Working Paper Series
Paper 12

Environmental Governance in the EU, Susan Baker[1]

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Abstract

The goal-directed interventions typical of EU environmental management strategies are increasingly taking place alongside a new network governance approach. While much of what is called 'new governance' is little more than old wine being poured into new bottles, nevertheless there is some evidence of change, even if it is difficult to pin down in concrete cases. The new approach involves making use of the principle of partnership and shared responsibility and of new instruments for environmental policy (NIEP). The promotion of sustainable development provides the organising framework within which this new approach is situated. The development of a new mode of governance at the EU level is leading to a new process of governing. This throws up the problem of relating new models of governance to methods and practices of traditional government. Even if this problem could be solved, the fact remains that the environment is also a normative political issue, that it, it is a 'wicked' problem. As such, the EU will continue to find that, despite its new approach, environmental governability will remain difficult.

Introduction

This paper examines the transformation of environmental governance in the European Union (EU)[2]. The process of European integration has meant that there has been a gradual shift from environmental decision-making at the national, Member State level to collective decision-making at the Union level. The EU now has the power to exercise direct authority over Member States in environmental matters.

There is a great deal of negative pressures acting on Europe's environment, particularly at the sectoral level. Currently, efforts by the EU to address the tensions between the economy and the environment are increasingly being framed by a new approach to environmental management, one that combines the traditional business of government with a new mode of governance. This new mode is built on the principle that better environmental management is achieved though partnership and shared responsibility rather than through the actions of governments alone. This facilitates the use of market-led solutions to environmental problems. In this paper we explore the rise of this new mode of environmental governance and ask whether or not it will help solve the problem of environmental governability.

Section 1: The Emergence of 'New Governance' within the EU

<u>Network Governance</u>

The term 'governance' has its origins in the study of international relations and of comparative politics (Rosenau and Czempiel, 1992). Its application to the study of the EU has been confused by the tendency of researchers to allow almost anything to fall

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[2] Since the Maastricht Treaty, the terminology which applies to the European Union/ European Community has become very complicated. For simplicity, I use the term European 'Community' to refer to events and process before the Maastricht Treaty and the term 'Union' to refer to events after the Treaty.

under the label 'new governance' (see the review article by Hix, 1998). Further, as Kohler-Koch has argued, the few authors who have explicitly used the term 'governance' in their analysis of EU decision making (see Bulmer, 1994; Pollack, 1996) have relied heavily upon the concept's self-explanatory power, neglecting to provide a definition or explicit elaboration of its elements (Kohler-Koch, 1999: 4-5).

To help clarify matters some of the more recent literature makes a distinction between *modes of governance*, which as ideal types includes statism, corporatism, pluralism and network governance and *new processes of governing* (Kohler-Koch, 1996; 1999: 5). The claim is that the use of a new mode of governance - network governance - within the EU is giving rise to a new process of governing. Unlike Rhodes, this literature distinguishes this new process of governing arising from the use of network governance from other modes of governance. This distinction rests on the specific role that network governance allocates to the state, on the particular rules of behaviour that are associated with this mode, on the patterns of interaction this gives rise to and on the level at which political action takes place within this new process of governing (Kohler-Koch, 1999).

'Governance' in this sense means, first, that the process of governing is no longer conducted exclusively by the state, but involves 'all those activities of social, political and administrative actors that .... guide, steer, control or manage society' (Kooiman, 1993: 2). Second, the term governance also takes account of the fact that within new governing processes, the relationship between state and non-state actors (such as environmental NGOs, economic actors, quasi-governmental agencies) is non-

hierarchical, and based on mutual dependent (Jachtenfuchs, 1997: 40). As governing patterns develop, there is a growing recognition of the inter-dependencies that exist between state and society, between the public and the private. Third, the key function of network governance is regulation, not re-distribution, the latter being a traditional function of governments. In short, as a new mode of governance develops, society, the economic and the political system cease to be run, as it were, from the 'top-down' by governments engaged in the traditional business of governing. Instead there is a process of governing, where the boundaries between government and society are more diffuse and the lines between public and private responsibility become blurred. Within network governance political actors consider problem solving to be the essence of politics and policy making is undertaken within the context of highly organised social sub-systems. In this model, unlike that of pluralism and corporatism, interests are not given, but may evolve and get redefined in the process of negotiations between the participants of the network.

The process of governance stand, therefore, in stark contrast to the classic, state-centric, re-distributive, command and control processes that form the traditional business of government (Hicks, 1998: 39). The new mode of governance is giving rise to a new process of governing not just in relation to environmental management but across many policy areas. Our paper explores the claim in relation to one policy areas, EU environmental policy, identifying the extent to which a new mode of network governance is emerging in this policy arena and whether this is giving rise to a new process of governing. We also examine the problems associated with this development.

<u>Taking Account of Multi-Level Government within the EU</u>

The new mode of governance that is emerging within the EU is highly complex. This is because, in the EU, policy is always an outcome of complex bargaining and shifting alliances among the Member States and between them and EU institutions. In formulating policy, differences can emerge within institutions and in particular within the Commission, which is composed of numerous Directorate Generals (DGs). The Commission, as the highest administrative organ of the EU, acts to represent the supranational element of the Union and has the power to initiate policy. Commissioners are appointed to head the Directorate Generals, that is, the separate policy areas into which the Commission is divided, with one Commissioner being appointed as President. The Commission stands in contrast to the European Council and the Council of Ministers, which are the main decision-making authorities of the EU, representing the heads of state and government, and the national government ministers respectively.

