

**Multi-Level Governance Networks and the Use of Policy Instruments
in the European Union**

Kenneth I. Hanf
Pompeu Fabra University, Barcelona

and

Laurence J. O'Toole, Jr.
University of Georgia, USA

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The challenges of sustainability emerge in many ways and through scale issues of widely differing dimensions. Not surprisingly, therefore, governance needs arise at multiple levels; and both the challenges and many of the apparently sensible kinds of responses require linked, intertwined approaches. Two or more levels of governance are called upon to address the sustainability agenda in fashions that push those in governance systems to acknowledge, and anticipate, the realities of interdependent choice. Multi-level governance, governance across social scales, is a *sine qua non* of effective sustainability.

Multi-level governance shapes policy making in complex fashions. In Europe, aspects of the multi-level system are obviously in great flux, and the sustainability effort takes place against a backdrop of shifting multi-level governance -- particularly as between nation-states and the European Union (EU). What are the implications of the emergent multi-level system in Europe for the challenges of sustainability? This analysis adopts and extends a theory about how institutional arrangements – including arrangements across social scales – influence policies aimed at sustainability. The empirical focus is Europe, and particular attention is directed to the kinds of policy instruments selected thus far in the EU. The object is to explain what has happened regarding relevant policies at the European level and also what the consequences of policy instrument selection have been within member states. What explains the approaches to sustainability taken at the European level? What possibilities and difficulties are entailed by the responses triggered thus far? Are there features of the European governance system that offer prospects for improving effectiveness regarding sustainability?

Dealing with the sustainability challenge means addressing issues of governance (see Parts I and II of this volume, particularly the chapter by Kuks and Bressers in the latter Part). Here we focus in particular on impacts on governance structures, as well as on the choice of policy instruments in governance systems. The next section clarifies concepts and summarizes the theoretical approach used in the ensuing analysis. The argument requires some extension to render it fully adapted to a multi-level system such as that in Europe. A brief analysis of

instrument selection in the EU is then presented; we conclude that the theory does help one understand the selection of policy instruments in the different phases of the development of EU environmental policy, although the application of the model raises some questions that need to be addressed in the further elaboration of the underlying theory. An examination of the relation between the conditions under which instruments are selected at the EU level and the institutional context within which they are applied in member states sheds light on the reasons why the domestic implementation of EU choices has been replete with gaps in execution. But the very complications engendered in the multi-level system have fueled a set of dynamics at the European level, particularly more recently, that hold prospects for improvement. In particular, the EU may be experiencing shifts that offer prospects for different and potentially more effective domestic implementation in the longer run.

Governance, Instruments, and Multi-Level Systems

The policy performance of governance regimes is affected by many variables. Our focus in the first instance is the selection of policy instruments. We consider how instrument selection (in the EU) is likely to be shaped by structural features of the governance setting and also certain important characteristics of the relevant target group(s). Instrument selection is not driven by these features alone, but the combination of these elements is likely to be revealing.

The structural feature of the EU system that we bring into focus is the multi-level character of the institutional arrangements (during policy formation, and also during implementation). Target-group characteristics are included in indirect and relational terms -- features of the relationship between “governors” and target group. Two such features are selected for attention here: the interconnectedness between “government” and target group, and

4 "Fit" between policy and existing institutions plays a central role in much current work on the impact of the EU on domestic affairs in member states. See Börzel and Risse 2000; Knil and Lenschow 1999; and Haverland 2000a. For a more general treatment of the questions raised by "fit" see Heritier, Knil and Mingers 1996. An interesting question, for further research, is the relationship between the institutionalist focus of these authors and the network perspective being taken here.

the degree of cohesion exhibited in such a “network.”

Practically speaking, this approach allows us to explore a crucial aspect of governance for sustainability: effective collaboration across levels typically requires change, but existing institutional arrangements impose barriers to change. Focusing on network features and how they shape instrument selection puts the constraining impact of institutional arrangements in the foreground. (For a brief overview of perspectives that can be applied to understand the role of institutions and the impact of EU policies on member states, see Knill and Lenschow 1999; and Börzel and Risse 2000.) Theoretically speaking, this approach allows us to treat seriously the arguments of those who explore how action in institutional settings reproduces existing patterns of power. This approach also allows us to tap recent work sketching the impact of network features in governance systems on policy instrument selection (see Bressers 1993; Bressers and O’Toole 1998; Ligteringen 1999).

A highly compressed version of the relevant (single-level) theoretical argument is in order (see Bressers and O’Toole 1998 for a full exposition). A policy network is “a social system in which actors develop comparatively durable patterns of interaction and communication aimed at policy problems or policy programs” (Bressers and O’Toole 1998: 218). We consider the network of actors including the EU (as “government”) and the cluster of member-state systems. The array of member states is considered — at one level of analysis — as the target group in the network. Each “side” of the network, of course, is one or more coalitions of actors, but for simplicity we refer to each as government and target group in this coverage.

