

## Summary report of the 2<sup>nd</sup> Colloquium on EU environmental policy

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### Abstract

The impact of European directives on Member States involves a complex interplay of domestic and European factors and is not a simple, top-down process. Increasingly, the Member States apply ex-ante impact assessments to explore the flexibility in EU directives. An important determinant of flexibility, although one that is difficult to assess on this basis, is the domestic legal interpretation of EU legislation; this differs greatly between the national courts in the Member States. Few comparative country studies have been done on the cost effectiveness of domestic implementation of flexible EU directives. The need for such studies could increase due to the observed trend of increasingly flexible EU environmental policy and the call for cost-effective domestic environmental policies.

These were the conclusions from the 2<sup>nd</sup> Colloquium on EU environmental policy that took place on 8 December 2005 as a joint effort of the Netherlands Environmental Assessment Agency (MNP) and the Forest and Nature Conservation Policy Group of Wageningen University.

### Aim

Generally speaking, EU directives allow Member States to flexibly implement the required legislation in their national contexts. The aim of the colloquium was to determine how Member States use this flexibility by examining the national implementation of several EU directives.

### Programme

10.30 – 10.45	Welcome by Ir. Keimpe Wieringa (MNP)
10.45 – 11.15	Europeanisation of national environmental policy Dr Duncan Liefferink (Radboud University Nijmegen, the Netherlands)
11.15 – 11.45	Effectiveness of urban wastewater treatment policies in selected countries Professor Mikael Skou Anderson (National Environmental Research Institute, Denmark)
11.45 – 12.15	Implementation of the Air Quality Directive and the Habitats Directive in various EU Member States Professor Chris Backes (Utrecht University, the Netherlands)
12.15 – 13.15	Lunch
13.15 – 13.45	Best practices in exploring flexibility in the NEC Directive, Habitats Directive, and Packaging Waste Directive in various EU Member States Patrick ten Brink (Institute for European Environmental Policy, Brussels/London)
13.45 – 14.30	General discussion (led by Bart Wesselink)

## **Introduction**

Against the background of EU environmental law flexibility, this colloquium gave speakers the opportunity to compare the implementation of several environmental directives in EU Member States. We discussed what the Netherlands can learn from experiences in other Member States and where additional research is required. Of course, the colloquium did not provide the whole story on flexibility. The speakers presented examples based on their recent work, which mostly involved the Habitats Directive, the Air Quality Directive, the National Emissions Ceilings Directive (NEC) and the Wastewater Treatment Directive. The speakers addressed various aspects of the interaction between EU policy and Member States:

- How EU environmental policies affect the national style, structure and content of policymaking (Duncan Liefferink).
- How Member States apply ex-ante impact assessments to assess the consequences of new EU policies (Patrick ten Brink).
- How Member States transpose EU legislation into national law and legally interpret its implementation (Chris Backes).
- How Member States implemented the EU Wastewater Directive using different instruments with varying effectiveness (Michael Skou Anderson).

## Duncan Liefferink: “Europeanisation is not a simple top-down process”

Duncan Liefferink is lecturer in the Political Science of the Environment (Environmental policy in Europe) at Radboud University Nijmegen. His main research fields are European and comparative environmental politics, with a particular interest in the dynamic interrelationship between national and EU environmental policymaking. His present research focuses on the Europeanisation of national environmental policies and on multi-level environmental policymaking in the European context. He has co-edited a number of books and has authored various articles and book chapters on European and comparative environmental policy.

Based on a ten-country study, Duncan Liefferink discussed the changes in national environmental policy of Member States during the period 1970-2000 that were influenced by the European Union. Due to this Europeanisation (i.e. the domestic impact of European integration), the content, structure and style of national policy changed to a larger or smaller extent. In all countries, the content of the environmental policy, which includes the aims, the instruments, the precise setting of standards as well as the topics scheduled for discussion, was strongly influenced by the EU. This influence had the least effect on countries such as the Netherlands and Denmark (environmental policy leaders), which already had their own policies largely in place. Member States have adapted themselves institutionally to the EU policy. Due to the European support, the domestic influence of the national environmental ministries has increased, while the influence of the national parliaments has declined. The influence of NGOs also increased. The policy style (consensus-seeking or not; an anticipatory or reactive approach to problems) was least affected, but in countries such as Sweden and Austria it has demonstrably shifted to a more conflict-based style. One explanation for this shift is that the time span for seeking national consensus has become shorter and the EU policy process has become less subject to influence. The UK stands out in this analysis. On the one hand the EU has strongly influenced UK policy, but on the other hand the UK has also become an important shaper of EU policy (Table 1). Liefferink indicated that there are a number of directives that are difficult to fit into the national contexts of all countries, such as the Nitrates Directive and the Habitats Directive.

