Robert Schuman Centre

New Instruments for Environmental Policy in the EU

Negotiated Agreements in EU Environmental Policy

JAN WILLEM BIEKART

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EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

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European University Institute
Badia Fiesolana
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This paper addresses the question if and how negotiated agreements between government and industry can improve the environmental performance of companies. In answering this question, as a representative of an environmental NGO,[2] we want to illustrate four propositions:

- *negotiated agreements in themselves are not more than a minor step towards sustainable production;*

- *negotiated agreements will only work if there is an effective regulatory framework with regard to performance standards, so that at a minimum level formal equality between companies is assured and free-riders can be dealt with;*

- *public access to information on the results of agreements and the performance of individual companies is an essential requirement;*

- *though negotiated agreements offer both opportunities and threats, as with any change, the balance of judgement depends on the credibility of agreements. Credibility requires strong commitment of the parties to the targets of an agreement and the willingness to take the necessary actions whenever troubles arise in the implementation process.*

The scope of this paper is limited to negotiated environmental agreements between government and the secondary sector (i.e. industry), though agreements with other economic sectors are also known, as well as agreements in which no (national) public body participates (like neighbourhood agreements and self-obligations of industry). The geographic scope is Europe, but most examples are from The Netherlands. In order to obtain the necessary depth, our subject is put into the context of a much more challenging issue: how can the environmental performance of European industry be improved substantially through policies of the European Union or its member states.

Section two identifies some trends in environmental thinking in industry and the challenges that lie ahead. Section three discusses negotiated agreements in the context of the possibilities for the improvement of European environmental policy as a whole. Section four elaborates on the 'rules of the game' for negotiated agreements, based in particular on the many Dutch experiences, but with an eye

[2]With regard to negotiated agreements, The Netherlands Society for Nature and Environment critically follows their development and implementation and signals Parliament, Government, public bodies, industry and press when important issues arise. The Society does not participate in any of the agreements.

towards experiences in other member states. In section five, some often heard questions regarding negotiated agreements are answered, while section six draws conclusions about the value of negotiated agreements in EU environmental policy.

Environmental Thinking in Industry: Issues

This section addresses the issues in environmental thinking that have emerged in influential bodies of industry over the past few years. A focal point of industry thinking was the United Nations world environment conference in Rio de Janeiro in 1992. Bodies of industry that have since become active in promoting voluntary agreements are the International Chamber of Commerce (see for example WICE (1994)), UNICE (European employers organisation), and many transnational companies and influential trade organisations like CEFIC (European chemical industry).

Public authorities in many industrialised countries are reconsidering their role and ambitions. In particular, co-operation between policymakers and industry has become a trendy issue. In EU environmental policy, a change of course was laid down in the Fifth Environmental Action Program of 1992, which emphasised the responsibilities of industry. In 1995, the European Commission actively started exploring the opportunities for negotiated (or voluntary) agreements. Many industrial countries within and outside the EU (like the United States, Japan and Korea) were already acquainted with these instrument in some form.

However, reaching sustainability in industrial production is seldom at the core of the debate on new instruments in environmental policy. Rather, central issues in the worldwide debate on co-operation between governments and industry in environmental matters are:

- *increasing use of voluntary or negotiated measures;*
- *more flexibility in policy implementation in combination with consistent policies and clear, long-term targets;*
- *attention to cost-effective policies and priority-setting, stimulating an integrated approach towards environmental problems.*

These are the recurring issues in industry's policy papers, memoranda, etc. to governments, often implying the need for fewer regulations. This is in essence an economic and not an environmental agenda. A characteristic quote: "Voluntary agreements offer the best guarantee to control the influence of the chlorine

industry on the environment," said former CEFIC president Daniel Janssen at a conference of Euro-Chlor in Brussels (NDI 1995:1). The same kind of statements could be heard at a workshop of UNICE in March 1995 (EE 1995:1).

Industry representatives, but also some governments and politicians, tend to deny or conveniently forget the hard fact that every survey on industry's motives for doing something about environmental problems comes to the same conclusions: for the vast majority of industries, regardless of their country of origin, a corporate environmental policy depends on the presence of legislation. Moreover, in companies which aim to go beyond compliance with legal requirements, the main driving force is gaining advantages by anticipating legislation.

While the environment now occupies a permanent position on the managerial agendas of most bigger industries, business has responded to the challenge in its own, well-known way: reducing it to a management problem of limited proportions and seeking solutions in rational and pro-active management. Hence the relative popularity of environmental management systems and the scarcity of business initiatives that explore more far reaching solutions that translate the concept of sustainability into concrete actions.

Is industry really going green or is it all 'greenwash', as Greenpeace stated in a 1992-report (Greenpeace 1992)? The credibility of industry's environmental performance is one of the central issues in this debate between industry and environmentalists. Differences between individual companies on this point have grown widely, however, which makes generalisations more difficult. There are enormous divergences in attitude towards environmental issues between branches of industry, between companies and even within companies. There are also growing market niches for environmentally sound products. This is essential to understanding the discussion on new instruments in environmental and industrial policy.

The accountability of industry's environmental performance is still extremely low. Only a very small part of industry (less than one percent) is publishing annual environmental reports, of which only a few are externally verified. Accountability is only partial; for example, products and raw material input are usually excluded (UNEP 1994). Implementation of public release and transfer registers by governments (PRTR's), documenting emissions of all industrial companies, are strongly resisted by industry organisations and individual companies. At the EU level, the Pollution Emission Register initiative of the Commission, for instance, is so strongly opposed by CEFIC that all work on the PER seems to have stopped. This represents a remarkable lobbying result of the chemical industry, because transparency of performance is a pre-requisite for successful negotiated agreements. In the United States, the existing Toxic Release

Inventory is under pressure from certain parts of industry and several politicians, in order to reduce the extent of its right-to-know impact.[3]

Still, there is value in the concept of shared responsibility between governments and industry, because it seems unlikely that sustainability can be reached solely through command-and-control. The enormous reservoir of industry's creativity must be used and refocussed on issues of sustainability.[4] However, to overcome a number of major dilemmas, it is indispensable that governments dare to make difficult decisions, sometimes against established interests.

