

Soft Governance in the EU Climate Change Strategy

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1. Introduction

The softening of governance modes is a remarkable trend in the EU. Environmental governance is no exception. The paper takes the EU climate change strategy as an example of this softening and sheds light upon some features of soft governance, which are multi-level networking and a market mechanism. The paper is structured as follows. Section 2 gives general features of modes of EU environmental governance, demonstrating two facets: EU wide harmonisation based on the Community method and the softening of governance modes. Section 3 traces out the developmental process of the EU climate change strategy, paying attention to the use of soft instruments for establishing a shared understanding of climate change issues. Section 4 elucidates the softness of the EU climate change strategy from four viewpoints: target-setting, policy-framing, policy-making and individual measures. On the basis of these arguments, the paper briefly suggests the implication of soft governance on European integration and disintegration.

2. Two Facets of EU Environmental Governance

2-1 EU Wide Harmonisation

EU environmental law comprises a huge amount of instruments. The number seems to be more than one thousand! (Wilkinson et al. 2004: 7; IEEP 2004), though it depends on whether or not to include modification and soft instruments such as recommendations, opinions, notices, international political agreements and so on. Presumably, the range from 580 to 850 may be plausible (MacCormick 2001: 17-8; Weale et al. 2000: 2). The consequence of this huge legislation is the heavy burden of their transposition in Member States and of judicial review by the Court of Justice. An estimate shows that 'over 80 per cent of UK environmental policy now originates from the EU' (Wilkinson et al. 2004: 7). The Commission reports that, as of December 31 2003, there were 3927 infringement cases and the total volume of infringement cases initiated by the Commission were 2708 (COM (2004) 839: point.1.1). The Community method has produced this troublesome situation, and this is a background against which new modes of governance have been introduced. Héritier points out that, in terms of policy development, environmental policy can be compared with social policy. In the latter, even the use of soft instruments means the first step towards European policy-making. In contrast, the adoption of non-binding targets in environmental policy means the shift from hierarchy to self-regulation (Héritier 2002).

The Community method in environmental legislation is as follows. The EC Treaty provides two procedures for environmental legislation: the co-decision procedure of Article 175 (1) EC and the consultation procedure of Article 175 (2) EC. The former is a usual legal base in environmental legislation, in which the Council can act by qualified majority voting. 'General action programmes setting out priority objectives to be attained' are also based on this co-decision procedure. The latter is for (a) provisions primarily of a fiscal nature; (b) measures affecting town and country planning, quantitative management of water resources and land use except waste management; and (c) the choice of energy sources and the structure of energy supply. In these areas, the Council has to act unanimously, though it may define matters that are decided by a qualified majority (Article 175 (2) EC). Many climate change policies are fallen into areas of Article 175 (2) EC, though the Commission and the

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Council have chosen the co-decision procedure of Article 175 (1) EC in the adoption of climate change related instruments. However, these instruments are soft in terms of substantive obligations as will be mentioned later.

2-2 Soft Governance

Environmental legislation has been seen as an area in which better lawmaking and simplification need to be pursued. For example, the Commission lists up European sustainable development strategy, insisting that an impact assessment of legislation must be conducted (COM (2002) 275: 3). This trend of reviewing existing legislative policies is in line with the White Paper on European Governance (hereinafter the Governance Paper) (COM (2001) 428). In some degree, non-legalistic approaches in the Governance Paper is followed by the Sixth Environmental Action Programme (Decision 1600/2002/EC) (hereinafter the 6th EAP), which states that '[o]ther options [than legislation] for achieving environmental objectives should also be considered' (Preamble, point.12), and advocates that '[a] strategic integrated approach, incorporating new ways of working with the market, involving citizens, enterprises and other stakeholders is needed. . . ' (*Ibid.*, point.14). This trend already begun in the 5th EAP of 1992 (OJ 1992 C138/7), which indicated that legislative measures alone were not sufficient and participatory schemes based on the principle of shared responsibility needs to be sought. On this view, non-legislative measures such as market-based instruments and environmental agreements have been offered as cost-effective policy instruments (ex. Commission Recomm. 96/733/EC, preamble). On the basis of the strategy of this 5th EAP, civic inclusion and softer legalisation became the features of EU environmental governance in the 1990s.

Two examples demonstrate a multi-level network style of EU environmental governance: the 1993 European Green Forum (The European Consultative Forum on the Environment and Sustainable Development) and the 1992 IMPEL. The former is the general consultative forum and invites NGOs, industry/business, local authorities and non-EU states (Commission 2001a; MacCormick 2001: 60). The contribution of this Forum to the establishment and refinement of the principle of environmental integration and the creation of the 6th EAP is reported to be visible (Commission 2001a: 18-19), although the chairman carefully mentioned in the self-assessment report that 'it is difficult to pinpoint the exact nature of this influence' (*Ibid.*, 3). Since this institutional innovation in the early 90s, stakeholder consultations around individual environmental medias and/or emission substances have certainly become usual practices.

The IMPEL is the EU network for implementation and enforcement of environmental law. It consists of 29 countries, including Norway and Turkey (SEC (2004) 1025: 23). Interestingly, the Decision (1600/2002), which establishes the 6th EAP, is referred to as its formal legal base (*Ibid.*). In this network, national authorities hold informally biannual meetings, which are chaired by the DG ENV and a Member State holding the EU Presidency. An example of programmes of the IMPEL is IMPEL Review Initiative, in which the IMPEL works on Recommendation 2001/331/EC on minimum criteria for environmental inspections, issuing its Management Reference Book for Environmental Inspectorates, which provides good examples for Member States' environmental inspectors (*Ibid.*, 24). The other example is IMPEL Better Legislation Project, in which IMPEL delivers recommendations for legislative improvement in the transposition of EU environmental legislation into national measures (*Ibid.*, 24-5). In 1998, AC-IMPEL was set up in order that officials from CEEC governments and EU Member States discuss implementation issues for accession period (MacCormick 2001: 67). Together with the EEA (European Environmental Agency based in Copenhagen), the IMPEL demonstrates one dimension of the network-like character of EU environmental governance.

