Early Draft for internal consultation – do not quote or distribute

2002-09-04

Environmental Governance and the Commission White Paper

Backgroundpaper for the EEAC Workshop on Environmental Governance

Berlin, 27th and 28th of September

Christian Hey, German Advisory Council on the Environment

Table of Contents:

1. Introduction 3

2. The White Paper Approach 4

3. Assessement of the White Paper Approach 6

3.1 Insufficient to overcome the legitimation crisis 6

3.2 The environmental dimension of the White Paper 9

3.2.1 The need for new governance models from an environmental policy perspective 10

3.2.2 Strengths of the present system of environmental policy making 11

3.2.3 Assessment of the performance of the new governance models already in practice 14

3.2.4 Preconditions for the Design of governance regimes from an environmental perspective 18

3.3 Assessment of specific proposals 19

3.3.1 Voluntary Agreements 19

3.3.2 Reducing the Volume of Legislation the Mandelkern Report 20

Environmental Governance and the Commission White Paper

1. Introduction

In July 2001 the European Commission launched a debate on governance in the EU with its White Paper (Commission of the European Communities, 2001a). The White Paper has to be seen in the context of a wider debate on institutional reform and constitution building of the European Union. It may be seen as a complementary or by some commentators even as an alternative strategy to the constitution building process launched by the Nizza Summit in late 2000.

The governance debate is about strengthening the problem solving capacity of the EU as well as about improving its democratic legitimation. The Commission White Paper is essentially advocating the mobilisation of organised interests to become more involved in network type new cooperative arrangements as essential elements of better performance and better democratic accountability. The approach chosen by the White Paper is not the only possible approach. As further options the idea of further integration towards democratic, federal and state like institutions or improvements of intergovernmental cooperation are discussed.

This debate is relevant for environmental policy making in the EU. New forms of governance possibly could overcome opposition for certain policies, overcome inherent deficits of traditional environmental legislation and improve the implementation and enforceability of environmental legislation. Furthermore the European Commission is already experimenting with new governance models in the environmental policy making since the beginning of the 90ties. This makes it worthwhile to assess the performance of such experiments. Thirdly DG Environment has declared, it would like to become the lead DG in governance (VERSTRYNGE, 2001). The advice of EEAC on where and how to do this best, therefore could make an impact on the proper design of new governance arrangements. Last not least forms of governance may be ambivalent. They may increase the problem-solving capacity in the environmental policy field – but they also may, if understood as withdrawal of government, reduce the level of ambition and the speed of environmental policy.

The following background paper shortly summarises the general approach of the White Paper and its key projects. It then makes a review of the generally critical responses by political scientists mainly concerned with the dynamics of European Integration. The central concern of scholars of European Integration is the limited contribution of the White Paper to overcome the legitimation deficits of European Institutions. It then identifies the needed governance changes from an environmental policy perspective and assesses the strengthes and potential risks of new governance arrangements for environmental policies. A key argument is, that the well functioning elements of EU Environmental Policy Making should not be substituted by new governance arrangements and that new governance

arrangements only deliver innovative and ambitious environmental policies if certain conditions for institutional design are met.

2. The White Paper Approach

The White Paper offers a blunt analysis of the shortcomings of the institutional system of the EU. Alienation from EU Policy making, reduced citizens support and identification with key policy projects and low levels of participation in elections for the European Parliament characterize a growing gap between the citizens and the EU. The White Paper notes widespread disagreement with the priorities of the EU agenda, which does not address the real big problems. The White Paper deplores insufficient Member States communication about achievements of the EU and widespread popular ignorance on EU policy issues. In short: the Commission perceives a legitimation crisis.

The White Paper has to be seen in the context of the scandals, which led to the early retirement of the previous President of the Commission and the constitutional debate for an enlarged and deepened Europe. The White Paper is part of a reform package aiming at re-establishing the credibility of the Commission. It is also a document, clarifying its own responsibilities and tasks in a future enlarged and deepened Europe. While the constitutional debate focuses on institutional reforms related to the voting rules, fundamental objectives of the EU and the delimitation of competences, the White Paper addresses policy management within the existing institutions.

In its consequences however the Commission advocates a clearer separation of executive and legislative functions. The legislator should concentrate his activities more on his core tasks to give guidance and general orientations of political nature. Hence the legislator should be relieved from details (CEC 2001, p. 68), which the Commission considers as mainly executive tasks. Also the Commission should have a stronger focus on its core task to initiate policy and to supervise implementation more effectively (CEC 2001, p. 12). The Commission wants to become a true executive similar to those in member states (CEC, 2001, p. 68). This may however also imply that many important decisions will no more be taken by the Council of Ministers and the European Parliament within the legislative process, but rather by other players in processes managed by the Commission.

The White Paper on Governance intends to overcome the legitimation crisis, basically by mechanisms strengthening the participation and active (self – regulatory) role of associations, regions and municipalities in the design and especially the implementation of EU policies. The mobilisation of civil society, which according to a definition shared by the Commission consists of organised interests, is intended to overcome the legitimation deficit of EU policies. Policy making should change from a hierarchical top-down approach towards networking and mechanisms of flexible feed back (CEC 2001a, p. 18). **The White Paper approach is that public policy goals shall be implemented by**

mobilising stronger responsibility and ownership of the business sector and other organised interests and hence by relieving both the European legislator and the Commission. The Commission has formulated a number of principles (openness, participation, responsibility, effectivity and coherence) to guide cooperation between the institutions and with associations (socalled civil society).

The White paper outlines a number of very useful ideas and proposals to improve practices for consultation, public participation and transparency. The spirit of those ideas must be welcomed. But there is an other set of ideas, which need closer scrutiny, especially those associated with the concept of better regulation.

In June 2002 the Commission has published an other communication, explaining some of the activities aiming at "simplifying and improving the regulatory environment" (CEC 2002a)). The Commission states, that the aim of simplification is "not to deregulate the Community or limit its scope for action". The aim is according to the Commission to make regulation less complicated, easier to understand, more implementation friendly, increase legal certainty and to save time and to reduce costs.

The action programme suggested by the Commission contains in total 17 actions. Many of them are useful and need not deeper discussion, such as minimum standards for consultation, the introduction of review clauses in legislation or a prioritisation in infringement procedures against member states. Some others seem to be unrealistic such as an impact assessment of substantial amendments to Commission proposals formulated by Council and Parliament. More important are those, which might restructure the roles of Parliament, Council, Business Associations and the Commission respectively in the policy making process:

Limiting directives to the essential aspects of legislation (CEC 2002a, p. 12): The Commission wants to come back to the original idea of a directive, which sets broad objectives and leaves the detail to "executive processes". This idea is linked to reflections of the Commission on abolishing or at least reforming the socalled "Comitology" [1]procedures, which give member states a direct decision-making power on implementation proposals by the Commission. The Commission intends to assume "full responsibility for its executive function" (CEC, 2002b, p. 4) and offers the legislators instead an indirect "supervision" role. Another option to take over executive functions is the creation of regulatory agencies (CEC, 2002b, p. 5). An internal Commission network will be set up as a watchdog to control, if new directives really are "proportional" in this sense. This proposal is relieving the

[1] Comitology is a word for the different committees, which assist and control the Commission in the implementation of EU directives. The committees consists of delegates from member states and Commission officials. There are three types of Committees, with different internal decision-making rules: Advisory, management and regulatory committees. The word "comitology" stands for the complexity of the different decision-making rules, each finding a different balance between member states and the Commission.

legislator from decisions on complex details, but it also delegating key decisions with potential political outreach to those players, who take over executive functions.

