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# Compliance, Communication and Competition: Patterns of EU Environmental Policy Making and Their Impact on Policy Convergence

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## ABSTRACT

Responsibility for environmental policy making in Europe has shifted to the EU level to a remarkable extent. Considering that many of the EU measures aim at levelling the playing field between member states and even achieving the harmonization of national policies, one might expect far-reaching convergence of environmental policy in Europe, but there are a number of domestic and policy-specific factors diverting the path from reaching convergence. In this contribution we are interested in the specific effects of different patterns of European governance on domestic environmental policies. In this respect, we are particularly interested in the scope of national institutional change and cross-national convergence of regulatory institutions. We distinguish between three ideal-typical governance patterns: (1) prescriptive governance based on the compliance of national implementers with legally binding EU rules, (2) communicative governance based on information exchange between regulatory agents across national levels arranged in a EU legal or institutional framework and (3) competitive governance based on competition between national administrative systems to achieve EU requirements. Copyright © 2005 John Wiley & Sons, Ltd and ERP Environment.

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## Introduction

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**R**ESPONSIBILITY FOR ENVIRONMENTAL POLICY MAKING IN EUROPE HAS SHIFTED TO THE EU level to a remarkable extent. Considering that many of the EU measures aim at levelling the playing field between member states and even achieving the harmonization of national policies, one might expect far-reaching convergence of environmental policy in Europe, but there are a

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number of domestic and policy-specific factors diverting the path from reaching convergence (see Liefferink and Jordan in this issue). In this contribution we will focus on one particularly important 'nodal point' in either facilitating or hindering environmental policy convergence in the EU, namely national bureaucracies.

EU regulatory policy places national bureaucracies at centre stage as actors responsible for implementation. Although national bureaucracies may already be involved in the formulation of EU policy making, EU environmental policy frequently poses challenges of adaptation to these national actors. Assuming that regulatory convergence depends to a significant degree on the willingness and capacity of national bureaucracies to facilitate and conduct the respective reforms, this paper reflects on the behavioural rationalities shaping their role as 'agents of convergence'.

However, convergence hinges not merely on factors of national 'pull'; it is also affected by European supra- and trans-national 'push factors'. In the field of EU environmental policy we currently witness a growing variance in the modes of governance that may (or may not) make policy norms and procedures spread throughout Europe. The (still) dominant hierarchical and legally based regulatory approach is being complemented by 'softer' and more flexible modes relying on the power of economic incentives or learning. Regulatory approaches establishing a framework either of competition or of communication are pursued for these two logics of change to become effective. The main addressees of EU environmental policy, therefore, increasingly encounter quite different signals for adaptation and we suggest that the potential for national institutional change and cross-national convergence varies with the particular governance pattern embedded in EU environmental policy.

In order to elaborate on this thesis we distinguish between three ideal-typical governance patterns: (1) prescriptive governance based on the compliance of national implementers with legally binding EU rules, (2) communicative governance based on information exchange between regulatory agents across national levels arranged in a EU legal or institutional framework and (3) competitive governance based on competition between national administrative systems to achieve EU requirements (for a similar distinction of mechanisms driving policy convergence see Busch and Jörgens, Tews, and Liefferink and Jordan in this issue). In contrast to the articles by Busch and Jörgens and by Tews, we are interested in potential changes and convergence of national institutions rather than policy outputs. In this respect, our particular focus is on prevalent regulatory styles and structures in the environmental field (cf. Knill, 2001). It is important to emphasize that explanations of institutional change (as developed in this article) and explanations of policy change (as analyzed by Tews and by Busch and Jörgens) might differ considerably.

In the following, we will not only address each of these governance types from a theoretical perspective, including the development of some hypotheses on national institutional change and cross-national convergence. We will also illustrate the practical operation and effects of the different governance patterns by looking at concrete measures of EU environmental policy. In the conclusion we highlight trends as well as open questions, setting the stage for both future systematic research and future environmental policy making.

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## Prescriptive Governance in EU Environmental Policy

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### Theoretical Considerations

The functioning of the European common market depends on the existence of certain shared rules and standards to (a) develop a stable and reliable framework for producers and consumers moving freely across European borders and (b) to level the playing field among these actors. Many such rules concern

the removal of barriers to trade; but they also constitute agreements of common constraints for economic actors in order to protect workers, consumers, the environment or cultural heritage from certain risks. Especially in the latter cases we see a dominance of prescriptive governance, defined as legally binding European legislation that leaves little or no discretion to national implementers.

