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**Analysing Environmental Multi-level and Cross-sector Policy Processes:
The Case of Strategic Environmental Assessment in Europe
and the Process of Greening German Transport Planning**

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Content

1	Introduction	3
2	Multi-Level Governance	3
	2.1 The Structure of the European Multi-Level Governance System	4
	2.2 The Case-Study Strategic Environmental Assessment (SEA)	5
3	The Multi-Level Interactions as Object of Analysis.....	9
	3.1 A Theoretical Approach: Modes of Interaction.....	9
	3.2 Multi-Level Interactions in the Environmental Politics	10
4	Conclusion.....	11
	References	13

1 Introduction

Over the last 50 years, the multi-level system of the European Union has developed distinctive features that differentiate it from others. These features, and their significance for the decision-making process in the EU, are central aspects of the current European research. In the following, environmental politics and more specifically the European directive on Strategic Environmental Assessment will remain in focus while examining these central aspects of the multi-level system.

In 2001, the European Parliament and the Council passed a directive on Strategic Environmental Assessment (SEA) of Plans and Programmes. Similar to other impact assessment procedures it aims at integrating environmental concerns in policy making in order to support a sustainable development. Transport policy is a sector that still is quite reluctant to environmental policy integration. Until now transport infrastructure construction is still an indicator for prospering economy and industrial development. But in recent years, the environmental pressure on transport policy grows. Within this context, SEA for transport plans is an important step for better consideration of so called network and cumulative effects, and hence struggling against climate change, in transport planning.

The following paper examines the various influencing factors and patterns of decision-making processes existing in the multi-level system of the European Union. In order to better conceptualize the term European Multi-Level Governance, its structure and the specific types of interactions and constellations that evolve within its system are to be analysed. With the aim of illustrating governance processes in the EU and implementation procedures in the member states, the case study of the SEA-directive will be represented. The process preceding the passage of the directive and its implementation in the German transport policy, remain central aspect of the case study. In addition, the implementation of the directive in Conclusively, the focus will be directed towards environmental politics in the European multi-level governance system.

2 Multi-Level Governance

In the last years, the term Multi-Level Governance has become central in the European political research (Benz 2004,2005). The research is first and foremost dedicated to the decision-making and ruling processes on the European level and their impact and implementation on the national level. The following section examines the specific characteristics of the European multi-level governance system, and demonstrates the various processes involved by showing how a central environmental directive, the SEA-directive, was passed.

2.1 Governance in a European Multi-Level Polity

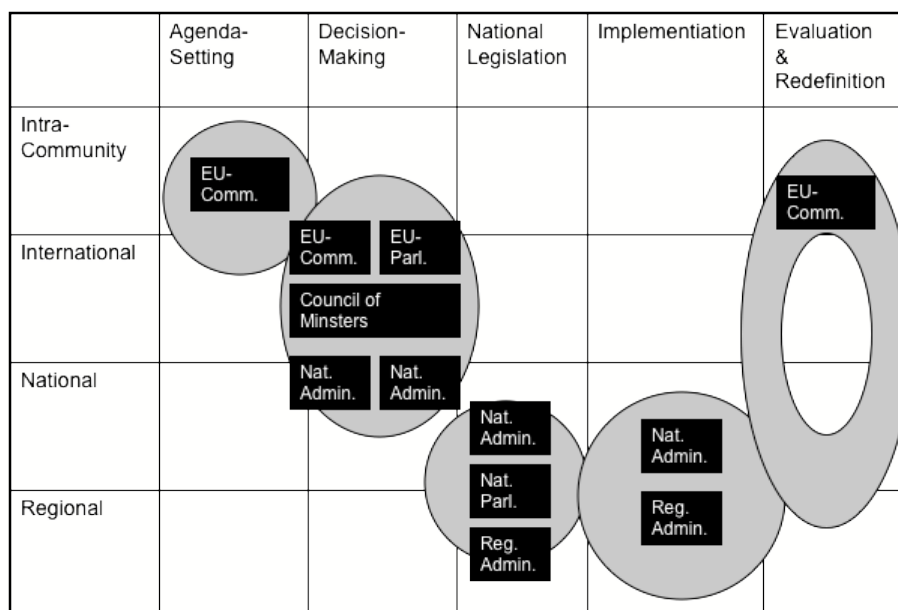
The broad and abstract term “Multi-Level Governance” is applicable to a variety of institutions, including federal states, international organisation, regions and municipalities. The term essentially implies a system with adjoined different and territorially defined levels of ruling. The multi-level governance system of the EU cannot be characterised under any of the above-mentioned bodies (Tömmel 2003), but contains elements of already known multi-level systems. It is possible, though, to explain the institutional structure of the European Union (Weidenfeld 2002). The EU is an institution made up of national and European players. Decisions are made on a supranational, European level, and the member states have limited influence, due to the specific constellation of actors, the decision-making modes and the fact that decisions are made on multiple arenas.

