

# **Experimentalist environmental governance in the EU: complex challenges, recursive policy-making, international implications**

**Draft**

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## INTRODUCTION

One of the major trends which has characterised EU environmental policy in recent years is the rise of experimentalist governance. Existing mechanisms of top-down environmental regulation have been complemented by new structures relying on framework goals, locally devised measures, information provision and recursive procedures to encourage policy learning from experience. In contrast to more traditional mechanisms, these structures operate on the basis of long time horizons of 20 or more years for implementation. Drawing on two main examples - the EU Sustainable Development Strategy and the Water Framework Directive - the paper discusses the factors which led to the emergence of EU experimental environmental governance, its characteristics and functioning, as well as some implications for environmental governance at the wider international level.

Since its beginning in the early 1970s EU environmental policy has in theory been guided by successive Environmental Action Programmes (EAPs) covering short- to medium-term periods between 5 and 12 years. But the policy impact of the EAPs tended to be low, not least because they lacked effective implementation mechanisms beyond occasional stocktaking exercises by the European Commission's DG Environment. In practice EU environmental policy was mostly shaped by more contingent processes, in particular converging interests of a relatively small number of pioneering Member State governments and/or their environment ministries, DG Environment, and the European Parliament Environment Committee. However, at present the governance arrangements underlying EU environmental policy seem to be in flux. More specifically, arrangements resembling what Sabel and Zeitlin (2007) have called "the new architecture of experimentalist governance in the European Union" are emerging. This experimentalist governance architecture (EGA) promises more long-term orientations for EU environmental policy as well as better integration across different environmental effects and of economic and social considerations.

The EGA is characterised by institutions which enable recursive policy-making and learning from the experience of lower level units. Recursiveness requires Member State governments and EU bodies to commonly evaluate and justify their performance at regular intervals. Among other things, this creates opportunities for continuous adjustment and learning. According to Sabel and Zeitlin (2007a), the following more specific features characterise the EGA:

- Establishment of framework goals and metrics;

- Elaboration of plans by “lower-level” units for achieving them;
- Reporting, monitoring, and peer review of results;
- Recursive revision of goals, metrics, and procedures in light of implementation experience.

The emergence of EGA-like structures in EU environmental policy is a recent phenomenon dating back to the second half of the 1990s. The two main case studies therefore are relatively early examples of the emerging EGA, with the adoption of the Water Framework Directive (WFD) and the EU Sustainable Development Strategy (EU-SDS) dating back to the years 2000 and 2001, respectively. Consequently, the analysis of the EGA characteristics of the WFD and the EU-SDS can rely on comparatively extensive experience. In addition, both measures are examples of types of EU environmental measures - strategic initiatives and comprehensive framework directives - which most other cases of the EGA in EU environmental policy seem to belong to.

EU environmental measures featuring EGA characteristics have multiplied in recent years. For example, the Commission adopted seven so-called thematic strategies on air pollution, waste management, the urban environment, pesticides, the marine environment, soil protection, and resource management in 2005 and 2006. Along with most of these strategies, the Commission published proposals for legislation, in particular framework legislation, such as the Marine Strategy Directive or the Waste Directive. Table 1 provides an overview together with a preliminary assessment of their EGA characteristics which is based on a textual analysis of the strategies and, if applicable, accompanying legislative proposals. The analysis suggests that EGA features are common among the thematic strategies/associated legislation. Most characteristics are either fully or, in a smaller number of cases, partly present. However, there is significant variation among the various strategies. In particular in the cases of the air pollution and the urban strategies two of the five EGA characteristics are only “somewhat” present. The actual potential of the strategies/associated legislation to function according to the requirements of the EGA is likely to vary even more than Table 1 suggests. Additional factors not represented in the Table, such as pronounced differences in the substantive scope of the thematic strategies, the existence of pre-existing EU legislation in a given area, and the availability of established support mechanisms, such as advisory and expert committees, can be expected to affect the functioning of the strategies.

**Table 1: Overview of institutional EGA features of the thematic strategies**

	Air	Marine	Pesti- cides	Res- ources	Soil	Urban	Waste
Legislation	Yes	Yes	Yes	No	Yes	No	Yes
Framework goals and metrics	(+)	+	(+)	+	+	+	+
Reporting obligations, monitoring	(+)	(+)	+	(-)	(+)	(-)	(+)
Peer review	(-)	(-)	+	(+)	(+)	+	+
Periodical review	(+)	(+)	+	+	+	(-)	(+)
“Lower level” plans	(-)	+	+	+	+	(+)	+

**+ fully present; (+) partly present; (-) somewhat present; - not present**

Given that the design of some strategies corresponds more to the EGA than that of others and the variation in scope and contextual conditions, some strategies/associated legislation may eventually turn out not to conform to the EGA. Nevertheless, the adoption of the strategies/associated legislation and their characteristics clearly attest to the rise of EGA-type measures in EU environmental policy. In addition to the thematic strategies, there are several other EU environmental measures which resemble the EGA, such as the Integrated Product Policy (IPP) or aspects of the Environmental Technology Action Plan (ETAP).

This paper proceeds as follows: the first section presents a number of general factors which tend to support the emergence of the EGA in EU environmental policy. This is followed by sections discussing the EU-SDS and the WFD, respectively. Each of these sections starts with an introduction presenting the specific factors which affected the adoption of the EU-SDS/WFD. The analysis then proceeds to establish the degree of correspondence between the institutional features of the EU-SDS/WFD and those typically associated with the EGA. In a second step, the analysis focuses on the experience with the EU-SDS/WFD so far, focussing on two key EGA mechanisms: recursiveness and learning. Using the WFD and the related Marine Thematic as examples, the paper then looks at some of the implications of the rise of the EGA for environmental governance at the wider international level. The conclusion summarises the findings and discusses links between the EU-SDS/WFD and the emergence of the EGA in EU environmental policy more generally.

## **FACTORS AFFECTING THE EMERGENCE OF THE EGA**

The rise of the EGA in EU environmental policy benefited from several similar and inter-related general conditions which emerged in the 1990s: the refocusing of environmental policy on persistent environmental problems; the rise of the sustainable development paradigm; efforts to integrate environmental concerns into sectoral policies; challenges to the legitimacy of EU environmental policy, and the adoption of new policy instruments. While the emergence of the EGA in EU environmental policy benefited from these general trends, the adoption of the EU-SDS and the WFD was also affected by more specific conditions which will be discussed further below.

### **Persistent environmental problems**

To some extent, the rise of the EGA is a response to the success of traditional EU environmental policy which has addressed the most visible and pressing environmental problems, such as high levels of air and water pollution. This was achieved mainly by making the application of “end-of-pipe” clean-up technology - for example filters and waste water treatment - mandatory, while the polluting activities as such could continue without major further adjustments. However, as many of the most pressing problems had been addressed in this way by the late 1980s, attention shifted towards what has been called “persistent environmental problems”, such as climate change and the loss of biodiversity. These problems are characterised by

- a relatively close causal link between the problem and the operating logic of the economic sectors causing the problem. Consequently, the effectiveness of technical fixes is limited and problem solutions require changes in the behaviour of sectoral actors;
- high complexity: frequently, the sources of persistent problems are diffuse and involve a large number of actors, including important indirect contributors. In addition, cause and effect tend to be significantly delayed;
- low “visibility”: due to the “creeping” character of many persistent problems, measures must be taken well in advance of the manifestation of serious effects. However, this means that such measures must deal with uncertainty and react to models of the future and scenarios rather than direct threats. The resulting low problem visibility tends to reduce political pressure for action.

- global dimension: persistent environmental problems often have an important global dimension in the sense that, ultimately, they can only be addressed effectively by internationally co-ordinated measures. This tends to create political barriers to change as issues relating to social justice (for example, differentiated contributions by developed and developing countries), national sovereignty, and weak international enforcement mechanisms need to be taken into account (cf. Jänicke/Jörgens 2006: 169-171).

Relying on recursiveness and learning the EGA is, arguably, more suitable to address persistent environmental problems than the more traditional governance arrangements underlying EU environmental policy. In particular, learning offers the possibility of intervention into the functioning of economic sectors causing persistent environmental problems while minimising negative effects on the sectors' effectiveness and efficiency. Similarly, learning-based governance may be particularly suitable to accommodate fundamentally different national conditions without undermining national sovereignty. Learning is also less dependent on problem "visibility" than governance arrangements relying more strongly on politicisation of issues. Recursiveness allows for long-term, flexible responses which can accommodate uncertainty and the "creeping", casually complex character of persistent environmental problems.

Beyond this apparent general "fit" between the EGA and the need to address persistent environmental problems, the increasing focus on these problems also created opportunities for the rise of substantive environmental governance innovations, associated with sustainable development and the integration of environmental concerns into sector policies, and for the application of "new" policy instruments, such as market-based approaches, procedural approaches, and information-based instruments.

