

Thesis
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Subnational Regions Matter

Implementing EU Environmental Policies in Scotland and Bavaria

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**Submitted for the Degree of
Doctor of Philosophy**

**Department of Politics
University of Stirling**

1999



Acknowledgement

I would like to thank my supervisor Elizabeth Bomberg for her immense (!) patience, guidance and encouragement. I am also indebted to Stephen Ingle, Andrea Baumeister, Peter Lynch and Florence Faucher from the Department of Politics, University of Stirling, for their interest and support in my studies. I am most grateful to the Carnegie Trust and the Andrew J. Williamson Memorial Fund for funding my research visit to Brussels. The funding of questionnaires and some of the telephone interviews by the Department of Politics, University of Stirling, is also very much appreciated.

I would also like to thank the numerous interviewees in Brussels, Scotland and Bavaria who have been most helpful with my research enquiries. Their contributions are very much appreciated. Of course, any errors that may still remain should not be associated with the names mentioned in my thesis. They are entirely my own.

Finally, I would like to thank my husband Gerry for his support and patience without which I could not have completed my PhD. I dedicate this thesis to my father Reimund Grosse-Weischede who encouraged and supported me to undertake the challenge.

Antje Brown

Abstract

With over 280 environmental laws designed to regulate economic activities and tackle pollution problems, EU actors have established an impressive environmental policy. While policy-making has been impressive, implementation has often been disappointing with the result that EU environmental policy now suffers from an 'implementation deficit' whereby policy intentions on paper are not carried out properly 'on the ground'. Until recently, many EU actors and analysts have focused on the initial stages of the policy process, in particular the dynamics of bargaining between Member States. Yet, the overall effectiveness of EU environmental policies depends upon actors 'on the ground' and how they apply the policies in practice. This research moves away from the conventional state-centrist approach and focuses instead on the subnational regions and their role in the overall success of EU environmental policies.

The research investigates Scotland and Bavaria and assesses to what extent the two regions shape EU environmental policy implementation. To help with the investigation, the research establishes a 'multi-layered implementation map' which best captures the policy 'filtering' process. The map helps identify formal and informal determinants within the layers which either facilitate or obstruct policy implementation. The research not only compares implementation performances between the Member States and between the regions, it also compares the regions vertically with their 'mother' states and thereby highlights implementation obstacles which would remain undetected with the state-centrist approach.

A case study illustrates in detail the formal and practical implementation of the EIA Directive in Scotland and Bavaria. The study confirms that subnational regions feature determinants which differ in many respects from national determinants and influence the effectiveness of EU environmental policies. By highlighting subnational regions and their role in the process, the research contributes to a better understanding of the implementation deficit and presents a more refined picture of the EU environmental policy 'reality'.

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85,870 Words

List of Abbreviations

AT	Treaty of Amsterdam
BATNEEC	Best available technology not entailing excessive costs
BImSchG	Bundes-Immissionsschutz-Gesetz*
BMU	Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit
Bund	Bund Naturschutz in Bayern e.V.
BVerwG	Bundesverwaltungs-Gericht*
CDU	Christlich Demokratische Union Deutschlands
CEBIS	Centre for Environment & Business in Scotland
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
CO	Carbon Monoxide
CO ₂	Carbon Dioxide
CoR	Committee of the Regions
COREPER	Committee of Permanent Representatives in the EU
CoSLA	Convention of Scottish Local Authorities
CSU	Christlich Soziale Union in Bayern
DG	Commission Directorate-General
DG VII	Transport
DG XI	Environment, Nuclear Safety and Civil Protection
DG XVI	Regional Policy

DoE	UK Department of the Environment (since 1997: DETR Department of the Environment, Transport and the Regions)
EAP	Environmental Action Programme
EC	European Community
ECJ	European Court of Justice
EcoSoc	Economic and Social Committee
ECSC	European Coal and Steel Community
EEA	European Environment Agency
EEC	European Economic Community
EIA	Environmental Impact Assessment
EMU	Economic and Monetary Union
EP	European Parliament
ERM	Exchange Rate Mechanism
ES	Environmental Statement
ESEC	East of Scotland European Consortium
EU	European Union
FDP	Freie Demokratische Partei Deutschlands
FoEScotland	Friends of the Earth Scotland
FPTP-system	First past the post electoral system
FRG	Federal Republic of Germany
G7	Group of Seven
GDP	Gross Domestic Product
HMIPI	Her Majesty's Industrial Pollution Inspectorate
ICM	Integrated Catchment Management

IMPEL	EU Network for the Implementation and Enforcement of Environmental Law
IPC	integrated pollution control
JHA	Justice and Home Affairs
LBV	Landesverband für Vogelschutz in Bayern e.V.
LEEP	Lothian and Edinburgh Environmental Partnership
LfU	Bayerisches Landesamt für Umweltschutz
MEP	Member of European Parliament
MP	Member of Parliament
NGO	Non-governmental Organisation
NO ₂	Nitrogen Dioxide
NSMs	new social movements
O.J.	Official Journal of the European Communities
PR-system	Proportional representation electoral system
PPP	Polluter Pays Principle
REEFs	Regional Environmental Education Forums
RPBs	River Purification Boards
RT	Rome Treaty
SEA	Single European Act
SEA	Strategic Environmental Assessment
SEEC	Scottish Environmental Education Council

SEPA	Scottish Environmental Protection Agency
SI	Statutory Instrument
SMEs	Small and Medium-sized Enterprises
SNH	Scottish Natural Heritage
SO ₂	Sulphur Dioxide
SPD	Sozialdemokratische Partei Deutschlands
StMLU	Bayerisches Staatsministerium für Landesentwicklung und Umweltfragen*
TEU	Treaty on European Union (Maastricht Treaty)
UK	United Kingdom
UKREP	United Kingdom Permanent Representation in the EU
UN	United Nations
USA	United States of America
UVPG	Umweltverträglichkeitsprüfungsgesetz*
VerwVerfG	Verwaltungs-Verfahrens-Gesetz*

(*) = See 'Glossary of German Terms' for English translation.

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Chapter 1

Introduction

1.1 Why study EU Environmental Policies in Subnational Regions?

The European Union (EU)¹ has established an impressive environmental policy. Over 280 pieces of legislation are designed to regulate economic and other human activities and thereby tackle increasingly alarming environmental problems. EU environmental objectives include the setting of qualitative and quantitative standards (such as emission standards), the protection of species and areas of special interest (such as wild birds and habitats), and procedural frameworks which integrate environmental considerations into economic and other activities (such as environmental impact assessment). However, the effectiveness of most EU environmental policies has been hampered by the so-called 'implementation deficit' whereby policy intentions on paper stand in stark contrast with policy 'reality'. The overall success of EU environmental policies depends upon implementors' attitudes and resources on the ground. Yet, until recently their influence on EU environmental policies has been largely under-estimated and under-examined. Many EU

¹ With the Treaty on European Union (TEU) the Member States included two policy 'pillars' (Justice and Home Affairs, Common Foreign and Security Policy) which are not incorporated into the original treaty framework. The whole 'temple' construction was named 'European Union' (EU) which is the official term since the ratification of the TEU on 1 November 1993. Environmental legislation is adopted under the 'European Community' (EC) pillar. The term 'EC' (which was accepted as the general term before TEU ratification) has now replaced the 'European Economic Community' (EEC). All these changes make the correct use of terms difficult. In this research the term 'EC' is applied in the context of activities conducted before 1 November 1993, the term 'EU' is applied in relation to activities thereafter. In cases where policies and activities cannot be categorised under this time criterion the author uses both terms - 'EC/EU'.

practitioners and analysts have focused primarily on the creation of EU policies and the national governments' role in the policy-making process. Any assessment of the effectiveness of EU environmental policies, however, must include the evaluation of policy implementation within the Member States and their regions.

This research addresses the implementation deficit by contributing a perspective that moves away from the conventional state-centrist approach.² It moves subnational regions and their actors to the fore of EU environmental policy investigation and examines to what extent they shape EU environmental policies in practice. The research compares two subnational regions, Scotland and Bavaria, and their implementation performances with EU environmental policies.³ It offers a 'multi-layered implementation map' which guides the reader through the key government levels (EU, national, subnational levels), highlights obstacles and facilitators in the implementation path, and explains why implementation deficits occur. More importantly, the map distinguishes between national and subnational government levels (or 'layers') and highlights the subnational regions' influence on the success (or failure) of EU environmental policies. By doing so, the map provides a more refined picture of the EU environmental policy reality.

This Chapter sets the study in its broader context. It begins by

² For a good example of the state-centrist approach, see Alberta Sbragia 'Environmental Policy: The Push-Pull Policy-making' (pp.235-255) in Wallace, Helen; Wallace, William (eds) Policy-making in the European Union 1996.

³ See below for a justification of Scotland and Bavaria as comparative examples.

examining the relevance of environmental problems, the role of the EU in environmental politics, the problems of meeting EU environmental objectives, and the subnational regions' influence on EU environmental politics. The Chapter then formulates two key arguments and concludes with a structure outline of the research.

1.2 Considering the wider Context of the Research Topic

Relevance of Environmental Problems

Concerns about pollution and environmental deterioration are relatively new. Apart from some isolated cases of water and air pollution caused by early industrial activity in the 19th Century, citizens in industrialised countries became aware of environmental deterioration only since the 1950s.⁴ In Europe, especially, the negative impact of industrial activity and intensive farming not only shocked those who were directly affected by them; pollution and environmental deterioration also proved to know no frontiers and time limits. Acid rain caused by emissions of burning fuels such as coal frustrated citizens in all European states, so did the Chernobyl nuclear disaster of April 1986 which confirmed the perception that many environmental problems cannot be dealt with within national boundaries alone.

Environmental problems have been highlighted by alarming scientific evidence which responded and contributed to heightened public awareness. Environmental problems also received considerable attention from the media which highlighted signs of pollution and reached areas where 'green issues' had not been

⁴ The London "Great Smog" in December 1952 which caused over 4,000 deaths was one of the first major pollution incidents to receive wide attention. Lean, Geoffrey 'Where did all the fresh air go?' The Independent on Sunday (The Sunday Review, pp.4-9) 5 March 1995.

raised before. This new perception coincided with the wider societal adjustments in attitudes of the 1960s and 1970s which were initiated by the younger generation. The resulting 'New Social Movements' did not entirely change society towards a 'post-materialist' or 'green' society, but they nevertheless succeeded in further raising public awareness on environmental issues.⁵

While shifts in perception were considerable and occurred in a relatively short period of time, they were not sufficient in providing the basis for effective solutions to problems of pollution and environmental deterioration. To date, the industrialised world has seen an abundance of environmental initiatives and legislation as well as recycling processes and the development of new 'clean' technologies to replace old heavy industries. These efforts, however, have borne limited success and the environment continues to deteriorate. To illustrate the point, the European Environment Agency report of 1995 states that Europe is far from moving towards a sustainable environment and is "actually facing increasingly acute environmental difficulties".⁶ Despite optimistic

⁵ For further information on 'New Social Movements' see Inglehart, R. Culture Shift in Advanced Industrial Society Princeton University Press 1990; Roth, R.; Rucht, D. (eds) Neue Soziale Bewegungen in der Bundesrepublik Deutschland Bundeszentrale für politische Bildung, Bonn 1991; Raschke, Joachim Soziale Bewegungen. Ein historisch-systematischer Grundriss Campus 1988. For a recent critique on 'New Social Movements' approach see Koopmans, R. Democracy from below. New Social Movements and the political system in West Germany Westview Press, Oxford 1995.

⁶ Mann, Michael 'Widespread condemnation of action programme review' European Voice (Survey: Environment), 30 May - 5 June 1996 (p.17). Previously, the EU Fifth Environmental Action Programme pointed out "[s]ome disquieting trends" which, "if not satisfactorily contained, could have significant negative consequences for the quality of the environment" in Europe. Trends included a 20% increase in EC carbon emissions by 2010 and a 13% increase in municipal waste over a 5 year period. Official Journal (17.5.93) No C 138/23.

findings which indicate a decrease in certain pollution categories⁷, the 1980s and 1990s so far have shown slow progress in enforcing comprehensive and effective environmental measures. Policies and legislation undoubtedly have improved certain pollution problems. But the real driving force behind many success stories has been production changes from old heavy industries to new 'clean' technologies. These improvements have not eliminated threats and increases in pollution in other areas, neither have they solved the accumulative problem of pollution.

Three factors contribute to the rather cumbersome nature of environmental issues: environmental problems are complex and 'know no frontiers'; their solutions are influenced by economic considerations; and environmental policies have to be processed within established and often inflexible societies and state systems. With reference to the first factor, pollution and environmental deterioration constitute extremely complex problems. They affect other policy areas, 'know neither time nor territorial boundaries', are ever changing and involve a high degree of uncertainty. Moreover, environmental assets such as fresh air and rare species are difficult to value in economic terms.⁸ These uncertainties hamper the tackling of environmental problems by conventional political and administrative means and require particular commitment and determination by politicians and citizens.

⁷ Jänicke, Martin et al investigate the main pollutant categories and conclude that some categories such as SO₂, CO and to a certain extent fertilisers have shown improvements. Umweltpolitik der Industrieländer. Entwicklung-Bilanz-Erfolgsbedingungen edition sigma, Berlin 1996.

⁸ For a discussion on attributing an economic value to environmental assets see, for instance, Goldin, Ian; Winters, L Alan (eds) The Economics of Sustainable Development Cambridge University Press, Cambridge 1995. See also 'An invaluable environment' (p.105) The Economist 18. April 1998.

The second factor concerns the dominant perception that environmental considerations contradict economic success and material wealth. Embedded as a policy priority in post-war Europe, economic growth has been an essential objective for most citizens despite the 'post-materialist' input of the 1960s and 1970s. Today, environmental issues are considered important, but in relation to other priorities such as job security, 'green' policies continue to be associated with inconvenience and costs. Only in recent years, have attempts been made to reconcile environmental concerns and economic interests, though with limited success.⁹

Finally, environmental matters are problematic because they often challenge existing societal and institutional structures. Past experience in the social development of the welfare state suggests that the process of accepting a new policy area and integrating it into the existing social, political and legal systems is difficult and slow. Institutional structures, which reflect and organise societal structures and preferences, are arguably slower in adapting to new demands. This lethargy is due in part to the administrators' perception that policy changes undermine their bureaucratic positions.¹⁰ Environmental measures often require radical changes, for instance in the form of a new Ministry or a law which restricts certain economic activities. Therefore, environmental issues face similar problems to those faced by other new political issues (such as gender equality), namely the resistance and

⁹ Chapter 2 discusses the complex relationship between economic and environmental considerations in more detail.

¹⁰ Among other implementation researchers, Pressman and Wildavsky describe the administrators' reluctance to adjust, or give up, their positions for the sake of new policies in Implementation: How great expectations in Washington are dashed in Oakland Los Angeles, University of California 1974. For a detailed account of implementation obstacles see Chapter 2.

opposition of established interests. At the same time, environmental deterioration is intensifying and requires action which may stand in direct conflict with economic interests. The inherent complexity, the conflicting relationship with other interests and the urgency to act all make the environmental policy issue unique.

Relevance of the European Union

In Europe, environmental politics cannot be studied without focusing on the EU. The European Union finds its roots in the European Coal and Steel Community (ECSC) of 1952 which signaled the beginning of a complex integration process involving quantitative (i.e. an increasing number of Member States and policies) and qualitative (i.e. intensifying policy commitments) developments. The EU has steadily acquired political and legal competencies which significantly affect every-day lives of EU citizens. Despite recent discussions on the principle of subsidiarity¹¹ and the European Commission's latest strategy to minimise the number of new policy proposals, the EU continues to shape fundamentally European politics related to the environment.¹²

Environmental policies constitute an area which has attracted

¹¹ The EU defines subsidiarity as locating decision-making at the 'most appropriate level'. Ideally, decisions should be made as closely as possible to the citizens, i.e. at the 'lowest' government level. However, where the 'lowest level' cannot adequately address policy issues, a 'more appropriate' level (e.g. the EU) should act. For a summary and discussion of the EU principle of subsidiarity, see Scott et al 'Subsidiarity: A 'Europe of the Regions' versus the British Constitution?' (pp.47-67) Journal of Common Market Studies vol.32, No.1, March 1994.

¹² Bomberg highlights the Commission's 'do less but do it better' strategy in EU environmental policy: "whereas dozens of new proposals were introduced during the 1980s and early 1990s, only two new proposals were introduced in 1996" (p.177) Bomberg, Elizabeth; Peterson, John Decision-making in the European Union MacMillan, Basingstoke 1999.

considerable attention at the EU level. The objective to limit environmental deterioration and protect Europe's natural resources was formally adopted by the (then) European Community (EC) and its Member States with the Single European Act (SEA) in 1987. But even prior the SEA, from the 1970s onwards, the EC had begun to adopt environmental legislation as well as action programmes, initiatives and support funds. Today EU environmental policies are numerous and ambitious with an impressive number of Regulations and Directives regulating environmental matters.

Political and economic considerations have contributed to the adoption of environmental policies at the EU level. The first consideration concerns the apparent urgency of environmental problems described above. Particularly in times when public interest in environmental issues is high, politicians want to be seen as (and are expected to be) actively solving environmental problems at every opportunity. Inactivity could cost them the support of the electorate and would provide targets for criticism from political opponents. The EU presents itself as an ideal forum for concerted action, especially when problems of transboundary pollution are on the agenda. The EU provides a political and institutional framework which facilitates the realisation of environmental policy objectives and obliges Member States to follow their common commitments.

Economic interests, too, have forced Member States to establish the environment as a common policy area. In order to avoid economic imbalances caused by 'environmental dumping' whereby lax environmental standards in one Member State can attract economic activities away from another Member State

which has more stringent requirements, Member States have sought to harmonise their environmental policies and adopt a common environmental policy basis. This economic imperative has contributed towards the adoption of many EU environmental policies, among them the LCP Directive which sets common emission standards for large combustion plants, which otherwise would not have been adopted by EU actors.

The EU's 'historic commitment' to economic growth¹³ has in many ways aggravated environmental problems in Europe. In particular, the effects of EU policies such as the Trans-European Networks and the Single Market have made EU environmental objectives even more pressing. In recent years, the EU has tried to integrate economic and environmental interests. EU documents such as "1992: The Environmental Dimension"¹⁴ and the Fifth Environmental Action Programme bear the message of sectoral policy integration and sustainable development.¹⁵ However, their influence on behavioural patterns and attitudes in the EU has to date been limited and not effective enough to bring about

¹³ Susan Baker uses this description in 'The evolution of European Union environmental policy: from growth to sustainable development?' (pp.91-106) in Baker, Susan; Kousis, Maria; Richardson, Dick; Young, Stephen (eds) The Politics of Sustainable Development. Theory, Policy and Practice within the European Union Routledge, London 1997.

¹⁴ Task Force Environment and the Internal Market "1992" The Environmental Dimension Task Force Report, 1990.

¹⁵ The Brundtland Report defines 'sustainable development' as a development which meets the needs of the present without compromising the ability of future generations to meet their needs. See World Commission on Environment and Development Our Common Future Oxford University Press, Oxford 1987. Similarly, the EU defines 'sustainable development' as a "policy and strategy for continued economic and social development without detriment to the environment and the natural resources on the quality of which continued human activity and further development depend". (p.12) 5.EAP Towards Sustainability O.J. C138, 1993. 'Sustainability' can be defined as the long-term (final) objective in achieving a complete merger of economic, social and environmental developments.

sustainable development in Europe.¹⁶

Meeting EU Environmental Policy Objectives

Considering the potential conflict between environmental and economic interests and the above described inflexibility of societal and institutional structures, developments in EU environmental policy-making have been remarkably swift. However, when it comes to the actual implementation of EU environmental policies, progress has been markedly (and as expected, see above) slower and often disappointing. EU environmental policies have been confronted with severe obstacles to successful implementation. The EU environmental policy area in particular has shown an alarming and widening gap between 'good intentions on paper' and policy outcomes 'on the ground'.

The gap between EU environmental policy intention and 'reality' is now recognised: several reports provide detailed evidence on the problems of implementation.¹⁷ Until the early 1990s, however, considerable time was spent investigating EU environmental policy-making and the influence of Member State governments on policy formulation. This rather restricted perspective was partly due to the fact that the EC/EU had been preoccupied with the adoption of common environmental policies. In addition,

¹⁶ For a discussion of sustainable development in the EU and case studies on Member States and regions' experiences with sustainable development, see Baker, Susan et al The Politics of Sustainable Development. Theory, Policy and Practice within the European Union Routledge, London 1997.

¹⁷ Among others The State of Reporting by the EC in Fulfillment of Obligations contained in EC Environmental Legislation Institute for European Environmental Policy, London, November 1993; The Commission Eleventh Annual Report to the European Parliament on monitoring the Application of Community Law - 1993 (Section G. Environment) Official Journal (6.1.1994) No C154/42. See also Krämer, Ludwig Focus on European Environmental Law Sweet & Maxwell, London 1992 and 1997; 'Appendix 3: Evidence on EU Environmental Policy Implementation Performances'.

implementation deficits were not as noticeable at the initial stages of the EU environmental policy process. However, with the adoption of an increasing number of environmental policies at the EU level, the contrast between policy objectives and policy outcomes has become more evident. In the light of increasing pressures to 'complete' policy obligations and questions over the effectiveness and legitimacy of the EU level as a key policy-maker,¹⁸ EU practitioners and researchers have started to re-adjust their focus by studying the problems of environmental policy implementation and by suggesting ways to consolidate environmental policy-making and implementation.¹⁹ The European Commission, in particular, has highlighted the ever increasing gap between EU environmental policy 'intention' and the Member States' policy 'reality' and has sought to close the gap through initiatives such as dialogue groups and partnerships.²⁰

This research follows up the approach of EU environmental policy consolidation. It refines the picture of EU environmental policy implementation and highlights implementors 'on the ground'. In particular, the research identifies formal and informal conditions (or determinants, see below) on the ground which

¹⁸ From a more general perspective, Merkel discusses these questions in 'Legitimacy and Democracy. Endogenous Limits to European Integration' (pp.45-67) Anderson, J (ed) Regional Integration and Democracy Rowman & Littlefield 1999.

¹⁹ A similar approach of 'consolidation' applies to policy objectives of the Single Market and, indeed, the future Economic and Monetary Union (EMU).

²⁰ In the 5.EAP Towards Sustainability O.J. C138, 1993, the Commission introduced three dialogue groups: the General Consultative Forum (since 1997 European Consultative Forum on the Environment and Sustainable Development, in short Forum), the Implementation Network and the Environmental Policy Review Group. The 'partnership' between policy-makers and implementors at EU, national and subnational levels is underlined in the Commission's Interim Review (November 1994).

shape EU environmental policies during the implementation process.

Subnational Regions Matter

One obvious step towards consolidation is to focus on the latter stages of the policy process and study the problems of EU environmental policy implementation on the ground. Another step is to focus on the government level that plays a key function in putting most EU environmental policies into practice: the **subnational** level. EU environmental policies such as water and air quality Directives, nature protection Directives (e.g. Habitats Directive), or procedural Directives (e.g. Directive on environmental impact assessment) require implementation ‘beyond’ the national level – they affect the competencies and activities of subnational actors (i.e. actors at regional and local government levels) who have to implement and apply the policies and act in accordance with EU obligations. However, subnational actors do not exist in a vacuum; they are influenced and guided by formal-institutional structures as well as informal factors such as attitudes, priorities and relationships that exist within their subnational frameworks. These determinants²¹ are not always compatible with EU environmental policies with the effect that their implementation is either inadequate or ignored completely. More importantly, many subnational determinants differ from the determinants which shape EU environmental policies in the Member States at large. Consequently, subnational regions

²¹ The author uses the term 'determinants' to describe factors which decisively influence the implementation process of EU environmental policies. Determinants can either facilitate these policies, alter them, or hinder their proper implementation. For a more detailed definition and justification of the term see below and Chapter 2.

feature implementation performances and problems with EU environmental policies which differ in many respects from their 'mother' states. The study of subnational regions is therefore essential when assessing the overall success (or failure) of EU environmental policies. By and large, EU policy-makers and researchers have not paid enough attention to subnational regions and their role in the EU environmental policy process. This research brings the subnational regions and their actors to the fore of EU environmental policy investigation. It emphasises the importance of distinguishing between conditions at national and subnational levels and argues that the problem of the implementation gap in EU environmental policy cannot be fully grasped unless particular attention is paid to the 'unique' implementation conditions and performances inside the subnational regions.²²

²² For a definition of 'subnational regions' see 'Argument 2' in next section.

1.3 Setting an Starting Point for Investigation

Bearing in mind the uniqueness and urgency of environmental issues; the significance of the EU as an important environmental policy-making level; the need to focus on the implementation stage of the EU policy process; and the importance of the subnational level in the EU environmental policy process, the research investigates the following two key arguments:

Argument (1): Formal determinants such as political-administrative structures as well as informal determinants such as policy priorities and relationships between actors influence EU environmental policy implementation on the ground. These formal and informal determinants are inter-related and cannot be studied on their own.

EU environmental policies have to be processed through various government levels until they reach the appropriate implementation level. In the process, policies are either altered, their implementation facilitated, or hindered by certain formal and informal conditions at the national and subnational levels. Conditions or factors which shape the process decisively can be described as determinants. To help identify implementation obstacles, the research distinguishes between seven formal and informal determinant categories which shape the EU environmental policy process in every layer. The formal determinants refer to - constitutional settings; political-administrative structures and resources; and legal systems and instruments. Informal determinants comprise - relationships between actors; attitudes towards environmental protection and the EU; policy-makers' priorities and strategies; and policy styles

and practices.²³

Clearly, successful policy implementation depends upon favourable formal determinants. Yet, it would be a mistake to assess the policy process without taking into account attitudes and relationships between (and among) policy-makers and implementors. Even the most favourable formal political-administrative structure cannot guarantee satisfactory policy implementation if implementors are opposed to a policy or if relationships between policy-makers and implementors are not on constructive terms. On the other hand, relationships and attitudes do not develop free from any internal structures and legal frameworks, they are often the result of certain formal links and rules between political-administrative actors. Therefore, formal structures and processes significantly influence the attitudes and relationships between policy-makers and implementors.

The EU environmental policy process is shaped by formal and informal determinants which are more complex than determinants in any other policy area. Not only do EU environmental policies face a longer process chain than national environmental policies (Directives in particular have to be transposed into national and subnational legislation and then require practical implementation), their objectives also have to fit in with the implementors' other (predominantly economic) priorities. In addition, EU environmental policies are influenced by the implementors' links with, and attitudes towards, EU policy-makers and, indeed, attitudes towards the European integration process in general. The research therefore takes account of the wider implications of environmental policies on other policy areas (e.g. economic

²³ For a justification of the determinant categories see Chapter 2.

competition and transport policies) and identifies EU-specific factors which influence EU environmental policy implementation.

Argument (2): Subnational regions and their actors play a central role in the EU environmental policy process. They shape the implementation of most EU environmental policies.

The second argument draws attention to the subnational regions and their role in the EU environmental policy process. In order to investigate subnational regions, however, it is necessary to define 'subnationality'. A universal definition which applies to all regions in the EU is difficult to establish. EU Member States have evolved in different manners and feature diverse constitutional structures ranging from federal to unitary state systems. Consequently, subnational regions are diverse: they vary depending on their subnational regions' history, traditions and attitudes as well as their embeddedness within the national contexts.²⁴ For the purpose of this research, subnational regions are defined as units immediately below the Member State level whose boundaries and identities are recognised by both the national governments and the EU. Subnational regions distinguish themselves from their 'mother' states by featuring 'unique mixes' of formal and informal conditions (or determinants). Many of these conditions develop independently within the regions and are, for instance, based on the regions' own history, culture and constitutional position. Other formal and informal determinants are influenced by the wider national and European contexts, i.e. events and

²⁴ Even within the UK there are various forms of 'regions'. In particular, Scotland possesses 'regional councils' similar to counties in England and Wales, yet Scotland as a whole is treated as one region. See Rhodes, R.A.W. Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability Open University Press, Buckingham, 1997.

circumstances which affect citizens not just within the regions but nation-wide or Europe-wide. Taken together, the resulting mixes of determinants are unique for each subnational region, they shape policy processes in their own way and should therefore be assessed in their own right.²⁵

Two subnational regions have been selected for investigation which feature sharp differences as well as similarities: Scotland and Bavaria. Scotland is part of the United Kingdom (UK) centralised state system and although Scotland is recognised as a 'nation' with a strong identity, it does not yet possess a government of its own.²⁶ On the other hand, Scotland features a number of other formal and informal conditions which identify it as a region with a distinct political-administrative system. In contrast, Bavaria is a federal state (Land) within the Federal Republic of Germany (FRG) which possesses its own considerable political-administrative powers. At the same time, Bavaria shares political competencies with the Federal level and is part of an intertwined state system. It would therefore be misleading to over-emphasise Bavaria's autonomous powers in the federal state system.

²⁵ For another definition of subnational regions see Udo Bullmann's 'basic typology of regional organisation'. He distinguishes between regions belonging to either classic unitary states, devolving unitary states, regionalised unitary states, or federal states. 'The Politics of the Third Level' (pp.3-19) Jeffery, Charlie (ed) The Regional Dimension of the European Union. Towards a Third Level in Europe? Frank Cass, London 1997. Edey lists a number of definitions (including the Commission's own definition) in Regions and Regionalism in the European Union European Dossier 38, University of North London 1997. Finally, Bomberg and Peterson categorise subnational regions along a scale of constitutionally strong and weak SNAs (sub-national authorities) in Decision-making in the European Union. Implications for central-local government relations John Rowntree Foundation, 1996.

²⁶ See 'Appendix 5: Scottish Devolution - A Brief Outline' for more information.

Referring to constitutional discrepancies between the two regions, a former Secretary of State for Scotland once commented: "We are not Bavaria."²⁷ Indeed, Scotland and Bavaria differ in terms of their constitutional positions within the state systems, their policy priorities and geographical location.²⁸ At the same time, Scotland and Bavaria share common characteristics such as a strong 'national' identity and relatively large natural resources. In addition, both regions represent their interests in the EU more forcefully than most of their British or German counterparts.²⁹ The comparison of both Scotland and Bavaria's similarities and differences promises valuable insights for the research; it helps define the subnational political-administrative systems and identifies those determinants which ultimately shape the implementation of EU environmental policies.³⁰ Having stressed that Scotland and Bavaria are convenient objects for comparison, the research framework could easily be applied to other EU regions. Scotland and Bavaria simply serve as comparative examples which illustrate how subnational regions process EU environmental policies.

²⁷ Former Secretary of State for Scotland Ian Lang, at the launch of the 'Scotland Europa' office in Brussels. Quoted in The Herald ('Opening night for Scotland's voice in Europe', p.1), 27 May 1992.

²⁸ Indeed, while Scotland represents a subnational region at the periphery of the EU with its own distinct characteristics and problems (e.g. disadvantage in terms of trading links with the EU 'core', comparatively large natural resources but a keen interest in economic development), Bavaria is geographically at the 'heart of Europe' and faces different problems (e.g. economic and environmental pressures caused by immigration and traffic). Susan Baker et al focus on peripheral regions and EU environmental policies in Protecting the Periphery. Environmental Policy in the Peripheral Regions of the EU Frank Cass, London 1994.

²⁹ For more detailed information on Scottish and Bavarian representation in Brussels see Chapter 5.

³⁰ For a detailed introduction to comparative political analysis see 'Appendix 1: Supplement to the Literature Review'.

Research Structure

In order to address the above key arguments, the research applies a synthesis of analytical concepts which combines and refines the wider study areas of environmental politics, the politics of the European Union and the study of policy processes. The synthesis also introduces new elements to the subject: it highlights the subnational level in the investigation of EU environmental policy implementation and distinguishes between formal and informal determinants which shape the EU environmental policy process. A 'multi-layered implementation map' illustrates how EU environmental policies are filtered through essentially three government levels and moves subnational regions to the fore by examining their influence on, and contributions towards, EU environmental policy outcomes.³¹ The distinction between formal and informal determinants helps highlight facilitators and obstacles which lie in the implementation path of EU environmental policies.

The following Chapter, 'Towards a Multi-layered Implementation Map', outlines the synthesis in detail. It examines existing theories related to the research topic and draws up a map which best encompasses the EU environmental policy process and guides the research. Starting with the first layer of the implementation map, Chapter 3 focuses on the EU level: it

³¹ By focusing on subnational regions, the research borrows insights from the 'multi-level governance' approach which emphasises the importance of a 'third tier' (i.e. subnational government tier) in the EU policy process. For 'multi-level governance' analyses see Hooghe, Liesbet (ed) Cohesion Policy and European Integration. Building Multi-level Governance Clarendon Press, Oxford 1996; Gary Marks et al (eds) Governance in the EU Sage, London 1996. Jeffery, Charles 'Towards a 'Third Level' in Europe? The German Länder in the European Union' Political Studies vol.44, No.2, 1996 (pp.253-266). Jeffery, Charles 'Sub-National Authorities and European Domestic Policy' Regional and Federal Studies vol.7, No.3, 1996 (pp.204-219).

introduces the complex EU environmental policy-making process, outlines the key EU environmental policy objectives and, finally, contrasts EU policy intentions with the most common problems and insufficiencies during policy realisation. Chapter 4 describes the environmental policy and politics of the UK and the FRG and assesses to what extent formal and informal determinants at the national level influence the (non-) implementation of EU environmental policies. It concludes that the study of national determinants is not enough to explain fully the implementation deficit. Chapter 5 contributes the subnational level to the study of EU environmental policy implementation. It establishes the Scottish and Bavarian political-administrative systems, highlights their environmental politics and policies, and identifies 'uniquely' Scottish and Bavarian determinants which influence EU environmental policy outcomes. The Case Study featured in Chapter 6 investigates the process and problems of EU environmental policy implementation in detail. It focuses on one particular piece of legislation, the 'EC Directive on environmental impact assessment', and compares its implementation in the national and subnational layers. Finally, Chapter 7 concludes with a resume of the research; it addresses the key arguments again in the light of the evidence and assesses the usefulness of the 'multi-layered implementation map' for further investigations.

Overall, this research seeks to explain why - despite good intentions - EU environmental policies fail to be properly implemented and why the EU remains a long way from its objective of sustainable development. It does not suggest a new theory which predicts policy outcomes, neither does it propose ultimate solutions to the implementation deficit. Rather, it offers

more refined insights into EU environmental policy implementation practices and contributes towards a better understanding of the implementation deficit. The new evidence could in turn contribute towards closer co-operation between the government levels which could, ultimately, improve implementation practices of EU environmental policies.

Chapter 2

Towards a Multi-Layered Implementation Map

2.1 Introduction

Processing findings within a conceptual framework facilitates research and contributes to a greater understanding of the subject area. This Chapter introduces theories and concepts relevant for the study of EU environmental policy implementation. It assesses their usefulness and extracts relevant components which will form part of the analytical framework. The Chapter concludes with a 'multi-layered implementation map' which includes key insights from existing concepts and adds new elements to the study of EU environmental policy implementation.

2.2 Studying Policy Implementation

"If Implementation Works - Clap!"¹

The above comment by a political analyst indicates that the implementation of policies should not be taken for granted. In fact, over the years many analysts have attempted to address the question why policy commitments often fail in practice. Implementation analysts have complained that most studies concentrate on the study of 'policy-making' while the subsequent 'implementation' of policies has been neglected as a focus for research.² Calls for more implementation studies commenced as early as the 1970s and the criticism over the neglect of

¹ Richardson, Jeremy 'Eroding EU Policies: Implementation Gaps, Cheating and Re-steering' (pp.278-294) Richardson, Jeremy (ed) European Union. Power and Policy-Making Routledge, London 1996.

² See, for instance, Collins and Earnshaw 'The Implementation and Enforcement of EC Environment Legislation' (pp.213-249) Environmental Politics vol.1, No.4, Winter 1992. Sabatier, Paul; Mazmanian, Daniel 'The Implementation of Public Policy: A Framework of Analysis' (pp.538-560) Policy Studies vol.8, 1980.

implementation as a scientific focus is still continuing in the 1990s. Nevertheless, by the mid-1980s an impressive list of about 90 'implementation' studies was produced by O'Toole which suggests that this study area is not as 'exotic' as many people believe.³ What is missing is a comprehensive analytical framework which can be applied to a wide range of possible scenarios of policy implementation. Some analysts have attempted to establish all-encompassing theories, while others have claimed that they have found the most important and decisive factor which determines policy implementation. While all analysts have contributed valuable insights to the discipline, none of them provides a framework which adequately addresses the complexity of the EU environmental policy 'scenario'. The following review outlines relevant implementation concepts and then extracts analytical tools which contribute towards a more suitable analytical framework for this research.

2.3 Pressman and Wildavsky's Implementation Theory

One of the first major studies on policy implementation remains in many ways the most valuable contribution to this study area: Pressman and Wildavsky's Implementation.⁴ Even though their 1974 study describes the implementation efforts of the Economic Development Administration Program in Oakland, California (USA),⁵ many of Pressman and Wildavsky's conclusions can be

³ O'Toole Jr., Laurence J. 'Policy Recommendations for Multi-Actor Implementation. An Assessment of the Field' (pp.181-210) Journal of Public Policy vol.6, part 2, 1986.

⁴ Pressman, J.L.; Wildavsky, A. Implementation: how great expectations in Washington are dashed in Oakland Los Angeles, University of California, 1974.

⁵ This Program was produced as an employment creation measure in a predominantly black community facing high unemployment and associated problems such as crime and poverty.

applied to the EU context.

At the outset both authors assumed that the implementation of a well-prepared and popular program such as the Oakland Program would be accomplished with no delay and difficulties. However, the subsequent failure of the 'Program' showed that a policy - no matter how perfect it appears to be in its formulation - does not necessarily lead to its complete, satisfactory implementation. Surprised by the failure of an apparently popular policy, Pressman and Wildavsky decided to identify the reasons for non-implementation.

Following their investigations, Pressman and Wildavsky pointed out that there are **various forms of 'policies'** applied by political actors. Sometimes policies represent a statement of intention, at other times they describe a certain standpoint or behaviour. However, if a policy contains a certain objective to be achieved, the implementation of that policy cannot be ignored. Applied to the EU, environmental policies clearly set out policy objectives which require implementation at a later stage. Once adopted, EU environmental policies are legally binding and Member States are expected to follow their policy obligations. EU environmental policies belong to the latter category of Pressman and Wildavsky's policy forms. In order to gain a full picture of an EU environmental policy, it is therefore essential to investigate 'beyond' policy statements and consider their implementation on the ground.

A policy followed through to its actual implementation has a **starting point** and an (ideal) **end point**. What occurs between starting point and end point can be calculated or predicted as accurately as possible; nevertheless a policy at the starting point is

a mere prediction or hypothesis at that time. The implementation of new policies always require new legislation, funding and coordination, as well as co-operation at various levels and administrative changes. These factors indicate a variety of obstacles which have to be overcome in order to reach the policy goal. In addition, dealing with one obstacle may influence another obstacle. A 'program', for example, is a system of policy stages which are related and dependent on each other. If one stage in the 'program' chain faces difficulties, the following link is very likely to be affected. Pressman and Wildavsky labelled potential obstacles in the process '**decision points**' and '**clearances**'. The number of 'decision points' and 'clearances' determines the likelihood of successful policy implementation; the more actors involved in 'clearances', the more difficult it is to implement a policy successfully.

The sheer number of implementors does not always determine policy outcomes.⁶ Nevertheless, Pressman and Wildavsky's 'decision points' and 'clearances' are useful in so far as they illustrate potential obstacles in the EU environmental policy implementation process. With the EU as a 'supra-national' government level, the EU policy process is obviously more complex than national policy processes. The EU policy process involves not only an additional government level, it also involves a

⁶ O'Toole; Pag and Wessels argue that the number of actors is insignificant if a policy is generally perceived as positive and there are no obvious administrative or political obstacles. They prefer a combination of quantitative and structural-compositional criteria as a measurement. O'Toole, Laurence 'Strategies for Intergovernmental Management: Implementing Programs in Interorganizational Networks' (pp.417-441) International Journal of Public Administration vol.11, 1988. Pag, Sabine; Wessels, Wolfgang 'Federal Republic of Germany' (pp.165-229) Siedentopf, Heinrich; Ziller, Jacques (eds) Making European Policies work. The Implementation of Community Legislation in the Member States Sage, London 1988.

wider range of actors and interests than in the case of national processes. The likelihood of an EU environmental policy being blocked by an obstacle is therefore quite substantial. In addition, environmental policies tend to be complex and often affect economic, social and other policy areas. Consequently, representatives of other interests tend to get involved in the process and place obstacles in the implementation path of EU environmental policies.

Following Pressman and Wildavsky's argumentative line further, the **time span** plays an important role in the implementation result. The more time is envisaged for a 'program', from policy initiation to desired implementation, the more difficult it becomes to reach the end point. Too many changes can occur in a period of time - circumstances, opinions, scientific evidence etc. can change, so can goals or policy objectives themselves. In the case of EU environmental policies, most policies are formulated as Directives which contain implementation deadlines usually effective three years after adoption. While three years may be necessary to adjust national systems and constitute a short period to put certain environmental obligations into practice (such as setting up offices, adjusting national legislation, requiring 'polluters' to invest in 'clean technologies'), in political terms three years can be a long time in which actors tend to forget policy obligations and commitments. The large time span between policy adoption and implementation deadline can therefore have a negative impact on the effectiveness of an EU environmental policy.

Successful implementation also depends upon **feasibility**, according to Pressman and Wildavsky. If aspirations are set too

high, the objective is unlikely to be accomplished. Goals should, therefore, be within reach. If a policy goal had not been reached in a previous 'program', the enthusiasm for a subsequent 'program' may be negatively affected. The implementation and success of previous policies can therefore affect policy-making significantly. As far as EU environmental policies are concerned, views differ on the feasibility aspect. According to environmental NGOs and some Member States (in particular Denmark, the FRG and the Netherlands⁷), most policy goals are set at the lowest common denominator level,⁸ while many industrial lobbyists and other Member States consider the policy goals as too ambitious and unrealistic. Pressman and Wildavsky miss the point that the 'feasibility' of EU environmental policies depends upon the perception of implementors: if policy goals are seen as unattainable, implementors are unlikely to put much effort into the policy. Pressman and Wildavsky neglect the importance of perceptions but their observation is correct concerning the impact of previous policy performances on further policy implementation: the success or failure of EU environmental policies influence attitudes at a later stage when other policy goals are supposed to be implemented.

Pressman and Wildavsky attended to **actors and their attitudes** in a separate section of their analysis. If the motivation

⁷ Yves Meny et al describe the 'push-effect' of the Netherlands, Denmark and the FRG on EU environmental policy-making in Adjusting to Europe. The Impact of the European Union on National Institutions and Policies Routledge, London 1996.

⁸ The term of 'lowest common denominator' is used by A. Moravcsik in 'Negotiating the Single European Act: National interests and conventional statecraft in the European Community' (pp.19-56) International Organisation Vol.45, 1991.

and support towards a policy is high, implementation is completed without problems or delays. If the perception is critical or even negative, implementation is hindered considerably.⁹ Lack of interest in a policy can delay implementation moderately and should not be ignored in the investigation. Attention should also be paid towards the question of priorities and competing interests which have an impact on the policy implementation outcome. If the policy is perceived as a major priority, its implementation is most likely to be accomplished. If, however, the policy has to compete with other interests on the practical implementation level, the actual implementation is most likely to fail. Whether or not an actor is involved in policy-making is also important for implementation. If an actor is instructed to implement a policy but had no say in the shaping of the policy, this person tends to fulfill his\ her implementation tasks with less enthusiasm or even with reluctance. Pressman and Wildavsky stressed that some implementors may well agree with the substantive aim of a policy but are unable or unwilling to implement the policy in detail. Possible reasons include simultaneous commitments to other projects, dependence on other actors who are less committed towards the policy, and incompatibility with existing policies or procedures.¹⁰

A similar behavioural pattern applies to implementors of EU environmental policies. In fact, the implementation of EU environmental policies is heavily dependent upon attitudes towards the EU and environmental objectives. Implementors are

⁹ Pressman and Wildavsky (p.117).

¹⁰ Pressman and Wildavsky (p.99).

required not only to accept policy decisions coming from the EU level, they are also required to accommodate environmental objectives which may conflict with their existing (economic) priorities. The gap between EU policy-makers and implementors represents another handicap for the implementation of EU environmental policies. Despite the Commission's efforts to involve implementors in the policy-making process, the majority of implementors at the grass-root level are excluded from the negotiating process and consider EU environmental policies as 'instructions from above'. According to Pressman and Wildavsky, this non-involvement can only have a negative impact on EU environmental policy outcomes.

Overall, Pressman and Wildavsky describe the complex relationship between policy-making and implementation and highlight the gap between the two policy process stages. Their study demonstrates that favourable conditions during policy-making (support for a policy, allocation of resources, etc.) are not necessarily met with successful policy implementation. Certain factors such as attitudes and the time span can block an implementation chain which may then result in a policy's failure. While Pressman and Wildavsky's findings constitute valuable material for this research, their study also shows flaws (such as the 'feasibility' argument) and neglects areas which still require consideration. In particular, critics such as Sabatier and Elmore (mentioned below) have pointed out that Pressman and Wildavsky's concept of policy processes is too linear and hierarchical. It concentrates on single 'top-down' instructions 'from above' while neglecting the influence of 'grass root' actors in 'shaping' policies throughout the policy process. The following

studies attempt to construct more comprehensive implementation theories which address the flaws of Pressman and Wildavsky's concept.

2.4 A Discourse of Policy Implementation Studies

Discussions over the 'right' implementation approach have occupied analysts such as **Jordan; Hill and Weissert**.¹¹ 'Top-down' analysts such as Pressman and Wildavsky have started their investigation with the presentation of a policy decision and then addressed questions which concern the consistency between the policy objective and policy reality. However, 'top-downers' have often neglected pre-decisional factors which determine the policy outcome considerably. In many instances, policies under 'top-down' investigation have appeared to have 'come out of the blue' or appeared to have been created by policy-makers without prior consultation and co-operation with interested parties.¹²

'Bottom-up' analysts such as Elmore have focused instead on the complex, reciprocal relationship between both levels and stressed the continuous learning process between policy-makers and implementors. **Elmore** refused to accept the 'hierarchical' structure of 'top-down' analysis.¹³ This approach, in his words

¹¹ Hill, Jeffrey S.; Weissert, Carol S. 'Implementation and the Irony of Delegation: The Politics of Low-level Radioactive Waste Disposal' (pp.344-366) The Journal of Politics vol.57, No.2, May 1995. Jordan, Andrew 'The European Union: Rigid or Flexible Decision-Making. From Brussels to Blackpool and Southport. "Post-decisional Politics" in the European Community' (pp.1897-1906) Contemporary Political Studies Hampster-Monk (ed), PSA Conference Proceeding, 1996.

¹² For a critique see in particular Jordan, Andrew Implementation Failure or Policy Making? How Do We Theorise the Implementation of EC Policy at the National and Sub-national Level? Working Paper, Centre for Social and Economic Research on the Global Environment, University of East Anglia and University College of London, 1996.

¹³ Elmore, Richard F. 'Backward Mapping. Implementation Research and Policy Decisions' (pp.601-616) Political Science Quarterly vol.94, Winter 1979\80.

'forward mapping', implies a linear downward instruction which is neither influenced nor challenged by implementors. However, implementors at the lower policy levels influence policy outcomes considerably. It would therefore be inadequate to analyse policy implementation by concentrating on the transposition of policy instructions from above without considering attitudes and conditions at the bottom. Elmore argued further that a 'backward mapping' approach would not only benefit analysts in their analysis. Applied in practice, 'backward mapping' would also improve policy outcomes. Policy-makers should assess implementors' abilities, attitudes and resources first before they formulate a policy. Considering the 'real' conditions at the bottom ensures successful accomplishment of a policy.

In the light of an increasing gap between EU environmental policy objectives and their implementation, Elmore's idea of 'backward mapping' is attractive for EU practitioners and analysts as it suggests a solution to the problem of implementation deficit.¹⁴ However, one major problem arises with Elmore's concept. His approach does not highlight the discrepancies between policy 'intention' and policy 'reality'. Rather, it adjusts the research perspective to the implementors' level without considering the policy-makers' legitimate position in the process and their hopes and expectations. Policy-makers derive their legitimacy from direct elections (or other selection procedures), they respond to public demands and (urgent) problems and adopt policies on behalf of their constituents. It would therefore be a

¹⁴ In the 1990s the European Commission has adjusted its environmental policy strategy to allow for implementors' views and problems. For further details see Chapter 3.

mistake to neglect their importance in the overall policy process. Elmore's concept is useful as it brings implementors' interests and behaviours to the fore, but in the case of the EU environmental policy implementation deficit, Elmore's 'backward mapping' is of limited use because it neglects the EU policy-makers' role in the overall process.

In an attempt to provide a more comprehensive framework for the study of policy implementation, **Sabatier and Mazmanian** produced a concept which is almost at breaking point because of the weight it carries.¹⁵ Sabatier and Mazmanian established three broad categories of factors which shape the implementation process and labeled them 'tractability of the problem(s) being addressed by a statute', 'the extent to which the statute coherently structures the implementation process' and 'non-statutory variables affecting implementation'. The lists of items under these categories are not always plausible as some items occur in all three categories. Particularly, a clear line cannot be drawn between the first category ('tractability') and the third category ('non-statutory variables'). Moreover, Sabatier and Mazmanian's flow chart model of the policy process assumes that a policy 'problem' suddenly occurs without prior influence of political variables.¹⁶ Despite these shortcomings, Sabatier and Mazmanian's study is useful in so far as they suggest a check list of ideal conditions for policy implementation which helps predict policy outcomes. In an 'ideal scenario', legislation should outline

¹⁵ Sabatier, Paul A.; Mazmanian, Daniel, A. (eds) Effective Policy Implementation Lexington Books, Massachusetts 1981. Sabatier, Paul A.; Mazmanian, Daniel, A. 'The Implementation of Public Policy: A Framework of Analysis' (pp.538-560) Policy Studies Journal vol.8, 1980.

¹⁶ See 'Appendix 1: Supplement to the Literature Review'.

clear and consistent objectives, demonstrate causal links between problem and problem-solving objectives, and specify responsibilities in the implementation process. Further, implementors and target groups should possess the necessary means to accomplish policy objectives and should be committed towards the policy consistently over the whole implementation period.

Applied to the research, outlining an EU environmental policy that is clear and consistent for all involved is a difficult (if not impossible) task considering the EU's vast diversity in terms of languages, legal traditions and political priorities. Further, demonstrating a causal link between environmental problems and EU environmental policy objectives is enormously difficult since most environmental objectives are complex, involve long-term periods and are inter-connected with other policy areas. In many cases, responsibilities are not specified in the legislation and EU Member State governments tend not to supervise adequately the implementation of EU environmental policies. This lack of clarity can result in confusion and is occasionally used to avoid unwelcome policy obligations. In addition, financial and administrative resources required for the implementation of EU environmental policies are generally not specified in the legal texts to allow for national and subnational variances and diversity. However, resources allocated at a later stage often prove to be insufficient for effective implementation. In addition, the commitment of implementors is often missing due to a lack of consultation and involvement at the policy-making stage. Considering Sabatier and Mazmanian's criteria, EU environmental policies face serious implementation difficulties indeed. The EU

environmental policy implementation 'scenario' is therefore much further from 'ideal' than are national policy implementation 'scenarios'.

Sabatier offered another all-comprising theoretical framework which merges various approaches and encompasses all directions and influences in the policy process.¹⁷ In order to limit the enormous complexity of his framework, Sabatier proposed the categorisation of 'advocacy coalitions', i.e. groupings who share sets of beliefs and seek to realise common goals in a policy system. His 'advocacy-coalition' model is useful in so far as it takes into account (conflicting) interests and influences of various factions within policy systems as well as the role of political-administrative 'policy brokers'. On the other hand, his model implies that influential factors - 'relatively stable system parameters' (such as socio-cultural values and basic constitutional structures) and 'events external to subsystem' (such as changes in socio-economic conditions and government changes) - are on the side-line of the policy process. According to the model, 'advocacy coalitions' seem to be affected by these influential factors but remain outside their framework. However, actors such as 'policy brokers' derive their positions from the 'system parameters' and are an integral part of them. Sabatier's model is misleading at this point. Nevertheless, his 'advocacy coalitions' are useful for the EU environmental policy context. They highlight the tensions between

¹⁷ Sabatier, Paul A. 'Top-Down and Bottom-Up Approaches to Implementation Research: A Critical Analysis and Suggested Synthesis' (pp.21-48) Journal of Public Policy vol.6, part 2, 1986. See Appendix 1 for his 'conceptual framework of policy change' model. More recently, Sabatier confirmed his 'framework' in 'The advocacy coalition framework: revisions and relevance for Europe' (pp.98-130) Journal of European Public Policy vol.5, No.1, 1998.

environmental coalitions and their opponents who fear the costs of EU environmental policies. Moreover, Sabatier's model describes the Commission's problematic position as a 'policy broker' in the EU environmental policy process which negotiates between conflicting interests. His model helps explain the Commission's behaviour towards poor implementation performances; playing the role of a policy 'broker', the Commission is often overly tolerant and compromising towards 'bad' implementors.

The above studies describe policy processes in general. Other analysts have preferred to focus on individual aspects which they consider as the key to implementation problems. Some analysts have drawn attention to the evaluation of policy implementation and its effects on policy-making,¹⁸ while others have been interested in the clashes of two or more policies and their hindering impact on the policies' implementation.¹⁹ **Thompson** concentrated on the interdependent relationships between policy-makers and implementors which determine policy outcomes.²⁰ He distinguished between 'pooled', 'sequential', and 'reciprocal' interdependencies and outlined the advantages and disadvantages of each relationship category.²¹ EU relationships can be described

¹⁸ Comfort, Louise K. 'Evaluation as an Instrument for Educational Change' (pp.35-57) Ingram, Helen M.; Mann, Dean E. Why Policies Succeed or Fail Sage, London 1980.

¹⁹ O'Brien, David 'Crosscutting policies, uncertain compliance, and why policies often cannot succeed or fail' (pp.83-106) Ingram, Helen M.; Mann, Dean E. Why Policies Succeed or Fail Sage, London 1980.

²⁰ J. D. Thompson's typology of interdependence in O'Toole Laurence; Montjoy, Robert S. 'International Policy Implementation: A Theoretical Perspective' (pp.491-503) Public Administration Review Nov\Dec 1984.

²¹ A 'pooled' relationship between policy-makers and implementors implies a simple, straight-forward policy instruction; the 'sequential' category involves intermediate steps which can have a hindering impact on the policy

as 'sequential' and 'reciprocal' interdependencies involving a multitude of actors, channels and directions. The 'sequential' and 'reciprocal' categories are useful in so far as they highlight the complexity and interconnectedness of the EU process. They help identify the advantages of complex EU relationships (such as feed-back on policies and the participation of grass-root actors), as well as downfalls (such as delays and possible disagreements) in the EU policy implementation process. While Thompson's focus on policy process relationships is useful in highlighting weak links between EU actors, his concept neglects other essential implementation aspects such as the influence of policy instruments (or tools) on policy outcomes.

Ingram and Schneider stressed the importance of studying policy tools and proposed the framing of 'smarter statutes' which forestall implementation problems.²² They distinguished between four statutory categories: the 'strong statute', the 'grass roots statute', the 'support building statute' and the 'Wilsonian statute'.²³ The 'Wilsonian statute' is of particular interest because it resembles EU Directives: it combines policy goal specificity with

implementation; 'reciprocal' interdependence refers to a more complex relationship between policy-makers and implementors which requires more coordination at all stages of the policy process.

²² Ingram, Helen; Schneider, Anne 'Improving Implementation through framing smarter Statutes' (pp.67-88) *Journal of Public Policy* vol.10, 1990.

²³ The 'strong statute' represents a detailed piece of legislation with precise instructions from policy-makers to implementors; the 'grass roots statute' constitutes a mere encouragement from above to shape and implement a policy at the lowest possible government level; the 'support building statute' tends to be a complementary piece of legislation which relies upon voluntary policy implementation and compliance; the 'Wilsonian statute' can be located between the two extremes of the 'strong' and 'grass roots' statutes: the 'Wilsonian Statute' is strong in goal specificity but leaves wide discretion to implementors on the ways and means in achieving policy goals.

discretion over the ways and means in achieving the policy goal.²⁴ Once a 'Wilsonian statute' has been issued, it is generally perceived as a 'depoliticised responsibility' for professional administrators. The statute leaves an essential part (i.e. ways and means) of policy implementation to the implementors' discretion, at the same time policy-makers lack effective control over the realisation of policy commitments. The resulting gap between policy-makers and implementors, described by Ingram and Schneider, is evident in the EU policy process: once EU policy-makers issue a Directive, they often lack effective control powers over implementors at the national and subnational levels. The evident gap between EU policy-makers and implementors caused by the statute form makes the proper transposition of a policy difficult.

Berman, too, focused on 'statute' forms and their influence on policy implementation.²⁵ He established two broad statute categories which can be located at two ends of a scale: statutes are either accomplished according to 'programmed implementation' or 'adaptive implementation'. 'Programmed' statutes constitute well-defined policies which allow only limited discretion for implementors, provide sufficient monitoring and control powers for political decision-makers, outline incentives and disincentives, anticipate problems, and are formulated as clear and precise as possible. 'Adaptive' statutes, on the other hand,

²⁴ "A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods." (Art.189 EC, new: Art.249EC)

²⁵ Berman, Paul 'Thinking about Programmed and Adaptive Implementation: Matching Strategies to Situations (pp.205-227) in Ingram, Helen M.; Mann, Dean E. (eds) Why Policies Succeed or Fail Sage, London 1980.

provide only general policy objectives with maximum discretion for implementors while policy-makers resume a passive role. In contrast to the 'programmed' statutes, 'adaptive' statutes are open to modifications and revisions during the implementation process. More importantly, 'adaptive' statutes lack a clear line between policy-making and implementation as far as policy decisions and actors are concerned.

Like other statute analysts, Berman suggested that the most appropriate policy tool should be chosen to suit the policy situation. Since policies tend to be complex constructions consisting of several political messages and containing legal, administrative and resource provisions, a combination of statute ingredients should be applied where appropriate. While the 'pick and mix' approach is sensible as it allows for complex circumstances and objectives, EU environmental policy outcomes have shown that complex statutes, carefully formulated to contain all aspects (and interests) of the policy matter, do not necessarily result in successful implementation. Following Berman's concept, most EU environmental Directives are neither 'programmed' nor 'adaptive' statutes but contain a complex mix of statute ingredients. In practice, this mix does not prevent the EU from failures in the environmental policy area. Mixed EU statutes are sensible but cannot eliminate implementation problems such as misunderstandings over requirements, lack of supervisory power and lack of discipline. Therefore, the study of statutes forms helps identify EU Directive characteristics (i.e. discretionary and regulatory elements) which contribute significantly towards policy outcomes but does not provide a complete picture of EU environmental policy implementation problems.

The above findings reflect the state of policy implementation studies and their usefulness for this research. In order to complete the analytical framework, the following Sections introduce the dimensions of 'environmental politics' and 'EU politics'.

2.5 Adding the Environmental Dimension

Chapter 1 introduced the environmental policy area as an area which has no counterpart in terms of complexity, urgency and inter-relationships with other policy areas. For the study of EU environmental policy implementation one of the key characteristics of the environmental policy area requires particular attention: the inter-relationship between economic and environmental considerations.

Offe's 'subsystems' model is a useful starting point in establishing the relationship between environmental and economic interests.²⁶ Offe investigated the functioning of a state system from a post-Marxist perspective and highlighted tensions and conflicts between economic (or 'capitalist') interests and other interests which may exist already or arise in a developed 'capitalist' society. According to Offe, modern society evolves around three subsystems: the economic subsystem, the normative (legitimation) subsystem and the political-administrative subsystem. Put simply, the economic subsystem stands for economic or 'capitalist' interests which in many cases exclude 'moralist' (or environmental) considerations. The second subsystem, the normative subsystem, represents 'public morale' or public pressure. This pressure may be targeted against 'capitalist' interests causing tension between the two subsystems. The third,

²⁶ Offe, Claus Contradictions of the Welfare State Hutchinson, London 1984.

political-administrative, subsystem provides the framework within which both diverging interests can negotiate and secure as many interests as possible. Similar to Sabatier's 'policy broker', Offe's political-administrative subsystem plays the role of a mediator or referee, seeking to accommodate both sides.²⁷ According to Offe, the domination of one subsystem would inevitably lead to instability if not self-destruction of the 'capitalist' state as a whole. Therefore, the balancing act between the subsystems is vital. Of course, by mediating between economic and 'moralist' interests, the political-administrative subsystem has an interest of its own, namely to survive and confirm its own position. It is dependent upon the normative subsystem's approval as well as the support of the economic subsystem which is essential for financing the political-administrative subsystem and, in fact, the functioning of the state system in general. Crises still occur despite the balancing, self-regulatory nature of the developed 'capitalist' state: the political-administrative subsystem is often unable to cope with the tensions. The reason for this dilemma lies in the dual interest of the political-administrative subsystem to please both the economic and the normative subsystems.

Offe's model is useful because it highlights wider 'macro' conditions which shape the formulation and implementation of environmental policies. His model is also useful in so far as it highlights the tensions between two conflicting interest groups as well as the political-administrative actors' efforts to mediate between the factions. In the case of the EU, environmental interest groups often clash with representatives of economic

²⁷ While Sabatier emphasises the process of learning which results from the exchange of views, Offe highlights the tensions between the subsystems.

interests over EU environmental policies. The Commission, in turn, is constantly seeking to reach compromise solutions which accommodate environmental and economic interests.²⁸ In doing so, the Commission itself has to reach a compromise solution as it is subdivided into sectoral Directorates-Generals (DGs) which constantly guard 'their' policy interests.²⁹

There are weaknesses in Offe's model which limit its application to the study of modern environmental politics. Firstly, Offe's model does not explicitly address the idea of sustainable development, i.e. the concept to reconcile economic, social and environmental developments. True, environmental and economic interests often stand in conflict with each other. On the other hand, sustainable development is reflected in a number of private and public sector initiatives which seek to integrate environmental and economic concerns.³⁰ Secondly, Offe neglects the economic cycle and its impact on environmental politics. In times of economic recession, relations between environmental and economic interest groups are likely to be tense and environmental objectives are pushed to second place in priorities. In times of economic prosperity, environmental concerns can be pursued with fewer economic obstacles. In other words, during periods of

²⁸ The Commission pushed hard for Council Regulations (EEC) Nos. 880/92 and 1836/93 introducing 'eco-labeling' and 'eco-management' schemes which are initially based on voluntary participation of the industrial sector and which promote sustainable products and production as a business opportunity.