Scholarly attention has already been paid to characteristics of new modes of EU environmental governance. Héritier explores the mode of EU environmental governance by paying attention to methods of target

development and implementation: one is 'reputation mechanisms and learning'; the other 'voluntary accords' (Heritier 2002). A point is institution-building for multi-level participation into target-setting and time-table setting and publicising of monitoring results. Scott formulates EU environmental governance as 'the "procedurally constrained Member States flexibility in implementation" model' (Scott 2000: 280), drawing on the IPPC Directive. In this model, substantive obligations are soft, however, procedural obligations are hard. Scott submits that this model implicates five values: flexibility; decentralisation; participation; reflexivity and deliberation (*Ibid.*, 265-6). Weale et al characterises EU environmental governance as being multi-level, horizontally complex, evolving and incomplete (Weale et al 2000: 6). In this open-ended governance oriented to learning,

'National state executives and supranational institutions, distinctive national systems of policy-making and international mechanisms for problem solving coexist and will continue to play important role in environmental policy-making' (*Ibid.*, 6).

These characteristics of EU environmental governance seem to be a contrast to the orientation to legal harmonisation. While it may be said that 'soft' environmental governance are supplementary to 'hard' environmental legislation, this softness has much more entered into EU climate change policies, as will be examined below.

3 Policy Development

The EU climate change strategy has developed since the last half of the 1980s. The noteworthy is the uncertainty of the issue and the 'softness' of instruments.

3-1 Uncertainty

Climate change is a wide-ranging, serious but uncertain issue. On the one hand, Climate-related disasters are huge as follows (UNEP 2005).

- Changes on the earth such as ice cap melting, sea level rise, ocean circulation upheaval (ex. gulf stream modification), changes in precipitation;
- Extreme weather events such as Europe cooling, floods, storms or cyclones, droughts, heat waves;
- Other major threats such as diseases spread, biodiversity losses and famines.

Already global average surface temperature increased over the 20th Century by 0.6 degree Celsius, and the famous scenarios of the IPCC are that, until the year 2100, the temperature may increase by 1.4 – 5.8 degree Celsius and sea level may increase by 9 – 88 cm. Presumably, the coming Fourth Assessment Report of the IPCC will raise the precision of the scenarios. Climate change is already under way. A policy response is required not only to the source of global warming but also to the mitigation and adaptation to climate change.

On the other hand, the mitigation and adaptation is still under preparation, though capacity building in developing countries for this mitigation and adaptation now becomes the priority of development policies of developed countries including the EU. Any reduction target of GHGs such as CO₂ becomes quite uncertain in terms of policy effectiveness. This is because climate sciences are still to a large degree uncertain. The reports of the IPCC depend on the analysis of six scenarios based on about 40 scenarios (IPCC 2001c: 144-5). In terms of scientific certainty, the scientific base of target-setting for GHGs reduction is far from complete. In its assessment report, the IPCC states that:

'Climate change decision-making is essentially a sequential process under general uncertainty.' (IPCC

2001b: 12).

'The relevant question is not "what is the best course for the next 100 years", but rather "what is the best course for the near term given the expected long-term climate change and accompanying uncertainties".' (*Ibid.*)

Certainly, CO₂ concentration in the atmosphere, which causes temperature rise, has been and still is rising. While in the last 400000 years the concentration was not beyond 300ppm (UNEP 2005: 9), the present level is about 370ppm! However, what must be clarified is, for example, carbon cycle between atmosphere, ocean and land. A human-induced climate change by fossil fuel burning and the change of land use might be only a hypothesis if the understanding of this carbon cycle falls short, and the modelling and simulation of carbon cycle at the global scale is a very difficult task because of too complicated interrelations between atmosphere, ocean and land. Rather, what the IPCC pays attention to is 'a small but significant perturbation of a huge global cycle' (IPCC 2001a: 187). This may mean that any amount of reduction would already be in vain. While any climate sceptics failed to be the major force (Skodvin 2000: 165), the scientific base of climate change policies is still not so reliable.

3-2 A Shared Understanding

The development of the EU climate change strategy can be divided into two phases: before and after the year 1997. The first phase was for the construction of a shared understanding. Individual instruments were simple and not successful.

In 1985, the Commission first raised a need for EU (EC) policies on climate change, by issuing a research policy statement (McCormick 2001: 280). It seems that this was response to the 1985 Villach international research conference on climate change. The 1988 UN General Assembly recalled the conclusion of this Villach conference (A/RES/43/53, December 1988) and graded up climate change as an international agenda. The development of EU Climate change policies have been contextualised by evolving international climate change regime. The UN Framework Convention on Climate Change (UNFCCC) of 1994 (Decision 94/69/EC) and the Kyoto Protocol of 1997 (Decision 2002/358/EC) have framed the EU climate change strategy, as will be examined below. What needs to be paid attention to is the fact that the international agenda of climate change had been incorporated into the EU through Commission communications, Council resolutions and European Council Presidency Conclusions, not through political statements by Member States leaders, and in turn the UNFCCC and the Kyoto Protocol were incorporated into the EU legal order. This demonstrates that soft instruments are a tool of developing a shared understanding between EU institutions and Member States. The following shows this process.

- 13 October 1986. Resolution on measures to counteract the rising concentration of carbon dioxide in the atmosphere (the "greenhouse" effect). OJ 1986 C255/272.
- 16 November 1988. COM (1988) 656-1 Communication to the Council: the greenhouse effect and the commission work programme concerning the evaluation of policy options to deal with the greenhouse effect / COM (1988) 656-2 Draft Council Resolution on the Greenhouse effect and the Community.
- 2-3 December 1988. Rhodes Declaration on the Environment. Presidency Conclusions, Rhodes, December 1988 (Bull. EC 12-1988).
- 20 July 1989. Council Resolution on the greenhouse effect and the Community. OJ 1989 C183/4.
- 25-6 June 1990. Declaration by the European Council on the Environmental Imperative. Presidency Conclusions, Dublin, June 1990 (Bull. EC 6-1990).
- 29 October 1990. Conclusions of the joint Council of Environment and Energy Ministers (EC Bull. 1990

October, point. 1.3.77).

In this process, scientific uncertainties were rejected as an excuse of delaying policy responses to climate change. The 1988 Rhodes Declaration on the Environment underlined 'the greenhouse effect' along with depletion of the ozone layer and the loss of biodiversity (Bull. EC 12-1988, point.1.1.11), and then the 1989 Council Resolution stated that:

'Such a response [to problems of climate change] should be made without further delay, irrespective of remaining uncertainties on some scientific aspects of the greenhouse effect' (OJ 1989 C183/4: para.1).

