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Patterns of  
European Policy Development:  
The Case of Clean Air Policy

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## **Patterns of European Policy Development: The Case of Clean Air Policy**

Although the Treaty of Rome did not initially contain any legal basis for European environmental policy, the past 10 to 15 years have witnessed an impressive widening and deepening of European policy competences in this field. This article aims to explain this process of policy development and to describe its underlying factors of influence. Why and by which means was it possible for the Commission to open up and colonize an area of exclusive domestic competence for European action? The main argument elaborated herein is that the development of environmental policy can largely be understood in terms of a co-evolution of policy instruments, legal and institutional arrangements, and policy beliefs. The argument is illustrated by means of a concrete example drawn from clean air policy (stationary sources).

### **Introduction<sup>1</sup>**

For many policy areas which today are important and widely known fields of EC activity, the Treaty of Rome did not initially contain any legal basis for Community action. This circumstance can be largely explained by the original conception of the European Community as a purely economic union. Delegation of Member State powers to supranational institutions was therefore restricted to areas of economic policy. Despite these clearly defined legal boundaries, the EC did take action in the years following the enactment of the Treaty of Rome in policy fields not referred to therein. Impressive examples may be seen in the far-reaching activities in environmental protection, health and safety at work, consumer protection and R&D policy.

Although the importance of these activities compared with the processes of economic integration remained fairly limited at first, the past 10 to 15 years have witnessed a widening and deepening of European policy competences in

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<sup>1</sup> The empirical data underlying this paper stem from a research project on „The Changing State in Europe“ conducted by Adrienne Héritier from 1992-1994 at Bielefeld University (see Héritier et al. 1994; 1996). Special thanks to Dirk Lehmkuhl for helpful comments on earlier drafts of this paper.

these fields. A closer examination of the changes in clean air policy underlines this affirmation. The Commission initially pursued a *quality-oriented strategy* in this area. Thus, the EC restricted the amount of certain airborne pollutants by means of air quality standards. Responsibility was then left to the Member States to decide upon appropriate measures to comply with these limits. In the mid-1980s the Commission reviewed its policy concept, which led to the introduction of an *emission-based strategy*. This change implied that the EC no longer defined only the objective, but also the concrete means by which Member States should fulfil European standards. In recent years a further instrumental shift can be observed. The approach currently dominating EC clean air policy is characterized by *framework regulation and regulatory transparency*. Although the Commission has thus partially returned to the definition of quality objectives, this strategy reduces national competences even further. The EC now defines detailed procedural rules with respect to public information. In this way, the Commission aims to stimulate a 'pressure from below' which can then force national governments to a more ambitious enforcement of EC legislation.

These processes of policy development were accompanied and accelerated by institutional and legal changes introduced with the Single European Act (SEA) and the Maastricht Treaty. The SEA, for the first time, established an explicit legal basis for environmental policy activities of the Community. Until that point the Commission had been obliged to base its proposals on general clauses of the Treaty, which thus offered a relatively limited space for action. The Maastricht Treaty brought about further institutional changes, which have confirmed and strengthened this development.

This article aims to explain this process of policy development and to describe its underlying factors of influence. Why and by which means was it possible for the Commission to open up and colonize an area of exclusive domestic competence for European action? What are the relevant factors leading to the prescribed changes in strategy? The main argument elaborated herein is that the development of environmental policy can largely be understood in terms of a co-evolution of policy instruments, legal and institutional arrangements, and policy beliefs; this last refers to ideas reflecting a generally accepted philosophy

of how to tackle a certain political problem. In short, we assume a mutual interdependence of these three factors.

In a first step, this mutual interdependence of policy instruments, institutional aspects and policy beliefs and the effects of this constellation on the development of European policies are examined within a general perspective. The analysis in this part mainly concentrates on regulatory policy. The second section then seeks to illustrate the argument by means of a concrete example drawn from the field of environmental policy: the case of clean air policy (stationary sources).

### **The Strategic Development of European Policies: Constraints and Conditions**

Based on the above assumption, we presume that the development of European policies can be characterized by a co-evolution of policy instruments, institutions and policy beliefs. According to this argument, the availability of policy strategies is influenced by institutional conditions and dominating problem-solving philosophies. Hence, every policy change in turn implies a change in the legal and institutional framework; the relationship between institutions and policies can thus be understood in terms of an inherent evolutionary dynamic. This incremental process of co-evolution may be additionally accelerated when general political developments (i.e. the SEA or the Maastricht Treaty) bring about changes in institutional structures and dominant policy beliefs. With respect to this interdependence of policies, institutions and beliefs, the two latter factors are not only to be interpreted as constraints for strategy choices, but rather they simultaneously function as opportunities by opening up specific policy options.