### **Rise of the sustainable development paradigm**

The adoption of Agenda 21 at the 1992 Rio Summit was crucial to the rise of the sustainable development (SD) paradigm which has subsequently been embraced by a large number of countries and organisations. In particular, many countries adopted national sustainable development strategies (NSDSs) following the follow-up Rio+5 Summit in 1997 which had set a 2002 target date for doing so.

The EGA benefited from the rise of SD because SD is associated with governance functions - recursiveness and learning - which are very similar to

those underlying the EGA. This becomes clear, for example, if one looks at the guidelines for designing SD strategies. According to the OECD Resource Book for SD strategies, being “strategic is about developing an underlying vision through a consensual, effective and iterative process; and going on to set objectives, identify the means of achieving them, and then monitor that achievement as a guide to the next round of this learning process” (Dalal-Clayton/Bass 2002: 29). SD strategies therefore “move [...] towards operating an adaptive system that can continuously improve”. Similarly, the European Sustainable Development Network (ESDN) concludes that “overall, the guidelines for SD strategies put a strong emphasis on procedural and institutional aspects of an iterative governance process [...]” (ESDN, <http://www.sd-network.eu/?k=basics%20of%20SD%20strategies>).

### **Efforts to integrate environmental concerns into sector policies**

In legal terms the rise of SD in the EU was reflected most prominently in the inclusion in the 1997 Amsterdam Treaty of today’s Article 6 TEU, calling for the integration of environmental concerns into the definition and implementation of Community sectoral policies (Although SD would, at least in theory, call for more comprehensive, mutual integration of environmental, economic and social concerns than Article 6 does).

The so-called Cardiff Process of environmental policy integration was the most direct consequence of the adoption of Article 6. In December 1997 the Luxembourg European Council asked the Commission to present a strategy to implement Article 6, “in particular with a view to promoting sustainable Development”. The June 1998 European Council in Cardiff called on three sectoral Council formations - Agriculture, Energy, and Transport - to pioneer the development of environmental integration strategies. Subsequently, this list of Council formations was extended to include, among others, the General Affairs, Internal Market, Industry, and the Economic and Financial Affairs Councils. According to the December 1999 Helsinki European Council, “[r]egular evaluation, follow-up and monitoring must be undertaken so that the strategies can be adjusted and deepened” to facilitate the integration process. The Commission and the Council are expected to “develop adequate instruments and applicable data for these purposes” (Presidency Conclusions, Helsinki European Council, 10-11 December 1999, para. 47).

At least in theory, the Cardiff process shares important functions and institutional characteristics with the EGA. This applies to recursiveness and features such as the use of targets, indicators and regular monitoring and evaluation. But the significance of learning is less clear and, more importantly, the range of actors included in the Cardiff process was much too narrow because it was limited to the EU level and, further, to the Council. In practice the Cardiff process came to a gradual standstill after the initial drafting of environmental integration strategies by the various Council formations. Despite repeated calls by the European Council for follow-up and the “Commission’s intention to carry out an annual stocktaking of the Cardiff process of environmental integration” (Presidency Conclusions, Brussels European Council, 20-21 March 2003, para. 58), there was little systematic follow-up by the Council formations concerned and the Commission only produced a single, belated stocktaking report in June 2004. Consequently, recursiveness and learning did not materialise beyond initial steps.

### **Legitimacy challenges and new policy instruments**

In the 1990s the legitimacy of EU environmental policy and governance came under increasing political pressure. The challenges were based on concerns relating to economic issues, such as costs, competitiveness and employment effects, but also to subsidiarity and democracy. For example, traditional EU environmental policy instruments using emission limits and “end-of-pipe” clean-up technology to reduce pollution were deemed to be inefficient, too expensive, and ill-adapted to local conditions, in particular if they were to be applied in the future to combat persistent environmental problems. In particular the British and German governments called for more flexibility and subsidiarity. At the same time, the traditional “permissive consensus” among the general public in favour of the EU began to erode and the Union’s democratic credentials were increasingly questioned. This put further pressure on “traditional” environmental governance.

Against this background, “new instruments” were expected to increase efficiency, flexibility, and legitimacy. Economic instruments, most prominently the CO<sub>2</sub> emission trading scheme, but also information-based measures, such as eco-labels and eco-audits, were adopted to enhance efficiency. To increase flexibility and subsidiarity, target-oriented measures were introduced, in particular framework directives allowing lower level units significant discretion. Procedural legislation - for example, to improve public access to environmental information

and consultation of civil society and stakeholders - was expected to increase effectiveness and democratic legitimacy.

In general, the use of these new instruments seems to provide a beneficial context for the EGA. For example, procedural legislation requiring public access to environmental information, impact assessment, and public participation creates opportunities for the diffusion of knowledge, learning, and peer-group based accountability. Target-based framework directives allow for experimentation with different approaches at the national or sub-national level and the diffusion of good practice among the lower level units. Similarly, economic and information based instruments allow for variation and testing of different approaches. In fact, the growing diversity of policy instruments and of the respective practices itself forms a pool of options from which lower level units may draw inspiration and information.

In sum, the evolution of EU environmental governance in the 1990s created a fertile ground for the EGA. EGA-type governance arrangements characterised by recursiveness and learning appear to be more suitable to address persistent environmental problems and to integrate environmental concerns into sectoral policies than traditional EU environmental governance. Governance arrangements associated with the SD paradigm are similar to the EGA, in particular in that they, too, rely on recursiveness and learning. Finally, the rise of new environmental policy instruments at the EU-level tends to support the emergence and functioning of the EGA. These instruments are often highly flexible, tend to broaden the number of actors involved in policy-making and create opportunities for learning and peer-group based accountability.

## **THE EU SUSTAINABLE DEVELOPMENT STRATEGY<sup>1</sup>**

The EU-SDS provides an initially unsuccessful, but evolving example of EGA-type mechanisms in EU environmental governance, illustrating the need for involvement of national-level actors and appropriate organisational structures. The EU-SDS was first adopted in 2001 and was then significantly revised in 2006. As argued below, the factors supporting the emergence of the EGA in EU environmental policy in general - the refocusing on persistent environmental

problems and the rise of SD, environmental policy integration, legitimacy concerns and new policy instruments - contributed significantly to the adoption and revision of the EU-SDS.

The substantive focus of the EU-SDS was clearly shaped by the growing concern for persistent environmental problems as all of the main environmental priorities of the strategies concern these problems. These priorities are climate change, natural resource management, threats to public health, and sustainable transport. The 2006 revised EU-SDS adds sustainable production and consumption to these priorities.

The rise of SD at the global level also had a profound impact on the adoption of the EU-SDS. As mentioned above, the 1997 Rio+10 Summit had called for the adoption of national SD strategies in time for the subsequent follow-up meeting in Johannesburg in 2002. Against this background, the December 1999 Helsinki European Council invited the Commission “to prepare a proposal for a long-term strategy dovetailing policies for economically, socially and ecologically sustainable development to be presented to the European Council in June 2001” (Presidency Conclusions, Helsinki European Council, 10-11 December 1999, para. 50). However, Member State positions diverged and the 2001 Gothenburg European Council merely “welcomed” the Commission proposal for the EU-SDS, adopting a broadly similar, but much less detailed text as part of its summit conclusions. In practice the original Commission proposal nonetheless retained some relevance, reflecting its higher specificity, but also because the European Council invited the Council “to examine, for the purposes of implementing the strategy, the proposals in the Commission communication, in particular its proposals for headline objectives and measures” (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para 25). Because the Commission proposal and the Council conclusions focussed primarily on the domestic implications of sustainable development for the EU, another document on the “external dimension” was adopted in 2002.

Environmental policy integration also influenced the EU-SDS. In particular, the original 2001 EU-SDS contains a section on “Integrating environment into Community policies”, inviting “the Council to finalise and further

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<sup>1</sup> The discussion focuses on the environmental dimension of the SDS. Although the social dimension has been strengthened in the renewed SDS, the environmental dimension clearly remains dominant.

develop sector strategies for integrating environment into all relevant Community policy areas” (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para 32) – a reference to the Cardiff process mentioned above. Sector specific references to environmental policy integration include the Common Agricultural and Fisheries Policies (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 31). The renewed EU-SDS does not explicitly refer to environmental policy integration, but mentions wider integrative concepts, in particular the integration of economic, social and environmental considerations (“policy integration”, Council of the European Union 2006, para. 6) which is one of the guiding principles of the renewed EU-SDS. It also calls for “sustainable development [...] to be integrated into policy-making at all levels” (Council of the European Union 2006, para. 10). However, concerning substantive issues, the renewed EU-SDS often implies environmental policy integration. The two priorities “climate change and clean energy” and “*Conservation* and management of natural resources” [emphasis added] provide the clearest examples implying integration of environmental concerns into energy policy and policies affecting the conservation of natural resources. In addition to suggestive titles, the renewed EU-SDS also explicitly states that energy policy should be consistent with the objective of *environmental* sustainability [emphasis added]. Similarly, in the section on natural resources the renewed EU-SDS, too, calls for “greening” the Common Agricultural and Fisheries Policies.

