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National Adaptation to European Integration: The Importance of Institutional Veto Points

Paper prepared for presentation at the panel "National Policy Adaptation" at the Sixth Biennial International Conference of the European Community Studies Association, Pittsburgh, Pennsylvania, June 2-5, 1999.

Abstract

The repercussions of European integration on national policymaking have increasingly drawn scholarly attention. Yet, the determinants of national adaptation to the EU are still poorly understood. This article takes issue with evolving arguments which grant crucial importance to the "goodness of fit" between European provisions and national rules and practices for explaining the degree of national adjustment to European requirements. In the implementation of the Packaging and Packaging Waste Directive in Germany, the Netherlands and the United Kingdom, the country with the greatest misfit, the United Kingdom, adapted more successfully than the country which only needed incremental adjustments, Germany. The German record was also worse than the Dutch one, despite the higher adaptation pressure of the latter. The finding of this case study draws attention to variations in the domestic institutional opportunity structures as explanation for the degree of adaptation to European requirements. Of particular importance, are the institutional veto points that central governments have to face when imposing European provisions on their constituencies. The case study suggests that gaps in the goodness of fit are important as a major cause of domestic opposition, which is a necessary condition for variations in implementation records. However, the institutional opportunity structures ultimately tend to shape the pace and quality of implementation regardless of differential degrees in the goodness of fit.

1. INTRODUCTION¹

Since the mid-1980s, European legal and economic integration has increased its speed, scope and depth. In the same period, the tensions between European unity and national diversity have become more obvious. On the one hand, the question emerges to what extent member states still pursue nationally distinct policies (Caporaso, Green Cowles, and Risse, 2000, Mény, Muller, and Quermonne 1996, Unger and van Waarden 1995). On the other hand, from the European Union (EU) perspective, one has to ask to what extent these diverse national traditions and institutions are hindering the process of European integration. Hence, from an integration perspective national differences have been transformed into degrees of compliance with, or deviations from, a hypothesised or indeed actual European standard. As the European Union moves towards supranational policies, with universally applicable rules, the degree of compliance or

¹ I would like to thank Tanja Börzel, Rainer Eising, Andrea Lenschow, Susanne Schmidt, Thomas Risse, Alec Stone Sweet and the participants of the EUI Luncheon Seminar, Florence, for their valuable comments on earlier drafts of the paper.

the differences and similarities in policies and regulatory styles become of crucial interest to academics, governments and interest groups (cf. Buller, Lowe and Flynn 1993). However, despite their importance, however, the shaping forces and dynamics of national adaptation to European legislation are still poorly understood.

The first systematic cross-national studies on European integration and domestic policy change started with hypotheses that grant importance to the stickiness of national policies and regulatory styles. Essential to this argument is the concept of adaptation pressure, which is defined as the degree of institutional incompatibility between national structures and practices and EU requirements. The argument is that in cases of *high* adaptation pressure, implementation of European requirements is likely to be ineffective, since European policies require fundamental changes of cores structures and practices of national institutions. In cases of *no* adaptation pressure, it is assumed effective implementation as a result of full compatibility of European requirements and existing national arrangements. The explanation becomes more complex for cases where EU legislation is demanding changes within the core of national tradition but not challenging this core as such. In these instances of *moderate* pressure the degree of adaptation is shaped by the preferences and resources of domestic coalitions, mediated by institutional structures, such as veto points (Knill 1998, Knill and Lenschow 1998, cf. Carporaso, Green Cowles, Risse 2000).

The case of packaging waste suggests a shift in emphasis in this theoretical model. The degree of adaptation pressure - or conversely the goodness of fit - between national practices and European requirements turned out to be less important than it is assumed by this theory. Britain implemented² the Packaging Directive comparatively quickly and appropriately despite relatively high adaptation pressure. Germany, facing only low adaptation pressure, implemented late and without proper regard to the Directive's provisions. The German record was also worse than the Dutch one despite the higher adaptation pressure of the latter. While adaptation pressure remains an

² The term implementation covers the transposition of European legislation in national statutory law (legal implementation) and the provision of the basic administrative arrangements and governance structures to meet the substantial targets of the European requirements (practical implementation). This study will not focus on the effectiveness of the implementation arrangements, i.e. the degree of

important source of activating domestic opposition, the case study finding suggests however, that the relative degree of adaptation pressure is not very important for explaining variations in implementation records. This paper seeks to argue that variations in the national institutional opportunity structure tend to determine the pace and quality of implementation regardless of differential gaps in the goodness of fit³. In the case of packaging waste it was decisive whether the national institutional opportunity structure provided domestic opposition with an institutional veto point that enabled them to modify the outcome. This was the case in federal Germany, but not in Britain and the Netherlands with their centralized institutional structure.