Within the European Union, a variety of parties are involved in the policy-making. In addition to the governments and European administrative bodies, lobby groups, federations, parliamentarians etc. have at least an indirect influence on the ruling. The constellation of actors in the EU is distinctive, due to the existence and the specific influence of the European players. The European Commission, the Court of Justice and the European Parliament are not directly coupled with national institutions, but hold their own European orientation. On the other hand, institutions like the Council of Ministers constitute European arenas, where national interests are negotiated. With the diverse European parties on one side, and the affected and involved nation states on the other, a wide range of constellations can evolve.

The developments of the constellations discussed in the above, are also made possible by a second institutional characteristic of the European multi-level system. The typical mode of international decision-making, the consensus-orientated negotiation, is extended by the formalised preparation process, in which the Commission and the European Parliament play a significant role. Introduced by the Treaty of Maastricht and simplified in the Treaty of Amsterdam, the co-decision procedure has become the most applied legislative procedure in the European Union. The procedure forms a fundamental institutional frame for the interrelation between national and European actors. In co-existence with unanimity voting this procedure is vulnerable to blockades. As unanimity increases the number of possible veto players, the danger of failure is still lurking. With the introduction of the qualified majority in an increasing number of fields, though, the chances of blockades are decreasing.

Decision-making proceedings involve a variety of decision-making rounds. In order to define the European multi-level system, the term “Arena” by Grande (2000) has been applied. It basically maintains that the EU is a negotiation system of interdependent, territorially and functionally related political arenas. The arenas are divided into Intra-Community Arenas, i.e. Commission and Parliament, and international arenas, like the Council of Ministers and the governmental conferences. The illustration below can further enlighten the relationship between the arenas and actors.

Illustration 1: Arenas and actors of multi-level governance in the phase of the political cycle



Source: author's illustration

In conclusion, one can emphasise the special form of the European multi-level-governance. It has become evident that governing in the EU demands new, complex manners of decision-making. With the following case study, the terms Governance and Arena will be illustrated by applying the Directive Strategic Environmental Assessment.

2.2 Case-Study: Strategic Environmental Assessment (SEA)

On the 27 June 2006, the European "Directive on the effects of certain plans and programmes on the environment" was passed. The acceptance of the so-called SEA-Directive was a result of long-lasting controversial discussions in the European multi-level governance System. A Strategic Environmental Assessment can be defined as an examination of the environmental consequences of strategic acts by assessing and publishing the expected impacts and including public participation already at a very early stage. (Schäfer et al. 2003). Instead of only focusing on specific projects, the SEA focuses on programs, plans and politics. It therefore enables an early setting of course on the superior planning level (Hey 1998).

On the European level, the Strategic Environmental Assessment was mentioned for the first time in the First Environmental Action Program of 1973 (Gühnemann 2000). In early Commission bills from 1985, a SEA Directive was passed as well. This was cancelled, though, in the following negotiation process (Lustig 1998; Schäfer et al. 2003). The Commissionaire responsible for the Directive, claimed that the proposal would have found support among the member states. The Parliament and the Commission continued to aim for an SEA agreement and the Commission decided on a long-term strategy, with a gradual approach to the SEA.

The Position of the Member States

It was not until 1996 that the Council of Commissioners could decide on an official bill. It had to coincide with the member states' complex constellation of interests. The idea of a SEA received a variety of responses among the member states. Some countries were opposed to the efforts of the Commission, while others had a positive approach (Hey 1998). Active support came, for example, from the Netherlands: the country supported the process with experts and organised several workshops where the bill was discussed. The Netherlands had already put some elements of a SEA into practice (Hey 1998). While Denmark, France, Sweden, Finland, Spain, Italy and Ireland showed positive tendencies of acceptance (Lustig 1998), Great Britain and Germany were the most decisive opponents. The British criticised that the SEA methodology still needed to be developed, and referred to the risk that the approval process would be halted by long-lasting legal procedures. The German government maintained similar opposing arguments. Comparable to the introduction of the SEA, the planning process in Germany was not compatible. Given the existing complex Planning- and Environmental Law in Germany, the government questioned the necessity of a directive, as regards content and law (Jacoby 2000). Although the European SEA-discussion of the 1970s was initiated by Germany, the Federal Council summoned the Federal Government to reject the Directive in 1997, "based on fundamental considerations and because of severe content and factual deficits" (Schäfer et al. 2003).