A framework for coregulation (Com (2002)278, p. 13): The Commission wants to use coregulation more systematically. The idea of coregulation is to combine legislation with self-regulation. While legislation is supposed to define scope , general objectives and deadlines, it is up to the business-sector to take responsibility on how to achieve the targets. This approach is supposed to combine the strengths of legislation, e.g. democratic accountability and legal certainty, with the strengths of self-regulation, e.g. consensus, acceptance by the business-sector, flexibility etc. Examples for coregulation are the use of the socalled new approach of harmonisation and negotiated agreements.

Simplifying and reducing the volume of Community Legislation ((Com (2002)278, p. 14): The Commission intends to define a programme, which aims considerably reducing the volume of EU legislation. The aim formulated in an earlier Communication (CEC, 2001b), based upon the "Mandelkern- Report" , aims at reducing the volume of legislative text by 25% by January 2005. The Commission suggests to create ad-hoc bodies, which screen existing legislation and make proposals for simplification.

The Commission plans to further elaborate those actions in the course of the year 2002 and 2003. In July 2002 the Commission already published a communication on how to use voluntary agreements within the above mentioned framework. The more specific proposals will be discussed below.

3. Assessement of the White Paper Approach

Any assessement of the White Paper approach depends upon the normative and analytical perspective. One may differentiate between a general perspective of European integration and a more sectoral environmental policy point of view. Both come to different assessments. Scholars of European Integration focus upon the question of democratic legitimation. Scholars of environmental policy making tend to concentrate upon environmental policy effectivity. Both aspects are naturally interlinked and shall be reviewed below.

3.1 Insufficient to overcome the legitimation crisis

Any policy should be effective to solve a given problem and democratically legitimated by respective procedures, giving citizens a chance to influence a policy.

Many scholars of EU integration argue, that the White paper falls short of both requirements. While the proposals of the White Paper have a focus on effectivity and efficiency (Kohler-Koch, 2001, p. 5) especially as regards more technical issues of regulation, it does not really address the big challenges (Scharpf, 2001, p. 3). The White Paper does little to address the challenges of enlargement or the still

prevailing asymmetry between market integration and positive integration (ibid.). Among such key issues feature the lack of a coordinated macro-economic policy or of a tax policy on capital income or environmental policy integration (for the shortcomings of the latter: SRU, 2002). Much more fundamental changes would be needed to overcome those deficits than the suggested White Paper Reforms.

The White Paper uses the word civil society, but in practise means the mobilisation of organised interests, to overcome the democratic deficit (input legitimation) (see the critics by Magnette 2001, Kohler-Koch 2001; , Eriksen 2001, Amstrong 2001). A stronger involvement of organised interests however does not necessarily imply stronger popular support. Organised interests at EU level form a "policy elite" (Kohler-Koch 2001, p. 5). It is far from evident, that they are able to effectively aggregate the will and the very divergent interests of their members (Eichener 2000; pp 254ff; Joerges, 2001, p. 18). Membership influence is filtered by the multi-level nature of such organisations. KOHLER-KOCH (2001, p. 9) even criticises the ideological and harmonistic use of the concept of civil society in the White Paper. Civil society gathers many divergent interests and those most strongly voiced in Brussels are not necessarily identical to those expressed nationally or regionally.

The White Paper does not systematically address the question, how the Commission will make use of the consultations and more transparent policy processes. Key factors for the policy proposals are which organisations the Commission considers as representative, how it strikes the balance between different and contradictory interests and positions and which ones find strongest attention by the Commission (ibid.). It is evident, that the Commission as the key player maintains full discretion on how to give weight to the different stakeholder inputs. While potentially weakening other channels of legitimation (Parliament and Member States) the White Paper gives the wrong impression, that the Commission would be the "lonely hero" cooperating with civil society. SCHARPF (2001, p. 7) even reproaches the Commission of "enlightened dictatorship": the Commission listens carefully to the arguments put forward by associations and then makes up its mind for its policy proposals. The role of the Commission as process manager and central filter for the relevant and less relevant interests and arguments is to be reinforced by many of the White Paper proposals. Such a Commission centered perspective might even be contraproductive as regards popular support for EU Policies (see also: Möllers 2001, p. 5). Principles like openness and participation sound quite differently in the light of such a criticism.

Despite of some proposals, like the use of online communication, the White Paper fails to address the question how to organise not many technical but political debates involving a European public. The key issue of democracy in Europe, the link between the European institutions and a European public and as well as a European wide political debate, is not really addressed in the White Paper (Möllers, 2001, p. 5). Some scholars therefore wonder, why those players, who might be the first to be able to

organise such debates, the political parties, are not systematically discussed and promoted in the White Paper (Steinberg 2001, p. 2).

The White Paper also underestimates the key role of Member States as source of legitimation. Member States may anticipate difficulties of acceptance within their constituency (Kohler-Koch, 2001, p. 6, Scharpf 2001, p. 5).

The legitimation crisis of the EU basically results from the fact, that within the EU citizens cannot make real choices. There is no one, who can be made responsible for wrong orientations and who could be sanctioned by citizens (Amstrong 2001, p.1). Policies are the result of technocratic decisions by elitist actors. This remains unchanged by the Commission proposals.

Most scholars therefore conclude, that the real hidden agenda of the Commission proposals is, to regain lost ground (Héritier 2001, Wincott 2001, Scharpf 2001, Kohler-Koch 2001). The introduction of the co-decision procedure has strengthened the role of the European Parliament and the Council at the expense of the Commission. Many institutional proposals (e.g. reform of Comitology, framework directives, threat to withdraw commission proposals, stronger role of associations in policy making etc) will effectively reinforce the key role of the Commission at the expense of the other institutional players. While claiming, that the Commission does not intend to reform the "methode communitaire", its proposals would considerably change the present institutional power relationships between Council, Parliament and Commission. Strengthening a supranational player, who frequently has vested regulatory interests, may contribute to better regulatory policies (so for instance: Eichener 2000), but will not necessarily overcome the democratic deficit.

While many scholars agree however on their critical analysis of the White Paper, they suggest different alternative paths. As alternatives to the networking approach of the Commission one can diffentiate between a more intergovernmental approach (eg. Scharpf 1999) and a more federalist approach, which identifies opportunities for a gradual development towards a European civil society with a European public debate, political culture and hence a democratic perspective (Habermas 2001).

