

**EUROPEAN GOVERNANCE AND THE TRANSFER OF 'NEW'
ENVIRONMENTAL POLICY INSTRUMENTS IN THE EUROPEAN
UNION¹**

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This paper has been prepared for the 2001 European Community Studies Association Biannual Conference, in Madison, Wisconsin, 30 May- 1 June 2001.

¹ The research underpinning this paper was generously funded by the ESRC's Future Governance Programme (L216252013).

ABSTRACT

This paper examines the use of 'new' environmental policy instruments (NEPIS), particularly market instruments and voluntary agreements, in the European Union (EU). It focuses on the motivations of actors that are pushing for the adoption of innovative instruments in the EU process and their implementation in the member states. In exploring actor motivation, the research examines the role of actors in both the EU institutions and the member states (as well as the external international arena). Do the entrepreneurial actions of certain member governments, EU institutions, expert groups or non-governmental organisations (ngos) motivate the adoption of new instruments, or are market pressures and other harmonisation forces the main driving force? The research concentrates on voluntary agreements, eco-labels and eco-taxes. The paper uses the policy transfer as well as ideas and institutions literature in offering analytical conclusions. The paper draws upon preliminary research findings from a UK Economic and Social Research Council (ESRC) funded study of the use of NEPIs in the European Union and four case countries: Austria, Germany, the Netherlands and the United Kingdom.

1. INTRODUCTION.

Research Question and Project Aims

In the last two decades, the European Union (EU) has pushed to define itself as an innovator and leader in international environmental policy. Part of its bid to develop a higher profile has involved EU actors promoting its agenda and approach to environmental problems in various international arena, such as the Rio and Kyoto Summits. Another dimension of its global profile is the effort to develop 'new' policy instruments (NEPIs), which include instruments that emphasise the role of information (such as ecolabels and voluntary permits) and those that focus on manipulating market incentives (such as eco-taxes and tradable permits). Policy instruments are the various techniques that governments may use to achieve their policy objectives (Howlett, 1991, 2; Howlett and Ramesh, 1993, 4; and Schneider and Ingram, 1990, 527). In this regard, the EU as a whole has assumed at least part of the leadership mantle in international environmental policy innovation that often was ascribed to the United States in the 1970s (Golub, 1998).

The question that this paper addresses is: what exact role has the European Union played in the development of NEPI innovation in Western Europe? In particular it

looks at the part the EU has played in experimenting with instruments that do not involve the making of law or at least retain a high degree of flexibility. Certainly there has been a substantial growth in NEPIs in the OECD countries and more acutely in the EU geographic area. Ekins (1999, 39) suggests that the use of market-based instruments has increased by 50 per cent from 1987 to 1994 in OECD countries. The EU has been described as a 'massive transfer platform' for the borrowing of policies between member states (Radaelli, 2000, 26). The paper assesses the relationship between the EU supranational institutions and actors and the member states. It examines the usage of 'soft law' instruments in the EU context – have they actually been used in a systematic fashion? How can we explain their adoption, focusing especially on the role the EU process has had in the development and selection of these instruments? The paper also addresses the EU intervening role in the adoption of NEPIs: in cases where the member states or the EU have adopted policy instruments, what impact has the EU institutional and ideational systems had on the adoption and implementation of these softer instruments across Europe?

In attempting to address these questions, this paper offers findings from the preliminary phase of a wider project. This paper is part of a broader ESRC-funded research project in which the authors seek to: (1) examine the use of NEPIs across different sub-sectors of environmental policy in four member states and the EU in order to determine the extent of policy innovation; (2) identify the domestic and international factors that account for the use of NEPIs within and across the different policy jurisdictions; (3) analyse the factors which shape the overall pattern of NEPI use; and (4) to assess whether there is an overall pattern of NEPIs is convergent and divergent across the case countries, and what role lesson drawing has in this process. This paper only takes a small slice of these research questions, examining the EU role in the adoption of NEPIs. It first explores the different potential roles the EU may have in the policy transfer process. The third section lays out the theoretical framework that the project uses to explain the adoption of policy instruments. In the fourth section, the paper explores how EU environmental policy has followed certain

paths, in large part due to institutional constraints, concerning policy instrument choices. The fifth section lays out the EU history of adopting new policy instruments in three specific case areas: taxation, voluntary agreements and ecolabels. The concluding section provides an overall analysis of the EU role based on the preliminary research presented in this paper.

Defining Types of Instruments

Before investigating the theoretical issues required to conceptualise our research question, we first need to clarify the different types of instruments that the paper investigates and what is the significance of 'soft' law. Bemelmans-Videc *et al.* (1998, 50-2) present a useful first cut at categorising environmental instruments. They develop a three-fold typology, which is based on the degree of constraint that the instrument imposes on target groups: carrots, sticks and sermons. The carrots are the economic instruments, which manipulate market incentives and processes in a way that constrains choice to a moderate degree. These might include charges and taxes, subsidies, tradable emission permits and deposit-refund schemes (OECD, 1998). Traditional command and control instruments (i.e. legislation that prescribes specific emissions limits or environmental processes) constitutes the stick as they highly constrain the choices of the target groups. Sermons constitute informational devices that present the target actors with information about the implications of particular choices (Bressers, 1990, 86). This category fits most closely the notion of 'soft' law while market instruments, such as taxes retain a substantial element of imposition through the price mechanism.

This research project takes the view that empirical investigations must remain flexible in the use of such distinctions and typologies. For one thing, it is difficult to fit certain instruments neatly into the Bemelmans-Videc *et al.* typology: both voluntary agreements and ecolabels cross the preceding categories. To reflect the need for flexibility, this ESRC project uses the following categories: market instruments, informational devices (such as eco-labels) and voluntary agreements. The Commission (CEC, 1996a, 5) defines voluntary agreements as 'agreements between industry and

public authorities on the achievement of environmental objectives'. These agreements range from unilateral commitments by companies themselves to improve environmental performances to more negotiated agreements between public authorities and industry to address specific environmental problems (Börkey and Léveque, 1998). The Commission views the EU eco-label scheme as being a 'market-based instrument', with the primary function of stimulating the supply and demand of products with a reduced environmental impact (CEC, 2001, 1).