Further, responsibility for the various stages of the policy process is fragmented: the Union plays a major role in policy formulation but has less direct control over the implementation stage, this being the job of the Member States. The task of monitoring is also difficult, as the EU is reliant upon Member States to provide it with information on policy achievements and successes.

Regional and local authorities, Pan-European interests groups, such as the European Environmental Bureau, as well as national environmental and business interests are also involved in policy-making, but to varying degrees. In addition, policy is not made by one institution in one sitting, but takes place over a long period of negotiation and

discussion through a variety of different formal and informal channels. In this state-private sector interaction, informal contacts and networks help to define policy options (Peters, 1996). Interest groups, especially those representing industry, also play a role in shaping EU policy through the influence they exercise on the negotiating position of Member States, the Commission, and on individual Commissioners (Mazey and Richardson, 1995). There is also a policy-making role for quasi-autonomous executive agencies, such as the European Environment Agency.

In view of the complexity of its policy-making process, the EU has been characterised as a 'multi-level structure' (Marks, et al, 1996). By this is meant that decision-making competencies are dispersed among national, supranational and sub-national (local and regions) actors. It also means that Member State institutions no longer have a monopoly over the formulation and implementation of policy. In this sense it is useful to make a distinction between 'levels of government' and 'systems of governance'. (Kohler-Koch: 1998: 6). Levels of government refer to the development of the EU as a system of multi-level government. Here there is a shifting balance of power between different levels of government and the transfer of power to the European level that also impinges on the constitutional power of sub-national units. Systems of governance, on the other hand, is less concerned with the shift in the balance between levels of government and more concerned with changes in the mode of governance. The EU, as a multi-level system with supra-national institutions and Member States acting together, has also contributed to the rise of a different kind of governing. Here policy is made through network governance structures, where there is mutual interdependence between the variety of actors and interests involved in negotiations on policy solutions. Thus, when we speak about new network governance in an EU

context, we have to take account of the involvement of multi-level state and non-state actors and regulatory institutions - government - in policy making.

Section 2: The Environment and the Emergence of a New Mode of Governance

In this section we explore the new mode of governance that is arising in the environmental policy arena. We begin by examining the reasons for the search for a new approach towards environmental management, finding explanations specific to the environmental policy arena (the problem of environmental governability and the emergence of a new problem definition) as well as more general explanations relating to weaknesses in the democratic legitimacy of the EU. We then explore the ways in which a new governance mode is being put into practice in relation to environmental management and how this is leading to a new process of governing.

<u>Why Search for a New Approach?</u>

The early years of Community environmental policy were largely driven by a 'command and control' approach to environmental (pollution) management. This approach involves direct regulation, which prescribes uniform environmental standards across the EU, mandates the abatement methods required to meet such standards, licenses production sites which adopt the required methods, and assures compliance through monitoring and sanctions (Golub, 1998: 2). While this established a European-wide regulatory framework within which economic actors must now operate, as time passed weaknesses in this regulatory style became apparent. These weaknesses can be grouped into two broad sets of factors specific to the

environmental policy sector: first, what we call a general problem of environmental governability; and second, the emergence of a new definition of the environmental problem, which highlights the limitations of the old, top-down, regulatory approach. In addition, explanations for the search can also be found at the more general level. We discuss below how, as the EU began to experience a crisis of democratic legitimacy following the difficulties encountered in the ratification of the Maastricht Treaty, the search began for new ways in which the European integration process could be made more relevant and responsive to the aspirations of the peoples of Europe. This in turn led to a search for a more participatory style of policy making, including within the environmental arena.

The Problem of Environmental Governability

The search for a new approach towards environmental management is driven, to a large degree, by the growing complexity of environmental problems and the difficulties in finding efficient and effective policy solutions to these problems. There is also the realisation that getting intervention on behalf of the environment 'right' is proving a difficult task. First, social interests, especially environmental groups, contest the traditional, scientific understanding of environmental problems and their solutions. The result is that the input of scientific experts into policy-making is the subject of social dispute. Second, policy solutions are subject to high degrees of uncertainty and what is considered an appropriate response to an environmental problem at an earlier time can, at a later date, be regarded as a contributory factor to that problem. Third, environmental management puts demands on policy makers that cut across established administrative boundaries and bureaucratic lines of competence. This makes co-ordination and policy consistency difficult to achieve.

Fourth, there are numerous and often conflicting interest groups (for example, business interest associations and environmental NGOs) all seeking to shape policy. Accommodating these conflicting interests is not easy. Fifth, the failure of many government interventions in the past has led to scepticism about the capacity and indeed willingness of public authorities to understand, let alone resolve, society's environmental problems (Baker, 2000a).

Finally, the traditional regulatory approach has been plagued by implementation failures, both across Member States and at the sectoral level (EEA, 1995a; 1995b). The result has been a steady deterioration of Europe's natural environment (EEA, 1999). This led to a realisation that unless stakeholders (particularly firms and businesses) are involved in shaping policy, there is a strong possibility that compliance will be weak. In addition, command and control approaches were increasingly seen as stifling incentives to reduce emissions beyond mandated levels and as doing little to encourage firms to develop innovative pollution control technologies. There was also the growing evidence that regulatory bodies often develop close and dependent relationships with industry because of the latter's detailed knowledge of, and direct interest in, pollution activities and abatement options. This has allowed polluters to 'capture' regulatory bodies, thereby shaping environmental policies in accordance with their own economic self interest (se Golub, 1998: 3). Thus, the command and control approach has contributed to the exclusion of the general public and environmental interests groups from environmental decision-making and in this way has contributed to the problem of environmental governability.