Of all the network characteristics, Bressers and O’Toole focus on the intensity of network actors’ interactions — interconnectedness — and the ways that objectives are distributed across the network actors — cohesion. Each is treated as a relatively enduring feature of the network. (We consider below how and under what circumstances such “constants” may become “variables” in a multi-level system.) The central theoretical argument linking these features and instrument selection, then, is that instruments that help to maintain existing features of the network are more likely to be selected than instruments that would induce a shift in network characteristics (Bressers and O’Toole 1998: 220).⁴

Characterizing instruments fully here would take the coverage afield. We adopt a set of

dimensions utilized elsewhere: provision or withdrawal of resources to targets, degree of freedom of choice to apply the instrument for/by the target, extent of bi-/multilaterality, extent of normative appeal to the target, and extent of involvement of policy makers in implementation (Bressers and O'Toole 1998: 223-225). These rather abstract instrument dimensions can be treated operationally in clusters and used to characterize any of the policy instruments adopted in governance systems: direct regulation, technology responses, covenants, informational efforts or hortatory appeals, subsidy schemes, and so on.

In networks of certain characteristics — those exhibiting strong interconnectedness and strong cohesion, for instance — instruments that emerge from policy making are likely to exhibit features that encourage such network characteristics. In this case, in strongly cohesive and interconnected network settings, the compatible features would be instruments that lack a normative appeal to targets, exhibit proportionality, add resources to the targets, leave the option of application to the targets, entail bi-/multilaterality, and involve policy makers in implementation. In practice, such settings are likely to see a reliance on subsidies, along with information and advice. In network settings of other types, different instruments can be expected. Networks with weak interconnectedness and weak cohesion, for example, can be expected to produce regulatory instruments (for the full logic, see Bressers and O'Toole 1998: 230-233).

This theoretical argument seems to account for a number of instrument selection cases and some interesting cross-national and cross-sector variations. Still, the argument does not amount to an elaborate claim that systems of power inevitably reproduce themselves, nor that all policy adoption is window-dressing. Bressers and O'Toole caution against such an interpretation and note how intentional efforts on the part of some policy actors to craft changes in network features can have impacts on instrument selection, and ultimately on policy impacts, over time (p. 233). In the analysis of EU policies and their implementation, this additional point must be treated particularly seriously. In multi-level systems like the EU — with the European level networked with member states, which themselves are entwined in ties with domestic target groups — the multiple levels create disjunctions that reverberate from one to another. EU instruments can perturb domestically networked patterns, with the result that avenues open up

for change. Conscious efforts to craft European networks offer opportunities to shift instrument selection over time, as well as to create network conditions to support an effective application of the instruments selected at the EU level.⁵ This argument is made more tangible by applying the rudiments of the theory in an overview of EU instrument selection since 1972. Of particular interest are the consequences of policy reorientation, marked by the explicit commitment of the EU to a strategy to achieve sustainable development with the Fifth Environmental Action Program of 1992-1996.⁶ With this shift, a conscious effort was undertaken to introduce a new set of policy instruments felt to be more appropriate for achieving the kinds of behavioral changes required within the societies of the member states. The analysis considers the extent to which this has represented an attempt to use the choice of policy instruments to change the existing network structure in order, subsequently, to create the conditions required for the effective application of the instrumental strategy selected. In this sense, we focus on how the dynamics of multi-level governance in the EU generated movements to reshape European networks to produce different, and more effective, sustainability instruments. This analysis extends the theoretical argument in three respects. First, the logic is expanded to encompass a multi-level system, one in which “selectors” are also “targets.” Second, in treating the EU over time, the study considers what happens when governance arrangements within a network of actors shift in composition. And third, this inquiry goes beyond the selection of policy instruments to explore implications for policy implementation.

Environmental Policy and Instruments in the EU

Our coverage concentrates on European environmental policy from 1972, particularly on the five Environmental Action Programs and the legislation adopted thus far. After reviewing developments in general terms, we consider some implementation results. Developments during

⁵ The EU's Fifth Environmental Action Program illustrates the promotion of the ideas of "shared responsibility" and "partnership" as well as the institutional framework for different forms of participation of public and private actors from different governmental levels. Kohler-Koch (1998) discusses the role of the European Commission in promoting what she calls "network governance," in this case with regard to the participation of regional actors in EU decision making. See Metcalfe (1996) on the Commission as a "network organization."

⁶ These multi-year framework programs usually run for a period of four years. The sixth action program was approved in early 2001 and will run until 2010.

the period of the Fifth Program presaged some changes of interest, which are in turn discussed later.

The European Community (EC)/EU and its relationship with member states have changed significantly during the past generation. Likewise, environmental policy has evolved considerably during the same period (Hildebrand 1992; and Jordan 1999a). The EU has had its own environmental policy since 1973, when the First Environmental Action Program of the Community was approved. If one ignores much important detail, it can be said that early years — and Programs — relied most heavily on regulatory instruments to address environmental issues. This regulatory approach was based, in the main, on the setting of emission standards, often with technology-forcing aspects. In addition to standard setting, regulations were also designed to reduce emission to the separate media. They were often point specific, directed to reduction of emissions at the end of pipe and constituted clean-up efforts to diminish damage created by the discharge of pollutants.⁸

More recently, the heavy reliance on regulation as the centerpiece instrument has diminished markedly. In 1993 the Commission's proposal for a fifth environmental action program was finally approved by the Council of Ministers. This program was intended to serve as the framework for dealing with what was seen as "one of the most important tasks of the Community in the 1990s": the "reconciliation of social-economic development with the maintenance and protection of the environment" (Commission, 1992:19). In pursuit of this objective, the program offered a fundamentally different approach by laying responsibility upon those who cause the exhaustion of natural resources and other forms of disturbance in the environment, the so-called "target groups." Although this program was touted as a significant "turning point" in Community policy, it represented a "logical" further development of the line that had been evolving. In adopting the Third Program, the Council explicitly recognized the benefits that environmental protection could offer for greater competitiveness. This theme was developed