Institutional factors in this context firstly encompass all the provisions of primary Community law. In particular, questions of whether the Treaty contains an explicit legal basis for action, which decision rules must be used in the Council and how the European Parliament (EP) should participate in the decision-making process seem to be relevant. Secondly, all provisions of the so-called secondary Community law ever decided upon in the relevant policy

field must be taken into account. It is assumed that both the primary and secondary Community law define the institutional backing that the Commission can rely on when seeking to strengthen its policy competences *vis-à-vis* the Member States. This position will be the stronger, the more the Commission is able to base its proposals on Treaty provisions and legislation already enacted in the corresponding policy field. Also, the chances of acceptance of a certain proposal by the Council will be greater if the decision is taken by qualified majority. Decision-making by unanimity, on the other hand, seems to make only incremental policy developments possible as every state has a *de facto* veto power at its disposal. A third aspect of relevance to institutional factors can be seen in the international treaties agreed by the EC (such as the Geneva Protocol on Long-range Transboundary Air Pollution). These strengthen the position of the Commission when proposing policies bearing upon such agreements.

The concept of policy beliefs is understood in terms of ideological philosophies and normative assumptions which are deeply rooted in 'belief systems' (Converse, 1964) of relevant actors (Sabatier, 1993) and are thus quite stable over time. They reflect a generally held normative consensus on the appropriate mode of how to tackle certain policy problems and are therefore influential in policy formation.

The question of whether and to what extent the potential for action opened up by institutions and policy beliefs can be used is highly dependent on the interplay of the Commission's and Member States' interests. The main objective of the Commission, which can be conceptualized as a corporate actor with its own selfish interests (Kenis and Schneider, 1987), is to widen its policy competences *vis-à-vis* the national governments. This aim implies a steadily growing regulatory activity on the part of the EC because the possibilities for opening up new competences by distributive measures remain quite limited (Majone, 1989: 167). These constraints can be explained by the fact that most of the EC expenditure is restricted to agricultural and regional policy. 'Budget-neutral' regulatory policies, on the other hand, are not confronted with such constraints and thus provide greater opportunities for the Commission to pursue its interests. 'The higher the level of European regulation, the more

authority and provision of action the Commission will get' (Eichener, 1993: 51). From this situation it follows that the Commission — pursuing its self-interests — is constantly trying to open up new fields of regulatory policy, as indeed can be observed in the area of environmental policy.

Member States' interest in the formulation of EC regulatory policy mainly focuses on two aspects: securing the international competitiveness of domestic industries (which implies both protection from foreign competition and the opening up of new markets for the domestic economy); and minimizing the potential costs of legal and institutional adaptation which might result from differing regulatory arrangements on national and European levels (Héritier *et al.*, 1994: 12f). As a result, Member States have constantly found themselves in a 'regulatory competition' with each other (Héritier *et al.*, 1996): they each strive to shape supranational policy as far as possible according to their own regulatory arrangements. In order to gain a favourable position in this contest, Member States generally try to influence European policy-making at a very early stage. In offering the Commission — the formal initiator of Community policy — innovative regulatory proposals, Member States hope for the 'advantage of the first step'. The Commission, limited by its own scarce resources, is quite open to external activities (Mazey and Richardson, 1993: 5), and countries which take this initiative are expected to have quite a significant influence during the stages of problem-definition and agenda-setting. An important condition, however, in this respect is that the proposals advanced must be in line with the Commission's general perception of the problem<sup>2</sup>. If, instead, a Member State does not succeed in getting a hand in the policy-making process at this early stage, it is dependent on the negotiations in the Council in order to secure its interests. If necessary, a country will block the negotiations by using its veto powers or — in the case of qualified majority voting — by trying to form a blocking minority.

Because of the highly diverging national interest positions, compromise solutions are the order of the day. Generally, three variants of such

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<sup>2</sup>Although the Commission is often accused of being overly eager to regulate, 90% of the proposals relating to industrial emissions discussed in recent years have come from Member States (interview with EU Commission, DG 11, March 1993).

compromises appear to be possible. Firstly, policy proposals can be modified in such a way that the specific interests of opposing countries are taken into account. A second possibility consists in offering financial compensation payments to cover the implementation costs for opposing Member States. The third alternative involves package deals, with opposing countries being offered exchanges in the form of concessions related to other measures on the agenda. The willingness of Member States to give in or to accept a compromise is generally dependent on the particularities of the European agenda. For political reasons, it is not possible to reject all measures proposed in a certain policy field; rather, Member States will concentrate their resistance on those policies which conflict most with their particular interest position. In this way, they are increasingly prepared to compromise in other areas which are less important for them.

Whether, or to what extent, it is possible for Member States to attain their objectives or for the Commission to get proposals accepted against national resistance is influenced by dominating policy beliefs and institutional conditions. When, for example, the unanimity principle offers Member States the possibility of a veto position in the Council, a Commission proposal must take particular account of national autonomy. In such cases, measures leaving Member States a broad leeway for implementation are often agreed upon. If, on the other hand, conditions are such that it is possible to ignore national resistance to a certain extent, policy options leading to significant modification of national regulatory practices can be chosen.