²⁹ DG XI responsible for environmental matters has to co-ordinate policy objectives with other DGs such as DG VII (transport) and DG XVI (regional policy).

³⁰ One such initiative is the EU Task Force which produced a Report on the environment and the Internal Market. "1992" The Environmental Dimension. Task Force Report on the Environment and the Internal Market 1990.

economic growth and prosperity, citizens are more receptive to environmental concerns and 'can afford' environmental policies, while in times of recession, citizens tend to concentrate on economic (and related social) issues and 'cannot afford' environmental policies. Many observers describe this correlation as a 'paradoxical' relationship between economic and environmental interests.³¹

Finally, modern politics is not easily divided into Offe's three subsystems and constrained into a single-state framework. In the case of the EU, a line between environmental and economic interest groups cannot be drawn at all times, considering the complexity and inter-connectedness of EU actors and their interests. The EU environmental policy process involves fifteen Member States, several government levels and inter-related policy areas. While Offe's single-state scenario is difficult to apply to the EU context, his macro perspective is nevertheless useful as it emphasises the (potential) conflict between economic and environmental interests of the EU and the dilemma to try and bring the two interests together. The dilemma is particularly evident when it comes to the formal and practical implementation of EU environmental policies. The following Section specifically deals with the EU dimension.

2.6 Adding the EU Dimension

The EU provides fertile ground for research and has attracted

³¹ Interview with Ken Collins MEP, Chairman of EP Environment Committee, 3. February 1995, East Kilbride.
Martin Jänicke, et al provide empirical evidence for the 'paradox' in Umweltpolitik der Industrieländer edition sigma, Berlin 1996. Gene M Grossman discusses the complex relationship between environmental and economic matters in 'Pollution and growth: what do we know?' (pp.19-46) in Goldin, Ian; Winters, L. Alan (eds) The Economics of Sustainable Development Cambridge University Press, Cambridge 1995.

many analysts who have tried to understand and explain the complicated EU policy process. However, in contrast to studies on the EU bargaining and decision-making process which exist in abundance, the number of studies on EU policy implementation is somewhat limited. One obvious explanation lies in the initial preoccupation of the EU to produce policies, while their implementation at the national and subnational levels has been outside EU analysts' field of vision. Only in recent years, in the light of an increasing number of unresolved EU policies, have EU policy-makers and analysts recognised the widening gap between EU policy objectives and policy 'reality' which is now causing considerable concern. Many now agree that attention should move away from policy production to the implementation of existing policies to forestall any further loss in the EU's legitimacy and effectiveness.³²

In order to address the complexity of the EU policy process and particularly the problems of EU policy implementation, analysts have used various analytical approaches. 'Traditional' intergovernmentalists have studied EU politics from a state-centrist perspective and have focused on national actors and their influence on the EU policy process.³³ Other analysts have resorted to approaches which accommodate more appropriately

³² In a different context (i.e. in the context of the EU Cohesion Policy), Liesbet Hooghe points out that the EU's legitimacy is currently on an insecure footing. EU policy-makers find it increasingly difficult to justify their capacity to adopt legislation which is later not implemented properly. Hooghe describes this dilemma as policy dysfunctionality in 'EU Cohesion Policy and Competing Models of European Capitalism' (pp.457-477) Journal of Common Market Studies vol.36, No.4, December 1998.

³³ See in particular Moravcsik, Andrew 'Preferences and Power in the European Community: A Liberal Intergovernmental Approach' (pp.473-524) Journal of Common Market Studies vol.31, No.4, December 1993.

the increasing complexity of the EU: 'policy networks' analysts have tended to ignore governmental levels and have focused instead on actors and their interests during the bargaining 'game', while 'multi-level governance' analysts have focused on essentially three government levels and their influence on EU politics.

Policy Networks:

Among the pioneers of 'policy networks' analysis have been Rhodes and Marsh who put some order into the complexity of UK and EU policy processes by identifying a continuum of policy network types ranging from 'policy community/ territorial communities' to 'issue networks'.³⁴ To help identify the type of network, Rhodes and Marsh suggest three broad criteria:

1. the relative stability and continuity of network membership;
2. resource dependencies (resources can be of constitutional-legal, organisational, financial, political or informative nature);
3. the relative insularity and autonomy of a network from outside influences (i.e. other networks).³⁵

'Policy networks' identify actors, their interests, positions and resources in the policy process. Moreover, 'policy networks' highlight the complexity of modern politics characterised by a decline in governmental control and an increasing dominance of 'coalitions' consisting of governmental as well as non-governmental actors sharing certain interests. These new 'coalitions' tend to overstep conventional horizontal and vertical

³⁴ Rhodes, R.A.W Beyond Westminster and Whitehall. The Sub-central Governments of Britain 1988. Rhodes, R.A.W; Marsh, D (eds) Policy Networks in British Government 1992. Rhodes, R.A.W. Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability Open University Press, Buckingham 1997. For other policy networks categories see 'Appendix 1: Supplement to the Literature Review'.

³⁵ Rhodes and Marsh (p.11).

boundaries and create new policy process constellations. 'Policy networks' can be applied to the EU context: they accommodate the complex patterns of EU interdependencies and enmeshing of interests, as well as the emergence of new values and coalitions in the EU. In recent years, analysts such as Heritier; Bomberg; McAteer and Mitchell; Bressers, et al³⁶ have discovered the usefulness of 'policy networks' for their studies of EU politics and policy-making.

At first glance, 'policy networks' constitute a powerful analytical tool. There are caveats, however. In general, there is a danger of 'policy networks' developing into "giant garbage can[s]",³⁷ containing all possible aspects but providing no basis for a clear and structured analysis. Another problem concerns the distinction between (and definition of) 'policy network' categories: the line between 'policy networks' cannot always be drawn as many 'policy networks' are inter-connected or interdependent. As far as implementation studies are concerned, 'policy networks' are useful in so far as they highlight differences between policy-making elites and established 'network coalitions' on the ground which may

³⁶ Heritier, Adrienne 'Policy-Netzwerkanalyse als Untersuchungsinstrument im europäischen Kontext' (pp.432-449) Politische Vierteljahresschrift Sonderheft: 'Policy-Analyse. Kritik und Neuorientierung' 24/93. Heritier et al Die Veränderung von Staatlichkeit in Europa. Ein regulativer Wettbewerb. Deutschland, Großbritannien, Frankreich Leske + Budrich, 1994. Bomberg, Elizabeth 'Protecting the Periphery: Environmental Policy in Peripheral Regions of the European Union' (pp.45-61) Regional Politics & Policy vol.4, No.1, 1994. Bressers, Hans et al 'Networks as Models of Analysis: Water Policy in Comparative Perspective' Environmental Politics vol.3, No.4, 1994. McAteer, Mark; Mitchell, Duncan 'Peripheral Lobbying! The Territorial Dimension of Euro Lobbying by Scottish and Welsh Sub-central Government' (pp.1-27) Regional & Federal Studies vol.6, No.3, 1996.

³⁷ Quotation from Bressers et al 'Networks as Models of Analysis: Water Policy in Comparative Perspective' (1-23) Environmental Politics vol.3, No.4, 1994.

oppose and resist new policies.³⁸ However, while 'policy networks' by definition describe actors, their positions, resources and interests, they downplay formal institutional factors such as statute forms and constitutional structures and neglect other circumstances such as events and geographical conditions. 'Policy networks' therefore do not constitute an analytical tool which covers all major aspects of EU policy implementation.

Multi-level governance:

Another analytical approach, promoted by EU analysts such as Marks et al; Hooghe; Jeffery; and Scharpf responds to the increasing pressures of subnational actors who have sought to influence the EU policy process more forcefully.³⁹ Their approach offsets the state-centrist perspective⁴⁰ by attributing weight to essentially three government levels in the EU policy process: the EU, the national, and the subnational levels. Many of the 'multi-

³⁸ Marsh and Rhodes, et al conclude that many 'Thatcherite' policies failed because of the continued importance of policy networks on the ground. Implementing Thatcherite Policies. Audit of an Era Open University Press, Buckingham 1992.

³⁹ Marks et al Governance in the European Union Sage, London 1996. Hooghe, Liesbet (ed) Cohesion Policy and European Integration. Building Multi-level Governance Clarendon Press, Oxford 1996. Jeffery, Charles The Emergence of Multi-level Governance in the European Union Conference Paper, 8eme Colloque International de la Revue 'Politique et Management Public' 1996; 'Sub-National Authorities and European Domestic Policy' (pp.204-219) Regional and Federal Studies vol.7, No.3, 1996; 'Towards a Third Level in Europe? The German Länder in the European Union' (pp.253-266) Political Studies vol.44, No.2, 1996. Scharpf, Fritz Community and Autonomy. Multi-level Policy-Making in the European Union European University Institute, Florence, Working Paper RSC No.94/1.

⁴⁰ For an example of a state-centrist analysis see Moravcsik, Andrew 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach' (pp.473-524) Journal of Common Market Studies vol.31, No.4, December 1993. For a discussion of state-centrist and multi-level governance perspectives see Marks, Gary; Hooghe, Liesbet; Blank, Kermit 'European Integration from the 1980s: State-Centric v. Multi-level Governance' (pp.341-378) Journal of Common Market Studies vol.34, No.3, September 1996.

level governance' studies have focused on the interactions across government levels during the bargaining process and each government level's influence on EU policy decisions. As far as the latter stages of the EU policy process are concerned, 'multi-level governance' studies exist, however they concern predominantly experiences in the EU Structural Policy, a policy area which differs in many respects from the EU environmental policy area.⁴¹ In essence, the EU Structural Policy involves the allocation of funds to support disadvantaged regions and social groups. One of its key principles is the 'partnership' between EU, national and subnational actors during both policy-making and implementation (i.e. during the negotiation and allocation of financial support and the subsequent pursuance of regional and social projects). Since the Structural Funds regulations explicitly mention (and are designed to suit) the 'partnership' of actors at all government levels, the EU Structural Policy is a convenient study area for 'multi-level governance' analysts. The involvement of essentially three government levels is less obvious in the EU environmental policy area as subnational authorities' responsibilities are not outlined explicitly in EU environmental Directives. However, this implicit 'partnership' does not mean that the 'multi-level governance' approach cannot be applied to the study of EU environmental policies and their implementation. While the process of EU environmental policies is more complex and more difficult to trace than the EU Structural Policy process, the 'multi-level governance' approach still promises to be a useful tool for

⁴¹ Studies include Gary Marks 'Structural Policy and Multilevel Governance' (pp.391-410) in Cafruny, Alan; Rosenthal, Glenda (eds) The State of the European Community. The Maastricht Debates and Beyond vol.2, Lynne Rienner, 1993.

this research area.

EU Implementation Studies:

A number of EU studies have focused on implementation experiences and have generated some valuable findings. However, many EU implementation studies have shown limitations: some have tended to be descriptive and failed to provide a conceptual basis for further research, while others have not followed a systematic comparative analysis which could have highlighted more forcefully key problems of EU policy implementation.

The first study is interesting considering the time of publication: in 1975 **Puchala** presented his findings on 'EC post-decisional politics' which have since been re-confirmed by more recent implementation studies. Puchala emphasised the need to study the whole policy process which includes the implementation of EU policies at lower government levels.⁴² According to Puchala, EU politics involves the harmonisation of Member States' national policies so that a common, mainly economic, ground can be established. This harmonisation process inevitably implies changes which may benefit some but harm others at the 'domestic' level. Member States' governments usually find themselves caught between the European Commission's call for compliance of EU policy commitments and resistance from various interest groups within the Member States. This conflictual situation is even more problematic when a Member State's government is divided over one particular policy or has accepted reluctantly an EC policy in return for other benefits. In the latter case, a Member State may exercise a 'second veto' at the later, post-decisional stage when an

⁴² Puchala, Donald 'Domestic Politics and Regional Harmonisation in the European Communities' (pp.496-520) World Politics vol.27, 1975.

EU policy is supposed to be implemented.⁴³ Faced with pressure from above (EU) and below (domestic constituencies), Member States' governments tend to give way to domestic pressures. However, since most EU policies are legally binding, Member States will eventually follow their obligations. The European Commission recognises the dilemma faced by Member State governments and is aware of its own limited enforcement powers. It therefore takes a pragmatic position and is careful not to demand the 'impossible' from Member States.

With his study on 'EC post-decisional politics', Puchala made a valuable contribution to the research of EU policy implementation. He pointed out the unique pressures and dilemmas associated with EU policies and the differences of interests and motivations depending on government levels and policy stages. A policy idea, feasible and attractive at the EU policy-making stage, may be unfeasible and unwelcome at the practical implementation level. In particular, EU environmental policies adopted at the EU level (for environmental and often economic 'level-playing-field' reasons) almost always involve costs at a later stage and are often perceived as unbearable burdens by domestic implementors. The discrepancy between EU policy objectives and domestic interests goes some way towards explaining the 'implementation gap'. Following Puchala's logic, the wider the gap between EU and domestic interests, the less likely it is that an EU policy is implemented properly.

⁴³ In a more recent study Lenearts even suggests that in the past "Member States did not use the right of veto against legislation whose implementation would in any event be weak and lightly monitored". (p.888) Lenearts, Koen 'The Principle of Subsidiarity and the Environment in the EU. Keeping the Balance of Federalism' (pp.846-895) Fordham International Law Journal vol.17, Part 4, 1994.

However, Puchala's study represents a 'state-centrist' account of the EU post-decisional phase. It focuses on national governments and their 'sandwiched' position between EU policy obligations and domestic pressures as a whole. Puchala neglects variations of domestic pressures treating them as homogenous entities. Moreover, he is only interested in domestic pressures as they affect Member States' bargaining at the EU level. Puchala's 'domestic' perspective therefore needs to be supplemented for this research. In fact, it could be argued that Puchala's approach does not provide for an accurate picture of EU (environmental) policy implementation because it runs the risk of ignoring those subnational variances which significantly shape EU policy implementation.

Following a different approach, **Siedentopf and Ziller** edited a two-volume study in 1988 which lists the (then) twelve EC Member States and their implementation performances of 17 EC Directives.⁴⁴ Their twelve case studies represent the first comprehensive attempt to describe, compare and assess EU policy implementation results and problems. However, the authors of the case studies did not conduct their research in a comparable pattern and their investigative structures and approaches differed depending on their personal preferences. Nevertheless each contribution provides insights into the practice of EU policy implementation. For instance, in their case study on Germany, Pag and Wessels include an EU-specific criterion which cannot be

⁴⁴ Siedentopf, Heinrich; Ziller, Jacques (eds) Making European Policies work. The Implementation of Community Legislation in the Member States Sage, London 1988. The 17 Directives selected for the case studies ranged from a Electrical Equipment Directive (76/117/EEC) to a Company Accounts Directive (78/660/EEC).

found in other policy systems.⁴⁵ The criterion "general integration attitudes" refers to implementors' attitudes towards the EU which can vary over time depending on political and economic circumstances. Pag and Wessels' criterion is important because favourable attitudes towards the EU can facilitate the implementation of EU policies, while critical attitudes can hinder the implementation of EU policies. In either case, 'EU integration attitudes' influence the process of EU environmental policy implementation.

From a more legalistic perspective, **Krämer** highlighted the gap between EU environmental legislation and Member States' non-compliance which he considered as more alarming in the environmental policy area than in any other policy area.⁴⁶ Krämer did not formulate an analytical concept which explains the alarming gap. Instead, he identified areas of non-compliance, differences in formal and practical implementation among the Member States, and their limited commitment in EU environmental policy obligations. Krämer does not establish a conceptual framework but his first-hand insights nevertheless stress the importance to further investigate (and solve) the problems of EU environmental policy implementation.

From a more comparative angle, **Butt Philip** investigated the EU environmental and social policy areas.⁴⁷ In comparison with

⁴⁵ Pag, Sabine; Wessels, Wolfgang 'Federal Republic of Germany' (pp.165-229) in Siedentopf and Ziller.

⁴⁶ Krämer, Ludwig Focus on European Environmental Law Sweet & Maxwell, London 1992 and 1997. Krämer, Ludwig 'The Implementation of Community Environmental Directives within Member States: Some Implications of the Direct Effect Doctrine' (pp.39-56) Journal of Environmental Law vol.3, No.1, 1991.

⁴⁷ Butt Philip, Alan Regulating the Single Market: A Comparison of the Implementation of Social and Environmental Legislation Research Paper

the EU social policy area, Butt Philip pointed out that the increase in complaints concerning environmental policy non-compliance had been "spectacular". He blamed inadequate consultation, deliberate ambiguities in legal texts, inconsistencies in policy objectives, lack in administrative and financial resources, and the ineffectiveness of existing penalties for inadequate policy implementation. Similar to Krämer's studies, Butt Philip's comparison emphasises that the implementation (and compliance) of EU environmental policies is more complex and problematic than other EU policy areas and therefore deserves particular research attention.

Finally, **Collins and Earnshaw** presented the flaws in EU environmental policy implementation across Member States and across three broad implementation stages.⁴⁸ They identified five main reasons for the Member States' poor environmental policy implementation results: the complexity of the transposition process from the EC level to the national level; misinterpretations of legal texts; structural obstacles; legislative cultures which may be incompatible with EU legislation; and political considerations which may have a hindering impact on the EU legislation. Again, Collins and Earnshaw did not establish a conceptual basis tailored for this research area. Instead their investigation relies upon the analytical approaches of other analysts, in particular Pressman and Wildavsky.

1994.

⁴⁸ Collins, Ken; Earnshaw, David 'The Implementation and Enforcement of European Community Environment Legislation' (pp.213-249) Environmental Politics vol.1, No.4, Winter 1992. Implementation stages: First - transposition of EU legislation into national law; second - practical results and impacts; third - enforcement and monitoring of legislative obligations.

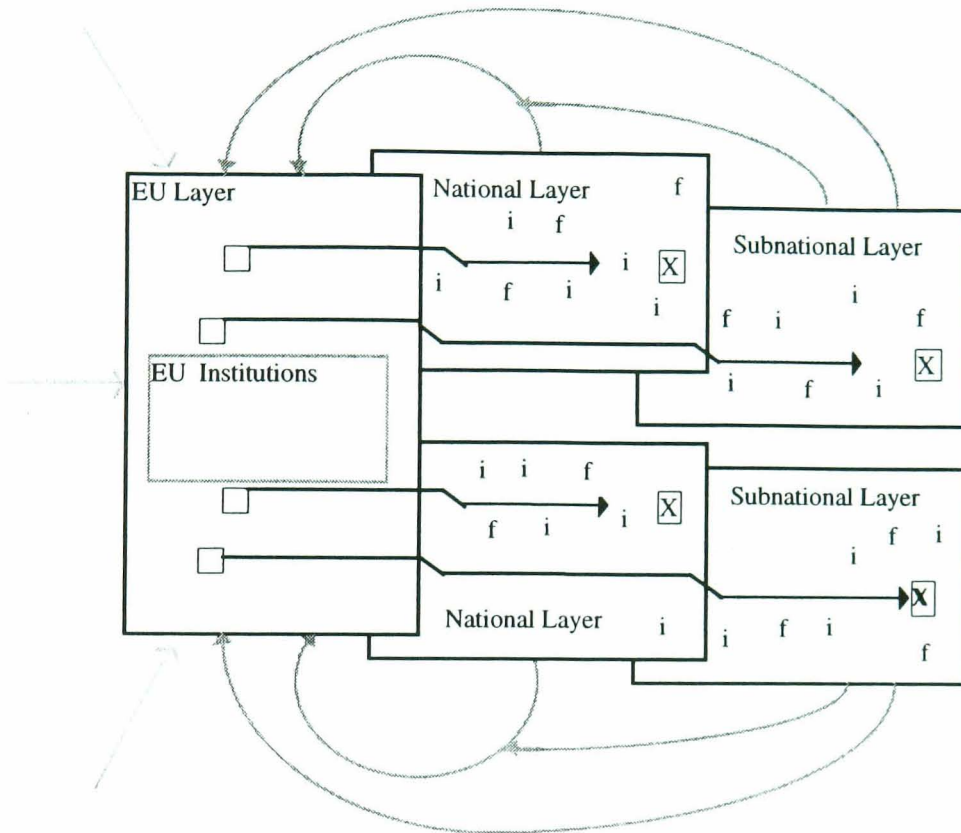
All of the above studies are relevant and contribute to a better understanding of the processes and problems of EU environmental policy implementation. However, they do not fully cover and conceptualise the research matter. Referring to the great difficulties in grasping the EU and its policy process, Schumann once commented that "it is necessary to embrace the whole elephant".⁴⁹ In the EU environmental policy area, the beast appears to be even more difficult to embrace. The following outline is an attempt to do just that by providing an analytical framework which synthesises and enhances existing studies.

⁴⁹ Schumann, Wolfgang 'EG-Forschung und Policy-Analyse. Zur Notwendigkeit, den ganzen Elefanten zu erfassen.' (pp.232-257) Politische Vierteljahresschrift 32.Jahrgang, Heft 2, 1991.

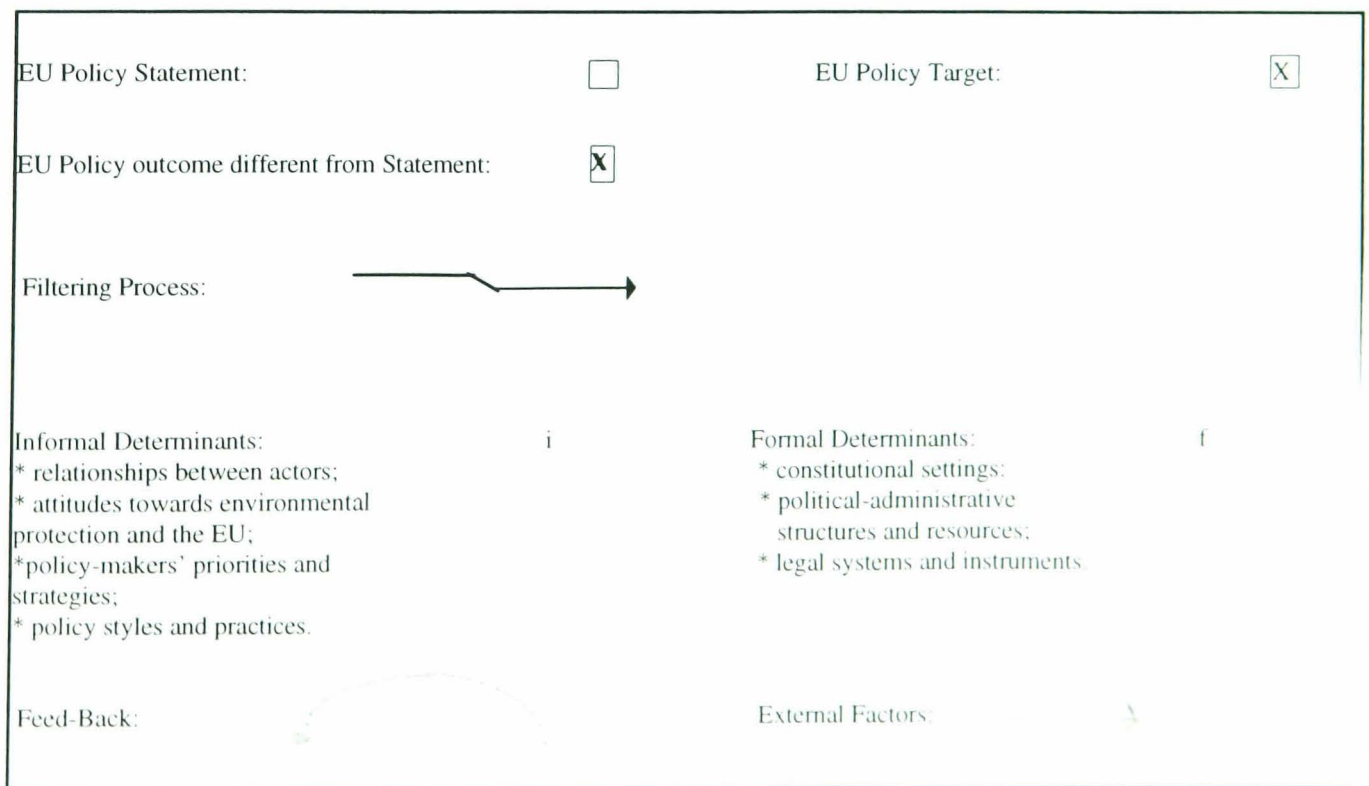
2.7 Drawing-up a Multi-layered Implementation Map

The following 'multi-layered implementation' map captures the complex EU environmental policy process.

Figure 2.1: Multi-layered Implementation Map



Key:



In essence, the map describes the implementation of EU environmental policies as a 'filtering' process. Policies are not translated directly but 'filtered' through unique political systems, or 'layers'. In contrast to other multi-level governance studies which focus on the inter-active dynamism between government levels and their actors, this map highlights and distinguishes between three government 'layers' - the EU, national and subnational layers. The layers feature their own mixes of formal and informal determinants which either facilitate or hinder EU environmental policies reaching their implementation 'targets'.

The map fulfills essentially three purposes: it guides the investigation through the EU environmental policy process and provides a comparative framework; it accommodates relevant aspects of the process and highlights key determinants; and it provides a template for further investigations of EU policy implementation problems. The map does not suggest a new challenging theory for the discipline which predicts future policy outcomes. Rather, by way of focusing on government levels and identifying and sorting implementation determinants, the map captures the details of the EU environmental policy process while at the same time not losing sight of the whole context. Finally, with the help of the map, researchers can identify weaknesses in the policy process and draw-up lists of 'worst scenario' and 'ideal scenario' determinants which help predict implementation outcomes.

The Layers

Similar to multi-level governance studies by researchers such as Marks, Hooghe and Scharpf, the map distinguishes between essentially three government levels. However, in contrast to the

conventional multi-level governance perspective which focuses on the complex inter-relationships between actors from different government levels, this research looks at three political arenas - the EU, the Member States, and the subnational regions - and their involvement in (and influence on) the filtering process. In this context, the term layers is particularly useful because it accentuates the process of 'filtering' policies as well as the inter-connectedness (or 'overlap') of EU, national and subnational competencies and structures.⁵⁰

Subnational regions are part of wider national state systems and are influenced by national conditions. Yet, while both national and subnational layers are to a certain extent inter-connected and feature some similarities in the implementation of EU environmental policies, they also feature different conditions which shape EU environmental policies accordingly. The distinction between layers is therefore important for a refined study of EU environmental policy implementation which generally involves actors at both national and subnational levels. In this context, the map clearly departs from Puchala's 'domestic' variable by distinguishing between national and subnational layers and investigating both layers separately. Studying domestic conditions as a homogeneous whole neglects and underestimates those subnational determinants (geographical, cultural, constitutional

⁵⁰ 'Concentric circles' were considered as an alternative to the term 'layers'. However, since the central theme of this research is the filtering process and the distinction between national and subnational implementation performances, overlapping layers are more suitable as an illustration of government levels. In the same context, the author prefers the multi-level governance description of political arenas being 'inter-connected' rather than 'nested'. Marks et al make the distinction in 'European Integration from the 1980s: State-Centric v. Multi-level Governance' (pp.341-378) Journal of Common Market Studies vol.34, No.3, September 1996.

etc.) which have an impact on EU environmental policy outcomes. Moreover, subnational actors process EU environmental policies within their own systems and in their own way which may well differ from national practices. The domestic perspective would therefore not provide an adequate picture of the EU environmental policy 'reality'.

Strictly speaking, there are government levels below the subnational level (i.e. regional, local levels). The composition and structures of government levels inside the subnational layers depend upon the regions themselves and their constitutional settings.⁵¹ Subdividing the subnational layer into further layers would refine even more the research picture of EU environmental policy implementation. However, the purpose of this research is to highlight the importance to move 'beyond' the national (or domestic) level when investigating EU environmental policy implementation and to provide a template for further investigation. Expanding the 'multi-layered implementation' map to add more layers to the investigation was therefore considered unnecessary.

The Arrows

EU environmental policies are not static phenomena: they are developed, negotiated and adopted, and later require implementation (and enforcement) at either the national level or subnational level. Focusing on policy-making factors, the map distinguishes between 'external factors' arrows and 'feed back' arrows. Firstly, EU environmental policy-making is influenced by external factors in the form of international pressures (for

⁵¹ Chapters 5 and 6 describe in detail the political-administrative structures inside the Scottish and Bavarian layers.

instance, commitments to UNCED, global environmental problems, and international economic agreements) and pressing environmental issues such as pollution incidents and problems of long-term environmental deterioration. These factors occur sporadically and can have an indirect impact on EU environmental policy-making. EU environmental policy-making is influenced more frequently by the feed-back from actors at the national and subnational government levels. From the national level central government ministers (in the Council of Ministers), COREPER officials, national experts and advisors as well as 'nation-wide' interest groups seek to influence EU environmental policy-making. In addition, subnational politicians, administrators, experts and regional or local interest groups seek to channel their views on EU environmental policies to the national and EU levels.⁵² EU institutions themselves (i.e. Council, EP, Commission, EEA, EcoSoc, CoR, to a certain extent ECJ) contribute to the form and content of EU environmental policies. All these forces (some are more influential than others) contribute towards a complex, and often cumbersome, EU policy-making process and influence the form and content of the policies themselves.⁵³

It is important to consider the complexity of the early stages of the EU environmental policy process when studying policy implementation and policy outcomes. Conditions which contribute towards the adoption of EU environmental policies vary: the

⁵² Depending on the Member State and depending on the policy issue, some subnational representatives can participate in the Council of Ministers.

⁵³ For a detailed account of the EU policy-making procedures, see 'Appendix 2: An Introduction to the EU, its Institutions, Policy-Making Procedures, and Legislation'.

Council in particular, adopts policies either because Council ministers support the policy objectives, because ministers accept them in order to pursue other policy goals, or because they hope to ignore them at the later implementation stage (the latter option is known as the 'second veto'⁵⁴). Implementors observe the process of policy adoption and act accordingly; their commitment is influenced later by either the policy-makers' whole-hearted support or reluctance towards a policy. Whether or not their opinions and lessons from past implementation experiences are taken into account at a later policy-making stage (indicated with 'feed-back' arrows) is also an important aspect for implementors and their commitment towards EU environmental policy objectives. The map acknowledges the complex relationship between EU policy-making factors and the dynamism of EU bargaining on the one hand and EU policy implementation circumstances on the other.⁵⁵

Focusing on the latter stages of the process, the map describes the implementation of EU environmental policies as a 'filtering' process through the national and subnational layers. The majority of EU environmental policies concern areas which predominantly touch upon subnational competencies (for instance planning, water and waste management) and therefore require implementation and compliance at the subnational level. Other EU environmental policies concern the national level only. The map

⁵⁴ See in particular Puchala, Donald 'Domestic Politics and Regional Harmonisation in the European Communities' (pp.496-520) World Politics vol.27, 1975.

⁵⁵ The dynamic relationship between government levels and policy processes is described by Weale as a system of European governance in 'Environmental rules and rule-making in the European Union' (pp.594-611) Journal of European Public Policy Vol.3, No.4, December 1996.

therefore distinguishes between filtering arrows pointing towards national and subnational layers. Since there are more EU environmental policies which require implementation on the subnational (and even local) ground, filtering arrows pointing towards subnational layers should outnumber the national filtering arrows. For the sake of simplicity, however, each implementation process is indicated in the map with one arrow only.

In order to reach the subnational ground, EU environmental policies generally have to be filtered through the national layer which, to a certain extent, pre-shapes the policies. However, most of the formal transposition (i.e. adjustments of the legal framework to accommodate EU Regulations and Directives) and practical implementation (i.e. application in practice of EU policies' standards and objectives) are conducted within the subnational layer. It is therefore important to study the influence of the national layer but pay particular attention to the subnational layer and its influence on EU environmental policy outcomes.

Policy Statements and their Targets

As is typical for a more traditional implementation study, the map highlights 'policy statements' and their 'targets'. In contrast to mere statements of political opinions (or 'standpoints', see Pressman and Wildavsky), EU environmental policy statements combine and accommodate a wide range of interests and objectives which require realisation at a later stage. EU environmental policy statements (i.e. Regulations and Directives) are legally binding and should therefore be implemented by the Member States and their subnational regions. However, while Directives (which constitute the majority of EU environmental policies) outline legally binding policy objectives, they generally

leave the ways and means to the Member States and their national and subnational implementors. Directives are therefore comparable with the above described 'Wilsonian' statutes which involve a complex sharing of discretionary powers between policy-makers and implementors. This sharing of powers often results in policy outcomes which do not resemble the original policy objectives as outlined in the statutes (see **x** in map).

Given the complexity of powers and interests, EU environmental policy objectives or 'targets' (**X**) are either reached, are missed by national and subnational implementors, or EU environmental policies result in unexpected and unintended policy outcomes.⁵⁶ In the light of three government layers involved in the EU environmental policy process and the potential obstacles for environmental policy objectives from other policy areas and interests, the majority of EU environmental policies are most likely to 'get stuck' in the filtering process falling short of the policy target '**X**'. Or EU environmental policies take shape different from their objectives stated on paper (see **x**). In the latter case, EU environmental policies fall short of target '**X**' as well.

Formal and Informal Determinants

The map identifies determinants which shape EU environmental policy outcomes.⁵⁷ Ultimately, these determinants can facilitate, divert or prevent EU environmental policies in reaching their targets. The map distinguishes between formal and informal

⁵⁶ The 'targets' resemble Pressman and Wildavsky's 'end points' which have to be reached in order for a policy to be effective.

⁵⁷ The author considered other terms such as 'attributes' or 'variables' as alternatives to 'determinants' but decided that determinants best capture the intended description of key factors which shape EU environmental policy implementation one way or another.

determinants which can be found in 'unique' combinations in each layer. In order to gain a structured overview, the map isolates seven categories of determinants:

Formal determinants:

- * constitutional settings;
- * political-administrative structures and resources;
- * legal systems and instruments.

Informal determinants:

- * relationships between actors;
- * attitudes towards environmental protection and the EU;
- * policy-makers' priorities and strategies;
- * policy styles and practices.

The determinant categories best encompass the research matter: they take account of the different government levels (or political arenas) involved in the EU environmental policy process and accommodate the complex environmental policy dimension which tends to involve a multitude of policy areas, interests and competencies. The determinants also allow the researcher to investigate EU environmental policy implementation from a micro-perspective (for instance, the researcher can focus on the details of formal transposition of EU environmental policies into national and subnational legal systems), while assessing the overall and combined impact of all determinants on EU environmental policy implementation from a macro-level.

When EU environmental policies are filtered through the layers, they are either blocked by formal and informal determinants, facilitated by favourable determinants, or their content and objectives are altered by determinants on the ground (see Argument 1). Similar to existing 'ideal implementation scenario' check lists (see in particular Sabatier and Mazmanian), the map can be used to assess whether determinants in the national and

subnational layers are favourable or unfavourable. Again, by following the map, the researcher can investigate details of the implementation process while taking account of the process as a whole.

Considering the multitude and complexity of government layers and the complexity of environmental issues and their policy solutions, determinants which influence EU environmental policies during the filtering process are expected to be more diverse and numerous than in other policy areas. Certain formal and informal determinants stand out in the EU environmental policy process. In the formal determinant category, the compatibility of EU legal instruments vis-à-vis national and subnational legal systems and administrative structures plays a significant role in the success of EU environmental objectives. If the form or content of an EU legislation is incompatible with national and subnational structures and legal frameworks, the transposition of EU environmental policy objectives is likely to fail. In turn, if the form or content of an EU policy is compatible with national and subnational formal conditions, the EU environmental policy is likely to succeed unless there are major informal obstacles in the form of hostile relationships between actors⁵⁸ and conflicting policy priorities which prevent the policy from being implemented.

Focusing on informal determinants, both attitudes towards the EU and the relationships between EU and national/ subnational actors can have an impact on EU environmental policy implementation. Past implementation studies (such as Pag and

⁵⁸ Thompson argues above that relationships between policy-makers and implementors play a decisive role in the success of policies.

Wessels' case study mentioned above) have shown that among other factors, the success of EU policies has depended very much upon implementors' attitudes towards the EU and its 'legitimacy' to produce common policies. National and subnational implementors have also been influenced by their formal links and informal relationships with EU actors. Both aspects should therefore be taken into account when exploring EU environmental policy implementation.

Another important informal determinant concerns the prioritisation of economic interests. Economic considerations still play a significant role for actors during environmental policy processes (see Offe's argument). In the context of EU environmental policies, the economic imperative is particularly relevant. During EU environmental policy-making, economic considerations either hinder the adoption of 'costly' environmental policies, or they motivate the adoption of harmonised environmental standards for the sake of an economic 'level-playing-field'. At the implementation stage, economic considerations take a different shape: in many cases, the economic motivation to harmonise environmental standards in the EU diminishes in the light of implementors' (self-) interest to protect national and subnational economies. Unless EU environmental policies are convenient and complementary to economic priorities within the national and subnational layers, economic considerations can become obstacles in the implementation path of EU environmental objectives. In any case, economic considerations play a vital role in the pursuance of EU environmental policies. They either complement and support environmental objectives or do not touch upon environmental

objectives. In both cases EU environmental policies can be implemented without problems. Economic considerations can also clash with environmental objectives. In the latter case, EU environmental policies are likely to fail on the ground. By and large, economic incentives and 'trade-offs' between EU policy-makers (especially in the Council of Ministers) which result in the adoption of many EU environmental policies are almost absent in the minds of implementors at a later stage with the result that EU environmental policies often do not receive the necessary backing on the ground.

Comparing Implementation Experiences

A political analyst once commented that "a person who knows only one country basically knows no country well".⁵⁹ The same rule applies to the study of EU Member States and their subnational regions. The map provides for a systematic comparison of implementation performances at both national (UK and FRG) and subnational (Scotland and Bavaria) levels. A thorough investigation and comparison of both national and subnational layers is necessary in order to gain a comprehensive picture on the overall process of EU environmental policies. The map guides the reader: it helps establish the differences and similarities between the UK and the FRG first before attending to the similarities and differences between Scotland and Bavaria. It also compares the subnational regions with their 'mother' states. This two-dimensional assessment not only promises to uncover a wide range of determinants which decisively shape the

⁵⁹ Lipset, Seymour Martin 'Binary Comparisons. American Exceptionalism - Japanese Uniqueness' (pp.153-212) Dogan, Mattei; Kazancigil, Ali (eds) Comparing Nations. Concepts, Strategies, Substance Blackwell, Oxford 1994.

implementation of EU environmental policies, it also contrasts divergencies between the layers under investigation.

Possible Caveats and Limitations of the Map

The map does not establish a new theory or blueprint for predicting future policy outcomes. It does not establish a causal link between policy statement and target, neither does it predict and quantify the effectiveness of EU environmental policies. The map is a guiding tool which helps investigate the complexity of the filtering process and identify obstacles which hinder the implementation of EU environmental policies in the layers. Similarly, with the help of the determinant categories, researchers can draw-up a list of 'ideal scenario' factors which facilitate the implementation of EU environmental policies.

The map resembles what some researchers would call a 'traditional' top-down approach towards EU environmental policy implementation whereby political outcomes different from the original policy objective are seen as negative outcomes or failures. True, this research investigates critically the shortcomings of EU environmental policy implementation and highlights problems and obstacles during the process. Yet, it does not point the finger at one particular government level or one particular group of actors. Instead, it aims to contribute towards a better understanding of the whole EU environmental policy process and the problems associated with implementation. While the map resembles a top-down investigation, it nevertheless makes some allowance for a more dynamic policy approach by including feed-back arrows and other (external) arrows which influence EU environmental policy as a whole.

There are some aspects which the map cannot possibly include

without causing confusion. Firstly, the map does not describe in detail the policy-making procedures that take place within the layers. The map is intended to focus mainly on the latter stages of the policy process (i.e. policy implementation). It therefore includes only policy-making arrows (i.e. external factors and feedback arrows) which help explain the style and content of EU environmental policies as well as their subsequent implementation. Similarly, the map does not highlight the Commission as a typical 'policy broker' (see Sabatier) and representative of the 'political-administrative subsystem' (see Offe) during policy formulation. The Commission plays a vital role during policy-making process. However, when it comes to the implementation of most EU environmental policies, the Commission plays a predominantly guardian function. It is therefore sufficient to recognise indirectly the role of the Commission as part of the EU institutions (indicated inside the EU layer) and as a facilitator (or obstacle) when investigating the filtering process. The ECJ, too, is not highlighted in the map although it plays a central role in the interpretation and enforcement of EU environmental legislation. However, in the context of 'filtering' EU environmental policies, it is not directly involved in the actual process. It is therefore sufficient to acknowledge the ECJ as part of the EU institutions box and refer to it whenever implementors in the national and subnational layers are affected by its judgments.

The map does not distinguish between different types of EU legal instruments or 'policy statements'. While the form and content of legal instruments constitute important factors in the implementation of policy objectives (see Berman, Ingram and Schneider), the instruments' categorisation would make the map

less intelligible. Since the main focus of this research is the filtering process through government layers, it was decided not to include statute categories in the map.

Finally, the layers themselves are featured in the map as identical in terms of shape and size. This does not reflect the differences and similarities of the two Member States and their subnational regions under investigation. Indeed, focusing on the subnational regions, Bavaria and Scotland differ in many respects. They provide a stark contrast in terms of their embeddedness in two opposite state systems: Scotland is part of a centralised state system while Bavaria is part of a federal state system. Bavaria and Scotland also feature differences in the way their political-administrative actors and citizens perceive (and deal with) environmental matters and policies. In addition, Scotland and Bavaria differ in geographical terms: Scotland represents a peripheral region of the EU with its own unique characteristics and problems (such as difficulties in accessing EU markets), Bavaria is situated more or less in the centre of Europe coping with economic and other pressures from Central and Eastern Europe. On the other hand, Scotland and Bavaria feature certain similarities such as a strong territorial identity, relatively large natural resources (which are of EU significance), as well as expanding high technology industries. Obviously, the map's uniform layers do not describe the subnational regions fully. However, for the purpose of comparative analysis (which can be applied to other EU subnational regions), it is sufficient to arrange the layers in a simplified and systematic manner.

On a similar note, the regions feature government levels below which are structured differently depending on their constitutional

and political-administrative settings. The map could therefore include more layers to take account of the variances inside the subnational regions. However, it would be difficult to determine exactly how many 'sub-subnational' layers should be added to the map. Moreover, the main purpose of this research is to move beyond the national government level when investigating EU environmental policy implementation. The multi-layered implementation map as it stands should therefore provide adequate guidance for the researcher.

The above synthesis of analytical approaches has already suggested that the scenario for the implementation of EU environmental policies is far from ideal. The map seeks to combine all relevant aspects which shape EU environmental policy implementation into one comprehensive framework. Its strength lies in its potential to guide investigations on EU environmental policy implementation at both macro and micro levels. It distinguishes between national and subnational arenas (i.e. layers) and puts order into the complex mix of formal and informal factors (i.e. determinants) that shape EU environmental policies in the process. With the help of the map, the following Chapters will address the implementation deficit in the EU environmental policy area by examining step by step the EU, the national and the subnational layers. The Chapters will identify and highlight the layers' key determinants and will assess to what extent national and particularly subnational layers influence the success, or failure, of EU environmental policies.

Chapter 3

Environmental Politics and Policy in the EU

3.1 Introduction

The following Chapter focuses on the first layer of the EU environmental policy process. In order to gain a comprehensive picture, the Chapter starts with an analysis of the EU policy-making process before investigating EU environmental policy objectives and their implementation problems. The Chapter describes EU policy-making as an enormously complex process which has been influenced by a multitude of actors with varying interests and which has culminated in a broad EU environmental policy containing some vague environmental policy compromises but also some substantial and ambitious environmental objectives. The EU has produced an impressive range of EU environmental policies, yet many policies have failed on the implementation ground. The Chapter addresses the apparent implementation deficit and investigates the imbalance between EU environmental policy ('over-') production on the one hand and national and subnational implementation shortfalls on the other. The multi-layered implementation map helps identify the key problems in implementing EU environmental policies: EU environmental policies often fail their targets because their legal instruments have limited direct binding force on implementors; their filtering process is enormously complex and implementation links between the layers are weak; and finally the layers and their political-administrative systems are diverse, complex and feature formal and informal determinants which are often incompatible with EU environmental policies.

3.2 The Complexity of EU Environmental Policy-Making

EU environmental policies derive from a particularly complex policy-making process.¹ EU environmental policy-making involves not only EU institutions,² but also national, subnational, and even international actors who seek to influence the form and content of EU environmental policies (see 'feed-back' and 'external factors' arrows in figure 3.1 below).³ During the process, bargaining not only exists between government layers (vertically) but also within government layers (horizontally, cross-sectoral). In addition, institutions themselves have to come up with decisions which may have caused internal conflicts previously.⁴

In general, the Commission initiates an environmental policy as a response to informal pressures, i.e. demands from both environmentalists and representatives of economic level-playing-field considerations. Issued with information from the European Environment Agency (EEA) and lobbied by a vast variety of national and subnational institutions, interest groups and 'experts', the Commission prepares a policy draft which is then referred to the Council of Ministers and the European Parliament (EP) for

¹ For further information on key EU actors, processes and legislation see 'Appendix 2: An Introduction to the EU, its Institutions, Policy-making Procedures and Legislation'.

² The primary policy-making EU institutions include the Commission, the Council of Ministers, the European Parliament (EP), the Committee of the Regions (CoR) and the Economic and Social Committee (EcoSoc).

³ At the international level, the UNCED Conference in Rio (1992), for instance, had a considerable impact on the EU environmental policy. See Liberatore, A. 'Problems of transnational policymaking: Environmental policy in the EC' (pp.281-305) European Journal of Political Research No.19, 1991.

⁴ For instance, differences in views often exist between Commission DG XI (environment) and other DGs such as DG VII (transport). The same rule applies to single departments: even within Commission DG XI opinions and priorities can clash.

consideration and decision-making. In addition, the Economic and Social Committee (EcoSoc) and the Committee of the Regions (CoR) are consulted whenever proposals affect their policy spheres. Depending on Member States' political and constitutional backgrounds, subnational representations formally participate in the EU environmental policy 'bargaining', too.⁵ EU environmental policy proposals have been adopted through either the consultation and co-operation procedures (where the Council plays the key legislative role), or through the co-decision procedure (where the Council and the EP share legislative powers). The choice of procedures has depended on the nature and importance of environmental issues. The Amsterdam Treaty (to be ratified by Spring 1999) envisages a more simplified system of decision-making: the co-operation procedure will be replaced by the co-decision procedure which will be used for most EU environmental policies.⁶

Throughout the process, politicians, administrators, experts, environmentalists and representatives of the farming and industrial sectors seek to influence the final policy version to suit their particular views and interests. Actors involved in the process pursue economic, environmental or political-strategic interests, and are influenced by events such as pollution incidents or economic crises. Considering the multitude of actors and their

⁵ Michael Keating and Liesbet Hooghe provide detailed information on subnational participation in EU policy-making and distinguish between various forms of regional influence in 'By-passing the nation state? Regions and the EU policy process' (pp.216-229) in Richardson, Jeremy (ed) European Union Power and Policy-making Routledge, London 1996.

⁶ For a detailed account of the EU policy-making procedures see 'Appendix 2: An Introduction on the EU, its Institutions, Policy-Making Procedures, and Legislation'.

backgrounds as well as the variety and inter-connectedness of interests, EU environmental policy-making can either give way to a comparatively strong force in the bargaining process (e.g. a Member State or an EU institution)⁷, or it results in a balance between conflicting sides and compromise solutions. In the latter case, the balancing act often leads to vague policy commitments which ultimately disappoint the majority of actors.⁸ Put simply, environmental policy compromises are generally perceived as too stringent by business representatives, while the same policies are considered inadequate by environmental campaigners.

The search for environmental policy solutions is further complicated by the fact that the EU is equally committed towards common policy areas such as transport, trade and energy which often compete with environmental objectives. Moreover, the EU established the principle of environmental policy 'integration' which implies, for instance, that a policy generating industrial production cannot be processed without taking into account aspects such as pollution, land use and energy efficiency. By the same token, environmental policy 'integration' also implies that environmental measures quantifying upper limits for pollutants cannot be set without taking account of the economic costs. Formulating an environmental policy proposal for consideration is therefore a delicate task for all actors involved.

Having negotiated an EU environmental policy with the EP,

⁷ For instance, the FRG was the driving force behind the adoption of the EC Directive regulating emissions from large combustion plants. For more detailed information see Böhmer-Christiansen, Sonja; Skea, Jim Acid Politics: Environment and Energy Policies in Britain and Germany Belhaven Press, London 1991.

⁸ The exception, perhaps, is the Commission which mediates between diverging interests and tends to consider any compromise a success.

Council Ministers adopt a policy for a variety of reasons. They either fully support the environmental policy as it stands, they accept the policy in order to pursue other priorities in a policy 'package', or they accept the policy knowing that certain obligations can be avoided at a later stage. Individual Council Ministers may also be outvoted by their colleagues following a qualified majority voting procedure.⁹ Policy decisions are therefore influenced by informal political-strategic calculations and formal procedures which are relevant at the time of negotiation and may have a significant impact at a later implementation stage.

The adoption of the EIA Directive¹⁰ and the preparations for its successors (Directive 97/11/EC amending the EIA Directive; the SEA Directive¹¹) exemplify the continuing battle to find policy solutions. The EIA Directive was intended to harmonise and strengthen environmental standards in planning, a policy area which had previously been an exclusive domain of national and subnational actors. It took EU policy-makers ten years of intense discussion and considerable opposition from some Member States before the policy could be adopted. The UK Government saw the Directive as further 'red tape' preventing economic development, while the Danish Government was concerned about the transfer of their strict planning regulation powers to the European level. The

⁹ Votes are allocated as follows: FRG, UK, France and Italy 10 each; Spain 8; the Netherlands, Greece, Belgium, Portugal 5 each; Sweden and Austria 4 each; Denmark, Finland and Ireland 3; Luxembourg 2. Total number of votes 87, 62 votes required for qualified majority.

¹⁰ Council Directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC). The EIA Directive is discussed in detail in Chapter 6.

¹¹ Strategic Environmental Assessment Directive.

EIA version, finally adopted in 1985, did not resemble the earlier policy draft which suggested more radical EIA measures. Instead, the Directive included a number of discretionary elements which provided the Member States and their implementors with convenient planning policy loopholes.¹² Similarly, the 1997 amendment of the EIA Directive, forwarded by the Commission, met with considerable resistance, particularly from the FRG Minister for the Environment who rejected the policy proposal on the grounds that the new policy would have an 'inflationary' (and therefore counterproductive) impact on the original objective of the policy.¹³ In the meantime, the EP expressed its disappointment that the new policy was not 'inflationary' enough - it did not comprise all the measures suggested by the EP. The SEA Directive has faced problems, too. In the latter case, subnational representatives stood at the forefront of opposition: in June 1997 the FRG Länder (through the Bundesrat) asked the Federal Government to reject the proposal. The Länder expressed concerns over accommodating the SEA policy into their existing legal-administrative systems and questioned the necessity to adopt a common SEA policy.¹⁴ While the Commission and many EIA experts (i.e. planning officials and analysts) have insisted on further harmonisation in this policy area (which includes strategic planning), Länder officials continue with their campaign against

¹² Christopher Wood describes the 'evolution of the Directive' in Environmental Impact Assessment: A Comparative Review Longman, Essex 1995.

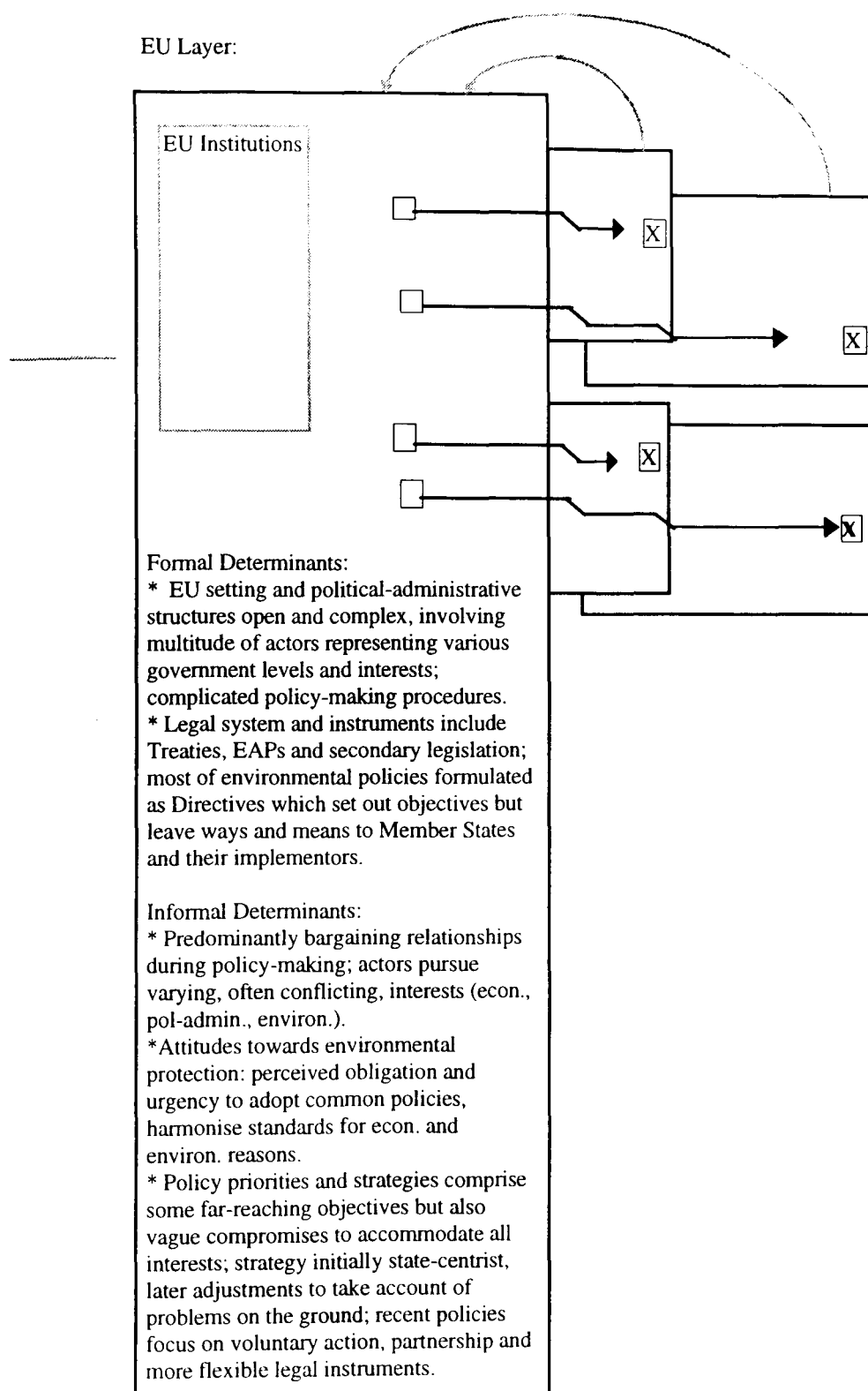
¹³ Minister Merkel explained her decision to oppose the amendment in a letter of 20. December 1995 sent to the Länder Ministries for the Environment.

¹⁴ 'Bundesrat lehnt UVP für Pläne und Programme ab' UVP-Gesellschaft (<http://www.laum.uni-hannover.de/uvp/uvp-netz/>).

the SEA Directive.

It remains to be seen to what extent the FRG Länder will succeed with their campaign in a policy-making system which is so complex in terms of actors, government layers and interests. The above examples illustrate, however, the tensions during policy-making and the difficulties in reaching policy solutions acceptable for all actors. Despite these difficulties, the EU has managed to establish a common ground on which a variety of environmental policies have been developed. The following Sections look at the evolution of the EU environmental policy in the treaties and Environmental Action Programmes (EAPs) and highlight the multitude and magnitude of policy 'obligations' for national and subnational implementors. The Sections investigate to what extent the concerns and problems of national and particularly subnational implementors are taken into account in the Treaties and EAPs.

Figure 3.1: The EU Layer and Environmental Policy



3.3 The EU Environmental Policy in the Treaties

The manner in which a common environmental policy was established in the EU layer confirms the argument that a complex mix of determinants contributes to EU policy processes. Environmental considerations were not among the common policy priorities at the start of the European integration process, nor was the (then) EC the initiator of international co-operation in the environmental policy area. A significant international event preceded the EC's adoption of the environmental issue: the UN Conference on the Environment in Stockholm of June 1972 acknowledged the problems of pollution and their transboundary impacts. While the participants of the Stockholm Conference reinforced their sovereign right "to exploit their own resources pursuant to their own environmental policies" as long as damage is not caused to other states,¹⁵ the conference, nevertheless, signaled a starting point in the international co-operation on environmental problems. EC Member States felt obliged to follow this high profile occasion (see external factor arrow in figure 3.1 above). In addition, Member States' governments noticed that domestic pressures for environmental policies and legislation would lead to diverging environmental standards which in turn would have an impact on trade within the EC. As a consequence, the EC soon adopted an Environmental Action Programme (EAP) which outlined a considerable number of environmental policy objectives and slowly adapted the treaty framework to environmental policy demands. Subnational views were not directly involved in the initial stages, neither did EU policy-

¹⁵ Haigh, Nigel EEC Environmental Policy and Britain. An Essay and a Handbook 1984 (p.6).

makers pay full attention to possible implementation problems on the ground. EC environmental policies were considered at that time as foreign policy matters which formed part of the harmonisation process of national standards. In other words, EC environmental policies were developed and processed in a strictly intergovernmental and state-centrist manner. This shortfall would later be reflected in many disappointing EC/EU environmental policy outcomes.

It is striking how, in the years preceding the Single European Act, EC Member State governments justified the adoption of common environmental policies without changing the actual treaty. The EC interpreted liberally a clause in the Rome Treaty Preamble which stated that the "essential objective" of the EC was to improve living and working conditions for the Member States' citizens. Without amending the treaty text, the EC gave "a gloss to the words of the Treaty and assume[d] that environmental policy was implicit".¹⁶ Environmental legislation was processed under the economic provisions of Articles 100 and 235 RT¹⁷ which ensure a well-functioning Common/ Single Market. Applying Articles 100 and 235 RT, the objective was to

¹⁶ Haigh (p.6).

¹⁷ Article 100: The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market. Article 235: If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures. (Since Amsterdam Treaty Article 100 has been renumbered Article 94. See 'Appendix 2: An Introduction to the EU, its Institutions, Policy-making Procedures, and Legislation' for a complete list of renumbered Articles mentioned in this thesis.)

coordinate and harmonise Member States' environmental standards and thereby avoid any distortions in the EC trade. This link between environmental measures and economic interests frequently resulted in rather curious legislative constructions. The Directive on the conservation of species of wild birds, for instance, was adopted under Common Market provisions.¹⁸

The Single European Act

With the Single European Act (SEA), the (then) EC system was formally adjusted to allow for a legal basis for environmental policies under Articles 130R, 130S and 130T. Article 130R committed the EC and its Member States to the following objectives: to preserve, protect and improve the quality of the environment, to contribute towards protecting the human health, and to ensure a prudent and rational utilisation of natural resources. In this context, the SEA did not mention subnational actors and their vital role in the pursuance of these environmental objectives.

Environmental action was based on three principles - preventive action; damage should be rectified at source; and the 'polluter pays principle'. Further, the title stipulated that "environmental protection requirements shall be a component of the Community's other policies". In pursuing environmental policies, the EC should take into account - available scientific and technical data; environmental conditions in the various regions of the Community; costs and benefits of action\ non-action; and the economic and social development of the Community as a whole. Paragraph 5 of Article 130R called upon the EC and its Member

¹⁸ David Freestone 'EC Environmental Policy and Law' Journal of Law and Society No.18(1), Spring 1991 (p.137).

States to co-operate internationally with third countries in environmental matters. Article 130S identified the environment as a specific legislative area and specified that unanimity on environmental legislation was required in the Council of Ministers unless it was accepted that a 'qualified majority' was sufficient for decision-making.

The SEA recognised diverse interests and conditions in the EC in two respects. Firstly, Article 130T allowed Member States to adopt more stringent protective measures as long as they were compatible with other objectives of the Treaty such as free and fair competition. Secondly, and more importantly, Paragraph 4 of Article 130R acknowledged the principle of subsidiarity and thereby distinguished between different government levels and their suitability for various environmental policy matters. However, the latter Paragraph fell short of specifying in detail the competencies for each government level (or layer). Moreover, it did not formally acknowledge the importance of the subnational level in the EC environmental policy process. In other words, whilst the SEA strengthened consistently the EC environmental remit, the important role of subnational regions in the overall process was not incorporated properly.

The Treaty on European Union

The Treaty on European Union (TEU), or Maastricht Treaty, elaborated on the SEA provisions but also altered the overall environmental policy picture. It integrated the environment more strongly into the EU formal framework: Article 2 which outlined the basic principles of the EU now stressed the promotion of a "harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the

environment".

One TEU amendment was not directly related to environmental considerations but had implications for the EU environmental policy. Following increased pressures from several subnational governments in the Member States (in particular FRG Länder) and (for different reasons) the UK central government, the principle of subsidiarity was anchored more strongly into the overall treaty framework. The new Article A stated that decisions should be taken as "closely as possible to the citizen" and Article 3B called upon the EU and the Member States to take decisions at the most appropriate government levels.¹⁹ In the context of environmental policies, subsidiarity has spun off an ongoing debate on which government level is 'most appropriate' for decision-making in certain environmental policy (and related) areas. While subsidiarity has helped underline the importance of subnational participation in EU environmental politics, the provision did not resolve questions over competencies. Rather, it contributed towards greater divergencies of environmental policy commitment and performances. In fact, some Member State (and subnational) governments have pursued their stringent environmental measures, while others could justify their less stringent policies on the grounds of subsidiarity and diversity thus contributing to the overall implementation deficit in the EU

¹⁹ Art.3B: The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

environmental policy area. Detailed measures clarifying and regulating the principle of subsidiarity were missing from the TEU.