⁸ H ritier, Knil and Mingers 1996 provide a good discussion of this strategy with regard to air pollution. Haigh 1992 contains a wealth of information on the details of European environmental policy in general and regarding this period.

further in the Fourth Program (1987-1992) where it was argued that the measures taken to protect the quality of the environment could be expected to be important for economic growth and would, consequently, work to facilitate employment creation (Weale 1993:207). Just how far the traditional growth ethos of the Community has formally “greened” can be seen in the preamble to Maastricht Treaty which speaks of "balanced and sustainable economic and social progress" as the overall objective of the Community. The Treaty of Amsterdam (1998) extended this focus and modified significantly the institutional framework within which decisions on these issues are to be taken.⁹

The “ideology” of ecological modernization underlying the environmental quality management strategies of the Community and individual member states directly links the "prospects for future economic development in an era of global markets with higher standards of pollution control and environmentally safe products and processes" (Weale 1992:77). It also provides a common mode of discourse for a meeting of the minds -- and interests -- among actors who had earlier been on opposing sides of the debate. Furthermore, it serves as a legitimizing device for policy debate and development, and can potentially serve as an important source of policy ideas and principles. In this way it can be used to define new strategies calling new actors onto the political scene, thereby laying the basis for the formation of new coalitions.

Since realizing the potential of ecological modernization will likely require more than spontaneous adjustment in response to moral imperatives or market forces, regulation is essential. Government, therefore, can play a positive role -- at both national and European levels -- in raising standards of environmental regulation to spur industrial innovation. However, the relationship between public authorities and economic actors is to be adjusted. The role of policy is to provide a Community-wide framework to channel developments already underway in many member states.

The Fifth Environmental Action Program represents a shift in the thinking of the Commission on the appropriate mix of instruments to integrate the imperatives of environmental protection and economic development. Previous Action Programs had placed primary emphasis

⁹ For a critical - and somewhat sceptical - evaluation of the "real" meaning of this commitment to sustainability, see Baker 1997; and Baker and Young 1996.

on legislation or regulations. The Fifth Action Program is based on the assumption that present-day pollution trends can only be reversed by restructuring consumption and behavior patterns, thus requiring a broad array of instruments to stimulate and support the involvement of all in a joint effort. Juridical (or legislative) instruments will remain an important element in the arsenal. However, a second type of instrument is the cluster of so-called market-oriented instruments. Examples of such instruments are: fiscal stimulation measures or charges, the environmental audit, the eco-label and risk liability for environmental damage.

A third type is the group of so-called “horizontal supporting instruments” such as statistical information and basic information regarding the condition of the environment; scientific research on the development of clean technologies; better spatial and sectoral planning; and environmental education. Lastly, there are a number of financial instruments through which money is transferred to improve environmental quality.

Underlying the Fifth Action Program is the assumption that sustainable development, as well as the specific programmatic objectives, can only be achieved by means of a joint effort of all parties in the form of “partnership” (Brinkhorst and Klatte 1993:73). According to the subsidiarity principle, the Community is only supposed to act when the objectives cannot be achieved by the member states alone. The Fifth Program, however, links the notion of subsidiarity with the idea of partnership. In this context, subsidiarity involves finding the most appropriate combination of different environmental instruments and “actors” from different levels to deal with a particular problem.

The emerging strategy of environmental regulation in many West European countries and the EU is part of the process of redefining the relations between society and its governmental authorities and working out a new division of labor between them. Students of alternative regulatory schemes stress that efforts to prevent pollution will need to become a joint responsibility -- in an important sense, a co-produced result. The character of the regulatory relationship will need to shift toward collaboration. At the heart of their vision is the belief that socially responsible self-interest can be mobilized in support of long-term adjustments towards pollution prevention.

The core here is the idea of the "active participation of all social-economic partners in the

joint search for solutions for environmental problems and the realization of sustainable development" (Brinkhorst and Klätte 1993:74). Crucial for success is the level and quality of the dialogue between the different actors in the context of active partnership. The Commission intends to promote and structure such a dialogue by providing a number of formally institutionalized arenas (Commission 1992:82-83).

The general instrumental strategy outlined in the Fifth Program has been translated into a number of pieces of legislation, incorporating one or another of the instruments described: for example, the Regulation on the Environmental Management and Audit Scheme, the Directive on the Access to Environmental Information: the Eco-label Regulation, and the Directive on Integrated Pollution Prevention and Control. It has also guided the revision of earlier directives on water and air quality. Parallel to changes introduced by the Single European Act in 1987 and the Maastricht Treaty (1992), the Commission has changed its problem-solving approach. For clean air policy, the emission-oriented strategy, guided by technical capabilities, has "given way to greater emphasis on ambient air quality," much as was the case in the early eighties (Héritier, Knil and Mingers 1996:161-63). Member states are required only to comply with certain standards; how to do so is left up to them. Simultaneously, however, the public has been outfitted with far-reaching information rights. By making implementation more transparent, the Commission hopes to guarantee improvements via public pressure. Similarly, the proposed new water directive continues the trend toward more general framework legislation, with leeway left to the member states to develop flexible measures given national conditions. Recent changes have then signaled a strategic turn-about toward a decentralized, transparent and flexible application of Community-wide quality standards by member states (see Knil and Lernschow 2000).