The vehicle for realising sustainable development must be a credible environmental policy. Attention in the discussion on new instruments in EU environmental policy is too much distracted by claims that command and control and self-regulation are mutually exclusive; that environmental policy must be comprised entirely from one rather than the other (as noted in chapter 1, similar polarisation plagues the FME debate) . This is in fact a false dichotomy. A credible environmental policy means that transparency, effectiveness, equity and efficiency are criteria of the highest order. In practice, this will have to lead to an intelligent mix of different instruments: regulatory, economic (like subsidies and ecotaxes), social (like negotiated agreements), fiscal (like special tax schemes for green stocks) and information instruments (like education and technology development and transfer programmes), giving frontrunner companies some advantages and treating laggards with a straight command and control approach.

Policy Context: The Need for Improved Environmental Performance from Industry

The already limited advantages of negotiated agreements will only become evident in a credible policy which is designed to put the right responsibilities on the right shoulders. Otherwise negotiated agreements become an isolated and useless or even dangerous instrument which undermines existing policy instruments. This section devotes some attention to this wide-ranging issue.

The sense or nonsense of negotiated environmental agreements should be analysed within the context of a number of logical requirements of effective environmental policy:

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[3]Information can be found regularly in the newspaper of the Working Group on Community Right-to-Know in Washington, D.C.

[4]Many studies have tried to identify the actual policy changes required to achieve sustainable development. What is actually necessary is well described in Reijnders (1996).

1. *it enforces transparency and accountability;*

2. *it ensures that market forces work for you;*

3. *it provokes creativity;*

4. *it creates flexibility;*

5. *it exhibits coherent design.*

First, improving the environmental performance of industry demands transparency and accountability. There is a great need to draw a company's performance out of the shadows of uncontrollable claims or even complete silence. The history of the American Toxics Release Inventory has shown that dramatic improvements of a company's performance can be achieved when companies are given the possibility of competing in the market or in public relations on the basis of a credible environmental performance. It provides an opportunity for shareholders, banks, insurance companies and business partners to obtain answers to their questions regarding the environmental risks of companies and their products, thereby improving the credibility of both government and industry in society. Therefore, vital instruments are:

- a legal obligation of companies to submit their emission data to a central, publicly accessible register, or PRTR (for example the EU Pollution Emissions Register if it doesnt languish). In 1996, the OECD developed guidelines for PRTR's as a consequence of the decisions at the UN conference in Rio in 1992 (OECD 1996);

- a legal obligation to publish the environmental characteristics of chemical substances for which a company requests market access;

- a legal obligation for industrial companies to publish annually an adequate environmental report which is externally verified (similar, for instance, to the reporting requirements of the US Security and Exchange Commission);

- public access to all information pertaining to negotiated environmental agreements and their results, including information at the level of individual companies, as well as evaluations of the enforcement of environmental regulations.

Second, as the market is a powerful force in creating effective regulation with regard to the environment, one must look for policy instruments that change the rules of the economic game so that the right competition impulses are given and

that differences between the environmental performance of individual companies can play a clear role in the marketplace. Instruments which might be expected to be highly effective are:

- the introduction of extended producer responsibility, i.e. the producer of products remains responsible for them during their user- and end-of-life phases (Greenpeace 1995a);

- the introduction of green taxes (Greenpeace 1995b, Dietz, Vollebergh and De Vries 1995);

- a shift from labour taxes to taxing the use of the environment;

- strong legislation on liability for environmental and health damage, including access to justice;

- a high quality certification scheme for environmental management systems (of which EMAS is a very first step) (see ch. 10);

- an ambitious ecolabel scheme (see ch. 9).

Third, while it is generally believed that environmental regulations usually do not stimulate innovation and creativity, this is not an inevitable characteristic of regulations, let alone of environmental policy instruments in general. Stimulating constructive creativity in industry in order to reach better solutions for environmental problems is an invaluable quality of environmental policy. Instruments to reach this include:

- challenging, longer term environmental targets with a commitment of industry to reach them;

- whenever possible do not prescribe the application of a specific pollution abatement method, but set a performance goal and let industry find how best to achieve it;

- stimulate co-operation between companies located on a particular site or within a limited region by analysing whether waste streams of one company (solid or fluid waste, waste heat, waste water) can be used as inputs for another;

- look for coalitions with companies who wish to go (much) further than 'business-as-usual' and find ways of rewarding them if they indeed perform better.

Fourth, flexibility is a valuable aspect of a more effective environmental policy. In contrast to creativity, which is essential for meeting longer term and challenging objectives, flexibility is more focused on the shorter term. For example, industry should be allowed to discuss with authorities the setting of environmental priorities on the basis of cost-effectiveness and investment realities, as long as the objectives themselves, fixed by these authorities, will not be violated and will be met on time.

Fifth, coherence in the design of the legal framework is essential, though this is quite difficult to reach. It focuses on the elimination of bloated and burdensome bureaucracy, the coordination of legislative scope, definitions and terminology, as well as on sufficient financial resources for manpower and training in order to implement and enforce environmental regulations.