An even more critical reason for taking a flexible approach to these definitions is the fact that governments will not use specific policy tools in exactly the same fashion (Hood, 1983, 106). What constitutes, for example, an informational scheme in one country may not hold true in another - especially when countries, such as the Netherlands, consider individual instruments to be part of a larger mix of tools used to achieve a range of environmental objectives.

2. THE ROLE OF THE EUROPEAN UNION

One of the important objectives of the larger NEPI project is to examine the pattern of NEPI innovation within the European Union. One dimension that may affect this pattern is the presence of policy transfer, which focuses on the process by which knowledge at a particular time and place is used at another time or place in a different governance setting (Dolowitz and Marsh, 1996). In assessing the influence that the EU can have in such a process, we need to consider a whole range of potential roles for the EU. Unlike the Bulmer and Padgett (2000) framework that typologises all the different kinds of EU policy transfers, this paper is more focused on the transfer influence of the EU *vis á vis* the member states. We do not hold these roles to be mutually exclusive; under particular conditions the EU process may foster instrument innovation concerning the instrument through several of these roles simultaneously. Moreover, some of these dynamics are strongly linked to each other.

The first scenario discussed below suggests that member state convergence occurs without Europeanisation. The next three scenarios suggest that the EU arena creates strong incentives for the member states to converge while the fifth suggests a 'top-

down dynamic' where the supranational institutions push and define the NEPI innovation. Bulmer and Padgett (2000) draw a different distinction between the more vertical 'obligatory' transfer where the EU law acts as the main driver and is imposed on the member states and the more horizontal voluntary transfer where members states learn from each other in the EU arena. Their framework can be made compatible with that offered here, but this paper is more concerned with the mechanism than the degree of obligation.

1. The EU as a Passive Arena

In this role the policy innovation and transfer within and between EU member states occurs with no substantive contribution from the EU supranational process. This scenario expects that EU member states with relatively similar policy problems and resources, as well as geographic proximity, will seek to emulate key aspects of another country's policy which are seen to be successful (Bennett, 1991; Dolowitz *et al.*, 1999). One could argue that the EU experimentation in tradable permits – prior to Kyoto Summit and the consequent need for an EU response - has largely taken place in individual countries, such as the Netherlands and the UK (project interviews, 2000). They in turn drew lessons from the activities occurring in the United States (Dekkers, 1999).

2. The EU as a Facilitating Arena

This scenario expects that the complex web of actors and processes that surround EU policy making create the conditions in which ideas and experience will more quickly diffuse and be transferred across EU member states. The EU structure enhances the creation of networks of Commission and member state actors; it gives these actors numerous opportunities to discuss ideas and exchange information. Despite the lack of success in creating a EU carbon-energy tax, the EU efforts in this area have highlighted the different approaches taken in the member states, leading to a sharing of ideas and experiences about this instrument. It may also create the chance for individual member state representatives to showcase their approach to other member states and to define the larger regional agenda. Dutch environmental officials figured

heavily in the formulation of the Fifth Environmental Action Programme of the European Communities, which not surprisingly bore some resemblance to the Dutch Environmental Policy Plan (Kronsell, 1997, 117-121).

The EU as a Harmonising Force to Prevent Market Disruption

This scenario acknowledges the fact that a crucial motive and justification for the institution of EU environmental instruments was the need to protect the Common Market. The Environmental Action Programmes and the justification for much of the pre-1987 legislation emphasised the need to avoid distortions in competition (Liberatore, 1991; Jordan, 1999; Zito, 1999). Much of the framework directives and the more command and control regulation, or 'daughter directives', that followed had the stated aim of protecting the internal market. This motivation has remained an important one in recent decades as the EU was forced to react to the EU market disruptions caused by such national environmental schemes, most notably the German packaging waste scheme (Golub, 1996b).

The EU as a Competitive Arena

This fourth category is closely tied to the third scenario mentioned above. It recognises that the EU, with the strong rationale for harmonisation of national policies and integration into further environmental areas, creates the conditions under which different member states have a strong incentive to compete for economic advantage, or at least minimise regulatory adjustment costs. Because the EU integration process has led to a significant adjustment of environmental policies and standards, member states have a clear incentive to stay ahead of EU regulations and regulatory intentions in their national policies (Héritier *et al.*, 1996) If individual states have imposed regulations with significant costs on industry, the national government also may seek to ensure that other member states are forced to impose similar legislation (Héritier, 1995). States that have more elaborate regulatory frameworks will be strongly interested in trying to shape the EU legislative agenda according to their own regulatory patterns. Member states wish to avoid endangering the competitive position of their industries. Having to adjust national legislation to an EU standard will impose competitive costs,

especially if another country has managed to define the EU agenda to benefit its own industry.

A clear example of this process involving a NEPI was the EU Eco-management Audit (EMAS). Environmental management systems set out basic principles of environmental practice that guide how businesses run their production and marketing (Zito and Egan, 1998, 94-117). In the EMAS negotiations the British government and other member states that adopted the British environmental management standard (BS 7750) were seeking to use BS 7750 as the basis for the EU standard. Countries, which had their own standards, such as Germany and France, opposed this move.

The EU as an Entrepreneur

This last category recognises the substantial independent affect that EU actors can have on making the policies of the member states converge. For various reasons, supranational elements within the EU may seek to define the agenda for the member states. Most attention has been paid to the role of the Commission as an entrepreneur, seeking to expand the influence of the EU and the Commission by looking for opportunities to suggest new policy initiatives and to expand into new areas (e.g. Cram, 1997; Jordan, 1999; Radaelli, 2000). In terms of NEPIs, the Commission's past commitment to a carbon-energy tax and its current desire to harmonise energy taxation, suggest a combination of motives, such as to expand the leadership position of the EU and to increase influence on key environmental and economic issues involving taxation. As Jordan (1999) notes, the Commission has been highly successful in operating at the international level to develop policies that have ramifications for EU regulation.

3. THEORETICAL FRAMEWORK

Having laid out the possible ways that the EU may influence the convergence of member state selection of NEPIs, we must now turn our attention to the theoretical factors that influence how EU actors select different types of NEPIs. This conceptual framework will also be important for understanding how the EU structure shapes the adaptation process for the individual member states. The larger research project

focuses on three different analytical perspectives: 'ideas dominant, settings dominant and chaos dominant' (see Table I).