At first sight the concept of prescription may seem curious considering that such regulation depends on the member states agreeing to their binding, obligatory force. Dolowitz and Marsh have named this feature of EU policy making the 'negotiated transfer' (2000, p. 15) of rules with a sanctioning potential. Various factors ranging from the uniform character of the norms or standards, flexible decision rules and practices, the inability of national policy makers sometimes to fully comprehend the reform implications or a strategy to choose the European route to push policy reforms that might otherwise fail domestically explain why most of these 'EU transfers' imply a departure from the status quo on the national level. Regardless of the specific dynamic shaping the decision making, we have witnessed the rise of tough policy requirements in the environmental and other fields, putting many member states and their implementing agencies under considerable compliance pressure.

Interesting from the perspective adopted in this contribution is the link between policy compliance and institutional change. Prescriptive regulatory policies are prone to have institutional impacts as EU legislation frequently defines procedural obligations and presupposes organizational structures. For instance, a regulation may call for the creation of new organizations (e.g. regulatory agencies) or the centralization of regulatory processes (e.g. imposing reporting requirements on a central authority), or demand horizontal organizational change (e.g. requiring the coordination of previously distinct administrative tasks). Furthermore, European legislation may impact on national administrative styles, including patterns of state intervention (e.g. the degree of hierarchical imposition) as well as administrative interest mediation (e.g. the degree of formalization) (Knill and Lenschow, 1998). In short, EU policy often assumes a given administrative model with the effect that national bureaucracies face a double challenge of adaptation, touching on policy and organization.

What is the typical rationality of national bureaucracies in reacting to this challenge? We suggest that the prevailing response is indeed persistence driven, meaning that bureaucracies attempt to meet the policy obligations while minimizing their institutional adaptation cost. It is conducive for this strategy that in the context of prescriptive governance national bureaucracies remain widely autonomous in finding appropriate ways towards policy compliance. The prescriptive mode focuses on the formal and timely compliance with the EU standards, not explicitly valuing the search for most efficient and effective paths towards solving a given problem. Hence, it is keeping bureaucracies insulated from outside pressure to engage in administrative optimization efforts. Consequently, national adjustments will primarily follow the pattern of administrative self-adaptation. The literature both on bureaucratic politics and, more generally, on organizational behaviour suggests that this administrative rationality typically coincides with rather incremental and gradual adjustments of established routines and procedures (March and Olsen, 1989). Given the strong emphasis placed on institutional maintenance and continuity, change is likely to be limited to adaptation that is unavoidable in light of the policy requirements defined in the EU legislation. Although it is well conceivable that domestic political leaders in government or opposition strongly support institutional change as required by EU rules and even use these rules as a leverage to push such reforms, subordinate implementation authorities typically seek to reduce reform pressures as far as possible.

Three hypotheses follow. We expect (1) a generally limited institutional change in response to prescriptive forms of governance in the EU and (2) due to this relative persistence of national institutional structures very little convergence in terms of administrative arrangements among the member states. (3) Although the main objective of prescriptive forms of governance in EU regulatory policy is a high level of harmonization across states, we expect strong resistance against full policy convergence given

the close link between policy and institutional design. While national policy makers have a high incentive to harmonize the rules and procedures governing the common market, national bureaucracies counter with an incentive to protect traditional structures. This tension remains unresolved given the high autonomy of national bureaucracies in complying with 'top-down' obligatory EU legislation. Only outright non-compliance with EU policy will subject national bureaucracies to external judicial but also societal pressure – a threat too remote to contemplate radical institutional change from the start.

### Empirical Illustration

Although other governance approaches emphasizing voluntary action and discretion for domestic compliance have gained importance since the early 1990s, in EU environmental policy we still observe a clear dominance of the prescriptive, command-and-control approach. In many instances, European regulatory policies define highly specified and legally binding requirements implying detailed prescriptions for the adjustment of national regulatory styles and structures and requiring a real re-shaping and re-forming of existing domestic institutions (Scharpf, 1999). The close link between prescriptive policy contents and pre-determined institutional arrangements for domestic application can be shown both for substantive and for procedural environmental regulation of the EU.<sup>1</sup>

In the growing field of EU procedural environmental law the domestic institutional implications are most evident. The directive on the freedom of access to environmental information (Information Directive) may serve as an example. This directive aims to ensure free access to information on the environment held by public authorities. It lays down the detailed conditions for making such information accessible, including appeals procedures against refusal or failure to provide information, charges for the provision of information and exemptions from disclosure (Winter, 1996). These detailed procedural prescriptions affect especially national patterns of administrative interest intermediation by demanding a more open and transparent style of environmental regulation with different societal interests having equal opportunities to access administrative decision making. They significantly reduce the scope for secretive and closed interaction patterns between regulatory authorities and the regulated industry, which used to be prevalent in many member states.