In contrast with areas of so-called negative integration in which the Commission disposes over relatively broad competences, institutional conditions in areas of positive integration (e.g. environmental policy) favour the autonomy interests of Member States (Scharpf, 1994: 5f). Most legislation in areas of positive integration therefore takes the form of directives which define only the objectives; the means by which those objectives are to be attained can then be decided at the national level. Regulations defining both the objectives and the means for fulfilment are rarely found in environmental policy. At the same time, however, it should also be noted that the difference between these two forms of legislation is not as clear as it might seem. Directives may often

include such detailed prescriptions that they come quite close to being regulations. There are also regulations which leave so much room for interpretation that they can hardly be distinguished from directives.

From this argumentation it follows that the strategic development of EC regulatory policy can be understood in terms of a mutual interdependence of policy instruments, policy beliefs and institutional aspects. Beliefs and institutions define the amount of available policy strategies and are in turn influenced by these choices. The relationship between the three factors, however, by no means determines certain options. Rather, it can be interpreted as defining a general scope for action. The question then of which concrete policy strategies are chosen is highly dependent on the interplay of interests between the Commission and the Member States.

In the following section, the development of European clean air policy is analysed on the basis of this general framework of European policy-making.

### **The Strategic Development of European Clean Air Policy**

Although the starting-point for a European environmental policy can be traced back to the early 1970s, it was only at the beginning of the 1980s that a first strategic orientation in the field of clean air policy (stationary sources) emerged. Three stages in the strategic development in this area can be distinguished. During the first stage the EC confined itself to the definition of *quality standards*; that is, the regulation of maximum amounts of airborne pollutants. Responsibility was then delegated to the Member States to select the appropriate means by which these objectives would be achieved. The second stage was characterized by an *emission-based strategy*. Thus, the focus no longer lay on the state of the atmosphere, but on the technical conditions of industrial plants. EC directives defined maximum levels, based on the best available technology, for certain pollutants emitted from industrial plants. The third stage in some sense echoes the framework regulation as observed in the first strategy. There is, however, one significant difference: *framework regulation* is combined with *regulatory transparency* — that is, the public is offered broad

access to environmental information. The aim here is to stimulate a 'pressure from below', which will lead to a more ambitious implementation on the national level.

### *The Regulation of Air Quality*

With the enactment of the directives on standards for SO<sub>2</sub> and suspended particulates (1980)<sup>3</sup>, lead (1982)<sup>4</sup> and NO<sub>x</sub> (1985)<sup>5</sup>, a clear strategy orientation in European clean air policy could be observed for the first time. All three measures contained relatively weak objectives and left the Member States a broad leeway for implementation. Neither the policies nor their enforcement therefore constituted a significant threat to national autonomy. This is underlined by the fact that the directives offered quite lengthy time-spans for implementation, which could even be prolonged under certain circumstances.

With respect to the concrete implementation of the quality objectives, Member States were free to decide on the measures most appropriate to ensuring that the standards were not breached (Knoepfel and Weidner, 1985: 255). Monitoring obligations were also quite vague: monitoring stations were to be built in those regions where the infringement of limit values was likely to occur. Selection of such areas was left to national authorities.

A closer look at the institutional conditions which were relevant during the decision-making process for these measures reveals that there was only a quite limited scope for policies which would satisfy the interests of both the Commission and the Member States. At that time, there was no explicit legal basis for environmental policy mentioned in the Treaty (Johnson and Corcelle, 1989: 1). Thus, the 'hidden potential of the Treaty had to be discovered' (Scheuing, 1989: 154; this author's translation) in order to establish environmental policies. The Commission had to base its proposals on Articles 100 and 275 of the Treaty. However, these general clauses were not at all directed towards environmental protection. Rather they mainly intended to

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<sup>3</sup>80/779/EEC; OJ L/229.

<sup>4</sup>82/884/EEC; OJ L/378.

<sup>5</sup>85/203 EEC; OJ L/87.

supply the Community with the necessary competences to complete economic integration (Rehbinder and Stewart, 1985: 16). The possible strategy choices for the Commission were thus quite limited, nor should it be forgotten that both Articles required unanimity in the Council (Johnson and Corcelle, 1989: 4).

Although it is often argued that the first environmental action programme of 1973 marks the beginning of European environmental policy (Bongaerts, 1989: 578 f.; Rehbinder and Stewart, 1985: 27), it only gradually emerged as an independent policy field separate to that of economic integration. Both this first programme and the second action programme of 1977 defined ambitious objectives in relation to clean air policy. However, the realization of these goals did not make any significant progress until the early 1980s. Only one directive on product standards for diesel and fuel oil had been enacted (Haigh, 1990: 177). Primary and secondary Community law offered the Commission only a limited institutional background for action. The only institutional resource available to the Commission was the 1979 Geneva Convention on Long-range Transboundary Air Pollution. This agreement, signed by the EC, contained an — albeit not binding — obligation to limit and reduce air pollution<sup>6</sup>.