Legitimacy concerns and the discussion regarding new instruments only had a moderate impact on the original EU-SDS. Under the heading “A new approach to policy making” the EU-SDS addresses legitimacy concerns inviting Member States to consult widely and establish appropriate processes (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 24). Regarding new policy instruments there are two main proposals: Economic instruments are to ensure that prices better reflect true costs to society (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 22) and all major legislative Commission proposals were to be subjected to a sustainability impact assessment (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 24). The renewed EU-SDS retains similar priorities, but provides more details on economic instruments (Council of the European Union 2006, para. 22-24) and consultation and public participation - among other things an “Open and democratic society” and involvement of

citizens, business and the social partners are mentioned as guiding principles of the renewed EU-SDS.

In addition to the factors supporting the emergence of the EGA in general, there were a number of more specific influences on the formulation and adoption of the 2001 EU-SDS. Several Member States - in particular the Scandinavian countries which had only recently joined the EU at the time – strongly supported the adoption of the strategy. The early preparations for the formulation of the EU-SDS also coincided with plans for the adoption of the Lisbon strategy aiming to turn the EU into “the most competitive and dynamic knowledge-based economy in the world”. This posed the problem of co-ordination between these two EU initiatives. The 2001 Gothenburg European Council eventually declared that the EU-SDS “adds a third, environmental dimension to the Lisbon strategy” (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 20). Thereby the Council effectively turned the EU-SDS into the third pillar of the Lisbon strategy. As argued below, the Lisbon strategy subsequently continued to exert a significant influence on the EU-SDS because of a common reporting and review cycle and because the Lisbon strategy was revised shortly before the EU-SDS.

### **Institutional features**

The EGA is often associated with a set of functions: establishment of framework goals and metrics; elaboration of plans by “lower-level” units; reporting, monitoring, and peer review; recursive revision of goals, metrics, and procedures. This section looks at the extent to which the original and the renewed EU-SDS exhibit corresponding institutional characteristics.

**Framework goals and metrics:** the 2001 EU-SDS identifies climate change, sustainable transport etc. as key environmental priorities. However, it does not contain sufficiently specified framework goals and metrics. In addition to excessively general goals, such as “strong economic performance must go hand in hand with sustainable use of natural resources [...]” (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 31), the EU-SDS merely repeats several more specific commitments which had already been adopted in different contexts. Examples include the indicative targets of the Renewable Energy Directive and the aim in the EU 6<sup>th</sup> Environmental Action Programme to halt the decline of biodiversity by 2010. While the original Commission proposal

contains somewhat more specific and original framework goals - such as “[b]y 2020, ensure that chemicals [...] do not pose significant threats to human health and the environment“ (European Commission 2001: 11) - the 2001 EU-SDS merely invites the Council to “examine” these “headline objectives” (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 25).

In contrast to the original EU-SDS, the renewed EU-SDS contains more specific objectives which may work better as framework goals and metrics. However, as with the 2001 strategy, these objectives are not original, but reflect previous EU commitments. The renewed EU-SDS distinguishes between “overall objectives” and more specific “operational objectives and targets”. Together, these may often be regarded as framework goals and metrics. For example, the overall objective for the priority area “climate change and clean energy” is to “limit climate change and its costs and negative effects to society and the environment“ (Council of the European Union 2006, para. 13). This is combined with an extended set of more specific commitments including targets and timeframes which had previously been adopted in different contexts, including those mentioned in the 2001 EU-SDS.

**“Lower level” plans:** like framework goals and metrics, plans elaborated by “lower level” units hardly feature in the original EU-SDS which merely “invites” Member States to adopt national SD-strategies (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 23). At the time many countries had in fact already produced national SD-strategies (NSDSs) or were in the process of doing so in preparation of the upcoming 2002 Johannesburg World Summit on Sustainable Development. Against this background, it seems to be particularly problematic that the original EU-SDS lacks any provisions dealing with links between the EU- and the emerging national SD-strategies. Interestingly, the renewed EU-SDS conforms much better to the EGA in these respects than the original EU-SDS. According to the renewed strategy all Member States are expected to have adopted NSDSs by June 2007. More importantly, the EU-SDS is used as a basis for EU-level review of NSDSs: „Future reviews of NSDSs should be undertaken in the light of the revised EU-SDS [...] bearing in mind specific circumstances in the Members States“ (Council of the European Union 2006, para. 40).

**Reporting, monitoring, and peer review of results:** in line with the designation of the 2001 original EU-SDS as the environmental pillar of the Lisbon strategy,

the Commission's annual synthesis report to the Spring European Council is identified as the appropriate reporting tool for the EU-SDS. The Spring ("Lisbon") European Council reviews the EU-SDS on the basis of this report. In addition, the Council is expected to identify suitable "headline indicators" to monitor and evaluate the performance of the EU-SDS (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 25). The EU-SDS itself is subject to a more fundamental review at the beginning of each new Commission's term. While the EU-SDS gives responsibility for co-ordinating "horizontal preparation" (Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, para. 24) to the General Affairs Council, it does not identify a specialised or lower-level body for dealing with the EU-SDS on a more day-to-day basis. Given the absence of a role for such a body, it is not surprising that peer review is not foreseen under the original EU-SDS.

The renewed EU-SDS contains more elaborate reporting and monitoring provisions than the 2001 strategy - not least because it creates independent reporting and monitoring procedures which are no longer linked to the structures serving the Lisbon strategy. According to the renewed EU-SDS, the Commission submits a progress report covering implementation of the strategy in the EU and the Member States to the December European Council every two years (Council of the European Union 2006, para. 33). To facilitate national level input, Member States are expected to appoint representatives acting as EU-SDS focal points and providing „the necessary input [for the Commission's report] on progress at national level in accordance with National Sustainable Development Strategies“ (Council of the European Union 2006, para. 37). Two sets of indicators are envisaged to monitor EU-level performance of the EU-SDS. For preparing its biannual progress report, the Commission will "draw on a comprehensive set of sustainable development indicators (SDIs)", taking into account the EUROSTAT SD-Monitoring Report and other relevant factors (Council of the European Union 2006, para. 33). A second, more limited set of indicators will also be used for monitoring the EU-SDS at the EU-level "and for communication purposes". These indicators resemble the "political" headline indicators used for monitoring of the original EU-SDS; they are to be endorsed and regularly reviewed by the Council (Council of the European Union 2006, para. 36). In addition to regular Council review of the "political" indicators, the Member States and the Commission are to continue to develop, and to biannually review, indicators in the EUROSTAT working group on SDIs - which produces the SD Monitoring Report - to "increase

their quality and comparability as well as their relevance to the renewed EU-SDS” (Council of the European Union 2006, para. 35). The renewed EU-SDS is itself to be reviewed in 2011 at the latest.

In contrast to the original EU-SDS, which lacked provisions for peer review, the renewed EU-SDS envisages a voluntary, phased peer review process in which different groups of Member States engage in annual peer reviews of NSDSs or specific themes featuring in these strategies (Council of the European Union 2006, para. 41). The Commission is to use the results of the peer reviews as input into its biannual progress reports (Council of the European Union 2006, para. 37). In addition, the renewed EU-SDS suggests that the European Sustainable Development Network (ESDN) could help to identify priority areas and examples of good practice as well as facilitate exchange of experience (Council of the European Union 2006, para. 42). ESDN is an informal network of European national officials dealing with NSDSs.

In sum, the analysis of the institutional features of the EU-SDS suggests that, despite ambitions such as building “an effective review” (Council of the European Union 2006, para. 25), the 2001 EU-SDS failed to establish strong institutions to perform this and other functions associated with the EGA. In particular, framework goals and metrics were insufficient; provisions on planning by “lower level” units were very weak and did not establish any procedural or substantive links with the EU-SDS; reporting and monitoring requirements lacked institutional anchoring in sufficiently specialized bodies and there were no provisions for peer review. The analysis therefore suggests that, while the aspirations and broad contours of the 2001 EU-SDS are strongly reminiscent of the EGA, the concrete institutional arrangements foreseen appear to be too weak to effectively perform the required functions. By contrast, the institutional characteristics of the 2006 revised EU-SDS correspond more closely to the EGA and, on the whole, can be expected to be more effective than those of the original EU-SDS. While framework goals and metrics remain somewhat vague and lack originality, they tend to be more concrete than those of the original EU-SDS. Provisions on planning by “lower level” units were strengthened and a link with the EU-level has been established. Reporting and monitoring are institutionally anchored in various specialized bodies, such as the national focal points and the working group on SDIs. Peer review has also become part of the EU-SDS.

## The EU-SDS in practice

How do the institutional characteristics of the EU-SDS translate into practice? More specifically, have they allowed the EU-SDS to perform key EGA functions, in particular recursiveness and learning? Starting with recursiveness, the following discussion not only looks at the implementation of the original and the renewed EU-SDS, but also discusses the process of the revision of the strategy between 2004 and 2006.