The intergovernmentalists argue, that the nation remains for the foreseeable future the entity, where solidarity, redistributive policy, public political debate and sufficiently strong collective identity are established, which are a precondition for any policy which would require sacrifices from some parts of society in favour of others. Such conditions can not be easily established at EU level. The national state therefore remains the key actor who can manage certain types of policies, especially those with redistributive effects (Scharpf 2001, 1999). Direct democratic legitimation of EU institutions, without national intermediaries, will not work therefore. As a consequence the "pessimists" advocate strategies for further integration which rely on the key role of member states. The "open method of coordination" as established in the Lisbon process, where member states agree upon some strategic targets but leave the means to the national levels belongs to the favoured mechanisms for less integrated policy areas. Other proposals take into account of the different levels of economic development and productivity,

such as the idea of "two level standards" - a higher level for more advanced and a lower for less advanced countries or cooperation solutions between like-minded countries (opt-out rules, variable geometry, flexible coordination) (also: Holzinger/Knill 2001, S. 1005). Such flexible approaches increase the problem solving capacity, while relying on member states as the most important source of legitimation.

The federalists perceive already now embryonic elements of European media projects and a European public, thus of essential preconditions of European democracy. Summits receive media attention everywhere in Europe and hence initiate debates on similar issues throughout Europe. European integration is considered as a collective choice, whereas democratic institutions, a European public and a European communication culture can evolve in parallel (Habermas 2001; also: Töller 2002, p. 185ff). The optimists warn against the self-fulfilling prophecy of the pessimists. The European Parliament (Kaufmann, 2001) develops its critics on the White Paper from this vision of a strengthened democratic legitimation by a representative democracy. Therefore the Parliament strongly criticises the Commissions proposals, where they weaken the role of the European Parliament.

A more intermediary point of view is, that some issues may allow for a more integrationist, supranational path others not (Kohler-Koch 2001, S. 13). In any case there is little doubt, that the visionary position of the federalists is not suitable to guide institutional design for the near future but that any institutional design should be open for a visionary perspective on democratic integration.

The message resulting from this debate is, that weakening the two players which directly or indirectly can claim to represent a democratic constituency and which can be made responsible by general elections, the European Parliament and national governments, risks to backfire. The more EU policy making becomes a matter of a supranational EU policy making community the less citizens may identify with this community and the more vulnerable it might become to all types of ant-EU populism. Sometimes even technical details (such as the minimum size for a tradable apple) become an issue for such a populism.

3.2 The environmental dimension of the White Paper

From an environmental policy point of view one has first to identify those problems, which are not sufficiently addressed by the present system of detailed regulation. One has also to identify those issues, which function satisfactorily and which should not be changed. As a second step one can assess the experiences, which have been made by new governance approaches, such as coregulation, voluntary agreements and devolution. On this basis one can formulate a number of key conditions for effective and environmentally accountable governance. Those conditions finally may be used to assess specific proposals of the Commission to be developed in the course of the next future.

3.2.1 The need for new governance models from an environmental policy perspective

There is widespread agreement on three key shortcomings of EU environmental policies, which justify further reflection on further instutional innovation:

a. Environmental legislation contributed to reductions of some pollutants, but failed to solve a number of environmental problems (see: EEA 2001; SRU 2002). A key issue is, that harmful sectoral market or policy trends could not be changed due to the sofar relatively unsuccessful steps towards environmental policy integration (ibid.). Environmental policy integration is also a governance issue, aiming at a better coordination and coherence between sectoral policy communities.

b. Closely related to the poor record on environmental policy integration are the deficits to manage complexity. The structure of environmental problems has changed from pollution by installations towards pollution by diffuse sources. Farming practices, mobility trends or consumtion patterns (including products and chemical substances) are drivers of many of the socalled "persistent problems"(SRU 2002). The challenge can be illustrated by the problems of controlling ten thousands of chemicals or an equal number of different products, which have potentially negative effects. The multitude of sources, the different environmental problems they may cause, the diversity of local situations as well the substantially higher legitimation needs of a more precautionary and comprehensive (compared to a danger averting) policy approach are a challenge both to the instrumental choice and to the governance mode. It is evident that a single legal text cannot ensure the design of environmentally friendly products. Many of the specifics must be delegated. It is also easier to legitimate a policy which prevents imminent harm than a policy which would improve quality of life or reduce general pressures on the environment. The policy approach, which was successful for installations or cars, the setting of emission limit values on the basis of knowledge on Best Available Techniques, does not work properly in such cases (Demmke/Unfried 2001,87; Toeller 2002; see also: European Commission 2001c). As regards instrumental choice more generic instruments are required (such as management systems or taxation of inputs). As regards governance modes either the mobilisation of new knowledge and sources of legitimation is needed or an approach, which allows prioritisation.

c. The shortcomings of implementation belong to the most challenging problems of environmental legislation. Implementation deficits can be less strongly felt in the case of internal market linked product standards, than in the field of monitoring and reporting requirements, procedural law and programming (see: Demmke/Unfried 2001, p 112). Deadlines for implementation are frequently exceeded. Implementation deficits derive from the multi-level structure of the EU, where the transposition and implementation of European legislation is under the control of member states or regions (Lübbe-Wolff 1996, p. 1). . The European Commission as guardian of the Treaty only has indirect possibilities to ensure effective implementation, by monitoring or by reacting to complaints. The legal way of suing non-complying member states may be very effective, but it is a

cumbersome multi-stage process, which only reaps fruits after years. Presently the Commission is still suing member states because of directives, which have been decided in the 70ties. The compliance problems of EU legislation raise the question, if there are not better mechanisms, next to suing non-complying countries (see: Commission of the European Communities 1996).

The White paper contributes little to the first deficit. Some ideas, like the target of internal cohesion and the reform of the General Affairs council might be helpful to promote environmental policy integration. However the governance debate launched by the White Paper has little explicit reference to the debate on environmental policy integration, which lost momentum since the Spanish presidency early 2002.

The complexity and enforcement problems may be better linked to the governance agenda. Devolution, coregulation, self-regulation or the establishment of regulatory agencies might all be potentially suitable approaches, to manage complexity. The enforcement problem is also linked to some of the governance proposals (see: Demmke/Unfried 2001): More indicative legislation may give Member States more scope for implementation. Furthermore networking, benchmarking and calibration during the early phases of implementation may also be helpful for better enforcement. Finally, by agreements between Commission and stakeholders or the regions , or by the establishment of regulatory agencies, the Commission may get a more direct control about implementation, not being dependent on the acts of different autonomous intermediate players. If and under which conditions those hopes materialise, need to be analysed.

3.2.2 Strengths of the present system of environmental policy making

In any case despite of the above mentioned shortcomings and challenges (which besides are nothing particular for the EU level), one has to acknowledge, that EU environmental policies might also loose something, if changes would be too fundamental.

Generally European environmental policies must be considered a success story of international cooperation (see for a literature review: Hey, 1998, p. 257ff; also more recently: Eichener 2000, more critical Knill 2002, Demmke/Unfried 2001). Policy analysts find considerable variation in the quality of the individual pieces of environmental legislation. Nevertheless in terms of quantity and of quality very often a level of protection could be achieved, which was closer to the pioneering countries than to the laggards. Environmental policies could successfully avoid the "joint policy making trap", the policy stalemate caused by a few national veto players. European environmental legislation has adopted an eclectical patchwork (see: Héritier, Eichener 2000) of regulatory approaches. The instrumental mix reaches from procedural requirements aiming at strengthening decentralised learning processes (see: Heinelt et. al. 2000) over limit values, thresholds, targets and controls centrally

establishing a certain minimum level of protection (overview over EU environmental legislation: Krämer 1999).