This fairly limited institutional basis was not significantly enhanced by dominating policy beliefs. Although the problem of acid rain had been an issue on the international agenda since the 1970s, a predominant and urgent perception of the need to react to this phenomena within the EC only emerged in the mid-1980s when forest dying topped the German political agenda.

In sum, the Commission had only a limited potential for action at its disposal for widening its policy competences and opening up a new policy field. Acceptable policy proposals had to be tailored in such a way that they did not interfere with important national interests. The implementation of directives could neither reduce the competitiveness of national economies nor impose significant costs of legal and institutional adaptation. This was only possible by defining rather weak objectives and leaving the Member States a broad leeway in implementation.

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<sup>6</sup>The fact that legally binding reduction rates could not be agreed upon was mainly due to the resistance of the UK (Vogel, 1986: 104).

It therefore does not come as a surprise that the implementation results for these measures have been less than satisfactory. Air quality improved only very slowly and, due to the employment of different monitoring procedures, only a limited comparability of the results was possible. Furthermore, inadequate personnel resources within the Commission meant that it was unable to evaluate the results in an appropriate manner (European Community, 1994: 2f.). The strategy of the EC therefore became the subject of heavy criticism as the problems of acid rain and forest dieback grew increasingly apparent. Against the background of this growing pressure for action, the first change in clean air policy strategy can be observed.

#### *Emission Standards and Technology Orientation*

This strategy shift became manifest in the third environmental action programme of 1982 (Bongaerts, 1989: 580). This programme placed specific emphasis on emission-based concepts in order to reduce air pollution already at source (Johnson and Corcelle, 1989: 17). These principles were set down mainly in two measures: the directive on the combatting of air pollution from industrial plants<sup>7</sup> and the directive on the limitation of certain pollutants into the air from large combustion plants<sup>8</sup>. Whereas the quality-oriented policy gave Member States substantial freedom with respect to implementation, the emission-based measures interfered much more with national autonomy. First, their objectives are far more detailed; that is, emission standards for specified industrial plants rather than quality-based objectives relating to the atmosphere as a whole. Second, in many cases the definition of the goal implies the prescription of the means: defining standards with respect to best available technological possibilities may in the end lead to the prescription of a certain technology when there is only one available.

The directive on industrial air pollution was the first important reaction on the part of the EC to the problem of acid rain and forest dieback. It lays down fundamental principles to be observed for the authorization of industrial plants. The directive does not itself fix emission limits, but specifies various

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<sup>7</sup>84/360/EEC; OJ L/188, pp. 20-25.

<sup>8</sup>88/609/EEC, OJ L/336, pp. 1-13.

industrial sectors for which limits are to be subsequently set for certain - also listed - pollutants in so-called 'daughter directives'. It is thus referred to as a 'framework directive'. All industrial plants falling under the directive are obliged to obtain an official permit before going into operation. Such permits have to be granted by the relevant national authorities, which in turn are only allowed to grant such permission when applicants can prove that relevant emission limits will not be exceeded and best available technologies will be used in order to reduce air pollution. The large combustion plant directive, introduced in 1988, is the first and to date only 'daughter directive' of the 'framework directive'. It defines emission limits for SO<sub>2</sub>, suspended particulates and NO<sub>x</sub> which are binding on all new plants. At the same time, Member States are obliged to reduce emissions of these pollutants from existing plants by a certain percentage before the year 2003<sup>9</sup>.

How did policy beliefs and institutional factors change in such a way as to bring about the acceptance by Member States of a shift in strategy which interfered much more with their autonomy? From the mid-1980s, issues such as transboundary air pollution, forest dieback and acid rain were increasingly perceived as urgent political problems within the EC. This was especially due to the growing international pressure exerted by the Scandinavian countries, but also to the activities of Germany where the problem of forest dieback was increasingly acute. In this way, policy beliefs and convictions emerged which facilitated the development of a growing environmental responsibility on the EC level.

Moreover, several institutional developments need to be mentioned. First, within the framework of the SEA, environmental policy was for the first time explicitly embodied in the Treaty. The significance of the SEA lies in its recognition of the need not only to link the goals of free trade with a 'high level' of environmental protection (Art. 100a), but also to pursue environmental objectives as a legitimate goal in itself (Art. 130r,s,t). The SEA, which defines environmental protection as a cross-sectional task — 'environmental protection requirements must be integrated into the definition and implementation of

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<sup>9</sup>These reduction rates differ from Member State to Member State. For details see Hériter *et al.* (1994: 225f.).

other Community policies' (Art. 130r) — thus gives environmental policy a special status (Scheuing, 1989: 176). Although the changes introduced by the SEA bore no formal effect on the decision-making process for the emission-oriented measures (the SEA came into force after the directives had been initiated), it is quite likely that they had some practical effect by strengthening the position of the Commission — at least with respect to the large combustion plant directive. Secondly, the introduction of the quality-oriented measures, by which the Commission succeeded in opening up a new policy field, contributed to a broader institutional background for further activities in clean air policy. Related to the large combustion plant directive, a third institutional factor must be taken into account. For this measure, the 'framework directive' quasi functioned as an explicit legal basis. The fact that the 'framework directive' clearly defined the areas for further action meant that new possibilities were opened up to the Commission to enhance its regulatory competences through daughter directives. Interestingly, thus, the Commission had itself created a substitute for the missing Treaty provisions.