The Emergence of a New Problem Definition

The growing awareness by both the EU and the Member States of their insufficient problem solving capacity, in other words a recognition that they are facing a problem of environmental governability, is closely associated with the emergence of a new definition of 'the environmental problem'. This new problem definition recognises the complexity, dynamic and diversity of environmental policy issues and in particular their inter-sectoral, inter-generational and social dimensions. In short, re-articulating the environmental problem as a problem of how to promote 'sustainable development' provides the organising principle within which the utilisation of the new governance approach towards environmental management is framed. This new 'problem definition' has been adopted, albeit it in diverse ways, across all the EU Member States (Lafferty and Meadowcroft, 2000). EU and Member State participation in UNCED has acted as a decisive influence on the adoption of the new problem definition (Baker, 2000b).

More specifically, the EU's Fifth Environmental Action Programme, *Towards Sustainability: A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development* (1992-97, ongoing) (5th EAP) (CEC, 1992) provides the organising framework for the change in policy orientation from a 'command and control' to a more consensus driven environmental policy style aimed at the promotion of sustainable development. The 5th EAP is the main means through which statements of environmental policy intent (declaratory politics) are translated into concrete policy proposals.

The Crisis of Legitimacy in the European Integration Process

As we said above, the search for a new approach towards environmental management was driven by factors specific to the environmental policy arena as well as more general problems relating to the European integration process itself. It is to this latter issue that we now turn. The difficulties experienced with the ratification of the Treaty of European Union, the Maastricht Treaty, during the early part of the 1990s, highlighted the growing gap between the top-down drive to deepen the EU integration process, on the one hand, and on the other, the bottom-up acceptance of the integration project among the citizens of the Member States and across Europe as a whole. While the Treaty was eventually ratified, the problems encountered with ratification made it clear that the drive to deepen the European integration process, in particular through the completion of the Single European Market (SEM), had disregarded the need for popular support for, and citizen involvement with, that process. This highlighted the EU's democratic deficit, but also contributed to importance changes in the understanding of that deficit. Until the 1990s, the EU's democratic deficit was seen primarily in institutional terms, that is, in terms of the relative lack of power of the only directly elected EU institution, the European Parliament in relation to the Council, Commission and Court. The solution to this democratic deficit seemed relatively straightforward and forthcoming, resulting in gradual, but cumulatively important, enhancements of the policy-making powers of the European Parliament. However, following the debate over the ratification of the Maastricht Treaty, the EU's democratic deficit began to be increasingly seen in new terms: in relation to a deep social scepticism about the integration process arising from public exclusion from the European project; in terms of the lack of a European demos and identity that could ground further integration; and in terms of a failure of

the architects of Europe to obtain public acceptance of the integration project, essential to achieve legitimacy for the EU as a whole (see Weiler, 1997). Finding solutions to this more diffuse and critical articulation of the problem of the EU's democratic deficit is difficult.

Nevertheless, the EU has responded. There is now a drive to make the Union more accountable to the citizens of Europe (Council Presidency, 1995). Much of this is taking place within the Commission, which has borne the brunt of the criticisms made about the conduct of governance within the EU that arose as a result of the problem with the ratification of the Maastricht Treaty. Subsequent scandals within the Commission concerning the misallocation of funds, added to the growing concerns about the lack of openness and accountability in the management of EU affairs. In response, the Commission is now making efforts to 'move closer to the citizens', in particular by responding to criticisms about the technocratic nature of EU governance. This has resulted in an elaborate programme within the Commission of greater openness, transparency and subsidiarity (see Christiansen, 1997). In particular this has led to the establishment of new institutional structures to facilitate direct relationships between the Commission and the public.

The task of 'democratising' the conduct of governance within the Commission is not an easy one. A major barrier is that policy-making in the EU takes places though a 'comitology' structure, where numerous committees play a key role in policy making. But, in addition, the Commission's response is hampered by the potential for conflict between its traditional roles and its new task. On the one hand, the Commission is under pressure to respond to the tasks set by the Council and give reassurances to

Member States that its policy proposals are in keeping with the various principles (in particular the principle of subsidiary) that underlie Union policy and that it's actions are in keeping with the competencies that the Community has been given under the Treaties. At the same time, the Commission needs to be seen to meet the increasing call to address complaints about the EU's democratic deficit, complaints that stem more from the public and from interest group demands for greater participation than from Member States, which display an ever watchful concerns to protect their own interests.

Thus the institutional innovations and reforms that are being initiated by the Environmental Directorate General, and which are discussed below in evidence of a move towards a new form of network governance within the EU, must be seen as forming part of the more general drive to ensure that the integration process is not undermined by the legitimacy crisis that is currently being experienced by the EU.

Putting the New Mode of Environmental Governance into Practice

Within the framework of the EU's 5th EAP the traditional business of government in the environmental policy arena (regulation) is being increasingly combined with two closely related, new approaches towards environmental management. These form the core elements of the new mode of network governance in relation to environmental policy. The first is aimed at developing new patterns of participatory governance through the utilisation of the principle of partnership and shared responsibility. The second approach involves making use of a broad range of instruments and tools to help manage the environment more efficiently and effectively. Collectively these tools are known as 'new instruments for environmental policy' (NIEP). We should

bear in mind, however, that while it is useful for the purposes of our analysis to distinguish these two new approaches, in practice they are closely interrelated. The principle of partnership and shared responsibility is seen as a re-condition for the adoption of market-led solutions to environmental problems. Similarly, the use of NIEP seeks to encourage new forms of environmental partnerships between the private and public sectors (see European Environment, 1994).