Instrument Selection and Europe-level Networks

Put simply, what we see at the European level is a shift from the heavy, almost exclusive reliance on traditional regulatory instruments to the use of a mix of instruments that depend more on creating the conditions under which the ultimate target groups could be encouraged and

supported to make environmentally-friendly decisions.¹⁰ At the same time, the member states were also to be given more leeway in adapting Community objectives to the peculiarities of the conditions within the different member states. The task now is to see to what extent the features of the networks in the policy formation phase were such that would have led us to expect the choice of the instruments we have found.

What kind of European policy network can be expected to emphasize regulation? This approach fits best in a network setting characterized by both weak interdependence and low cohesion (Bressers and O'Toole 1998). According to the theoretical argument, we should also be able to detect a shift in the type of network associated with the choice of instruments, from one characterized by a low degree of interconnectedness and low cohesion during the first phase of environmental policy to one displaying a high level of interconnectedness at the time of -- and since -- the introduction of the sustainable development strategy. Anticipating the degree of cohesion is less straightforward, since the mix of instruments adopted more recently incorporates elements expected under both low- and high-cohesion circumstances – thus perhaps indicating a complex or shifting set of network circumstances with respect to this variable.

How can the EU-level network best be characterized at this time? What one finds depends on whether one focuses on the EU-policy system as a whole (Héritier, Knil and Mingers 1996:7-9) or examines the relationships in the environmental policy sector (where networks could still differ from one medium to another). For present purposes, it is appropriate to pursue the latter strategy, although it remains difficult to characterize a network for environmental policy making as a whole. We assume that a composite description based on information drawn from different sources (and referencing conditions in different areas of environmental policy) is sufficient for the purpose at hand.

¹⁰ Instruments based on normative appeal continue to be important. EU legislation will be used to define the quality objectives and general obligations of the member states and secondary target groups. The innovations with regard to instruments have to do with the way in which these policy objectives are to be realized. Likewise, information and educational materials will be used, appealing to the moral responsibility of the target groups.

¹¹ A complete analysis would involve looking at the different networks of actors associated with the separate sub-phases of the policy process. Depending on the phase in the process, other European institutions would be important; and the institutional arenas within which these decisions are taken, along with the associated rules, would define the focus around which networks form and determine which actors are included.

Here it is necessary to clarify the empirical referent for “network.” Bressers and O’Toole focus on the relations between the government and the target group. However, environmental policy at the EU level is directed toward two sets of target groups. These measures are aimed directly at the member states; at the same time, the instruments selected are intended to be applied -- by administrative authorities at the member-state level -- to the ultimate target groups. Consequently, it is appropriate to define the EU-level network in terms of the relationships among three sets of actors: the European “government” (for our immediate purposes, the European Commission)¹¹, representatives of the national governments, and organized representatives of the secondary target groups -- the social and economic interests affected by European policy.¹²

The European network in the early phase

To characterize the environmental network during the first phase of policy development, we use the information supplied by Richardson regarding the EU water policy network. In the main, the features highlighted in his description can be extrapolated to the sector as a whole. Richardson notes that the EU process is best described as a multi-national, neo-federal system open to lobbying by a wide array of organizations. It is also characterized by an unpredictable agenda-setting process, which creates an unstable and multi-dimensional policy-making environment. Although relations among EU organs are still in flux, the Commission is at the center of the European-level policy process. Consequently, “if policy networks exist at the EU level, they will most certainly be centered around the Commission as the initiator of policy” (Richardson 1994: 141).

Any network description inevitably has a certain implicit “dynamic” quality: although we are describing the first phase of EU policy development, the situation is changing as the level of EU involvement grows; consequently the EU policy level becomes salient for actors within the member states. For example, with increasing legislative activity in the area of environmental

¹² Bressers and O’Toole suggest that “policy and policy instrument choice at one level can influence network characteristics at another level, with these network features in turn shaping instrument selection at the second level” (1998: 237, n. 2). The present analysis is an effort to explore such dynamics more systematically.

protection -- at the moment there are roughly 200 such pieces of European legislation -- interconnectedness is bound to increase as occasions develop for representatives of governments and interests to participate in decision making. Although not inevitable, cohesion is also likely to increase as consensus regarding problem definitions and solution space gradually emerges. Still, it is not inevitable that more frequent interactions encourage a decline in disagreement.

In this evolving network, the first phase of policy development, and instrument choice, was characterized by low interconnectedness and low cohesion. Richardson argues, "if network is an appropriate term to use, we should generally see EU water networks as open rather than closed." Indeed, "a more accurate image might be to speak of extended issue networks with potentially large numbers of participants, who may not have regular interactions and who share few apparent resource dependencies" (1994:147). The fledgling European-level "government" dealt relatively sporadically with member states — some more sporadically than others, of course — and there was hardly a discernible collective normative stance at the European level. European "governance" on the environment was barely emergent, and the string of regulatory instruments adopted during this time clearly fits the theoretical expectations. But as far as the member states were concerned, contacts with European-level counterparts grew in proportion to the amount of legislative activity. Likewise, group attention to and efforts to participate in what was happening at the EC level increased with the growing recognition of the stakes involved. Still, decision making involved a good deal of disagreement and conflict as the member states -- and the domestic interests behind them -- struggled to forge consensus.