If we compare the characteristics of negotiated agreements with these requirements, agreements might score well on several points. However, the contrary is just as likely to be the case, depending on the way the agreements are negotiated, designed, implemented and enforced. The next section will therefore focus on the proper rules of the game for negotiated agreements.

The Rules of the Game

In this section we would like to communicate experiences with negotiated agreements, particularly in The Netherlands. Based on many experiences with environmental agreements, especially with the many mistakes made in the first generation of agreements in the late 1980s, a number of 'rules of the game' are derived (for the Dutch literature on these rules, see Winsemius 1993, Bogie 1993, Commissie voor de Toetsing van Wetgevingsvraagstukken 1992). We want to add that in The Netherlands guidelines for agreements in general (not just environmental ones) have been formalised and published by the government (a preliminary version was published in English by the Ministry of Housing, Physical Planning and the Environment in 1994). These guidelines have no formal status.

Our 'rules of the game' entail:

1. Ambitions criteria

- the environmental targets of the agreement must be set high enough so that companies perform better than would be the case with 'business as usual' or mere compliance with existing legislation. In general, this means that the targets are not negotiable by industry, but rather are based on a long-term environmental policy devised by the government;

- wherever possible, the objective must be to award companies that do more than is minimally required (compliance, 'business as usual'), for example through flexibility in reaching specified targets or certain financial benefits, and to prevent free-riders by withholding from them these rewards and confronting them with a straightforward command-and-control approach. This objective becomes difficult in a situation without regulation or other 'standards'.

2. Choice criteria

- the agreement must not violate existing legislation;

- the characteristics of the parties involved are crucial for a successful agreement. These characteristics pertain to knowledge, professionalism, representativeness, negotiating position, level of organisation, credibility and mutual respect;

- parties must show a strong commitment to the environmental objectives of the agreement and be prepared to effectively solve troubles arising in the implementation process;

- in general, there must be a limited number of parties (companies, authorities) involved;

- the choice of the instrument must be considered according to the situation and in the context of the implementation of other and additional policy instruments. A regulatory framework for the issues agreed upon, which defines minimum performance standards for industry, is always necessary and should therefore be in place or at least be prepared at an early stage for eventual implementation.

3. Design criterion

- the agreement must offer a clear solution (quantified targets) for a well-defined problem reachable in steps (staged approach) within a specific period of time;

- the agreement must make clear who the parties to the agreement are and what their obligations are;

- the agreement must offer safeguards for third parties, including publication of the text, public access to periodic monitoring results and to the contribution of individual companies, and verification of the results;

- the agreement must tackle the free-rider issue through the possibility of sanctions and be binding on all parties;

- the agreement must offer some kind of reward for companies going further than compliance and/or 'business as usual';

- procedures for consultation of the parties and for changing or terminating the agreement must be defined;

- the results must be evaluated and made public, and the procedure for non-compliance with the targets of the agreement must be foreseen.

We will illustrate the meaning and relevance of these rules by elaborating on a range of Dutch examples of *integral* and *single issue* agreements respectively.

Experiences with 'integral' agreements

Experiences with *integral agreements*, i.e. agreements which establish medium to long-term targets and cover a whole set of environmental parameters of a particular branch of trade, are very limited within the EU (as well as outside). The Netherlands stands out clearly with their target group policy on industry, which has received widespread attention throughout the industrialised world. This, however, is not the only type of negotiated agreement in The Netherlands. Of the approximately 80 agreements with industry, only 10 are integral agreements (Öko Institut et al. 1996). Together, these agreements address less than 300 companies, emitting the major part of the industrial pollution in The Netherlands.

Integral negotiated agreements are both a communicative and a management instrument, in contrast to most 'single-issue' negotiated agreements. The Dutch integral agreements build on existing command and control type instruments, but strive to incorporate commitment of industry to long-term objectives, a real integrated approach, flexibility for industry and transparency for the parties and the general public, which cannot be stressed enough.

In most cases it is still too early to assess the effectiveness of these integral agreements, but in some cases there are enough results available to draw meaningful preliminary conclusions. Our experience is that negotiated agreements do not work or have at least a high risk of failure, unless they meet the rules described above (see also Biekart 1995).

Chemicals

The best example of (relative) success has been the negotiated agreement with the chemical industry. In April 1993, the chemical industry, not only the trade organisation but also most of the 130 individual companies, signed an agreement with the ministries of environment, economic affairs and water management, the twelve provinces and the organisation of municipalities. It contains quantitative targets for the main emissions (air, water, soil, waste, energy) for 1995 and 2000, with indicative targets for 2010. For most emissions, reductions between 50% and 99% relative to the year 1985 are required. These targets were reasonably ambitious and non-negotiable. They do not bear the character of standards. The reduction objectives were derived directly from the National Environmental Policy Plan, which was adopted by Parliament in 1989. For its part, the NEPP was based on a quantitative assessment of the environmental situation in The Netherlands, entitled *Concern for Tomorrow* (RIVM 1988). The agreement is a declaration of intent which creates obligations, but no liabilities.

Under the agreement companies are obliged to write a company environmental plan (CEP) in which they indicate how they want to implement the objectives of the agreement in terms of concrete measures. This is done in steps; a CEP covers a four-year period and must contain an outlook for the next four year-period. Every four years the CEP is completely revised and every year a report is compiled on the actual progress made. Thus, in the time-span of the agreement, four or five CEP's will be written by each participating company. An essential article in the agreement is that companies should implement the agreement by applying best available technologies (BATNEEC), which is required anyway in the Dutch permit procedures, and that they must justify the choices made in their CEP. If the CEP is considered acceptable by the permit-giving authority, it is taken as the basis for the legally required periodic revision of permits or for a new permit.

