environmental policy innovations to the European level. This structure has been successful in putting in place policy measures and programmes to reduce the burden of direct pollution and risks to health. Any strategy for environmental governance should continue make use of this favourable institutional context of a legislative venue and not try to weaken or to substitute it.

More specifically THE EEAC WG assesses EU policy developments as

regards the multi-sector, the multi-level and multi-actor dimensions of governance as follows:

2.3.2 The Multi-Sector Dimension of European Environmental Governance

Environmental Policy Integration and Sustainable Development

24. EEAC observes that the European Sustainable Development agenda and the Cardiff Process have considerably lost momentum. In this context EEAC regrets that, that the White Paper on European Governance and its follow-up process offer little innovation with regard to key persistent challenges to environmental policymaking, namely environmental policy integration and securing more sustainable development. This will require review of institutional factors such as state aid rules and adjustments to EU funding mechanisms so that they are more readily able to provide the wider social and environmental public goods associated with the 6th Environmental Action Programme and the EU Sustainable Development Strategy.

25. EEAC is relieved that in the final draft for a European Constitution the *acquis* of the present Treaty regarding the definition of sustainable development, environmental protection and the integration of environmental requirements into other sectors was restored. EEAC asks the IGC to reconsider the placement of the environmental integration requirement in Part I of the Constitution and to review the outdated and obsolete objectives namely for agriculture and transport policies.

The Cardiff Process and the SD agenda suffered from governance shortcomings, which need to be readdressed in order to regain momentum. In general those processes were characterised by a lack of focus, an insufficient administrative and scientific resource basis, insufficient commitment from political leaders and a too strong reliance on Council formations, which are specialised in negotiating proposals, but not necessarily in drafting themselves innovative proposals.

26. Also earlier attempts of the Commission towards environmental policy integration and SD largely failed, because they relied too heavily on Commission leadership only. Environmental policy integration may regain momentum, if:

- * adequate resources (in terms of staff and research) are invested into the process by the Commission,
- * the strategies have a problem oriented focus on few key persistent problems, whereas DG Environment and environmental ministries have a key responsibility to prioritise and to challenge the sectors with the problems they cause,
- * clear and unambiguous targets are being agreed,
- * more systematically national policy innovation in environmental policy integration and sustainable development is used as basis for EU policy proposals,

- * effective coordination mechanisms between environmental and sectoral departments are established, which allow for better participation and consultation, assessment of sectoral policy proposals and accommodation of sectoral and environmental targets and even joint problem solving (e.g. transition strategies for sectors); the potential of the new impact assessment should be used to the greatest extent possible; and
- * learning from regional innovations, and better cooperation with the regional and local level can be achieved.

27. From its beginning the SD process has lacked focus and it still does. The relation of the EU sustainable development strategy to the Lisbon process and the 6th Environmental Action Programme remains unclear. For the original, and necessary, goal of converting the Lisbon process into the EU sustainable development strategy by adding the so far missing environmental dimension, the current situation is only a first step. Those parts of the 6th Environmental Action Programme that are of major relevance for moving towards sustainable development shall be considered as the environmental dimension of the EU SDS (the Lisbon process). The economic and social dimension of the Lisbon process shall be scrutinized and amended in the light of the (current) EU SDS as endorsed in Gothenburg. Overall responsibility for taking SD policies forward remains a difficult institutional problem, as does environmental integration and other cross-cutting issues. The EEAC WG recommends that on EU level the Environmental Council and DG Environment shall remain driving forces, but coordination of overall strategies should be done by the Horizontal Affairs Council, and the Secretariat General of the Commission respectively. In both cases past experience shows that this allocation was not really successful. It therefore seems to be necessary to reinforce commitment and to increase resources for this task, incl. e.g. the creation of a separate unit in both organisations.

28. The Lisbon and Cardiff processes will both be evaluated each spring summit starting in 2004. The EEAC WG welcomes this new commitment, but emphasises that the overall objective must be directed towards an absolute decoupling of economic growth and environmental stress so that this stress decreases really decreases. This objective must be reflected in the thematic strategy on eco-efficient production and consumption which the Commission is currently working on. This strategy must focus both on the development and diffusion of innovative technology as the promotion of environmentally sound products and services.

Target Led Environmental Policies

29. Persistent environmental problems can best be tackled by a combination of binding targets with timetables and a flexible mix of instruments to achieve those targets. Target oriented approaches are a preferable approach to manage diversity in an enlarged Europe to open-ended net-working processes with high levels of uncertainty about the environmental

outcomes. They give clearer and politically legitimated orientation for the level of ambition of policies for other sectors, for industry, other private actors and regions than unpredictable results from consensus in networks. For key technological choices such binding long-term commitment are an indispensable driver of innovation.

30. In recent years the EU has successfully introduced target oriented policies. Clean air legislation, namely the NECs directive, climate change policy, namely the burden sharing agreement, energy policy, namely the still indicative targets for renewables and combined heat and power systems, or waste policy, namely the targets for collection and recycling the take-back legislation are important examples for a policy approach formulating European wide targets, allowing for differentiation between member states and different national implementation strategies. Such policies allow for diversity and flexibility towards a common agreed goal. Most of those targets were based upon modelling, economic analysis and intensive discussion with member states and stakeholders, preparing the ground for consensus.

EEAC suggests that DG Environment should resume and intensify the target oriented approach when implementing the 6th Environmental Action Programme through thematic strategies.

Regulatory Impact Assessment

31. The European Council in Cardiff (1998) endorsed “the principle that major policy proposals by the Commission should be accompanied by its “appraisal of their environmental impact” and invited “all relevant formations of the Council to establish their own strategies for giving effect to environmental integration and sustainable development within their respective policy areas”. The subsequent “Cardiff Process” has lost some of its momentum (see above). The environmental impact assessment was taken up and widened to a “Sustainability Impact Assessment” in the EU sustainable development strategy endorsed by the Gothenburg summit. As a response to the Gothenburg Summit’s call for a Sustainability Impact Assessment, the Commission presented in June 2002 a general approach, a Regulatory Impact Assessment, which would cover all the various implications of policies including business and environmental impacts (European Commission, 2002a). EEAC recognizes that consolidating such impact assessments into one single procedure could lead to procedural convenience, but is concerned that there would then be a real danger of environmental considerations taking second place, and for trade-offs to be made that are neither transparent nor explicit. If it proceeds down this path, therefore, the Commission must put in place safeguards to ensure that the environmental appraisal is explicitly discrete within the overall assessment, and that the full involvement of DG Environment is secured in all policy assessment.

2.3.3 The Multi-Level Dimension

Wider Use of Framework Directives

32. The White Paper on European Governance suggests a wider use of framework directives in EU legislation. As regards environmental legislation the EU has already made much experience with framework directives. Framework directives establish general objectives, working procedures, instruments and launch a work programme. On the basis of experience made with different types of environmental framework directives EEAC suggests that:

- * Care should be taken, that the objectives and principles are formulated in a clear, unambiguous and committing way. Vagueness at the programming level shifts conflicts and decisions to secondary levels, e.g. information exchange networks or committees. Some of those secondary levels however are not designed and legitimated to make such decisions.
- * Any decisions on environmental performance levels and targets should be made by a political mechanism (e.g. daughter directives) and not by a technical mechanism.
- * Framework directives should contain a review and supervision mechanism, whereby the political levels can correct and repeal decisions made at the technical levels. So technical committees work in the shadow of potential repeal and have an incentive to move within the mandate given to them.

Reform of the Comitology

33. In December 2002 the Commission has made a new proposal to reform the Council decision on Comitology of 1999 (European Commission, 2002b). EEAC welcomes the intention of the Commission to put the European Parliament on equal footing with member states committees, as regards their right to comment and to reject Commission proposals.

EEAC regrets however that the Commission stops half way in offering new rights to the European Parliament as regards the supervision of technical adaptation decisions. The European Parliament has a right to comment and to reject, but unfortunately not to modify. Furthermore, if Parliament or Council do not adopt a Commission proposal, the Commission may either adopt its modified decision or suggest a legislative proposal.

EEAC suggests, that in case of severe reservations expressed by member states or the European Parliament the Commission should see this as an indicator for the need of a political mechanism (i.e. a directive or regulation by the European Parliament and the European Council). In such cases the committee is no more the appropriate level of decision making.

Tripartite Partnerships

34. In December 2002 the Commission published a Communication on

Tripartite Partnerships aimed at promoting negotiated agreements with individual regions and the respective member states on the implementation of Community policies (European Commission, 2002c). The Commission has expressed its intention to apply this instrument on a pilot project basis on the environment.

EEAC supports the new instrument, as far as it strengthens regional commitments on environmental policies, where there is need for action but limited Community competence, e.g. in the case of tourism, spatial planning, and coastal management. Agreements in those fields may deliver added value for the environment. The new instrument however requires a strong financial resource basis in order to create strong incentives for regional cooperation and strong staff capacities on the side of the Commission in order to monitor negotiated progress. Both may be not easily mobilised for a broad application beyond the pilot project phase. EEAC warns against reduction of staff capacities in other fields in order to promote tripartite partnerships.

EEAC also warns against any tripartite partnership involving regulatory relief to a region if this is not combined with very clear targets and preconditions. This would undermine the credibility and strength of EU environmental legislation. Legal obligations should apply to everyone. If the Commission can accept less reporting, monitoring in negotiations with one region, why not for all regions in the form of simplified legislation?

2.3.4 The Multi-Actor Dimension of Environmental Governance

Aarhus Convention

35. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, better known as the Aarhus Convention, was approved and signed in June 1998 to promote democratic principles and rights in environmental decision-making in Europe. It entered into force on 30th October 2001, in accordance with its article 20. The Aarhus convention formulates three central objectives: guarantee citizens access to environmental information, participation in environmental decision-making processes, and access to court. It represents the most impressive elaboration of Principle 10 of the Rio Declaration. Still, its foremost intention to empower the public is confronted with several difficulties in which need to be resolved in order to turn it into working, global model of democracy. Some key weaknesses relate to the still lacking incorporation of public participation requirements in decisions on plans, programs, policies and laws relating to the environment as well as the need to better incorporate pollutant release and transfer registers (PRTR).

36. The new EP and Council Directive on Public Access to Environmental Information (2003/4/EC) of 28th January 2003 promotes the integration of environmental protection requirements into the definition and implementation of Community policies and activities. In order to guarantee the right

of access to environmental information, the member states shall ensure that public authorities are required to make environmental information available (article 3), with a view to its active and systematic dissemination to the public (article 7). Matters like access to justice, electronic databases and increasing the quality of environmental information set up a good support to the decision-making process towards a better environment.

During the spring summit in March 2003, EU heads of state called on the Environmental Council to adopt proposals for a directive concerning access to court and for legal instruments concerning the implementation of the three pillars of the Aarhus Treaty by the EU institutions.

37. EEAC welcomes the present steps to transpose the Aarhus Convention into European law. It urges the Commission to improve the incorporation of public participation requirements in decisions on plans, programs, policies and laws relating to the environment and to better integrate the results of the Aarhus Convention with the new European pollutant release and transfer register. EEAC welcomes the proposal of the Commission on access to justice for citizens organisations both at national and EU levels (European Commission, 2003a). This is an important step for the better enforcement of environmental legislation and the better control of public administrations by citizens. As regards access to information and standards for participation at European level EEAC however cautions that the Aarhus Convention adopts a citizen rights based approach. Commitments for good practice on transparency and participation are welcome, but in itself not sufficient.

The Target of Reducing the Volume of EU Legislation by 25%

38. In 2001 the Mandelkern Group presented a report on the simplification and better regulation to the Commission (Mandelkern Group on Better Regulation, 2001). This report suggested a 40% reduction of the volume of EU legislation. In subsequent communications the Commission endorsed the report with a slightly more moderate target of 25% (European Commission, 2001c, 2002d).

EEAC considers this type of quantitative target as inappropriate for environmental policies. The quantity and level of detail of legislation cannot be determined without the specific context, the type of environmental problem addressed, the instruments applied and the complexity of the specific situation. Overall targets, without such a problem specific qualification, risk to become part and parcel of a deregulatory agenda.

Coregulation

39. EEAC welcomes hybrid instruments if they effectively combine the strengths of governance by legislation with the strengths of voluntary action and self-regulation. It is necessary that general objectives, quantitative targets and timetables, monitoring mechanisms, requirements for balanced participation, sanctions and mechanisms of peer review and supervision should be under the responsibility of the legislator (EEAC,

1997). Those issues are crucial for environmental effectiveness, public participation and democratic legitimation. Under such conditions the potential of knowledge creation, consensus and complexity management of self-regulatory approaches should be used, provided a well functioning supervision and peer review mechanism of the work of private bodies, as well as effective mechanism for balanced and pluralistic representation of interest groups, as well as opportunities to voice for the wider society, are established.

In 2002 and 2003 the Commission has suggested two specific models for coregulation, combining legislative and self-regulatory elements of governance, one on negotiated agreements, the other on the wider use of European Standardisation for Integrated Product Policies (European Commission, 2003b and c). Both concepts partially meet the above formulated requirements, but still offer too many loopholes, opt-out rules and hurdles for effective steering by the legislator.

40. As regards negotiated agreements with industry EEAC welcomes, that the Commission suggests a new hybrid instrument, which links negotiated agreements to a legislative framework, setting targets, monitoring mechanisms and sanctions. However the Commission also wants to continue accepting more traditional unilateral commitments and the informal gentlemen's agreements types of mutually binding commitments (so called exchange of letters), which are not brought under such a legal framework. EEAC acknowledges that voluntary actions and negotiated approaches can be effective in terms of costs and results than traditional modes of regulation, if they build on trust, a co-operative attitude, and establish a common language; if strong incentives for the sector exist to improve its environmental performance, and if the sector has the capacity to enforce the agreed targets and actions internally. Since the participative democratic legitimation and the environmental effectiveness of these agreements are strengthened, EEAC will support this type of agreements. If not, this type of agreements is part of a development towards more sophisticated approaches and has to be left behind.

41. As regards the integration of environmental aspects into European Standardisation EEAC acknowledges that standards play a key role in economic life and hence welcomes strategies, which better incorporate environmental aspects into standards. However there are limitations to use standards as an environmental policy tool or even as a substitute for legislation. Standardisation bodies cannot relieve the legislator from defining criteria, targets and thresholds for environmental performance. This is a genuinely political task. They can be helpful in providing tools for the implementation of those requirements. Furthermore the EEAC WG notes, that interest representation within those bodies must become more balanced at national and EU levels, that the internal processes must become more publicly transparent and accountable and that public authorities must have a credible repeal mechanism, before a more pro-active use of

standardisation can be made for environmental policy purposes (e.g. within Integrated Product Policy).

42. The recent Commission proposal on energy-using products (European Commission, 2003c) has been remarkably improved, as regards political supervision and guidance, compared to previous drafts. The new draft foresees that the Commission and member states define specific environmental performance levels for energy using products within a Comitology procedure as basic requirement for the work of the private standardisation bodies.

43. Nevertheless EEAC expresses concern that performance levels are not to be defined by the political levels, but by technical levels. EEAC also expresses concern, that an environmental policy tool is not driven and managed by those departments responsible for the environment, but by those responsible to take care for economic interests. The proposal also contains too many restrictions for innovation driving requirements. All this may have severe repercussions on the environmental aspirations of the implementing measures. The EU hence may risk to fall behind more dynamic approaches to define energy efficiency requirements in other regions, such as Japan.

The Knowledge Dimension of Governance

44. Knowledge management, research and innovation policies are intimately linked to the type of governance and to the nature of the policy problem (in 't Veld, 2000). The recent Commission Document "Improving the Knowledge Base for Better Policies" (European Commission, 2002e) is a response to a commitment made in the White Paper on European Governance. Another report, "Governance of the European Research Area. The Role of Civil Society" (Banthien et al., 2003), focuses on methods of participation in research policy-making.

45. Although these principles and guidelines at a first glance seem sensible, the question is when and under what circumstances they should be applied. Do they apply for all types of policy problems? Unfortunately, the document of the European Commission does not mention this point. For before involving a broad spectrum of actors, the nature of the policy problem should be analysed. The report "Governance of the European Research Area. The Role of Civil Society" (IFOK, 2003) recommends a thorough analysis of the problem to be resolved in its specific context, then a problem classification according to typical characteristics and then an identification of relevant methods for civil society participation. This order is crucial to get valuable results from participation.

The prerequisites for participation in research need further elaboration in our opinion. If there is a consensus in society about the values at stake with respect to a certain policy problem and if the knowledge is not heavily disputed, there is little need to broaden the spectrum of actors

involved in research. The scientific input from experts will do. It is often monodisciplinary and technical. So, these so-called “structured problems” can be dealt with in the “customary” way.

Box 2: Improving the Knowledge Base for Environmental Policy

In “Improving the Knowledge Base for Better Policies” (European Commission, 2002e) several principles, guidelines and practical questions are formulated as a basis for a common and coherent approach for all EU Institutions and Member States to provide for the accountability, plurality and integrity of the expertise used in policy-making. The EC recommends to apply openness, quality and effectiveness of methods for collecting and using expert advice.

The guidelines and practical questions which the Commission Document offers seem to be appropriate for dealing with controversial issues, when knowledge is disputed and the perception of uncertainties and values at stake may differ widely. The Document states:

“In several occasions, difficult policy decisions must be made on contentious issues in the face of significant uncertainty. Scientific expertise is then as much about stating what is unknown or uncertain with differing degrees of probability, as about setting out commonly agreed and accepted views. The Commission might be confronted by a panoply of conflicting expert opinions (...). Increasingly, attention has to be focused on the process followed and not only on the policy outcome.” (...) “Issues increasingly cut across disciplines and responsibilities, requiring the Commission to seek out and integrate knowledge from different sources.”

The Commission wants to “promote a structured debate between scientists, policy-makers and interested parties.” This description in fact perfectly fits in a dialogue model of interactions between science, policy-makers and society. The guidelines the Commission has formulated are implicitly based on a dialogue model, with their emphasis on:

- involving divergent views (not only mainstream);
- consultation of interested parties in framing the questions and
- underlying assumptions;
- making explicit the interests of experts; and
- highlighting persisting uncertainties.

46. “Unstructured” problems on the contrary are characterised by lack of consensus about the values at stake and about the relevant knowledge. These are the really wicked problems. A broadening of the spectrum of actors involved is not only apt, but absolutely necessary for improving the knowledge for a better policy. These problems cannot be tackled in a straightforward, technical way. The result would be endless discussions and disputes about the reliability of knowledge, the framing of the research question, and so on.

So, for unstructured problems, the whole process of knowledge production and utilisation should undergo careful scrutiny. A dialogue model of interactions between scientists and policy-makers is most appropriate for unstructured problems (Hoppe, 2003). Experts may either contribute to divergence, producing scientific evidence in favour of particular argumentations or positions or to convergence, trying to create a common knowledge base. This common knowledge base involves not only relevant explicit knowledge of the experts, but also local and implicit knowledge about problem perceptions, preferences and values, skills and so on. The common knowledge base is sometimes referred to as the “negotiated truth” (cf. Jasanoff, 1990) for a particular case.

Participation of Civil Society in the European Research Area

47. The question of course is whether there is a big gap between the guidelines proposed in the Commission document on “Improving the Knowledge Base for Better Policies” and day-to-day practice in the EU research programmes. The link between research in the Framework Programme and the knowledge needs of European Commission environmental policy-makers is weak (e.g. Busch et al., 2000). The contextualisation of science (i.e. the context of application and implication) is also weak (Nowotny et al. 2000). Of course, this also worries policy-makers in the European Commission. How to put the knowledge that is produced by Framework Programs to a practical use (cf. Bennett and van Halen, 2001).

48. The core message of the IFOK report “Governance of the European Research Area” is that it is impossible to provide precise guidelines for the implementation of methods for civil society participation in research. European Commission and Member States can however foster useful practices of participation in research policy-making. Before choosing a particular method for participation a good problem analysis and problem classification is essential as a prerequisite. What the report does not point out is that only in a dialogue setting, participation in research makes sense. A dialogue model (science, policy, society) is well suited for dealing in particular with complex unstructured problems.

The next question of course is to what extent the 6th Framework Programme will provide opportunities for participation of civil society. If the European Commission is serious about participation in research policy-making, these opportunities should be created from the very start of creating research programmes.

Governance and Demand Driven Innovation Policy

49. New ideas of governance are quite relevant too for the role that knowledge may play in handling persistent problems. If policy-makers are convinced that for handling a persistent problem new initiatives and innovative solutions are needed, breaking up the “lock in” situation, this has clearly consequences for the mobilisation of knowledge. A dialogue model as described above seems adequate when policy-makers start thinking of how to get out of a lock-in situation. But a dialogue model itself is not sufficient to boost system innovation. New configurations of actors should be created, stirring things up, thus stimulating new visions and new perspectives. System innovation is in general the result not only of technological innovation but also of (concurring) alterations in the social context: property rights, responsibilities, fiscal system, all kinds of institutional arrangements.

50. The concept of “transitions” is buzzing around. Transitions to more sustainable systems or a more sustainable regime. Transitions consist of a series of system innovations and social behaviours.

Transitions ask for a well thought-over policy to get rid of institutional barriers for more sustainable systems and, where appropriate, a new kind of demand driven innovation strategy on a national and European scale to foster technological and other innovations.

Traditional innovation policy is based on the idea of linear connections between fundamental scientific research and innovation of end products. Transitions to a sustainable system of energy production, transport, etc., ask for a long term process of interaction between scientists, policy-makers and stakeholders. Interactions that are driven by future visions.

51. Governments should aid in constructing nexuses to bridge the gap between relevant actors in the scientific field, the industry, NGOs and policy-makers at several levels (regional, national, EU). Where most effort should be put in to construct these nexuses, depends on the problem at hand and the responsibilities of the actors concerned, also in view of consumers and citizens.

52. Knowledge for transitions should not only include formal knowledge from several disciplines, but also informal knowledge and skills of stakeholders and other societal groups. In other words, for a demand driven innovation policy a transdisciplinary approach is needed in the beginning. You need to know the stakeholders’ views on the problem and possible solutions, what values are at stake and what uncertainties should be explicitly addressed. And this should include open and transparent ways to show the weight given to the different types of knowledge (scientific, technological, traditional and local knowledge) used in the policy-making process. The research agenda should be a co-production.

Of course, the role of the government will change in due time, creating favourable conditions for the development of particular innovations,

funding demonstration projects and creating “niches” and helping to overcome institutional barriers.

53. Overall, the dominant governance system in the European Union is actually of crucial importance for the success or failure of any innovation policy. As Cashore and Vertinsky (2000) pointed out, the dominant type of relations between central government and industry will determine to what extent innovation is boosted or hampered by institutional arrangements. For the European Union a similar kind of analysis should be done and deepened, if not yet done. The results will show whether a new kind of innovation policy for sustainable development is viable or not.

The organisational challenge of broadening the governance perspective

54. As the time scales of processes leading to system innovations and transitions are evidently quite different from day-to-day politics, their relation can be expected to be problematic. That is why due attention should be paid to the organisational aspects of linking sections in ministries devoted to transition processes to the main stream policy.

Governmental institutions such as EU directorates-general or national ministries not only have to develop a rationale for the decision on the best governance style for each environmental policy issue, but should also attune their organisation's working style, attitude (culture) and staff competencies (for example process management) in order to be able to execute these governance styles in a credible way. If this is not given due attention, the paradoxical situation may develop that the high expectations the White Paper raises for societal participation, lead to less credibility, which discourages participation (Meuleman, 2003). In general terms there is a need to develop new combinations of the classical ‘decision making machine’ and the open and transparent networking organisation: a hybrid organisation. EEAC regrets that this organisational challenge is not really addressed in the Commission's White Paper on European Governance.

2.4 CONCLUSIONS

55. With this statement, EEAC cautions the EU and national governments against an imbalanced move towards devolution and deregulation in environmental policy. It calls for a differentiated, problem-based and solution-oriented choice of strategies and instruments. This involves maintaining existing capacities for direct regulation as well as developing additional capacities for strategic target-setting, economic regulation, and the coordination and monitoring of processes of decentralised implementation, co-regulation and self-regulation.

In the current process of reforming European governance, the European Commission and Parliament as well as the leaders of the EU member states need to be careful not to inadvertently reduce their future capacities for effectively solving environmental problems in an integrated and multidisciplinary manner.

56. They should opt for a twofold strategy of careful, problem-based and solution-oriented experimentation with new modes of environmental governance while at the same time maintaining the traditional capacity for direct regulatory intervention. The traditional capacity for direct regulation will continually be necessary in order to quickly react to or avoid problems of imminent danger. This capacity is also necessary as a fallback option in the case that other, more decentralised and flexible steering modes fail to produce the desired effects. Ultimately, successful environmental governance depends on increasing, not shifting the political system's capacity for environmental protection, supported by a deepened public participation.

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3. EEAC STATEMENT “REFLECTIONS ON SELF-REGULATION” (1997) - RESULTS OF THE FIFTH ANNUAL EEAC CONFERENCE AT VINKEVEEN, THE NETHERLANDS

Advisory Councils in principle support self-regulation as a process that can contribute towards the achievement of environmental targets. The views of those Councils represented at the Fifth annual conference follow.

3.1 WHAT IS SELF-REGULATION?

Self-regulation strengthens the involvement of societal groups and individuals in the improvement of the environment and conservation of nature.

The European Environmental Advisory Councils describe self-regulation as:

All (partly) voluntary individual or group activities that contribute to the realization of a common interest within conditions agreed with, or provided by, a government or sometimes non-governmental organisation.

Self-regulation can arise from direct interactions with business partners, landowners, consumers, non-governmental organisations (NGOs) and governmental bodies. It can also result from anticipating market-led, technological, cultural, political or environmental developments.

Cooperation in rural areas, voluntary agreements, in-company environmental management as well as voluntary consumer schemes provide good examples of self-regulation in environmental management.

It is important to understand that cooperation does not by definition imply self-regulation. Self-regulation can be limited to the implementation of specific plans; it may also extend to the formulation of self-regulatory targets. Self-regulation, however, always functions within a framework of legal, economic and cultural conditions.

3.2 ESTABLISHING AND STIMULATING SELF-REGULATION

Political-administrative cultures differ throughout Europe as do the environmental problems being as self-regulation. Among the various forms of self-regulation voluntary agreements play an important role, because they can - but not necessarily - offer a more effective and equitable method of environmental management and one that can engender wider public support.

It is important for governments to stimulate and facilitate self-regulation whenever considered superior to direct regulation or economic instruments. Institutional arrangements and the design of instruments of environmental policy, both nationally and at a Community level, should not impede self-regulation. Rather, they should provide for an appropriate framework for self-regulation.

Self-regulation can be stimulated and facilitated through:

- * raising the level of participation in the formulation, implementation and review of policy;

- * raising the level of expertise by education, pilot projects, demonstration projects and research;
- * providing financial facilities such as project subsidies;
- * explicit communication about policy targets that will be realised through direct regulation unless these targets will be reached through self-regulation;
- * reorganising the institutional structure to better accommodate for self-regulation.

3.3 MAKING SELF-REGULATION WORK

Instruments that encourage self-regulation must be regarded as an integral part of the comprehensive regulatory system. Self-regulation should not simply be launched as a last resort if all other means fail, but only when the conditions for its success are met. In any case, a careful evaluation of the environmental goal envisaged and the conditions for success as compared with alternatives such as direct regulation and economic instruments is necessary.

At the moment it is unclear to what extent particular forms of self-regulation, such as voluntary agreements, are compatible with existing national legislation and Community directives. The uncertainty about juridical drawbacks of entering into agreements and other instruments of self-regulation discourages measures of self-regulation that otherwise would be taken. Self-regulation must be in conformity with legislation such as competition law. If self-regulation cannot be adapted to existing legislation, or legislation revised to accommodate self-regulation, self-regulation will not be a feasible option.

Free riding can also be a serious problem in voluntary agreements, but once the market leaders have entered into the agreement experience has shown that most or all parties will follow their lead. Free riding could be further reduced if government can make the agreement binding for the entire sector concerned. However, apart from other policy considerations, this may also discourage recourse to self-regulation.

There are general principles that promote the success of self-regulation:

- * good analysis of the scope of self-regulation and its alternatives;
- * establishing the support of all stakeholders specifically by providing for participation in the negotiation process;
- * the process should be transparent and relies on openness of all partners; established environmental goals;
- * clear deadlines with established reporting and monitoring systems;
- * clear sanctions, should the self-regulatory agreement not succeed.

Systematic scientific knowledge concerning many aspects of self-regulation is still lacking. Better understanding of the conditions for failure and success is essential to establish effective self-regulation. There are distinct differences in appreciation of self-regulation in various countries of the

European Union. These differences need to be understood in order to realise the reasons for failure and success.

Further research into self-regulation is therefore recommended.

This should include:

- * analysis of the conditions that promote effective self-regulation given the diversity of target group and environmental problems;
- * evaluation of effective methodology
- * the establishment of pilot or demonstration projects.

Self-regulation should be assessed both on its technical results (effectiveness, efficiency, administrative costs) and on basic principles of sound governing (proportionality, legitimacy, public participation, equity).

Assessments should not be limited to the interaction between government and enterprises but should also involve interaction with NGOs, such as the environmental movement, and consumer organisations with local groups.

The European Environmental Advisory Councils recommend that these considerations be taken into account when formulating, implementing and reviewing environmental policy and in deciding on research priorities.

The following councils participated in the Fifth annual conference of European Environmental Advisory Councils:

Commission Française du Développement Durable, France
Conseil de l'Environnement de la Région de Bruxelles-Capitale, Belgium
Conseil National de Développement Durable, Belgium
Conseil Wallon de l'Environnement pour le Développement Durable, Belgium
Consejo Asesor de Medio Ambiente Gainata de la Sra. Minstra, Spain
Cyngor Cefn Gwlad Cymru, Wales
Deutscher Rat für Landespflge, Germany
English Nature, England
Heritage Council, Ireland
Milieu en Natuurraad van Vlaanderen, Belgium
Miljövårdsberedningen, Sweden
Országos Körhvezetvédelmi Tanács, Hungary
Oesterreichische Vereinigung für Agrarwissenschaftliche Forschung, Austria
Raad voor de Volkshuisvesting, de Ruimtelijke Ordening en het Milieubeheer, The Netherlands
Raad voor het Landelijk Gebied, The Netherlands
Raad voor het Milieu- en Natuuronderzoek, The Netherlands
Rat von Sachverständigen für Umweltfragen, Germany
Royal Commission on Environmental Pollution, United Kingdom
Scottish National Heritage, Scotland
Wetenschappelijke Raad voor het Regeringsbeleid, The Netherlands
Wissenschaftlicher Beirat der Bundesregierung Globale Umweltveränderung, Germany
Ympäristö-ja luonnonvarainneuvosto, Finland.

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II Proceedings of the EEAC Annual Conference 2003

1. GOVERNANCE: A NEW CONCEPT LEADING TO POLICY INNOVATION?

(Introductory speech by Roeland J. In 't Veld, Chairman of the Advisory Council for Research on Spatial Planning, Nature and the Environment (RMNO), The Netherlands)

1.1 WHAT DOES GOVERNANCE MEAN?

There are several definitions of governance in use. For the purpose of this speech I shall just state some possible meanings of the word. Governance is about the location of power: who influences whom, by coercion, temptation, incentives, learning? Who is responsible for what, who is accountable? How are procedures and decisions legitimised? As these characteristics seem interconnected, some use the word “regime” to indicate a type of governance. Such a regime involves: principles, norms, rules, and decision-making procedures.

Pearl Eliadis (2003) sees governance as a collaborative endeavour between state, citizen and intermediaries, acknowledging that governance is not self-executing and recognising that government often works best by indirection. This author notices a paradigm shift from governing to governance.

Some are even more radical and think governance is a process (for example Meuleman, 2003). Governance as a process fits well in a horizontal way of thinking. Government on the contrary is the adequate term for a vertical way of thinking. Governance is characterised by configuration management compared to classical steering in vertical thinking. Several styles of governance have been identified. Facilitation, co-production, delegation, open participation are styles of interactive policy-making. On the other hand there are the closed participative style, the open authoritarian and the closed authoritarian style.

The style of governance reflects and defines the roles of authorities and other actors in the process.

1.2 TRENDS IN SOCIETY AND THEIR INFLUENCE ON GOVERNANCE STYLES

Globalisation, virtualisation, de-ideologisation and fragmentation of value patterns: these are just some of the catchwords nowadays indicating that society is on the move. The stability of social institutions is no longer guaranteed. Some people think Western democracies are in the middle of an institutional crisis. The model of representative democracy itself is in urgent need of adaptation and reform. The balance between what should be private or corporate and what should be public, is in fact a dynamic

equilibrium, constantly seeking new equilibrium states.

The need to rethink public and private institutions and democratic representation is also fuelled by the growth of the number of professionals often possessing more or better know-ledge than politicians or civil servants. The culture in the affluent society, as Eliadis puts it, is characterised by citizens voting less, but overall participating more in alternative forms of political activities. People influence one another by taking part in networks. Political representation seems obsolete now, as Castells put it. So can we figure out a more effective model of democracy in the network society?

The EC White Paper on Governance is an example of a document reflecting this transition. It states, "The EC advises networks to get connected to us". This seems a rather paternalistic advise. It shows the European Commission still thinks it is the middle of the universe. A monocentric orientation. If the EC is serious about the idea of a network society, it should be aware of the fact that a network society puts a claim on the adaptive capacity of the state. Networks of organisations assume roles that have been played by the state, frequently "hollowing out" government as a consequence. The inherent adaptive capacity of networks should at least be mirrored by the adaptive capacity of the state. A diversity of options by a wider range of instruments for the state that encourage innovation and flexibility, will increase this adaptive capacity (Eliadis, 2003).

If you think society nowadays is predominantly characterised by networks, then of course, the focus will come to lie on a more horizontal way of decision-making. This horizontalisation of decision-making on the other hand, shifts the responsibility to those who carry out the policy. They are more and more taken accountable for the effective implementation of policy. Someone, a person or an institution, has to check what the effective results of policy are. Inspectors and auditors come into play. Moreover, in case a public service is privatised, you need market authorities to see to a proper functioning of the market, in order to get honest competition and to prevent cartelisation.

1.3 TRENDS AND GOVERNANCE IN THE PUBLIC AND PRIVATE SECTOR

Horizontalisation of decision-making is reflected by trends towards decentralisation, putting state agencies at a distance and splitting private companies up in smaller business units. Moreover, there is the overall emphasis on economic aspects and efficiency. In the not-for-profit-sector these trends lead to a more professional and economic way of handling things, neglecting things that do not belong to its core business. Also a strict separation of policy-making and policy implementation, is adopted, setting executive services apart, at a distance. This separation of policy-making and policy implementation necessitates some sort of control mechanism. A Supervisory Body, be it named a Board of Supervisors or Auditory Board

or otherwise, should be capable of controlling what results policy has brought about.

Often the task and competence of these supervising bodies are quite dissimilar. There is no general prescription of what these supervisory bodies in the public and the not-for-profit sector should do and are allowed to do. For the private sector, on the contrary, the tasks and competencies of supervisory bodies are nowadays regulated by law.

The situation is even more complicated, as some of the supervisors have a rather paradoxical role. On one hand, they should be very critical and independent; on the other hand some of them also have an advisory function. This Janus face makes the situation even more complex. So, who will be the supervisor when reshaping the not-for-profit-sector and the public sector? How do you create new checks and balances? Could a kind of self-cleaning mechanism be invented and how can we introduce it?

Not only in the public and not-for-profit-sector changes occur. Deregulation and privatisation accompany the above-mentioned horizontalisation, redefining the boundaries and roles of the state and the private sector and citizens. Corporate governance and public governance can be seen as communicating vessels. If more and more functions are taken over by networks or private companies, this of course reduces the need for governments to put their effort in these functions and services. If companies integrate sustainability as a goal in their policies, the state need not intervene and impose regulations. However, some kind of supervision or auditing will still be needed. Some organisation(s) will have to decide about for example what will be used as a set of indicators of Sustainable Development. Someone will have to appeal to a broadly conceived and long-term orientated responsibility of firms and organisations. Inevitably, this appeal to moral obligations will create dilemmas. What to do with free riders, who will take action? Self-regulation is of course more successful if the number of actors is limited and if it is effectuated “in the shadow of state intervention”.

1.4 GOOD GOVERNANCE AND INSTRUMENT CHOICE

Instrument choice is a governance issue that is central to the legitimacy and accountability of governments, spanning regulatory instruments, tax and monetary policy, alternative service delivery, voluntary codes and standards, the management of relations with NGO's and businesses, public accountability, risk management and public service reforms. (Eliadis, 2003). Eliadis emphasises however the often forgotten “other half “ of the instrument choice equation, namely civic regulation and issues such as risk management, the role of courts and globalisation.

The question arises what characterises good governance in connection with the choice of policy instruments. Of course, we all do adhere to the underlying hypothesis that a politically rational choice is made about what instruments will be chosen. This however is not in accordance with findings of policy analysts. All kinds of constraints such as international

obligations and domestic constitutional law, political opportunity reasons and imperfect information make that policy-makers are not always free to choose for administrative efficiency. Acknowledging these constraints, one can nevertheless state, quoting Eliadis, that good governance should improve the effectiveness and efficiency of the public sector, enhance the responsiveness of public agencies to their clients and customers, reduce regulatory burden and public expenditure and improve managerial accountability.

Knill (2003) uses 3 criteria to define “good governance”. In addition to implementation effectiveness and problem solving capacity he thinks that for the European Union, the capacity to enhance the decision-making capacity is a very important criterion.

So apart from some general criteria, one should always bear in mind that context-specific criteria can be of overriding importance in the choice of instruments. Knill himself points out that the harmonisation drive in EU policy has influenced instrument choice to a great extent in the past.

1.5 SHIFTS IN INSTRUMENT CHOICE IN THE EU

When describing instrument choice in policy-making, Knill distinguishes several “modes of social regulation”. He introduces a 2x2 scheme, departing from two axes, representing discretion and obligation, to characterise these modes:

Figure 1: 2 x 2 scheme Knill

	Obligation high	Obligation low
Discretion high	New instruments: economic, communicative, framework	OMC = open method of coordination
Discretion low	Regulatory standards	Self-regulation

The simplicity of this scheme of course is at odds with political practice. European policies too are often implemented through the interaction of multidimensional combinations of policy instruments. However, the scheme is very useful to see what shifts in instrument choice have taken place and may come in the near future. The focus in EU governance has long been on regulatory standards with detailed prescriptions. In the last years, there has been a shift to other instruments. More and more the European Commission experiments with a variety of different regulatory approaches: new instruments, covenants, Framework regulations and the Open Method

of Coordination. The shift of regulatory to non-regulatory instruments is a general phenomenon in Western states, also as a consequence of deregulation and the redefinition of the boundaries and roles of the state and the private sector and citizens.

The so-called new instruments are a mixed bag of regulatory tools. They are characterised by a more indirect approach towards the motivation of behavioural change. An example are the Framework Regulations of EU, that are directed to decentralised levels of governance to regulate things according to local conditions. They combine a high degree of common standards with sensitivity as to a specific context. This kind of subsidiarity is comparable to the German system of cooperative federalism. Other new instruments, be it economic or communicative, emphasise self-regulation and seek to alter incentive structures. Often they are focused on procedures.

As the number of EU countries increases, another pragmatic way of dealing with increasing diversity might win support. This might give a boost to the Open Method of Coordination (OMC), as it is a rather convenient way to deal with huge differences between the new member states and the rest of the EU states. There are some potential limitations to OMC:

- * the steering capacity of EU may become less reliable because it is less demanding
- * effective implementation depends on internal learning processes, cannot be expected immediately
- * OMC relies on experimental processes, hence is not designed to ensure certain results.
- * OMC accepts the unequal treatment, is not interested in creating a level playing field.

The disadvantages of OMC may prove to be, as Knill has pointed out, that there may exist shortages of legitimacy, that adjustment flexibility may be low as well as the predictability of outcomes. We are not entering a debate here with Knill on the validity of his criteria and their measurements but we simply accept his argument.

If creation of harmonisation is the aim of regulation, OMC is rather unsuitable. New instruments and OMC are also likely to be too flexible if the actors share a preference for predictable and reliable outcomes.

After this general picture of shifts in instruments choice in EU governance, the questions is to what extent these shifts also affect the choice of instruments in EU environmental governance.

1.6 NEW TYPES OF GOVERNANCE AND INNOVATIVE ENVIRONMENTAL POLICY

The leading idea of our EEAC statement on governance is that the type of policy problems is of great importance to decide what style of governance should be chosen. Of course I agree this is a very important characteristic.

When talking in detail about how to choose the right type of policy instrument to tackle an environmental problem, some specific criteria, linked to the type of the problem should be used, of course supplemented with some general criteria. Specific criteria might be for example:

- the number of sources of pollution or nuisance,
- the number of actors involved,
- the availability of cleaner alternatives,
- the shift in emphasis from cleaning up to prevention and integral chain management,
- etc. (the EEAC statement).

The general criteria originate from neo-classical economic theory.

An ideal instrument should:

- * be effective;
- * provide motivation for further change;
- * be administratively cheap;
- * be economically efficient;
- * be politically acceptable.

As pointed out above, the selection of policy instruments and governance style in day-to-day practice of politics not only depends on these selection criteria. There are other factors like the dominant culture, political constraints and opportunities and incomplete information that influence decisions.

New policy instruments as part of new governance in the field of environmental policy may take several forms in practice. Of course, economic instruments like emission trade permits have come forward and we are still discussing the pros and cons of several ways to implement an emission trade system on a European scale. How to distribute emission permits: by grand-fathering or by auctions or in still another way? Any system of distributing permits will give rise to questions about equity, responsibilities and ownership rights.

Self-regulation is an option when the number of actors is not too big. Self-regulation could be coupled to auctions. For example in choosing the location of a landfill site to get rid of a particular kind of waste. The procedure starts with a project involving the municipalities that have a possible location on their territory. Every municipality is asked to hand over a sum of money in an envelope, representing the sum of money that it would like to receive if it would permit the landfill location on its territory. The municipality offering the lowest amount of money “wins”. The other municipalities pay their share for this solution in the form of a fixed amount of money per capita. The process is organised in such a way, that it will bring about a decision.

1.7 MORAL DILEMMAS

Moral dilemmas linked to new instruments pertain to responsibilities of citizens for their behaviour (can one buy himself off?), the question whether the burden is shifted to poorer people (intragenerational equity)

or future generations (intergenerational equity) and who can and may be involved in this choice (representativeness). Who possesses a common, who can sell it? (cf. the discussions about patents on wild plants and animals).

Also the legitimacy might be questioned (what is democracy about?). New instruments often appeal to learning processes and the question arises how this learning can be measured, what effects are desired or unanticipated? So, introducing new instruments brings about new dilemmas and new information needs.

1.8 INNOVATIVE POLICY-MAKING

Taking for granted that “innovative” indicates a quality that is in a way comparable to “surprising”, “not-the-usual-way” due to a new vision, using new combinations of existing things and new knowledge, the point is whether and what new qualities can be created.

So, what could “innovative” mean for the design of policy instruments? I see two possible ways of thinking, two possible directions:

Direction 1: One way of defining “innovative” would be to design a policy with the advantages of the new instruments but without the disadvantages. For example combining the instruments with the use of new technology for monitoring compliance and/or reallocating monitoring authority or reallocating ownership rights.

Illustration of Direction 1: Public auctions as a manner of self-regulation as illustrated above for the landfill case. Modern theories often unfold options for self-regulation as an alternative for central decisions. At a first glance, the argument that you need representations of citizens to legitimise decisions seems impressive, but citizens may feel they represent themselves in a more direct way taking part in an auction.

Direction 2: Another way of indicating the possible design of innovative policy would be to adhere to the views of those authors (Funtowicz and Ravetz, Nowotny) that the remaining problems bear a wicked nature, that they are ill structured in general so that we should aim at processes that produce social robustness of the knowledge that is relevant. The policy is characterised by an intervention that is aimed at getting a process started to structure these complex problems. The instrument is a process model, just like the Open Method of Coordination in EU policy.

Illustration of Direction 2: the way the Dutch Ministry of the Environment encourages system innovations to overcome the so-called persistent problems. This idea of transitions is now being implemented. RMNO recently published its advice to the Ministers involved on how to deal with knowledge in such transitions (RMNO, 2003). Risk assessment, “the other half of the instrument choice equation” according to Eliadis, might develop in the following manner:

1. concepts of risks are developed that can be communicated between experts, politicians and citizens;

2. decisions about risk-bearing provisions such as infrastructure and mobility are prepared in interactive processes whereby integral risk assessments for a certain territory are effectuated.

Still another possible intervention mechanism might be found in the idea of “coopetition” (e.g. Teisman, 2000). Coopetition is the phenomenon that though competition for a market position has been increasing in recent years, so has the frequency of collaboration among competitors, resulting in a successful renewal of the economy by boosting technological innovation. So, if one can create the necessary conditions for such processes to happen, the authority concerned can play its role in stimulating things. A facilitating, enabling and encouraging role.

These are some ideas about “innovative policy instruments” in connection with shifts in governance style in the European Union. I am very interested to hear from the other participants of this conference what ideas they have.

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2. THE AMBIVALENCE OF ENVIRONMENTAL GOVERNANCE

(Martin Jänicke, Member of the German Advisory Council on the Environment, (SRU))

SHORT VERSION OF THE PRESENTATION

There are at least two important reasons, why we should speak about environmental governance:

1. The extremely high and still growing complexity of the environmental policy arena, which is characterised by multi-level, multi-sectoral and multi-stakeholder governance (see the following figure).
2. The environmental problems that so far have not been solved (“persistent environmental problems”) may provide criteria to ask in how far and under what conditions the new patterns of governance - introduced in the shadow of the Rio Process (1992 -) can contribute to improved solutions for this type of problems.

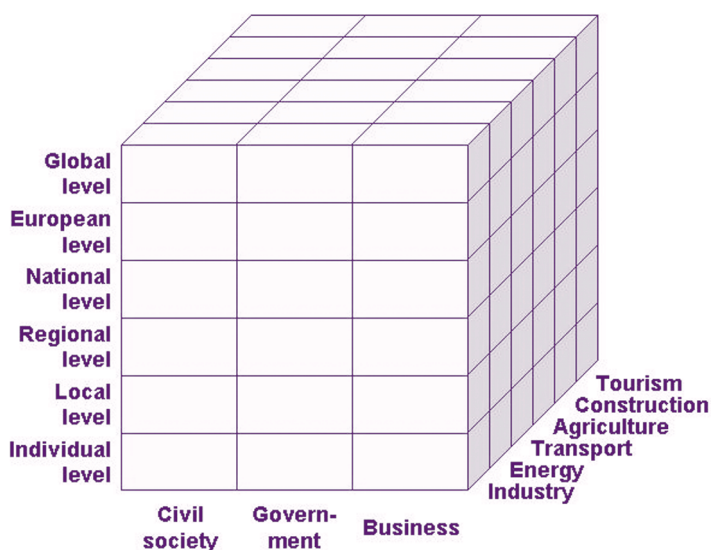


Figure 1: Dimensions of Environmental Governance

In our next Council Report (SRU, 2004) we evaluate the Governance model of the Rio process and its core concept “Agenda 21”. This is the only comprehensive model of global environmental governance which explicitly integrates both, multi-level and multisectoral governance, with new modes of governance like co-operation and participation.

