

GOVERNING THE SUSTAINABLE DEVELOPMENT

EVOLUTION OF ENVIRONMENTAL ADMINISTRATIONS IN

EUROPE AND THE UNITED STATES



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Introduction by Philippe Bezes (CNRS, CERSA)

Philippe Bezes is a Senior Research Fellow at CNRS and Coordinator of the research project MUTORG-ADMI, which stands for “Mutation of the Organisation of the French Administration”. Under the subtitle “Hierarchies, Division of Labour and Coordination”, Bezes and his fellow researchers have been investigating the organisational changes implemented in France under Sarkozy between the years 2007 – 2012. This public reorganisation, effected through a top-down Public Policy Review Process (RGPP), consisted mainly of the merging of administrations and subsequent changes to the division of labour and (de)specialization. MUTORG-ADMI studies these changes and their effects on the mode of coordination.

Under the slogan “Re-thinking the State”, French administrative organisations were transformed at two levels:

- 1) **The state level:** Boundaries between ministries were effaced and the responsible directorates subsequently merged. The “Ministry of Ecology, Sustainable Development and Energy” was created, for example.
- 2) **The regional/local level:** Massive re-territorialisation at the regional and departmental level led to the merging of ministerial units as well.

The trend towards merger is an international one, making a comparative perspective indispensable. In most Western nations, waves of mergers have been introduced under the precepts to make administrative bodies more effective. MUTORG-ADMI looks at the various ways in which such mergers have been interpreted, and at the theoretical frameworks that are available for such interpretations, namely Rational Choice Perspectives, Diffusion Theories, Power Struggle Perspectives and Neo-Institutionalist Theories. The project aims at answering the question: Are systems really changing or do they, in fact, remain the same?

Finally, the drivers of this restructuring emphasise the importance of Sustainable Development as a policy sector. While efficiency and changes in governance certainly are among the desired effects of these mergers, one should also acknowledge policy issues as a possible driver. MUTORG-ADMI asks whether mergers lead to more coordination between policies and administrative units, and thus to new policy options and a strengthening of democratic governance.

MORNING SESSION – CHAIRWOMAN CALLIOPE SPANOU
(UNIVERSITY OF ATHENS, GR)

“The government of environment and sustainability in the UK: leading in or being led by Europe?” Andrew Jordan (University of East Anglia, UK)

The approach of the United Kingdom to issues regarding the environment and sustainability is informed by its system of government: It is a unitary state that is rapidly moving towards multilevel governance. Despite its bicameral parliamentary system, it has no formal constitution and no common law tradition. The Green Party exists, but has only a weak parliamentary presence. However, an effective network of environmental pressure groups has proven influential in the past. In 1970 an environmental department was put in place, and has undergone various changes since then.

There are many compounding factors that contribute to this situation, namely the trend towards New Public Management, an extensive Europeanization—especially with regards to the environment—, the “ambiguity” of sustainability, as well as shifting levels of concern and attention given to sustainability issues.

The UK’s attempt to deliver on sustainability can be divided into four historical phases:

Phase 1 (1970-1990): Sustainability issues were not widely regarded as a problem and struggled to be recognised as a politically-relevant issue.

Phase 2 (1990-1997): First attempts made at establishing new coordinating structures and a “partial institutionalisation”.

Phase 3 (1997-2010): A renewed focus on delivering results, putting into place of new structures.

Phase 4 (2010<): The government promised to be “the greenest government ever”, but simultaneously began to dismantle the administration of the sustainability sector.

Compared with other OECD countries, the UK made active use of a great variety of instruments in its implementation of sustainability. It created an environmental committee with Green ministers on board (established in 1990), put in place a strategy for Sustainable Development (established in 1990), drew up public service agreements targeted towards the environment (established in 1999), agreed to a cross-governmental Green budgeting (implemented in 1997) and created new institutions, such as the Sustainable Development Commission (in 2000-2011) and the Parliamentary Audit Committee (established in 1997).

Since the 2010 coalition of the governing Conservative Party and the Liberal Democrats first formed a government, many changes have been implemented. Previously, environmental issues were used by David Cameron to garner votes and even had an effect on the rebranding of the Conservative Party, but actual engagement and concern were kept at a superficial level.

As soon as the economic crisis required major spending cuts, the actual measures taken with regards to sustainability had a debilitating effect. The Sustainable Development Commission was dismantled in 2011, along with the Royal Commission of Environmental Pollution. The national environmental agencies experienced severe cuts, and the government refrained from formulating a new Sustainable Development strategy or any other kind of substantial vision. There were some half-hearted attempts at making positive changes, but they were immediately criticised by environmental pressure groups. In short, the new government failed to make substantial changes to further sustainable development.

Further research on the subject of environmental administration should strive to answer the following questions:

- How can we move from a change in administration and policies to a change in impact and outcome?

- How can sustainability be promoted in the new “hollowed-out” governmental landscape? If the drive now comes from civil society organisations and the private sector, what is the role of the state?
- What is the role of the EU and the OECD, and the looser, less hierarchical policy transfer they make possible?
- What happens to environmental policies when the state is under severe austerity pressure? Is the dismantling of the “eco-state” comparable to that of the welfare state?