The TEU's amended Article 130R expanded on key environmental objectives. The EU underlined its international commitment on environmental protection; reinforced the principle to aim at a high level of environmental standards; and integrated environmental considerations into other EU policy areas. Article 130S also provided rather complicated policy-making guidelines which specified the different legislative procedures depending on the form and content of proposals.²⁰ Article 130S(4) placed the financial burden as well as the implementation of environmental policies on the Member States unless measures were specified as common projects. Article 130S did not address subnational actors who actually implement the bulk of EU environmental policies. Legally, Member State governments' were to ensure that the policies are implemented and complied with by actors within the subnational regions. The supervision of subnational regions and their responsibilities in the EU environmental policy process were not explicitly mentioned in the TEU.

Article 130S(5) indicated a major change in the EU environmental policy: if EU environmental measures imposed disproportionate financial costs on one of the less prosperous EU regions (i.e. regions below 75% of the EU GDP average), Member States concerned could either derogate from this

²⁰ Policy-making procedures are mentioned above. As a general rule, the more sensitive issues are (i.e. involving financial and economic sacrifices), the more difficult it is for the EP to influence the policy and the more difficult it is for the Council to reach a decision (in these cases unanimity is required). For a detailed description of the procedures see 'Appendix 2: An Introduction to the EU, its Institutions, Policy-making Procedures, and Legislation'.

measure or apply for financial help under the Cohesion Fund. The latter provision allowed for more flexibility and acknowledged implementation problems faced by poorer Member States. On the other hand, the provision represented a potential loophole for Member States reluctant to cover the economic costs of EU environmental policies. As a final provision, Article 130T confirmed the right for individual Member States to adopt more stringent environmental measures as long as they were compatible with the Treaty. The Commission would have to be notified of these measures.

The Amsterdam Treaty

The Amsterdam Treaty (AT) of 1997 has made minor adjustments to the EU environmental policy. The Treaty formally acknowledges sustainable development as one of the EU's key principles in Article 1. The Treaty also formally recognises environmental policy 'integration': new Article 3C states that "[e]nvironmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development".²¹ Articles 130R, S, T have been renumbered into Articles 174, 175 and 176 respectively and most EU environmental policies are now processed under the co-decision procedure. New Article 174 states that "harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic reasons,

²¹ The objective of environmental integration was previously mentioned in Art.130R(2). Since the new Art.3C covers 'integration', the Art.130R(2) 'integration' clause is deleted from the Amsterdam Treaty.

subject to a Community inspection procedure". Obviously, the latter provision is a response to the criticism of EU 'over-regulation' (or in German: 'Überreguliertheit')²² and provides Member States and their implementors with more discretionary room to follow their EU environmental policy obligations.

On a wider policy scale, a Protocol on the principles of subsidiarity and simplification addresses general problems of the EU policy process. The new subsidiarity provision emphasises that only those policies are adopted at the EU level which are absolutely necessary. The protocol is intended to strengthen the legitimacy of EU policies and ultimately implementors' commitment towards EU policy objectives. Simplification of policy-making procedures and legislation should help EU citizens and implementors understand the EU policy process and thereby facilitate the implementation of EU policies. Apart from the protocol (which is formally separate from the main body of the Treaty), there are no other provisions in the AT which specifically deal with implementation problems of EU policies in general and EU environmental policy problems in particular.²³

In sum, the EU has responded slowly to environmental problems, events and pressures (see 'feed-back' and 'external factors' arrows above) and has developed an environmental policy which now features some 'lowest-common-denominator'

²² Among others Demmke describes the problem of 'Überreguliertheit' in Verfahrensrechtliche und administrative Aspekte der Umsetzung von EG-Umweltpolitik European Institute of Public Administration, 30. May 1996.

²³ The other Treaty amendment concerns EU decision-making: Art.130S specifies that decisions on Art.130R matters should be taken under the co-decision procedure as outlined in Art.189B instead of the Art.189C co-operation procedure. According to the consolidated version of the Amsterdam Treaty, Articles are re-numbered as follows: ex-Art.130R - Art.174; ex-Art.130S - Art.175; ex-Art.130T - Art.176.

compromises but also some far-reaching principles and policy objectives. Over the years, the Treaties have adjusted and refined the EU environmental policy with sustainable development now playing a central role. At the same time, new measures introduced with the TEU and the AT which allow for more flexibility and discretion have provided loopholes to avoid 'inconvenient' EU environmental standards. Both Treaties have briefly touched upon the Member States and regions' diversity (evident in the principle of subsidiarity and the right to adopt more stringent policies) and have recognised some of the difficulties in meeting EU environmental policy obligations (the Cohesion Fund and the principle of simplification are intended to improve policy implementation). But these measures have not tackled the gap between policy-making and implementation by matching environmental principles and objectives with more systematic and legally binding implementation mechanisms tailored for both national and subnational layers. Neither have they changed behavioural patterns and committed national and subnational actors more strongly to EU environmental objectives.

If the Treaties themselves fail to address the problems of EU environmental policy implementation, perhaps EU Environmental Action Programmes (EAPs) compensate for this insufficiency. The following Section outlines the development of EC/EU environmental policy objectives as stated in the EAPs and assesses whether they address (and solve) implementation problems in the national and subnational layers.

3.4 EU Environmental Action Programmes - Policy Priorities and Objectives

EU environmental policy priorities and strategies have been

stipulated in EAPs from the early 1970s onwards. Following the events of the UN Stockholm Conference in 1972, the first EAP of 1973 established for the first time a common environmental policy basis and outlined the main objectives and principles which were re-confirmed in subsequent EAPs and, indeed, in the Treaties. The objectives were - to prevent, reduce and as far as possible to eliminate pollution and nuisances; maintain a satisfactory ecological balance; ensure sound management of natural resources; improve the quality of life; and promote international co-operation.²⁴

Environmental policies followed principles such as pollution prevention; the preservation of natural resources; the polluter pays principle; international commitments and responsibilities; environmental education and awareness; the acknowledgment of the diversity of pollution as well as geographical and other differences; and the possibility for individual Member States to adopt more stringent environmental policies. Depending on policy objective and type, some of the EAP's objectives were to be carried out at the EC level, while many others required implementation within the 'domestic' boundaries of the Member States. Member State governments were required to supervise the policies' execution within their boundaries, while the Council further coordinated and harmonised national policies. The Commission was responsible for monitoring EAP compliance and for initiating further policy proposals.

The first EAP clearly focused on the intergovernmental

²⁴ The first EAP was presented by the European Commission in 1973 and received strong support from the Council and the Member States in a 'Declaration' which accompanied the document. O.J. (1973) No. C 112/1.

harmonisation of national policies and neglected subnational variances. Moreover, the EAP was rudimentary in terms of structure and content with emphasis being placed on scientific research, the development of assessment criteria for future legislation and on specific issues such as the pollution of the Rhine.²⁵ Despite these shortcomings, the first EAP represented an important starting point in the EC/EU environmental policy process as it formulated for the first time principles and objectives which later contributed towards the adoption of common environmental policies.

The second EAP (1977)²⁶ built on its predecessor. One of its more significant features was its mentioning of the preventive policy approach. It also included specific policy issues such as environmental impact assessment (mentioned for the first time) and waste management. However, its emphasis on the urgent need for research, collection of data and their evaluation, indicated that the problems of pollution had not been tackled with the first EAP and that considerably more work was required in this field. In addition, the second EAP emphasised the need for more policy harmonisation: the Commission was requested to "compare national laws" and "align" laws wherever possible. This statement signaled for the first time that environmental policies varied significantly and required increased coordination. While the second EAP encouraged a more harmonised environmental policy framework, it addressed only variances at Member State level while intra-state or subnational variances were not mentioned at

²⁵ The pollution of the Rhine became evident at the end of the 1950s and was high on the political and media agenda throughout the 1960s.

²⁶ O.J. (1977) No. C 139/1.

all.

The third EAP (1983)²⁷ differed from its predecessors in style and content. It focused on the integration of environmental interests into other policy areas and highlighted specific pollution problems in the Mediterranean region (as a response to the Southern enlargement of the 1980s). This time, Member States were noticeably careful to emphasise geographical and social differences as well as economic interests. In other words, the third EAP recognised the necessity to reconcile national and, indeed, regional socio-economic priorities with environmental considerations. To reassure themselves that environmental objectives did not suffer under economic considerations, Member States emphasised that environmental policies "must be carried out without regard to the short-term fluctuations in cyclical conditions".

More importantly, the third EAP was the first document to openly acknowledge the increasing gap between policy-making and implementation. It stated that projects from previous EAPs had not been accomplished and that there was still a "discrepancy between the scale of the projects and the means available for implementing them". The Commission was instructed to progress the monitoring of implementation and increase its effectiveness in enforcing environmental legislation. In addition, the third EAP considered the development of clean technologies as a way to reconcile environmental interests and business opportunities. It was hoped that many of the disappointing EC environmental policies would benefit from this reconciliation.

²⁷ O.J. (1983) No. C 46/1.

The fourth EAP (1987)²⁸ reinstated a more rigorous policy approach. It confirmed long-established objectives and principles but also signaled a change in attitude. The problem of inadequate policy implementation was highlighted in the preceding Council Resolution: the Council -

underlines the particular importance it attaches to the implementation of Community legislation and invites the Commission to review systematically the application and the practical effects of existing Community policy and to provide regular reports on this to the Council and the European Parliament so that an assessment of the effectiveness of such a policy can be made and, inter alia, useful guidelines for future proposals determined.

Notwithstanding the apparent gap between environmental policy objectives and 'reality', the fourth EAP suggested even stricter environmental standards and legislation. The document argued that measures which closed discretionary loopholes for implementors, would benefit the environment and would also provide opportunities for the economy and employment. Stringent environmental standards would stimulate the development of 'clean technologies' and would make the EC as a whole more competitive at the global trading level. Apart from environmental standards and quantitative limits to pollution in EC legislation, the fourth EAP also considered economic instruments in the form of incentives and deterrents, and tolerated state aids for environmental projects "under certain circumstances". The Commission was also asked to develop a liability system, an objective which has not been fulfilled to date because Member States fear the financial costs for their industries.²⁹

²⁸ O.J. (1987) No. C 328/1.

²⁹ The Commission considered this idea in its 1995 Annual Programme but

The fifth EAP (1993)³⁰ was clearly a response to the criticism which had been building up over the years concerning the implementation deficit in the EC/EU environmental policy area. The rigorous regulatory tone of the previous EAP was considered ineffective and was abandoned with the fifth EAP. The new EAP represented a desperate call for alternatives. Entitled 'Towards Sustainability', the fifth EAP followed the Brundtland Report of 1987³¹ and the Dublin Declaration of 1990 which adopted 'sustainable development' as a central theme.³²

As a lesson from past implementation experiences, the fifth EAP highlighted revised environmental policy approaches. For instance, the EU should not rely on legal instruments which set quantitative levels, rules and standards. The variety of legal instruments should be widened to include policy measures such as market-based incentives and disincentives (e.g. voluntary eco-labeling and eco-auditing). Further, the Commission was instructed to establish dialogue groups which would give interested parties in all government layers an opportunity to take part in information exchange and policy-making (i.e. strengthening the 'feed-back' arrows). The strategy was shifted

has, so far, not succeeded in forwarding a proposal which is acceptable for all. Although this idea has been circulating for quite some time, most Member States and their private sectors are not prepared to accept a system which would imply substantial and unpredictable costs for their economies.

³⁰ O.J. (1993) No. C 138/1.

³¹ Our Common Future Report of the World Commission on Environment and Development, 1987.

³² The fifth EAP cites the Brundtland definition of sustainable development. Sustainable development refers to the "development which meets the needs of the present without compromising the ability of the future generations to meet their own needs". The document did not provide answers for questions such as - who determines or predicts the needs of future generations; who safeguards their interests; and what exactly are their needs in the future?

from 'thou shalt not' to 'let's work together', a new campaign which responded to the criticism by many national and subnational implementors that 'Eurocrats' were 'out-of-touch'. Moreover, the fifth EAP praised public participation and encouraged Member States and EU institutions to consider citizens' complaints 'less a nuisance than a resource' for sustainable development. Another proposal for improvement, which was formally included in the fifth EAP, was the creation of a European Environment Agency (EEA) which today collects and processes information and makes data available to interested parties.

Since its adoption, the fifth EAP has been under intense scrutiny by the Commission. In November 1994, the Commission initiated an elaborate assessment process culminating in an 'Interim Review of Implementation'.³³ The Interim Review examined the Programme's implementation progress under six headings: 'integration' of environmental considerations into other policy areas; 'broadening' the range of policy instruments; shared responsibility and partnership (for instance through dialogue groups such as IMPEL³⁴); changes in attitudes and patterns of consumption and production; effective implementation and enforcement; and international responsibility. These aspects were investigated within the areas of the manufacturing industry (in particular SMEs), energy, transport, agriculture, tourism, and

³³ Interim Review of Implementation of the European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development. Towards Sustainability November 1994. COM (94) 453 final.

³⁴ IMPEL: EU Network for the Implementation and Enforcement of Environmental Law, formerly 'Chester Network'. For a detailed discussion of IMPEL see Werner, Julia 'Das EU-Netzwerk für die Umsetzung und Vollzug des Umweltrechts' (pp.131-138) in Lübke-Wolff, Gertrude (ed) Der Vollzug des Europäischen Umweltrechts Erich Schmidt Verlag, Berlin 1996.

international co-operation. The Commission's study concluded with "cautious optimism", at the same time the Commission highlighted insufficiencies in meeting policy objectives as well as the necessity for further improvements. The Commission complained about the persisting perspective that environmental considerations were contrary to economic interests. Businesses continued to make use of environmental resources without fully covering the costs of pollution and environmental deterioration. The conciliation of environmental concerns and economic interests, in particular the 'internalisation' of environmental costs as part of businesses' cost-benefit analyses, remained one of the Commission's key objectives.

Following the Interim Review, the Commission asked Member States' administrators to comment on the fifth EAP progress. Parallel to this consultation, the new EEA was asked to prepare a progress report. On the basis of the EEA document of November 1995 and the consultation report of January 1996, the Commission concluded its investigation with a 'Proposal for a European Parliament and Council Decision on the Review' of the fifth EAP.³⁵ While the proposal restructured priorities, the items for consideration remained essentially the same as the Interim Review. Apart from key priorities such as environmental policy integration, the broadening of legal instruments and 'shared responsibility and partnership', other objectives included improved collection and distribution of data, changes in production and consumption patterns, strengthened local and regional

³⁵ Proposal for a European Parliament and Council Decision on the Review of the European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development. Towards Sustainability January 1996. COM (95) 647 final.

participation, and reinforced commitment towards environmental themes as outlined in the fifth EAP.

In essence, the fifth EAP attempted to close the gap between policy-making and implementation and sought to apply new policy approaches such as 'smart' legal instruments (to use Ingram and Schneider's term) and dialogue at an early stage of the policy process. The new approaches were considered more compatible and acceptable for all interested parties in the national and subnational layers and signaled a strategic change from strict and regulatory policies to more pragmatic and flexible environmental policies.

The EAPs, and particularly the fifth EAP, corresponded more strongly with the practicalities of EU environmental policy objectives than the Treaties. Overall, the EAPs set out EU environmental policy objectives, provided policy guidance for all actors involved and were influential in so far as they paved the way for the adoption of environmental Directives and Regulations. On the other hand, the EAPs do not carry the same legally binding weight as the Treaties. The EAPs have not generated the changes in behaviour and attitudes (i.e. informal determinants) envisaged by EU policy-makers; changes which could have contributed towards a more sustainable environment in the EU.

Table 3.1: Overview of Key EU Legal Instruments

Treaties (primary legislation):

Initially, EEC Treaty Articles 100 and 235 were applied for the adoption of EC environmental legislation.

Single European Act Articles 130 R, S, T set environmental objectives, principles, policy-making procedures, allowed for Member States' stringent measures, acknowledged subsidiarity.

Treaty on European Union Article 2 included environmental objective; principle of subsidiarity was anchored more strongly into Treaty framework; new Article 130R expanded on objectives, 130S introduced more complicated policy-making procedures, mentioned responsibilities, introduced Cohesion Fund, confirmed the right to adopt more stringent measures.

Amsterdam Treaty formally acknowledged sustainable development as one of the key EU principles in Article 1, stressed sectoral policy integration, provided separate protocols on simplification and subsidiarity.

Environmental Action Programmes (EAPs):

First EAP (1973): starting point, outlined for the first time environmental objectives and principles, rudimentary in some parts, based on intergovernmental harmonisation of national policies.

Second EAP (1977): followed first EAP, expressed the need for further research, included some specific target areas, emphasised comparison and alignment of national policies, need for more harmonisation.

Third EAP (1983): included some specific issues such as Mediterranean problems, emphasised diversity, acknowledged implementation gap and the need to monitor progress, expressed hope in clean technologies.

Fourth EAP (1987): more rigorous approach, stricter quantitative standards seen as opportunity to strengthen new technologies, focused on economic instruments.

Fifth EAP (1993): dramatic response to implementation deficit, main theme sustainable development; new emphasis on partnership, participation and flexible legislative tools; progress on Fifth EAP reviewed extensively.

Sample Directives and Regulations (secondary legislation):

Procedural harmonisation: EIA Directive (85/337/EEC); Directive amending EIA Directive (97/11/EC); SEA Directive proposal; IPC Directive (96/61/EC).

Setting qualitative/ quantitative standards: Directive (76/160/EEC) on the quality of bathing waters; Directive (80/778/EEC) on drinking water; Directive (85/203/EEC) on air quality.

Protection of species and areas of special interest: Habitats Directive (92/43/EEC); Wild Birds Directive (79/409/EEC).

Other: Regulation setting up the European Environment Agency (1210/90).

3.5 Problems of EU Environmental Policy Implementation

Considering the complexity of government levels, actors and interests involved in the EU policy-making process, the EU has developed an impressive environmental policy. On the basis of the Treaties and the EAPs, the EU adopted more than 280 items of environmental legislation by the early 1990s of which about 200 Directives specified and formalised in more detail EU environmental policy objectives.³⁶ However, in contrast with the creation of EU environmental policies, their implementation has been rather disappointing.³⁷ For a number of reasons, EU environmental policies have not been filtered through properly to the practical implementation layers with the result that implementors have often missed the original policy targets.

³⁶ Young, Stephen 'Environmental Politics and the European Community' *Politics Review* vol.2(3), February 1993 (p.6).

³⁷ For further information on disappointing implementation results see 'Appendix 3: Evidence on EU environmental policy implementation performances'.

Despite recent attempts to close the gap (attempts include dialogue groups and more flexible legal instruments) the EU is facing a serious implementation deficit in the environmental policy area.

According to Ludwig Krämer:

There is almost no other sector (...) where the gap between political statements and legislative commitments and obligations on the one hand and the reality [on the other hand] is as great as in the field of environment.³⁸

Why does the EU environmental policy area suffer from a gap between policy intention on paper and policy 'reality on the ground'? And why is there no other EU policy sector where the gap is as great as in the field of environment? The following analysis of key problems addresses the questions and sheds light onto the EU environmental policy practice.

EU Environmental Policies fail to reach their Targets because their Legal Instruments are weak

Starting from the outset of policy implementation, the EU's legal instruments which outline EU environmental objectives (or policy statements, see map) imply problems for the policy process. EU policy-makers have at their disposal a wide range of EU tools³⁹ which help accommodate diverse policy matters, objectives and circumstances, but also cause confusion and provide loopholes for

³⁸ Krämer, Ludwig Focus on European Environmental Law Sweet and Maxwell, London 1992 (p.219).

³⁹ A Regulation is directly binding for all "in its entirety"; it should, ideally, be clear in its objectives and there should be no room for interpretations or legal loopholes. A Directive is binding as far as the final aim is concerned; ways and means are left to the Member States and their implementors. A Decision is binding in its entirety upon those to whom it is addressed; it is used to remind a Member State/ institution of certain obligations. Recommendations and opinions have no direct legal force; they are merely a political statement and call upon the addressee to follow EU obligations.

implementors. Directives, in particular, outline broader policy aims but also provide discretionary room for national and subnational implementors over the policies' ways and means. This discretionary room has often been used to avoid policy obligations. While this problem has been evident in other EU policy areas such as competition and social policy, the discretionary room for EU environmental Directives has been particularly large, partly because the Directives have had to accommodate several (long-term) objectives which affected several government levels and departments. In the case of Directive (76/160/EEC) on the quality of bathing waters, UK and FRG legislators used their discretionary room to interpret the notion of 'significant number of bathers' in such a way that only a small number of bathing waters were identified for monitoring. Following heavy criticism from the Commission, both the UK and the FRG eventually adjusted the number of their bathing waters from 27 to 470 and from 97 to 2000 respectively.⁴⁰

Even within the category of Directives, the EU has developed a range of legal instruments with different obligations and control measures.⁴¹ The variety of instruments allows for the political, economic and geographical diversity of the EU as well as the wide range of environmental policy matters. On the other hand, the complexity of EU instruments has had the effect that many

⁴⁰ Information taken from Krämer, Ludwig Focus on European Environmental Law (pp.8/9) Sweet & Maxwell, London 1997.

⁴¹ Rehbinder and Stewart distinguish between three Directive categories: the 'typical' Directive contains an obligatory goal but leaves the means to the Member States, the 'regulation-type' Directive contains detailed substantive obligations (standards, provisions for implementation etc.), and the 'framework' Directive paves the way towards a 'regulation-type' Directive. Cited in Freestone, David 'EC Environmental Policy and Law' (pp.135-154) Journal of Law and Society 18(1), Spring 1991.

implementors in the national and subnational layers have found it difficult to distinguish between instruments and interpreted their content incorrectly. Implementors have had difficulties with the details of EU environmental laws which often contained several objectives and affected several policy areas. Moreover, the study of EU environmental laws has been time consuming for implementors who have rather dealt with familiar matters first before attending to complicated, and sometimes 'inconvenient', EU environmental policy documents.⁴² Aware of implementors' difficulties with EU legal instruments, the Commission has suggested that documents and legislative processes should be simplified and streamlined as much as possible.⁴³ However, the 1990s have seen more complex environmental policy demands such as the integration of environmental considerations into other policy areas and the adoption of procedural, cross-sectoral policies such as the IPC Directive. These policies have been difficult to accommodate in the light of the Commission's simplification strategy. The new approach of simplification has therefore been limited to certain environmental objectives.

Another major problem of EU legal instruments concerns the actual language used in formulating EU environmental policies and their subsequent interpretation. Following an elaborate bargaining process, Directives in particular often feature legal formulations which are deliberately vague and open to

⁴² In the words of an Environmental Consultant, EU environmental policy documents tend to end up at the bottom of the 'in' tray. Interview, 15. February 1995, Dalkeith.

⁴³ Commission DG XI, interview, Brussels, 7. March 1997; see also Commission information document How is the European Union protecting our Environment? June 1996; McHugh, Fiona 'Voluntary accord get mixed response' (p.18) European Voice 30.May - 5.June 1996.

interpretation to suit all interests involved. General terms such as 'best available technology not entailing excessive costs', 'high environmental standards' or 'no nuisance' are not sufficiently defined to provide for a truly common environmental policy basis. The term 'best available technology not entailing excessive costs' (known as the BATNEEC principle), for instance, raises questions such as - which technology is 'best'; when are costs 'excessive'; and who decides whether costs are excessive or not? Apart from the problems of definition and interpretation of certain terms, Directives provide large discretionary powers over the ways and means of policy implementation. This lack of clarity has encouraged Member States and their implementors to interpret EU legislation to their own liking with the result that many EU environmental policy targets have not been on the ground.⁴⁴

The Filtering Process of EU Environmental Policies is enormously complex and the Links between Layers are weak

Focusing on the actual implementation process, EU environmental policies require formal transposition by the Member States and their national and (depending on Member State) subnational legislators. In the case of Directives, national and subnational legislators are also required to specify policy requirements where the EU legal text provides flexibility and discretion. National and subnational administrators should then proceed with the implementation by establishing guidelines and by applying the policy on the ground.⁴⁵ Administrators are supported

⁴⁴ Giselle Bakkenist describes in detail how UK actors interpret liberally Directive (90/313/EEC) on access of environmental information in Environmental Information. Law, Policy and Experience Cameron May, London 1994.

⁴⁵ Art.5: Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty

by various quasi-governmental bodies and environmental non-governmental organisations (NGOs) which contribute information and know-how. Citizens as well as representatives from industry, the farming community and environmental NGOs are expected to comply with the policy. Finally, courts within the Member States have the task of interpreting EU legislation and, if necessary, enforce full compliance with legal obligations.

Figure 3.2 below describes the filtering process of EU environmental policies as complex in many respects. Firstly, the vast majority of EU environmental policies (e.g. policies regulating water and waste management, pollution control policies, the EIA policy discussed in Chapter 6) require implementation at the national and subnational government levels. In other words, policies have to be filtered through essentially two layers before they reach their implementation target. Considering the long distance between policy statement and target, EU environmental policies face more potential implementation obstacles than, say, national policies.

Secondly, the filtering process of EU environmental policies involves a multitude of actors who are influenced by a variety of informal determinants (i.e. attitudes towards environmental protection and the EU; policy-makers' priorities and strategies). Following Offe's concept of subsystems, EU environmental policies tend to suffer from tensions between representatives of economic interests (e.g. business and farming communities) and

or resulting from action taken by the Institutions of the Community. They shall facilitate achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

SEA Art. 130R (4) reinforces Member States' responsibility.

environmental interests (e.g. environmental NGOs) while political-administrative actors (e.g. Commission officials and administrators on the ground) try to mediate between the two groups. The 'push-pull' effect of conflicting interests hinders the implementation process. In the case of the EIA Directive, planning officials in the national and subnational layers have tried to consolidate the developers' economic interests with environmental concerns of NGOs and citizens affected by project applications. During the balancing process, planning officials have often opted for the easiest solution and have given way to economic interests. As a result, the key objective of the EIA Directive (i.e. environmentally sound 'minimum-regret-planning') has often been ignored in practice.⁴⁶

Thirdly, the filtering of particularly ambitious EU environmental policies often requires major adjustments of existing formal and informal conditions in the national and subnational layers. Formal determinants such as legal systems and political-administrative structures as well as informal determinants such as policy-makers' priorities and attitudes towards environmental protection in the national and subnational layers are not always compatible with EU environmental policies. In practice, favourable preconditions for successful implementation such as the commitment and flexibility of national and subnational actors have often been missing during the filtering process. Facing the inflexibility of national and subnational political-administrative structures and practices, many EU environmental policies have simply failed to reach their target.

Finally, the filtering process has been hampered by the way

⁴⁶ See Chapter 6 for a detailed analysis of the EIA Directive and its implementation in Scotland and Bavaria.

competencies have been allocated and shared between EU, national and subnational layers and their actors. According to the treaties, the Commission is required to 'guard' the implementation of policy obligations as stated in the treaties and EU legislation.⁴⁷ The Commission is supposed to 'remind' Member States of policy commitments and, if necessary, threaten Member States with fines and court action if they fail to fulfill their tasks or violate against legislation. While Member States are required to follow their EU environmental policy commitments, national and subnational implementors' responsibilities are not specifically addressed in the treaties. EU policy-makers have been careful not to dictate the allocation of competencies not only because they are so diverse in terms of state systems and government structures but also because they have feared that the allocation of competencies would start a major debate on national-subnational relations and power-sharing.

In practice, the Commission's guardian activities have almost always come to a halt at the first stage of implementation (i.e. formal transposition of EU legislation). Member States and (depending on constitutional settings and the policy in question) their subnational regions have often ignored deadlines or failed to notify the Commission of any changes in national (and subnational) legislation. In many cases, Member States and subnational regions have had difficulties in interpreting Directive objectives or they assumed that their own legal instruments and administrative structures and resources were adequate.⁴⁸

⁴⁷ The Commission has to "ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied" (Art. 155).

⁴⁸ Bavarian legislators argued that formal transposition of the EIA Directive was not necessary because existing legal-administrative provisions in Bavaria

If Member States fail to transpose and implement Directive objectives into the national context or fail to put pressure on their subnational regions to follow their EU obligations, the Commission can initiate infringement proceedings under Article 169.⁴⁹ The infringement procedure is divided into three stages. First, the Commission informs the Member State of a suspected infringement which has come to its notice ('letter of formal notice') and requests the Member State to submit its observations. If the Member State's response is not satisfactory, the Commission issues a 'reasoned opinion' stating why infringement is suspected. If the Member State still does not show any reaction to the Commission's concern, the matter is taken to the European Court of Justice for judicial ruling.

In practice, the first stage has often clarified misunderstandings and implementation problems.⁵⁰ Both the Commission and the Member State governments have sought to resolve problems at an early stage because they did not wish to rock the boat. However, many cases have not been taken further by the Commission out of reluctance to 'over-use' the threat of legal prosecution. In

were adequate. See Chapter 6 for a detailed account of the Directive's implementation.

⁴⁹ Art.169: If the Commission considers that a Member State has failed to fulfill an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

⁵⁰ In general, most disputes are resolved during the first stage following the 'letter of formal notice' (1209 cases). The number of 'reasoned opinion' cases for the same period is considerably smaller (342 cases), while the number of references to the ECJ is comparatively insignificant (44 cases). The figures refer to Community Law in general for 1993. Source: Alan Butt Philip Regulating the Single European Market: A Comparison of the Implementation of Social and Environmental Legislation Research Paper, 1994.

addition, the Commission has been very careful not to appear as a dominant power 'from Brussels' for Member States and their implementors. Yet, despite this diplomatic approach, the Commission has had to initiate several legal proceedings against Member States in 1997. Thirteen out of fifteen Member States are currently challenged over their failure to comply with EU environmental legislation on water quality, waste management and nature protection (in particular the Habitats Directive).⁵¹

If Member State governments refuse to comply with EU environmental policy obligations or are unable to commit their subnational regions to EU policy compliance, the cases are referred to the ECJ which is likely to impose fines under TEU Article 171. It is debatable whether the Commission's legal challenge together with the fines imposed by the ECJ have a significant impact on the Member States' compliance with EU environmental legislation. The moral pressure caused by the publication of fines certainly has had some effect on the Member States and their implementors.⁵² On the other hand, many Member States have been prepared to pay the fines since relatively small amounts of money are considered worthwhile in the light of costly environmental standards and economic difficulties.⁵³

⁵¹ Smith, Michael 'Brussels in environmental clampdown' Financial Times 18/19. October 1997, (p.2).

⁵² In 1997, the FRG faced heavy fines imposed by the ECJ for insufficient implementation of EU environmental legislation in three instances. The 'punishment' was seen by observers in Brussels as an embarrassment and effective deterrent for the FRG. For more details see Europe Nr.6903 (N.S.), 30. Januar 1997 (p.6).

⁵³ Butt Philip argues that current penalties are not threatening enough for polluters. Regulating the Single European Market: A Comparison of the Implementation of Social and Environmental Legislation Research Paper, 1994.

In order to fulfill its guardian task and strengthen the filtering links from one layer to another, the Treaties should provide the Commission with more effective powers enabling it to control and, if necessary, enforce compliance within the Member States and their subnational regions. Equally, Member State governments should have adequate monitoring mechanisms in order to check EU policy compliance within the subnational regions. However, neither the Member State governments⁵⁴ nor the Commission have shown effective controlling powers. The Commission in particular, does not possess adequate staff and financial resources to monitor the implementation of every EU environmental policy in every part of the EU. It does not possess 'eco-inspectorate' powers similar to the fisheries inspectorate functions under the Common Fisheries Policy. Instead, it has to rely upon complaints from environmental NGOs and individual citizens who inform the Commission of any alleged infringement cases.⁵⁵ Complaints, however, are insufficient in monitoring overall compliance. For instance, UK citizens have tended to complain more than citizens do from Denmark and within the UK there have been more complaints from England than from

⁵⁴ Reporting by subnational actors on the progress of EU environmental policy implementation is predominantly on an informal and voluntary basis despite specific reporting requirements outlined in EU Directives. For further information on the difficulties associated with reporting see The State of Reporting by the European Community in Fulfillment of Obligations contained in EC Environmental Legislation Institute for European Environmental Policy, London, November 1993.

⁵⁵ In turn, EU citizens consider the Commission as the most appropriate recipient for complaints and advocate of EU environmental objectives. For more information on the Commission's relations with environmental NGOs see Webster, Ruth 'Environmental Collective Action. Stable patterns of co-operation and issue alliances at the European level' (pp.176-195) in Greenwood, Justin; Aspinwall, Mark Collective Action in the European Union. Interests and the new politics of associability Routledge, London 1998.

Scotland.⁵⁶ This imbalance contributes to an incoherent picture of the whole policy area.

Member States and their subnational regions have not been assessed on their performance in a uniform and transparent manner and therefore cannot be properly compared with each other. Further, implementors' discipline and commitment towards EU environmental obligations has been relatively low. To a certain extent, EU policy-makers have acknowledged the problem by creating another EU institution, the EEA, which has developed a system of uniform and comparable information gathering and dissemination. The system has helped to identify cases of non-implementation and has thereby 'embarrassed' those national and subnational actors who did not comply with EU environmental policies. However, while the EEA has processed environmental information, its tasks have not included an active 'eco-inspectorate' function. When the EEA was established, the Member States deliberately restricted its tasks to the gathering and distribution of information. Council Ministers were not prepared to have "(..) their performances vetted by another tier of 'Brussels bureaucrats'".⁵⁷ Without a control body, however, it is not only difficult to gain a coherent and accurate overview of the success or failure of environmental policies, it is also difficult to fully enforce implementation discipline within the Member States and their regions.

Since the early 1990s, the Commission has sought to

⁵⁶ Former DG XI secondment official (complaints department), interview, 10. May 1995, Glasgow.

⁵⁷ 'European Environment Agency gets under way' ENDS Report No 240, January 1995 (pp.20-23).

consolidate policy-making and implementation by initiating new, alternative policy strategies which more strongly involve actors from all government levels and interest groups. In particular, the Commission has focused on 'working' or 'dialogue' groups which include a wide spectrum of actors and their interests. The Commission now receives information on implementation performances from 'IMPEL', a forum for information exchange and dialogue which assesses the practicalities of EU environmental policies. Apart from dialogue and partnership initiatives, the Commission has responded to discrepancies between stated policy objective and 'reality' by setting policy expectations at a lower, more pragmatic level. Many new environmental policy proposals focus on voluntary, market-orientated solutions to environmental problems. As a response to national and subnational implementors' criticism of EU 'Überreguliertheit', the Commission has also considerably reduced the number of environmental policy proposals to allow government levels below to take their own environmental policy decisions (under the principle of subsidiarity). In addition, an internal Commission communication has suggested a systematic 'implementation check' for Commission. This mechanism assesses the EU environmental policies' potential costs and benefits as well as feasibility and compatibility with national and subnational legal-administrative systems. However, some Commission officials have already expressed doubts over the necessity and usefulness of such a 'check'.⁵⁸

⁵⁸ During an interview one Commission DG XI official defended the proposal, while his colleague opposed the proposal: "We already have consultation procedures (...), the check could be counter-productive." Brussels, 7. March 1997.

While the Commission hopes that these and other policy initiatives will help establish more acceptable EU environmental policies, it remains to be seen whether these efforts can really strengthen implementation links and make the filtering process more permeable. The Member States and their subnational regions have repeatedly demonstrated reluctance in accepting more binding monitoring and enforcement mechanisms. In the light of the weak links between the layers, the gap between policy statement and implementation is very likely to remain.

The Layers involved in the Filtering Process are diverse, complex and their formal and informal Determinants are often incompatible with EU Environmental Policies

EU environmental policies require implementation in national and subnational layers which are complex and diverse. In terms of formal determinants, constitutional settings, political-administrative structures and resources as well as legal systems (all of which are shaped by policy styles, practices and priorities) have varied across and, more importantly, within Member States.⁵⁹ Similarly, informal determinants such as relationships between actors, attitudes towards environmental protection and the EU, and policy-makers' strategies and practices (all of which are influenced by formal conditions) have varied, too. This diversity of determinants is understandable and legitimate. Nevertheless, the question arises whether some of the national and subnational layers can cope with EU environmental policies.

⁵⁹ Ludwig Krämer describes the differences in legal cultures in Focus on European Environmental Law Sweet & Maxwell, London 1992. Ken Collins MEP, chairman of the EP Environment Committee, pointed out differences in transposition approaches during an interview. He went so far as to describe the Italian attitude towards Directives as merely "something to aim at". Interview, 3. February 1995, East Kilbride.

Given the wide array of formal and informal determinant combinations, the ways in which EU environmental policies have been implemented (or not implemented) within the Member States and their subnational regions resemble a colourful patchwork. Many layers have featured an unfavourable combination or 'mix' of determinants which have hindered the successful implementation of EU environmental policies.⁶⁰ National and subnational implementors have also tended to amend EU environmental policies as much as possible to suit their particular 'mix' of formal structures and informal priorities.⁶¹ As a result, EU environmental policies have often assumed a shape which has not resembled the policy intention at the outset of the process.

Focusing on formal determinants, EU environmental policies have often been hindered due to a lack of resources or inadequate administrative structures within the national and subnational layers.⁶² Budgetary constraints in particular, have put a damper on EU environmental policy obligations and in many cases the EU Cohesion Fund did not compensate for the problems of financing

⁶⁰ See Chapters 4, 5 and 6. Knill and Lenschow also argue that disappointing implementation outcomes cannot be explained with incompatible (national) administrations alone. Rather, a complex mix of factors shape policy implementation. See 'Coping with Europe: The impact of British and German administrations on the implementation of EU environmental policy' (pp.595-614) Journal of European Public Policy vol.5, No.4, 1998.

⁶¹ Their discretion, of course, depends upon the form of EU environmental policy: Regulations have direct effect and are therefore transposed verbatim while Directives provide a large scope for interpretation and formal transposition.

⁶² For instance, Baker et al argue that "the weak resource base of peripheral regions and Member States limits their capacity to implement policy. [This is] especially so in the field of environmental protection, requiring as it does high levels of scientific and technical expertise (...)." (p.9) in Baker, Susan; Yearley, Steven; Milton, Kay (eds) Protecting the Periphery: Environmental Policy in Peripheral Regions of the European Union Frank Cass, London 1994.

the implementation of policies which demand, for instance, expensive technological standards. In addition, some Member States and their subnational regions have featured political-administrative structures which were less suited than others to cope with the requirements of EU environmental policies. For instance, they have not been equipped with the institutions and technological know-how necessary to measure quantitative environmental standards.⁶³ The details of EU environmental legislation (e.g. quantitative thresholds and qualitative standards) have also clashed with national and subnational legal systems and instruments. There are, therefore, a number of potential formal obstacles (highlighted in figure 3.2 below) which can hinder the successful implementation of EU environmental policies.

In terms of informal determinants, particularly attitudes towards the EU as well as policy-makers' economic priorities have played a significant role in the implementation of EU environmental policies. Firstly, political-administrative actors in the national and subnational layers have not received EU environmental policies unprejudiced. Often, disputes over conflicting interests which had been conducted 'out in the open' during policy negotiation have not been resolved with the adoption of a policy. Reacting to preceding conflicts, actors have not felt obliged to show much enthusiasm towards a controversial environmental policy.⁶⁴ In other cases, national and subnational

⁶³ Lack of administrative staff and resources are highlighted by Krämer in Focus on European Environmental Law Sweet & Maxwell, London 1997. See in particular (p.22).

⁶⁴ For instance, it took the Member States ten years to agree on a common policy on environmental impact assessment. Once the EIA Directive (85/337/EEC) was adopted, implementors received no encouragement in realising the policy objective and showed limited enthusiasm towards the Directive. See Chapter 6.

actors have reacted towards EU environmental policies with either disappointment over 'lowest-common-denominator' compromises,⁶⁵ or they have been preoccupied with other policy priorities and have not taken much notice of EU environmental policies. Often, national and subnational actors have not been particularly biased against EU environmental policies but have chosen the easiest option which caused the least friction: they have avoided 'inconvenient' policy obligations for as long as possible.

In terms of relationships with, and attitudes towards the EU, many national and subnational actors have questioned the legitimacy with which EU environmental policies have been adopted. Particularly subnational implementors have often considered EU policies as "imported legislation"⁶⁶ and have clashed with EU policy-makers over the question whether a certain environmental policy required harmonisation at the EU level. Subnational regions with a strong territorial identity such as Bavaria have perceived 'policies from Brussels' as a challenge against their own political competencies. Reassurances on the principle of subsidiarity in the Treaties and other EU documents have not eliminated the scepticism over 'unnecessary policies from Brussels' by many implementors on the ground.⁶⁷

⁶⁵ Among others, the term 'lowest common denominator' has been used by Michael Mann in 'EU struggles to find right shade of green' (p.13) European Voice 30.May - 5.June 1996.

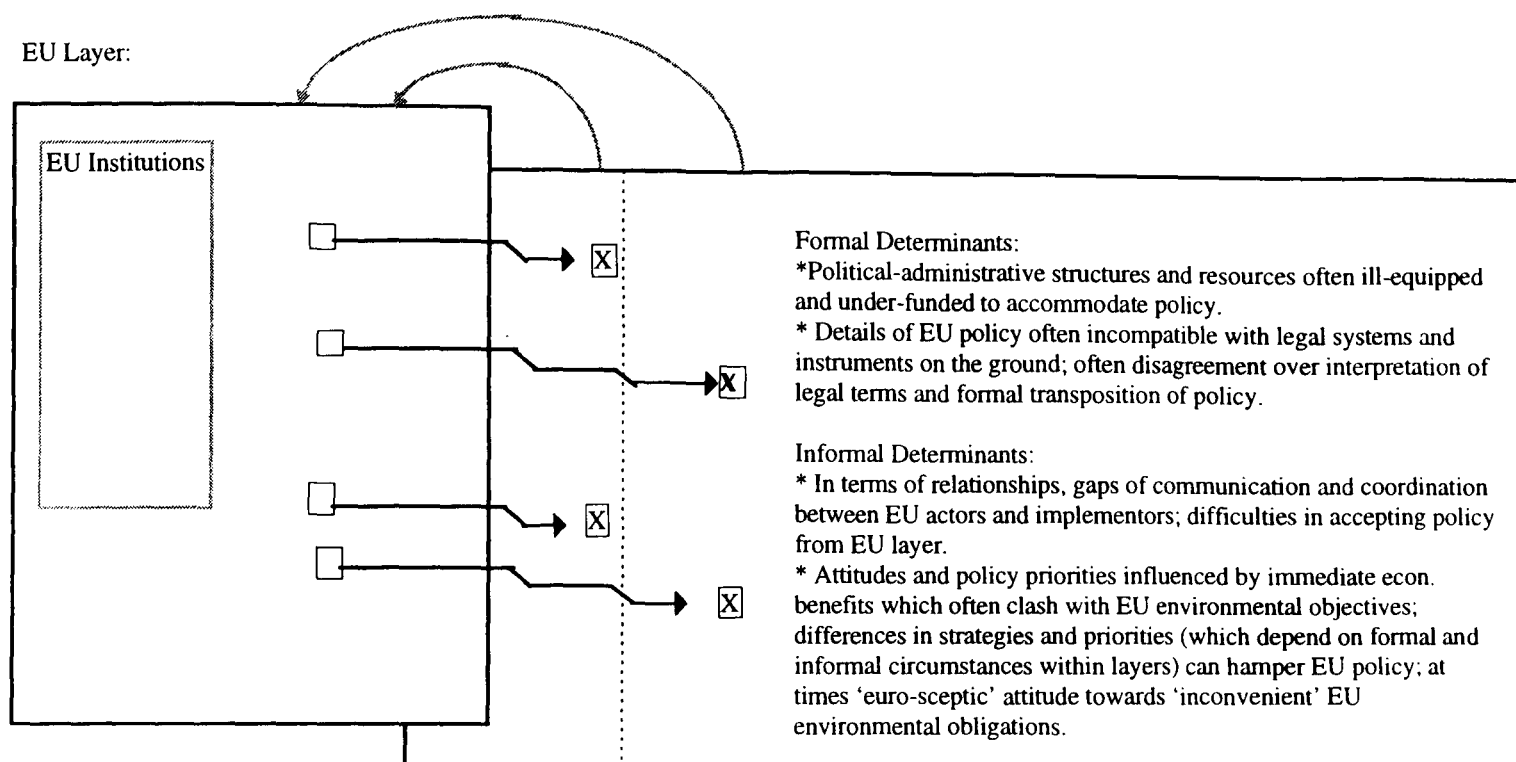
⁶⁶ Krämer, Ludwig Focus on European Environmental Law 1992 (p.216). Description also used by di Fabio, Udo 'Integratives Umweltrecht. Bestand, Ziele, Möglichkeiten' (pp.329-337) Neue Zeitschrift für Verwaltungsrecht Nr.4, 1998.

⁶⁷ Ludwig Krämer would go as far as describing some of the opposition against 'imported' environmental provisions as 'xenophobic'. (p.11) Focus on European Environmental Law Sweet & Maxwell, London 1997.

Not far from the legitimacy question is the economic imperative which influences EU environmental policies. Economic motivations which contributed towards the adoption of EU environmental policies have tended to differ from the economic (self-) interests of national and subnational actors on the ground. More specifically, economic concerns over possible imbalances in the 'level-playing-field' caused by diverging environmental requirements which compelled Member States' governments to harmonise their national environmental policies, have tended to evaporate at a later stage in the light of immediate interests in protecting and generating national and subnational economies. Increased trade has been a desirable but abstract goal. However, actors on the practical ground have found it difficult to believe that policies which effectively restrict their economic activities, not only protect the environment but also benefit their economies in the long term. National and subnational implementors and business communities have therefore tended to secure economic priorities first before attending to the 'inconvenient' harmonisation of costly environmental measures. Subnational administrators in particular have shown a protectionist attitude towards their local economies and have been less sympathetic towards the goal of EU-wide environmental standards harmonisation (see Chapters 5 and 6). This discrepancy between the 'level-playing-field' objective in one layer and economic self-interests in the other layers helps explain why many EU environmental policy outcomes have been disappointing and why a wide gap is still evident between EU environmental policy statement and 'reality'. It underlines the importance to examine the motivations of those who are actually charged with the formal and practical implementation of EU

environmental policies.

Figure 3.2: General Implementation Obstacles for EU Environmental Policies



3.6 Conclusion: Between EU environmental policy ambition and reality

To sum up, EU environmental politics is an extremely complex process which involves a vast range of actors and interests as well as complicated procedures and legal instruments. The multi-layered implementation map has illustrated the long and complex filtering process from policy statement to target, has highlighted the discrepancy between the various layers involved in the process

and has already identified formal and informal determinants which hinder the implementation of EU environmental policies (confirming Argument 1).

Since the early 1970s, EU environmental politics has been dominated by the 'making' of EU environmental policy 'statements' (i.e. Directives and Regulations). These statements have usually accommodated a complex mix of considerations ranging from transboundary and accumulative impacts of pollution to economic level-playing-field interests and their correlation with environmental matters. Yet, when it comes to the implementation of these policies, the EU has tended to neglect formal and informal determinants in the layers as well as mechanisms which would ensure the policies' implementation and compliance. Since the early 1980s, EU policy-makers have recognised an implementation deficit in the environmental policy area. In recent years, EU policy-makers have attempted to adjust their policy approach through alternative strategies outlined in the TEU, the AT, the fifth EAP and more recent secondary legislation. These strategies, however, have had a limited impact on the effectiveness of EU environmental policies and have not adequately addressed the gap between policy objectives and their implementation.

One of the main reasons behind the discrepancy between policy-making and implementation has been the rather intergovernmentalist, state-centrist approach with which EU environmental policies have been adopted and pursued until recently. This approach has neglected the practical problems of EU environmental policy implementation on the ground as well as the multi-facetedness of Member States and their intra-state

variances. Most EU environmental policies require implementation at all government levels and particularly at the regional and local levels. Yet the complexity and influence of these levels on EU environmental policies has been to date underestimated. Subnational regions are in many ways distinct from their 'mother' states and feature formal and informal determinants which can differ significantly from determinants which shape politics and policy processes in the Member States at large. During the filtering process, EU environmental policies can clash with incompatible determinants within the subnational regions; determinants which would not be detected with a state-centrist ('domestic') research method. Therefore, in order to gain a more accurate picture of the EU environmental policy reality (and close the implementation gap), it is necessary to investigate implementation practices more thoroughly and go beyond the national (or 'domestic') level to include specifically subnational conditions and obstacles during policy implementation.

Chapters 4 and 5 refine the study of EU environmental policy implementation by investigating the national and subnational layers separately. The Chapters assess to what extent subnational regions differ from their 'mother' states and to what extent they shape the EU environmental policies during implementation (addressing Argument 2). Chapter 6 will then examine in detail the filtering process through the layers by focusing on one specific policy example: the EIA Directive. The following Chapters will confirm that subnational regions and their actors do play a significant role in EU environmental politics and that they therefore deserve more attention by EU practitioners and researchers.

Chapter 4

Environmental Politics and Policy in the UK and the FRG

4.1 Introduction

The previous Chapter described the complexity of the EU environmental policy area and highlighted common difficulties in filtering EU environmental policies through the implementation layers. It argued that implementation layers are diverse, complex and often incompatible with the style and content of EU environmental policies. This Chapter takes up the incompatibility argument by examining the national layers of the UK and FRG and their environmental policies in more detail. In particular, the Chapter examines the national environmental policies and how they have been shaped by distinctly British/ German formal and informal determinants. It then assesses to what extent national and EU environmental policies differ and highlights those formal and informal determinants in the UK and FRG layers which hinder the implementation of many EU environmental policies. With the national layers in mind, Chapter 5 can then proceed with an investigation of the subnational layers, Scotland and Bavaria, whose environmental policies and implementation performances in the EU environmental policy area heavily depend upon their embeddedness within the wider state systems.

Focusing on the national layers, the FRG and the UK have often been described as environmental 'leader' and 'laggard' respectively.¹ Indeed, as far as EU environmental policy-making is

¹ Alberta Sbragia identifies the FRG as a 'leader' and the UK as a 'laggard' in EU policy-making in 'Environmental Policy: The Push-Pull Policy-Making' (pp.235-255) in Wallace, Helen; Wallace, William (eds) Policy-Making in the European Union Oxford University Press, Oxford 1996. Sonja Böhmer-Christiansen and Jim Skea describe the UK and FRG along similar lines in Acid Politics: Environmental and Energy Policies in Britain and Germany Belhaven Press, London 1991.

concerned, the FRG frequently has put pressure on other Member States to set uniform environmental standards, while the UK has blocked many EU environmental policies which it considered over-ambitious or unnecessary.² However, the 'leader-laggard' analyses miss one important point: in terms of EU environmental policy implementation, both the FRG and the UK have failed to realise many policy goals. At the beginning of the 1990s, the FRG and the UK failed even to notify the Commission about the formal transposition of Directives in 10% of the cases. This performance improved slightly by 1995.³ The FRG and the UK have failed to implement various types of environmental policies: the Commission has tackled both Member States over the inadequate implementation of the EIA Directive (a typical procedural framework Directive), the failure to designate areas for environmental protection (under the Wild Birds and Habitats Directives), and failure to comply with quantitative and qualitative environmental standards (in particular water and air quality standards).⁴ Over the years, the Commission referred alleged

² For instance, in the early 1980s, the FRG took the lead in adopting Directives which regulate emissions from large combustion plants. For further information see Böhmer-Christiansen, Sonja; Skea, Jim Acid Politics: Environmental and Energy Policies in Britain and Germany Belhaven Press, London 1991.

³ For details see Annual Reports on Monitoring the Application of Community Law by the Commission. In particular, Eleventh Annual Report (COM (94) 500 final) and Thirteenth Annual Report (COM (96) 600 final).

⁴ Among others, Directives 85/203/EEC (air quality); 76/160/EEC (bathing waters); 80/778/EEC (drinking water); 79/409/EEC (wild birds); 92/43/EEC (habitats). For more information see Commission Annual Reports as well as Demmke, Christoph Verfassungsrechtliche und administrative Aspekte der Umsetzung von EG-Umweltpolitik European Institute of Public Administration, 30. May 1996. For a British account on the implementation of water quality Directives see Ward, Neil; Buller, Henry; Lowe, Philip Implementing European Environmental Policy at the Local Level: The British Experience with Water Quality Directives University of Newcastle upon Tyne, March 1995.

infringement cases to the ECJ which, in many instances, confirmed the Commission's criticism.

The following investigation gets to the bottom of the implementation problems by examining the national layers and their environmental policies in detail. The Chapter argues that both Member States feature 'distinct' environmental policies which derive from their formal and informal circumstances (or determinants) and differ in many respects from EU environmental policies. The Chapter suggests two broad reasons for the often inadequate implementation of EU environmental policies. Firstly, EU environmental policies often clash with informal determinants, in particular with national policy-makers' priorities and strategies as well as policy styles and practices. Secondly, EU environmental policies are often incompatible with formal determinants such as political-administrative structures and legal systems that organise and administrate environmental policies within the national layers.

THE UNITED KINGDOM

4.2 Environmental Politics and Policy in the UK:

'Forerunner' and 'Dirty Man'

National environmental policies are shaped by formal constitutional settings as well as informal circumstances (e.g. policy priorities and relationships between actors) within state systems (or layers). In the case of the UK, formal and informal determinants have contributed towards a paradoxical environmental policy. The UK has often been at the forefront of environmental policy, while at other times political and economic behaviour in the UK has pointed towards a lack of environmental commitment. It is therefore difficult to pin down one straight-

forward UK policy on the environment.⁵

One of the key formal determinants contributing to the paradoxical handling of environmental matters has been the UK constitutional setting which is highlighted in figure 4.1. The UK is a centralised state which evolved over centuries and is composed of four former kingdoms. Ultimate sovereignty lies with Parliament. The UK does not possess a written constitution, therefore legislation derives either from traditional conventions or political decisions taken in parliament (with the House of Commons playing the central role in decision-making). UK policies are formulated as Acts of Parliament, Regulations, and Statutory Instruments supported by administrative Circulars. Scotland and Northern Ireland generally require separate bills to allow for their legal traditions as well as geographical and other diversities. Nevertheless, legislation for England, Wales and Scotland stem from the legislative centre in Westminster and Whitehall and do not differ significantly from each other in terms of content and objective.⁶

The UK constitution's combination of ancient traditions on the one hand and the potential for radical change on the other is reflected in the development of UK environmental policy. In some respects the UK has been slow in adopting a strong environmental position, while in other instances the UK has taken the lead in environmental initiatives.

⁵ John McCormick describes the British attitude towards environmental matters as rather "curious" in British Politics and the Environment 1991 (p.8).

⁶ The implications of a Scottish parliament are discussed in 'Appendix 5: Scottish Devolution - A Brief Outline'.

The Forerunner

In terms of informal attitudes towards environmental protection, the British have traditionally valued their natural environment and initiated environmental organisations and legislation long before other states (and indeed the EU) even considered the problems of pollution. The 'Commons, Open Spaces and Footpaths Preservation Society', for instance, was founded in 1865 and was one of the first environmental NGOs to appreciate the countryside and campaign for its access. Modern environmental NGOs in the UK continue this tradition; they now enjoy large memberships and are among the wealthiest and most influential environmental groups in Europe.⁷ Building on the early influence of environmental NGOs, the UK was the first country in Europe to form a Green Party which, however, could not establish itself as a strong parliamentary force mainly because of the UK electoral system (i.e. formal determinant constraint).⁸

Apart from a traditional interest in the countryside, the British were also environmental 'initiators' in Europe because they were the first to suffer under the negative effects of industrial activities which began in the UK. Industrialisation brought not only material prosperity but also problems of pollution. Legislation on the environment, dating back as early as 1273, responded to the negative effects caused by early industrial activity.⁹ 1863 saw the

⁷ Gordon, John 'Environmental Policy in Britain and Germany: Some Comparisons' European Environment vol.4, part 3, June 1994, (pp.9-12).

⁸ In the first-past-the-post electoral system (or FPTP-system) the candidate who secures more votes than his/ her rivals wins the constituency seat. The UK Green Party was founded in 1973 and was named 'Ecology Party' between 1975 and 1985.

⁹ Early environmental legislation included a law prohibiting the burning of sea coal.

Alkali Act which established a framework to control industrial processes that emitted hydrochloric acid. One century later, the British were the first to respond to environmental pressures by adjusting their formal government structure: in 1970 they established a Department of the Environment (DoE).

The establishment of the DoE (today DETR) was facilitated by the UK policy style and in particular by the UK-specific definition of the term 'environment'. Under the environment, people in the UK understand a collection of issues which include architecture, town planning, local government administration and pollution control. The DoE was established to accommodate this wide range of policy matters. In this sense, the DoE concept resembles the EU environmental policy approach of policy 'integration'. However, environmental interests in the UK have tended to take a subordinate position in relation to other policy priorities such as housing and industrial development.¹⁰ A similar (integrative but also compromising) pattern applies to the territorial Scottish Office which deals with environmental policies in Scotland (outlined in detail in Chapter 5). EU environmental policy objectives have been processed accordingly throughout the UK: next to other (economic or social) interests, many EU environmental policies have lacked the support by UK actors necessary to ensure effective implementation.

The 'Dirty Man'¹¹

To a certain extent, the UK has taken the environmental policy

¹⁰ To illustrate the point, only 10% of the DoE staff deal with environmental matters. McCormick, John 'Environmental Politics' (pp.267-284) Patrick Dunleavy et al Development in British Politics 4 1993.

¹¹ Among others Stephen Young describes Britain as a 'dirty man' in The Politics of the Environment 1993, (p.50).

lead in Europe, for instance by establishing environmental institutions and organisations and adopting legislation on air and water quality. However, these initiatives have represented piecemeal and 'reactive' rather than comprehensive and precautionary measures to pressing environmental problems. While UK measures signalled a beginning in the environmental policy area, they have never merged into a coherent and consistent policy pattern. Several informal determinants relating to the UK policy style and practices have contributed to the half-hearted UK environmental policy.

Firstly, UK political-administrative actors have followed a rather pragmatic policy approach. This short-term, step-by-step approach has had the advantage that only realistic goals have been envisaged and that UK policy-makers have committed themselves only to policies which they could confidently implement. On the other hand, UK 'pragmatists' have tended to plan for the immediate future only, have been reluctant to take on board scientific uncertainties and vague predictions and have found it difficult to pursue 'unnecessary' and 'radical' policies just because of unsubstantiated worries and public demands. Since many environmental problems are difficult to measure and predict, environmental policies have tended not to fit into the UK pragmatist mould. As far as EU environmental policies such as the Directive on large combustion plants are concerned, UK actors have perceived many of their preventive and stringent standards as unnecessary burdens which overstep UK marks. 'Ambitious' EU environmental policies have therefore been pursued by UK actors with a certain reluctance or scepticism.

Not far from the UK 'pragmatism' lies the often praised

'impartiality ethos' of the UK civil service.¹² UK administrators have been described as committed professionals who implement legislation with a certain 'sense of neutrality'.¹³ This professional neutrality should be advantageous for the pursuance of environmental objectives in general and EU environmental policies in particular. Yet, this 'neutrality' has had the effect that often the source of legislation, be it British or European, has been unknown. As a result, implementors could not clarify and coordinate policy objectives with the 'makers' of a policy. In addition, the impartiality ethos has been limited when it came to the implementation of environmental measures which UK administrators perceived as unnecessary or costly.¹⁴ Therefore, the impartiality ethos may have positively influenced the implementation of some individual EU environmental policies, but has been more likely to evaporate in the majority of other policy cases.

Another explanation for the half-hearted UK environmental policy concerns the preference for voluntary action in environmental matters. UK Governments and Conservative Governments in particular, have supported the general view that any restrictions to economic prosperity should be avoided and that UK citizens as well as the private and public sectors should

¹² Among others, Siedentopf and Ziller describe the UK 'impartiality ethos' in Making European Policies work. The Implementation of Community Legislation in the Member States 1988.

¹³ Heinrich Siedentopf describes the 'Neutralitätsverständnis' in Die Umsetzung des Gemeinschaftsrechts durch die Verwaltungen der Mitgliedsstaaten Europa-Institut, Universität des Saarlandes, Saarbrücken 1990.

¹⁴ The case study in Chapter 6 highlights the critical views of Scottish Office officials towards the EIA Directive.

not be forced to pay for 'costly' environmental objectives. This emphasis on voluntary action, however, has secured only a relatively small number of 'green' initiatives from individual citizens, NGOs, private companies and local authorities. As Stephen Young remarks, in the UK leaflets promoting environmental interests "are everywhere".¹⁵ These and other voluntary initiatives, however, have not provided for consistent and effective environmental action in the UK.

The policy approach of voluntary action together with the integrative definition of the environment is reflected in the UK legal system (a formal determinant) and the way in which UK legislators and administrators have dealt with environmental policies. More recent EU environmental policies which are based on voluntary action and policy integration (e.g. 'eco-audit' and 'eco-labelling' Regulations and the 'IPC' Directive) have been more compatible with UK political-administrative structures and legal instrument preferences than earlier EU environmental policies which focused on quantitative standards and strict qualitative regulations. UK administrators have therefore found the implementation of more recent EU environmental policies comparatively easy.

With regard to legal instruments containing high quantitative or qualitative standards and preventive policy objectives, UK administrators and citizens have preferred to trust the self-healing potentials of the natural environment, i.e. the capability of nature to absorb diluted and dispersed polluting substances.¹⁶ Soil, water

¹⁵ Young, Stephen The Politics of the Environment 1993, (p.76).