Veto points refer to all stages in the decision-making process at which agreement is required for a policy change (Immergut 1992: 26, cf. Kitschelt 1986, Tsebelis 1995). This is not to say that European requirements as such can be ultimately rejected at domestic veto points. But, it does make sense to perceive them as *quasi* veto points, because in practice, European legislation is mostly “packed” with additional provisions to ensure effective implementation. These provisions are necessary to make directives fit to the domestic (legal) situations or to create specific legislative conditions for application (Streinz and Pechstein 1995). However, such provisions often depend on the assent of other institutional players, most importantly second chambers of the legislature. If these chambers represent regional actors, the government has a strong incentive to get the assent even when it is not formally required, because central governments are often dependent on regional actors for the practical implementation of European legislation, for which the central governments nevertheless remain legally responsible and liable.

The article is organized as follows. In order to provide a deeper understanding of the national adaptation to the European Packaging and Packaging Waste Directive, I will first sketch the cross-national variations in policies and regulatory styles prior to the European Directive. The study will concentrate on Germany, the Netherlands and the United Kingdom, since these countries by and large represent the range of

compliance with the Directive’s environmental protection targets, since these targets have only to be met by 30 June 2001.

strategies employed by governments to deal with the problem of packaging waste. The unintended consequences of this policy diversity were the prime reason for the Europeanisation of the issue of packaging and packaging waste. Moreover, national practices were also the main determinant of the national preferences in the formulation of the European Packaging Waste Directive. The second section of the case study will summarize the highly politicized decision-making process resulting in the Directive. The third and main section of the paper seeks to elaborate on the evidence in support of my hypothesis. Specifically, the conditions and dynamics of the implementation process will be analyzed in order to show the overriding importance of institutional veto points for explaining the variation in timing and success of the national adaptation to the European requirements. The conclusion will be preceded by a section in which the research finding will be viewed in the light of an alternative theory that suggest that adaptation performance is conditioned by the policy objectives of member state governments. The article closes with the claim that the institutional opportunity structure might also be a crucial variable in regard to national policy adaptation in other areas of European integration.

2. CASE PACKAGING WASTE

National diversity causes harmonisation pressure

During the 1980s and the early 1990s, member states of the European Union were confronted with the problem of increased packaging waste. However, the member states varied in their packaging waste policies and regulatory styles. I will concentrate on three countries - Germany, the Netherlands, and the United Kingdom – whose strategies in dealing with the environmental problems associated with packaging waste

³ This clarification of my argument draws heavily upon comments by Rainer Eising and Alec Stone Sweet (personal communication).

differed substantially⁴. The nationally distinct approaches resembled the more general regulatory patterns in these countries (cf. Knill and Lenschow 1998, Richardson 1982).

Compared to the British and the Dutch approach, the German one was not only the most formalised, but also set the highest standards. The government adopted the Packaging Ordinance “*Verpackungsverordnung*” that was binding under public law (Federal Law Gazette 1991 I, p. 1234). The ordinance obliged industry and retailers to take back all packaging and to re-use or recycle it. Furthermore it introduced mandatory deposits for a range of products, such as containers for detergents. Forced by these – in cross-national comparison – far-reaching obligations, peak associations of industry negotiated an exemption scheme for the largest and most problematic waste stream, used sales packaging. Industry could be exempted from its 100 per cent take back and reprocessing obligations of sales packaging, if it set up a collective and privately run waste management system capable of recycling 64 and 72 per cent of sales packaging respectively (depending the material in question) within five years. This was still very demanding given the fact that sales packaging recycling was estimated for paper at some 38 per cent and for all other materials well below ten percent (estimation for 1988, *The Economist* 3.7.1993). But industry was forced to accept this standard as the lesser evil. It founded the *Duales System Deutschland* to meet the recycling targets requested. It was envisaged in the Ordinance that in the event of a failure of this industry scheme, take-back obligations and the mandatory deposits for a number of products would be introduced. In addition the ordinance also ruled that the existing level of re-use of drink containers, which was 72 per cent, has to be maintained. When the share of refillables sold in Germany would fell below this quota, the government would introduce mandatory deposits for drink containers.