Table 1: Theorising the transfer of instruments and policies within the European Union.

	'Ideas' dominant	'Settings' dominant	'Chaos' dominant
Themes	Instrument choice driven by the conflict between competing ideas	National institutions shape the selection and implementation process	Instruments look for policies; policies look for instruments
Role of instruments	Mainly instrumental: implement dominant ideas/approaches	Embedded in institutional contexts/settings which <i>shape</i> the policy development/search process	Search process is ad hoc (whatever appears to work)
Key agents of policy transfer	expert communities, advocacy coalitions, experts and scientists	National and/or supranational actors within the institutional structures	Pluralistic mix of actors
Search process	Rational and goal directed	Path dependency (to achieve 'goodness of fit')	Chaotic and highly pluralistic
Scope for innovation	Generally large	Small if goodness of fit poor (the 'stickiness of adaptation'); higher if the fit is better	Unclear <i>a priori</i> : context dependent
What is transferred?	Ideas, paradigms, policy goals	Mainly theories of <i>stability</i> rather than change: but crises?	Not clear <i>a priori</i> : possibly ideas, policy goals or instruments

Ideas Dominant Approaches

This public policy literature focuses upon ideas as the driving force behind policy change. Applying this literature to the selection of policy instruments, it argues that ideas and beliefs drive the policy makers' selection of instruments. Policy instruments have a secondary, instrumental role in underpinning larger beliefs. Howlett and

Ramesh (1993) portray instrument selection as only one aspect of the wider policy process where social learning is a dominant motive force. Policy change results from a cognitive struggle between different groups of policy actors seeking to solve policy problems and apply the most suitable policy instruments (Hall, 1993). Learning informs this discussion: normally instruments will be simply fine-tuned to meet the current political demands, but sometimes policy crises will open the policy area to substantial changes in explanatory frameworks and to new instruments.

Hall (1993) and Sabatier (1998) offer parallel explanations for the learning process shaped by ideas. Hall views the role of policy-making and learning as occurring at three levels: a) the design of existing instruments based on past experience; b) the choice and usage of instruments to achieve particular objectives; and c) the wider goals that the policy-making is seeking to achieve (Hall, 1993, 281-7). Change occurs because actors face new problems and anomalous events that challenge their current policy paradigms. Howlett and Ramesh (1993) note that Hall's focus is on the change of ideas. Sabatier's approach focuses more on how different coalitions of actors, armed with distinct sets of beliefs, compete to become the dominant coalition in the policy sector, or 'subsystem' (Sabatier, 1998). Each coalition will contain a set of core beliefs and secondary beliefs, analogous to the hierarchy presented by Hall.

Both Hall and Sabatier distinguish between major and minor policy change. Major change involves the alteration of core aspects of a policy program, including its goals, while minor change involves secondary aspects, such as instruments. The secondary changes to instruments are likely to be much more frequent and involve much less political contestation than the larger strategic changes. Both of these accounts focus on voluntary learning and a rational approach to decision-making.

In the context of the European Union and NEPIs, this approach would emphasise understanding the role of particular policy perspectives, such as sustainable development and ecological modernisation, and look for particular sets of actors seeking to push these views and related policy instruments. These policy philosophies

may come into conflict with other EU priorities, such as ensuring the efficiency of the market and enhancing economic growth and competitiveness.

Settings Dominant Theories

The focus of these works is to argue that the political context in which decisions about instruments are made will be critical in informing the choices of decision-makers. The new institutional approaches in particular seek to study the role of policy structures.

March and Olsen (1998) define institutions 'as a relatively stable collection of practices and rules defining appropriate behaviour for specific groups of actors in specific situations'. The institutionalist approach focuses on 'the whole range of state and societal institutions that shape how political actors define their interests and that structure their relations of power to other groups' (Thelen and Steinmo, 1992, 2).

Institutions will contain standard operating procedures and norms that give preference to particular instruments. Actors will select and modify instruments on the basis of what is appropriate to the institutional context, in terms of what is politically acceptable and what 'satisfices' the given policy problem.

In terms of environmental instruments, actors operating in institutions will be resistant to change, preferring incremental alterations to fit the given policy/political context.

Only when the policy sector faces a notable policy failure, such as an ecological catastrophe, will institutional settings be forced to open their policy processes to a wider selection of new ideas and associated policy instruments. Even in this context, the institutionalist notion of path dependence suggests that past decisions will still shape new outcomes in a way that maintains existing arrangements. Even with such pressures it remains the case that instruments that fit the organisational pattern and routine of EU and member state institutions are much more likely to be adopted than those that challenge these norms and structures. Moreover, once these new policies are adopted, the institutions are likely to filter characteristics of the policy as it proceeds through the implementation stage (Majone, 1991).

In looking at the EU role and influence on the policy process from an institutional point of view, one must acknowledge the traditional linkage of the environmental

policy area to the Single Market, one of the embedded institutional routines/norms within the EU process. At the same time, policy-making at the EU levels is shaped by a complex chain of institutions that provide access points for different (and often conflicting) points of view. This chain creates the necessity for building agreement across the entire set of institutions (Peters, 1994; Weale, 1996). Moreover, the EU operates at multiple levels, which opens it up further to agenda setting by a wide range of actors and adds even more layers of actors with some role in shaping the policy in the decisional and implementation stages (Bulmer and Padgett, 2000). Policy solutions will have to be agreed by the member state representatives and the supranational institutions as well as be implemented by domestic political actors. This suggests that it is difficult, although not impossible, to move beyond the lowest common denominator in creating a instrument, and that there will be some variation in how NEPIs are implemented.

Chaos Dominant Approaches

In contrast to the first two approaches, the policy literature in this category tends to view the policy process as unstable because preferences are unclear for actors who operate under conditions of uncertainty and who normally lack the time to conduct comprehensive information searches (i.e. bounded rationality). The article of Cohen *et al.* (1972) was particularly influential in arguing that the policy process resembled less a rational, linear process than it did a 'garbage can'. At any given time an unpredictable assortment of ideas, problems, solutions and decision-making priorities will be present in the policy process, with no necessarily systematic policy pattern resulting. Thus policy solutions may very well precede and even shape the definition of policy problems.