Jordan’s research is dedicated to answering the last question. By looking at patterns of environmental and social policy dismantling—both in terms of the number of policies and of their stringency—he reached several conclusions. Whereas the dismantling of policies has indeed taken place primarily in the social sphere, in contrast, environmental policies are actually expanding. However, most changes can be found in terms of the policy intensity rather than density, and are often related to specific issues. For example, issues related to air and water have been given more attention than those of nature.

Question Time

Question: Do experts in the UK differentiate between sustainability and the environment?

Answer: Environmentalists in the UK have urged against conflating the two, arguing that a sustainability approach also includes measures involving society and the economy. In order to have the desired impact, policy changes need to go beyond the environmental sphere. Even the business sector does in part agree with the environmentalists' assessment. However, this argument has not been accepted in government, which uses the terms sustainability and environment almost interchangeably. Therefore they can be viewed as very similar empirically.

Question: What is the likelihood of new environmental protests in response to the dismantling measures?

Answer: Civil society movements have certainly been very active and successful as pressure groups at that time, and there are indications that they are coming back. Whether or not that will have any effect at the policy level remains to be seen. After all, the government is known to take symbolic measures that keep these groups quiet, without actually changing anything.

Question: Do the expanded environmental policies deliver what they promise?

Answer: That is certainly the question that environmentalists are most interested in. However, one major problem is the fact that even though the environmental movement keeps pushing for changes, they rarely track them consistently. Only a very small set of groups actually follows up on them. In addition, big associations such as "Friends of the Earth" and "Greenpeace" tend to focus more on topics of popular interest in order to generate a bigger membership, rather than keep track of more urgent but less exciting issues.

“Between Decentralisation, Politicisation and Professionalism. Environmental Administrations in Germany at a crossroad”

Falk Ebinger (Ruhr Universität Bochum, DE)

Over the last decade, drastic changes in Germany's administrative structures promised a more coordinated and integrated approach to the environmental administration. Because it is divided into 16 *Länder*, each with its own competencies to execute policies of concern to the environment, we can fruitfully test this claim through comparison of their different approaches. The motives for these reforms as well as the effects and problems following them shall also be investigated.

Each *Länder* administration is unique, but its organisational forms can be categorised into four different modes, all allowing for the implementation of policies:

- 1. Centralised & Mono-functional:** Central Single-Purpose Agency (*Landesamt*)
- 2. De-centralised & Mono-functional:** Regional Single-Purpose Agency (*Untere Staatliche Fachbehörde*)
- 3. Centralised & Multi-functional:** Regional Government (*Mittelinstanz*)
- 4. De-centralised & Multi-functional:** Urban and Rural District Administration (*Kreisfreie Städte / Landkreise*)

Germany's administration was set up in the 1970s and remained rather adverse to reforms throughout the subsequent decades. Likewise, Germany's environmental administration was a stable policy field that changed only in an incremental manner. It remained very static, even after changes in the government. Because they feared making promises they could not keep, and suffering subsequent electoral defeat, political leaders were hesitant to formulate clear goals and set up binding time frames. For this reason, no substantial changes were ever sincerely attempted.

After 2000, however, the administrations underwent holistic reforms, which affected all of the *Länder* at all levels and in all branches. These reforms included the reallocation of tasks, the restructuring of the organisational structure and the re-territorialisation of local and state-level administrations. Through this process, the environmental administration was likewise fundamentally transformed.

Two major trends can be observed during these reforms:

1. **Horizontal de-centralisation:** the fusion of specialised agencies into broader multipurpose agencies
2. **The devolution of tasks to local governments:** competencies moved randomly between the different levels

Overall, no convergence in the structures can be observed. The reforms seem random and at times even contradictory among the different *Länder*, making the *Länder* administrations even more heterogeneous than before. Despite this lack of obvious convergence at a structural level, convergence can indeed be observed in the overall reform strategy.

The reasoning behind the reform strategy can be explained through reference to several factors. First of all, fiscal austerity turned into a window of opportunity for the introduction of reforms, as it presented an occasion for cost-cutting. This climate of austerity was prompted not only by the economic crisis, but also by the looming retirement bubble and the termination of transfers to the former Eastern German states. A non-incrementalist reform led to the formation of coalitions between different administration levels, whose aggregated interests defined the central approach. Ad-hoc committees were set up to decide on the key goals to be achieved by the reforms: i.e. structuring, tasks and possible savings to be made. However, post-hoc negotiations never took place at any stage, which meant that potential consequences had to be dealt with later. The governing administration simply postponed dealing with such consequences, and their cost was passed on to the next government's mandate.

These fundamental changes at the administrative level produced a variety of effects.

Overall there is no actual reduction in the number of tasks to be performed; they are merely reallocated, without for as much likewise transmitting the knowledge of what types of specialisation they require and how they are interconnected. Furthermore, we can note the absence of any discussion on synergies (economies of scale and scope) in the resulting structures. Thus, environmental policies cannot be executed effectively, and power politics continue to dominate the reform process.