**Recursiveness:** recursiveness of the original EU-SDS tended to be very weak in substantive terms. The annual review by the Spring European Council remained a largely pro-forma, ineffective exercise. Similarly, the Commission's Spring progress reports focused mainly on economic issues and employment, paying much less attention to the environmental priorities highlighted by the EU-SDS (Homeyer 2007, Pallemarts et al. 2007: 32-33). Only 3 out of a total of 14 „headline indicators” used in the reports focused on environmental issues. The SDS's four key environmental priorities were only partly covered. The fact that the exclusively economic and social aims of the Lisbon strategy were never adjusted to take account of the newly added environmental dimension is a particularly striking example of failed recursiveness. Against this background, DG Environment stated in 2005 that "to many actors the environment still appeared as an add-on to the rest of the [Commission's Spring] Report in 2002 and 2003" (European Commission 2005).

Recursiveness of the original EU-SDS was somewhat stronger in procedural than in substantive terms. In 2003 the Spring European Council attempted to strengthen the role of the EU-SDS in the context of the Lisbon strategy, noting the Commission's "intention to carry out an annual stocktaking of the Cardiff process of environmental integration and a regular environment policy review [which are] to be taken into account in [...] Spring reports, starting in 2004" (Presidency Conclusions, Brussels European Council, 20-21 March 2003, para. 58). This decision reflected the lack of integration of the EU-SDS into the previous two review cycles. As illustrated below, the 2004-2006 fundamental review of the EU-SDS itself is another example of recursiveness, although it was significantly delayed because the new Barroso Commission which took office in 2004 decided the review the Lisbon strategy first.

Significant instances of substantive recursiveness can be identified in the context of the 2004-2006 review of the EU-SDS. Perhaps most importantly in

substantive terms, the relationship between the EU-SDS and the Lisbon strategy was redefined. Whereas the 2001 Gothenburg European Council saw the original EU-SDS as providing an environmental dimension to the Lisbon strategy, the renewed EU-SDS “forms the overall framework within which the Lisbon strategy, with its renewed focus on growth and jobs, provides the motor of a more dynamic economy” (Council of the European Union 2006, para. 8). This redefinition of the relationship between the two strategies reflected the experience of the failed integration of the EU-SDS into the Lisbon strategy. Similarly, the somewhat improved specification of framework goals and metrics in the renewed EU-SDS appears to have been motivated at least partly by the negative experience with the 2001 EU-SDS.

The review of the EU-SDS also featured significant recursiveness in procedural terms. One of the most important examples again concerns the relationship with the Lisbon strategy. The establishment of a new, independent review cycle for the EU-SDS seems to have resulted from the experience with the previous, incomplete and superficial EU-SDS reviews in the context of the Lisbon strategy. It seems less clear to what extent the second set of major procedural innovations - the obligation to name national focal points and submit NSDSs for review in light of the EU-SDS - can be attributed to recursiveness. The revision of the Lisbon strategy, which immediately preceded the revision of the EU-SDS, led to similar innovations. It therefore seems likely that the Lisbon strategy innovations served at least to some extent as a model for reforming the EU-SDS.

As there is little experience so far with the renewed EU-SDS, its performance cannot be assessed yet. However, the newly independent EU-SDS reporting and review process and the creation of expert bodies dealing with the EU-SDS - in particular the national SDS coordinators group chaired by the Commission’s Deputy Secretary General, but also the informal ESDN network - seem to provide significantly improved opportunities for recursive governance.

**Learning:** In substantive terms, the original EU-SDS and the 2004-2006 revision resulted in very limited learning. Perhaps most importantly, the original EU-SDS contributed significantly to indicator development. Shortly after its adoption, EUROSTAT established the SDI Task Force, bringing together national and Commission officials and other experts. An initial, comprehensive set of “12 headline, 45 core policy and 98 analytical indicators” was presented in 2005 (EUROSTAT 2005; European Commission 2005a). The 2004-2006 revision of

the EU-SDS resulted in a somewhat better specification of framework goals and metrics which can be interpreted as an instance of moderate learning. The same applies to the new designation of the EU-SDS as a “framework” for the Lisbon strategy. However, it remains to be seen whether, and how, these changes will influence the implementation of the renewed EU-SDS.

Concerning procedures, it is difficult to identify major instances of learning in the framework of the original EU-SDS despite the significant recursiveness described above. The annual Environmental Policy Review (EPR) and Cardiff (environmental integration) stocktaking reports which were mentioned above were introduced to improve SDS-related reporting. However, these procedural innovations soon turned out to be ineffective. In the absence of further guidelines, the format of the EPR remained unclear. This resulted in a lack of specific focus and purpose and a seriously belated first EPR. Subsequent reports encountered similar problems. Due to a lack of political support from Member States and the Commission, the 2004 Cardiff stocktaking report (European Commission 2004) was a one-off exercise. The two environmental reporting innovations failed to improve the coverage of the EU-SDS in the Commission's spring reports and the review by the European Council. On the contrary, the 2005 and 2006 Spring Reports no longer contained separate chapters on environmental issues. The environment was only mentioned in a number of references which were widely scattered throughout the reports (cf. Pallemmaerts et al 2007: 33).

In contrast to the original EU-SDS, learning in the framework of the 2004-2006 revision of the EU-SDS resulted in several procedural changes, in particular the obligation for Member States to produce NSDSs and appoint national focal points, the introduction of an independent reporting and review process for the renewed EU-SDS, and better opportunities for peer review, sharing of experience and the identification of good practices. Although it is too early to tell whether, and to what extent, these measures will succeed, they appear to be more suitable to increasing the political effectiveness of the EU-SDS than the procedural innovations which had been introduced under the original EU-SDS. This is partly because the revision of the EU-SDS could draw on broader and longer experience than innovations introduced under the original EU-SDS. Experience gained with the implementation and reform of the Lisbon strategy was relevant in this respect. Such experience was readily available in the Commission where the Secretariat General was in charge of the reviews of the Lisbon strategy

and of the EU-SDS. It is therefore not surprising that some of the SDS's main procedural changes are similar to those of the Lisbon strategy which had been decided upon only a few months earlier. Like the Lisbon strategy, the original EU-SDS had failed to generate sufficient commitment and innovation at national level. The inclusion of NSDSs and national focal points in the renewed EU-SDS is expected to increase "ownership" and stimulate mutual learning<sup>2</sup>; at the same time it resembles the changes made to the Lisbon strategy. The decision to decouple the EU-SDS reporting and review process from the Lisbon strategy was taken not only against the background of the initial failure to effectively integrate the EU-SDS into the Lisbon strategy, but also of the subsequent failures of the EPR and Cardiff stocktaking to do so.

A broad and long consultation process involving a range of state and non-state actors constitutes another factor giving reason to expect learning to have played a significant role in the 2004-2006 revision of the EU-SDS. Starting in early 2004 with an elaborate internet consultation launched by the Commission, the review of the EU-SDS was accompanied by many hearings, workshops, conferences etc. The Commission published two communications and the European Council adopted a set of SD guiding principles. Drawing on additional hearings and workshops involving, among other things, several environmental NGOs and ten Council formations, the Austrian EU Presidency provided political leadership at the final stages of the revision process (cf. Kopp 2006). The revision of the EU-SDS therefore benefited from the knowledge gathered in the run of this consultation process, creating additional opportunities for learning.

In spite of all of this, the political tensions characterising the relationship between the EU-SDS and the Lisbon strategy also prevented learning in some cases. The failure to adopt adequate procedures regulating this relationship illustrates this. More specifically, the newly introduced designation of the EU-SDS as a „framework“ for the Lisbon strategy has not been translated into corresponding co-ordination procedures. In fact, there is only a relatively vague provision in the renewed EU-SDS which does not correspond to the SDS's framework character because it instructs the Council to take "account of priorities under the Lisbon strategy for growth and jobs" when reviewing the SDS (Council of the European Union 2006, para. 38), rather than the other way round.

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<sup>2</sup> Interview with Alexander Italianer, European Commission, Deputy Secretary General and chair of the SDS Coordinators Group, in Berger and Steurer (2007).

While it is too early to assess the actual implementation of the renewed EU-SDS, a number of implementing measures which point to improved conditions for learning have already been taken. For example, the activities of the national SDS coordinators group have been extended beyond reporting on NSDSs to include exchange of experience and best practice, discussion of progress made on peer reviews, and provision of input and suggestions on new SD policy initiatives (cf. Berger/Steurer 2007). The Commission has also made co-financing available to support peer reviews of NSDSs and selected themes. By mid-2007 the French and Dutch NSDSs had already been reviewed. A total of eight Member States was involved in these review processes. Several participants and Commission officials have given positive assessments of the results of the reviews (Berger et al. 2007: 20-24). In addition, the European Economic and Social Committee (EESC) has established an SD Observatory. According to the renewed EU-SDS the EESC “should play an active role in creating ownership [...] and is invited to prepare input to the biennial progress report of the Commission including a collection of best practices of its members” (Council of the European Union 2006, para. 39).