The Rio process and its core concept “Agenda 21” is characterised by:

- * Goal-orientation: long-term objectives with reporting and monitoring obligations
- * Environmental Policy Integration (EPI) and sectoral strategies
- * Co-operation
- * Activated participation and self-regulation.
- * Multi-level governance from the global to the local.

The components of this governance model are overlapping (hybrid). And each of them has its own development and its special literature. The new governance patterns of the EU can be classified in a similar structure.

Table 1: New patterns of environmental governance in the European Union

Governance Pattern	Examples
Goal-oriented Approaches	
* Complex long-term strategies	* Sustainability strategy
* Thematic strategies	* 6th Environmental Action Program
* Thematic objectives	* Open coordination
- with decentral implementation	* Climate policy, NEC Directive
- with open coordination	* Lisbon Strategy
Environmental Policy Integration	
* Sectoral strategies	* Cardiff Process
* Environmental assessment	* SEA
* Mainstreaming	* Evaluation EU summit meetings
* Greening of government operations	* Green public procurement
Cooperative Governance	
* With member states	* Framework directives
* With regions	* Tripartite partnerships
* With business organisations	* Technical norms, integrated product policy, negotiated voluntary agreements
* With environmental NGOs	* Financial support
* Latent regulation	* “Negotiation in the shadow of hierarchy”
Activated Self-regulation	
* “Activating state”	* Aarhus process
* Regulated self-regulation	* EMAS
* Voluntary agreements	* ACEA (fuel consumption)
* “Corporate responsibility”	

Source: Hey/Jänicke/Jörgens 2003

Trying to summarise the main results of our analysis, we can say that the above mentioned new approaches to environmental governance have a high potential to improve our present insufficient strategies - always provided their preconditions are not being ignored. The preconditions are:

- * Capacity building
- * Clearly defined responsibilities, especially “guarantee function” as regards final responsibility of government
- * A clearly defined role of the state within the European and global institutional context.

At first sight, there seems to be a tension between capacity building and lean government. But “capacity saving” approaches are possible.

Policy innovations in climate policy such as emission trading, feed-in tariffs or ambitious efficiency standards (e.g. the Japanese Top Runner Programme) demonstrate the possibility of improvements in the field of regulatory policy.

“Environmental Governance” has its opportunities, preconditions and caveats:

- * The new governance approaches have a high potential to improve the existent environmental strategies - but only if their functional prerequisites are taken into account.
- * They are no substitutes for traditional regulation.
- * Their quantitative role is limited (about 15 % of EU directives and regulations, see table below).
- * The persistent environmental problems need to be addressed by both approaches to regulation! They contradict any dogma of regulatory abstinence.
- * Cooperative approaches may be most helpful in case of over-obligatory activities.
- * Societal interventions by NGOs, the Media or the internet can be very important. However they are no general solution for difficult long-term problems. Their low calculability may create economic sub-optimal solutions.
- * There is also a high potential in the innovation of government regulation (climate policy!).
- * Multi-level, multi-sectoral and multi-stakeholder governance must not dissolve responsibilities. If everybody is responsible, nobody may be responsible.
- * The developed nation state has a potential as “local hero”, first-mover, collective actor and final guarantor - a potential that needs to be secured and even improved.

Table 2: Types of Environmental Governance in the EU 1967-2000

	Hierarchical Regulation	economic	Context- oriented	Sum
1967-72	100	0,0	0,0	100
1973-76	100	0,0	0,0	100
1977-81	88	0,0	12	100
1982-86	100	0,0	0,0	100
1987-92	82,4	2,9	14,7	100
1992-00	78,6	7,7	13,7	100

Source: HOLZINGER et al., 2003, S.119.

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3. ENVIRONMENTAL GOVERNANCE BEYOND THE INSTITUTIONAL VOID

(Maarten Hajer, University of Amsterdam)

3.1 INTRODUCTION

There is this saying that every picture tells a story. And I am sure that, given your background, most of you have at least a vague recollection of having seen this picture. It is of course the former Minister of the Environment of the United Kingdom, John Gummer who, in the early days of what was later to become the BSE crisis, thought that he could restore trust in beef by taking his daughter out to a hamburger joint. 'If I eat it, I am either mad or it is safe'.

3.2 TYPES OF ENVIRONMENTAL PROBLEMS

The picture is embedded in a larger story. There is a type of environmental problems for which old institutional routines no longer produce solutions. We are all sort of educated with the idea that there is a useful differentiation, for instance, between risk assessment, risk management and risk communication. But there is a type of environmental problems that cannot be approached by separating these three approaches to risks and in such cases politicians easily take to symbolic means.

Secondly, what we can learn from the BSE crisis is that we persistently tend to learn after the event, and even then old institutional routines are pretty stubborn. In this particular case, however, the British government has been remarkably effective in learning. Indeed I would claim the British response stands out the most innovative by far. If you look at it from a comparative point of view you would see that the European Commission, but also nation states like the Netherlands and Germany, have not learned that much in institutional terms. Yet it seems essential that we rethink our regulatory procedures fundamentally.

My claim is simply that our national regulatory cultures are not up to controlling the big transnational and economically essential developments in areas such as biotechnology, genomics and food. Of course, I am hardly the only one arguing this case. The environment suddenly seems to become an issue for the realm of 'high politics'. I mean, for the first time, and I am sure that is shared by many of you, high ranking political advisors and ambassadors come to academics and ask, 'tell me all about biotech', 'tell me all about genomics'. EU-US diplomacy is not only about steel but also about biotech at the moment. Perhaps there was a time that Margaret Thatcher could say that she was fed up with 'humdrum issues like the environment' but I think that at the moment the environment is moving from the sphere of 'low' politics to the realm of 'high' politics. Notwithstanding the fact of course that the domain of high politics might still be kept away from the councils that you are all working for.

3.3 TRANSNATIONAL NATURE

Issues of food and genomics not only surpass a sectoral differentiation but also carry a transnational nature. Consequently we face an 'institutional void'. Let me explain what I mean by that. All your councils are nationally or European in orientation. The advantage is that you always know that there is a clear polity for which you work. You advise a polity, mostly a nation state, others advise the Commission.

Yet existing institutional arrangements falter in the face of new problems and new demands. It's not only that these problems of the environment have become transnational, and regulation is constantly evaded, despite the fact that nation states might want to regulate. If one thinks of the food chain, it still is very easy of course to evade national regulation by organising your production processes transnationally. But simply lifting responsibilities to a supranational level does not produce solutions either. We struggle with all sorts of forms of multi-level governance but without having found an effective new transnational regime.

The need to think about nature and environment in transnational terms also has to do with the transnational nature of societal activism. The key learning moment here was, of course, Brent Spar. There for the first time we saw how politics took place next to or across national polities. Eventually, it were the German petrol consumers that made Shell change its policy. National governments were not so much meaningless - after all, John Major had the formal authority to determine whether or not the Brent Spar could be sunk or not — but Shell followed a different political logic. It exposed the formal authority by reversing its decision in spite of the permission that was granted by the British government.

In today's world, decision making is often dispersed. I think it's useful, as Ulrich Beck has argued, to conceive of the behaviour of German petrol consumers, that boycotted Shell, as a very political act with some decision making power. A little bizarre of course - politics as not taking their petrol from Shell but from BP, yet in this case something such (in)action turns events around.

When environmental politics turns transnational there are no generally accepted rules and norms according to which politics is to be conducted and policy measures are to be agreed upon. If you operate in your national systems, you in most cases can at least assume that the rules according to which you come to a decision are clear and generally accepted. You might agree or disagree on the content of decision, or on what knowledge you need, but the rules are clear and generally accepted. If politics takes place in an institutional void, that assumption no longer holds. In such cases there is no script, there is no clarity as to who should play which part. There is no clear distribution of authority. So we are, if you accept my thesis, living in an age of 'constitutional politics', to borrow Bruce Ackerman's phrase. The Convention is an obvious example of constitutional politics, of arguing about new rules for the game. But I think in many more cases you see a movement from normal politics of regulation to one

in which we have to re-think the norms. And that is exciting, but it's also extremely difficult, because we have to do much more than only solve problems.

3.4 TYPES OF REGULATORY PRACTICE

Right now governance is often policy making in an institutional void. That is what the concept 'governance' seems to refer to: we do not know exactly how it works, it's informal, flexible, changing, but it's a key way to get to results.

Even if there is little that can be said about the rules that dominate governance, there are at least some ideal types of regulatory practices that we can identify. I will keep to a high pace to stay within the allotted time.

There is of course the instantaneous reflex, if we have a crisis, like the BSE crisis, to turn to monitoring techniques, like 'labelling and tracing' or chain management 'from farm to fork'. This is very much the Commission's language when it comes to BSE. Basically, that is seeking technical managerial solutions. This is inadequate in cases where the success of policy making depends so much on implementation. And managerial practices tend to overlook the issue of how to involve the 'street level bureaucrats'.

We still of course have, and rightly so, 'regulatory practices' that aim for standardised goal setting and legal-procedural innovations. There is nothing wrong with that, but my argument would be that there are more and more cases where that won't help us that much. 'Scientific advisory' practices is also of course a type of regulatory practice and there I would refer to knowledge for policy arrangements that were devised from, say, the late 1960s onwards.

3.5 DELIBERATIVE PARTICIPATORY PRACTICE

And the fourth one which I would like to spend a little more time on. What I call the 'deliberative participatory' practices where you aim at involving stakeholders and civic groups.

Now here is a famous cartoon and I will quickly read for those of you at the back what it says. It portrays a woman in front of a television and on the television, which must give the news, says: 'Government and heads of industry issued a statement today which condemns the report as irresponsible scare-mongering and emphasized that there was no significant risk at all, under any circumstances, of even a single fatality among the public.' And the woman says: 'This is it. We're all going to die.'

The cartoon captures something which is what we are all addressing. There is no way in which the old reflex of the white laboratory coat and male person with glasses with a bald head would help resolve the sort of regulatory or governance problems that we are facing in environmental politics right now.

Here the notion of deliberative governance, which is already much

discussed at this meeting, is one that needs to be further thought through, because I think that is able to help develop institutional trust, which you need but can no longer get in the old way. That is the point of the cartoon. You need institutional trust. But the repercussions of this cartoon go further. I also think that deliberative governance is not only a good thing. I mean I haven't even discussed it in terms of democracy, I've discussed it in terms of trust and as way to improve the implementation records.

The example of the British Food Standards Agency

If you take for instance an example of this, the BSE. After the BSE what the British did with the Food Standards Agency, comes a very long way to understanding deliberative governance. It's not seeking to restore trust only by being a good scientist or a good scientific institution, but it is also very much involving those who are also overseeing what you need to know in order to implement regulation in the further discussion of what the problem really is. So once again, learning from BSE on how to produce trust in highly modern societies.

Trust can no longer simply be assumed or drawn upon, it must be won. Passive trust is the old notion we always used. Its confidence was derived from the assumed superiority of authority, based on the institutional positions. It's no longer a fallback, if you believe the cartoon. People no longer think that that type of authority stands for much. They have heard too often that that went wrong. So the classic role of the expert advisors is under siege.

Active trust is the alternative and that is one where you win trust, based on the interaction between interaction and argumentation. But of course if you want to develop that you need practices that are able to produce active trust.

3.6 CHALLENGES FOR ENVIRONMENTAL ADVISORY COUNCILS

To conclude, the challenges for environmental advisory councils. Conceiving of your work in terms of providing 'knowledge for policy' is no longer an appropriate image. Generating knowledge is intertwined with building institutional capacity and deliberating with a variety of stakeholders. If you really want to generate knowledge that is useful for policy you must in the meantime also develop institutional capacity, which basically also would mean avoiding that others would say; 'Well, this is not the sort of expertise we needed, we had actually wanted to have expertise on other things'. So you need to 'build in' the stakeholders in order to first define what relevant knowledge is.

3.7 SHIFT FROM PASSIVE TO ACTIVE TRUST RELATIONSHIPS

Furthermore one needs to shift from passive trust to active trust, and that means extended interaction and argumentation. And, unfortunately, we

cannot often start by saying: 'This is the problem', because it is the definition of the problem that people disagree on. When it is about genomic or biotech we just don't know what the problems are. We can't start with that. We can only build a certain institutional regime which is so robust that if a crisis occurs it doesn't fall to pieces, and people will at least trust that the institutions that try and get us out of the crisis are robust.

Fatal strategy is to continue to keep the tasks separate, continue with risk communication, assessment and management. And then say: 'But if only we did risk communication better, more professionally. If we only had a face for the important and another face for the not so important problems so that people would know when something is key and when it is not, and other tricks like these'. I don't think it will work. For that the people are a little too experienced in the meantime.

3.7.1 Institutional networks of trust relations

And the final sheets. Elaborating institutional networks of trust relations that can cope with crises. What this means, and it's important, is that you measure your results differently, not only in terms of reports, policy output, but also the extent to which you contribute to trust in institutional forms. And then, not measure, like also the FSA does, what a survey says that people think of that institution. No, measure it in terms of all the stakeholders that you've got involved. Whether they trust each other and don't start to blame each other at the first instance of a crisis. That is an indicator of real, robust trust. And of course, move away from the idea of 'message-in-a-bottle' communication. Reports, I don't know if reports are still the device of communication you need. Perhaps that is just one of the techniques you need.

3.7.2 New responsibility

And finally, new responsibility. I could talk about that for ages but I won't, don't worry. I think that, given the fact that we are in an institutional void and often parliamentary councils can no longer be seen as being in charge, it is so that many other instances, many other places in society have to themselves think about what they do in terms of democracy. You cannot refer for democratic legitimacy to the fact that you deliver your reports to a Parliamentary Council. No, your own procedures must be democratic. If you want to have a sort of system of robust governance in the European Union, it must not rely on whether parliamentary democracy is democratic. All these other advisory practices, the comitology system in Brussels, that should in itself have a standard of democracy in order for that system to be robust.

So to give you an indicator of what sort of judgment criteria you could use, I refer to the literature, booming as it is, on deliberative democracy and I hope that this presentation that I have given contributes to your reflection on this theme.

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4. ENVIRONMENT RELATED PROCESSES

(Ludwig Krämer, European Commission)

Good afternoon,

I have the nice or the less nice task to keep you awake for the next 15 minutes, just after this delicious lunch. I presume the honor was given to me to do this because inside the European Commission I run a unit which is called 'Governance'. But that is the English name. Try to translate this name into other languages. In German this unit is called 'Unit on Legal Policy' and this is the name in Spanish and this is the name in Italian. I mention this to show that you should not too easily undergo the dialectics of political science and derive conclusions from words.

4.1 ENVIRONMENT IN THE "GOVERNANCE" DEBATE

The European Commission published a rather famous White Paper about 10 years ago on economic growth and competitiveness. This Paper became known as the "Delors White Paper" and drew a rather visionary forward-looking strategy for European economy, ecology and social policy. However, when the Delors Commission was followed by the Santer Commission, there was hardly any more discussion of this paper, as the new Commission had fixed new and other priorities for the future.

One might well be afraid that, beyond 2004, the Commission's White Paper on Governance will not either find much echo with the public or within the EC institutions themselves. The reason for that is that the big discussion at EC level, as far at least as regards the environment deals with the question of deregulation versus regulation; should there be more and/or more stringent standard setting in Brussels or should there be less. Political scientists are letting this discussion sail under the new name of "governance". As a lawyer, one has to be cautious with new names. To a lawyer, it rather seems that this new name hides the old strategy of lowering environmental standards, not the effort to ensure a high level of environmental protection.

It is clear, inside the European Union, that we will have continuous discussion, if we should regulate, what we should regulate, what we should leave to member states or to the regional level. From an environmental side, the most relevant issue is that there be measures taken to protect the environment. Take as an example the seven environmental strategies which are earmarked in the EC sixth environmental action program for action at EC level, namely soil protection, marine protection, urban environment, air protection, management of natural resources, recycling of waste, and biological or sustainable use of pesticides.

Nobody would be worried inside the Commission, or the Community, if regions themselves were taking appropriate measures to protect the environment in these seven areas. Solving the problems of soil alone, of the marine environment, of the biological use of pesticides. And nobody would worry if member states were taking measures in this area! Why on earth is

it necessary to adopt EC measures in these sectors in order to solve the environmental problems? And yet, this is the decision of Decision 1600/2002 on the sixth environmental action program.

4.1.1 Lack of input

The program fixed for the Commission very clear timetable: By the begin of 2005, we will have to submit - at least as a rule - proposals for a framework legislation in these sectors. And there is very little advice on what to do, at least not from the environmental side. Generally, it is estimated that in Brussels there are some 13,000 people lobbying for trade and industry, and some 50 persons lobbying for environmental issues. The Commission services thus receive a considerable amount of advice on what should not be done as regards these seven thematic strategies, or indeed other items which are covered by the sixth action program. Indeed, the program is not limiting the Commission's initiatives. Nobody would prevent the Commission, if it had good advice, to propose thematic strategies in other political areas. There is nothing in the program which prohibits that. However, the European public is rather reactive to what Commission services set down on paper; it is very exceptional that it comes up with proposals what to do, how and in what intensity to do it. And this has practically not changed since EC environmental policy started.

4.1.2 Lack of criticism and pro-active advice

Indeed, framework directives, so fervently favoured by this gathering, are not new in EC environmental policy. Since 1975, there is a framework directive on waste. Since 1976, there is a framework directive on the discharge of pollutants to water, since 1984 a framework directive on pollution of the air from industrial installations. There is thus a nice and long-standing experience with framework directives. What lacks in the discussion, is the criticism of past measures. As examples, two directives may be chosen. Directive 76/464 on the discharge of pollutants to water did not work for reasons which are well known by some of you: indeed, we had a big controversy in Europe between the United Kingdom approach and the Continental approach, the UK preferring quality standards, whereas the other eight Member states of the time preferred emission limit standards. Over time, from 1976 until the year 2000, the United Kingdom has turned around the issue: in 1991, the EC abandoned its original position, however, without any discussion in the public. In 1984, Member States were unanimous to adopt emission limit values at EC level for air emissions from large industrial installations; this Directive 84/360 was to be followed by vertical directives on specific pollutants or on sectors of industrial installations. As with Directive 76/464, this policy was given up without any public discussion, comments, criticism from the side of advisory bodies, environmental bodies, scientists, university people and so on.

The IPPC Directive of 1996 was mentioned a few moments ago. This

Directive is a directive which requires the best available technique to be used for environmental emissions from industrial installations. The practice today is, looked at it from the side of political science, that industry writes, via this Directive, its own standards of what is the best available technique. Once more, there is hardly any comment from the critical public, environmental groups, academics or other interested persons or bodies.

In the year 2000, the Waste Incineration Directive (Directive 2000/76) and the Directive on Large Combustion Plants (Directive 2001/80), were, due to historical circumstances, the only remaining exceptions to the approach regarding the best available technique. Even then, Directive 2000/76 did not take the best available technique and fixed it in its legislation, but lowered the standards. There was, of course not any comment, criticism, or outcry from the public on this approach to "best available technique"!

More generally, the Commission is constantly asked to invent new thinking, new instruments, new approaches for improving the protection of the environment. As regards the reality, however, it must be realized that environmental research, thinking and (natural and social) science contribute relatively little to the thinking and making of new and better legislation at EC level. Overall, there is very little advice to conceive, prepare, adopt and market progressive environmental legislation.

You advise your governments on transport, in particular on cars. Car legislation has been communitarised. Since about 30 years, national governments cannot make any standard on cars. And if you closely look into the legislative process, you will find that the car industry writes these standards themselves! The last example is this filter for diesel cars, where industry argues that it does not wish to see legislation adopted. Thus, the fact that the diesel filter which is standard equipment in French cars today, takes away about 80% of the diesel carcinogenic emissions of particulates, is not a reason to introduce this equipment in all diesel cars by way of EC legislation. At the same time, the Commission indicates, in its publications on air pollution that the particulates in particular from diesel cars contribute to the death of some 16.000 deaths per year within the EC. The official answer probably is that such a measure is not foreseen in an EC action program.

4.1.3 Lack of public political discussion

This absence of advice on general interest matters such as the environment sometimes gives to public opinion the impression of Eurocrats who sit in their offices in Bruxelles and try, by reading, or contacts with a lot of lobby groups or even with the help of social events such as delicious lunches and dinners, to learn about problems, how to tackle or to solve them or, and that is much more important, how not to tackle problems.

Let me give you a number of examples which are again taken from the sixth EC environmental action program. We would desperately need

advice from the non-committed Community on several aspects of it. The first problem which comes to my mind is the question, whether we should have GMO-free zones inside the European Union. Should a specific region be allowed to declare that it does not wish to have GMO-seeds, plants or animals inside that region. Or would such a position be incompatible with the free circulation of GMOs and GMO-containing products? There is no public political discussion on this issue. Two Austrian regions are trying to follow such a line; until now, the Commission rejected their approach.

The issue of filters in diesel cars was already mentioned, where neither discussion nor advice nor pressure took place in order to find EC wide solutions to the environmental impairment which has a considerable bearing on human health.

As regards composting, legislation in Southern Europe was compromised by bad standards or bad enforcement which made farmers and other interested persons reject the use of composted waste. The result is that compost is very little used in Southern Europe, though the soil there is, generally speaking, in great need of the fertilization by composts. There was and there is practically no advice or discussion on composting.

Another issue is product policy. The European Commission issued two communications on this topic; the sixth environmental action program contains a number of political statements which might not entirely be in line with these communications. Furthermore, cars are products and perhaps the most polluting products which we have. Where in Europe are issues of car standards and environmental impairment publicly discussed? I need not come back once more on the diesel filter standard. Another example might be a car which cannot run quicker than 100 km per hour, or a car that does not consume more than three liters of petrol per 100 km. As regards the last example, there is such legislation in California. The point is not that we should imitate such legislation, but rather that we should consider whether there is not some need to have intensive public discussions on such issues which seem, at present, rather to be taboo questions.

This raises the next issue, the problem of urban environment and cars. Western European cities underwent, over the last eighty years, considerable changes, in order to adapt them to cars. The impact on noise, traffic congestion, air pollution, time to reach the workplace etc are enormous. Is there really enough discussion on this issue? Cities are for citizens, but often one has the impression that cities are for cars - with implications for young families, old persons, children etc. The discussion is often left to the individual urban agglomeration, though it is not the urban agglomeration which is the problem, but the product "car".

Other examples concern incineration versus material recycling, the shrinking of habitats and the loss of biodiversity, which all the EC and national, regional or local legislation has not stopped. At a European level, the overall impression is that there is no extended discussion on such items. There are some researchers who publish in their countries, but often, they do not communicate with researchers in other Member States, they do not cumulate their dispersed forces and they do bring their accu-

mulated know-how to the EC level where decisions finally are taken - or not taken.
Let me now try to introduce you shortly to the four working groups of this afternoon.

4.2 INTRODUCTION TO THE CONFERENCE WORKSHOPS

4.2.1 Environment and sustainable development in the new constitution

The first issue which will be discussed is the issue of environmental protection and the new European Constitution. This is a difficult subject, because we do not know what the Constitution in its final form will look like once it has been approved by the Intergovernmental Conference of the 25 Member States. If we look into the Convention, some persons might be disappointed in not seeing there the establishment of a right to a clean environment. However, there is such a citizen's right to a clean environment in a number of constitutions of EC Member states, in particular Spain, Portugal and Greece. However, the state of the environment in these countries is not, it is submitted, any more brilliant than in other Member states which do not know such a right. And at the political level, the environment in those countries is not at the forefront of attention, but rather plays a secondary role. In other terms, writing a right to a clean environment into a constitution is not yet a guarantee that such a right really will be respected.

It is for this reason that the evolution of environmental policy at Community level will for the foreseeable future depend much less on what is written into the Constitution, but what is done politically. A fish always starts stinking at his head says the proverb: where the political will and leadership lack, the best text remains a piece of paper.

4.2.2 Governance by complex strategies

The second issue is the complex of strategies. The agenda indicates that this will concern climate change and biotechnology; to this, I would add the integration issue. If one looks into the first environmental action program of 1973, the principle on integration was already prominently mentioned there. Even in the first Commission communication on an EC environmental policy of 1971 it appeared as an important principle. It has had quite a diversified history over the years: All programs repeated it. In 1987 it was inserted in the EC Treaty, then rephrased in 1991/1993 and shifted to Article 6 in 1999.

And it is a flop! We have not managed an integration of environmental considerations into transport policy, energy policy, regional policy or other policies. At present, there are some signs of a better integration of environmental requirements in fishery and agricultural policies. However, this is due to the fact that there is not enough money to continue the present policies and, as regards fish - there is simply not enough fish any more.

But overall, the policy of integration of environmental requirements in other policies is a flop, though we are afraid to pronounce that. The different departments of the Commission have written their Cardiff integration paper. However, these strategy papers were not followed by continuous actions and measures to bring the integration requirements into reality. In practice, the change in policies, strategies, programs and measures was small.

As regards biotechnology, the main question is, whether there will or there should be genetically modified food on the European market, genetically modified plants and animals in the environment. The battle against the introduction of products, plants and animals which have been genetically modified is, in my opinion, already lost. The main reason for this is that with the introduction of Directive 2001/18, Member States agreed that (a) biotechnology issues come under Article 95 and not Article 175 EC, though it is question of life (biotechnology) and (b) they agreed to apply the principle of free circulation of goods to this sector. Overall, there is not, in my opinion, sufficient intellectual discussion power at EC level, where the discussions are taken, and not either sufficient public awareness of the decisions taken at EC level.

Generally, this applies to all issues of this afternoon's discussion: whether it is the question of climate change, of biotechnology, of integration, or of sustainable development as such, all the questions concerning these sectors are complex. This complexity always existed; the sectors have not become complex issues. Environmental policy per se right from its beginnings is a complex issue. It requires the bundling of know-how, strategic capacity, clear visions, a capacity to fix objectives and successfully bargain and negotiate on them, together with the readiness to use public opinion and the media to make the case, if bargaining and negotiations fail.

EC environmental policy perhaps started to regulate the most important pollutants and neglected to develop strategies for an environmentally friendly transport or energy policy at European level. It might be worthwhile discussing how such strategies could successfully be developed and introglided into public policy discussions. At the same time, a discussion on the use of taxpayers' money is necessary: why is nuclear energy still more subventioned by the EC and by Member States than renewable sources of energy; why are millions of euros given every year to the European and international standardization organizations, without taking safeguards that environmental aspects in these standards are duly taken into account? Why do trade unions obtain money from the EU budget to create an institute which trains and form their members on European issues, while environmental organizations do not obtain funds to train theirs?

4.2.3 New tools of EU environmental policy making: framework directives, governance by expert networks, co-regulation

As regards new tools, the framework directive from the mid-seventies,

were already mentioned. Their practical impact was limited - and yet, framework provisions are fashionable anew, as if the devil was not in the detail. Soft law approaches are another, much-praised tool. However, OECD is working with non-binding instruments. And their practical application is rather limited. Also, the Council of Europe is working with non-binding instruments, and, again, the results are very limited. Even the environmental conventions of the Council of Europe are often treated as soft law provisions which are followed or not followed by the discretion of the deciding country.

My submission to you is that over the last 20 years, we have not made good international environmental conventions, perhaps with the one exception of the Montreal Protocol on ozone-depleting substances. This might suggest that we have to go for another policy to promote environmental issues at international level, rather than make conventions as the Basel Convention or the Long-Range Trans Boundary Air Pollution, or the Stockholm Convention with 12 out of 100,000 substances,

There are European environmental expert networks that exist, otherwise the Birds' Directive or the Habitat Directive would not have been adopted. Indeed, there existed some sort of network of convinced biologists, campaigners in environmental organizations etc., who tried to set up this legislation at a European level, and finally succeeded. To the Commission staff, nature protection overall is still a good example of networking and creating an EC environmental consensus, though this success is constantly being threatened.

Another point of discussion of today is Comitology, which is so often a point of concern. Its basic idea exists in all member states: the relevant legislation is made by Parliament; public authorities receive the instruction in a provision of the legislation to adopt executive measures, to put Parliament's legislation into practice. It is obvious that in borderline cases, there might be a discrepancy of opinion whether a measure is really executive or not. However, for that there are courts which arbitrate. In modern democracies, the majority of rules are nowadays made by executives, not by legislative powers, because societies have become too complex. The main reason why this practice is looked at with suspicion at EC level, is that there is no European public opinion. There is a British, a French, a German and an Italian one, but not a joint European opinion on the European environment.

Co-regulation was already mentioned. This is a procedure where parts of the rules are made by vested interest groups, such as standardisation bodies; also, the above-mentioned Sevilla-process under directive 96/61 may be mentioned here. This approach is useful for economic operators which, in part, write their own standards. But it is hardly remembered that the new approach failed in the application of directive 94/62 on packaging and packaging waste, where the EC rejected a number of packaging standards made by CEN, because they were not in conformity with Directive 94/62. Directive 94/62 is the only and first Directive at Community level which tried to regulate environmental concerns and the free circulation of

goods under the new approach.

Nevertheless, there are continued attempts from the side of the Commission to get industry to write its own standards, also in areas that affect the environment. The reason is the workload. Furthermore, a topic is considered to be less controversial, if the Commission does not itself regulate or propose regulations: when industry writes its own standards, there is no concern from vested interest groups at EC level. There might be protests from the few environmental groups; however, these groups normally do not have the time and the resources to look into details of technicalities. Also their number is too small to be of relevance.

The conclusion is, that one has to consider carefully, in what way new tools really promote the general interest which constitutes the environment. The French philosopher La Rochefoucauld once stated that between the strong and the weak, legislation makes free and freedom oppresses. The weak part in our society is, without doubt, the environment. Co-regulation, standardization, voluntary agreements and other similar instruments at European level are certainly instruments to direct away from responsibilities for the environment and as the environment has no voice, there is not much concern.

4.2.4 The involvement of civil society: implementation of the Aarhus Convention at EU and national levels

The last aspect to raise is the Aarhus Convention implementation. I would start by saying that a democracy needs democrats. When we have an Aarhus Directive and a Regulation on access to information held by national and EC public authorities, somehow and someday this tool must be made operational. A recent survey on the situation in Germany which examined how many applications for access to information had been made in three years by a population of 11 million people, showed 214 applications for access to information on the environment. These figures are amazingly small. They show, if ever they are correct, how small the interest in the public is as regards the environment. And this problem that people might not be very concerned about their environment, is likely to become greater in the accession countries. It is quite obvious that there the culture of communication, of discussion, of quarreling, but also of transparency and of openness is not very developed.

In the meantime, the EC also adopted legislation on participation in environmental decision-making. Furthermore, it is hoped that very soon the Commission will adopt a proposal for: a) a decision to ratify the Aarhus Convention by the EC; b) a regulation to apply the principles of the Aarhus Convention to EC institutions and bodies; and c) a directive on access to justice, giving legal standing to environmental organisations to challenge acts and omissions in breach of EC environmental law, committed by public authorities or private persons.

But again, giving the right of action to environmental organisations, what sense does it make if this right is not used? This will be one of the

big problems of the future application of the directive, if ever it becomes adopted. We run the risk that the Aarhus Convention will be used as a sort of alibi, to say: 'Well, you have all your rights, of participation, of access to information, of access to the courts, now keep quiet, use these instruments and let us take decisions.' Instead of that, the environmental democracy element which is contained in the three pillars of the Convention, is based on the idea that citizens use the rights given by that convention to contribute to protect, preserve and improve the quality of their environment, but do not leave this task to public authorities.

4.3 CONCLUSIONS

It was Lafontaine, the French fable writer stated: Quand il s'agit de délibérer, la cour des conseillers foisonne. Quand il s'agit d'exécuter, on ne voit plus personne (When advice is to be given, there is always a crowd of councilors. But when there is a question of acting, you do not see anybody any more).

The first and foremost task of environmental policy is to ensure that the many legal rules which exist to protect the environment, are really implemented, and the numerous political commitments on this issue are fulfilled. Environmental decisions need to be implemented, whether it is an environmental action program, a habitat directive or the application of the best available technique. Running from one new instrument, one new tool to the other, is fashionable, but not very effective. The environment if it had a voice, would probably be more cautious, and would probably rather request that those numerous instruments of political, economic and legal character which were brought into existence over the last 30 years, at global, European, national, regional and local level are effectively applied. What else can we ask our political leaders: that they keep the promise which they made when they came into office, to look for a high level of environmental protection, to preserve and improve the environment, to ensure a sustainable development, to make the polluter pay - and hundreds of similar commitments. If there is too much indulgence and if the permanent rush for new and newer instruments is accepted, one should not be surprised, that the existing commitments, promises and obligations are forgotten.

Thank you very much.



III Individual work: Recent statements and summarised advice of European environmental advisory councils on governance-related issues

1. GOOD ENVIRONMENTAL GOVERNANCE PRACTICES - ELEMENTS FROM THE VISION OF THE ENVIRONMENTAL COUNCIL OF FLANDERS

Environment and Nature Council of Flanders, MiNa-Raad) ¹

1.1 INTRODUCTION

Every analysis of current environmental problems shows that a desirable environmental quality which provides a sustainable situation is still far ahead. This is the case on every policy level, from local to international. To fill the gap between the current and a sustainable situation, our society has to innovate in a structural way several basic activities like transport, energy supply and the production and consumption of food and industrial goods. Several barriers are making it hard to realise the innovations needed to make these activities sustainable.

Governance can be seen as an umbrella concept for how policies and instruments are made and implemented. Good Environmental Governance Practices are dealing with the barriers mentioned above which stand in the way of necessary innovations and transitions:

The lack of trust between governments and other actors to create a fruitful cooperation looking for optimal solutions. Therefore Good Environmental Governance is working on a harmonised cooperation between state and non-state actors.

Insufficient policy-instruments who make users of natural resources pay for this use. For that reason those who cause environmental problems are not been stimulated to solve them. Therefore Good Environmental Governance tries to implement a differentiated range of policy-instrument who make actors responsible for their use or pollution of the environment.

Policies show often an inability to take into account effects on long term and to create a synergy with related policy areas, also on the budget-level. Therefore Good Environmental Governance has a long term scope and looks for a solid underpinning of policies which are coherent with other policy-areas.

Economic globalisation is strengthening several kind of inequalities but the lack of international policy structures makes it difficult to correct

¹ Based on recent advices of MiNa-raad on the vision for the future of Flanders (December 7th 2000); on the Flemish Environmental Policy Plan (July 4th of 2002) and on the institutionalisation of Sustainable development in Flanders (November 5th 2002).

negative effects of globalisation. Therefore Good Environmental Governance intensifies international cooperation looking for more effective multilateral environmental agreements.

1.2 HARMONISED COOPERATION BETWEEN STATE AND NON-STATE ACTORS

A balanced input in policy-processes from all relevant actors in society. Solving environmental problems is not just the responsibility of governments and administration. Also non state actors must be involved in the decision making process. As a result, target groups can feel themselves more as problem owners; scientists and NGO's can catalyse this process. The right involvement of non state actors - both in preparation and implementation - strengthens the acceptance and the quality and, as a result, also the effectiveness of policies. To increase the involvement of a broad range of relevant actors, structural mechanisms are needed to canalise their input into the policy process. Innovative environmental policies are directed towards substantial transitions in society and are based on open but anchored processes in which these actors in every phase of decision making play different roles and have specific inputs.

Differentiated design of the input in the preparation or implementation of policy and in strategic or operational discussions. The role actors in decision making play and the input they give, depends on the phase of the process. Essentially, the character of input and involvement is much different whether we talk about preparation or implementation of policies. Also the difference between strategic or operational discussions is important. In the preparatory phase the role of authorities is still very important. They have to draw the framework (in the form of strategic targets for the short, medium or long term) within which actors have to take their responsibility. Societal debate on this strategic framework must take place in parliament and in strategic advisory councils in which a broad range of relevant actors can participate. For the debate about the preparation of rather operational policy topics, more technical structures for dialogue are needed. This means committees with mandates and compositions adjusted to the specific topic. In the phase of the implementation, these structures are the vehicles to mobilise the creativity of society to realise the targets of the framework. It means looking for the right combination of measures and instruments to meet the targets for a certain combination of a target group and a problem type.

Transparency as a key issue in developing input-designs. In both preparation and implementation of policies, it is important that the debate between state and non state actors is an open process with all the transparency needed for those who are concerned. Today it is often the case that deliberation with some economic target groups takes place in obscure and informal meetings without a balanced composition or clear procedu-

res. Involving a broader range of actors in policy making implies that in every phase the discussion between state and non state actors is structured and transparent. As a result, in every situation it must be clear which is the input-design; in other words which is the mandate and composition of the different settings for discussion between public authorities and other actors and which procedures are there to follow.

Public Private Partnership. In specific cases a fruitful cooperation between state and non state actors in the implementation phase can be an incentive to create different forms of public-private-partnership (PPP). This is the case when the public and the private sector reach an agreement on a project which guarantees the parties that it can reach their objectives better, faster or with less costs. To avoid the risk of abuse of public money, governments must develop a criteria-set to when a PPP is a good choice (a framework for go/no go-decisions) and also here directives for clear and transparent procedures. These questions also related to discussions about the core business of the public and private sector and of the different policy-levels. This links the PPP-mechanism to the subsidiarity-debate.

Improvement and structuring experiments looking for a better input from citizens. Creating input from the general public is a somewhat different question. Procedures for strategic policy plans most of the time contain a public consultation. The result of this consultations however are often poor and usually don't have much impact on the final decision. There are some ad hoc experiments to strengthen the input of the not organised population via new, innovating participation methods. In the context of the implementation of the Aarhus-convention there is a need for more comprehensive strategies to mobilise input and participation of the broader public. Current isolated initiatives must be integrated in these strategies.

1.3 DIFFERENTIATED IMPLEMENTATION OF POLICY-INSTRUMENTS

Differentiated combinations of instruments. In the phase of the implementation, a major question is which instruments can be used for the most effective and efficient realisation of the policy targets. Given the huge differences in the increasing range of problems and target groups, this question translates itself in how the right combination of measures and instruments can be composed to meet the targets for a certain combination of a target group and a problem type. The criteria for the differentiation and combination of instruments can be described as the type of environmental problem, the quality level aimed for and the differences between and within target groups. The main criterion is perhaps the problem type: a structured well known problem with few sources calls for a more classical direct regulation, while persistent problems with much sour-

ces is more suitable to use economic or social regulation. Communication has mostly a supporting role. Apart from the character of the problem the policy is dealing with, also other parameters are important in the differentiation and selection of (combinations of) instruments, namely the level of protection within the same problem and the structure and differences within target groups: absolute limits and laggards in target groups need direct regulation, while forerunners and optimal quality targets can offer perspectives for different forms of social (self-)regulation. Economic regulation have often an intermediate position in this spectrum.

Greening fiscal structures to internalise environmental and social values in production and consumption patterns. Perhaps the most powerful instruments to internalise environmental targets into activities of economic (sectors) are fiscal measures. Indeed price mechanisms must give producers and consumers the right signals for a sustainable behaviour and to act in a responsible way concerning environmental values. An important part of this strategy is to reform the basic tax system on the basis of environmental criteria. Examples are the taxation of the use of natural resources trespassing a social basic level, lower taxes on properties in cities or fiscal stimuli for ethical investments. Especially in Flanders (2,39%) and Belgium (2,54%), environmentally related fiscal systems are running behind compared with some neighbour countries. The EU-average is 2,77% while the UK reaches 3,10%; the Netherlands 3,91% and Denmark 4,62%. The revenues of environmental taxes can be invested in transitions towards sustainability like efficient public transport, renewable energy en organic farming.

Using more instruments to make producers and consumers responsible. More general, the strategy in the implementation of instruments is to make actors responsible for their environmental impact. For that objective, in the first place economic instruments are suitable. Next to the greening of fiscal systems, also the screening and abolishing of unsustainable subsidies and trading schemes for (emission)allowances can be powerful economic tools for that goal. But also other instruments can create more responsibility. One can think of liability-regulations and verifiable policy-agreements with 'a stick behind the door'. Overall, it is important to implement this strategy by priority in the sectors (driving forces) with a major environmental pressure (transport, energy, agriculture, mining, ...).

Making legislations and regulations more simple but also more clear and effective. Developing a broader range of policy-instruments does not imply that the classical steering mode of law and legislation will loose it's role. This direct regulation stays important but efforts are needed to make this steering mode more effective and efficient. More effective via a shift of focus from regulations on means towards regulations on targets. More efficient via legislations which are more coherent and simplified where possible, based on scientific analyses of costs and benefits for society as

a whole. The result must be a renewed legislation which is more simple, sober, feasible, maintainable and consistent. Examples of less regulatory burdens by making administrative legislation more simple are digital one stop shops and simplification of permits and procedures. The Flemish government e.g. recently intends to replace the obligation for 100.000 small or medium size enterprises to obtain an exploitation permit by the duty to report on their activities. Also for law enforcement a more efficient framework is planned which integrates several so far dispersed regulations.

1.4 UNDERPINNING AND COHERENCE OF POLICY

Horizontal and vertical policy-coherence. A first condition for coherent policies is that there is both coherence between the distinct policy-areas (horizontal) and between policy levels (vertical). This concern must be answered from the viewpoint of the policy-contents, the instruments and the structures. The persistent environmental problems ask for far-reaching transitions in society which are only possible if policies in all fields and on all levels work towards the same goals. This is a main characteristic of sustainable development: to create a synergy between environmental, social, economic and institutional policies. This implies that environmental targets must be integrated in sectoral policies (cf. the Cardiff-strategy) and that policies of different levels must complement each other (subsidiarity). Hence the importance of the top-down and bottom-up relations between European policy and national, regional and local policy-levels.

Strategic planning based on the policy cycle. Strategic policy-plans must guarantee the coherence between different areas, fields and levels. The implementation of strategic planning systems which are consistent with planning-systems of other policy fields must be based on the policy cycle. This cycle systematically sets following basic steps: making up an agenda, preparing and underpinning policy-options, deciding on a certain option, implementing the chosen policy and evaluating the success of this policy-option as a basis for policy-renewal. Important here is that every step builds in logical way on the previous one and that every new cycle should mean a new step towards the long term targets. As important is that the cycle is connected to strategic policy cycles of other related policy-areas in such a way that they take into account or help to achieve each other strategic targets. Leapfrogging in the procedures of related planning system can make it possible to develop new policies building on each others results.

Indicators as tool for policy monitoring. An indispensable tool for a coherent planning system is a monitoring mechanism which uses a set of key-indicators (like the European Structural indicators). Key-indicators are selected in the first place on the basis of chosen policy targets. Their

function is to measure progress towards the formulated policy targets. To develop a set of key indicators there is a need for a statistical mechanism which gives priority to the collection of all relevant data to keep the selected key-indicators up to date. In the context of a more coherent policy system, it is also necessary to elaborate indicators who measure the level of integration between major policy-areas. Indicators for the eco-efficiency of economic sectors e.g. give a view on the integration between economic and environmental policies. They show to what extent there is a relative or absolute decoupling of the economic trend of a sector and its environmental pressure. Integration-indicators are essential components of a management-tool to judge sectoral policy developments in a sustainable development-framework.

Impact assessment of the policy. Indicators are indeed elementary building stones for a comprehensive system of policy-evaluation. In this mechanism there is an important difference between an ex ante and an ex post-approach. The ex ante approach tries to assess the potential impact of planned policies. In this stage one can use a Strategic Environmental Assessment or Sustainability Impact Assessment to judge the possible environmental impacts or synergies with others policies-areas of a certain policy. The ex post approach evaluates these impacts after the policy has been implemented. In this stage more specific tools (cost-effectiveness-analysis and cost-benefit-analysis) measure the effectiveness, the efficiency or other relevant aspects of the policy. In both cases the objective is of course to create a higher quality level of the evaluated process and finally to make policies more effective and coherent. An important aspect of policy-evaluation is to look for a methodological harmonisation. At this moment several initiatives on different policy-levels have been and will be taken to develop new tools for policy-evaluation. There could be a risk that this a large number of initiatives are developing somewhat isolated from each other. The result could be a diverging, not harmonised and incompatible number of evaluation tools and a inefficient use of human capital. It is important to create a harmonisation of developments and efforts in this field, certainly on a European level.

An increased knowledge level. To realise the desirable transitions which combine economic growth with substantially reduced environmental impacts, society needs to invest in an increased knowledge levels of both state and non state actors (the knowledge economy and society). To increase the knowledge level in policy processes, there is a need for more policy-related scientific research which implies a better balance between demand and supply of the research. The three-way-policy which is necessary for innovation and transition is also a leading concept for this policy-related scientific research. Each of the three ways has its function and must be scientifically underpinned. The first is optimising existing processes and patterns of production and consumption. The second is improving and re-designing this processes and patterns. The third one is develop

functional innovations for the same basic need. Translated to the transport sector e.g. this means firstly looking for cleaner fossil-fuel-technology and driving styles; secondly developing alternative fuels with a significantly reduced emission (biogas, electricity or hydrogen) and thirdly fulfil the need for transport with completely new concepts of transport (like ICT, tube transport or innovative collective transport services).

1.5 INTERNATIONAL COOPERATION

Bottom-up approach. In a globalising world, the power of national authorities to realise policy targets is decreasing and shifting strongly to international policy levels: the European level in the first place but also international institutions like the UN, the WTO and the Bretton Woods-organisations (IMF and World bank). Especially long term targets concerning environment and sustainable development are more and more been formulated by these institutions. For that reason, national and regional authorities who give priority to environment and sustainable development, are obliged to invest more in uploading the environmental and sustainability policy of the EU and other international institutions. A proactive attitude of (member)states and the EU in preparatory talks on European and international policy processes helps to influence the policies on these levels in a sustainable way. To make this investment profitable, it is important to strengthen multilateral institutions who are working for the environment (UNEP, Multilateral Environmental Agreements) or for sustainable development (United nations, CSD).

Top-down approach. Apart of contributing to better environmental and sustainability policies, national and regional authorities have also an important responsibility for a more effective downloading of international policies. Pleading for more ambitious environmental targets on the international level is not credible without an dutiful implementation of international environmental agreements (EU-directives, MEA's). International agreements must indeed be seen as base-lines for national and regional policies. Reports on the implementation of European directives show that this is not always the case yet.