Similarly demanding institutional effects flow from the 1985 Environmental Impact Assessment (EIA) Directive, which obliges developers of specified kinds of public and private project to pass on information on the environmental impact of these projects to a designated public authority. This environmental impact assessment must then be taken into consideration by those public authorities responsible for the authorization of the project(s) in question. Adequate implementation of this directive implies the concentration or horizontal integration of administrative control responsibilities. Since an impact assessment will deal with the project's implications for air, water and soil pollution as well as potential threats to flora, fauna and human health, the designated public authority ought to be able to evaluate these impacts in a comprehensive way.

Although the above-mentioned measures cover only a small part of the environmental *acquis*, this small sample makes evident the close link between policy contents and corresponding institutional arrangements for domestic implementation, which are implicitly prescribed in European legislation and to which regulatory practice at the domestic level must be adjusted.

<sup>1</sup>Viewed from the perspective of national administrations, the distinction between 'old' and 'new' policy instruments makes little difference, therefore. Most so-called 'new instruments' aiming at more flexible and context-oriented regulation oblige national administrations to set up specified organizational forms and procedures that, in turn, allow for more flexible substantive adjustments on the part of industry or establish a framework for competitive or communicative dynamics in society (cf. Knill and Lenschow, 2000).

Comparative studies on the implementation of EU environmental policy (Knill and Lenschow, 1998; Knill, 2001) back our hypothesis that the adjustment of national institutions is indeed characterized by a persistence-driven pattern of bureaucratic self-adaptation. The central objective of the bureaucracy is to comply with EU legislation while minimizing changes to existing regulatory styles and structures. For instance, the German administration resisted the adoption of the integrated approach in meeting the requirements of the EIA Directive and merely implemented EIAs in existing authorization procedures, avoiding an overhaul of administrative structures. As a consequence, the German authorization practice remains based on a single-medium approach. A similar pattern can be observed in Britain and France, where the EIA was merely integrated into the local planning procedures without improving coordination between authorities with different control responsibilities. Contrary to the intentions of the directive, such lacking organizational integration may keep environmental considerations at the margins of the planning process.

Similar patterns characterize the implementation of the Information Directive. The directive's approach of open and transparent administrative interest intermediation was not compatible with the more closed German practice, where access to environmental information is generally restricted to parties directly affected by and involved in administrative activities and procedures (Winter, 1996). To avoid changes to existing practices, both the formal and practical implementation were characterized by a narrow interpretation of European policy requirements. Germany's transposition of the directive limited the number of affected administrative actors as well as the number of potential information requests, thereby minimizing the adaptive challenge at the risk of violating against the directive (Knill and Lenschow, 1998). Such patterns of institutionally bounded and persistence-driven implementation equally apply to many other member states (Kimber, 2000) and other policies (Eichener, 1996; Duina, 1997).

The pattern of institutional persistence characterizing the implementation of prescriptive EU measures is particularly pronounced if these are in contradiction with deeply entrenched national administrative traditions. In other words, domestic resistance increases with the adaptive pressures emerging from European legislation. As a consequence, institutional changes are generally restricted to incremental and piecemeal adjustments (Knill, 2001; Knill and Lenschow, 1998). It follows that not convergence of national arrangements but the continuation of existing institutional differences across countries characterizes fields of prescriptive EU governance such as the bulk of environmental policy.

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## Communicative Governance in EU Environmental Policy

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### Theoretical Considerations

A second type of governance targets national institutions by way of communication and information exchange in trans-national networks. At the heart of this approach are two objectives: the stimulation of information exchange and mutual learning between national policy makers and the development and promotion of innovative regulatory models or concepts – 'best practice' – to be applied in the member states. There is no legally binding prescription of institutional models for domestic compliance. Rather, these models offer non-binding suggestions for national policy makers to guide the search for regulatory solutions to certain policy problems (cf. Knill and Lehmkuhl, 2002).

This governance approach, which is currently diffusing from international organizations such as the OECD into the EU repertoire, is thus characterized by voluntary action and a high degree of openness as policy suggestions leave broad leeway for interpretation and adjustment to domestic conditions. Moreover, the promotion of certain concepts, which have been successfully applied in other countries, is based

on policy transfer (Dolowitz and Marsh, 2000). The underlying idea is to stimulate cross-national lesson-drawing (Rose, 1991) and learning through comparing and evaluating the performance of different national approaches (Tews, 2002, p. 174, and in this issue).<sup>2</sup>

Institutional change, we suggest, now follows the rationale of securing and increasing the legitimacy of certain institutional arrangements within a trans-national discourse. National policy makers and bureaucratic elites compete for 'authorship' of or at least adherence to leading models in order to legitimize their very existence. In this context, institutional actors typically embrace forms and practices that are widely accepted and valued within the 'myths' of the broader institutional environment (DiMaggio and Powell, 1991). Striving for legitimacy is analytically distinct from the persistence-driven rationalities as not the minimization of change but responsiveness to dominant discourses and, if necessary, flexible and far-reaching reforms of existing arrangements secure the survival of the institution. The bureaucratic interest to protect the institution is pursued not defensively by prioritizing the status quo but responsively through dynamic adjustment. Moreover, not so much the functionality but trans-national acceptance of the institutional design guide this dynamic.

