



STATEMENT

November 2003

EUROPEAN GOVERNANCE FOR THE ENVIRONMENT

First EEAC Statement on Governance

The following EEAC councils have endorsed the statement (by 11 October 2003)

<i>Belgium</i>	Environmental and Nature Council of Flanders (MiNa-Raad)
<i>Finland</i>	Finnish Council for Natural Resources (FCNR)
<i>Germany</i>	Advisory Council on the Environment (SRU)
<i>Hungary</i>	National Council on the Environment (OKT)
<i>Netherlands</i>	Council for the Rural Area (RLG) Advisory Council for Research on Spatial Planning, Nature and Environment (RMNO) Wadden Sea Council (WSC)
<i>Portugal</i>	National Council on Environment and Sustainable Development (CNADS)
<i>Poland</i>	State Environmental Council of Poland (PROS)
<i>Slovenia</i>	Council for Environmental Protection (CEPRS)
<i>United Kingdom</i>	Royal Commission on Environmental Pollution (RCEP) Countryside Council for Wales (CCW) English Nature (EN) Scottish Natural Heritage (SNH)

I. Introduction

1. Governance has become a key word in recent debates on environmental policy. The common core of the governance debate in the public sector is the search for a new role of the state, the region and the European Union. Governance is about pursuing public goals in an international multi-level and multi-sector setting and in co-operation with a wide range of non-governmental actors.

This statement has its primary focus on the EU level, where among others in the view of enlargement, new approaches for European governance are being discussed, proposed and promoted. The reflections within the statement may inform national and other levels as well.

II. Key Message

2. In 2001 the European Commission launched a White Paper on European Governance. The White Paper and a number of follow-up communications and other policy processes have important consequences for environmental governance. The central theme of the governance debate at EU level is about relieving the legislator, streamlining and reducing the overall volume of legislation and about strengthening the participation and the responsibility of interest organisations.

3. While some of those processes are to be welcomed, EEAC cautions the EU and national governments against an imbalanced move towards devolution and deregulation in environmental policy. It calls for a differentiated, problem-based and solution-oriented choice of strategies and instruments. This involves maintaining existing capacities for direct regulation as well as developing additional capacities for strategic target-setting, economic regulation, and the coordination and monitoring of processes of decentralised implementation, co-regulation and self-regulation. In the current process of reforming European governance, the European Commission and Parliament as well as the leaders of the EU member states need to be careful not to inadvertently reduce their future capacities for effectively solving environmental problems in an integrated and multidisciplinary manner.

They should opt for a twofold strategy of:

- careful and problem-based experimentation with new modes of environmental governance
- while at the same time maintaining the traditional capacity for direct regulatory intervention.

The traditional capacity for direct regulation will continually be necessary in order to quickly react to or avoid problems of immediate danger. This capacity is also necessary as a fallback option in the case that other, more decentralised and flexible steering modes fail to produce the desired effects.

Ultimately, successful environmental governance depends on increasing, not shifting the political system's capacity for environmental protection, supported by a deepened public participation.

III. A Framework for Environmental Decision-Making

4. Effective environmental governance requires a differentiated decision-making process which takes into account differences in the type of environmental problem to be addressed as well as varying institutional framework conditions and actor constellations within the European multi-level system. Problems are not only environmental issues, but they reflect a complex social structure, including their visibility, their dynamics and the complexity of potential solutions. Based on these considerations EEAC proposes a heuristic framework that can help decision-makers to systematise available governance options and prospectively evaluate them with regard to their problem-solving potential (Figure 1).

Differentiated, Problem-Based and Solution-Oriented Strategies

5. Policy choices in the field of environmental protection have to be based on the structure of the particular problems to be solved. Environmental problems may reach from problems of imminent danger to persistent deterioration of the natural environment and, finally, to newly emerging challenges with largely unknown

Figure 1: A Framework for Environmental Decision-making

	<i>Problems of imminent danger</i>	<i>Persistent local problems</i>
<i>Mode of governance</i>	Direct Regulation	Target led instruments
<i>Actors</i>	Government	Government

Filter conditions that affect the choice of steering modes:

- Structure of target groups,
- Structure of sources of environmental degradation,
- Level of ambition,
- Political opportunity structures in the European multi-level system.
- Structure of ecosystems (natural conditions)

consequences. Over time, if uncertainty decreases and the weight of evidence increases, emerging problems may switch to problems that may require precautionary action. So the above suggested typology is a dynamic one. Therefore EEAC advises national and European policymakers to strive for a maximum of strategic capacity to cope with these different type of problems. This includes:

- applying new instruments for dealing with complexity and uncertainty
- preserving and reinforcing regulatory capacity to successfully tackle problems of imminent danger
- with regard to persistent environmental problems, it means strengthening the governments' strategic and scientific capacity to set adequate targets and effectively steer and monitor implementation.