Making Use of the Principle of Partnership and Shared Responsibility

The use of the principle of partnership and shared responsibility for environmental management is one of the key components of EU efforts to promote sustainable development, as specified in the 5th EAP. As Ritt Bjerregaard, the former EU Commissioner for the environment, has said, 'Sound stewardship is not a task for government alone' (CEC, 1997: 10). She believes that effective environmental management can only be achieved through true partnership, involving all sectors and groups in society (CEC, 1997: 3).

The principle allocates a role in environmental management not only to Member State governments and to regional and local authorities but also to economic and social actors. At the institutional level, this has led the Commission (the Environment Directorate-General) to established specific policy networks, including three dialogue groups. The first, the European Forum on Environment and Sustainable Development, has its members drawn from enterprise, consumers, trade unions, environmental groups and local and regional authorities (see European Community, 1997). The second, the Environment Policy Review Group (EPRG), comprises members from both the departments of the environment of the Member States and from the

Commission. The third group, an informal Network for the Implementation and Enforcement of Environmental Law, has a narrower membership base and facilitates contact between regulators and policy-makers and those concerned with day-to-day implementation.

The use of the principle is also evident at the sectoral level. It is particularly evident in relation to consultation between business interest associations, particularly those representing industry, and the Commission (Environment Directorate-General). A regular dialogue exists, for example, between UNICE, the European industry federation, and the Commission. In a project known as the Auto Oil Programme, for example, the Commission used consultation to devise a mixed agreement (combining regulation and voluntary agreements) with the oil industry and car manufactures to deal with pollution from car emissions, albeit with mixed results (Axel et al, 1998).

In a parallel effort to involve environmental groups, the Commission supported the establishment in 1994 of the European Partners for the Environment scheme. This provides a platform for industry and NGOs to meet and discuss possible ways to promote sustainable development, in particular through training and information initiatives. More widespread consultation with environmental NGOs also takes place. Since 1992 regular information meetings have been held between the Commission (the Environment Directorate-General) and representatives of the major environmental NGOs. Consultation has also taken place between local and regional partnerships. In addition, thematic meetings (for example, in relation to the Rio Earth Summit and its follow-ups, or in relation to the Structural Funds) have been held in which other DGs have taken part (Baker, 2000b).

As well as utilising the principle of partnership and shared responsibility, the emerging new mode of environmental governance in the EU also involve the utilisation of new instruments and tools for environmental policy.

Making Use of New Instruments for Environmental Policy (NIEP)

The Commission has argued that making greater use of market-based instruments (NIEP) is the key to the successful promotion of sustainable development. This is because it sees NIEP as having the potential to help construct a positive relationship between economic growth and the environment. It is hoped that their use can lead to a more consensus-driven EU environmental policy style (European Foundation: 1994; European Environment, 1995: 6). The move from a predominately legislative approach to a more voluntary approach is also in keeping with the market-led ideology embedded in the SEM and the EU's *White Paper on Growth, Competitiveness, Employment (*CEC, 1993). The shift is also popular with governments because it is consistent with the continuing trend towards deregulation and re-regulation at the Member State level (European Environment, 1994).

NIEP give a strong role in environmental management to the market (for further details see Eckersley, 1995). For simplicity, NIEP can be divided into economic and 'suasive' instruments (Golub, 1998). Economic instruments include several types of environmental taxes and charges, 'green tax' reforms, tradable pollution permits, government subsidies for environmental improvements and deposit/refund schemes. 'Suasive' instruments include ecolables, ecoaudits and voluntary environmental agreements. NIEP currently in use within the EU and the Member States include

fiscal tools (taxation), economic instruments to encourage the production and use of environmentally friendly processes and products, horizontal-supporting measures (including information, education and research), and financial supporting measures (funds) and voluntary agreements. Voluntary agreements are being increasingly used, including across the Member States, for example, in relation to reduction in waste packaging, CO_2 emission levels, and to improve energy efficiency. Two specific EU-wide voluntary environmental agreements worth mentioning are the 'Eco-Label Scheme' and the 'Eco-Management and Audit Scheme' (EMAS).

In contrast to a regulatory approach, NIEP are seen as having several advantages. They are potentially lucrative sources of revenue for governments. Instruments, such as voluntary agreements, also have the advantage of facilitating closer co-operation, rather than confrontation, between government and industry. In this way, the utilisation of NIEP can help consolidate the utilisation of the principle of partnership and shared responsibility to ground environmental management. Furthermore, the Commission hopes that making use of new instruments will help alleviate the implementation deficit, because such tools have the advantage of shifting environmental responsibility onto mechanisms (the market) and agencies (for example, business interest associations) other than the EU or the Member States and their legislative powers. In this sense, the development of a new mode of network governance at the EU level is offering a way in which the old dichotomy between the state and the market can be overcome: because new governance involves both state (as regulator) and markets (as solution provider) acting in a new alliance aimed at resolving the complex problems arising in relation to environmental management. In addition, because they have the potential to decrease regulatory capture and to

facilitate direct public involvement in environmental management (for example, of consumers) it is also hoped that they can lend greater legitimacy to EU environmental policy.