Although policy beliefs and institutional factors had offered new possibilities for strategy choices in clean air policy, the negotiations on the large combustion plant directive proved to be particularly tough and drawn out. Some Member States reacted with strong resistance to the detailed prescriptions from Brussels, which reflected to a large extent the German interventionist approach. In 1982, Germany, in response to the forest dieback problem, had enforced a regulation on large combustion plants based on an emission- and technology-oriented approach. After having acted at the national level, the Germans sought intensively to persuade the Commission that a similar measure should be adopted at the EC level. Apart from environmental objectives, the active German role may be explained most clearly by the competitive position of national industry. At that point, German industry, confronted with strict standards, faced economic disadvantages in relation to its foreign competitors. Another motive for the Germans was their intention of opening up new markets for their highly developed environmental technology industry. In defining emission standards at the EC level in accordance with best available

technological possibilities, the economic prospects of this industrial sector could be enhanced (Héritier *et al.*, 1994: 195f.).

The strategic shift in EC clean air policy forced by the Germans was in line with the Commission's interest in widening its policy competences. By pursuing an emission-oriented strategy, the EC not only defined the goals to be achieved at the national level, but also the means by which those objectives should be fulfilled. Thus, the Commission was able to strengthen its regulatory authority *vis-à-vis* the Member States (Eichener, 1993: 51). This coincidence of interests between Germany and the Commission enabled the Germans to succeed in influencing the European policy-making process with their regulatory philosophy at an early stage. In some sense, Germany could therefore be seen as the pace-setter in EC clean air policy (Boehmer-Christiansen and Skea, 1991: 234f.).

While the emission-based approach was well in line with the objectives of both Germany and the Commission, other Member States faced major problems with it. In particular, the United Kingdom, in coalition with Spain, proved to be the major opponent of the new strategy. Indeed, the UK had accepted the 'framework directive' quite quickly, but only after having obtained a crucial compensation: while the initial proposal foresaw the subsequent introduction of daughter directives by qualified majority, the UK succeeded in changing this voting procedure to one of unanimity. Thus, Britain could rely on a *de facto* veto power with respect to the definition of concrete emission limits in daughter directives (Knill, 1995: 113).

This compromise was to have major consequences for the negotiations on the first daughter measure: the large combustion plant directive. This directive, relying on the precautionary principle and an emission- and technology-based approach, stood in sharp contrast to the traditional British regulatory philosophy. According to the UK approach, state intervention could only be justified when sound scientific evidence existed on the negative environmental consequences of certain pollutants. Moreover, the UK relied on a quality-based, and not an emission-based, concept: local environmental quality together with the economic situation of the individual plant had been the crucial factors in

defining control and reduction technologies. The British approach was therefore much more pragmatic than that adopted by Germany. Until that time, no legally binding emission limits had ever existed in the UK (Vogel, 1986: 76f.).

The legal and institutional adaptation of the UK's regulatory philosophy to the European strategy would have resulted in significant costs for the British. Furthermore, British industry feared the loss of competitive advantages it enjoyed as a result of its specific geographic situation. Strong winds and the island position meant that the UK could export most of its own emissions to other countries while only being minimally confronted with pollutant imports. Industry therefore had to deal with comparatively weak environmental controls. Another factor relevant to the British resistance lay in the structure of the energy sector. As most of the UK's energy was generated on the basis of fossil fuels, in contrast to France and Belgium which heavily relied on nuclear plants, the large combustion plant directive implied significant and costly technological improvements for the UK (Bohmer-Christiansen and Skea, 1991: 142).

Within this perspective, Britain not surprisingly sought to block the negotiations in the Council. The UK argued that there was no sound scientific evidence on a causal relationship between British emissions and negative environmental consequences in Scandinavia. It was only when new scientific evidence confirming this relationship emerged that the British resistance began to weaken. Several policy developments on the national level, especially the growing influence of environmental organizations, further loosened this resistance<sup>10</sup>. In the meantime, the German Council presidency had succeeded in isolating the UK in the Council negotiations. By offering Spain large-scale financial compensations in return for acceptance of the directive, the British-Spanish blocking coalition could be split. After further bilateral negotiations between the German presidency and the UK delegation, the UK in the end gave up its opposition (Héritier *et al.* 1994: 223f).

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<sup>10</sup>For further details on national developments in Britain see Knull (1995: 162f.).