The manner in which the reform has affected multi-purpose agencies is at least to some extent positive. Previously specialised agencies can now share central facilities and information. The multi-purpose agencies also allow for a better coordination of different policy fields. Moreover, unlike local administrations, these agencies are able to preserve their authority as state agencies. Even though undue political influence cannot be entirely prevented, it can nevertheless be mitigated.

There are, however, negative effects as well. The processes have become more bureaucratised, and the distance between top level management and the street level have increased, allowing for little to no communication between the two. Furthermore, the policy processes suffer from the de-specialisation of once-expert knowledge and poorly thought-out cost reduction measures.

The devolution of tasks also has specific consequences at the local level. First of all, this reform poses a greater financial risk for local communities. In order to perform their tasks successfully, local administrations require specialists; however, these specialists tend to gravitate towards the more attractive districts. Problems with the coordination of tasks lead to a service deterioration for both citizens and companies, because they often have to address different local entities using different standards (especially bigger companies with branches in multiple *Länder*), thus prolonging and complicating processes. In addition, specialists are often allocated different tasks and have divergent levels of expertise, due to vast

discrepancies in the training standards among *Länder*. Furthermore, decisions become heavily politicised because mayors and district leaders can influence the policy-making process, whereas the political steering capacity of the *Länder* governments is reduced.

In conclusion, an overall negative trend can be observed. The coordination of policy-making and sustainable development has not increased, but the process has become more power-driven. While the establishment of multi-purpose agencies has led to some positive effects and cost reduction, their main achievements are purely symbolic. The negative effects, however—especially those caused by personnel de-specialisation—are drastic, and the next generation will most likely encounter very grave problems.

Question Time

Question: The situation in Italy is very similar to that of Germany, which has also responded to increasing financial pressure with far-reaching reforms. However, a distinction must be made between the different policy sectors: the spending cuts actually led to a greater efficiency with regards to priority goals, but to a total loss of secondary policy objectives. Can we find these two-tier effects in Germany as well?

Answer: As previously mentioned, the number of policy tasks remains the same, but there are fewer capacities to accomplish them. At the same time, the political pressure to produce results has strengthened. The administrations therefore have to prioritise. Most resources now go to issues related to the economy and to citizen demands. The more strategic tasks—such as area planning, emissions control, noise planning etc.—are no longer a priority. Neither is the task of monitoring companies to ensure that they observe environmental regulations. Such tasks are considered negative for the economy and therefore ignored. Most of the time, only the very visible and “important” tasks are executed, but not the more difficult and long-winded ones.

Question: The reforms in Germany look very similar to the reforms among the French state units. How can we explain the strong resemblance of the reforms implemented among the different *Länder*? Does the federal ministry have a steering role in, for example, suggesting models?

Answer: The strategy we observe in Germany can be called an isomorphism. The *Länder* mostly learned from each other, and states that did not immediately adopt the reforms came under pressure, when others did. Political interests, of course, were also among the drivers, because the reforms were a way to save money and to get rid of some undesirable policies or agencies. These were both components of a learning process and a situation of intense political pressure.

Question: As a consequence of the Europeanisation process, the influence of street-level bureaucrats on the national level has declined. However, have they begun to communicate among themselves, outside the national government level? Can we find reactionary processes at the EU level?

Answer: There are unions from certain corporations that have tried to protect their specialised fields from being merged with others, and there are some other professional organisations that also try to prevent change. However, they are not very effective at developing strong counter-measures. They often count on the opposition (for example the Green Party) as allies, but in general it is very hard to argue against cost-saving and getting rid of the red tape. Stopping reforms is very difficult. As for the links with EU level organisations, they are very weak, without any tight or systematic connections.

“Task Force or Super Ministry? Institutional models and transformations of environmental administration in France”

Jean-Pierre Le Bourhis (CNRS-CURAPP, FR)

This presentation traces the historical transformation of environmental administrations in France from a small bureaucracy in the 1970s to the “giant ministry” of sustainable development in 2012.

The main arguments are as follows:

1. The history of environmental administration in France is not a linear process, but depends on episodes during which the environment and related concerns gained or lost momentum.
2. This historical process reveals continuous political hesitation with regards to the level of priority that should be attributed to environmental policies.
3. Furthermore, this history illustrates a conflict between two institutional models that emerged separately and then partially merged over the last decades, whose net result was to produce institutional instability.

These two models of environmental administration are, namely:

1. **The 'task force' or transversal model:** this model describes a “light” bureaucracy (with regards to its staffing, funding and authority) that is centred on the promotion of environmental values and interests. Rather than managing policy problems directly, this model instead relies on other actors to implement its programs, consequently developing an inter-ministerial form, i.e. reporting only to the prime minister, and depending on his authority for legitimacy.
2. **The autonomous vertical model:** this model describes a strong, vertical bureaucratic structure, which runs from the heads of the central administrative

bodies (i.e. general directorates) to devolved “field” departments and public agencies. As a sector of the state administration, it has monopolistic high-priority competencies on certain issues, and thus frequently conflicts with other antagonistic administrations.