Section 3: Critique of New Governance

Problems with the Operationalisation of the Principle of Partnership and Shared Responsibility

There is a great deal of unevenness in the Commission's application of the principle of partnership and shared responsibility. Partnership arrangements between the Commission and environmental groups have not been as numerous or as successful as those between the Commission and industry. This unevenness stems from the asymmetrical relationship that exists between the Commission and industry on the one hand and, on the other, the Commission and social stakeholders, including environmental groups. This bias skews partnership and shared responsibility arrangements heavily in favour of industry. Not only are corporate interests able to mount broad-based lobbying campaigns backed by considerable practical expertise and financial resources, they also play on fears of the increasing costs and decreasing European competitiveness that can result from environmental management (Butt Philips, 1998: 264). Crucially, the Commission takes these fears very seriously, not least because of its historic commitment to stimulating economic development within its Member States and of maintaining European (industrial) competitiveness at the global level. As a result of this bias, environmental NGOs often feel that they loose out in negotiations with the Commission and find their views marginalised.

But, while critical of the manner in which the principle is put into practice, this is not to say that environmentalists reject the principle of partnership and shared responsibility itself. Rather, the principle is in keeping with the call from environmental NGOs for wider participation in environmental policy-making processes. Its application is seen as having the potential to enhance the democratic nature of EU environmental policy-making and to make Union policy more relevant to public needs and aspirations. However, environmental NGOs are wary about its uneven application. There is also fear among environmental NGOs that the use of the principle may lead to the abandonment of responsibility for environmental protection by public authorities (EEB, 1996: 6). The principle could be (mis)used to undermine the responsibility of public authorities for protecting the environment. Here there is still a felt need for the EU to maintain a strong regulatory framework as well as to ensure that partnership means just that: a sharing of responsibility for environmental management by both the public sector and the private sector (the market and the state) not the replacement of the regulatory function of the state by market-led solutions to environmental problems.

Problems with the Use of NIEP.

Broadening the range of instruments used to bring about a shift to sustainable development has proven to be more difficult to accomplish than was envisaged when the 5th EAP was prepared (European Environment, 1996: 14). In the first place, tension has developed between the desire of the Commission to make greater use of NIEP and the reluctance of Member States to concede competence in the use of such

tools to the EU level. Precisely because they have the potential to diminish their role and influence, Member States have been reluctant to allow the Community to make use of the full range of policy tools outlined in the 5th EAP, in particular fiscal tools. This is despite the fact that Member States are themselves increasingly making use of these tools, as seen for example in the use of environmental charges and taxes in Denmark, Finland, the Netherlands and Sweden, albeit with mixed results. The lack of progress in the use of a Community CO_2 tax is a reminder of the highly political nature of decisions about whether or not to sanction the use of market-led tools for environmental management at the EU level.

Industry has also shown some ambivalence towards the shift to NIEP. This is because of the uncertainty involved in their use and the transactions costs they face in abandoning what is often a well understood regulatory approach, over which they have considerable influence (Golub, 1998:7).

Similarly, NIEP are not acceptable to all sectors of society and have been criticised by environmental NGOs. The European Environmental Bureau, an umbrella groups representing over 120 environmental groups, has argued against what they call the 'privatisation' of environmental protection at the European level (EEB, 1996: 6). Here, distrust of industry as a self-proclaimed guardian of the environment remains high. In relation to voluntary agreements, for example, it has been argued that granting more decision-making power in relation to environmental protection and management to those who are also the environment's main assailants requires 'a considerable leap of faith' (Collier, 1998: 61). Voluntary agreements are often pre-

emptive moves on the behalf of economic actors to avoid more stringent regulation, 'enabling industry to set the terms and simultaneously to demarcate the limits of environmental protection' (Collier, 1998: 62). Self-regulating mechanisms, such as voluntary agreements, because they tend to favour sectional interests over environmental ones, need at a minimum to be backed up by sanctions. The EMAS in particular has been the subject of much criticism. There has been considerable disagreement over which experts (independent certifiers or a self-administering industrial body) ought to verify and certify industrial compliance with ecoaudit standards. This indicates that proponents of NIEP have been somewhat over optimistic about the ability of such tools to diminish the problem of industry 'capture'.

New Governance and the Eastern Enlargement of the EU

The EU is about to undergo profound change as it accepts new members from among the countries of the former Eastern-bloc into its fold. In countries targeted for the first round of Eastern enlargement - Poland, Hungary, the Czech Republic, Estonia and Slovenia are the 'front runners' identified in Agenda 2000 (CEC, 1997) - membership of the Union has become *the* determining factor in shaping current environmental policy (Baker and Jehlicka, 1998). The EU also plays an increasingly important role in shaping environmental policy of other European Association countries that have a more uncertain membership timetable, such as Bulgaria.

Preparations for Eastern enlargement are having an impact upon the emergence of new modes of governance within the EU. This impact appears to be of a contradictory

nature. On the one hand, there is evidence of the emergence of new governing patterns within Eastern Europe as countries undertake institutional innovation and reform in order to develop sufficient administrative and institutional capacity to enable them to implement the EU *acquis.* There is, for example, growing transparency in environmental policy-making processes across the region as a whole, albeit with marked variation between countries. The region has also seen the establishment of new institutional arrangements to facilitate participation, both at the country and at the regional levels. This is contributing to the enhancement of the roles of environmental NGOs in both the formation of civil society and in the democratisation of environmental policy-making. The change can also been seen in relation to making use of NIEP, made possible by economic re-structuring and in particular the process of marketisation.