Kingdon (1984) elaborated Cohen *et al.*'s garbage can model into an explanation of agenda setting, which also touches upon decision-making and implementation. He argued that the policy process contains: (1) a stream of policy problems (e.g. acid rain) that demand policy attention, (2) a stream of policies that are developed without necessarily one policy problem in mind, but are available to particular entrepreneurs,

and (3) a stream of politics where actors compete for position and resources, shaping how policy problems are defined and solutions selected. These streams operate simultaneously, but they may interconnect. This interconnection leads to a 'policy window', where a compelling problem forces political recognition and opens an opportunity for specific policy solutions to seize the agenda. Because of the complexity and contingency of this system, with its multiple factors, success at defining the agenda will depend on luck as well as strong access to power resources. Unlike the ideas approach, there may be opportunities for instruments to be designated as solutions without necessarily involving a systematic change in worldview within the policy subsystem.

The chaos dominant perspective suggests that NEPIs will be fitted in a fairly random manner into political problems when the conditions and opportunities are favourable. Because the problem stream can be unpredictable and because various advocates will be pushing their solution in a rapidly moving political process, often including policy-makers with very short-term perspectives, the policy picture is of a much more fluid system. This fluidity does exist in the EU system where it is very difficult for many actors to be able to track and anticipate the behaviour of other actors in the subsystem. The multiple access points to the system give the opportunity for entrepreneurs both in the Commission and in favourable member states to shape instruments in particular ways (Cram, 1997; Andersen and Liefferink, 1997). The chaos dominant perspective would expect the Commission, with its fairly central location in the policy process and ability to view the larger picture, to seize the opportunities created by uncertainty on the part of other actors, to push for particular initiatives (Héritier, 1995).

4. INSTITUTIONAL PATTERNS IN EU ENVIRONMENTAL POLICY

As has been introduced in the previous section, the historical pattern of EU environmental policy, and the process by which decisions about policy selection and adaptation are taken, are important to understanding the role the EU can play in facilitating and promulgating instruments. We use institutionalist analysis as well as ideational and chaos approaches to discuss the pattern of instrument adaptation up to

1992. 1992 was the year that the issue of a Community wide carbon energy tax came to a head, and the Fifth Action Programme, with its focus on new instruments, was agreed. Of course, consideration of NEPIs and soft instrument did occur before this date (e.g. the EC tax was first raised as an idea in the late 1980s), but it was after this date and the Maastricht treaty fallout, that more of a pressure for 'soft' instruments occurs. After noting the change, we then explore the decision-making process and the factors promoting change that have shaped the EU selection of instruments since then.

Patterns established prior to 1992

During the period after the signing of the Rome Treaty, environmental policies in Western Europe, where they existed, took the form of the traditional command and control policies. Any Community wide initiatives would naturally tend to resemble the pervasive philosophical approach across the members states: instruments that reflected command and control principles, a focus on remedial as opposed to preventative action and a problem definition that addressed issues in a single media (e.g. water), non-holistic fashion. Alternative policy instruments did exist in member states, but these tended to be supplementary instruments (e.g. the water pollution levy in the Netherlands).

The institutional constraints reinforced this ideational bias. The general histories of EU environmental policy note the focus on legislating in an arena where there was no clear legal authority prior to 1985 and the Single European Act (Hildebrand, 1993; Jordan, 1999a). There was an immediate institutional constraint that forced EU legislation to be justified for economic and wider Community harmonisation. There was another important institutional constraint: the member states often had their own individual policy styles and traditions of designing policy instruments; these sometimes would conflict. This was seen in the clash between the UK and its fellow states over the UK government's desire to maintain quality objectives. Moreover, there was some competition between member states that held the EU Presidency to try to agree as much environmental policy as possible.

Additionally, the Environment Directorate, DG XI, was a relatively weak and junior partner, which meant that it had to aim for visible legislative accumulation (Jordan, 1999b). The DG XI had the added institutional constraint in that consideration of economic instruments would involve negotiations with the Commission DGs with economic responsibilities who have differing priorities and constituencies – hence the immediate difficulty that the EU carbon-energy tax proposal encountered when DG XI put forward the idea (Zito, 2000). As Weale (1996) notes, this did not prevent the EU from adopting a huge range of measures, as well as increasingly stringent measures, that went beyond the strict requirements of protecting the single market. However, we wish to argue that it did tend to focus the Commission agenda on creating legislation with less attention paid to assessing the efficiency of the measurement and problems of implementation, and how alternative instruments might affect these issues.

In terms of selecting policy instruments, this led to the following institutional patterns.

The legal situation gave the Commission a strong rationale for pursuing 'negative integration' (i.e. the harmonisation of national legislation so as to protect larger Community aims) as opposed to 'positive integration', which involved creating new policies (Majone, 1991). Harmonising current national legislation tended to enshrine the importance of command and control legislation as opposed to created new innovative policies. The institutional constraints also led the Commission to propose directives, which allow states to determine the detailed arrangements for implementing the guidelines included in the directive.

In terms of the development of directives, the Commission also gravitated towards proposing framework legislation, which only lays out the general purpose and regulatory principles without specifying measures and emissions limits (Héritier, 1995).

As these framework proposals were likely to meet less resistance from national governments, their acceptance was easier and could start a process of gradual commitment towards more specific measures. It is important to emphasise that this usage of 'softer' framework legislation was a well-established practice before 1992.

Indeed, the Commission DG XI started consulting with external actors in 1990 to draw

up proposals for environmental management regulations that became the Eco-audit Scheme.

Patterns established after 1992

Since 1992, there have been some substantial shifts in the policy philosophy of the EU actors. It is important to emphasise that much of the 'dirigiste' legislation remains in place, and has been very difficult to amend in a way that reduces the command and control nature of the legislation. Although a number of the command and control laws were reviewed and amended in the 1990s, much of their fundamental nature did not alter.