The Dutch approach was significantly less formalised than the German one and introduced more modest standards. In line with a general consensus approach, government and a large part of industry agreed to a so-called Covenant (VROM 1991). It was binding under private law, but only for the signatories and not for the whole potential target group. The strictness of standards was lower than in Germany: there was a general

⁴ An overview is provided by Table 1

recycling target of 60 per cent for all packaging waste to be achieved in nine years, given a level of some 25 per cent in 1988. Since the target applied to all packaging, companies could offset difficult recyclable sales packaging by the easier recyclable transport and industry packaging. Unique in Europe, however, industry had to reduce - by the year 2000 at the latest - the quantity of packaging newly introduced into the market to below the quantity for the reference year 1986. Moreover the amount of waste incinerated or landfilled was to be brought down to 1986 level. In contrast to Germany, the collection of packaging waste remained the responsibility of the local authorities. The Dutch mode of interest integration resembled the German corporatist one, though it was less impositional. Government and the Foundation for Packaging and the Environment (*Stichting Verpakking en Milieu, SVM*) – a cross-sector single issue trade association - agreed on a bundle of measures in order to meet the ambitious prevention and fairly demanding recycling targets. However, unlike in Germany, however, an intensive public-private consultation process, pointing to a more consensus-oriented approach preceded the Packaging Covenant negotiations. A large number of economic and societal actors met with government in some 270 sessions (cf. Mingelen 1995: 43).

The United Kingdom had the least formalised and least ambitious approach. In comparison with other countries it set both a very vague and modest recycling target: half of the recyclable household waste had to be recycled by the year 2000 (HM Government 1990). It was estimated that roughly half of the household waste is recyclable. Hence, the recycling target lied at some 25 per cent. The target was not legally binding. The conservative government basically believed that market forces were sufficient in promoting savings in packaging raw materials and reduction in waste (Haigh 1990: 167). In addition, the government asked local authorities to increase their packaging waste collection and recycling efforts and provided a small incentive in the form of a recycling credit scheme to stimulate that. The message to industry, to reduce unnecessary packaging, was answered by three initiatives of industry: two general codes of practice and one ill funded and narrow business plan. These industry initiatives did little to reduce packaging and packaging waste (cf. Haverland 1999: 140-144).

Table 1 National policy approach prior to the European Packaging and Packaging Waste Directive

	Germany Packaging Ordinance 1991	The Netherlands Packaging Covenant 1991	United Kingdom White Book, 1990 & Codes of Practice 1992
Formalisation	High	Medium	Low
Strictness of standards	High	High/Medium	Low

Germany, the Netherlands and the United Kingdom provide good illustrations of the diversity of national policies and regulatory styles concerning the common challenges of increased packaging waste. National regulatory diversity in increasingly interdependent markets, however, is prone to have unforeseen, unintended and unwanted cross-border effects. To be more specific, domestic market interventions by a major economy such as Germany, in a field that is so closely related to the free movement of goods, potentially threatens the proper functioning of the Internal Market. It is therefore not surprising that the German Packaging Ordinance had cross-border effects that caused a stir in other member states. Three effects can be distinguished. Two of these effects were related to the fact that the German sales packaging recycling system was financed by companies via a licence fee (symbol: green dot). It was known that most of the German retailers privileged "green dot" products *vis-à-vis* other products, in order to support the domestic scheme. Foreign companies argued that the "green dot" established a technical barrier to trade as they were forced to comply with an additional measure before being able to sell their products in Germany. Moreover, the limited domestic recycling capacities resulted in a surplus of collected packaging waste being unloaded in the recycling markets of other EU member states. Since this material was subsidised by the "green dot", it could be offered to these foreign recycling facilities at prices that were lower than those of waste collected in the respective country. As a consequence, the embryonic packaging collection infrastructures in a number of member states, in particular in the United Kingdom, were threatened. The third consequence was associated with the German refillable quota. There was evidence that due to this quota some retailers privileged refillable drink containers over one-way packaging in order to stabilise the share of refillables. It was argued that this discriminated against foreign companies because it would be difficult to export refillable containers given the high costs of

establishing the logistical infrastructure to take back used bottles and carry them over long distances. As a matter of fact, in 1995 only 12 per cent of drink imports came in refillable packaging; in contrast 75 per cent of domestically produced drinks were sold in refillable packaging (Long and Bailey 1997: 218).