The Passing of the SEA-Directive

In 1999, under German presidency and three years after the first bill, the first round of negotiations on the Council level took place. In the first reading of the Parliament, several suggestions of modifications were made, but only few were acted on by the Commission. During a debate on environmental minister level, it became evident that a political will towards the establishment of the directive was present in the member countries (Feldmann 2000, p. 109; Sangenstedt 2001, p. 236). The following Finnish presidency greatly supported a successful conclusion to the negotiations. The question regarding the plans and programmes which would be embraced by the directive, was still to be disputed on. As a compromise, a narrow area of application was defined, which would allow an unanimous assent by the member states. Consequentially, the environmental group of the Council could establish the details of the directive. After seven rounds of negotiations, a common position of the Council of Ministers (SEC(2000)568) could be publicised in 2000. The Commission did not consent to the position of the Council, though, arguing that the area of application seemed too narrow (Feldmann 2000, p. 109). After the Parliament in its second reading again called for several changes, conciliation proceedings between the Council and Parliament were initiated. (Sangenstedt 2001. P. 237). At the end of 2000, both parties were able to settle on a bill of the directive. The proponents had been able to put through most of their issues.

In the context of these proceedings, the decision mode's role is particularly interesting, as it was disputed on and changed during the process of negotiation. To begin with, the Commission claimed that the "Cooperation Proceedings" (Art. 189c) should be used for attaining specific environmental goals (Art. 130s). Thereby, a qualified majority in the Council of Ministers would have been enough, rather than unanimous voting. Great Britain and the German

Federal Council, however, questioned this interpretation. Both referred to the Strategic Environmental Assessment as also pertaining to spatial planning and land utilisation. With this, hearing proceedings would have been applicable, weakening the role of the European Parliament by demanding unanimity in the Council (Lustig 1998, p. 75). This position could not be implemented, though, and cooperation proceedings were applied in the first reading.

In these proceedings as well, the Council could overrule the Parliament. It is therefore not strange that the Commission and the Council only acted on a few modification proposals (Feldmann/Vanderhaegen 2001, p. 119). With the commencement of the Amsterdam Treaty in 1999, the situation altered: in the area of environmental politics, the “Co-decision Procedure” was to be applied. As a result, the Parliament considerably gained in influence. In the second reading and the conciliation proceedings, much more issues could therefore be implemented as earlier expected (Feldmann/Vanderhaegen 2001, p. 120). The Parliament for instance achieved the implementation of a monitoring of environmental impacts. Background for this, is the opposition’s change of position towards the directive: in Great Britain, the institutional compatibility of the “Policy Appraisals” with the directive rose, due to various amendments and modifications of the directive bill. In Germany, the reasons for the change of position was more due to the parties involved: after the shift in government in 1998, the environmental ministry started actively supporting the initiative (Lustig 1998).

The Significance of Expert Networks and Co-Decision Procedures

The example of the SEA directive demonstrates the variety of arenas that policies pass through: initially, long-lasting discussions took place in the European Commission on whether and how a proposal of a directive should come about. In the middle of the 1970s, the development of the Strategic Environmental Assessment was thereby appointed to a relatively small environmental politics- and network of experts. The subject matter of SEA “mainly” derived from “the influence of an epistemic community” (Hey 1998, p. 189), whose core belonged to the European SEA-Centre of the University of Manchester (EIA-Centre), that had been ejected by the Commission. This network had maintained good contacts to the General Direction X1 (Environment) of the Commission. Since 1989, proposals for Strategic Environmental Assessment are additionally discussed in a SEA-advisory board, in which predominantly SEA experts from the national environmental ministries are represented (Hey 1998, p. 189). The experts’ consistent background studies can be viewed as a significant success factor for the decision on introducing SEA on a European level.

Implementation of SEA in German Transport Policy¹

Even though decisions on European level have been made, policy-making is not completed at this stage. A vital stage is the implementation of the directive in the member states and converting it in national law. Since SEA is applicable for a range of sectors, this paragraph focuses on transport planning. As stated, the success of a directive cannot be concluded on the European level, but depends on the implementation in member states. Transport policy is

¹ The following section is based on interviews by the author, completed in 2006.

a sector that still remains quite reluctant to environmental policy integration. In order to measure “integration”, the question is whether the SEA directive increases the environmental pressure on transport policy. Significant is also, whether or not an institutional change in the planning procedures occurs. For example, if new actors enter the transport-planning arena, the constellation of actors changes and new ways or modes of decision-making are introduced. The question remained, whether or not the SEA directive could effect power and lead to a new overall concept of transport-planning objectives in terms of “greening” transport policy.