Herein lies one of the chances for awarding participating companies more flexibility. Industry itself is not so much opposed to ambitious objectives, as long as they have enough time to anticipate them. Industry highly favours certainty and stability in what is being asked from them. Through the CEP, a company gets the chance to anticipate long-term objectives, and enjoys the liberty to propose whatever measures it wishes to take first, taking into account considerations like

cost-effectiveness, depreciations of existing installations, etc. Also, negotiations take place with regard to an integral package of measures, while formerly the company had to talk to different permit-giving authorities for the different environmental aspects of its production site. This also means that under the agreement it can be considered acceptable that a company does not yet implement BATNEEC for water if it is logical to give high priority to BATNEEC for air emissions (to put it simply).

The CEP's are available to the public on request, just like the yearly evaluation reports. This is particularly important, because in this way the environmental performance and plans of a company can be monitored by third parties, which is a big stimulus in the dynamics of the agreement. The progress of the sector as a whole is monitored by adding up the results of the individual CEP's and comparing these with the objectives of the agreement. The results are evaluated by a formal body, the Overleggroep Chemische Industrie. This body is responsible for the correct implementation of the agreement and consists of representatives of the chemical industry and several public authorities. Bottlenecks in the evaluation study are traced down to the individual company, where the possibilities of specific action are discussed and (if agreement is found) measures are taken. Usually this will mean applying measures beyond BATNEEC. If no agreement can be found, there is always the permit procedure to fall back upon (with its public inquiry and appeal procedure) where the authority can ask of the company what it thinks is necessary. Of course, the company (like third parties) can also object to these permit prescriptions and can go to court. The permit procedure with its legal requirements thus forms the safety-net.

In mid 1996, the results of the first round of CEP's of the chemical industry were compiled and bottlenecks have been identified. It is clear that most of the 2000 targets will probably be reached, but some 20 percent of the targets will not, at least not on the basis of the first generation of CEP's. Most of these bottlenecks have an economic background (too expensive to solve in the view of companies), and not a technical one. A substantial number of companies contribute to three of these bottlenecks: NO_x, vinylchloride and CO. The other problems lie generally with only one or a few companies.

Several evaluations of the first generation of CEP's have made clear that industry does not actually do more than was already foreseen in permits or other arrangements with authorities (Inspectie Milieuhygiëne 1995, Ministerie van Verkeer en Waterstaat 1995, Inter Provinciaal Overleg 1996). In fact, reduction of emissions to water have probably decreased less quickly than would have been the case without the agreement. Emissions to air on the other hand have probably been reduced more than in a scenario without the agreement. A possible reason for this is that the integral approach--examining all environmental problems of a

site--made clear that the reduction of emissions to air were relatively more urgent than reduction of emissions to water. This in turn has a range of causes which cannot be discussed here. The level of strategic environmental thinking in the chemical industry still proves to be generally low, which is a subject of concern and action by the trade organisation VNCI and others. Still, the CEP instrument has proved to be a big stimulus for companies to think integrally about the environment. Furthermore, through the writing of a CEP, many companies have been confronted with the fact that they still cannot quickly generate accurate environmental data. This shows the urgency of the introduction of good environmental management systems. The question how far companies have really been given more flexibility in case of good behaviour or have been confronted with strong permit requirements in case of bad behaviour is still a subject of evaluation by the Environmental Inspectorate.

Oil and Gas

Apart from this case in the chemical industry, some integral negotiated agreements specify inappropriate objectives and suffer from poor design. The June 1995 agreement with the oil and gas exploration and production sector, for example, has a more or less similar design to the agreement with the chemical industry, but with some important differences which undermine its effectiveness.

The most important difference is that the offshore oil and gas industry (14 companies) is not subject to the Environmental Management Law (Wet milieubeheer), under which all other business activities fall. Therefore, offshore oil and gas installations need no environmental permit. There is only one regulation applicable (included in a non-environmental law), which is concerned with banning the discharge of oil-based drilling muds. Exploration and production of oil and gas fall under the jurisdiction of the ministry of economic affairs. Therefore, this ministry, with its ideology of non-interference in the market, i.e. no regulation, was the responsible ministry for the agreement. However, the ministries of water management and environment participated in the negotiation process and have succeeded to a certain extend in improving the design of the agreement. Luckily, the objectives of the agreement were derived directly from the National Environmental Policy Plan and were not themselves negotiated. These objectives are similar to those contained in the chemical industry agreement, i.e. reduction percentages for all emissions, relative to 1985. However, and this is another weakness, the trade organisation NOGEPA attached critical remarks to many of these environmental objectives. Therefore it is questionable if industry has a similar perception of the environmental problems as the other parties have.

In this particular case, the choice for an agreement meant in practice that the negotiated path was officially preferred instead of regulation, though no arguments have been substantiated why an agreement was considered more effective. This is remarkable, because originally the ministry of water management intended to introduce legislation for this category of industry, though it faced heavy opposition from the ministry of economic affairs. Difficult consultations between the three ministries and the sector on necessary environmental measures for the offshore industry had been going on since 1989. In 1992, an Environmental Action Plan was formulated, in which a number of important legislative activities were foreseen. But then the idea arose to switch to the negotiated agreement approach and the parties abandoned the legislative proposals, causing a delay in the implementation of concrete measures of at least three years, but in practice probably in the order of 8 to 10 years. As third parties had no possibilities for inquiry and appeal because of the lack of a system of environmental permits for offshore platforms, a special procedure has been designed through the efforts of the environment ministry so that third parties may comment on draft CEP's. An appeal procedure is not foreseen, however. Monitoring of the agreement is carried out by the sector itself, instead of by an independent agency, as in the chemical industry (the FOI).