Differentiated efforts. In discussions about uploading international policies, there might be a slightly different approach whether the policy context is European or global. In multilateral talks on a global scale (e.g. within WTO or UN) it is advisable that member states and the EU as a whole play a spearhead role and pull all together the same rope of more ambitious environmental agreements. In discussions within the European context it must be however possible to have eye for the specific situation of every region. This can imply that there must be some space for a differentiation of European policies based on a typology of European regions which brings into account their specific opportunities and threats. It is important to state that this kind of policy differentiation can aim at reduc-

tion-efforts or at the implementation of instruments and measures but certainly not on quality targets.

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2. ASPECTS OF ENVIRONMENTAL GOVERNANCE IN THE ENVIRONMENTAL REPORT 2002 OF THE GERMAN ADVISORY COUNCIL ON THE ENVIRONMENT (SRU)

2.1 PERSISTENT ENVIRONMENTAL PROBLEMS (PAGE 69-73) ¹

1.* In spite of the sometimes considerable success that has been achieved in using technology to control pollution from stationary sources, the overall quality of the environment has not improved since the early days of modern environmental policy. The majority of environmental problems have not been resolved to any sufficient degree. Instead, one can often observe an ongoing negative trend, which implies that environmental burdens will continue to increase. Problems which manifest a trend that long-term government measures have not been able to influence are problems that can be considered to be persistent. They will pose one of the most important strategic challenges to environmental policy in the coming years.

6.* The significance of persistent environmental problems is often underestimated in the public perception because of their low visibility and their complex nature. One consequence of this situation is that the role of science has to be strengthened, not only as regards analysing persistent environmental problems but also as regards placing these problems on the political agenda. The role of the environmental sciences, especially as concerns unresolved environmental problems, is that of a key actor who can point to the need to take action and to help to promote public awareness of such problems. In addition, an efficient instrument with which to make people sensitive to unresolved environmental problems is environmental reporting which, by using long-term forecasts, takes into account the long-term problem of accumulation and the possibility that growth-engendered pollution trend curves will rise again.

7.* Dealing with persistent environmental problems will require a sectoral strategy which incorporates long-term objectives which are developed and implemented together with the sectors causing the problems, these being, primarily, the transport, energy, construction and agriculture sectors. The Council recommends that German environmental reporting attribute environmental problems to the sectors that cause them. In doing so, it can avail itself of the Federal Statistical Office's national environmental economic accounts, which already list the contributions of specific sectors to specific types of environmental problems.

Such sectoral strategies cannot, however, replace the traditional environmental policy instruments; rather, they can only complement them in a useful manner. Large and inhomogeneous polluter groups such as consumers, motorists and small users of energy can hardly be reached using

¹ Page numbers behind headers refer to SRU (2002): Umweltgutachten 2002. Für eine neue Vorreiterrolle. - Metzler-Poeschel, Stuttgart.

negotiation or cooperation strategies. They thus make the continued use of direct, classical regulation necessary.

8.* Persistent environmental problems can, however, also be an indication that environmental policy does not have adequate capacity to deal with such problems. In this case, specific capacity building is necessary. Establishing new institutional arrangements and environmentally related strategic alliances, as well as shifting to the international level, are useful capacity-building approaches. Sectoral environmental strategies have the advantage, in this context, of being able to use extant capacities in administrations or firms in new ways in order to strengthen environmental concerns directly within polluter sectors.

9.* Successfully dealing with environmental problems also depends on the weight given to firms interested in resolving such problems. Such firms include innovative firms whose products further ecological modernisation. Wherever possible, environmental policy-makers should quickly ally themselves with such firms

2.2 CITIZENS AND THE ENABLING STATE (PAGE 86-121)

16.* Efficient and democratic policy-making must utilize and promote the willingness of citizens to assume responsibility for themselves and to serve public interests, and must create the necessary framework for citizens to do so. This is the objective of the “government as catalyst” model established by the coalition agreement of October 1998. However, in practical policy-making, as elsewhere, this model of a government that enables citizens to actively serve public interests has not been sufficiently implemented, in spite of the laudable progress that has been made. This is the case as concerns the role of citizens as market participants as well as their role as participants in government decision-making processes.

2.2.1 Ecological Market Transparency as a Precondition for Market Participants to be able to Make Environmentally Oriented Choices

17.* Market transparency is the precondition for citizens as market participants - when buying products or choosing with whom to transact their business - to be able to make their environmentally oriented preferences known. This implies that information about environmentally relevant aspects of products, as well as any other environmentally relevant information related to market participants' preferences must be easy to obtain. Market transparency is the precondition for “green” competition to be able to function. Since environmentally relevant facts, for example, about products, are not always easily ascertainable, the framework conditions for ecological market transparency will have to be provided by the government. There are numerous instruments that can be used to this end; however, they need to be supplemented and made more efficient.

18.* To improve ecological market transparency, the Council recommends supporting EU efforts to provide better protection from misleading ecological advertising by amending the Directive on Misleading Advertising. The Council is of the opinion that the most suitable way of preventing consumers from being confused by the great number of different eco-labels is to enter into labelling agreements with producers and manufacturers.

19.* Protected names and symbols are, under certain conditions, a suitable means of creating ecological market transparency. The eco-label that was introduced for foodstuffs in 2001 is well conceived and is an important step forward under the current framework conditions. There is however, a drawback to the new label, namely that it is not an EU label. The Council recommends pressing, at the EU level, for necessary improvements to the EU Regulation on Organic Production of Agricultural Products - especially as concerns using the EU Eco-Label on non-EU products - and for better marketing of the EU Eco-Label so that it can, additionally, also become more important.

20.* The basic concept of the German Blauer Engel (Blue Angel) eco-label does not need to be changed. The Council advises against expanding the awarding criteria to include non-environmentally related criteria, such as social criteria. In view of the fact that the Blue Angel is losing in importance, greater marketing efforts need to be taken, efforts which include the mass media. The prospects for the EU Flower, which has been less successful in the past but which has been gaining in importance recently, have been improved considerably as a result of the EU Eco-Label Regulation being amended.

The participative element in the awarding procedure is, however, underdeveloped; as concerns this, Germany should press for further improvements. The EU eco-label, with its considerable potential for opening markets, should not be considered to be in competition with the German eco-label; it should, within the framework of the common promotional activities provided for by the EU regulation, also be heavily promoted by Germany.

21.* An efficient supervision scheme is of central importance for the ability of protected labels and designations to properly fulfil their function. The supervision scheme provided for by the EU Regulation on Organic Production of Agricultural Products suffers from shortcomings. When designing supervision schemes, it should be taken into account that schemes that allow the supervisees to select their supervisors on the market are prone to suffer from competition-induced malfunctions.

22.* Ecological market transparency requires the extensive disclosure of product properties. Disclosure should preferably be effected by means of obligatory labelling or alternatively by means of transparency data banks. The Council recommends that the transparency strategy of the chemical

policy reform, with which the EU Commission would like to bring about the disclosure of the properties of and uses for chemicals, be supported. The Council further recommends that it be made obligatory for packaging to list the DSD's Green Dot licence fee in order to provide consumers with information about the quality, quantity and economically relevant recovery properties of packaging.

23.* According to prevailing opinion, there is no legislation that would allow government authorities to provide information about the environmentally relevant properties of products and services. The Council thus recommends that appropriate comprehensive, rather than authority- or sector-specific, legislation be passed.

24.* Making environmentally relevant information about firms public contributes to creating market transparency. The European Eco-Management and Audit Scheme (EMAS) combines publicity elements with incentives for better environmental management. The amendment of the EC Eco-Audit Regulation has created important preconditions for improving the acceptance of the scheme. However, in addition to making numerous welcome changes, the amendment also took a couple of steps backwards with respect to the self-assessment requirements, which offset the progress made with respect to ensuring compliance. Further improvement in the efficiency and acceptance of EMAS can only be expected if the cost-benefit ratio of participating in the scheme can be further improved. It would be possible and useful to honour EMAS certification by taking it into account on a case-by-case basis within the existing discretionary powers of government authorities, for example, as regards monitoring frequencies and processing priorities in licensing procedures (see, however, 37.* below, on the inappropriateness of general regulatory privileges). The current possibilities for granting preferential treatment to EMAS-certified firms when awarding public contracts should be taken advantage of. Further, private market participants - consumers, banks, insurance companies - should also make participation in EMAS worthwhile by honouring firms' participation in the scheme. The preconditions for doing this could and should be further improved by conducting more intensive publicity campaigns - preferably to be coordinated at the EU level - for the EMAS logo.

25.* Pollutant release and transfer registers could be used to make firm-related pollution data available to the public, thus making improved environmental services the object of competition between firms. The Council recommends that the establishment and implementation of the planned UN/ECE Protocol on Pollutant Release and Transfer Registers be actively supported and be given positive publicity.

2.2.2 The Role of Citizens in Government Decision-Making Processes

26.* German legislation and the way policy is made in Germany are still

determined by the idea that the role of citizens in government consists basically only in voting at regular intervals in elections. Any direct, active participation in government decision-making processes which goes beyond participating in public opinion formation processes tends not to be considered part of the democratic process, but rather a disruption of the process. Because of this authoritarian-based, restrictive concept of democracy, Germany is amongst those member countries lagging behind with respect to developing democracy.

In the 1990s, Germany strongly resisted developments in EU environmental policy-making towards creating greater transparency and participative openness in government and public administration affairs.

At the end of 1988, the then new federal government, by signing the Aarhus Convention (the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters), declared its willingness to engage in transparent and participative policy-making in a manner that would be in line with the government-as-catalyst model. Since then, the government has, however, pursued a policy of restrictive implementation.

2.2.3 Government Environmental Information

27.* In Germany, there are still considerable reservations about granting citizens extensive rights to information and actively and routinely providing them with relevant information, in spite of recent progress made in this context. This is partly also the case as concerns the German government, which should play an exemplary role in this context, one that would be in line the enabling state model. The shortening of the time allowed for deciding whether to comply with requests for information, as required by the Aarhus Convention, should be accepted as being appropriate and practicable and should be actively implemented. Original EU-level plans to extend rights of access to environmentally relevant information to include private parties that provide services of general economic interest, plans which unfortunately in the meantime have been moderated considerably, were system-appropriate and deserved to have been better supported by Germany. The practice of making information, for example, bills and proposals for ordinances, available in a timely fashion on the Internet is still underdeveloped in Germany. Further, government environmental agencies do not provide any systematic, publicly accessible implementation reports. It is especially regrettable that a proposal by the European Commission regarding the provision of such reports was ignored in the Common Position of the Council on amending the EU Directive on Public Access to Environmental Information.

2.2.4 Public Participation in Licensing Procedures

28.* Participation in plant- and facility-related licensing procedures was once comparatively high. Legislation passed in the 1990s to speed up the

procedures, however, was a significant step backwards. In view of the fact that public participation is important in implementing environmental legislation and hardly influences the length of the procedure, the Council thinks the trend to reduce public participation needs to be reversed. For all notification procedures and environmental licensing procedures in which the public does not participate, the Council recommends that a general obligation be introduced to publicly announce the receipt of notifications or applications. This would enable associations or individuals to inform themselves about the relevant procedure, if necessary by claiming their rights to be given access to information as provided for by the German Environmental Information Act. Provisions for public participation should also be expanded, primarily at the EU level, to also include substance- and product-related permitting procedures.

2.2.5 Public Participation in Establishing Standards and Agreements That Substitute for Standards

29.* The obligation embodied in the Aarhus Convention to allow early public participation in administrative procedures establishing standards should be seen as an opportunity to pass legislation that would establish uniform, participation-friendly rules as regards public participation in such procedures. The Council recommends allowing the public to participate in a direct and unmediated manner through commissions.

The problem of insufficient public participation in environmentally relevant standard setting procedures is even more critical when such procedures involve using voluntary commitments and environmental agreements as instruments, rather than legal rules. All mutual commitments arrived at using these instruments should, as a matter of principle, be declared in an agreement, which should then be published as a draft proposal and comments invited.

2.2.6 Public Participation in Plans, Programmes and Policies

30.* The obligations embodied in the Aarhus Convention to allow public participation in plans, programmes and policies are formulated in weak language. The Council advocates that the current German policy, pursued at home and at the EU level, of interpreting and implementing these obligations such that participation is avoided to the greatest possible extent be abandoned. The current scope provided by the EU Directive on Strategic Environmental Assessment should not be used in a restrictive manner. The reservations expressed by Germany against the EU Proposal for a Directive on Public Participation in Certain Environmental Matters are, in the opinion of the Council, unjustified.

2.2.7 Association and Citizen Lawsuits

31.* Because of its restrictive legal system, which only allows lawsuits

pertaining to specific individual, subjective rights, Germany is lagging far behind other countries, especially as concerns granting associations the right to sue. National and international experience with granting associations the right to sue has been largely positive. The Council welcomes the fact that association lawsuits pertaining to nature protection are now allowed at the federal level. The progress that this represents is, however, not sufficient. Extensive possibilities to file association lawsuits that are not restricted to individual areas in environmental law or to particular types of government measures, and that pertain to government failures to act as well as to positive activities, should be gradually introduced. In addition to introducing special possibilities for associations to file lawsuits, it would also be appropriate to expand the possibilities for individual citizens to do so. In the European context, Germany should not only support the Commission's Proposal for a Directive on Public Participation in Certain Environmental Matters, but should also support the stipulations it contains concerning the legal right to file lawsuits.

2.3 REGULATION AND DEREGULATION(PAGE 122 - 146)

2.3.1 Weaknesses in the Deregulation Discussion

32.* In the last decade, increased international competition in many areas, chronic unemployment and the scarcity of government control resources have caused considerable pressure to deregulate. The increased attention to the cost-benefit relationships of regulations that has gone hand in hand with this development is to be welcomed without qualification. The current deregulation discussion and current deregulation policy in Germany, however, suffer from a number of basic weaknesses. In the 1990s, in the area of environmental law, the deregulation discussion and deregulation policy were characterized by being based not on qualitative notions but on purely quantitative notions that were often too undifferentiated, by a personal responsibility rhetoric which often supplanted rational incentive-oriented analysis, by one-sided perceptions of the relevance of competition to environmental regulation, and by generally discrediting regulation.

33.* Demands for environmental deregulation in Germany have traditionally concentrated especially on two areas: environmental permitting procedures and relief for EMAS-certified firms. In the opinion of the Council, the time has come to put an end to the discussion in these two areas.

2.3.2 The Indispensability of Regulation

34.* Sweeping characterizations of environmental regulations as being inefficient and sweeping claims that economic instruments are superior are inappropriate. They serve to damage an indispensable instrument of environmental policy. Whether the potential allocative efficiency advantages of

economic instruments can actually be realized depends on preconditions that are all too often ignored. Economic and other environmental protection instruments that have indirect effects will undoubtedly gain in importance. Regulations can in many areas, however, not be replaced by economic instruments such that there is a gain in efficiency. Those instruments that are suitable for regulating environmentally relevant behaviour have specific advantages and disadvantages. Whether regulatory instruments or economic instruments or measures of some other type promise the greatest efficiency advantages with regard to use in a particular area can only be established by thoroughly analysing the relevant incentives and other framework conditions, including monitoring and enforcement costs and other transaction costs. In many cases, a policy mix which combines or balances the strengths and weaknesses of various instruments, will turn out to be the best option.

2.3.3 Speeding Up Environmental Permitting Procedures

35.* The burden placed on the economy by waiting-time costs caused by environmental licensing requirements has been drastically reduced in the last decade. The average length of time required for pollution control licensing procedures in those German states that have current, relevant statistics is between 2.4 and 4.9 months (generally between three and four months). Almost all of the procedures take less than six months. In particular states the proportion of procedures that took less than six months in 2000 was 87% (North Rhine-Westphalia), or even 90% (Hesse). Procedures that take longer than one year have become a rare exception. Even water protection licensing procedures, for which there are fewer statistics, have been successfully speeded up.

36.* In order to achieve this, the overall system of government supervision of compliance with environmental law, whose most important and most efficient element is environmental licensing procedures, has had to suffer being weakened: licensing requirements and public participation have been rolled back. As a result, inter alia, of licensing deadlines, government working capacities have had to be focused on processing license applications, which has left even less scope to effectively perform application-independent supervision activities. To a considerable extent, however, accelerated processing has been achieved without there being a corresponding loss in supervision efficiency, while increasing the efficiency of the legal and administrative systems. The Council strongly advocates that shortening procedures even further should only be attempted as long as doing so does not adversely affect the efficiency and the quality of government supervision. The possibilities for efficiency-friendly procedure acceleration have been largely, but not completely, exhausted by the legislative and, above all, by the administrative measures that have been taken. The Council sees further possibilities for improvement primarily in reducing the often disproportionately time-consuming involvement of

government specialist agencies and municipalities, in establishing measures to improve the quality of submitted applications and in having regulatory authorities intensively attempt to clarify legal uncertainties that can protract procedures. In so far as legislative and administrative measures, in addition to further improvements in administrative procedures and improved efforts on the part of applicants, can, in this context, still make a useful contribution at federal and state levels, they should at least as regards certain uses - for example, specifying unclear legal terms or ensuring that submitted applications are of an appropriate quality - be by and large positive regulatory measures rather than deregulation measures.

2.3.4 EMAS Privileges

37.* Combining calls for deregulation or deregulation measures with participation in EMAS is fundamentally problematic in the opinion of the Council. EMAS is a scheme that is intended to motivate and honour environmental performance above and beyond that which is generally required. Granting privileges that allow EMAS-certified firms to perform such that they do not meet general requirements runs counter to the spirit of the scheme and endangers its viability.

2.3.5 Discussing Efficiency instead of Deregulation

38.* The discussion about deregulation should be replaced by a discussion about the efficiency of government regulations which is based on rational analyses of incentives in particular and on empirical data. This would require that the experience and perceptions of those who deal with the application of environmental regulations on the ground, e.g., relevant actors in firms and government offices, be carefully evaluated, and evaluated in detail. The Council hopes these remarks will stimulate corresponding evaluations.

2.4 THE EU'S STRATEGY FOR SUSTAINABLE DEVELOPMENT (PAGE 147-168)

39.* The move towards a strategic, target oriented model of environmental policy that was initiated at the EU level in the 1990s has lost momentum recently. The main reason for this is that although various strategies have been established, they have not been coordinated with one another. Amongst these are the EU Strategy for Sustainable Development, whose basics were established at the European Council meeting in Gothenburg in June 2001, the 6th Environmental Action Programme, proposed in January 2001, which upon being adopted by the European Council and the European Parliament will provide guidelines for EU environmental policy, and which will represent the environmental policy core of the EU sustainable development strategy, the Cardiff process, which was begun in 1998, and which provides for developing sectoral strategies for integrating the

environment, the Lisbon strategy for “employment, economic reform and social cohesion”, which was established in March 2000 and which is intended to represent the economic and social dimension of the EU sustainable development strategy.

On the whole, current strategy development is characterized by an obvious institutional overload, which is made especially obvious by a strong tendency to postpone decisions on specifying and integrating strategy elements. This is due to a lack of personnel and clearly defined competences. Demanding strategies cannot be formulated, coordinated and implemented in passing.

Furthermore, the process of developing strategies, especially the Cardiff process, is not sufficiently problem-oriented. Sectors are not specifically confronted with the unresolved problems which they help to cause. The original orientation towards persistent problems has not been maintained.

40.* During the further process of strategy development, those involved will have to clearly determine which problems to give priority, which objectives to set, and which competences, procedures and means of indicator-based assessment to use. They will also have to determine what role particular strategy components should play and how they should be coordinated.

The following points should be clarified in order to ensure that the various strategies exhibit at least a minimum degree of transparency and that there is a minimum of coordination between them:

- The relationship of the sustainability strategy to the Lisbon process. If the decision in favour of the three-pillar sustainability concept (which the Council criticizes) cannot be changed, the Lisbon Process should be reformulated such that the high level of efficiency envisaged for environmental policy-making by Agenda 21 can be achieved. Under no circumstances should linking the strategies lead to current environmental strategies being weakened, or even to limiting the scope of environmental policy-making. The process of linking the sustainability strategy to the Lisbon strategy is only acceptable if it results in the environmental part of this strategy being made much more demanding. The introduction of the so-called open list of environmental indicators or themes channels this process in a useful direction.
- The relationship of the Proposal for an EU Strategy for Sustainable Development to the 6th Environmental Action Programme. The objectives set forth by the Commission in the SDS proposal are by far the better approach and should be incorporated into the 6th Environmental Action Programme.
- The relationship of the Cardiff process to the other strategies as a whole. Here it is imperative that the sustainability strategy or the 6th Environmental Action Programme provide overarching objectives.

41.* The process of formulating objectives and strategies requires clear

decisions concerning fundamentals. This in turn requires that there be a strategic centre with a clear mission and clearly defined competences. In its Environmental Report 2000, the Council stressed the importance of vertical decision-making structures by mainstreaming strategy development. This type of decision-making should be used to promote the active participation of environmental governmental departments and agencies rather than to weaken them.

The European Council is the appropriate decision-making entity for making fundamental decisions and for evaluating the Cardiff process and the sustainability strategy. The European Council, however, has neither the time nor the personnel to competently fulfil this role. It would thus be useful to establish an entity - a standing committee or a task force - that would include representatives of the Commission and in which the Environment Directorate General would participate substantially. Institutionally, this entity would have to be attached to the president of the Commission. The Council of Environmental Ministers has requested that the Committee of Permanent Representatives assess the practicality of establishing a group of high-ranking officials to deal with the environmental aspects of the sustainable development strategy. This is an indication that they have recognized, at least to some basic degree, that the fact that the lack of a central controlling and coordinating entity is a problem. The Council calls upon the German government to take efforts to have this group established and to have it established along the lines sketched out above.

42.* The appropriate framework for defining the objectives of the Cardiff process would be the 6th Environmental Action Programme because of the relatively binding nature of the decision-making process involved. If the 6th Environmental Action Programme is adopted without objectives and measures being further specified, they will then have to be specified when designing the main (sectoral) theme-based strategies. The so-called open list of environmental indicators or objectives proposed for the Lisbon process could serve as a starting point. Indicators or objectives that pertain to persistent environmental problems are of particular importance.

43.* The integration of environmental protection aspects into other sectoral policies, which is imperative and which is required by the EEC Treaty, should be accomplished, as planned, by means of the Cardiff process of environmental policy integration (i.e., by means of sectoral strategies). The Cardiff process should be continued in the long term by establishing clear procedural and institutional objectives. In order to improve the problem awareness and motivation of everyone who is involved in the process, it will be necessary to develop the most important environmental policy objectives using detailed problem analyses and to clearly determine the sector-specific causes of problems. In this context, the work of the European Environmental Agency in the area of transportation (TERM 1 and 2) can be considered exemplary.

Better networking with the sustainability activities and integration strategies of the member states, activities and strategies which in particular cases are very advanced, is also necessary. The more advanced member states as regards environmental policy-making should coordinate with one another in order to obtain greater influence in the European Council and the individual Councils of Ministers. The German government seems to be limited in its ability to engage in such activities at the EU level because of personnel shortages. Thus, new personnel needs to be hired in order to actively link environmental policy-making at the national and the EU level.

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3. THE ADVISORY ACTIVITIES OF THE COUNCIL FOR THE RURAL AREA: A GOVERNANCE PERSPECTIVE (RLG)

3.1 INTRODUCTION

Advising national governments on environmental policy issues has to take into account the changing political and societal reality in which governmental activities take place. The EEAC background reports gives an analysis of Environmental governance at the EU-level. Is this a useful framework also for an analysis of the work of councils at the national level?

In this paper the work of the Council for the Rural Area ¹ is analysed from a perspective on governance.

Two angles are distinguished:

- * A governance perspective: Does the council take into account the following three aspects of governance: multi-level, multi-sector and multi-actor?
- * Different modes of governance: Does the council have a differentiated view on how to handle different type of problems? Is the EEAC framework for environmental decision making a useful tool to analyse the Council's work? How can the council contribute to the governance-discussion from its own view?

3.2 A GOVERNANCE PERSPECTIVE IN THE COUNCIL'S WORK

National governments throughout Europe are faced with new challenges. The power of the central government is diminishing within a multi-level political reality and within a society in which individuals and n.g.o's claim their own role. The structure and nature of problems change. Our sector policy-regimes were set up to solve specific problems. In former times they did, and often effectively. Nowadays we are faced with problems that can not be solved by sector policy but need integral solutions within new modes of governance using the problem solving capacity within the society. Less directive approaches are needed. So governments are faced by the challenge of a changing policy context: multi-level, multi-actor and multi-sector. This challenge is automatically also a challenge for advisory bodies at the national level.

3.2.1 The mission of the Council of the Rural Area

The Council for the Rural Area in the Netherlands gives advice to the national government and the parliament on strategic policy questions concerning the rural area. There is a direct link between the Ministry of

1 The Council for the Rural Area advises the Dutch Government and Parliament on strategic policy questions concerning the rural areas and functions like agriculture, nature and recreation, as well as on strategic questions that are related to or have influence on those functions, whether they are interrelated or not.

Agriculture, Nature Management and Food Quality and the council. The working programme is developed within this Ministry - together with the council - and is finally decided upon by the minister, brought for final decision making into the cabinet and send to the parliament that can add their questions. The advisory reports are formally presented to the minister of Agriculture, often also to other ministers, and the parliament. The advisory reports are official documents and disseminated freely among a wide range of target groups. The minister of Agriculture has - according to the law - to tell the parliament within three months what he plans to do with the advice. In this way the formal task of the council to give advice to the Dutch Government - and not just the minister of Agriculture - and the parliament is safeguarded. The advisory reports have an authority of their own and are used by members of the parliament, scientists and by n.g.o.'s as reference for their own opinions.

3.2.2 Advising about Rural policy

The council has the task to give advice to the national government and the parliament about rural policy. This policy field includes agriculture, nature management, landscape, recreation, forestry, fisheries and food quality. These are all policy fields with an important international dimension. The three most important EU-policy fields in terms of budget and regulations are agricultural, environmental and structural policy. They are more or less at the core of the work of the council.

from a centralistic national perspective to a regional, area-specific and tailor-made one in line with European policy

Rural policy has been developed from a too centralised perspective. Furthermore the national policy is not well in line with the European policy frameworks. This leads to complex bureaucratic procedures, funds that can't be used or are used in a wrong way, legal actions and good projects that can't be realised.

Our council has in its advisory activities regularly confronted the ministry with the need for better integration of international and European regulation into the Dutch practice and for a more area-specific and tailor-made policy. The national government ought to be more pro-active in an early stage of European policy formulation, to be quick to respond and translate new policy regulation into the Dutch practice and to create regulatory space for innovative and creative local projects. In the advisory report 'European integration and regional diversity' (RLG 00/1a) the council explicitly analysed the multi-level issue as a challenge for the Dutch Ministry of Agriculture.

from government to a multi-actor perspective

In former days the government developed policy in splendid isolation. The last ten years an internal process within the Dutch government has been set up to change this and develop a more demand-oriented approach in

co-production with societal groups and the market. Still problems are defined and handled in a technical way. Interactive policy making within a network structure and in co-production with societal groups and the private sector is often not more than window dressing.

The council is in its advisory activities promoting ways to safeguard a more open dialogue with society and the private sector throughout the policy process without losing the framework setting and controlling responsibility of the national government. In a number of advisory reports a governance-perspective is presented; e.g. in the market-oriented model for green services (RLG 02/7) or in the way to handle complex rural problems within the new type of land use planning in the Dutch rural areas with intensive farming (RLG 03/3 no English summary available).

from sectoral to integral

Because of the organisation of the government, the budget discipline and the complexity of regulations it is very difficult to go beyond a sector approach and introduce a more integral sustainable development perspective.

The council has an integral approach; integral as to policy content and as to policy process (vertical and horizontal integration). In the Advisory reports 'The importance of interconnection'(RLG 00/3a) and 'For Farmers, Townspeople and Countryfolk' (RLG 02/8) there is a clear focus on the integral aspects of the rural areas. Also the advisory letter on the CAP reform (RLG 03/4) has a clear focus on the need for an integral scope on agricultural and rural policy.

3.2.3 The council's way of functioning

The council is - in its organisation and own way of functioning - integrating this multi-level, multi-actor and multi-sector challenge. The focus is, however, on the national level. That's the formal assignment.

multi-level

The members of the council come from an administrative, scientific or n.g.o.-background. The international dimension is reflected in the choice of members. A Belgian Professor in Agricultural Economy, a former advisor of the EC, just left the council because of a position at the World Bank. A number of the members of the council is actively involved in international and European circles. Other council members are grass root workers or combine an involvement with international organisations and their grass root involvement.

multi-actor

The advisory reports of the council are not only based on reliable and thorough scientific work (done by others) but also on consultations with different target groups (different government levels, societal groups, farmers and the market. The advisory reports are presented in a way that can be

used within the civil society (plain, readable language, comprehensive and in an attractive lay-out).

multi-sector

The scope is integral. The council is also asked to handle sector problems, but they are always placed in an integral context. The staff members are generalists. Specific expert knowledge is hired in from outside on an ad hoc basis.

Some self-criticism

It is always good to be self-critical. The focus is on the national and regional level. From a governance perspective the international (European) dimension could be strengthened. It is a capacity problem, but also a question of jargon. There is still a mission here if the council want to face the governance challenge.

There is a strong focus on civil society. The council has good relations with a broad range of n.g.o.'s, the market sector and with scientific organisations. The council advises the government to strengthen their relationship with the citizens. In an advisory report about rural integral projects the council pleads for dialogue at the kitchen table, not only at the formal negotiating tables.

The integral perspective is no window dressing but at the heart of the council's work. A dilemma here is the need for better accountability. The Dutch Government has introduced a new policy procedure to strengthen the accountability (VBTB). Integral targets are hard to handle from an accountability viewpoint.

3.3 DIFFERENT GOVERNANCE MODES AND THE COUNCIL'S WORK

The EEAC states very truly that 'Effective environmental governance requires a differentiated decision-making process which takes into account differences in the type of environmental problem to be addressed as well as varying institutional framework conditions and actor constellations within the European multi-level system.' Based on this the EEAC has developed a heuristic model that can help decision-makers to systematise available governance options and prospectively evaluate them with regard to their problem-solving potential.

Figure 1a: A Framework for Environmental Decision-making

	Problems of immediate danger	Persistent problems	Emerging problems/ complex local problems
Mode of governance	Direct Regulation	Target led, flexible mix of instruments	Reflexive social learning (self-regulation within incentive structure)
Actors	Government	Government and target groups	Target groups and government
Filter conditions that affect the choice of steering modes: <ul style="list-style-type: none"> - Structure of target groups, - Structure of sources of pollution, - Political opportunity structures in the European multi-level system. - Structure of ecosystems (natural conditions) 			

If we confront this model with the advisory activities of our council there is a clear common line of thought. The council clearly and explicitly takes into account that different kind of problems needs different governance modes. However, in our opinion the view of the council could add some valuable insights to the discussion about this framework.

Advisory reports of the council

In the following we have looked at a number of recent reports of the council starting with the kind of problems that this reports handle and looking into the governance mode that the council presents as solution (Figure 1b).

Points for discussion

This is just a global overview of some of the councils work. Analysing the work of the council with this instrument shows the strength and the weakness of this heuristic model.

There is a tension in this model between a traditional sequential way of looking at decision- making as problem solving and a governance perspective of decision-making seen as a complex learning process within a network society. System innovation and transition management are not part of this framework.

Figure 1b: RLG-work placed in 'A Framework for Environmental Decision-making'

	Problems of (possible) immediate danger	Persistent problems	Emerging problems/ complex local problems
Advisory reports	The need for special water retention areas (RLG 01/4) The crisis in the intensive animal farming (RLG 01/6) Animal disease policy (in preparation)	Managing nature within the Ecological Main Structure RLG (RLG 03/5) Protection of species (RLG 02/5)	Rural areas under reconstruction (RLG 03/5) Advice on the Second National Plan for the Rural Areas (RLG 02/6) Green services (RLG 02/7)
Mode of governance	Prevention, Firm government directed frameworks, actions and/or master plans Good communication (clear and in dialogue)	Target led, flexible mix of instruments; Continuity of policy targets to strengthen effectively Streamlined, more effective and less regulations Under strict conditions also self-regulation	Target led, flexible instruments, streamlined, more effective and less regulations, where possible self-regulation
Actors	Government has the lead; but has to involve target groups in an effective way	Government together with target groups	Government should where possible step back and give room for self-regulation within clear frameworks

Prevention of immediate danger is a more fundamental way of handling risk than the traditional control and command way of direct regulation. Facing the possibilities of immediate danger requires prevention in an early stage. The government should try to reduce the chance of crisis as far as possible through system innovation and transition management.

If the danger is there - of course - the government needs to handle immediate and effectively and to do that it has to have the tools to do that. That means effective direct intervention instruments in a traditional 'command and control'-way.

If forceful governmental actions are needed these actions need to be communicated in a clear way and in an open dialogue with target groups and the citizens?

The framework does not acknowledge the fact that the government is part of the problem. Often enough the national government creates such a complex regulative context that it frustrates the problem solving capacity from bottom-up.

The framework is a heuristic tool and not more than that. The present governance situation is complex. We need to transcend the present problem solving capacity through integrating different type of feedback and learning mechanisms into our governance system. This need for strengthening our present problem solving capacity with new modes of governance is not fully acknowledge in the model. Still this is a useful instrument as it stimulates policy makers to reflect on the type of problem they face and to choose governance style in accordance with type of problem in a conscious way.

References

- RLG 03/4a: Consequences of the CAP reform proposals
Advice on Collective Agriculture Policy – May 2003
- RLG 03/2a: Wanting something for nothing
Advice on Nature Policy – February 2003
- RLG 02/8a: For Farmers, Townspeople and Countryfolk
Advice on the importance of socio-cultural developments for the Rural Area – June 2002
- RLG 02/7a: Green Services: From Direct Support to Rural Enterprise
Advice on Green Services in Rural Areas – June 2002
- RLG 01/6a: Before it is too late ...
Advice on the future of livestock farming in the Netherlands – August 2001
- RLG 00/4a: Evaluation Council for the Rural Area for the 1997-2000 period
- RLG 00/3a: The importance of Interconnection
Advice on development, alignment and integration in the rural area – May 2000
- RLG 00/1a: European integration and regional diversity
A challenge for the Dutch Ministry of Agriculture – January 2000

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4. DEALING WITH KNOWLEDGE IN TRANSITIONS: A SURVEY INTO THE UNKNOWN (RMNO)

Advice of the Advisory Council for Research on Spatial Planning, Nature and the Environment to the Minister of VROM and the other Ministers involved, February 2003 (RMNO-03/03)

4.1 INTRODUCTION

In his letter dated 16 August 2001 the Minister of Housing, Spatial Planning and Environment (VROM) has asked the RMNO to advise him in three stages on the knowledge needs in connection with the government policy on spatial issues, environment and nature. This followed the publication of the "Fifth Strategic Document on Spatial Planning, and the Fourth National Environmental Plan. Part of this was the quest for advice on the subject of knowledge needs with regard to the ongoing operationalisation of the concept Transition Management, in particular focused on the part the government plays in this.

4.2 WORKING METHOD

The request for advice has been targeted by two steering committees within the RMNO council. After discussions with the Transition Support Office of VROM, interviews have been held with the key persons responsible for the transition processes within the Ministries of Economic Affairs, Agriculture, Nature and Food, International Cooperation and Transport and Water Management. As a result of these interviews and a brief literature survey, a list of questions and points of attention has been drawn up. On the basis of the reactions of the key persons mentioned, four questions from that list have been selected for further analysis.

With regard to these questions, opinions have been gathered from literature and interviews to form a picture of relevant schools of thought. Another source was the report of the International Conference on Transitions which was held in Enschede (NL) in July 2002, as well as a study on transitions and R&D policies which was carried for the RMNO.

The questions and the collected material have been discussed in a workshop held at the Ministry of VROM on November 11th 2002. The aim was to find out how scientists in particular approached these questions. Additionally the workshop rendered some indications on what may be considered robust knowledge, and the participants have been asked explicitly to write down their knowledge questions as well as their learning points. These knowledge questions can be seen as input to a knowledge agenda which will evolve further in discussions between the key people in transition processes, researchers and other parties concerned who may or may not participate in a research network.

Partly on the basis of the exchange of ideas in the workshop the Council has developed its own vision on transition processes and transition management which have been described in the advice included.

4.3 WHY “TRANSITIONS”?

4.3.1 Persistent Environmental problems and transitions

The National Environmental Policy Plan (NMP₄) has boosted the start of the political career of the concept of “transitions”. In the NMP₄ a number of environmental problems have been characterised as persistent. These are the problems on climate change, loss of biodiversity, mobility and agriculture. Some of these problems are of a global nature (climate change); others are more prominent on a national or regional scale. There are solutions to these problems, but some of them are on European level, others national or regional. All of these solutions have a limited effect.

In order to effectively address a global problem such as climate change, a global strategy towards the green house gas emissions is needed, which in turn also requires national and regional adjustments.

Loss of biodiversity mostly is related to spatial planning on a national and regional scale, and to how biodiversity is conserved. Also it involves environmental pollution, exotic organisms, which may or may not have been consciously introduced, etc.

From the point of view of sustainable development a normative element must be introduced as well. Taking into account all possible future prognoses and circumstances, sustainable agriculture cannot be described beforehand. On the other hand the concept of sustainable development enables us to design integral foresights and look for solutions. Different levels must be taken into account (regional, European and global), in order to be able to ascertain what the system limits are. Many of the causes of so called persistent environmental problems are, at least partly, beyond the competence of national governments. Causes and solutions are linked to various levels, which causes a dilemma for national governments. This complexity causes the prevailing approach of national governments to render only a limited result, which is in view of long term solutions insufficient.

Complexity is the keyword in persistent environmental problems. These problems characterise themselves in that the issues transcend sectors and have effects on various levels simultaneously. This makes it imperative to make a structured analysis on the type of intervention, as well as by which level of government, that will result in the best suited solution to the environmental issue at hand. Perspectives of interventions must correspond with the level to which the problem is related to. Government intervention may take various forms: (co-)financing R&D efforts (innovation policy), stimulating knowledge networks, or creating a demand for socio-technical solutions through a system of emission trade (e.g. the EU-wide introduction of the system of marketable CO₂-emission rights), taxation or the announcement of stricter emission and production demands in the future (e.g. zero-emission vehicles). The interventions can also be of an administrative or institutional nature.

In the past technological transitions went hand in hand with institu-

tional changes. Taking into account the very nature of the persistent problems mentioned in the NMP₄, one should avoid thinking solely of technological solutions, but also address (institutional) changes to taxation systems, responsibilities and rights of ownership. Each transition process needs an analysis of possible interventions by national, regional and transnational governments (EU), as well as the obstacles that may become evident in practice. E.g. Technical prescriptions on EU level contrast with national policy which is focused on policy targets, and another obstacle may be that European policy may not allow a national innovation policy to create certain niche markets. The policy space of the national government must be crystal clear for these transition processes.

If solutions are for an important part beyond the reach of national governments, a national government may - keeping in mind the abovementioned policy space - consider regulations as an incentive for industries in another country. California has, on the basis of its policy to reduce air pollution, announced a zero emission law to stimulate development and introduction of zero emission cars. The car industry is situated in other states of the USA. California is an example of a state that does not feature a car industry, but attempts to influence this industry by its laws. In The Netherlands the car with the catalytic converter was introduced in likewise fashion, despite misgivings with the EU. Within the various transition processes an analysis needs to be made to what level The Netherlands can influence them, what part the national government and other involved parties, such as researchers, can play on an international level. It would be unjust to characterise transitions as a long term concept covering up the relative lack of power of the national government, as is being posed by some critics.

Who ever asks the question what knowledge is relevant for transitions as seen from the eyes of the Dutch government, must ascertain beforehand to what extent the transitions within the four NMP₄ problem fields can be influenced, or effectuated on a national scale, and how the part of the national government can be streamlined with the (possible) role of regional and transnational governments. Transitions do not by definition require a demand driven technological innovation policy of the National government. Should the bulk of the system innovations and resulting transitions be realised outside The Netherlands, careful consideration should be given to how Dutch knowledge institutions can focus on that utilising their specific strengths. In other words, how do they secure the best bits for themselves?

In order to decide which are the most interesting aspects to the innovation system to which Dutch research institutions can contribute, is it advisable to have a well organised information centre. It should also not be excluded beforehand that the Dutch government creates space for experiments, niches, with regard to transitions, keeping in mind the European laws with respect to market processes in research policies.

4.3.2 What is new in transitions?

The concept transition seems to be in a pre-paradigmatic phase. There are various conceptional images which refer to transitions and transition management, and various links are possible with other concepts such as “co-evolution”, “integrated assessment” as well as the relevant knowledge linked to these concepts. Choosing one definition of the concept of transitions over another is at this stage premature.

Although the concept is in a preparadigmatic phase, it is possible to indicate several features to the concept which have been accepted in general.

In the first place a transition process is aimed at the long term (10-30 years). A transition process will be established through system innovations. A transition involves various sectors (multi sectoral). The transition aimed at sustainable energy does not involve industry alone, but housing, transportation etc. as well.

Within a transition the involvement of the stakeholders is important, not only to make the process legitimate, but also because a new configuration of the stakeholders revitalises the issue. Existing interest configurations will be forced open to create new insight and ideas, new combinations and perspectives. Creating a vision is important as the engine to this process. It is aimed at future perspectives, which should, ideally be generated through mutual dialogue with the new group of stakeholders. Visions of the future inspired through sustainable development are necessary to be able to work on changes in a system. Essential is the willingness of various parties concerned (stakeholders), scientists and governments to participate in experiments which will stimulate system innovations. The kind of interventions that are being considered will be different for each transition process, as has been indicated above. But transitions will often involve institutional changes (responsibilities, rights of ownership etc.).

Implicit (silent) knowledge in transition processes can be just as important as explicit scientific knowledge. It is expected that transitions require foremost interdisciplinary knowledge which is attuned to the knowledge needs of the parties involved. This in fact refers to a transdisciplinary scientific approach.

Knowledge is a limited part of a transition process, the rest is characterised by chaotic occurrences and perhaps dialectics. Analogical thinking is very valuable in this. The originating process of e.g. technological innovations very much resembles a (co)-evolutionary process. Variations emerge as a result of the interaction between science and society. Then a selection of variations takes place.

Analogously, transition processes seem unpredictable. But this does not mean that they cannot be influenced in a limited way at certain points in time. From research into technological transitions it becomes clear that it is possible to indicate that modulation of a process at certain moments is possible. Manipulations are possible at certain moments.

As a result of the long term character and the unpredictable experimental features of a transition process, it is imperative that one establishes learning points at regular intervals. By some this aspect of reflection is summarized in the following phrase; “you learn by doing, you do by learning”.

4.3.3 Indications - learning to recognise patterns

To what extent is it possible to find indications in social developments, of upcoming transitions, or even ongoing transitions? Some people will reason that in the field of water management there is a transition taking place. For some time now a different train of thought is being adopted by policy-makers with regard to water management. The implementation of that train of thought will take some more time.

Also in the past, agriculture has undergone various transitions, but if there are any indications of such a transition now remains to be seen. It is however possible to recognise two types of innovation patterns in agriculture, which are evolving side by side. One in the classic way, through research aimed at production, the other focusing on the farm and its role within the surrounding area.

Recognising the innovation patterns in sectors which are connected with the transition themes is an important point. Some scientific knowledge is already available for this. Technological innovations can be mapped through a prospective technological analysis, which will show several development paths, and how parties involved can influence (modulate) these.

4.3.4 How to shape the interaction between Science, Policy and Society in the case of transitions?

How the interaction between Science, Policy and Society can best be shaped is a question RMNO answers by referring to earlier publications (“Willingly and Knowingly”, 2000 and “Disaster, Success or Failure” 2001) and a recent publication (in Dutch) “Boundary Work: paradoxes and dilemmas” (2003). It should be clear that interactions in transitions should enable a learning process. In other words, there is no political or scientific primate, but an interaction between science, policy and society, aimed at learning. In “Willingly and Knowingly” and more recent publications RMNO has formulated recommendations for the realisation of this interaction model. This entails, among other things, that in order to create a common knowledge base, to deal with uncertainties, to draw up a knowledge agenda, and to guarantee quality and learning by doing, an interactive working method is needed and certain methodologies (such as extended peer review) are imperative.

4.4 RECOMMENDATIONS

Taking into account the abovementioned reflections the Council has formulated the following recommendations to the Ministers involved and the key persons of transition processes.

Recommendation 1

As thinking about transitions is in a pre-paradigmatic phase, it is not advisable as a national government to embrace any one train of thought solely. Creative competition is desired in such a situation. After some time the best applicable train of thought will become clear.

It is advisable to ascertain if and to what extent different trains of thought lead to different approaches of transitions or that generally speaking, in practice no major differences occur. This should only take place after recommendation 2 has been effectuated, which deals with the setting of a specific transition process within the international context and the stipulation of policy space of national and other governments.

Recommendation 2:

It is advisable that the transitions as described in NMP4 - as far as there remain any uncertainties on this point - to make an analysis of the policy space on the national level in contrast to the international (EU) and regional level.

This means that the sector transcending and multi level nature of the problem needs to be taken into consideration, and an analysis should be made of the kind of interventions that will enable the national government to stimulate solutions. Possible interventions by the government need to be tuned to the level at which the problem is to be tackled.

This analysis leads to more consciousness of the (possible) roles that the parties involved may play in these transition processes on a national, regional and international level and will open the door to (international) co-operation. The desired innovations can be of a technological nature, and/or pertain to institutional changes in e.g. fiscal systems, responsibilities and ownership rights.

Recommendation 3:

Due to the complexity and lack of consensus on the knowledge and values concerned, transition processes should be seen as unstructured problems. A dialogue model of interaction between science, policy and society is most effective in such a situation. This entails, among other things, that in order to find a common knowledge base, to deal with uncertainties, to draw up a knowledge agenda, and to guarantee quality and to learn by doing, an interactive working method is needed and certain methodologies (such as extended peer review) are imperative

Recommendation 4:

If technological innovation seems to be, or seems to become an important

part of the required transition (energy, agriculture, mobility), it is advisable to make an analysis of the relevant regime in order to recognise patterns and windows of opportunity. This prospective technology analysis can map the development paths, and how parties involved can influence (modulate) these.

Whether institutional renewal solely can bring about system innovations, and who plays what part in this, is matter for discussion and clarification.