In part this is because the EU aimed at establishing a strong position in preparation for UN Conference on Development and Environment (or the Rio Summit) of 1992, as the 1990 Dublin Declaration claimed (Bull. EC 6-1990: Annex II, point 1.36). In this process of norm-building, the EU established the first target-setting in the 1990 joint Energy/Environment Council. This target was the 'stabilization of the total carbon dioxide emissions by the year 2000 at the 1990 level in the Community as a whole' (cited from Dir. 93/76/EEC (SAVE Programme), Preamble). It was non-binding and quite flexible. The conditions were that '... other leading countries undertook similar commitments' (*Ibid.*). Furthermore,

'... Member States which start from relatively low levels of energy consumption and therefore low emissions measured on a per capita or other appropriate basis are entitled to have carbon dioxide targets and/or strategies corresponding to their economic and social development. . .' (*Ibid.*)

Though other leading countries did not begin to undertake similar commitments in a visible manner until the signing of the Kyoto Protocol of 1997, this flexible commitment anticipated the principle of 'common but differentiated responsibility' established by the UNFCCC.

The Commission announced the start of climate change policies in the 4th EAP of 1987 (OJ 1987 C328/5, point. 2.3.20) and envisaged a set of climate change policies in the 5th EAP (OJ 1993 C138/5) (Krämer 2003: 299). The strategy in this early stage of the development of climate change policies was simple. Measures to combat global warming were 'a three part climate package' (McCormick 2001: 281): energy efficiency and alternative/renewable energy, monitoring mechanisms and a carbon/energy tax (COM (1991) 249). These measures had been proposed and implemented in forms of directives and decisions; however, they were by and large 'soft' in terms of flexibility in meeting obligations. With regards to energy, financial supports were provided for national programmes: SAVE Programmes for an energy efficiency; and ALTENER Programmes for a renewable programme. However, the amount of financial supports was small.¹ Energy policies have developed by arranging indicative targets and annual report requirements (ex. Dir. 2003/30/EC). A monitoring mechanism was set up by Decision 93/389/EC, under which Member States are required to submit national reports concerning the monitoring of all anthropogenic GHGs and the Commission publishes regularly reports. This monitoring mechanism has later evolved in order to meet the Kyoto commitments (Decision 280/2004/EC). Fiscal measures did not reach consensus. At first, the Commission envisaged a carbon tax (COM (92) 226). Although the Parliament supported the adoption of the carbon tax, the Council did not accept it. For any fiscal measure, Member States were quite sensitive and, even after the carbon tax was 'dressed up as an energy tax', strong opposition continued (Wettestad 2005: 8). Later on, a fiscal policy on climate change has been established as a flexible energy tax directive (Dir. 2003/96/EC), as will be examined below.

¹ Dec 91/565 (SAVE I): 35 million Euros; Dec 96/737 (SAVE): 45 million Euros; Dec 647/2000 (SAVE II): 66 million Euros; Dec 93/500 (ALTENER): 40 million Euros; Dec 646/2000 (ALTENER II): 77 million Euros. See Krämer (2003: 307).

The EU climate change strategy, not a mere aggregation of individual measures, has emerged since the signing of Kyoto Protocol of 1997. After this year 1997, a renewal policy-making started. That is illustrative of a spread of soft governance in the EU in a more visible way.

4 Governance Modes

As noted above, the huge amount of EU environmental instruments seem to be illustrative of 'Brussels conveyor belt of legislation' (Parker 2005); however, new modes of governance for the environment have also become marked in the EU. While Trubek et al properly points out 'hybridity' (Trubek et al 2005), EU environmental governance as a political process for setting a political goal and controlling/monitoring compliance (Kohler-Koch 2005) seems to gradually become characterised as stakeholder inclusion and softer legalisation, as suggested above. The emergence of this soft governance in the EU climate change strategy can be grasped from four dimensions of governance system: target-setting; policy-framing; policy-making; and individual measures. These are summarised in Table 1.

4-1 Target-setting

The burden-sharing of the target of GHGs emissions reduction in the EU was set up as a political common position in the Environmental Council. After this pure intergovernmental political process, the legal translation of the burden-sharing agreement was carried out. Table 2 shows the outcome.

The Kyoto Protocol (signing in December 1997) set up binding targets of GHGs emissions reduction for the so-called Annex I countries, which are 38 developed countries including EU15. In March 1997, under the Dutch Presidency, the Environmental Council already reached an agreement for sharing the burden of GHGs emissions reduction, 'the adoption of which were initially seemed impossible' (Lefevere 2000: 363). This agreement was nine months before the Kyoto COP3 (the third Conference of the Parties to UNFCCC). The target was so ambitious: a 15% cut in EU emissions of three GHGs (CO₂, methane and nitrous oxide) from the 1990 level by 2010 (Lefevere 2000: 363), and the burden of each Member State was allocated as if the principle of common but differentiated responsibility was applied (for burdens of each Member State, see Table 2). This burden-sharing agreement was far from perfect because the total emissions of agreed burdens 'amounted to only two-thirds of the 15%' (*Ibid.*). Notwithstanding, this became the EU position on the international negotiation in the Kyoto COP3.

An aim of the EU in the negotiation in Kyoto was to gain the entitlement for the EU15 as a whole to meet the Kyoto targets, such as a model of the 1997 burden-sharing agreement, and the EU won the negotiation. The Kyoto commitments of EU countries were all -8%; however, the EU15 are allowed to re-allocate the burden of emissions reduction. This is called 'bubble' (see table 2). The March 1997 burden-sharing agreement was a model of this method, and now this agreement, which was for -15% reduction, required to be modified according to the new -8% reduction target. Then, the 1998 burden-sharing agreement was adopted in the Environmental Council. For the ratification of the Kyoto Protocol, the 'legal translation' of this agreement (COM (2999) 88: 2) was needed, and it was incorporated into Decision 2002/358/EC, which transposes the Kyoto Protocol into the EU legal order. In this way, the so-called 'EU bubble' (joint fulfilment of the EU target: -8% reduction) was established² (See table 2).

Here attention needs to be paid to the fact that these two burden-sharing agreements were not owing to the

² New Member States are out of this joint fulfilment of the EU target. They have their own targets, which are -8% except Hungary and Poland. These two have -6% reduction commitment. See the Commission (2003: 10).

proposals of the Commission (Krämer 2003: 303). They were outcomes of a pure intergovernmental political processes. Soon after the adoption of the 1998 burden-sharing agreement, the EU climate change strategy has begun to develop.