Legitimation of Decisions

6. EEAC generally welcomes the Commission commitments towards structured participation of stakeholders and improved communication tools to "civil society" in its White Paper on European Governance.

EEAC appreciates the White Paper on European Governance as far as it develops a complementary perspective to strategies for improving intergovernmental cooperation (e.g. Open Method of Coordination, Burden Sharing, Closer Cooperation) and for strengthening the codecision-powers of the European Parliament (e.g. in agriculture, transport and taxation issues).

EEAC signals that mechanisms and opportunities for participation are fairly advanced within DG Environment. Care should be taken, that this acquis of good governance is maintained and further improved, especially as regards joint documents of different DGs and environmentally relevant documents of other Directorate Generals.

7. EEAC however perceives limits of a strategy to relieve the legislator in the environmental policy field. First, as regards environmental policies, the most essential issues often are formulated in technical details. Weakening the traditional legislator, in having a say about such details, would be problematic from a democratic and from an environmental policy perspective.

Democratic legitimation of EU policies has to rely on all three pillars of legitimation:

1. the indirect legitimation by national governments, through the Council of Ministers,
2. the direct one by the European Parliament, and
3. the issue specific legitimation by the consultation of and debate with stakeholders.

None of these will be sufficient as a source of legitimisation as a stand-alone.

8. The strengths of EU environmental policies of recent years derive from the existence of dynamic coalitions of environmental policy makers from the Commission, national governments and the European Parliament. While accommodating economic concerns, this triangle was effective in overcoming national and political

most problems problems	Emerging problems/ complex
and, flexible mix of instruments	Reflexive social learning (self-regulation within incentive structure)
incent and target groups	Target groups and government

differences, and developing powerful and innovative environmental policies. The rules of the Treaty have offered a favourable opportunity structure for environmental concerns and for the rapid diffusion of national environmental policy innovations to the European level. This structure has been successful in putting in place policy measures and programmes to reduce the burden of direct pollution and risks to health. Any strategy for environmental governance should make use of this favourable institutional context and not try to weaken or to substitute it. More specifically EEAC assesses EU policy developments as regards the multi-sector, the multi-level and multi-actor dimensions of governance as follows:

IV. Assessment of New EU Policy Trends

1. The Multi-Sector Dimension of European Environmental Governance

Environmental Policy Integration and Sustainable Development

9. EEAC observes that the European SD agenda and the Cardiff Process have considerably lost momentum. In this context EEAC regrets that the White Paper on European Governance and its follow-up process offer little innovation with regard to key persistent challenges to environmental policymaking, namely environmental policy integration and securing more sustainable development.
10. EEAC is relieved that in the final draft for a European Constitution the *acquis* of the present Treaty regarding the definition of sustainable development, environmental protection and the integration of environmental requirements into other sectors was restored. EEAC asks the IGC to reconsider the placement of the environmental integration requirement in Part I of the Constitution and to review the outdated and obsolete objectives namely for agriculture and transport policies.
11. The Cardiff Process and the SD agenda suffered from governance shortcomings, which need to be readdressed in order to regain momentum. In general those processes were characterised by a lack of focus, an insufficient administrative and scientific resource basis, insufficient commitment from political leaders and a too strong reliance on Council formations, which are specialised in negotiating proposals, but not necessarily in drafting themselves innovative proposals. Also earlier attempts of the Commission towards environmental policy integration and SD largely failed, because they relied too heavily on Commission leadership only. Environmental policy integration may regain momentum, if:
 - adequate resources (in terms of staff and research) are invested into the process by the Commission,
 - the strategies have a problem oriented focus on few key persistent problems, whereas DG Environment and environmental ministries have a key responsibility to prioritise and to challenge the sectors with the problems they cause,
 - clear and unambiguous targets are being agreed,
 - more systematically national policy innovation in environmental policy integration and sustainable development is used as basis for EU policy proposals, and
 - effective coordination mechanisms between environmental and sectoral departments are established, which allow for better participation and consultation, assessment of sectoral policy proposals and accommodation of sectoral and environmental targets and even joint problem solving (e.g. transition strategies for sectors); the potential of the new impact assess-

- ment should be used to the greatest extent possible, and
- learning from regional innovations, and better cooperation with the regional and local level can be achieved.