Table 1 Geographical pattern of Europeanisation

	<i>EU policy taker</i>	<i>EU policy maker</i>
Weakly Europeanised	Austria, France, Finland, Norway	Netherlands, Germany, Sweden
Strongly Europeanised	Ireland, Spain.	UK

Finally, Liefferink concluded that every Member State is Europeanised to some extent, but that there are also differences between various aspects and various countries. Europeanisation involves a complex interplay of domestic and European factors and is not a simple top-down process.

### References:

Liefferink, D. and A. Jordan (Eds.) 2004. Environmental Policy in Europe : The Europeanization of National Environmental Policy. Routledge, London

## Patrick ten Brink: “Consulting the public and stakeholders improves domestic implementation”

Patrick ten Brink is senior fellow and head of the Brussels office of the Institute for European Environmental Policy (IEEP). An environmental economist by training, he joined the IEEP in 2001 to help open an IEEP office in Brussels, and he contributes to IEEP’s work in the area of environmental policy instruments, evaluation, climate change, industrial pollution, clean technologies and aspects of enlargement. Before joining the IEEP, Ten Brink was Associate Director of the environment group of ECOTEC Research and Consulting Ltd, where he was responsible for environmental economics and policy and EU accession-related advice.

Patrick ten Brink began his presentation by illustrating the many areas of flexibility in EU legislation. These vary between directives; such areas of flexibility include target setting, the time scale for target achievement, institutional responsibility and the national instruments which are used. An increasing number of Member States apply ex-ante impact assessments before implementing new EU policies, but their approaches differ greatly; the impact assessment procedure is most well developed in the UK. Based on actual results, ten Brink showed that proper and timely consultation of national stakeholders was a crucial prerequisite for the smooth implementation of the Habitats Directive. He illustrated this by comparing the relatively rapid and smooth implementation of the Habitats Directive in the UK, where there was a strong focus on consultation with land owners and residents, with the situation in the Netherlands, where stakeholder consultation was initially more or less ignored (*Table 2*).

*Table 2: Insights into the national context of the implementation of the Habitats Directive*

National context	
UK	The UK has a long history of biodiversity protection. The British consequently showed little hesitation in agreeing to early EU biodiversity proposals, such as the Birds Directive.
Sweden	There has been no rigorous public debate in Sweden regarding the Natura 2000 network. But the transposition of Habitats Directive in Sweden still turned out to be a more lengthy process.
Ireland	In Ireland, the transposition and implementation of the Habitats Directive has been problematic. The need for a change in thinking led to immense controversy during the site designation process.
France	The French transposition of the Habitats Directive was a long process.
Finland	An intense debate on the Natura 2000 network took place in Finland; there was high degree of politicisation at the national level. The right to claim land for conservation purposes was widely disputed. Natura 2000 was the first occasion after Finland’s EU accession where people could express their feelings and anxiety regarding the EU in general.
Czech Republic	The starting point for the Directive implementation was the decision to achieve all the goals in this EC legislation (as part of Czech accession to the EU).
Austria	The responsibility for nature conservation and other environmental topics was allocated to the nine Austrian federal states.
Germany	There was a long debate between the parliament ( <i>Bundestag</i> ) and the Federal Councils ( <i>Bundesrat</i> ) of the Federal States ( <i>Länder</i> ) about compensation payments for farmers. Competence for the Natura 2000 sites was allocated to the Federal States, which follow a variety of implementation strategies.
Slovak Republic	Transposition of NATURA 2000 is included in the National Programme for Adoption of Acquis Communautaire 2000. Slovakia was one of the newer accession countries, so the experiences of transposition and implementation acquired by older Member States (the Netherlands, Austria) as well as other accession countries (Czech Republic, Hungary) were taken into account.
Netherlands	The Netherlands was strongly involved in the design of the Habitats Directive. The Netherlands’ past record with respect to transposing and implementing the Habitats Directive can be initially characterised as essentially a wait-and-see approach, in which the processes of stakeholder consultation and impact assessments were more or less ignored. The legal strictness of the Directive has gradually been acknowledged, therefore including areas of non-flexibility.