The Packaging and Packaging Waste Directive

Confronted with these developments, some member states (in particular the UK) and lobbyists from industry, expressed their concern to the Commission about the trade implications and other effects of the German regulation. Yet, earlier judgements of the European Court of Justice had not prevented interventionist regulations in this field. In the Danish Bottle Case, for instance, a Danish ban on beverage cans was justified for reasons of environmental protection despite its adverse effects on the internal market. This judgement "*effectively shelters national environmental measures in areas that are not subject to European harmonisation legislation against the threat of Court-driven regulation*" (Gehring 1996: 16). In light of this decision, the Commission did not challenge the German system before the European Court of Justice. Rather it proposed a directive to harmonise national regulations while ensuring a high level of environmental protection⁵. The Directive was adopted two years later achieving neither a harmonisation of national regulations nor high environmental standards⁶.

The Commission and the European Parliament initially advanced environmental targets, which would have induced tremendous adaptation pressure on the majority of member states. The first official proposal of the Commission as well as the initial position of the European Parliament aimed at a harmonisation of national

⁵ A second reason for the Commission's initiative for a directive on packaging waste, was the attempt of its General Directorate of the Environment to revitalise its own packaging waste policy.

⁶ The decision-making process was initially governed by the co-operation procedure. After entry into force of the Maastricht Treaty (1 November 1993), however, the co-decision procedure applied. See for detailed and chronological analyses of the European packaging waste policy process (Gehring 1996, Golub 1996a, Haverland 1999)

policies on a high level of environmental protection⁷. They were supported by the “green” member states Germany, the Netherlands and Denmark. The majority of member states, however, wanted to combine provisions ensuring the free movement of goods with provisions aiming at a comparatively low level of environmental protection. Facing not only this opposition but also heavy lobbying from trade and industry, the European Commission stepped back from its initial ambitious “green” proposal and framed the Directive in a way that would please the majority of the Council. The European Parliament shifted its position in the similar direction: In its second reading it was less concerned with the environment and accepted all major elements of the Council’s position. In the final decision, MEPs voted along national lines, rather than along party lines. In short: the majority of member states were able to lower the standards and thereby substantially decrease the adaptation pressure induced by the Directive. The Council majority accepted, however, exemptions for the “green” member states. They were allowed to maintain or introduce more far reaching measures under certain conditions. This exemption is an expression of the consensus-orientation in the Council. It prevented, however, a far-reaching harmonisation of national policies⁸.

National adaptation to the Packaging Directive

Even though member states were able to substantially reduce the adaptation pressure implied in the initial drafts by the European Commission and the European Parliaments, the Directive still did – to a varying degree – induce adaptation pressure on member states (see Table 2). Given the technical complexity of the issue, it might even be the case that the Directive caused more adaptation pressure than most officials were aware of during the negotiations in Brussels. The adaptation pressure stemmed partly from the substantive objectives of the Directive. It introduced minimum quotas

⁷ The first Commission proposal entailed the collection and recycling quota of the Dutch 1991 Covenant. This is no coincidence. The author of the text was a civil servant of the Dutch environment ministry, delegated to the Commission.

for packaging recycling (25 per cent) and recovery (50 per cent) well above the recycling and recovery levels in a number of member states at that time. It also set maximum quotas (50 per cent, 65 per cent, respectively) which were well below the national targets in the front runner countries Germany and the Netherlands. The Directive's targets had to be met by 30 June 2001. On balance, adaptation pressure was higher for those who had rather weak recycling records such as the UK. Countries who already had high standards in place were less affected. As mentioned before, member states were allowed to go beyond the maximum targets set in the Directive under certain conditions. In other words, they had the possibility to "opt up" (Golub 1996a).