Thus, after five years of negotiations, a measure was accepted which implied far greater intervention into Member State autonomy than the earlier quality-based policy. National leeway in implementation was significantly reduced. In relying on a German-influenced emission-based strategy, the Commission — supported by institutional developments and the emerging European environmental orientation — had succeeded in increasing the comparability and effectiveness of European clean air policy implementation. On the other hand, it became clear that such a strategy provoked severe difficulties with respect to the policy-making process. Differing national regulatory traditions and different national economic conditions lead to highly diverging national interest constellations, which are difficult to overcome by central regulation from Brussels. The price for a more effective implementation seemed to be a slowing down of the pace of decision-making. With its most recent change in strategy, the Commission has sought to tackle this problem.

#### *Framework Regulation and Regulatory Transparency*

Since the beginning of the 1990s a new strategy concept in European clean air policy may be observed. With this shift, the Commission has in some senses returned to its initially pursued strategy of framework regulation: on the EC level only policy goals are prescribed, while decisions on how to achieve these goals are left to the Member States. However, there now exists one significant difference with respect to the first strategic stage. By offering the public extensive access to environmental data, the Commission hopes that a 'pressure from below' will emerge, forcing national governments to implement European policies more effectively. This recent change can be observed most clearly in two strategic variations, both of which seek to involve the public: the definition of air quality standards and self-regulation of industry.

The activities of the Commission aimed at enhancing regulatory transparency were expressed for the first time in the 1990 directive on freedom of access to environmental information. This measure contains a passive right to information; that is, information is only given to persons who have officially applied for it. With respect to new air quality directives and self-regulation of industry, the Commission is attempting to establish active information rights.

Environmental data on these topics are published automatically — without official application (interview EU Commission, DG 11, March 1993).

A 'framework directive' on air quality, which shall provide a general basis for further measures in this area, is currently the subject of discussion in the Council. The proposal lists several pollutants for which subsequent quality standards shall be defined by daughter directives. It also contains concrete obligations for Member States in the event that they breach quality standards; namely, they are obliged to publish action plans specifying measures to be taken to reduce air pollution. In addition, if the monitoring results signal a certain alert threshold, also defined in the corresponding daughter directives, Member States must inform the public through the mass media.

A combination of 'pressure from below' and a quality-based orientation can also be seen in the directive on integrated pollution control (IPC). This directive is currently being negotiated in the Council and will replace the 1984 'framework directive' on industrial plants. While the earlier directive only concerned air pollution, the IPC concept implies an overall approach by viewing the protection of all environmental media as a whole — that is, air, water and soil pollution — and taking account of mutual interdependencies between different media. The proposal stipulates that Member States shall only be allowed to grant authorizations for industrial plants on the condition that the prescribed quality standards are respected. In order to guarantee accordance with the quality objectives, Member States will have to define emission standards based on the best available techniques not entailing excessive costs<sup>11</sup>. Member States will also be obliged to publish applications, authorizations and monitoring results. In this way, the Commission hopes that industrial plants which emit large quantities of pollutants will have an incentive to improve their environmental performance voluntarily (Héritier *et al.*, 1994: 280f.).

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<sup>11</sup>The question of whether emission standards will be defined on the national or European level is currently the subject of intense debate in the Council. See Héritier *et al.* (1996).

The emphasis on self-regulation and regulatory transparency lies at the core of the eco-audit regulation adopted by the Council in 1993<sup>12</sup>. This measure defines criteria for an environmental management system to be built up by individual enterprises and validated by external verifiers. The results of the audit are to be published as so-called environmental declarations. The Commission is also currently considering further plans to enhance the self-regulation of industry. First, the introduction of environmental registers — namely, a list of the major pollutant emittents — is the subject of debate. A yearly publication of such emittents by name and plant position would function as an incentive to the publicity-oriented industry to reduce its emissions (interview EU Commission, DG 11, Sept. 1993). A second possibility under consideration by the Commission at present are negotiated agreements on voluntary emission reductions between the Commission and industry associations. The concrete design of such agreements, however, is still rather vague. Moreover, it appears very likely that Member States would strongly oppose any proposal heading in this direction as such agreements would replace national regulatory activity (interview EU Commission, DG 11, July 1994).

The Commission's plans to place greater emphasis on framework regulation and regulatory transparency can largely be understood in terms of changing policy beliefs and dominant perceptions. Particularly relevant in this context is the principle of subsidiarity introduced by the Maastricht Treaty. On the basis of this principle, the Community shall only take action in those cases in which problem solution at the supranational level would appear to guarantee more effective results than national, regional or local activity. In this way, European regulation is expected to both take account of national autonomy and to remain in line with the objective of strengthening European integration (Scharpf, 1993). With respect to clean air policy, the Commission has sought to accommodate the principle of subsidiarity by defining only a frame of objectives within which Member States are free to choose an appropriate regulatory arrangement to ensure compliance. Furthermore, the fifth environmental action programme states that the principle of subsidiarity is to be combined with an intensified

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<sup>12</sup>Regulation (EEC) No. 1836/93 of the Council of 29 June on voluntary participation by industrial companies in a Community eco-management and audit scheme (see EC Official Journal No. L 168/1).

participation of private actors in Community regulation (European Community, 1992: 48f.). The stronger emphasis placed on public access and self-regulation can be understood in these terms.