Recommendation 5:

Without vision(s), there can be no system innovation. Creating a vision involving (certain) stakeholders and others is desirable. The creation of a vision is the result of interactions aimed at the future and sustainable development.

Recommendation 6:

An analysis of the nature of existing (policy)networks within the field of a transition is necessary to ascertain if the present relationship between governments and other parties, stimulates or prohibits innovations. In order to establish a transition network one needs to learn from this. In a co-operative quest for innovations the option of network steering or self steering fits very well

An analysis of existing networks, the participants and innovation tendencies, will provide leads for the composition of a transition network. Shadow networks can be important as cores of innovative thinking.

Transition processes cannot be managed through a hierarchal management model. The Dutch departments involved have often adopted a project structure, which operates outside the line organisation. A possible risk would be that the line organisation does not feel involved with transition management, which will make the part played by the departments smaller than is possible or desired. The Council advises to pay great attention to this organisation issue.

Recommendation 7:

For system innovations the not dominant knowledge is important. This means that the configuration of the knowledge(bearers) within a transition network should be different than that of the existing (policy)networks. Renewal is impossible without new, crosswise thinking, be it though this should be done to a limited extent to be productive. The process management must be given the authority to utilise new, possibly relevant knowledge.

Recommendation 8:

After the configuration of the participating parties is decided, for each transition casus there needs to be done a survey which intrinsic knowledge is needed with regard to a future vision as well as to clarify problems. This pertains to formal and non-formal knowledge. The research will often

have to be transdisciplinary, in other words has to detect the knowledge questions of participants, and decide if new knowledge should be developed, and find multi- or interdisciplinary answers. Relevant informal knowledge must be traced.

Recommendation 9:

The role of national and local authorities:

The authorities involved in the transitions should play a stimulating and co-ordinating part. They are too carrying the ambition to effectuate a transition. The governments have a special task in creating appealing representations of the future as the core for a transition process.

The authorities involved are also responsible for the mapping of relevant informal and formal knowledge. Also, they must ensure that research is done into robust knowledge questions, as brought forward by the involved parties.

At a later stage the governments have other responsibilities, both in research (co financing experiments, demonstration projects), as in creating the necessary environment for the experiment (to lift restrictions, stimulate, subsidise, etc.).

Recommendation 10:

With regards to R&D-policy:

Stimulation of innovations with regards to transition to a sustainable development, will find its scientific justification in a demand driven model of innovation policy. The need and possibility of a demand driven innovation policy must be ascertained for each transition casus individually. Demand driven innovation policy requires different roles and a new kind of co-operation between governments, knowledge institutions and Business and Industry. The national government can stimulate new connections (nexuses), for example, as is the case for ICES/KIS. Perhaps there are also possibilities on EU level to promote a demand driven innovation policy.

With regards to transitions in specific areas (agriculture, water), the stimulation of R&D in The Netherlands makes sense because of the specific strengths and innovative powers of Dutch researchers and/ or the relative lead they have within these areas.

It should be ascertained to what extent a demand driven innovation policy is stimulated or blocked by current policy instruments on national and international level (which is usually driven by offer?) and what kind of provisions can be made to stimulate it.

Recommendation 11:

Even though one should be aware that Dutch research and researchers can only contribute in a limited way to the realisation of transitions, it is nonetheless desirable to find out if and how Dutch researchers can play a part in an international context with regards to system innovations which seem to contribute to the desired transitions. This means that one will have to survey how the specific strengths of Dutch research can be utilised

to the fullest. This requires a sort of observatory, which collects information on the progress of system innovation processes in the rest of the world and on the progress of relevant International research programmes like the Industrial Transformation Program by the IHDP (International Human Dimensions of Global Change Program).

Recommendation 12:

In shaping the transition process it is imperative that during the course of the transition time is set aside for reflection on the process itself and the targets, keeping sustainable development in mind. The process management had best rely on experts who have knowledge of processes of change in organisations and of knowledge management, of social learning or are qualified in an other sense

Transition processes as consciously desired social processes of change are new and for the most part terra incognita. They must be accompanied by scientific research, both of the process itself and as a means to generate intrinsic knowledge. The governments involved are jointly responsible.

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5. GOVERNANCE FOR SUSTAINABLE DEVELOPMENT IN CATALONIA: CONCEPTS, INSTITUTIONAL REQUIREMENTS AND ANALYTIC ELEMENTS (CADS)

Advisory Council for the Sustainable Development of Catalonia and GSD Team (International Institute on Governance, IIG)

ABSTRACT

The word “governance” is used when talking of decision-making processes in relation with collective subjects. Governance, opposite to other approaches that defend that decision-making concerning public subjects can be done unilaterally and through hierarchic control, starts from another government style. Apart from this general definition, in a more specific level the governance notion counts on a wide approaches diversity. It has to be already said that, from our approximation, we consider governance as that formal and informal rules system (norms, procedures, customs,...) that establishes interaction guide-lines among actors within the decision-making process; considering as relevant actors both public authorities and social and economic stakeholders.

Given the fact that we use the concept of governance concerning several topics that can be more or less related to sustainable development (for example, urban governance, environmental governance, electronic governance, international governance, etc), in this abstract we will use the concept of “governance for sustainable development”. Therefore, governance for sustainable development will represent the process and the structure of actors and formal and informal rules that will approach us to the consecution of sustainable development. Governance appears to be the independent variable that would explain why some societies are self-organised and walk more efficiently along the way that will lead them to sustainability.

A (good) governance for sustainable development will obviously be the one that will approach us to the sustainable development. In this sense, we can talk about “governability”, since this other concept refers to a characteristic of societies: governability appears to be an attribute of sociopolitical systems that depends on the effective and legitimate adjustment between necessities - institutional requirements for a good governance - and organisational, management and political abilities and also on social abilities to reach the set objectives; in the case we are dealing with, SD objectives in Catalonia.

5.1 INTRODUCTION

Nowadays, it is possible to argue that achieving sustainability is not merely a technical matter. Technologies will have a bigger or smaller contribution to the Sustainable Development (SD) process as far as the socio-political process displays the necessary collective action capacities to reach higher levels of sustainability.

It is in this sense that governance and governability notions are appropriate, since they go into the analysis of the organisational, managerial, political and social needs and capacities necessary to develop a decision-making process towards a collective subject like SD and to make this process cover the whole society. Also, the integrative nature of the governance approach makes it more appropriate to tackle complex, diverse, interdependent, strongly dynamic and highly uncertain problems than those of the more traditional public policy or public management.

Since the Rio Conference in 1992, the importance of governance for sustainable development has been increasingly acknowledged by both the academic community and the international agencies. However, in the case of Catalonia, the discussion about sustainable development has not been supported by a debate about the institutional capacities that are needed to self-organise to move towards sustainability in an effective way.

To address this shortcoming, in 2000 the Advisory Council for Sustainable Development of Catalonia (CADS) entrusted the International Institute on Governance of Catalonia (IIG) to prepare a theoretical and analytical framework to assess the level of governance for SD in Catalonia. The present paper outlines the key element of the study undertaken by the IIG.

The study begins proposing a conceptual framework and a set of theoretical assumptions focusing on the main issues in discussion. It follows a central part on institutional requirements for sustainable development. Finally, it presents a set of analytic elements in order to join up the information into a valid framework for the governance for sustainable development analysis.

5.2 CONCEPTUAL FRAMEWORK AND THEORETICAL ASSUMPTIONS

Governance for sustainable development (GDS) is an emerging topic and, therefore, does not have a theoretical, analytical or practical reference internationally consolidated. As we use the governance concept concerning several topics related to SD, in this paper we will introduce the concept of governance for SD which will represent the process and the structure of actors and formal and informal rules that will approach us to the consecution of sustainable development.

5.2.1 Key concepts: governance and governability

Every governance system is composed of rules and procedures (both formal and informal) that build up an institutional framework in which the various stakeholders operate. The more foreseeable, transparent and legitimate this framework is, the more governability the system will have.

The term governance for SD is used to identify the set of procedures, actors and processes that should enable a given society to move towards sustainability, whereas it is more appropriate to refer to governability for

SD while assessing a governance system which has an impact on sustainability. Thus, governability is a quality, an attribute of a society, noticeable when assessing the existing collective action capacities insofar as they provide an efficient transition towards SD. The evaluation of a given society and its governance system, this is, the diagnosis of its governability in relation to SD, is done by comparing the institutional requirements with the existing institutional SD framework.

5.2.2 Theoretical assumptions

The main perception of sustainable development (SD), the challenges, the aims and the actions that implies, must be established by every and each society collectively and through the political process. We define political process as the process by which societies define the collective meaning of what sustainable development is. It is important to note that this political process requires the leadership, mobilization of efforts and direction that mostly correspond to public actors democratically legitimised.

In order to join all society around a consensus on the meaning of SD, the conscious intervention of citizens and actors is required. That does not subtract legitimacy from the system but permits progress to an increasing democracy model such as deliberative democracy or participated democracy.

Governance presupposes that nowadays governability must be ensured not only by governments but also by the efficient performance of more or less institutionalised networks of strategic actors, each of which has its own autonomy and strategic agenda. Today, a good government is that one able to build good governance and thus provide governability.

When talking about sustainability, the process rationality is more important than the content rationality. In the complex present time, the collective learning process depends more on the institutional design of processes concerning the actors and on the information and its interrelationships than on the pre-design of technical solutions.

5.3 INSTITUTIONAL REQUIREMENTS

This section introduces an approach to the key institutional requirements of governance for SD. We call them “institutional requirements” since they define, in a normative way, what certain institutional arrangements of a society should be like concerning the implementation of transition towards sustainability.

The following noted requirements (see Box 1) refer to both the actors and the interaction procedures between organizations and individuals of the governmental sphere and of the non-governmental one. The task of deciding and managing transition towards SD goes beyond the capacities of governments and public administrations acting by themselves. The functions and capacities of both spheres must be developed all together.

5.3.1. Information of quality and adequate knowledge

All the actors must take part in the decision-making processes with an adequate level of information. To this purpose, up-to-date information and broad knowledge are required. Moreover, this knowledge must get closer to the public. Approachable, qualitative, reliable, sufficient and useful information and knowledge is not an aim in itself but a resource (cognitive, in this case) that must be used by all the actors.

5.3.2. Intergovernmental coordination in the local-global axis (vertical integration)

Moving towards sustainability implies a renewal of the intergovernmental relationships system. The local-global axis should be more dynamic in order to enable an efficient assignment of the regulating authority, and the development of management capacities unavoidable in this field.

The State carries the burden to link all the different territorial levels so that all together take part and responsibility in the process leading to SD. This process relies on a change from a centralized policy to a multi-centric one, breaking the conventional ruling role of the state. According to this, the subsidiarity principle must make a big step forward into the direction of a coordinated policy, instead of simply delegating to more local government levels.

Making vertical integration possible carries the policy design into a coherent and complementary pattern. It requires the engagement and the political will to set up permanent intergovernmental communication, consultation, cooperation and coordination mechanisms. Even though several specific aspects of SD (such as bio-diversity maintenance, regulations to reduce CO₂ emissions, etc.) will have to be promoted at the competent governmental level, these and other topics will still need to be discussed by all territorial levels.

In addition to the requirement of coordination and coherence between the policies of different territorial levels, there is also a need for an institutionalised coordination of the policies formulated by territorial entities of the same level. In this regard, the Catalan reality on territorial levels includes a specific model that could enrich the dialogue and representation between different concerns.

Spain is a multinational state, within which Catalonia is an Autonomous Community with its own legislative assembly. This territorial level builds mainly power relationships as a sub national level to the national one and to the European Union. In addition, there are different territorial units at the sub national level joining the local government: the municipal power represented by each town and village; the deputations, a provincial government in relation to this specific territorial division; and also a more regional division relating to a local district.

5.3.3. Coordination between sectorial policies (horizontal integration)

SD requires a high level on coherence and integrally when formulating and managing all the performance areas. Nowadays, environmental issues still are given lower priority in the planning process in relation to other conventional key issues like industrial development, employment or urban planning. Public administration should get around this problem by rebuilding the decision-making process.

The integration of environmental issues into sectorial policies does not simply mean to take it in as a kind of important factor into the policy design process. According to SD principles, horizontal integration asks for the ability to join together economical, social and environmental considerations into decisions in a coherent and effective way.

The aim of an integrated planning of sectorial policies does not come just by a commitment. Joining the economic, social and environmental topics require to apply the information quality and the acquaintance knowledge to the considerations. That must enable to submit the costs and benefits of different policy options and get the decision making next to a greater transparency. Both society and politicians needs to improve their knowledge about the causes, effects and interactions between sectorial aspects and about the social and environmental effects of the current patterns of production and consumption.

5.3.4. Assignment of a wide and innovative range of policy instruments

The innovation on policy instruments is aimed at stimulating both the social actors' capacities for self-regulation and the capacity of the economical market strengths. This effort wants to encourage the achievement of SD through the replacement of the "top down" and controller patterns of direct regulation, which tend towards misleading statements of stakeholders.

The complexity of environmental issues is nowadays displaying in new intensive types of conflict that affect different performance areas, both among the same administrations and with different social groups. The improvement of environmental conflict management is essential, and it requires the use of instruments like consensus and mediation to find solutions socially agreed.

5.3.5. Administrative culture and bureaucratic quality of political action

The transition towards sustainability also requires changes within the administrative culture. In a global sense, the traditional vision of reactive or palliative policies has shown the limits of short-term planning. Instead of this orientation, a preventive and pro-active approach opens a different performance logic, following the precaution principle.

Particularly, the new administrative culture is to be based on a long-term management perspective not based upon the electoral cycles and

complemented by half-term objectives and gradual measures. It can be helped by the public management values (transparency, information and accountability) in order to increase the efficacy and the efficiency of political action.

Apart from the need to incorporate a wider temporary scale, it is necessary to consider those effects of the decisions which are not clearly evident. Most of the environmental issues have a cost and benefits distribution conflict in the action or inaction assessment. As affected groups or individual ones, the benefits coming from acting or not acting are difficult to measure. So, it is usual that the one who is receiving the costs of solving or avoiding a problem would claim for that, while the beneficiaries are not so easily mobilized.

Administrations must include these considerations in the culture and assessment procedures in order to decide weighing up the economical, social and environmental costs and benefits distributions in the different temporal and territorial scales.

5.3.6. Participative political culture

Different public instances have revealed among citizenship a feeling of lack of legitimacy and transparency of the decision-making process. Scientific and technical knowledge is essential but not sufficient to link political performances to citizens' requests. It is required that the political culture (understood as the group of subjective orientations towards politics that affect the way in which citizens interact with the political process) has a participative nature.

The conventional framework for the performance of social actors does not contribute to the emergence of powerful and lively public policy networks. Governmental and non-governmental actors are highly interdependent but with completely different mental maps, with strong asymmetries concerning the organization and participation costs and benefits.

The involvement of multiple social actors and stakeholders in the socio-political process towards sustainability allows them to own this process, making the adopted solutions more legitimate and qualified. We are not referring just to sporadic procedures of public consultation but to a participative political culture that allows the permanence of decisive procedures where discussions, deliberations and, above all, the joint reflection that makes possible the mutual learning and the adoption of decisions agreed by consensus are welcome.

It is also necessary that public authorities are active when encouraging implication and collaboration of all actors in a common effort to define and agree main SD objectives. The procedures of Local Agendas 21, as far as they efficiently involve the actors, are used to create by mutual consent the future strategy and structures that will perpetuate a responsible action throughout the time.

An open and active policy making requires new types of partnerships and cooperation between public and private actors. The strategies promo-

ted both by the Agenda 21 international movement and by the EU Fifth Environmental Action Programme emphasize the vital role of partnerships to bridge the gap between the public and private spheres.

5.3.7. Culture of sustainability

Culture, generally speaking, includes the beliefs, values and rules that guide the attitudes, decisions and behaviours. Therefore, the institutionalisation of sustainable development values is required. This sustainability culture respects the environmental limits and the socio-economic needs of the rest of the citizens, whether these are close, far or even future generations.

Transition towards SD implies that the whole society will have to act as socially and environmentally responsible citizens, through values such as solidarity, community spirit, tolerance or respect for different realities. Public authorities must get involved with all the available resources in order to make SD principles known and understandable.

5.3.8. Social capital strength

A good governance for SD system requires that society - and the various communities that constitute it - has a certain level of social capital. Many definitions of social capital have been put forward since the concept first appeared in Hanifan's discussions on rural school community centres¹. Putnam², for example, argues that social capital refers to connections among individuals -social networks and the norms of reciprocity and trustworthiness that arise from them. A certain level of social capital could thus favour the penetration of SD values, not only for the conductivity existence that makes easier communication and diffusion, but also because SD points at collective interests.

Social capital can be strengthened in two ways. On the one hand, it can be strengthened as an effect of an indefinite number of individuals or groups getting involved in a more or less continued way in subjects or processes to achieve shared interests. On the other hand, it can be boosted through governmental actions, for example, actions that give support to community initiatives or organizations, specific actions to increase social interaction through information and communication technologies, or through actions that increase human capital like access to university studies.

In any of both cases, social capital will be increased when individuals and groups have their capacities, abilities and necessary expertise to interact and act in their own benefit strengthened. Moreover, it will happen

1 Hanifan, L.J. (1916). "The rural school community center". *Annals of the American Academy of Political and Social Science*, 67: 130-138.

2 Putnam, R. D. (2000). *Bowling alone. The collapse and revival of American Community*. Simon and Schuster, New York.

when cooperation and consensus building between all different actors will be also reinforced.

5.4 ANALYTICAL FRAMEWORK TO STUDY THE GOVERNANCE FOR SD

This section briefly explains the key elements to be considered in an analysis of the governance system structure for sustainable development and of the existent institutional capacities towards SD within a given society.

Territorial scales

The analysis of the governance system for SD in Catalonia has to be, to some extent, inserted within an analysis of governance for SD within the supra and sub regional territorial levels. In this sense it will have to be considered that the European Union is at present building a federal structure on the subsidiarity principle. The achievement of this principle can be seen in the transference of sovereignty by the states to their regions and cities. Within this process of regionalization of Europe, local and regional authorities are presenting their specific demands.

Catalonia's governability is under the influence of governability at the state and European levels, but also depends on the particular provincial and local spheres of the country, as explained before. Thus, governability in Catalonia is immersed in a diversity of governance subsystems throughout the local-global axis, and it will have to be analysed according to this.

Actors maps and networks

Any governability analysis begins with the establishment of the actors' map. The strategic map of actors is studied from a conventional governability analysis. Even so, documents like Agenda 21 introduce the discussion on the involvement of different social groups in the planning towards sustainability. Therefore the analysis we propose has also opened the range of actors upon whom the analysis has to be based.

We are pointing at the following key elements for the actors' analysis: interaction rules explicitly or implicitly adopted; power resources controlled by them; their internal soundness; types of strategic alliances with other actors; their prospects, conflicts and mental maps. In addition, it will also be necessary to identify their capacity to represent or to add the interests they are supposed to lead.

Institutional framework: rules and procedures

The "rules of the institutional game" go beyond the legal rules. Thus, it is necessary to distinguish in the analysis between formal and informal rules:

Formal rules or legal framework: competencies, political instruments set by legislation, vertical and horizontal regimes of relationships between actors, validity of the coherence principle among policies, etc.

Informal rules: since normative aspects do not explain all the guidelines and processes happening in a practical level, it will be appropriate to

analyse the intergovernmental coordination in the local-global axis, the coordination procedures for sectorial policies, and the existence and application of innovative policy instruments.

Transversal analysis

The proposed analysis has a transversal structure characterized by the following questions:

- Which are the stakeholders or other decisive actors (public and private ones) who are formulating the content of what a compromise towards SD means.
- Which has been the range of opinions and definitions towards SD in the social and political discourse, which concrete challenges have been formulated.
- What are the processes through which decisions are formulated regarding SD subjects and SD action plans.
- Which are the past, current and foreseeable conflicts. Also, which are the mechanisms and processes for their management, as well as the consensus and learning reached out of them.

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IV Articles on environmental governance by environmental advisory council members or staff

1. ENVIRONMENTAL GOVERNANCE AND THE COMMISSION WHITE PAPER: THE WIDER BACKGROUND OF THE DEBATE

(Christian Hey, SRU)

1.1 INTRODUCTION

In July 2001 the European Commission launched a debate on governance in the EU with its White Paper (Commission of the European Communities, 2001a). The White Paper has to be seen in the context of a wider debate on institutional reform and constitution building of the European Union. It may be seen as a complementary or by some commentators even as an alternative strategy to the constitution building process launched by the Nizza Summit in late 2000.

The governance debate is about strengthening the problem solving capacity of the EU as well as about improving its democratic legitimation. The Commission White Paper is essentially advocating the mobilisation of organised interests to become more involved in network type new cooperative arrangements as essential elements of better performance and better democratic accountability. The approach chosen by the White Paper is not the only possible approach. As further options the idea of further integration towards democratic, federal and state like institutions or improvements of intergovernmental cooperation are discussed.

This debate is relevant for environmental policy making in the EU. New forms of governance possibly could overcome opposition for certain policies, overcome inherent deficits of traditional environmental legislation and improve the implementation and enforceability of environmental legislation. Furthermore the European Commission is already experimenting with new governance models in the environmental policy making since the beginning of the 90ties. This makes it worthwhile to assess the performance of such experiments. Thirdly DG Environment has declared, it would like to become the lead DG in governance (Verstrynge, 2001). An assessment, where and how to do this best, therefore could make an impact on the proper design of new governance arrangements. Last not least forms of governance may be ambivalent. They may increase the problem-solving capacity in the environmental policy field - but they also may, if understood as withdrawal of government, reduce the level of ambition and the speed of environmental policy.

The following background paper shortly summarises the general approach of the White Paper and its key projects. It then makes a review of the generally critical responses by political scientists mainly concerned with the dynamics of European Integration. The central concern of scholars of European Integration is the limited contribution of the White Paper to

overcome the legitimization deficits of European Institutions. It then identifies the needed governance changes from an environmental policy perspective and assesses the strengths and potential risks of new governance arrangements for environmental policies. A key argument is, that the well functioning elements of EU Environmental Policy Making should not be substituted by new governance arrangements and that new governance arrangements only deliver innovative and ambitious environmental policies if certain conditions for institutional design are met.

1.2 THE WHITE PAPER APPROACH

The White Paper offers a blunt analysis of the shortcomings of the institutional system of the EU. Alienation from EU Policy making, reduced citizens support and identification with key policy projects and low levels of participation in elections for the European Parliament characterize a growing gap between the citizens and the EU. The White Paper notes widespread disagreement with the priorities of the EU agenda, which does not address the real big problems. The White Paper deplores insufficient Member States communication about achievements of the EU and widespread popular ignorance on EU policy issues. In short: the Commission perceives a legitimization crisis.

The White Paper has to be seen in the context of the scandals, which led to the early retirement of the Santer Commission and the constitutional debate for an enlarged and deepened Europe. The White Paper is part of a reform package aiming at re-establishing the credibility of the Commission. It is also a document, clarifying its own responsibilities and tasks in a future enlarged and deepened Europe. While the constitutional debate focuses on institutional reforms related to the voting rules, fundamental objectives of the EU and the delimitation of competences, the White Paper addresses policy management within the existing institutions.

In its consequences however the Commission advocates a clearer separation of executive and legislative functions. The legislator should concentrate his activities more on his core tasks to give guidance and general orientations of political nature. Hence the legislator should be relieved from details (CEC 2001, p. 68), which the Commission considers as mainly executive tasks. Also the Commission should have a stronger focus on its core task to initiate policy and to supervise implementation more effectively (CEC 2001, p. 12). The Commission wants to become a true executive similar to those in member states (CEC, 2001, p. 68). This may however also imply that many important decisions will no more be taken by the Council of Ministers and the European Parliament within the legislative process, but rather by other players in processes managed by the Commission.

The White Paper on Governance intends to overcome the legitimization crisis, basically by mechanisms strengthening the participation and active (self - regulatory) role of associations, regions and municipalities in the design and especially the implementation of EU policies. The mobilisation

of civil society, which according to a definition shared by the Commission consists of organised interests, is intended to overcome the legitimisation deficit of EU policies. Policy making should change from a hierarchical top-down approach towards networking and mechanisms of flexible feed back (CEC 2001a, p. 18). The White Paper approach is that public policy goals shall be implemented by mobilising stronger responsibility and ownership of the business sector and other organised interests and hence by relieving both the European legislator and the Commission. The Commission has formulated a number of principles (openness, participation, responsibility, effectivity and coherence) to guide cooperation between the institutions and with associations (so-called civil society).

The White paper outlines a number of very useful ideas and proposals to improve practices for consultation, public participation and transparency. The spirit of those ideas must be welcomed. But there is an other set of ideas, which need closer scrutiny, especially those associated with the concept of better regulation.

In June 2002 the Commission has published a communication, explaining some of the activities aiming at “simplifying and improving the regulatory environment” (CEC 2002a)). The Commission states, that the aim of simplification is “not to deregulate the Community or limit its scope for action”. The aim is according to the Commission to make regulation less complicated, easier to understand, more implementation friendly, increase legal certainty and to save time and to reduce costs.

The action program suggested by the Commission contains in total 17 actions. Many of them are useful and need not deeper discussion, such as minimum standards for consultation, the introduction of review clauses in legislation or a prioritisation in infringement procedures against member states. Some others seem to be unrealistic such as an impact assessment of substantial amendments to Commission proposals formulated by Council and Parliament. More important are those, which might restructure the roles of Parliament, Council, Business Associations and the Commission respectively in the policy making process:

Limiting directives to the essential aspects of legislation (CEC 2002a, p. 12): The Commission wants to come back to the original idea of a directive, which sets broad objectives and leaves the detail to “executive processes”. This idea is linked to reflections of the Commission on abolishing or at least reforming the so-called “Comitology”¹ procedures, which give member states a direct decision-making power on implementation proposals by the Commission. The Commission intends to assume “full responsi-

1 Comitology is a word for the different committees, which assist and control the Commission in the implementation of EU directives. The committees consist of delegates from member states and Commission officials. There are three types of Committees, with different internal decision-making rules: Advisory, management and regulatory committees. The word “comitology” stands for the complexity of the different decision-making rules, each finding a different balance between member states and the Commission.

bility for its executive function” (CEC, 2002b, p. 4) and offers the legislators instead an indirect “supervision” role. Another option to take over executive functions is the creation of regulatory agencies (CEC, 2002b, p. 5). An internal Commission network will be set up as a watchdog to control, if new directives really are “proportional” in this sense. This proposal is relieving the legislator from decisions on complex details, but it also delegating key decisions with potential political outreach to those players, who take over executive functions.

A framework for co regulation (Com (2002)278, p. 13): The Commission wants to use co regulation more systematically. The idea of co regulation is to combine legislation with self-regulation. While legislation is supposed to define scope, general objectives and deadlines, it is up to the business-sector to take responsibility on how to achieve the targets. This approach is supposed to combine the strengths of legislation, e.g. democratic accountability and legal certainty, with the strengths of self-regulation, e.g. consensus, acceptance by the business-sector, flexibility etc. Examples for co regulation are the use of the so called new approach of harmonisation and negotiated agreements.

Simplifying and reducing the volume of Community Legislation (Com (2002)278, p. 14): The Commission wants to promote the streamline, to consolidate and to slim down existing legislation with the aim to reduce the volume of EU legislation. The objective formulated in an earlier Communication (CEC, 2001b), based upon the “Mandelkern- Report”, is to reduce the volume of legislative texts by 25% by January 2005. The Commission suggests to create ad-hoc bodies, which screen existing legislation and make proposals for simplification.

The Commission plans to further elaborate those actions in the course of the year 2002 and 2003. In July 2002 the Commission already published a communication on how to use voluntary agreements within the above mentioned framework.

1.3 ASSESSMENT OF THE WHITE PAPER APPROACH

Any assessment of the White Paper approach depends upon the normative and analytical perspective. One may differentiate between a general perspective of European integration and a more sectoral environmental policy point of view. Both come to different assessments. Scholars of European Integration focus upon the question of democratic legitimization. Scholars of environmental policy making tend to concentrate upon environmental policy effectivity. Both aspects are naturally interlinked and shall be reviewed below.

1.3.1 Insufficient to overcome the legitimization crisis

Any policy should be effective to solve a given problem and democratically legitimated by respective procedures, giving citizens a chance to influence a policy.

Many scholars of EU integration argue, that the White paper falls short of both requirements. While the proposals of the White Paper have a focus on effectivity and efficiency (Kohler-Koch, 2001, p. 5) especially as regards more technical issues of regulation, it does not really address the big challenges (Scharpf, 2001, p. 3). The White Paper does little to address the challenges of enlargement or the still prevailing asymmetry between market integration and positive integration (*ibid.*). Among such key issues feature the lack of a coordinated macro-economic policy or of a tax policy on capital income or environmental policy integration (for the shortcomings of the latter: SRU, 2002). Much more fundamental changes would be needed to overcome those deficits than the suggested White Paper Reforms.

The White Paper uses the word civil society, but in practise means the mobilisation of organised interests, to overcome the democratic deficit (input legitimization) (see the critics by Magnette 2001, Kohler-Koch 2001; Eriksen 2001, Armstrong 2001). A stronger involvement of organised interests however does not necessarily imply stronger popular support. Organised interests at EU level form a “policy elite” (Kohler-Koch 2001, p. 5). It is far from evident, that they are able to effectively aggregate the will and the very divergent interests of their members (Eichener 2000; pp 254ff; Joerges, 2001, p. 18). Membership influence is filtered by the multi-level nature of such organisations. Kohler-Köch (2001, p. 9) even criticises the ideological and harmonistic use of the concept of civil society in the White Paper. Civil society gathers many divergent interests and those most strongly voiced in Brussels are not necessarily identical to those expressed nationally or regionally.

The White Paper does not systematically address the question, how the Commission will make use of the consultations and more transparent policy processes. Key factors for the policy proposals are which organisations the Commission considers as representative, how it strikes the balance between different and contradictory interests and positions and which ones find strongest attention by the Commission (*ibid.*). It is evident, that the Commission as the key player maintains full discretion on how to give weight to the different stakeholder inputs. While potentially weakening other channels of legitimization (Parliament and Member States) the White Paper gives the wrong impression, that the Commission would be the “lonely hero” cooperating with civil society. Scharpf (2001, p. 7) even reproaches the Commission of “enlightened dictatorship”: the Commission listens carefully to the arguments put forward by associations and then makes up its mind for its policy proposals. The role of the Commission as process manager and central filter for the relevant and less relevant interests and arguments is to be reinforced by many of the White Paper proposals. Such a Commission centred perspective might even be contra productive as regards popular support for EU Policies (see also: Möllers 2001, p. 5). Principles like openness and participation sound quite differently in the light of such a criticism.

Despite of some proposals, like the use of online communication, the

White Paper fails to address the question how to organise not many technical but political debates involving a European public. The key issue of democracy in Europe, the link between the European institutions and a European public and as well as a European wide political debate, is not really addressed in the White Paper (Möllers, 2001, p. 5). Some scholars therefore wonder, why those players, who might be the first to be able to organise such debates, the political parties, are not systematically discussed and promoted in the White Paper (Steinberg 2001, p. 2).

The White Paper also underestimates the key role of Member States as source of legitimation. Member States may anticipate difficulties of acceptance within their constituency (Kohler-Koch, 2001, p. 6, Scharpf 2001, p. 5).

The legitimation crisis of the EU basically results from the fact, that within the EU citizens cannot make real choices. There is no one, who can be made responsible for wrong orientations and who could be sanctioned by citizens (Amstrong 2001, p.1). Policies are the result of technocratic decisions by elitist actors. This remains unchanged by the Commission proposals.

Most scholars therefore conclude, that the real hidden agenda of the Commission proposals is, to regain lost ground (Héritier 2001, Wincott 2001, Scharpf 2001, Kohler-Koch 2001). The introduction of the co-decision procedure has strengthened the role of the European Parliament and the Council at the expense of the Commission. Many institutional proposals (e.g. reform of Comitology, framework directives, threat to withdraw commission proposals, stronger role of associations in policy making etc) will effectively reinforce the key role of the Commission at the expense of the other institutional players. While claiming, that the Commission does not intend to reform the “methode communautaire”, its proposals would considerably change the present institutional power relationships between Council, Parliament and Commission. Strengthening a supranational player, who frequently has vested regulatory interests, may contribute to better regulatory policies (so for instance: Eichener 2000), but will not necessarily overcome the democratic deficit.

While many scholars agree however on their critical analysis of the White Paper, they suggest different alternative paths. As alternatives to the networking approach of the Commission one can differentiate between a more intergovernmental approach (e.g. Scharpf 1999) and a more federalist approach, which identifies opportunities for a gradual development towards a European civil society with a European public debate, political culture and hence a democratic perspective (Habermas 2001).

The intergovernmentalists argue, that the nation remains for the foreseeable future the entity, where solidarity, redistributive policy, public political debate and sufficiently strong collective identity are established, which are a precondition for any policy which would require sacrifices from some parts of society in favour of others. Such conditions can not be easily established at EU level. The national state therefore remains the key actor who can manage certain types of policies, especially those with

redistributive effects (Scharpf 2001, 1999). Direct democratic legitimation of EU institutions, without national intermediaries, will not work therefore. As a consequence the intergovernmentalists advocate strategies for further integration which rely on the key role of member states. The “open method of coordination” as established in the Lisbon process, where member states agree upon some strategic targets but leave the means to the national levels belongs to the favoured mechanisms for less integrated policy areas. Other proposals take into account of the different levels of economic development and productivity, such as the idea of “two level standards” - a higher level for more advanced and a lower for less advanced countries or cooperation solutions between like-minded countries (opt-out rules, variable geometry, flexible coordination) (also: Holzinger/Knill 2001, S. 1005). Such flexible approaches increase the problem solving capacity, while relying on member states as the most important source of legitimation.

The federalists perceive already now embryonic elements of European media projects and a European public, thus of essential preconditions of European democracy. Summits receive media attention everywhere in Europe and hence initiate debates on similar issues throughout Europe. European integration is considered as a collective choice, whereas democratic institutions, a European public and a European communication culture can evolve in parallel (Habermas 2001; also: Töller 2002, p. 185ff). The optimists warn against the self-fulfilling prophecy of the pessimists. The European Parliament (Kaufmann, 2001) develops its critics on the White Paper from this vision of a strengthened democratic legitimation by a representative democracy. Therefore the Parliament strongly criticises the Commissions proposals, where they weaken the role of the European Parliament.

A more intermediary point of view is, that some issues may allow for a more integrationist, supranational path others not (Kohler-Koch 2001, S. 13). In any case there is little doubt, that the visionary position of the federalists is not suitable to guide institutional design for the near future but that any institutional design should be open for a visionary perspective on democratic integration.

The message resulting from this debate is, that weakening the two players which directly or indirectly can claim to represent a democratic constituency and which can be made responsible by general elections, the European Parliament and national governments, risks to backfire. The more EU policy making becomes a matter of a supranational EU policy making community the less citizens may identify with this community and the more vulnerable it might become to all types of ant-EU populism. Sometimes even technical details (such as the minimum size for a tradable apple) become an issue for such a populism.

1.3.2 The environmental dimension of the White Paper

From an environmental policy point of view one has first to identify those

problems, which are not sufficiently addressed by the present system of detailed regulation. One has also to identify those issues, which function satisfactorily and which should not be changed. As a second step one can assess the experiences, which have been made by new governance approaches, such as co regulation, voluntary agreements and devolution. On this basis one can formulate a number of key conditions for effective and environmentally accountable governance. Those conditions finally may be used to assess specific proposals of the Commission to be developed in the course of the next future.

The need for new governance models from an environmental policy perspective

There is widespread agreement on three key shortcomings of EU environmental policies, which justify further reflection on further institutional innovation:

a. Environmental legislation contributed to reductions of some pollutants, but failed to solve a number of environmental problems (see: EEA 2001; SRU 2002). A key issue is, that harmful sectoral market or policy trends could not be changed due to the so far relatively unsuccessful steps towards environmental policy integration (ibid.). Environmental policy integration is also a governance issue, aiming at a better coordination and coherence between sectoral policy communities.

b. Closely related to the poor record on environmental policy integration are the deficits to manage complexity. The structure of environmental problems has changed from pollution by installations towards pollution by diffuse sources. Farming practices, mobility trends or consumption patterns (including products and chemical substances) are drivers of many of the so called “persistent problems” (SRU 2002). The challenge can be illustrated by the problems of controlling ten thousands of chemicals or an equal number of different products, which have potentially negative effects. The multitude of sources, the different environmental problems they may cause, the diversity of local situations as well the substantially higher legitimization needs of a more precautionary and comprehensive (compared to a danger averting) policy approach are a challenge both to the instrumental choice and to the governance mode. It is evident that a single legal text cannot ensure the design of environmentally friendly products. Many of the specifics must be delegated. It is also easier to legitimate a policy, which prevents imminent harm than a policy which would improve quality of life or reduce general pressures on the environment. The policy approach, which was successful for installations or cars, the setting of emission limit values on the basis of knowledge on Best Available Techniques, does not work properly in such cases (Demmke/Unfried 2001,87; Toeller 2002; see also: European Commission 2001c). As regards instrumental choice more generic instruments are required (such as management systems or taxation of inputs). As regards governance modes either the mobilisation of new knowledge and sources of legitimization is needed or an approach, which allows prioritisation.

c. The shortcomings of implementation belong to the most challenging problems of environmental legislation. Implementation deficits can be less strongly felt in the case of internal market linked product standards, than in the field of monitoring and reporting requirements, procedural law and programming (see: Demmke/Unfried 2001, p 112). Deadlines for implementation are frequently exceeded. Implementation deficits derive from the multi-level structure of the EU, where the transposition and implementation of European legislation is under the control of member states or regions (Lübbe-Wolff 1996, p. 1). . The European Commission as guardian of the Treaty only has indirect possibilities to ensure effective implementation, by monitoring or by reacting to complaints. The legal way of suing non-complying member states may be very effective, but it is a cumbersome multi-stage process, which only reaps fruits after years. Presently the Commission is still suing member states because of directives, which have been decided in the 70ties. The compliance problems of EU legislation raise the question, if there are not better mechanisms, next to suing non-complying countries (see: Commission of the European Communities 1996). The White paper contributes little to the first deficit. Some ideas, like the target of internal cohesion and the reform of the General Affairs council might be helpful to promote environmental policy integration. However the governance debate launched by the White Paper has little explicit reference to the debate on environmental policy integration, which has lost momentum.

The complexity and enforcement problems may be better linked to the governance agenda. Devolution, co regulation, self-regulation or the establishment of regulatory agencies might all be potentially suitable approaches, to manage complexity. The enforcement problem is also linked to some of the governance proposals (see: Demmke/Unfried 2001): More indicative legislation may give Member States more scope for implementation. Furthermore networking, benchmarking and calibration during the early phases of implementation may also be helpful for better enforcement. Finally, by agreements between Commission and stakeholders or the regions , or by the establishment of regulatory agencies, the Commission may get a more direct control about implementation, not being dependent on the acts of different autonomous intermediate players. If and under which conditions those hopes materialise, needs to be analysed.

Strengths of the present system of environmental policy making

In any case despite of the above mentioned shortcomings and challenges (which besides are nothing particular for the EU level), one has to acknowledge, that EU environmental policies might also loose something, if changes would be too fundamental.

Generally European environmental policies must be considered a success story of international cooperation (see for a literature review: Hey, 1998, p. 257ff; also more recently: Eichener 2000, more critical Knill 2002, Demmke/Unfried 2001). Policy analysts find considerable variation in the quality of the individual pieces of environmental legislation. Nevertheless

in terms of quantity and of quality very often a level of protection could be achieved, which was closer to the pioneering countries than to the laggards. Environmental policies could successfully avoid the “joint policy making trap”, the policy stalemate caused by a few national veto players. European environmental legislation has adopted an eclectic patchwork (see: Héritier et. al. 1994, Eichener 2000) of regulatory approaches. The instrumental mix reaches from procedural requirements aiming at strengthening decentralised learning processes (see: Heinelt et. al. 2000) over limit values, thresholds, targets and controls centrally establishing a certain minimum level of protection (overview over EU environmental legislation: Krämer 1999).

The available literature identifies some of the institutional specifics of the European Institutional System as key factors for this relative success story of international cooperation. Most are linked to the existing system of environmental policy making, only a few have a certain link to the “new governance” models (for a systematic overview of those factors: Eichener 2000).

The Codecision Procedure with the European Parliament, qualified majority in the Council and the key role of the European Commission as “process manager” in the legislative process (initiation monopoly for proposals; right to withdraw or modify proposals through the process, broker between the Council and the Parliament) generally contribute to results, which are higher than a “lowest common denominator” and even higher than what could be expected from a winning coalition of a group of member states.

The institutional system of the EU and the potential constellations of interests and actors are different from case to case, so that generalisations are difficult. However there are good arguments to believe, that Commission officials have a certain preference for innovative, welfare increasing, regulatory solutions, since welfare and efficiency are key issues for the legitimization of the Commission (Jachtenfuchs 1996). Commission officials therefore are keen to take innovative national solutions as model for their European policy proposals (Héritier et.al. 1994, Peters 1994). Therefore the Commissions right to initiate policies is an institutional key factor for environmental policy innovation (see also: Andersen/Liefferink 1997).

The European Parliament, as the other supranational player, is not by definition a green player, but it is frequently helpful. The European Parliament often links green issues with institutional battles over its influence and the dynamics of European integration. Environmental policies often need a stronger European approach and hence are especially suitable for such types of issue linkages. Furthermore many Members of Parliament, across all parties, are relatively distant from their respective constituencies, from national governments and are free to be responsive to environmentalists arguments. Coalition building within the Parliament is more variable and less predictable than in national Parliaments, where normally the government majority supports the governments proposals.

Such a “government majority” and hence the voting discipline associated with this majority does not exist in the present EU parliamentary system. The present Parliament was frequently able to form a “green majority” of social democrats, greens, liberals and some conservatives, which was sufficiently strong to negotiate for concessions by the Council of Ministers during conciliation talks. Variable environmental coalitions therefore often have good success chances in the European Parliament (for this more optimistic assessment: Eichener 2000, p. 192f; Hey 1998; Kraak et. al. 2001). The cessation target for the release hazardous into waters, a wider scope in the SEA directive, binding EURO IV norms for cars by 2005, emission control standards for existing large combustion plants, binding medium term targets in different clean air directives substances were some of the green concessions the European Parliament won from the Council, where it sometimes went beyond a Commission proposal. Frequently the Parliament supported stronger monitoring, stricter deadlines and better requirements for public participation. One may also find examples, where other majorities were formed, but in terms of quality and quantity those are less relevant than the positive examples.

The formal legislative decision-making process therefore offers multiple opportunities for legislation aiming at a high level of protection. Environmental legislation also frequently has been a direct or indirect spillover effect from internal market objectives, either to harmonise different product requirements which would cause barriers to trade or to harmonise process requirements which indirectly could distort terms of competition.

Also the assessment of the present system of Comitology is generally positive as regards technical issues (see: Töller 2002, Eichener 2000). The different committees consisting of representatives from member states assist the Commission in the implementation of legislation, the specification of general requirements or the adjustment of technical annexes to the state of art. Many of them have developed a problem solving, cooperative and deliberative culture focusing on finding consensus, rather than defending national interest only. This is the case, especially if cooperation is long-term cooperation, a group formation process takes place and if the type of issues allows for relative autonomy from a national political mandate. Such conditions can be found frequently but not always (see for a critical assessment: Töller 2002, pp51ff, also very differentiated on actual performance: p523ff). The present system of Comitology might need stronger control by the European Parliament, which only has take-back opportunities with high hurdles, but it considerably increases flexibility, national feedback and is helpful to specify general legislative requirements (ibid.). Töller (2002, p. 526) however emphasises, that Comitology cannot overcome deficits and shortcomings of the legislative program, which is key for the proper functioning of the committees. The comitology system also tends to fail, to solve political conflicts. Cases, such as the release of GMO's or a proper conditions for energy recovery operations, could not be decided in Committees. Committees function within a well defined political mandate, for the flexible adjustment of technical requirements to new

scientific evidence or technical progress. But decisions on the level of protection should be generally be made by a proper legislative venue.

Other factors for a high level of protection are rather linked to some institutional changes, which might associated with the governance agenda of the Commission. Often the Commission could only mobilise support from member states by a strategy, which only step by step was specifying targets and obligations. Such a process-orientation offers support for a general policy orientation under a “veil of ignorance” about the full cost and benefits of the final shape of the policy. Further commitments will only be required in later stages and by specifying measures. Such a process-oriented strategy will allow gradual support for a policy, which might not be acceptable, if proposed as a whole at one moment (Eichener 2000, p. 309ff.). The Water Framework Directive, adopted in 2000, is a case in point of such a process oriented strategy, which leaves many decisions to later stages and also other institutions, arenas and players (Hey 2001). The concept of “framework” directive is not new in the context of environmental legislation. Framework Directives were frequently specified by daughter directives and hence function under the “legalistic” approach. This should be differentiated from the White Paper ideas, to relieve the institutions from legislative work and from consolidating existing legislation. The White Paper advocates different forms of devolution and factual relief. It must be emphasised, that for environmental policies the distinction between political and technical issues is not very simple. The choice of a technique as “best available”, may be controversial, may have ramifications on the costs of a certain sector and often is based upon value judgments. Under conditions of ignorance and uncertainty any assessment of risk contains a judgment. Therefore the link between the technical levels and the political ones needs more careful design than in other policy fields.

From an environmental point of view therefore it would be risky to generally substitute legislation by “soft law” or by shifting key decisions from the formal political agenda to other fora.

Assessment of the performance of the new governance models already in practice

Since the early 90ties the European Commission is already experimenting with new governance models, which rely on stronger involvement of associations throughout the policy cycle and the wider use of self-regulation and reflexive law) (see: Pallemmaerts 1999, Knill/Lenschow 2000 a and b; Demmke/Unfried 2001; Hey 2000 and 2001; Glasbergen 1998; Golub 1998). The following innovations can be observed:

Associations and experts are systematically incorporated in the early phases of policy design and also in the implementation processes. The institutional design reaches from sectoral ad-hoc committees, over systematic consultation to consensual reports in pluralistic committees (see: Wurzel 2002 on the Auto-Oil Programme; Hey 2000 on clean air, IPPC and chemicals policy, Toeller 2002 on the EMAS committee).

The Commission has been experimenting with voluntary or negotiated agreements. The best known example is the agreement with the car manufacturer on the CO₂-reduction of cars from 1998 (a critical analysis: Keay-Bright 2000). There are also few other voluntary commitments or negotiated agreements (Wurzel/Brückner et. al. 2001).