The results based on the first generation of draft-CEP's in the offshore oil and gas sector in mid-1996 show rather disappointing results. While large reductions of SO_2 and CH_4 emissions have been achieved (meeting the objectives of the agreement), substantial bottlenecks remain to be tackled (in particular NO_x), and water discharges have hardly been dealt with. The successes are mainly achieved through simple technical measures and by the closure of platforms. In spite of the agreement, water discharges are not considered a problem by industry, while NO_x emissions have actually risen due to the need to increase pressure in end-of-life oil and gas reservoirs. If the originally intended regulations had been introduced, the performance of industry would have been much better, because then for the first time in history this sector would have been confronted with the same environmental requirements as in any other branches of trade.

Other integral agreements

Various flaws have plagued other integral negotiated agreements concluded in The Netherlands as well, though this does not mean necessarily that they do not work. That also depends on the particulars of the situation:

- An agreement with the base metal industry (1992) meets all of the 'rules of the game' criteria but has been hampered in practice because of the unwilling attitude of most participating companies (i.e. an element of the choice criteria). This has brought significant pressure to fall back on traditional command and

control in order to reach the necessary environmental improvement. A further problem is the relatively high costs of substantially reducing emissions, due to the capital-intensive character of this industry. Finally, there have been serious problems with transparency because many companies did not want to give their CEP to third parties. For details, see Stichting Natuur en Milieu (1994);

- Agreements with the printing industry (1993) and the metal- and electronic industry (1995) both do not meet the element of the choice criteria that there must be a limited number of parties involved. Both sectors contain too many companies, the metal sector even comprising more than 10.000 companies. Though the organisation of the implementation of these agreements differs from those with the chemical and base metal industry (with packages of measures for particular groups of companies), the results are very difficult to monitor and problems are very difficult to tackle. Finally, the rewards for companies are much less evident then in other agreements. The agreement with the printing industry was scheduled for evaluation in 1997;

- Although the agreement on petrol filling stations (1991) does not meet an element of the choice criterion (number of companies addressed), it works rather well. Partly because the agreement has been supported by regulation (on request of the companies), but also because the sector itself decided to set up a sectoral fund (SUBAT) for soil sanitation; the most pressing environmental problem of the sector (besides VOC-emissions). This fund is generated from a small rise in the price of petrol. Filling stations which decided to close down before a certain deadline (often the ones owned by a private person who could not afford soil sanitation) could apply to the fund, which then takes the responsibility for paying the soil sanitation. Very important in this case has been the role of the major oil companies, which own a large portion of the petrol filling stations and whose role will increase through this restructuring of the sector. More information is found in Stichting Natuur en Milieu (1993).

Experiences with 'single issue' agreements

Most of the many negotiated agreements in the member states of the European Union are concerned with single environmental issues (for a recent overview of existing European agreements see Öko Institut et al. 1996). One can think of particular waste streams like batteries, old tyres, wrecked cars, packaging, emissions of volatile organic compounds, CFC's, energy efficiency (or CO_2 emissions), soil sanitation, tropical timber, and so on. The important thing to realise with this type of agreement is that, in contrast with the integral agreements described above, they are usually not meant to be a communicative or management instrument targeted at an integral improvement of companies'

environmental performance. They are usually meant as an instrument for reaching a specific environmental goal where regulation is very complicated or even hardly possible, or (usually in the bad cases) as an alternative to regulation. A number of modern Dutch cases illustrate the limitations of poorly considered single issue agreements as well as the potential environmental gains from agreements which adhere to the essential rules of the game.

Energy Efficiency

A particularly striking example is the large group of single issue agreements on energy efficiency which have been concluded since 1992. The responsible ministry is economic affairs, which has no high environmental ambitions and prefers a no-regrets policy in this area. This is the main reason for their choice of the instrument in the first place. There are more than 30 of these agreements, but some 18 for industrial sectors. The energy efficiency agreements violate several elements of the aforementioned rules. Although the choice of the instrument might be justified in this particular case, the problems lie in the ambitions and the design criteria.

The ambitions of the agreements are low, despite enormous scope for energy savings in industry. The present objectives barely exceed the average increase in energy efficiency which industry already achieves by itself (1.0 to 1.2 percent/year vs. 1.6 to 1.8 percent/year required by the agreements). As a rule, measures considered under the agreements must have a maximum pay-back time of three to five years, which actually means normal profitable business practice and nothing more. This is also what is meant by 'no-regrets' policy. Studies show that the economic potential (cost-neutral options) and technical potential (all known options, without reference to costs) are each much higher (World Wide Fund for Nature 1996): efficiency gains of between 24 and 29% for economic potential and 37% for technical potential are possible between 1990 and 2000. These percentages increase substantially if the time horizon is extended.

Moreover, efficiency targets do not limit the CO_2 emissions in an absolute sense. Although the official intention of the government is to reduce CO_2 emissions 3 percent by 2000 from 1989 levels, due to the central position of the Ministry of Economic Affairs in energy policy, energy efficiency objectives were chosen instead of CO_2 reduction targets. Between 1992 and 1996 the government lowered the national industry targets for 2000 (relative to 1989) from 20% to 16% efficiency increase, because of lower economic growth. However, CO_2 emissions for 2000 are predicted to rise by 7%, instead of dropping by 3%, due precisely to expected economic growth (RIVM 1996).