However, embedded in the Eastern enlargement process is a problem of a more political nature that challenges the shift to a new mode of governance. EU influence extends not just to environmental policy, but more centrally to the process of re-structuring the economic and political systems of former Eastern-bloc countries. Despite the existence of mechanisms for mutual consultation, the relationship between East and Central European countries and the Union is an unequal one, with power skewed heavily in favour of the Union (Caddy, 1997: 328). As a result, the ten Association Countries have begun to bind their environmental policy into a European Union legislative, monitoring and reportage framework that they have had no say in formulating. The adoption by Eastern European countries of the norms, legislation, standards and codes of practice that were the product of political discourse, debate and compromise hammered out among political, social and economic actors from

Western European Member States is a profoundly undemocratic political act. In this respect, environmental politics in transition states bears similarities with the politics of environmental management under Communism: that is, it is largely driven by a top-down, legislative and regulatory approach that leaves little room for political dialogue. The tendency of the EU, via the Phare programme and the Know-How Fund to utilise western 'experts' to solve the environmental problems of Eastern Europe also flies in the face of the critique of the role of traditional expertise in environmental management, a critique that has contributed to the problem of environmental governability.

Section 4: Will the New Mode of Governance Solve the Problem of Environmental Governability?

It will be recalled that it was within the context of the problem of environmental governability that the EU's search for a new way of governing could be situated. In other words, they have tried to 'let others help' (Kooiman, 1993: 2) because they can not achieve successful policy outcomes alone. We now ask – will the adoption of new processes of governing help solve the problem of environmental governability?

The Efficiency Issue

The problem of environmental governability is, as we have seen, a multi-dimensional problem. It is, at least in part, a problem of inefficiency and ineffectiveness in relation to traditional approaches towards environmental management, leading to both a marked implementation deficit and thus failing to halt the steady deterioration in Europe's environment. So, in part, our question becomes – will the use of new

processes of governing lead to greater efficiently and compliance and thus to a more favourable environmental outcome than what has been achieved under the old approach? Unfortunately, the question has, as yet, to remain unanswered - not enough is known about the use of new processes (partnership and shared responsibility; NIEP) to enable us to evaluate them. In relation to the use of NIEP there is an implicit assumption on behalf of their proponents that, as a market-led approach, their application will lead to greater efficiencies in relation to, for example, the use of environmental resources. However, in practice, little is actually known about the effectiveness of new instruments as pollution control measures and whether they in fact will lead to a harnessing of market forces in favour of a cleaner environment.

In addition, new governance practices, such as the use of market-led tools, are in practice rarely used alone but are typically are used in combination with, rather than as a replacement for, the old command and control approach. As yet, we have no empirical evidence to evaluate the comparative capacity of each of these governance types to produce solutions to environmental problems. Research is also needed into the experiences of policy makers with different mixes of governance modes (traditional and new network governance) and whether this mixing of approaches gives rise to complementary or contradictory pressures on policy-makers.

But, the problem of environmental governability is not just a problem of evaluating the efficiency and effectiveness of alternative approaches. It is also a problem of a more social and political nature.

The Problem of Democracy and Participation

Viewed as a political problem, the problem of environmental governability can be seen as a problem of how to ensure greater societal participation in environmental policy-making while at the same time guarding against any erosion of the principles of democratic government. The EU has a deep enough crises in relation to its democratic deficit without establishing new processes of (environmental) governing that will contribute to this problem.

The issue arises because the new governance mode within the EU has, paradoxically, the potential to undermine further the democratic nature of EU policy-making. This is because groups and interests participating in these processes do not, by definition, represent the general interests of society, but a particular, partial and often narrow set of interests of sections of that society. Thus there can be tension between governing that evolves from public/private partnership and the responsibility that elected governments have to guard the wider public interest. In our western political systems, democratic practice requires that the wider interests of society, not just those of selected groups, be taken into account in policy-making. In other words, the development of a new governance mode is giving rise to a problem: how do we relate new governance to the tradition business of democratic government or at least in an EU context, ensure that it does not further undermine the democratic legitimacy of the Union?

In an EU context there is a danger that new environmental governance will lead in practice to little more than a continuation of old patterns of elite participation, especially that drawn from economic (including industrial) interests. In many ways, EU practice remains more akin to traditional forms of elite participation, adhering less to the principle of partnership and shared responsibility that is embedded in the commitment to the promotion of sustainable development articulated at Rio. In other words, when it comes to the emergence of 'new' environmental governance patterns within the EU, there may be much old wine being poured into new bottles.

We also ask whether, in relation to environmental policy, new governing processes can really help resolve interest differences between proponents of growth and development and those concerned with environmental protection, when the latter is seen as the junior partner? It is in relation to the needs of industy that institutional structures to facilitate participation are evolving within the EU. In addition, the distribution of power between EU institutions is such that decision-making power is skewed heavily in favour of the interests of the Council at the expense of that of the Commission. Yet, most dialogue is occurring within the Commission. Here participatory structures can continue to be the forum for the articulation of self-interest, which may often lead to actions that damage the environment. The participatory fora that are evolving within the EU lack what Habermas has termed an 'ideal speech situation', that is, a situation where discussion is free, all participants have the ability to inform the discussion and the only authority is that of the better argument (see Dryzek, 1987:201). It is unlikely therfore newly established EU participatory structures will provide the opportunity to engage in discursive

democratic practices. This leaves unresolved the problem of how to ensure open, informed, ecologically sound public deliberation at the EU level.