¹⁶ For example, UK actors have argued that fast-flowing rivers and the surrounding sea can absorb polluted water and that water quality legislation is therefore not necessary.

and air have been seen as free resources for waste disposal "until the moment of unacceptable harm or damage is reached".¹⁷ Despite an early interest in countryside issues (mentioned above), the overall UK policy style and approach towards environmental problems has been reactive rather than preventive. Action has been taken only when environmental damage became unbearable and when pollution incidents became potential threats to human health. As a result, many stringent and preventive EU environmental policies such as the Habitats Directive and water quality Directives have been pursued UK political-administrative actors only after considerable pressure from environmental interest groups and the EU Commission.

One key reason why 'green' considerations could not take central stage in UK politics can be seen in the political-administrative actors' inability (and reluctance) to completely open long-established lobbying networks to include environmental NGOs. Therefore, traditional political-administrative structures and informal relationships between actors have played a significant role in the setting of political priorities. While countryside lobbyists and 'clients' from industry and the farming community have maintained strong links with Westminster and Whitehall, new environmental NGOs have been generally looked upon with mistrust and scepticism.¹⁸ Only in recent years have

¹⁷ Böhmer-Christiansen, Sonja 'Emerging International Principles of Environmental Protection and their Impact on Britain' (p.109) The Environmentalist vol.10, No.2, 1990 (pp.96-112).

¹⁸ John Gordon contrasts UK and FRG attitudes towards 'outsiders': at an environmental conference, John Gummer (then Secretary of State for the Environment) refused to answer a question from the floor on the future of the THORP nuclear fuel processing plant. In contrast to his FRG colleague Klaus Töpfer who did not shy away from controversial questions, Gummer argued that the decision concerning THORP was for him alone and therefore not a matter for public consultation. See 'Environmental Policy in Britain and

environmental NGOs gained more access to political-administrative actors and are currently establishing themselves as influential campaigners and advisers on environmental matters in the UK.

In terms of parliamentary representation, figure 4.1 highlights a major formal constitutional obstacle: environmentalists have not been able to enter the House of Commons due to the electoral system (FPTP-system) which has tended to give weight to either of the two mainstream parties, the Labour Party and the Conservative Party. For this reason, the UK Green Party has never gained as much political influence as its European counterparts, although it was the first political party in Europe to raise environmental concerns. Meanwhile, the Labour Party, the Conservatives and the Liberal Democrats have responded to the campaigns of environmental NGOs and have adopted 'green' issues in their party manifestos.¹⁹ The main parties have adjusted priorities and strategies slightly to accommodate environmental pressures. Minor changes have included, for instance, a few lines in party manifestos and a brief mentioning of environmental issues at party conferences. These changes have proven to be sufficient to satisfy the majority of party members and voters but have not provided for a strong environmental force in parliament which monitors the progress and effectiveness of EU environmental policies.²⁰

Germany: A Comparison' European Environment vol.4, part 3, June 1994, (pp.9-12).

¹⁹ The main parties also responded to the 1989 European Parliament election result. The UK Greens gained 15% of the votes cast, however they did not win any EP seats because of the FPTP-system.

²⁰ For a detailed account see Robinson, Mike The Greening of British Party Politics Manchester University Press, Manchester 1992. See also Maloney

Despite its forerunner position, the UK has pursued a half-hearted environmental policy which has prompted observers to describe the UK as a 'dirty man'. Frequently, post-war UK governments have blocked the adoption of international and EU environmental policies and have given the impression that environmental issues take second place in policy priorities. For instance, the UK initially vetoed the 1987 EC Directive on large combustion plants, installed only seven nitrogen dioxide monitoring stations compared to 200 in the FRG, and opposed Directives regulating water quality. The latter were considered as unnecessary by UK actors because of the UK's island situation and the self-healing potentials of its 'fast-flowing' rivers. Internationally, the UK joined the USA and Saudi Arabia to produce the worst records in preparation for the UN Conference on Environment and Development in Rio (1992), according to a consortium of more than 100 NGOs.²¹ Further, the UK initially delayed the signing of the biodiversity treaty and was reluctant to promote a new UN environmental body as a follow-up measure to the Rio Conference.²² Two UK initiatives, the International Conference on the ozone Layer in February 1989 and the inclusion of the environment on the G7 agenda in July 1989, could not counter the UK's image of a 'dirty man'.

and Jordan who point out that in relation to other issues, only 4% of British adults nominate 'green' concerns as most important. 'Joining Public Interest Groups: Membership Profiles of Amnesty International and Friends of the Earth' (pp.1137-1153) in Lovenduski, Joni; Stanyer, Jeffrey (eds) Contemporary Political Studies vol.3, Political Studies Association, University of York 1995.

²¹ McCormick, John 'Environmental Politics' Patrick Dunleavy et al Development in British Politics 4 1993, (pp.267-284).

²² McCormick (p.276).

4.3 UK Governments and the Environment

The half-hearted attitude towards environmental concerns is reflected in the policy priorities and strategies of consecutive UK Governments in the last decades. From 1979 until 1997, Conservative Governments concentrated on a 'laissez-faire' economic policy which pushed environmental considerations to the side-line of UK politics. Avoiding economic obstacles, Conservative Governments relied upon voluntary environmental measures and tended to 'react' to pollution problems rather than innovate policy reforms.²³ This initial perspective did not change significantly in the following years; the environmental issue was merely accommodated as a low-priority policy area. The formal restructuring of UK government (culminating in the loss of many administrative powers to the private sector) together with the voluntary action approach aggravated pollution control and other environmental measures. However, the privatisation process implied also positive consequences for the environment. Due to public scrutiny and (then) EC alertness the privatisation process of water and electricity could only be pursued in conjunction with the adoption of more stringent environmental measures.

Accommodating pressures from the (then) EC level and UK environmental NGOs for more environmental consideration, prime minister Thatcher (1979-1992) initiated a moderate shift in policy which was taken up by subsequent Conservative

²³ In 'Transition or Transformation? - Environmental Policy under Thatcher' Andrew Blowers elaborates on the conflict between the Thatcher philosophy of deregulation and privatisation on the one hand and environmental problems on the other. Public Administration vol.65, Autumn 1987. (pp.277-294).

Governments and, indeed, the Labour Government under Tony Blair. Learning her lesson from an unpopular comment at the annual conference of the Scottish Conservative Party in May 1982, describing environmental issues as "humdrum", Mrs Thatcher stated in 1988 that protecting nature was "one of the great challenges of the late twentieth Century".²⁴ She further demonstrated her change in attitude by replacing the Secretary of State for the Environment, Sir Nicholas Ridley, with the more sympathetic Chris Patten. Mrs Thatcher also created and chaired a Cabinet committee which prepared a White Paper on the environment. The 1990 White Paper titled 'This Common Inheritance' signified the UK Government's half-hearted approach towards environmental policies in so far as it contained a mix of fundamental as well as minor policy proposals. One of the White Paper's key policies was the energy efficiency policy which included a ministerial committee dealing with global warming. The Paper also included elaborate sections on issues such as protecting Cathedrals and abandoned shopping trolleys. As far as car traffic pollution was concerned, the Government suggested "adopting less aggressive driving habits to save fuel" and "keeping cars well tuned".²⁵ Due to tensions between sectoral interests inside the Cabinet and Whitehall,²⁶ the White Paper turned out to

²⁴ Statement from a speech at the Royal Society, September 1988.

²⁵ Moreover, the Government considered it necessary to include the following statement in the White Paper on the environment: "The Government welcomes the continuing widening of car ownership as an important aspect of personal freedom and choice. The speed and flexibility of motoring make it indispensable for much business travel, which in turn is vital for the economy."

²⁶ In particular, transport and finance interests clashed with environmental objectives of earlier White Paper drafts. In 1998, John Prescott faced similar problems with his White Paper on the environment which was delayed due to internal disagreements on policy priorities.

be only a moderate Government policy on the environment. Yet despite the shortcomings, the White Paper represented a potential stepping stone for more environmental policy commitments.

John Major followed in Mrs Thatcher's footsteps: environmental issues were neither at the top of the political agenda, nor could John Major completely ignore pressures for more environmental action. One major policy change occurred during his premiership with the introduction of 'green' fiscal instruments such as the landfill tax. Moreover, less ambitious road building plans towards the end of John Major's term in office, i.e. the reduction of road building expenditure from over £8 billion (3 year budget until 1996) to £6 billion (3 year budget until 1999),²⁷ indicated a response to increased traffic pollution and heightened public awareness.

Tony Blair's Labour Government has followed its predecessors' environmental policy line by taking up the fiscal policy as a convenient means to tackle pollution.²⁸ Occasionally, the Labour Government has demonstrated a keen interest in environmental matters. For instance, in February 1998 the Labour Government proposed new housing development plans for 'brown field' sites instead of 'green field' sites, thereby avoiding further destruction of the countryside. In June 1998 the Labour Government published a white paper on transport which proposes charges for the use of roads and parking. The charges should deter motorists

²⁷ 'Road Protests. Victory' The Economist 25 January 1997, (pp.31/32).

²⁸ Fiscal policies are used as another source of public income and as a tool which encourages 'green' behaviour. Examples include proposals on 5% VAT on energy saving products for low income families and a tax on water pollution for firms. See 'Brown puts focus on pollution and energy' The Independent 26.November 1997, (p.18).

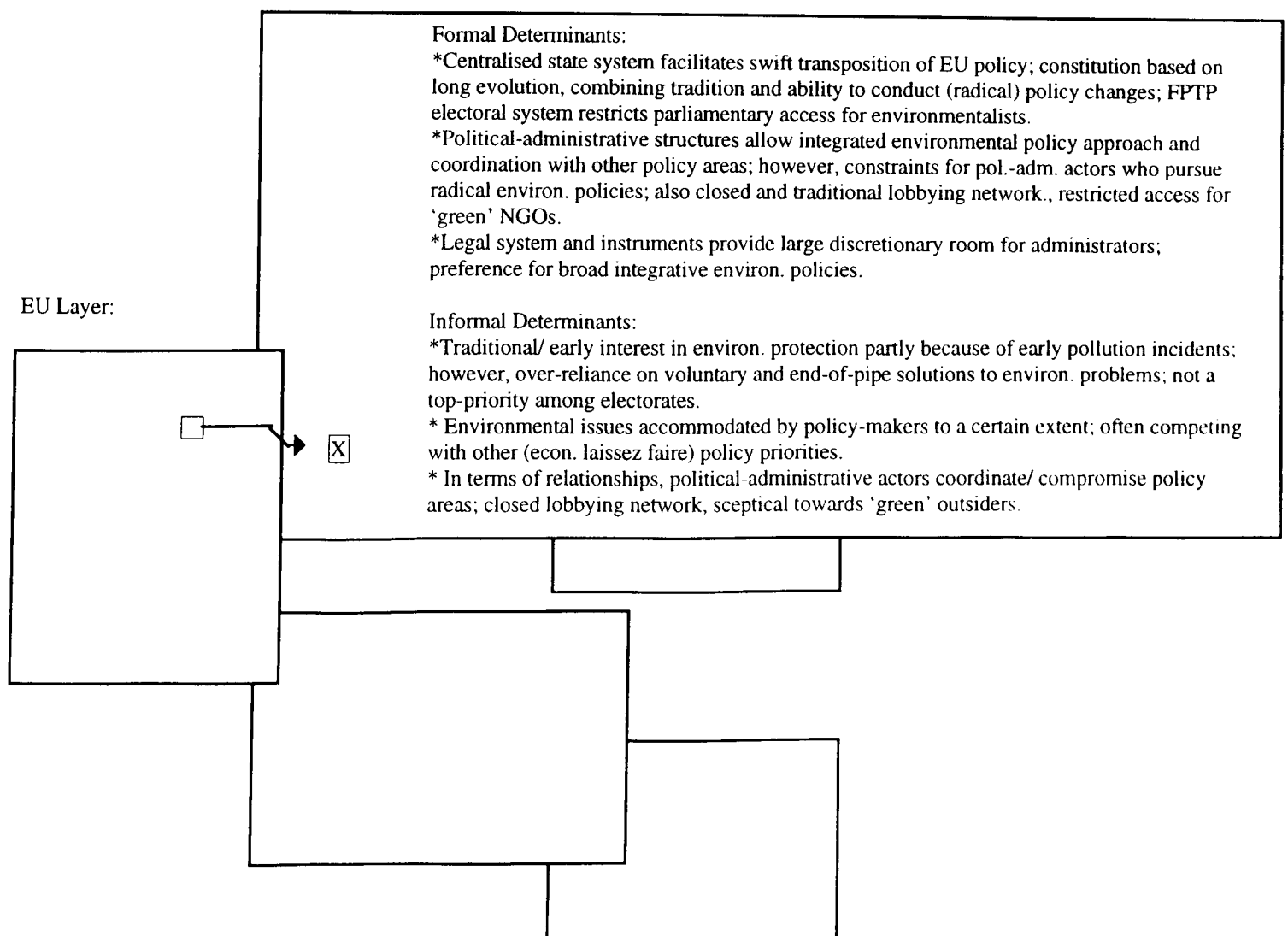
from using their cars and encourage them instead to use public transport. However, other examples such as the Government's earlier decision in July 1997 not to oppose major road building projects have signalled that the Labour Government is not prepared to undertake radical environmental policy reforms in the near future. The Labour Government's initiatives have to date not merged into a coherent and effective environmental policy which takes account of sustainable development. Environmental considerations are not fully integrated into other (economic and social) policy areas and more recent Labour Government initiatives do not signal the beginning of a new stringent UK environmental policy that would pave the way for EU environmental policies in future. It is therefore not surprising that the Labour Government's environmental policy has been described by environmentalists and the media alike as 'pale green'.²⁹

In sum, a combination of formal and informal determinants have influenced the development and conduct of environmental policy in the UK. Environmental matters have been processed in a pragmatic manner which has tended to exclude long-term, less tangible EU environmental policy objectives. In addition, UK policy-makers and administrators have focused on policies which react to (rather than prevent) environmental problems. They have relied upon voluntary environmental action and have been reluctant to open traditional lobbying networks to include new, 'green' lobby groups. At the parliamentary level, environmental interests have received limited support from politicians. On the

²⁹ Chancellor Gordon Brown's 1998 budget is described as 'pale green' in 'Environment and transport: Green Gordon' The Economist 21. March 1998, (p.41).

other hand, a traditional interest in the countryside and early problems with industrialisation encouraged UK citizens to become forerunners in a number of environmental policies and organisations. While the UK has paved the way in some respects for other states and the EU, UK citizens and politicians have not utilised their forerunner position to establish a 'model' environmental policy which ensures sustainable development. Instead, the UK has suffered from the image of the 'dirty man of Europe' which was aggravated by the Conservative Governments' 'laissez-faire' economic policy. Despite attempts by Tony Blair's Government to improve the UK environmental policy, more commitment will be required to eliminate the 'dirty man' image in the near future.

Figure 4.1: The UK Layer and Environmental Policy



THE FEDERAL REPUBLIC OF GERMANY

4.4 Environmental Politics and Policy in the FRG:

'Latecomer' and 'Green Man'

Environmental policies in the FRG, too, have been shaped by the formal constitutional setting as well as informal circumstances within the national layer. The FRG has often been described as a state with an activist attitude (and policy) towards the environment.³⁰ However, in comparison with the UK, the interest in pollution problems has been a relatively recent phenomenon in the FRG. This is partly due to the fact that the German industrial revolution commenced after British industrialisation and that environmental problems became noticeable in Germany some time after the first pollution incidents in the UK. Other explanations for the comparatively recent, but at the same time more rigorous, 'green' approach in the FRG point towards other formal and informal determinants which are listed in figure 4.2.

The Latecomer

In comparison with UK environmental legislation which dates back to the 13th Century, the first German measure to control pollution was introduced in 1845 with the Prussian General Trade Ordinances (Gewerbeordnung).³¹ The late adoption of the

³⁰ Among others, Sbragia describes the FRG's activist position/ image in EU environmental policy-making in 'Environmental policy: The push-pull policy-making' (pp.235-255) Wallace and Wallace Policy-making in the European Union Oxford University Press, Oxford 1996. Heritier et al evaluate (and qualify) the conventional perception that the FRG is an activist state in environmental policy in Die Veränderung von Staatlichkeit in Europa. Ein regulativer Wettbewerb: Deutschland, Großbritannien und Frankreich Leske + Budrich, 1994.

³¹ The environmental measures were part of a general check on trade practices and were considered within the local authorities' discretionary powers. For more information see Weale, Albert et al Controlling Pollution in the Round. Change and Choice in Environmental Regulation in Britain and Germany Anglo-German Foundation Project 1991.

environmental issue was not only due to Germany's comparatively late industrialisation, but also due the ongoing dispute over formal competencies between the Reich Government and Confederal States which prompted polluters to take environmental measures in their own hands. Facing severe river pollution, representatives from the agricultural and industrial sectors had a commercial interest in clean water and established common water quality standards which would apply throughout the German Reich.³²

In the first half of this Century, environmental matters did not receive much attention due to National Socialism and two World Wars which dominated and devastated Germany. Only after the alarming side-effects of the 1950s' FRG economic miracle ('Wirtschaftswunder') became apparent, did German citizens notice environmental problems. Again, initiatives to combat pollution came mainly from the Länder level, predominantly from North Rhine Westphalia which suffered most under the side effects of industrial activities. The pollution issue was eventually taken up at the Federal level: the SPD under Willy Brandt campaigned for "blue skies over the Ruhr" during its 1961 Federal election campaign.³³

One of the key formal reasons behind the late adoption of an environmental policy lies obviously in the traditional separation of government levels which has often resulted in disputes over competencies and has hindered the progress of many environmental policies including EU environmental policies. The

³² Water control initiatives such as the 'Emscher Genossenschaft' were set up by local authorities and industry.

³³ "Blauer Himmel über der Ruhr" cited in Malunat, Bernd M. 'Die Umweltpolitik der BRD' Aus Politik und Zeitgeschichte B49/94, 9. December 1994, (pp.3-12).

separation of political-administrative competencies continues to this day: established in 1949, the FRG is based on a written constitution which provides for checks and balances between the executive, the judiciary and the legislature as well as the Federal and Länder government levels. The Federal Parliament (Bundestag) shares decision-making powers with the Länder which are represented in the regional chamber (Bundesrat). In addition to the balancing of Länder and Federal competencies, judicial review can scrutinise policies adopted in the FRG. Federal as well as Länder legislation is adopted in the form of Acts of Parliament (Gesetze), Regulations (Rechtsverordnungen), and Administrative Instructions (Verwaltungsvorschriften).

Focusing on formal political-administrative structures, the FRG constitution manifests and emphasises the vertical separation of competencies as well the sharing of powers between government levels. Consequently, political-administrative actors at subnational and local levels have taken a great interest in protecting their areas of autonomy. In other words, formal conditions have had an impact on informal perceptions. Apart from protecting their autonomy in decision-making, subnational and local implementors have tended not to report to government levels above on policy performances.³⁴ For the implementation of EU environmental policies, this lack of communication has been particularly unfavourable: since most of them have required implementation on the ground, EU policy-makers as well as national (and

³⁴ Strictly speaking, they are not required to report to superior levels. For instance, when asked about further details concerning the practical implementation of the EIA Directive, the Bavarian Ministry for the Environment did not have information from regional/ local authorities. Written correspondence, 7. January 1997.

subnational) implementors have been left in the dark over the effectiveness of policies.

Apart from cutting across government levels, EU environmental policies have tended to cut across policy sectors which, in the case of the FRG, have enjoyed considerable independence from each other. In comparison with UK horizontal structures and institutions, FRG environmental institutions and agencies in particular have been able to pursue ambitious policies without compromising environmental objectives and giving way to immediate pressures from other sectors. On the other hand, the independence of sectoral institutions has resulted in a lack of communication and cooperation. In the case of environmental policies, this gap has hindered the wide-spread adoption and integration of environmental objectives into other policy areas. Yet many EU environmental policies such as the IPC and EIA Directives explicitly promote the integration of environmental considerations into other policy areas. Faced with the fragmented nature of FRG political-administrative structures, their implementation has been cumbersome and often disappointing.

In order to function properly, the fragmented and compartmentalised FRG political-administrative system has had to rely on a policy style which is based on consensus and conciliation of policy sectors and government levels. This conciliatory approach has not only prevented political paralysis, it also has ensured that policies are more acceptable for a wide spectrum of actors. On the other hand, the search for consensus has caused decision-making and the subsequent implementation of policies to be slow. Environmental matters in particular, which tend to affect other policy areas such as transport, have had to be processed

through complicated consensus mechanisms. Environmental policies from the EU level, too, have had to face the scrutiny of 'affected' actors. The perceived right to assess and approve (or reject) every policy has often delayed the implementation of EU environmental policies. Moreover, FRG implementors have tended to re-shape 'policies from Brussels' to suit their policy preferences. Consequently, the implementation of many EU environmental policies has been delayed in the FRG or failed to reach policy targets, according to Commission officials and environmental NGOs.³⁵

The Green Man

Despite the fact that the FRG political system was relatively slow in addressing environmental problems, a mix of long-established formal and informal determinants, highlighted in figure 4.2, contributed to the establishment of a comparatively rigorous environmental policy. Firstly, as part of wider societal changes, attitudes towards environmental protection were influenced significantly by the 'new social movements' (Neue Soziale Bewegungen) of the 1960s, 1970s and 1980s.³⁶ NSMs raised environmental concern and put 'green' issues on the agenda of politicians and the media. The new emphasis on environmental protection was facilitated further by the FRG electoral system³⁷ (a

³⁵ See for instance ECJ Case C-396/92 where both the Commission and the Bund Naturschutz criticise the FRG Government over the late and insufficient implementation of the EIA Directive (85/337/EEC).

³⁶ They highlighted a variety of issues such as acid rain, the construction of motorways and airport runways, and the dangers associated with nuclear energy. Anti-nuclear protests under the banner of "Atomkraft nein danke" targeted nuclear plants such as Wyl near Freiburg, Brokdorf near Hamburg, the 'fast breeder' in Kalkar, and Wackersdorf in Bavaria.

³⁷ The FRG electoral system combines FPTP and proportional representation (PR): one half of MPs are elected within their constituencies on a direct majority basis, the other half are 'party lists' candidates and are elected via

formal determinant) which helped the FRG Green Party enter the Bundestag in 1983 for the first time with 27 MPs.³⁸ The Greens' success not only shocked the main parties, the Christian-Democratic Union (CDU) and the Social-Democratic Party (SPD), it also threatened the very existence of the small FDP. While the three parties adjusted their party manifestos accordingly, 'Die Grünen' changed the political landscape in the FRG considerably, forming 'red-green' Länder governments with the SPD in Hesse, Berlin, Lower Saxony and North Rhine Westphalia. In October 1998, 'Die Grünen' even achieved a 'red-green' coalition government with the SPD at the Federal level and replaced the Christian-Liberal Government under Helmut Kohl. Overall, environmental objectives have enjoyed comparatively strong public and parliamentary support which has ultimately contributed towards some radical environmental policies inside the FRG and influenced the EU in adopting some stringent EU environmental policies such as the Directive on large combustion plants.³⁹

The FRG policy style and practices contributed towards a more 'rigorous' environmental policy. In particular, the FRG-specific definition of the term 'environment' (Umwelt) has meant that environmental objectives have been pursued in a 'concentrated' manner. However, while the apparent separation between

PR. The system allows small and new political parties to enter the parliamentary stage or, at least, threaten the positions of established parties.

³⁸ In order to avoid unnecessary fragmentation and disruption, the electoral system includes a '5% hurdle' which small parties have to overcome in order to enter the Bundestag or Länder parliaments.

³⁹ It has to be said though that environmental considerations were not the only motives behind the FRG policy on the LCP Directive. Economic level-playing-field considerations (i.e. committing other Member States to the same stringent standards) also played a major role in the FRG position.

environmental and other policy areas has facilitated the adoption of a number of far-reaching environmental policies. The environmental policy as a whole has suffered because 'green' issues have often been considered on their own without taking into account wider contexts and other (economic) interests. This non-holistic perspective has resulted in many environmental policies having only limited impact. Nevertheless, the discretionary room and 'creativity' of environmental political-administrative actors has also meant that some radical FRG policies have been models for EU environmental policies such as the introduction of catalytic converters for cars and lead-free petrol.

More radical environmental policies have been adopted not only because of the discretionary room the environmental policy sector has enjoyed. Radical policies have also responded to an informal attitude towards environmental protection which has been described by Böhmer-Christiansen and Skea as 'anxiety' or 'Angst' over environmental threats.⁴⁰ Concerns over pollution and environmental deterioration have been more intense in the densely populated FRG than in many other European states. Environmental problems such as the Chernobyl accident and the much-publicised 'Waldsterben' ('dying forests') hit a raw nerve with FRG citizens, leading to vociferous calls for 'green' policies and increased pressures on political-administrative actors to act. This Angst has influenced the development of environmental policies in so far as many policy objectives have been more

⁴⁰ Böhmer-Christiansen and Skea highlight the FRG pollution 'Angst' in Acid Politics: Environmental and Energy Policies in Britain and Germany Belhaven Press, London 1991.

substantial and far-reaching than in other EU Member States (and, in fact, the UK). Yet, the FRG's preparedness to adopt stringent environmental standards without scientific backing has not resulted in a policy that would substantially change behavioural patterns in the FRG. That is to say patterns of production and consumption that would ensure sustainable development. Nevertheless, the FRG 'Angst' has had the advantage that EU environmental policies have not faced obstacles of acceptance as has been the case in the UK.

In order to tackle environmental 'threats', the FRG has focused on legal instruments which specify regulatory and (subsidised) technological policy solutions. The promotion of the 'state of the art' (in German: 'Stand der Technik') and the regulatory approach (as opposed to voluntary action) continue to dominate the FRG environmental policy. Both approaches are most evident in the nuclear sector where FRG citizens have been reassured that nuclear accidents are impossible under strict regulations and modern technological-scientific management. Over the years, political-administrative actors and experts have developed an expertise and a certain perfectionism in applying and monitoring 'end-of-pipe' technologies. On the other hand, FRG actors have been reluctant to alter their perspective in favour of a less technology-orientated approach. More importantly, FRG actors have found it difficult to accept EU environmental standards which depart from their own standards. As a result, many EU qualitative and quantitative requirements (such as water quality requirements) have not been implemented properly because of technical discrepancies. In addition, FRG implementors have taken the liberty to fill, what they perceived as, legislative gaps

with technical and legalistic details where EU Directives are silent. However, by doing so, FRG implementors have tended to change the actual character of many EU policies. In the case of the EIA Directive, this 'perfectionism' has culminated in the criticism that FRG legislators over-shot their marks: in two legal cases (C431/92 and C396/92) the ECJ pointed out that the FRG specification of project categories was detailed but failed to mention many important project types which effectively excluded them from FRG legislation.⁴¹

Despite this and other disputes, the FRG has presented itself nationally and internationally as an environmentally conscious advocate of high 'green' standards, often much to the annoyance of other EU Member States.⁴² However, while politicians in the FRG have promoted a 'green advocate' image and have introduced some of the most stringent environmental measures, many environmental policies have originated from economic considerations⁴³ or have been a response to obvious environmental problems and public pressure. The FRG has not been the environmental 'Musterknabe' (paragon) as portrayed by many politicians. To illustrate the point, the late establishment of the Federal Ministry for the Environment (Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit, BMU) was not the

⁴¹ C431/92 concerned the extension of a power station in Großkrotzenburg, Hessen; C396/92 concerned the extension of the motorway 'B15 neu' in Bavaria.

⁴² Böhmer-Christiansen and Skea describe the UK Government's anger over the FRG Government's aggressive strategy during negotiations of the 'Large Combustion Plants' Directive in Acid Politics: Environmental and Energy Policies in Britain and Germany Belhaven Press, London 1991.

⁴³ For instance, economic and competition considerations motivated the FRG to commit other EC Member States to the same standards as the 'Bundesimmissionsschutz-Gesetz' (Federal Law on Emission Standards).

result of a well-planned and fully committed adjustment of formal structures to tackle environmental problems. Rather, its creation was a 'panic reaction' to a major environmental crisis (the 1986 Chernobyl nuclear accident) which subsequently caused a political crisis (the Federal Government was criticised over its inadequate handling of the accident).

Stringent FRG environmental legislation and standards have not concealed the fact that the FRG has been one of the worst polluting countries in the world.⁴⁴ Moreover, the economic strains of the 1990s have put a damper on the environmental policy, despite the political success of 'Die Grünen' and NSMs. Particularly, German Unification and obligations associated with the Economic and Monetary Union (EMU)⁴⁵ have pushed environmental considerations to the side-line of FRG politics. Economic and social policy objectives are now at the top of the FRG priority list with the effect that many environmental policy adjustments of the 1970s and 1980s are watered-down and many EU environmental policy objectives are neglected to eliminate any obstacles against the 'Wirtschaftsstandort Deutschland'.⁴⁶ It

⁴⁴ In this context, 'energy consumption' serves as an indicator: with over 30 barrels of oil per head in 1991, the FRG was just behind the USA (over 50) in terms of energy consumption. UN source in The Economist 'A Survey of Energy', 18 June 1996.

⁴⁵ In order to enter the third stage of EMU (establishing a European System of Central Banks, a European Central Bank and a single currency), Member States must comply with the following criteria: price stability with an average inflation rate of not more than 1.5% of the 3 best performing Member States over a one year period; no excessive public spending (deficit not more than 3% of GDP); the total government debt should not be more than 60% of the GDP; a stable currency with an exchange rate fluctuating within the margins of +/- 2.25% (within the ERM for at least 2 years); and average nominal long-term interest rates not exceeding more than 2% of the 3 best performing Member States.

⁴⁶ English translation: 'Economic location Germany' or 'powerhouse Germany'.

remains to be seen whether the new 'red-green' coalition government under Gerhard Schröder will steer FRG politics back to environmental priorities despite continuing economic pressures. Considering that the new Federal Chancellor Schröder is adamant to boost the FRG's economic confidence, it is unlikely that the FRG will return to a (truly) 'green man' position.

4.5 FRG Governments and the Environment

Former Federal Chancellor Helmut Kohl and his Government colleagues were at the forefront of portraying the FRG as a 'green' state. Following a Social-Liberal Government initiative, Christian-Liberal Governments adopted the environmental principles of the 1971 Environmental Programme⁴⁷ and took up environmental policy ideas which had been in the pipeline at the time of government change-over in 1982. The 'large combustion plants' legislation, in particular, signalled a start in the Christian-Liberal environmental policy and was a response to the alarming media coverage of the 'dying forests'. While FRG Governments under Helmut Kohl pursued some of the most ambitious environmental policies, their environmental commitment was soon questioned by the public. Interior Minister Zimmermann's mishandling of the Chernobyl nuclear accident in particular, highlighted the Governments' inability to cope with major environmental problems.⁴⁸ Walter Wallmann, the first Minister for the

⁴⁷ The Brandt Government presented an environmental programme in 1971 which established for the first time a set of environmental principles: the precautionary principle, the polluter pays principle, and the cooperation principle. For more information see Müller, Edda 'Sozial-liberal Umweltpolitik. Von der Karriere eines neuen Politikbereichs' (pp.3-15) Aus Politik und Zeitgeschichte 47-48/89, 17. November 1989.

⁴⁸ The Chernobyl accident caused a political crisis in the FRG which was later resolved with the establishment of a new ministry for the environment (the BMU) in 1986.

Environment heading the BMU, was new to the environmental policy area and was soon criticised over his handling of incidents such as the Sandoz fire.⁴⁹ From 1987 onwards, Wallmann's successor, Klaus Töpfer, assumed a more pro-active approach. However, Töpfer's symbolic commitment towards the environmental cause⁵⁰ could not disguise the low priority stance of his Ministry which received only 0.3% of the Federal Budget.⁵¹ Nevertheless, while Töpfer was in office, the FRG established a number of 'green' policies such as the plastic bottle policy (a recycling system similar to the recycling policy in Denmark) and the 'Grüne Punkt' recycling scheme for packaging waste of consumer goods.⁵² The 'Grüne Punkt' policy in particular encouraged the EU to consider similar policies on waste and packaging.

FRG Governments have established some of the most stringent environmental policies in Europe. At the same time, these measures have fallen short of a coherent environmental policy which controls the negative impacts of the FRG 'power house'. Moreover, FRG Governments have tended to react to public pressure rather than initiate policies which ensure sustainable

⁴⁹ The fire at the Sandoz factory near Basle posed pollution and health threats to citizens living in the Southern part of Germany.

⁵⁰ For instance, to demonstrate that government measures had improved the water quality of rivers, Töpfer invited the media to watch him swimming in the Rhine.

⁵¹ Data taken from Weidner, Helmut 'Die Umweltpolitik der konservativ-liberalen Regierung. Eine vorläufige Bilanz' (pp.16-28) Aus Politik und Zeitgeschichte 47-48/89, 17. November 1989. Ministers for the Environment do not enjoy a veto right (similar to the Finance Minister's veto right) in policy areas which affect environmental interests.

⁵² Under the 'Grüne Punkt' scheme producers are obliged to fund a 'dual system' which collects packaging waste and either recycles the material or disposes it in an environmentally sensible way.

development in the FRG. Critics of the Kohl Government in office until October 1998 would argue that environmental principles existed on paper but not in practice. For instance, many FRG policies relied on a technical 'end-of-pipe' strategy which runs counter the FRG principle of pollution prevention. Also, in the light of an ever growing mountain of waste in the FRG, 'polluters' have obviously not paid the price for environmental damage despite the introduction of the 'Grüne Punkt' and other recycling schemes. Although the FRG possesses some of the most stringent environmental standards, the environment itself continues to deteriorate.⁵³ In the light of German Unification and European Integration, the Kohl Government focused on other policy priorities such as transport. Road and air traffic developments already overstepped forecast marks **prior** to the Unification.⁵⁴ Despite an alarming increase in traffic and its pollution impacts, the Kohl Government committed itself to several large-scale projects intended to connect infrastructures in Eastern and Western Europe. Investments on public transport technology could not counter the fact that the current Infrastructure Plan (until 2012) is the most ambitious plan since the end of the Second World War.⁵⁵ It remains to be seen whether 'Die Grünen'

⁵³ For more information see, among others, Malunat, Bernd M 'Die Umweltpolitik der Bundesrepublik Deutschland' (pp.3-12) Aus Politik und Zeitgeschichte B49/94, 9. December 1994.

⁵⁴ The scope of road traffic predicted in the Federal Traffic Infrastructure Plan of 1985 for the year 2000 had already been exhausted in 1986. For more details see Wissmann, Matthias (Fed. Minister of Transport) 'German Transport Policy after Unification' (pp.453-458) Transport vol.28A, No.6, 1994.

⁵⁵ With over DM 200 billion the Federal Government is funding 12,000 km of new projects and extensions of roads and motorways which, it is hoped, will further generate and strengthen the FRG economy. Information from Der Bund Naturschutz informiert: Verkehrspolitik. Totalschaden! BUND leaflet (author Richard Mergner, no date).

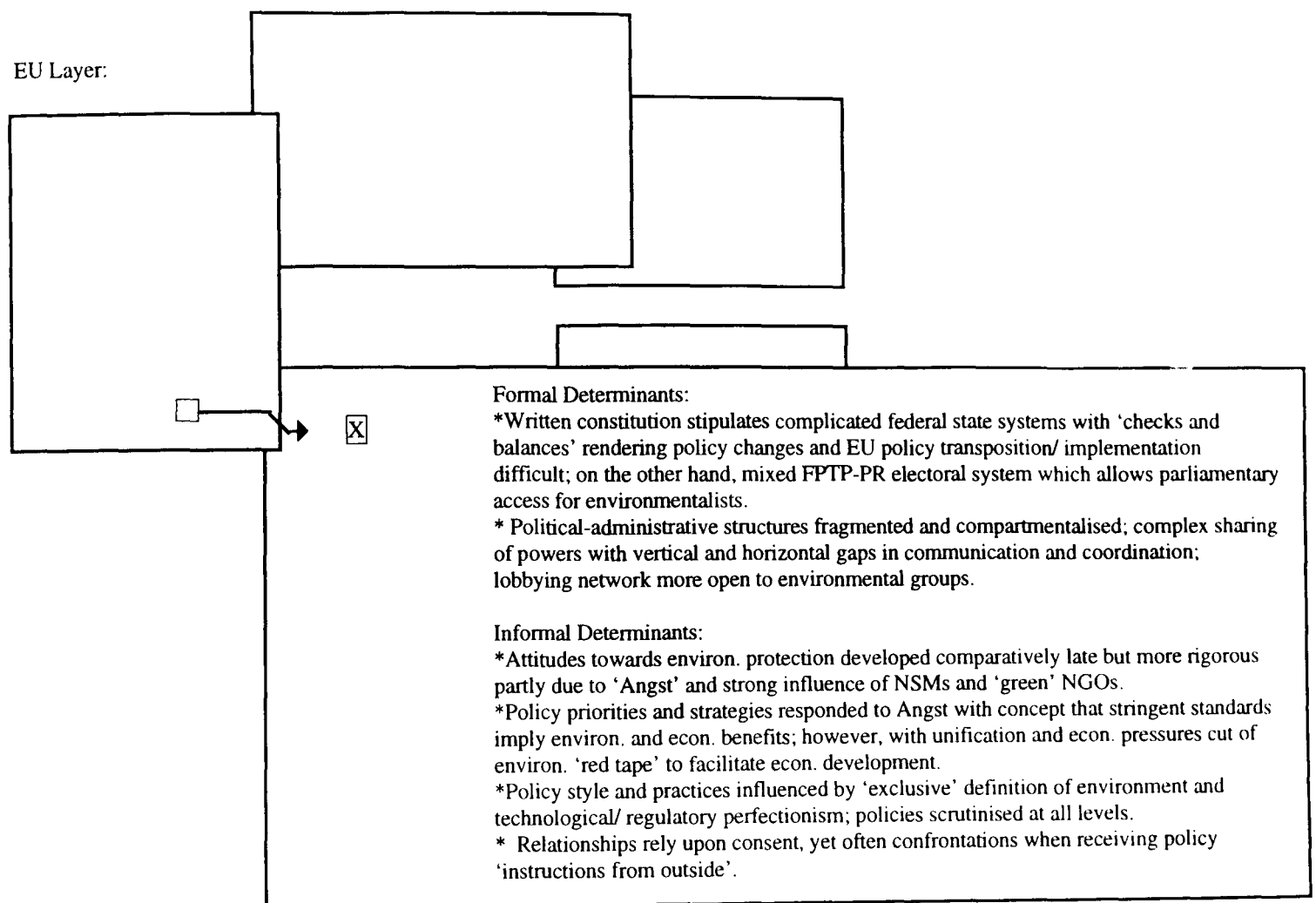
(as partners of the new 'red-green' coalition Government) can press for more radical environmental policies which will shift the FRG's political and economic landscape towards a more sustainable society. Given that the FRG political-administrative system is so fragmented and that the policy process is so slow in seeking consensus among policy sectors and government levels, it is unlikely that the 'red-green' coalition will bring about a substantial change in FRG environmental policy. There are other obstacles that could hinder a 'deep green' policy. Already, the 'red-green' Government's policy to phase-out nuclear energy in the FRG has faced severe obstacles from the nuclear sector lobby. The nuclear sector refuses to cooperate and threatens to re-locate to neighbouring Eastern European countries. The Government has so far failed to solve the problem of nuclear accident threats.

In sum, the FRG features a complex and to a certain extent ambitious environmental policy. Environmental matters have received much informal public and parliamentary attention due to the perceived environmental threats and the support from NSMs and the FRG electoral system. Yet, the formal constitutional setting and political-administrative structures have contributed to the comparatively slow progress in adopting and, more importantly, implementing environmental policies. In addition, political-administrative structures have been inflexible to policy priority changes as well as 'instructions from outside' (in particular from the EU). Horizontal and vertical gaps in the political-administrative structures have provided environmental actors with considerable discretion and non-interference from other sectors. The FRG 'compartmentalism' has also been detrimental to environmental policy integration into other policy sectors which

has been one of the main objectives of EU environmental policy. FRG policy-makers have accepted and adopted some ambitious environmental objectives without necessarily relying upon scientific evidence. However, this preparedness to go beyond scientific proof has not always guaranteed the policies' successful implementation at a later stage. The FRG's technological expertise has been beneficial for the pursuance of some EU environmental objectives (such as installing NO₂ monitoring stations). Yet, this over-reliance on technological solutions has neglected other, non-technical solutions to environmental problems. Overall, the FRG has not fully lived up to its image of a 'green' state. In fact, the economic pressures of the 1990s have put a damper on the FRG's commitment towards national and EU environmental policies. As one observer commented: "the [environmental] situation [in the FRG] has improved only marginally, in many respects it has deteriorated even more".⁵⁶

⁵⁶ Translation by author. Malunat, Bernd M. 'Die Umweltpolitik der Bundesrepublik Deutschland' (pp.3-12) Aus Politik und Zeitgeschichte B49/94, 9. December 1994.

Figure 4.2: The FRG Layer and Environmental Policy



4.6 Conclusion: An Assessment and Comparison of EU and National Layers

With the help of the multi-layered implementation map and particularly the determinant categories, the Chapter has described how two (EU member) states have developed and pursued their own environmental policies and how these policies have often been incompatible with EU environmental policies. The first finding therefore emphasises the discrepancy between national and EU layers.

National layers have developed and pursued distinct environmental policies which have not always been in line with EU environmental policies

It is true to say that the EU, UK and FRG have shared some common ground in the environmental policy area. Actors in the EU and national layers have acknowledged the necessity to adopt and implement environmental policies. They have been committed to more or less the same environmental principles (precautionary principle, polluter pays principle etc.) and have sought to accommodate environmental interests in a society which is orientated towards economic and material prosperity. Secondly, actors in EU and national layers (national government ministers and representatives, Commission officials, EU and national experts etc.) have participated in the EU environmental policy-making process and have sought to influence policy decisions as much as possible. In this respect, EU environmental policies must have been, at least to a certain extent, compatible with Member States and their environmental policies. However, the complex and diverse dimension of the EU has also contributed an outside impetus to national policies (i.e. they 'Europeanised' national policies). While the FRG and UK have adapted to EU pressures, the 'European impetus' has also brought elements 'foreign' to the national layers which were ultimately incompatible with formal and informal conditions. As a result, many EU environmental policies have faced various formal and informal obstacles inside the national layers which have hindered the implementation of EU environmental policies.

By and large, the UK and FRG have featured their own, distinct, environmental policies which have depended upon, and

have been shaped by, complex and unique mixes of formal and informal determinants inside the national layers.⁵⁷ EU environmental policies have therefore faced a number informal and formal obstacles which have occurred in the form of different policy priorities, strategies and policy styles (i.e. informal determinants), as well as incompatible political-administrative structures and legal systems (i.e. formal determinants). These determinants have made the implementation of EU environmental policies difficult.

EU environmental policies often clash with informal determinants such as policy-makers' priorities and strategies as well as policy styles and practices within the national layers

Actors in the EU and national layers have been involved in the balancing of informal policy priorities and strategies which has required the coordination of essentially two (conflicting) interests: environmental protection **and** economic prosperity. However, while all three layers have sought to consolidate environmental and economic interests, the input of economic considerations has differed considerably between the layers. At the EU level, the 'level-playing-field' consideration has played a significant role in the production of EU environmental policies. In contrast, UK (Conservative) Governments, have pursued a laissez-faire economic policy which has by and large pushed the regulation of environmental standards to the side-line of priorities. Since the

⁵⁷ This research confirms Weale's argument that the national context is a more important influence on environmental politics and policy than are common secular trends (in contrast, Jaenicke argues that there is a common, cross-national pattern in the development of environmental policy). See Weale et al 'Environmental Administration in six European States: Secular Convergence or National Distinctiveness?' Public Administration vol.74, Summer 1996, (pp.255-274).

early 1990s (and until October 1998), FRG Governments under Helmut Kohl focused on the 'Wirtschaftsstandort Deutschland' policy which put a damper on many environmental priorities. This economic priority is unlikely to change in the near future with the new Schröder Government. In the light of these divergent national economic strategies, many EU environmental policies which were intended to harmonise and regulate 'polluting' economic activities, have encountered resistance from national actors and have therefore failed to reach their implementation target.

The Chapter has also highlighted the differences in policy styles and practices between the EU and national layers. Broadly speaking, UK actors have approached environmental matters with a certain pragmatism, while their FRG counterparts have often pursued ambitious policies based on the precautionary principle and technological solutions. EU actors, for their part, have been influenced by a mix of Member States' policy styles and have developed their own 'European' style which has seen adjustments over the years. Since the early 1990s, EU actors and the Commission in particular, have tried to bring the EU and national layers closer in the environmental policy area by introducing a policy style which strengthens the links between EU and national actors via 'partnership' initiatives and dialogue groups. In addition, the Commission has pursued a less regulatory environmental policy which allows for more flexibility and subsidiarity. Whether the policies of partnership and subsidiarity can help overcome the dimensional hurdle from EU to national layers remains to be seen.

The FRG and UK have seen some 'Europeanisation' in their national environmental policies, i.e. they have adjusted to EU standards and objectives. Yet, there still remain formal and

informal differences between EU and national layers which make EU environmental policy implementation difficult. Considering the differences between the layers in environmental policy, it is unlikely that the gap between EU environmental policy-making and implementation can be closed completely unless the EU environmental policy becomes an integral (and exclusive) part of the Member States' environmental policies.

National layers' formal determinants, specifically their constitutional settings, political-administrative structures and legal systems, have often been incompatible with EU environmental policies

With reference to formal structures, it is striking how the FRG process has involved an enormously complex and complicated sharing of competencies.⁵⁸ The preparation, adoption and implementation of environmental policies within the FRG layer has therefore been a slow and arduous venture. Considering the complexity of the FRG political-administrative structures, the difficulties associated with the implementation of (and compliance with) EU environmental policies come to no surprise. Actors at both Federal and Länder levels have felt obliged to add their own ideas to EU environmental policies and have adjusted EU policies to suit their national (and subnational) priorities and circumstances (see also Chapter 5 and case study in Chapter 6). According to the Commission and environmental NGOs, these

⁵⁸ For discussions on the complex FRG political-administrative system and its influence on EU policy-making see Rometsch, Dieter The Federal Republic of Germany and the European Union. Patterns of Institutional and Administrative Interaction University of Birmingham, Discussion Paper in German Studies, December 1995. See also Jeffery, Charlie Towards a 'Third Level' in Europe? The German Länder in the European Union (pp.253-266) Political Studies vol.44, No.2, 1996.

'adjustments' have in many cases contradicted with the original objectives of EU environmental policies.

In comparison, the UK has had the advantage that national (and subnational) implementors have been used to processing policies from central government in Westminster and Whitehall. In other words, EU environmental policies have not faced the same scrutiny by legislators and implementors in the UK as has been the case in the FRG (see also Chapters 5 and 6). This may change in the near future, however, with the devolution plans for Scotland and Wales which will provide Scottish and Welsh actors with more decision-making powers. These constitutional changes may encourage Welsh and Scottish actors to examine 'instructions from outside' more closely and shape them to suit their particular priorities and circumstances. Until then, actors in the UK transpose EU environmental legislation verbatim for England/Wales, Scotland and Northern Ireland without adjusting the actual content of policies.

When it comes to the practical implementation of EU environmental policies, UK political-administrative actors have enjoyed considerable discretionary powers. This discretionary room has led to instances where the UK has not properly followed its EU environmental policy obligations. For example, UK officials considered the instalment of only seven NO₂ monitoring stations sufficient for the whole UK. This small number, however, prompted criticism from the Commission over the UK's inadequate implementation of an air quality Directive. Also, measuring water quality standards only in a small number of UK coastal areas not affected by water pollution attracted the Commission's attention. Therefore, the UK has not been spared

from criticism over the inadequate processing of EU environmental policies.⁵⁹

In terms of legal systems and instruments, both the UK and the FRG have demonstrated some advantages as well as difficulties with EU environmental policies. Actors in the FRG have often complained about the lack of clarity which characterises many EU environmental Directives. FRG actors have tended to fill legal gaps with their own criteria and have thereby changed the character of many EU policies. Where EU environmental policies have provided detailed information on qualitative and quantitative environmental standards, FRG actors have faced a different problem: often EU and FRG standards have been divergent and FRG actors have been reluctant, or unable, to make adjustments. The FRG environmental policy has been based predominantly on regulations and technological solutions to pollution problems which follow a long and elaborate decision-making process. EU legislation 'from outside the FRG' has therefore been perceived as unnecessary and inconvenient unless they were in line with FRG standards (this even includes EU legislation which followed FRG initiatives).⁶⁰

The UK, on the other hand, has preferred policies which provide discretionary room for implementors and focus on voluntary environmental action. More recent EU environmental policies

⁵⁹ Heritier et al describe the UK's political-administrative characteristics (such as problems of 'soft regulation' and 'secrecy') and their negative impact on EU environmental policy implementation in Die Veränderung von Staatlichkeit. Ein regulativer Wettbewerb: Deutschland, Großbritannien und Frankreich Leske + Burdrich, 1994.

⁶⁰ For a detailed account on the divergent EU-FRG standards, see Lindemann, Hans-Heinrich; Delfs, Stefan 'Vollzug des Europäischen Umweltrechts. Lösungsansätze zur Überprüfung und Verbesserung' (pp.256-263) Zeitschrift für Umweltrecht Nr.6, 1993.

such as the 'eco-audit' Directive have therefore been more acceptable for UK implementors. UK actors have also followed a more 'integrative' approach towards environmental matters (demonstrated by the DoE and, for Scotland, the Scottish Office which consider environmental matters in conjunction with other policy sectors).⁶¹ EU policies such as the IPC Directive have therefore been easier to implement in the UK than in the FRG. The FRG has had considerable difficulties in pressing the IPC policy into a compartmentalised political-administrative system.⁶² However, in the case of qualitative and quantitative standards, UK administrators have often abandoned their 'sense of neutrality' when faced with EU policies which they considered too ambitious and stringent (i.e. policies over-stepping scientific marks and entailing 'excessive' costs). Moreover, UK actors have pursued quantitative and qualitative standards with less technological and regulatory perfectionism than FRG actors. In this respect, the FRG has had an advantage over the UK.

Both FRG and UK actors have sought to influence EU policy-making as much as possible to carry through their environmental policy ideas. Both Member States have also dealt with the subsequent EU environmental policy implementation in

⁶¹ Another way to describe the UK approach is offered by Heritier et al; they use the term 'konsensuelles bargaining' (p.112) in Die Veränderung von Staatlichkeit in Europa. Ein regulativer Wettbewerb: Deutschland, Großbritannien und Frankreich Leske + Budrich, 1994.

⁶² At the time of writing, FRG legislators prepare a comprehensive 'Umweltgesetzbuch' which encompasses EU 'integrative' policies such as the IPC Directive. FRG legislators address these policies with a certain reluctance; they are still considered as "imported and incompatible policies", "outcomes of diplomacy which cover up conflicting interests" and "confused but over-ambitious policy objectives". See di Fabio, Udo 'Integratives Umweltrecht. Bestand, Ziele, Möglichkeiten' (pp.329-337) Neue Zeitschrift für Verwaltungsrecht Nr.4, 1998. Translation by author.

accordance with their informal preferences and formal conditions. UK actors have reluctantly accepted EU Directives on air and water quality (many of which still require proper implementation), while FRG actors have implemented with great difficulty EU Directives which contain broad, integrative and procedural policy objectives.⁶³ In this respect, both national layers have demonstrated neither 'euro-scepticism' nor 'euro-enthusiasm' towards EU environmental policies. Another finding common to both layers has been a missing coherent and consistent overview on implementation performances which in turn has contributed towards a lack of discipline. Conscious of the EU diversity and the difficulty in gaining an overview, Member States' implementors have tended to be lenient with EU environmental policy objectives, especially with objectives which affected other (economic) policy priorities. Even if all Member States exercised a certain amount of implementation discipline, mistrust over other Member States' lax implementation practices still remains.

The success of EU environmental policies has obviously depended upon the formal and informal determinants within the implementation layers (confirming Argument 1). This Chapter has provided a general picture of EU and national environmental policies from a wider 'domestic' (i.e. national layer) perspective. Yet, a 'domestic' perspective limited to the national layer is not sufficient for fully covering the actual ground where the bulk of EU environmental policies are implemented. Most EU

⁶³ In fact, Heritier and Knill notice a shift from FRG-style EU policies to EU policies which are more compatible with the UK 'integrative' approach. See 'Neue Instrumente in der europäischen Umweltpolitik: Strategien für eine effektive Implementation' (pp.209-233) Lübke-Wolff, Gertrude (ed) Der Vollzug des Europäischen Umweltrechts Erich Schmidt Verlag, Berlin 1996.

environmental policies have to be filtered through to the regions and local communities and affect areas of subnational and local government competency such as planning, public health, waste and water management.⁶⁴ It is within the subnational layers that the majority of EU environmental policies are implemented or fail to be implemented. Subnational regions process policies within their own 'distinct' frameworks (or layers) which have to be taken into account when considering the EU environmental policy deficit. The following Chapter therefore addresses the subnational dimension by examining Scotland and Bavaria and their influence on EU environmental policies. It investigates to what extent Scotland and Bavaria confirm the above described characteristics of the national layers, modify national determinants to suit their subnational circumstances, and to what extent they defy national determinants in order to present their own 'distinct' environmental policy (testing Argument 2).

⁶⁴ Graham Ashworth describes these competencies and emphasises the importance of local government in environmental policy area in The Role of Local Government in Environmental Protection. First Line Defence Longman, Essex 1992.

Chapter 5

Environmental Politics and Policy in Scotland and Bavaria

5.1 Introduction

The previous Chapter examined EU environmental policies in the context of national (or 'domestic') frameworks. This Chapter refines and magnifies the implementation analysis by focusing on the subnational layer and its role in the EU environmental policy process. To help understand why subnational layers process EU environmental policies in a distinct way, the Chapter starts with a general analysis of Scotland and Bavaria's political systems and their positions in the wider national and EU contexts. The Chapter then focuses on Scotland and Bavaria's environmental policies and assesses to what extent their formal and informal determinants shape EU environmental policy implementation. It is not argued here that the Scots and Bavarians are necessarily less compliant with EU environmental policy obligations than are UK and FRG actors in general. Rather, Scottish and Bavarian actors process EU environmental policies in a 'unique' manner and in accordance with their particular political-administrative structures, policy priorities and practices.

The Chapter highlights essentially three reasons why Scottish and Bavarian policy implementation findings differ from their 'mother' states. Firstly, actors in Scotland and Bavaria are influenced considerably by their constitutional positions in the wider state systems (i.e. formal determinant) which in turn influence formal political-administrative structures as well as informal policy priorities and practices within the regions. Secondly, actors in Scotland and Bavaria follow their own informal priorities and attitudes towards environmental protection

which are shaped not only by their constitutional embeddedness in the wider national systems but also by subnational circumstances such as Scotland and Bavaria's geographical location, infrastructure, industrial sectors and population density. Finally, the implementation of EU environmental policies is influenced significantly by the Scots and Bavarians' links with, and attitude towards, the EU and the European integration process.

SCOTLAND

5.2 'Scotland's Paradox': Scotland's Structure and Position in the UK and the EU

In order to understand the way in which the Scots have perceived and dealt with environmental matters, it is necessary to establish Scotland's formal position within the UK. Scotland is an integral part of the UK, a centralised state which developed in a slow and steady evolutionary manner over the past centuries. Scotland's position in the UK is unique: it does not yet¹ possess its own parliamentary sovereignty and is dependent upon central government which is situated south of the border; yet, Scotland has retained distinctive institutions and enjoys considerable independence in the areas of education, law and religion.² This paradoxical situation will change in the near future with Scottish devolution introducing a Scottish Parliament which will take over a number of legislative powers for Scotland.

Scotland's current formal structure and position in the UK

¹ For a detailed account of the forthcoming Scottish devolution see 'Appendix 5: Scottish Devolution - A brief Outline'.

² Other aspects in which Scotland retained its national identity include culture, the media and sport. For a discussion on Scotland's position in the UK see Kellas, James The Scottish Political System 1989 and Midwinter, Arthur; Keating, Michael; Mitchell, James Politics and Public Policy in Scotland 1991.

political-administrative context is unusual: until 1996, Scottish local government was divided into 'Regional' and 'District Councils' (in contrast with English and Welsh County Councils) and has since been re-organised into 29 single-tier County Councils. Scottish local authorities co-ordinate their policies under the umbrella of the Convention of Scottish Local Authorities, in short CoSLA. Apart from co-ordinating Scottish local authorities' views, CoSLA seeks to counterbalance the central government ministry responsible for Scottish matters: the Scottish Office.

Formal representation of Scottish interests at large is conducted by the Scottish Office and the Secretary of State for Scotland. Due to the UK's history and constitution, both the Scottish Office and the Secretary of State for Scotland are somewhat 'hybrid' institutions: as parts of central government (i.e. national layer), they execute and administer policies which have been legislated in Westminster, while at the same time they represent Scottish interests (i.e. subnational layer interests) in the UK. This dual, reciprocal representation promises close formal ties between the UK and Scottish layers. However, promoting two sets of interests can be difficult, especially when these interests are opposed to each other. CoSLA's perceived task to 'counterbalance' both the Scottish Office and the Secretary of State for Scotland confirms that the representation of Scottish interests is rather precarious.

The Scottish Office and Secretary of State's 'juggling' of Scottish and UK interests has implications for informal relationships between political-administrative actors North and South of the border. While the Secretary of State for Scotland is a

member of the central government cabinet, he³ holds only the position of a junior minister and therefore enjoys less political power than his colleagues. The Scottish Office, on the other hand, suffers from a lack of communication with other, sectoral departments. Complaints from civil servants on both sides illustrate this communication problem. Whereas London-based civil servants say about their Scottish counterparts: "We don't know what they do up there - you'll have to ask them",⁴ a Scottish Office official remarked: "We always have to remind London that we exist".⁵ Geographical problems contribute towards this gap: the vast majority of Scottish Office civil servants are located in Scotland while fewer than 1% are based in Whitehall. There are also differences in responsibilities: the Scottish Office pursues territorial interests in an integrated, cross-sectoral manner, while other government departments such as the Department for Transport or the DoE pursue sectoral interests. The same division between territorial and sectoral responsibilities applies to the Secretary of State for Scotland and his Cabinet colleagues.

There is, however, another reason for the precarious situation in Scottish representation: until the general elections of May 1997 the majority of Scots did not appreciate their 'Scottish' representation in Westminster. Three-quarters of the Scottish voters did not vote for Conservative Governments and therefore felt that their interests were not represented adequately by

³ Scotland has never had a woman Secretary of State for Scotland.

⁴ Quoted in Butt Philip, Allan; Baron, Christina 'UK Report' (p.657) Siedentopf, Heinrich; Ziller, Jacques (ed) Making European Policies Work. The Implementation of Community Legislation in the Member States vol.1 and II, 1988.

⁵ Interview, 30. May 1995, Edinburgh.

Conservative Secretaries of State and a Conservative-led Scottish Office.⁶ From 1979 until 1997, Conservative Governments introduced policies such as the council tax and privatisation policies in education, health, energy and housing. These policies met with strong opposition in Scotland.

The discrepancy of informal perceptions dominated relations between the UK and Scottish layers and shaped the political-administrative process significantly. Similar tensions between central government and subnational regions are evident in every state system. However, in the Scottish case, the dissatisfaction of the Scottish public and many Labour-run (former) Scottish District and Regional Councils towards the UK central government has been more explicit. Apart from electoral discrepancies, relations between the centre and Scottish local governments were tense for two other reasons. In certain policy areas, Scottish local authorities have possessed few consultative and discretionary rights and have been obliged to receive and execute (unwelcome) Conservative Government policies.⁷ In other policy areas such as planning, Scottish local authorities have been able to pursue their (economic self-) interests regardless of the UK-wide impact their decisions may have had. This lack of co-ordination on both accounts has had a hindering impact on the transposition of policies in general.

As far as links with Brussels are concerned, formal contacts between Scotland and the EU have been largely dominated by.

⁶ At the general election in 1992 three quarters of the Scottish electorate voted for opposition parties - the Labour Party, the Liberal Democrats and the Scottish National Party.

⁷ The Council Tax and the creation of 'quangos' in Scotland serve as examples.

and have been conducted within, the national layer. As a central government minister, the Secretary of State for Scotland participates in Council of Minister meetings whenever the EU agenda affects Scottish interests. The same rule applies to the Scottish Office and its influence in Brussels. The Scottish Office has sent delegates to the UK Permanent Representation (UKREP) and has been consulted on Commission proposals which concerned Scotland particularly (such as the Habitats Directive). In addition, UKREP introduced an information practice which involves sending short progress reports to the Scottish Office. Individual (Scottish) UKREP officials have also maintained regular contacts with the Scottish Office.⁸ Despite these formal and informal means of Scottish representation, co-operation between Scottish and other UK actors on EU matters has been influenced by suspicion and sometimes mistrust.⁹ Following the persistent perception that Scottish interests do not receive adequate attention, Scottish Office officials have often felt that their colleagues in other (sectoral) departments ignore Scottish concerns when bargaining in Brussels. Therefore, the Scottish Office has maintained links with the Commission by regularly sending 12 to 18 officials to Commission Directorates General (DGs) on secondment. This secondment practice, however, has been the result of a voluntary and informal agreement between the Scottish Office and the Commission and does not constitute Scottish representation at the EU level as such.

⁸ In particular the UK Deputy Representative who is a Scot. Information from UKREP official, interview, 5. March 1997, Brussels.

⁹ A UKREP official described the mistrust between Scottish and UK officials in an interview, 5. March 1997, Brussels.

Over the years, other Scottish actors such as local government officials have sought independent channels of influence in Brussels and, in contrast to the rest of the UK, have promoted a more 'euro-friendly' image of Scotland.¹⁰ Today, various regional, commercial and educational representations lobby EU policy-makers directly and actively.¹¹ The privately-funded Scotland Europa office, established in 1991, facilitates private and public sector links with Europe. Scotland Europa Ltd represents and informs 45 subscribing members at the EU level. Apart from lobbyists associated with Scotland Europa, other Scottish actors seek to influence EU policy-making through European Parliament¹² and through other EU institutions such as the Committee of the Regions. Many Scots working for EU institutions or lobbying for Scottish interest groups maintain contacts, for instance, via the 'Jock Tamson's Bairns' Index which lists Scottish officials and employees working in Brussels.¹³

Despite a number of well-functioning European 'feed-back' links (see figure 5.1), Scottish EU representation has been fragmented and has relied upon informal contacts. All official matters affecting Scotland, for instance complaints about non-compliance

¹⁰ Many Scots have considered EU actors and institutions such as the Commission as allies in the campaign for devolved powers for Scotland and have used EU links to 'bypass' Westminster.