What explains such legitimacy-driven rationality in the face of governance based on communication and information exchange in trans-national networks? The embeddedness of national bureaucrats and policy makers in these networks implies not only that they can observe and learn from developments in other countries, but also that they are 'observed' by their counterparts; i.e., they have to demonstrate the quality and legitimacy of their concepts vis-à-vis external actors. Nationally autonomous bureaucracies may well be tempted to protect national practices and structures and act persistence driven, but their integration into trans-national networks forces them to react to – and survive in – its discourse. Institutional change is thus driven by a bureaucracy confronted with the need to legitimize national developments exposed to trans-national scrutiny.

The higher the number of countries adopting a certain approach, the more likely it becomes that the search for legitimacy results in domestic institutional adjustment (Meyer and Rowan, 1977; Meyer *et al.*, 1997). Furthermore, constellations of high uncertainty (DiMaggio and Powell, 1991, p. 70), the existence of time pressures (Bennett, 1991, p. 223) or the attempt to avoid high costs of information (Tews, 2002, p. 180) are likely to incite national institutions to follow the mainstream. Therefore, we expect a moderate and potentially even high degree of institutional change, depending on the presence of a leading model and corresponding pressure to 'move closer'. Moreover, we hypothesize that trans-national communication and information exchange carries a good potential of fostering cross-national convergence of regulatory styles and structures, in particular, in those constellations identified above. Interestingly, convergence of national institutions constitutes a plausible outcome despite the absence of any explicit harmonization pressure.

### Empirical Illustration

Three mechanisms can be subsumed under the label of communicative governance: the provision of an infrastructure for multilateral communication, the supply of expert knowledge and the promotion of distinctive policy approaches or concepts that these experts consider to be particularly promising. Together these mechanisms build a framework for 'learning through performance comparison' (Tews, 2002, p. 174). The Organisation of Economic Cooperation and Development (OECD) and the United Nations (UN) emerged early as important settings for policy experts and national policy elites to exchange views on environmental policy problems and concerns. Compared with the OECD, the logistical support

<sup>2</sup> Reflecting on the future role of the European Environment Agency, Majone (1997) named this mode 'regulation by information'.

for communication is relatively light and more dispersed within the UN. The OECD operates with a host of working parties, working and expert groups, task forces and so-called joint settings coordinating the work between OECD committees and bodies. The UN compensates its thinner operational level with a higher potential for the politicization of 'peer review' in recurring international conferences. Peer review is one strategy for facilitating an exchange and change dynamic; it implies the more or less explicit construction of league tables ranking national policies according to previously agreed criteria. Country reports (typical in the UN), country surveys and environmental performance reviews (in the case of the OECD) support this exercise. Regular national reports identifying best practice models or independent expert advice promoting innovative models provide further guidance to national policy makers paving the way for diffusion. Studies have shown that the member states do take 'their' performance reviews and the supply of best practice models very seriously (Kern *et al.*, 1999, p. 6) and follow up with necessary policy and institutional adaptations.

The EU is part of these communication networks and also able to reinforce the communicative dynamic internally (Lenschow, 1999). In sharp contrast to the OECD and UN, the EU has of course more direct and hierarchical means of intervention at its disposal; nevertheless, as part of the 'new governance' agenda the dialogue between national administrations is gaining relevance.<sup>3</sup>

Some empirical evidence will illustrate the communicative mode of governance both in international and EU settings: The United Nations has set several paradigmatic cornerstones in environmental policy. Prior to the negotiation of international treaties, where bargaining and diplomatic skills shape the dynamic, the UN provides during the agenda-setting phase the context for policy and scientific experts to exchange and develop concepts and instruments suitable for global environmental problem solving. Besides environmental expertise, a crucial element for global diffusion has been 'social creativity', i.e. the ability to establish a framework for action and to find policy instruments that bridge a highly diverse set of actors, with the north-south division forming the most notable gap. General concepts such as 'sustainable development', but also specific policy instruments such as 'emission trading', have diffused from the UN agenda due to its bridging capacity combined with a problem solving promise.