We should note here that other explanations have been advanced for the initially heavy reliance on regulations, including some emphasizing the broader institutional context in which sector-specific selections are made. (Note, for instance, that regulation is cheap for European decision makers, as compared for instance to subsidy schemes; and such an approach front-loads the benefits of policy, as Richardson argues, p. 141.) The evidence nonetheless is also consistent with a theoretical perspective that treats network characteristics as constraints on instrument selection.

One final point on the use of EC regulatory instruments: even though these were common to all countries, there were significant differences in the policy strategies and regulatory styles

(and these influenced and reflected the relations among the actors constituting the relevant policy network). For example some countries used emission limits and the application of best available technology, while another took quality standards and the economic costs of control measures into consideration; one country could be more hierarchical and legalistic in its approach, while another would stress negotiations between government decentral authorities and polluters in determining the conditions for permits. Such differences often led to severe conflict between member states.

Europe and the new mix of policy instruments

How about the explicit commitment to a new mix of policy instruments? Can this shift be accounted for by roughly parallel network changes at the European level over the same period? In the following section, we analyze the question of whether the changed instruments (and shifted networks) in Europe are likely to hold prospects for more sustainable policy in action. Here, we first address the nexus between instruments and networks.

Although the basic assumption of our argument is that network characteristics can be expected to influence the selection of instruments congruent with the features of the existing social context, this does not mean that policy instruments cannot be chosen to subvert or change the existing network, or even in spite of the character of the extant institutional arrangements. Often, as Bressers and O'Toole point out, "specific actors (including government actors) prefer and even intend major changes in the network." It is the interaction between shifting network features and explicit policy change that is important for understanding the second phase of EU environmental policy.

It is difficult to characterize European networks unambiguously in more recent years. Governance has shifted markedly in many respects, including membership, jurisdiction, and institutional arrangements. Most obviously, the network has enlarged considerably, and the process is not complete — a point that may shape actors' perspectives and indeed their willingness to take definitive action. The most unambiguous EU-level network shift, of course, has been the addition of multiple new member states at the European level, through the existing EU policy institutions. And many of the newer members are characterized by serious domestic

environmental problems, relatively limited capacity to act on them, and in some cases substantially different political systems and domestic network patterns.

At the EU level, these nations have been forced to accept existing EU policies as the price for membership. So, too, they have joined a "game in progress" with regard to the institutional arrangements through which policy is made. At the same time, formally speaking, they immediately became "one of the gang" for instrument selection for Europe. The new members have been immediately involved as full participants in decision making. The problem has more often been one of generating the domestic capacity to support the development of coordinated national positions and their effective presentation at the European level. The problem of adequate capacity has been especially critical, and problematic, with regard to implementation. Changes in the existing national networks were necessary (Sorrell 1998).

Although Richardson tends to focus on the interest group cluster around, in his case, water policy issues, saying little about the pattern of interactions among the national governments, his characterization provides a useful point of reference for describing the overall EU-level network in the second phase of the development of environmental policy. In general, the policy process continues to be "a rather loose and more open issue network or constellation of actors, rather than a closed and restricted policy community" (p. 139). Given the openness of the policy system at the EU level, there are multiple opportunities for interested parties to mobilize themselves and enter the fray. Consequently, growing appreciation of the full costs and implications of EU environmental policy has led to more activity on the part of national governments and affected interests. A Commission dependent on information has also actively encouraged such intervention and has created opportunities for consensus building among affected parties to develop well-founded and politically feasible legislative proposals.

However, while the number of participants and the points of contact between them have increased with the expansion of EU legislative activity, sheer numbers alone are not definitive. The Commission not only plays an active role in stimulating and organizing this mobilization of interested actors; it also is busy selecting among them those that "count." The Commission, acting as broker, gets to know which organizations really matter. During policy formulation, these are the ones that can define the problem and how it can be addressed; or those who are in a

position to block passage of legislation. Accordingly, as Richardson notes, there are inner and outer circles of consultation, institutionalized through an elaborate system of consultative committees. Similarly, the Commission makes use of important informational inputs drawn from its network of government experts. In both cases, the membership of these consultative bodies tends to be quite stable, thus contributing to the growth of consensus on general policy issues, even as the degree of agreement in the broader network is somewhat lower and more variable (for a sketch of dynamics, see Morata 2000).

This characterization is primarily valid for policy initiation: the consultative and deliberative activities connected with the Commission's drafting of a legislative proposal, prior to its submission to the Council of Ministers for decision (and other bodies for their opinion). The possibilities for participation in the negotiations -- Council of Ministers circuit (with technical working groups, Permanent Representatives of the member states, and the environmental council meetings) -- are different: participation by representatives of the member states continues to be direct and is, if anything, even stronger; so too, the Commission continues to be present. Indeed it retains certain advantages flowing from its formal institutional position. Involvement by representatives of the different social interests becomes more indirect in this phase, being channeled through their national governments or continued contacts with the Commission. Therefore, it is necessary to distinguish two separate EU-level networks involved in selecting European policy instruments. For negotiations between member states on the Commission's proposals, the network is characterized by high interconnectedness. The degree of cohesion will vary from issue to issue. Over time, however, with the development of legislation in a given area, it could be assumed that cohesion (around sustainable development) would increase. How much disagreement there might be will be affected by the contents of the proposals submitted by the Commission. The policy instruments that have been adopted by the EU in more recent times, particularly in the Fifth Program (see Konsell 1997), are largely consistent with the theoretical expectations one would have for this shifted network context.