¹¹ Among them CoSLA, East of Scotland European Consortium (ESEC), Edinburgh's Telford College, Eurodesk Brussels Link, Highlands & Islands of Scotland European Office, Maclay Murray & Spens (law firm), Scottish Enterprise, West of Scotland European Consortium.

¹² Until the next EP elections in June 1999, eight MEPs represent Scottish constituencies; among them David Martin (EP Vice-President) and Ken Collins (Chairman of the EP Environment Committee).

¹³ For an account of Scottish representation at the EU level see Bomberg, Elizabeth 'Policy Networks on the Periphery: EU Environmental Policy and Scotland' (pp.45-61) *Regional Politics and Policy* vol.4, No.1, Spring 1994.

with EU policy obligations in Scotland, are processed via the national layer. Many Scots, however, have questioned the legitimacy of central government representing Scottish interests. The new Labour Government and the prospects of devolution may ease the tensions between Scottish and UK interests at the EU level. However, recent opinion polls in Scotland indicate that many Scottish voters re-establish a traditional opposition against Westminster by supporting the Scottish National Party (SNP).¹⁴ It remains to be seen to what extent a future Scottish Parliament will change Scotland's party political landscape and its influence in UK and EU politics.

5.3 Environmental Politics and Policy in Scotland

Environmental politics in Scotland has been shaped significantly by Scotland's formal structure and position within the UK and EU contexts. Scotland's paradoxical position in the UK (and the EU) and questions surrounding Scottish self-determination and devolution have had an impact on informal perceptions and policy priorities. Scottish devolution has preoccupied political minds in Scotland with the effect that other issues such as environmental problems have received not as much attention in Scotland as in other UK (and European) regions. Only recently have issues associated with 'green' movements attracted public and media attention in Scotland.¹⁵ The process of adopting and integrating

¹⁴ According to 1998 opinion polls conducted in Scotland by MORI, System Three and others, SNP support for the next Scottish Parliament elections has been almost equal to the support of the governing Labour Party. See The Scotsman website, in particular webpages 'Scotland could go it alone by 2013' and 'Labour gets new poll warning'.

¹⁵ See Eleanor McDowell 'The Environmental Movement in Scotland: An Empirical Analysis of Leading Group Activists' (pp.1154-1163) in Lovendusky, Joni; Stanyer, Jeffrey (eds) Contemporary Political Studies Vol.3, Political Studies Association, University of York, 1995.

environmental concerns in education, the media and at work has just started and many Scots are aware of the need to catch up with other Europeans in terms of environmental policy experience.¹⁶

Scotland's constitutional position has also had an impact on the way (EU) environmental policies are processed within Scottish political-administrative structures. Playing a dual role, the Scottish Office has pursued environmental policy instructions 'from Westminster' while at the same time responding to Scottish priorities and interests. As far as EU environmental policies are concerned, their formal transposition has been conducted by the Scottish Office in line with its 'hybrid' position in the UK state system. Scottish Office has generally followed Westminster and adopted 'Scottish' versions of DoE Statutory Instruments. While Scottish Statutory Instruments have taken account of Scottish circumstances (such as the large agricultural and fisheries sectors), they have not differed significantly from their DoE counterparts (see in particular case study in Chapter 6). The Scottish Office has traditionally been careful not to depart from central government policy and has relied upon the guidance from 'down South' on the transposition of EU policies. By and large, the study (and assessment) of EU legislation has been neglected by Scottish Office implementors. For instance, when asked about the EIA Directive (85/337/EEC), one Scottish Office official responsible for environmental and planning matters replied that he

¹⁶ "The Scottish Parliament offers an opportunity to start afresh and learn from not just the UK experience, but from our sister countries in Europe, some of whom have a longer and more thoroughgoing approach and strategy from which we can learn." Working for Sustainability: An Environmental Agenda for a Scottish Parliament Final Report. The Governance of Scotland Project. John Wheatley Centre, August 1997.

had "never read that thing".¹⁷ This transposition practice has been advantageous for EU policies in so far as Scottish implementors have not questioned or 're-written' EU legislation. On the other hand, DoE transposition documents have been copied automatically by Scottish implementors without much consideration for the original EU policy texts and without establishing additional measures in support of the policies.

The Scottish Office Agriculture, Environment and Fisheries Department has been formally responsible for environmental matters in Scotland translating central government policies into the Scottish context. However, while the Department has exercised considerable influence in the policy areas of agriculture and fisheries, it has shown less determination in pursuing environmental objectives. On the surface, environmental matters have been an integral part of the Scottish Office machinery with one Department covering the environment and two other related policy areas. One Scottish Office official argued that he and his colleagues have the advantage of discussing certain policy issues internally and consulting department colleagues on an informal basis. In contrast, the DoE has to reach out and approach other departments whenever co-operation and consultation is required.¹⁸ In this sense, it appears that environmental matters and EU integrative environmental policies in particular, are processed more effectively in Scotland than in the rest of the UK. In practice, however, the Scottish Office's approach towards the environment has not exactly been 'holistic' as environmental

¹⁷ Scottish Office official, telephone interview, 5. April 1995.

¹⁸ Scottish Office official, interview, 30. May 1995, Edinburgh.

objectives have tended to compete (often unsuccessfully) with other interests. On many occasions, the Scottish Office has demonstrated a lack of interest in environmental matters which do not carry the same immediate and lucrative benefits as economic policies.¹⁹ The Scottish Office has had the internal means to integrate environmental and other policy matters, but it did not utilise this advantage to provide for a strong policy of sustainable development.

Despite the low-priority stance of environmental issues, the Scottish Office has begun to respond to informal public pressures demanding more environmental action. While Secretaries of State have shown no particular interest in the environment (on no occasion has the environment been at the top of their political agenda), environmental concessions have indicated that the issue cannot be ignored completely. For instance, the postponement of the decision in 1996 to build a second Forth road bridge by Ian Lang (the Secretary of State for Scotland until May 1997) suggests that the Scottish Office has adjusted to 'green' pressures. Scottish Office Ministers for the Environment have not been enthusiastic towards the 'green cause'. In particular, Sir Hector Monro refused to open traditional lobbying networks to include environmental NGOs in Scotland. His successors, the Earl of Lindsay and Lord Sewel, signalled a change in attitude by showing an interest in environmental issues and initiatives.²⁰

¹⁹ For instance, the Scottish Office was responsible for setting up the Scottish Environmental Protection Agency and was blamed by environmental groups for not including 'integrated catchment management' (ICM) as one of SEPA's responsibilities. Among other aspects, ICM takes into account the effects of intensive farming and intensive forestry methods on water resources. Environmental groups claim that ICM was left out deliberately to please the farming community.

²⁰ The Earl of Lindsay initiated a Scottish Office publication documenting

Considering that a Secretary of State and two Scottish Office Ministers for the Environment have felt obliged to respond to increasing pressures from Scottish environmentalists, it can be deduced that slight policy changes take place in Victoria Quay.²¹

In order to accomplish environmental policies successfully, formal and informal links between the Scottish Office and Scottish local authorities should ideally be close and co-operative. However, as in most other areas, environmental policy links between the government levels have been dominated by an overall mistrust and can be described as non-cooperative. For instance, in the 1980s the Conservative Government deprived Scottish local authorities from an effective environmental policy tool by privatising bus services in Scotland. According to a (former) Regional Council official, local authorities effectively lost the control over public transport which could have been used to establish an environmentally-friendly, sustainable infrastructure.²²

The precarious relationship between central government and Scottish local authorities has influenced the practical application of EU environmental policies. While Scottish local authorities have enjoyed considerable discretionary room over many practicalities of EU environmental policies (such as determining

environmental initiatives. Common Sense, Common Purpose. Sustainable Development in Scotland 1996 is a colourful yet superficial statement. Lord Sewel is committed to "place sustainable development at the heart of policy making". Quoted from The Herald 'Scottish Office and Cosla in new accord' 22. August 1997, (p.7).

²¹ Victoria Quay is the new Scottish Office Headquarters in Leith, Edinburgh.

²² Regional Council official, interview, 11 January 1995, Edinburgh. This situation will change in the near future. The Labour Government White Paper on Transport of 1998 proposes more discretionary powers for local authorities. For instance, local authorities will be allowed to charge motorists for the use of roads and parking. 'Train, planes, but not automobiles' (p.34) The Economist, 6. June 1998.

EIA projects, see Chapter 6), the Secretary of State for Scotland has retained his ultimate right to over-rule local authorities' decisions. Due to the discretionary powers, implementation performances have been less co-ordinated and have depended on priorities and relationships between actors inside local authorities. The implementation of EU environmental policies has depended upon individual administrators and their interpretation of EU legislation and Statutory Instruments unless the Secretary of State interfered with their decisions.

CoSLA has not been able to provide an effective link of co-operation between the Scottish Office and Scottish local authorities in the environmental policy area. For example, together with the Scottish Office, CoSLA representatives published a Local Environment Charter for Scotland²³ which met with harsh criticism from environmental officers within the Councils. Many Council officials were outraged over the perceived arrogance with which the Charter was put forward and criticised the fact that only a small number of Council officials were involved in the Charter's preparation. Reactions such as these confirm that the working relationship between the Scottish Office and Scottish local authorities (and even CoSLA) in the environmental policy area has been marked by mistrust. This relationship may change in the near future. Following the Labour victory of May 1997, Labour-run Scottish local authorities have already supported CoSLA in its 'sustainable Scotland' partnership with the Scottish Office.²⁴ This new 'partnership' could prove

²³ Local Environment Charter for Scotland Published by The Scottish Office and the Convention of Scottish Local Authorities, September 1993.

²⁴ The Herald 'Scottish Office and Cosla in new accord' 22. August 1997, (p.7).

beneficial for the implementation of (EU) environmental objectives as actors at the Scottish and local community levels express their interest in close co-operation.

Environmental politics and policies at the Scottish local government level have shown strengths and weaknesses. Environmental objectives have suffered under formal constraints: the 1996 local government re-organisation in Scotland which involved a major administrative shake-up from a two-tier to a single-tier local government system occupied local administrators for several months. The shake-up and redundancies caused by the merging of responsibilities of former Regional and District Councils pushed many policies to the side-line of local politics.²⁵ Similarly, the implementation of EU environmental policies did not receive top-priority attention during the shake-up.

Prior to re-organisation, the majority of the District and Regional Councils produced environmental programmes (or charters) which outlined the Councils' commitment in protecting the environment.²⁶ These documents usually listed internal measures, for example energy saving and recycling schemes, and measures which promote environmental awareness outside the Councils.²⁷ While environmental initiatives and contacts with

²⁵ For example, 'Local Agenda 21' plans, which follow up the UN Agenda 21 initiative, had to be abandoned at the time of local government reform. Contacts with environmental actors could not be maintained during the shake-up. CoSLA spokesperson for Local Agenda 21, interview, 25. April 1997, Stirling.

²⁶ Examples: Environmental Action in Strathclyde. Charter for the Environment Strathclyde Strathclyde Regional Council, Chief Executive Department, 1994; Environmental Strategy City of Edinburgh District Council, Department of Strategic Services, 1995; Charter for Action on the Environment. 3rd Environmental Action Plan Lothian Regional Council, 1994; Environmental Charter Central Regional Council, 1994.

²⁷ Former Lothian Regional Council, for example, promoted and financially supported 'LEEP' (Lothian and Edinburgh Environmental Partnership) which

environmental organisations were disrupted by the local government shake-up, many informal initiatives and contacts have been maintained (or have been taken up again) by environmental officers within the Councils. Environmental officers have consulted NGOs such as Friends of the Earth Scotland (FoEScotland) and have maintained close links with 'green' groups in Scotland. However, environmental officers have often felt isolated and have complained about their colleagues' lack of interest in 'green' issues.²⁸ Today, environmental officers enjoy considerable freedom in producing environmental charters and programmes; they also participate in the 'Local Agenda 21' initiative which continues the objective of the 1992 UN Conference on the environment in Rio to promote environmental protection at the local community level. As far as influencing other local government departments is concerned, environmental officers play only a minor role in local authority activities; they are 'tolerated' but not integrated as influential actors in Scottish local politics.

One environmental officer argued that Scottish local authorities follow a low key environmental policy approach because public opinion in Scotland does not put enough 'green' pressure on them.²⁹ The public debate over Scottish devolution provides one explanation for the somewhat half-hearted interest in 'green' issues. Another explanation can be seen in the fact that Scotland's

advised businesses and citizens on recycling and energy efficiency.

²⁸ Regional Council officials, interviews, 11. January 1995 (Edinburgh) and 7. August 1995 (Glasgow).

²⁹ Former Regional Council environmental officer, interview, 11. January 1995, Edinburgh.

natural resources have been taken for granted by many Scots. Because of its relatively low population density and an abundance of natural resources, pollution problems have been less visible in Scotland and therefore appeared to be less urgent. At the same time, Scotland's natural resources have supported large economic sectors such as the wool and whiskey industries and tourism. For this reason, many Scots have been "unconsciously aware"³⁰ of environmental issues and have shown an interest in natural resources (such as water) mainly because they constituted essential components for their economy.

A 1995 public opinion survey has shown that while the majority of respondents in Scotland were generally concerned about environmental problems, they quite strongly favoured economic interests over other considerations.³¹ Many respondents were not prepared to restrict economic development such as the building of out-of-town shopping centres. 73% of respondents agreed that "if people want to go shopping in their car, it's up to them".³² The Brent Spar controversy of 1995 also suggests that the majority of Scots have been less worried about environmental problems than other Europeans. The planned disposal at sea of the 'Brent Spar' Shell oil rig caused more public opposition in other European regions than in the region most directly affected by the plan: Scotland and particularly the north west of the Hebrides.³³ One of

³⁰ Description used by Scotland Europa Ltd Spokesperson, interview, 5. March 1997, Brussels.

³¹ McCaig, Ewen; Henderson, Charlie (The MVA Consultancy) Sustainable Development: What it means to the general public The Scottish Office Central Research Unit, 1995.

³² McCaig and Henderson (p.10).

³³ The dumping plan caused boycott protests throughout Europe with an immediate 20% decrease in Shell's retail figure in the FRG. In contrast, car

the key reasons behind the Scots' reluctance to challenge a large company (and employer) can be found in Scotland's economic conversion from old heavy industries to new industries such as North Sea oil exploitation. Enjoying material wealth, many Scots have been reluctant to restrict immediate economic development for the sake of less tangible environmental benefits.

More importantly, Scots have perceived Scotland's peripheral situation in the Single Market as a disadvantage which has to be compensated with lenient environmental standards and the promotion of economic development.³⁴ Indeed, many Scottish actors from the public and private sectors have opposed EU environmental policies which seemed to threaten economic opportunities in disadvantaged regions and imposed financial and administrative costs which appeared to be disproportionately high for Scotland.³⁵ In fact, many officials at both Scottish Office and local authority levels have abandoned their 'euro-friendly' attitude when faced with 'expensive' EU environmental policy obligations. For instance, the Drinking Water Directive and the 'voc Stage I' policy of 1984 (which regulates the capturing of emissions at petrol stations) has met with strong opposition in Scotland. Scottish Office officials and those affected by the policies (such as farmers with their own water supplies and petrol station owners)

drivers in Scotland continued to buy their petrol at Shell petrol stations, according to a BBC Scotland Today TV news report, 16. June 1997.

³⁴ Susan Baker et al confirm the peripheral regions' concern that so-called 'core regions' are more economically advanced and that they enjoy better trade links with the rest of the EU. See Protecting the Periphery. Environmental Policy in Peripheral Regions of the European Union Frank Cass, London 1994.

³⁵ Bomberg describes Scotland's 'peripherality' and gives examples on the (perceived) disproportional costs in 'Policy Networks and the Periphery: EU environmental policy and Scotland' (pp.45-61) Regional Politics and Policy vol.4, Spring 1994.

have felt that the periphery situation of the Highlands has been an unacceptable disadvantage as remote areas cannot afford the changes to drinking water supplies and petrol stations.³⁶ Pragmatic economic (self-) interests have therefore influenced key actors' perceptions towards EU environmental policies. Faced with 'inconvenient' EU obligations, many Scots have tended to complain as much about the costs imposed by "bright-eyed, bushy-tailed junior Commission officials" as their colleagues in other EU regions.³⁷ Therefore, the above described close informal relations between EU and Scottish actors dampen as soon as policy details over potential economic restrictions and sacrifices come to light. Unless they fit conveniently into existing procedures and priorities, EU environmental policies face a lack of commitment, if not down-right resistance, from many Scottish implementors. Comments such as "the most endangered species in the Highlands is man" illustrate this concern over EU-imposed burdens and therefore come to no surprise.³⁸

However, it would be misleading to assume that the Scots are only interested in economic benefits. A number of Scottish institutions and organisations fulfil key monitoring, educational, informative and advisory functions in the environmental policy area. Since 1996, the quango 'Scottish Environmental Protection Agency' (SEPA) has pursued the tasks of pollution control and

³⁶ Information from British COREPER official. Interview, 5. March 1997, Brussels.

³⁷ The comment was made by a representative from the Scottish whiskey industry at an Environmental Group meeting organised by Scotland Europa, Glasgow, 26. February 1997.

³⁸ The comment was made by a Scottish business representative at an Environmental Group meeting organised by Scotland Europa, Glasgow, 26. February 1997.

waste regulation.³⁹ SEPA has been criticised for being an over-centralised institution, for not ensuring the representation of local authorities and for neglecting vital monitoring tasks such as ICM.⁴⁰ SEPA officials have responded to the criticism by stressing that the agency is still in a process of learning and identifying pollution control criteria. Some SEPA officials have continued with the former HMIPI and RPBs' neutral and passive approach while many others have taken a more 'green-activist' position (at least at public meetings) in Scottish environmental politics.⁴¹ In terms of EU environmental policy implementation, however, SEPA has played an important monitoring and control function in the areas of air quality control as well as waste and water management.

Scottish Natural Heritage (SNH) has fulfilled advisory and monitoring functions in Scotland and has entertained close ties with the Scottish Office. SNH has been criticised by environmental activists, however, for acting like a central government agent and adopting (former) Conservative Government terminology such as 'efficiency' and 'value for money'.⁴² Nevertheless, SNH has contributed towards

³⁹ Prior to 1996 these functions belonged to Her Majesty's Industrial Pollution Inspectorate (HMIPI) and the River Purification Boards (RPBs), as well as Scottish local authorities.

⁴⁰ ICM ('integrated catchment management') takes into account the effects of intensive farming and intensive forestry methods on water resources.

⁴¹ Examples: Environmental Law Lecture at University of Edinburgh (15. January 1997) and Scotland Europa Environmental Group meeting (26. February 1997).

⁴² In fact, SNH is financially dependent on central government funding. Quotations from Scottish Natural Heritage Third Operational Plan - Review of 1993-94 and Work Programme 1994-95 and Corporate Plan 1994/95 - 1996/97.

environmental awareness in Scotland and has taken the lead in a number of environmental initiatives.⁴³ With regard to EU environmental policies, SNH has contributed towards the implementation of the 1979 Wild Birds Directive and, more recently, has played a leading role in the first implementation stage of the EU Habitats-Directive (92/43/EEC).⁴⁴

The environmental NGO 'Friends of the Earth Scotland' (FoEScotland) has regularly attracted public and media attention with campaigns such as 'Slow down Scotland' in 1994 and has maintained contacts with the EU Commission on a number of environmental issues.⁴⁵ FoEScotland have utilised their links with the Commission as "headline grabbers" and have thereby strengthened the 'green cause' in Scotland.⁴⁶ FoEScotland and other NGOs have welcomed the environmental input from the EU layer and have put pressure on Scottish implementors to comply with EU environmental obligations.

Finally, there are a number of organisations in Scotland which have fulfilled informative functions. For instance, the Scottish Environmental Education Council (SEEC) has co-ordinated the work of REEFs, informed children in Scotland about environmental issues and raised 'green awareness' in Scottish

⁴³ Examples include the SNH's 'Countryside around Towns' programme, the 'Coastal and Marine Task Force', and the 'Cairngorms Project'.

⁴⁴ SNH has prepared a list of areas for environmental protection which fall under the Habitats Directive.

⁴⁵ In 1995 FoEScotland informed the Commission about the M77 road extension project which caused controversy and media attention in Scotland. Commission DG XI replied promptly and sympathetically to FoEScotland's claims that the M77 project did not comply with requirements of the EIA Directive. FoEScotland spokesperson, interview, 17. April 1995, Edinburgh.

⁴⁶ FoEScotland spokesperson, interview, 17. April 1995, Edinburgh.

schools.⁴⁷ The Centre for Environment and Business in Scotland (CEBIS), which has been funded by Scottish Enterprise and membership fees, has informed interested businesses of the latest developments in UK and EU environmental legislation which affect Scottish industry.⁴⁸ By doing so, CEBIS has made a valuable contribution towards the implementation of (and compliance with) EU environmental policies.

Figure 5.1 summarises the Scottish layer and its formal and informal determinants which have shaped (and continue to shape) (EU) environmental policies in Scotland. Scotland has featured some favourable determinants (such as economic sectors depending on 'healthy' natural resources) as well as unfavourable determinants (such as a 'half-hearted' public opinion towards environmental problems) for the environmental policy process. Recent years have seen a moderate shift towards environmental awareness in Scotland. Representatives from a wide spectrum of institutions and interest groups now seek to strengthen policy links between actors and government levels and establish a 'Scottish' environmental policy.⁴⁹ It remains to be seen whether Scottish devolution and the latest environmental initiatives can contribute towards a coherent environmental policy which accommodates (and complements) EU objectives and ensures a

⁴⁷ 'REEFs' stands for 'Regional Environmental Education Forums'. The SEEC also collaborates with many other institutions concerned with environmental education such as teacher training colleges and the Scottish Office.

⁴⁸ With the binder Environmental legislation and policy for the manager, CEBIS regularly update Scottish businesses about new standards and requirements in the environmental field.

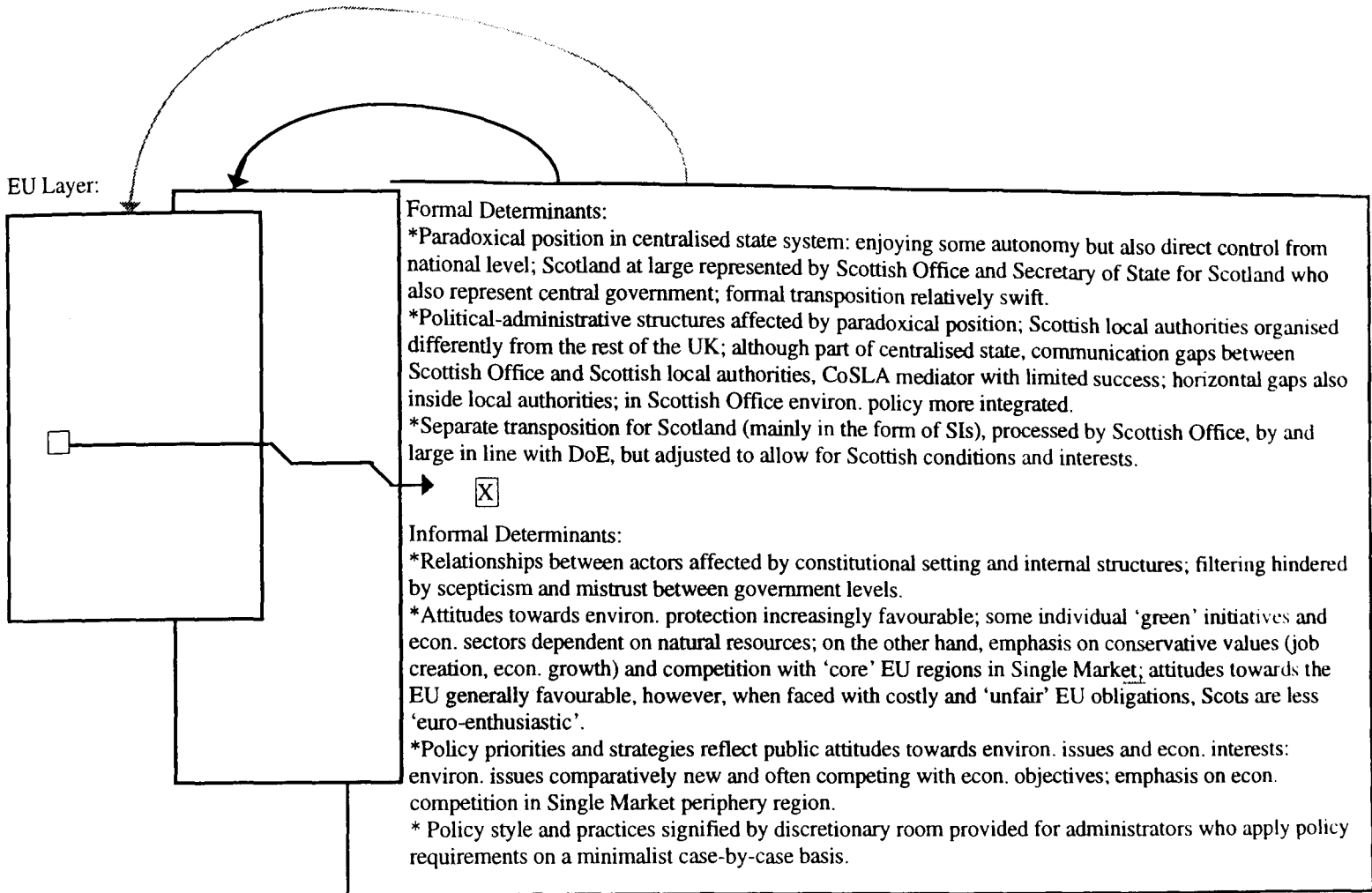
⁴⁹ For a discussion on a future Scottish environmental policy see Working for Sustainability: An Environmental Agenda for a Scottish Parliament. Final Report The Governance of Scotland Project, John Wheatley Centre, August 1997.

sustainable environment in Scotland.⁵⁰

In terms of EU environmental policy implementation, some Scottish actors (such as Scottish NGOs) have welcomed and actively supported EU environmental policies while many others (such as government officials and private sector representatives) have openly expressed concern over the additional costs and work associated with EU environmental obligations. These 'burdens' have been perceived as particularly unfair for Scotland, a regions which is at the periphery of the Single Market. While EU environmental policies have benefited from a swift and uncomplicated transposition process, they have also faced resistance from conservative (economic) priorities in Scotland. These priorities have often been incompatible with EU environmental obligations and have presented obstacles in the implementation path.

⁵⁰ Environmental activists already express their fears that a future Scottish Parliament will focus on "jobs at all costs" while neglecting the environment. 'View from the Mill' (p.3) FoEScotland What on Earth Issue 20, Spring 1998.

Figure 5.1: The Scottish Layer and Environmental Policy



BAVARIA

5.4 'Bayerische Offensive': Bavaria's Structure and Position in the FRG and the EU⁵¹

In order to understand how Bavaria is processing EU environmental policies, it is necessary to investigate the Bavarian layer and its formal and informal determinants. Bavaria's formal constitutional position in the FRG state system can be described as 'verflechtet' (interconnected) yet confrontational. The 'Free State' of Bavaria⁵² is part of a federal state system which shares political-administrative competencies with the national layer.⁵³ Once the Federal level (i.e. the Bundestag and the Bundesrat) adopts a Federal Law, the Länder are obliged to execute the policy according to the principle of 'federal loyalty' (Art.83). In return, the Federal level respects the legislative and executive powers of the Länder. This careful balancing of Federal and Länder powers has placed formal and informal obstacles in the policy path. Bavarian political-administrative actors in particular, have insisted on their autonomy in certain areas and have maintained a strong and well-functioning political-administrative system which has resisted many 'instructions from above'.⁵⁴

⁵¹ The title 'Bayerische Offensive' of a Bavarian State Government economic initiative best describes the Bavarian 'confrontational' position and attitude towards FRG and EU actors.

⁵² For a general introduction to the politics of the 'Free State' of Bavaria see Peter James The Politics of Bavaria - An Exception to the Rule Avebury, Aldershot 1995.

⁵³ The FRG constitution provides a clear framework: in policy areas such as defence the Federal level enjoys exclusive decision-making powers (Art.73), 'concurrent' or shared powers exist in areas which concern both government levels such as social services (Art.74), and in areas such as education the Federal level only provides framework guidance while respecting the 'cultural diversity' of the Länder (Art.75).

⁵⁴ A German COREPER official described the Bavarian administration as a 'Musterverwaltung', a perfectionist 'model' administration which is not

Parallel to the FRG constitution, Bavaria established its own constitution in December 1946 which stipulates the principles of democracy and self-determination as well as the Bavarian national heritage and Christian (i.e. Catholic) values. Policy-making in Bavaria has been an elaborate democratic process of several readings, involving the Bavarian State government, a lower chamber (i.e. the Land parliament or 'Landtag'), and an upper chamber (i.e. the Bavarian 'Senat').⁵⁵ In some specific cases which involve substantial reforms, the Bavarian policy-making system even allows for referenda, a measure which is unusual for FRG politics.⁵⁶ The Bavarian State government consists of a 'Ministerpräsident' and nine government ministers. The 'Ministerpräsident' who is supported by the 'state chancellery' of about 330 officials, has traditionally enjoyed a powerful position, with the other nine ministers and their sectoral departments⁵⁷ following his political lead. Despite the two chamber system,

prepared to accept instructions from outside. Interview, 5. March 1997, Brussels.

⁵⁵ The 'Senat' has no counterpart in any of the other FRG Länder. It consists of 60 members representing social, economic, cultural and local community interests who must be older than 40 years of age. Among other sources, for more information about policy-making in Bavaria see Internet (<http://www.bayern.landtag.de/wissen/gesetz/gesetz.htm>).

⁵⁶ To date, 5 referenda have been conducted in Bavaria. One referendum concerned the question whether Bavaria should align its electoral system to the FRG system. Following the 1970 referendum, Bavaria changed its '10% electoral hurdle' to the FRG '5% hurdle'. Most recent referendum 1. October 1995: 'Volksentscheid über neue kommunale Mitwirkungs- und Entscheidungsrechte der Bürgerinnen und Bürger' (referendum on citizens' participatory powers in local authority decision-making).

⁵⁷ Apart from the Bayerische Staatskanzlei, the other nine government departments are: Staatsministerium für Bundesangelegenheiten; Bayerisches Staatsministerium des Innern; B.S. der Justiz; B.S. für Unterricht, Kultus, Wissenschaft und Kunst; B.S. der Finanzen; B.S. für Wirtschaft, Verkehr und Technologie; B.S. für Ernährung, Landwirtschaft und Forsten; B.S. für Arbeit und Sozialordnung, Familie, Frauen und Gesundheit; B.S. für Landesentwicklung und Umweltschutz.

Bavarian Ministerpresidents have tended to be charismatic and powerful politicians who have enjoyed the backing of their political party, the CSU. The CSU has been, for German standards, an unusual political party as it represents only territorial (i.e. Bavarian) interests and secures vast majorities at every Bavarian election.⁵⁸

In contrast to the Scottish Office's 'dual' representation of central government and Scottish interests, Bavarian State governments have tended to compete with Federal Government and have not shied away from occasional confrontations with the Federal level and other Länder.⁵⁹ Although constitutional obligations have been followed with 'federal loyalty', Bavarian politicians have tended to perceive 'outside' obligations as disturbances to Bavarian affairs. The CSU Government in particular, has promoted the idea of Bavaria's self-sufficiency and has been reluctant to commit Bavaria's resources to projects outside its range of powers. Co-operation with other European regions has been generally welcome, however policy 'instructions' from the national and EU layers have been perceived as unnecessary 'burdens' which should be avoided.⁶⁰

⁵⁸ For an empirical analysis of the Bavarians' unusual electoral behaviour see Falter, Jürgen 'Bayerns Uhren gehen wirklich anders. Politische Verhaltens- und Einstellungsunterschiede zwischen Bayern und dem Rest der Bundesrepublik' (pp.504-521) *Zeitschrift für Parlamentsfragen* Nr.13, 1982. Bavarian elections in September 1998 have confirmed that the Bavarian electorate differs from the rest of the FRG: the CSU secured an absolute majority while the general elections conducted one week later resulted in a red-green coalition government at the FRG level.

⁵⁹ For example, Franz Josef Strauß' regular disputes with Federal Chancellor Helmut Kohl. An example for Länder quarrels is Stoiber's criticism in 1997 over the 'lax' handling of anti-nuclear protests by the Lower Saxony police force.

⁶⁰ For a Bavarian critique of EU environmental 'instructions' see in particular Wegner, Hans-A 'Die Umweltpolitik der EG im Spannungsfeld zwischen Harmonisierungszwang und Subsidiaritätsprinzip' Sonderdruck aus

Along similar lines, local authorities in Bavaria have enjoyed discretionary powers based on the Bavarian constitution. The Bavarian 'Free State' is organised in a three-tier government system with the Bavarian State government level at the top of the ladder, the seven Districts ('Regierungsbezirke')⁶¹ at the intermediate level, and the County (71 'Landkreise') and Town (25 'Kreisfreie Städte') Councils at the bottom of the system.⁶² In order to extract a common position which represents policy interests and opinions, each local government level has organised itself within umbrella organisations ('Spitzenverbände')⁶³ equivalent to the Scottish CoSLA.

In contrast to CoSLA, Bavarian 'Spitzenverbände' have been in the formal position to ensure that no government level 'above' oversteps political-administrative boundaries. Occasionally, Bavarian local authorities have had to protect their 'autonomy' when confronted with a dominant Bavarian State government.⁶⁴ Consequently, informal relations between Bavarian local

Berichte der Bayerischen Akademie für Naturschutz und Landschaftspflege
Nr. 17, 1993.

⁶¹ Unterfranken, Oberfranken, Mittelfranken, Oberpfalz, Niederbayern, Oberbayern, Schwaben.

⁶² The Counties themselves are divided into smaller communities, totalling 2052 'Gemeinden' in Bavaria. District presidents are appointed civil servants; members of the District assemblies ('Bezirkstage') are elected. County presidents ('Landräte') as well as County Councils ('Kreistage') are elected by their constituents; the same applies to Town Councils, town mayors, and community Councils ('Gemeinderäte').

⁶³ 'Spitzenverbände' in Bavaria: Verband der Bayerischen Bezirke (regions), Bayerischer Landkreistag (districts), Bayerischer Städtetag (towns), Bayerischer Gemeindetag (municipalities).

⁶⁴ The following statement indicates that Bavarian local authorities have to 'guard' their constitutional rights: "constitutional reality is often not identical with constitutional right." ("Denn Verfassungsanspruch und Verfassungsrealität driften immer wieder auseinander.") (p.7) Bayerischer Städtetag. Aufgaben, Organisation, Mitglieder 1991.

authorities and the Bavarian State government have not been entirely co-operative. In fact, a former Bavarian local authority spokesperson described relations between the Bavarian State government and local authorities as 'stiefmütterlich'.⁶⁵ This relationship has been worsened by economic and financial pressures following German unification, the recession and economic targets associated with the EMU.⁶⁶ The Bavarian State government has responded to these pressures by shifting a number of 'expensive' responsibilities to lower government levels.⁶⁷ Bavarian local authorities in turn have had to cope with public criticism over unpopular and stringent economic decisions. As a result, communication between the Bavarian State government and local authorities has deteriorated further.⁶⁸

Apart from disputes between the Bavarian State government and Bavarian local authorities over competencies, both levels have pursued different objectives. The Bavarian State government have focused on the formulation of legal texts for Bavaria, while Bavarian local authorities have been occupied with the subsequent practicalities of policy obligations. While this sharing of tasks makes sense, the difference in perceived objectives has constituted a psychological gap between 'instructors' and 'implementors' which does not facilitate the policy process in Bavaria.

⁶⁵ 'Stiefmütterlich' - behaving like a 'stepmother'. Comment made by a former official of the Europabüro der Bayerischen Kommunen, interview, 6. March 1997, Brussels.

⁶⁶ For details on EMU convergence criteria see Chapter 4, footnote 43.

⁶⁷ For instance, some social security provisions and environmental policy tasks were shifted to local authorities.

⁶⁸ Official of the Europabüro der Bayerischen Kommunen, interview, 4. March 1997, Brussels.

Tensions between government levels have also been evident in Bavaria's formal and informal links with the EU. The Bavarian State government has been one of the key campaigners for increased subnational participation at the EU level. Bavaria hosted a number of Länder and European regions conferences⁶⁹ which contributed towards the adoption of policies such as the principle of subsidiarity and the establishment of the Committee of the Regions.⁷⁰ Following Länder pressure, the Federal Government had to accept constitutional adjustments in the form of a new Article 23⁷¹ which has allowed Länder formal representation at Council meetings whenever Länder competencies are affected.⁷² While Article 23 has strengthened the Länder's formal position in the EU process, a clearer line still has to be drawn establishing exactly which government level participates at which Council meeting. In addition, Länder governments have already signalled their continuing dissatisfaction with the inadequate participatory powers at the EU level.⁷³ It remains to be seen whether Bavaria

⁶⁹ Länder representatives met in 1987 to adopt the 'Ten Munich Theses on European Policy'; Bavaria initiated and hosted the first Conference on 'Europe of the Regions' in 1989.

⁷⁰ The four key demands of the regions: formalisation of the 'subsidiarity' principle; subnational representation at Council meetings; a 'regional chamber'; a right of appeal for subnational governments to the European Court of Justice. Apart from the latter, all demands were met with the subsequent TEU.

⁷¹ Article 23 was included in the constitution without, however, amending Articles 24(1) and 32(1). For an English translation of Article 23 see 'Appendix 4: Extracts from the Federal German Constitution'.

⁷² Länder representatives participate on behalf of the FRG as a whole. Article 23 is further strengthened by a more detailed Federal Law of 12 March 1993 and an 'Agreement on the Co-operation in European Union Matters' of 29 October 1993. Prior to these changes, the FRG constitution provided the Federal level with exclusive decision-making powers at the EU level; the Länder could only observe developments from a distance (the only Länder official in Brussels was the 'Beobachter der Länder' ('observer') whose tasks were restricted to the collection of EC information for the Länder).

and the other Länder can utilise their new powers and shape EU policy-making effectively. So far, the 'fusion' of Federal and Länder representation at the EU level has resulted in 'confusion' over competencies and interests and could well lead to a slow-down of the EU environmental policy process.⁷⁴

Both the Bavarian State government and Bavarian local authorities have maintained well-resourced quasi-representation offices in Brussels: the 'Informationsbüro des Freistaates Bayern' and the 'Europabüro der Bayerischen Kommunen'.⁷⁵ The 'Freistaat' office lobbies EU institutions on behalf of the Bavarian State government and focuses on economic interests and formal implementation problems, while the 'Kommunen' office represents Bavarian local authorities and their every-day practical problems with EU policies. Apart from the two Bavarian offices in Brussels, two members (out of 24 FRG members) of the Committee of the Regions (CoR) represent Bavarian State interests, while one CoR delegate (out of three 'Kommunen' delegates) represents Bavarian 'Kommunen' interests and fourteen MEPs come from Bavarian constituencies.⁷⁶ Bavarian lobbying techniques have been

⁷³ According to a Bavarian Government official, the current situation is 'not satisfactory': Länder can send delegates to the Council but still have no independent representation. Written correspondence, 13. March 1996, Munich.

⁷⁴ Terms used by Dietrich Rometsch in The Federal Republic of Germany and the European Union. Patterns of Institutional and Administrative Interaction University of Birmingham Discussion Papers in German Studies, December 1995.

⁷⁵ Bavarian interests are also pursued by Members of the European Parliament, Members of the Committee of the Regions, and, of course, Bavarians who work within EU institutions. A similar index to 'Jock Tamson's Bairns' does not exist for Bavaria, but individual contacts are maintained on an informal basis.

⁷⁶ CoR Bavarian State representatives: Thomas Goppel (Minister for the Environment), Reinhold Bocklet (Minister for Agriculture and Forestry). CoR 'Kommunen' representative: Otto Neukum (Landrat Kreis Bamberg).

criticised by officials from EU institutions and FRG representations as 'awkward' and sometimes even 'intimidating'.⁷⁷ Bavarians have enjoyed comparatively strong formal links with the EU (see 'feed-back' in figure 5.2) and have had the (financial) resources to be heard at the EU level, but their 'awkward' informal lobbying has often hindered successful Bavarian participation in EU politics.

5.5 Environmental Politics and Policy in Bavaria

An often-quoted phrase - "in Bayern gehen die Uhren anders"⁷⁸ - not only describes Bavaria's unique position and internal structures in general, the phrase also applies to the unique features of Bavaria's environmental politics and policy. In contrast to Scotland, Bavarians have been interested in 'green' issues from an early stage and have used their formal means to establish an environmental policy which has differed in many respects from the FRG policy. In fact, the Bavarian 'Free State' included environmental protection as one of its state objectives⁷⁹ long before the Federal level decided to amend the FRG constitution.⁸⁰

Generally, German MEPs do not represent constituencies as such due to the mixed FPTP/PR electoral system. However, fourteen MEPs are elected as Bavarian members under the FPTP section. Information from Europa-Pass für Bayern Europäische Kommission, Vertretung in Deutschland (no date).

⁷⁷ For instance, a Commission DG XI official complained about the 'most severe intervention' ("massivste Intervention") tactics by Bavarian representatives during the preparation of an environmental policy proposal. Commission DG XI official, interview, 7. March 1997, Brussels.

⁷⁸ English translation: in Bavaria the clocks run differently.

⁷⁹ Constitutional reform in 1984. Article 3(2) commits the 'Free State' to protect the natural resources and cultural traditions; Article 131(2) establishes a 'sense of responsibility towards the environment' as one of the key objectives in Bavarian education; Article 141(1) obliges the 'Free State' and its citizens to protect the environment in a sustainable manner for future generations.

⁸⁰ Since 1994 the FRG constitution includes a new Article 20A: the state protects the environment for future generations in accordance with the

Apart from the 'green' amendment of Bavaria's constitution, Bavaria established an additional principle of "environmental precedence": environmental concerns shall take precedence over other considerations such as planning.⁸¹ Other Bavarian forerunner initiatives include the first school curriculum which mentions environmental education (1976), the first systematic assessment of natural habitats ('Biokartierung') from the mid-1970s onwards, and the first comprehensive and systematic measuring networks in the areas of air quality, soil and nuclear energy.⁸² Since Bavarians have been able to establish an independent environmental policy at an early stage, it should be an easy task to identify a 'Bavarian' environmental policy and a 'Bavarian way' of EU environmental policy implementation.

At the Bavarian State level, the 'Bayerische Staatsministerium für Landesentwicklung und Umweltfragen' (StMLU),⁸³ established in 1970 and the first ministry of its kind, has played a central if not dominant role in Bavaria's environmental policy. Untypical for the FRG and Bavaria's compartmentalised policy approach, the StMLU was established to accommodate two vital

constitution and legislation. For a detailed account of Bavaria's development and adoption of the environmental objective see Mauritz, Markus Natur und Politik: Die Politisierung des Umweltschutzes in Bayern Andreas Dick Verlag, Neueraubling 1995.

⁸¹ This principle, however, is limited to cases where economic and other considerations have 'long-term and fundamental impacts'.

⁸² For further information see Umweltschutz in Bayern '94, Information: Umweltschutz und Landesentwicklung in Bayern both: Bayerisches Staatsministerium für Landesentwicklung und Umweltfragen, 1994 and 1996 respectively; Im Dienste des Umweltschutzes Bayerisches Landesamt für Umweltschutz (LfU) (no date).

⁸³ English translation: Bavarian State Ministry for Planning, Development and Environmental Matters. The StMLU fulfils functions similar to the Scottish Office Agriculture, Environment and Fisheries Department.

interests: economic development on the one hand and rural-traditional values on the other hand.⁸⁴ To a certain extent, this underlying concept continues to apply to this day as StMLU officials still consider their role as balancing and combining environmental protection with economic development. In this sense, the StMLU has been the first government department in Europe to apply the approach of environmental policy 'integration'. However, in terms of EU environmental policy implementation, the StMLU has not been a 'truly integrative' institution. In particular, the StMLU has had serious difficulties with broad and cross-sectoral policies such as the EIA Directive or the IPC Directive. These integrative policies have been processed in a fragmented, piecemeal and even technocratic manner. Communication and co-ordination between the StMLU and other sectoral departments and government levels over the implementation and effectiveness of these and other EU environmental policies have been almost non-existent.⁸⁵ A coherent picture (and further strengthening) of EU environmental policies is therefore difficult to achieve.

Over the years, the StMLU managed to give equal weight to environmental and economic aspects. At least, citizens and environmental NGOs in Bavaria appeared to be satisfied with the handling of environmental matters. However, since the early 1990s, the economic-environmental balance has drifted towards

⁸⁴ Bavarian political-administrative actors thereby responded to the negative impacts on the environment of post-war economic reconstruction and migration from Central and Eastern Europe, both of which were completed by the late 1960s.

⁸⁵ One StMLU official commented that other government departments and local governments do not report to him and his colleagues on EIA policy compliance. Interview, 19. August 1996, Munich.

economic priorities and the StMLU has been criticised by environmental NGOs for compromising the 'green' policies of the 1970s and 1980s in favour of economic deregulation of the 1990s.⁸⁶ The Bavarian Development Programme of 1993, for instance, deleted key clauses such as "a healthy environment should not be sacrificed for the sake of economic growth". In addition, statements such as "policy objectives are to be implemented" were replaced by vague formulations such as "should be pursued if possible".⁸⁷ The high-profile initiative 'Umweltpakt' of 1995 also signalled a major policy change.⁸⁸ Following a new 'substitution and deregulation' approach,⁸⁹ the StMLU now "eases the financial burden" for businesses caused by environmental control. In return, private sector representatives commit themselves towards a number of 'voluntary' environmental obligations listed in the 'pact' document.

While the StMLU has conducted a strategic change from a stringent to a more flexible and lenient environmental policy, it continues to supervise and co-ordinate a variety of environmental activities in Bavaria. Its role in Bavaria's environmental policy is

⁸⁶ BN-Position. Ökologisches Landessanierungsprogramm. Stellungnahme zur Fortschreibung des Landesentwicklungsprogramms Bayern Bund Naturschutz in Bayern e.V., 1993.

⁸⁷ "Ist zu" (1976 Programme) is replaced by "soll", "möglichst" and "soweit möglich und vertretbar" (1993 Programme). Information taken from BN-Position. Ökologisches Landessanierungsprogramm. Stellungnahme zur Fortschreibung des Landesentwicklungsprogramms Bayern Bund Naturschutz in Bayern e.V., 1993.

⁸⁸ Umweltpakt Bayern. Miteinander die Umwelt schützen Bayerische Staatskanzlei (publisher) 1995. English translation: 'Pact on the Environment'.

⁸⁹ For a summary of the 'substitution and deregulation' approach see Böhm-Amtmann, Edeltraud Cooperative Enforcement: Successes, Impediments, Solutions Conference Paper at the United States Environmental Protection Agency, Washington, 21-22. January 1998.

so central that policies from the EU and national layers are received with considerable reluctance. In fact, the StMLU has made no secret of its opposition against policies from 'outside' which it considers unacceptable and incompatible with Bavarian standards.⁹⁰ This rather defensive behaviour of the StMLU has represented an obstacle in the path of environmental policies which derive from the national and EU layers. The complex sharing of powers between the Federal and Bavarian levels has contributed towards the perception that every EU environmental policy has to undergo a scrutiny process. In the process, EU environmental policies are shaped to fit Bavaria's existing legal-administrative system.

Following the above described tradition to 'confront' other government levels, the StMLU has tried to resist many 'inconvenient' EU environmental policy obligations. StMLU officials have tended to wait until Federal and Länder colleagues completed their EU policy tasks and have frequently blamed the Federal level for their own transposition delays.⁹¹ Arguing that the implementation of most EU policies lie within their exclusive domain, Bavarian implementors have also considered it unnecessary to inform Federal and EU actors on their transposition performances and have insisted that both EU and Federal levels are not in the position to supervise Bavaria's compliance with EU obligations.⁹² The Bavarian State

⁹⁰ These views were openly expressed during a research interview. StMLU officials, 19. August 1996, Munich. Further, see Wegner, Hans-A 'Die Umweltpolitik der EG im Spannungsfeld zwischen Harmonisierungszwang und Subsidiaritätsprinzip' Sonderdruck aus Berichte der Bayerischen Akademie für Landespflege und Naturschutz Nr.17, 1993.

⁹¹ StMLU written correspondence, 26. February 1998, Munich.

⁹² Neither the Treaties nor the FRG constitution provide for specific measures

government has been adamant to maintain this 'unwritten rule' and has opposed any form of instruction concerning the transposition and practical implementation of EU policies. Bavarians have also questioned the necessity of many EU policies on the grounds of subsidiarity.⁹³ This 'euro-sceptical' attitude, an attitude which is unusual for the FRG as a whole,⁹⁴ is unlikely to change in the near future and will continue to influence relations between Bavarian and EU actors during environmental policy-making and implementation.⁹⁵

Despite the StMLU's central co-ordinating position, links between the StMLU and government levels below have suffered from the above described tensions over competencies. The Bavarian State government has responded to the economic pressures of the 1990s and has shifted the burden of financing many environmental policies to Bavarian local authorities which in turn have had to deal with expensive pollution control measures in

which monitor and control implementation performances within the Länder and Bavaria in particular.

⁹³ For instance, Thomas Goppel (Bavarian State Government Minister for the Environment) opposes the EU 'dirigism' during a speech at the Peutingger-Collegium, 23. April 1997, Munich.

⁹⁴ One exception is, perhaps, Thuringia which followed Bavaria's 'Euro-sceptic' example. The Thuringia Land government clashed with the Commission over subsidies for declining industries in Thuringia which the Commission considered as distorting the Single Market.

⁹⁵ The Bavarians' scepticism does not stop at the EU (Commission) level: apart from recent complaints by StMLU Minister Thomas Goppel about the Commission's inactivity in monitoring regions' performances, other EU regions have been criticised for not complying with EU environmental legislation (Press Release PM-Nr.126/97). StMLU Minister Goppel's remarks as well as strong critical views expressed to the author by StMLU officials indicate that Bavarian politicians and administrators are not inclined to adjust their informal attitudes in order to co-operate more effectively with the Commission on the implementation of EU environmental policies (interview, 19. August 1996, Munich).

areas such as noise, air, soil, waste and water.⁹⁶ Not surprisingly, Bavarian local authorities have considered these responsibilities and further environmental instructions from 'above' not so much a necessity rather a punishment which causes considerable financial and administrative problems.

The Bavarian 'Spitzenverbände' have taken a passive stance in the co-ordination of environmental policies. One of the few inter-regional initiatives was taken in May 1997 when a private marketing company was commissioned by the Bavarian 'Landkreistag' to survey local authorities' environmental activities and prepare a comprehensive overview of environmental policies in Bavaria.⁹⁷ While this and other initiatives have been intended to strengthen policy co-operation between the regions (and government levels), local authority officials still prefer to compartmentalise environmental matters along horizontal and vertical lines. For instance, the pollution control of a river is divided into sections according to size and relevance for infrastructure, with different government levels taking care of different parts of the river. This sectoralisation and fragmentation has implications for the pursuance of many environmental policies: efforts to comply with environmental objectives are not co-ordinated between government levels and departments and there is a general lack of transparency over policy results. Ultimately, inadequate information and lack of transparency contribute towards implementors' lack of commitment in

⁹⁶ According to an official of the Europabüro der Bayerischen Kommunen, 4. March 17, Brussels.

⁹⁷ The survey Die umweltbewusste Gemeinde was conducted by B.A.U.M Consult München GmbH. Findings are assessed at the time of writing.

environmental policies and particularly policies which require a joint effort and affect several policy areas.

The fragmentation and lack of a coherent overview is reflected in local authorities' environmental programmes and charters. Few policy documents are available in Bavaria and those which are available, are not comprehensive but instead focus on either nature protection⁹⁸ or the technological side of pollution prevention and control.⁹⁹ Apart from these specialised areas, there are also a number of leaflets in circulation which outline individual local community initiatives for the environment.¹⁰⁰ In many instances, local authority officials referred the author to StMLU publications such as Die Umweltbewusste Gemeinde, an information pack which had been compiled with the help of Bavarian local authorities and which provides information on existing environmental initiatives and gives advice on setting-up new initiatives.¹⁰¹ To date, Bavarian local authorities have not produced a common environmental strategy which would help co-ordinate and strengthen cross-boundary and cross-sectoral environmental policies.

Considering Bavaria's overall environmental policy, not only formal structures have influenced environmental institutions and policies, other determinants such as informal attitudes towards

⁹⁸ Example: Informationen zu Naturschutz und Landschaftspflege Newsletter, Regierung von Oberbayern (no date).

⁹⁹ Examples: Umweltschutz im Regierungsbezirk Unterfranken April 1996; Umweltschutz im Regierungsbezirk Mittelfranken October 1995.

¹⁰⁰ Examples: Landschaftsplanung Gemeinde Kirchdorf im Wald (no date); Gemeinde Hunding Arbeitsergebnisse: Kommunale Strukturpolitik 1995; Bürgerinformation Landschaftsplan der Stadt Abensberg (no date).

¹⁰¹ Die Umweltbewusste Gemeinde. Leitfaden für eine nachhaltige Kommunalentwicklung May 1996.

environmental issues, traditional values, economic priorities and geographic location have shaped institutions and policies. Environmental awareness has been particularly influenced by Bavaria's traditional values which constitute an essential part of Bavarian politics. Bavaria has often been described as a 'Flächenstaat' - a state with large rural and agricultural resources as well as forests and parks.¹⁰² In addition, traditional economic sectors such as farming, tourism and beer brewing have relied upon a healthy environment. In comparison with Scotland, Bavaria's 'conservatism' has combined successfully rural traditions and nature-orientated values with more recent 'green' issues such as problems of air pollution.

The combination of traditional and new environmental concerns contributed towards the early establishment the 'Bund Naturschutz in Bayern e.V.'¹⁰³ in 1913. Over the years, the 'Bund' has fulfilled informative and advisory functions similar to the Scottish SNH. However, in contrast to SNH, the 'Bund' has been financially independent from government and has played a more confrontational role. With its campaigns such as the promotion of small-scale farming methods which allow for biodiversity and the preservation of rural communities, the 'Bund' has merged Bavarian traditional-rural values with new 'green' issues.¹⁰⁴ The

¹⁰² 88% of Bavaria's land mass is used for forestry and agriculture. Hinterstoisser, Franz 'Umweltpolitik in Bayern - Folgen für die Landwirtschaft' (pp.25-33) Landwirtschaft und Umweltpolitik Nr.30, 1996.

¹⁰³ English translation: Federation for Environmental Protection in Bavaria (e.V. abbreviation for 'eingetragener Verein' - registered organisation). The 'Bund Naturschutz in Bayern' has 130,000 members and is associated with the FRG-wide BUND (Bund für Umwelt und Naturschutz).

¹⁰⁴ BN-Position: Zukunft für die Landwirtschaft. Aktualisierte agrarpolitische Forderungen des BN Bund Naturschutz in Bayern e.V., November 1995.

'Bund' has also campaigned for the protection of the Alpine and Danube regions which represent valuable parts of the Bavarian heritage.¹⁰⁵ The 'Bund' has collaborated with other environmental NGOs such as the 'Landesbund für Vogelschutz in Bayern e.V.' (LBV).¹⁰⁶ The LBV, too, has promoted the protection of Bavaria's natural heritage, in particular the protection of Bavaria's wild birds such as the kingfisher.

The 'Bund' and LBV have co-operated with the EU Commission on a number of occasions and have used EU institutions and policies to support their 'green' campaigns.¹⁰⁷ Both NGOs have sought to influence the implementation of EU environmental policies such as the Habitats Directive and sometimes have had to initiate legal proceedings against the Bavarian State government. For instance, the 'Bund' was involved in a legal case against the Bavarian State government which concerned the question whether the 'B15 neu' motorway project was compliant with the EIA Directive. LBV complained bitterly about the last-minute consultation by the StMLU on the list of protected areas for the Habitats Directive.¹⁰⁸ Bavarian environmental NGOs possess comparatively large membership and financial resources but their quasi-exclusion by the Bavarian State government from the

¹⁰⁵ Rettet die Donau! Stoppt die Kanalisierung! Bund Naturschutz in Bayern e.V. leaflet, December 1993. BN-Position. Das Alpenprogramm des Bundes Naturschutz Bund Naturschutz in Bayern e.V., 1989.

¹⁰⁶ English translation: Federation for the Protection of Birds in Bavaria.

¹⁰⁷ Information provided by two 'Bund' activists during research interview, 19. August 1996, Landshut (Bavaria).

¹⁰⁸ The list had already been published by the time the LBV was consulted for final comments. Information from LBV written correspondence, 2. February 1998, and 'Presseinformation Nr. A31-97: Landesbund für Vogelschutz (LBV) fordert: Schutzgebietnetz NATURA 2000 erweitern', 22. July 1997.

implementation process can only be disadvantageous for EU environmental policies.

Another key actor in Bavarian environmental politics is the 'Bayerische Landesamt für Umweltschutz' (LfU) which exemplifies the Bavarians' preference for measuring and assessing pollutants and environmental impacts in Bavaria (see informal determinant in figure 5.2). The measuring of qualitative and quantitative environmental standards has been elaborate and extensive in Bavaria. Particularly the LfU, Bavaria's equivalent to SEPA, has monitored environmental standards in great detail and has provided information for the public and private sectors as well as interested citizens. The LfU has collected data on air, soil, water, noise, waste, nature, and nuclear safety, and has prepared assessments and environmental reports such as the 'Biokartierung'. It was the first agency to set up a centralised air quality monitoring network in 1974 and now supervises 73 monitoring stations. In addition, the LfU today runs 30 stations specifically measuring radioactivity in air. A new LfU Headquarter for 430 employees is expected to be completed in Augsburg by 1999. With the new Augsburg LfU Headquarters, the Bavarian State government intends to create a centre of 'green technology' which provides information and know-how particularly for the industrial sector.¹⁰⁹

The attribute of technological perfectionism has been quite pronounced in Bavaria, perhaps even more pronounced in Bavaria than in the rest of the FRG (and indeed the rest of the EU).

¹⁰⁹ For further information see Im Dienste des Umweltschutzes Bayerisches Landesamt für Umweltschutz (no date); Umweltschutz und Landesentwicklung in Bayern Bayerisches Staatsministerium für Landesentwicklung und Umweltfragen, 10/96.

Bavaria has been one of the wealthiest regions in the EU; its citizens have been able to accept and afford stringent technological standards.¹¹⁰ On the other hand, the focus on 'water-tight' technological standards has also meant that many EU environmental policies which are less measurable (i.e. policies such as the EIA policy) fell in the 'incompatible' category and were neglected by Bavarian implementors because they did not fit into Bavarian standards and practices.

Since the early 1990s the Bavarians' vigorousness with environmental standards has taken a turn with increasing economic pressures. German unification together with the opening towards Central and Eastern Europe, the ongoing recession and tough EMU targets have changed informal policy priorities in Bavaria. While other EU regions and FRG Länder have faced the same or similar economic pressures, Bavarians have perceived these problems as particularly burdensome and as the most difficult problems since the Second World War. The prospect of economic instability partly caused by economic and political changes in neighbouring countries to the East have compelled the Bavarian public and politicians to consider substantial economic policies. The Bavarian State government has responded to economic fears by launching initiatives such as the 'Bayerische Offensive' (which invests public money in new businesses) and the above mentioned 'Umweltpakt'.¹¹¹ The

¹¹⁰ Of the EU GDP average 100, Bavaria scores 127.

Bavaria's wealth has been one of the key reasons for Bavaria's strong environmental policy stance, according to a representative of the Bavarian local authorities office in Brussels. Interview, 4.March 1997.

¹¹¹ The policy of derogation and deregulation is outlined in Bavarian Government documents such as Information: Umweltschutz in Bayern (10/96) and Umweltpakt Bayern. Miteinander die Umwelt schützen 1995.

Bavarian State government now relies heavily upon the private sector's 'voluntary' self-discipline ('Eigenverantwortung') to limit environmental pollution and develop clean technologies.

With the economic pressures of the 1990s, Bavarian political-administrative actors and representatives from the private sectors have distinguished more carefully between 'welcome' and 'unwelcome' EU environmental policies. 'Inconvenient' policies involving administrative changes and adjustments of threshold criteria have caused headaches for Bavarian administrators, while policies based on voluntary action such as the 'eco-audit' Directive have been looked upon favourably in the light of Bavaria's 'deregulation' measures. Nevertheless, the majority of EU environmental policies are still perceived as unnecessary, incompatible with Bavarian standards, and 'imposed by outsiders' who do not have a legitimate right to do so.¹¹² Comments such as: "Brussels does not even have a proper sewage plant, so who are they to set high standards for us?!" are typical for the Bavarian State officials' attitude towards EU institutions and EU environmental policies.¹¹³

Bavaria has been at the forefront of some radical environmental initiatives and has often shown a stronger commitment towards environmental objectives than other FRG Länder. Bavaria has invested substantially in environmental technology, in particular the monitoring of environmental standards. On the other hand,

¹¹² In 'Die Umweltpolitik der EG im Spannungsfeld zwischen Harmonisierungszwang und Subsidiaritätsprinzip' Hans-A. Wegner highlights incompatibilities between EU and Bavarian standards and describes many EU environmental policies as "Rückschritte" ('backward steps') for Bavaria. Sonderdruck aus Berichte der Bayerischen Akademie für Naturschutz und Landschaftspflege Nr.17, 1993.