At the same time, however, EU policy innovation and instrument selection has witnessed a substantial change in focus (McCormick, 1998; Golub 1996a). With the publication of the Fifth Action Programme, the Commission noted its intent to consider other policy instruments and approaches that emphasised involving shared responsibility among different public and private actors (CEC, 1993b). It also declared a desire to focus on sustainable development and on the implications the principle had for how the economy was managed (Collier, 1997). In terms of embedding these ideas in the EU institutional structure, the Single European Act stated that environmental protection had to be a component of the EC's other policies; this philosophical principle was further enshrined in the Maastricht Treaty. There were a number of institutional elements and external events that shaped the actual output that the Commission presented in the 1990s. There was also more consideration of the need to integrate other actors into the policy process, which has implications for instruments. Weale (1996) argues that the greater use of voluntary agreements was implied in the Fifth Action Programme.

Two pressures from below acted as a constraint on proposing new initiatives. The post-Maastricht referenda fall out has served to push the Commission into a more reactive, defensive mode where it seeks to justify policies by working to improve efficiency and implementation of already established policies. The Santer Commission's resignations have continued this trend. Equally important in this context of the EU

overreaching itself and being inefficient was the push by certain member states, particularly Britain, to enshrine the philosophical principle of subsidiarity (Golub, 1996a). At the same time, the wider European economy faced large difficulties in the 1990s, which raised issues of how should environmental priorities be couched against economic priorities, particularly the protection of the economic market's competitiveness and the reduction of unemployment (Weale, 1996).

These pressures have combined with the change in philosophy about instruments and participation of other actors. The Commission has recognised the need to broaden responsibility and roles to the economic sector; this necessitates that the environmental coalition in the EU works with economic actors and competing economic interests in the other Commission DGs. By 1995 the Commission had conducted studies which emphasised the need for improving current legislation and raising concerns about cost-effectiveness (CEC, 1995; Delbeke and Bergman, 1998).

This combination of reaction to political circumstances outside the narrow environmental subfield and the more endogenous evolution in policy thinking has given the Commission a strong incentive to propose legislation that is less intrusive and that seeks to build consensus and give a great deal of responsibility to the other stakeholders (Jordan, 1999a). This means that the use of framework directives has received considerable prominence as the member states have greater scope to determine how the general principles will be achieved. The Commission has concentrated more of its effort on 'soft law' instruments which it had been using since the 1970s; these can take the form of Community recommendations and resolutions, and strategic papers to try and cajole the member states towards general principles concerning the environment (McCormick, 1998).

It also gives the Commission the incentive to create instruments that consciously involve other actors in a non-conflictual way. Informational instruments fulfil this requirement. Thus, for example, the Commission has pushed EMAS among industrial actors as a means of getting them to engage voluntarily in the process of self-regulation via the information incentive (Héritier, 1995). The Eco-label was agreed

during this time period. The 'Access to Information' instrument is another informational mechanism that entails opening access to information on the environment held by national authorities. This information can be used to empower citizens and groups to take a larger role in environmental enforcement (Kimber, 2000). During this time period the Commission also created a formal consultative forum and made an effort to increase its informal consultation with a wide range of groups.

Commission advocates also used the increasing arguments about global competitiveness to expand the use of economic instruments. They gained wider credibility within the Commission with the publication of the Commission's White Paper on Growth, Competitiveness and Employment (CEC, 1993a). This document promoted the use of market based instruments as a means of shifting the financial burden away from the employment of labour towards the consideration of environmental costs.

5. ADOPTING NEPIs

The patterns established before and after 1990 are reflected in NEPI innovation at the EU level. This section examines the pattern of NEPI adoption at the EU level and how the EU has affected the adoption of individual instruments at the national level with respect to three specific categories of instruments. These cases serve to illustrate the EU's role, but are not a comprehensive examination of all aspects of this role.

Environmental Taxes and Charges

The most prominent instrument in this category that the EU has considered is the carbon-energy tax proposal. Given the continued lack of success of this proposal (despite consuming a considerable amount of the EU policy time), this unsuccessful effort only will be discussed in terms of the research questions asked in the paper. In terms of policy selection, the story reflects characteristics in all three theoretical frames laid out in this paper (Zito, 2000). There was a very clear advocacy coalition operating out of the Commission Environment and Energy Directorates that pushed forward the idea of a EU level tax to address these emissions. In line with the fifth scenario concerning the EU role and the chaos dominant approach, there was also a

very clear element of policy entrepreneurship with actors attempting to seize a window of opportunity. Thus the Environment Commissioner of the time, Ripa di Meana, and DG XI used the impending Rio Summit and increasing concerns about climate change to fix on this particular solution, which had the institutional benefits of increasing the EU global role and the Commission's scope of influence within this context (Zito, 2000). Delors and his cabinet also found this instrument a useful tool for pushing forward the Commission agenda, a viewpoint later elaborated in the 1993 Commission White Paper.

However, the momentum for this proposal was quickly upended by the fundamental constraints operating against EU environment actors. First, they had to compromise with the other Commission Directorates as this instrument had clear significance for the interests of these other Directorates and their clientele. More significantly, however, the fact that the issues were couched as a tax issue under EU institutional norms gave a fiercely motivated minority group of states, led in particular by Great Britain and Spain, the ability to block this policy.

In view of the clear Council ruling against the proposal, the Commission has repackaged the instrument in a far less ambitious form. In 1997, the Commission introduced a proposal emphasising the need to create harmonisation of member state taxation of energy products, particularly fossil fuels (CEC, 1997). They have been frozen, in large part due to Spanish opposition. The Council negotiations during the 2001 Swedish Presidency suggest that the member states have agreed to the basic principles of this Directive, but the specific details concerning the minimum excise duty rates for each energy product remain undecided and are likely to be contentious (*ENDS Daily*, 19/03/2001 & 23/04/01). It is important to note that the proposal is very much in line with the traditional norm associated with EU environmental protection, which is to enhance market harmonisation by ensuring a consistent taxation policy for each fuel in all the member states. If accepted, the energy products directive will force national measures towards a minimal convergence on price levels. This suggests the continued importance of EU institutional constraints and norms, which

limit the scope of supranational entrepreneurship, particularly in a politically sensitive area such as taxation. The fixed minimum prices also illustrate how this particular legislative instrument has a number of elements not associated with the notions of 'soft law'.