Based on a reputation of providing 'sound knowledge', but also due to its credibility as an economic development organization safeguarding against 'green dogma', the OECD has been able to play a crucial role in promoting certain environmental policy principles such as the polluter pays or the environmental integration principles within the industrialized world. Most notably, the OECD can be considered a main promoter of economic instruments such as taxes, charges and tradable permits to ensure the integration of environmental policies into sectoral policies. Indeed, these instruments are beginning to diffuse among OECD member countries and, although far from dominating the regulatory toolkits, they receive much attention.

The EU has been a multiplier, either turning soft international policy into stronger commitments for its members (e.g. in the case of the regulation on emission trading) or by doubling the communicative effort for its members. Particularly with respect to broader environmental concepts and principles EU members now find themselves in an international and a European network of peers reporting to each other. Given the treaty status of the principles of sustainable development, environmental policy integration or the polluter pays principles, to name a few, they may be considered 'harder' or more hierarchical in the EU than in the international context. Considering the almost unenforceable character of these broad principles, however, their function remains that of framing a discourse within which concrete operational measures are discussed, reviewed and compared.

<sup>3</sup>It needs to be acknowledged, however, that the main addressees of 'soft', communicative tools employed by the EU are industry, rather than administrations. In the case of the Environmental Management and Audit Scheme of the EU, for instance, the national legislator has been obliged to set up a framework for verification and registration of participating companies. These companies – not the administrations – will enter into a dynamic of peer review and reputation competition.

The institutional implications of the concepts and instruments just mentioned are enormous. The application of the environmental policy integration principle, which can be thought of as an operational principle of the sustainable development concept (Lenschow, 2002), involves the strengthening of horizontal coordination (and control) between the environment and relevant sectoral ministries or administrative units and it is likely to intrude into established patterns of administrative interest intermediation – especially in the case of clientelistic relationships between bureaucracy and private actors. The shift towards taxes and incentive systems implies an administrative ‘paradigm shift’ in those countries where a legalistic, top-down interventionist regulatory style dominates; it bears the potential of leading to the overhaul of procedures and probably also staff.

Communicative governance relies on the normative power of leading ideas and concepts. In Drezner’s words ‘states alter institutions and regulations because a set of beliefs has developed sufficient normative power that *leaders fear looking like laggards* if they do not adopt similar policies’ or models (Drezner, 2001, p. 57; emphasis added). While mere exchange of information and ideas will serve to develop a full ‘story’ around new concepts, forming coherent arguments for their adoption and concrete advice on the practical implementation, the ‘exercise of shaming’ (Botcheva and Martin, 2001, p. 15) implied in peer reviews and league tables combined with the exercise of praising, as institutionalized in best practice models, taps some competitive spirit of national actors as well as the real need to legitimize national structures and approaches in a cross-national comparative discourse. In contrast to competitive governance, competition here focuses on form – i.e. evidence that new concepts and models are being tried – at least as much as performance.

Longer term data on environmental reforms triggered by OECD discourses underscores that communicative governance can induce a dynamic rationality of national actors, leading them to overcome a first ‘reflex’ of persistence that may have existed. Institutional experimentation in the medium term entered a dominant stream, with countries copying the models of trendsetters and opinion leaders (Kern *et al.*, 1999). Institutional legitimacy became linked to fitting into an emerging trans-national norm, of course with the consequence that institutional dynamism decreased once this norm had been met.

Looking a bit closer at the principles and norms that are pushed by means of communicative governance in the EU, however, we may need to differentiate this conclusion of convergence and look at commitments, institutional change and policy change separately. True enough, we will find commitments to sustainable development, policy integration and polluter pays principles (etc.) in all countries, but this may be window dressing. Taking environmental policy integration (EPI) as an example, in rhetoric all EU members have accepted EPI as a governing norm. There is more limited evidence, however, that the EU member states are also engaging in organizational and procedural reforms that would turn environmental policy into a truly horizontal policy. Interestingly, with respect to such ‘hardware’ (Jordan, 2002) we can witness at least some restructuring in several countries, whereas it is ‘software’, i.e. policy content, where we see least movement toward the new model. Also, ‘polluter pays’ remains vision more than practice.

Turning to the international sphere, OECD evidence seems generally supportive of our convergence hypothesis (compare also Busch and Jörgens in this issue). Researchers at the *Forschungsstelle für Umweltpolitik* at the Free University of Berlin have engaged in extensive studies showing the degree of international diffusion of environmental policy innovation and institutional convergence, pointing to the spread of environment ministries, national environmental plans, economic instruments, changing administrative structures, regulatory style and even state–society relations. After about 30 years of environmental policy making the degree of change as well as convergence has been enormous. Kern (2000) argues that once a critical mass of countries adopting certain institutional models was reached, other countries rapidly jumped on the train leading to diffusion especially among industrialized states, with only a few latecomers joining the stream after the early 1980s.