Moreover, the changes in clean air policy have been influenced by institutional developments which have reinforced the relevance of environmental policy *vis-à-vis* other areas of EC activity. A major change, ensuing from the Maastricht Treaty, can be seen in the introduction of qualified majority voting for most environmental legislation<sup>13</sup> (Strübel, 1992: 147). Hence, the option of relying on the power of veto to block Council negotiations no longer seems to be appropriate for individual Member States. Indeed, pushing for national interests in the Council now appears to require the building up of coalitions and blocking minorities (Peters, 1992: 83). In this way, the willingness of Member States to compromise and participate actively in policy-making increases. With qualified majority voting, it is almost impossible for a Member State which finds itself in an isolated position in Council negotiations to demand compensations or package deals.

In sum, this constellation of factors has facilitated a further acceleration and innovation in EC environmental policy (Strübel, 1992: 147). While the joint decision trap (Scharpf, 1985) allowed only incremental policy developments, strategic preconditions enabling Member States to influence EC policy-making have now changed significantly. In order to successfully bring national interests to bear under such conditions, it is more promising to play an active role during the process of policy formulation by supplying the Commission with innovative proposals than to rely on the possibility of blocking proposals advanced by other Member States in the Council.

Against this background of reinforced institutional backing for environmental policy, it might at first sight seem surprising that the Commission at this very point is returning to framework regulation rather than using the new

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<sup>13</sup>However, the unanimity requirement is retained in important areas, particularly for tax matters, regional planning, land use (with the exception of waste management), as well as water management and measures substantially affecting the choice of energy sources by Member States and the general structure of national energy policy (Art. 130s).

institutional powers to strengthen the emission-oriented strategy. Such an approach, however, would not only run counter to the subsidiarity principle, but would also be inappropriate in seeking to solve the major problem of the emission-based approach: the slowing down of decision-making. The problem of reaching agreement in the Council on a detailed definition of emission limits and control technologies seemed not to be facilitated in a crucial manner by shifting from unanimous to qualified majority voting. From this perspective, it appears to be quite useful for the Commission to employ its new potential for action in enhancing the effectiveness of implementation. Hence, the Commission has only minor resources at its disposal for the control of European policy implementation; it places greater emphasis on public participation and information. 'Pressure from below' shall function as a lever forcing Member States to implement and enforce Community regulations more effectively. Earlier institutional conditions and policy beliefs would not have allowed these measures, in particular, on public access and public participation to be accepted by the Council. Improved institutional opportunities in combination with the subsidiarity principle thus opened up new strategy options which offer several advantages from the Commission's point of view: on the one hand, by returning to framework regulation, the problem of a slowing down in policy-making is avoided; on the other hand, the concept of regulatory transparency is intended to reduce the implementation deficits particularly apparent during the first strategy stage.

Although the new strategy orientation takes account of national autonomy to a larger extent, it is by no means uncontroversial. Germany, in particular, with support from the Netherlands and Denmark, continues to insist on the emission-based strategy, while the UK and the southern Member States favour the Commission's new concept. The French, instead, are taking quite a neutral position in between these two poles of opinion. The core of this conflict centres on the sharp contrasts between the German and British regulatory philosophy, a contrast which had already dominated the negotiations on the large combustion plant directive. Whereas at that time the Germans succeeded in influencing Community legislation with their emission- and technology-approach, it now seems to be the British who have taken on the role of pace-setter in the regulatory competition. In 1990 the UK enacted a new

environmental law<sup>14</sup> which brought about significant changes in the British regulatory approach to clean air policy. The Act not only brought the British approach into line with EC legislation, but it also introduced further innovations, particularly concerning the introduction of IPC and public access, which — at that time — were far ahead of existing EC policies<sup>15</sup>.

This advantage of the 'first step' made it easier for the UK to exert a significant influence over European-level problem definition. A further advantage for the British in this context lay in the fact that their regulatory approach was to a large degree in line with dominating policy beliefs at the European level. Thus, their general preference for quality-oriented approaches as well as their tendency to favour the establishment of procedural rules (such as self-regulation of industry or public access), rather than substantial regulation (like emission standards), fitted well with the Commission's notions of subsidiarity, regulatory frameworks and regulatory transparency.

It is especially these components that have provoked tough German opposition. By no longer defining environmental controls in relation to technological capacities but to local air quality, Germany sees one of its central environmental concepts — the precautionary principle — in danger. Another problem for the Germans can be seen in the high costs of legal and institutional adaptation to the procedural rules on public access and self-regulation. Both of these elements are quite extraneous to the German interventionist approach. Furthermore, Germany anticipates economic disadvantages if other countries, given their particular industrial structures and geographic conditions, are able to impose less strict standards on their industries in order to meet EC quality objectives.

It is therefore by no means surprising that Germany strongly opposes all European activities which have to do with this new strategy orientation. Indeed, the German position is particularly apparent in the Council negotiations on the IPC directive. In this case, the German government is using all available resources (including the European Parliament) in seeking to

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<sup>14</sup>The Environmental Protection Act.