Finally, ten Brink focused briefly on the need to draft national implementation plans, a process increasingly required by EU directives, especially framework directives. He illustrated the large differences in national implementation plans for the NEC Directive. In Sweden, the UK and Finland, the plans only describe current policies as these suffice to meet the 2010 emission ceilings. Several countries report an expected exceedance of the 2010 NO<sub>x</sub> emissions ceiling, but the extent to which additional measures are assessed in the implementation plans differs greatly between Member States. In general, it appears difficult to monitor the implementation progress from these plans.

*References:*

IEEP (2005). Workshop on Best Practice in Analysing and Developing Environmental Policies. 15 November 2005 Background Paper.  
<http://www.ieep.org.uk/events/events.php>

### Chris Backes: “Efficient and accessible Dutch courts also judicialise the implementation of environmental policies”

Chris Backes is Professor of European and International Environmental Law at Utrecht University. He is Director of the Centre for Environmental Law and Policy, member of the editorial board of the *Tijdschrift voor Milieu en Recht* (Journal of Environment and Law) and Vice-president of the Dutch Association of Environmental Law. His publications focus mainly on EU and national environmental law, including nature conservation and planning law.

Chris Backes compared the transposition and judicial interpretation of the Air Quality Directive (first EU daughter directive of the Air Quality Framework Directive) and the Habitats Directive in a number of EU Member States. The legislative texts of these European directives have been almost literally copied (transposed) in the national legislation. Nevertheless, there still appears to be a great deal of room for differing national interpretation and implementation. In the case of the Air Quality Directive, there are major differences in measurement intensity and method, regardless of whether or not air quality is interpolated to cover the entire country. For example, the Member States differ regarding where the limit values for air quality are measured (everywhere or at specific locations) and how permit procedures must be reviewed according to the limit values for air quality. There are also major differences between Member States when there are interpretation disputes that must be decided by a national court. In the Netherlands, citizens and organisations have good access to the courts, and the jurisprudence is efficiently organised, which allows court cases to be decided relatively quickly. In Belgium, such a judicial process can take many years. In Germany and Austria, it is much more difficult for citizens and for NGOs to have any access to the courts at all. As a result, there were much more court cases in the Netherlands than in other countries (*Table 3*)

*Table 3 Number of court cases (1/2005)*

	<i>Air Quality Directive</i>	<i>Habitats Directive</i>
Sweden	0	
Austria	1	Some
Germany	1	Many
Flanders region of Belgium	0	1
England	0	Very few
France	0	Few
The Netherlands	40	Many

#### *References:*

R.B.A. Koelemeijer, Ch.W. Backes, W.F. Blom, A.A. Bouwman, P. Hammingh. 2005. Consequenties van de EU-luchtkwaliteitsrichtlijnen voor ruimtelijke ontwikkelingsplannen in verschillende EU-landen. Rapport 500052001/2005

## **Mikael Skou Anderson: “Early application of levies in the Netherlands exemplified a cost-effective policy”**

Mikael Skou Andersen is Professor at the Department of Policy Analysis of the National Environmental Research Institute in Denmark. His research interest lies in the comparative study of environmental policy, nationally and across Europe, with particular regard to policy instruments and implementation. A special field of interest is market-based instruments. Dr Andersen is the author of *Governance by Green Taxes* (Manchester University Press, 1994) and co-editor of *Market-based Instruments for Environmental Management* (Edward Elgar, 2000). He is an editorial board member of several international scientific journals, including *Environmental economics and policy studies*. He has served as a consultant for the Danish Environmental Protection Agency, the European Commission, the European Environment Agency and the OECD on various reports and evaluations.

Andersen showed that there are relatively large differences in the cost effectiveness of wastewater treatment policy in various Member States. Wastewater treatment is an important component of the environmental policies of Member States; about 50% of total environmental policy costs are for wastewater treatment. Moreover, large subsidies from the structural funds are paid to Southern European and new Member States to improve wastewater treatment.

Andersen's effectiveness analysis showed that clear lines of institutional responsibility were helpful for implementation in Denmark and the Netherlands. Overlaps of responsibilities between authorities at the local, regional and national levels in Spain and France, together with large investment needs and bottlenecks in financing, appeared to be important reasons for not implementing the directive requirements on time. Denmark and the Netherlands are in complete, or nearly complete, compliance with the Wastewater Directive, and their discharges to surface waters have decreased by more than 90 %. The Danish approach to implementation appears to have been more costly than the Dutch approach. This was apparently caused by the failure in Denmark to apply 'the polluter pays' principle and other economic instruments at an early stage. These results suggest that Member States with low or inadequate water pollution levies (Spain, France and Estonia) or no full-cost pricing of sewerage (Spain, Estonia and Poland), may invest unnecessarily in excessive capacity. Most of these countries are eligible for considerable EU funding (75–85 % of investment), so there is a risk of less efficient use of EU resources.