This 'story' benefits of course from the general absence of deeply institutionalized – and persistent – models of environmental governance in most states prior to the 1970s. Hence, the 'reflex of persistence' that we assume to generally characterize the behaviour of national administrations may have been weak as no strong walls had to be torn down. It is easier to build than to restructure! Especially in the case of EPI, the re-organizational implications are substantial. Rather than building up a new policy field, EPI implies the re-orientation of policy making in established fields of state activity. Hence, the discourse for change takes place between conflicting and very unequal partners.

Furthermore, the communicative exercise with respect to the environmental principles mentioned above may require specific characteristics to induce convergence. For instance, the competitive, reputational dynamic of communicative governance depends on the existence of benchmarks, the achievement of which can be measured and ideally even compared in the form of league tables. In the case of EPI, policy makers and policy analysts are still in the process of defining benchmarks. To some extent, we witness a dynamic of benchmarking rather than of integrating, which might be however, the first step toward substantive reforms. For the time being, isolated activities, such as the installation of coordination units or other 'hardware' (see Jordan, 2002, on the UK), suffice for cross-national legitimation although upon closer review they would be found to lack substance. Also, such complimentary factors for reform as sustained political or societal mobilization depend on the presence of clear benchmarks as reference points. In short, benchmarks are the cornerstone to ensure both successful peer review and societal control and hence legitimacy-driven adaptation leading towards convergence not only of hardware but also of software.

The communicative mode of governance builds primarily on the cognitive dimension of policy making and policy diffusion. The awareness of other – more successful – models coupled with the competitive dynamic between potential representatives of best practice or potential winners of the 'benchmark league' is supposed to unblock the minds of otherwise persistence-oriented administrations and mobilize political leadership and society. However, even with respect to the kind of general principles that have become the subject of communicative governance in the EU we must not ignore their material implications. The sustainable development paradigm, the EPI and the polluter pays principles imply not only institutional change but also a restructuring of the economy with redistributive effects, where not every producer, farmer or consumer will gain. In political terms, this means that these principles are more likely to gain acceptance on the 'general expert level' and among heads of state or government or Commission officials, but will face resistance where immediate trade-offs are felt. National administrations tend to be the interface between the generalists and those affected materially. Hence, the tendency toward window dressing and the gap between 'hardware' reforms (for the generalists) and 'software' persistence (for the clients) is not surprising for administrations that are players on an ideational as well as material level. In short, the loss of administrative autonomy need not necessarily lead toward responsiveness to international trends and hence full convergence; it may pitch the reform minded against powerful societal interest demanding persistence at least in terms of policy substance.

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## Competitive Governance in EU Environmental Policy

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### Theoretical Considerations

The third variant, governance by competition, is intended to trigger domestic institutional change in a more indirect way than is the case for prescriptive and communicative governance. With the increasing integration of European markets and the abolition of national trade barriers, the international mobility of goods, workers and capital puts pressure on the nation states to redesign domestic market regula-

tions in order to avoid regulatory burdens restricting the competitiveness of domestic industries. The pressure arises from (potential) threats of important economic actors to shift their activities elsewhere, inducing governments to change existing regulatory arrangements. This way, competitive governance implies only limited legally binding requirements for domestic institutional change. Rather, pressure for institutional adjustment basically emerges from the need to rearrange and redesign national arrangements in order to enhance their effectiveness for achieving certain, politically defined objectives in comparison to the performance of other member states (Oates and Schwab, 1988). Whilst European policies thus pose potential challenges for domestic institutions, they do not prescribe any distinctive institutional model of how the new institutional equilibrium should actually look but leave the member states broad discretion for institutional design. Their prescriptive impact is confined to the definition of legally binding 'rules of the game' with which member states have to comply (Knill and Lehmkuhl, 2002).

What is the rationality underlying institutional change in such constellations? Change is now based on the need to improve the functional effectiveness of institutional arrangements in comparison to the performance of institutional arrangements in other member states. Rather than securing institutional persistence (regardless of performance questions), the basic focus is on institutional effects such as the impact, for instance, of certain regulatory arrangements on the competitive position of the national industry within the common market.

The performance-driven rationality behind institutional change is hence rooted in systems' competition. Competition implies that there will be winners and losers, that is, redistributive effects, between and within member states depending on the comparative performance of national regulatory practices and institutions. Different national systems of (eco-)taxation, for instance, might result in enormous moves of capital and investment between countries, with wider consequences on national tax revenues, economic performance or employment rates. Similarly, national arrangements for emission trade are likely to affect the competitive position of energy producers and users.