Even if the EU member states do not agree in the end about the energy products proposal, EU legislation has had a continual constraining effect on the selection of possible taxation instruments by the member states. Again the aim is to ensure that the single market is not damaged. EC provisions aim to ensure, for instance, that taxation measures are non-discriminatory and that the use of revenues raised by taxes as a form of aid does not distort competition (Delbeke and Bergman, 1998). Environmental measures that involve the use of revenue in a way that constitutes state aid must notify the Commission. The Commission has the right to demand that member states postpone implementation of such legislation until it is modified. A more indirect notification requirement exists for technical standards and regulations linked to fiscal measures (Delbeke and Bergman, 1998).

Voluntary Agreements

The picture of EU action with regards to voluntary agreements (VAs) shows a mixed record of success in a different way from the taxation instrument. The Fifth Action Programme did contribute to the momentum of instituting these instruments. The EU wide subsidiarity debate seemed to have an even greater role in creating a policy window for the Commission concerning this instrument. The emphasis of this discussion on less interventionist instruments allowed DG XI to place this instrument on the EU agenda.

In 1996, the Commission announced its aim of promoting and facilitating the use of 'effective and acceptable' environmental agreements as a means of supplementing the more traditional command and control regulation (CEC, 1996, 5). A year before this announcement, the Molitor Report came out arguing that the EU's command and control regulations put European businesses at a competitive disadvantage (CEC, 1995). The mixed coalition promoting the idea of VAs has not created a purely new

VA model at the EU level; rather, the EU VAs tend to take characteristics from various member state approaches as well as including several novel supranational elements. Such variation in member state approaches has been reflected in the tensions and ambiguities of the EU VA design. For example, the Dutch tradition of agreements emphasised the need for a very formal instrument while the German approach is extremely informal, albeit closely linked to the threat of legislation.

Various doubts have been raised about the legitimacy, legality and transparency of creating VAs at the EU level (Mol *et al.*, 2000, 121; Friedrich *et al.* 2000; CEC, 1996a). The lack of consultation with most actors, including the European Parliament, has made the implementation of the instrument quite controversial. These doubts seem to be reflected in the very small number of VAs being created by EU legislation.

One notable example of an agreement negotiated by the Commission concerned the voluntary fuel economy agreements negotiated with the automobile industry. As a result of the 1991 amended Directive regulating vehicle emissions, the Commission entrusted a group of national officials and motor industry representatives to draw up policy proposal to help limit these emissions (Keay-Bright 2001). Initially the group proposed tax solutions, which were strongly supported by DG XI, but rejected by the Commission Directorate for Indirect Taxation. The then Commission DG III (for Industry) actually proposed the idea of voluntary agreements, which was accepted by DG XI after initial reluctance (Keay-Bright 2001). The automotive industry had been pushing for these instruments, at least at the start of the EU process, but seemed to lose enthusiasm as the negotiations progressed.

After several years of haggling with the manufacturer's association (which involved the EU raising the political profile of the negotiations and the increasing public visibility due to the Kyoto Summit), the Commission DGs in 1998 managed to achieve an agreement for industry to institute a 25% fuel economy improvement (Keay-Bright, 2001). The Commission has created a further negotiated agreement with the Japanese automobile manufacturers. The European agreement has faced considerable criticism from the environmental perspective. Perhaps more serious was the issues of

transparency, as the Council, Parliament and environmental ngos were kept out of the negotiations, and the legal basis for the non-binding agreement was uncertain (Keay-Bright, 2001). Although the political context of subsidiarity provided some favourable conditions, the lack of a strong coalition outside DG 3 for this instrument suggests that this case is more the outcome of an absence of well-considered alternatives by the Commission.

As was the case with tax instruments, EU aims and legislation can have a significant constraining effect on member state usage of VAs. There are a few examples of EU legislation actually replacing member state VAs. The EU end-of-life vehicles directive, which regulates the obligations of manufacturers to take back scrapped cars, replaced a legally non-binding agreement in Austria and Germany. The 1994 EU Directive on Packaging and Packaging Waste rendered void a Dutch covenant with packaging manufacturers (Lauber and Ingram, 2000, 130-7). The Dutch actors were somewhat pleasantly surprised when the Commission approved a new version of the VA agreed by the various parties as a means of implementing the EU Directive.

Eco-labels

The EU Scheme

The EU established a common eco-label in 1992 (CEC, 2000a; Eiderström, 1998; Erskine and Lyndhurst, 1996; Haigh, 1999:11.7; Herrup, 1999; Karl and Orwat, 1999; Kern *et al.*, 2001; UBA, 1996). However, serious problems have dogged the scheme from the start. It has failed to receive the full support of member governments, the EP and stakeholders (such as industry and consumer/environmental groups). Consumers have remained largely oblivious to the existence of the EU eco-label and/or sceptical, particularly in member states with their own national eco-label schemes (CEC, 1998; UBA, 1996, 1998a). In 2000, the EU eco-label scheme underwent substantial (but half-hearted) revision (CEC, 2000a, 2001a). However, it remains to be seen whether

the reforms are sufficient to transform the flagging EU eco-label scheme into a success.

The EU eco-label is a voluntary scheme which, like similar member state eco-labels, aims to promote products which are less damaging to the environment (compared to functionally equivalent competing products); it provides consumers information about the environmental impact of the labelled product. The EU eco-label scheme, which excludes food, drink and pharmaceuticals as well as dangerous substances, is based on product groups for which (environmental) criteria are defined on the basis of an LCA (life cycle assessment). The EU eco-label, which is symbolised by a flower ('European Flower'), can be awarded for a period of up to three years depending on the product group.

Regulation 880/92/EEC, which established the EU eco-label, came into force in May 1992. It allocated the main competencies for the administration of the EU eco-label to the following institutions: (1) the Commission; (2) national Competent Bodies which are responsible for processing the applications; (3) an Advisory Committee which is made up of national officials from the Competent Bodies but chaired by the Commission (the Council may decide on the product criteria if the Advisory Committee fails to take a decision or achieve the required majority); and (4) a Consultation Forum which grants access to important stakeholders (such as industry and consumer/environmental groups).