4-2 Policy-framing

A non-binding guideline for developing the principle of environmental integration (hereinafter PEI), which the Amsterdam Treaty of 1997 graded up by newly establishing Article 6 EC as one of basic principles of the EU, has framed EU Policies for Climate change as a single and fundamental issue against which the EU must tackle. This process of developing the PEI is, to a large degree, not legislative but political process. A non-binding guideline is the 1998 Guidelines for a partnership for Integration of Environment into other policies (COM (98) 333), which initiated the Cardiff process that is followed by the EU Sustainable Development Strategy.

Climate change is a cross-sectional issue. This means that wide-ranging legal bases are required for climate change policies. The expected legal bases are agriculture (Article 37 EC), transport (Article 71 or 80 EC), taxation (Article 93 EC), internal market (Article 95 EC), trade (Article 133 EC) and energy (Article 175 (2) or 308 EC) (Krämer 2003: 300). However, many instruments for climate change policies have been based on Article 175 (1) EC (*Ibid.*). Climate change policies have been framed as a single issue through the process of developing the PEI. While the PEI does not set any substantive obligation but procedural obligations and has been applied by the Court of Justice to the legal base disputes in which environmental legislation based on non-environmental legal bases is contested (Usui 2005), this PEI also seems to have a sort of policy-framing effect. In the process of developing the PEI, climate change policy-making has been stressed as one of major objectives of the EU. This development has been prompted and supported by 'Guidelines for a Partnership for Integration of Environment into other policies' (COM (98) 333), proposed by the Commission and agreed by the Council. The Guidelines require the EU institutions to cooperate one another as follows (*Ibid.*, 6-7):

- All Institutions review organisational arrangements and ensure that environmental requirements are reflected in their own decisions;
- The Commission review existing policies and incorporate environmental concerns into all key proposals;
- The Council and the Parliament identify a set of priority actions for PEI;
- The European Council review periodically environmental integration into key sectoral policies.

On this base,

'The Council, Parliament and Commission should jointly discuss the development of mechanisms for implementing these guidelines and for monitoring their implementation.' (*Ibid.*, 7)

In the policy document that proposed this Guidelines, the Commission states that 'Fulfilment of (Kyoto) commitment . . . must become a primary consideration in the framing of all key policy areas' (*Ibid.*, 9). This Guidelines have initiated and activated the Cardiff process since 1998 and the EU Sustainable Development Strategy since 2001. And these policy processes have produced policy responses of the Council in the form of policy planning reports.³

³ Gonzalez-Calatayud shows us the following: Agriculture: 2218th Council Meeting, 15 Nov. 1999 (Strategy on Environmental Integration and Sustainable Development in the Common Agricultural Policy established by the Agriculture Council); Transport: 2204th Council Meeting, 6 Oct. 1999 (Transport and Environment: Report to the European Council in Helsinki); Energy: 2230th Council Meeting 2 Dec. 1999 (Strategy for Integrating Environmental Aspects and Sustainable Development into Energy Policy); Internal Market: 2210th Council Meeting 28 Oct. 1999 (Integration of Environmental Protection and Sustainable Development into Internal Market Policy); Development: 2215th Council Meeting 11 Nov. 1999 (Development Council Report including Elements of a Comprehensive Strategy on the Integration of Environment and Sustainable Development into EC Economic and Development Cooperation); Industry: 2214th Council Meeting 9 Nov. 1999 (Integration of Sustainable Development into EU Industrial Policy). See Gonzalez-Calatayud (2002: 307).

4-3 Policy-making

EU climate policy-making has been carried out by the European Climate Change Programme (ECCP), which was initiated by the Commission in the year 2000. The document, 'Main Elements of the ECCP to be initiated by the European Commission' (COM (2000) 88, Annex 2), launched 'a multi-stakeholder consultative process' (Commission 2001b: 6) for adopting instruments of EU climate policies. This can be said to be done in some degree at the expense of the Commission's prerogative of the 'initiative' (COM (2000) 88: 5-6), because the Commission announced that the ECCP results would be converted into 'a clear political commitment from the Commission' (Commission 2003: 6) in supranational legal processes based on the Community method. However, the expected list of common and co-ordinated policies and measures on climate change was attached with the Annex 3 of that document (COM (2000) 88) as if the Commission confines results of the ECCP within an expected scope.

The origin of the ECCP was the Commission Communication for preparing for the implementing of the Kyoto Protocol (COM (1999) 230). On this basis, the Environmental Council made proposals in June 1998 and October 1999, for urging the Commission to put forward a list of climate policies and measure and to prepare policy proposals (Commission 2003: 4). Soon after this political process, the ECCP has become 'an essential part of the EU Sustainable Development Strategy' (Commission 2001b: 157). There were consensus between the Commission, the Council and the Parliament. In October 2000, the Environmental Committee of the Parliament adopted an opinion on the ECCP, which stressed the priority of the ECCP (Commission 2001b: 7). In November 2000, the Commission submitted a progress report to the 'special climate Council'. In the second ECCP report, the Commission emphasises the broad consensus at this first phase, stating that:

'Despite the very short time available, the Programme already set out a first list of likely measures in all the relevant sectors taking fully into account the proposals made in the Parliament's Resolution and by the Council' (Commission 2003: 7).

The objectives of the ECCP is 'to identify and develop all those elements of a European Climate Change Strategy that are necessary for the implementation of the Kyoto Protocol' (COM (2000) 88, Annex 2, 8) and to pursue 'a co-operative effort of all relevant stakeholders such as representatives of the Commission, the Member States, industry and the NGO community' (*Ibid.*). The policy target is quite a simple no matter how the effect of anthropogenic GHGs emissions on the rise of global surface average temperature, or global warming, is still uncertain: the reduction of 336 MtCO₂eq in 2010 with respect to 1990 (Commission 2001b: 5). This amount of reduction is what the Commission calculated for corresponding to an 8% reduction in GHGs emissions from 1990 levels by 2008-2012, which is the Kyoto commitment of the EU15 (*Ibid.*). A multi-stakeholder consultative process was launched for envisaging policies and measures to achieve this objective.