First experience with co regulation, the combination of general requirements and targets defined by a legislative act and self-regulation by industry led bodies could be made with the implementation of the packaging directive (SRU 2002, p. 200ff, Danish Environmental Protection Agency 2002). Further ideas to use the so-called new harmonisation approach for environmental policy objectives have been developed in the Green Paper on Integrated Product Policy (European Commission 2001c).

There are many framework directives in place which apply a myriad of instruments and combine a legislative program, with networking on different issues and levels (see: IPPC-directive, Water framework Directive, Habitat-Directive, Directive on Ambient Air Quality).

Those experiments with environmental governance rely on network building and horizontal cooperation between public authorities and associations (Héritier 2002). Normally they do not substitute the legislative process, but they combine it with other modes relying more on consensus mobilisation, deliberation and arguing (Prittwitz 1996) and on functional rather than territorial representation of interests. They combine a publicly accountable legislative process with processes which are less visible in technical committees.

It would be premature to assess those innovations finally. There is little empirical literature available (see for instance: Héritier 2002, Knill/Lenschowl 2000b; Demmke/Unfried 2001 on the Water Framework Directive; Heinelt et. al. 2000 on EMAS and EIA).

Theoretically new forms of governance are associated with the hope, that by earlier involvement of the target groups of norms in early phases of the policy cycle, resistance in later phases can be anticipated and reduced and policy design can become more implementation friendly. Reflexive law relies on learning processes, on the mobilisation of citizens and on providing more autonomy to member states and authorities (see: Heinelt et. al. 2000; Knill/Lenschow 2000b, p. 5). Furthermore more and better knowledge can be created by open and information generation policy processes. New governance models promise to increase the “political and institutional capacity” of environmental policy making (Héritier 2002).

Recently some doubts have been raised, if those theoretical hopes materialise in practice everywhere and if the expected benefits do not have a certain price:

A key criticism is, that the invitation to vested interests to take responsibility in different phases of the policy process, also offers them multiple veto points. Target setting hence may be less ambitious than by a “political process”. This can be explained by the different constellations of actors in the two alternative settings. During the process of making a directive, environmentally oriented players in the Commission, Member

States and the Parliament have key positions, process leadership and decision-making power, even if they are subject to lobbying and pressures from other departments and industry. In a constellation, where a business sector, offering little business is negotiating with the Commission and the Commission may be split between a pro business and a pro environment Commissioner, the Commission will not be able to negotiate equivalent levels of ambition. An example is the weakening of the CO₂- reduction target for cars during the negotiations with the car manufacturers on the agreement with the Commission (Keay-Bright 2000). Member States and the Commission originally wanted to achieve average fuel use of new cars of 120g CO₂/km and they got 140g. The negotiation power of the Commission was weak, because it had an instrumental bias for an agreement and no serious proposal for a directive in the drawers. It is a natural interest and policy of industry federations, to maximise discretion and to minimise binding requirements, even if individual companies may have a strong environmental record. This can be derived from the analysis of many business policy papers.

Also consensus seeking processes during implementation may reduce legal certainty (Héritier 2002; Knill/Lenschow 2000a and b), since outcomes may become less predictable. There is also some evidence, that devolution to technical, multi stakeholder or business-led committees may cause considerable difficulties, if this is result of a lack of agreement at the legislative level, if political conflicts are shifted to fora, which are not designed to solve such conflicts (e.g. IPPC-Directive, see: Hey 2000, p. 92 or the Packaging Directive, see: Commission of the European Communities, DG ENV.A2 - Sustainable Resources, 2002). A recent example is the Water Framework Directive, which has been criticised because of its ambiguities and deficiencies as a legal text (Demmke/Unfried 2001). The Water Framework Directive is a work program with general and ambiguous objectives, to be operationalised in later stages. Key decisions on what exactly is a “good ecological state” and where the generous derogations apply, will be made on a technical level. The outcomes of this devolution process still need to be assessed. The argument that this type of devolution is necessary to allow adaptation to rapid technological change is not fully convincing (Eichener 2000, p. 359ff). Also traditional regulation has a considerable potential to adjust technical standards to technical progress. Emission control for cars has been amended 4 times during the 90ties. From a legalistic perspective, law itself, should not be subject to bargaining and compromise finding, but only the policy process leading to a peace of legislation (Lübbe-Wolff 1996 , p. 5).

While “devolution” and differentiated decision making processes generally improve the problem solving capacity of the EU, this may take place at the expense of political control by member states and the European Parliament (Gehring 2000, also “Eichener, 2000, p. 253f, Toeller 2002, p 168). The question is, if and how the outcomes of committees and networks remain within the range of options, acceptable to the legislator. Do effective mechanisms to monitor and check the processes exist, which

prevent technical communities to get decoupled from the political will? Are the mandating framework directives formulated sufficiently precisely to check deviation from a mandate? Obviously there is a certain trade-off between effective mobilisation of expertise, which tremendously increases the capacity to generate and use information and democratic control. Generally the policy level lacks the knowledge to effectively assess and monitor processes at expert network level. The challenge is, to prevent decoupling of those two processes.

Also the stronger incorporation of associations in the policy process has a certain tradition in the environmental policy field. In most cases this incorporation however does not substitute the traditional legislative process, but rather enrich and complement it, both in the preparatory and implementation phases. In the past the Commission has rarely opted for co regulation type of solutions, such as the “new approach”, the devolution of tasks to European standardisation organisations in the field of environmental policy, because it had the justified fear that they would deliver inadequate levels of protection and overburden their self-regulatory capacity (Töller 2002, p. 524; see also critically: SRU 2002, p. 201ff). Therefore in the past a committee mechanism has been chosen, which allowed stronger participation of national administrations. It needs to be shown, why those fears expressed in the past now have become obsolete (critical: SRU, 2002, p. 202f).

Last not least the resources needed for the new types of governance are generally underestimated. The different technical processes need considerable coordination and technical support, imply travel to Brussels and coordination at home and need considerable time to find consensus. Those additional demands run counter to the budget constraints and even cuts, environmental ministries are facing nationally. Without such multilevel networking the Commission would be deprived of its most important source of information. Voelzkow (2002) has found, that participation of experts from the German environmental protection agency in the European Standardisation process is mainly voluntary activity after regular working hours. Industry associations claim, that they have invested more than 1 Million Euro for the input, of the work on one sectoral BREF in the framework of the IPPC directive. Representatives of non-commercial interests may find some public support, to participate in some of the technical fora - but due to resource constraints they only can expect to be influential in coalitions with representatives from public authorities or some industries. In this sense, the assessment, that the EU is already moving towards “associative democracy” (see Eichener 2000) by supporting environmental organisations to participate, considerably underestimates the needed investments for “public pluralism” aiming at balanced representation and influence. Much depends on how the Commission helps and supports organisations of “diffuse” interests to counterbalance the influence of economic interests and to offer a fair platform by respective decision-making rules. Without an active organisation forming and supporting role of the Commission, the reliance on self-regulation might overburden the capaci-

ties of European level associations (Eichener 2000, p. 254ff.) In total one can express considerable doubt, if the proposals towards devolution of executive tasks will really save time and costs.

The analysis of the potential risks of new governance models does not prove, that they necessarily will fail to increase the problem-solving capacity or undermine democratic accountability, but it shows, that a crucial factor is the proper political design of those arrangements. The worst, which might happen, is that governance models evolve in an institutional vacuum, which does not take into account of the above mentioned risks of policy delay, legal uncertainty, expertocratic decoupling, failure due to capacity overload or distortions by asymmetric influence.

Preconditions for the Design of governance regimes from an environmental perspective

As shown above, from an environmental perspective governance has to satisfy the triple challenge of environmental policy integration, of managing complexity and of better enforcement. The governance proposals of the Commission mainly may address the latter two problems.

From the analysis of the successful record of EU environmental policies it becomes evident, that next to the Commission the key role of the European Parliament should not be weakened by the devolution of technicalities with a strong political dimension. Careful attention should be given, that the self-regulatory and delegated executive activities do not develop an own dynamic which gets decoupled from the political will of the legislator or which creates facts, where the political levels have little alternative than to follow. Therefore new governance models should not be considered as an alternative to the traditional legislative process, but as a complementary and especially a subordinated process. The supremacy of democratically legitimated environmental policy should be generally accepted. The key players providing democratic legitimation, the European Parliament and the Council, should not be weakened by new governance models.

If due to the complexity of the issue devolution is considered to be necessary, the legislation should take utmost care of the proper institutional design for the delegated activities.

Objectives and quantitative targets as well as the mandate for technical work should be defined in an unambiguous way, as precisely as possible.

Mechanisms of "public pluralism" should be established, which ensure, that by clear decision-making rules, rights and obligations a fair balance between different interests and expert paradigms will be created. This should be neither be left to the full discretion of the Commission nor to technical bodies, like the normalisation institutions.

Furthermore the hurdles to intervene into the technical fora, for instance by safeguard clauses, complaints procedures and possibilities to bring issues back to the political levels, should be sufficiently low - in order to establish a credible threat of the shadow of democracy to techni-

cal committees. All this requires a communication strategy, which easily allows the identification the political core (the value judgements) in technical fora. This can be achieved by actors having a watchdog function, by independent assessment (competing expert networks), by monitoring and assessment.

Institutional design, which creates the conditions for effective public-private self-regulation under selective observation of Parliament and Council, would considerably reduce the effectivity - democracy trade-off of new governance models. Under the conditions, that sufficient resources will be mobilised, they may have the chance to increase the problem-solving capacity of the EU, as regards the management of complexity and better implementation by networking.

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2. COOPERATIVE AND SELF-REGULATORY APPROACHES TO ENVIRONMENTAL GOVERNANCE: A PRELIMINARY ASSESSMENT *(Helge Jörgens, SRU)*

2.1 INTRODUCTION

New forms of governance are increasingly being discussed within the European Union (Héritier, 2002; Metcalfe, 2001). In this debate which centres around the European Commission's White Paper on European Governance (European Commission, 2001a) and its follow-up documents, voluntary and cooperative approaches such as negotiated agreements between public authorities and private actors play a crucial role. Especially in the environmental field different approaches to co- and self-regulation are increasingly being thrown into the political debate. However, cooperative approaches are not altogether new to environmental policymaking. Not only have they figured prominently in the theoretical debate on environmental governance since the late 1980s. Over the last decade they have also increasingly become part of the real-life environmental policy-mix of most European Union member states. Based on theoretical reflections and practical experience with these new forms of environmental governance, this chapter provides a tentative assessment of voluntary and cooperative approaches in environmental policymaking.

2.2 THEORETICAL ASSUMPTIONS ABOUT THE ADVANTAGES OF COOPERATIVE APPROACHES IN ENVIRONMENTAL POLICY

In theoretical terms, voluntary or cooperative programs are often thought to hold a number of advantages over direct regulation. In terms of their effectiveness it is argued that cooperative approaches are more successful than direct regulation in making use of industry's inside knowledge about the processes through which pollution occurs and the technological options for effective and efficient pollution abatement (De Bruijn and Norberg-Bohm, forthcoming; Meadowcroft, 1998: 29). Moreover, negotiated agreements between polluters and public authorities may accelerate the process of rulemaking as they "evade the lengthy, unwieldy, and cumbersome process of legislative decision-making" (Héritier, 2002: 187; see also De Clercq and Suck, 2002: 11-13). Cooperative approaches of co-regulation or self-regulation may improve implementation by reducing the target-groups' resistance to environmental protection measures which they themselves have had a hand in drafting (De Clercq and Suck, 2002: 17-18). Last, but not least, they are expected to be more effective than direct regulation in promoting first-movers at the firm level, i.e. companies that voluntarily develop and apply more effective environmental protection technologies in order to position themselves prominently in newly emerging markets (De Bruijn and Norberg-Bohm, forthcoming).

In terms of their efficiency cooperative forms of environmental governance are expected to reduce public expenditure on securing compliance

(Golub, 1998b). At the same time, their openness as to the concrete measures through which environmental damage is to be reduced leaves great leeway to the target groups for choosing the most cost-effective way of pollution control (De Clercq and Suck, 2002: 13).

Finally, cooperative and self-regulatory approaches are sometimes thought to produce more legitimate policy outcomes as they involve more directly the target groups in the drafting and implementation of environmental programs. In addition, by building a more consensual relationship between regulatory bodies and industry, they may “decrease regulatory capture and lend legitimacy to environmental policy by substituting direct public involvement for command-and-control’s infamous ‘poacher and gamekeeper’ relationship” (Golub, 1998b: 6).

2.3 EMPIRICAL FINDINGS

These largely theoretical assumptions about their potential advantages have been influential in placing voluntary and cooperative modes of environmental governance on the political agenda of the European Union as well as their member states (for comprehensive overviews, see Golub, 1998a; Glasbergen, 1998; De Clercq, 2002; Jordan et al., 2003). However, the alleged advantages of these new forms of cooperative governance are not uncontroversial. First of all, in the political as well as the academic debate, there has been and still is a tendency to compare the empirically observed shortcomings of direct regulation to the theoretically assumed advantages of new modes of environmental governance. Only recently, a number of systematic and comparative empirical evaluations have demonstrated that in real life cooperative forms of governance also suffer from numerous flaws (OECD, 2003; De Clercq, 2002; De Bruijn and Norberg-Bohm, forthcoming).

These and other studies have found that the environmental effectiveness of cooperative forms of governance depends on a number of crucial preconditions. First, in order for self-regulation to be effective, quantifiable and binding environmental targets and timetables need to be set which clearly go beyond “business as usual”, i.e. improvements which would also have happened in the absence of any form of regulation due to “normal” structural or technological developments. Setting ambitious environmental targets which often affect basic material interests of the target-groups, however, is as difficult to achieve within cooperative arrangements as by means of direct top-down regulation. In both cases the results will above all “reflect existing differentials of power” (Meadowcroft, 1998: 33).

This point is crucial also for another of the other presumed advantages of cooperative approaches. The assumption that voluntary forms of governance can make more effective use of industry’s inside knowledge about the processes through which pollution occurs and the technological options for effective and efficient pollution abatement is highly questionable: more often than not, effective environmental protection is costly for industry and voluntary action beyond win-win situations cannot be expected.

ted to occur as a rule. It therefore comes as no surprise that, in practice, most “voluntary” agreements are in fact externally imposed or - in the official words - “negotiated” agreements (De Clercq, 2002; De Bruijn and Norberg-Bohm, forthcoming). This constellation of “imposed voluntariness”, however, does not create the right incentives for industry to disclose confidential information about the most effective measures to reduce the environmental impact of their operations. The poor performance of the German automobile industry’s self-commitment on the environmentally sound management of end-of-life vehicles clearly illustrates this point (Jörgens and Busch, forthcoming). Thus, deregulation and voluntary action is not necessarily a promising option for bringing into play the individual firms’ knowledge about the causes of pollution and the most effective ways of reducing it.

Another controversial assumption concerns the effective promotion of so-called first movers, that is firms that move beyond the legally prescribed level of environmental protection in an effort to gain advantages at a later point in time - advantages such as being the first in a newly emerging market or avoiding adaptation costs at a later point in time when stricter regulations are in place. An important condition for first mover strategies to lead to benefits at a later point in time is a continuous strengthening of environmental laws and standards (SRU, 2002). Without the prospect of “hard” regulation at a later point in time, firms will lose a crucial incentive to voluntarily move ahead in protecting the environment. The prospect of future direct regulation - independent of whether a voluntary program is successful or not - however, runs counter to the basic idea of voluntary approaches as a substitute for direct regulation.

Finally, empirical research shows that cooperative programs do not automatically accelerate the process of rule-making. Often the negotiation process leading up to a voluntary agreement has been just as lengthy as comparable legislative processes (for illustrative examples from German waste policy see Busch and Jörgens, 2002; Jörgens and Busch, 2002). Moreover, these lengthy negotiations do not necessarily lead to an agreement (Bressers et al., 2002). As regards co-regulation - for example in the European Union’s so-called “New Approach” to standardization (European Commission, 2000) - the decision-making process may even be extended as, in a first step, essential qualitative and procedural requirements are established in an EC-directive and, in a second consecutive step, “stakeholders are invited to elaborate the technical harmonized standards which provide a ‘presumption of conformity’” (European Commission, 2001b: 8). In order to become effective, these programs need to go through both the legislative process and stakeholder negotiation.

These constrictions regarding the effectiveness of cooperative approaches in environmental policy naturally have impacts on their overall efficiency. While it is largely uncontroversial that cooperative forms of governance in principle allow the target groups a substantial degree of flexibility to choose the most cost-effective means of pollution control (OECD, 2003: 14-15), similar efficiency gains are not found on the side of

the regulator. In a recent evaluation of voluntary approaches in environmental policy, the OECD has found their economic efficiency to be “generally low” (OECD, 2003: 14). Contrary to some early theoretical reflections, voluntary approaches are not self-enforcing and do not relieve the regulator from the necessity to critically accompany the whole process of designing and implementing the program. While “administrative and transaction costs vary greatly between different voluntary approaches”, it is clear that “if too few resources are spent in their preparation, negotiation and enforcement, their environmental impacts are likely to be very modest” (OECD, 2003: 15). In addition, the OECD-study shows that the combination of voluntary approaches with market-based instruments such as a tax or a tradable permit system “can trigger significant additional administrative costs, and the environmental integrity of the other instrument can be weakened”. The general assumption that a shift towards voluntary approaches will lead to more cost-effective environmental policies, therefore, cannot be maintained. Whenever a high level of environmental protection is aimed at, cooperative governance modes are not automatically the better choice.

Finally, as regards democratic legitimacy, voluntary approaches themselves show a number of potential deficits. Negotiated agreements, for example, where industry commits itself to a certain environmental performance while government, in return, agrees to refrain from direct regulation in this issue area while the agreement is in effect, severely restrict the range of available policy options for future governments (De Clercq and Suck, 2002: 12). This is aggravated by the fact that - contrary to traditional legislation - these agreements are often concluded in the absence of parliamentary control. Furthermore, environmental NGOs as well as the general public are usually excluded from the negotiations leading to an agreement - this stands in stark contrast to the general call for greater participation in environmental policymaking.

2.4 CONCLUSION

What are the consequences of this empirically informed assessment of cooperative and self-regulatory approaches in environmental policy? Above all, their mixed performance cautions against an imbalanced shift from direct regulation to new forms of cooperative governance. The above evaluation therefore supports the key message of the EEAC statement on Environmental Governance in Europe in that voluntary and cooperative approaches to environmental policymaking cannot a priori be seen as a superior solution to persistent environmental problems. In order for these forms of governance to be effective, a number of essential - and by far not self-evident - conditions have to be met. Moreover, the type of problem to be solved is essential for the choice of steering modes. It is not so much the abstract characteristics of different governance modes that are decisive for their performance, but their suitability for specific environmental problems as well as societal and politico-institutional conditions. Just as EEAC has rightly stated, effective environmental governance, therefore, requires

a differentiated decision-making process which takes into account differences in the type of environmental problem to be addressed as well as varying actor constellations and institutional framework conditions within the European multi-level system.

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3. THE ROLE OF IMPACT ASSESSMENTS FOR (ENVIRONMENTAL) POLICY INTEGRATION

(Ingeborg Niestroy, EEAC)

ABSTRACT

In a non-formalised way Impact Assessments are part of daily life and governmental decision-making: one reflects on the effects of a decision before deciding. As formalised, procedural instrument it has been introduced in EU member states, triggered by the EIA-Directive for the project level, and the recent SEA-Directive plans and programs. There has always been an underlying link to the environmental integration requirement of the EC Treaty, but only with its growing importance this became explicit.

Yet the introduction and application of this instrument, particularly for the more strategic or policy level has faced quite some obstacles, on which this article reflects. Also, scientific domains outside of planning that deal with EPI, tend to neglect this instrument and/or underestimate how powerful this tool could be if its potentials were fully used.

Either reluctance or underestimation apply for the EU level itself: The European Commission has not systematically implemented the requests, introduced by the Declarations to the Treaty of Maastricht and subsequently, to apply EIA for its own policy initiatives.

Recently there have been new developments: on the one hand the EU SD Strategy, which calls for 'Sustainability Impact Assessments', and the 'better regulation' package on the other side, have merged into one process of developing an 'integrated' Impact Assessment for the Commission's proposals. Trial runs have been conducted in 2003, and it has to be monitored carefully whether the environmental dimension is treated in a way that fully reflects the requirements of Art.6 TEC that *environmental protection requirements must be integrated into the definition ... of the Community policies ..., in particular with a view to promoting sustainable development.*

3.1 DECISION-MAKING AND IMPACT ASSESSMENT

3.1.1 Reflections on context

Impact Assessments are in fact part of everyone's daily life. When e.g. choosing a destination for summer holidays one develops alternatives like mountain - coast - city, warm - modest climate, desired activities, puts together assessment criteria like costs and accessibility, and then chooses among available offers for the desired time. This takes place quite naturally, and a more systematic assessment is only performed, when issues become more complex like choice of computer-telecommunication system at home, selecting an insurance company or buying a car. All these decisions are usually very simple when there are no alternatives: either not desired (one travels to the same place in summer anyhow, one wants just this one and only car etc.) or not available (for the personal constellation

there is only one insurance company at offer).

Thus, whenever it makes life easier, or more efficient and/or cuts down expenses etc. one performs an impact assessment, with a pragmatic approach, i.e. at the scope that is found appropriate. With this method one can e.g. convince partner or friends about the choice made, and can later one look up why such and such decision was made, which means that the whole story becomes transparent. In a more complex decision-making some iteration might be necessary or agreement with other parties is required - and in this case the assessment lays the basis for joint discussions about the objectives and means.

As this method is so natural, and widely used, not so surprisingly it was at some point also proposed for policy-(decision-)making and planning. In early attempts this was also motivated by the higher challenge that policy making and planning shall be coherent (which also applies to those examples from daily life that have more long term effects, e.g. choice of insurance company), and later, with increasing importance of accountability and “improving democracy”, also transparent. The early exercises in the 70s and 80s however, as “legislative impact assessments”¹, did not become a success.

Impact Assessment (IA) was also introduced as procedural instrument for better ensuring environmental considerations in other fields of policy making, though this link has only over time been made strong and explicit (cf. chapter 2.). From a structural point of view astonishing: environmental impact assessments (EIA) in policy making/planning started at the “project” level:

Given that in the holiday example resources are scarce (and this situation clearly applies to most government decisions), and the aim of the holiday is broadly ‘recovery’ (as opposed to particular cultural interest in an e.g. specific city), one would - in contrast - start with the question

1. WHETHER to go (e.g. with the question: is there enough money?),
2. with which MEANS (which influences how far one can go, and is the other way round influenced by the available time) and the desired activity, and only then elaborate on the
3. desired climate and landscape, and exactly WHERE to go.

It is puzzling to observe quite some resistance towards more fundamental - or strategic - impact assessment, i.e. for earlier stages of planning and/or policy-making. Is it because of a misinterpretation that IA substitutes the (political) decision? Do planners, policy-makers and/or politicians not really want transparency?² Is it because of a perception of planning in general, and IA in particular, that it is “data-hungry” and bureaucratic³,

1. E.g. Böhret/Hugger, 1980. According to literature there seems to be recent little renaissance of such work (e.g. Böhret, 2000, 2001)

2 Cf. general cultural and organisational problems in the public sector (e.g. Meuleman, in this volume).

3 Empirical studies – which are rather rare – though show that it has more positive effects for environmental protection than usually assumed (e.g. Wende, 2001; Hill/Weber, 1996).

too rigid and binding, whereas real life needs more flexibility?

Hence, it might be deeper. Again the holiday example: One does not necessarily deliberate in the order of questions listed above, but is able to make an (“irrational”) choice, like “I WANT TO go to Egypt”, if enough resources are available (money or time as variables for transportation costs) and then questions 1 and 2 don’t have to be answered.⁴ Even then, at least in long-term planning, one might consider different ways, with different means, to design this travel, ranging from a two months trip by car through the Balkan and a ferry to Egypt from Greece, to a one-week charter flight with a guided tour to the tourist highlights.

3.1.2 Rational and irrational parts of decision-making

It may be concluded that it is exactly this kind of freedom policy-makers and/or politicians wish to maintain, and that they feel IA as being a threat to that. This may be interpreted in a malevolent way, i.e. in terms of manipulating, which would also mean that proclaimed intentions for more policy coherence and transparency is then at least partly only window-dressing. But it could as well be a basic problem that the concept of IA, namely providing a structured, “rational” information basis for the decision-makers, conflicts with a certain degree of “irrationality”, that is by the nature of fact wanted or needed in complex decision-making.

A more “rational” decision is based on a weighing up of all (known) pros and cons, measured against previously set objectives, and the result shall serve the common good - all of this can easily be made transparent. If it succeeded to reach a decision in one policy field without conflicting with another one, it even serves the coherence criteria. The latter is the harder to tackle the more complex decisions and policies get.⁵ Trade-offs are then typical measures to achieve cross-sectoral agreements at all, and are at the same time a clear example for “irrationality”: in such a situation it is not the case that new substantial criteria come in, something that could be accommodated in an IA, but political criteria that might even be

4 In terms of resources another variable might be ‘number of vacations over time’, i.e. one decides to rather go once in two years to Egypt, instead of going twice to a place nearby. This situation also applies for government decisions on expenditure.

5 There are of course well-known cases with only medium-complex decisions for which the interpretation suggests itself that certain decision-making criteria are wanted to remain behind the curtain, because the weighing up in the decision-making process can not be made plausible with “rational” considerations: Be it a waste incineration plant (example from Belgium), be it a highway through a nature reserve (example from Denmark): such cases reveal a defective weighing up, but this has to be ruled in court, and litigation has the disadvantage that it a) must be possible (standing rights), b) affordable and c) it often takes years, during which the project will eventually have already been built.

Figure 1: Opposite corner stones of planning and decision-making

	Positive character	Negative character	
rational ("100% information")	comprehensive and structured information basis, aims at limiting risks, focussed	endless information gathering, getting out of hand, paralysing, obstructing decisions	
	innovative, creative, pragmatic, open	arbitrary, unstructured, despotic, unscientific	spontaneous ("zero information")
binding ("100% accountable")	Objective- and target-oriented, reliable, long-term oriented	rigid, formalistic, legalistic, not adapting	↑ <i>incremental</i> ↓
	adapted to problems, solution oriented, case related (may be + and –)	Crisis-like "muddling-through", no foresight	flexible ("zero" accountable)

way outside the scope of e.g. two policy fields that try to reaching a compromise. ⁶

Not only because the objectives of transparency and accountability (and coherence) require a certain degree of "rationality" it can be concluded that possible ways out are not black and white. In Figure 1 a model is presented, breaking up "rational" into "information-rational" (all information is available) and "binding" (a binding decision, i.e. 100% accountable), as well as "irrational" into "spontaneous" (zero information is available) and "flexible" (decisions can be revised any time, i.e. zero accountability), and the opposite pairs are assigned to positive and negative attributes usually associated with them.

Planning and decision-making in general, and IA as a accompanying and supporting instrument in particular, should hence strive for a balance of these poles. It is a challenge to develop appropriate methodologies for different stages of assessment that allow for enough flexibility, i.e. adapting to new criteria emerging, without losing accountability, and to design an iterative process ('tiered approach') that stimulates the development of the positive characters of the features shown in Figure 1.

It might be the tragic of the more strategic types of IA for environment and sustainable development policies that the predominant attitude to IA derives from the experience with that particular type of IA having emerged for environmental impact assessment (EIA), which is often charac-

⁶ On the policy level one might speculate whether the agreement of France and Germany on the CAP reform proposals in October 2002, which was not really in line with the objective of the reform, derived from a trade-off well outside agriculture, budget and environment policy: With an IA, at least one that is taken seriously, this wouldn't have been possible so easily.

terised by all attributes displayed in the boxes ‘negative character’ for ‘rational’ and ‘binding’ in Figure 1: It often leads to endless data-gathering, not rarely steamed by conflicting parties involving several opposing experts; it comes too late, because it is the architecture of this Directive that the EIA is made for a project proposal (and not with) etc. pp.

3.1.3 Specific problems of the environmental dimension?

Besides these general considerations on IA and decision-making there is one particular observation on the environmental dimension.

The problem of insufficient irrationality, flexibility or space for trade-offs often (only) occurs if the environmental dimension has to be taken into account. When looking at e.g. transport planning in a ‘pure’ form, trade-offs are made with regions, who do not have a legal competence, but political power to influence the alignment of a transport way or the decision for road or rail. This happens despite objective, or “rational”, cost-benefit-analysis - as such assessment methods always leave space for individual setting of criteria. It could be speculated that in the case of ‘pure’ transport planning assessments such as cost-benefit-analysis are perceived as less dangerous for the freedom of decision-making, because all parties involved share the same “belief system” in the respect that the plan and the projects are in principle welcomed. The environmental side might be felt as a danger, as it dares to ask the famous “if-question”: that this is almost a taboo could be observed in the legislative process for the strategic environmental assessment Directive (cf. chapter 2.1), where there were fierce fights about including the “zero-alternative” as an obligatory one for assessment.

The environmental dimension hence might be particularly prone to getting ignored or undermined, or being blamed: the latter either because of the typical perception of EIA or because of the difficult position in contest with economic interests.

The following chapter 2 looks into the development of the EIA- and SEA-Directive, the environmental integration requirement of the TEC that has evolved in parallel, and the requirements for the European Commission to perform EIA for its own initiatives. Chapter 3 will explore the more recent developments for Sustainability / Regulatory / Extended Impact Assessment on the European level.

3.2 DEVELOPMENT OF EIA AND SEA AS A TOOL FOR ENVIRONMENTAL POLICY INTEGRATION

3.2.1 The EIA- and SEA-Directives as role-models for (integrated) impact assessment?

NEPA as predecessor

For the more specific problem of better considering the environmental effects of certain activities or plans the USA in 1969 was a forerunner by introducing with NEPA (National Environmental Policy Act) an “environmental impact assessment” (EIA) as procedural instrument for implementing the environmental policy aims and objectives defined in the same legislation. NEPA does not distinguish between different decision-making levels ⁷ and is remarkably overarching in the sense that the remits of the Federal Agencies shall have an ‘integrating’ character:

- *‘In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may - ...’ (42 U.S.C. Sec. 4331(b));*
- *‘The Congress authorises and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall - (A) utilise a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment; ...’ (42 U.S.C. Sec. 4332).*

EIA- and SEA-Directives

When this instrument crossed the Atlantic around 10 years later it was first, among experts, developed in the same way as applying to policies, plans and projects. In the course of preparing for the EC Directive on Environmental Impact Assessment though the first thing to delete was the application for policies, and very soon after that also the plan/programs - i.e. the instrument was cut back to deal only with the above mentioned question 3.

As the Commission realised these deficiencies it already indicated at the time of the adoption of this “reduced” Directive on Environmental Impact Assessment in 1985 ⁸ that it would consider an extended applica-

⁷ though the vast majority of NEPA EIA over time has been conducted for projects rather than for the more strategic level.

⁸ Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC; OJ No. L 175, 05/07/1985 P. 0040 - 0048).

tion.⁹ It nevertheless took around 10 years until the next level of decision-making was again tackled with the proposal for a Directive on Strategic Environmental Assessment from December 1996¹⁰, now also covering plans and programs, which came into force 2001.¹¹

As application for “policies” was also in this second attempt removed immediately, there could be some evidence for the argument above. The fierce disputes during the preparation phase on the scope of application, particularly on drawing the line between plan/programs and policies, will continue during and after transposition in member states, which is due by July 2004.¹²

Parallel to the development of this new SEA Directive the Commission worked towards amending the EIA-Directive of 1985, because some shortcomings had been identified, which also touch upon IA in general. The key amendments of this Directive of 1997¹³ were:

- the introduction of “screening”, i.e. a procedural step to assessing whether a project might have environmental impacts, and hence moving away from the so-called “positive-list” of 1985,
- strengthening the requirements to consider alternatives.

The last requirement was finally made explicit in the SEA-Directive - one of the items heavily discussed during the conciliation process; the former was solved by setting a framework regarding legal procedural requirements of a plan/program and regarding sectors whose plans and program would be covered by SEA.¹⁴

9 Commitments in this respect were expressed in the 4th and 5th Environmental Action Programmes.

10 A first internal draft was proposed in January 1991 (Haigh, 2003, chapter 11.10).

11 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ No. L 197, 21/07/2001 P.0030-0037).

12 An illustrative example is the German Federal Transport Plan of 1992 (under revision since 1999), for which the Federal Ministry of Transport has all the time argued, that it would not be subject of SEA, because it is not a “plan” in the traditional sense (with maps), but only represent “intentions”; and also, quite legalistically, because it is not a plan obliged by law, and hence does not fulfil the provisions of Art. 2 a) of the Directive saying that “... ‘plans and programmes’ shall mean plans and programmes, ... which are required by legislative, regulatory or administrative provisions.”

13 Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 073, 14/03/1997 P. 0005 - 0015).

14 Art. 3 No.2. SEA-Directive: an environmental assessment shall be carried out for all plans and programmes, ... which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC.

*Table 1:
Overview of EIA/SEA developments, EC Treaty requirements for
environmental integration, and requests to the Commission to
perform EIAs for its own initiatives*

	EIA/SEA	Treaty requirements on environmental integration / Council conclusions	Requests to the Commission on EIA (and other IAs)
1980	Start of development EIA-Directive	Environmental integration as objective of the Commission, also in 3rd EAP (1982)	
1985-87	Adoption of EIA- Directive 1985	Art. 130r(2) TEC: Environmental Integration Requirement in Single European Act 1986/87	
1991-93	Start of development SEA-Directive	Improved EIR in Art. 130r(2) Treaty of Maastricht 1992/93	1st Declaration on EIA, Treaty of Maastricht 1992/93
1996-99	<ul style="list-style-type: none"> • Proposal for SEA-Directive 1996 • EIA-amendment Directive 1997 	<ul style="list-style-type: none"> • Improved EIR, moved 'up' to the primary objectives as Art. 6, Treaty of Amsterdam 1997/99 • Cardiff European Council (June 1998) asks Council formations to develop strategies for environmental integration 	<ul style="list-style-type: none"> • 2nd Declaration on EIA, Treaty of Amsterdam 1997/99 • Cardiff European Council (June 1998) endorses the principle that the Commission shall conduct EIAs
2001	Adoption of SEA-Directive	Gothenburg European Council (June 2001) endorses the EU SD Strategy	Gothenburg European Council (June 2001) asks Commission to perform Sustainable Impact Assessments
2003			Commission's commitment for '(extended) Impact Assessment' for selected proposals

20 years of struggling with EIA and SEA in Europe has covered the following key items:

1. application on which level of decision-making, with high resistance of member states to also cover more strategic levels,
2. scope of application (which projects or plans/programs), with the tendency to confine it,
3. the obligatory consideration of alternatives ¹⁵,
4. the competence of the authority in charge (which is typically, also in the SEA-case, responsible for conducting the assessment) and the role of the environment authority (only consultative in all Directives), or a 'higher' level (not foreseen in all Directives),
5. public participation.

It has to be analysed which lessons can possibly be learned from this for the current and future development of a wider sustainability/regulatory/extended impact assessment from a procedural point of view (all the five aspects mentioned above), and from the particular view-point of environment policy, as a cross-sectoral one facing the resistance towards environmental policy integration as indicated above (cf. chapter 3.3).

The development of the EIA- and SEA-Directive has been intertwined with the development of the environmental integration requirement in the EC Treaty, but the relation has never been very explicit. Also quite astonishingly the European Commission itself apparently has not been inspired by the indeed fore-running work it had performed when developing these Directives, in terms of applying the principles for their own policies and programs, and in terms of following demands to perform EIAs for its initiatives (Chapter 2.2).

3.2.2 EIR of the Treaties and EIA requirement for initiatives of the European Commission

Almost parallel to the development of the EC policy initiatives for EIA and SEA, both addressed to the member states, there have been both (a) introductions to the EC Treaty regarding environmental integration and (b) requests to the Commission to also perform EIAs for their own proposals. Table 1 gives an overview on the timelines.

Environmental Integration Requirement in the Treaties and references in the EIA/SEA-Directives

Integrating environmental considerations into other Community's sectoral policies became an objective of the Commission already in 1980 ¹⁶, and

- 15 As already mentioned above, an illustrative example is that the EP introduced the consideration of the so-called "zero-alternative" during the legislative procedure, which was deleted again in conciliation.
- 16 Commission Communication on progress made in connection with the Environmental Action Programme and assessment of the work done to implement it (COM(80) 222).

subsequently the 3rd Environmental Action Program (1982 - 1986) considered environmental integration as a most important item ¹⁷.

The recitals of the EIA-Directive of 1985 refer to this early integration policy by stating:

'Whereas the 1973 (4) and 1977 (5) action programmes of the European Communities on the environment, as well as the 1983 (6) action programme, ..., stress that the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects; whereas they affirm the need to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes; whereas to that end, they provide for the implementation of procedures to evaluate such effects;' (EIA-Directive, 85/337/EEC)

I.e. here is even a clear link that evaluation procedures are a tool for achieving environmental integration.

The later so-called "environmental integration requirement (EIR)" was given legislative force in the Single European Act (SEA) of 1986/87 ¹⁸, with Art. 130 r (2) saying that

'Environmental protection requirements shall be a component of the Community's other policies.' (TEC 1.7.1987).

This clause underlined a specific, cross-sectoral character of environmental policy, because there was no other Community policy with such a requirement. Nevertheless it had serious implementation deficits, so that for the Treaty of Maastricht 1992 there were reform attempts, leading to the wording

'environmental protection requirements must be integrated into the definition and implementation of other Community policies.' (Art. 130r (2) TEC, in force 1.11.1993).

Legal interpretations concluded that this integration clause is to be considered as a legal requirement and not only a political programme. ¹⁹

In a wider sense it was even quite enthusiastically stated that with this requirement a substantial change in economic policy is formally anticipated. ²⁰

The subsequent EIA-amendment-Directive of 1997 (March) astonishingly refers to Art. 130r (2) but not to the integration clause:

'Whereas, pursuant to Article 130r (2) of the Treaty, Community policy on the environment is based on the precautionary principle and on the principle that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay;' (EIA-amendment-Directive, 97/11/EC)

As the wording in the Treaty of Maastricht in detail lead to divergent interpretations regarding the scope of application ('other Community policies': i.e. only applying to some?) and responsibility ('definition and implementa-

¹⁷ Haigh, 2003, chapter 3.1.

¹⁸ Signed on 17.2.1986, in force from 1.7.1987.

¹⁹ i.a. Breier, 1992, p.181.

²⁰ Pernice, 1989, p.51.

tion': is the Community or are the Member States responsible?), and because of the lacking link to the commitment to 'sustainable growth', as stated in Art. 2 of the Treaty, further amendments were introduced in the Treaty of Amsterdam of 1997 (June) with *'Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.'* (Art. 6 TEC, in force 1.5.1999).

These amendments as well as the placement of the 'environmental integration requirement (EIR)' among the EC's primary principles gave it a much higher profile and subsequently lead to the so-called Cardiff process, which was launched by the Cardiff European Council (June 1998) ²¹, who *'... invites all relevant formations of the Council to establish their own strategies for giving effect to environmental integration and sustainable development within their respective policy areas. ... The Council and Commission are invited to keep under review their organisational arrangements necessary to carry this forward.'* ²²

The weak performance and effectiveness of this process to date is disappointing, including the limited role, or failure, of the Commission in energising it, despite the aforementioned call of the Cardiff European Council to both the Council and the Commission.

The development of the SEA-Directive seems to have been more guided by the EIR than the two previous EIA-Directives, as it states as objective (Art. 1 SEA-Directive):

'The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, ...' (Art. 1 SEA-Directive, 2001/42/EC).

Also the recitals are rather explicit (all of them having been similar, or even more detailed, in several earlier versions of the Directive in the course of the legislative process):

'(1) Article 174 of the Treaty provides that Community policy on the environment is to contribute to, inter alia, the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources and that it is to be based on the precautionary principle. Article 6 of the Treaty provides that environmental protection requirements are to be integrated into the definition of Community policies and activities, in particular with a view to promoting sustainable development.'

21 Interestingly the Council saw this initiative in the context of 'identifying practical ways of bringing the Union closer to people through greater transparency, environmental integration and stepping up the fight against drugs and organised crime' (Presidency Conclusions, Cardiff European Council, 15-16 June 1998, No. 2).

22 Presidency Conclusions, Cardiff European Council, 15-16 June 1998, No. 34.

- (4) *Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.*
- (5) *The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision-making. The inclusion of a wider set of factors in decision-making should contribute to more sustainable and effective solutions.’ (SEA-Directive, 2001/42/EC).*

Commitments for performing EIA for Commission’s initiatives

The Intergovernmental Conferences (IGC) for the Treaties of Maastricht (1993) and Amsterdam (1997) both committed the European Commission to perform environmental impact assessments for proposals that might have significant effect on the environment:

- * Treaty of Maastricht, Declaration of the IGC (Nº 20) on assessment of the environmental impact of Community measures: *‘The Conference notes that the Commission undertakes in its proposals, and that the Member States undertake in implementing those proposals, to take full account of their environmental impact and of the principle of sustainable growth.’*
- * Treaty of Amsterdam, Declaration of the IGC (Nº 12) on environmental impact assessments: *‘The Conference notes that the Commission undertakes to prepare environmental impact assessment studies when making proposals which may have significant environmental implications.’*

One could argue that the wording of the Maastricht Declaration was even stronger with using ‘taking full account of...’, on the other hand the Amsterdam Declaration is in a way stronger by referring to the preparation of EIA studies, i.e. a more formalised procedure or background document, which hence would not allow for reactions like “we are doing this anyhow in the course of normal, good policy making”.

The Cardiff European Council 1998 strengthens these intentions by endorsing

‘the principle that major policy proposals by the Commission should be accompanied by its appraisal of their environmental impact.’ ²³

The results of these requests were quite poor:

Within the Commission the concerned DGs were in charge with these assessments, and the Secretary General was meant to overall coordinate. Both apparently did not happen, at least not systematically. DG Environment seems to have performed EIA for some of their initiatives, but it has to be kept in mind that the EIR of the Treaty EIR predominantly

23 Presidency Conclusions, Cardiff European Council, 15-16 June 1998, No. 33.

aims at ‘other [sectoral] Community policies’.

The statement of the IA Guidelines of 2002 (cf. chapter 3.3 below) *‘The Commission has in the past used a wide range of tools to assess its proposals: environmental assessments, SME fiches, regulatory analyses, economic studies, ad hoc consultations, business assessments, gender mainstreaming, green books and dialogues with lobbies.’*

can not really be confirmed. From inside the Commission it is said that only the so-called “SME-fiches”, a rather simple form for assessing impacts of policy proposals on small and medium sized enterprises, have been a standardized assessment type. All other assessments apparently have taken place in a rather arbitrary way.

It would require further research to explore why it has been that way. There are indications that the Commission, or rather: the DGs, have not really deemed these EIAs as a new task but rather believed that they are doing this “anyhow”. One plausible aspect here is the special nature of the Commission as a college, i.e. a collective decision making body, which induces a certain culture of cooperation that could lead to the overall perception that the concerns of all “sectors”, i.e. DGs, are per se taken into account. As opposed to national Ministries and their relation among each others, in particular to the cross-sectoral Environment Ministries, where mostly a tendency of sealing off can be observed, within the Commission and among the DGs cooperation is much more common: a) the Commission as cabinet determines for which policy proposals a so-called “interservices group” shall be installed, and b) if one DG claims to be included in the policy development of another DG, such a request can not be refused - a situation mostly beyond imagination for national ministerial systems.

Nevertheless it is questionable why the Secretariat General has not been a driving force for installing a more systematic, structured and streamlined approach for fulfilling the requests for conducting EIAs. As the architecture is more favourable than in member states’ government and administration systems, it remains a not unlikely conclusion that these attempt just had too much focus on the environment.

If this was the obstacle, the times coming provided approaches from other ends, with doubtful results for the environment, as the next chapter will show.

3.3 SUSTAINABILITY/REGULATORY/EXTENDED IMPACT ASSESSMENT FOR COMMISSION PROPOSALS

3.3.1 Gothenburg Conclusions

The Gothenburg European Council of June 2001 endorsed an EU Sustainable Development Strategy (EU-SDS), committed itself to review progress in developing and implementing the strategy at its annual Spring meetings, and with this the environmental and sustainability dimension became part of the so-called Lisbon process. Basis for this strategy was

the rather ambitious proposal of the European Commission, who proposed (references to assessments are highlighted):

‘Sustainable development should become the central objective of all sectors and policies. ... Careful assessment of the full effects of a policy proposal must include estimates of its economic, environmental and social impacts inside and outside the EU. ... Assessments should take a more consistent approach and employ expertise available from a wide range of policy areas.’

It furthermore announced to

*‘submit an action plan to improve regulation to the Laeken European Council in December. This will include mechanisms to ensure that all major legislative proposals include an assessment of the potential economic, environmental and social benefits and costs of action or lack of action, both inside and outside the EU.’*²⁴

The Gothenburg Council, accepting this proposal,

*‘notes that the Commission will include in its action plan for better regulation ... mechanisms to ensure that all major policy proposals include a sustainability impact assessment covering their potential economic, social and environmental consequences’*²⁵,

and by that invented the term “sustainability impact assessment” (SIA).

Both Commission and European Council hence have the viewpoint that “better regulation” inter alia requires a SIA. It will be shown in the next chapters, whether one of the two motivations prevails, and how the environmental dimension is covered in a wider (S)IA.

3.3.2 Development and Design of the Extended Impact Assessment

The Commission’s Secretariat General took the lead and established in autumn 2001 a Task Force for designing the procedure and methodology for Impact Assessment (IA). At the same time a high-level consultation group chaired by Mr. Mandelkern (the so-called Mandelkern group) produced a report with recommendations that were taken up in further work on proposals for “better regulation”. The first Communication was issued for the Laeken European Council in December 2001, which refers to the Göteborg conclusions and proposes an ‘impact analysis’, ‘based on an evaluation of the costs and benefits, stressing the economic, social and environmental impacts’²⁶.

In June 2002 finally the “better regulation package” was published, containing both the “Action plan: ‘Simplifying and improving the regulatory

24 Communication from the Commission A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development. The Commission’s proposal to the Gothenburg European Council (COM(2001) 264), p.6.

25 Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, No. 24.

26 European Commission, 2001: Communication from the Commission - Simplifying and improving the regulatory environment. COM(2001) 726 final, from 5.12.2001, p.7.

environment”²⁷ and a Communication on Impact Assessment ²⁸.