In sum, this analysis of the institutional characteristics of the EU-SDS and its functioning with respect to recursiveness and learning suggests that despite featuring several institutional arrangements which correspond to the EGA, the original EU-SDS was insufficiently recursive and generated only very few instances of learning in practice. The lack of recursiveness can largely be attributed to the fact that the reporting cycle of the original EU-SDS was part of the Lisbon strategy, while specific bodies which could have generated learning and pushed for better integration of the EU-SDS into the Lisbon strategy were not created. Therefore the original EU-SDS remained a largely pro-forma “add-on” to the Lisbon strategy. The fact that the original EU-SDS was not linked to national SD-strategies reinforced this tendency. The revised EU-SDS partly addresses the deficits of the original EU-SDS. The EU-SDS is now based on its own, independent reporting cycle. In addition, NSDSs have been linked to the EU-SDS, and a specialised body - the group of national SD coordinators – has been created to increase national input and improve the co-ordination of the EU-SDS process. Mechanisms and fora specifically promoting learning on the basis of peer review have also been established. Whether or not these innovations will lead to a significant improvement of the functioning of the EU-SDS remains to be seen. In particular, new tensions between the EU-SDS and the Lisbon strategy

may emerge in the absence of improved procedures to co-ordinate the two substantively interdependent strategies. It also remains unclear whether Member States will be sufficiently committed to the EU-SDS/NSDSs, although the successful revision of the EU-SDS despite an initial lack of political support by the Commission suggests that there is a relatively high degree of commitment at least by some Member States.

## **THE WATER FRAMEWORK DIRECTIVE**

The Water Framework Directive (WFD) provides another early example of the EGA in EU environmental policy. As was the case with the EU-SDS, the WFD had to be amended - albeit in an informal way - to improve implementation. However, in contrast to the EU-SDS, the WFD was amended only a few months after its adoption. As a result of this early amendment, significant progress has been made in the implementation of the WFD.

Following several years of highly antagonistic negotiations among Member State governments, the WFD was eventually adopted in 2000. The WFD itself as well as its implementation differ in two major ways from most earlier pieces of EU environmental legislation: First, the Directive is very general and open-ended: "Far from being a single piece of legislation as that term is normally understood, the WFD is better seen as the initiation of a comprehensive program designed to guide further action by the EU and the Member States" (Trubek/Trubek 2006:18). The way in which the WFD defines overall aims provides a good example of its open-endedness. The WFD states that Member States must achieve "good water status" by 2020. However, it is left to the implementation stage to define what good water status means in practice. Similarly, the concrete requirements of the river basin plans - the overarching instrument that is to deliver good water status - are also to be developed at the implementation stage.

The Common Implementation Strategy (CIS) is the second main WFD feature rendering the Directive different from previous EU environmental legislation. The CIS was established following the adoption of the WFD which, however, does not mention the CIS. Involving representatives from DG Environment and Member States as well as technical experts and stakeholders, the CIS is an instrument to support implementation of the WFD. More specifically, the CIS was created to facilitate the elaboration, testing and validation of

technical guidance documents and best practices as well as the sharing of experience and information in order to avoid the duplication of efforts and to limit the risk of a bad application (CIS 2001: 3-4). Although CIS output, such as the guidance documents, is legally non-binding, the CIS had a significant influence on the implementation of the WFD so far.

In many ways the adoption of the WFD reflects the factors which affected the emergence of the EGA in EU environmental policy more generally. With its comprehensive focus on river basins rather than specific pollutants or sources of pollution, one of the main objectives of the Directive is to address persistent environmental problems caused by excessive water consumption and diffuse sources of pollution, for example in agriculture. The WFD embodies a shift of EU water policy towards the sustainability paradigm and supports the integration of environmental concerns into various sectoral policies. In particular, water is explicitly treated as an economic as well as an environmental resource. Among other things, this is reflected in various flexibility clauses - for example, allowing subsidised water services for low-income households (Page/Kaika 2003: 5) - the use of economic valuation, and other economic instruments, such as provisions for cost recovery. Stakeholder participation and decentralised planning at the level of river basins is, among other things, meant to increase the democratic credentials of the WFD.

In addition to these general trends, the specific characteristics of the WFD are also owed to certain institutional and political constraints on the execution of EU competencies. EU law stipulates that environmental measures “affecting quantitative management of water resources”, but also town and country planning as well as land use, must be adopted unanimously by Member State governments (Article 175 TEU). This contrasts sharply with environmental legislation in other areas, where the Co-decision Procedure and its less restrictive requirement of support by a qualified majority of Member States applies. As a result of the comprehensive approach taken by the WFD, the Directive to some extent affects areas falling under the more restrictive procedure, in particular quantitative management of water resources (cf. Page/Kaika 2003: 6). This posed potentially insurmountable obstacles for the adoption of the WFD primarily because of the opposition of several southern European Member States, such as Spain, Italy and Greece, to EU measures that could result in a restriction of water supplies. For example, responding to the Commission’s WFD proposal, the

Spanish government raised serious sovereignty concerns arguing that measures affecting water quantity may have negative economic repercussions (cf. Page/Kaika 2003: 6).

Against this background of exceptionally high political sensitivity in some Member States and the potential application of restrictive EU decision-making procedures, the WFD's vagueness and open-endedness can partly be interpreted as a concession to political pressure and an effort to ensure that the WFD would not fall under the legislative unanimity rule. Shortly before the adoption of the WFD, the European Court of Justice (ECJ) finally dismissed the Spanish government's claim that the WFD should fall under the restrictive Article 175 (Kaika/Page 2003: 11).

### **Institutional features**

As illustrated below, the WFD/CIS is characterised by a number of institutional features which correspond to EGA functions:

**Framework goals and metrics:** The WFD/CIS is built around a clear - though vague - framework goal: the achievement of "good water status" by 2020. Metrics and benchmarks to assess progress towards the achievement of the Directive's aim have been, or are to be, established. They range from quite specific chemical and ecological criteria to entire reference sites to ensure that "good status" means the same in all Member States despite different local and regional conditions. The so-called "intercalibration" exercise is expected to result in the harmonisation of ecological quality status assessment systems for all surface waters.

**"Lower level" plans:** The WFD/CIS resembles the EGA in that it requires "lower level units" to prepare plans for achieving "good water status". More specifically, Member States are obliged to develop comprehensive river basin management plans. These plans are key to the implementation of the WFD on the ground.

**Reporting, monitoring, and peer review of results:** The WFD also features EGA characteristics such as regular reporting, monitoring, and peer review. Because full implementation of the WFD stretches over almost three decades, it has been divided into three management cycles with the last extension of deadlines ending in 2027. While some reporting obligations only require one-off reporting, many of the crucial aspects of the Directive are subject to reporting

every six years. This applies, for example, to submitting updates of the environmental and economic analysis of river basin districts (Article 5), programmes of measures (Article 11), and river basin management plans (Article 13). Similarly, the Commission is obliged to report on implementation of the WFD every six years (Article 18). In addition to the monitoring facilitated by the various reporting requirements, Member States are expected to develop and implement comprehensive monitoring of the chemical and ecological status of river basin districts using common technical specifications to be established by the WFD regulatory committee (Article 8). Standardised and co-ordinated reporting and monitoring is also to be supported by the Water Information System Europe (WISE) which is not formally part of the WFD, but has been developed under the CIS (CIS 2003a).

The CIS in particular provides the WFD with what comes close to a system of multi-level peer review. Essentially, the CIS has established a nested hierarchy of expert fora, ranging from the more political to the more technical. The water experts draft, review, and adopt guidance documents and other CIS output drawing on their technical and scientific expertise as well as country specific knowledge and experience. At the top of the CIS hierarchy is the meeting of the Water Directors. A Water Director typically heads the water division in a national environment ministry. Draft documents are prepared by a number of working groups (WGs) with more specific tasks. For example, the “Ecological Status” WG has been charged with developing harmonised or comparable criteria for high and good environmental quality as well as monitoring and assessment systems (CIS 2006: 16). Steering and preparatory groups as well as drafting groups and highly specialised expert networks and workshops support the WGs. In addition there are so-called ad hoc structures, in particular the strategic steering groups looking specifically at links between the WFD and other policy sectors and expert fora directly advising the Commission (ibid.: 12-14). Usually, a clear majority of the participants in these networks are national officials. However, external scientific experts and stakeholders, such as economic actors and environmental NGOs are also well represented, in particular in the more specialised fora.