The aforementioned document, 'Main Elements of the ECCP', set up Steering Committee and Working Groups. The former is composed of all DGs that take part in the ECCP (COM (2000) 88, Annex2, 8). The WGs have their 'specific set of stakeholders representing a European rather than a national or regional clientele' and about 15 persons par WG (*Ibid.*, 8). Respective WGs have reporting requirements to the Steering Committee (*Ibid.*, 9) so that on this base the Commission can prepare 'policy proposals containing instruments such as technical regulation, taxation, voluntary agreements, or flexible mechanisms' (*Ibid.*). Initially, five WGs were set up, and further WGs were expected to be established later (*Ibid.*, 10). In the course of the ECCP, the following WGs and sub-WGs have been activated (Commission 2001b: 6 and Commission 2003: 5):

- WG1: 'Flexible mechanisms'
Sub-WGs: 'JI/CDM' and 'Emission trading'.

- WG2: 'Energy supply'
- WG3: 'Energy consumption'
Sub-WGs: 'Energy efficiency in end-use equipment and industrial processes' (a joint sub-working group with WG5).
- WG4: 'Transport'
Sub-WGs: 'Vehicle technology and fuel', 'Transport infrastructure', 'use and charging', 'Freight logistics and intermodality', 'Awareness raising and behavioural change' and 'Data validation'.
- WG5: 'Industry'
Sub-WGs: 'Fluorinated gases', 'Renewable raw materials', 'Voluntary agreements' and 'Energy efficiency in end-use equipment and industrial processes' (a joint sub-working group with WG3).
- WG6: 'Research'
Sub-WGs: 'the scientific aspects of sinks'.
- WG7: 'Agriculture'
- WG: 'Sinks in agricultural soils' (WG number is unknown)
- WG: 'Forest-related sinks' (WG number is unknown)

Wide-ranging stakeholders have been invited to these WGs and submitted each policy report as if they are policy-makers in collaboration with the Commission. Table 3 summarises participants into the WGs. They are as follows (see Table 3; cf. Michaelowa 1998).

- Commission officials (from various DGs such as ENV, ENTR, ECFIN, ELARG, TREN, RES, RTD, AGRI).
- National experts and independent researchers.
- Emitters groups such as UNICE, and sector-specific groups and national lobby groups.
- Climate protection industry such as COGEN Europe (www.cogen.org).
- Environmental lobbies such as Climate Network Europe (a network group of various national NGOs), WWF, Greenpeace and ICLEI (this is a local government network group for local environmental initiatives).

Attention must be paid to the participation of one member of the Parliament into WG5's sub-group that addresses voluntary agreements, with which the Parliament has been concerned because of the possibility that the Parliament may be circumvented and left out of policy-making processes. In addition, the participation of officials of CDM Executive board of UNFCCC, EBRD and EIB into JI/CDM sub-group needs to be kept in mind for understanding an open policy-making process in the EU climate change strategy.

To a large degree, the Commission has orientated these WGs towards the use of new modes of governance, though improvements in the implementation of existing legislation and the planning of new legislation are at the same time stressed (Commission 2001b: 157). Basic strategies produced by the ECCP are as follows.

- Taking the full range of policy instruments including legislation (existing, new and planned), voluntary actions, supporting measures, awareness and best practice initiatives, market instruments and research/technology development (*Ibid.*, 158).
- Taking the full range of stakeholders in the process of developing a strategy with a view to launching a process that gathers the required expertise and promotes consensus-building (Commission 2003: 4-5).
- Horizontal policy integration that enables all DGs to collaborate one another and establishes a single coherent strategy (*Ibid.*, 4 and Commission 2001b: 157).
- Target-sharing and monitoring with a view to underlining 'the responsibility of Member States in establishing their own policies and measures' for reducing GHGs (Commission 2003: 6).

The first phase of the ECCP identified 42 cost-effective measures, which was expected to total 'a technical potential of 664-765 MtCO₂eq' (Commission 2003: 6). While some of them are, or going to be, taken shape in forms of directives, such as the 2003 EU Emission Trading Scheme Directive, the 2004 JI/CDM Directive, and directives on biofuels, energy performance of building, energy efficient public procurement, fluorinated gases, combined heat and power, energy services, and so on, these contain more or less flexible measures such as target-sharing and monitoring schemes. Following the first phase in which 'the ECCP acted predominantly as an initiator, catalyst and discussion forum to prepare a strategy, the second phase of the ECCP has moved to 'monitoring and implementation of the agreed measures' (*Ibid.*).

4-4 Individual Measures

In this way, the EU climate change strategy has been produced. Examples of individual measures are as follows.

4-4-1 Market Instruments

In January 2005, the 2003 EU ETS (emission trading scheme) Directive (Dir 2003/87/EC) entered into force. In the first phase, about 12000 plants in the industries of iron & steel, glass, cement, pottery and bricks across EU25, which cover about 40% of total CO₂ emissions in the EU, are under this scheme (EurActiv.com, 21 April 2005). Allowances to emit CO₂ are now a goods for businesses to be able to sell and buy; however, if emissions exceed the allowances, which are subject to Member States' national allocation plans (NAP), fines of 40 euros per excess tonne of CO₂ will be imposed. Three years later, the fines will rise to 100 euros. This EU ETS is a typical market instrument, which the 5th and 6th EAPs have envisaged.

A point is the allocation of the allowances (Wettestad 2005: 19; Butzengeiger and Michaelowa 2004: 117-8). In the EU ETS Directive, this allocation of emission entitlements is arranged in accordance with NAPs. Although the Commission provided a broad criteria, Member States can decide the amount and opt-out of some individual plants, unless the Commission vetoes it. Already legal disputes occur, for example between the UK and the Commission, concerning the amount of the allowances (EurActiv.com, 11 March 2005). Member States are also allowed to issue additional allowances in case of *force majeure*. In addition, the allocation mechanism is basically not auctioning but grandfathering, though the Scheme prescribes 5% auctioning up to 2008 and 10% after (Wettestad 2005: 6). Incidentally, the 100% auctioning can be said to theoretically implicate the same effect as the introduction of a sort of carbon tax in terms of its effect on businesses.