At least equally important, though less visible, were the adaptation pressures posed by the formal requirements that had to be taken into account by implementing the Directive. The Packaging Directive induced the need for a high degree of formalisation of national policies. In other words, there was a need to replace voluntary agreements and codes of practice by command and control measures. The reasons for this is that even though member states are free to choose their own legal means and the form in which to implement a directive, the European Court of Justice had already elaborated in its case law a number of basic legal requirements. Firstly, member states have to ensure clarity, legal security, and legal protection of third parties when implementing directives (Jans 1994: 133). These obligations leave member states with virtually no viable alternative to implementation by a legalistic command and control approach. Next, the Court repeatedly emphasised that directives have to come into full effect. This implies certain obligations for member states to make directives enforceable. Moreover, member states are also being held liable if the desired result is not achieved or the directive is late or improperly implemented. The member state concerned cannot evade its responsibility by blaming private actors or sub-national governmental institutions. Under these circumstances central governments are very cautious in choosing implementation instruments others than command and control measures based on public law (Prechal 1995, Steyger 1993, Stone Sweet and Brunell 1998)

^s Provisions for 'laggard countries' further contribute the weakening of the environmental dimension and the lack of harmonisation. Greece, Portugal and Ireland were granted less demanding targets.

Table 2 Adaptation pressure induced by the Packaging Directive

Degree of Formalization		
Packaging Directive	National Practice	Adaptation Pressure
High	D high NL medium UK low	D low NL medium UK high
Strictness of Standards		
Packaging Directive	National Practice	Adaptation Pressure
Medium (Opt ups)	D high NL high/medium UK very low	D low NL low UK high

United Kingdom: Proper implementation by policy innovation

If we take the substantial and formal requirements together, the United Kingdom appeared to have had the strongest need for adaptation. Generally binding legislation had to be introduced, and from the British perspective rather high environmental standards had to be met. Especially the minimum recovery target of 50 per cent posed a great challenge to British government and industry. This target included two options: recycling and incineration with energy recovery. The United Kingdom had, however, only a small capacity for waste incineration with energy recovery. Building up new capacities would have been quite costly, cumbersome and time-consuming, not in the least because these facilities would have to meet, from a British viewpoint, strict European environmental emission standards. Hence, the United Kingdom had not only to recycle the 25 per cent of packaging waste envisaged by the Directive but much more in order to meet the deadline for the 50 per cent recovery target. An industrialist estimated the recycling level necessary at 42 per cent, which is two-and-a-half times more than the level at that point in time (Interview Industrialist).

Implementation was complicated by additional factors. First, to fulfil the legal requirements for the implementation of directives, the government proposed a system of quantified and uniform targets for each individual company. Prior to the adoption of the Directive, British governments had always opposed this regulatory approach, because it clashed with traditional British regulatory principles and regulatory styles. In contrast to Germany and the Netherlands, British government had always prioritised

the principle of sound scientific evidence rather than the principle of precaution. The latter one would have legitimised environmental action also in the absence of scientific consensus (Weale 1992). Accordingly, the British government repeatedly argued that the environmental superiority of recycling and recovery as waste management options could not be backed by unanimous scientific support. The clear privilege of these waste management options by quantified targets would not be legitimised. The British government could not prevent the setting of quantified targets in the Directive, however. Second, the uniform application of these targets contradicted not only regulatory principles but also the British regulatory style. Traditionally, broadly defined environmental objectives and principles were translated into concrete obligation by bilateral negotiation between companies and government agencies. Tailor-made solutions for individual companies were the outcome of these negotiation processes (cf. Richardson and Watts 1985). Implementing the Packaging Directive, however, the British government wanted clear and standardised obligations for two reasons. First: tailor-made solutions would put excessive demands on the implementation agencies, given the tens of thousand companies who would fall under the scope of the Directive. Secondly, and more important, the government wanted to ensure that the Directive's obligations are enforceable (Interview Department of Trade and Industry, Interview Department of the Environment). The British government approach to the Directive shows, that it was ready to sacrifice traditional regulatory principles and practices to meet the European requirements.

The substantial and formal misfit between European requirements and British practice challenged also another aspect of the regulatory style, namely the traditional system of interest intermediation. The challenge had very much to do with the "chain" character of packaging. The producers of packaging raw material, the packaging manufacturers, the packers and fillers (especially the consumer good producers), and the retailers form the so-called packaging chain. In order to create a workable packaging recycling system capable of meeting the Directive's targets, a certain degree of co-ordination and co-operation within and across each part of the packaging chain was necessary. The government therefore repeatedly asked industry to come up with a proposal of an industry-led scheme that enjoys the support of all relevant parts of trade

and industry. Unlike in Germany and the Netherlands, however, the willingness and organisational capacity of companies to engage in inter and intra-sectoral co-ordination to achieve common objectives is rather poorly developed. British companies are informed by an individualistic industry culture (Dyson 1983). Accordingly (peak) trade associations has always been comparatively weak. Hence British industry is rather unlikely to engage in corporatist-like arrangements; i.e. assisting government by implementing public policies and supervise compliance, to an extent which is common in Germany or the Netherlands (Grant 1993, van Waarden 1992). The implementation process proved this. Trade associations were not able to aggregate industrial interests and to present themselves as legitimate interlocutor between industry and government.