The history of French environmental administration is marked by three significant periods, in which these two models were defined, used and hybridised:

I. (1968-1988) From administrative task force to integrated administration:

In 1971, the “Ministry for the Protection of Nature” was founded. Its aim was to raise environmental awareness in the other ministerial sectors and in the French regions. Robert Poujade became its first environmental minister. This administration was characterised by its light-weight structure, present only at the central administrative level, its main offices in Paris. It had no hierarchical authority within the state apparatus. This ministry had practically no devolved executive arms; only a small vanguard of twenty “regional environment delegates” (one person per region), and it was strongly dependent on the staff of other ministries (such as those for industry and mines, departmental public works, and agriculture).

In 1978, the Environmental Ministry was incorporated into the much larger, integrated “Ministry of Environment and Quality of Life” (*Environnement et cadre de vie*). As such, it developed a much heavier bureaucratic structure, made up of departments drawn from the Ministry of Public Works and from the Ministry of Culture. It was in charge of infrastructures, town planning, housing, the environment, architecture and the protection of natural, cultural and historical sites. At the same time, as a large organisation with a development goal (i.e. the greening of public works) it received 2% of the budget. It developed a hybridised “task force” with regional delegations for architecture and the environment (merging of environmental and cultural departments) with more staff (10-20 people per region). Their staff comprised mainly public servants with atypical profiles for the French public administration (i.e. they were rarely engineers and more frequently architects, geographers or landscape specialists). Other devolved departments placed under

the aegis of the Ministry evolved in a positive direction (for example, the “*Services des Mines*”), but its own public works departmental services did not.

II. (1988-2007) The road to autonomy and vertical environmental bureaucracy:

1988 can be described as the year of the “The Ministerialisation Turn within the Environmental Sector”, prompted mainly by a change in context. Since the mid-80s, a strengthening of ecological forces and their audience had made itself felt (scores of 3 % to 8 % in the various elections from 1988 onwards) and the government began to mobilise on environmental issues. For example, a National Environmental Plan was implemented and PMs announced a “change of scale in policies”. This mobilisation also led to the launching of structural administrative reforms, including the creation of three new agencies (IFEN, ADEME, INERIS) and a vertical administration that could compete with the other ministries.

At the field level, 1988 also marked the emergence of a regional administration, the DIREN, which kept the ‘task force’ functions and was structured vertically from Paris, with “troops” of 40-50 staff per service. It resulted from the merging of services working on environmental issues (i.e. from the Ministry of Environment, Agriculture and Public Works), thus increasing in size. These changes can be described as a hybridisation of models: New services were both specialised and transversal. This meant that knowledge could be gathered (for example on the state of the environment and water), regulations could be monitored, and environmental values could be defended and promoted (for example, through participation in local planning, communication, etc.).

III. (2007-2012) The return of the integrated model:

The year 2007 marked yet another break in the administration of the environment. This time, the large “Ministry of Ecology and Sustainable Development” was created, which handled everything from public works, transport, housing, regional development and risk prevention to the conservation of nature and the landscape. This giant organisation employed 50,000 personnel in public works,

3,650 in environment, and 1,500 in industry. It was formed through the RGPP (*Révision générale des politiques publiques*) general reform of public policies, and by virtue of a strong political commitment to sustainable development.

The 2007 organisational decision to opt for an “integrated model” was based on criticism of the preceding model: the idea that the “vertical” 1992 Ministry had led its struggle against the other state departments in vain, lacking in efficiency and real impacts. The new Ministry of Sustainable Development, however, was supposed to integrate contradictory issues (such as environmental protection and economic development) right at the input side of the conception of public policies, and promoted a unified approach.

The merging of the regional department led to a new transversality, while preserving the vertical structure. Within the margins of the new Ministry, the three devolved departments were merged into the DREAL. However, this implementation did not create a complete merger: the integration of sectors remained partial and superficial, leaving whole sectors of the previous regional administration unchanged. The transversality was introduced mainly by ad hoc services or operating procedures (for example, the production of authorisation and mandatory consultation, environmental assessments, studies etc.) and rarely by units combining 'enemy' departments.

IV. After 2012: Present issues

Both “sustainable development” and the “environment” still demonstrate considerable malleability as administrative categories. In the past five years, they have been labelled as follows:

- MEDAD (*écologie, développement et aménagement durable*)
- MEDDAT (*écologie, énergie, développement durable et aménagement du territoire*)
- MEEDDM (*écologie, énergie, développement durable et mer*)

- MEDDTL (*écologie, développement durable, transport et logement*)

- MEDDE (*ministère de l'écologie, du développement durable et de l'énergie ; avec transports et la mer, mais sans le logement et l'AT*)

In the future, the context of the economic downturn continues to be a strong constraint on the “super ministry’s” staffing and operational capacity. After all, the department for Ecology and Sustainable Development is not a “priority department” and will have to further downsize its operations. With governmental “road maps” left unchanged, it will be difficult to maintain all the objectives (i.e. a broad dissemination of sustainable development to all public policy sectors, regardless of the scope of the ministry).