15 Here our argument regarding the importance of "fit" between EU policy and existing networks is very similar to the perspective used by the authors mentioned in footnote 4. In both cases the factors that facilitate or inhibit adaptation of institutional arrangements (networks) in the member states to implement EU policies, as well as the strategies that can be applied to secure these adjustments, are central. See further, Knil and Lenschow 1998.

What is less conclusive is the causal order triggering the correlation. The shift in network character has occurred more or less simultaneously with the changed emphasis on policy instruments. In some cases, it would appear, new instruments were adopted by the EU at least somewhat in advance of the enhanced interrelatedness that is characteristic of the EU in recent years.

Sustainable development represents a clear break with the previous definition of the problem and where to look for ways of dealing with it. These changes began to appear on the agendas of a number of western European countries in the mid-eighties. A primary contributing factor was the growing disappointment with the results of what Weale has called the "first generation of environmental policy": in spite of obvious progress in some respects, threats to the environment continued, exacerbated by new problems and the recombination of old ones in new forms. Disillusionment also increased with regulatory instruments; especially the high costs and relative inefficiency of enforcement.

We present no historical analysis of the decision. But it can be assumed that the more informal channels of communication and points of contact between the Commission, representatives of the national governments of the member states, and representatives of the most immediately affected "secondary target groups" (the business community) served as conduits for an exchange of experience and information on the evaluation of the first generation of policy, and the development of plans for a reorientation of efforts. Certainly any move away from government regulation toward self-regulation by target groups and reliance on market forces would be supported by key elements of the business community.

One important general process through which such a shift in policy instruments can be effected has been described by Héritier, Knil and Mingers (1996). (A more simply formulated version is found in Sbragia 1996.) The argument is that governments in countries with a well-developed system of environmental regulation will be under pressure from both domestic environmentalists and the business community to extend national policy to the EC as a whole. In this way, the environment can be protected from further deterioration as a result of the inaction of laggard countries, and national industry can be assured a level playing field in the European market, where business in less-regulated countries will no longer enjoy an unfair

competitive advantage. A further benefit would be to reduce the costs of the first-mover country in adapting its institutional arrangements to the requirements of any European legislation.

Consequently, such first movers, with the support of the Commission (assuming that a particular national policy initiative coincides generally with the Commission's own interests and vision), try to preempt the definition of the problem and policy response (see Héritier, Knil and Mingers 1996:5-37). Other member states will choose sides, according to side payments that they can negotiate or via other political rationales.

A policy or program, therefore, can be pushed onto the agenda, and debate can be structured, by the initiative of one or a small group of countries. Since, however, the policy process at the EU level has an institutional and political dynamic of its own, first movers are never assured of control. More likely, the result will be less than what the first movers wanted, but more than the otherwise-reluctant member states would have preferred.

The shift to sustainable development and the associated policy strategy was probably based on a growing consensus among, at least, the environmentally advanced member states and the socioeconomic interests in those countries. Tighter networks have emerged within several of the core EU members. Networks at that level have increased considerably in interconnectedness, although understandably cohesion has remained fairly low between national governments and the target groups. Perhaps the archetypal case is the Dutch, with covenants and other innovative instruments applied to environmental management in recent years. Similar patterns, generally, have emerged in other member states. Based on national experiences and critical evaluations of results, these countries came to see that a new approach was necessary. Such insights reflected as well shifts in the national networks toward a new mix of instruments to realize the revised set of policy objectives. It would seem, therefore, that shifts in networks and instruments at the national level were then projected upward onto the policy process at the EU level. To a certain extent the networks at this level had also undergone change in a similar direction. But the push from the bottom also served to effect a strategic reorientation, and, as indicated below, to contribute toward a further modification of the EU network.

Here the argument connects to the question of implementation. Obviously, the "new" set of EU instruments can raise implementation challenges within member states, as was the case for

the earlier set. In the next section, an admittedly speculative argument suggests that the newer set of European instruments offers prospects for helping to reduce the implementation gaps that have been a sore spot for advocates of sustainability thus far.

Implementation and the Fit between European and National Programs

Of particular interest is the European experience during implementation.¹⁵ But we should be clear: the theory used in this analysis thus far was not developed with attention to the implementation experience of governance systems. Here, therefore, we need to extrapolate the instruments-and-networks theoretical logic.