In sum: The European requirements posed a real challenge to the core of British policies and regulatory styles. The British government had to act under - comparatively - very unfavourable conditions. But it managed to implement the Directive relatively fast and appropriately. This is not to say that the implementation process went smoothly. On the contrary, almost the entire British industry opposed the environmental dimension of the European Packaging Directive prior and after the adoption. Not only the substantial increase in recycling activities required by the Directive caused the resistance. Equally important was the opposition against the shift in the regulatory approach towards quantified and uniform targets. In other words: the misfit of European requirements with national traditions was not trivial. It caused a lot of political conflict. The important point is, however, that the domestic opposition had no effective veto point at which it could substantially delay the process or modify the outcome of the implementation of the European Packaging Directive. The institutional structure of the United Kingdom effectively sheltered central government from societal demands. Hence at the end, representatives of leading companies, fearing unilateral action by government, agreed on the basic (financing) principles of a packaging recycling system capable of meeting the minimum standards of the Packaging Directive. This agreement formed the base for the British packaging regulation that was adopted eight month after the official deadline of the Directive but still well before the Dutch or the German regulation. Facing no effective domestic opposition, the government had also the capacity and flexibility to set up an innovative system for

complying with the European Packaging Directive. Imitating the system of tradable emission rights, which gained prominence in US air pollution policies, the government introduced a system of tradable packaging recovery notes. Companies have to prove by these notes that they have fulfilled their recycling and recovery obligations. They can purchase the notes from approved waste management and recycling firms.

The Netherlands: Flexible adjustment by patching up

The Dutch government was in a better position than its British counterpart. The Netherlands already had an impressive recycling record. While Britain had to more than double its recycling performance, the Netherlands met the maximum recycling quota that the European Packaging Directive envisaged for the year 2000 already in 1993. That the Dutch policy aimed at recycling targets, which exceeded the maximum targets of the Directive, did only cause a problem at first sight. As other front runner countries, the Dutch government could rely on the exemption, that the targets can be exceeded given that enough recycling capacities are in place. Hence, unlike the United Kingdom, the Directive did not cause adaptation pressure in regard to policy substance.

Like in the United Kingdom, however, the formalistic approach induced by the European Directive clashed with the national practice. The Dutch 1991 Covenant was the expression of a pragmatic and consensus-oriented regulatory style. The problem from a legal viewpoint was, however, that not all relevant companies were party to the Covenant. Some 200 companies, mainly the large ones, participated, representing roughly 70 to 80 per cent of the turnover of the relevant sectors (SVM 1995). Moreover, no clear and legally enforceable obligations were allocated to individual companies. In order to comply with the legal requirements for the implementation of directives, the Dutch government therefore wanted to replace the Covenant by generally binding regulation. As in the United Kingdom large parts of industry opposed this turn to a more formalistic approach. Many companies as well as the larger public disliked the idea that a flexible and relatively efficient and effective policy

arrangement had to be replaced by a more bureaucratic and rigid system. In addition, those companies who were not party to the Covenant, especially a large number of small and medium sized companies, feared that they would be part of mandatory packaging recovery and recycling system. However, like in the United Kingdom, domestic opposition had no institutional veto point where it could effectively delay the process or modify the substance of the European provisions imposed on them.

Still, in a corporatistic country like the Netherlands, united and representative trade and industry associations enjoy almost an informal veto position. It would have been very hard for the Dutch government to simply impose a new waste management system on the Dutch industry. The Dutch government was, however, in a more comfortable position than their British counterpart. There was no need to substantially increase the recycling and recovery efforts as compared to what the current policy envisaged anyway. On the contrary, the targets of the 1991 Covenant significantly exceeded the substantial requirements of the Directive. Hence, the government had some exchange to strike a bargain with industry. Moreover, unlike in the United Kingdom, trade and industry was able to formulate a uniform position. Relatively powerful trade associations, in particular the Foundation of Packaging and the Environment, were instrumental to that. And finally, unlike in British, the Dutch industry followed, after the initial opposition and fierce criticism, a problem-oriented and active approach. Guided by the tradition of corporatist consensual decision making, government and industry were so flexible to strike a compromise.