Possible new changes in environmental administration could result from the current government's “reform of decentralisation”, involving all ministries including that of sustainable development. After the state restructuring operations from 2007 to 2012, competencies and resources could be redistributed between the state and local authorities, meaning a new transfer of staff to local authorities. The future of the environmental administration would then be in the power of local areas.

Question Time

Question: Is there any clear indication that the performance of the environmental ministry has improved as a result of the new administrative structure? Does the super-ministry actually solve the problem, or has it changed only superficially and the culture has remained the same?

Answer: Unfortunately this question cannot be fully answered yet. It is a long process, and 3-4 years of this new structure is too short a time to tell what the outcomes will be. The current government seems to want to keep this structure for now, so changes might be possible and can be analysed in a few years from now. In any case, a lot of research is still necessary. Overall, a sustainable development culture is emerging, but it continues to be a challenge...

Conclusion of morning session by Chairwoman Calliope Spanou (University of Athens, GR)

The different national cases give great insight into approaches to environmental policy, and it is worth exploring them further, especially in an international comparison. Overall, it seems as though sustainable development policy cannot escape hybridisation.

We have seen the dilemma of the French case and its super-ministry. Germany seems unconcerned by static models, and is rather more improvised in its construction. It would be interesting to look at each approach of the *Länder*, the ideas underlying each approach and the rhetoric used to defend them. The UK, on the other hand, where a super-ministry was the idea from the start, seems to favour a more stable structure and more realist approach.

Overall, we have identified several common themes:

We have seen a strong influence from the economy and the fiscal pressures of the financial crisis. At the EU level, competition seems to serve as a framework for environmental issues, rather than environmental concerns themselves. However, the presence of environmental policy can no longer be denied. It has a history and is more rooted in government than ever.

One aspect that was not so visible in the presentations is the technocratisation of the environment, and how it fits into the economic approach based on cost-benefit analysis.

Moreover, the trend towards localisation/regionalisation deserves more attention and exploration. Considering that the environment is both a local and a global factor, where is the balance if policies are increasingly formulated exclusively at the local level?

**AFTERNOON SESSION – CHAIRWOMAN FLORENCE
FAUCHER (CNRS-CEE, FR)**

“The European Union’s complex environmental policymaking system: Core institutional actors and their evolving roles and functions” Rüdiger K. Wurzel (University of Hull, UK)

EU environmental policy-making is distributed among three main kinds of actors: the EU institutional actors (who legislate); the member states (who must implement the laws decided by the institutional actors); and the societal actors. Each kind has its own particular functionalities.

Among the EU institutional actors with legislative powers are the European Council and its Environmental Council (established in 1973), the European Commission and its Directorate-General for Environment (established in 1981) and Directorate-General for Climate Action (established in 2010), as well as the European Parliament (EP) with its Committee on the Environment, Public Health and Food Safety (established 1979) and Temporary Committee on Climate Change (CLIM) (2008-2011). Both the European Council and the Court of Justice have political or judicial functions, but no sub-units specific to any given policy sector.

Among the institutional actors with consultative powers are the Economic and Social Committee and its Environmental Section (established 1973) and the Committee of the Regions and its Environmental Committee (established 1993). The European Environmental Agency (EEA) and the General Consultative Forum on the Environment are both EU agencies and advisory bodies devoid of regulatory powers (both established 1993 and therefore rather late in comparison to national agencies).

In the 1970s and 1980s, environmental policy-making was determined by two different opposing coalitions and their respective goals: on the one hand, the environment advocacy coalition, consisting of the DG Environment, the environmental leader states in the Environmental Council (NL, DE, DK, AT, SE), the EP Environment Committee and the various environmental NGOs; and on the other hand, the economic feasibility coalition, consisting of the DG Industry, the environmental laggard states in the Environmental Council, the Industry Committee in the EP, and businesses. Since then, however, things have become more complex.

Environmental policy-making in the EU is marked by contradictory organisational and administrative principles. Although policy-making in the EU is usually organised along functional lines (reflected in the internal organisational structures of most EU institutions), environmental policy-making works according to the principle of environmental policy integration (EPI), which means that environmental requirements ought to be integrated across policy sectors.

A similar contradiction is illustrated by the general principles and “mega strategies” of EU environmental policy-making. The most important and most progressive Environmental Action Programme (EAP) was the fifth; the sixth, however (2002-2011), was very vague, lacking clear objectives. Since then, EAPs have become less and less important.

The Cardiff Strategy (1998) aimed at integrating environmental requirements into all major policy sectors. It represented a softer form of government and was supposed to encourage the different environmental Councils to learn from each other. This strategy led to reports produced by nine environmental Councils, but it ran out of steam in the 2000s.

The Sustainable Development Strategy (launched in 2001 and renewed in 2006) had surprisingly clear objectives, none of them however were legally binding. It promoted the goal of paying equal attention to economic, social and environmental concerns. This was a relatively ambitious programme, which in the final analysis failed to accord equal weight to all three aspects.