In the 1990s, the EU was a sceptic to ETS; however, 'the very about-turn of the EU from ETS fiend to front runner' (Wettestad 2005: 2) occurred, thanks to 'the strong entrepreneurial role of the Commission' (*Ibid.*). Butzengeiger and Michaelowa points out that 'the speed of its implementation has surprised seasoned observers of Brussels decision processes' (2004: 118). According to the study of Wettestad, the background of this quick turn is: the failure of the adoption of a carbon tax; the existence of the IPPC system (which has already set an emission permit scheme); liberalisation of an energy market (which may be disadvantageous for renewable energy); experiences of ETS among central industrial actors and by some Member States (the Danish system and the UK system); and the rejection by G.W. Bush administration of the Kyoto Protocol (which prompted EU leaders to save the Kyoto Protocol and to get the leading position of global environmental diplomacy) (Wettestad 2005: 10, 12).

Attention needs to be paid to the legal base of this Directive, which was Article 175 (1). In a sense, it can be said that this ultimate market instrument was produced, in the context of international environmental politics, by a forced collaboration between the Commission, the Council and the Parliament. The 2004 JI/CDM Directive will make this market instrument develop further, by activating flexible Kyoto mechanisms.

4-4-2 Co-/Self-Regulations

In 1999 and 2000, the Commission reached environmental agreements with ACEA (the European automobile manufacturers associations) (Commission Recom. 1999/125/EC), with JAMA (the Japanese automobile manufacturers associations) (Commission Recom. 2000/304/EC) and with KAMA (the Korean automobile manufacturers associations) (Commission Recom. 2000/303/EC). The ACEA also represents the major US car manufacturers (Gonzalez-Calatayud 2002: 304), and therefore these agreements cover almost all car manufacturers in Europe. All legal bases are Article 211 EC, which is competences conferred on the Commission. The commitments are to achieve the reduction of CO₂ emissions from new passenger cars as follows:

- ACEA: 140g/km CO₂ by 2008 and 120g/km CO₂ by 2012.
- JAMA: 140g/km CO₂ by 2009 and 120 g/km CO₂ by 2012.
- KAMA: 140g/km CO₂ by 2009 and 120 g/km CO₂ by 2012.

These environmental agreements also provides a scheme of collaboration between the Commission and these automobile manufacturers associations, and the structure of the scheme is the same in three agreements, as follows:

- Cooperation between the Commission and an association in monitoring of the commitments.
- Interim evaluation of the potential for additional fuel-efficiency improvements towards the objective of 120 g/km CO₂ by 2012.
- Trial by individual members of an association to place on the market the models emitting 120 g/km CO₂ or less.
- Intermediate CO₂ emission target in the range of 165 - 170 g/km CO₂ in an early stage.
- The additional counting of target achievement in cases of the technological innovation for replacing conventional cars to new cars that do not produce CO₂ emissions or using alternative fuels.

It can be said that these agreements are an outcome of political exchange between the Commission and the associations. The Commission would not make a legislative proposal, and not provide fiscal measures, on CO₂ emissions from passenger cars, unless the associations would fail to achieve the targets to reduce CO₂ emissions at their own initiatives and methods.

The Parliament has rejected the use of environmental agreements, and instead claimed the adoption of legislation and fiscal measures (Lefevere 2000: 368; cf. OJ 1997 C132/210). The policy process has certainly proceeded in the collaboration between the Commission and the Council. ACEA initially rejected the proposal of the Commission and proposed 'a target of 150-160g/kmCO₂ by 2005 (*Ibid.*); however, in December 1997, the Environmental Council rejected this ACEA's proposal, following the suggestion of the Commission (*Ibid.*). The threat of legislation can be said to function in this case. ACEA revised its proposal and offered the target of 140g/kmCO₂ by 2008. The Commission accepted it, and then finally the Environmental Council approved the agreement with ACEA (*Ibid.*, 368-9).

Various industry associations welcomed the agreement. In contrast, environmental NGOs and the Parliament were opposed to this (*Ibid.*). In addition, attention also needs to be paid to the fact that the CoR and the ECOSOC have no say (Krämer 2003: 284). The Commission already issued Communication on environmental agreements (COM (96) 561) and Commission Recommendation concerning them (96/733/EC), in which a guideline was set up: consultation, contractual form for the legal status of agreements, quantified objectives, staged approach, monitoring of results, public information, transparency, independent verification of results, and so on (COM

(96) 561: 11-17). Already many and various environmental agreements have been concluded at European and national levels (for example, see Table 1), and these guidelines require to be further refined. In order to reiterate these points, the Commission further issued the Communication concerning Environmental Agreements at Community Level (COM (2002) 412). Notwithstanding the checklists and their further refinement, environmental agreements continue to be controversial.

4-4-3 Monitoring and Reporting Requirements

In 1993 the EU adopted Decision for a monitoring scheme (Decision 93/389/EC), in which Member States were required to monitor all anthropogenic GHGs. This Decision has been amended twice by Decision 1999/296/EC and Decision 280/2004/EC. The last one is entirely devoted to implementing Kyoto mechanisms, which are ET (emission trading), JI (joint implementation) and CDM (clean development mechanism). These mechanisms need the national registry system of Kyoto units (for example, CRU (certified reduction unit) for JI and ERU (emission reduction unit) for CDM). These Decisions have obliged the Commission to issue regular reports with a view to grasping the state of affairs in GHGs emissions in the EU. Therefore, this monitoring scheme is not only for a learning system between Member States, but also for the implementation of the Kyoto Protocol.

The EU has also operationalised an issue-specific monitoring scheme, which is to monitor the average specific emissions of CO₂ from new passenger cars (Decision 1753/2000/EC). As noted above, this is to supplement the environmental agreements with car manufacturer associations. Article 8 of this Decision reads that:

The data collected under the monitoring system from the year 2003 onward shall serve as the basis for monitoring voluntary obligations to reduce emissions of CO₂ from motor vehicles agreed between the Commission and the automobile industry and, where necessary, for their revision.'

This Decision was adopted based on Article 175 (1) EC. In the process of co-decision procedure, the Parliament and the Council formulated 'an objective of 120g/km (5 litres/100km for petrol engines and 4.5 litres/100km for diesel engines) as a mean value for CO₂ emissions in 2005 (2010 at the latest) (*Ibid.*, preamble). In this way, monitoring schemes support environmental agreements.