The government introduced legislation that entailed the maximum recycling standards of the Packaging Directive. On top of that, government agreed with industry on a new Covenant entailing substantially higher targets. These targets were on balance, however, slightly lower, than the targets of the old Covenant. Since the new Covenant was designed as a flexible alternative to the bureaucratic individual route of compliance, virtually all companies joined the Covenant. A hybrid system evolved. The underlying logic of the Dutch policy arrangement was not changed. Rather, it was supplemented by new legislation adding more formalistic elements. Hence, while the United Kingdom innovated with a new recycling system, the Netherlands "patched up"

their existing arrangements (Genschel 1997, cf. Héritier, Knill and Mingers 1996). The lack of institutional veto points enabled the central government to reconcile European and domestic demands in a flexible manner.

Germany: Stalemate and improper implementation

Unlike its British and Dutch counterparts, the German government had the advantage that the legalistic approach taken in the 1991 Packaging Ordinance matched the formal requirements of the Packaging Directive. In other words, the European Directive neither demanded a shift of the core of the regulatory style as in the United Kingdom (high adaptation pressure) nor a change within the core as in the Netherlands (moderate adaptation pressure). Moreover, as in the Dutch case, the current recycling and recovery level was more than sufficient to meet substantial requirements of the Directive. And more far-reaching recycling and recovery efforts were backed by the exemptions granted by the Packaging Directive. In other words: the substantial core of the German packaging waste policy, the recycling of packaging waste, was not endangered by the Directive. The only adaptation pressure was induced concerning the German refillable quota. Hence, given this comparatively low adaptation pressure, one should expect a relatively smooth, timely and proper implementation of the European Packaging Directive. The opposite is true, however. As the next section will show, the government's attempt to weaken the refillable quota in order to satisfy the Commission and other member states met with domestic opposition. The opposition was able to use mobilise the *Bundesrat* to veto the government's proposal. As a consequence, the implementation of the Packaging Directive delayed significantly and the outcome is challenged by an infringement procedure.

The central substantial provision of the European Packaging Directive concerns the material recycling and energy recovery of packaging waste. However, the Directive also states that member states may *encourage* the use of refillable packaging. This option is not identical with the recycling of packaging *material*. Rather the packaging itself is re-used. The 1991 German Packaging Ordinance ruled that 72 per cent of all drink packaging sold in Germany must be filled in refillable containers. When the level of refillables falls below the quota, mandatory deposits on drink containers will be introduced. The Commission was already sceptical about this provision prior to the

implementation of the Packaging Directive, because of its discriminatory trade effects (see above). After the adoption of the Directive, it argued that this mandatory quota is more than merely the “encouragement” of re-use, and that it erects barriers to trade that are not justified under the Directive. Six months before the official deadline for transposing the Directive into national law, the Commission finally reacted to the complaints of many member states and companies by starting an infringement procedure against Germany. Any attempt of the German government to abolish or at least weaken the refillable quota met, however, with strong resistance by the German *Bundesrat*, the chamber of the German states (*Länder*). While the central government was run by a Christian-democratic-liberal coalition, the majority in the *Bundesrat* was made up of state governments ruled by the social-democratic party, partly in coalition with other parties. A majority in the *Bundesrat* favoured even a higher refillable quota. This majority consisted not only of social-democratic-led state governments but also of conservative Bavaria. These states, especially those with an environment minister from the green party, argued that the re-use of drink packaging would be environmentally superior to material recycling. For the green party, re-use rather than recycling was a corner stone of its waste reduction policy. Bavaria joined this coalition, because it protected its local breweries from competition. As already said above, local drink producers can more easily set up a refill infrastructure than foreign importers. Thus, a so-called “baptist-bootlegger” coalition (Vogel 1996) between environmentalists and protectionists evolved, which could channel their influence through the German *Bundesrat*.