The initial theory attends to the selection of instruments rather than their likely effectiveness. But some implications can be deduced regarding expected implementation experience. For one thing, should instruments be adopted that are not congruent with institutional arrangements prevailing during implementation — and thus should such instruments threaten to disturb the distribution of power in the implementation setting — it can be expected that implementation efforts are likely to be conflictual, and likely less successful. For another, some inferences about implementation can be made with regard to multi-level cases like Europe — and in particular for systems where the “targets” of regulation are themselves the principals (within their own member-state jurisdictions) of implementation action — again, as in Europe.¹⁶

In a multi-level system like the EU, European network features fit comfortably with the regulatory emphasis of the early Action Programs. But note that such instrument choices become in the next instance constraints superimposed on the “implementation systems” of the member states. The states have lost freedom of action to select instruments offering a close fit with national-network circumstances — in the sense here of national governments dealing with domestic targets. While in member states featuring low degrees of both cohesion and

¹⁶ See Börzel and Risse 2000; Knil 1998; Knil and Lenschow 1999; and Haverland 2000b for a discussion of the impact of institutional factors on the implementation of EU policies in member states.

interconnectedness in the relevant national networks, EU-style regulatory instruments might offer a consistent fit with domestic relationships, others might experience a mismatch between an instrument chosen at the European level and the pattern of relations dominating between government and target groups within a state. In such cases, any implementation difficulties that would emerge anyway are likely to be compounded.

What has European environmental implementation experience been like, particularly in the initial phases? The general results have been short of expectations. In particular, “implementation gaps” have been frequently noted. Although concern with effective implementation is now prominent, studies show such gaps during the first phase of European environmental policy (Glim 1990; Bennett 1991; Haigh 1992; also de Bruijn; and Lulofs, both this volume). In examining this earlier period, one can note the slippage between EU policy -- initiated and pushed, with Commission support, by a “first-mover” country anxious to extend its own approach -- and its domestic implementation in several member settings.

Perhaps the best example from the early period — a period absent Southern-tier new member states — is the well-known battle between the United Kingdom (UK) and Germany regarding the large combustion plant (LCP) directive, a patently regulatory instrument. Resistance was keen in the UK to the directive — very much an emissions-oriented, best available technology approach of the Germans. Indeed so strong was this resistance that adoption at the European level was delayed greatly. A combination of international pressures -- from different presidencies of the EC -- and fundamental changes within the UK environmental network resulted in the passage of the Environmental Protection Act (1990) and the associated changes (Héritier, Knil and Mingers 1996: 208-33). Given the general changes in the UK institutional context, the LCP Directive was no longer at odds with the domestic pattern. Subsequently, the record of British implementation has been rather good. Despite modifications required to gain acceptance, the final directive was quite consistent with the German national network. Not surprisingly, there were few problems with the implementation of the European legislation.¹⁷

¹⁷ See Eames 2000; and also Knil and Lenschow 1998 for a somewhat different view. The EU-funded project IMPOL on "The Implementation of EU Environmental Policies: Efficiency Issues" sketches an additional causal

Another example from this first period -- the 1980 Drinking Water Directive, as put into practice in the UK -- illustrates that even when there is a confrontation between European legislation and existing institutional arrangements, implementation can be effective over the longer term. Here there were substantial changes in the national network, as a result of both the EC policy and domestic institutional changes (privatization of water supply and creation of new regulatory agencies) that established conditions more conducive to effective implementation (McGillivray 1997). On the other hand, with regard to the new mix of instruments, Spain offers a good illustration of the tensions between EU legislation and the institutional arrangements and tradition already in place in the country. (See Börzel 2000; Font 1996; and Aguilar 1997. Conditions in Spain do not necessarily support a more effective application of the older regulatory instruments; see Calleja, Rebollo and Hemmelskamp 2000.)

The general point is that when the actions of European-level regulation reach member states with network characteristics not well correlated with the features of regulatory instruments, one could expect complications during implementation. These might be dealt with via domestic departures from European regulatory intent, or at least placed into a domestic environment in which the dominant policy instruments rely on other features — thus, subsidies, for instance, or informational efforts. Or they might be dealt with by relative inaction.

The EU is an interesting case in which systems tend to reproduce by preempting policy formation to generalize institutional arrangements for a particular problem or policy issue to all other sub-systems via the jointly-produced common policy. Of course this attempt does not go unchallenged, and the final policy product reflects the need to reach agreement and find acceptable compromises. Subsequently, during implementation, the different member states tend to protect (a more defensive version of reproduction) the integrity of existing institutional arrangements when European policy appears at odds with core features of the national networks.

Where the fit between European requirements and national regulatory style and structures is good, implementation does not face such barriers. Where the fit is poor, one can expect high resistance to EU instruments and, more likely than not, no or token implementation. In such cases, institutional (or political) forces outside the network can shift the core, thereby increasing

the match with national networks.

The upshot is that the theory offers a plausible explanation for some of the observable policy and implementation developments in European environmental affairs in the early phases of the system. Of course, on the issue of implementation gaps, a great deal of research has both documented the phenomenon in Europe and offered explanations (Jordan 1999b; Knil and Lenschow 2000a and b; and Glachant 2000). In a sense, the disappointing implementation results are at this point theoretically over-determined. But the theory regarding networks and instruments, adapted to take account of multi-level dynamics, provides a point of leverage on whether and how governance systems for sustainability might actually emerge. Clearly, a theory based in the tendency of social systems to reproduce their basic features over time nevertheless generates nontrivial possibilities for change when the implications are stretched across the breadth of more complex governance arrangements

For a number of reasons, the Commission has decided that for decision making on long-term sustainability, a closely integrated, tightly coupled multi-level implementation system would be counterproductive. The decision has been made to allow more in the implementation of broad policy measures. The resulting challenge can be seen as another example of the “old” problem of achieving effective implementation (defined as an acceptable range of variation within a broader normative framework) in highly decentral systems. More specifically, effective implementation requires the creation of enough linkages among the relevant actors -- at both the EU and national levels -- to ensure the existence of sufficient cohesion among the parties.