And finally, the Lisbon strategy (2000 and 2001) initially focused only on economic and social concerns and on making the EU the most competitive region in the world; the environment was completely neglected. Environmental concerns were then retrospectively integrated into the Lisbon strategy at the 2001 Gothenburg summit.

The most recent Euro 2020 strategy mentions “smart, sustainable and inclusive growth”, however, such statements are rather open to interpretation.

Overall, many important strategies were developed. With the exception of Article 6 of the 1997 Amsterdam Treaty, however, which stated that environmental requirements must be integrated into the definition and implementation of EU policies, none of them were legally binding.

The Institutional Actors

As an institutional actor, the European Commission, headed by President José Manuel Barroso, has the powers to formally propose all EU laws and to act as Guardian of the Treaties. Founded in 1979, the Directorate-General (DG) for Environment is currently led by Janez Potočnik from Slovenia. The DG Climate Action, founded only recently in 2010, is headed by Connie Hedegaard from Denmark. The development of DG Climate Action raised concerns by the DG Environment that climate would now be seen as the main environmental issue and priority.

The European Parliament is the greenest of all institutional actors. Another actor is the Council of Ministers. Even though legally speaking there is only one Council of Ministers, there currently are nine different so-called technical Councils (formerly 26), one of which deals exclusively with the environment. The organisation of these technical Councils leads to certain advantages and disadvantages. On the positive side, grand political bargains in which the winner takes all are avoided by this setup, and it helps to encourage functional and technical cooperation amongst policy experts. Moreover, ministers were able to adopt laws that in their countries at home would have been more controversial. On the negative side, however, this structure leads to disjointed decision-making that makes it difficult to integrate environmental concerns into other policy areas, thus foreclosing the ability to take into account the cross-cutting requirements of environmental policy.

Initially, the European Council and its 27 Heads of State and Government rarely dealt with environmental issues, except at the 1972 Paris summit, which can be seen as the starting signal for a more common environmental policy, and the amendment of the Lisbon strategy after the 2000 Gothenburg summit. Since 2005, then, climate change has become an important and serious political issue for the European Council, as can be seen in the formulations of the EC conclusions.

The EU rotating Presidency is most important concerning the integration of environmental policy. Even though this is rarely mentioned, among the main functions of the rotating EU Presidency is the integration of environmental policy (i.e. the integration of environmental requirements into other policy sectors). Due to the increasing number of member states, its management functions have likewise increased in number. Likewise, the environmental Council became busier, and now formally meets four times a year.

Generally, a member state is more likely to give way on issues of national interest when holding the Presidency than when not in office, however, overall the Presidency's powers are *agenda-shaping* rather than *agenda-setting*.

In conclusion, one can say that EU policy-making is still largely based on functional lines, which makes environmental policy integration very difficult. The dispersion of power among the different EU actors increases the likelihood that such policies are blocked. Ultimately, it is rather surprising that so many environmental laws have actually been adopted, in the face of such odds. However, most member states are lagging behind when it comes to the domestic implementation of such laws. Nowadays, sustainable development definitely plays a significant role, but there are contradictions. The mainstreaming of climate change also raises concerns among those dealing with other environmental issues.

Question Time

Question: Is climate change really taking over environmental concerns, and thus burying the complexity of environmental challenges?

Answer: There is a danger that this is currently happening. After all, the majority of the environmental budget is now going towards climate change issues. In the future, there will be some tough decisions to be made, also with regards to nuclear energy. Internationally, the EU can be seen as a leader when it comes to putting effort into global agreements on climate change.

Question: Does the EU play any role in facilitating discussion among member states regarding nuclear policy? So far, strategies have been articulated at a national scale rather than EU-wide.

Answer: The EU has decided on health and safety standards regarding nuclear energy, but the rest is up to the member states. Currently, the views among the member states differ greatly. There is not much that can be done on the EU level and the conflict is not on the agenda of the European Commission.

Question: The legislation produced on the EU level increasingly incorporates institutional elements into its programs. Should legislation not also determine who is to do things and how they are to be done? How about some ideas on how to construct the implementation structures? Moreover, what impact do individual commissions have on the implementation of legislation?

Answer: Certainly, the implementation deficit is a big problem in the EU. Implementation fails because laws aren't followed up. We need environmental inspectors and NGOs to observe these processes and to complain if necessary. In rare cases, commissioners can make a difference, but it depends on the context. Unfortunately, voluntary agreements mostly fail.

“Environmental Protection in the United States: Fragmentation, Rigidity, and the Problems of Institutional Design” Marc A. Eisner (Wesleyan University, USA)

Within the political system of the United States, there are significant barriers to making sustainable development possible.

US Environmental Policy is characterised by significant constraints on the discretionary authority of ministries, and very little trust is given to the Environmental Protection Agency. Furthermore, there is a heavy reliance on state-level implementation, command-and-control instruments and high levels of conflict (due to what is known as ‘adversarial legalism’). At \$8.5 billion, the EPA budget has not kept up with inflation, showing that the good old days of the 1970s with a budget of over \$18 billion have long passed. Regulation is primarily organised by medium (air, water, solid).