## The WFD/CIS in practice

The following analysis presents significant instances of recursive policy-making and learning in the framework of the WFD/CIS:

**Recursiveness:** The WFD has a comprehensive scope and long timeframe for implementation but lacks detailed substantive provisions. The resulting uncertainty and complexity necessitate a recursive governance approach where existing WFD measures need to be continually adapted in response to the successive implementation of WFD measures, the accumulation of experience, and changing circumstances. This means that operational objectives, metrics, procedures etc. must remain provisional and need to be regularly reviewed and revised. Two main factors provide a basis for recursive adjustment. First, as mentioned above, the WFD comprises numerous provisions requiring periodical monitoring, reporting and review of measures. Second, by incorporating national and sub-national experts in the review and revision processes, the CIS creates better opportunities for cross-level, vertical feedback. In this way the CIS strengthens the link between actual implementation experience at national and sub-national levels and EU-level monitoring and review processes.

In 2007 the Commission completed the first interim review of implementation on the basis of national reports mandated by Articles 3 and 5. Focussing on administrative arrangements for implementing the WFD and on the analysis of river basins by national authorities, the review illustrates, among other things, the link between monitoring and review provisions and the CIS. Along with some progress, for example concerning national administrative arrangements, it reveals severe shortcomings in the economic and environmental analyses of river basins submitted by Member States (European Commission 2007: 7-8).<sup>3</sup> Addressing these results, the review refers to the CIS, stating that the Commission would focus its support on improving economic instruments and the assessment of ecological status (ibid.: 11).

The CIS itself has been revised in 2003, 2005, and 2006. In each case the Water Directors reviewed the CIS and adopted updates of the CIS work programme which concerned both substantive and organisational aspects. For example, in 2003 the CIS was restructured. This resulted in a significant reduction of the number of working groups and in the adoption of measures to

increase the accountability of CIS structures below the level of the Water Directors (cf. Scott/Holder 2006: 17). Similarly, reflecting the completion of tasks and shifting priorities, the Working Group on Integrated River Basin Management was dissolved in 2006, while the *ad hoc* stakeholder forum on floods was transformed into a more permanent Working Group (cf. CIS 2006: 8).

CIS substantive output, such as the guidance notes and similar documents, is also intended to be reviewed and revised, albeit on a more *ad hoc* schedule than the CIS work programme (Scott/Holder 2006: 17). Some CIS documents explicitly mention the preliminary status of CIS output. For example, the guidance note on the planning process states that it “is a *living document* [original emphasis] that will need continuous input and improvements as application and experience build up in all countries of the European Union and beyond” (CIS 2003: i).

**Learning:** The evolution of the CIS so far shows that, first, different types of learning have characterised different phases and, second that there is a trend towards more inclusive and mutual types of learning. Initially, the CIS focussed on the development of non-binding guidance notes designed to support implementation at national and sub-national levels (European Commission 2007a: 44). Activities at this stage were dominated by several large Member States, such as Germany, France or the UK, leading key working and drafting groups. Reflecting the strong influence of these countries, learning resembled an asymmetrical diffusion process in which most information flowed from these countries towards the remaining, less influential Member States. The fact that, when it comes to implementation of the WFD, the smaller, and in particular the future Central and Eastern European Member States, tended to draw more heavily on the guidance notes than the large, “old” Members further increased the prevailing asymmetry (Interviews VROM, May 26, 2005; European Commission, June 23, 2005). On the whole, the uptake of the guidance notes at the national and sub-national levels appears to have varied strongly not only among Member States but also among guidance notes. For example, the 2006 CIS work programme finds that “there was only limited or no use made of the CIS Guidance Documents” (CIS 2006: 2), whereas the Commission finds that the guidance documents on the identification of heavily modified water-bodies were

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<sup>3</sup> In addition the Commission identified numerous serious transposition failures (ibid.).

“widely used” (European Commission 2007a: 26). The Commission itself drew heavily on the reporting guidance notes when evaluating Member States’ implementation reports (ibid.: 15, 23).

When the pilot river basin projects were launched, learning took on a more experimental form in that the guidance notes were to be tested in these projects. An early result which was based on the first experiences with the pilot river basins was a CIS document (CIS 2004) on the principles of the WFD environmental analysis (Art. 5) (cf. European Commission 2007: 24). However, the idea of the pilot river basins serving as laboratories for testing and refining CIS recommendations was only partly realized because many early results tended to be disconnected and too specific to local settings (Interview, 13 June 2005). Nonetheless, the pilot river basins are still being perceived as helpful and continue to be used for testing of, and providing feedback on, a broad range of CIS output and recommendations (cf. CIS 2006: 30, 37, 41, 60, 62); ongoing efforts to link the pilot river basin projects more closely to CIS output can be viewed as a possible instance of procedural learning.

Learning within the CIS was, at least initially, often based on contributions by a few Member States which took the lead in the working groups and on the experience gained in the pilot river basins. More recently, the Water Directors have tried to promote more inclusive and mutual forms of collective learning. According to the 2007-2009 CIS work programme, the structure of the CIS is to be adapted to reflect “a clear preference for ‘less documents, more information exchange’” (CIS 2006: 5). The Water Directors are also trying to achieve greater active participation in the CIS by all Member States (Interview, VROM, 23 June 2005). This shift towards more mutual learning and peer review has led to a reduced focus on the elaboration of guidance notes and on the pilot river basins. The new approach relies on collectively documenting, comparing and evaluating a broad set of Member State practices and experiences. “Ecological status classification” - one of the priority activities under the 2007-2009 work programme - illustrates the recent shift: the exercise “aims to compare approaches in the Member States” by “collating case studies and sharing experiences on Member States’ approaches. [...] Based on this information it will be evaluated if further guidance [...] will be needed. Further tasks will include comparison of alternative approaches to set maximum and good ecological potential for heavily modified water bodies” (CIS 2006: 17).

To some extent, the increased emphasis on cross-national comparison, mutual learning and peer review reflects, but also depends on the progress made so far in implementing the WFD. The early implementation measures have provided a growing number of Member States with relevant experience which can now be compared and evaluated. This new experience, which has been gathered in all Member States, provides a basis for more equal, peer-review style of interaction and evaluation by the Water Directors.

The evolution of learning within the CIS from a diffusion approach strongly dominated by a small group of Member States to experimental learning in the pilot river basins, to more inclusive mutual learning and peer review can itself be seen as a learning process. This process resulted from the frequent revisions of the CIS work programme which allowed for periodical reflexive analysis of the effectiveness and efficiency of CIS working methods (cf. CIS 2004: 3-6).

This analysis shows that the implementation of the WFD is a highly dynamic process. Already in its initial stages this process displayed institutional and functional characteristics corresponding to the EGA. The WFD itself features framework goals and metrics, “lower level” plans and numerous reporting, monitoring and review requirements. However, due to the Directive’s comprehensive scope, long timeframe and lack of substantive provisions, these were difficult to implement. Therefore, the Commission and the Water Directors created the CIS early on in the implementation process. The CIS enables learning on the basis of peer review. The results helped to translate framework goals and metrics as well as reporting and monitoring requirements into operational concepts. In this the CIS was itself a recursive learning exercise, with learning evolving through several revisions of the CIS work programme from diffusion, to experimentation, to inclusive, mutual learning. But implementation of the WFD is a long-term process. Although the CIS has helped to keep deadlines, implementation has so far hardly gone beyond implementation planning – a process that is scheduled to take 9 years (CIS 2001: 1). The effectiveness of the WFD/CIS “on the ground” has so far hardly been tested.

## **INTERNATIONAL IMPLICATIONS**

The rise of EGA-type environmental measures in the EU is likely to affect environmental governance at the wider international level. In fact, many of these

measures explicitly address the international level. The EU-SDS is a case in point. For example, the strategy proposes measures at the international level to mitigate, and adjust to, climate change, and to eradicate global poverty. However, it seems too early to assess the effects of the SDS on governance at the international level. In contrast, there is more experience with the implementation of the WFD. With respect to governance at the international level, the WFD appears to have had two major types of effects: some impacts can be directly attributed to the WFD, whereas others are indirect, resulting from other EU measures which, however, were themselves strongly influenced by the WFD. This applies, in particular, to the EU Marine Strategy/Marine Strategy Directive (MS/D) discussed below.

The WFD has directly and - frequently via the MS/D - indirectly affected the operation of regional international conventions for the protection of rivers and seas in Europe. In terms of governance, the WFD typically turned the river conventions' decision-making mechanisms and executive bodies into processes serving to implement the WFD. This happened although, in many cases, some of the contracting parties to the conventions do not belong to the EU. A broadly similar effect can be observed with respect to the European seas conventions. However, in this case, the interaction between the MS/D and the conventions appears to be weaker and, on average, more reciprocal: among other things, representatives of the conventions formally participated in the process of formulating the MS/D. The WFD has also affected more bilateral relations of the EU, in particular with neighbouring countries. The so-called Mediterranean EUWI/WFD Joint Process provides a good example of this. However, the focus of the following analysis is on the effects of the WFD and the MS/D on the international rivers and seas conventions.