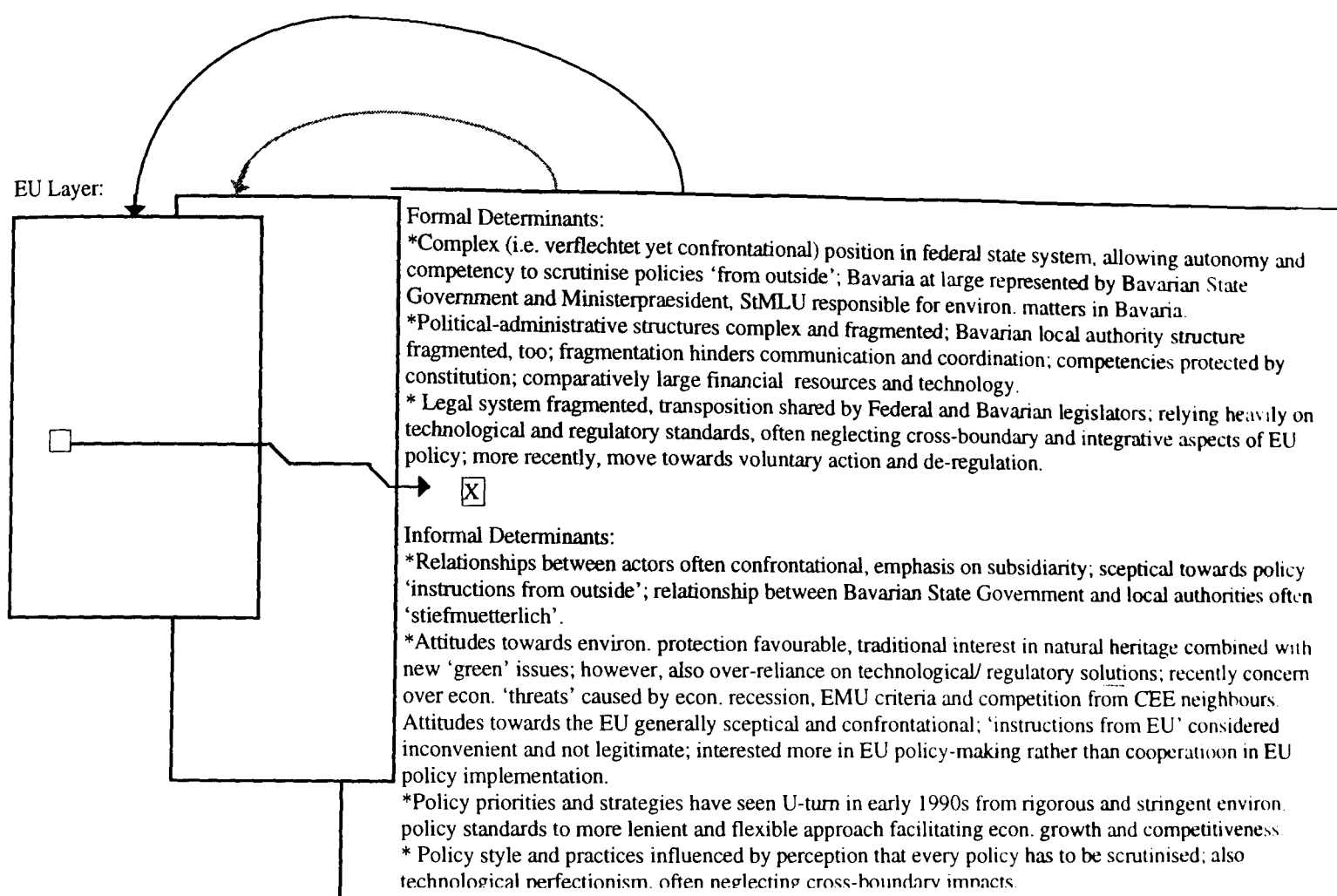
¹¹³ Bavarian StMLU official, interview, 19. August 1996, Munich.

Bavarian technological perfectionism together with Bavarian self-determination has often resulted in a reluctance to pursue policies from outside the Bavarian layer. In addition, the 1990s' economic difficulties and associated problems such as high unemployment have caused Bavarian political-administrative actors and the public to view their (old) environmental policy practices as a luxury which cannot be maintained in the near future. Since the late 1990s, Bavarians have embraced a strategic policy change of deregulation which now threatens to undermine many Bavarian environmental achievements and indeed many EU environmental policy objectives.

Figure 5.2 highlights formal and informal obstacles in the Bavarian layer which make the implementation of EU environmental policies difficult. Bavarian political-administrative actors have scrutinised every EU environmental policy and have relied upon their own media-specific and technological standards. Since the early 1990s, the StMLU in particular has focused on a strategic change towards environmental policy 'deregulation'. Bavaria's 'deregulation' may have been in line with those EU policies which are based on voluntary action. However, other EU environmental objectives have suffered from a lack of discipline and co-ordination. The 'voluntary approach' has been welcomed by the private sector, but environmental NGOs in Bavaria have opposed the new emphasis on voluntary action quite strongly. NGOs have tried to support EU environmental policies but their involvement in the implementation process has been restricted by Bavarian administrators as much as possible. Their confrontational position in Bavarian environmental politics has hindered them from forming a partnership with the public and

private sectors which could have supported the implementation of EU environmental objectives.

Figure 5.2: The Bavarian Layer and Environmental Policy



5.6 Conclusion: Subnational Layers are important in the EU Environmental Policy Process

With the help of the map, this Chapter has described how two 'distinct' subnational layers feature their own 'unique' mixes of formal and informal determinants and develop their own environmental policies. The Chapter has also shown how 'distinctly Scottish and Bavarian' formal and informal determinants have shaped EU environmental policies in both regions (confirming Arguments 1 and 2). In the following conclusion, three key insights are highlighted again.

(EU) Environmental policies have been shaped by the subnational regions' formal constitutional position in the wider national state systems

Subnational regions' formal constitutional positions in the wider national context constitute an important determinant in the implementation of EU environmental policies. In the Scottish case, environmental policies have been influenced by Scotland's paradoxical position: on the one hand, Scotland has enjoyed autonomous spheres which have allowed Scotland to develop some distinct environmental policy features, while on the other hand, Scotland has been an integral part of the UK centralised state system and has therefore followed the national lead in many other environmental policy instances. This paradox is reflected in the way Scottish actors, and in particular Scottish Office officials as representatives of both central government and Scottish interests, have followed (and perceived) their roles and relationships in the EU environmental policy process. While responsibilities for formal transposition of EU policies have been kept comparatively simple (the Scottish Office has tended to

adopt a Scottish version of DoE documents), formal and informal relationships at a later implementation stage have often suffered from the Scottish paradox as it contributed towards a lack of co-operation and even mistrust between government levels.

Scotland's paradoxical position has generated an ongoing debate about Scottish devolution which has dominated Scottish politics for the past decades. The environmental policy area has suffered under this debate in so far as many Scots have neglected environmental issues and have shown limited interest in the pursuance of EU environmental policies. Nevertheless, environmental problems have not been ignored completely and there are indications that many Scots consider them increasingly important. Scotland currently prepares for a devolved Scottish Parliament which will provide the Scots with more decision-making powers. In the process, the Scots may well develop their own independent environmental policy¹¹⁴ and may well strengthen their commitment towards EU environmental policies. The next steps in the devolution process will determine the future of (EU) environmental policies in Scotland.

In contrast, the Bavarians have enjoyed substantial political powers in the federal state system and have therefore been able to establish their own independent environmental policy. Arguably, Bavaria has been the FRG Land most committed to the environment and has stood at the forefront with a number of environmental initiatives. Bavaria has managed to accommodate

¹¹⁴ See Working for Sustainability The Governance of Scotland Project, mentioned above. FoE Scotland urge environmentalists to keep up the pressure and remind politicians in Scotland that environmental concerns should be considered in a future Scottish Parliament. 'Scottish Parliament - Green for Go?' (p.6) What on Earth Issue 18, Summer 1997.

traditional values and 'new' environmental concerns (such as nuclear safety and air pollution) as matters of central importance. However, with similar vigorousness, Bavarians have conducted an environmental policy 'U-turn' in recent years. The new lenient and flexible approach has proven to be more substantial and radical than the environmental policy adjustments of the FRG as a whole (see Chapter 4). Bavaria's relative independence in the environmental policy area has not left much room for environmental ideas and instructions from 'outside'. In fact, every EU environmental policy that entered Bavaria's fragmented and legalistic political-administrative system has faced serious implementation difficulties. Bavarian political-administrative actors have protected and maintained their competencies and have demonstrated a rather confrontational attitude towards instructions from 'above' or 'outside'. This sceptical and confrontational attitude has meant that EU environmental policies have had to overcome (and sometimes have failed) constitutionally protected hurdles of Bavarian scrutiny and approval.

(EU) Environmental policies have been influenced by 'distinctly Scottish and Bavarian' Informal Determinants

While formal determinants are paramount, it would be misleading to place too much emphasis on Scotland and Bavaria's constitutional positions and internal formal structures. There are other, informal determinants such as policy-makers' priorities, attitudes towards environmental protection, and policy styles within the subnational layers which ultimately shape EU environmental policies. Scotland has been, in some respects, 'greener' than the UK as a whole: Scotland's unique natural

environment has been an integral and much valued part of Scotland's national heritage. In addition, important economic sectors such as tourism and the wool and whiskey industries have depended upon a healthy environment in Scotland. Therefore, commercial considerations have contributed towards an interest in environmental matters in Scotland. On the other hand, there are indications that the majority of Scots have been less concerned about environmental problems (such as water pollution) than other EU citizens. This half-heartedness has been partly due to an abundance of natural resources which make environmental problems less visible and economic priorities which have been more pronounced in Scotland because of its peripheral situation. While economic priorities have distracted many key Scottish actors from environmental issues and the implementation of EU environmental policies, recent years have also seen an upward trend in the Scots' environmental awareness. This new 'green' interest can only benefit EU environmental policy implementation.

Informal determinant differences are also evident between Bavaria and the FRG: Bavaria was the first FRG Land to formulate an environmental policy. The Bavarians' motivation to pursue an environmental policy as early as 1970 derived mainly from Bavaria's 'Flächenstaat' characteristics (large rural, agricultural and forestry areas) and the traditional values associated with them, as well as the desire to promote economic development without compromising Bavaria's natural resources to an unacceptable level. While the Bavarians combined successfully traditional and 'new' environmental values, they have also reacted to the economic challenges of the 1990s with a policy change more radical than in the rest of the FRG. The Bavarians'

perceptions and attitudes, which obviously change over time and depend on political-economic circumstances, influence the way in which EU environmental policies have been processed. Since the early 1990s, Bavarians have pursued a policy of 'substitution and deregulation' which is compatible with 'voluntary action' EU environmental policies. Bavaria's new strategy, however, is less compatible with regulatory and procedural EU environmental policy obligations. While Bavarian political-administrative actors have reassured critics that deregulation will not lead to lax environmental policy compliance, the risk still remains that implementors and practitioners will not follow EU policy requirements by the book.

Formal and informal links between the EU and subnational regions have influenced significantly EU environmental policy implementation

Finally, the subnational regions' formal and informal links with the EU have influenced EU environmental implementation performances. Both Scottish and Bavarian links with the EU have varied. While the Bavarians have enjoyed stronger formal links with Brussels and have had the financial and administrative means to channel their views to the EU level, the Scots have participated either through the national layer or through well-functioning informal lobbying bodies in Brussels. Bavarians have campaigned for, and have maintained, strong formal links with the EU in order to influence the formulation of EU policies. Indeed, their rigorous campaign for more participation has occasionally backfired as EU actors often perceived Bavarian lobbying as intimidating. Bavarians have been less interested in close ties with the EU (Commission) when it comes to the implementation of EU

environmental policies. This discrepancy suggests that Bavarians are not particularly interested in the success of EU environmental policies. Although this may be true to a certain extent, the main reason for this discrepancy lies in the Bavarians' confidence that they fully comply with EU obligations and that they do not wish to be supervised by another government level. This attitude, however, prevents any critical self-assessment on the part of Bavarian implementors which, ultimately, would be beneficial for EU environmental objectives.

The Scots have appeared to be more 'euro-cooperative' than their Bavarian counterparts. Until the Labour victory of May 1997, particularly Scottish local government officials have considered the Commission as an ally against the 'mighty' central (Conservative) government and have therefore participated at the EU level in a less confrontational manner than the Bavarians. A 'truly euro-friendly' position, however, is difficult to establish because Scottish links with Brussels have been maintained through central government and informal channels. Disagreements between Scottish and EU levels have therefore been less obvious. A less 'euro-enthusiastic' attitude is noticeable in Scotland when it comes to the implementation of EU environmental policies. Faced with 'inconvenient' practicalities of EU environmental policies, many Scots (particularly those affected by 'unbearable' administrative and economic costs imposed on their already ailing economies) have turned out to be as 'euro-sceptical' as their Bavarian colleagues. Therefore, the implementation of EU environmental policies in Scotland has not been guaranteed by the Scots' apparent 'euro-friendliness'; instead it has depended upon Scottish pragmatism and economic (self-) interests in a

competitive Single Market.

The difference in EU attitudes between subnational and national layers is striking. In contrast to the FRG 'driving force' in the European integration process, Bavarians have taken an overall 'euro-sceptical' stance and have defended their powers and interests at every opportunity. The Scots, on the other hand, have departed from the UK position of an openly 'awkward EU partner'¹¹⁵ and have presented themselves as 'euro-friendly'. This image, however, has not prevented occasional criticism against "bright-eyed bushy-tailed Commission officials"¹¹⁶ by Scottish actors who have faced 'inconvenient' EU environmental obligations which placed a disproportionately heavy burden on the peripheral region Scotland.

Looking at the overall process of EU environmental policy implementation, the question remains whether EU environmental policies are compatible with the Scottish and Bavarian political-administrative systems. If both subnational layers feature determinants which are favourable to EU environmental policies, policy implementation should take place without major difficulties. However, if subnational determinants are incompatible with EU environmental policies, problems of implementation are almost inevitable. Focusing on formal and informal links between government levels, both Scotland and Bavaria have featured unfavourable weaknesses and gaps in the EU environmental policy filtering process. Tensions caused by political and

¹¹⁵ Stephen George uses this description in An Awkward Partner: Britain in the European Community 1990.

¹¹⁶ The comment was made by a representative of the Scottish Whiskey industry, see above.

constitutional circumstances exist in both political-administrative systems. In the Scottish case, vertical communication and co-operation links have been dominated by mistrust and political differences (especially between the Scottish Office and Scottish local authorities). Horizontal links between policy sectors have been more integrated in Scotland but have also shown problems in co-ordination (especially within local authority administrations). The UK centralised state system in its current form implies one advantage for the implementation of EU environmental policies: since the Scottish Office and the Secretary of State are part of UK central government and since Scotland does not yet possess a parliament and government of its own, policy instructions do not require political approval in the subnational layer. The lack of a subnational authority which scrutinises every policy entering its territory can therefore be seen as beneficial for the implementation of EU environmental policies.

In contrast, the transposition of EU environmental policies in Bavaria is bound to be difficult. The FRG constitution (and the Bavarian constitution for that matter) emphasises the sharing of competencies between government levels. While Bavarian implementors are required to follow their obligations under the FRG constitution and under the Treaties of the EU, they also consider it legitimate to assess and shape every policy which enters their 'territory'. Their interpretation and 'additions' to policies 'from above', often in the form of technological and legalistic details, can result in the inadequate implementation of EU environmental policy objectives. In this respect, Bavaria appears to be in a disadvantage as far as the FRG 'Politikverflechtung' is concerned (see also Chapter 4). In

addition, the FRG and Bavarian political-administrative systems and their environmental policies in particular are compartmentalised and fragmented. While horizontal fragmentation ensures a certain independence for environmental actors to pursue ambitious policies, it also has the effect that integrative EU environmental policies such as the EIA Directive are not co-ordinated and implemented properly. Despite these gaps, one Bavarian determinant is favourable for the pursuance of EU environmental policies: Bavaria possesses impressive financial and administrative resources (although perhaps less impressive in the 1990s) as well as technological 'know-how' in the environmental field and should therefore be able to meet EU environmental policy obligations even if EU qualitative and quantitative standards are slightly different from Bavarian standards.

This Chapter has highlighted the Scottish and Bavarian layers and assessed to what extent their formal and informal determinants have shaped EU environmental policies on the ground. The following case study on the implementation of the EIA Directive (85/337/EEC) examines the Scottish and Bavarian layers and their experiences with the policy. In order to highlight more clearly the discrepancy between national and subnational layers, the case study compares and contrasts Scottish and Bavarian performances with the implementation findings of the UK and FRG at large.

Chapter 6

Case Study: Implementing the EIA Directive in Scotland and Bavaria

6.1 Introduction

The previous Chapters investigated the three government layers involved in the filtering process of EU environmental policies. The Chapters highlighted key problems which contribute towards the EU environmental policy implementation deficit. The following case study examines the EU environmental policy 'reality' further by focusing on the filtering process of one particular piece of legislation: the Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) (in short 'environmental impact assessment' or 'EIA' Directive).¹

The EIA Directive has been selected for several reasons. Firstly, the EIA Directive serves as a useful case study because it features characteristics common to other EU environmental policies such as the Habitats Directive and water quality Directives. For instance, it has included a 3-year deadline by which Member States were required to adjust their standards to achieve the environmental objective of 'minimum-regret-planning'. As is typical for EU environmental Directives, the EIA requirements were not met by the deadline by most Member States for political, legal-administrative and economic reasons. Having stressed some of the similarities with other Directives, the EIA Directive stands out in other areas and has been described by many as one of the most complex and controversial EU environmental policies to date.² With the EIA Directive, (then) EC policy-makers entered new territory by

¹ O.J. No L 175 (5/7/85).

² Among others see Christopher Wood for a detailed discussion of the EIA Directive. Environmental Impact Assessment: A Comparative Review Longman, Essex 1995.

setting environmental standards in the planning policy area, an area that had previously been the exclusive domain of national and subnational actors. The EIA Directive has affected a variety of planning projects which fall within the competency of subnational (and/ or local) government. Not only has the EIA Directive challenged existing national and subnational planning policies and competencies, it has also tended to clash with economically motivated projects such as road construction, housing developments and the construction and operation of manufacturing plants. All these factors have rendered the Directive's implementation difficult. The EIA Directive is therefore a particularly useful case study because it promises to uncover some interesting and unique findings as well as findings that can be applied to EU environmental policies in general.

The following case study outlines and compares the formal (legal) and practical implementation of the EIA Directive in the national and subnational layers and assesses its chances of enforcement in the Member States and their regions. In particular, it contrasts the implementation performances in the national and subnational layers and identifies distinctly subnational determinants which shape EIA policy practice in Scotland and Bavaria. The study supports the argument that Scotland and Bavaria shape the EIA policy decisively and that their input is distinct from the wider, national context.³

6.2 The EIA Directive: Origin and Objective

The EIA Directive has been one of the most discussed EU environmental policies. Many analysts have highlighted the complexity of the policy, discussed its legal and practical implications and described the subsequent difficulties with which practitioners have processed the

³ For detailed information on the research methods and interviewees see 'Appendix 6: EIA Case Study - Field Research Information'.

policy.⁴ Indeed, the EIA Directive has been controversial and a tough nut to crack.

The adoption of the EIA Directive in 1985 followed a long and cumbersome negotiation process. Initially, all actors agreed that a common EIA policy was paramount for both environmental considerations (i.e. restricting environmentally damaging project developments) and economic considerations (i.e. level-playing-field as opposed to 'environmental dumping' in the planning policy area). At the same time, concerns were raised about a further loss of discretionary powers, the potential administrative and financial costs associated with environmental assessments, and the prospect of more 'red tape' on business developments. The Danish and UK Governments in particular, found it hard to accept a European policy which interfered with traditionally national and subnational decision-making.⁵ The adoption of the EIA Directive was therefore complex (see Chapter 3) involving various actors and interests from different government levels in a complicated bargaining process. Consequently, the end product of the intense bargaining was a Directive which represented a more 'digestible' compromise of considerations.⁶

The EIA Directive in its current form⁷ consists roughly of four

⁴ See in particular Hien, Eckart 'Die Umweltverträglichkeitsprüfung in der gerichtlichen Praxis' (pp.422-428) Neue Verwaltungsrecht Zeitung Heft 5, 1997; Jessel, Beate Die Umweltverträglichkeitsprüfung auf dem Prüfstand Bayerische Akademie für Naturschutz und Landschaftspflege, Presse Information Nr.17, 25 April 1997; Macrory, Richard 'Environmental Assessment and the 'direct effect' doctrine' (pp.44/45) ENDS Report No.228, January 1994; Wood, Christopher; Jones, Carys 'The Effect of Environmental Assessment on UK Local Planning Authority Decisions' (pp.1237-1257) Urban Studies vol.34, No.8, 1997.

⁵ For a more detailed account of the EIA Directive's adoption see Wood, Christopher Environmental Impact Assessment: A Comparative Review Longman, Essex 1995.

⁶ Christopher Wood provides a list of earlier, more ambitious, EIA policy proposals in Environmental Impact Assessment: A Comparative Review Longman, Essex 1995.

⁷ In 1997, the EU adopted 'Council Directive 97/11/EC amending Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on

procedural stages: Firstly, projects which are potentially harmful for the environment and therefore require an EIA have to be identified. Under Annex I, the Directive provides a list of projects which have "significant effects on the environment" and which "must as a rule be subject to systematic assessment". The Directive also contains an Annex II which refers to projects which "may not have significant effects on the environment in every case" but "should be assessed where the Member States consider that their characteristics so require". Secondly, once it is established that an EIA is necessary for a project application, the developer seeking planning permission is required to provide relevant information on the project in the form of environmental statements. Annex III of the Directive outlines a detailed list of environmental information items which developers are required to produce. Thirdly, having provided all the necessary information, interested parties and the public have the opportunity to participate in the planning process. According to the Directive, Member States shall ensure that "any request for development consent and any information (...) are made available to the public, and that the public concerned is given the opportunity to express an opinion before the project is initiated." And finally, a planning decision can only follow **after** the three stages of identification, environmental statement and information/ consultation have been accomplished.

The EIA Directive's main purpose is to oblige Member States' planning authorities to consider environmental aspects in planning procedures as early as possible whenever a proposed project is likely to have a major effect on the environment. The idea behind environmental impact

the environment (85/337/EEC)' which is intended to bind Member States into a more harmonised framework of EIA project identification. Its formal implementation is due in 1999.

assessment is to conduct 'minimum-regret-planning' which involves the identification, evaluation and incorporation of environmental externalities during the planning process so that 'unreasonable' environmental damage can be avoided. The Directive itself does not provide for specific environmental criteria; it does not require Member States and their planning authorities to change their policy priorities and 'become green'. The Directive requires planning authorities to adjust their formal procedures and thereby integrate environmental interests more strongly into planning considerations so that 'environmentally sensible' decisions are taken. Legally, the Directive establishes a right for the public to be consulted before permission is given to projects which may have damaging implications for the environment. In practice, however, political-administrative actors and the judiciary have been unable (and often reluctant) to bind developers and planning authorities into a coherent EIA system. The EIA Directive leaves much of the ways and means to achieve 'minimum-regret-planning' to the Member States and their implementors. It provides considerable scope for interpretation, particularly in areas such as time limits and methods of consultation. Consequently, the effectiveness of the policy depends upon the national and subnational implementors' ability and willingness to implement and enforce the policy within their political-administrative systems.

The EIA Directive requires formal transposition, practical implementation and (if necessary) legal enforcement within the Member States and their subnational regions. Accordingly, the following Sections investigate the three steps of implementation in the national and subnational layers and assess how and to what extent implementors in Scotland and Bavaria have processed and influenced the EIA Directive. The Sections compare implementation performances in Scotland and Bavaria and contrast their performances with experiences in the UK and

FRG at large.

6.3 The UK National Layer and the EIA Directive

Considering that the UK Government initially opposed the adoption of the EIA Directive, the first stage of the implementation process, i.e. the formal transposition of the Directive, was conducted relatively swiftly and problem-free within the national layer (for favourable determinants see figure 6.1). The EIA Directive did not require parliamentary scrutiny and approval. In addition, the policy's integrative approach to consider a wide range of inter-connected environmental impacts during planning fitted-in well with the UK's broad definition of the environment. The Directive text was therefore adopted promptly and verbatim by the two central government ministries DoE and the Scottish Office into existing planning policy frameworks in the form of Statutory Instruments.⁸

Although part of a centralised state system, Scotland required separate transposition from the rest of the UK for several reasons. Scotland's legal system differs in many respects from the system in England and Wales. In addition, policy matters such as environmental policies are dealt with by the territorial Scottish Office and the Secretary of State for Scotland. Scotland also differs from the rest of the UK in terms of natural habitats, infrastructure, population density and industrial output. Its environment is particularly affected by sectors such as salmon farming and wind generation which cannot be found in England and Wales in such a large scale. While all these aspects necessitated separate formal transposition of the EIA Directive for Scotland, Scottish Office officials did not obstruct (or divert from) the first stage of the filtering process. In fact, the Scottish Office followed the DoE lead and adopted an EIA Statutory

⁸ Statutory Instruments are legally binding but do not require approval by parliament. The EIA Directive's implementation deadline was 3. July 1988; the UK formally implemented the Directive on 15. July 1988.

Instrument (SI) which differs only marginally from the England/ Wales documents.⁹ While differences are only marginal, the Scottish Office nevertheless translated the EIA policy into the subnational (i.e. Scottish) context and gave the policy its 'personal touch' (the details of the Scottish Office SI and Circular are outlined below). By doing so, the Scottish Office followed its 'hybrid' function as a central government ministry representing both UK and Scottish interests. In this sense, both national and subnational layers 'overlapped'.

While the formal transposition of the EIA Directive was relatively swift, practical implementation of the policy in the UK proved to be more problematic. Planning applications have been processed on a case-by-case basis and planning authorities have enjoyed almost limitless discretionary room in determining EIA cases. A number of UK-wide EIA policy studies¹⁰ have revealed insufficiencies in the quality of EIAs (e.g. many vital environmental criteria were not mentioned in environmental statements) as well as quantity of EIAs (e.g. many potentially harmful projects were not identified). Certain formal and informal determinants represented major obstacles for the EIA policy in the UK: the above studies identified as the main problems in EIA policy implementation insufficient expertise, lack of resources, limited interest and lack of commitment. More recent studies have shown that the EIA practice has

⁹ For England and Wales see Statutory Instruments The Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988 No.1199); The Town and Country Planning (Assessment of Environmental Effects) (Amendment) Regulations 1990 (SI 1990 No.367); The Town and Country Planning (Assessment of Environmental Effects) (Amendment) Regulations 1994 (SI 1994 No.677).

¹⁰ See 'Annex - UK' of Commission Report on the Implementation of Directive 85/337/EEC on the assessment of the effects of public and private projects on the environment Com (93) 28 final - vol.13; Wood, Christopher; Jones, Carys Monitoring Environmental Assessment and Planning DoE Planning Research Programme, 1991; Treweek et al 'Ecological Assessment of Proposed Road Developments' (pp.295-307) Journal of Environmental Planning and Management vol.36, No.3, 1993; Lee, N.; Colley, R. Reviewing the Quality of Environmental Statements Occasional Paper 24, EIA Centre, University of Manchester, 1992.

improved only marginally since 1988.¹¹ While initial EIA policy results have been disappointing, the DoE has been adamant to provide detailed guidance for planners and developers to improve EIA standards and has thereby demonstrated a supportive and positive attitude towards the EIA policy. By and large, this supportive attitude has been missing from the Scottish Office (see Section below).¹²

In terms of legal enforcement, UK judges have generally been uneasy about the EIA policy. More specifically, they have been reluctant to support the policy with additional criteria and guidelines where the Directive and its national legislation have been 'silent'. For England and Wales, Ward and Alder observed that courts have not interpreted the EIA Directive in a 'sympathetic' light, i.e. they have not taken account of the wider concept and idea of the Directive and have not established a 'direct effect'.¹³ It is therefore up to the planning authorities to pursue and implement the objective of 'minimum-regret-planning' within their local communities.

In sum, the UK national layer has featured some favourable formal and informal conditions (or determinants outlined in figure 6.1) for the filtering of the EIA Directive. The centralised political-administrative system as well as the legal framework of the UK have accommodated the

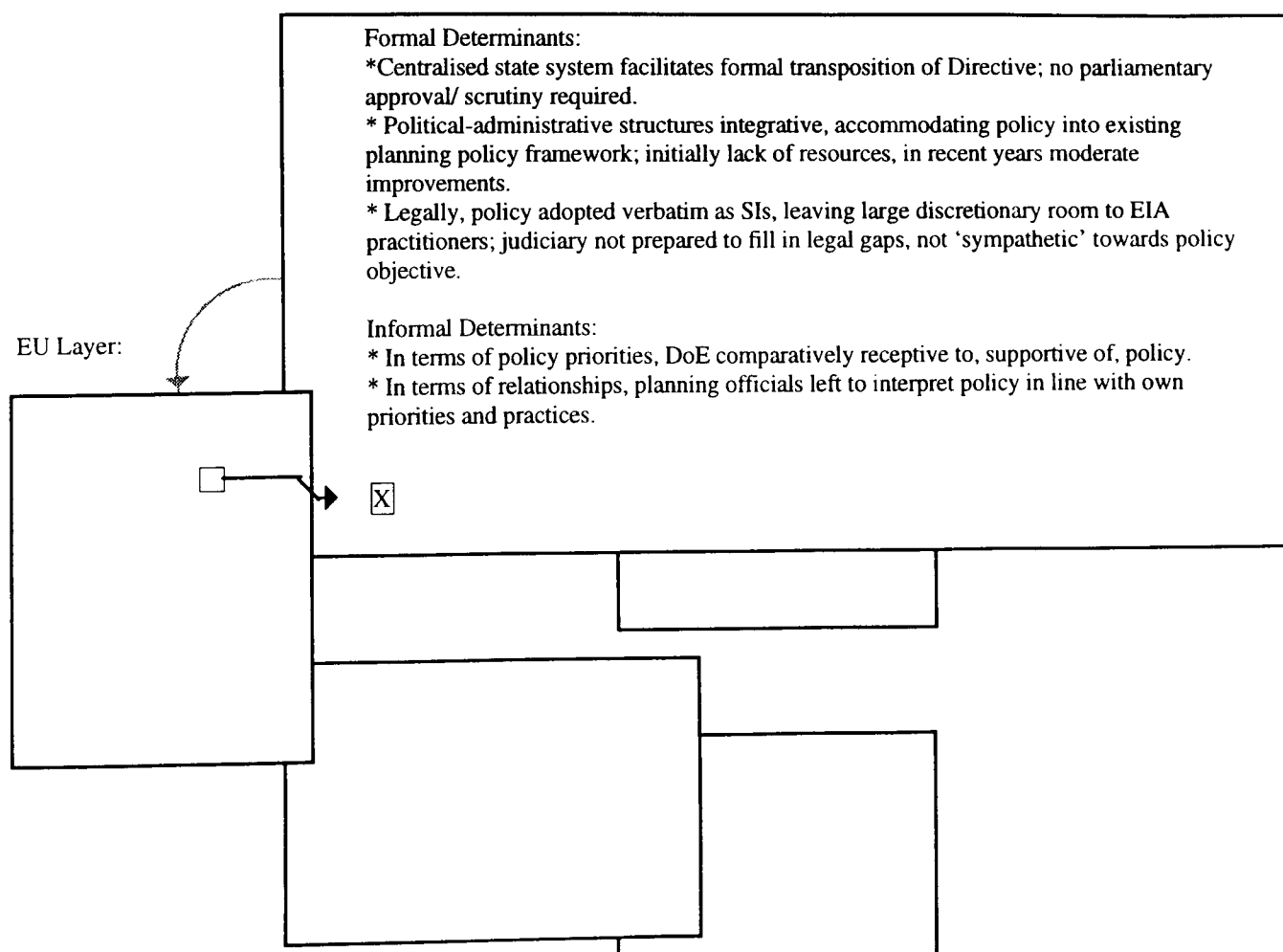
¹¹ For a more recent study see Wood and Jones 'The Effect of Environmental Assessment on UK Local Planning Authority Decisions' (pp.1237-1257) Urban Studies vol.34, No.8, 1997.

¹² See Scottish Office leaflet Environmental Assessment - a guide 6/90; for DoE see Environmental Assessment. A Guide to the Procedures 1989; Environmental Assessment. Evaluation of Environmental Information for Planning Projects. A Good Practice Guide 1994; also DoE Planning Research Programme Monitoring Environmental Assessment and Planning A Report by Christopher Wood and Carys Jones for the DoE, 1991.

¹³ Alder, John 'Environmental Impact Assessment. The Inadequacies of English Law' (pp.203-220) Journal of Environmental Law vol.5, No.2, 1993; Ward, Angela 'The Right to an effective Remedy in European Community Law and Environmental Protection: A Case Study of UK Judicial Decisions concerning the Environmental Assessment Directive' (pp.221-244) Journal of Environmental Law vol.5, No.2, 1993.

integrative environmental policy without major difficulties. In addition, the DoE played a pro-active role in the implementation of the policy. However, the policy has faced other formal and informal determinants which have hindered its the successful implementation into the UK planning policy practice. These determinants concerned mainly problems of commitment and resources on the part of planning authorities. The UK legal system has been unable (and arguably unwilling) to back up the EIA policy; the judiciary has not filled legal gaps were the Directive and Statutory Instruments have been silent.

Figure 6.1: The UK National Layer and the EIA Directive



6.4 The Subnational Layer: Scotland and the EIA Directive

Formal Transposition

On paper, the Scottish Office followed the DoE lead and did not divert substantially from the rest of the UK. However, close examination of the Scottish Office Circular (13\1988) (a document which accompanies, explains and summarises the Scottish SI) reveals that the Scottish Office has perceived and processed the policy in a manner distinct from the rest of the UK. In essence, the Scottish Office has been reluctant to adjust Scottish planning practices and restrict economic development in Scottish local communities for the sake of an EU policy which promotes an environmental level-playing-field in planning (see informal determinants in figure 6.2).

According to the Circular, the development control system already in place in Scotland covers the main objectives of the Directive and only minor additions have been necessary to implement the Directive fully.¹⁴ Instead, the Scottish Office places great emphasis on the date of applicability of the EIA policy (i.e. project applications in progress at the time of the Directive's formal transposition were excluded) and the developers' means of appeal against EIAs. The Scottish Office Circular elaborates in great detail the question whether a planning application requires an EIA, indicating that the impact of the policy on costs and administration should be kept to a minimum. Once a planning authority in Scotland is informed by a developer about a forthcoming planning application, the planning authority has four weeks time to investigate whether the proposal in question falls within the project categories of Annex I and II. If the proposed project is listed under Annex I, an EIA is mandatory. If the project can be found in the Annex II category, the

¹⁴ For instance, the planning permission procedure was extended from 8 weeks to 16 weeks to allow for the new information and consultation obligations.

planning authority has to decide whether the project is likely to have significant effects on the environment and therefore requires an EIA. The advice given on Annex II criteria is only indicative: an EIA is required if the project is of more than local importance; the project is situated in a "particularly sensitive or vulnerable location"; or if a project is "unusually complex" and has "potentially adverse environmental effects". The indicative thresholds suggested by the Scottish Office in Annex C of the Circular do not provide further guidance for planning authorities. As a result, Scottish planning authorities are free to consider Annex II projects on a case-by-case basis and can take decisions in accordance with their (economic) policy priorities and strategies.

Once the planning authority comes to the conclusion that an EIA is required, it has to provide reasons for its decision. The planning authority is not obliged to give reasons if it is of the opinion that a project does not significantly affect the environment and does not require an EIA. Developers are therefore in an advantage over environmentalists. They have the opportunity to find out why planning authorities are asking for environmental statements and can change their application strategy accordingly. Opponents of project applications do not enjoy the same early access to information which would strengthen their position in the process.

The Scottish Office Circular elaborates on the developer's right of appeal against an EIA decision which enables him to refer his case to the Secretary of State for Scotland for direction. The Secretary of State can either confirm the planning authority's opinion that an EIA is necessary, in which case an environmental statement is obligatory. He can also disagree with the planning authority, in which case the developer is not obliged to produce a statement. Therefore, as a central government minister (representing the national layer), the Secretary of State plays a

significant role in the planning process in Scotland: he can over-rule any decision taken by a Scottish local authority.

Environmental statements are covered in only one comparatively small section of the Circular which provides much discretionary room for developers. The briefness of the section suggests that the financial and administrative burden for both developers and planning authorities should be kept at a tolerable level. The Circular's guidelines do not mention all the requirements listed in Annex III of the EIA Directive. They do not include an outline of the main alternatives considered by the developer, neither do the guidelines include a description of the developer's research methods and process.¹⁵ Instead, the Circular emphasises that "[t]here is no statutory provision as to the form of an environmental statement". In other words, planning authorities are not in the position to make any judgements on the form and quality of developers' environmental statements; they can only 'request' more information if a statement does not provide sufficient information for an EIA.

Following the submission of the environmental statement by the developer, the planning authority is required to inform the public and statutory consultees about the planning application. The planning application together with the environmental statement are advertised in the local press and the 'Edinburgh Gazette'. The notices must indicate where and when the environmental statement can be inspected by the public. Statutory consultees receive copies of environmental statements free of charge, while other interested parties may request copies and pay

¹⁵ While the SI outlines the items of Annex III of the EIA Directive in detail (in Schedule 3), the document more likely to be consulted, the Circular, provides inadequate Annex III information: "[t]his statement must include a description of the project; a description of the measures envisaged in order to avoid, reduce and if possible remedy significant adverse effects; the data required to identify and assess the main effects which the project is likely to have on the environment; and a non-technical summary of this information."

a 'reasonable charge' to cover the costs of production. The list of statutory consultees is restricted to 'relevant bodies' such as adjoining planning authorities, Scottish Natural Heritage (SNH), and the Secretary of State for Scotland who should be informed whenever proposals are likely to affect water supplies, waste disposal, noise and air pollution, trunk roads and special roads, historic buildings, and Royal Parks and Palaces.¹⁶ Statutory consultees and other interested parties have the opportunity to comment on planning applications by submitting written representations about the proposed development within four weeks.

The Circular states that planning authority should inform the developer which bodies have been consulted and should send copies of the planning application and the environmental statement to the Secretary of State for Scotland. Again, the discrepancy between applications with and without environmental statement is striking: planning authorities are required to send only applications which have environmental statements attached, they are not required to forward applications where environmental statements were considered as unnecessary. Many potentially harmful projects can therefore fall through the net of EIA scrutiny.

Having accomplished the formalities of the preceding three stages, authorities can attend to the actual planning decision. Taking into account the environmental statement and any comments from consultees and interested parties, planning authorities should take a decision within 16 weeks, according to the Circular. If the information provided is not adequate, planning authorities can request further information within the 16 weeks time limit. Once a decision is taken, planning authorities are required to notify developers, the Secretary of State for Scotland, and

¹⁶ Other bodies include the Health and Safety Executive and the Scottish Environmental Protection Agency (SEPA). The list has been up-dated by the author: the 1988 circular mentions the Countryside Commission for Scotland and the Nature Conservancy Council which ceased to exist in 1991.

statutory consultees. The Circular does not mention in which form the planning authorities notify interested parties of their decisions, i.e. whether or not reasons for the decision are included. Further, only appeals to the Secretary of State for Scotland by developers are considered at a 'post decision' stage; possible appeals put forward by the public are not mentioned in the Circular. And, again, the Secretary of State can over-rule an authority's decision if he disagrees with the planning authority.

Although the policy's preventive objective is mentioned in the introduction of the Scottish Office Circular, the concept of 'minimum-regret-planning' is not evident in the remaining parts of the document. Throughout, the authors are almost apologetic about additional work and costs resulting from the EIA policy. They emphasise that "no unnecessary burden" should occur for planning authorities and developers and that "additional costs imposed on developers by the requirement to provide information about environmental effects should be kept to a reasonable minimum". The text lacks any similar sensitivity towards advocates of environmental concerns and their problems in representing 'green' interests.

In 1994, the Scottish Office had to up-date the list of Annex II projects as a response to amendments made by the DoE for England and Wales. Three new project categories (wind generators, motorway service areas, coastal protection works) were adopted with considerable reluctance. In Circular (26\1994) the Scottish Office stresses that other categories (salmonid farming, water treatment plants, non-motorway service areas and golf courses) were discussed but not included. A combination of considerations explain the Scottish Office's behaviour: the Scottish Office followed both the national layer's (i.e. the then Conservative Government's) policy of deregulation **and** the economic interests of

certain private and public sectors in Scotland. In this case, the representation of national and subnational interests by the Scottish Office was not paradoxical (see Chapter 5), but merged into a convenient combination of economic interests in both layers. The adoption of three new categories was the only concession the Scottish Office was willing to accommodate environmental considerations. Although the other four categories were not included in the Annex II list, the Circular nevertheless advised planning authorities to consider 'voluntarily' their environmental impacts.

In comparison with the DoE, the Scottish Office has taken a minimalist and defensive approach towards the EIA policy. Apart from an apologetic Circular, the Scottish Office produced a two-page leaflet which does not match up with the DoE documents which guide planners and developers in the rest of the UK.¹⁷ Figure 6.2 describes the formal determinants as favourable to the transposition of the EIA Directive in Scotland. Although Scotland transposed the policy separately from the rest of the UK, the centralised state system and legal framework allowed Scottish implementors to transpose the EIA Directive verbatim without parliamentary scrutiny and policy amendments. On the other hand, unfavourable informal determinants were evident right from the beginning of the Directive's transposition into the Scottish context. Informal obstacles occurred mainly in the form of economic considerations, in particular the financial costs and fears over more 'red tape' for Scottish business developments. These considerations compelled Scottish Office officials to keep additional and supportive measures for the EIA Directive to a minimum and apologise for any 'inconvenience' caused by the policy.

¹⁷ See Scottish Office leaflet Environmental Assessment - a guide 6/90.

Practical Implementation

At first glance, EIA policy implementation in Scotland did not diverge significantly from the implementation in the rest of the UK. But a closer look at the details of practical implementation reveals key differences in the Scottish EIA practice. Smith,¹⁸ for instance, pointed out that Scottish planners and developers already had considerable experience in the 'environmental assessment and management' of North Sea oil projects, but also noted that this advantage was not utilised for other planning sectors.¹⁹ More importantly, Smith observed that Scottish Office officials made no secret of their criticism over the costs and additional work resulting from the EIA Directive's requirements. Many Scottish practitioners (i.e. planners and developers) would later confirm this attitude by applying only a bare minimum of EIA requirements.

The author's own research findings reflect the Scottish Office's open dislike of the EIA policy as one of the policy's main informal obstacles. In fact, considering the initial response to research enquiries, the EIA Directive did not appear to have a good start in Scotland: one Scottish Office key official described the Directive as "an awful thing" but also admitted that he had "never read that thing".²⁰ Nevertheless, local planning authorities received brief EIA policy guidance from the Scottish

¹⁸Smith, James A Critical Appraisal of the Performance of the Environmental Assessment (Scotland) Regulations since their Introduction MSc Dissertation, University of Stirling, 1990. Smith used a research format developed and applied by the EIA Centre, University of Manchester. For his study, Smith selected 25 environmental statements submitted to the Scottish (Office) Development Department between 1988 and 1990. In addition, Smith conducted 14 interviews with planning authorities, developers, consultants and consultees in Scotland.

¹⁹ For an appraisal of high standards in North Sea oil environmental assessment and management in Scotland, see Nelson and Butler 'Assessing, planning and management of North Sea oil development effects in the Shetland Islands' Environmental Impact Assessment Review vol.13, No.4, July 1993.

²⁰ Quotations from a telephone interview with the Scottish Office official, 5. April 1995, Edinburgh.

Office.²¹ In return, local planning authorities provided the Scottish Office with a list of planning procedures requiring EIA and thereby generated a rough overview of the Scottish EIA practice.

Scottish planning authorities viewed the EIA policy with mixed feelings. Some planning authority officials complained about the increased bureaucracy and high expectations on the part of environmentalists, some were indifferent about the policy, while others approved of their 'new' strengthened authority to request environmental information from developers. Although planning authorities consulted the Scottish Office Circular on a regular basis, implementation practice depended very much upon informal determinants, in particular planning authorities' attitudes and preferences with individual planning officers leading the EIA process.²² As a result, one of the policy's aims, namely the harmonisation of environmental standards in planning, has not been achieved **inside** the Scottish layer.

The SI and the Circular have left Scottish planning authorities with considerable discretionary room concerning the 'screening' and identification of potentially harmful projects. Consequently, many planning officers have tended to avoid obstacles to economic or other developments in their communities which they perceived as inconvenient and unnecessary. The number of EIAs was therefore limited to project applications which were 'obviously' harmful. Taking rough estimates of the project's size and location, planning officers checked whether applications belonged to either Annex I or Annex II. Potentially harmful and controversial projects such as quarries, incinerators, or waste

²¹ One Scottish Office official stressed that the advice given is only "indicative", i.e. it is for the local authorities to apply the criteria mentioned in the Scottish Office Circular. Written correspondence, 4. December 1997, Edinburgh.

²² One planning official stressed that the style and content of EIAs depended upon his "own requirements". Written correspondence, 21. April 1997, Perth.

disposal plants were considered for EIA, while other, less obvious but equally harmful, projects were not checked at all. Environmental interest groups and other consultees who could have helped identify harmful projects, were not consulted by planning authorities during the screening process. Enjoying considerable discretionary powers, planning officers were reluctant to hinder economically lucrative developments in their local areas. This situation was worsened by the fact that planners showed a lack of experience and resources²³ in identifying potentially harmful projects.

There were differences in opinion concerning the information provided by Scottish developers. Generally, Scottish planning authorities were satisfied with the content and quality of environmental statements, although one planning officer admitted that statements were biased and focused on information in favour of the projects.²⁴ In contrast, environmental interest groups and some observers considered the quality of environmental statements as generally poor.²⁵ The most disappointing results were found in the Annex III sections 'alternatives' and 'remedial solutions', aspects which hardly received any consideration. Aware of the statements' insufficiencies, planning authorities nevertheless avoided additional work and only rarely returned applications to developers with the request for more information.²⁶ Therefore, (self-) interests in

²³ Lack of experience was mentioned by one local authority (Linlithgow, 17. April 1997), lack of resources by another local authority (Aberdeen, 28. May 1997).

²⁴ Planning officer, interview, 16. June 1997, Glasgow.

²⁵ See Smith, James A Critical Appraisal of the Performance of the Environmental Assessment (Scotland) Regulations since their Introduction 1990; also interest groups commented on inadequate environmental information during planning procedures at the 'People and the Environment: A Common Cause' Conference, held by Scottish Wildlife and Countryside Link, 14. February 1997, Perth.

²⁶ Only one planning officer stated that two or three environmental statements were returned. Telephone interview, 2. June 1997, Lochgilphead.

minimising the work-load have prevented planning officials from pursuing a more rigorous approach towards environmental statements.

Scottish planning authorities have made full use of their discretionary powers in determining the list of consultees. Consequently, potential opponents of project applications have had to rely upon the 'Edinburgh Gazette' and local papers to find out about planning applications. Statutory consultees and 'affected' parties were informed properly, according to Scottish planning authorities. Interestingly, the majority of consultees contacted by the authorities did not represent environmental interests as such but interests of traditional lobby groups, local communities and economic sectors.²⁷ Planning authorities were generally reluctant to open the EIA process to 'outsiders'. Among other reasons, planning officers feared the increased work load caused by a wider audience. At the same time, planning authorities were also aware that environmental interest groups could jeopardise projects through increased public and media pressure. As a response, environmental interest groups were allowed to participate, but only if they explicitly requested so (see 'relationships between actors' in figure 6.2).

Since the formal transposition of the EIA Directive, Scottish planning authorities have rejected a number of planning applications. However, it is difficult to establish exactly what impact the EIA policy had on these planning decisions. Again, some planning officers stated that the introduction of the EIA policy has had a positive influence on planning decision-making. The EU policy provided planning officers with more authority to demand environmental information and highlight

²⁷ In the case of the motorway M74 Northern Extension, the following bodies were consulted: Historic Scotland, Strathclyde Passenger Transport Executive, Royal Fine Arts Commission, Coal Authority, Scottish Power, British Gas, Clydeport, Railtrack, The Mineral Valuer, British Telecom, Clyde Calders Project, Strathclyde Police, Scottish Office Environment Department, Historic Scotland and the Scottish Wildlife Trust. Written correspondence, 23. July 1997, Glasgow.

environmental dangers of a project. In some cases, the information generated by EIA **contributed** towards either the projects' modification or even the refusal of planning applications.²⁸ Other planning officers, however, noticed no difference in decision-making following the introduction of the policy.²⁹ In some cases, planning authorities openly supported planning applications for economic reasons, with the result that EIA findings were ignored completely during decision-making.³⁰ Overall, there was no coherent (level-playing-field) pattern in the application of the EIA policy in Scotland. The policy depended very much upon individual planners and their priorities and attitudes towards the EIA policy objective of 'minimum-regret-planning'.

Enforcement

In terms of EIA policy enforcement, court decisions in Scotland have not differed significantly from decisions in England and Wales. Figure 6.2 indicates that the Scottish legal system, too, has been 'unsympathetic' towards the EIA policy. In one particular instance, a Scottish judge stressed that the EIA Directive and its Scottish Statutory Instrument do not provide clear-cut provisions to determine the question whether a project listed in Annex II requires EIA.³¹ Planning authorities in Scotland

²⁸ EIA information contributed towards moderate changes of the M74 Northern Extension application (Planning Officer, interview, Glasgow, 16. June 1997); EIA information contributed towards the refusal of two wind farm applications (Planning Officer, telephone interview, 2. June 1997, Lochgilphead).

²⁹ The EIA policy "did not make a big difference" when two applications for sewage treatment plants were refused planning permission, according to one planning officer. Written correspondence, 31. March 1997, Elgin.

³⁰ In an EIA 'related' case (the case was in progress at the time of the Directive's formal transposition, the policy was therefore not legally binding), the M77 'Road Route Extension' was pushed through the planning process by the Scottish Office, Strathclyde Regional Council and Kilmarnock District Council. The latter planning authority was particularly interested in housing development and trade links generated by the new motorway. Strathclyde Regional Council official, interview, 7. August 1995, Glasgow; Strathclyde Regional Councillor, interview, 29. August 1995, Glasgow.

³¹ For further information see Williams, Rhiannon 'Direct Effect of EC Directive on

(and indeed the UK in general) have traditionally enjoyed independence in local planning. Since vital elements of the EIA Directive (such as the question whether an Annex II project requires EIA) are left to the implementors' discretion, it is difficult, if not impossible, for project opponents to legally challenge planning decisions on the grounds that an EIA was inadequate.

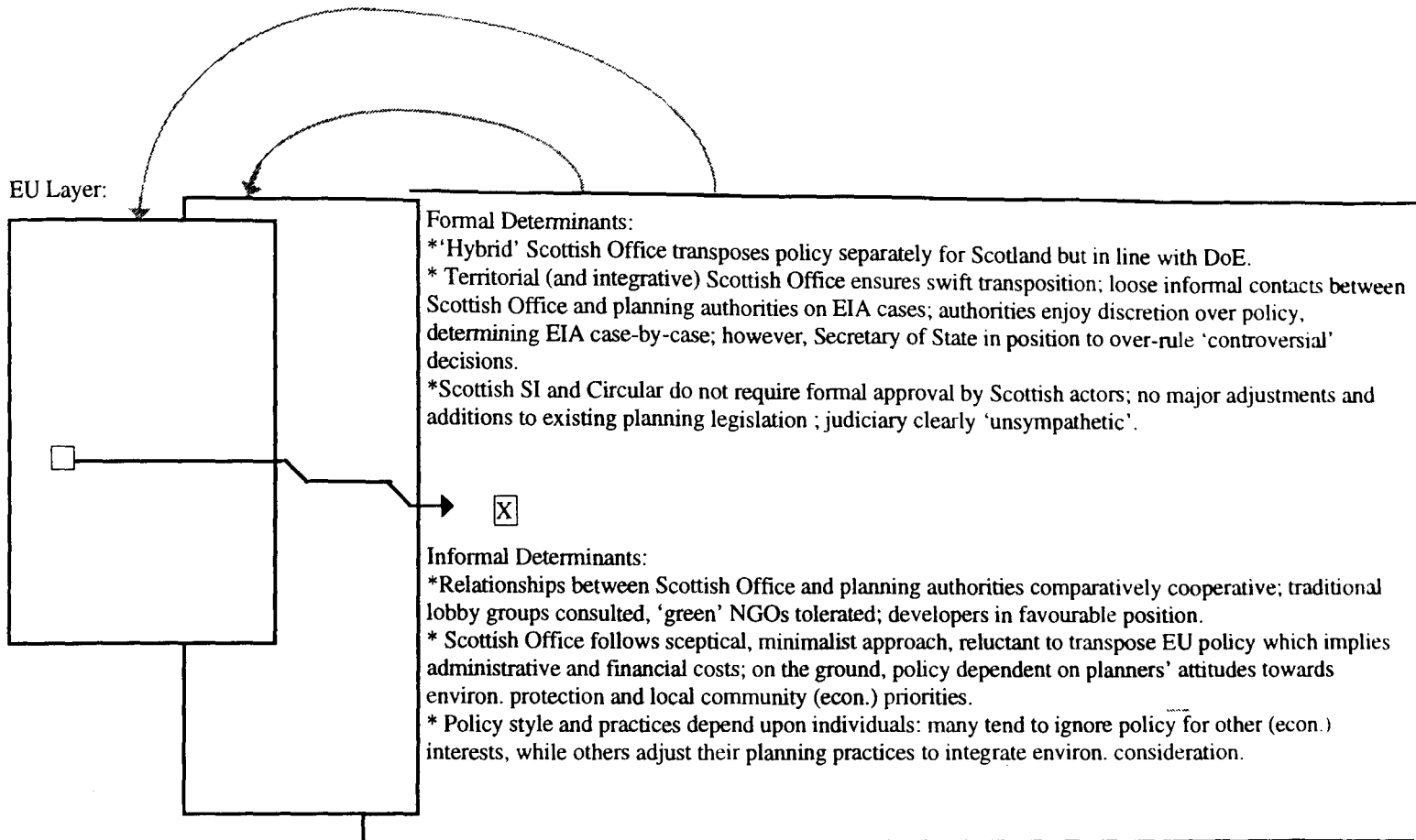
Overall, the EIA Directive has been filtered through the layers, however most of its practical implementation has taken place **within** the Scottish layer. True, the Directive's formal transposition was conducted by central government ministries: the Scottish Office and the DoE. While Scottish Office officials have followed the national layer's policy line, they have also translated the policy into the Scottish (i.e. subnational) context. In this sense, national and subnational layers have overlapped. The Scottish Office has made no secret of its reluctance to adjust planning processes and shift (economic) priorities. Accordingly, the EIA Directive has altered Scotland's planning practices only moderately and has depended upon individual planning officers' attitudes towards environmental considerations and other interests such as housing and economic development. Some planning officers used the EU policy as a means to take 'environmentally-friendly' decisions.³² Other planning officers have taken a more critical view of the policy and have been able to minimise the policy's impact on planning decisions.³³ In either case, a level-playing-field of minimum-regret-planning is not evident inside the Scottish layer.

Local Authorities' (pp.382-384) The Cambridge Law Journal vol.50, Part 3, 1991.

³² The same planning officers, however, have also pointed out the policy's weaknesses which still require improvement. For instance, one planning officer stated that EIAs and environmental statements "struggled to gain public confidence because they are not seen to be impartial, being funded and on occasions prepared by applicants". Written correspondence, May 1997, Melrose.

³³ One planning officer stated that the EIA Directive was not really necessary and that he was not interested in further guidance from the Scottish Office and the EU unless these contacts led to a reduction of work. Written correspondence, May 1997, Elgin.

Figure 6.2: The Scottish Layer and the EIA Directive



6.5 The FRG National Layer and the EIA Directive

In comparison with the UK and Scotland, the FRG constitutional setting, political-administrative structures and legal system rendered the formal transposition of the EIA Directive extremely difficult (for formal determinants see figure 6.3). In fact, the transposition turned out to be a legal nightmare involving long deliberations over the form and content of both Federal and Länder legislation. Among other issues, discussions surrounded the question whether the EIA Directive deserved a separate piece of legislation or whether the EIA policy should be integrated into the existing legal framework. Following a heated debate (the Bundesrat forwarded 59 amendments to the EIA Federal Law proposal of which only 30 were accepted by the Bundestag), the EIA Directive was formally transposed two years after its deadline. The national layer (i.e. the Bundestag and Bundesrat) adopted a Federal EIA law, 'Gesetz über die Umweltverträglichkeitsprüfung' (UVPG),³⁴ and amended sixteen existing Federal Laws affected by the new requirements.³⁵ Some amendments of these sectoral laws only came into force in 1992 (amendment to the Federal Emission Law) and 1994 (amendment to the Nuclear Safety Law). Apart from the UVPG and amendments to existing legislation, Federal legislators felt that the EIA policy further required detailed and complementary guidelines in the form of 'Verwaltungsvorschriften' (administrative regulations) which were eventually formalised in 1995.³⁶

³⁴ English translation: assessing the natural environment's 'ability to absorb' projects and their damaging impacts.

³⁵ The sixteen Federal Laws include areas such as emission control, nuclear safety, infrastructure, and nature conservation. For a detailed list see Vedder, Edgar 'Der aktuelle Stand der UVP-Gesetzgebung in der Bundesrepublik Deutschland und in Bayern' (pp.32-35) Inhalte und Umsetzung der Umweltverträglichkeitsprüfung (UVP) Laufener Seminarbeiträge 6/90, Akademie für Naturschutz und Landschaftspflege.

³⁶ See 'Allgemeine Vorschrift zur Ausführung des Gesetzes über die Umweltverträglichkeitsprüfung (UVPGVwV) vom 18. September 1995' (pp.671-694) Gemeinsames Ministerialblatt Nr.32, 1995.

The first stage of the Directive posed major difficulties for Federal legislators. While the project list of Annex I was adopted verbatim from the EU Directive text, the Annex II list proved incompatible with German legal-administrative tradition. Federal legislators found it difficult to transpose a measure which provides flexibility and discretionary judgement instead of water-tight rules and regulations. It was therefore decided to include separate paragraphs regulating matters such as airports, nuclear safety and mining in the UVPG, and transfer other Annex I and some Annex II items to one comprehensive and detailed list of projects which must, as a rule, undergo EIAs.³⁷ In effect, these departures from the EU Directive caused not only a delay in the implementation of the EIA policy for certain categories, but also excluded projects from the Federal legislation list which, according to the EIA Directive's Annex II, should be considered by planning authorities as potentially harmful.³⁸

In line with the German legal tradition to 'regulate' environmental standards, much attention was drawn to the formulation of 'scoping' standards, i.e. EIA items to be considered by developers and planning authorities. UVPG Paragraph 5 and supplementary administrative regulations elaborate on 'scoping' and the content of environmental statements. If applied correctly, the regulations do not provide much room for manoeuvre for developers. On the other hand, some of the environmental statement items are required only if their inclusion is

³⁷ The separate paragraphs in the UVPG referred to changes of other Federal Laws at a later stage and provided transitional derogation measures which would apply until the laws in question were amended.

³⁸ Annex II categories not mentioned in the UVPG list include the manufacture and assembly of motor vehicles and manufacture of motor vehicle engines; storage facilities for petroleum, petrochemical and chemical products; industrial estate development projects. For a detailed list see Commission Report COM (93) 28 final (Annex - Germany).

'zumutbar' ('reasonable') for developers. Requested information on environmental surroundings, project alternatives and research difficulties should therefore not exceed 'unreasonable' quantitative and qualitative thresholds. The question remains where to draw the line between 'reasonable' and 'unreasonable' information. It is up to administrative courts to determine the adequate quantity and quality of environmental information in each case.

Federal information and consultation procedures remained unchanged. According to Paragraph 9 of the UVPG, public consultation should be conducted by following the procedures of existing legislation, in particular Paragraph 73 of the Law on Administrative Procedures ('Verwaltungsverfahrensgesetz' or 'VerwVerfG'). The latter states that planning authorities should inform the public one week prior the actual consultation process that planning application documents are available for inspection. The documents are displayed for the period of one month in the local communities affected by the projects, after which the public has two weeks to comment. The subsequent consultation process excludes the general public: the planning authority invites to a consultation meeting only parties directly affected by the project, i.e. individuals who have a legal or material interest in a project application. Therefore, challenges against a project can only be made on the grounds of material damage (for instance, a motorway running through private property) or infringement of legal rights. Other project opponents such as environmental interest groups can advise 'affected' individuals but have no formal right to participate in the consultation process. Only in 'high risk' areas such as nuclear energy, the Federal legislator considers 'anybody' ('jedermann') 'affected' and eligible to participate at every stage of the consultation process. This restricted access for the public can result in the neglect of certain environmental aspects, but is in accordance with the

EU Directive which leaves the details of consultation to the Member States.

Once the consultation process is completed, the planning authority is required to summarise the evidence within one month. The authority then assesses the application together with the information provided by various parties. The assessment should be conducted strictly in accordance with quantitative thresholds established in Federal (and Länder) Laws and in line with the detailed guidelines of administrative regulations which supplement the UVPG. Aspects which fall outside threshold criteria, such as cross-media and accumulative impacts, are not specifically mentioned in Federal (and Länder) legislation. Once a planning authority has decided to permit a project, it must include the reasons in favour of the project. In the case of planning refusal, the decision itself is sufficient for information. Similar to the consultation process, only 'affected' parties who commented on the project application are informed about the planning authority's decision.

Federal legislators accepted the objective of the EIA policy and specifically referred to it in the first Paragraph of the UVPG. However, the EU Directive's integrative elements rendered the policy's filtering process almost impossible in a legal-administrative system which is compartmentalised and sector-orientated. Legislators in both national and subnational layers conducted a difficult transposition whereby the EU Directive was scrutinised by parliament and shaped to fit Federal and Länder legal-administrative preferences. However, unfavourable formal determinants were not the only obstacles during the filtering of the policy. Weber and Hellmann commented that the formal transposition of the EIA Directive in the FRG could have been "gemeinschaftsfreundlicher" ('more euro-friendly').³⁹ This assessment indicates that Federal and Länder

³⁹ Weber, Albrecht; Hellmann, Ulrich 'Das Gesetz über die

legislators also lacked the informal political commitment to adjust their planning systems to accommodate the EIA Directive (Bavarian legislators' lack of commitment is described below).