The available literature identifies some of the institutional specifics of the European Institutional System as key factors for this relative success story of international cooperation. Most are linked to the existing system of environmental policy making, only a few have a certain link to the "new governance" models (for a systematic overview of those factors: Eichener 2000).

The Codecision Procedure with the European Parliament, qualified majority in the Council and the key role of the European Commission as "process manager" in the legislative process (initiation monopoly for proposals; right to withdraw or modify proposals through the process, broker between the Council and the Parliament) generally contribute to results, which are higher than a "lowest common denominator" and even higher than what could be expected from a winning coalition of a group of member states.

The institutional system of the EU and the potential constellations of interests and actors are different from case to case, so that generalisations are difficult. However there are good arguments to believe, that Commission officials have a certain preference for innovative, welfare increasing, regulatory solutions, since welfare and efficiency are key issues for the legitimation of the Commission (Jachtenfuchs 1996). Commission officials therefore are keen to take innovative national solutions as model for their European policy proposals (Héritier et.al. 1994 , Peters 1994). Therefore the Commissions right to initiate policies is an institutional key factor for environmental policy innovation (see also: Andersen/Liefferink 1997).

The European Parliament, as the other supranational player, is not by definition a green player, but it is frequently helpful. The European Parliament often links green issues with institutional battles over its influence and the dynamics of European integration. Environmental policies often need a stronger European approach and hence are especially suitable for such types of issue linkages. Furthermore many Members of Parliament, across all parties, are relatively distant from their respective constituencies, from national governments and are free to be responsive to environmentalists arguments. Coalition building within the Parliament is more variable and less predictable than in national Parliaments, where normally the government majority supports the governments proposals. Such a "government majority" and hence the voting discipline associated with this majority does not exist in the present EU system. The present Parliament was frequently able to form a "green majority" of social democrats, greens, liberals and some conservatives, which was sufficiently strong to negotiate for concessions by the Council of Ministers during conciliation talks. Variable environmental coalitions therefore often have good success chances in the European Parliament (for this more optimistic assessment: Eichener 2000,p. 192f; Hey 1998;KRAAK et. al. 2001). The cessation target for the release hazardous into waters, a wider scope in the SEA directive, binding EURO IV norms for cars by 2005, emission control standards for existing large combustion plants,

binding medium term targets in different clean air directives substances were some of the green concessions the European Parliament won from the Council, where it sometimes went beyond a Commission proposal. Frequently the Parliament supported stronger monitoring, stricter deadlines and better requirements for public participation. One may also find examples, where other majorities were formed, but in terms of quality and quantity those are less relevant than the positive examples.

The formal legislative decision-making process therefore offers multiple opportunities for legislation aiming at a high level of protection. Environmental legislation also frequently has been a direct or indirect spillover effect from internal market objectives, either to harmonise different product requirements which would cause barriers to trade or to harmonise process requirements which indirectly could distort terms of competition.

Also the assessment of the present system of Comitology is often positive (see: Töller 2002, Eichener 2000). The different committees consisting of representatives from member states assist the Commission in the implementation of legislation, the specification of general requirements or the adjustment of technical annexes to the state of art. Many of them have developed a problemsolving, cooperative and deliberative culture focussing on finding consensus, rather than defending national interest only. This is the case, especially if cooperation is long-term cooperation, a group formation process takes place and if the type of issues allows for relative autonomy from a national political mandate .Such conditions can be found frequently but not always (see for a critical assessment: Töller 2002, pp51ff, also very differentiated on actual performance: p523ff). The present system of Comitology might need stronger control by the European Parliament, which only has take-back opportunities with high hurdles, but it considerably increases flexibility, national feedback and is helpful to specify general legislative requirements (ibid.). TOELLER (2002, p. 526) however emphasises, that Comitology cannot overcome deficits and shortcomings of the legislative programme, which is key for the proper functioning of the committees. Already now the Commission is the key player in the Comitology system. The Commission proposals normally find support by member states. The added value of a radical reform of the Comitology system for the environment and for democratic accountability therefore remains to be proven.

Other factors for a high level of protection are rather linked to some institutional changes, which might associated with the governance agenda of the Commission. Often the Commission could only mobilise support from member states by a strategy, which only step by step was specifying targets and obligations. Such a process-orientation offers support for a general policy orientation under a "veil of ignorance" about the full cost and benefits of the final shape of the policy. Further commitments will only be required in later stages and by specifying measures. Such a process-oriented strategy will allow gradual support for a policy, which might not be acceptable, if proposed as a whole at one moment (Eichener 2000, p. 309ff,). The Water Framework Directive, adopted in 2000, is a case in point of such a process oriented strategy, which leaves many decisions to later stages and also other

institutions, arenas and players (Hey 2001). The concept of "framework" directive is not new in the context of environmental legislation. Framework Directives were frequently specified by daughter directives and hence function under the "legalistic" approach. This should be differentiated from the White Paper ideas, to relieve the institutions from legislative work and from consolidating existing legislation. The White Paper advocates different forms of devolution and factual relief. It must be emphasised, that for environmental policies the distinction between political and technical issues is not very simple. The choice of a technique as "best available", may be controversial, may have ramifications on the costs of a certain sector and often is based upon value jugdements. Under conditions of ignorance and uncertainty any assessment of risk contains a jugdement. Therefore the link between the technical levels and the political ones needs more careful design than in other policy fields.

From an environmental point of view therefore it would be risky to generally substitute legislation by "soft law" or by shifting key decisions from the formal political agenda to other fora.

3.2.3 Assessment of the performance of the new governance models already in practice

Since the early 90ties the European Commission is already experimenting with new governance models, which rely on stronger involvement of associations throughout the policy cycle and the wider use of self-regulation and reflexive law) (see: Pallemaerts 1999, Knill/Lenschow 2000 a and b; Demmke/Unfried 2001; Hey 2000 and 2001; Glasbergen 1998; Golub 1998). The following innovations can be observed:

- Associations and experts are systematically incorporated in the early phases of policy design and also in the implementation processes. The institutional design reaches from sectoral ad-hoc committees, over systematic consultation to consensual reports in pluralistic committees (see: Wurzel 2002 on the Auto-Oil Programme; Hey 2000 on clean air, IPPC and chemicals policy, Toeller 2002 on the EMAS committee).
- The Commission has been experimenting with voluntary or negotiated agreements. The best known example is the agreement with the car manufacturer on the CO2-reduction of cars from 1998 (a critical analysis: Keay-Bright 2000). There are also few other voluntary commitments or negotiated agreements (WURZEL/Brückner et. al. 2001).
- First experience with coregulation, the combination of general requirements and targets defined by a legislative act and self-regulation by industry led bodies could be made with the implementation of the packaging directive (SRU 2002, p. 200ff, Danish Environmental Protection Agency 2002). Further ideas to use the socalled new

harmonisation approach for environmental policy objectives have been developed in the the Green Paper on Integrated Product Policy (European Commission 2001c).

- There are many framework directives in place which apply a myriad of instruments and combine a legislative programme, with networking on different issues and levels (see: IPPC-directive, Waterframework Directive, Habitat-Directive, Directive on Ambient Air Quality).