But even if we could resolve the problems associated with putting participation into practice there is still another problem. Criticism rests not just on the claim that the structures established to encourage new forms of participatory democracy are flawed in practice, – in other words they leave open the possibility that time and experience could lead to better practice – but on a more fundamental issue. This relates to a fundamental critique of the assumptions underlying participatory democracy itself. The application of a model of participatory democracy to environmental governance can be criticised on the grounds that methods of decision-making based on citizen participation are both cumbersome and time consuming and therefore impractical in an EU-wide context. The principle of partnership and shared responsibility also assumes a degree of interest and commitment on behalf of the citizen that may not actually be present, especially in an EU context where there is both deep scepticism about the integration process and a lack of a political 'demos' to unite the citizens in a common project. Caution has to be exercised in relation to the assumption that through participation *per se* people will become dedicated to principle of the common good or will respect the rights of others. In addition widening participation in decision making still leaves unresolved the issue of who represents the interests and needs of future generations (a defining feature of sustainable development) or how is the intrinsic value of the environment to be taken into account in deliberations? In the rush to provide for more public participation, how are the conditions of democracy to be secured? Here, constitutional measures are still needed to protect rights (Young, 1995). In other words, even if the practical problems in relation to putting

participatory principles into practice were to be solved, there are limits to participation as a route to ensuring effective and democratic environmental governance within the EU.

The Problem of Accountability

Opening up EU institutions of governance (such as the Commission) to increased participation leaves unresolved the major issue of accountability. This is the issue of how to ensure accountability for policy when a broad range of groups and interests are involved in policy-making and thus where lines of responsibility become unclear. In an EU context, who is responsible for decision-making when policy is formulated in complex networks and who is to blame when policy goes wrong? The classic notion of democratic accountability, which rests on the ideal of hierarchical control of administrators by elected politicians, has little applicability in the case of the EU. In the EU, environmental decision-making is split between several layers of government and there is a blurring of divisions of responsibility arising from the involvement of EU, Member States and non-governmental actors in policy-making and implementation. In the context of the multi-level structure of the EU, conventional methods of political accountability are hard to apply because public administration in the EU is undertaken in diffuse policy networks, rather than through top-down bureaucracies subject to the control of an elected political leadership. In addition, environmental governance relies heavily upon informal political networks and, as a result, formal institutions are not always the real site for political initiatives. The inter-

institutional bargaining that also characterises EU policy-making makes it hard to know what has been decides when and by whom. As Lord has argued, in the EU there is no single authority or office holder that is at once dominant in relation to the political system and dismissal by the people (Lord, 1998).

Democracy and Legitimacy in EU Policy Making

On the one hand, it could be argued that the development of a new mode of environmental governance in the EU has had a democratising influence upon the Union. The incorporation of new governance modes into EU environmental policy has resulted in an opening-up of the EU policy-making process (particularly at the level of the Commission) to a broad range of interests. The more open policy style that this encourages gives environmental NGOS an important conduit through which they can voice their concerns. Furthermore, the establishment of policy networks and specific *ad hoc* bodies (such as the Commission's European Forum on Environment and Sustainable Development) has helped to dismantle the centrality given to orthodox, scientific expertise in shaping policy preferences. However, on the other hand, given the problems with the nature of interest group participation discussed above, it is evident that increased participation in policy-making, while being a necessary, is not a sufficient condition to ground either the democratic legitimacy of the EU or the system of environmental governing that this is helping to build.

But attempts to ground the democratic legitimacy of the EU run into problems of a more structural nature. These arises because the elements that have traditionally been use to evaluate democratic practice are framed within the context of the nation-state.

Concepts such as transparency and accountability are linked to nation-state models of representative democracy. In the EU, seen as a *sui generis* political entity, we have no models of democratic practice that can be called upon. In the absence of criteria of what constitutes democratic practice and democratic legitimacy, the evaluation of EU environmental governance practice remains problematic. The absence of any models of supra- or post-national democracy throws into sharp relief the problem of how to ensure that the conditions of democracy are secured in the emerging new governing processes.

The Ethical Dimension to Environmental Governability

The problem of environmental governability is also related to the fact that different groups, be they within a given society, across different societies and through time, attribute different values to the environment. This stems, in part, from the complexity of the interrelationships between the biotic and physical components of ecosystems, and the fact that these relationships are open to alternative interpretations (Hayward, 1995: 218). People attribute a myriad of socio-economic and spiritual values to ecosystems. This makes it difficult to reach consensus on, or to make collective choices about, how to resolve environmental problems. As Frank Fischer has argued, contemporary environmental problems are best described as 'wicked' policy problems, in that they 'lend themselves to no unambiguous or conclusive formulations and thus have no clear cut criteria to judge their resolution' (Fischer, 1993: 173). In other words, the problem of environmental governability is also an ethical problem.

Seeing the environmental problem as essentially normative in nature means that democratic environmental policy-making requires a set of political arrangements that can help us address environmental issues as normative policy questions. Many suggestions have been put forward as to what such political arrangements could and should include. However, within the EU there are few efforts to ensure that new models of participatory democracy are structured in such a way as to help society reach consensus about environmental values and thus aid governability. NIEP, for example, in particular incentive schemes for pollution control such as pollution permits, do not address the ethical issues associated with the environment at all, failing to stigmatise pollution as morally wrong. Here there is a danger that pollution becomes something to which you have a right if you can afford to pay for it (Dryzek, 1995: 205).

We said at the start of this paper, the search for a new mode of environmental governance was a result of the problem of environmental governability. We would like to return to this now and ask: can new forms of environmental governance help solve the environmental problem? The answer is a stark no. This is because the problem of the environmental is not just a problem of management. It is also an ethical problem that requires structures to help society deal with the problem as a normative policy issue. To deal with the environment as a normative political issue a move has to be made towards what we may call responsible politics. A responsible politics combines political calculations (of modern real politics) convincingly with ethical judgement (or ideas politics) (Hans Kuhn, 1997: 66). Such a move is beyond the scope of the current EU integration project.