The former states the intention to implementing by the end of 2002 a *‘consolidated and proportionate instrument for assessing the impact of its legislative and policy initiatives, covering regulatory impact assessment and sustainable development (in economic, social and environmental fields) ...’*.²⁹

This relatively vague reference to sustainable development, and the coverage and language of both documents nevertheless reveal that the focus rather lies on the part “regulatory impact assessment”, with stressing that IA shall make it easier to decide whether action should be taken on Community level and to choose the most appropriate instrument. In contrast, it is not mentioned that the instrument IA shall make EU policies more sustainable and/or serve implementing Art.6 TEC through supporting environmental integration ‘with the view to promoting sustainable development’.³⁰

According to both documents it is planned that all proposals set out in the Commission’s work programme will be subject to the impact assessment procedure, and that only significant proposals will be subject to an ‘extended’ impact assessment. In procedural terms it is said that the DGs *‘must have completed the IA by the inter-departmental consultation stage the latest’*, and if *‘proposals require in-depth assessment, the DGs will on their own initiative start the process even before the proposal is included in the Annual Policy Strategy’*.

During the trial phase in 2003 this turned out to not fully functioning. One bad example e.g. was the extended impact assessment for the trans-European transport network (TEN-T) proposal that was supposedly only done at a very late stage.³¹

The Commission also points out in the Communication on Impact Assessment that it will be *‘open and transparent in the process’* ³² and it *‘will ensure full transparency on the results of IA both for the preliminary and extended assessment’* ³³, both has not really succeeded in 2003: The TEN-T guidelines might be again a weak example, but what is particularly

27 COM(2002) 278 final.

28 COM(2002) 276 final.

29 COM(2002) 278 final, p.7.

30 The formulation ‘The Commission is also delivering on its Göteborg commitments to implement sustainable development and to establish a tool for sustainable impact assessment’ is a) almost the only reference in a 19 pages document, and b) a quite empty phrasing (COM(2002) 276, p.2).

31 European Commission, 2003: Commission staff working paper. Extended impact assessment of the proposal amending the amended proposal for a decision amending Decision No. 1692/96/EC on the trans-European transport network. COM(2003) 564 final, from 1.10.2003. A press release of BirdLife International/T&E/WWF on 1.10.03 even states that ‘an Impact Assessment on the whole TENS-T proposal is still to be published, including the environmental implications, ...’.

32 As set out in the Communication on general principles and standards for consultation (COM(2002) 277 final).

33 COM(2002) 276, p.3 and 10.

missing is a common website for all proposals that go through an extended IA.

As already indicated, the name for this Impact Assessment has gone through some changes during the development phase. In the beginning there were the two terms “regulatory” and “sustainability” IA (the latter disappeared by end of 2001 already). According to the Task Force a comparison of the typical approaches for these two (different) assessments lead to the conclusion that they are very similar. It was then first planned to call it “Integrated Impact Assessment”, which was later changed to the more simple “Impact Assessment”, differentiating between a “preliminary IA” and the “extended IA”. Maybe it is an indicator for the more than limited influence of the Commission’s work on EIA and SEA that the term “screening”, which is used for in these Directives, is replaced here by a new, and even more complicated term.

Drawing on the Communication on Impact Assessment the Secretariat General in October 2002 issued the so-called “IA Guidelines”, an operation guide laying down the principles and broad procedure. It reiterates that the new method will be introduced gradually, with 2003 being a trial phase for 42 selected proposals and in 2004/2005 the system will be fully operational. The IA Guidelines are addressed to Commission staff and experts in charge with designing policy proposals and *‘thus for those who will carry out the impact assessments.’* The IA Guidelines were followed by a ‘Handbook for IA’, called ‘How to do an Impact Assessment’, which shows how to approach core elements of IA like: identifying the problem and its causes, the objectives, alternative policy options, the impacts, how to compare the options, and a technical annex with details on recommended methodology. ³⁴

The philosophy of the operational guide, emphasizing the need for reflection on objectives and the consideration of policy alternatives (‘Broaden your horizon’ is the underlying and expressed message) can be praised. It defines IA as

‘... the systematic analysis of:

- *the problem addressed by the proposal concerned,*
- *the objective it pursues,*
- *the alternative options available to reach the objective;*
- *their likely impacts; and*
- *respective advantages and disadvantages, including synergies and trade-offs.*

The analysis works on a step by step basis to provide a structured way to raise and then deal with questions and issues through the development of a proposal.’ ³⁵

It also stresses, as the previous documents on IA did, that ‘Impact assessment is an aid, not a substitute, for political decision’.

³⁴ European Commission, Secretariat General, 2002 a).

³⁵ European Commission, Secretariat General, 2002: IA Guidelines, p.6.

It clarifies that IA does not replace the so-called ‘ex-ante evaluation’ of expenditure programmes of the European Communities programmes, because those typically differ from policy proposals, but, for cases when both procedures apply, the ‘ex-ante evaluation’ will be integrated in IA.

It defines the following guiding principles:

- * *‘Get things in proportion*
- * *Think “outside the box” (do not limit your assessment to your own policy area... . Take into account both short and long term considerations. Be open-minded about alternative policy options. Consider the impacts of individual elements of the policy proposal and the effects of more or less ambitious versions of the policy. Use the assessment process to increase dialogue with other services and ensure policy coordination from the onset).*
- * *Consult interested parties and relevant experts.*
- * *Be transparent. (Decision-makers and external stakeholders want to understand the chain of logic in the policy process, and do not want to base their decisions on “black box” analysis).*
- * *Use existing knowledge and experience.*
- * *Compare negative and positive impacts.*
- * *Use your judgement.’* ³⁶

Particularly the second principle must be considered as a highly valuable one as it emphasizes the development of alternatives, cross-sectoral dialogue and process-orientation (‘from the onset’), all of which is quite in line with the direction that was claimed to be taken for IA in chapter 1 (cf. also chapter 3.4).

It will have to be observed how these principles and messages will be implemented. A support group, lead by DG Environment, is meant to give further guidance for applying methodology for elaborating IAs. The 2003 experiences are considered from inside the Commission as a ‘learning process’ with good and bad examples. However, some lessons for the architecture and the process could have been learned, and still might be learned, from EIA and SEA, as the following chapter will show.

3.3.3 Impact of EIA/SEA on the Impact Assessment: Lessons to learn?

Some of the crucial discussion points on EIA and SEA, as listed in chapter 3.1, have also turned up in the Commission’s IA:

1. *application on which level of decision-making:* not relevant, as the IA is meant for Commission’s proposals.
2. *scope of application (which projects or plans/programs):* This touches upon the “screening” process (for the Commission’s IA called: “preliminary IA”), and the body, that has the final decision-making or intervention competence. According to the IA Guidelines the Secretariat General has a reviewing and coordinating role ³⁷, and it is in the power of the

³⁶ European Commission, Secretariat General, 2002: IA Guidelines, p.9-10.

- Commission (as college) to decide, which proposals will require an extended IA ³⁸.
3. *the obligatory consideration of alternatives*: fulfilled, at least by the IA Guidelines. Lacking is a monitoring mechanism, i.e. a competent authority ensuring that alternatives are indeed considered in a sufficient manner.
 4. *the competence of the authority in charge*: According to the IA Guidelines, the DGs putting forward a proposal are also responsible for the IA, which corresponds to the arrangements in the EIA- and SEA-Directive. In the latter case this has revealed quite some disadvantages as indicated above. In the case of the Commission the architecture is set up as such:
‘The lead DG is responsible for the extended impact assessment and leads the policy design process. The lead DG is free to organise the assessment exercise but will be accountable for:
 - *the relevance and quality of the analyses,*
 - *proper coordination with other interested DGs and the SG,*
 - *appropriate consultation of interested parties.’ and also*
‘The extended IA will normally include consultations with interested parties. For sectoral initiatives it will be steered by the “lead” DG. For major cross-cutting initiatives, an interdepartmental group will be set up under the chairmanship of the “lead” DG with other DG concerned and the SG.’ ³⁹
 5. *public participation*: only relevant in this respect is the commitment to publish all proposals and IAs. This has not been fulfilled yet (cf. above: suggestion for a single website).

Another important issue is quality control of IAs, which, in the case of EIA in member states, is often done by an independent authority (e.g. EIA commission in The Netherlands, Walloon Environmental Council for Sustainable Development, CWEDD, in Wallonie). In the case of IA for Commission’s proposals, the Secretariat General

- 37 ‘The Secretariat-General will review the preliminary assessments together with the review of the DGs’ replies to the APS (Annual Policy Strategy) circular. ... Where new, additional proposals, or more details, are identified for the Commission’s Work Programme, the preliminary assessment statements must be completed as early as possible and sent to the Secretariat-General to ensure that additional proposals requiring an extended assessment can be identified as early as possible.’ (European Commission, Secretariat General, 2002, p. 11/12). And: ‘The SG will co-ordinate the basic support structure for the new impact assessment procedures through the SPP/ABM cycle and its network, in particular regarding the selection and monitoring of the proposals subject to impact assessment.’ (European Commission, Secretariat General, 2002, p. 14).
- 38 ‘On the basis of the preliminary assessment statements, the Commission will decide in its Annual Policy Strategy decision and/or Work Programme which proposals will require an extended impact assessment.’ (European Commission, Secretariat General, 2002, p. 12).
- 39 European Commission, Secretariat General, 2002, p. 13 and 16.

'will be responsible for both overall quality control throughout the process and final quality control, in particular during the interservice consultation.' ⁴⁰

From the EIA experiences (SEA experiences are likely to be similar) it can be recommended to empowering a body for coordinating and monitoring all steps of the process including screening, scoping, consideration of alternatives and assessment, including overall quality control. Attempts for this approach can be identified in the IA Guidelines of the Commission, with giving the Secretariat General a coordinating role and responsibility for quality control. The role in screening seems to be relatively weaker. For the other aspects it has to be ensured that there is enough capacity, spirit and will to take up this role that might cause conflicts. Measured at the outcomes of e.g. the IA for the TEN-T guidelines this role doesn't seem to be fully taken up so far. An independent body for quality control might be a more favourable alternative.

The demand for an iterative and intertwined process seems to be partly fulfilled with the possibility that, as opposed to national ministerial systems, other DGs may be involved from the beginning on request: *'All services will be informed of the initiatives proposed by other DGs through the preliminary assessment forms at the time of the adoption of the Annual Policy Strategy and the Work Programme. They are free to express their interest in being involved in the corresponding impact assessment by writing to the lead DG and copying this request to the SG. Such involvement may take a number of forms; however, at the very least all DGs should be informed and consulted at the main stages in the drafting of the impact assessment.'* ⁴¹

These provisions are nevertheless too weak for creating an intertwined process. It would be desirable if IA lead to the creation of e.g. more "interservice groups": in normal practice such groups are installed by the Commission (the college) for major cross-cutting initiatives. As most initiatives that undergo an extended IA are likely to be of cross-cutting nature it is recommendable to installing interservice groups by default, which are meant to conduct the entire process 'from the onset'.

3.3.4 Methodology disputes

As indicated in chapter 3.2 the Task Force established by the Secretariat General first looked at methodological approaches for sustainability IA and regulatory IA and decided to merge both into one procedure. During the subsequent development of an assessment methodology there was input from DG Environment based on EIA/SEA experiences, but the process was apparently mainly steered by the economic side, who advertised and asked for quantitative methods like cost-benefit-analysis. Such an approach is problematic for assessing environmental impacts, as they can

⁴⁰ European Commission, Secretariat General, 2002, p. 14.

⁴¹ European Commission, Secretariat General, 2002, p. 13.

only quantified to a very limited extend, and hence the environment side tends to get undermined in an overall assessment. DG Environment developed an ‘environment guide’ that fed into the environment chapter of the IA Guidelines and Handbook. The resulting recommendations for ‘how to do an Impact Assessment’ have quite an emphasis on quantitative methods, though it also includes ‘multi-criteria analysis’, which compares costs and benefits in a mixture of qualitative, quantitative and monetary terms.

It is furthermore quite surprising that earlier work on methodology for overall assessment, particular the “IA^{STAR}” ⁴², developed by the Joint Research Centre 2001, seems to not having been included in the IA Handbook. Also in other cases it is a bit peculiar that there is apparently a tendency to start methodology work from scratch (e.g. Jakob/Volkery, 2003).

The application of the methodology, i.e. the extended IAs conducted in 2003 and in the future, has to be monitored carefully with respect to the consideration and assessment of environmental impacts. One selected observation is quite alarming: The extended IA for the already mentioned TEN-T Guidelines, a 54 pages document, deals with environmental impacts on around six pages. Moreover, the structure and titles of the impact assessment chapter is quite revealing. It is called ‘socio-economic impacts of different policy packages’, divided in the subchapters: ‘financial impacts’, ‘economic impacts’, ‘impacts on modal rebalancing’, ‘social impacts’ (altogether 14 pages), and ‘impacts on environmental sustainability’. It doesn’t seem as if the DG responsible for this extended IA worked in the spirit of the IA Guidelines, as the proposals as such are not questioned and the consideration of alternatives is weak. In the environment chapter it refers to SEAs and EIAs to be conducted at subsequent planning levels, and hence misses the point of integrating environmental concerns on the TEN-T level. The IA e.g. is not mentioned in the Press Release of 1.10.03, which probably shows its low relevance.

3.4 CONCLUSIONS

As most of the general observations and assumptions of chapter 1 were confirmed in the analysis of Impact Assessment and (environmental) policy integration on the EU level, it can be preliminarily concluded:

A new understanding and attitude for Impact Assessment is needed, both for environmental and “integrated” impact assessments, designed in a way that stimulates the development of the positive characters of the features shown in Figure 1. It should:

- * be process-oriented, i.e. creating different stages of assessments during the decision-making process in an iterative way, - a ‘tiered approach’ ranging from coarse to fine;

42 European Commission, Joint Research Centre, 2001: IA^{STAR} - A Methodology for Appraising the Sustainability Implications of EC initiatives.

- * emphasise self-reflection of the parties involved, i.e. trigger and support learning processes, even if time- and energy-consuming at first sight; considering programmatic/strategic alternatives is one of the most important features;
- * be transparent, because this is a requirement that involved parties build up trust, which is inter alia needed to allowing for self-reflection.

43

This ideally would mean designing a cooperative process, involving all parties significantly concerned. It is a challenge to develop appropriate methodologies for different stages of assessment, allowing for enough flexibility, i.e. adapting to new criteria emerging, without losing accountability. Diminished possibilities for trade-offs might remain a problem, but eventually such situations will decrease in number.

Similar recommendations were made by Sheate et al. (2001) on SEA, who state that: SEA

- needs to be a systematic process involving different institutions in a common reporting framework,
- is an active, participatory and social learning process,
- is a continuing and iterative process in which the decision-maker is constantly being updated 44

Nooteboom/Teisman (2003) present an in-depth analysis of the obstacles of IA in decision-making discussed above, concluding that the instrument in the current design and mechanism of the “typical EIA” does not and can not work, and recommend similar routes to overcome these barriers, focusing a bit more on IA’s role in and for different arenas:

- IA as ‘communicator’ and ‘integrator’, not a separate and formal trajectory: Increase the interconnectivity between ‘policy arenas’ and ‘impact arenas’.
- IA to generate variety: IA should stimulate politicians to provide support to social learning processes with uncertain outcomes, ... keeping policy option open in an approach of ‘flexible anticipation’, ... create political debates
- IA to intertwine: focus more on long-term process rationality and develop IA as a modular tool that several parties in different arenas can use to find effective matches.

The IA Guidelines of the Commission reflect this spirit and point in the right direction, though the Handbook seems to be too much focussed on quantitative methods for assessment. Implementation has to take place in this spirit, with emphasising more on the process of developing policies with IA, and enough capacity should be established for the coordinating and monitoring role of the Secretariat General. An external monitoring institution should be considered.

43 Niestroy, 2002, p. 220-226.

44 Sheate et al., 2001, p. 85-86.

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4. POTENTIALS AND LIMITS FOR POLICY CHANGE THROUGH GOVERNMENTAL SELF-REGULATION - THE CASE OF ENVIRONMENTAL POLICY INTEGRATION

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SUMMARY

This article describes and analyses strategies and instruments for integrating environmental concerns into different sectors of policy-making. Since the 1970s, efforts are undertaken to implement the Principle of Environmental Policy Integration (EPI). But despite the fact that EPI has become very topical by now, environmental policy still follows to a large degree an add-on approach, leaving policy making in other sectors relatively unchanged. One reason is the organisation of administration itself, with its demarcation of responsibilities and role bondage. The other reasons are the typical problems of regulative capture and asymmetric allocation of information between regulators and their target groups. Current organisation of government seems not well suited to carry out the necessary policy shifts that EPI implies. New approaches seek to overcome these restrictions by stimulating the self-regulation potential within the single departments.

We develop a typology of the different strategies and instruments that have been implemented in the OECD countries and evaluate their use for contributing to the overall strategic objectives of EPI. By critically assessing the success conditions of the different approaches based on a cross-country comparison, we conclude with a rather sceptical estimation, whether governmental self-regulation is an strategic approach that runs alone. Above all, EPI is a question of the power relationships within government.

4.1 INTRODUCTION

The establishment of modern environmental policy in all western industrialised countries in the last thirty years can be considered a remarkable success concerning the speed and range of policy development. However, the environmental situation is still deteriorating in many areas (EEA, 2003; OECD, 2001). Above all, this record is due to two reasons: The first reason concerns the overall poor implementation of environmental policy. The second reason is related to the relatively unchanged continuity of environmental harmful policies of other departments such as energy, transport, agriculture or economic affairs.

In order to overcome this dilemma, the need to integrate environmental concerns into all other areas of public policy has been discussed since the 1970s. Without doubt, some kind of progress has been made. By the late 1990, the Principle of Environmental Integration (EPI) has become very topical, foremost in the European Union, where it is a core political objective by now. But so far, the practical application of EPI has not yiel-

ded the desired results. The constitutional obligations and political commitments have shown to be of less value in day-to-day politics. An adequate consideration of EPI in all stages of public decision-making and management is rarely to be observed at the international and national level.

The reasons for this lay in the routines and rules of bureaucratic organisation and decision-making. The organisation of Government follows mainly the maxim of boosting efficiency by the demarcation of competencies and bondage to rules. Agencies serve a narrow set of operational tasks and accumulate specific knowledge to govern their particular policy field. Many agencies have build up close networks with their target groups and are highly path dependent regarding their goals and instruments (regulative capture). Policy-makers are also not equally well informed as their target groups about specific characteristics of regulation effects and are thus dependent on them (adverse selection). EPI contradicts this way of sector-policy-making. Therefore, it faces strong political and institutional barriers. The organisation of government seems to allow easily for pursuing contradictory policy goals, but seems not well suited to carry out the necessary policy shifts that EPI implies (OECD, 2002a).

What makes EPI worth for studying, is that it allows for an in-depth investigation of the overall potentials and restrictions of reforming public administration in a cross-departmental perspective. It also allows for an analysis of the capability of new forms of governance patterns that are currently widely discussed within political science. Especially with regard to the aspects of self-steering, organisational learning and sharing responsibilities, these approaches depart from the traditional bureaucratic model. Whereas the environmental policy of the 1970s and 1980s mainly sought to formulate strict and binding norms, that left not much room for flexible manoeuvre by the target groups (horizontal integration), a number of industrialised countries witnessed the upcoming of new, more decentralised approaches in the 1990s that try to set binding goals, but leave more discretion for the deployment of these objectives. Examples are national Sustainability Strategies, sectoral Integration Strategies, Green Budgeting or Impact Assessments. The rationale behind that is to shift the burden of responsibility and thus to stimulate learning processes in the relevant departments.

This article develops first a taxonomy of the different instruments that have been developed to improve the integration of environmental concerns in the routines of decision making in other policy fields. We are secondly particularly concerned with the question, in how far these instruments are able to foster learning in the targeted policy sectors and in how far learning is a sufficient condition for the success in EPI. We start with a rather narrow definition of EPI, focusing upon institutions to shape the process rather than the output of policy making. On this basis, we develop a taxonomy of measures to improve decision making. In the following, we briefly discuss the identified measures, describing their main features and shortcomings, their first introduction and if a diffusion to other countries

has happened or can be expected. Based on evaluation studies in different countries and sectors we identify a number of factors that influence the success of EPI. Concluding, we analyse in how far the described measures match the identified conditions.

4.2 DEFINITIONS OF EPI

Most definitions of policy integration refer to a continuum regarding either the degree of integration or coherence of policy outcomes (objectives or practices) between different domains of policy making or the process of integrating policies. A general definition for integrated policies focusing on policy outcomes is given by Underdahl: “A policy is integrated when the consequences for that policy are recognized as decision premises, aggregated into an overall evaluation and incorporated at all policy levels and into all government agencies involved in its execution” (in: Weale and Williams 1992, 46). That is, as Lafferty (2001) has pointed out, an attribute of any good governmental practice, not an specific feature of good environmental governance. While this definition focuses on the minimisation of contradictions between different policies, another focus can be set on the integration of different instruments to tackle a specific problem (s.a. Liberatore 1997). This can be understood as coherence of policies.

The OECD (1996) has developed a frequently quoted scale for different levels of policy co-ordination with “independent decision making” as one corner mark and integrated policy as the other. For an empirical investigation of the co-operation between R&D policy and environmental policy, Conrad (2000) has developed a similar continuum. These typologies mix actors like departments or central bodies, institutions like systems of arbitration or channels for communication and preferences like hidden differences or seeking for consensus. By this, the sequence of the different levels is arguable, depending on which of the elements are to be placed first. However, this work provide insights on the wide range of possibilities for governmental practices.

Focusing upon the environmental dimension, Jordan and Lenschow define policies as environmentally integrated “when policy makers in ‘non’-environmental sectors recognise the environmental repercussions of their decisions and adjust them by appropriate amounts when they undermine sustainable development” (Jordan and Lenschow, 2000, 111). Another possibility is to analyse the process of policy integration: The European Environmental Agency (EEA) understands EPI as a process of adjusting the focus of environmental policy away from environmental problems themselves to their causes and from ‘end-of-pipe’ ministries to ‘driving force’ sector ministries’ (EEA, quoted by Jordan and Lenschow, 2000, 111).

Both the scope and the instruments for policy integration vary fundamentally according to the definition that is applied. If policy integration is understood as integrating environmental needs in policy outputs of non-environmental sectors, any policy instrument can be conceived to bring forward the case of EPI. Following this focus, EPI is frequently understood

as an internalisation of the environmental effects of a sector (e.g. Hey, 1998, 2002). To evaluate the progress of this output oriented view, the main focus is on policy outcomes and impacts. From this perspective, EPI implies a substantial policy change in the different domains of government.

The second perspective on the process of EPI focuses on strategies and instruments to change government routines. It is interested in the potentials and limits of self-regulation of government to optimise the process of decision making. The evaluation of the process starts with the question which strategies and instruments are adopted to modify the process of policy formulation and implementation in sectors other than the environment? Of course, changes in the decision making process are meant to change policies as well, but this perspective on the policy process may reveal opportunities and barriers for a “toolbox” of EPI.

In this paper we zoom into the process perspective of EPI. We identify and categorise typical instruments- then describe their potentials and limits, based on a comprehensive survey of the evaluation literature on EPI. By this we not only aim at identifying the merits and shortcomings of the different measures, but furthermore at estimating the possibilities for a cross-country adoption.

4.3 A TOOLBOX FOR EPI

A review of the efforts to establish and implement EPI in the western industrialised countries reveals a considerable number of strategies and instruments (see e.g. Hontelez, 2003, Hertin and Berkhout, 2003; OECD, 2002a, 2002b; Lenschow, 2002; Lafferty and Meadowcraft, 2000). In Germany, for example, administrative measures were developed such as a green cabinet, that was supported by a inter-departmental working group of high ranking civil servants (established in 1971), or a obligation for each ministry to consult the then responsible ministry of the interior in the case of legislative proposals are likely to affect the environment (introduced in 1975). Also, preparations were undertaken to develop a systematic assessment of bills and programmes regarding their environmental effects. But this project was stopped due to lack of personnel available for its realisation (Müller, 2002). These attempts for an integrated policy design lost their relevance when the momentum of the reform period of the early environmental policy died away in consequence of the oil price shocks and the world-wide economic downturn. Similar observations can be made for most of the other industrialised countries (Jänicke et al., 2002). In the late 1980s and the beginning of the 1990s, the integration approach was rediscovered and recalled to life with several innovations in several European countries, as well as on the level of European policy-making (OECD, 2002a; Liefferink and Andersen, 1997).

Table 1. gives an overview on typical measures that have been adopted in the recent past. We distinguish these measures with regard to their scope (encompassing strategies vs. instruments) and their domain of

application (centralised vs. decentralised). A strategy comprises ideally objectives, action plans (including the allocation of resources), mechanisms for monitoring and obligations for reporting. Instruments are means or devices to implement policies.

In the following a short description of each of the different measures for EPI will be given, describing their main features, their first time of application, their target groups and related requirements, but also the experiences that have been gathered in practice.

Table 1: A Toolbox of Measures for Environmental Policy Integration

	<i>Political Strategies</i>	<i>Administrative Instruments</i>
Centralised Mechanisms	<ul style="list-style-type: none"> * National Planning for Environment / Sustainability Strategies * Constitutional Provisions for EPI * New institutional bodies for EPI 	<ul style="list-style-type: none"> * Extension of the competencies of the Environmental Ministry: <ul style="list-style-type: none"> – Consultations procedures – Veto power – Initiative rights * Independent institutions for advising and evaluation * Amalgamation of departments * Green Budgeting * Consultative procedures: <ul style="list-style-type: none"> – Green Cabinet – Interdepartmental working groups * Reporting obligations to new institutions * Strategic Environmental Assessment
Decentralised Mechanisms	<ul style="list-style-type: none"> * Sectoral Strategies 	<ul style="list-style-type: none"> * Environmental departments in the different sectors / Environmental Correspondents * Sectoral Conferences * Appraisal of policy initiatives

Source: own compilation

4.4 EXPLORING THE TOOLBOX

4.4.1 Centralised Mechanisms: Political Strategies

National Environmental Policy Plans / Sustainability Strategies

National Environmental Planning comprises the development of a comprehensive strategy concept, that defines priorities and objectives of environmental policy in a long-time perspective, names relevant target groups and related measures and proposes indicators for monitoring and evaluation. Such plans are often drawn up with wide societal participation.¹ Furthermore, they are often integrated in an overall reform of the public sector, are paralleled by an ecological tax reform and accompanied by strong orientation towards technology- and research funding as also ecologically motivated investment programs (SRU, 2000; Dalal-Clayton, 1996).

The first plans were introduced in the Netherlands, Canada, UK, Denmark, Sweden and Norway towards the End of the 1980s. In the 1990s, a fast diffusion of the instrument could be observed (Tews et al., 2002).² At present, about 80% of all industrialised countries have adopted different plans or strategies, that however vary considerably concerning their strategic approaches. The requirement of the Agenda 21 to develop such Plans or Strategies has proved as a catalyst (Jänicke and Jörgens, 2000). Environmental Planning furthers the case of EPI in several ways. Usually, the role of the MoE is strengthened in the process of the plan development. The attention is shifted from contested instruments to problems and their need for adequate solutions. In the best case, the result is the internalisation of problem responsibility within the relevant sector and its target groups which might trigger learning processes in a long-term perspective. But most of the adopted plans are characterised by some serious shortcomings so far: The objectives are often vaguely formulated only and they frequently do not impose binding implementation requirements. The plans are often restricted to conventional environmental objectives and tend to ignore unsolved, persistent problems. Also the institutionalisation of the whole planning process is, with a few exceptions, weak and objectives are not taken sufficiently into account by decision-makers in other relevant departments (SRU, 2000; Jänicke and Jörgens, 2000).

National Sustainable Development Strategies have to be distinguished from Environmental Planning. They usually have a much broader focus on economic, social and environmental policy, but also education and research policy or other policy areas. In this respect they only contain

- 1 As the German Advisory Council on the Environment has pointed out, they are especially characterised by a consensus of opinion on the objectives which are derived from the principle of sustainability, by an integration and participation approach and by the obligation to report on improvements and shortcoming regarding the implementation of objectives (SRU, 2000).
- 2 The most prominent example is the National Environmental Policy Plan of the Netherlands (NEPP). This plan not only embodies the target-oriented policy approach best, containing over 200 quantitative objectives, but also the strict orientation of environmental policy towards its target groups.

few, highly aggregated environmental objectives and indicators. EPI is not the central aim, rather the deployment of a multi-dimensional set of policy objectives. From the late 1990s, Sustainable Development Strategies were adopted world-wide (Jänicke and Jörgens, 2000). They are either newly adopted as in the German case or they replace or complement existing national environmental policy plans such as in the Netherlands or Austria. ³

Constitutional Provisions for EPI

Many countries adopted constitutional provisions to protect the environment. One of the most clearest formulated and strictest obligations is to be found in the treaties of the European Union. While the environment was not mentioned in the founding treaty of Rome, in all of the more recent treaties requirements of the environment were incorporated. For the first time, the Single European Act (SEA) of 1987 established in its article 130 r(2) the principle, that ‘environmental protection requirements shall be a component of the community’s other policies’.

In 1993, the Maastricht Treaty amended the article 2 of the Treaty of Rome by replacing the objective of ‘continuous expansion’ with the objective of sustainable and non-inflationary growth respecting the environment’. Furthermore the integration principle was strengthened by making it imperative (environmental requirements must be integrated into definition and implementation of other policies) (Wilkinson, 1998, p. 114 f.). For the time being this process of institutionalising the EPI principle was continued with Article 6 of the Amsterdam Treaty, that makes EPI a core principle of the Union.

4.4.2 Centralised Mechanisms: Administrative Instruments

Extension of the Competences of the MoEs

Successful EPI is a question of power: The relative strength of the involved actors has been identified as a crucial variable to explain substantial policy change in environmental relevant policy sectors. Therefore, the expansion of the competences of MoEs has been proposed as a veritable tool by scholars of Policy Integration. It is, however, difficult to define precise criteria for the strengths of MoEs in relation to other departments. ⁴

So far, a wide range of tools has been discussed to extend the competences of the MoEs. The most extensive institution is probably the right

³ The relationship between the more sectoral approach environmental planning approach and the overall arching approach of the Sustainable Development Strategies is however far from being cleared yet: a complementary relationship as also a competitive relationship is possible. Most countries by now have both a plan and a strategy. How this dualism affects policy-making in practice remains a challenge for further research.

⁴ Liberatore (1997) stresses this point in her study on the DG Environment of the European Commission: Its staff and budget is neglectable compared to other DGs, but its regulatory output has been and still is of considerable importance for other DGs .

for the MoE to veto legislative proposals by other departments. To our knowledge, such a formal veto-power-right has not been institutionalised in any country. This is no wonder given the frequent weak status of the MoE in the hierarchy of the government.

But it is also questionable, whether such an instrument would be of practicable advantage to the MoE. A veto is a powerful instrument that can be used only in cases of high importance. However, as many environmentally contended policy proposals are often backed fully by most of the other cabinet members, the upholding of a veto might lead to political isolation of the minister of environment or to similar obstruction behaviour by other cabinet members.⁵ Therefore it is not likely, that a veto, once institutionalised, will be actually enforced. In Germany, a veto power is given to the ministers of finance and justice, but it has not been enforced yet. However, such a power might unfold effects before it is actually deployed. To sum up, it seems very unlikely, that such an instrument will diffuse widely after adoption by a pioneering country, because it implies too far-reaching changes in the distribution of power among the different departments.

Another, however weaker, possibility to involve the MoE in the legislation process of other departments is to oblige the latter to consult the MoE in the case of legislative proposals with likely environmental impacts. One might rightfully argue, that this is a standard procedure of all political decision-making within cabinet. But evidence shows that consultation starts at a late stage of decision making, when considerable policy changes are out of reach (OECD, 2002a). In order to overcome the shortcomings of the traditional consulting procedures, the right for the MoE to start initiatives in other departmental areas of responsibility has been brought forward to the debate (Müller, 2002; Jänicke et al., 2002). Such a provision might improve the power of the MoE in two ways. First of all, the MoE gains greater influence on the overall agenda of the government. But it also obtains a more offensive role in relation to the other departments: The responsible department has to prove the possibility of the proposal and has to justify a withdrawal with good reasons. The barrier for withdrawal can be increased, if the MoE builds up winning coalitions in the run-up of the decision-process.

The amalgamation of departments is another way to enhance the relative power of the MoE. An example for a useful merger has been the Danish joint energy- and environmental ministry. But this merger has been revoked by the new middle-right government recently. In the UK, the merging of the departments of transport and of the environment by the Labour

5 This observation was made by Pehle in his comprehensive study on the German Ministry for the Environment (Pehle, 198). He concluded, that at least in the political system of Germany, the theoretical advantages of a veto right of the Ministry of Environment are practically counteracted by the dominant role of the chancellor. The chancellor is able to overrule a veto in any case, and is able to dismiss a minister. Politically it would not be wise to vote against the position of the chancellor.

government and the selection of the vice prime minister John Prescott as head of this department has also been interpreted as an improvement in EPI (Jordan, 2002).

Liberatore (1997) points out, that integration understood as a two way relationship, in general could imply a dilution as well, if the two departments are of different size or power. That is particularly true for the amalgamation of ministries. The German case proves again ideal for illustration: Until 1986 the departmental responsibilities for the environment were distributed among 8 different ministries. The responsibility for nature protection was located in the ministry of agriculture, which was seen as the most important barrier for a more ambitious nature protection. Conflicts between the different departments had to be carried out inside the ministry, and the possibility to resolve conflicts on the cabinet level was missing (Pehle, 1998). A diffusion of a special design of ministries to other countries is not very likely, because it would imply again a shift in the distribution of power. The design of ministries is likely to be the result of a political bargaining on national level rather than driven by a certain functionality.

Consultative procedures

Apart from formal procedures to include the MoE into the decision making process, there have been many efforts to institutionalise joint committees of environmental departments and other policy sectors. These committees have been introduced both on the cabinet level (“green cabinets”) as well as on the departmental level (“interdepartmental working groups”).

In the 1980s, there has been a series of joint European councils of the transport and environment council. This instrument has been taken up again by the British presidency in 1997 despite the rather disappointing results of the earlier series. Hey (1998) concludes, that these joint meetings generate considerable organisational efforts, but despite of symbolic declarations, substantial efforts for an improved EPI could not be observed.

Several European countries introduced so called “Green cabinets”, mainly on the level of secretary of states. In Germany such a committee was introduced as early as 1971 (Jänicke et al., 2002), but it was dissolved soon. The red-green coalition tied on this tradition. A Green Cabinet was constituted again in 2000, mainly to prepare the national sustainability strategy. In the UK, such a committee was introduced in 1990, being chaired by the deputy prime minister (Jordan and Lenschow, 2000). Norway introduced a State Secretary Committee for Environmental Issues in 1989 (Sverdrup, 1998).

Frequently, these cabinet committees are supported by working groups of high ranking civil servants. There is good reason to assume, that such committees can be expected to be standard governmental procedures. Apart from agenda setting, it is however unlikely, that these consulting mechanisms prove to be a vehicle for a sufficient change of policy goals and objectives in other departments. Consultation is likely to impro-

ve the efficiency of implementation, but such a policy change has to be decided upon on a higher level of policy making.

Strategic Environmental Assessment

The basic idea for a strategic environmental impact assessment (SEIA) on the European level was originally developed back in the late 1970s by a small network of experts (Hey, 1998). A SEIA is a procedural instrument for the evaluation of all stages of the decision-making-cycle, thereby starting from the formulation of policies (definition of strategic guidelines and objectives) via planning (assignment of resources) and ending with the development of programmes (set of projects). This is based on the assumption that the set of alternatives predetermined on the respective higher level of decision making, that are, however, not at disposition. The practical execution ranges from simple checklists to an elaborated modelling of the impacts. From the mid 1980s there have been several attempts of the Commission to implement a SEIA. In 1989 a consultation process with national EIA experts was started which led to an official proposal for a directive in 1996 which came into force in 1999. The directive requests the competent authorities to elaborate an environmental statement and to perform consultations with the environmental authorities and the general public (Niestroy, 2000). Although the directive was weakened in its scope, the now to be established SEIA is of high potential for EPI, because of its binding character and its overall impact on governmental decision-making processes. This is often not really recognised in the discussions about furthering the case of EPI.

An environmental Assessment (EA) of legislative proposals has been introduced for the first time in the USA in 1970, but it is seldom applied. Moreover, the underlying act lacks even substantial and operational goals (Andrews, 1997). Canada introduced an environmental assessment review process (EARP) back in 1973, that was aimed to assess legislative proposals regarding their environmental impacts. But this guideline was only applied to a few policies. In 1990 the procedure was reformed including a formal provision of EA for the first time. That was laid down in the so called Blue Book from 1993, which is the official guide to the assessment process (Marsden, 1998, p. 246). Denmark, the Netherlands, Finland, Norway and the European Union itself have enacted requirements for legislative EA. An obligatory EA can also be found in Hong-Kong. The current state of institutionalisation varies considerably: provisions for SEA are partially given by legislation (e.g. USA), by administrative orders (e.g. CDN, DK) or advisory guidelines (e.g. UK). Countries differ regarding the form and scope of public participation in SEA: The involvement of the general public is foreseen in DK and NL, while in the UK and CDN the availability of the assessment results is restricted to the cabinet. A further spread of this policy innovation is likely because of the adoption of the related European directive in 1999, that requires the Member States to implement a SEA.

Although there are considerable differences in the implementation of SEIA, it is most often applied across the boundaries of a department or

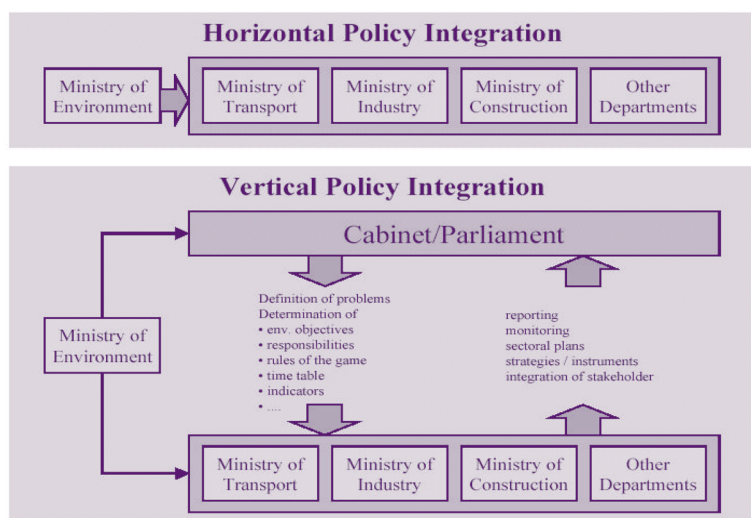
ministry. Therefore we assign it to the centralised instruments. The counterparts are appraisal tools that are applied inside the department only, without obligations for publishing the results and without a need for consulting other departments or the general public.

Green Budgeting

The governments budget reflects the governments priorities beyond declarations regarding their policy objectives. Therefore, an in-depth evaluation has the potential of revealing government spending that is contradictory to environmental objectives.

Norway pioneered this policy instrument and introduced it for the first time in 1988 by adding an environmental profile to the state budget proposal. This form of Green budgeting was further elaborated in 1992 and 1996 by developing more detailed categories for spending with environmental effects. Other countries that implemented or consider such measures are Canada and the Netherlands (OECD, 2002b). The dispute on budget was the core issue to integrate environmental objectives into the European Regional and Cohesion funds that can be considered as cases of relatively successful EPI (Lenschow 1997, 2002; Wilkinson, 1998). Here, EPI was legitimised and supported by the reformed constitutional law of the EU which demands a consideration of the environment within the spending procedures. It is, however, not linked to the application of government routines in favour of EPI.

Figure 1: Mechanisms of Horizontal and Vertical Environmental Policy Integration



Source: Jänicke, 2000

4.4.3 Decentralised Mechanisms: Political Strategies

The instruments described above have mostly failed in greening governmental policies. In the 1990s several countries witnessed a shift in the overall approach to EPI, which can be described as a shift from horizontal Integration measures towards vertical Integration measures, that move the burden of activity to the single departments (OECD, 2002a; Lafferty, 2001).

In the case of horizontal EPI it is mainly up to the MoE to “green” the other departments. That requires a sufficient capacity to interfere in the non-environmental domains. The limits of this more traditional approach towards EPI have been shown in the analysis above. A vertical strategy requires a central body as for example the parliament or the cabinet to oblige the sectors to develop sectoral strategies and action plans, but also to monitor and report the progress to a competent authority. In case of vertical EPI, the role of the MoE changes: Instead of imposing measures to the other departments, its main task is to facilitate the development of sectoral strategies, e.g. by providing advice and indicators.

Decentralised Sectoral Strategies

Sectoral Strategies prove to be the most far-reaching and demanding decentralised mechanism. In the 1990s, several countries introduced this approach. In Canada the “Guide to Green Government” was published in 1995, that committed a large number of ministries and agencies to develop a report on their environmental policy, to develop sectoral strategies until 1997 and to update this strategies in a three years term. For a review of the strategies, the Commissioner of the Environment and Sustainable Development was established as a part of the General Accounting Office (SRU, 2000). In Denmark several ministries developed by own initiative or by request strategies to implement a sustainable development in their respective domain following the Brundtland Report of 1987. That was pioneered by the ministry of agriculture and soon followed by the energy ministry and the transport ministry. Since then, Denmark has developed many sectoral action plans rather than an all-embracing National Plan as e.g. the Netherlands (Andersen, 1997).

The Cardiff-Process of the European Union

However, the greatest efforts to promote sectoral strategies have been made at the European Level (Jordan, 2002). Here, the disappointing results of the 5th Environmental Action Programme (5EAP), that enclosed the integration principle as its fundamental objective by defining priority sectors and major environmental problems, served as a starting point for the reconsideration of the existing EPI-mechanisms.

An evaluation of these measures concluded, that the impact on the practical policy-making procedures of other Directorate-Generals (DG) had been modest. Any progress was ascribed to external factors (e.g. environmentalists action) rather than the integration measures (Wilkinson 1998, p. 122). Based on a Swedish initiative, a reform of the integration project was

agreed upon at the 1997 Luxemburg summit. To enter into a more binding process, the leadership was shifted from the Commission DG Environment to the European Council. The following UK presidency put the EPI issue on the top of the agenda (Lenschow, 2002a, p.11). At the Cardiff Summit in June 1998, the Cardiff-Process of Environmental Policy Integration was started.

All relevant Council formations were asked to develop sectoral strategies containing objectives, timetables and task assignment, but also to constantly monitor improvements and shortcomings. The Councils for Agriculture, Energy and Transport started the process in June 1998. They were joined in a second round by the Councils for Development, for Internal Market and for Industry in December 1998. The setting was completed in a third round by the Councils for General Affairs, for Economical and Fiscal Affairs and for Fisheries (Fergusson et al., 2001). This shift of responsibility for EPI away from the DG Environment to the European Council, together with the request for the development of sectoral strategies by single Council formations can be analysed as a shift from horizontal to vertical integration.

The European Council of Helsinki in June 1999 undertook a first comprehensive evaluation of all delivered reports and strategies and came to a rather disappointing assessment concerning the content and binding character of the proposals. All council formations were asked to finalise their work with a view to the forthcoming European Council in Gotenborg in June 2001. The whole process should then be shifted to the implementation phase (Fergusson et al., 2001). But the European Council in Gotenborg revealed serious shortcomings of the received strategies concerning vague objectives, missing timetables and indicators and unclear task responsibilities. The whole process was postponed to the next Spring Summit in Barcelona in 2002. But also in Barcelona an sufficient progress could not be ascertained. At present, the future course of the Cardiff-Process is nebulous (see Krämer et al., 2002).

Up to now, no council has published a strategy with concrete objectives, timetables and indicators. The political significance of the strategies remains unclear. There is a lack of an overall co-ordination and steering body and overall clear procedural and rules for the development of the strategies as also with regard to their content. Therefore, the single strategies differ considerably concerning the understanding of EPI, the needs for problem analysis but also the work on objectives and indicators (SRU, 2002). But the Cardiff-Process clearly is an important institutional innovation, nonetheless because it proves rich ground for learning about barriers to EPI and requests for effective policy steering.

4.4.4 Decentralised Mechanisms: Administrative Instruments

Appraisal of policy initiatives

In several industrialised countries, instruments have been developed that gain at the assessment of possible impacts of legislative proposals by

the competent authorities themselves. These mechanisms are closely related to Strategic Environmental Assessments as described above and there is a continuum between appraisal methodology and the more formal SEA procedures. The main difference is, that the general public or other departments are not involved. An appraisal system was developed in the UK in 1991 as a guide for civil servants, called Policy Appraisal and the Environment (Jordan and Lenschow, 2000). This appraisal was rarely conducted, which was criticised among others by environmental groups. Only when the guide was reformulated in later years, the application became more frequent.

In the Netherlands the need for an impact assessment regarding the environment for new legislation was recognised in the NEPP of 1989. From 1992 on preparations were undertaken to establish such an assessment. Additional momentum for the introduction came in 1994 from the Quality of Legislation initiative which aimed at a tighter evaluation of proposed legislation. Here, the underlying goal was to stimulate a more productive economy and an effective administration. This deregulation initiative aimed primarily at an evaluation of the economic costs and benefits of regulation. However, it was realized that environmental costs and benefits should be taken into account, too. While the economic evaluation was formalised in the so called Business Effects Test (BET), the environmental test was developed by a ministerial Commission chaired by the prime minister. This so called E-test was finally introduced in 1995. It is applied to all types of legislative proposals including drafts and amendments. As it was recommended in NEPP 2, a 'help desk', namely the Joint Support Centre for Draft Regulations, was established by the Environmental and the Economic ministries to give guidance for the procedures. By this, the coordination between BET and E-Test is assured also institutionally (Marsden, 1999).⁶

In 1993, the DG Environment of the European Commission developed an appraisal system (so called 'green star') to evaluate the effects of policy proposals with significant effects to the environment in order to implement the 5EAP. The Manual of Operational Procedures lists a step-by-step procedure for the undertaking of the appraisal. However, due to a lack of an appropriate methodology, these appraisals were never conducted (Wilkinson 1998, p.120). Other appraisal tools have been developed for the DG Industry (IAPlus, see <http://www.jrc.es/projects/iaplus/>) or are currently under development (e.g. Rodmell 2002, DEFRA 2002, Jacob and Volkery,

6 The E-Test procedure encompasses mainly four different phases: 1) Screening/Scoping Phase: An interdepartmental working group selects proposals for which an E-Test should be carried out and lists environmental aspects that should be evaluated. 2) Adoption Phase: The list of proposal is adopted by the Council of Ministers. 3) Documentation/Assessment Phase: The selected aspects are addressed by the responsible ministry, supported by the helpdesk; results are documented and added to the draft legislation. 4) Reviewing Phase: Joint Support Centre and the Ministry of Justice reviews the quality of information and checks if the draft can be send to the Council of Ministers.