Those experiments with environmental governance rely on network building and horizontal cooperation between public authorities and associations (Héritier 2002). Normally they do not substitute the legislative process, but they combine it with other modes relying more on consensus mobilisation, deliberation and arguing (Prittwitz 1996) and on functional rather than territorial representation of interests. They combine a publicly accountable legislative process with processes which are less visible in technical committees.

It would be premature to assess those innovations finally. There is little empirical literature available (see for instance: Héritier 2002, Knill/Lenschowl 2000b; Demmke/Unfried 2001 on the Water Framework Directive; Heinelt et. al. 2000 on EMAS and EIA).

Theoretically new forms of governance are associated with the hope, that by earlier involvement of the target groups of norms in early phases of the policy cycle, resistance in later phases can be anticipated and reduced and policy design can become more implementation friendly. Reflexive law relies on learning processes, on the mobilisation of citizens and on providing more autonomy to member states and authorities (see: Heinelt et. al. 2000; Knill/Lenschow 2000b, p. 5). Furthermore more and better knowledge can created by open and information generation policy processes. New governance models promise to increase the "political and institutional capacity" of environmental policy making (Héritier 2002).

Recently some doubts have been raised, if those theoretical hopes materialise in practice everywhere and if the expected benefits do not have a certain price:

A key criticism is, that the invitation to vested interests to take responsibility in different phases of the policy process, also offers them multiple veto points. Target setting hence may be less ambitious than by a "political process". This can be explained by the different constellations of actors in the two alternative settings. During the process of making a directive, environmentally oriented players in the Commission, Member States and the Parliament have key positions, process leadership and decision-making power, even if they are subject to lobbying and pressures from other departments and industry. In a constellation, where a business sector, offering little business is negotiating with the Commission and the Commission may be split between a pro business and a pro environment Commissioner, the Commission will not be able to negotiate equivalent levels of ambition. An example is the weakening

of the CO2- reduction target for cars during the negotiations with the car manufacturers on the agreement with the Commission (Keay-Bright 2000). Member States and the Commission originally wanted to achieve average fuel use of new cars of 5 liters and they got 6l/100km. The negotiation power of the Commission was weak, because it had an instrumental bias for an agreement and no serious proposal for a directive in the drawers. It is a natural interest and policy of industry federations, to maximise discretion and to minimise binding requirements, even if individual companies may have a strong environmental record. This can be derived from the analysis of many business policy papers.

Also consensus seeking processes during implementation may reduce legal certainty (Héritier 2002; Knill/Lenschow 2000a and b), since outcomes may become less predictable. There is also some evidence, that devolution to technical, multistakeholder or business-led committees may cause considerable difficulties, if this is result of a lack of agreement at the legislative level, if political conflicts are shifted to fora, which are not designed to solve such conflicts (e.g. IPPC-Directive , see: Hey 2000, p. 92 or the Packaging Directive, see: COMMISSION OF THE EUROPEAN COMMUNITIES, DG ENV.A2 – SUSTAINABLE RESOURCES,2002). A recent example is the Water Framework Directive, which has been criticised because of its ambiguities and deficiencies as a legal text (Demmke/Unfried 2001). The Water Framework Directive is a work programme with general and ambiguous objectives, to be operationalised in later stages. Key decisions on what exactly is a "good ecological state" and where the generous derogations apply, will be made on a technical level. The outcomes of this devolution process still need to be assessed. The argument that this type of devolution is necessary to allow adaptation to rapid technological change is not fully convincing (Eichener 2000, p. 359ff). Also traditional regulation has a considerable potential to adjust technical standards to technical progress. Emission control for cars has been amended 4 times during the 90ties. From a legalistic perspective, law itself, should not be subject to bargaining and compromise finding, but only the policy process leading to a peace of legislation (Lübbe-Wolff 1996 , p. 5).

While "devolution" and differentiated decisionmaking processes generally improve the problem solving capacity of the EU, this may take place at the expense of political control by member states and the European Parliament (Gehring 2000, also¨Eichener, 2000, p. 253f, Toeller 2002,p 168). The question is, if and how the outcomes of committees and networks remain within the range of options, acceptable to the legislator. Do effective mechanisms to monitor and check the processes exist, which prevent technical communities to get decoupled from the political will? Are the mandating framework directives formulated sufficiently precisely to check deviation from a mandate? Obviously there is a certain trade-off between effective mobilisation of expertise, which tremendously increases the capacity to generate and use information and democratic control. Generally the policy level lacks the knowledge to effectively assess and monitor processes at expert network level. The challenge is, to prevent decoupling of those two processes.

Also the stronger incorporation of associations in the policy process has a certain tradition in the environmental policy field. In most cases this incorporation however does not substitute the traditional legislative process, but rather enrich and complement it, both in the preparatory and implementation phases. In the past the Commission has rarely opted for coregulation type of solutions, such as the "new approach", the devolution of tasks to European standardisation organisations in the field of environmental policy, because it had the justified fear that they would deliver inadequate levels of protection and overburden their self-regulatory capacity (Töller 2002, p. 524; see also critically: SRU 2002, p. 201ff). Therefore in the past a committee mechanism has been chosen, which allowed stronger participation of national administrations. It needs to be shown, why those fears expressed in the past now have become obsolete (critical: SRU, 2002, p. 202f).

Last not least the resources needed for the new types of governance are generally underestimated. The different technical processes need considerable coordination and technical support, imply travel to Brussels and coordination at home and need considerable time to find consensus. Those additional demands run counter to the budget constraints and even cuts, environmental ministries are facing nationally. Without such multilevel networking the Commission would be deprived of its most important source of information. VOELZKOW (2002) has found, that participation of experts from the German environmental protection agency in the European Standardisation process is mainly voluntary activity after regular working hours. Industry associations claim, that they have invested more than 1 Million Euro for the input, of the work on one sectoral BREF in the framework of the IPPC directive. Representatives of non-commercial interests may find some public support, to participate in some of the technical fora – but due to resource constraints they only can expect to be influential in coalitions with representatives from public authorities or some industries. In this sense, the assessment, that the EU is already moving towards " associative democracy" (see Eichener 2000) by supporting environmental organisations to participate, considerably underestimates the needed investments for "public pluralism" aiming at balanced representation and influence. Much depends on how the Commission helps and supports organisations of "diffuse" interests to counterbalance the influence of economic interests and to offer a fair platform by respective decision-making rules. Without an active organisation forming and supporting role of the Commission, the reliance on self-regulation might overburden the capacities of European level associations (Eichener 2000, p. 254ff.)In total one can express considerable doubt, if the proposals towards devolution of executive tasks will really save time and costs.

The analysis of the potential risks of new governance models does not prove, that they necessarily will fail to increase the problem-solving capacity or undermine democratic accountability, but it shows, that a crucial factor is the proper political design of those arrangements. The worst, which might happen, is that governance models evolve in an institutional vacuum, which does not take into account

of the above mentioned risks of policy delay, legal uncertainty, expertocratic decoupling, failure due to capacity overload or distortions by asymmetric influence.