In an evaluation done by Stichting Natuur en Milieu (1996), the non-committal form of the energy efficiency agreements is an aspect that is increasingly problematic for sectors of industry lagging behind in schedule. For example, the paper and board industry, the rubber industry and many branches within the food industry are considerably behind schedule (Ministerie van Economische Zaken 1996). Only when considerable efforts are made will these sectors be able to reach their objectives for 2000 . This is not a problem of technical possibilities, as has been mentioned, but mainly a lack of attention for the problem within the companies. There is no real stick behind the door in order to deal with free-riders. Although since 1992 authorities may prescribe energy demands in environmental permits, companies participating in one of the energy agreements are exempted from this permit obligation, provided that their efforts are in line with the objectives of the agreement. This is also the reward for companies participating in the agreements.

Also, permit-giving authorities first have to check whether a company adequately fulfils its agreement obligations. However, the lack of transparency goes very far, because not even the authority gets access to the actual data of the company; it has to rely on the opinion of an intermediary organisation, NOVEM, which carries out all monitoring of the energy agreements. If NOVEM endorses the performance of the company, the authority cannot prescribe energy measures in the permit. NOVEM, for its part, relies for data on the companies themselves; in some cases even on the trade organisation which collects the data, and there is no verification. There are known cases where a company performed badly, but received the consent of NOVEM (for example Triton Paper company). In those sectors which fall behind in schedule, one would expect that companies would have measures prescribed in their permit, but there are no indications that this really happens. It is possible that this will only occur if the sector does not improve its performance in the period 1995-2000.

The lack of transparency naturally extends also to the public. Though companies have to produce a company energy plan under the articles of the agreement, even an abstract of this plan only becomes public if there is a new environmental permit application. Several NGO's tried to get access to the information in the hands of NOVEM through the Court by asking to apply the law on Open Government Practices. In December 1994, the Court held that formally the ministry of economic affairs could not supply the data, because NOVEM held these. NOVEM didn't want to provide them because they were not a partner in the agreements. The Court went on to say that this construction was culpable and contrary to the meaning of the law on Open Government Practices. But in practice nothing could be done and nothing has changed since then. The lack of access to the NOVEM data has also been criticised by researchers wanting to control its work.

In the EU several other weak negotiated or voluntary schemes for industrial energy efficiency have been signed. In the United Kingdom, for example, there is a highly ineffective 'Making a Corporate Commitment Campaign', only asking industry to sign a declaration which contains seven principles. These seven principles do not contain quantitative objectives and are not obligatory for the participating companies to implement. In surveys of the Department of the Environment there are strong indications of the ineffectiveness of the scheme. Still, the UK government considers the declaration one of its major policy elements in reaching CO_2 reduction targets (Jenkins 1995). Similarly, German industry designed a number of Selbstverpflichtungen in 1996 for the reduction of CO_2 . According to experts within the Dutch chemical industry, the way the monitoring of these Selbstverpflichtungen is done gives a meaningless picture of the actual increase in energy efficiency.

Packaging

Another example of a 'single issue' agreement is the packaging agreement which was signed in 1991 between the ministry of the environment and the Stichting Verpakking en Milieu, representing approximately 150 companies. The targets of the agreement, specified for five types of packaging waste (glass, ferrous metals, non-ferrous metals, paper and plastics) were not very ambitious: in particular, the general target of only a 10% reduction in packaging waste over ten years time was rather low. The agreement also established an overall minimum recycling target of 60% in ten years (50 to 80% depending on material type), and included interim (halfway) objectives for 1995. Still, the agreement led to action in an area where effective regulation of re-use and recycling was not possible, because general legislation for a very diverse range of packaging products is very difficult to formulate and control. The targets of the agreement have been negotiated by industry to a certain extend: the reduction percentage is now related to what is reachable with current industrial improvement trends, rather than a more ambitious reduction goal.

Initially, monitoring of industry's performance was chaotic and data were very difficult to obtain by third parties. Several years after the signing of the agreement, this situation has significantly improved, not least through the influence of environmental organisations and the strong interest of the press. Now, both industry and an independent research organisation (RIVM) monitor the yearly progress and publish the results. Information about individual company performance, however, is still lacking.

The weakest point of the agreement is the unpunished free-rider behaviour of a group of companies, which, particularly for plastic waste, is the main reason why several of the targets for specific waste streams have not been reached

(although other targets have, particularly those for waste streams where effective collection systems have been in place for many years, i.e. paper and glass) (Commissie Verpakkingen 1995). No provisions have been made in the agreement to tackle this problem.

The EU directive on packaging waste, which came into force in 1994, might solve this problem to a certain extent. This directive contains very unambitious targets, at least much less ambitious than the Dutch packaging agreement (the EU law requires at least 15% recycling for every stream of packaging waste).[5] The point is that the directive legally obliges a government to address producers of packaging material. In October 1996, the EU packaging directive was implemented in Dutch law and consequently the existing packaging agreement was deposed. Negotiations were still going on with industry with the goal of continuing the agreement in another form. The problematic point here is that the Dutch government is hampered in its negotiating position because it can no longer threaten to adopt recycling measures which go much further than the EC directive.[6] The intention is now to exempt companies from the law if they join a new packaging agreement. This gives them some flexibility as they are not bound to strict rules, but as a consequence they have to perform better than required under EC law. If they do not perform better, the law is there to guarantee a minimum performance and measures for individual companies can be enforced.

Similar or (more often) worse experiences with packaging agreements have been noted in several EU member states, with the UK as a documented disaster. The extremely sluggish reaction of British industry to repeated government calls to present a packaging plan meeting five key criteria indicated the problems to come. At a certain stage industry itself even asked the government to come up with regulations, in order to overcome their internal problems (Eden 1997). In the period 1990 to 1995, not even a concrete plan of action was decided upon, by government or by industry (Jenkins 1995, Eden 1997).