2003). Recent developments focus on the different dimensions of Sustainability, or aim to integrate different appraisal methods.

Environmental Correspondents

The establishment of mirroring units in other departments is another standard procedure in governments practices. For example, environmental correspondents have been established in Germany from 1986, when the Ministry of the Environment was founded. The European Commission also introduced this instrument in 1993, in order to implement the overall integration philosophy of the 5EAP (Kraak et al, 2001). Wilkinson (1998, p. 121) gives a range of possible functions for the environmental correspondents:

- spy: informing DG XI of developments in the respective DG,
- postman: passing information on environmental legislation,
- policemen: vetoing policy proposals,
- technician: guidance for e.g. appraisal methods
- facilitator: negotiating between the respective DG and DG XI
- ambassador: modifying DG XI policies to fit with own DG

The practical results are slightly disappointing. The environmental correspondents have not been willing or able to influence the policies of their respective departments. Again, the less discretion, that bureaucratic routines and rules offer for alternative policy options, can be considered to be one main reason of failure. There are strong indications, that environmental correspondents ran danger to jeopardise their own status or career opportunities, when they tried to lobby environmental proposals that clearly contradicted the main policy objectives of their own department (Kraack et al., 2001).

Another reason is, that DG Environment (XI) did not give an administrative guidance on the role of the environmental correspondents. Therefore, the implementation and understanding of their role varied considerably: In several DGs that had already units or policies which are concerned with the environment, this duty was given to officials with pre-existing environmental responsibilities. In particular in those DGs, where an attention for environmental concerns had been already established, the integration principle was regarded as a two-way process, requiring the environmental department to integrate also the objectives of the non-environmental departments. Therefore, role-models like ‘spy’ or policeman’ necessarily failed.

4.5 OPPORTUNITIES AND IMPEDIMENTS FOR EPI

Recent evaluation studies on the introduction of EPI measures and on EPI in different policy sectors identified a broad range of different factors that influence success or failure of integration measures. In accordance with many approaches of policy analysis, Lenschow (2002a) expects three dimensions to be relevant for an explanation of patterns of EPI:

- * Actors: Their preferences, relative strength and position in the political structure, variation in the commitment to environmental issues, pres-

sure by top level political commitment and/or by environmentalists or other non-state actors. A sufficient regulatory capacity and a balance of power with environmental stakeholders is suggested as prerequisites for EPI also by Hey (2002) and Hontelez (2003).

- * Ideas: On the one hand, the framing paradigms of environmental policy, i.e. the concept of sustainable development, or the expectation of win-win solutions are of decisive importance. On the other hand the implementation of EPI is determined by the 'policy mission' in the sectoral policy and its compatibility with environmental concerns. The focus on 'win-win' risks the failure of EPI, if there are losers. In the long run, success depends upon the ability to compensate or to enable those actors for a restructuring their activities.
- * Policy traditions and institutions: In how far the concept of EPI fits into the given structures and practices is a determinant success factor. A fragmented institutional setting is difficult to reform. Usually, it requires a crisis to open a window of opportunity for institutional change (Lenschow, 2002c, p. 229).

Lafferty (2002) as well as the OECD (2002a) enumerate the following factors as decisive for the success of EPI: A common understanding of sustainable development, a clear commitment and related leadership by political leaders, specific institutional mechanisms to steer integration, the effective involvement of stakeholders and efficient knowledge management.

Hertin and Berkhout (2002) identify four complementary core functions, that EPI has to fulfil in order to be successful: sectoral agenda setting, horizontal communication, sectoral capacity building and policy learning.

It is common to these studies, that on the one hand the importance of learning in the different policy sectors, the utilisation of knowledge, a shared vision and a common understanding of problems is stressed. But on the other hand, these studies point to the prevailing importance of political will and leadership as also to the relative strengths of actors or their capacity to act. Our brief discussion of the different measures for EPI revealed considerable differences in how far these prerequisites are fulfilled. There is no single instrument that is able to fulfil all of the different functions. The following table gives an overview over the different features of the discussed measures.

Table 2: Expected impacts of strategic approaches and instruments of EPI

	Changes relative strengths of existing Actors	Shaping of New Actors	Inclusion of Environmental Actors / Opening of Networks	Improvement of Leadership	Dissemination of Vision	Improves utilisation of knowledge	Agenda Setting	EPI in policy implementation
National Environmental / Sustainability Planning	Possible		✓	✓	✓		✓	
Sectoral Strategies				✓	✓	Possible	✓	
Constitutional Provisions	Possible				Possible		Possible	
Consultation procedures	Possible							✓
Veto power	✓							
Initiative rights	✓			✓		✓		
Amalgamation of departments	Possible			Possible	Possible		Possible	Possible
Independent institutions for advising and evaluation		✓	Possible		Possible	Possible	Possible	Possible
Green Budgeting					✓		✓	✓
Green Cabinet				✓	✓		✓	
Interdepartmental working groups								✓
Strategic Environmental Assessment			✓			✓		✓
Environmental departments in the different sectors / Environmental Correspondents		✓				Possible		✓
Sectoral Conferences			Possible		✓	Possible	✓	Possible
Appraisal of policy initiatives						✓		✓

Source: Own Compilation

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5. GOOD ENVIRONMENTAL GOVERNANCE: IMPROVING THE DIRECTION

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5.1 INTRODUCTION

The current generation has the responsibility to create an institutional system capable of managing a stable society and economy in a way that does not lead to the degradation of environmental resources. In order to achieve this, we must create mechanisms that stimulate social participation in decision-making, support the rationalization of public asset management, and encourage transparency and accountability. These principles are essential for a modern and efficient administration/management. Taxpayers have a right to expect the government to be serving public interests in an ethical way and managing public assets properly. OECD countries in recent years have worked together closely on improving both the state and corporate management cultures (e.g. ethical public service, fight against corruption, guidelines for multinational corporations, principles of corporate management). Transparency and accountability requires the governments to create a strong and coherent ethical culture capable of living up to the high demands. In order to achieve this, it is vital to have a united leadership when designing and implementing public service policies and practices.

In order to implement proper management, one needs to establish an efficient law-abiding conduct. The techniques designed with aim to exercise rights include official inspections, self-monitoring, reports based on self-assessment, and citizen's acts. The government system of OECD countries is based on the principles of representative democracy. Strengthening the participation mechanism of citizens in decision-making improves the quality, authenticity and legitimacy of the decisions. The rapid spread of information and communication technology (e.g. the Internet) further augments the possibilities of influencing decisions. All OECD countries support information access. While some countries have instituted regulations regarding citizens' access to information decades ago, 40% of them passed laws establishing this as a right. The demand for discussing issues with citizens is on the rise, even though the process is still slow. Most of the OECD countries just recently became aware of the importance of regular consultation with citizens and their representatives. Active participation is still present in the policy making process only to a very small degree. In reality, however, this is the most advanced form of democratic decision-making, the actual, and not merely verbal, manifestation of partnership.

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5.2 OVERCOMING THE OBSTACLES IN THE WAY OF SUSTAINABLE DEVELOPMENT

Beside reducing social problems and improving the environment, another serious challenge for the governments of OECD countries is how to maintain their high living standard. This requires substituting old political approaches with new ones and improving the efficiency of implementation. The conditions for designing policies in favor of sustainable development are as follows:

- * improving the operability of economic processes;
- * strengthening the decision making process;
- * working out the conditions for sustainable development with the help of science and technology.

OECD countries have already made some progress in the application of these conditions and recognized the importance of using an “amalgam” of political means in order to implement policies involving all three dimensions of sustainable development. In many cases, however, obstacles related to politics and the lack of information have hindered the implementation of appropriate policies. The most important task in this respect is the integration of the environmental and social aspects into the economic and sectorial policies. The implementation of an integration that is not only virtual presupposes an institutional system paired with government structures that are capable of creating a balance between the occasionally competing objectives.

5.2.1 Environmental taxes

In the 1990's, the use of environmental taxes became common in OECD countries. Some countries (e.g. Germany) have attempted to employ the frequently mentioned “double dividend” policy which shifted the tax load from human effort to pollution and the use of resources. At the end of the 1990's, taxes related to the environment constituted 7% of all tax revenues and 2.5% of GDP. (Figure 10.5.) More than 90% of total revenues originated from taxes imposed on fuel and vehicles. However, applying environmental taxation does not mean that these taxes will adequately stimulate the enhancement of the environment. Most taxes are not being imposed on the basis of the actual assessment of external costs. For example, coal and coke are not taxed or taxed very lightly, in contrast with the much less polluting natural gas. The same is true for fuel: gasoline is taxed at a much higher rate than diesel oil, even though the fine particle emission of the latter is higher. Another problem in enforcing environmental taxation (this is mainly true for industries with high energy needs) is the introduction of substantial exceptions and reimbursements. These circumstances considerably reduce the efficiency of taxation and the legitimacy of control. Production subsidies represent obstacles for trading and thus are a hazard to the producers of developing countries. The agricultural subsidies and import restrictions currently in effect in OECD countries result in an annual USD 20 billion loss for developing nations.

5.2.2 Marketable permits

Marketable permits designed to reduce air and water pollution have spread relatively rapidly in the USA but have been employed much less in other OECD countries. Only a few countries use this means to control sulphur dioxide, nitrogen oxides, and volatile carbohydrates emissions, water pollutants, over fishing (e.g. fishing quotas). Some OECD member countries, the European Union and the states of the Baltic region have drawn up the framework for controlling the trading rights of greenhouse gases. Similar to other market-based means, marketable permits make it possible to achieve certain environmental protection objectives at lower costs, providing the flexibility for polluters and resource users to apply the least costly solutions. At the same time, there are other difficulties in designing and implementing marketable permits (e.g. allocating permits, setting the initial fees, monitoring performance, etc.). Prior experience shows that the system has been applied successfully for reducing air pollutant emission in a cost-efficient way. The introduction of sulphur oxide trade in the United States in 1995 showed that the objectives could not only be reached by the deadline but also that the system was more cost-efficient than the use of the traditional “instruction-control” method. Similarly, the reduction of the environmentally harmful use of ozone-damaging substances and leaded fuel has also produced good results. However, the application of marketable permits for the protection of water did not yield such positive results.

5.2.3 Voluntary agreements

Voluntary agreements spread rapidly in the OECD countries in the 1990's. More than 300 discussion agreements have been made in the European Union. In Japan 30 000 local pollution control agreements have been made, while the number of voluntary programs operated by the federal government in the USA has exceeded forty. In contrast with the regulatory and market-based means, voluntary agreements are becoming more popular among those being regulated, especially when the use of other means is met with strong political resistance. Voluntary agreements could cover a wide range of activities, in which both producers and consumers could participate. Corporations could discuss with the authorities the rules of conduct, while the third party (e.g. civil organizations) could also have ability to inspect the performance of assumed obligations. Business participants oblige to raise the level of their environmental productivity or social responsibility higher than stipulated by the laws and regulations. Voluntary agreements could be more fruitful for corporations because they result in smaller legal fees, an enhanced corporate image, and a better relationship with the society and the shareholders. According to prior experience, voluntary agreements play a positive, yet limited, role among the means that facilitate the implementation of sustainable development. When designing voluntary agreements, it is important to ensure that the measures stimula-

ted by those are more efficient than not having them at all. In addition, the inspection and transaction costs must be minimized too. The document titled “OECD Guidelines for Multinational Corporations” that was accepted in 2000, is a good example of the voluntary initiatives to which business members can join. Beside voluntary agreements, corporations can unilaterally employ various codes of conduct. In the 1990’s, a number of corporations drew up policies that support both the economic development and the protection of the environment. Voluntary agreements also target buyers, making them aware of the environmental, social and health consequences of their consumption decisions. Such awareness can also be stimulated by various information campaigns and a clear and coherent trademark system (environmentally friendly product, energy saving, bio-product, animal protection, etc.). The governments of OECD member countries recognized that they have a special responsibility in altering consumption patterns. This is particularly true for propagating the procedures and practices of “green” public procurement, as well as for considering the environmental consequences of infrastructural developments. In 2002, the OECD Council accepted a Recommendation on improving the environmental results of public procurements.

5.2.4 The management/administration systems

The management/administration systems are often not able to guarantee the coherence of various policies and to consider the long-term consequences of political decisions. One of the main reasons for this is that the policies with various social, economic and environmental objectives are designed by different government agencies, which rarely take into consideration the concepts, plans and programs created by others. The short election cycles (in reality reduced to 2-3 years) and the difficulties in assessing long-term trends do not help the governments in being able to understand the long-term consequences of their decisions. Although at this point there is only a limited amount of experience in this respect, many OECD countries are trying to do a better job in integrating the dimensions of sustainable development into the design and implementation of their relevant policies. For example, South Korea has established the Presidential Commission on Sustainable Development; Austria, the Municipal Subcommittee of Environmental Sustainability; Germany, the National Council for Sustainable Development. The main goal of these institutions is to raise the awareness of sustainable development among public service and the general population, to assess progress, and to help coordination in implementing future tasks. The intent of governments to support sustainable development can be seen from the fact that the French government that came to power in June 2002 has established the post of the minister of ecology and sustainable development and that it appointed a separate secretary of state who will be responsible for facilitating sustainable development. Beside the integration of policies between various branches (horizontal integration), it is important to strengthen the

coherence between the various levels of administration (vertical integration). Regional and municipal governments often have the greatest responsibility in carrying out the sustainability policies created by the national governments in such fields as education, health care, development of economy, waste management and water supply/canalization/sewage treatment. In order to properly implement the policies, municipal governments have to be able to exert an influence on the planning of national policies and participate in the decision making process, especially with respect to the division of implementation costs.

5.2.5 City governments

The city governments need to increase their capacity in order to be able to realize sustainable development. Experience shows that in OECD countries the management/administration systems of large urban areas are obsolete and cannot properly adapt to solving problems such as urban expansion, excessive population density, revitalization of aging areas, prevention of the deterioration of urban environment, public security. One of the most difficult tasks is to provide the resources that will implement the objectives of the local, regional and national policies.

5.2.6 Monitoring

Monitoring performance and reporting the results are important for assessing the progress made towards sustainable development. Only a few OECD countries have established independent institutions for examining objectives related to sustainable development. Canada has created the post of the Commissioner of the Environment and Sustainable Development. The commissioner is independent from the government; regularly inspects the sustainable development strategies of the ministries and prepares an annual report on its implementation for the Parliament.

In the 1990's, in order to solve problems arising in connection with the traditional state of separation, a number of OECD countries have begun creating institutions to help integration and the reform of work methods. Despite all these efforts, there have been very few results in increasing institutional capacities that would be capable of considering the consequences of current measures on future generations. In most countries there is a strong need for improving the capacity for analysis and for preparing long-term integrated assessments that are capable of elucidating the interactions between environmental, economic and social processes. The institutions, as a result of their current structure, in the course of their decision-making are not able to consider adequately the long-term effects typical in many areas of sustainable development. The short-term nature of the election cycles and economic programs, as well as the difficulties in assessing long-term trends represent a considerable challenge for decision makers. This situation is further complicated by the fact that when assessing the long-term consequences of current measures, one has to take into

account a given number of uncertainties, which is often an unsuccessful task. So far only a few countries have begun the scientific analysis of the long-term effects of political decisions related to sustainable development. It is essential to strengthen the cooperation and communication in this field between the decision makers and the representatives of the world of science.

5.2.7 Scientific innovations and technologies

Scientific innovations and new technologies play an important role in advancing sustainable development. Government research/development programs and the introduction of new technologies need to be designed in a way so they do not substitute the research carried out by private corporations. In order to achieve the objectives of sustainable development, technology policies must be integrated more closely with environmental policies, while the government programs aiming at the development of technology must pay more attention to the environmental and social objectives. Technological development may often unintentionally cause economic, social and environmental problems. Innovations aiming at solving a given problem (e.g. asbestos preventing the spread of fire) may bring up new problems (lung cancer). Governments need to improve their risk assessment and management capacities, so that they can evaluate the potential risks and benefits of technological development.

Very little is known about the sustainability of economic, social and ecological systems and their interactions. In the 1990's, many countries have prepared sustainable development indexes, which are now being used in planning, programming, determining political objectives and priorities, budget planning, assessing performance and communicating with the society. However, in many cases the existing indexes are inadequate, or the background information is incomplete or not comprehensive. Despite the growing amount of information and knowledge, science is still unable to answer many important questions regarding the type and nature of hazards affecting us. Experts still cannot predict with certainty the economic and social effects of certain policies. For example, such uncertainty hinders the implementation of political reforms related to global warming, because we cannot tell with certainty the costs and effects of the proposed climate-altering policies. Naturally, we can never completely eliminate uncertainty from our predictions but we could still try to reduce it. In order to improve the efficiency of political and administrative decisions, policy makers in OECD countries are increasingly relying on methods such as the examination of the effects of sustainability, the analysis of the effects of control, integrated assessment, risk analysis, etc. The analysis of the effects of control could improve the efficiency, success and transparency of government decisions. When designing sustainable development policies, uncertainties must be balanced by applying the principle of caution.

5.3 LONG-TERM THINKING VERSUS SHORT-TERM EXIGENCIES AND INTERESTS

Plural democracy and the associated institutional system have become dominant in most of the world. As part of the mechanism of this system, the actions and deeds of people currently in power are scrutinized through the elections that are held every 4-5 years.

It is obvious, on the other hand, that from the perspective of converting to sustainability, this mechanism is not only unsuitable but also dysfunctional, that is, potentially damaging. Naturally, it would be detrimental and dangerous to conclude that we do not need civil democracy. Still, we can see that the institutional system that has formed at the beginning of the 21st century, in its current form, is insufficient for the management of sustainability in Hungary too. Moreover, Hungary provides about half a percent of the world's revenue production, emissions, etc. There is not much we can do. Hungary might come up with interesting solutions and examples but it will obviously adapt to the main stream of the world, since in view of the current proportions, any difference would count as deviation. Even if we think that the main stream is going the wrong direction, we must still follow it.

A further obstacle for "nurturing" some new paradigms is the fact that not only the long-term but also the shorter-term strategic plans lack coordination. Obviously this is not a Hungarian peculiarity; other countries have similar problems, although the degree of the lack of coordination might be different. There are many tasks to be done: a national environmental protection program, drawing up a national development plan, a national sustainable development strategy, a population health program, the four-year plan of the government with various points, including its four-year budget. Every four years, the EU requests and prepares a report on various aspects of the country. However, the completed reports are not coordinated with each other, even though they are supposed to contain the same elements and refer to each other. Furthermore, with respect to the justification of programs prepared as applications for foreign aids, it would be sensible to always use the same system of reasoning (which has initially been refined and coordinated for "internal" use). This would be useful not only with respect to their form but also to their inherent content and relationships.

However, the different plans and programs are in some unknown, undisclosed or unspecified relationship with each other.

The steps that need to be made towards sustainability cannot be planned or identified without a deep analysis of the consequences and conditions of social, regional, etc interactions. The government itself should perhaps coordinate this task. It is impossible to attribute this task to this or that particular branch. Still, we must come up with some mechanism that would make the lines meet. The central coordinating place could obviously be somewhere in the vicinity of the prime minister, where the greatest amount of information is available. However, this structure runs

the risk of granting the Office of the Prime Minister excessive power. At least the other branches of the government would be concerned about this. The constant struggle between short and long-term pressures has also come up in the OECD analyses of the environmental politics.

The solution is a matter of political culture and decision. We could hope that the smoother a system works (e.g. capitalism and its political product, civil democracy), the more likely are people to realize the need for a different approach and new ways of thinking and planning. This demand may change the expected functioning of the institutional system.

5.4 INTEGRATION OF POLICIES

The problem of intersectorality also originates from the structure of plural democracies. At the same time, leading a field means having the power to manage the budget sources and political/economic/social relations. This situation is in striking contrast with the desired notion of having leaders let each other in. In other words, leaders ideally should encourage their apparatuses to cooperate, should negotiate how to take into consideration each other's points of view, that is, the various interests of the social groups they represent. For example, transport development should take into consideration the viewpoints of water and environmental protection, agriculture, nature preservation and infrastructure development. Experience tells us that managing an industry equals the opportunity of having control over the associated budget and potential foreign funds, being in charge of, or rather dominating, the relationship with the scientific, social or economic institutions and corporations. Thus this is a territory which could be compared to a "residence" with boundaries as wide as possible.

The question is whether this situation is going to improve or whether it is possible to improve it at all? Almost as old as environmental protection itself is the intent to integrate environmental protection, that is, the rational and continuous (=sustainable) management of the environmental and natural resources, into the policies of national industries and economic organisations who use these resources. This is the way it started in Hungary in the 1970's. The EU has been formulating this effort since 1972. It is a very intelligent invention to integrate environmental protection into the policies of polluting industries. Nevertheless, these efforts are still not successful as it can be seen from the EU evaluation of the fifth environmental action program. The document describes how the commissioners were unwilling to cooperate and, therefore, they rushed ahead to substitute the Helsinki process with the Cardiff one. Therefore, only five commissioners had to participate in the integration, whereas the others had to be included only later. But even this scheme did not work out.

With respect to integration, we notice stagnation. The process has its ups and downs, since progress in this field also depends on the expectations of the leaders which, in turn, depend on their discretion, determination, willingness and, first of all, potentials. If the cooperation between various industries were a consistent requirement then it would gradually

spread and become a reliable force. However, instead of relying on subjective expectations we can simply demand that cooperation should be institutionalized, just as the integration of the environmental interests/perspectives into the industrial policies. Therefore, in order to be able to enforce these rules in real life, it would be sensible (and is necessary) to stipulate cooperation in a statutory provision. In the practice of the National Environmental Protection Council, there has been a case when the examination analysis was not prepared, thus the legally prescribed assessment was not carried out, causing the case to be dismissed on the grounds of procedural error. The parties involved, on the other hand, initiated conciliation. This case is a good example showing that if this is an enforced requirement then the situation is bound to improve. If this is not a mandatory and enforced requirement then the willingness to cooperate decreases, partly because of the above peculiar trend of “residence-separation,” partly because it takes a long time to convert from one work method to another, even if it is supported from above. In addition, the phenomenon is independent from the system; the various apparatuses are not socialised for cooperation. Instead, they compete for the budgeted resources or the priority access to information. The reason for this is that, unfortunately, these are the assets that guarantee a better position in the competition, and not the combination or joint application of resources and information.

Therefore, we can see that the integration of policies, the incorporation of environmental issues into the large socio-economic and sectorial policies represent a constant struggle and will never happen automatically. At this point, there are no possible conceptual and political situations that would prompt members of any government to give up their separated terrains. Understanding is not enough. We need mechanisms that cannot be circumvented and this depends on the will of the leaders. We cannot establish these by means of social pressure. There is not enough awareness and knowledge in the society to achieve this, just as there are no communication channels able to convey the demands, if there were any.

5.5 PREVENTIVE, FARSIGHTED ENVIRONMENTAL POLICY

Today, prevention is not a priority in environmental policy. Following up on the line of thought detailed above, prevention cannot be taken seriously until it is not incorporated into other processes of the economy and society. Until then, we will only have the usual “end of pipe” classical environmental protection which can only ease the damages, not avoid them. Thus it reluctantly acquiesces to the regeneration of damages.

Prevention and prudence are two related yet separate things. Prevention can be best examined in relation with the economic participants. Among multinational corporations, suppliers and their partners there is a widespread way of thinking that is directed at prevention. Obviously, this is, once again, a question of the size of the capital. This is an issue we have already discussed. For a corporation, the stability of its profit is

the same as the national revenue for a country. If there is enough capital to invest now then there is a chance to operate the technology at a much lower cost on the long-term. The English have a saying worth considering: "Only the rich can afford to buy cheap." We all know the double diagram showing the costs of investment and the cost of future operation. This represents the underlying principle for the philosophy and practice of a cleaner production, promulgating the notion that prevention is rational and lucrative because it saves both material and energy. In other words, in the case of a cleaner technology, a solution that burdens the environment to a smaller degree is, at the same time, sensible from an economic perspective. The only shortcoming is that one needs to possess the initial capital capable of creating this new situation from the very beginning. Thus initially it costs more to incorporate the protection of environmental resources and their rational management into the process of production, instead of trying to reduce damages subsequently. The method is an existing one and it is spreading. Naturally, the availability of the initial capital necessary for the investment is not the only obstacle on the way to spreading the method. There are other obstacles too. The centers of cleaner production (CP) operating in university departments and institutions exert great efforts to make the corporations of the given region recognize that cleaner production is not merely a matter of environmental protection; from the perspective of the entrepreneur, it is predominantly a matter of rational management. Even though this would be a significant step towards sustainability, it is not enforced because for the economic decision makers the budget cycle and the fiscal year are the most decisive factor. If an investment brings returns a year later then it already seems like too great a risk. The results cannot be estimated in advance, especially if we also take into consideration the unpredictability of control and monitoring.

The best example of the difficulties related to prudence is the debate that is in process right now both in Hungary and the rest of the world regarding gene technologies. Even the opinion of the professional world is split to a large degree with respect to whether we should let the GMO out of the laboratories. Once again, economy plays a crucial role in this respect because in countries where such issues are not regulated as strictly as, for example, in the United States, half of the grains and soy produces are already GMO. Therefore, the economic argument is that whoever does not conform will fall behind!

The legislators in various administrations are also quite divided in their opinions on the matter. Some represent the competitiveness of the country, others the fears or interests of the consumers, and others simply the interests of environmental protection.

The notion we have already touched upon with respect to environmental and cost efficiency is especially valid for prevention. Namely, it is not practical to collect the funds and redistribute them. Instead, we should encourage capitalist corporations to solve the problem on their own - preferably not through subsequent investments in environmental protection but rather through innovation which could, at the same time, represent

both technological development and increased competitiveness, not to speak of new employment opportunities.

5.6 INSTITUTIONAL SYSTEM, DECISION-MAKING

The implementation of sustainability requires an adaptive institutional system. This is also true with respect to long-term planning because we cannot clearly see the partial processes and tasks years in advance. Therefore, we need a management mechanism and a supporting institutional system which builds on the assumption that it is possible to state clearly the proposed long or mid-term objectives. Moreover, the sources used for reaching these objectives should appear in the mid and long-term financing systems, the budget and, via the control system, in the corporate business plans. Short-term tasks should be determined in a way that the participants become, at the same time, aware of the long-term objectives and understand the relationship of those to the current tasks.

Concurrently, this is also a learning process. This self-correcting process also conforms to the classical program management rules, including every single element of that: goal, tasks, sources/assets, timing, participants, monitoring, feedback, correction/redesign, all within one continuous self-correcting process. Naturally, the process includes the partners who keep “moving” too.

The institutional system in Hungary, so far, is neither adaptive nor innovative. An interesting question in general is whether a bureaucracy can be made innovative at all. The policies, long-term plans need constant upgrading, which is a task that requires constant learning. It is also hard to bring in the appropriate number of participants.

Here we really need to separate economy from the public sphere. Administration, both state and municipal, is bound by hierarchical conditions. In a hierarchical system, in order to accomplish a given task, instructions go downward, whereas feedback/reports, if there are any, come upward. An adaptive institutional system, on the other hand, would also require independent initiatives, in the course of which not only reports but also proposals and ideas could also come back up. However, the executive hierarchical power regards such structure as dysfunctional. The mechanisms dominating the hierarchy also have a socializing effect. Thus the changes also have a negative human effect on the people within. This considerably hinders the establishment of the learning process and an adaptive institutional system.

In the economic sphere, market competition makes an intelligent manager appreciate innovations and initiatives. A transparent, traceable and accountable administrative system makes the work of government administration much easier, including the acceptance and support of the decisions of the municipal governments. Secrecy, on the other hand, has a reverse role, concealing from the outsider the reasons why this or that particular proposal was chosen. This practice directly contradicts the requisites of transparency and social participation.

All decision making teams or apparatuses work by initially evaluating, perhaps only on a conceptual level, several options before eventually choosing one on of which they build their entire stock of arguments. From this point on, the direction of the proposal is fixed on supporting the chosen option until it is accepted. If the various portfolios finally agree on something, then a territorial compromise is formed. Starting from this moment, the author of the plan cannot, even if he/she wanted to, deviate from the particular political/territorial standpoint which has become a political and/or administrative position as a result of the given compromise.

This is why it is very hard for a government council to initiate some sort of change. According to the experience of the National Environmental Protection Council, such a consulting, innovative role could be meaningful only if one could participate in the process at the earliest stages when the proposals are still being conceptualized, when there are still, at least in principle, available alternatives. This problem is related to the long-term issues of inter-industry integration and cooperation.

As a certain study analysing the OECD has already illustrated, one of the obstacles in recognizing genuine decision alternatives, and thus in running of the entire sphere of public service “smoothly,” is that the apparatuses prefer to explore and submit to their leaders the alternatives which those are likely to accept. Thus the leaders are being “tricked” at point zero. The problem with this is that in reality the system is forced neither to think, nor to learn.

Therefore, the result of all this is that genuine alternatives do not appear even in the (early) stage of decision planning. We would like to emphasize that it is possible, even very likely, that the proposal is a result of evaluation, since there are just as many competent people in the apparatuses as anywhere else. Still, this is a completely internal, so-called intimate process. Eventually, the apparatuses reach a point when they only promote a single alternative, trying to convert it into a decision. (It would also be useful to know how long it takes them to arrive at this point and to what degree do they exclude “external” impulses.) This process makes any social participation extremely difficult. Social participation, if there is such a thing today, can work in a very roundabout way. It is exerted in a way that the apparatuses and their leaders, being members of the society, most likely have enough information about the actual needs and wants of the people. But it rarely happens at this preparatory stage that the people are asked directly.

In reality, however, dispute and the ability to respond both affects and reflects many things, including the absence or presence of deep analyses. This fact also limits the generation of alternatives because if we do not analyse the complex processes, we will only have a narrow range of potential alternatives. Short-term thinking became a typical phenomenon, thus there is naturally no need to draw up alternatives. Although a short-term perspective may improve accountability, short-term plans do not incorporate the viewpoints of environmental management, not to speak of

sustainability.

The economic transition in Hungary can be considered to have been implemented successfully. The country has adapted relatively quickly, rapidly instituting the changes in the direction of foreign economy and turning towards the European market. These changes have generally increased the demand of production in Hungary, resulting in many positive effects. There are, however, some shortcomings, too. Social deficits have accumulated. Domestic health care is now in a disadvantageous position, poverty is on the rise, and regional differences are also increasing.

5.7 SUMMARISING: MANAGING THE POLICY OF SUSTAINABILITY

A managerial structure aiming at the implementation of sustainable development is still a distant dream, since there is no place in Europe with a government that considers sustainable development in an integrated way. During the Swedish Presidency, the European Council accepted the sustainable development strategy of the EU. The first, entirely verbal, attempt has been the Göteborg Declaration which has probably not entered the consciousness of the apparatus and politicians at all. Nevertheless, the newest French government, which has been formed in July 2002, has established a ministry of ecology and sustainable development. There remains the question of how this ministry operates. So far we know nothing about this. Perhaps an institutional pragmatization is about to begin, but it is also possible that there is a ministry by this name with a very limited influence. The important questions are what kind of actual political objectives are behind it, what kind of mandates it possesses, what are the capabilities of the minister in comparison with, for example, the social minister or the extremely powerful minister of economy, finance and industry (which is a single function in France).

In fact, most European countries have a so-called sustainable development commission which usually operates under the leadership of the prime minister or his deputy. This is done because the governments recognized that the notion of sustainability in reality must be integrated into the socio-economic processes.

Before the transition to a market economy, the Hungarian government used to have the function of deputy prime minister. This tradition could be reinstated, if there is willingness to do this.

Hungary could also establish a ministry in charge of sustainability. One could ask the question whether a separate ministry for such purposes is needed at all. Or even a deputy prime minister. But if a government has declared the principles of sustainable development and their integrated and adaptive management, then the government itself must be in charge of this.

Another interesting question is whether it is necessary, or even possible, to have a sustainable development strategy independent of the government programs. Such a strategy must obviously share the same

views as the individual branch programmes: it must see health care the way the health care programme does; environmental protection, the way the National Environmental Protection Program does, etc.

This is a dilemma and if we try to obtain a completely clear answer to it then the answer, obviously, is that there is no answer. Instead, the government program needs to act as the program of sustainability itself. But there has not been a government capable of achieving, or even just promising, this. In reality, the goal of preparing the strategic programs of sustainability is to catalyse and advance this process, to involve more and more people in analysing the feasibility of sustainability. A number of countries have drawn up sustainability programs; as we have already mentioned above, the EU itself has one too. [We cannot mention it without irony that, as we came to learn in Johannesburg, Burkina Faso, and even Botswana, have already created such a program.] The preparation of sustainability programs and strategic analyses is backed by a large professional and scientific apparatus; there are many people who do this for a living. This is why it is not completely unsubstantiated to assume that if there are many people involved with this at many places, then the decision makers will sooner or later get “contaminated.” Initially, this would happen only at the level of slogans. But this process will continue and will hopefully infiltrate the minds of the society and decision makers. As for the speed of this process, we can only hope that it will be slightly faster than the self-destructive effects of the unsustainable economic and social processes. If we are lucky and these efforts manage to catch up with the current tendencies, then we will have a chance to bring about a transformation leading to more sensible and sustainable resource management, before the resources themselves are obliterated.

6. NEW GOVERNANCE IDEAS AND THEIR CONSEQUENCES FOR KNOWLEDGE MANAGEMENT, RESEARCH AND INNOVATION IN THE EUROPEAN UNION *(Bert de Wit, RMNO)*

6.1 INTRODUCTION

Knowledge management, research and innovation policies are intimately linked to the dominant type of governance and the nature of the policy problem (In 't Veld, 2000). So, if new ideas about governance in the EU come forward, it is interesting to see what consequences these may have for knowledge management and research policy.

Evidently, the European Commission itself is also aware of this. The EC recently published a Document "Improving the Knowledge Base for Better Policies" (COM (2002) 713) as a response to its commitment made in the White Paper on European Governance. Another report, "Governance of the European Research Area. The Role of Civil Society" (IFOK, 2003) is also presented as an implementation of principles from the White Paper on European Governance to the European Research Area. This report focuses on methods of participation by civil society in research policy-making. Before dealing with these documents, some definitions are needed. Furthermore, in this contribution a typology of boundary work is presented to describe the interactions between scientists, policy-makers and representatives of societal groups. Using this typology, a quick and dirty analysis is made of the current discourses underlying science policy in the EU.

6.2 DEFINITIONS

Knowledge can be described as information collected for a certain purpose, and structured accordingly. An other definition is: knowledge is a socially constructed communal belief system, a shared set of beliefs (Wilder, 2003). Information are observations that shape a person's beliefs (ibidem).

Scientific knowledge has a disciplinary background, referring to fundamental scientific concepts (paradigms). Disciplinary knowledge in a sense is a kind of dialect. If persons from very different knowledge communities have to cooperate, for example a physicist and a sociologist, there is the problem of disciplinary language. Wilder even thinks they can only cooperate if they are prepared to make some temporary compromises, leaving some of their paradigmatic fixations ("logically irreconcilable beliefs") aside.

Knowledge is either explicit (formal, scientific knowledge) or implicit (experiential or contextual knowledge, faculties, etc.). Often in complex policy issues, implicit knowledge is as important as explicit knowledge. Moreover, integration of formal knowledge from several disciplines is a problem itself in an epistemological and methodological sense. Is integrated knowledge still reliable? How to check the quality of knowledge that is produced in interaction with several actors? If informal knowledge is inclu-

ded in the process, how can one prevent “negotiated knowledge” becoming “negotiated nonsense”? This subject bears a clear relation to methods for participatory integrated assessment and quality control.

Knowledge is often considered to be a public good (merit good). But it is often really partly a private good (WRR, 2001). This fact should be born in mind when talking about sharing, integrating and disseminating knowledge.

6.3 THE WHITE PAPER’S CONSEQUENCES FOR KNOWLEDGE AND RESEARCH

6.3.1 Broadening the Spectrum of Actors and Knowledge

In the White Paper on Governance, the European Commission favors broadening the spectrum of actors involved in policy-making. Furthermore, the EC favors a broadening of steering modes, from a focus on command-and-control regulation towards an inclusion of economic, informational or self regulatory approaches.

In “Improving the Knowledge Base for Better Policies” (COM 11.12.2002) the general principles for Better Governance have been regrouped to “openness, quality and effectiveness of methods for collecting and using expert advice”. These principles have been translated into guidelines and practical questions that can serve as a basis for a common and coherent approach for all EU Institutions and Member States to provide for the accountability, plurality and integrity of the expertise used in policy-making. Note that two of these principles are in fact process criteria and the third one (quality) is also to a large extent described in terms of process characteristics.

The guidelines and practical questions which the EC Document offers seem appropriate for dealing with controversial issues, when knowledge is disputed and the perception of uncertainties and values at stake may differ widely. The Document states:

“In several occasions, difficult policy decisions must be made on contentious issues in the face of significant uncertainty. Scientific expertise is then as much about stating what is unknown or uncertain with differing degrees of probability, as about setting out commonly agreed and accepted views. The Commission might be confronted by a panoply of conflicting expert opinions... (...). Increasingly, attention has to be focused on the process followed and not only on the policy outcome.” (...) ... “Issues increasingly cut across disciplines and responsibilities, requiring the Commission to seek out and integrate knowledge from different sources.”

The Commission wants to “promote a structured debate between scientists, policy-makers and interested parties”. This description in fact perfectly fits in a Dialogue Model of interactions between science, policy-makers and society (see paragraph 4). The Guidelines the Commission has formulated are implicitly based on a Dialogue Model (Hoppe, 2003), with their emphasis on:

- involving divergent views (not only mainstream);
- consultation of interested parties in framing the questions and underlying assumptions;
- making explicit the interests of experts;
- highlighting persisting uncertainties

Although these principles and guidelines at a first glance seem to be sympathetic, the question is when and under what circumstances they should be applied. Do they apply for all types of policy problems? It is a pity the EC document does not mention this point. For before involving a broad spectrum of actors, the first step should be to analyse the nature of the policy problem. The other recent report made for the EC, “Governance of the European Research Area. The Role of Civil Society” (IFOK, 2003) recommends a thorough analysis of the problem to be resolved in its specific context, then a problem classification according to typical characteristics and then an identification of relevant methods for civil society participation. It is crucial to understand under what circumstances participation is necessary and will lead to valuable results.

So our point is that the general recommendation to involve a broader spectrum of actors in policy research should be specified taking the nature of the problem into account.

The recommendation is especially relevant for unstructured policy problems. Unstructured problems are characterized by lack of consensus about the values at stake and about the relevant knowledge.

For structured problems there is no need to broaden the spectrum of actors, as there is consensus about the values at stake and policy-makers only want to know from scientists which of some possible options is the best to choose. This scientific input is in most cases not disputed, often being monodisciplinary and technical. So, these so-called “structured problems” can be dealt with in the “customary” way.

“Unstructured” problems on the contrary are the really wicked problems. A broadening of the spectrum of actors involved is not only apt, but absolutely necessary. These problems cannot be tackled in a straightforward, technical way. The result would be endless discussions and disputes about the reliability of knowledge, the framing of the research question, and so on.

So, for unstructured problems, the whole process of knowledge sharing, production and utilisation should undergo careful scrutiny. We agree with Hoppe (see paragraph 4) that a Dialogue Model of interactions between scientists and policy-makers is most appropriate for unstructured problems (Hoppe, 2003). Experts may either contribute to divergence, producing scientific evidence in favor of particular argumentations or positions or to convergence, trying to create a common knowledge base. This common knowledge base involves not only relevant explicit knowledge of the experts, but also local, implicit knowledge about problem perceptions, preferences and values, experience and so on. The common knowledge base is sometimes referred to as the “negotiated truth” (cf. Jasanoff, 1990) for a particular case.

6.3.2 Self-Regulatory Approaches and Knowledge

The assumption underlying the ideas about self regulation is: the actors involved know best how to solve their problems. They have the knowledge for solving the problems and (another assumption:) they are willing to do something about the problem. Self regulation implies that people are well informed to make policy decisions or can easily get missing knowledge themselves.

If so, one may put the question who is responsible for getting the right knowledge in the right place at the right moment? Is there any (“facilitating”) role for governments, local or national or EU? Or are the problem owners themselves responsible for organising the relevant knowledge? Who will guarantee the quality of the knowledge used and produced by the participants?

Of course, the first question is for what type of policy problems, self-regulatory approaches are best suited. Then, the next point is whether the problem belongs in the category structured or unstructured. If there is no general rule that self regulation should be linked to a particular type of policy problem (VROM-Raad, 1998), then obviously, each policy problem should first be analysed and classified.

Perhaps some general knowledge about self regulation on a meta level may be of use. But even then the question is whether this knowledge is controversial or not.

6.3.3 How to Optimise the Use of Knowledge in Policy-Making?

RMNO recently published several reports analysing the (non) use of knowledge in complex policy issues (In ‘t Veld, 2000; RMNO, 2001). Complex policy problems are unstructured problems, characterised by lack of consensus about the values at stake and about the relevant knowledge. Examples are the new Railway Track from Rotterdam to Germany, the manure surplus policy and the construction of the 5th landing strip of Schiphol Airport. Why is knowledge in those cases not utilised in policy-making, ignored or even actively suppressed? What should be done to enhance the utilisation of knowledge by policy-makers? RMNO put forward several recommendations ¹ to optimise the use of knowledge in policy-making. They may serve as well for new forms of governance in the EU.

The possible consequences of the European Commission’s “new” governance ideas for knowledge management and research cannot be

- 1 An interactive approach, involving stakeholders is needed to tackle unstructured problems. Analysis of problem definitions of different actors. An independent facilitator should find out what and where relevant knowledge is and what the knowledge needs are. Critical examination of knowledge claims is necessary. Uncertainties in knowledge claims should be made explicit and qualified. A common knowledge base constructed. Research should be a co-production. Extended peer review for quality control. The knowledge arena and the political arena should be closely linked, although responsibilities should be separated (dialogue model).

separated from the fundamental question how the interactions between scientists, policy-makers and societal groups can be characterised for a specific policy problem. The next question of course is, whether these interactions are optimal or not.

Fortunately, a typology of these interactions linked to the nature of the policy problem is at hand. It can be of great help, be it only to prevent endless debates and waste of money.

6.4 A GENERAL VIEW ON THE INTERACTIONS BETWEEN SCIENCE, POLICY AND SOCIETY

6.4.1 The “Classic” Model of Interactions between Science, Policy and Society

If you ask scientists or policy-makers how their relations can be described ideally, all kinds of implicit ideas about responsibilities, relations, power and trust will come forward. These implicit assumptions often can be summarised in a model of “rational policy-making”.

On one hand, there is the politician with his or her political rationality, asking the policy-maker to provide the answers for questions arising from a particular political problem. The policy-maker then formulates the question. A translation into research questions follows. This might be done by someone else. The next step is that the research is carried out by a scientist who has his or her own scientific rationality and own responsibility to come with an answer to the research question. The scientist considers himself or herself strictly independent. At last, the results of research are translated into knowledge that can be used - or ignored - in policy-making (de Wit, 2002). Of course, a scientist from his or her perspective may pretend that he or she should be on top and not the policy-maker, but the basic idea remains the same.

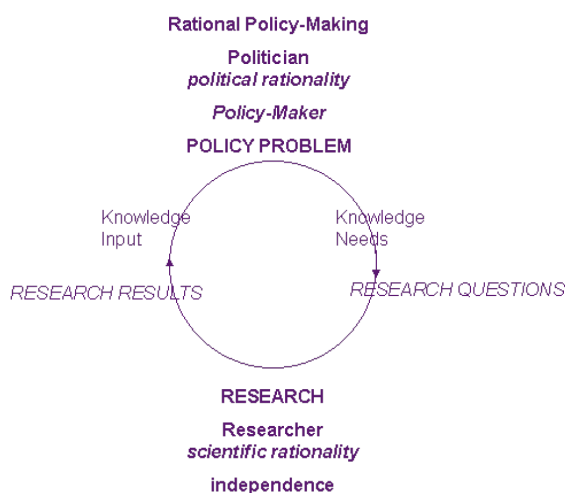


Figure 1. The “classic” model of interactions between science, policy and society

So far, so good. This “classic” model helps to explain a lot, but it cannot explain the way knowledge is (not) used in multi actor situations. In that case, a lot of stakeholders and different policy-makers are involved who do not share a common problem definition, who do not stand for the same values and who deal with uncertainties in quite a different way. In the “classic” model, the nature of the problem bears no relation to the scientific approach of the problem. All problems are equal and research should be done in the usual way.

The first step to a more sophisticated model is to admit that unstructured problems should be tackled in a special way. They cannot be tackled in the same straightforward way as a technical problem. The result would be endless discussions and disputes about the reliability of knowledge. The ensuing strategic use of knowledge does not bring forward the desired solution. On the contrary, it will bring about confusion and polarisation.

6.4.2 A More Sophisticated Typology

Hoppe and Huijs (2003) have tentatively drawn up a typology of interactions between science, policy and society. This typology is centred around two axes: primacy of policy or of science on the one axis and convergence or divergence on the other. The typology is based upon cases in several European countries and further research is needed for validation and adaptation.

The fundamental presupposition is that interactions between scientists, policy-makers and other actors should be structured according to the characteristics of the situation, the context. A relevant distinction is whether policy-makers or scientists have primacy. Furthermore, the interventions of policy-makers and scientists may be aimed at finding a common knowledge base, a consensus (convergence), or at raising arguments underpinning different positions (divergence).

Using these distinctions, at least six types of interactions have been classified. They have named different models. One of them is the Enlightenment model, often supposed to be appropriate for fundamental research. The role of scientists is to produce knowledge without any concern about possible relevance for society. Knowledge from science will gradually creep into society. In another model, scientists are very much involved in policy-making. They are expected to produce the ultimate truth and give directions for policy-making. That is the Technocratic model. In the Engineer Model “politicians are on top, experts on tap”. The idea is that the best available knowledge is available on a market. Contrary, in the Bureaucratic Model, science is incorporated as much as possible in the bureaucratic system, experts are indoors.

As already indicated, the role of scientists (and policy-makers as well) should depend on the nature of the problem. For structured problems, the scientist is expected to be the problem solver. In moderately structured problems scientists often act as advocates for a certain position. In the case of unstructured problems, the scientist is one of the

actors involved in a complex policy process.

A Dialogue model is most appropriate for unstructured problems. A scientist may either contribute to divergence, producing scientific evidence in favour of particular argumentations or positions or to convergence, trying to create a common knowledge base.