This study encountered a bottleneck of poor availability for some data. For example, the researchers had to refer to national statistics, and information on wastewater levies was sometimes not accessible at all (Spain). The study was initiated by the European Environmental Agency, which is increasingly focusing on the evaluation of the effectiveness of EU environmental policy instruments.

### *References:*

Effectiveness of urban wastewater treatment policies in selected countries: an EEA pilot study. EEA Report No 2/2005. [http://reports.eea.eu.int/eea\\_report\\_2005\\_2/en](http://reports.eea.eu.int/eea_report_2005_2/en)  
Andersen, Mikael Skou, 1999, Governance by green taxes: implementing clean water policies in Europe 1970-1990, *Journal of Environmental Economics and Policy Studies*, 2:1, 39-63.

## Summary and general reflection

EU directives have strongly affected the content (targets, topics) of Member States' environmental policies, but the national policy styles have been less affected (Lieverink). Flexibility in EU legislation also explicitly aims at providing room for flexible solutions that are tailored to the national or local situation. The aim of the colloquium was to determine how Member States use this flexibility in EU directives and to draw conclusions, if possible, from this process (see *Table 4*).

*Table 4 Areas of flexibility and inflexibility in EU directives and remarks on their effectiveness*

<i>Directive</i>	<i>Goals</i>	<i>Means</i>	<i>Lessons</i>
European Habitats Directive (1992)	Flexible establishment of national or local nature protection goals	Inflexible: designation of protected sites Flexible: managing favourable conservation status of sites	The designation of protected sites under the Habitats Directive (1992) has been widely perceived as an inflexible EU policy measure, which has led to substantial resistance in the Member States. Early involvement and communication with national and local stakeholders contributed to improved implementation. The environmental benefits have been significant: about 20% of the total EU area now has protected status.
Urban Wastewater Treatment Directive (1991)	Inflexible: stipulation of effluent concentrations or reductions	Highly flexible	The Urban Wastewater Treatment Directive (1991) is fully flexible in terms of the national choice of instruments. After full implementation (as in the Netherlands or Denmark) the benefits are significant: more than 95% reduction of waste loads in surface waters. Clear lines of institutional responsibility and early application of the 'polluter pays' principle (by using levies) was shown to be the most cost-effective implementation approach.
1 <sup>st</sup> Air Quality Daughter Directive (1999)	Inflexible: air quality standards	Flexible, although target achievement depends largely on the emission standards in other EU directives (NEC, EURO, etc.)	The legal interpretation of this directive in various Member States has been very different and determines most of the legal pressure of this directive on the policy and implementation process.
National Emissions Ceilings Directive (NEC) (2001)	Inflexible: national emissions ceilings (NO <sub>x</sub> , SO <sub>2</sub> , NH <sub>3</sub> , VOC).	Flexible, although target achievement depends largely on the emission standards in other EU directives (NEC, EURO, etc.)	Obligatory national emission reduction plans still give little insight into the actual implementation of this directive.

The general conclusions from the colloquium were the following:

- Europeanisation involves a complex interplay of domestic and European factors and is not a simple top-down process (Lieverink).
- The flexibility in EU directives is increasingly being assessed by Member States applying ex-ante impact assessments (ten Brink).
- Not every aspect of implementation can be assessed. This is especially true for the legal interpretation of EU legislation. This may differ greatly between national courts in various countries, even when there has been an almost literal transposition of the EU legislation in the Member States (Backes).
- Comparative country studies on effectiveness (in terms of instrument choice, costs and environmental benefits) are rare. Interesting ex-post conclusions emerged from the study on the Wastewater Treatment Directive (Andersen, see *Table 4*); these conclusions can be used for future policies.



### *Outlook*

The newest generation of EU framework directives, such as the Water Framework Directive, the proposed Marine Directive (and probably the Soil Framework Directive), were not discussed in the colloquium. These new directives delegate not only the instrumentation, but also the target allocation to the national level. Does this development suggest that European environmental policies are moving towards re-nationalisation? If this is the case, then it will become even more important to conduct comparative country analyses and to look for cost-effective national implementation policies. This could be an interesting starting point for our third colloquium.

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