### **Direct effects on river conventions**

The effects of the WFD/CIS on the International Convention for the Protection of the Danube River - the longest river crossing EU territory - are particularly striking. The Convention was signed in 1994 and came into force in 1998. Its general aim is to ensure that surface waters and groundwater within the Danube river basin are managed and used sustainably and equitably. Despite the fact that more than half of the Convention's thirteen signatory states (the EU is the 14th contracting party) do not belong to the EU (Bosnia and Herzegovina,

Croatia, Macedonia, Montenegro, Moldova, Serbia, Ukraine), implementation of the WFD has become the main operational aim of the Convention's executive body, the Commission for the Protection of the Danube River (ICPDR). In 2000 - the first year in which the Commission was fully operational - the 3rd Plenary Session of the ICPDR already considered implementation of the EU WFD to be "the highest priority" (ICPDR 2000: 3). In the same year the ICPDR's Ad-hoc River Basin Management Expert Group (RBM EG) "prepared the steps and activities the ICPDR should take in the 2001-2004 period for the implementation of the EU Water Framework Directive" (ibid.: 6), while other working groups dealt with ecological aspects of the WFD and compliance with the WFD list of priority substances (ibid.). Efforts to comply with the key requirements and deadlines of the WFD continued in the following years. For example, in accordance with the WFD's Article 5, the ICPDR submitted the analyses of the river basin to the European Commission. Further illustrating the strong impact of the WFD, the ICPDR working group on river basin management was permanently chaired by European Commission officials in charge of the implementation of the WFD. By contrast, national officials representing countries which were neither EU Member States nor accession countries very rarely chaired one of the working group. In 2005 and 2006, of a total of eight expert working groups six were headed by EU Member States and two by the European Commission (cf. ICPDR annual reports).

Except for the International Convention for the Protection of the Danube River and the 2002 Framework Agreement on the Sava River Basin, a clear majority of the contracting parties to each of the remaining six European river conventions are EU Member States. It may therefore appear less surprising that the impact of the WFD on these conventions was broadly similar to its effects on the Danube river convention. In particular, the convention's river basin commissions were designated as co-ordination bodies for the implementation of the WFD in the respective basins. In the case of the Sava River Convention which was adopted after the WFD, the text of the convention itself commits the contracting parties to implementing the Directive - despite the fact that only one of the convention's four contracting parties is an EU member state (Slovenia). Reflecting the fact that it had to be adapted to enable it to co-ordinate the implementation of the WFD, the Scheldt Convention also explicitly commits the contracting parties to implementing the Directive. By contrast, the Rhine River Commission seems to have been most concerned about its autonomy vis-à-vis

the WFD. In this somewhat exceptional case, a separate body was created under the convention to co-ordinate the implementation of the WFD despite the resulting institutional complexities and considerable duplication of work (cf. Moellenkamp 2007).

### **Indirect effects: the MS/D and the seas conventions**

To a considerable extent the WFD served as a template for the EU Marine Strategy and the associated Marine Strategy Directive which, in turn, interacted with the European seas conventions. As with the WFD, the overall approach of the MS/D is similar to the EGA. The Directive pursues an analogous framework goal – good environmental status by 2020. This is to be achieved using an ecosystem approach and via “lower-level” (in this case national rather than regional) strategies and programmes of measures. Another similarity with the WFD consists in the fact that the provisions for peer review and, to a lesser extent, for monitoring and reporting tend to be weak. Whether or not the MS/D will live up to its EGA potential will therefore strongly depend on the emergence of structures resembling the WFD-CIS. Effective implementation of the MS/D would certainly require CIS-type co-ordination and review structures given that key concepts, in particular “good environmental status” and the respective targets and indicators, will have to be defined at regional rather than national level (Articles 9,10 MSD). The fact that the formulation of the MS/D involved an intensive consultation process - the structure of which was similar to the CIS - suggests that CIS-like structures might indeed emerge under the MS/D. More specifically, the Commission had asked the CIS core body – the meeting of Member States’ Water Directors - “to guide and steer the development of the marine strategy and its implementation” (European Commission n.d.). Subsequently, several technical working groups broadly resembling those of the CIS were established under the guidance of the Water Directors (cf. Ibid.; European Commission 2006x, Marine strategy story: 17, 18).

These similarities between the WFD and the MS/D are not surprising. As mentioned above, the thematic strategies and associated legislation generally tend to resemble the EGA. In addition, there are significant substantive links between the WFD and the MS/D, for example concerning transitional and coastal waters, but also monitoring (European Commission n.d., work plan). Perhaps

most importantly, the Water Directors responsible for the implementation of the WFD also played a leading role in the process of formulating the MS/D.

**Effects on the seas conventions:** The MS/D has only recently been adopted (the Strategy was adopted in October 2005, the Directive in December 2007). Consequently, an assessment of its impact on the European marine conventions is necessarily very provisional. Five international marine conventions are particularly relevant because of their strong overlap with the main focus of the MS/D – the waters of EU Member States: The Arctic Council, the Barcelona Convention, the Black Sea Commission, the Helsinki Convention (HELCOM), and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR).

Effects of the MS/D on the seas conventions were to some extent preceded by reverse effects. More specifically, the expected potential effects of the MS/D on the conventions had a significant impact on the agenda-setting and policy formulation process of the MS/D. For example, at an informal meeting of EU Water Directors, candidate and EFTA countries in 2004, the Commission had to reassure some delegations that the MS/D would not “undermine the work of regional conventions. The approach taken should be working together with regional conventions” (Informal meeting of Water Directors 2004: 7). To address potential conflicts and synergies between the MS/D and the conventions, the Commission complemented “first tier” involvement of the Water Directors and expert groups in the agenda-setting/policy formulation process of the MS/D with a “second tier” of external engagement. For this purpose the Commission created the Inter-organisational Consultation Forum in which the European marine conventions as well as stakeholder and expert organisations participated (European Commission n.d.). Among other things, Members of this forum actively contributed to the more technical working groups. However, active involvement varied significantly among the conventions. For example, while the MS/D “was one of the main items on the agenda of the Joint Ministerial meeting of the Helsinki and OSPAR Commissions” (European Commission 2006: 19), the Arctic Council in particular hardly engaged with the MS/D (ibid: 10).

Similar variation can be found in the reverse impact of the MS/D on the European seas conventions to date. Article 6(1) of the MSD designates the conventions as privileged fora for regional co-operation in implementing the Directive: For this purpose “[...] Member States shall, where practical and appropriate, use existing

regional institutional cooperation structures, including those under Regional Sea Conventions, covering that Marine Region or Sub-Region” (see also Gammeltoft 2007). The HELCOM Baltic Sea Action Plan, which was drawn up and adopted at roughly the same time as the MS/D, is broadly compatible with the MS/D. In line with the MS/D, the plan is based on an ecosystem approach and aims to restore the “good ecological status” of the Baltic marine environment by 2021. It has even been “heralded as a pilot project for European seas in the context of the proposed EU Marine Strategy Directive. The EU has described HELCOM’s plan as the cornerstone for further action in the Baltic Sea region, emphasising that plan will be instrumental to the successful implementation of the new EU Marine Strategy in the region” (HELCOM 2007: 16). To a large extent, the similarities between the plan and the MS/D can be explained by the fact that the plan was drawn up in parallel to the MS/D and many HELCOM contracting parties are environmentally “progressive” EU Member States. However, even the Russian Federation appears to have played a constructive role in the adoption of the action plan (cf. Gammeltoft 2007).

All countries which have signed the OSPAR Convention for the protection of the north-east Atlantic are EU Member States. “[T]hroughout the 2006/07 cycle of meetings, OSPAR and its subsidiary bodies have reviewed the ongoing development of the European Marine Strategy and the proposed EC Marine Strategy Directive” (OSPAR 2007: 4). The interest of OSPAR in the MS/D suggests that, like HELCOM, OSPAR is preparing to act as a regional co-ordination forum for the MS/D. As a first step, OSPAR is planning to adapt its major 2010 Quality Status Report (QSR) to the requirements of the MS/D (ibid.: 10). However, these preparations appear to be significantly less pro-active and more limited than in the case of HELCOM. The 2007 OSPAR decision to “to initiate collaborative discussions between the European Regional Marine Conventions to discuss a more harmonised approach to the future Marine Strategy Directive” (ibid.: 4) also seems to suggest a heightened concern by OSPAR for the autonomy of the conventions vis-à-vis the MS/D. This may partly be explained by the fact that countries with important off-shore oil drilling and/or shipping interests, such as the UK, the Netherlands, and Norway are contracting parties to OSPAR. Some of these were among the sharpest critics of the MS/D.

The European Commission has in recent years intensified co-operation with the Barcelona Convention for the protection of the Mediterranean against

pollution, in particular with the secretariat of the associated Mediterranean Action Programme (MAP). Slightly more than half of the 22 contracting parties, which are all bordering on the Mediterranean, are EU Member States or Candidate Countries. According to a recent agreement between the Commission and the MAP Secretariat, “the MAP will continue to contribute, through the MEDPOL programme, to the process of development and implementation at regional level of the EU Thematic Strategy for the Protection and Conservation of the Marine Environment, with a view to providing a holistic framework to deal with the protection and conservation of the marine environment” (UNEP MAP 2006, para 2.8). While the reference to the MEDPOL programme - which focuses on monitoring and assessment, including capacity building - indicates that, for the time being, the focus of co-operation is mainly on technical issues, the reference to “a holistic framework” suggests that the Barcelona Convention could evolve into a broader regional co-ordination forum for implementing the MS/D.