[5] For a discussion of the directive's development, and its relatively weak requirements compared to various pre-existing national recycling schemes, see Golub (1997).

[6] In this case the relative *laxness* of EU standards constrains the use of voluntary agreements; although the directive allows member states to establish more stringent recycling targets, a number of conditions must be satisfied (e.g. self-sufficiency, proximity), and there is a risk of violating EU rules on free trade. In other cases, however, it is the possibility of *stringent* EU rules which acts as a constraint by injecting considerable uncertainty during the negotiating stage of national voluntary agreements.

Other single issue agreements

Flaws have plagued many 'single issue' agreements in other areas of Dutch environmental policy:

- An agreement on plastic waste reduction in industry (1993) does not comply with elements of our ambition, choice and design criteria: after three years of negotiating this agreement said only that in 1995, industry should have finished research into the possibilities of prevention and re-use of plastic waste within companies. Objectives are lacking, despite the fact that in 1988 the ministry of environment had already formulated a concrete target. After several years of implementation, this agreement is still hardly known in industry.

- An agreement on the reduction of pesticide use is far behind schedule because of severe failures with regard to elements of our choice and design criteria. The lack of adequate regulation (in particular the admittance policy of existing and new pesticides) and/or other substantial incentives like taxing of pesticides are the main cause for the failure of this agreement. Many more details are provided in a joint report of a large group of national and regional NGO's (Muilerman and Steekelenburg 1996).

- An agreement between a national water authority and Hydro Agri (a producer of artificial fertilisers) (1987) did not meet elements of our choice and design criteria. As a consequence, in the permitting procedure existing legal requirements were violated. Therefore the agreement was nullified in a court procedure prompted by two NGO's (see Biekart (1995) for details).

- A really effective agreement was signed on the reduction of acidifying emissions from electricity plants (1990). This agreement meets our criteria and it works. The main point is that the electricity companies themselves may decide whether a site is subjected to further emission control, as long as the targets for the sector as a whole are met. This is purely a matter of cost-effectiveness. The agreement is supported by legislation on emission standards for electric power plants.

Reports for the EC on negotiated agreements (Öko Institut et al 1996) and other information sources illustrate the meagre results of single issue agreements in several member states, as well as in other countries. Agreements that work are almost inevitably supported on one or more points by legislation. In the other cases, agreements usually do not work well, or only because specific pressures have been effective:

- A good example of the necessity of regulatory support is Denmark with its agreement on the recycling of car batteries. Here, after an agreement had been signed, an extensive set of rules and regulations developed in the course of the time in order to cope with a range of possibilities for free-riders to circumvent the agreement. But with these in place the agreement seems to work (Pedersen and Elmvang 1996).

- An example of effective external pressures is the agreement in Germany on the reduction of the use of CFC's in refrigerators, earlier than legally required. Through the introduction of the CFC-free refrigerator ('Greenfreeze') by a joint initiative of Greenpeace and DKK Scharfenstein, supported by the legislation of environment minister Töpfer, all leading producers such as Bosch-Siemens and Liebherr had CFC refrigerators on the market within six months of claiming that commercialisation of such a technology was not possible.

Our examples illustrate that negotiated agreements, integral or single issue, must obey the rules of the game, or run the serious risk of failure. Only when the authorities (or government) involved plays their negotiating role adequately may negotiated agreements become a useful instrument, creating commitment and cooperation between industry and government parties.

The present experiences with negotiated agreements, integral or single issue, can hardly prove that industry performs better with than without them. Often the contrary seems to be true. In the shorter term, the benefit is in the process, not in the performance: it calls for industry to take its responsibilities and it might integrate environmental thinking in business practices. In the longer term, that might change and real results might be achieved, but only if the process works well enough. As some of the previous examples illustrate, agreements designed according to the rules of the game (in particular the integrated ones), might provide the fertile ground for more strategic environmental thinking in industry, on the condition that government also takes the necessary actions.

Pros and Cons: Frequently Heard Arguments

This section devotes attention to a number of important issues with regard to negotiated agreements which could not be dealt with in earlier sections. Many of these issues are mentioned in the international discussion on negotiated agreements.

In the view of some people, *command-and-control type regulation has proven to be ineffective*, and therefore new instruments like negotiated agreements are necessary to create a more effective environmental policy. Though there is some

truth in this view, it is far too simplistic. While a great deal of environmental legislation is not effective, this has nothing to do with the instrument itself, but finds its root causes in a sometimes too detailed and complicated design of legislation, and more especially in the lack of money and political attention devoted to implementation and enforcement.

Implementation and enforcement of negotiated agreements *require capable, flexible and creative people*, who can negotiate and distinguish between features and details. It requires permanent training of people. These are high standards, but the point is that negotiated agreements do not require less. On the contrary. We have seen in The Netherlands that the introduction of negotiated agreements requires a change in the culture of permit-giving authorities and enforcement personnel that will go on for many years to come. Similarly, the same switch must be made by companies, which could formerly wait to see what was being asked of them, and react. Now they have to become pro-active and make their own plans; a real shock for many of them. Very useful indeed, but it is not easier than a command-and-control approach.