The German government was required to implement the SEA directive before June 2004. Prior to 2001 it would hardly have been possible to introduce an impact assessment of the National Transport Plan. The responsible transport ministry argued that German planning procedures of collecting project proposals and selecting up to 2000 with economic benefits did not match the idea of public and environmental participation. The ministry thus blocked all initiatives. The situation altered when the German environmental minister agreed on the directive. Although the transport ministry argued that the SEA directive was not applicable to the National Transport Plan, the environmental ministry succeeded in including the transport sector in the SEA-law. The decision conditions in Germany transformed, as EU-law required action. Hence, the power-relation between the environmental ministry and the transport ministry changed. The question that remained was what kind of SEA was needed, instead of whether or not a SEA was needed.

In order to be prepared for negotiations, the environmental ministry tried to increase competences in the field of transport planning by funding a research project on SEA in transport planning. At this stage, the transport ministry argued that the economic assessment only had to be adapted to some provisions of the directive. Concurrently, the environmental ministry preferred more basic changes, including increasing the influence of environmental stakeholders like e.g. the Environmental Protection Agency. Finally, the transport ministry succeeded in defining how SEA should look like: the SEA-law views the SEA in national transport planning as an exception. It turned out that the transport ministry would remain responsible and would provide procedures. As until now, no planning-process is running, there is no final decision made on how SEA should be implemented. Currently, the transport ministry is preparing a draft concept.

In conclusion to this case, the greening of transport policy in Germany is not very ambitious. The constellation of actors in transport planning did not change substantially. Even if European decision-making led to the integration of formal procedures like public participation, the transport ministry did not have to change the overall concept of planning processes, i.e. setting environmental objectives as a key point on the transport agenda. Nevertheless, multi-level interactions reinforced the influence of the environmental actors in Germany.

3 The Multi-Level Interactions as Object of Analysis

On the background of the non-hierarchic arrangement of the arenas and their dynamic functions and roles, the term European Multi-Level-Governance can be defined as the following: *to govern in coupled, non-hierarchic organized arenas, in which negotiated solutions are required and a dynamic allocation of roles exists*. The differences to Government, with determined responsibilities and hierarchic elements, are thereby evident.

For the European Union, three effects of this arena structure can be formulated, (on the basis of Grande 2000):

(1) The decision processes demand a high level of coordination, first and foremost due to the high number of interfaces present on several arenas, in that way reaching a certain position of power.

(2) Several strategic possibilities arise due to the decision processes. Networks gain in influence, dominating the arena structure and the decision-making.

(3) In connection with joint decisions, various interaction effects arise between the involved parties. These effects can be utilised in the theoretical development of the Governance term: the possibilities and restrictions of interactions in multi-level governance can allow generalised statements on the probability of outcomes. This will be further examined in the following.

Although the research on European politics covers many areas, one can identify three central questions: in which way the institutions of the EU develop, how decisions are made on the European level and finally, which effects the governance on the European level have on the member states. The interactions between the involved parties remain the connective element. The succeeding section, will present the various types of multi-level interactions that exist in the European Union, as well as examining the significance of European multi-level interactions in environmental politics.

3.1 A Theoretical Approach: Modes of Interaction

With the help of a set of "Interaction Types" or "Modalities of Europeanization", Fritz Scharpf (2000, 2001) has attempted to develop concepts that describe specific characteristics of processes in the European multi-level system. The types are the following:

Intergovernmental Negotiations: Interactions in which national interests are decisive and European players take an inferior role.

Mutual Adjustment: An interaction mode that describes a coordination of interests without binding agreements. In the context of Europeanization, the mode points to nations adjusting their policies to each other, regardless of negotiations on the European level.

Hierarchical Direction: An interaction situation in which a superior influences the decision-making of others. In a European context, supranational areas fall under the field of competences of the European players, i.e. the European Central Bank and the Court of Justice.

Joint Decision-Making: Interaction implying proceedings with several central and decentralised parties involved in the decision-making. This mode remains the most fundamental interaction of the decision-making in the EU.

Open Coordination: An interaction type describing multilateral agreements of mutual political goals. Information is exchanged and actions are coordinated centrally on the European level, while the implementation remains the responsibility of the member states.