3.2.4 Preconditions for the Design of governance regimes from an environmental perspective

As shown above, from an environmental perspective governance has to satisfy the triple challenge of environmental policy integration, of managing complexity and of better enforcement. The governance proposals of the Commission mainly may address the latter two problems.

From the analysis of the successful record of EU environmental policies it becomes evident, that next to the Commission the key role of the European Parliament should not be weakened by the devolution of technicalities with a strong political dimension. Careful attention should be given, that the self-regulatory and delegated executive activities do not develop an own dynamic which gets decoupled from the political will of the legislator or which creates facts, where the political levels have little alternative than to follow. Therefore new governance models should not be considered as an alternative to the traditional legislative process, but as a complementary and especially a subordinated process. The supremacy of democratically legitimated environmental policy should be generally accepted. The key players providing democratic legitimation, the European Parliament and the Council, should not be weakened by new governance models.

If due to the complexity of the issue devolution is considered to be necessary, the legislation should take utmost care of the proper institutional design for the delegated activities.

Objectives and quantitative targets as well as the mandate for technical work should be defined in an unambiguous way, as precisely as possible.

Mechanisms of "public pluralism" should be established, which ensure, that by clear decision-making rules, rights and obligations a fair balance between different interests and expert paradigms will be created. This should be neither be left to the full discretion of the Commission nor to technical bodies, like the normalisation institutions.

Furthermore the hurdles to intervene into the technical fora, for instance by safeguard clauses, complaints procedures and possibilities to bring issues back to the political levels, should be sufficiently low – in order to establish a credible threat of the shadow of democracy to technical committees. All this requires a communication strategy, which easily allows the identification the political core (the value judgements) in technical fora. This can be achieved by actors having a watchdog function, by independent assessment (competing expert networks), by monitoring and assessment.

Institutional design, which creates the conditions for effective public-private self-regulation under selective observation of Parliament and Council, would considerably reduce the effectivity –

democracy trade-off of new governance models. Under the conditions, that sufficient resources will be mobilised, they may have the chance to increase the problem-solving capacity of the EU, as regards the management of complexity and better implementation by networking. .

3.3 Assessment of specific proposals

(this chapter is work in progress, since many specific proposals have not been published yet).

3.3.1 Voluntary Agreements

July 17th 2002, the European Commission has published a communication on the use of environmental agreements at Community level (CEC 2002c). The Commission generally intends to make use of those agreements more intensively, but only as one policy option.

The Commission identifies 3 types of voluntary agreements, two are self-regulatory, for one a new framework is established. Environmental agreements may be established upon the initative of a business sector, after the Commission has expressed intentions to regulate or as part of a Commission proposal. The first two types are considered to be self-regulatory – the latter is based upon the coregulation approach. Spontaneous initiatives need little formal reaction by the Commission. The second model follows current practice in the EU: A business sector offers an environmental agreement as alternative to a legislative measure. By a gentlements agreement, the sector promises to achieve certain objectives, whereas the Commission promises not to propose legislation in this field. This deal is codified by an exchange of letters. In its Communication the Commission emphasises, that "no acknowledgement of an operators engagement by means of an exchange of letters can ever constitute any kind of engagement from the Commission´s side" (European Commission 2002d, p. 7). This statement paradoxically negates that a gentlemen's agreement normally is reciprocal, where each side gives something in exchange for what it wants to get. The Commission will in future ensure more public accountability and transparency than in the past by communicating its intention and assessment of the planned agreement to Council and Parliament, considering their comments, publishing the agreement in the official journal and the monitoring results on its website. Non – compliance may be sanctioned by a proposal for new legislation.

Innovative is the idea of an embedded agreement. This idea is a hybrid between environmental legislation and self-regulation. The definition of the scope, the objectives, deadlines, monitoring mechanisms and potential sanctions will take place by a legislative process, fully involving the Parliament and the Council as colegislators. This ensures, that the primacy of the political levels is maintained – whereas the implementation will be left over to the business sector.

The Commission makes clear, that it wants to maintain full discretion on which instrument it chooses. The Commission has identified PVC, Integrated Product Policy, Waste Management and CO2-Emissions from light commercial vehicles as areas as candidates for the new coregulation strategy.

The concepts for both the gentlemen agreement type and the coregulation type of agreement is a considerable improvement over current practice of voluntary agreements. Both are more accountable and allow for early comments by those actors, which are traditionally excluded from the process of forming environmental agreements, namely environmental organisations. The coregulation type of agreement may furthermore help, that the Commission is negotiating in the shadow of a decision by legislators. This may shift its bargaining power towards more ambitious levels compared to a situation, where Council and Parliament are excluded.

Car should be taken however, that the institutions do not "rubber stamp" informal agreements between industry and the Commission, which aim at low levels of ambition. The planned coregulation initiative on PVC might be a case in point …. (further research is necessary). ….. weiter Jörgens ….

Critique: PVC – proposals of PVC industry for agreement fall behind needs identified by green paper.

3.3.2 Reducing the Volume of Legislation the Mandelkern Report

Based upon the report of the MANDELKERN GROUP (2001) the Commission has published a communication on simplifying and improving the regulatory environment in December 2001 – which was further specified by the above mentenioned acion plan from June 2002. All documents insist that their target is not "deregulation", but "simplification". The key quantitative objective of the simplification exercise is the reduction of the volume of existing legislative texts by 25% (CEC 2001b:p. 5) by the year 2005, , which is a slightly less ambitious target than the 40% target of the MANDELKERN GROUP (2001, p. V) . The aim of this "simplification" programme is, "that regulation is only used when appropriate" and that "unnecessary burdens on businesses, citizens and public administrations" should be prevented (MANDELKERN GROUP; 2001, p. I). Rules hence should be made "more effective, less burdensome and easier to understand to comply with" (ibid., p.2). The simplification programme contains a systematic review of existing legislation, which should be promoted by heads of government and the hierarchy of the Commission and institutionalised by various mechanisms, in order to maintain momentum. It also contains a systematic control programme for any emerging legislation. As a key instrument the group suggests a regulatory impact assessment, which is supposed to be a systematic ex ante evaluation about the needs of and alternative options to, the side effects and the costs and benefits of new legislation. This idea has been meanwhile endorsed by the Commission (CEC 2002d).

The core idea is to promote systematically a search process in favour of alternatives to regulation. The MANDELKERN GROUP (2001, p. 13) acknowledges arguments, where there is little alternative to

the use of regulation, but the focus is, that wherever appropriate, the alternatives should be chosen. Self-regulation, contractual agreements, coregulation and more systematic delegation of details should be the preferred options (p. 15ff). Furthermore the group suggests "consolidation" of legal texts, in order to make them more userfriendly and to real "the (sometimes excessive) volume of regulation … and therefore the need to reduce or codify it" (ibid. p. 42). . The European Commission has with its communications (CEC 2001b, 2002b,c,d) endorsed central ideas of the MANDELKERN GROUP, which itself responds to key demands of the business sector.

The German advisory Council (EEAC?) expresses its concern that the suggested strategy has a clear bias against detailed regulation. A whole administrative and procedural machinery will be mobilised, to add additional hurdles and veto points against new regulation and to impose pressures upon existing one. This becomes most evident, if one sees the unsubstantiated use of the words "unnecessary" regulation. There is little evidence or illustration, what the MANDELKERN GROUP or the COMMISSION consider as "unnecessary". "Misuse of regulation is already perceived, it regulatory processes are excessively lengthy, have disproportionate drafting costs or take away responsibility from players.