Conclusion

Traditionally, the EU has managed the environment by acting as a 'regulatory state', that is, by establishing a regulatory framework for environmental policy, restricting the behaviour of economic actors (Majone, 1996). In other words, as far as environmental policy is concerned, the EU engages in what we may call the traditional business of government. Alongside this traditional approach a new mode of environmental governance is emerging. This is due to weaknesses inherent in the traditional 'command and control' approach, because of the acceptance of a new definition of what constitutes the environmental problem and because, more generally, of a crisis of legitimacy within the EU integration project as a whole. As a result of these pressures, the goal-directed interventions typical of EU environmental management strategies are increasingly taking place *alongside* a new network governance approach.

This new approach involves grounds environmental protection on the principle of partnership and shared responsibility and makes use of new tools for environmental policy and. The promotion of sustainable development provides the organising framework within which this new approach is situated. The development of a new mode of governance at the EU level is leading to a new process of governing. This offers a way in which the old dichotomy between the state and the market can be overcome, involving both the EU (as regulator) and the market and social interests (as solution provider) acting in a new alliance aimed at resolving the complex problems arising in relation to environmental management.

Our empirical exploration uncovered examples of the growing use of new governance structures and patterns to facilitate negotiation and agreements on environmental management. Little is actually known about the effectiveness of these new patterns in relation to how well they can help protect the environment. We do know, however, that the application of the new mode is uneven and biased in favour of traditional (economic) interests. Our study also showed how the transformation of environmental governance is being blocked in places. Member States, for example, are not always willing to allow the EU to use market tools to manage the environment if it bring political costs. We also saw how the asymmetrical relationship between the EU and the Association Countries threw into sharp relief the contrast between the emergence of new governance in the EU and the almost exclusive reliance upon the use of the traditional command and control approach towards environmental management in the Association Countries. In this sense, much of what is called 'new governance' is little more than old wine being poured into new bottles. Nevertheless there is some evidence of change, even if it is difficult to pin down in concrete cases. This changes relates to a new sharing of responsibility between the state and economic actors; a new partnership between the EU and social forces including environmental interest groups, and the involvement of multi-level governing structures in policy-making.

We also pointed to the lack of research on whether or not the co-existence of old and new modes of governance are leading to contradictory pressures on policy-making at the EU level. More seriously, the emergence of new patterns of governing throws up the problem of relating new models of governance to methods and practices of traditional, democratic government. Decision making at all levels is allegedly

something that happens through elected representatives and through assemblies. But if we are to encourage new governance through participation, that is, new models of steering, then we need to know how to relate these models to the principle of democratic government and to do so in the EU context, which is a *sui generis* political development. The emergence of a new mode of governance throws into sharp relief the deep political problem emerging as a result of the European integration process: the fact that we have no model for reconciling network governance and the practice of democratic government at the EU level. We have found that the development of environmental governance structures has had a weak democratising influence upon the Union. However, the increasing use of new governance patterns still gives rise to problems. These include concerns about the representative nature of groups participating in policy negotiations and consultations. There are also difficulties in relation to how to ensure accountability in democratic practice when policy is formulated in complex networks. We also argued that there are problems in ensuring that groups do not use new participatory structures merely as a forum for the articulation of narrow, vested interests. This behaviour only serves to undermine the democratic legitimacy of new governance itself. We also recognise that issues of distribution and social cohesion are of considerable importance for grounding the democratic legitimacy of EU environmental governance.

In addition to the political problems encountered in putting new governance into practice, we saw that newly established EU mechanisms for facilitating collective choice are flawed in more fundamental ways. They are flawed because of the asymmetrical power distribution between EU institutions and new participatory structures that are being established. They are flawed because, given the multi-level

system of government in the EU, the Member State role in environmental policy implementation means that, irrespective of the institutional structures and innovations at the EU level, a better quality of environmental protection, or what Dryzek calls 'functional ecological rational', (that is, decisions that can produce, increase or preserve the life-supporting capability of ecosystems consistently) will not necessarily be the outcome of institutional innovation at the EU level. The new process of governing is therefore not sufficient to ensure the protection of Europe's environment, let alone to promote sustainable development. The change to a new mode of governance may buy time for the Commission in the face of current critiques of its traditional approach, it may help to win economic (industry) proponents for environmental protection, but its adoption will neither solve the problem of the EU's democratic deficit nor help resolve the deep ethical problem that makes environmental governability so 'wicked', so difficult to achieve.

However, there is a danger in our research that we are all too aware of: that in searching for new governance patterns we find precisely what it was we set out to look for! We must be cautious because, as we have already indicated, while there is evidence of a shift in approach, when it comes to governing the EU there is much old wine being poured into new bottles. We also need to be cautious because we have confined our investigation to a preliminary sketch of new network governance only in relation to environmental policy. We have many reasons to believe that what we find here is replicated across other policy areas. But we also have many reasons to be cautious. For example, a mode of governance more characteristic of statism may better describe how EU monetary policy is currently been made, whereas corporatism may offer a better fit to describe policy making in relation to EU social policy. Thus

the extent to which new models of governance are arising may well show marked differences across policy sector. In addition, we suspect that the extent to which there is a shift to new governance not only varies across sector, but may also vary between Member States and across time.

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