The Rule of the Majority: This interaction form is primarily relevant in the European Parliament and by the implementation of guidelines in the member states.

Due to the various arena structures, different types of interaction will be relevant, depending on political field and decision phase. Many political areas show various types of interaction, with joint decision-making as the dominant mode. An attempt to explain these trends would require considering the various situations in the political fields. Three aspects are thereby of particular importance: institutional frames, forms of interaction and type of policy.

Since the first two already have been looked at, the last aspect demands further explanation. Common interests and a will for European solutions dominate the areas of agro-, research- and regional politics. This is not the case in the political fields relating to the single European market. These areas, environmental politics being among them, do not show this trend of common interests. In the energy- and transport politics, an approach has been made with the Trans European Net (TEN). The member states, though, have no interest in delegating these competences to the European level, despite the pressured situation. In most cases that a directive has been initiated, blockade situations emerged, only to result in unsatisfactory solutions.

3.2 Multi-Level Interactions in the Environmental Politics

Environmental politics was “Europeanized” in the 1980s and 1990s (Schwarz 2002), and demonstrates how a positive coordination can be possible in the European multi-level system and how a density of rules can be reached (Hey 2005). The Joint Decision-Making mode is particularly applicable to the field of environmental politics. The reason for the development of such a positive coordination despite the mode’s vulnerability for blockade situations, most likely lies in the special constellation of environmental players. As European actors, the Commission and the Parliament are barely affected by party politics. They view environmental politics as an area in which:

- (1) Community action is especially appropriate, due to the cross-border nature of the problem;
- (2) a legislative competence through the single European market could be justified, because of the close relationship to the market rules;
- (3) the European Union generates a positive coordination that is commonly seen as reasonable by its citizens.

The Commission and the Parliament stand face-to-face with the national environmental ministers. They can use the European arena, wherein other sectoral ministries have less influence. Due to this sectoralisation of environmental politics, the chances of implementation of interests are higher than in other political fields. The Court of Justice has further supported the relatively good conditions of environmental politics, through jurisdiction that relates the principals of the common market to environmental aspects. The Court of Justice has thereby been provided a framework of supranational decisions for the Joint Decision-Making. Additionally, coordination and adjustment processes allow a diffusion of particularly economical policy instruments, like the Eco-Tax in Germany. It is evident that various possibilities of strategic options can evolve as a result of the multiple forms of interactions that exist within the environmental politics.

The proceedings leading up to the passage of the SEA-directive demonstrates the complex negotiation process of the Joint-Decision-Making mode. Despite the lasting opposition of the member states, the Commission was able to achieve a passage of the directive. This was made possible through the support of a Parliament with increasing authority and the expert committees. The resulting directive was a compromise between all involved parties.

4 Conclusion

The European multi-level system opens possibilities for environmental decisions, but also sets boundaries. Rather than acting on only one level, the political players influence their sphere of decision-making by acting on several levels. This paper has analysed the structure and interactions of the European multi-level governance system, illustrated by the process of establishing SEA in the EU and implementing SEA in the member states. The process leading up to the passage of the SEA directive, clearly shows the complexity of decision-making in the European multi-level system. The implementation of SEA in the German transport policy demonstrates the importance of multi-level interactions in the member state. It is all in all evident, that global, European and national policy-making are interdependent through the linking of arenas on different levels. In a globalised world (especially the European Union), policy processes “flow” through different decision-making arenas that cannot be analysed without taking interdependencies into account.

Although impulses in the area of regulation are given on the EU-level, directives based on financial incentives should be provided on the national level. Regulations like emission limits and the SEA-directive are pushed on to the EU-level. The single European market can explain these circumstances. Un-coordinated regulations on the national level are often seen as competitive disadvantages for national enterprises. Central solutions are in this respect advantageous.

All in all, it is evident that environmental politics can flourish under the relatively stable conditions set by the European multi-level governance. The arenas are clearly defined and actors “know” their political field. The sectoralisation of the environmental politics, which benefits from Joint Decision-Making in the EU, can even increase the environmental ministers’ decision-making power on national level, as illustrated by the implementation of SEA in Ger-

many. The analyses made also show, that a great variety of interactions are possible in the multi-level system. In addition, the cooperation form “Intergovernmental Negotiations” is extended through the inclusion of European and non-governmental Europe-orientated actors.

These are preliminary conclusions. They are empirically proven and applicable to the field environmental politics. Other fields show other premises, constellation of actors and other external conditions.

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