The complicated formal transposition of the EU Directive is reflected in the FRG's EIA policy practice. The practical implementation of the EIA policy has been fragmented, legalistic and technocratic. For these reasons, it has been difficult to gain a comprehensive overview of the policy's practice. From the information available, it is evident that the UVPG project list has excluded certain categories mentioned in the EU Directive. In addition, the information provided by developers has often been too detailed and difficult to understand (a situation made worse by the fact that Federal legislation does not require developers to produce a non-technical summary). Further, the consultation process has been restricted to certain groups with material interests and planning decisions have been predominantly based on quantitative thresholds while many cross-media aspects of pollution and environmental deterioration have been neglected by Federal practitioners.⁴⁰

In terms of enforcement, FRG legal experts have taken stock of the EIA policy and its prospects of enforcement since the mid-1990s. One conclusion has been that neither the high expectations of environmental interest groups nor the EIA critics' fears of unreasonable costs have proven to be correct. Today, EIA experts view the state of the policy

Umweltverträglichkeitsprüfung (UVP-Gesetz)' (pp.1625-1633) Neue Juristische Wochenschrift Heft 27, 1990.

⁴⁰ For FRG-wide studies on EIA practice see 'Annex - Germany of the Commission Report COM (93) 28 final; Schwab, Joachim 'Die Umweltverträglichkeitsprüfung in der behördlichen Praxis' (pp.428-435) Neue Verwaltungsrecht Zeitung 1997; Kollmer, Norbert 'Die verfahrensrechtliche Stellung der Beteiligten nach dem UVP-Gesetz' (pp.1057-1061) Neue Verwaltungsrecht Zeitung Heft 11, 1994; Kollmer, Norbert 'Der öffentliche Anhörungstermin im UVP Verfahren (Paragraph 9 UVPG)' (pp.449-453) Bayerische Verwaltungsblätter 1. August 1995; see also UVP-Gesellschaft internet pages (<http://www.laum.uni-hannover.de/uvp/uvp-netz/>) and Commission Report of 1995.

with a certain 'soberness' ('Ernüchterung').⁴¹ Two problems, however, remain the subject of legal discussions. Firstly, there is no 'Popularklagerecht' (i.e. a legal right of appeal for the general public) to challenge decisions in all project categories which means that statutory consultees are restricted to those who tend to pursue economic (self-) interests. In order to establish a right of appeal, some environmental interest groups have resolved to purchasing land affected by the project. However, not all environmentalists have the financial means to undertake these legal challenges. As a consequence, many controversial projects are completed without proper EIA. Another problem concerns the burden of proof for opponents of projects: planning permission can only be annulled if there is a 'definite possibility' ('konkrete Möglichkeit') that a formal EIA would have produced condemning evidence necessitating planning refusal. In 1997 the Federal Administrative Court in Berlin ('Bundes-Verwaltungsgericht' or 'BVerwG') has put another damper on EIA 'sympathetic' court rulings and opponents of 'harmful' projects will continue to face major difficulties in EIA enforcement.⁴²

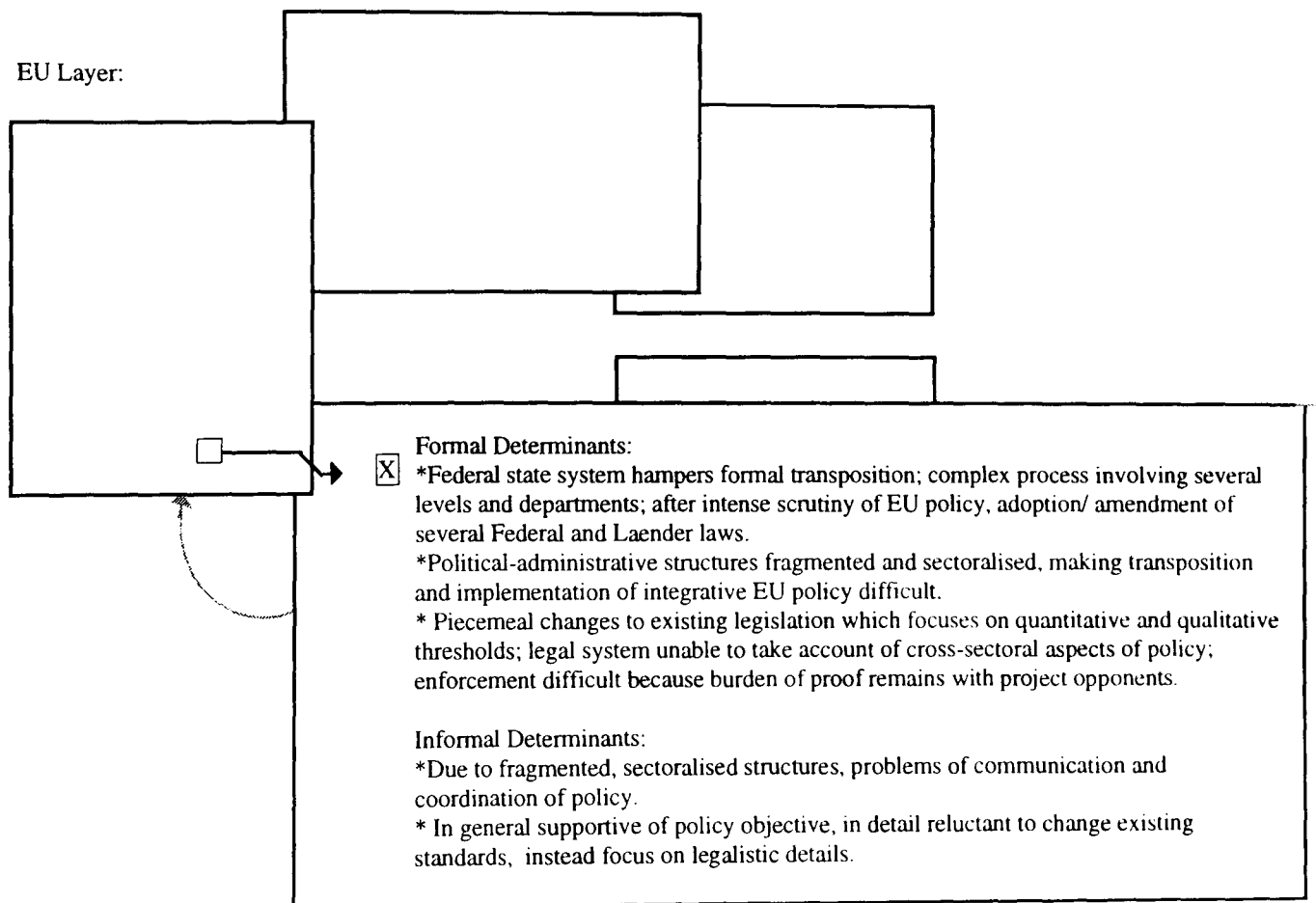
In sum, formal determinants in the FRG layer such as its federal constitution, its fragmented political-administrative structure and sectoralised legal system have hindered the filtering process of the EIA policy (see figure 6.3). In other words, the Directive has been in many respects incompatible with German legal tradition and its media-oriented processing of environmental matters. Not surprisingly, the commitment to adjust long-established standards has been limited. The 'direct effect' of the Directive and the prospects of enforcement have been limited also,

⁴¹ For an assessment of the EIA enforcement practice in the FRG see Hien, Eckart 'Die Umweltverträglichkeitsprüfung in der gerichtlichen Praxis' (pp. 422-428) Neue Verwaltungsrecht Zeitung Heft 5, 1997.

⁴² For further details on the BVerwG's reaction to Länder court rulings, see Bavarian enforcement section below.

and experts now view the effectiveness of the EIA policy with a certain 'soberness'. Although, FRG practitioners have enjoyed expertise and large resources with environmental policies that set quantitative and qualitative standards (e.g. emission limits), the cross-media EIA policy has had a bad start indeed in the FRG.

Figure 6.3: The FRG Layer and the EIA Directive



6.6 The Subnational Layer: Bavaria and the EIA Directive

Formal Transposition

Bavaria's handling of the EIA Directive reflects in many ways the FRG's general difficulties with the policy. At the same time, as figure 6.4 illustrates, Bavaria has featured 'unique' informal obstacles which made the filtering process of the Directive even more difficult. Sharing legislative powers with the Federal level, Bavaria was required to formally transpose parts of the EIA Directive within its boundaries of competency. In particular, Bavaria and other Länder were asked to clarify which authorities are in charge of EIA procedures and provide threshold criteria for Annex II projects which belong to the Länder level. To date, Bavaria has followed its obligations only to a certain extent: the Bavarian 'Verordnung' (ordinance) of 20. July 1990 regulates which authority is in charge ('federführend') of EIA procedures.⁴³ In addition, a 1993 'Verordnung' confirms already established EIA standards for the re-parcelling of agricultural land.⁴⁴

Bavarian legislators have failed to meet one important obligation: they have not specified Annex II criteria for projects which are not covered by Federal Laws but fall within Bavarian competencies. Bavarian legislators have claimed that measures equivalent to the EIA policy have already been in existence since 1978 and that the formal establishment of EIA criteria was unnecessary.⁴⁵ Bavaria's standpoint does not necessarily imply that 'environmentally harmful' projects are not assessed at all.

⁴³ See 'Verordnung zur Bestimmung der federführenden Behörde und ihrer Aufgaben gemäß Paragraph 14 Absatz 1 des Gesetzes über die Umweltverträglichkeitsprüfung' Bayerisches Gesetz- und Verordnungsblatt Nr.14, 1990.

⁴⁴ See 'Bayerische Vollzugsrichtlinie Umweltverträglichkeitsprüfung in der Flurbereinigung' (p.1044) Allgemeines Ministerialblatt 6. August 1993.

⁴⁵ See Information Umwelt und Entwicklung in Bayern: Die Umweltverträglichkeitsprüfung Bayerisches Staatsministerium für Landesentwicklung und Umweltfragen 1/95.

However, whether or not Bavarian measures are really compliant with the Directive, remains to be a question for legal clarification by courts at either the Bavarian, Federal or European level.

Bavarians have traditionally opposed 'instructions from outside' and, in the case of the EIA Directive, have considered the EU policy a major infringement on Bavarian affairs. Indeed, one Bavarian state ministry official confirmed that the EIA Directive clashed with the EU principle of subsidiarity and that planning matters should remain within subnational boundaries.⁴⁶ Arguably, Bavaria has not accomplished all its obligations concerning the EIA policy for informal determinant reasons (e.g. an aversion to instructions from outside). Formal determinants such as a fragmented political-administrative structure and a sectoralised legal system have certainly contributed towards transposition difficulties in Bavaria. But they cannot explain Bavaria's inactivity because the Federal level and, indeed, some of the Länder (Baden-Württemberg and North Rhine Westphalia) were able to accomplish their EIA policy obligations. Obviously, Bavaria has also lacked the informal commitment to follow 'inconvenient and unwelcome' EU instructions which hindered the EIA policy's implementation right at the initial stage of legal transposition.

Practical Implementation

At first glance, findings on the EIA practice in Bavaria do not divert significantly from EIA findings in the FRG as a whole. Bavarian EIA experts, too, have focused on the legal and technical implications of the EU Directive on planning procedures in Bavaria.⁴⁷ While FRG and

⁴⁶ Wegner, Hans-A. 'Die Umweltpolitik der EG im Spannungsfeld zwischen Harmonisierungszwang und Subsidiaritätsprinzip' Sonderdruck aus Berichte der Bayerischen Akademie für Naturschutz und Landschaftspflege Nr.17, 1993.

⁴⁷ For Bavarian studies see in particular Vedder, Edgar 'Der aktuelle Stand der UVP-Gesetzgebung in der Bundesrepublik Deutschland und Bayern' (pp.32-35) Inhalte und Umsetzung der Umweltverträglichkeitsprüfung (UVP) Laufener Seminarbeiträge 6/90. Akademie für Naturschutz und Landschaftspflege; Weber, J. Environmental Planning as a Part of Urban Planning in the Federal Republic of Germany - The City of Munich

Bavarian findings are similar, there are distinctly Bavarian characteristics which have shaped the EIA policy in Bavaria in their own way. They concern in particular Bavaria's informal resistance to co-ordinate 'unwelcome policies from outside', as well as a lack of communication on the progress and effectiveness of the policy. This lack of co-ordination is partly due to shortage of staff and insufficient resources.⁴⁸ However, there are two other, more substantial, reasons for the lack of co-ordination. Firstly, both Federal and Bavarian constitutions emphasise the principle of checks and balances which has resulted in a fragmented, sometimes confrontational, political-administrative system (see formal determinants in figure 6.4). Although the Bavarian StMLU has enjoyed a strong and central role in the environmental policy area, this principle has meant that colleagues in other sectoral ministries and local governments have resisted StMLU intervention. Secondly, in the light of the 1990s' economic pressures (i.e. the recession, increased competition from Central and Eastern European neighbours, pressures associated with the convergence criteria of EMU) Bavarians have feared the costs and economic constraints of the EIA Directive and have therefore been reluctant to co-ordinate the implementation of the policy. Instead, Bavarians have reacted to economic pressures more rigorously than the Federal level (and other Länder) with investment and deregulation measures which, to a certain extent, clash with the objective of the EIA Directive and its 1997 amendment which seek to bind planners at all government levels to a framework of 'minimum-regret-planning'.⁴⁹

as an Example Paper, Universidade Nova de Lisboa, 1993; Seidel, Reiner UVP bei Industriestandorten am Beispiel eines Kraftwerk-Genehmigungsverfahrens nach BImSchG (not date).

⁴⁸ Bavarian Ministry official, written correspondence, 7. January 1997, Munich.

⁴⁹ For a summary of Bavaria's deregulation policy see Böhm-Amtmann, Edeltraud Cooperative Enforcement: Successes, Impediments, Solutions Conference Paper, United States Environmental Protection Agency, 21. January 1998, Washington.

Asked about the first stage of the EIA process, Bavarian planning authorities stated that the 'German legislator' ('der Deutsche Gesetzgeber') identified EIA projects for them. In other words, legislators at the Federal level provided them with a project list which included 'water-tight' threshold criteria. Most projects requiring EIA under the UVPG concerned roads, waste management (disposal and processing) and pipelines (for gas, water and oil). However, by focusing on the UVPG text only, Bavarian planning authorities effectively excluded many Annex II projects which are not specifically mentioned in the Federal and Bavarian laws. These included projects which still require clarification at the Bavarian level and projects whose transboundary impacts are difficult to measure. Moreover, Bavarian State government officials have been preoccupied with the formulation of policies which allow planning authorities to derogate from EIA project categories and concentrate on 'exceptional cases' only.⁵⁰ In combination, the exclusion of certain Annex II categories and the proposed derogation measures can only result in a decreasing number of EIAs conducted in Bavaria.

Bavarian planning authorities had no complaints concerning the quality of environmental statements. Developers were acquainted with EIA obligations and often commissioned professional environmental consultants with the production of statements. In fact, in order to avoid obstacles in the planning process, developers often provided too many project details which in turn contributed to the heavy workload of planners. In contrast, environmental interest groups complained about the inadequate and biased content of environmental statements and demanded

⁵⁰ For instance, one Bavarian proposal concerned the speeding-up of road building projects. The Bavarian state government argued that the 'old' Länder should adopt the same derogation measures as the 'new' Länder. These temporary measures were intended to lift the 'new' Länder economies to the 'old' Länder level. See Viebrock, Jan 'Beschränkungen der UVP in der Verkehrswegeplanungsbeschleunigung' (pp.939-942) Neue Zeitschrift für Verwaltungsrecht 11. Jahrgang, 1992.

the inclusion of questions on the wider (even global) environmental implications of projects. The developers' study of two or three project alternatives were considered insufficient. Instead, environmentalists wished to discuss 'moral' questions whether to tolerate and promote economic development at all in a sustainable society. Planning authorities preferred less time-consuming 'simplified' approaches, focusing either on one proposal and its alternative or on a 'zero sum calculation' (i.e the study of the environment before and after a project is completed). In many cases, environmentalists put enough public pressure on developers and planners to adopt a wider perspective.⁵¹

In terms of information and consultation, the EIA policy has hardly made a difference in Bavaria. Guidelines on information and consultation procedures derived from existing Federal Laws on environmental protection and pollution control as well as administrative regulations.⁵² In general, project applications were made public through official notices, the local press and 'Amtsblätter' (German equivalent for gazette). 'Affected' parties and the public have had four weeks time to comment on project applications. Despite the fact that existing Federal legislation allows only indirect participation for environmental interest groups, Bavarian planning authorities have been conscious of the 'green' pressure and therefore involved as many parties as possible.⁵³ In some cases,

⁵¹ For instance, the project 'Franken II' (power station extension) was delayed following demands for more information by the public. Planning permission was eventually given after intense public scrutiny. See Seidel, Reiner UVP bei Industriestandorten am Beispiel eines Kraftwerk-Genehmigungsverfahrens nach BImSchG (no date).

⁵² See in particular Paragraph 73 of the 'VerwverfG', also Paragraph 29 of the Federal Nature Protection Law.

⁵³ For instance, the Schwaben planning authority involved 46 parties in the consultation process of Bundesautobahn A8; among them local communities, farmers associations, environmental agencies, private sector representations, national heritage societies and environmental interest groups. See Regierung von Schwaben Neubau der Ortsumfahrung Gundelfingen - Lauingen der Bundesstraße 16 Planfeststellungsbeschluss vom 28. November 1996.

Bavarian environmental interest groups which generally enjoy large memberships and financial resources, bought property affected by planning applications and thereby created a legal right to be consulted. Some of them even succeeded with their legal challenges as administrative courts confirmed their claims. Consequently, Bavarian planning authorities have accepted environmental interest groups as a 'necessary evil' and an influential force in the planning process and have adopted a more approachable attitude towards consultees and the public in general.

According to Bavarian planning officials, existing Federal and Bavarian laws (in particular the Federal Emission Law of 1974) have had more of an environmental influence on planning decisions than the EIA policy.⁵⁴ Many planning officers stated that the EIA Directive influenced decisions only in so far as additional costs, 'unnecessary' work and delays occurred. For instance, the planning permission for the nuclear research station 'München II' was delayed by nine months as a result of EIA requirements.⁵⁵ On the other hand, Bavarian planning officers could not deny that the 'inconvenient' extension of environmental investigation generated relevant evidence for consideration. Overall, however, Bavarian planning officers stressed that the policy did not significantly change planning behaviour.

Enforcement

In terms of enforcement, Bavaria's administrative courts have appeared more 'sympathetic' towards the policy. In particular, they attempted to shift the burden of proof and require planning authorities to successfully

⁵⁴ Among others, officials from the StMLU (19. August 1996), Schwaben (May 1997), Niederbayern (5. June 1997) and Oberbayern (24. April 1997) stated that the EIA has hardly had an influence on planning decisions.

⁵⁵ StMLU official, written correspondence, 24. July 1997, Munich.

deny that formal EIA compliance would lead to a different planning decision. They have also considered the EIA Directive a step towards widening the legal right of appeal. However, the Federal Administrative Court in Berlin has rejected this 'sympathetic' interpretation.⁵⁶ Consequently, project opponents in Bavaria have faced serious difficulties indeed in challenging planning decisions on EIA grounds.

In sum, Bavarian implementors have taken a lukewarm and pragmatic view of the EIA policy. Incompatibilities between the EU Directive and Bavaria's formal determinants (i.e. its administrative structures, its legal system and environmental standards, see figure 6.4) rendered the implementation of the EIA policy difficult. With the exception of Bavarian environmentalists, EIA practitioners in Bavaria have also demonstrated informal resistance over the policy's implementation. While many planning authority officials agreed that an EU-wide harmonisation of planning standards (and EIA standards in particular) was important, the same officials also believed that Bavarian standards were already set at a high level and that the policy was not necessary in Bavaria. In fact, the EIA policy caused 'inconvenient' and 'avoidable' work for practitioners. When asked about the EIA Directive, one planning official complained about the "flood of legislation coming from the EU".⁵⁷ The latter comment confirms the Bavarians' attitude to pursue their own policies without disturbances from 'outside'. All Bavarian officials who replied to research enquiries, stated that they had not been consulted by

⁵⁶ One well-publicised example is the Bavarian administrative court (VGH) ruling of the B15neu motorway (15 February 1996). The court dismissed the Bavarian state government's decision to permit the B15neu on the grounds that a proper EIA had not been conducted. In April 1997 the BVerwG dismissed the ruling but also referred the case back to the VGH for further consideration of other legal aspects. A final decision on the B15neu was still in progress at the time of writing. Bund Naturschutz in Bayern e.V., written correspondence, 30. July 1996, Landshut. See also Bund Naturschutz e.V. website.

⁵⁷ Planning official, written correspondence, 4. June 1997, Schweinfurt.

EU actors or the Federal government on the EIA policy and its 1997 amendment. They had little interest in consultation with (and guidance from) Federal and EU actors. Instead, Bavarian planning officers were confident in their own EIA expertise and were interested only in information exchange with other partner authorities.

The EIA Directive faced major obstacles during the filtering process in Bavaria. Even the German term for EIA, 'Umweltverträglichkeitsprüfung' or 'UVP', was criticised by Bavarian officials. UVP implies that projects can only be accepted if negative effects on the environment are fully absorbed. According to StMLU officials, this interpretation has raised false hopes which cannot be fulfilled.⁵⁸ In the end, the UVPG of 1990 has made one difference: Bavarian officials perceived EIA formalities as expensive and time-consuming.⁵⁹ These burdens have not been welcome at a time when Bavaria attempted to cut red tape in planning after the 'fat years' of economic success.⁶⁰ Campaigns such as the 'initiative for the speeding up of planning procedures in Schwaben' exemplify the trend towards more lenient environmental standards.⁶¹ This trend, however, runs counter the Commission's efforts to harmonise environmental planning standards (see EIA Directive amendment of 1997 and more recently proposals for a 'strategic environmental assessment' Directive).

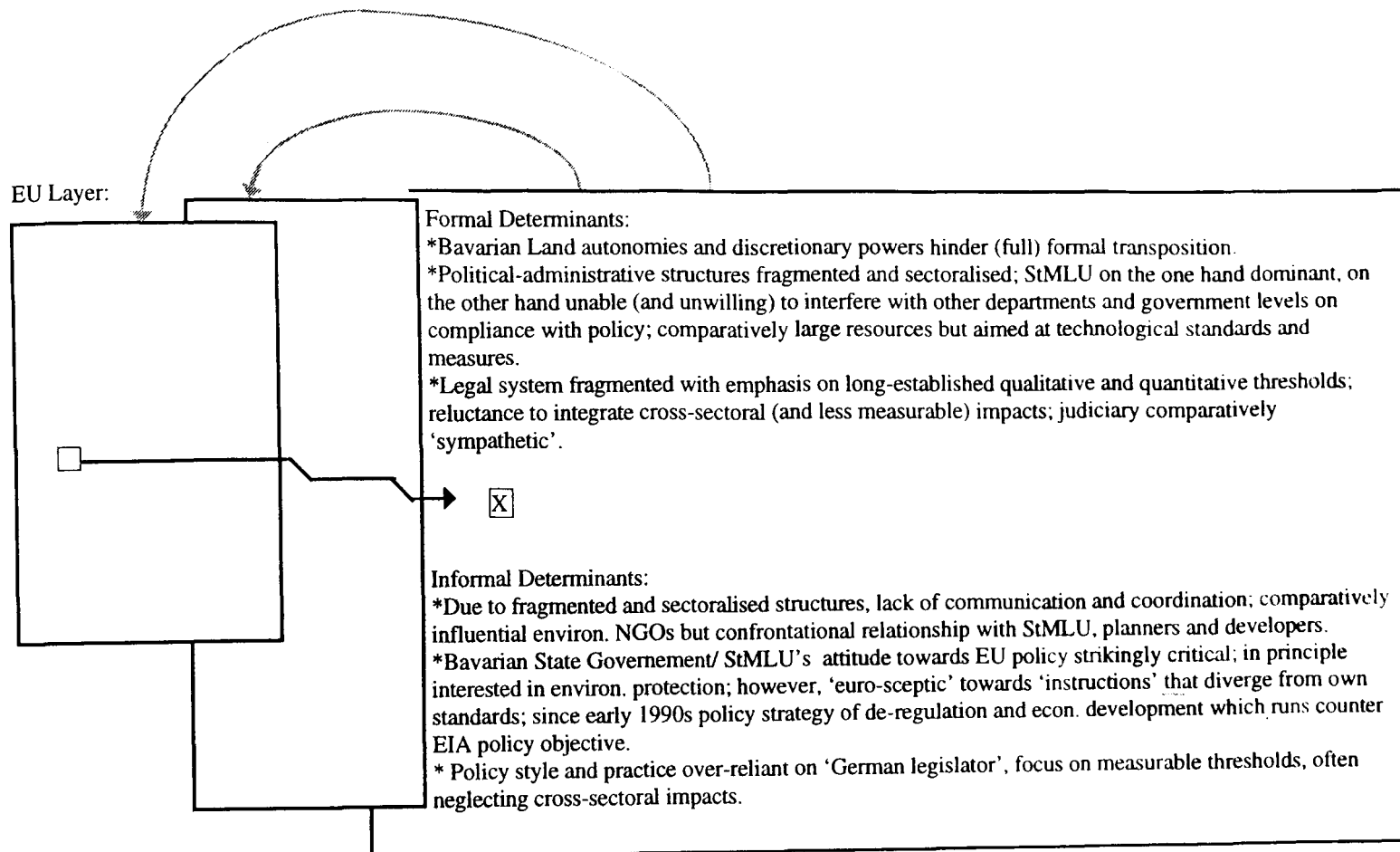
⁵⁸ Another point of criticism was the measuring of cross-media impacts, culminating in the question how cultural goods and fauna (two areas mentioned in the EIA Directive) could possibly have an impact on each other. StMLU officials, interview, 19. August 1996, Munich.

⁵⁹ Regional authorities such as Oberfranken complained about additional work and costs associated with the EIA policy. Written correspondence, 26. March 1997, Bayreuth.

⁶⁰ One StMLU official stated: "die fetten Jahre sind vorbei" (the good days are over). Interview, 19. August 1996, Munich.

⁶¹ Regierung von Schwaben Schwabeninitiative Beschleunigung von Genehmigungsverfahren 1996.

Figure 6.4: The Bavarian Layer and the EIA Directive



6.7 Conclusion: Subnational Regions play a Key Role in the Implementation of the EIA Directive

The Case Study on the EIA Directive has illustrated in detail the complex and often problematic filtering process of a typical EU environmental policy. The EIA Directive followed a cumbersome bargaining process which involved a wide range of actors pursuing a variety of (conflicting) interests through formal and informal communication channels (see feed-back arrows in map). Yet, EU policy-makers entered new territory by agreeing that a harmonisation of planning standards at national and subnational levels was necessary which takes account of environmental impacts. EU policy-makers followed environmental as well as economic level-playing-field motivations in their quest for a common policy. However, this harmonisation also implied that national and subnational competencies in the planning policy area would be affected, an aspect which was considered unwelcome by the UK and Danish governments in particular. Moreover, a common EIA policy would also have the potential to restrict economic development and consequently clash with economic self-interests on the ground. The policy finally adopted was therefore a compromise between considerations for and against a common EIA policy and provided considerable discretionary room for national and subnational implementors. The conflicting interests at the outset of the bargaining process would later re-occur during the filtering of the policy through the national and subnational layers.

In order to be filtered through properly, the EIA policy required adjustments of legal-administrative systems, the adoption of new laws which would set the policy into the national and subnational contexts, the practical application of the policy in planning procedures, and the enforcement of the policy whenever planning practices were not

compliant with the Directive. The policy affected planning procedures in a wide range of project categories and therefore involved all government layers and their actors throughout the implementation process. The case study has illustrated how actors in all layers have perceived, interpreted and accommodated the policy according to their particular formal and informal circumstances. In the filtering process, national and subnational actors have, for instance, kept the policy's impact to a bare minimum, have been eager to fill legal gaps (and often misinterpreted the policy, see the FRG's comprehensive project list), have welcomed the policy as a tool to support sustainable development, or they have perceived the policy as an 'invasion' to their own competencies. Considering the divergent conditions and attitudes, it comes to no surprise that the EIA Directive has been filtered differently in each layer.

Although the national layers have set the initial tone for implementation, it was mainly planning officials in the subnational regions who filtered the policy further by implementing and applying the EIA policy on the ground. In the process, the subnational regions have featured a number of implementation similarities with their 'mother' states but also some distinctly Scottish and Bavarian determinants which have influenced significantly the EIA policy in practice. It is therefore important to distinguish between national and subnational layers and study them separately in order to gain a more accurate and comprehensive picture of the whole EU environmental policy process.

The implementation of the EIA Directive has, first of all, depended upon formal determinants inside the layers. With regard to the subnational regions, their constitutional position in the Member States as well as their legal traditions and their internal political-administrative structures have influenced the policy. In the case of Scotland, the first part of the filtering process was comparatively swift and uncomplicated,

even though Scotland required a Statutory Instrument separate from the rest of the UK. Scottish Office officials simply followed their DoE colleagues and adopted the Directive verbatim. The Scottish Office SI left many discretionary powers of planning authorities untouched but also confirmed the Secretary of State's ultimate power in determining final planning decisions. In contrast, the Federal and Bavarian political-legal systems compelled legislators to transpose the EIA Directive through a complicated and, to a certain extent, controversial process. While UK and Scottish implementors transposed a bare minimum of the policy without considering further clarifying provisions (they thereby avoided legal disagreements with the Commission), their Federal and Bavarian counterparts scrutinised and interpreted the policy in detail, creating a fragmented and technocratic policy framework. In certain areas (such as Annex II projects) this framework departed from the original EIA policy and resulted in disputes with the Commission over the Federal and Bavarian laws' compliance with the Directive.

Overall, the formal determinants such as the constitutional position and the legal systems of the subnational regions have shaped their ability to implement EU environmental policies. Examining only formal determinants would therefore suggest that as long as constitutional and legal settings are favourable, EU environmental policy implementation should be smooth and successful. But EIA policy implementation has also been shaped by informal determinants such as the subnational regions' policy styles, attitudes, priorities and relationships. In Scotland, the EIA Directive was not welcomed with open arms. In fact, Scottish Office officials made no secret of their scepticism towards the policy, partly because the policy was seen as a 'red tape' brake on economic development in Scotland. It was therefore left to the discretion of individual planning officers to decide whether or not to apply the EIA

policy effectively. Some planners considered the policy as a useful tool from EU policy-makers to integrate environmental considerations more forcefully, while many others ignored the policy as much as possible for other (economic) priorities. The Bavarians, too, were reluctant to restrict economic development in their communities, especially at a time when the recession (and other pressures) hit them hard. However, in Bavaria's case the key informal obstacle in the implementation of the EIA Directive could be found in the Bavarians' attitude towards 'instructions from outside'. In particular, the EU was seen as an 'illegitimate' policy-making level in the planning policy area. The Bavarians have been (over-) confident in their own standards and their extensive environmental expertise and resources. On the other hand, Bavarian officials at all levels have traditionally focused on quantitative and qualitative standards and have resisted integrative environmental policies such as the EIA Directive. As a result, Bavarians have been criticised by Commission officials over their non-compliance with many EU environmental policies. A complex mix of formal and informal determinants in the subnational layers have therefore determined EIA policy implementation performances in Scotland and Bavaria (confirming Arguments 1 and 2).

Scotland and Bavaria have featured divergent political-administrative systems with different formal and informal determinants. Yet, despite these differences, their EIA policy implementation outcomes have been strikingly similar. In both regions, the EIA policy has had a moderate impact on planning practices and the key objective (i.e. a level-playing-field in minimum-regret-planning) has not been fully achieved. The case study has carved out two reasons for this shared disappointing result. Firstly, EU environmental policies are enormously complex and often involve policy objectives which are based on environmental and economic considerations. In order to be realised, the EU environmental policies

require the full commitment of key implementors. In the case of the EIA Directive, commitment was required from legislators at the national and subnational levels, planning officers and, to a certain extent, developers and the public (in particular environmental NGOs and other consultees). This commitment, however, was often missing from officials and developers. The study has demonstrated that EU environmental objectives such as 'environmentally sensible' minimum-regret-planning can later clash with implementors' more immediate economic and administrative considerations on the ground. The economic argument for the harmonisation of planning standards at the outset of the process may have been plausible for actors on the ground, but when it comes to economic (self-) interests, subnational implementors in particular have demonstrated a protectionist attitude towards their local economies.

The study has also revealed a certain 'euro-scepticism' towards 'instructions from outside' among subnational implementors, an attitude which can only dampen the pursuance of EU environmental policies. Subnational regions have been important in the process, yet they have been almost absent from EU policy-making which produces legislation they then are left to implement. Obviously, the exchange of views on the EIA policy practice (indicated in the map with 'feed-back' arrows) have been rather limited between the layers. It remains to be seen whether the more recent EU environmental policy strategies of 'partnership' and 'dialogue' can consolidate this (perceived) gap between EU policy-makers and subnational implementors and thereby contribute to more acceptable and effective EU environmental policies. The new strategies have not prevented more controversies surrounding the adoption in 1997 of Directive (97/11/EC) amending the EIA Directive. The amendment includes an Annex IIa which is intended to harmonise identification criteria for Annex II projects. Already, reactions from national and

particularly subnational actors during and after the policy's adoption have signalled that the new EIA policy is perceived as an 'EU-imposed' constraint on planning policies and economic objectives.⁶² The concept of partnership and dialogue therefore appears to be ineffective in closing the gap between EU environmental policy-makers' intentions and the implementors' 'reality'.

The case study has provided detailed evidence on the EU environmental policy implementation deficit by focusing on subnational actors and their policy performances on the ground. The final Chapter draws together the key findings of the research. It re-addresses the key arguments, assesses the usefulness of the multi-layered implementation map for further investigations and, finally, presents an outlook of the future of the EU environmental policy.

⁶² For further details see, for instance, UVP-Gesellschaft website (<http://www.laum.uni-hannover.de/uvp/uvp-netz>)

Chapter 7

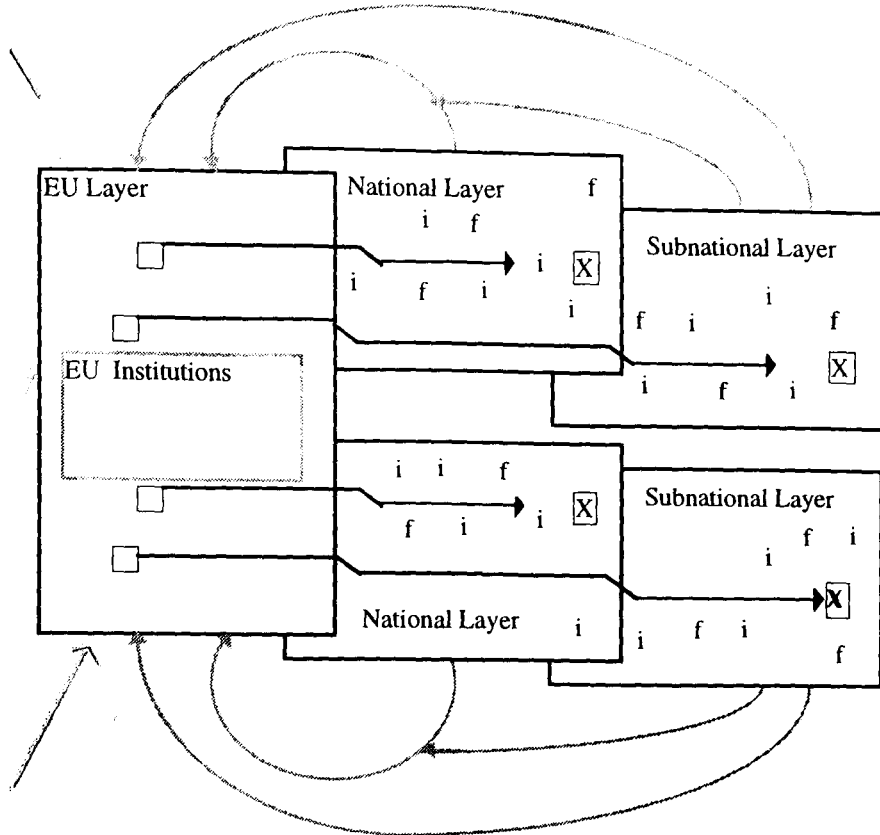
Conclusion: Subnational Regions Matter in the Implementation of EU Environmental Policies

7.1 Introduction

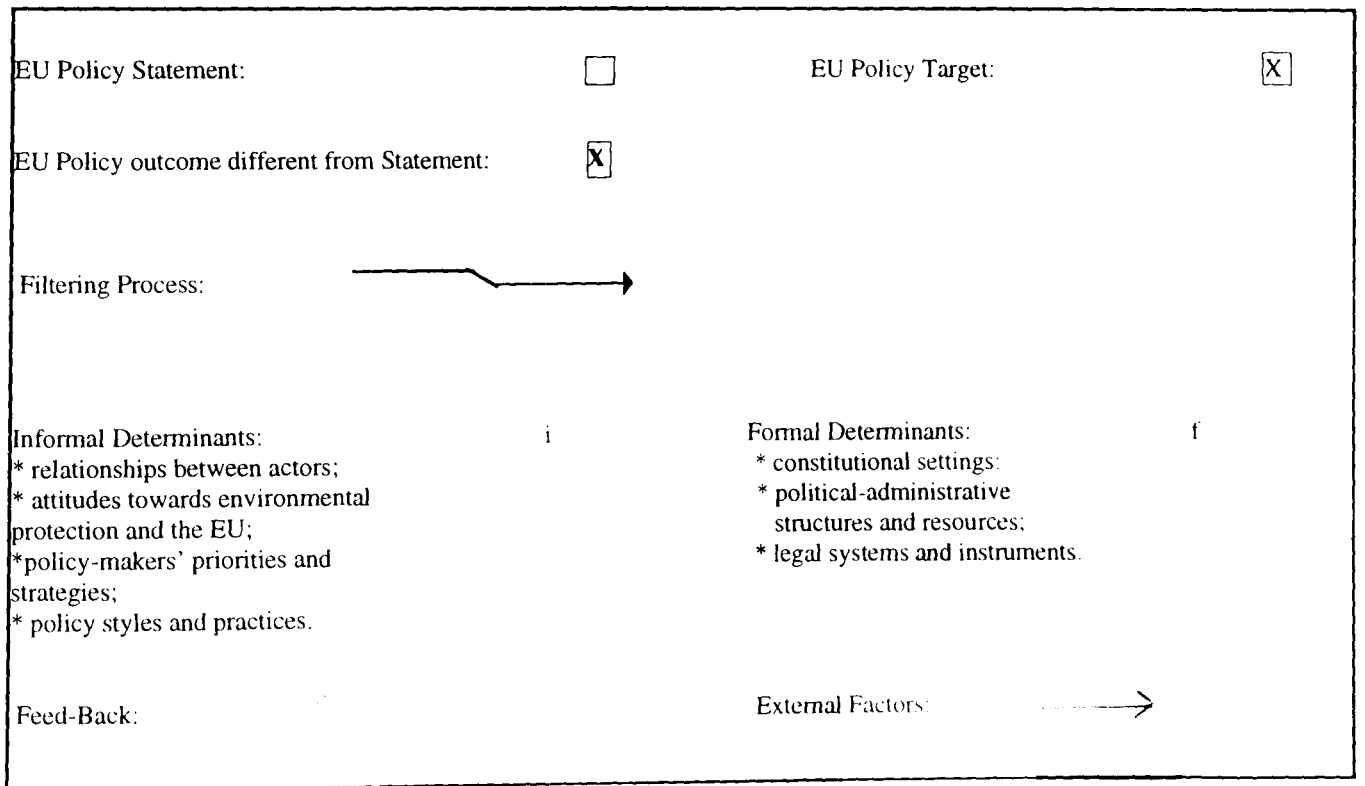
The purpose of this research was to move away from the analysis of national governments and their role in EU environmental policy-making and highlight instead subnational regions and their influence on the success, or failure, of EU environmental policies. In particular, the research argued that the study of subnational regions and their actors can help explain why the EU is suffering from an implementation deficit in the environmental policy area. By distinguishing between national and subnational government levels the aim was to contribute new and vital insights to the study of EU environmental policy implementation, insights which have been hitherto neglected by 'state-centrist' analyses.

To help investigate the EU environmental policy process, the research combined and synthesised relevant study areas and approaches into a heuristic framework. The 'multi-layered implementation map' introduced in Chapter 2 built on the evidence of existing policy process and implementation studies, and incorporated the complex EU and environmental policy dimensions. The map highlighted, and distinguished between, three government levels or 'layers' involved in the 'filtering' process of EU environmental policies and categorised influential factors into 'formal' and 'informal' determinants. The latter distinction helped identify potential obstacles in the implementation path and explained why many EU environmental policies either failed on the ground or took a different shape in the latter stages of policy implementation.

Figure 7.1: The Multi-layered Implementation Map Revisited



Key:



The research confirmed a number of well-publicised studies which highlight an implementation deficit in the EU environmental policy area,¹ a deficit which is arguably more alarming than in other EU policy areas. Indeed, the author's own research evidence (gained from interviews, questionnaires and primary sources) confirmed that at every stage of the implementation process - from the formal transposition and progress report to the enforcement and monitoring of policies - EU Member States have demonstrated difficulties (and often reluctance) in meeting EU environmental obligations. While many studies have contributed valuable insights to the research matter and suggested measures which would solve some of the implementation problems,² this study has sought to construct a more comprehensive framework which takes account of specific implementation factors while maintaining an overview of the wider (macro-) context of EU environmental politics. This was primarily done by categorising factors that influence EU environmental policy implementation into formal and informal determinants and by distinguishing between EU, national and subnational government levels.

The final Chapter addresses the key arguments and then evaluates the

¹ Among others see Butt-Philip, Alan Regulating the Single European Market: A Comparison of the Implementation of Social and Environmental Legislation Research Paper, 1994; Demmke, Christoph Verfahrensrechtliche und administrative Aspekte der Umsetzung von EG-Umweltpolitik European Institute of Public Administration, 30. May 1996; Institute for European Environmental Policy The State of Reporting by the European Commission in Fulfilment of Obligations contained in EC Environmental Legislation London, November 1993; Krämer, Ludwig Focus on European Environmental Law Sweet & Maxwell, London 1992 and 1997; various Commission reports, for instance Interim Review of Implementation of the EC Programme of Policy and Action in Relation to the Environment and Sustainable Development November 1994, COM (94) 453 final. See also 'Appendix 3: Evidence on EU Policy Implementation Performances'.

² See in particular Collins, Ken; Earnshaw, David 'The Implementation and Enforcement of EC Environmental Legislation' (pp.213-249) Environmental Politics vol.1, No.4, Winter 1992; Butt-Philip, Alan Regulating the Single European Market: A Comparison of the Implementation of Social and Environmental Legislation Research Paper, 1994; Krämer, Ludwig Focus on European Environmental Law Sweet & Maxwell, London 1992 and 1997.

map in the light of the research findings. It concludes with a short outlook on the future of EU environmental policies and assesses to what extent the EU can act as an environmental 'problem solver'.

7.2 Addressing the Key Arguments

Argument (1): Formal determinants such as political-administrative structures as well as informal determinants such as policy priorities and relationships between actors influence EU environmental policy implementation on the ground. These formal and informal determinants are inter-related and cannot be studied on their own.

National and subnational actors have processed EU environmental policies in accordance with their particular formal and informal conditions or circumstances. EU environmental Directives have, by their very nature,³ provided considerable discretion for implementors. They have been formulated in a way that would allow for national and subnational variances. While this discretion has been necessary, it has also provided 'loopholes' (discussed in detail in Chapter 3) for implementors whereby policy objectives were either avoided or policies were shaped to fit into implementors' political-administrative frameworks. As a result, many environmental policy targets have often been missed.

The study categorised the most influential factors in the implementation process into formal and informal determinants shown in figure 7.1. The formal determinants referred to - constitutional settings; political-administrative structures and resources; legal systems and instruments. The informal determinants comprised - relationships between actors; attitudes towards environmental protection and the EU; policy-makers' priorities and strategies; and policy styles and practices. Proper

³ EU Directives outline common objectives but they leave the details (i.e. the ways and means) to national and subnational implementors. See 'Appendix 2: An Introduction to the EU, its Institutions, Policy-Making Procedures, and Legislation' for details on EU legal instruments.

implementation of EU environmental policies was often hindered by incompatible legal systems, complicated political-administrative structures or a lack of financial and administrative resources. In addition, informal obstacles such as divergent policy priorities, contradictory policy styles and strategies have often clashed with EU environmental policies. In different combinations or 'mixes', these formal and informal determinants have generally rendered the implementation of EU environmental policies difficult.

Chapters 3, 4 and 5 have all demonstrated the extent to which both formal and informal determinants have shaped EU environmental policies at different government levels. The inclusion of both formal and informal determinants was crucial: an examination of only formal or informal determinants alone would have led to inaccurate conclusions. In fact, the Chapters have illustrated how formal and informal determinants are inter-related and cannot be studied on their own. It was therefore important to 're-assemble' the formal and informal determinants and assess their **combined** influence on EU environmental policies.

If formal determinants were to be studied only, the centralised state system of the UK and Scotland (i.e. formal constitutional setting) would appear to be ideal for the implementation of EU environmental policies. Indeed, in comparison with the FRG and Bavaria, 'instructions from outside' have been processed automatically and in a more integrated manner without much political scrutiny (see Chapters 4, 5 and 6). On the other hand, the UK state system featured gaps in co-ordination and co-operation which were particularly evident in the Scottish case. The gaps were mainly due to Scotland's paradoxical position in the centralised state system and associated questions concerning Scottish representation and devolution (see Chapter 5). Therefore the formal constitutional setting of the UK and Scotland has had an impact on informal attitudes and

relationships between actors which in turn influenced the way in which policies have been processed.

In comparison, the complexity of the federal state system proved to be problematic for the filtering of EU environmental policies in both the FRG and Bavarian layers (see Chapters 4, 5 and 6). Political-administrative structures have been fragmented and provided horizontal and vertical gaps that rendered the co-ordination of policies difficult. In addition, the constitutional checks and balances contributed towards the general perception that policies 'from outside' should be scrutinised, and if necessary adjusted, at every government level and in every sectoral department. Bavaria in particular fostered this perception with the result that many EU environmental policies, welcome or not, were hindered during the implementation process. However, focusing on formal determinants only would have neglected those informal determinants in the FRG and Bavaria that have eased the implementation of EU environmental policies. Favourable informal determinants included strong public (grass-root) support of 'green' issues and the FRG government's campaign for stringent qualitative and quantitative environmental standards (e.g. water quality standards and emission thresholds). Again, formal and informal determinants have to be examined together in order to gain an accurate picture of the policy 'reality'.

In terms of informal determinants, until the early 1990s the FRG government pursued the idea that stringent environmental standards would provide German producers with a competitive advantage in 'eco-friendly' products and markets. This strategy facilitated the implementation of many EU environmental policies (such as policies on large combustion plants, catalytic converters and lead-free petrol). However, in recent years, the strategy has given way to an economic policy priority of the late 1990s which resembles the UK's *laissez-faire*

approach. Before the Schröder Government took over, the Christian-liberal coalition Government had moved away from its EU position as a 'green man' demanding the highest environmental standards, and moved instead towards a lenient environmental policy with 'more affordable' EU targets. It remains to be seen whether the new red-green coalition Government at the FRG level will return to a 'green man' policy in the light of continuing economic pressures. There is bound to be some shift re-emphasising environmental policy priorities. However, given that the FRG political system relies heavily upon consensus especially between political parties and interest groups (in other words, formal determinants set the framework) and given that the new Federal Chancellor, Gerhard Schröder, has to reassure German businesses and voters that economic conditions will improve in the near future, it is very unlikely that the new FRG Government will introduce 'deep green' policies which would improve EU environmental policy implementation and secure sustainable development in the FRG.⁴

In comparison, the formal determinants (in particular the centralised state system and the FPTP electoral system) allowed Conservative Governments to pursue a laissez-faire economic policy in the 1980s and 1990s. This policy priority has been in line with EU 'voluntary action' policies such as the 'eco-audit' but has been less compatible with EU policies specifying and controlling qualitative and quantitative standards (such as water and air emission standards). Although the new Labour Government has pursued some radical environmental policy objectives (particularly in the area of infrastructure and transport, see Chapter 4), substantial changes in attitudes and priorities are not expected in the near

⁴ The 'phasing-out' of nuclear energy in the FRG is arguably an attempt to (re-) install a 'green man' strategy. The new 'phasing-out' policy, however, has faced already severe resistance from the nuclear sector lobby.

future. It is therefore unlikely that the new Labour Government will ensure the effective implementation of EU environmental objectives and establish a policy sustainable development in the UK.

Scotland and Bavaria have featured informal determinants that have differed in many respects from their 'mother' states. Arguably, policy priorities and strategies in Scotland and Bavaria have responded more vigorously to changes in public attitudes and priorities on the ground (see in particular Chapters 5 and 6). As a Federal Land, Bavaria has been able to pursue its own policy strategies and conduct policy changes that have been more radical than in other Länder. In this sense, the formal constitutional setting has helped Bavaria to establish its own set of priorities. Having formulated an environmental policy at an early stage with stringent qualitative and quantitative requirements, Bavarians conducted a political U-turn in the early 1990s towards a policy of voluntary action and de-regulation (see in particular the 'Umweltpakt' in Chapter 5). This new policy was intended to facilitate and encourage economic development and counter-act trade competition 'threats' from the rest of the EU and Eastern European neighbours. In the light of this strategic change, any EU environmental policy which implied financial and administrative costs as well as restrictions to economic development in Bavaria has been processed with considerable reluctance if not downright opposition by Bavarian implementors (for Bavarian reactions to EU environmental policy obligations see in particular Chapter 6).

Although Westminster has influenced considerably the political process North of the border (e.g. Conservative governments introduced privatisation and de-regulation policies), Scotland has featured some distinct informal determinants. Priorities in Scotland have been by and large conservative: next to economic stability, prosperity and growth, environmental considerations have remained low-priority issues for the

public and political-administrative actors in Scotland. True, there are indications that environmental issues have been considered increasingly important in recent years. Some important economic sectors in Scotland such as tourism and the wool and whisky industries have conveniently combined economic and environmental interests, and a number of more recent environmental initiatives in Scotland have demonstrated that the Scots could not ignore environmental matters completely. However, these adjustments have not been substantial enough to ensure the proper implementation of EU environmental policies. Scotland's 'paradoxical' position (i.e. its formal constitutional setting, discussed in detail in Chapter 5) has contributed towards this emphasis on economic priorities. It has allowed Scottish local authorities to pursue economic self-interests, while (former Conservative) central governments have been able to implement economic policies of de-regulation in Scotland. EU environmental policies have been implemented accordingly in Scotland: the Scottish Office has tended to transpose a bare minimum of 'costly and inconvenient' EU environmental policies, while local administrators have enjoyed considerable discretion when applying the policies on the ground. They have either followed the Scottish Office's example and limited - often severely - the impact of EU environmental policies as in the case of the EIA Directive, or they have welcomed the 'green' input from the EU as useful environmental tools. In both Scottish and Bavarian cases, informal interests and formal circumstances have proven to be intertwined, influential and distinct from that of their 'mother' states.

It is striking how policy-makers' economic priorities have influenced the implementation process of EU environmental policies in all layers. Economic level-playing-field motives which initially compelled EU policy-makers to adopt many EU environmental policies (see Chapter 3 and the EIA Case Study featured in Chapter 6) have tended to evaporate

during the latter stages of the EU environmental policy process. Depending on the political parties in power and their strategies towards temporary economic pressures, Member States and subnational regions have pursued their own economic advantage, much to the detriment of EU environmental policies which often required economic and financial concessions. In all layers informal determinants have influenced the way in which EU environmental policies have been implemented. Yet informal priorities and relationships have not developed in a vacuum, they have been shaped by formal constitutional circumstances which have, in turn, influenced the way in which EU environmental policies have been received and processed by implementors on the ground. Again, it is true to say that formal and informal determinants are inter-related and cannot be studied on their own.

Argument (2): Subnational regions and their actors play a central role in the EU environmental policy process. They shape the implementation of most EU environmental policies.

This Chapter has highlighted already the importance of investigating determinants in the Member States at large as well as determinants within the subnational regions. Indeed, the separate investigation of EU, national and subnational layers has provided a more accurate overview of the divergent determinants which shape the development and implementation of EU environmental policies. This research compared national and subnational conditions and examined in detail the subnational regions and their influence on the EU environmental policy implementation process. It concluded that subnational regions play a vital role in the success or failure of most EU environmental policies.

EU environmental policies such as Directives setting water quality standards, identifying and protecting areas of environmental interest, and procedural Directives which affect decision-making in policy areas such

as planning require implementation at **all** government levels. The policies' success therefore depends upon national **and** subnational actors and their capacities and willingness to realise EU environmental objectives. Although the national governments take the initial steps of formal transposition, it is mainly the subnational regions which are concerned with any further details of legal transposition and, more importantly, the subsequent practicalities of most EU environmental policies. In practice, subnational actors have shaped EU environmental policies decisively; in the implementation process they have accommodated (or failed to accommodate) the policies into their own political-administrative frameworks. This research has emphasised that subnational actors do not live in a vacuum but are influenced by circumstances (i.e. formal and informal determinants described above) which differ in many respects from the circumstances which shape environmental politics in the Member States at large. The detailed study of subnational regions and their implementation performances is therefore of vital importance for an accurate picture of the EU environmental policy practice.

Chapters 5 and 6 provided detailed evidence of Scotland and Bavaria's 'unique' implementation conditions and performances with EU environmental policies. In the Scottish case, it was admittedly a central government department (i.e. a national layer institution), the Scottish Office, which has transposed EU environmental policies into the subnational context. However, the Scottish Office has processed the policies separately from the rest of the UK and has taken into account Scottish characteristics and interests such as its infrastructure and certain economic sectors such as the wool and fishing industries. In this sense, the Scottish Office has already influenced EU environmental policies in a way which is 'distinctly Scottish'. For instance, the EIA Directive was transposed comparatively swiftly by Scottish Office officials and followed

the DoE example, yet the tone of the Scottish Office policy documents departed in many respects from the documents applying to the rest of the UK. In comparison, Scottish Office officials were almost apologetic about the 'inconveniences' caused by the EU environmental policy. This reaction reflects a general reluctance to restrict economic development for the sake of 'European' environmental objectives in a region which is trying to come to terms with its peripheral disadvantage.

While the Scottish Office has played a significant role in the way EU environmental policies are processed in Scotland, the effectiveness of EU environmental policies such as the EIA Directive has depended upon individuals' attitudes and priorities on the ground. In other words, Scottish local authority officials have enjoyed large discretionary room over the policies' application (unless, of course, the Secretary of State intervened) and have, in practice, implemented EU environmental policies according to their own local priorities and practices. In the EIA case, some Scottish practitioners have welcomed and applied the Directive as a long-overdue instrument which enhances environmental planning in Scotland, while many others have followed their economic priorities and have feared the costs, economic restrictions and administrative burdens associated with the Directive. Overall, the implementation of EU environmental policies such as the EIA Directive has depended upon the subnational layer (i.e. Scotland) and its actors who have filtered the policies in line with formal and informal determinants. Although the Scottish Office has been in a somewhat hybrid position between national and subnational layers, the subnational layer's role in the overall filtering process of EU environmental policies has been nevertheless striking.

Bavaria's handling of EU environmental policies has been different in many respects. Firstly, Bavaria has had considerable formal difficulties in transposing EU environmental policies due to the fragmented federal

state system and sectoralised legal framework. However, in contrast with the Federal level (and indeed with other Federal Länder) Bavarian political-administrative actors have shown considerable reluctance in complying with 'inconvenient and unnecessary' EU standards. Bavarians have resisted adjustments to their legal-administrative standards and procedures as much as possible. Environmental policies that affected other policy sectors (such as the EIA Directive) as well as policies with environmental targets and thresholds different from Bavarian standards have faced informal obstacles in Bavaria. In the EIA case, StLMU officials followed their obligations by transposing only parts of the Directive (in the form of two ordinances) and thereby demonstrated their opposition against 'inconvenient instructions from outside'. In principle, Bavarians have supported objectives similar to EU environmental policies. Bavarians also have had the financial and administrative means (and the know-how) as well as a strong environmental lobby to support EU environmental policies. However, recent policy practice has shown that EU environmental policies have been confronted with both a strategic change towards environmental policy 'lenience' **and** a 'typically Bavarian' resilience against instructions from outside. In comparison with the FRG at large, the Bavarians' 'euro-scepticism' has been striking. Political-administrative actors have been confident in their own standards and challenged the legitimacy of the EU as a policy-making level in this policy area. These Bavarian characteristics have made the filtering process incredibly difficult.

Comparing the two subnational regions, the research has identified and highlighted substantial formal and informal determinant differences between Scotland and Bavaria. Yet despite these differences, the regions' implementation performances have been strikingly similar. One immediate conclusion is that the success of EU environmental policies has depended

upon the 'mix' of determinants and that EU policy-makers have to accept that even the 'best tailored' or 'smartest' (to use Ingram and Schneider's term) policies face complex determinant combinations and are therefore most likely to 'get stuck' during the filtering process. Both Scottish and Bavarian layers have featured complex mixes which included favourable determinants facilitating policies as well as unfavourable determinants hindering the policies' implementation (and vice versa). For instance, the strong environmental lobby in Bavaria, which has been very much in favour of EU policy objectives, has not been able to compensate for the serious difficulties in pressing especially cross-sector policies into a fragmented and often confrontational political-administrative system. Similarly, in the case of Scotland the most integrative and centralised structure has not prevented informal reluctance by political-administrative actors whose policy priorities clashed with EU environmental policies.

Another explanation for the similar implementation performances can be found in certain informal determinants which both regions share. True, Scotland and Bavaria have been different in terms of constitutional settings, political-administrative structures and policy styles and strategies. But the research has also highlighted that economic considerations as well as tensions between government layers have mattered considerably in both Scotland and Bavaria. As far as the economic imperative is concerned, the regions' strategies and policy styles have differed over the years, but the paradoxical relationship between economic and environmental interests has proven to be a dominant factor in the pursuance of EU environmental policies (confirming the 'environmental dimension' argument in Chapters 1 and 2). By and large, environmental objectives have been (and continue to be) perceived as contradicting economic interests on the ground. Often, environmental and economic considerations which have motivated

Member State governments to adopt EU environmental policies have not been filtered through to (or shared by) actors at the subnational level. As a result, EU environmental policies have lacked the necessary support by implementors on the ground.

In the case of Scotland and Bavaria, EU environmental policies have been particularly susceptible to economic considerations: both regions have shown a more protectionist attitude towards their local economies than the national governments for whom a European level-playing-field appeared to be a more immediate, plausible and desirable policy objective. Scotland has had to compensate for its peripheral disadvantage in the Single Market, while Bavaria has had to deal with increased competition from its Eastern European neighbours who have attracted businesses away from Bavaria. The UK and the FRG at large have faced these economic pressures as well, but not to such a decisive extent as their subnational regions. Comments such as "the fat years are over, we cannot afford stringent environmental standards any longer" (Bavarian StLMU official) and "we don't want any more environmental policies from Europe, the most endangered species in the Highlands is man" (Scottish business representative) illustrate the subnational regions' concern over EU environmental policy restrictions on economic developments.⁵

As far as tensions between government levels are concerned, both regions have shown gaps in communication and co-ordination between government levels. For different formal and informal reasons (i.e. the impact of Scotland's 'paradoxical' embeddedness in a centralised state system and Bavaria's 'verflechtet' yet confrontational position in a federal state system), actors in both regions have had internal communication

⁵ The comments were made by an StLMU official in Munich (19. August 1996) and a member of the Scotland Europa Environment Group in Glasgow (26. February 1997).

difficulties as well as weak external links with national and EU actors. This was reflected mainly in terms of weak formal contacts and informal attitudes towards each other which often culminated in scepticism, mistrust and conflict. Relations between the two subnational regions and the other layers have not been favourable. Indeed, both Bavarians and Scots openly complained about 'inconvenient' and 'unwanted' policies from the EU. This suggests a general dissatisfaction of subnational actors over their restricted access and involvement in the 'making' of EU policies which affect their competencies considerably.

One obvious solution to the perceived communication gap and poor record of implementation would be to adjust the EU policy-making process so that subnational regions and their important role in the overall process is taken into account. In other words, the rapport between EU, national and subnational actors (indicated with feed-back arrows in figure 7.1) should be strengthened. To a certain extent, the EU and the Commission in particular, have already recognised the problem and have attempted to consolidate the layers by introducing 'partnerships' and 'dialogue groups' (such as IMPEL). Indeed, recent Treaties, Environmental Action Programmes, secondary legislation and other EU environmental initiatives (outlined in Chapter 3) have attempted to involve subnational actors more closely in EU environmental policy-making and thereby commit them more strongly to an environmental level-playing-field. These attempts, however, have thus far yielded only limited success. They have not prevented new criticism over EU environmental policy proposals (such as the EIA follow-up Directive of 1997 and the SEA Directive) and have not solved old problems of communication and co-ordination between actors when dealing with EU environmental policies. In other words, formal adjustments of the Treaties, Environmental Action Programmes and environmental laws

have not (yet) altered informal relationships between actors, policy priorities and attitudes towards environmental protection.

Apart from the attempts of involving subnational actors in EU environmental policy-making, subnational regions themselves have to a certain extent contributed towards closer co-operation between the layers. They have succeeded with some of their demands for more political competency at the national and EU levels. As a result, Scotland can now look forward to a devolved parliament in Edinburgh,⁶ while Bavaria has succeeded with its campaign for increased and formalised subnational participation at the EU level. With the process of Scottish devolution and more formalised EU decision-making powers for Bavaria, both regions may enjoy greater influence on EU policy-making which in turn will result in EU environmental policies more acceptable to these regions. However, this trend towards government 'fusion' may also make relationships between political-administrative actors more complicated which could result in 'confusion' and wider gaps of communication.⁷ More importantly, with increased participatory powers and a stronger 'national' identity and self-confidence, subnational regions may now oppose policies or adjust them to their liking with the result that one of the EU's key objectives, the economic and environmental level-playing-field, may be ignored completely. It remains to be seen to what extent the two divergent developments of regionalisation and European integration (which includes the implementation of, and compliance with, common

⁶ Having emphasised Scotland's prospects of having its own parliament in Edinburgh, its links with the EU will not be formally strengthened with Scottish devolution; EU links will remain primarily the domain of Westminster. See 'Appendix 5: Scottish Devolution - A Brief Outline' for further details.