Target Led Environmental Policies

12. Persistent environmental problems can best be tackled by a combination of binding targets with timetables and a flexible mix of instruments to achieve those targets. Target oriented approaches are a preferable approach to manage diversity in an enlarged Europe to open-ended networking processes with high levels of uncertainty about the environmental outcomes. They give clearer and politically legitimated orientation for the level of ambition of policies for other sectors, for industry, other private actors and regions than unpredictable results from consensus in networks. For key technological choices such binding long-term commitment are an indispensable driver of innovation. EEAC suggests that DG Environment should resume and intensify the target-oriented approach when implementing the 6th EAP through thematic strategies.

Regulatory Impact Assessment

13. As a response to the Gothenburg Summit's call for a Sustainability Impact Assessment, the Commission presented in June 2002 a general approach, a Regulatory Impact Assessment, which would cover all the various implications of policies including business and environmental impacts. EEAC recognizes that consolidating such impact assessments into one single procedure could lead to procedural convenience, but is concerned that there would then be a real danger of environmental considerations taking second place, and for trade-offs to be made that are neither transparent nor explicit. If it proceeds down this path, therefore, the Commission must put in place safeguards to ensure that the environmental appraisal is explicitly discrete within the overall assessment, and that the full involvement of DG Environment is secured in all policy assessment.

2. The Multi-Level Dimension Wider Use of Framework Directives

14. The White Paper suggests a wider use of framework directives in EU legislation. As regards environmental legislation the EU has already made much experience with framework directives. Framework directives establish general objectives, working procedures, instruments and launch a work programme. On the basis of experience made with different types of environmental framework directives, EEAC suggests, that:
 - Care should be taken, that the objectives and principles are formulated in a clear, unambiguous and committing way. Vagueness at the programming level shifts conflicts and decisions to secondary levels, e.g. information exchange networks or committees. Some of those secondary levels however are not designed and legitimated to make such decisions.
 - Any decisions on environmental performance levels and targets should be made by a political mechanism (e.g. daughter directives) and not by a technical mechanism.
 - Framework directives should contain a review and supervision mechanism, whereby the political levels can correct and repeal decisions made at the technical levels. So technical committees work in the shadow of potential repeal and have an incentive to move within the mandate given to them.

Reform of the Comitology

15. In December 2002 the Commission has made a new proposal to reform the Council decision on Comitology of 1999. EEAC welcomes the intention of the Commission to put the European Parliament on equal footing with member states committees, as regards their right to comment and to reject Commission proposals. EEAC regrets however that the Commission stops half way in offering new rights to the European Parliament as regards the supervision of technical adaptation decisions. The European Parliament has a right to comment and to reject, but unfortunately not to modify. Furthermore, if Parliament or Council do not adopt a Commission proposal, the Commission may

either adopt its modified decision or suggest a legislative proposal. EEAC suggests, that in case of severe reservations expressed by member states or the European Parliament the Commission should see this as an indicator for the need of a political mechanism (i.e. a directive or regulation by the European Parliament and the European Council). In such cases the committee is no more the appropriate level of decision making.

Tripartite Partnerships

16. In December 2002 the Commission published a Communication on Tripartite Partnerships aimed at promoting negotiated agreements with individual regions and the respective member states on the implementation of Community policies. The Commission has expressed its intention to apply this instrument on a pilot project basis on the environment.

EEAC supports the new instrument, as far as it strengthens regional commitments on environmental policies, where there is need for action but limited Community competence, e.g. in the case of tourism, spatial planning, and coastal management. Agreements in those fields may deliver added value for the environment. The new instrument however requires a strong financial resource basis in order to create strong incentives for regional cooperation and strong staff capacities on the side of the Commission in order to monitor negotiated progress. Both may be not easily mobilised for a broad application beyond the pilot project phase. EEAC warns against reduction of staff capacities in other fields in order to promote tripartite partnerships.