Early institutional design decisions strongly influenced the evolution of the EPA and US environmental regulation. These designs allowed for rapid implementation of legislation and minimal bureaucratic drift. At the same time, however, it also limited the flexibility to innovate and to employ the “new learning” in environmental protection policy.

Historically, the rising salience of environmental protection was triggered by the public reactions to the Santa Barbara oil spill, the Cuyahoga River fires and the Earth Day of 1970. During that era, attention to pollution spiked like never before. This coincided with growing concerns over regulatory capture (such as bureaucratic life cycles, corporate liberalism, economic theory of regulation) and political contests over environmental policy (i.e. Nixon versus Congress).

The EPA:

The EPA was created in 1970 by President Nixon via bureaucratic consolidation (5,743 bureaucrats from five different units of government). Initially,

concerns were raised over the agency's internal organisation, but the President's Advisory Council on Executive Organisation (Ash Council) recommended a functional organisation that initially rejected regulation by medium or pollution source (such as solids, water, air). However, the regulation by medium then followed as a practical necessity in order to facilitate rapid implementation; and so did the heavy delegation to the states.

Congress:

Congress's core environmental statutes were the Clean Air Act Amendments (1970) and the Clean Water Act (1972). These were both exhaustively detailed statutes, which allowed for minimal delegation to the administrators and set stringent timetables. These action-forcing and technology-forcing provisions entailed a complete disregard for compliance costs and included provisions to sue polluters and the EPA, whilst relying heavily on state-level implementation. In short, the goals that were proposed by the acts were simply unattainable.

In order to understand environmental policy in the US, it is also important to look at the fragmented institutional structure of the state. It has a bi-cameral legislature, with 48 committees with jurisdiction over the EPA, leading to extraordinary levels of decentralisation. Moreover, growing partisan polarisation has made it almost impossible to pass legislation; in fact, the last significant environmental statute was passed in 1990.

The Executive:

For the President, the executive branch of the US government, the environment only assumes a second-tier status, especially when the economy is in trouble. In general, the public is not too invested in the matter, a fact the President is aware of.

In addition to the EPA, there are 14 executive branch agencies (constituent agencies) which also have environmental responsibilities, leading to bureaucratic

fragmentation. The coordination of policy falls to the Council on Environmental Quality, which does very little, and the Office of Management and Budget, which allows for agencies not to regulate. Instead, the coordination works through regulatory review based on cost-benefit analysis.

The Courts:

The US judiciary is characterised by a highly decentralised court system: there is the Supreme Court, 13 federal circuit courts of appeals, and 89 federal district courts. The role of the courts expanded by nature of their core statutes, which allowed for citizen-initiated suits in case of failures to execute non-discretionary duties. However, the internal inconsistency of statutes annulled the definition of key concepts (for example, the “toxic substance control act”) and spelt a failure to provide guidance regarding tradeoffs.

Another important factor in the institutional context is US federalism. The core statutes delegated the implementation duties to the different states, even though most states did not have any dedicated environmental protection agencies. Moreover, among the states there is great diversity in political climate, budgets, bureaucratic professionalisation and economic strategies. As a key result there was great unevenness in the quality of policy implementation among the states.

The ramifications of the original design decisions:

1. Unrealistic goals backed by action-forcing and technology-forcing provisions often stressed agency capacity.

This meant that the task of meeting deadlines often exceeded agency capacities. With deadlines not being met, the agency was forced to revise its timetables, but it received no guidance on where to make tradeoffs, as is necessary under a fixed budget. Moreover, the most ambitious goals were simply unattainable, for example the “Zero discharges into navigable waters by 1985” agreement...

2. The decisions to limit bureaucratic discretion limited the flexibility needed to pursue more innovative strategies in environmental protection.

Certain statutes limited bureaucratic discretion, thus making extensions of regulatory authority contingent on new legislation. Congress simply became unable to pass any new environmental statutes. Efforts to pursue innovative strategies and new partnerships and to explore benefits of new instrument mixes and co-regulation were impeded by these statutes, because they were difficult to incorporate into the existing bureaucratic culture. For example, the Clinton era “reinvention of regulation” was such a statute. There was a heavy reliance on voluntary partnerships to fill regulatory gaps and concerns were raised over transparency, accountability, and robustness.

3. Congressional efforts to control the regulatory state stimulated a counter-movement by the executive.

The regulatory design was strongly influenced by inter-branch conflicts. As a response, the Presidents often demanded regulatory oversight, for example the Reagan executive order 12291 in 1981 and the Clinton executive order 12866 in 1993. This cost-benefit analysis based regulatory review limited the promulgation of new rules, increasing expense and delay. Such difficulties were particularly significant for environmental and occupational safety and health regulations. The Clinton executive order has since endured throughout all subsequent presidencies all the way into Obama’s mandate.

4. The decisions to invoke the courts created unanticipated consequences.

Originally, the expanded access to courts was designed to limit bureaucratic drift. As a consequence, Congress avoided trade-offs between statutory responsibilities and left the task to the courts. This way, the scope of court programs was extended, exacerbating resource constraints. In addition, compliance with court orders became a top EPA priority, further diluting congressional control.