The Consultation Forum was not foreseen in the Commission's original proposal (CEC, 1991). It was set up following requests from the European Parliament (EP). However, consumer and environmental groups, which occasionally struggled to gain the necessary expertise on some of the highly technical issues under consideration, soon complained about its ineffectiveness. They also pointed out that the Consultation

Forum was circumvented by industry groups involved in direct lobbying of the Commission (Eiderström, 1998). The Commission's original proposal (CEC, 1991) suggested placing an EU jury in charge of establishing the criteria for and awarding the EU eco-labels. However, member governments opposed the jury scheme, insisting instead on a scheme 'more based on mutual recognition of the decisions of national competent bodies, with provisions for objections to be raised' (Haigh, ed., 1999: 11.7). The Environmental Council also blocked the Commission's proposal (CEC, 1991) to allocate the competencies for the definition of product groups and their respective criteria to the European Environmental Agency (Haigh, ed., 1999: 11.7). Instead the product groups and criteria are worked out by the advisory committee within which one member state is assigned 'lead country' status. The lead country then forms an ad hoc working group in order to draft the specifications for product group criteria. The advisory committee takes decisions by qualified majority voting (QMV). However, great efforts are made to achieve as wide a consensus as possible (interview with UBA official in 2001).

The EU eco-label scheme employs a LCA or 'cradle-to-grave' approach which is based on an assessment matrix that lists the different stages of the product life-cycle (pre-production, production, distribution including packaging, utilisation and disposal). The stages are assessed with regard to the main environmental impacts (waste, soil pollution, water contamination, air contamination, noise, energy consumption, consumption of natural resources and effects on the eco-system) of a particular product (Haigh, ed., 1999, 11.7).

Major problems

The (un-revised) 1992 EU eco-label scheme received harsh criticism in the academic literature (Eiderström, 1998; Erskine and Lyndhurst, 1996; Herrup, 1999; Karl and

Orwat, 1999; Naida, 1999). The key problems included the following: first, a slow and cumbersome decision-making process. During the first four years of the scheme's existence, the criteria for only six product groups were established (washing machines, dishwashers, soil improvers, laundry detergents, single-ended light bulbs and indoor paints and varnishes). By early 1999, the criteria for 18 product groups had been agreed with only 41 EU eco-labels having been awarded (Haigh, 1999: 11.7).

Second, a lack of transparency and thorough consultation. While environmentalists complained about undue industry influence (Eiderström, 1998; EEB, not dated) industry raised concerns about the undifferentiated and unnecessarily stringent approach used by DG Environment in particular. Third, the relatively high cost and a cumbersome application procedure deterred many companies, particularly small ones, and importers from applying for a scheme that failed to achieve wide recognition amongst consumers. Fourth, the co-existence of and competition between the EU eco-label and national schemes meant that companies who wanted to appeal to consumers would have to apply for both schemes, especially in those member states where national eco-labels (such as the Blue Angel in Germany) were more widely known.

Fifth, the EU eco-label came under pressures from importers such as American and Brazilian paper producers who were keen to use international trade regimes (such as the GATT/WTO) in order to achieve a modification or even the abolition of the EU eco-label scheme (Herrup, 1999; Vogel, 1998). Ironically, the EU eco-label scheme's lack of success may have been one reason why the United States government refrained from launching a formal complaint against the scheme within the WTO, although informally the American, Brazilian and other governments have raised objections.

The revision

Revision of the EU eco-label scheme was due in 1997. However, because of differences in opinion between member governments and internal Commission conflicts in particular it became an arduous and long-drawn out process. The Commission issued its first revision proposal in 1996. However, it turned out to be unacceptable to both the Environmental Council and the EP. Mainly due to disagreements between the Directorate General (DG) Environment and DG Industry, the Commission subsequently failed to amend its proposal in a way that addressed the core demands of the Council and EP (*EWWE*, 22 January 1999, 7-8). The revision process was finally completed only in 2000 after the German EU Presidency managed to draft a new compromise proposal in 1999 which was acceptable to all member governments and the EP (Wurzel, 2000; *ENDS Daily*, 3 July 2000).

The Commission's first reading revision proposal suggested the following three major changes to the 1992 EU eco-label scheme, all of which turned out to be unacceptable to the Environmental Council and EP (*EWWE*, 22 January 1999, 8). First, the phasing out of national eco-labels in favour of one single EU eco-label for products and services where an EU label had been awarded. Second, the setting up of an independent supranational Eco-label Organisation (EEO). The EEO would have been given the competencies for setting the criteria and administering the EU eco-label scheme although it would have required a mandate from the Commission which would have been obliged to consult with interested parties (Driessen, 1999, 7). The third idea was the replacement of the pass/fail system with a graded label consisting of between one and three European Flowers. The proposed changes were partly the result of the Commission's desire to expand the EU's powers *vis-à-vis* member states and

partly a response to criticism from importers, such as American paper companies (Herrup, 1999; Vogel, 1998).

A graded EU eco-label system would have better taken into account the environmental conditions within different member states as well as importer countries. The UK has long favoured this version (Haigh, ed., 1999, 11.7). Several member governments and a considerable number of EP Members (MEPs) principally supported the idea behind a graded system. However, in the end the majority of member governments and MEPs opted to retain the existing pass/fail system for reasons of simplicity and fears that a more complex graded system would lead to confusion amongst consumers (interviews in 2001). During the first reading a narrow majority of MEPs still supported the phasing out of national eco-labels for products/services which had been awarded the EU eco-label although MEPs demanded more stringent environmental criteria for the EU scheme. However, during the second reading the MEPs joined the majority of member governments who opted for the continued co-existence and competition between the EU and national labels (*ENDS Daily*, 3 July 2000).

Regulation 1980/2000/EC (CEC, 2000a), which was finally adopted by the Environmental Council and the EP on 17 July 2000, did not adopt the Commission proposals mentioned above. Instead it introduced the following major changes to the EU eco-label scheme. First, it established the EU Eco-labelling Board (EUEB) which is composed of the Competent Bodies of the member states. The EUEB ensures that member governments continue to play a decisive role within the revised EU eco-label scheme (interview with UBA official in 2001). Second, the scope of the EU eco-label was expanded to cover both products and services. Moreover, the use of the label was opened to suppliers and retailers as well as manufacturers of goods (*ENDS Daily*, 3 July 2000). Third, an Eco-label Management Committee was set up within the

Commission in order to improve the transparency of the scheme. Fourth, the involvement of consumer and environmental groups was strengthened. Fifth, a ceiling was set for the license fees charged. Small companies and those businesses that already use the EU eco-management system can be granted a discount.