17. EEAC also warns against any tripartite partnership involving regulatory relief to a region if this is not combined with very clear targets and preconditions. This would undermine the credibility and strength of EU environmental legislation. Legal obligations should apply to everyone. If the Commission can accept less reporting, monitoring in negotiations with one region, why not for all regions in the form of simplified legislation?

3. The Multi-Actor Dimension of Environmental Governance

Aarhus Convention

18. EEAC welcomes the present steps to transpose the Aarhus Convention into European law. It urges the Commission to improve the incorporation of public participation requirements in decisions on plans, programs, policies and laws relating to the environment and to better integrate the results of the Aarhus Convention with the new European pollutant release and transfer register. EEAC welcomes the proposal of the Commission on access to justice for citizens organisations both at national and EU levels. This is an important step for the better enforcement of environmental legislation and the better control of public administrations by citizens. As regards access to information and standards for participation at European level EEAC however cautions that the Aarhus Convention adopts a citizen rights based approach. Commitments for good practice on transparency and participation are welcome, but in itself not sufficient.

The Target of Reducing the Volume of EU Legislation by 25%

19. In 2001 the Mandelkern Group presented a report on the simplification and better regulation to the Commission. This report suggested a 40% reduction of the volume of EU legislation. In subsequent communications the Commission endorsed the report with a slightly more moderate target of 25%.

EEAC considers this type of quantitative target as inappropriate for environmental policies. The quantity and level of detail of legislation cannot be determined without the specific context, the type of environmental problem addressed, the instruments applied and the complexity of the specific situation. Overall targets, without such a problem specific qualification, risk to becoming part and parcel of a deregulatory agenda.

Coregulation

20. In 2002 and 2003 the Commission has suggested two specific models for coregulation, combining legislative and self-regulatory elements of governance, one on negotiated agreements, the other on the wider use of European Standardisation for Integrated Product Policies (European Commission 2003a and b).

EEAC welcomes hybrid instruments if they effectively combine the strengths of governance by legislation with the strengths of voluntary action and self-regulation. It is necessary that general objectives, quantitative targets and timetables, monitoring mechanisms, requirements for balanced participation, sanctions and mechanisms of peer review and supervision should be under the responsibility of the legislator. In this respect both models partially meet such requirements, but still offer too many loopholes, opt-out rules and hurdles for effective steering by the legislator.

Governance and Knowledge

21. The new ideas of governance have been translated by the European Commission into principles and guidelines to improve the knowledge base of policy-making. Implicitly, the Commission advocates a dialogue model of interactions between scientists, policy-makers and interested parties when dealing with contentious issues in the face of significant uncertainty. A broadening of the spectrum of actors involved in knowledge production is not only apt but even necessary to deal with lack of consensus about relevant knowledge and differences in values.

For long term transitions to sustainable systems of agriculture, energy production, transport, etc. there is a need to explore the feasibility of a new kind of demand driven innovation policy on a European scale. The dominant governance system in the EU is of crucial importance for the success or failure of such an innovation policy based on sustainable development.

The organisational Challenge

22. In order to be able to implement the rationale EEAC proposes for making decisions on the best governance style for each environmental policy issue, and maintain or enforce the European Commission's credibility, due attention should be paid to its organisational implications, such as the European Commission directorates' working style, attitude (culture) and staff competencies (process management skills, networking abilities).

4. Conclusions

23. With this statement, EEAC cautions the EU and national governments against an imbalanced move towards devolution and deregulation in environmental policy. It calls for a differentiated, problem-oriented choice of strategies and instruments. This involves maintaining existing capacities for direct regulation as well as developing additional capacities for strategic target-setting, economic regulation, and the coordination and monitoring of processes of decentralised implementation, co-regulation and self-regulation.

In the current process of reforming European governance, the European Commission and Parliament as well as the leaders of the EU member states need to be careful not to involuntarily reduce their future capacities for effectively solving environmental problems in an integrated and multidisciplinary manner.

24. They should opt for a twofold strategy of careful, problem-based and solution-oriented experimentation with new modes of environmental governance while at the same time maintaining the traditional capacity for direct regulatory intervention. On the one hand, this capacity will continually be necessary in order to quickly avoid immediate danger. On the other hand, and maybe more importantly, this capacity will become increasingly necessary as a fallback option in the case that other, more decentralised and flexible steering modes fail to produce the desired effects. Ultimately, successful environmental governance depends on increasing, not shifting the political system's capacity for environmental protection, supported by a deepened public participation.



Berlin / Den Haag, November 2003