The Black Sea Convention and the Arctic Council appear to be least capable or willing to serve as regional co-ordination bodies for implementing the MS/D. While there are significant contacts between the European Commission and the Black Sea Commission, these have so far mainly focussed on technical assistance and capacity building (cf. Black Sea Commission n.d.). The Arctic Council, whose membership includes, among others, the U.S and the Russian Federation as well as various EU Member States, has so far shown few signs of engagement with the MS/D, including in the process of formulating the MS/D (cf. European Commission 2006, story, p. 20).

### **International impacts of the WFD and the EGA**

The WFD had considerable direct and - via the MS/D - indirect effects on many European river and seas conventions. The Danube Convention probably provides the clearest case. As the Danube Commission’s 2006 Annual Report puts it: “The EU Water Framework Directive (WFD) is the highest priority for the Danube countries, and all countries within the basin have committed to it, whether they are legally required to or not (ICPDR 2006: 14). All river commissions - with the partial exception of the Rhine Commission - are set to act as regional co-ordination bodies for the implementation of the WFD. A similar, though as of yet less pronounced tendency can be observed in the case of the MS/D and the seas convention. However, variability is significantly larger in this

case. While HELCOM has adopted a proactive role towards co-ordinating the implementation of the MS/D, OSPAR seems somewhat more reluctant. In the cases of the Barcelona Convention and the Black Sea Convention, first steps towards a possible role as the regional co-ordinating role in the implementation of the MS/D have only recently been taken. The Arctic Council has so far shown little inclination to engage with the MS/D.

The findings suggest that the degree to which the conventions serve to implement the WFD-MS/D is, if anything, only weakly influenced by the share of contracting parties for which implementation of the WFD-MSD is legally binding. For example, EU Member States are a large minority among the signatory states of the Danube River Convention and a small minority among the contracting parties of the Sava River Convention, whereas all the contracting parties to the Rhine Convention except Switzerland are EU Member States. Nonetheless, the Rhine Commission appears to have been more reluctant to co-ordinate the implementation of the WFD than the other two river commissions. Similarly, HELCOM engaged more proactively with the MS/D than OSPAR despite the fact that the former counts the Russian Federation among its contracting parties, whereas all contracting parties to the latter are EU Member States.

It seems likely that the EGA character of the WFD is a significant factor explaining the willingness of countries outside the EU to commit to the WFD. Flexibility, participation and recursiveness appear to be two key factors. The flexible, long-term character of the WFD, which leaves significant room for adaptation of implementation to local circumstances, reduces the potential costs and risks associated with committing to the WFD. These risks are further reduced by the opportunity to influence the CIS via participation in the expert groups, which are open to countries from outside the EU. Although participation in the meetings of the EU Water Directors themselves is restricted to Member State and Candidate Country officials, there are multiple opportunities for non-members to exert indirect influence. The same EU Water Directors who direct the CIS often represent their countries in the conventions' meetings of the contracting parties where they can discuss with their counterparts from non-members. The Mediterranean EUWI/WFD Joint Process provides additional opportunities. The structure of the process is similar to the CIS, including meetings of Mediterranean Water Directors. Finally, the recursive character of the WFD/CIS makes it easier

for the concerns of countries which have only recently committed to implement the WFD to be incorporated.

In principle, the same arguments should apply to the MS/D and the seas conventions. The significantly larger variation in commitment to implementing the MS/D can to some extent be attributed to the recent nature of the EU measures. However, differences between the approaches of HELCOM and OSPAR as well as the lack of involvement of the Arctic Council suggest an important role for strongly held interests by some contracting parties. In the case of the Arctic Council, the contracting parties have strong territorial and sovereignty concerns coupled with the interest to exploit the Arctic's resources. The predominance of these concerns and the potential for conflict have so far seemed to prevent a significant involvement in the MS/D. As mentioned above, oil-drilling and shipping interests held by some contracting parties may explain the differences in the approaches to the MS/D chosen by HELCOM and OSPAR.

## **CONCLUSIONS**

Over the last thirty or so years "traditional" EU environmental policy based on legal harmonisation has helped to reduce emissions from point sources, provided for cleaner water and air, banned hazardous substances etc. However, since the early 1990s several trends prepared the ground for the emergence of new governance patterns resembling the EGA in EU environmental policy. Among these trends were, in particular, the rise of persistent environmental problems and of the sustainable development paradigm, efforts to integrate environmental concerns into sectoral policies as well as challenges to the legitimacy of "traditional" EU environmental policy and experimentation with "new" policy instruments. It is hoped that EGA-type measures will address the challenges associated with these trends more effectively and efficiently than "traditional" approaches. For example, EGA characteristics such as flexibility, recursiveness and capacity for learning are expected to answer to problems of uncertainty and local differences, the need to limit costs and to change engrained production and consumption patterns.

The EU-SDS and the WFD/CIS share basic institutional characteristics and functions with the EGA. In particular, policy-making is recursive and utilises peer review to facilitate learning. However, it would be misleading to assume that

the EU-SDS and the WFD/CIS were designed from scratch to correspond to the EGA. The history of EU-SDS and the WFD suggests that, at least at the time of their adoption around the year 2000, the EGA was an emerging, rather than a fully developed concept. In both cases the measures initially adopted - the 2001 original EU-SDS and the WFD (without CIS) - featured only rudimentary EGA characteristics which, taken on their own, did not facilitate effective recursiveness and learning. In the case of the EU-SDS it took five years until the potentially more effective, renewed EU-SDS was adopted which corresponds more closely to the EGA. By contrast, the CIS was quickly added to the WFD, providing a recursive learning mechanism to facilitate the Directive's implementation.

As a result of the delayed emergence of fuller EGA characteristics in the case of the EU-SDS, practical experience allowing for an empirical assessment of the degree of recursiveness and learning facilitated by the renewed EU-SDS is still very limited. Nevertheless, the little evidence that is already available, and in particular the successful revision of the EU-SDS itself, suggests that the renewed EU-SDS is likely to generate more recursiveness and learning than its predecessor. As the CIS was quickly added to the WFD, an assessment of recursiveness and learning can draw on several years of experience. However, due to the 20 years timeframe for the implementation of the WFD this experience primarily concerns implementation planning, rather than actual implementation "on the ground". Even in the case of the WFD/CIS - which has generated significant recursiveness and learning so far - the assessment must therefore remain preliminary.

One factor which is likely to have a positive impact on the further implementation of the EU-SDS and, to a lesser extent, of the WFD is the recent adoption of the thematic strategies and accompanying legislative proposals for EGA-style framework directives. Given the comprehensive scope of the SDS's framework goals, these goals can only be achieved by a wide array of measures at EU and Member State levels – a fact that is illustrated well by the diverse operational goals and measures listed in the EU-SDS. This approach will require long-term co-ordination of measures. Being a cross-sectoral macro-strategy, the EU-SDS itself clearly lacks the necessary co-ordination mechanisms and capacities. By contrast, the thematic strategies and accompanying legislative proposals provide instruments, such as highly specific national plans and EU-level review, to co-ordinate multiple measures in support of their respective

framework goals. Although the framework goals formulated in the thematic strategies are not identical to those of the EU-SDS, there is a broad overlap. The implementation of the EU-SDS is therefore likely to benefit considerably from an increase in long-term co-ordination capacities as a result of the adoption of the thematic strategies and accompanying legislative proposals.

Similar arguments apply to the WFD. Despite its wide coverage, many factors affecting water quality and consumption in EU Member States remain outside the substantive scope of the WFD - for example the marine environment - or beyond the jurisdiction of the EU. However, the situation is alleviated by three factors: first, as the European river conventions are taking over the role of regional co-ordinating bodies for the implementation of the WFD, non-EU contracting parties to these conventions have committed to implementing the WFD. As a result, the WFD also covers parts of river basins which are not under the jurisdiction of the EU. Second, the marine environment is covered by the MS/D which is closely linked to the WFD by, among other things, the EU Water Directors meetings. The MS/D has also extended its effective geographical scope to non-EU countries via its effects on the European seas conventions, although so far to a significantly lesser extent than the WFD. Finally, other EGA-type measures, such as the Soil and Pesticides thematic strategies address issues of considerable significance for water quality and, consequently, the WFD. By forming a new comprehensive web of communication and learning underlying more concrete and immediate measures, the thematic strategies and associated framework legislation as well as other EGA-type environmental measures may transform EU environmental governance in a way that could allow the EU to address the multi-dimensional, long-term and global challenges posed by persistent environmental problems more effectively.

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