Recent EU developments suggest that the Commission and its allies are making a conscious effort to modify the structure of both the EU and national networks to create conditions for the effective application of the sustainable development strategy. The more encompassing system is attempting to create the normative and institutional context within which national networks can proceed on their own but within the parameters set by the more embracing array. This is to be achieved, it would appear, by taking steps that increase both interconnectedness and cohesion in the EU-member states network. These efforts are aimed at creating conditions under which the new strategy, which relies heavily on member states doing their own thing, can be “controlled” and the results achieved more rather than less in line with

what the EU intended.

In the first place, the degree of interconnectedness has been increased – for instance, there has been a growing involvement of national officials and other actors in the institutional arrangements through which European policy is formulated and implemented. Both formal institutions and the patterns of consultation around them provide points of contact and channels of communication linking actors from the national and European networks. When representatives of social actors at the national level participate in some phase of European decision making, they join the two levels of decision making. In this important sense, the European network is not something outside and above the national networks – although each possesses an independent existence with its own characteristics – but instead represents a higher-level game in which national network actors are simultaneously involved. In addition to these links, some policy arenas – regional policy, agriculture and environmental policy – have seen additional forums established to provide further arenas for the exchange of ideas and experiences. For environmental policy, three dialogue groups have been set up to provide the deliberations among social partners and officials from the member states, to strengthen the basis for the strategy being pursued by the Commission in its Fifth Environmental Action Program. In this way the commitment to partnership and shared responsibility has been institutionalized. Such contacts can also serve as opportunities for learning and consensus building that in turn contribute to growing cohesion within the network.

The Commission can have an impact on the normative framework of action by promoting certain ideas – like the notion of sustainability itself (Kohler-Koch 1998; Metcalfe 1996). This concept, and the policy commitment it embodies, becomes the common mode of discourse through which the different actors communicate, define problems and debate policy measures. Likewise, the notions of partnership and shared responsibility stress the cooperative and collaborative character of the endeavor and, institutionalized in the manner noted above, structure the concrete interactions. In addition, cohesion has grown as the body of EU environmental law has expanded and, as a result, policy action in this field has converged within the member states (Haverland 2000a; Börzel and Risse 2000; Lenschow 1999). While differences of opinion still remain, and the challenges from other policy areas to the values of

environmental quality continue, a set of shared values and ideas has emerged to guide and discipline policy choices and their implementation.

Concluding Observations

With the increasing importance of the EU in defining the framework within which national policy makers operate to address sustainability challenges, questions of effective implementation have risen to a prominent position. In recent years numerous studies have documented the range of implementation problems confronted by the EU and sought to explain the difficulties.

Governance systems across scales and levels would seem to be particularly prone to problems of implementation, but these must be addressed if sustainable development is to be a reality. This slippage can be attributed to two features of the decision systems through which such cooperation is arrived at and the results subsequently put into practice within the signatory states. First, decisions taken at the international negotiating table will not always “fit” with the policy approach and instruments operating in the individual countries. The larger the gap, the greater the chance that policy implementation will be less effective. Both the likelihood of bad fit and the chance of associated implementation problems are increased by the fact that the network of actors dominant during formation is not necessarily the same as that responsible for implementation.

Against this background, we have attempt to apply some of the insights developed by Bressers and O'Toole on the relationship between national networks and the selection of policy instruments to the development of European environmental policy. We have extended the model to a multi-level governance system and sketched implications for implementation. On the whole, the theory holds up quite well. However, an understanding of instrument choice in the second phase of EU environmental policy development requires a closer examination of the dynamics of the policy process within a set of institutional constraints. The same is true for understanding the problems in implementing EU environmental legislation. Here too, a more complete explanation would need to look closely at the ways in which changes in the larger institutional and political context, as well as the activities of both European-level and national-level actors “introduced”

into the national system, can work to modify existing implementation networks and create conditions conducive to sustainable action. Particularly interesting are measures taken to increase the likelihood that member states will integrate EU policy into their own national activities in a way to encourage policy outcomes within an acceptable range of variation.

Applying the theory to a system of multi-level governance leaves a number of issues for future research to explore. We mention but three.

First, the case of EU sustainable development policy is not one in which a higher level selects an instrument and the lower level then takes this on board, or not. Rather, the representative of the lower level participates in and jointly decides on the policy strategy to be followed by the system as a whole. This presents opportunities to "reproduce" national arrangements at the more general level. The fact that other countries can do the same thing and that the resultant policy never completely reflects the domestic situation of the first-mover country means that a certain amount of "slippage" is built into implementation.

A second point has to do with the "network management" of the Commission. Bressers and O'Toole emphasize the ways in which networks constrain policy selection. It may also be useful to consider more explicitly the dynamics of policy formation. These aspects appear to be particularly important during implementation, as tensions between the European legislation and the logic of extant domestic institutions coalesce. In multi-level governance systems it is seldom a question of simple fit or mismatch between the strategies of different levels.

Finally, research must consider whether the theory does a better job than other perspectives in explaining the adoption and implementation of EU environmental policy – or, to put the issue more precisely, which aspects of policy are best explained by the various perspectives available. These issues and more need to be addressed for a full treatment of such governance challenges across social scales.

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