<sup>15</sup>For the background of these far-reaching developments see Knill (1995: 181f.).

change the proposed quality-oriented concept to a more emission-based strategy<sup>16</sup>. But also the eco-audit and the freedom of access to information measures as well as the air quality 'framework directive' are judged quite critically by the Germans and are only reluctantly implemented — as is clearly illustrated with the access to information directive.

Although the strategy picture of European clean air policy seems to have a clear tendency towards framework regulation and regulatory transparency, elements of an emission-based philosophy are still apparent in some areas, mainly due to German activities. For instance, the Germans succeeded in influencing the problem-definition for the directives on the incineration of hazardous waste and volatile organic compounds. As indicated above, the quality-based concept of the IPC directive will probably also undergo some degree of modification in the Council as a result of German intervention. At present, a compromise is being discussed, which implies the definition of EC-wide emission standards while allowing environmental quality aspects to be taken into account for the determination of the best available control technology (interview EU Commission, DG 11, Sept. 1994).

The strategy mixture currently observed is enhanced by the changed voting rule in the Council, which reinforces regulatory competition among the Member States. Qualified majority voting makes it more difficult for Member States to successfully argue for their objectives in Council negotiations; effective influence over EC policy-making generally requires an active participation during the early stages of the policy-making process. Since it is both quite unlikely that the same country will always play a dominant role during these stages and hardly possible for the Commission to always rely on the initiative of the same country, there is an increasingly strong trend toward 'mixed strategies' (Eichener, 1996: 272).

The use of different policy instruments highlights the fact that the room for strategy choices opened up by institutional factors and policy beliefs has widened significantly since the early 1980s. While at that time only one strategy option — quality regulation — seemed to be realizable, the Commission can

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<sup>16</sup>For further details see Héritier *et al.* (1996).

now make use of quite a broad spectrum of options, including emission-based measures as well as instruments involving regulatory transparency and framework regulation. At the same time, however, the influence of dominating policy beliefs like the subsidiarity principle favours options which take greater account of national autonomy. This makes it more difficult for countries supporting emission-based concepts to succeed in the European-level regulatory contest. This, however, certainly does not mean that those Member States can no longer play a dominating role during the policy formulation process.

## Conclusion

The strategic development of EC clean air policy has run a parallel course with changes in dominant policy beliefs and the institutional establishment of environmental policy as an independent policy field of the Community. In this process of co-evolution, policy beliefs and institutional conditions have defined the availability of policy choices. The specific option finally selected with respect to these conditions has largely been dependent on the interplay of interests between the Commission and Member States.

The constellation of interests, institutions and policy beliefs at the beginning of the 1980s left the Commission only limited options for action. The weak institutional background and the lack of corresponding policy beliefs made it impossible to overcome important objections from the Member States. Acceptance by the Council only seemed to be possible when a proposed policy avoided significant economic or institutional costs on the national level. As a result, policies with weak objectives were decided on, leaving the Member States substantial leeway in implementation. Correspondingly, implementation results have not been very promising, particularly with respect to the strongly variant monitoring procedures.

Policy developments only began to appear possible when changes in institutions and policy beliefs broadened the number of feasible policy options for the Commission. Thus, enactment of the SEA meant that an explicit

environmental policy competence was incorporated into the Treaty for the first time. At the same time, the growing problem of transboundary air pollution created a general understanding of the need for action at the Community level. The German emission-based initiative proved to be quite compatible with the ideas of the Commission, thereby offering the possibility of achieving two goals in one: on the one hand, the German approach seemed an appropriate means for improving the Community's environmental performance, the subject of strong international criticism; on the other hand, the Commission could strengthen its competences *vis-à-vis* the Member States by pursuing an emission-based rather than a quality-oriented strategy. However, with the long and drawn-out negotiations required to develop the detailed emission regulation, it soon became apparent that these advantages would be outweighed by a significant slowing down of the decision-making process. A stagnation in policy-making therefore seemed quite likely.

Further institutional changes brought about by the Maastricht Treaty as well as the introduction of the principle of subsidiarity once more opened up the possibility for policy change to the Commission. By returning to framework regulation, the Commission has sought to overcome the stagnation problem inherent to the emission-oriented strategy. The combination of a framework approach with regulatory transparency is intended to resolve the problems of ineffective implementation witnessed during the quality-based strategy. This policy reorientation particularly facilitates the UK in dominating the European regulatory contest as a pace-setter.

Although this new concept now plays a dominant role, some elements of the preceding emission-based orientation can still be observed. This strategy mix is mainly the result of the changed voting rule in the Council. With qualified majority voting, Member States can no longer hope to successfully bring their interests to bear in Council negotiations. As a consequence, they have a stronger incentive in trying to actively influence EC policy-making at very early stages. In sum, this leads to increasing regulatory competition between Member States, the results of which are unlikely to always favour the same 'winner'.

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