⁷ Dietrich Rometsch uses the terms 'fusion' and 'confusion' in The Federal Republic of Germany and the European Union. Patterns of Institutional and Administrative Interaction University of Birmingham Discussion Papers in German Studies, December 1995.

policies) can be accommodated so that common environmental policies can be implemented effectively and successfully in every part of the EU. Already, Bavarian political-administrative actors have shown more interest in EU policy-making links and markedly less interest in EU policy implementation links. Substantial improvements in relationships between the layers and their actors are therefore unlikely.

The potential conflict between economic and environmental interests and the tensions between government levels constitute problem areas for the EU environmental policy process which cannot be eliminated completely by the EU's current environmental strategies. Arguments such as: energy efficiency measures cut financial costs for businesses, 'green' technologies are lucrative in the long-term, and 'partnerships' and 'dialogue' groups between government levels, have had some impact on attitudes and behaviours on the ground. They have appealed predominantly to the voluntary commitment of political-administrative actors, businesses and citizens. However, they have not brought about the substantial changes necessary for the successful and effective implementation of EU environmental policies. Implementation outcomes will therefore continue to be strikingly similar and often disappointing. Considering the multitude of obstacles and resistance by many implementors on the ground (particularly when economic and environmental interests clash), the implementation of EU environmental policies and sustainable development in general will remain a tough and long-term objective in Europe.

7.3 An Assessment of the Map and its Usefulness for future Investigations

The research has demonstrated that the study of subnational regions in the EU environmental policy process is important for a more refined as well as comprehensive analysis. By focusing on the 'third' government

level, the research has followed an approach similar to that of 'conventional' multi-level governance studies. However, in contrast to studies by Marks, Hooghe et al, this research has not argued that subnational actors are (increasingly) on an equal footing with actors from EU and national levels, especially during EU policy-making. Rather, it has used the 'multi-level' perspective to investigate the involvement of three government levels and to highlight subnational regions as political arenas where most of EU environmental policy implementation takes place. The research has used a 'multi-layered implementation map' which describes EU environmental policy implementation as a 'filtering' process whereby EU environmental policies have to go through various 'layers' before they reach their actual implementation target. The term 'layers' (highlighting the government levels involved in the process) has been particularly useful; it has helped to illustrate that the EU and national levels are not the only levels that shape EU environmental policy implementation. In fact, applied to the study of Scotland and Bavaria, the map has helped to demonstrate that subnational regions and their actors have played a vital role in the process. Moreover, with the help of the map, the research has uncovered 'mixes' of subnational determinants which have been distinct from their 'mother' states and which have shaped significantly the implementation of EU environmental policies.

With the 'multi-layered implementation map', the research has not presented a new theory or model able to predict EU environmental policy outcomes. Rather, the map has provided a guidance tool which helps identify implementation determinants without losing sight of the overall policy process and the government levels involved. The map can be applied for the study and comparison of other subnational regions and is not restricted to Scotland and Bavaria. Similarly, the map can be used for policy areas other than the environment and could generate similar

findings on other implementation deficits in EU policy areas such as transport where the subnational regions' role is equally strong.⁸ Yet, the map is particularly suitable for the environmental policy area because it tends to involve a vast range of inter-related yet conflictual aspects (i.e. formal and informal determinants) which may not be found to the same extent in other EU policy areas (e.g. cohesion policy) where interests between the main actors are (arguably) clearer or more harmonious. EU environmental policies also tend to require major adjustments and concessions, often involve compromises between a multitude of actors who pursue conflicting interests (i.e. adjustments of informal determinants), and finally know neither time nor geographical boundaries. In addition, EU environmental policies affect actors at all levels: actors from EU institutions, national government representatives and experts, subnational administrators, local communities and interest groups. The map encapsulates (and distinguishes between) government layers and implementation determinants and is therefore particularly useful and suitable for the study of EU environmental policies.

There are, however, shortfalls with the map. The map (and the research itself) resembles an 'old-fashioned' top-down approach whereby EU environmental policy implementation is investigated in a linear manner and focuses mainly on obstacles along the way. While this may be true to a certain extent, the author nevertheless has been careful to take account of the whole policy process and other 'directions' that contribute to the dynamism and complexity of EU environmental policy.⁹ In addition, the

⁸ Obviously, if the map is applied to other policy areas, the informal determinant 'attitudes towards environmental protection and the EU' should be replaced by an equivalent determinant such as 'attitudes towards the Trans-European Network'.

⁹ For instance, the research has outlined how actors from different government levels and interest groups have sought to influence EU environmental policy-making and how political views and experiences from existing policies have been 'fed back' to the EU level.

research has not proposed an 'instructivist' solution to implementation problems as some top-downers would suggest. 'Instructivism' would ignore implementors' legitimate interests in their own affairs and conditions as well as the 'real' problems in dealing with EU environmental policy obligations. By the same token, the research has avoided a bottom-up approach similar to that of Elmore's 'backward mapping' where implementors' feed-back (see feed-back arrows in figure 7.1) plays the most dominant role in the whole process. Indeed, Elmore argues that policy-makers should assess implementors' abilities, attitudes and resources first before they even consider a new policy (see Chapter 2). In contrast to Elmore, this research has argued that implementors' interests and behaviours should not be accepted as unchangeable or a yardstick by which future policies should be measured. Future EU environmental objectives need not be set at a low, pragmatic level just because it is convenient for economic and political-administrative actors at the national and subnational levels. Backward mapping would ultimately defeat the legitimacy of the EU environmental objectives themselves (they are supposed to tackle pollution and prevent further deterioration) and the legitimacy with which EU policy-makers have adopted the policies. After all, EU policy-makers have been 'instructed' (though indirectly) by their electorate and interest groups to pursue common policies.¹⁰

There appears to be a third option which seeks to combine bottom-up and top-down approaches. This option describes EU politics as a complex and dynamic system of European governance where national (and subnational) policies are influenced by the EU and vice versa.¹¹

¹⁰ Liesbet Hooghe refers to the legitimacy question (and the problem of policy dysfunctionality) in 'EU Cohesion Policy and Competing Models of European Capitalism' (pp.457-477) *Journal of Common Market Studies* vol.36, No.4, December 1998.

¹¹ For a discussion of an emerging European governance, see Weale, Albert 'Environmental rules and rule-making in the European Union' (pp.594-611) *Journal of*

While this third option is useful in so far as it highlights the 'unique' (and increasing) complexity of EU environmental politics, it does not tackle the immediate problem: the discrepancy between EU environmental policy 'ambitions' and policy 'reality', a 'reality' that has been described by many as disappointing. To this day, EU researchers and practitioners such as Krämer raise the issue of (and complain about) the implementation deficit in EU environmental policy. In order to address the issue, policy practice on the ground has to be investigated and compared with policy objectives as outlined in the Directives and Regulations. This inevitably involves a top-down perspective. The research has responded to the much publicised implementation deficit and has sought to shed more light onto the differences in formal and informal conditions (differences that are legitimate and often unavoidable) which render EU environmental policy implementation difficult. Moreover, this research has gone one step further than many other studies by disaggregating national and subnational government levels, by investigating implementation 'layers' separately and by comparing their differences (and similarities) in formal and informal circumstances. The distinction between government layers has helped to illustrate how varied formal and informal circumstances are and how these circumstances have shaped EU environmental policies differently. In this context, the research has shown how subnational regions have differed in many respects from their 'mother' states.

Of course, this research is by no means complete. Firstly, the research could have explored in more detail the aspect of feed-back from the national and subnational layers to the EU layer. Feed-back deserves more attention in the near future considering the recent initiatives of partnership and dialogue which have contributed towards the

establishment of groups such as IMPEL. While this research has taken account of some of the national and subnational responses to EU environmental policy-making, a specific and direct link between an EU policy and its feed-back has not been established. In its defence, it was not the purpose of this research to establish such a link. Nevertheless, implementors' response and its impact on the overall EU environmental policy process is an under-researched area that could benefit from further investigation.

The research could also include more case studies on EU environmental Directives other than the EIA Directive. On its own, the EIA Directive case study has generated valuable insights that have confirmed the overall concept of 'multi-layered implementation'. The EIA case study has illustrated how complex the 'filtering' process is, how it involves all 'layers' and how 'mixes' of formal and informal determinants can influence implementation on the ground. The question remains whether the comparison of different types of EU environmental Directives (or Regulations) would generate similar (or different) findings. This research has defended its choice of case study and has argued that the study of the EIA Directive is sufficient to highlight typical (and unique) problems of EU environmental policy implementation on the ground. Still, a comparison of two or several EU environmental policies could contribute more valuable evidence to this research.

Similarly, the research could be extended to include policy areas other than the environment. This could help assess to what extent EU environmental policy is more complex and difficult to implement than are, for instance, the competition policy or the CAP. There are already studies by Butt-Philip and others that compare the EU environmental policy with other EU policy areas. More comparative studies could confirm and underline the argument that the EU environmental policy area is a

problematic one and that EU environmental objectives require more commitment and determination by implementors than in any other policy area.

Focusing on subnational regions, further comparison of regions other than Scotland and Bavaria could also be useful. While Scotland and Bavaria were carefully selected for their striking differences as well as similarities (for a justification see Chapters 1 and 2), other regions could contribute aspects of formal and informal determinant differences that have not been found in the Scottish and Bavarian layers. Again, this research should serve as an encouragement for further investigation.

Finally, the map itself has shown limitations during the research. Apart from its tendency to guide researchers top-down, the map has proven to be too simplistic in some areas, especially when dealing with EU policy tools, institutions and government levels. These weaknesses have been acknowledged in Chapter 2 as minor and unavoidable. The problem of distinguishing between government layers, however, was particularly apparent in Chapters 5 and 6. For instance, the Scottish Office could not be confidently ascribed to one of the layers because of its somewhat hybrid position representing both national and subnational interests. Nevertheless, the author was careful to acknowledge this hybrid position and argued that the Scottish Office represented in many respects the 'overlap' between UK and Scottish layers. Moreover, both Chapters 5 and 6 have shown that there are government levels below the subnational level that have shaped EU environmental policy implementation in their own way. Chapter 2 already suggested that adding further layers below the subnational level could contribute to an even more refined picture of EU environmental policy implementation. While this may be the case, the question remains as to how many layers should be added to a comparative investigation. This question may be difficult to answer

considering that political-administrative structures and responsibilities among subnational regions are too diverse to press into one comparative format.

Chapter 2 has pointed out that EU environmental policy implementation is enormously complex and that it is difficult to conceptualise all aspects that constitute the subject matter into one framework (Schumann described this exercise as 'trying to embrace the whole elephant'). This research and its map have confirmed that every conceptual framework has its limitations. It is hoped that this research serves as a starting point for further investigations and that it encourages others to take up some of the themes that still require clarification.

7.4 A wider Outlook

This research has contributed another facet to the complex picture of EU environmental policy. It has illustrated how environmental Directives have been particularly susceptible to political-administrative and, more importantly, economic interests. Despite reassurances from the EU Commission that economic and environmental considerations do not necessarily exclude each other (in fact, for a sustainable development they should merge), the research has confirmed that the (perceived) conflict between these two interest areas is still very much alive and that it renders EU environmental policy implementation incredibly difficult.

Apart from the conflict between economic and environmental interests, the EU has had to deal with a more general dilemma that concerns the balancing act between efficiency and democratic legitimacy. Following the principle of subsidiarity, the EU (and particularly the Commission) has tried to consolidate efficient and effective EU decision-making on the one hand with the views and (democratic) decisions of national, subnational and local actors on the other hand. While the principle of subsidiarity as well as the Commission's efforts in minimising EU policies

have come some way in addressing the dilemma, the wider problem of accommodating all interests and government levels into a comprehensive and well-functioning environmental policy framework still remains.

In the light of clashing interests and questions surrounding the legitimacy with which the EU level adopts common environmental policies as well as the limited success with which these policies are implemented, the pressing question arises whether there is any point in pursuing EU environmental objectives. Another question would be whether many of these EU environmental policies are not merely statements of good intentions which lack 'real' commitment by EU policy-makers and national/ subnational implementors. In response to these questions it has to be pointed out that there are compelling reasons for tackling environmental problems at the EU level (e.g. transboundary pollution, see Chapter 1). Apart from major environmental problems, there are also economic considerations: Member States are interested in harmonising standards between environmental 'leaders and laggards' in order to strengthen the Single Market. The fact that many implementors will later ignore the level-playing field consideration behind many EU environmental Directives is another matter. There has been some progress in regulating and controlling pollution and protecting areas and species of environmental interest. It could be even argued that environmental conditions in Europe would be considerably worse without the EU's involvement in the policy area. In this sense, the EU is a legitimate and important policy-making level in environmental policy. Nevertheless, the EU environmental policy suffers from, what Weale¹² would call, an inherent 'pathology': this research has demonstrated that the EU polity is by no means ideal for solving environmental problems

¹² Weale, Albert 'Environmental rules and rule-making in the European Union' (pp.594-611) Journal of European Public Policy vol.3, No.4, 1996.

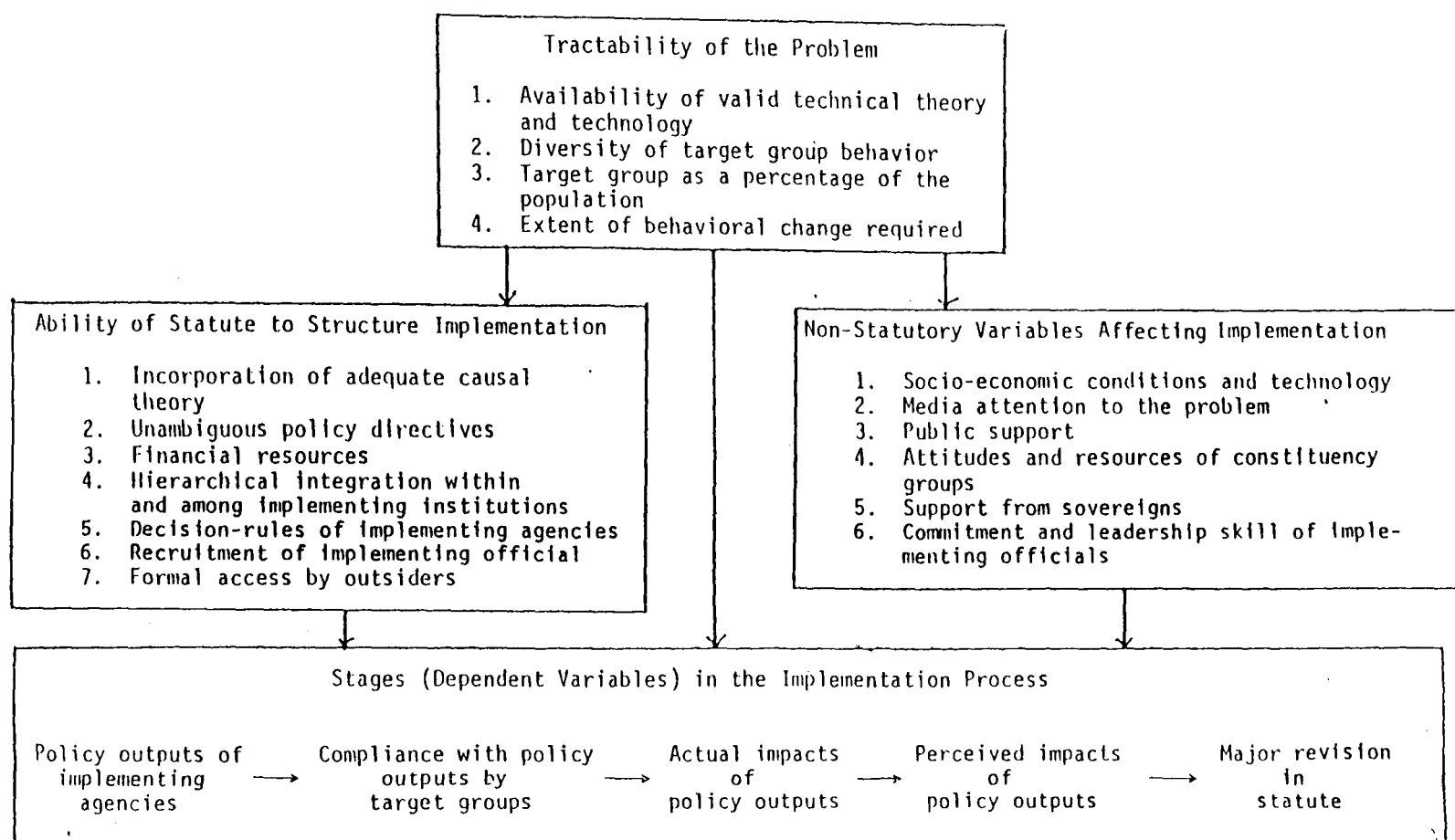
because it is so complex and diverse. There are no ideal solutions to fully tackle the above described problems and dilemmas that affect the EU in general and the EU environmental policy in particular. One can only hope that, by shedding more light onto EU environmental policy implementation, policy-makers and implementors will learn from past mistakes and take further steps (however small they may be) to narrow the gap between environmental policy intention and policy 'reality'.

Appendices

Appendix 1

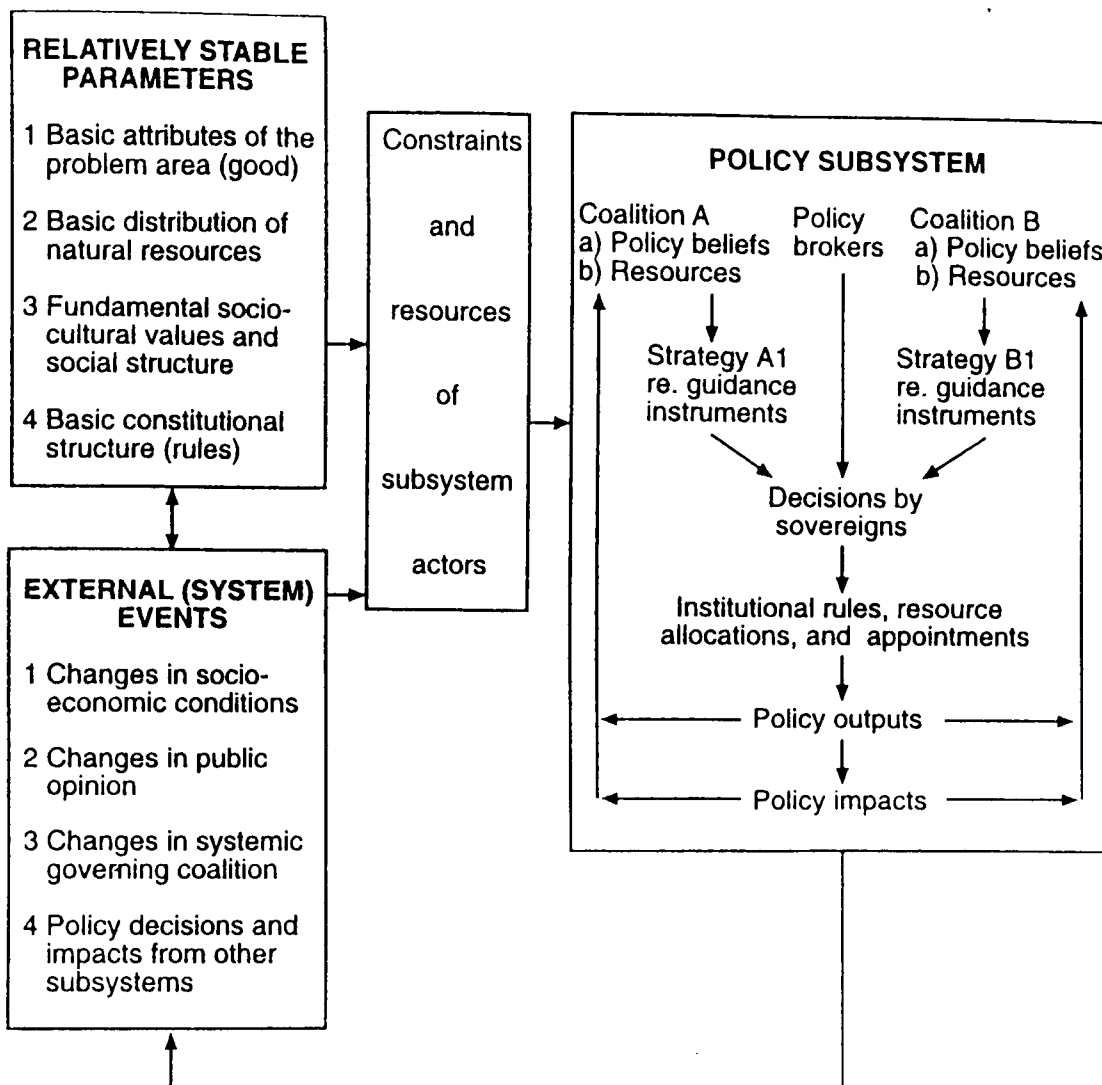
Supplement to the Literature Review

Sabatier and Mazmanian: Skeletal Flow Diagram of the Variables Involved in the Implementation Process



Source: Sabatier, Paul A.; Mazmanian, Daniel A. 'The Implementation of Public Policy: A Framework of Analysis' (pp.538-560) Policy Studies Journal vol.8, 1980.

Sabatier: Conceptual Framework of Policy Change



Sabatier, Paul A. 'Top-Down and Bottom-Up Approaches to Implementation Research: A Critical Analysis and Suggested Synthesis' (pp.21-48) Journal of Public Policy vol.6, part 2, 1986.

Rhodes and Marsh: Policy Networks

Policy/ Territorial Communities

Characteristics: highly integrated and insular; vertical interdependencies; integrated 'service delivery responsibilities'; emphasis on communities' independence from other networks; limited articulation with actors outside communities.

Issue Network

Characteristics: large numbers of participants with a limited degree of interdependence; membership generally unstable; atomistic structure.

Professional Network

Characteristics: professions pre-eminent in policy-making; stable, highly restricted membership; substantial degree of vertical independence; limited horizontal articulation; insulated from other networks.

Intergovernmental Network

Characteristics: based on representative organisations; topocratic membership; limited vertical interdependence; extensive horizontal articulation; ability to penetrate other networks.

Producer Network

Characteristics: economic interests prominent; fluctuating membership; dependence of centre on industrial organisations for policy goals; limited vertical interdependence.

Introduction to Comparative Political Analysis

Comparative political analysis is a research tool which helps explain observations and provides a basis for concepts which predict future developments. When political phenomena occur, researchers cannot conduct 'similar situation' tests which either confirm or challenge their assumptions and hypotheses. The only way to test an assumption in the study of politics is by way of comparing two or more equivalents. These equivalents may constitute states, regions, policies or other defined areas under observation. Equivalents are usually divided into sub-categories which are then investigated in more detail. This subdivision refines the analysis and establishes factors which determine policy outcomes. Most comparative analyses comprise the combination of two key factors investigated in two or more states, although a larger number of factors ensures more accuracy and avoids generalisations which may not be correct. A researcher conducting a comparative analysis may accidentally or mistakenly ignore intermediate factors which determine the political outcome to a decisive extent (possibly because they are hidden or not obvious).¹ The researcher should therefore identify the research area as accurately as possible to avoid any scientific insufficiencies.

The form and style of comparative analyses can vary along a spectrum of research priorities and preferences. Some researchers are highly critical of general assumptions and causal explanations which are presented at the outset and then followed by supporting facts. They rather concentrate on collecting empirical data which are then presented often without a new, challenging theory. Other researchers are more ambitious when it comes to the building of deductive constructions but often neglect the investigation of factual details. Not surprisingly, empirical data researchers tend to investigate a large number of cases while deductive theory researchers prefer to concentrate on only two 'paired' cases.

Researchers can also choose between 'most similar' and 'most different' equivalents.² Again, the choice depends on the subject matter and the research objective. 'Most similar' cases are chosen when researchers wish to concentrate on one particular aspect without being distracted by other, contrasting factors. 'Most different' cases are chosen when researchers wish to highlight the characteristics of their equivalents under investigation and establish determinant variables. Obviously, the line between 'most similar' and 'most different' comparisons is often difficult to establish since state or policy units under investigation are usually complex in that they contain both similarities and differences. However, the combination of similarities and differences is not a disadvantage; it can provide interesting material for comparative research, too.

In sum, comparative equivalents and factors are selected to suit the

¹ Przeworski, Adam 'The Role of Theory in Comparative Politics: A Symposium' (pp.1-49) World Politics vol.48, No.1, October 1995.

² Mackie, Tom; Marsh, David 'The Comparative Method' (pp.173-188) Marsh, David; Stoker, Gerry Theory and Methods in Political Science MacMillan, Basingstoke 1995.

research objective. Moreover, researchers can emphasise either empirical evidence or observations with deductive value. The majority of researchers seek to strike a balance between the two approaches.³ Ideally, a comparative analysis should balance theory, data and method in order to achieve a result which is satisfactory for a wider audience.⁴

For this research, two 'most different' subnational regions were selected for a 'paired' comparison. While some aspects were conveniently 'similar', Scotland and Bavaria featured a number of different characteristics which helped identify implementation obstacles in the EU environmental policy implementation process. This research does not represent an empirical study of comparative data, nevertheless the author was careful to avoid unsubstantiated generalisations. Instead, the author provided as much detailed evidence as possible to describe and compare Scottish and Bavarian conditions and implementation performances.

³ Evans, Peter 'The Role of Theory in Comparative Politics: A Symposium' (pp.1-49) World Politics vol.48, No.1, October 1995.

⁴ Dogan, Mattei 'Use and Misuse of Statistics in Comparative Research. Limits to Quantification in Comparative Politics: The Gap between Substance and Method' (pp.35-71) Dogan, Mattei; Kazancigil, Ali (eds) Comparing Nations. Concepts, Strategies, Substance Blackwell, Oxford 1994.

Appendix 2

An Introduction to the EU, its Institutions, Policy-Making Procedures, and Legislation

With the development of European integration in the post-war era, the EU has steadily acquired political and legal competencies and now determines policies and the every-day lives of EU citizens significantly. Despite recent discussions on the principle of subsidiarity and the EU Commission's latest strategy to restrict the number of new policy proposals, EU policies remain important. The study of the EU is therefore essential in order to understand political developments in Europe as a whole.

The European Union of today finds its roots in the European Coal and Steel Community (ECSC) which came into existence in July 1952 and involved the six founding Members - France, FRG, Italy, Belgium, the Netherlands and Luxembourg. According to the Schuman Plan, the ECSC established co-operation in the coal and steel sector, but also promoted the wider goals of building-up post-war Europe and establishing long-lasting peace. This was done in the first instance by choosing one particular but decisive functional area of co-operation and common interest which would make any aggressive confrontation impossible. The European Economic Community soon followed the ECSC in 1957, expanding areas of co-operation and integrating the Member States further into a common political framework. The Member States accepted the loss of part of their national sovereignty in return for stability and economic prosperity and created a legal as well as institutional system to ensure the objectives of the treaties (ECSC, Euratom, EEC). The Single European Act (SEA) of 1986, the Treaty on European Union (TEU) of 1992 and the Amsterdam Treaty (AT) of 1997 complemented the previous treaties and added new areas such as foreign policy, economic and social cohesion and the environment to the EC\EU competency.

Today, the EU is a powerful and successful co-operation of Member States which is unique in its form. The EC\EU's success is reflected in its constant enlargement from six Member States to nine, to ten, to twelve and fifteen. Since 1 January 1995 the following states are Members of the EU: France, Italy, the Netherlands, Belgium, Luxembourg, FRG, UK, Republic of Ireland, Denmark, Greece, Spain, Portugal, Austria, Sweden and Finland. Further enlargement is expected in the near future with Central and Eastern European states in particular, expressing their interest in EU membership.

EU Institutions

The **Council of Ministers** is a co-legislative institution which consists of the Member States' ministers. Attendance and the number of Council meetings vary depending on subject matter and ministry departments. Up until the SEA the Council was the only legislative body of the European Community. Since the SEA the Council has had to share legislative functions with the European Parliament, though the Council still holds a dominant position.

The **European Council**, although mentioned in SEA and TEU and in existence since 1974, is not a formal EU institution as such. Heads of Government or State, together with their Foreign Ministers and the Commission President, meet regularly to discuss new issues, respond to changes and launch reforms (the meetings are generally known as 'summits').

The **Commission** is often referred to as the 'heart' or 'motor' of the EU. It follows a vast range of tasks: the Commission proposes draft legislation, monitors performance and commitment towards EU policies within Member States, safeguards EU objectives, mediates between Member States and EU institutions and represents the EU in international (trade) arenas such as GATT. Commissioners are not elected but nominated by the Member States' governments and then approved by both the Council and the European Parliament. Once Commissioners assume their roles, they 'become native' in Brussels and pursue policies for the EU as a whole.

Since 1979 the **European Parliament** (EP) is a democratically and directly elected assembly which constantly seeks to increase its powers within the EU. It participates in the decision-making process via 'consultation', 'assent' and 'co-decision' procedures.⁵ It also shares budgetary powers with the Council and has developed various ways of influencing the other EU institutions. For instance, the EP lobbies individuals from other EU institutions during policy preparation and scrutinises their actions during question time.

The **European Court of Justice** (ECJ) represents the judiciary of the EU. When approached by Member States, institutions or national courts, the Court's task is to interpret EU law. Its rulings take precedence over national law. With the TEU the ECJ can impose fines on guilty parties.

The **Court of First Instance** (CFI) was established following the SEA to share the judicial workload with the ECJ. The CFI covers areas such as ECSC matters, competition cases and EU institutions' staff matters.

⁵ Prior to the Amsterdam Treaty of 1997, the European Parliament also participated in EU policy-making via the 'co-operation procedure'.

The **Court of Auditors** monitors EU financial records.

The **Committee of the Regions** (CoR) was established with the TEU and involves regional representatives in the consultation process.

The **Economic and Social Committee** (EcoSoc) represents a consultative forum consisting of employers' and employees' representatives as well as other interest groups.

The **European Investment Bank** (EIB) provides financial support in the form of preferential loans to areas and social groups which require support in the competitive Single Market.

The **European Monetary Institute** (EMI) prepared the monetary union for the EU which is now administered by the **European System of Central Banks** (ESCB) and the **European Central Bank** (ECB).

EU policy-making procedures

Administrative and technical matters are processed by the Commission and do not necessarily require backing from the other EU institutions. However, the Commission is required to discuss and coordinate these 'technicalities' with Member States' representatives within Committees prior to adoption. There are three types of Committees with various degrees of Member State influence: the administrative committee, the management committee and the regulatory committee. Member States' representatives enjoy most influence in the regulatory committee where they can veto decisions.

Other legislation which requires approval from the Council and the EP is processed under four different procedures. The choice of procedure depends upon the policy issue and its importance. Prior to policy adoption, a policy proposal has to be processed through the Commission. Commission officials in the Directorates-General (DGs) prepare initial drafts which are then channeled to the Cabinets (the level of Commission officials who prepare the proposals to be discussed by the Commissioners themselves). Once the Cabinets approve the proposals, they are sent to the Chefs de Cabinet (quasi-chairpeople of the Cabinets) who meet once a week. If there are no objections, the Commissioners responsible for the policies in question ask the Secretariat General (the Commission 'administration') to forward the proposals to the College of Commissioners. If there are no objections raised by Commissioners themselves, the proposals can be adopted and written approval is just a formality. If there are problems, the proposals can be discussed at one of the Commissioners' meetings who can either make amendments, reject the proposals and refer them back to the DGs, or pass them on to the next decision-making level.

Consultation Procedure

After submitting a proposal to the Council of Ministers, the Council asks the EP for an opinion. In some cases the EcoSoc and/ or the CoR are asked as well to express their views. The EP refers the matter to one of its specialised committees which then assesses the proposal and presents its conclusions to the EP, either calling for a positive opinion (endorsement) or negative opinion (rejection). Once the EP has taken a vote on the proposal in question, the Commission and the Council are informed of the EP's opinion. The Council can take into account the EP's views or it can ignore the EP's opinion and take an independent decision. To retain some influence, the EP has frequently delayed a policy (legislation can only be adopted after the EP has issued an opinion) and has exercised pressure on Council and Commission members in the meantime. Once the EP has issued an opinion, the Council can proceed with legislation.

Co-operation Procedure

With the Amsterdam Treaty of 1997 the co-operation procedure is used only rarely; the co-decision procedure is used instead. Under the co-operation procedure, the Commission proposes a legislation and the Council asks the EP for an opinion (first reading). In view of the EP's opinion, the Council establishes a 'common position'. The proposal is referred back to the EP for a second reading. This time, the EP has to process the proposal within a 3 months time limit.

- It can either approve the proposal and the Council's position, then the proposal can be adopted;
- it may fail to process the proposal within 3 months with the result that the Council can adopt the legislation;
- it can reject the Council's position by an absolute majority of all MEPs, the proposal would then enter another procedural stage;
- or the EP proposes amendments which would also involve another procedural stage.

If the EP rejects a proposal outright, the Council can only adopt the proposed legislation on the basis of unanimity. Considering that there are 15 Member States often pursuing diverging interests, a unanimous decision is difficult to reach. The EP tends to lobby at least one of the Member States to oppose the proposal. If the EP puts forward amendments, the Commission must decide within one month whether or not to include the EP's suggestions. Whatever the Commission decides, the proposal is referred back to the Council. If the EP's amendments are incorporated, the Council requires only a qualified majority for adoption. If the amendments are ignored, the Council requires unanimity in order to adopt the legislation. The Council can also amend the Commission's proposals and adopt its own version by unanimity. If the Council fails to act within 3 months, the proposal lapses but can be taken up again if the EP agrees.

Co-decision Procedure

The co-decision procedure commences with a Commission proposal and the Council's request for an EP opinion (first reading). The Council establishes a common position which is then examined by the EP in its second reading. The EP comes to either of the following conclusions:

- it can approve the Council's position and the legislation can be adopted;
- it fails to issue an opinion within three months with the result that the Council can adopt the proposal;
- the EP can signal that it intends to reject the proposal;
- or it can propose amendments.

The latter two options involve further procedural stages.

If the EP intends to reject the proposal, the Council can convene a meeting with the EP. Consisting of equal numbers of EP and Council representatives, the Conciliation Committee seeks to reach a compromise. If the EP still intends to reject the proposal, the proposal falls. If the EP suggests amendments, the Council may then decide within 3 months to accept them and adopt the proposal on a qualified majority basis. If the Council does not accept the amendments, another

Conciliation Committee is convened. If there is still disagreement and a compromise cannot be reached, the legislation cannot be adopted and the proposal lapses. The Commission is indirectly involved in the process. If it delivers a positive opinion on the EP's amendments, the proposal can be processed with no problems. If the Commission delivers a negative opinion, the Council can only approve the EP's amendments on a unanimous basis.

The co-decision has been streamlined and simplified substantially with the Amsterdam Treaty of 1997. The new procedure allows for automatic adoption of policies whenever EP and Council agree on a proposal (or any amendments to the proposal). The new procedure also omits the process of notification whereby the EP expresses 'its intention' to reject a proposal; a Conciliation Committee is convened immediately when the EP disagrees rejects a proposal (and the Council's common position). The Committee is required to reach an agreement within a six weeks time limit. The new procedure allows for more EP legislative powers but also accelerates the policy-making process.

Assent procedure

Finally, the assent last procedure allows the EP to either approve or reject a policy; the EP cannot suggest amendments. This procedure applies to decisions on association agreements with third countries, accession treaties for states applying for EU membership and 'sensitive' issues such as EMU-related decisions and issues surrounding citizenship. The EP's decision in the assent procedure cannot be ignored, however the threat of blocking decisions is very rarely used by MEPs.

The Amsterdam Treaty - Changes in Policy-Making

The Amsterdam Treaty of 1997 (to be ratified by Spring 1999), simplifies policy-making procedures, sets stricter time limits, and transfers most policy matters to the co-decision procedure. Under the Amsterdam Treaty, the consultation procedure should be applied mainly for CAP matters, while policy areas for the co-operation procedure are reduced substantially to cover only EMU decisions. The majority of policy matters (e.g. employment, social policy, health, freedom of movement, Single Market, structural and cohesion funds, and most environmental matters) are now processed under the more simplified co-decision procedure.

EU Legislation

EU policies are formalised and adopted in the form of primary and secondary legislation which is binding on Member States and EU institutions. EU primary law refers to the Treaties signed by the Member States while secondary law represents legislation adopted by the EU institutions taking the general principles and objectives of the Treaties further. The Treaties distinguish different types of legislation (ECSC Art.14, EC Art.189, Euratom Art.161). Article 189 EC is relevant for this research and outlines the different types of legislation.

Regulations are directly applicable and binding for all and do not require translation into national laws.

Directives are binding in their final objectives. However, the forms and methods to achieve these objectives are left to the Member States' discretion. Directives usually include a time table for implementation.

Decisions are binding in their 'entirety' upon those to whom they are addressed. They may be addressed to Member States, undertakings or individuals.

Recommendations and opinions have no binding force and are used for expressing views on particular issues.

With the Amsterdam Treaty of 1997, treaty articles have been renumbered. The new numbers for articles mentioned in this thesis are as follows:

<u>Previous numbering</u>	<u>New numbering</u>
Article 2	2
Article 3B	5
Article 3C	6
Article 100	94
Article 130R	174
130S	175
130T	176
Article 155	211
Article 169	226
Article 171	228
Article 189	249
Article 235	307

Appendix 3

Evidence on EU Environmental Policy Implementation Performances

In its 1994 Annual Report to the European Parliament, the European Commission addressed the problem of insufficient implementation of EU environmental legislation in Section G. From the information available, the Commission listed the most common insufficiencies and highlighted implementation problems of individual Member States. According to the Commission, the most common problems were: delays in transposing Directives, incorrect transposal and incorrect application. In many infringement cases, the Commission had to rely upon information from complainants. The Directives on 'freedom of access to information on the environment' (90/313/EEC) and 'environmental impact assessment' (85/337/EEC) deserved separate paragraphs in the Report since their insufficient implementation was particularly striking. (O.J.(1994) No C 154/42)

The Fifth Environmental Action Programme (EAP) outlines "some disquieting trends" which, "if not satisfactorily contained, could have significant negative consequences for the quality of the environment as a whole". Trends include a 20% increase in EC carbon emissions by 2010 (reference year 1987), a 25% increase in car ownership and a 17% increase in mileage by 2000 (reference year 1990), a 63% increase in fertiliser use between 1970 and 1988, a 13% increase in municipal waste over the last 5 years, and a 60% increase in Mediterranean tourism projected by 2000 (reference year 1990). (O.J. (1993) No C 139/23)

The Commission's 'Interim Review' of Implementation of the Fifth EAP concludes with "cautious optimism" on the progress of environmental measures in the EU. However, the Review also emphasises areas of limited success and problems in ensuring a sustainable environment in Europe. Problems include insufficient awareness of pollution and environmental deterioration, lack of willingness to adapt to environmental demands, and a general attitude that environmental matters only concern those who work in the environmental sector. (COM (94) 453 final)

In its 'Summary' of the Progress Report on the Fifth EAP, the Commission states the following: "Member States ultimately determine the effectiveness of Union measures. There are delays and failures in properly transposing directives into national law, and in some cases failure to enforce compliance with the transposed law. Late transposition of legislation remains an endemic problem in a majority of Member States." (p.19) (Taking European Environment Policy into the 21st Century 1996)

The Institute for European Environmental Policy (IEEP) examined 'the state of reporting' by the Commission. According to IEEP, the Commission failed to report on the progress of EU environmental policy implementation for several reasons: in many cases legislation had been poorly drafted and caused confusion; Member States failed to comply with their reporting obligations; the Commission conducted cumbersome internal procedures; the Commission lacked resources and, in some cases, lacked the will to follow up a policy; and finally other EU institutions failed to put pressure on the Commission to fulfill its obligations. IEEP included a comprehensive list of environmental Directives requiring reports. According to the list, most reports had not been submitted by the Commission at the time of publication. (The State of Reporting by the EC Commission in Fulfillment of Obligations contained in EC Environmental Legislation IEEP, London, November 1993)

Appendix 4

Extracts from the Federal German Constitution

Article 23 (1) With a view to establishing a united Europe, the Federal Republic of Germany shall participate in the development of the European Union, (...). To this end the Federation may transfer sovereign powers by law with the consent of the Bundesrat (...).

(2) The Bundestag and, through the Bundesrat, the Länder shall be involved in matters concerning the European Union. The Federal Government shall inform the Bundestag and the Bundesrat comprehensively and as quickly as possible.

(3) (...).

(4) The Bundesrat shall be involved in the decision-making process of the Federation in so far as it would have to be involved in a corresponding internal measure, or in so far as the Länder would be internally responsible.

(5) Where, in an area in which the Federation has exclusive legislative jurisdiction, the interests of the Länder are affected, (...), the Federal Government shall take into account the opinion of the Bundesrat. Where essentially the legislative powers of the Länder, the establishment of their authorities or their administrative procedures are affected, the opinion of the Bundesrat shall be given due consideration in the decision-making process of the Federation; in this connection the responsibility of the Federation for the country as a whole shall be maintained. (...)

(6) Where essentially the exclusive legislative jurisdiction of the Länder is affected, the exercise of the rights of the Federal Republic of Germany as a member state of the European Union shall be transferred by the Federation to a representative of the Länder designated by the Bundesrat. Those rights shall be exercised with the participation of and in agreement with the Federal Government, in this connection the responsibility of the Federation for the country as a whole shall be maintained.

(7) (...).

Appendix 5

Scottish Devolution - A Brief Outline

On 11. September 1997, the majority of the Scottish electorate voted in favour of Scottish devolution which involves the setting-up of a Scottish Parliament in Edinburgh with limited tax-varying powers. Elections for the Scottish Parliament are scheduled for 1999 and the Parliament will be fully operational by the year 2000. The Scottish Parliament will consist of 129 Members of Scottish Parliament (MSPs); 73 MSPs will be elected under the FPTP voting system, while the remaining 56 MSPs will be selected from party lists under a PR system. The Parliament will be headed by a 'Scottish Executive' chaired by the 'First Minister' for Scotland. The Scottish Executive and the First Minister will "co-operate closely"⁶ with the Central Government in Westminster and particularly with the Secretary of State for Scotland who will continue representing Scottish interests in the Cabinet and in the UK at large. Detailed arrangements for resolving possible disagreements between the two levels are not yet established. The number of Scottish seats in Westminster will be reviewed and will probably be reduced to reflect more accurately the Scottish population share in the UK.

The White Paper on Scottish Devolution⁷ sets out the policy areas where the Scottish Parliament will take over legislative powers: health (including the NHS, public and mental health); education and training; local government, social work and housing; economic development and transport; law and home affairs (including most civil and criminal law, criminal justice, police and prisons, fire service, legal aid etc.); the environment (including environmental protection; air, land and water pollution; natural and built heritage; water supplies and sewerage; flood prevention and coastal protection); agriculture, fisheries and forestry; sports and the arts; research and statistics. As far as relations with Scottish local authorities are concerned, the White Paper states that the Scottish Parliament and the Scottish Executive should not accumulate functions which would be more appropriately and efficiently delivered by other bodies. Decisions should be made as closely to the citizens as possible. The Scottish Parliament should provide a 'national' framework within which local authorities and other Scottish bodies operate. An independent Committee is currently studying how to build most effective relations between the Scottish Parliament, the Scottish Executive and Scottish local authorities. The Scottish Parliament will be given the power to increase or decrease the basic rate of income tax set by the UK Parliament by up to 3p. It will also be able to alter the form of the existing Council Tax, or even replace it if it so decides.

⁶ The Scottish Office Scotland's Parliament Presented to Parliament by the Secretary of State for Scotland by Command of Her Majesty, July 1997.

⁷ *ibid.*

The following policy areas will remain in Westminster: constitutional matters; foreign policy; defence and national security; fiscal, economic and monetary policies; common markets; employment legislation; social security; and most of transport safety and regulation. Relations with the EU will remain the responsibility of the UK Government, "but the Scottish Executive will be involved as closely as possible in UK decision-making on Europe".⁸ Ministers of the Executive will participate in Council meetings and the Scottish Parliament will be able to scrutinise EU proposals. A Scottish Representation office will be established in Brussels to complement UKREP. Its role will be separate from that which the Scotland Europa office currently fulfills.

Details on the form and objectives of an environmental policy for the Scottish Parliament are currently considered by various discussion groups. Under the 'Governance for Scotland Project', representatives from Scottish local authorities, universities, the media and environmental interest groups presented an 'Environmental Agenda for a Scottish Parliament' in August 1997.⁹ Participants hoped that a future Scottish Parliament will take "the opportunity to adopt a radical and progressive environmental policy"¹⁰ which ensures sustainability and the involvement of all citizens in Scotland. Despite the fact that the full extent of environmental policy powers are not yet known, the authors of the Agenda already identified key areas for the Scottish Parliament: land use, transport, forestry, natural heritage, energy and conservation, water and marine matters. The authors expected the Scottish Parliament to bring together all interest groups and provide a national policy framework or common strategy. The Scottish Parliament should produce a national 'State of the Environment Report' and set up a 'Round Table' as well as a 'Scottish Parliament Committee on Sustainable Development' which should work in conjunction with SEPA, SNH, business groups and environmental NGOs. The decision-making process should be transparent and democratic, according to the authors. The Agenda also mentions the issue of EU environmental policy implementation: the Scottish Parliament should seek "to enforce European environmental standards to maximum degree" and should be liable for failure to do.¹¹

The process of Scottish devolution may well have some less tangible impact on EU environmental policy implementation. Since the Scottish Parliament will take over a number of policy areas including environmental policy, it is likely the increased decision-making powers and a stronger 'national' identity will affect the way in which Scottish

⁸ *ibid.*(p.x).

⁹ John Wheatley Centre Working for Sustainability: An environmental agenda for a Scottish Parliament Final Report, The Governance of Scotland Project, Edinburgh, August 1997.

¹⁰ *ibid.*(p.2).

¹¹ *ibid.*(p.6).

actors will process EU environmental policies within their 'territory'. While links with the EU will remain essentially in Westminster, it is likely that the Scottish Parliament and the Scottish Executive will pursue stronger and more direct ties - formal and informal - with Brussels.¹² Stronger ties in general could result in more Scottish participation at the EU level which, in turn, could result in more 'acceptable' EU environmental policies. Stronger ties could also result in more complicated procedures and 'confusion' which could then lead to problems of communication and co-operation. Scottish actors already envisage a special Committee on European Affairs which would scrutinise EU policies affecting Scottish competencies. Assumptions concerning a more complex scrutiny of EU policies, however, are speculative. It remains to be seen to what extent Scottish Devolution will change formal and informal relationships between actors at Scottish, UK and EU levels and to what extent it will change the way EU environmental policies are implemented in Scotland. Whatever impact, devolution can only enhance the importance of this subnational region when studying EU environmental policies and their implementation.

¹² Devolution Day (1. July 1999) also marks the opening of a Scottish Executive Office in Brussels which will join Scotland Europa to form Scotland House.

Appendix 6

EIA Case Study - Field Research

The field research was conducted primarily during the first half of 1997.

Having researched the EIA Directive and consulted various documents and texts on the policy, the first step was to identify relevant contacts. The author focused on planning authorities in Scotland and Bavaria, key environmental organisations, EU institutions, and subnational representations in Brussels.

A Questionnaire was prepared in English and in German. The author was careful to formulate the wording of both English and German versions as similar as possible to avoid divergent outcomes. In addition, the author placed emphasis on an equal number of questionnaires sent to Scottish and Bavarian actors. The distribution of questionnaires was spread evenly to take account of geographical differences as well as the different types of areas (agricultural/ rural/ urban/ industrial areas, areas with high/ low population density). Questionnaires were sent in March and May 1997 and were backed up by telephone inquiries to addressees who had not replied in writing.

Questionnaires were sent to -

Planning authorities in Scotland = County Councils (25);

Planning authorities in Bavaria = Sectoral Departments at Bavarian State level (4), Districts (Regierungsbezirke) (7), Counties and Towns (Landkreise und Städte) (10), local communities (kleine Gemeinden) (8), total of Bavarian addresses (29);

EU institutions (Commission, COREPER for the Council of Ministers, European Parliament);

Subnational Representations in Brussels (Europabüro der Bayerischen Kommunen, Europabüro der Deutschen Kommunen, CoSLA, Scotland Europa Ltd);

The Scottish Office;

Bayerisches Staatsministerium für Landesentwicklung und Umweltfragen;

Royal Society for the Protection of Birds (Scotland), Scottish Natural Heritage;

Landesbund für Vogelschutz in Bayern e.V., Bund Naturschutz in Bayern e.V..

Apart from distributing questionnaires, the author conducted interviews and made telephone inquiries. Information was extracted from written correspondence, telephone conversation, interviews during research visits, and e-mail correspondence. Having gathered written and verbal statements and other information, the next step was to process and compare responses. The research findings are summarised in the Case Study, sources are indicated in the text or in footnotes.

The following planning authorities replied to the questionnaire:

Scotland - 9 out of 25 planning authorities (total of County councils 29): Glasgow, Argyll and Bute, Aberdeen, Scottish Borders, West Lothian, Perth and Kinross, Moray, Angus.
= one third of addressees.

Bavaria - 17 out of 29 planning authorities replied (among them 2 Bavarian State Ministries, all 7 Districts, 7 Counties and Towns, 1 local community): StMLU, Bayerisches Staatsministerium für Landwirtschaft und Forsten; Regierungsbezirke Schwaben, Unterfranken, Oberfranken, Mittelfranken (replied twice), Niederbayern, Oberbayern, Oberpfalz; Landkreise/ Städte Rosenheim, Fürth, Schweinfurt, Dachau, Bad Kissingen, München; kleine Gemeinde Dinkelsbühl. = over one half of addressees.

Other addressees and their interview details (such as places and dates) are listed in the Bibliography.

Replies from Scottish planning authorities were generally shorter in comparison with replies from their Bavarian colleagues. Some Bavarian planning officers enclosed relevant documents and papers. The number of Scottish replies were disappointing when compared to the significantly larger number of Bavarian replies. Both sides complained equally about time/ work pressures which hindered them from providing more detailed information. Reactions to the field research varied between genuine interest and co-operation (and sometimes curiosity from Bavarian officials) to lack of interest and outright rejection to co-operate (one Scottish planning authority was most unhelpful: the author was advised by a Council official to visit the planning department, was then sent to another part of the city only to find out that the Council was not prepared to answer any questions).

Overall, it was striking how different Scottish and Bavarian actors have dealt with EU environmental policies in general and the EIA Directive in particular. The differences in reactions and responses made a comparative evaluation of the research material difficult. Appendix 1 already outlined the various options of comparative political analysis and highlighted some of their advantages and disadvantages. It also stated that the 'paired' comparison of Scotland and Bavaria would inevitably have limitations. One limitation that became apparent during the course of the research was the difficulty in finding a comparative format for two regions that feature entirely different political-administrative structures and cultures. Particularly cultural differences explain why Bavarian administrators have tended to be more 'outgoing' than their Scottish colleagues. Not only have they shown more interest in this research (they sympathised with the author), many of them had also conducted their own research and had published articles in academic journals. Scottish administrators were more willing to provide information on already well-publicised initiatives such as Agenda 21 projects which involved public participation. With regard to planning and other responsibilities that were perceived as 'exclusive' areas of local government decision-making, Scottish administrators tended to be more secretive. The Scottish Office was by far the most secretive institution. As outlined in detail in Chapter 5, the Scottish Office has held a rather difficult position in Scottish politics (this is likely to change with Scottish devolution) which has had an impact on Scottish Office officials' attitudes towards inquiries from the public and from researchers in particular. With one or two exceptions, Scottish Office officials have tended to follow a strategy of caution and have avoided interview questions. While Bavarian StMLU officials have made no secret of their political views and opinions about EU environmental policies, Scottish Office officials presented either the official government policy line or they gave away unofficial information in strictest confidence.

The author took these differences into account during the research and was careful to process the Scottish and Bavarian findings in a comparable format. For instance, questionnaires and letters were worded and structured coherently to avoid different responses at a later stage. Despite the differences that were unavoidable, the research has generated evidence sufficient to compare EU environmental policy implementation in Scotland and Bavaria.

Questionnaires

Antje C K Brown
13 Ashley Hall Gardens
Linlithgow EH49 7DN
Tel. 01506 842542
e-mail ackb1@stir.ac.uk

26 March 1997

Dear Sir/ Madam

I am conducting post-graduate research on **the implementation of EU environmental policies in Scotland and Bavaria** at the University of Stirling. I am particularly interested in the Environmental Impact Assessment Directive (85/337/EEC) and its formal and practical implementation in both EU Regions.

For my research it is essential that I am collecting 'first-hand' information from EIA practitioners. I have therefore prepared a questionnaire which will hopefully generate valuable insights into the implementation (and possible problems) of the EIA policy.

Please allow me to forward a questionnaire which I have tried to keep as short and precise as possible to save time and unnecessary work.

I am aware that you have a busy schedule and that I am probably not the only researcher bombarding you with questions. However, I would be most grateful if you could answer the questions enclosed. Any help or advice is much appreciated. Statements will be treated as non-attributable if you wish.

I am looking forward to hearing from you.

Yours faithfully

Antje C K Brown
The Implementation of EU Environmental Policies in Scotland and Bavaria. A Comparison.
Tel: 01506 842542
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Questionnaire for Scottish Local Authorities

Question 1

How easy/ difficult is the practical implementation of the EIA Directive (85/337/EEC)?

Question 2

How many planning projects have been identified in your area as 'Annex I' and 'Annex II' projects requiring EIA?

Can you provide any details of these 'Annex I' and 'Annex II' projects?

Question 3

When determining whether a project under 'Annex II' requires EIA - what criteria do you apply?

Question 4

Are developers complying with the information requirements under 'Annex III'?

Question 5

Apart from statutory consultees - are other interest groups consulted by planning authorities during the EIA procedure?

Question 6

Are there any planning applications which were rejected following an EIA?

Does EIA make a difference when planning decisions are made?

Question 7

Which planning applications were referred to the Secretary of State for consideration?

What were the outcomes of these applications?

Question 8

Were you in any way consulted during the preparation of the latest EIA Directive amendment?

Question 9

Do you wish to see more guidance on EU legislation from the European Commission and / or the Scottish Office?

Would you be interested in more information exchange and cooperation with other local authorities concerning EIA?

Question 10

Do you think that a European EIA policy is necessary or do you think that other government levels should take care of this policy area?

Do you have any suggestions for improving the EIA policy?

Question 11

Are there any other aspects I should consider in my research?

Are there any organisations or individuals I should contact?

I would appreciate any help you can provide.

Antje C K Brown
13 Ashley Hall Gardens
Linlithgow, EH49 7DN
Schottland
Grossbritannien

Tel Nr. 00441506 842542
e-mail ackb1@stir.ac.uk

26 Maerz 1997

Sehr geehrte Damen und Herren

Ich schreibe zur Zeit an meiner Doktorarbeit an der Universitaet von Stirling und befasse mich mit dem Thema -

**Die Durchfuehrung von EU Umweltpolitik in Schottland und Bayern.
Ein Vergleich.**

Ich interessiere mich dabei besonders fuer die Richtlinie zur Umweltvertraeglichkeitspruefung (85/337/EEC) und deren formeller bzw praktischer Durchfuehrung in beiden EU Regionen.

Fuer meine Forschung benoetige ich nun Informationen aus erster Hand von UVP 'Praktikern'. Ich habe deshalb einen Fragebogen fuer Schottische und Bayerische Gemeindeverwaltungen vorbereitet, der mir hoffentlich einen Einblick in die UVP-Durchfuehrung (und deren Probleme) verschafft.

Sie werden sicherlich sehr beschaeftigt sein, zumal ich bestimmt nicht die einzige Studentin bin, die Sie mit Fragen bombardiert. Lassen Sie mich dennoch anfragen, ob Sie bereit waeren, die beigefuegten Fragen zu beantworten.

Um Zeit und unnoetige Arbeit zu ersparen, habe ich die Fragen so kurz und praezise wie moeglich formuliert.

Fuer jegliche Hilfe waere ich Ihnen aeusserst dankbar.

Mit freundlichen Gruessen verbleibe ich

Antje C K Brown
The Implementation of EU Environmental Policies in Scotland and Bavaria.
A Comparison.
Tel Nr. 00441506 842542
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Fragebogen für Bayerische Regionen/ Kommunen

Frage 1

Wie einfach/ schwer ist die praktische Ausführung der UVP-Richtlinie (85/337/EEC)?

Frage 2

Wie viele Planungsvorhaben fielen unter die Kategorien 'Anhang I' und 'Anhang II'?
Können Sie mir Informationen zu diesen Vorhaben zukommen lassen?

Frage 3

Bei der Feststellung, ob ein Vorhaben unter 'Anhang II' eine UVP benötigt - welche Kriterien werden angewendet?

Frage 4

Folgen die Träger der Vorhaben ihren Verpflichtungen nach Paragraph 6 UVPG?

Frage 5

Zur Einbeziehung der Öffentlichkeit - wer wird von Ihnen über Vorhaben informiert und konsultiert?

Frage 6

Sind Planungsvorhaben aufgrund von Umweltverträglichkeitsprüfungen abgelehnt worden? Beeinflusst das UVP Gesetz Planungsentscheidungen in irgendeiner Weise?

Frage 7

In Schottland kann der Träger eines Vorhabens gegen eine UVP Beschwerde einlegen und bei dem 'Secretary of State' (quasi Ministerpräsident von Schottland) beantragen, dass keine UVP durchgeführt werden soll.

Existiert eine ähnliche Regel in Bayern? (Vielleicht über Gerichte?) Falls ja, könnten Sie mir Beispiele nennen?

Frage 8

Wurden Sie in die Vorbereitungen zur Änderung der UVP-Richtlinie einbezogen?

Frage 9

Wären Sie an mehr Orientierungshilfe zur Ausführung von EU Gesetzen von Seiten der EU Kommission / Bundesregierung / Bayerischen Staatsregierung interessiert?

Wären Sie an Informationsaustausch und Kooperation mit anderen Gemeinden zu dem Thema UVP interessiert?

Frage 10

Glauben Sie, dass eine Europaeische UVP-Richtlinie notwendig ist? Oder glauben Sie, dass andere Regierungsebenen besser mit dem Thema umgehen koennen?

Frage 11

Haben Sie Verbesserungsvorschlaege fuer die UVP-Richtlinie und deren Durchfuehrung?

Frage 12

Gibt es noch andere Aspekte, die ich unbedingt beruecksichtigen sollte?
Wer bzw welche Organisation/ Institution koennte mir bei meiner Forschung weiterhelfen?

Fuer jegliche Hilfe waere ich Ihnen aeusserst dankbar.

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For detailed information on case study sources (questionnaires, written correspondence and interviews) see 'Appendix 6: EIA Case Study - Field Research Information'.

Glossary of German Terms

Amtsblätter:	gazette
Angst:	anxiety
Bayerisches Staatsministerium für Landesentwicklung und Umweltfragen: Bavarian Ministry for Planning, Development and Environmental Matters.	
Beobachter der Länder:	observer for the Länder in the EU.
Beschleunigung von Genehmigungsverfahren:	'the speeding up of planning procedures'.
Bezirkstag:	district assembly
Biokartierung:	identification and regular assessment of natural habitats.
Bundes-Immissionsschutz-Gesetz:	Federal Law for the Regulation of Large Combustion Plants.
Bundesrat:	upper (regional) chamber
Bundestag:	lower (Federal) chamber
Bundesverwaltungs-Gericht:	Federal Administrative Court.
Eigenverantwortung:	self-reliance, autonomy
Ernüchterung:	viewing developments with a certain soberness/ disillusionment.
federführend:	'in charge'
Flächenstaat:	'state' with large natural, farming and forestry resources.
Freistaat Bayern:	Free State of Bavaria
Gemeinderat:	Community Council
gemeinschaftsfreundlich:	'community/ Euro-friendly'
Gesetz:	Act of Parliament

Gesetzgeber:	'the legislator', legislature
Gewerbeordnung:	trade ordinance
Grüne Punkt, Der:	German recycling scheme of waste packaging.
Grünen, Die:	German Green Party (since merger with East German sister party 'Die Grünen/ Bündnis 90').
jederman:	'anybody'
konkrete Möglichkeit:	'definite possibility'
Kreisfreie Stadt:	town
Länder:	Federal States
Landkreis:	County
Landtag:	state parliament
Ministerpräsident:	head of state government
Musterverwaltung:	'example' or 'perfect' administration
nachvollziehen:	to 'comprehend' information
Neue Soziale Bewegungen:	new social movements
Neutralitätsverständnis:	'sense of neutrality'
Politikverflechtung:	'political inter-connectedness'
Popularklagerecht:	legal right for the general public to challenge decisions.
Rechtsverordnung:	Regulation
Regierungsbezirk:	district
Senat:	'Bavarian Senate of Elders'
Spitzenverbände:	umbrella organisations
Stand der Technik:	state of the art

stiefmütterlich:	'treating others like a stepmother treats a stepchild'.
Überregulierung:	'over-regulation'
Umwelt:	(natural) environment
Umweltpakt:	'environmental pact' between the Bavarian State Government and representatives of the private sector in Bavaria.
Umweltverträglichkeitsprüfung:	assessing the natural environment's 'ability to absorb' projects and their damaging impacts.
Verwaltungs-Verfahrens-Gesetz:	Federal Law regulating Administrative Procedures.
Verwaltungsvorschrift:	administrative instruction/ regulation.
Waldsterben:	'dying forests'
Wirtschaftsstandort:	economic location/ 'powerhouse' Germany.
Wirtschaftswunder:	'economic miracle'
zumutbar:	'reasonable' or 'tolerable'