On July 4 2000 *ENDS Daily* pointed out that

[t]he revision of the [EU] ecolabel regulation comes at a time when the scheme itself is moribund. Criteria for awarding labels in 11 product groups were adopted or formally proposed in the nine months to October last year. But since then no further products have been developed. Only two more are expected soon, while work on three has been suspended. Commission resources for managing the scheme have been slashed.

The future success of the EU eco-label is still in doubt. However, the revised scheme has managed to gain greater acceptance from member governments and consumer/environmental groups (interviews in 2001). Industry though remains highly sceptical about the usefulness of the scheme that is still not widely known amongst EU consumers who have better knowledge of and trust in their national eco-labels.

Member states with national eco-labels have done little to divert scarce resources to promote the EU scheme. Some member governments do not appear unhappy about the fact that the public continues to consider the EU eco-label scheme as inferior to national eco-labels. For certain products, however, the EU eco-label scheme has put forward relatively more ambitious criteria than some national eco-labels (interview in 2001).

The EU's recent emphasis on soft instruments may provide a lifeline for the embattled common eco-label scheme. As the Dutch government in particular has suggested, eco-labels could form part of a range of NEPIs that could be tailored for particular policy problems and/or markets in which consumption patterns continue to diverge. The EU's eco-label is in principle compatible with other types of NEPIs. It could also be combined with traditional regulatory tools as has been shown in the German case.

However, the EU eco-label is unlikely to become a successful policy instrument helping to bring about more sustainable consumption patterns if it fails to gain stakeholder support. Moreover, if the intention is to create more than yet another consumer label that competes with many private schemes, then the EU eco-label scheme needs to take account of a more integrated approach. Recent developments towards an integrated product policy on both the member state and EU level are therefore likely to have a medium to long term effect on the future of the EU and national eco-labels (CEC, 2001).

6. CONCLUSION

On both a rhetorical and a practical level, in terms of what percentage of new EU legislation is represented by NEPIs and soft law, there appears to be an increased proportion of EU time and attention being devoted to these types of instruments. Nevertheless, the evidence indicates that these new instruments have not supplanted EU legislation created prior to 1992, usually with a strong command and control element. In the three cases the actual policy impact the EU instruments have made is quite limited. The EU process may have deterred states from using certain fiscal instruments, but, in terms of positive integration and policy innovation, the EU still has yet to field a major market-based instrument instrument. In the areas of VAs and eco-labels, the EU has managed to get past the decision-making stage. However the uptake of these instruments at the supranational level has been quite limited.

The European Union has given greater weight to the use of more flexible instruments and documents that are supposed to exert 'suasion' on their targets. While this may constitute a change in the balance of 'hard' and 'soft' legislation in EU policy outputs, strategy papers and framework directives have played a significant role in EU policy from the 1970s.

The changes that have occurred do reflect a philosophical shift in the use of instruments in the early 1990s. Part of the process was the learning concerning the

problems of command and control instruments (in terms of costs, efficiency, the growing perception of the importance of integrating policies and so forth) and the need for policy-makers to consider other alternatives. However, an extremely critical factor was the increase in political pressure as a result of questions about the EU's legitimacy, the balance of responsibilities between the member states and the EU institutions (subsidiarity), and the concerns about economic competitiveness.

In terms of the selection of the paper's three focus instruments, the EU has played a role although perhaps not as effectively as the Commission's environmental actors would prefer. The existence of the EU process has allowed the member states to gain information about activities and experiences of their counterparts. Information for instance about the German experience with eco-labels and the Dutch with covenants has been diffused through the EU. The EU, not always successfully, has tried to act as a harmonising force with regards to instruments. This dynamic has become a key justification for the framework concerning the taxation of energy products, and it was a principle dynamic in the attempt to create an EU eco-label. The fact that these have been mixed successes shows the limitations of the EU role as well as the limitations of using the single market justification. Competitiveness issues do take part in explaining the EU process. Countries such as Germany have been extremely reluctant to consider EU alternatives to their highly successful national eco-label system. Concerns about competitiveness have led certain member states to push for an EU level tax although countries such as Spain have blocked the proposal on the same grounds. The attempt by EU institutions to carve out a role is clear in the case of taxation although this seems to be less of a driving force in the other cases.

The brief coverage of the three cases does not seem to exclude any of the three analytical approaches stressed by the project. It is worth emphasising that this paper and the wider ESRC project do not see the perspectives as being mutually exclusive: all three may be operative in a given context. Nevertheless, the impact of the settings and institutional factors seems clearest in terms of affecting instrument choice. The EU continues to rely on a great deal of command and control regulation; the new

instruments are filling more of a supplementary function. A traditional motivation for EU environmental legislation, the protection of the Single Market, carries on playing a prominent role in EU discussions. The tension between the Environment and the Economic DGs remains an influence in the Commission decisions about instruments, as does the need to build consensus with the member states.

As has been already noted in this section, there is substantial evidence of an ideas shift within environmental policy. The analysis of the paper is too general to identify systematically specific advocacy coalitions that might be pushing individual instruments in accordance with this shift of thinking. A coalition within the Commission did promote the carbon energy tax, but a change in institutional and external circumstances thwarted and ended this effort. The chaos dominant approach, while not predicting specific outcomes, does provide some important nuance to the ideas approach, especially as it emphasises the importance of policy windows opening for actors with specific instruments in mind. This was seen in the ecotax and voluntary agreements cases.

Examining the larger aims of this project, this overview of EU policy suggests that the use of 'soft' and 'new' instruments at the EU level reflects more continuity and sporadic innovation than a substantial revolution in environmental policy instruments. The significant strides in the European development of new instruments seem to be taking place in particular member states. The requirement of getting the European Union's complex array of actors to agree to new and different policy initiatives makes it likely that the EU NEPI innovation will continue to be reacting to efforts occurring in the member states.

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