4-4-4 Indicative Targets and Reporting Requirements

Despite the fact that energy policies are the prerogative of Member States, already around 100 instruments (directives, regulations and decisions) have been adopted in the EU. However, this is far from an EU common energy action (Collier 2002: 177). As noted above, in the early stage of EU climate change policies before the year 1997, financial supports were carried out in SAVE for energy efficiency and ALTENER for renewable energy. In addition to these financial supports, two directives have been adopted in the course of the ECCP: the 2001 Directive on the promotion of electricity produced from renewable energy sources in the internal electricity market (Dir 2001/77/EC) and the 2003 Directive on the promotion of the use of biofuels or other renewable fuels (Dir 2003/30/EC). The former set the indicative target of 22.1% share of electricity produced from renewable energy sources in the EU (Krämer 2003: 307). The latter set the indicative target of 5.75% share of biofuels in total sales of fuels in the EU (*Ibid.*). Both directives obliges Member States to submit progress reports. Attention must be paid to legal bases of these two directives, which are Article 175 (1) EC, not 175 (2) EC despite the fact that energy is listed up in the latter. This means that the Parliament can be involved into the legislative process not with consultation procedure but co-decision procedure.

4-4-5 Flexible Fiscal Arrangements

As noted above, the Commission aimed at the adoption of a carbon/energy tax in the early stage of EU climate change policies. While the Commission's effort was in vain, the use of 'enhanced cooperation' for EU tax

policies has sometimes been suggested in the Council (Gonzalez-Calatayud 2002: 303). The 2003 Directive for restructuring the EU framework for the taxation of energy products and electricity (Dir 2003/96/EC) seems to be one of examples for a differentiated policy co-ordination model. On the one hand, the legal base is not Article 175 but 93 EC (Taxation). This means that the consultation procedure was applied in which the Parliament cannot have a veto power. On the other hand, the PEI is referred to in the preamble (para.6), and the notion is reaffirmed such that 'energy prices are key elements of Community energy, transport and environment policies' (para.12). On this basis, this Directive offers the view that '[t]he taxation of energy products and, where appropriate, electricity is one of the instruments available for achieving the Kyoto Protocol objectives' (*Ibid.*, preamble, para.7). In this way, the rationales of this Directive are found not only in the building and functioning of internal markets but also in climate change.

This Directive sets the minimum levels of taxation on electricity and energy products. On this basis, flexible arrangements are set up, in which almost all competences remain in Member States. They can 'define and implement policies appropriate to their national circumstances' (preamble, para.9). 'Fiscal arrangements . . . for the taxation of energy products and electricity are a matter for each Member State to decide' (*Ibid.*, para.11). Only if Member States wish to introduce those taxation, they are required 'to comply with the Community minimum taxation levels' (*Ibid.*, para.10). In addition, if Member States apply 'differentiated national rates of taxation to the same product', they are obliged to respect 'Community minimum levels of taxation and internal market and competition rules' (*Ibid.*, para.15). It can be said that the softness in this type of legislation would become beneficial insofar as a mutual learning of effective taxation policies on GHGs emissions reduction must be carried out in a huge variety of national circumstances.

5 Concluding Remarks

The softness has increasingly become main elements in EU environmental governance, both in forms and contents of individual measures. In this regard, the EU climate change strategy is illustrative of soft governance, in which the political process emerges that can be characterised as civic inclusion in the process of political goal-setting and softer legalisation for monitoring and controlling compliance. The softening of environmental governance modes needs to be considered in terms of the deepening of European integration. Under the retreat of the EU from the legislative policy of harmonisation, is it possible to regard soft governance as an alternative way of European integration? The softening of governance modes required to be considered not only from the research interest of public policy, but also from the viewpoint of integration studies. The EU climate change strategy is one of useful research fields for reflecting on the implication of the softening of governance modes on both European integration and disintegration. Here we need to ask a question of what integration means. This will be a next research theme.

Table 1: EU Soft instruments to address Climate Change

<p>Target-setting</p>	<ul style="list-style-type: none"> • The 1990 Target Setting in the joint Environment and Energy Council. October 1990. Non-binding. • The 1998 Burden-sharing Agreement in the 2106th Environmental Council. June 1998. Legal translation by Decision 2002/358/EC of transposing the Kyoto Protocol.
<p>Policy-framing</p>	<ul style="list-style-type: none"> • The Principle of Environmental Integration. Article 6 EC. • Guidelines for a Partnership for Integration of Environment into other Policies. COM (98) 333. The Cardiff Process since the 1998 European Council. The EU Sustainable Development Strategy since the 2001 Gothenburg European Council.
<p>Policy-making</p>	<ul style="list-style-type: none"> • Main Elements of the European Climate Change Programme (ECCP) to be initiated by the European Commission. COM (2000) 88, Annex 2. Steering Committees. All DGs involved. Working Groups. Each has a specific set of stakeholders. A multi-stakeholder consultative process. End Product and Timeframe. On this basis, the Commission will make proposals to the Parliament and the Council.
<p>Individual Measures</p>	<ul style="list-style-type: none"> • Market Instruments EU Emission Trading Scheme. Dir. 2003/87/EC. JI/CDM Scheme. Dir. 2004/101/EC. • Co-/Self-Regulations General Guidelines for the use of Environmental Agreements. Commission Recom. 96/733/EC. Environmental Agreements with ACEA, JAMA and KAMA Commission Recom. 1999/125, 303 and 304/EC. Another examples (Commission 2003: 58) <u>Voluntary agreements:</u> industry-wide + quantitative targets: Standby TV and TCR / Washing machines / Refrigerators, freezers and their combinations / Detergents (energy saving consumer behaviour washing machines) / Standby Audio / Dishwashers. <u>Codes of conduct:</u> individual companies + quantitative targets: Digital TV services / External power supplies. <u>Voluntary programmes:</u> individual companies + best practice: Green Light (non-residential lighting). <u>Voluntary energy labelling:</u> EU energy star (for office equipment): EU environmental product declarations. <u>Eco-label:</u> The granting of the eco-label is subject to demanding energy efficiency levels. • Monitoring and Reporting Requirements A Mechanism for Monitoring Community GHGs Emissions and for Implementing the Kyoto Protocol. Decision 280/2004/EC. A Scheme to Monitor the Average Specific Emissions of CO₂ from New Passenger Cars. Decision 1753/2000/EC. • Indicative Targets and Reporting Requirements The Promotion of Electricity Produced from Renewable Energy Sources in the Internal Electricity Market. Dir 2001/77/EC. The Promotion of the Use of Biofuels or other Renewable Fuels. Dir 2003/30/EC. • Flexible Fiscal Arrangements Restructuring the Community Framework for the Taxation of Energy Products and Electricity. Dir 2003/96/EC.