Many of the suggestions of the GROUP, as regards the need for justification of the choice of instruments and a comprehensive analysis of costs and benefits is already current practice in Environmental Regulation, as can be seen from the extensive explanatory memoranda of new Commission proposals. From this procedural perspective there seems to be little potential to identify "unnessary" environmental legislation.

The focus of the COMMISSION and the MANDELKERN GROUP on volume is misleading. In its chapter on "Regulation and Deregulation" the German Advisory Council on the Environment (SRU 2002) has shown, that occasionally long and detailed legislation creates more legal certainty and hence reduces implementation costs. Conflicts about interpretation and hence delays often result from the use of generic, unprecise or even ambiguous legal terminology. Often the capacities of local authorities are overburdened, if they get too much discretion in the interpretation of vague terminology. Therefore sometimes it may be appropriate for a simplification strategy to include more and not less detail. A quantitative target to reduce volume of legislation hence is not an appropriate target. It is also doubtful, if such simplification exercises have a realistic potential to reduce costs of regulation, if they at the same time claim, not to reduce the level of protection. The MANDELKERN GROUP and the COMMISSION fail to indicate the order of magnitude of the cost reductions of more efficient legislation.

Economists have shown that the use of economic instruments (emission trading, taxes) may have comparative efficiency gains over legislation, if standards are applied in a uniform way (which is not always the case). If the main concern of the MANDELKERN GROUP would really be more efficient regulation, it would have been worthwhile to inquire into the potential of those instruments.

The proposals of the MANDELKERN GROUP however tend to shift responsibility (and also power) from the legislator to the sector, to be legislated. There is little reason to believe, that this shift of responsibility has no effect on the level of protection and the quality of public goods, to be delivered.

Within another normative context, several suggestions would merit support. RIA could become an important tool for better environmental policy integration, if its methodology would be targeted to a systematic assessment of the environmental consequences of a policy initiative and if environmental players would be enabled to comment. Such ideas for a strategic environmental assessment of policies emerged in the 90ties, but have been abandoned in the late 90ties. The Commission Communication lacks focus in this respect.

Also the consolidation of legislation is a strategy which might help to make legislation easier to handle and more transparent. For the national level, the German Advisory Council, for instance has advocated the idea of an "Environmental Code", Umweltgesetzbuch, which brings together and systematises the existing legislative patchwork. It would however be environmentally risky to start a consolidation exercise in a deregulatory political climate.

Literature

ANDERSEN M. S.,LIEFFERINK, D. (1997): European Environmental Policy. The Pioneers. – Manchester, New York:Manchester Universtiy Press. – 340 S.

ARMSTRONG, K. A. (2001): Civil Society and the White Paper – Bridging or Jumping the Gaps? – Jean Monnet Working Paper. - New York University School of Law, New York. – 11 S.

COMMISSION OF THE EUROEAN COMMUNITIES (1996) Communication on the Implementation of Environmental Legislation …..

COMMISSION OF THE EUROEAN COMMUNITIES (2001a): White Paper on Governance. Brussels.

COMMISSION OF THE EUROPEAN COMMUNITIES(2001b): Comunication from the Commission - Simplifying and improving the regulatory environment, Com(2001 726 final, from 5.12.2001,10 S.

COMMISSION OF THE EUROEAN COMMUNITIES (2001c): Green Paper on Integrated Product Policy. – Brussels. European Commission. – Com (2001 68 fin.

COMMISSION OF THE EUROPEAN COMMUNITIES (2002a): Communication from the Commission – Action plan "Simplifying and improving the regulatory environment". Com (2002) 278 from 5.6.2002, 19 S.

COMMISSION OF THE EUROPEAN COMMUNITIES(2002b): Communication from the Commission – European Governance: Better Lawmaking., Com(2002) 275 from 5.6.2002, 6 p..

COMMISSION OF THE EUROPEAN COMMUNITIES(2002c): Communication from the Commission – Environmental Agreements at Community Level, COM (2002) yyy final from 17.7.2002

COMMISSION OF THE EUROPEAN COMMUNITIES(2002d): Communication from the Commission on Impact Assessment, Com(2002) 276 final from 5.6.2002, 19 p.

COMMISSION OF THE EUROPEAN COMMUNITIES, DG ENV.A2 – SUSTAINABLE RESOURCES (2002): Working Document on the new Appraoch Elements of the Packaging and Packaging Waste Directive. – Committee for the Adpatation to Ceintific and Technical Progress of Directive 94/62 on Packaging and Packaging Waste -. Brussels, 21st January, 2002.

DANISH ENVIRONMENTAL PROTECTION AGENCY (2002): The New Approach in Setting Product Standards for Safety, Environmental Protection and Human Health. Environmental News No.66. – Kopenhagen. –158.S.

DEMMKE, Ch., UNFRIED, M. (2001): European Environmental Policy: The Administrative Challenge for the Member States. – Maastricht, The Netherlands. - European Institute of Public Administration. – 311 S.

EEA (2001): Environmental Signals 2001. EEA´s regular Indicator-based report. Copenhagen:EEA. – Environmental assessment report No.8. – 113 S.

EICHENER (2000):Das Entscheidungssystem der Europäischen Union. Instiutionelle Analyse und demokratietheoretische Bewertung. - Leske+Budrich., Opladen. – 393 S.

ERIKSEN, E. O. (2001): Governance or Democracy? The White Paper on European Governance. – Jean Monnet Working Paper. - New York University School of Law, New York. – 16 S.

GEHRING, Th (2000):Die Bedeutung spezialisierter Entscheidungsprozesse für die Problemlösungsfähigkeit der Europäischen Union. – in: Grande, E, Jachtenfuchs, M.: Wie problemlösungsfähig ist die EU? – Nomos Verlagsgesellschaft, Baden-Baden. - S. 77 - 112

GLASBERGEN, P (ed.) (1998): Cooperative Environmental Governance: Public Private Agreements as a Policy Strategy. – Kluwer, Dordrecht. - ….

GOLUB, J. (ed.) (1998) : Neu Instruments for Environmental Policy in the EU. Routledge, London and New York. – 270 p. ….

HABERMAS, J (2001): A Constitution for Europe? – New Left Review, September/October 2001. – S. 5 - 26

HEINELT , H., ATHANASSOPOULOU,E., GETIMIS,P. et al.(2000): Prozedurale Umweltpolitik der EU. Umweltverträlichkeitsprüfungen und Öko-Audits im Ländervergleich. –Opladen:Leske+Budrich. – 441 S.

HÈRITIER, A. (2001): The White Paper on European Governance: A Response to Shifting Weights in Interinstitutional Decision-Making. – Jean Monnet Working Paper. - New York University School of Law, New York. – 8 S.

HÈRITIER, A. (2002): New Modes of Governance in Europe: Policy-Making without Legislating? – Max-Planck-Projektgruppe Recht der Gemeinschaftsgüter, Bonn. – 23 S.