The bureaucracy now is no longer in an autonomous position when adjusting national institutions to European requirements. Given the far-reaching performance consequences of different institutional designs, there is a growing potential for mobilization and politicization in favour of institutional change. Bureaucratic self-interest in ensuring institutional persistence can be overturned by the mobilization of the affected interests and is highly contingent on the preferences of and struggle between political leaders. The role of the bureaucracy in institutional reform will thus be more instrumental than autonomous (Knill, 2001). There is a higher potential that the bureaucracy is deliberately transformed 'from outside' (Knight, 1992).

Which hypotheses regarding institutional change and cross-national convergence follow from these considerations? First, we expect that there is higher potential for fundamental and path-breaking reforms as the persistence-driven 'reflex' of the bureaucracy is constrained. Of course, this does not preclude periods of incremental forms of bureaucratic self-adaptation and institutional persistence, especially as long as the competitive performance of existing institutions remains at a satisfactory level. However, as soon as potential gains or losses are becoming politicized earlier decisions about form and scope of institutional change will be 'up for grabs'.

As regards the cross-national convergence of institutions, we expect that EU governance by regulatory competition will result in growing institutional similarity of national regulatory styles and structures over time. In contrast to economic theories of regulatory competition claiming that countries move their levels of regulation towards equilibrium (cf. Holzinger and Knill, 2004), we do not expect that there is full institutional convergence at the end of the process. Existing institutional traditions form a context for institutional performance and there may be no single functional optimum of regulatory styles and structures to which all countries will converge (March and Olsen, 1989). Also, the nature of bottom-up mobilization depends on nationally specific economic and societal structures. Notwithstanding the

role of path dependency, however, the fundamental challenges emerging from systems' competition are likely to reduce the variance between different national arrangements. In line with institutional arguments, we expect strongest convergence between countries characterized by similar state, legal and administrative traditions and possibly the emergence of several functionally equivalent models to which groups of countries converge. This leads us to the paradoxical conclusion that European governance by competition, which explicitly allows for domestic diversity, has a stronger convergence potential on domestic institutions than policies that seek to trigger this effect in a more explicit way such as prescriptive regulation.

### Empirical Illustration

EU governance based on the promotion of competition between national institutions can be found in particular in market-making policies of the EU. These policies essentially exclude certain options from the range of national policy choices, rather than positively prescribing distinctive institutional models to be enacted domestically. They aim at the abolition of those domestic administrative arrangements that distort the functioning of the common market, such as national regulations protecting domestic industrial sectors against foreign competition. In contrast with prescriptive or communicative governance, however, such patterns of competitive governance are only weakly developed in EU environmental policy. Hence, there is only limited evidence to illustrate the practical effects of this governance pattern in the environmental field.

At first glance, this finding seems to be rather surprising, as environmental governance stimulating a performance competition between different national regulatory systems would have important advantages in terms of implementation effectiveness. It has often been argued that EU environmental policies that avoid as far as possible interference with and – correspondingly – adjustment cost for existing institutional arrangements at the national level will be implemented more effectively than prescriptive policies that typically suffer from persistence-oriented compliance attempts (Knill and Lenschow, 2000). Hence, from the perspective of effective implementation, competitive governance patterns that avoid prescribing a distinctive institutional model for domestic compliance could be expected to lead to better results than are reported for prescriptive governance.

Notwithstanding this advantage, however, there are so far only partial attempts to move EU environmental governance into this direction. Two developments can be distinguished, namely framework legislation and economic instruments. The reliance on framework legislation, which defines legally binding objectives to be achieved by the member states but leaves them broad discretion regarding the choice of instruments and institutional arrangements, is a deliberate attempt to avoid potential incompatibilities of EU requirements with national institutions. This approach has been realized, for instance, with the 1996 air quality framework directive. In addition to the specification of air quality standards, this approach contains clearly specified information requirements in the case of a violation of the standards, intending to create 'pressure from below' towards effective compliance. However, this approach fails to establish competition between national regulatory systems as there are no built-in incentives to go beyond the standards set out in the European legislation.

Competition between national regulatory systems is much more pronounced, by contrast, with so-called economic instruments, such as emission taxes or emission trading systems. By introducing environmental taxes or tradable permits, subsidies, environmental funds or risk liability schemes, the polluter not only carries the costs of avoiding environmental pollution to a certain limit (usually by some technical device), but also the costs of the residual pollution. In the case of interventionist instruments (e.g. environmental standards), by contrast, the polluter carries only the costs for avoiding environmental pollution insofar as the standard requires that this be avoided.