In some EU member states (like the United Kingdom) and in Brussels itself, an important argument in favour of negotiated agreements is that they *entail lower costs*; lower costs for regulation and lower costs for industry. This can only be an argument of a secondary nature. To begin with, one must look at environmental effectiveness, otherwise one misses the point. This view is supported by the simple fact that the environmental effectiveness of agreements usually is monitored, but their economic efficiency is not. However, if one looks at the successful agreements in The Netherlands, one may conclude that after an initial investment in people and training to carry out negotiated agreements, cost benefits may be found in the procedure of giving permits, in particular for companies. At least two chemical companies have tried to estimate cost benefits for themselves (Hoechst in Vlissingen and DSM in Geleen). They found results in the order of 10% savings in time (= costs) spent. The reason for these savings lies in dealing with all the environmental problems of a site in an integral manner. The cost savings argument is related to efficiency and naturally does not hold for the level of the environmental investments of a company.

For permit-giving authorities, no quantitative data are known on the efficiency of agreements in terms of manpower. As observed previously, agreements seem to increase the need for qualified personnel. An advantage of the agreements might be that it becomes much clearer which companies can bear environmental responsibilities, while others show that they need a straightforward approach and strong enforcement. At least one province in The Netherlands uses a rating system for the quality of the environmental practices of companies, which has consequences for its enforcement priorities.

With regard to the *undemocratic nature* of negotiated agreements, the argument holds in principle, but the problem can be solved by following the 'rules of the game'. Agreements which are not designed according to these rules are very often undemocratic indeed. Generally, the reason for not following these rules is the wish of the parties involved to make it impossible for any third party to track the results of the agreement, whether an environmental NGO, a citizen or Parliament.

In our experience, negotiated agreements may become an *obstacle to ongoing environmental policy and the creation of new instruments*. We have already mentioned the agreement with the oil and gas industry which blocked the introduction of necessary legislation. The way the ecotax on energy is being treated is also very illuminating: industry as a whole is strongly opposed to this idea, for obvious reasons. One of their arguments is that they have made a deal for the improvement of energy efficiency. In their opinion, an energy tax thwarts their voluntary efforts, instead of supporting them. Trade organisations have therefore introduced a clause in the energy agreements that the introduction in The Netherlands of an ecotax on energy can lead to the termination of the agreement. In general, Dutch employers organisations argue continuously that government should renounce the introduction of new environmental policies, legislation and instruments, because agreements containing environmental objectives have already been signed, thus making any new instrument superfluous (see ch 4). We have seen this in particular with the discussion around the groundwater tax introduced in 1994 (De Graaff 1993).

The question is often put whether agreements *block or invite industry to innovate*. Again, the answer will depend on the particular case being considered. In general, agreements which meet the rules of the game will be able to stimulate innovation, provided that other instruments are in place in order to overcome particular difficulties--particularly financial stimuli, a strong research and development sector, within or outside industry, and an effective network of intermediate organisations which is working directly with researchers and companies. If this infrastructure is lacking, companies, especially SME's, will not tend to innovate. In the complicated process of pushing companies to innovation, negotiated agreements have only a modest role.

Conclusion

This final section evaluates the four propositions put forward in the introduction to this paper, and then offers some final remarks regarding the use of negotiated agreements in the European Union.

With regard to the first proposition: no example is known to us of an agreement that represents a major step towards sustainability. The ambitions of the agreements we have seen are usually compliance with legislation and/or somewhat more ambitious targets in the longer term. That is to be expected, because the actual balance of power between government and industry will not allow more ambitious objectives than would be reachable through other means where all parties are consulted, i.e. legislation. Agreements, therefore, will not solve the major dilemmas in environmental policy, though when used in the best possible way they do contribute towards sustainability.

With regard to the second proposition: although there are examples of agreements initially designed without a regulatory framework, in many of these cases this framework is constructed in a later phase (often at the request of companies themselves) in order to cope with free-riders. In the cases where this has not been done, there have been real problems with free-riders.

With regard to the third proposition: access to information provides a strong impetus for companies not to stay behind, but rather to stay even with the pack, or even perform better than others for reasons of market opportunities or public relations. This is a major reason for some environmental NGO's (like ours) to support negotiated agreements in particular cases and it is a unique possibility for government to organise pressure on companies to perform better or to refrain from free-riding.

With regard to the fourth proposition: a lack of credibility damages the value of an agreement in the eyes of the public, politics and the press. Especially crucial is the credibility of the position the governmental party takes in negotiating, designing, implementing and enforcing an agreement. There are no examples known to us of non-credible agreements that have had good results. A detailed look at what first seemed like examples to the contrary revealed cases where credibility had improved over one or two years.

Some final words about the application of negotiated agreements in the European Union. It is useful to mention that discussion focuses on three types of agreements: those at the Community level, those in member states as a possible means to implement certain types of EC directives, and purely national agreements. The thrust of this chapter has been that agreements in general have

no value in improving the effectiveness of environmental policy in Europe, unless the policy context in Europe is much improved.

Why such a pessimistic view? First, the possibilities of negotiating agreements which follow the 'rules of the game' with regard to ambition, choice and design are rather few indeed. Frequently agreements will have no additional value, as they demonstrably should have. Secondly, the implementation and enforcement of many agreements will probably lead to a number of new problems, like distinguishing between good and bad performing companies and defining adequate enforcement. Also, if agreements meet our 'rules of the game', a major shift in attitude and qualifications of both civil servants and industry personnel becomes necessary in order to reach good results. Thirdly, agreements will only work in optimal form if used in addition to other new instruments which fit into the philosophy of putting greater responsibilities on the shoulders of industry. Some possibilities were suggested above, but there is no reason to trust that such instruments will become available in the near future.

Still, it might be worthwhile to experiment a bit with negotiated agreements, both at the Community and member state level. The main problem is not a lack of belief in the potential value of negotiated agreements which meet the rules of the game. Rather, one wonders how governments will apply these rules and whether they will take a firm position when problems arise. In this sense, negotiated agreements do not seem to differ very much from environmental regulations.

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