Héritier et.al (1994):

HEY, Ch. (1998): Nachhaltige Mobilität in Europa. Akteure, Institutionen und politische Strategien. - Westdeutscher Verlag, Wiesbaden. – 298 S.

HEY (2000): Zukunftsfähigkeit und Komplexität. Institutionelle Innovationen in der Europäischen Union. – in: Prittwitz, V.: Institutionelle Arrangements in der Umweltpolitik. Zukunftsfähigkeit durch innovative Verfahrenskombinationen? – Opladen, Leske + Budrich. – S. 85 –102.

HEY, Ch. (2001): From Result to Process-Orientation: the New Goveranance Approach of EU Environmental Policy. – elni Environmental Law Network International Review (2). – S. 28-32 .

HOLZINGER, H., KNILL, Ch. (2001): Institutionelle Entwicklungspfade im Europäischen Integrationsprozess: Eine konstruktive Kritik an Joschka Fischers Reformvorschlägen. – Zeitschrift für Politikwissenschaft (3). - S. 988-1010.

JACHTENFUCHS (1996):Regieren durch Überzeugen.Die europäische Union und der Treibhauseffekt. In: Jachtenfuchs, M.,Kohler-Koch, B (Hrsg.): Europäische Integration, UTB 1853. Opladen, Leske + Budrich. –S. 429 –454.

JOERGES, CH. (2001): “Ökonomisches Gesetz” – “Technische Realisation” – “Stunde der Exekutive”: Rechtshistorische Anmerkungen zum Weißbuch der Kommission. – Jean Monnet Working Paper. - New York University School of Law, New York. – 21 S.

KAUFMANN, S.-Y. (2001): Motion for a Resolution. - Report on the Commission White Paper on European governance (COM(2001) 428-C5-0454/2001-2001/2181(COS)), Committee on Constitutional Affairs. – 48 S.

Keah-BRIGHT, S. (2000): A critical analysis of the voluntary fuel economy agreement, established between the European Automobile Manufatureres and the European Commission, with regards for its capacity to protect the environment.-Brussels: EEB. – 73 S.

KNILL, CH. (2002): Europäische Umweltpolitik 1. Grundlagen und Entwicklungslinien. – Interdisziplinäres Fernstudium Umweltwissenschaften – inferum. – FernUniversität – Gesamthochschule in Hagen & Fraunhofer UMSICHT, Oberhausen. – 100 S.

KNILL, CH., LENSCHOW, A. (2000a): Neue Steuerungskonzepte in der europäischen Umweltpolitik: Institutionelle Arrangements für eine bessere Implementation? in Prittwitz, , V.: Institutionelle Arrangements in der Umweltpolitik. Zukunftsfähigkeit durch innovative Verfahrenskombinationen? – Opladen, Leske + Budrich. – S. 65 - 84.

KNILL, CH., LENSCHOW, A. (2000b): Implementing EU Environmental Policy – New Direction and old Problems. – Manchester University Press, Manchester and New York. – 35 S.

KOHLER-KOCH, B. (2001): The Commission White Paper and the Improvement of European Governance. – Jean Monnet Working Paper. - New York University School of Law, New York. – 13 S.

KRÄMER, L. (1999): Umweltrecht der EG.Textsammlung.-Baden-Baden:Nomos, xx p. …..

Lübbe-Wolff,G. (Hrsg.) (1996): Der Vollzug des europäischen Umweltrechts. – Erich Schmidt Verlag, Berlin. – 272 S.

MAGNETTE, P. (2001): European Governance and Civic Participation: Can the European Union be politicised? – Jean Monnet Working Paper. - New York University School of Law, New York. – 11 S.

MANDELKERN GROUP ON BETTER REGULATION(2001): Final Report; www.cabinet-office.gov.uk/regulation/ europe/Successes/mandelkern.htm

MÖLLERS, CH. (2001):Policy, Politics oder politische Theorie? – Jean Monnet Working Paper. - New York University School of Law, New York. – 8 S.

PALLEMAERTS, M (1999): The Decline of Law as an Instrument of Community Enviornmental Policy. Revue des Affaires Européennes, No 3 /4. – Gent. – S. 338 - 354

KRAAK, M., PEHLE, H., ZIMMERMANN-STEINHART, P.(2001): Umweltintegration in der Europäischen Union. – Baden-Baden:Nomos. – 258 S.

Peters, G.B (1994): Agenda-Setting in the Curopean Community. – Journal of Law and Economics. – S. 9 – 26.

SCHARPF, F. W. (2001): European Governance: Common Concerns vs. the Challenge of Diversity. – Jean Monnet Working Paper. - New York University School of Law, New York. – 12 S.

SCHARPF; F. (1999): Governing in Europe: Effective and Democratic. – Oxford University Press, New York. - 243 S.

SCHMITTER, PH. C. (2001): What is there to legitimize in the European Union … and how might this be accomplished? – Jean Monnet Working Paper. - New York University School of Law, New York. – 16 S.

SRU (2002): Umweltgutachten 2002. Für eine neue Vorreiterrolle. – Metzler-Poeschel, Stuttgart, 549 S.

STEINBERG, Ph. (2001): Governance and Parteien – Politisierung als Möglichkeit größerer Bürgerschaftlicher Identifikation – Ein Kommentar zum Weißbuch Europäisches Regieren. – Jean Monnet Working Paper. – New York University School of Law, New York. – 9 S.

TÖLLER; A. E. (2002): Komitologie – Theoretische Bedeutung und praktische Funktionsweise von Durchführungsausschüssen der Europäischen Union am Beispiel der Umweltpolitik. - Leske + Budrich, Opladen, Niederlande. – Hrsg. B. Blanke, R. Czada, H. Heinelt, A. Héritier, G. Lehmbruch, M. G. Schmidt. - 600 S.

VERSTRYNGE, J.-F. (2001) :Concluding Remarks. Environmental Governance Conference in Brussels on 3-4 December 2001:"The Commission's White Paper on Governance: What's in it for the Environment?". - http://europa.eu.int/comm/environment/governance/index_en.htm

VOELZKOW (2002): UBA/BMU Study on Standardisation to be published soon.

VON PRITTWITZ (1996): Verhandeln und Argumentieren. Dialog, Interessen und Macht in der Umweltpolitik. – Opladen, Leske + Budrich, ...

VON PRITTWITZ, V. (2000): Institutionelle Arrangements in der Umweltpolitik. – Leske + Budrich, Opladen/Niederlande. – 331 S.

WINCOTT, D. (2001): Looking Forward or Harking Back? The Commission and the Reform of Governance in the European Union. - Journal of Common Market Studies, December 2000. – Blackwell Publishers Ltd., Malden, USA. – S. 897-911.

WURZEL, R., BRÜCKNER, L et. al. (2001): Policy Learning and the Transfer of new Environmental Policy Instruments (NEPIs) in the European Union. – Research Council's Future Governance Programme (L216252013). – Paper for the Annual Meeting of the American Political Science Association, San Francisco, Aug.Sept. 2001. – 38 S.

WURZEL, R.K.W. (2002):Environmental policymaking in Britain, Germany and the European Union. – Manchester und New York, Großbritannien/USA: Manchester University Press. – 318 S.