Table 2: EU Bubble

	The March 1997 Agreement (Pre-Kyoto COP)	The June 1998 Agreement (Post-Kyoto COP)
Luxemburg	-30.0%	-28.0%
Germany	-25.0%	-21.0%
Denmark	-25.0%	-21.0%
Austria	-25.0%	-13.0%
UK	-10.0%	-12.5%
Belgium	-10.0%	-7.5%
Italy	-7.0%	-6.5%
Netherlands	-10%	-6.0%
France	0.0%	0.0%
Finland	0.0%	0.0%
Sweden	+5.0%	+4.0%
Ireland	+15.0%	+13.0%
Spain	+17.0%	+15.0%
Greece	+30.0%	+25.0%
Portugal	+40.0%	+27.0%

Sources: Decision 2002/358/EC, Annex II and Lefevre 2000: 365.

Table 3: Participants into ECCP Working Groups

	Commission DGs	National Experts	Industry	Environmental NGOs	International Organisations
WG1 Flexible Mechanisms	<ul style="list-style-type: none"> • DG ENV • DG ENTR • DG ECFIN • DG TREN 	<ul style="list-style-type: none"> • Austria • France • Germany • Sweden • UK 	<ul style="list-style-type: none"> • EURELECTRIC • BDI • ERT • European Chemical Industry Council • Emissions Trading Group UK 	<ul style="list-style-type: none"> • Climate Network Europe • WWF • FIELD 	
WG1 sub-group: JI/CDM	<ul style="list-style-type: none"> • DG ENV • DG DEV • DG ELARG • DG ENTRE • DG TREN • DG RES 	<ul style="list-style-type: none"> • CZ Republic • Poland • Netherlands • Greece • France • Austria • UK 	<ul style="list-style-type: none"> • RWE Rheinbraun • UNICE • EUROFER • ABB • Gaz de France • Euro-Heat & Power • E5 • Edison • Shell • Lafarge 	<ul style="list-style-type: none"> • Climate Network Europe • FIELD 	<ul style="list-style-type: none"> • CDM Executive Board (UNFCCC) • EBRD • EIB
WG2 Energy Supply	<ul style="list-style-type: none"> • DG TREN • DG ENV • DG RTD • DG ENTR 	<ul style="list-style-type: none"> • Belgium • Finland • UK • Italy 	<ul style="list-style-type: none"> • ERES representing EPIA, ESIF, EWEA, EUBIA, ESHA, EUREC • OGP • EUROPIA • EUROGIF • EUROGAS • COGEN • EURELECTRIC • CECSO • VATTENFALL AB representing EURISCOAL 	<ul style="list-style-type: none"> • INFORSE-EUROPE • WWF • Climate Network Europe 	
WG3 Energy Consumption	<ul style="list-style-type: none"> • DG ENTR • DG ENV • DG JRC • DG RTD • DG TREN 	<ul style="list-style-type: none"> • France • Germany • UK • Denmark • Italy • Finland • Spain 	<ul style="list-style-type: none"> • ACE-CAE • BASF • BDI • CEFIC • CELMA • Cembureau • CEPI • COGEN Europe • Esoterica • Eurima (European Insulation Manufacturers Association) • EUROHEAT • FEDARENE (European Federation of regional Energy and Environmental Agencies) • FIEC (European Construction Industry Federation) • JHA • Orgalime 	<ul style="list-style-type: none"> • ICLEI • Climate Network Europe • ECEEE (European Council for an Energy Efficient Economy) • Greenpeace • WWF 	<ul style="list-style-type: none"> • IEA
WG4 Transport	<ul style="list-style-type: none"> • DG TREN • DG ENV • DG RTD • DG ENTR 	<ul style="list-style-type: none"> • UK • Netherlands • Sweden 	<ul style="list-style-type: none"> • PSA • ACEA • EUROPIA • European Biodiesel Board • WERD • ASECAP • Logistic/Telematics • UNICE/Transport • Alliance Internationale du Tourisme 	<ul style="list-style-type: none"> • SNM (Stichting Natuur en Milieu) • IEEP (Institute for European Environmental Policy) • T8E 	

WG5 Industry	<ul style="list-style-type: none"> • DG ENTR • DG ENV • DG RTD • DG TREN 	<ul style="list-style-type: none"> • UK • France • Austria • Italy • Denmark 	<ul style="list-style-type: none"> • CEFIC • CEMBUREAU • CEPI • EUROFER • EUROPIA • Orgalime/CECED • UEAPME • UNICE 	<ul style="list-style-type: none"> • Climate Network Europe • WWF • Greenpeace 	
WG5 Industry sub-group: Voluntary Agreements	<ul style="list-style-type: none"> • DG ENTR • DG ENV • DG RTD • DG TREN • the European Parliament 	<ul style="list-style-type: none"> • Denmark • Finland • Germany • Italy • Sweden • UK 	<ul style="list-style-type: none"> • BDI • CECED • CEFIC • CEMBUREAU • CEPI • DSM • EURELECTRIC • EUROFER • UEAPME • UNICE 	<ul style="list-style-type: none"> • Climate Network Europe • WWF 	
WG6 Research	<ul style="list-style-type: none"> • DG RTD • DG ENV • DG JRC • DG TREN • DG ENTR • DG AGRI 	<ul style="list-style-type: none"> • France • Sweden • Italy • Portugal 	<ul style="list-style-type: none"> • European Business Council for Sustainable Energy Future • Gerling Insurance Company 	<ul style="list-style-type: none"> • Climate Network Europe 	
WG7 Agriculture	<ul style="list-style-type: none"> • DG AGRI • DG ENV • DG ENTR 	<ul style="list-style-type: none"> • Germany • UK • Italy • Netherlands • France • Ireland 	<ul style="list-style-type: none"> • COPA/COGEGA • COPA • Hydro Agri Deutschland GmbH • ENCA • Norsk Hydro Porsgrum - Norway 	<ul style="list-style-type: none"> • Birdlife International • CEFF (Confederation of European Forest Owners) 	

Sources: the 2001 report; other Commission's documents (Commission's Web Site <http://europa.eu.int/comm/environment/climat/eccp.htm>).

* This table does not cover all working groups and independent external experts such as academic institutions and consultants. Alternates members are also excluded.

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