Moreover, economic instruments are suited to guarantee the optimal allocation of environmental resources. Taxes, permits and fund solutions are more flexible than regulatory standards and requirements. Environmental protection investments are used where the costs are lowest: as long as the investments to avoid environmental pollution are lower than the costs of taxes or permits, environmental pollution will be avoided; otherwise, companies will pay for the residual pollution. In this way, the operational and economic costs of environmental protection will be minimized.

Finally, economic instruments are dynamically efficient. The fact that, when these instruments are used, the residual pollution still has to be paid for gives those addressed by the provisions an incentive to be innovative. As long as a tax must be paid, a pollution permit must be purchased or one is liable to pay damages for residual pollution, there is an incentive to develop more comprehensive mechanisms to avoid pollution. Regulatory standards do not give rise to this incentive (cf. Holzinger *et al.*, 2003).

The application and design of economic instruments at the European level implies much stronger competitive effects between national regulatory systems than is the case for prescriptive governance. This is due to the fact that the incentives to reduce pollution do not stop at the level of a certain regulatory standard. In view of this incentive structure, the specific framework for integrating economic instruments in the overall regulatory structures at the national level has important repercussions with respect to the effectiveness of national institutional structures in safeguarding the economic competitiveness of their industries. We thus expect stronger political pressures on national administrations to reform existing regulatory structures in order to avoid potential negative effects for their industries when coping with economic incentives defined at the European level. As a result, institutional adjustments can be expected to occur more smoothly than it is the case for prescriptive governance patterns.

However, although the introduction of economic instruments in EU environmental policy has been constantly advocated by environmental economists as well as the EU Commission, this is hardly reflected in any noteworthy political measures. The planned introduction of a CO<sub>2</sub>/energy tax failed in the early 1990s because of the resistance of the member states. The only present approach for introducing economic instruments appears in the measures adopted in 2003 for implementing the Kyoto Protocol by creating an 'EU market' for CO<sub>2</sub> emissions, using tradable permits. Although we can observe a considerable increase in the use of economic instruments at the national level, corresponding developments at the EU level have for a long time been comparatively weak. The most important factor accounting for this might be seen in the fact that in particular EU environmental taxes would interfere with the fiscal sovereignty of the member states. As a result, Council agreements are particularly difficult, not least because of the fact that unanimity is still the relevant decision rule for all tax-related decisions. As a consequence, domestic institutional convergence induced by competitive environmental governance is so far hardly observable in EU environmental policy. One promising approach to circumvent these problems of decision making in the future might be the option of enhanced cooperation among a group of member states in a certain area. The possibilities for such forms of differentiated integration have been considerably improved in the Nice Treaty as agreed in December 2000.

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## Conclusion

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It is a well accepted argument in the literature that effective environmental governance in the EU is crucially dependent on corresponding adjustments and changes in national institutional structures in order to provide the necessary structural and practical ingredients for the achievement of the objectives spelled out in European legislation (Knill and Lenschow, 2000). This leads to the immediate question of whether, and by which means, smooth adjustments of domestic institutions can be encouraged, eventually leading to the convergence of regulatory arrangements across member states.

We have argued in this paper that the degrees of domestic institutional change as well as cross-national convergence are crucially affected by the distinctive pattern of governance that is shaping EU environmental measures. For this purpose, we distinguished between three sources of national institutional change. EU regulatory policy might trigger national adjustments either through compliance with obligatory EU policies, the stimulation of communication and information exchange in transnational networks or the promotion of competition between national institutions.

We argued that each of these ideal-typical modes of governance has differential effects on the process and outcome of national institutional change. We identify three underlying rationalities – persistence driven, legitimacy driven and outcome driven – shaping domestic processes of adjustment. These behavioural logics guiding administrative adaptation then have varying effects with respect to the degree of potential changes and the likelihood of convergence of national institutions. Interestingly, in this context there seems to be an inverse relationship between the political objective of harmonization and actual convergence. Prescriptive policies, which explicitly aim at harmonizing national policies, have a less pronounced drive toward convergence of domestic institutions than competitive and communicative governance approaches.

As became apparent in the empirical analysis, EU environmental policy so far predominantly follows the pattern of prescriptive governance. This development coincides not only with generally limited institutional changes in national regulatory arrangements and a low degree of cross-national convergence. It also coincides with far-reaching implementation deficits, a problem directly related to the persistence-orientated responses to EU requirements at the domestic level. At the same time, patterns of communicative and competitive governance are only partly developed so far. It should not be overlooked, however, that both approaches – even in full operation – might not necessarily constitute a panacea to existing problems of EU environmental governance. As became apparent with respect to communication, change and convergence might take place at a rather superficial level, implying that more substantive changes in national arrangements are difficult to achieve. Regarding competition, by contrast, the constellation of national interests imposes important constraints for a more encompassing development of effective policies in the environmental sector.

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