5. The decisions to delegate authority to the states rendered policy outcomes dependent on state action.

Given the limited capacities of EPA, delegation to states became necessary. However, the states now assume responsibility for 96 percent of the programs that could be delegated. This has led to rather mixed results. While some states have exceeded federal mandates and experimented with green tracks and energy portfolio standards, others have routinely failed to report violations, conduct inspections, issue permits, and generate data. These strains have been further exacerbated by the economic climate. In 2011, for example, state environmental budgets dropped by \$12 million per state.

In conclusion, institutional design decisions were shaped by concerns over capture, miscommunication, slippage, principal-agent problems, and inter-branch competition. This has led to some positive short-term ramifications, such as rapid implementation in the 1970s. On the negative side, however, the EPA has a limited adaptive capacity and dependency on new statutes. The decisions have rendered outcomes vulnerable to courts, executive review, and to the fragmenting dynamics of federalism. Overall, policy has become increasingly incoherent.

One of the biggest problems to date—climate change—can hardly be tackled under this patchwork policy system.

Question Time

Question: As we are approaching the next US Presidential elections, how important have environmental issues been for the Obama administration? What has he accomplished so far?

Answer: Unfortunately, there has not been much progress. Energy policy is now the only environmental aspect addressed by the administration, and tends to dominate everything else. The silence regarding climate change has certainly been a disappointment. In fact, there was the cap and trade legislation, but the Senate never brought it up for a vote, despite having a filibuster-proof majority. Besides, the President did not make much of an effort either. Today, there is a greater level of motivation to promote the regulation of greenhouse gases, but overall the environment has not emerged as much of an issue, especially not in the current campaign. In addition to that, for the first time ever surveys show that Americans support the economy over the environment, agreeing that the latter should be sacrificed for the sake of the former.

Question: What sort of influence do interest groups have on the EPA? To what extent is the EPA autonomous and what is its reputation?

Answer: In fact, the EPA was designed to be captured by interest groups. They have a very close relationship. However, there is one big problem that occurs: interest groups don't generally gain support by giving accurate representations of environmental policies. Therefore they prefer to point to the failure of environmental policies, rather than to the successful ones, in order to attract more support.

Conclusion and Prospects – Peter Knoepfel (Institut des Hautes Etudes en Administration Publique, CH)

A lot of the same issues that were discussed during this conference had already been discussed when environmental policy first became relevant in the 1970s. Nevertheless, there are few points that were not mentioned in detail, seen from a Swiss perspective.

1. Categorisation

In the 1970s, people wondered how to categorise the environment, and where to put it on the national level (it ended up becoming part of the interior ministry). When environmental policy became more attractive to politicians in the 1980s and 1990s, it led to a fragmentation among the different cantons in Switzerland, who categorised it very differently. Some decided it belonged to the public health policy sector, others to that of infrastructure, and so on. This labelling had a significant effect on the actual policies. Therefore it should be noted that this kind of “tailoring” of environmental policy is a political and not just a technical decision. It is thus similar to European directives, such as biotechnology. Politicians know how to weaken the implementation of certain policies by categorising them in particular ways.

An administration favoured by pro-environmentalists would therefore be one that is well-resourced, well staffed, and that has appropriate support. It is important to identify who are the clients, the alliances, and the opponents.

2. Inner-ministerial division

For a while people thought that the impact of certain kinds of implementation was weak because polluting actors did not adapt as quickly as they were supposed to. It so turned out that the real reason was attributable to a major contradiction within the policy output, as illustrated by the example of environmental protection

concerns vs. security standards. The problem was the clash of different target groups.

The environmental protection ministries were previously according to different mediums. A radical organisational change, however, structured the ministries by the criteria of target groups instead. This was supposed to be the solution to the contradictions in the output: reducing the number of interactions between different actors. Three polluter-specific divisions were created to replace the medium-specific units.

As one can see, this model has nothing to do with merger, but involves rather the functional attribution of new competencies. Among environmental specialists in many cantons, this has led to much resistance.

3. Hypothesis: Procedural arrangements are better than merger

Often a change in procedure is much more effective than a change in structure. As an example, much has been said about inter-policy coordination, but very little about intra-policy coordination. Intra-conflicts (i.e. water vs. soil; landscape vs. noise) should be acknowledged. If they are to be solved, then procedure is the correct means. We should understand that no one desires dismantling of environmental administrations; not even the “polluting” industries. After all, it is through the environmental ministries that polluters obtain the permits that protect them from liability claims. Production needs to be properly licensed, and permits guarantee the right to pollute (at least at limited thresholds).

Recently, governments have begun to focus their environmental policies on resource management (inputs) rather than the management of emissions (outputs). Administration must change accordingly and redistribute their focus towards resources, i.e. soil, air, water. In cooperation with the Swiss government, attempts have been made to create a national bank of natural resources. The idea is to move the issue of the environment away from political influence and administer resources in the interest of the future.