Having said goodbye to the classic model and embracing this new typology characterised by its emphasis on the nature of the policy problems, the next point to consider is how the interactions between scientists and policy-makers in the European Commission are predominantly structured. An answer to this question will bring forward possible frictions and elucidate problems encountered. So, a short excursion at the level of the European Commission is necessary.

6.5 DOMINANT DISCOURSES WITH REGARD TO KNOWLEDGE AND SCIENCE POLICY-MAKING IN THE EUROPEAN COMMISSION

Dominant discourses of the EC can be traced from documents and from standard practices but also from what policy-makers say. As time was too short to make a detailed study of documents and interview several people, a simple “quick and dirty” reconstruction should do. First, of course, one should analyse the discourses underlying the Sixth Framework Programme (FP6), which are presumably part of the policy theories of DG Research. Of course the mere fact that the EC has its own Program (FP6) for promoting research into specific themes is in itself a major manifestation of a discourse.

Furthermore, it is interesting to know what science policy theories can be traced from official documents of other EC Directorates. For example, DG Enterprise recently published a study about innovation policy in the Knowledge Society. The DG Environment may also cherish specific ideas about the way knowledge should be generated (for example in FP6) so as to match its knowledge needs.

Not only by analysing EC policy documents but also by looking at the common procedures one can get an idea of the dominant discourses.

The EC working methods (in the field of the environment) are centred round expert hearings and expert committees. In the field of knowledge management and research, the EC has its own research programmes and own research and statistical institutions.

6.5.1 Discourses underlying the Sixth Framework Program (FP 6)

The question of course is whether there is a big gap between the proposed EC Document's (“Improving the Knowledge Base for Better Policies”) guidelines and day-to-day practice in the EU research programmes.

The aim of FP 6 is promoting international collaboration and concentration of research efforts in the EU in the form of Networks of Excellence and Integrated programmes. The underlying idea is that concentration of

research in Europe makes the European research more competitive with research elsewhere in the world. “Networks help to reach the necessary critical mass”. This is believed to boost innovation. It will produce more patents or other research benefits and thus strengthen the economy of the European states. This way of thinking about innovation and R&D is based upon a certain theory of how innovation can be fostered.

The link between research in the Framework Programme and the knowledge needs of EC environmental policy-makers is weak (e.g. Busch, 2000, evaluation of FP 5). Speaking in terms of Nowotny et al. (2000): the contextualisation of science is weak. Of course, some people in the EC are also worried about how to put the knowledge to use that is produced by Framework Programs (cf. the report of the ESD-meeting in Amsterdam about environmental research, Bennett, RMNO, 2001). Frame Work Programs are an example of a mix of the Enlightenment discourse (to a certain extent, characterised by weak contextualisation) and of the Engineer discourse (to get knowledge for EC-policy-making).

The EC (DG Research) thinks, the utilisation of knowledge produced by Framework Programs for policy-making should be increased. To this end, the FP6 document proposes a proper place for knowledge needs of EC policy-makers under the heading of “anticipating the EU’s scientific and technical needs” to incorporate these needs under the “Integrated Projects” in FP6. One may readily doubt whether this move alone results in a stronger contextualisation.

More effect might be expected from other EC initiatives. For example the fact that a special program in FP 6 is dedicated to research on Science and Society and the fact that a special directorate Science and Society has been formed in DG Research, show the EC is serious about improving the relations between science and society. Several conferences have been organised. The recent IFOK report for DG Research, “Governance of the European Research Area, The Role of Civil Society”, deals with methods for participation of civil society in research. Participation of civil society in research is seen as a logical consequence of new governance ideas about openness, quality and effectiveness of methods for collecting and using expert advice. Although the report concludes that it is impossible to provide precise guidelines for the implementation of these participatory methods, the EC and Member States should foster useful practices of participation in research policy-making. Before choosing a particular method for participation a good problem analysis and problem classification is essential as a prerequisite, IFOK recommends.

Of course, we fully agree that a good problem analysis and problem classification should come first. The ideas about participation of civil society in research fit well in a Dialogue Discourse. The IFOK report does not point out that only in a dialogue setting, participation in research makes sense and that a Dialogue Model in particular is well suited for dealing with complex unstructured problems. In the learning dialogue discourse, neither of the parties involved has primacy and all parties involved are willing to cooperate to create a common knowledge base, learning

from each other.

The question is of course to what extent the 6th Framework Programme will provide real opportunities for participation of civil society. If the EC is serious about participation in research policy-making, these opportunities should be created from the very start of research programmes that focus on societal topics of a controversial nature.

6.5.2 The Discourses underlying EC Knowledge Institutions

The EC not only has its Frame Work Programs. Several EU Institutions play a role in producing, synthesising, codifying and disseminating knowledge. For example Eurostat supplies statistical data. EEA (European Environment Agency) reports to the EC primarily about the state of the environment in the Union using several indicators. The Joint Research Centre (JRC) is yet another EC-institution.

These institutions can be seen as an example of the bureaucratic discourse: policy-makers try to get the basic expertise they need indoors, under their command and control.

On the other hand, organising expert meetings and commissioning specific studies can be seen as examples of the engineer discourse: buying the best knowledge that is available on the market.

6.5.3 EC Innovation policy and discourses

The FP6 document of the Commission sees integration and concentration of research efforts as the way of stepping up innovation in Europe facing the challenges and prospects opened up by technologies of the future. Scientific and technical excellence will be developed.

This innovation theory seems to concentrate predominantly on the scientific institutions, although the Commission states that “the participation of SME’s (Small and Medium Sized Enterprises) in networks of excellence should be significant” and “cooperative research in collaboration with SME’s, research centres and universities should be extended”. The formulation of these lines indicates that the Commission, or should we say DG Research, is not really convinced of the idea that the crux of innovation lies in the interaction between scientists and industry, NGO’s and policy-makers. These ideas in FP6 are in agreement with a traditional linear model of innovation: linear connections between fundamental scientific research and innovation of end products. A recent paper drawn up for DG Enterprise about innovation policy in the EU (2003) stresses the need for a new innovation strategy. The transformation to a knowledge society asks for a new set of principles for innovation policy. Whether this will result in a policy change in the EC Enterprise and Science Directorates, remains to be seen.

New forms of governance are quite relevant too for the role knowledge may play in handling persistent problems and in boosting innovation. If policy-makers are convinced that for handling some persistent problem

new initiatives and innovative solutions are needed, breaking up the “lock in” situation, this has clearly consequences for the mobilisation of knowledge. A dialogue model as described above seems adequate when policy-makers start thinking of how to get out of a lock-in situation. But a dialogue model itself is not sufficient to boost system innovation. New configurations of actors should be created, stirring things up, stimulating new visions and new perspectives. System innovation is in general the result not only of technological innovation but also of (concurring) alterations in the social context: property rights, responsibilities, fiscal system, all kinds of institutional arrangements.

The concept of “transitions” is buzzing around. Transitions to more sustainable systems or a more sustainable regime. Transitions consist of a series of system innovations.

Transitions ask for a well thought-over policy to get rid of institutional barriers for more sustainable systems and, where appropriate, a new kind of demand driven innovation strategy on a national and European scale to foster technological and other innovations.

Several scientific reports underline that in modern society, often referred to as the Knowledge Society, the linear model of innovation is no longer adequate and should be replaced by an other model (cf. Nowotny, 2000). Transitions to a sustainable system of energy production, transport, etc., ask for a long term process of interaction between scientists, policy-makers and stakeholders. Interactions that are driven by future visions.

Overall, the dominant governance system in the European Union is actually of crucial importance for the success or failure of any innovation policy. As Cashore and Vertinsky (2000) pointed out, the dominant type of relations between central government and industry will determine to what extent innovation is boosted or hampered by institutional arrangements. For the EC a similar kind of analysis should be done, if not yet done. The results will show whether a new kind of innovation policy is viable or just a waste of money because of conflicting policy arrangements.

6.5.4 Conclusions

The dominant discourses with respect to knowledge and policy-making in the EC seem to be:

Knowledge is a public good.

Elements from the Engineer Discourse:

- The best available knowledge is available on the market. If you have sufficient money, you can buy it.
- The knowledge market functions properly.
- Experts have the best available knowledge to solve problems.
- The best available knowledge can be “brought together” by organising expert meetings.

Elements from the Bureaucratic Discourse:

- The fundamental data and knowledge for underpinning and evaluating policies should be collected by institutions which work under command and control of the EC, thus providing in house expertise.

Elements from the Enlightenment Discourse:

- Innovation is boosted by concentration and integration of research efforts.
- Experts have the best available knowledge to solve problems.
- Innovation will be boosted by spending more money on research (Lisbon and Barcelona Declarations).

Elements from the Dialogue Discourse:

- Promote a structured debate between scientists, policy-makers and interested parties.
- Participation of Civil Society in the European Research Area is necessary.

Although there is an influential group of scientists at the JRC and elsewhere in the European institutions that cherish constructivist views about scientific knowledge and mode 2 science production (Ravetz and Funtowicz are well known representatives of this group), until now they seem to have had little influence on the policy of the European Commission itself, as elements of the Dialogue Discourse have not yet entered the very heart of science policy of the EC. These scientists want alterations in “the social contract of science”, and want “scientists to assist the process of governance” (Funtowicz, Shepherd, Wilkinson, Ravetz, 2000). An eloquent plea for a stronger contextualisation of science, indeed.

The fact that different directorates and institutions of the European Commission seem to be linked to very different and even opposite discourses, should not come as a surprise. It is a consequence of a historical process of political ideas floating to the surface and getting submerged and of people who cherish them: commissioners and EC officials with their own ideas about how to organise the interface between science and society. These ideas underlie regulations, guidelines and other procedures. When it comes to implementing new forms of governance in EC policy, in this case in science and innovation policy, one should be aware of these underlying discourses to prevent possible frustrations.

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7. FLEXIBLE ORGANISING GOVERNANCE STYLES

(Louis Meuleman, RMNO)

ABSTRACT

If it is accepted that besides the classical, directive governance style of public sector bureaucracies, more participatory styles have to be applied in certain - maybe many - cases, what does this mean for the internal organisation of these bureaucracies? And when a government body has developed the capacity to choose and apply different governance styles, which organisational conditions stimulate flexibility to switch between styles when this is necessary? To illustrate relations between governance styles and organisational features this article relates three prominent governance styles (directive, participatory and self-regulatory) to eight organisational features (strategy, structure, shared values, staff, skills, systems and science (knowledge management)). It is meant to rather raise awareness for the organisational dimension of multi-mode governance than giving answers.

7.1 INTRODUCTION AND PROBLEM SETTING

Most research on the new societal challenges for the public sector concentrates on the relationships between governmental bodies and societal partners. It focuses on how to establish and maintain successful forms of cooperation between government, citizens, NGO's and private sector in the intermediate 'playing field' of what can be called the public sphere. Discourse analysis, developing direct democracy, and network analysis are among the issues that are extensively addressed.

In contrast, this article concentrates on the consequences of these new challenges within public sector organisations. Which new competencies, styles, structure etcetera, other than those that are common in classical, hierarchical public sector organisations are needed in order to interact better with societal partners?

The belief that governance styles should change - or rather that a flexible multi-mode governance approach is advisable - originates from the idea that the current society is gradually changing from a hierarchical towards a so-called network society (Castells, 1996). Government bodies will have to find new, but not less important roles: they remain very special societal parties with several monopolies such as raising tax and exercising violence, and with a special attention to the general public interest and to weaker societal groups.

During the past decennium governments on the local, national and the European level started to experiment with forms of public participation. Besides this they also issued strategic policy-statements (such as the EU White Paper on Governance, COM 2001) which promise more direct influence of citizens, NGO's and the private sector.

However, public participation, interactive policymaking, co-regulation and other forms of more direct influence on decision making have had

only a moderate success until now. Policy processes that started interactive often ended in a classical top-down approach. What was promised in the interactive phase sometimes was not delivered in the end. This created a paradoxical situation: trying to give citizens more direct influence and taking their interests and knowledge more seriously, resulted in a decrease of citizens' trust in the public sector. In the Netherlands citizens' trust in the public sector has decreased during recent years from 65% in 2000 to 35% in 2002 (SCP, 2003). It seems there is a growing credibility gap.

Some say that this credibility gap is caused by lack of leadership. But even the best captain will fail to reach his destination if his ship is not seaworthy. One of the weak spots of the so-called 'ship of state' is the overall dominance of hierarchical thinking. It's not about hierarchical thinking itself, because in many cases it has proven to be a practical background for quick decision-making in clear or urgent matters, but its dominance.

Most public sector managers are well-trained in a hierarchical style of governance. Within their belief system the new approaches may seem incomprehensible. This is understandable because most literature about more participatory approaches is written by authors who have a different belief system, namely the paradigm of the network society, and who use the new vocabulary that comes with it. For example, the relatively new term 'governance' (= a process) expresses a different paradigm than the term 'government' (= the institution) to which the public sector has been accustomed for decades. The observation of the dominance of the hierarchical orientation leads to the question if public sector organisations are equipped well for executing the new, more participatory governance styles. In order to understand possible organisational deficits, this article relates a number of organisational dimensions to three prominent governance styles, which are itself related to different types of societal problems.

The field of environmental policy in Europe provides a good case for analysing the chain 'societal problem - governance style - organisational dimensions'. Environmental problems vary from being simple to very complex, from clear and structured to persistent and unstructured, and from local to global. The joint statement of independent national environmental advisory councils 'European Governance for the Environment' (EEAC, 2003) postulates that in environmental governance three types (modes) of governance can be differentiated. EEAC presents a heuristic scheme to help decision-making on the governance type that matches best with different types of environmental problems, and asks for due attention to the organisational dimensions ¹.

1 "In order to be able to implement the rationale EEAC proposes for making decisions on the best governance style for each environmental policy issue, and maintain or enforce the European Commission's credibility, due attention should be paid to its organisational implications, such as the European Commission directorates' working style, attitude (culture) and staff competencies (process management skills, networking abilities)." EEAC, 2003.

If we differentiate three styles of governance, related to different types of problems as EEAC does for environmental problems, this in fact is a situational approach, analogical to the among managers well-known concept of situational leadership². A situational approach can prevent government bodies to completely wanting to reform their hierarchical, directive governance style into new, more participatory styles, which would be a new unbalance that can even be counterproductive.

In praxis the three styles of governance usually appear in mixed forms. A policy process that starts with a participatory style in the phase of problem definition may in later phases contain elements of the directive style, and the output can be a mixture of directives and selected fields for self-regulation.

This mixed appearance however at the same time makes it difficult to analyse (and subsequently to develop) the organisational features that typically match with the different governance styles. In this article the three governance styles are treated separately in order to illustrate the range of organisational features that can be helpful when a public sector organisation wants to 'master' all three styles.

Different problem types can be related to different dominant governance styles:

Type of problems	Immediate danger; clear and accepted	Complex, many actors, persistent, unclear, unstructured	Simple, few actors, few side-effects
Governance style	Directive style (the public sector rules)	Participatory style (the public sector co-operates)	Self-regulatory style (the public sector enables)

Each of the governance styles typically asks capacities of the governmental organisation that has a role (e.g. producer, co-producer, or enabler) in policymaking or implementation. To give a tentative, general description:

- * The directive approach, the way that has brought success to e.g. environmental policies during the last three decades, 'belongs' to the classical public sector organisation type. Typical for the organisational design is:
 - a dominantly hierarchically oriented culture
 - a clear command & control structure and internal procedures (including information management)
 - excellent project management.
- * The participatory approach, which is being developed in praxis since about ten years ago has several key elements in its design, that con-

2 A well-known management concept (Hersey and Blanchard, 1982), that describes four leadership styles every manager should master and be able to apply 'situational' in appropriate situations.

- flit with the essentials of the first type of organisation. It typically calls for:
- a well-balanced mix of a hierarchical (vertical) and networking (horizontal) culture;
 - a clear communication internal and external structure and procedures, as well as a command & control culture for internal decisionmaking;
 - excellent process management as well as project management.
- * The self-regulatory approach, which accepts that responsibility is in the hands of societal actors or individual citizens and places the public sector in the role of facilitator and enabler, is in organisations typically represented by:
- a dominantly networking oriented culture;
 - a clear external communication strategy, matching with how networks / communities communicate;
 - excellent network management.

The above general comparison of the three governance styles and three key organisational aspects illustrates that there is an overlap: type one and three are quite different, but type two combines both.

This article, which is meant to rather raise awareness for the relations between governance and the organisation of the public sector, addresses two questions.

1. If it is accepted that besides the classical, directive governance style of public sector bureaucracies, more participatory styles have to be applied in certain - maybe many - cases, what does this mean for the internal organisation of these bureaucracies?

It may be necessary to switch from one to another governance style during the course of a policy process, because of changes in the political or societal context, or when new insights about the nature of the problem lead to a new decision on the style of governance. Therefore it is not enough that a public sector organisation knows how to execute all relevant governance styles, but also has developed mechanisms for situational governance. Therefore, the second question is:

2. When a government body has developed the capacity to choose and apply all three different governance styles, which organisational conditions stimulate flexibility to switch between styles when necessary?

Some more detailed insights are available with Meuleman (2003) from which also most examples, concepts and figures are taken.

7.2 ILLUSTRATION OF SOME ORGANISATIONAL DIMENSIONS OF GOVERNANCE MODES

According to the 7-S-Model (Peters and Waterman, 1980)³ seven key

- 3 This model is nowadays criticised because it doesn't describe the dynamics of the current public sector environment; but because the dominant culture within the public sector is still one of a classical bureaucracy, it might be a good starting point for organisational discussions within the public sector.

dimensions of organisations should be differentiated and constantly being watched: strategy, structure, shared values, systems, style, staff and skills. One aspect is added here: science (knowledge management). Another aspect that could be added but is not illustrated in this article is service (different types of output and outcome).

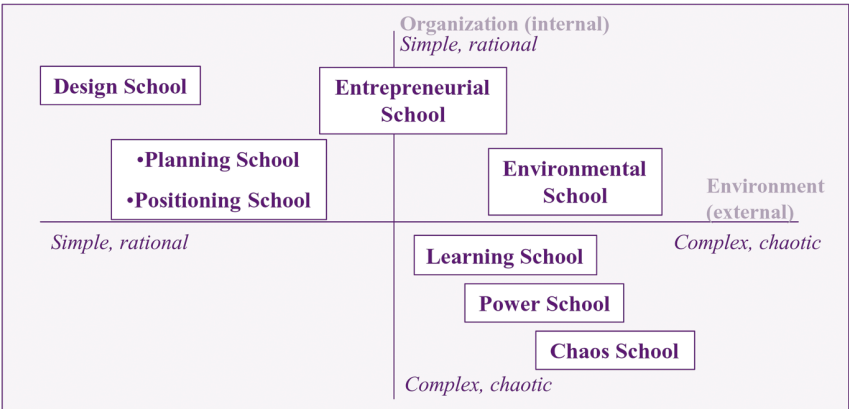
The following sections illustrate how the three governance styles can be linked to the eight differentiated organisational aspects.

7.2.1 Strategy: how to act

	Directive style	Participatory style	Self-regulatory style
STRATEGY	Planning school, design school, positioning school,	Chaos school, power school	Learning school, chaos school

Strategy is not ‘what the top managers of a public sector organisation decide’. It can be defined as a course of action leading to the allocation of an organisation’s finite resources to reach identified goals. There are many different ways to look at strategy. Mintzberg et al. (1998) differentiate 10 strategy ‘schools’. On top an 11th relevant school has to be mentioned, the chaos school (e.g. Stacey, 1991), which considers that management has to address complexity and unpredictability. Eight schools have specific assumptions on both the internal (organisational) and external (environment) situation:

Figure 1. Situational strategy formulation (after van Eenennaam, 2003).



Public sector officials who are used to work with structured, manageable, clear problems with a low external impact often think according to the design school, the planning school or the positioning school. They have experienced that their targets can be reached by thorough planning and design, and they focus on how to develop an optimal position. They are primarily line- and project managers and in general have a tendency to underestimate the process aspects. Financial and legal experts typically have a preference for this approach⁴. Their internal and external organisational environment is relatively simple and rational. Therefore people who are used to work with a directive governance style often develop strategies according to the strategy schools in the above-left square of Figure 1.

The chaos school of strategy sometimes provides useful insights on how to cope with the unpredictability of complex, target-led, policy processes. This school deals with situations in which the internal and external problem environment is so complex, that the system cannot be 'steered'. This can lead to a strategy which aims at determining (or better: discovering) the rules under which the system can operate successfully.

In many complex policy issues the problem environment is not so 'chaotic' that it is impossible to exercise influence. Mapping networks is a typical instrument to reduce 'chaos'. This can help developing strategies for complex, participatory governance processes. An analysis of the relations between the actors in a process (the network) describes if there is a relation and what the nature of the relation is. The analysis gives insight in possible occasional (temporary) coalitions that can arise between parties who are in principle opponents. With the information from a relation analysis one can also try to stimulate the establishment of coalitions. Mapping the relations that are visible⁵ also illustrates with which influential parties the public sector organisation doesn't have well-established relations. Or which relations are redundant, at least for the moment.

In a multi-actor, multi-level and multi-sector environment and spatial renewal process in The Netherlands (the Green Heart case⁶) network maps were made several times, and they were never the same. The Ministry's insights as well as the actual situation changed constantly. While drawing a map we were discussing possible relations that had not yet been established. For example the large cities like Amsterdam and Rotterdam that surround the Green Heart area, had no relations with the stakeholders in the area and only a little interest in the area. For them it was not a place of nature, historic landscapes, rest and

4 This preference can be very deeply-rooted. During a series of workshops I asked in total 100 financial consultants to name the worst advice to the public sector they could think of. They then stayed within their favoured planning and design strategy paradigm. The other ways of strategic thinking were not considered as undesirable, but were outside their scope.

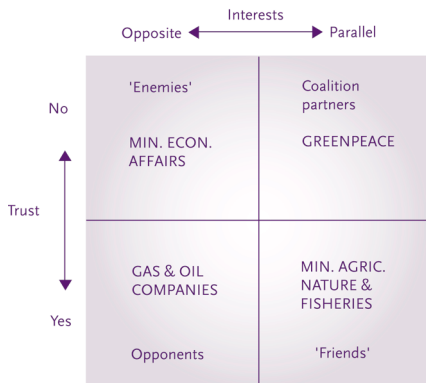
5 Some relations will stay invisible for the map-maker(s).

6 The Green Heart is a 1500 km² relatively rural area in the Western part of The Netherlands, surrounded by a ring of cities.

recreation, but non-urban wasteland: not-yet-urbanised farmland. But we assumed that if we could help to focus their attention to the enormous recreation values the Green Heart area potentially had to offer for their 6 million inhabitants, we would have strong new allies. We invited the responsible aldermen of these cities to several meetings with the Minister and with other actors and they started developing relations with several of the involved parties. The common interest we developed was to make plans to open up the Green Heart area as a recreation area for people in the cities: more bicycle roads, parking lots, water recreation facilities etcetera. This would preferably happen in the border zone of the Green heart area and would provide a robust 'defence' zone against future urbanisation plans: in the future the cities itself would have an interest in keeping this recreation zone green.

In a participatory governance style the public sector is usually leading the process and wants to guarantee transparency and the admission to the process of also for weakly organised societal interests. In order to prevent the participation paradox⁷, strategic thinking according to the power school can be helpful. What are the strengths and weaknesses of stakeholders interested in the process? A strength analysis may provide useful information for strategic decisions, as the following example illustrates, taken from the policy process on the environmental impacts of drilling for natural gas under the Dutch Wadden Sea:

Figure 2: Strength analysis (after: Meuleman, 2003, p.128).



In the Wadden Sea example the Ministry for the Environment and Spatial Planning had the lead of the process. It didn't trust its 'enemy', the Ministry of Economic Affairs, and this feeling was mutual.

7 More participation of established interest groups may lead to greater exclusion of weaker, unheard interests.

Furthermore Economic Affairs wanted to serve the interest of the Gas and oil companies. The representatives of the gas and oil companies had interests contrasting the environment interest, but they could be trusted, because they were interested in a constructive outcome. They even came up with an interesting solution: not drilling in but under the Wadden Sea, via diagonally drilled pipes that started from the mainland. Greenpeace had parallel interests to the Environment Ministry, but a contrary strategy, which included communicating to the press that the environment was at risk, whatever the outcome of the policy process would be.

The chaos school may also provide useful strategic insight in self-regulation processes. But here the learning school is predominantly important: the main interest of the public sector within the self-regulatory governance style is not influencing but to stimulate and enable societal actors to collectively learn from experiences and apply these experiences within their network, region or city.

To conclude: awareness of the idea that there are different strategy schools may improve public sector efficiency because it creates a basis for mutual understanding of actors within the public-sector organisation, who may not be fully aware of the different strategy belief systems different internal colleagues have. On top it may increase effectiveness when applied situationally and in combination. Different views on strategy do not exclude each other: a balanced synthesis may create the best results (de Wit and Meyer, 1999).

	Directive style	Participatory style	Self-regulatory style
STRUCTURE	Hierarchical, centralised, project organisation	Hybrid organisation supporting a process organisation	Network organisation, decentralised

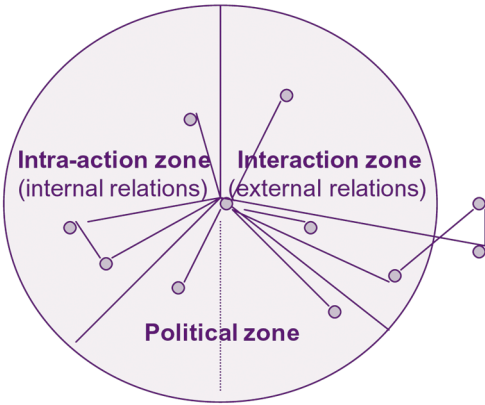


Figure 3. The public sector organisation as seen by a policymaker: three network zones (after Meuleman, 2003, p. 82).

7.2.2 Structure: How people and work are organised

Public sector organisations can be described in many different ways, depending on which aspects one finds important in the organisation. For a minister or a director-general the organisation structure is probably in the first place a power and decision-making structure. That's why ministries often present themselves as a hierarchical, pyramidal structure. But someone in the ministry, who is in charge of organising a complex policy process, may have a completely different view of the organisation structure. For him or her three network zones are important: the interaction zone (contacts with external parties), the intra-action zone (contacts with internal parties) and the political zone (contacts with political players, in the first place the minister, but also parliament and political parties):

Comparing this organisational picture with the hierarchical organisational scheme a minister or a director-general is familiar with, illustrates that there apparently is a difference:

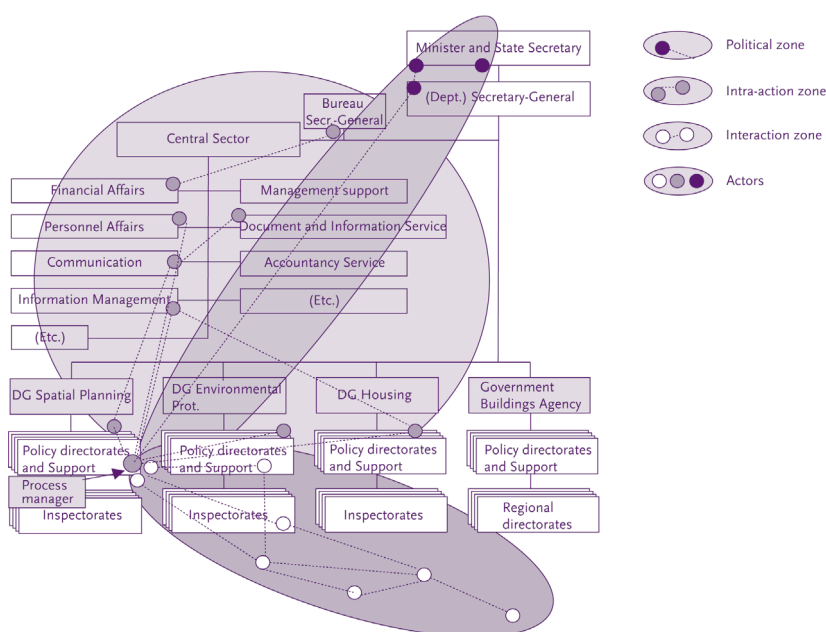


Figure 4. Two views of the same public-sector organisation: a hierarchical and a network zone view, illustrated with the Dutch Ministry for Housing, Spatial Planning and the Environment (Meuleman, 2003, p. 83).

Another influential aspect is scale: the number of people working in a government body makes quite a difference. If the organisation has more than 3000 employees (like the Dutch Environment and Spatial Planning

Ministry) internal bureaucracy will play a more prominent role than if the organisation has only 150 employees (like the Swedish Environment Ministry). In a small organisation the communication lines are much shorter and policy alignment is much easier.

A directive governance style usually relates to a hierarchical organisational structure, in which power is centralised and in which project teams are established for issues that are cross-cutting. When a participatory approach is chosen, typically a process team (with a horizontal orientation) is installed, that profits from and is supported by a (vertically oriented) hierarchical structure. This could be called a hybrid organisation structure (in 't Veld, 2002). Within the participatory process itself, and for a self-regulatory approach, the concept of a network organisation is usually referred to (see e.g. Roobeek, 1999).

7.2.3 Shared values (culture): significant meanings or guiding concepts that an organisation imbues in its members

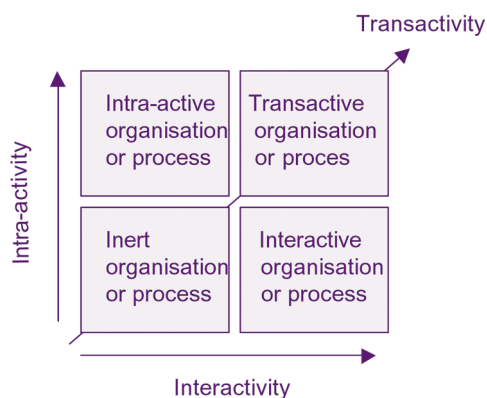
Two aspects of the organisational culture are discussed here: the balance between internal and external orientation, and the awareness of intercultural differences.

Balance between internal and external orientation: transactivity

	Directive style	Participatory style	Self-regulatory style
SHARED VALUES (1. TRANSACTIVE BALANCE)	Predominantly internally oriented, expertise-driven	Equally internally and externally oriented	Predominantly externally oriented

Some public sector organisations are dominantly internally oriented, other are dominantly externally oriented, and the people working for these organisations may be not aware of this. A public sector organisation that executes (mixtures of) the three main styles of governance, can profit from a dominant culture in which a good balance of internal and external orientation exists. Organisations that do not have a good balance of these orientations usually show characteristic deficiencies in their performance. Three types of unbalanced organisations or projects within organisations can be differentiated (Meuleman, 2003, p. 98):

Figure 5. Four types of public-sector organisations (Meuleman, 2003, p.98)



* An inert public-sector organisation or project aims at continuity, predictability and conformity. The outside world is seen as the enemy. The organisation may have output (research reports) but no outcome.

* An extremely interactive organisation is completely committed to interactive policy-making and to cooperation in implementation processes, but has a low level of intra-activity.

* An intra-active organisation is completely committed to internal co-operation and co-creation, or intra-activity, and is weak in external interaction. The internal communication structure is perfected. An organisation that exercises a well-balanced⁸ combination of inter-activity and intra-activity I call a transactive organisation.

Intercultural differences

	Directive style	Participatory style	Self-regulatory style
SHARED VALUES (2. INTER-CULTURAL DIFFERENCES)	High insecurity reduction, high to moderate power distance: pyramid organisation, well-oiled machine organisation	Low insecurity reduction, Low to moderate power distance: family organisation, village market organisation	Low insecurity reduction, low power distance: village-market organisation

Values and belief systems are strong drivers for the behaviour of people. They are partly individual, but on a deeper level grounded in the values and beliefs of the respective societal groups, nations, region or tribe people belong to. Understanding these intercultural differences becomes

8 What is 'well-balanced' is situationally determined.

increasingly important when more participants or networking partners are involved in an international policy process. For the national level this approach also produces useful information, because in many European countries migration has caused a mixture of several cultures: the multi-cultural society.

Hofstede (2001) developed four indexes for describing intercultural differences. Research data, generalised on the level of nations, show significant in the underlying culture of Northern and Southern European people:

Figure 6. Data on PDI (power distance), IDV (individualism), MAS ('masculinity') and UAI (uncertainty avoidance) for 190 European countries and the United States (Data derived from www.itim.org. After Meuleman, 2003, p. 58).

Country	PDI	IDV	MAS	UAI
Denmark	18	74	16	23
Sweden	31	71	5	29
The Netherlands	38	80	14	53
Germany	35	67	66	65
United Kingdom	35	89	66	35
United States	40	91	62	46
France	68	71	43	86
Belgium	65	75	54	94
Spain	57	51	42	86
Portugal	63	27	31	104
Greece	60	35	57	112

Using two of his indexes Hofstede described four different organisations, which differ in the way they can manage complexity (insecurity). Two types of organisation are best in executing a directive governance style:

- * the pyramid organisation: a classical bureaucracy with low insecurity because there are rules and regulations for everything;
- * the well-oiled machine organisation: an organisation with mainly standard word that is regulated and controlled by standard procedures.

Two other types have a basic culture that relates with a participatory governance style:

- * The family organisation: basically hierarchical but allowing more flexibility and creativity. Hierarchy gives the necessary insecurity reduction;
- * The village-market organisation: the work is so complex and divers that standard procedures make no sense and management is not giving instructions but supporting people.

The village-market organisational culture typically relates to a self-regulatory governance style.

7.2.4 Systems: Processes and information flows that link the organisation together

	Directive style	Participatory style	Self-regulatory style
SYSTEMS	Information and feedback	Communication	Network communication, communities

One of the main type of systems linking the organisation is the way information flows and how information exchange is seen. In a directive style information typically flows from one person to another, i.e. in principle uni-directional. In a participatory style information is shared and flows into two directions. Sometimes information and communication are mixed, and then internal and external expectations cannot be met.

A clear example of unclear management of expectations comes from a radio documentary about a communications campaign of the Dutch Ministry of Transport, Public Works and Water Management. The campaign was about new plans for flood protection that included the potential inundation of specific areas in cases of extremely high water. An information boat sailed to a number of river communities. The Ministers' representative said: "We want to hear all comments the people might have on the plans we designed to protect them. Our ears are wide open. All questions will be answered. We'll explain all the details." In the radio broadcast, a local citizen gave the following comment on this attempt for dialogue: "I think this campaign stinks. We are not allowed to talk with them about issues that are important to us. They only have their own agenda." But the project manager stayed on the track. On the question of what she hoped the people would remember from this campaign she answered: "We would like them to understand completely what is going to happen to them. And that they can be sure that their voices will be heard." ⁹

Communicating with(in) networks, typically a feature with the participatory and the self-regulatory style, is e.g. influenced by the fact that groups of people who share a large part of their definitions of reality, together form a 'family'. They show what Termeer (1999) calls social or cognitive fixation. People in one 'configuration' primarily talk with people from their own group and the group as a whole stops developing and acts defensively to outsiders.

⁹ Meuleman (2003), p. 69.

7.2.5 Style: How public sector organisations behave in relation to internal and external actors

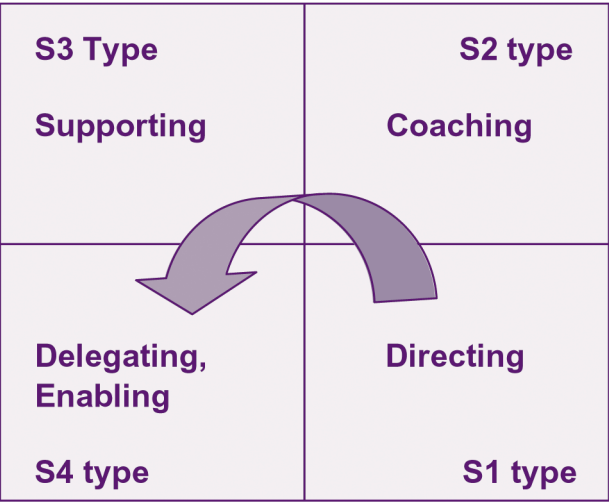
	Directive style	Participatory style	Self-regulatory style
STYLE	Command and control	Coaching, supporting	Delegating, enabling

Most public sector managers and politicians have a preferred style of leadership. Hersey and Blanchard (1982) differentiated four styles of leadership for different situations: directing (S1 type), coaching (S2), supporting (S3) and delegating (or enabling; S4).

These styles can be related to the three governance styles. That a command and control leadership style relates well to a directive governance style seems plausible, but if the organisation has highly educated professionals as employees, within the organisation other styles can be more appropriate. The relation between the e.g. ministry and other organisations is dominated by a ‘command and control’ attitude of the ministry.

A participatory style of governance relates to a coaching and supporting styles of leadership. A self-regulatory governance style typically relates to enabling, empowering and/or delegating. Delegating however can be seen in two ways: to give power to others, or to acknowledge other parties’ power and knowledge. In the relation between national and regional governments the ministry often chooses the first approach, and decentralised governments the second.

Figure 7. Four styles of situational leadership/management (after Hersey and Blanchard, 1982)



7.2.6 Staff: personnel categories within the organisation

	Directive style	Participatory style	Self-regulatory style
STAFF	Line managers, project managers, controllers, legal experts	Process managers with network abilities	Process managers, network moderators, webbers, facilitators

When a directive style is chosen for a policy issue, the organisation typically makes use of experienced project managers and experts in different fields. In participatory and self-regulatory policy processes with many actors, the person in charge of the project typically is a process manager with networking abilities.

One of the failure factors in the first phase of an investment program for keeping the Green Heart area in The Netherlands relatively rural and not urbanised was that the managers of the regional projects were content experts (e.g. ecologists). They had difficulties in dealing with constantly changing external conditions and alterations in the standpoints of involved parties. They fulfilled a useful role in the first phase of the project, when the objectives of the regional projects were designed (although also in that phase more participation could have lead to better results), and it probably had been better if they had been replaced in the execution phase.

7.2.7 Skills: dominant attributes or capabilities that exist in the organisation

	Directive style	Participatory style	Self-regulatory style
SKILLS	Project management	Process management, network management	Network management, process management

Civil servants, who have to execute a directive style of governance, usually will need project management skills. In a project the objective is clear, there is a deadline, the resources are given. The 'art' of project management is how to reach the objective as soon as possible, in a straight line, with everything under control. This is the way one builds a car, a house or a bridge. The project environment is stable, the conditions are relatively clear.

In a participatory governance style, process management is typically a central skill. In a process, there is often no clear vision of the objective, the situation is so complex and the number of actors is so large that the

route to the end of the process is unpredictable. The objective will probably be reformulated several times while ‘travelling’ through the process. There is no straight line from the start to the end. Process management asks for permanent awareness of changing circumstances and a lot of creativity.

Process management is a skill that covers many dimensions. One of them is that it is important to understand that involved parties may have a different problem definition, and that it is crucial to stay open to adjust ones own problem definition.

An example from the UK’s national response to marine oil spills illustrates this. The UK Environment Ministry’s objective was to clean up oil spills before they caused environmental damage. The Ministry made extensive use of chemicals dispersant for this but disapproved of mechanical sweeping methods. For obvious geographical reasons they worked very closely with their Dutch colleagues at the Rijkswaterstaat whose objectives were identical but who eschewed dispersants and would only use mechanical means. There were many friendly but heated discussions about this difference. But the reason was obvious once a step was taken back from the objectives - they were not identical after all. The difference lay in the type of environmental damage that was the priority for averting - in the UK, the sensitive environments were globally important populations of offshore diving birds, and extensive and ecologically vital areas of salt marsh around the coast. Floating oil would have caused devastation to both. Dispersants took oil off the sea surface and into the water column where it could do little harm. Mechanical methods could not do this reliably or quickly enough. For The Netherlands, of course, seas are much shallower and consequently the damage caused by oil in the water column becomes very significant - the Rijkswaterstaat needed a technique which did not need to be particularly fast but would get rid of as much oil as possible from both the sea surface and the water column, and mechanical sweeping was the obvious answer: using dispersants would have been disastrous. Later a joint manual was produced, which emphasised using the correct technique according to the nature of the environment to be protected - in other words, a situational objective.¹⁰

For both the participatory and the self-regulatory style networking is a skill that can prove to be useful. In networks hierarchy is (almost) absent, so the initiator of a network has other ways to develop commitment and ownership with partners at his disposal. Networks need to be fuelled, which is a task for network moderators and ‘webbers’. Consequently, network abilities have to be trained: networking involves more competences than attending meetings where people have a drink together.

¹⁰ Meuleman (2003, p. 132).

7.2.8 Science (Knowledge management)

	Directive style	Participatory style	Self-regulatory style
SCIENCE (KNOWLEDGE MANAGEMENT)	Accent on facts and expertise; databases, knowledge centres	Joint fact finding and transdisciplinary knowledge development	Joint fact finding network moderators, knowledge development

A directive governance style usually builds upon accepted, clear facts and expertise. There is no time (during calamities) or no need (with well-defined, structured problems, consensus about values and knowledge) to involve many parties in the knowledge basis for decision-making.

If one accepts that scientific and other knowledge for complex policy- and decision-making processes has to be organised together with relevant participants (De Wit, 2003; in 't Veld, 2001), then in the participatory and the self-regulatory governance styles joint fact finding and transdisciplinary knowledge development are useful approaches.

The Dutch province of Noord-Brabant in the early 1990's concluded that a directive approach was not successful in convincing the local authorities that they had to modernise their land use plans. The province established a team of specialists which acted as a flying brigade that helped local authorities on the spot with their land use plans. The specialists did not just bring standard methods and knowledge but took part in a joint process. This approach turned out to be very successful.

7.3 TOWARDS FLEXIBLE ORGANISING DIFFERENTIATED GOVERNANCE STYLES: THE FOGS MODEL

The first question in Chapter 1 (what does multi-style governance mean for the internal organisation of bureaucracies?) was illustrated Ch. 2 with typical relations between governance styles and nine organisational features. It was suggested that it is possible to relate each of the three differentiated prominent governance styles to a specific organisational setting.

Most public sector organisations are well-equipped to execute the directive style, and in general they tend towards choosing this style in the majority of cases. It becomes more difficult when the complexity (or other aspects) of a problem typically asks for a participatory or a self-regulatory style.

The following overview of nine organisational dimensions that were briefly described in Ch.2, related to the governance styles, is designed to determine the organisational challenge. In other words: to scan the organisation in order to create an organisational change agenda. The model I call the FOGS Model: Flexible Organising of Governance Styles. The first association with fogs usually is that something is not transparent, but in this case the FOGS metaphor points at two other dimensions of this weat-

her phenomenon: the fact that it covers everything and that it penetrates in all corners (of the organisation, in this case).

Figure 8. The FOGS Model.

Type of problems:	Immediate danger; clear and accepted	Complex, many actors, persistent, unclear, unstructured	Simple, few actors, few side-effects
Governance style:	Directive style (the public sector rules)	Participatory style (the public sector co-operates)	Self-regulatory style (the public sector enables))
Organisational dimension:			
STRATEGY	Planning school, design school, positioning school	Chaos school, power school	Learning school, chaos school
STRUCTURE	Hierarchical, centralised, project organisation	Hybrid organisation, supporting process organisation	Network organisation, decentralised
SHARED VALUES (1. TRANSACTIVE BALANCE)	Predominantly internally oriented, expertise-driven	Equally internally and externally oriented	Predominantly externally oriented
SHARED VALUES (2. INTERCULTURAL DIFFERENCES)	High insecurity reduction, high to moderate power distance: the pyramid organisation, the well-oiled machine organisation	Low insecurity reduction, Low to moderate power distance: family organisation, the village-market organisation	Low insecurity reduction, low power distance: the village-market organisation
STYLE OF LEADERSHIP (POLITICAL AND BUREAUCRATIC)	Command & control	Coaching, supporting	Empowering, enabling, delegating
STAFF	Line managers, project managers, controllers, legal experts	Process managers with network abilities	Process managers, network moderators, webbers, facilitators
SKILLS	Project management	Process management, network management	Network management, process management
SYSTEMS	Information and feedback	Communication	Network communication, communities
SCIENCE (KNOWLEDGE MANAGEMENT)	Accent on facts and expertise; databases, knowledge centers	Joint fact finding and transdisciplinary knowledge development	Joint fact finding and transdisciplinary knowledge development

Even if all styles are mastered, the next step, namely flexible, situationally switching between styles can be virtually impossible because of the organisational design. The second question of Ch. 1 (which organisational design stimulates flexibility to switch between governance styles?), can be answered in many ways. The FOGS Model suggests that each governance style relates to a quite different organisational setting. However, the problem is that most public sector organisations such as ministries are (hierarchically) organised according to societal issues - which are often issues from the past¹¹. One idea is to take the complexity of the (current and

11 Illustrative is that until 2001 the mission of the national directorate-general for housing in the Netherlands was to build enough houses for the Dutch population; this was a post-second world war mission statement that had long lost its relevance. In 2001 the mission statement was changed into guarding the quality of housing, not the quantity.

emerging) issues to be managed as the main organisational principle. In the Dutch Environment ministry three directorates-general are differentiated: one for environment, one for spatial planning and one for housing. It might be a good idea to organise directorates-general according to the governance styles they specialise in: in the Dutch example this could mean a DG Directives, a DG Participation and a DG Self-regulation.

7.4 CONCLUSION

Governmental organisations have to broaden the scope of their organisational capacities to relate better to participatory or self-regulatory governance styles which are needed because of the emerging network society. A first step can be to analyse the relations between different governance styles and different organisational features. For this the FOGS Model might be a useful tool.

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LEMMA



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The Advisory Council for Research on Spatial Planning, Nature and the Environment (RMNO) advises the government, either on its own initiative or in response to requests from ministries, on the content and organisation of research concerning spatial planning, the environment, nature and landscape. Focusing on mid-to long-term planning, RMNO tries to be a knowledge broker between science, politics and society. Preparing advice on complex issues may take much time. The publication of preliminary studies is a way to stimulate reflection, and is often a landmark in such processes. Therefore RMNO not only issues Advice, but also Preliminary studies and Background studies.

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Environmental Governance in Europe is an RMNO background study, published in cooperation with the network of European Environmental Advisory Councils. This book is a result of the eleventh EEAC annual conference, organised by RMNO and EEAC, in cooperation with the Robert Schuman Centre for Advanced Studies at the European University Institute (EUI) in Florence. It combines the proceedings of the conference, including the joint EEAC work discussed there, advice of individual EEAC councils and staff. Some contributions emphasise more the potential of self-regulatory approaches, while others emphasise the strengths of a state-centred approach. But there is a strong consensus that the governance debate should not lead to substitution of one approach by another, but to broadening the spectrum of options.

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