The implementation of the provisions of the Packaging Directive were “packed” into the amended version of the 1991 Packaging Ordinance. Since the Packaging Ordinance touched upon (implementation) competencies of the *Länder*, the *Bundesrat*, provided an institutional veto point in the decision-making procedure. Disentangling the European and supplementary provision would have had many negative practical consequences for the existing packaging waste system, if the *Bundesrat* had vetoed the supplementary provisions. As a consequence, the federal government was trapped between the Commission on the one hand and the *Bundesrat* on the other hand. It took more than two years before the *Bundesrat* finally accepted

a certain relaxation of the refillable quota and only in exchange for some concessions concerning the rules governing the operation of the *Duales System Deutschland*.

As a consequence of this time consuming wheeling and dealing, Germany implemented the Packaging Directive only two years after the official deadline (Federal Law Gazette 27.8.1998). And what is more, the Commission restarted the infringement procedure against Germany arguing that a modest relaxation of the refillable quota is not sufficient. The infringement procedure was still pending at the time of writing of the article. It is quite likely that the Court will decide against the refillable quota since it clearly contravenes the Directive's objective to harmonise national regulations in order to ensure the free movement of good. That the Commission hesitates to put Germany before the European Court of Justice has therefore less to do with the fear that it would not be successful. The Commission is afraid of the high level of political conflict such a step would provoke in this sensible regulatory area.

3. CONCLUSION

This article presented a case where member states were to a varying degree exposed to adaptation pressure by a European Directive. The Packaging Waste Directive challenged the core of the British waste policy and regulatory style. The government was forced to impose - from a national viewpoint- demanding packaging waste recycling and recovery standards. It also was forced to replace the traditional regulatory style, broad objectives to be translated into individual obligations by bilateral government-company negotiations, by quantified targets uniformly imposed on industry. The Dutch government was only exposed to moderate adaptation pressure. The Directive demanded changes but not fundamentally challenged the Dutch pragmatic Covenant approach. The German policy and regulatory style was faced with comparatively low adaptation pressure. The central objectives of its policy as well as its regulatory style could remain intact.

The case study does not confirm the crucial importance of the differential gap in the “goodness of fit” for explaining the pace and degree of adaptation to European requirements. Britain, the country with the greatest misfit of national practice and European requirements, implemented the Packaging Directive comparatively successful, while Germany had the greatest problems to implement even incremental changes. This result draws the attention to the importance of the national institutional opportunity structures. Unconstrained by institutional veto points, the British and the Dutch government adapt to Europe relatively timely and properly. Germany facing opposition in the *Bundesrat*, implemented rather late and improperly. Hence, the case study suggests that veto points tend to determine the timing and quality of implementation regardless of differential gaps in the goodness of fit between European requirements and national traditions.

The case study builds on an institutional approach, because it was the first one, which had been systematically tested by cross-national policy research. A competing hypothesis has been suggested by several scholars, in particular from international relations, but has not yet been tested systematically. According to this actor-oriented approach, the degree of national adaptation to European requirements depends primarily on the preferences of central government. It is suggested that in cases where member state governments dislike the outcome of the European policy formulation process and/or facing strong domestic opposition, they will try to reduce the impact of European legislation by lax and delayed implementation or even by non-compliance (cf. Eichener 1996, Golub 1996b).

The case of the Packaging Directive does not corroborate this hypothesis, however. None of the three central governments liked the Packaging Directive very much. The German and the Dutch government voted against the Directive in the Council since they opposed the watering down of the environmental protection targets. The British government voted in favour of the Directive, because of its harmonisation objectives and because it was preferable to no directive. Motivated by their overriding preference to guarantee the free movement of goods, it accepted substantial changes in the form and the substance of their national policies. The government was against the –

from its viewpoint – still high level of environmental protection objectives and the rigid system of recovery and recycling targets. Despite this opposition, there is no evidence that one of the three central governments seriously considered non-compliance as viable alternative. There are also no indications that they explicitly delayed the process in order to reduce the adaptation pressure. On the contrary, as the official deadline for the transposition of the Directive came closer, all governments undertook serious efforts to transpose the Directive into national statutory law and to provide the basic administrative arrangements and governance structures to meet the targets of the Packaging Directive. This case therefore suggests that central governments are willing to obey to the rule of law. The legal incentive to do so (state liability etc.) has been discussed in a previous section.

Preliminary observations indicate that the national institutional capacities for policy change do not only matter in the field of environmental policy. A review of the Commission in regard to the pace of the implementation of the single market directives reveal that the countries who have a fragmented institutional structure (strong bicameralism, federal division of competencies) have on average a worse implementation record than centralized states. From the twelve countries that were members of the EC before the last round of accession Germany, Belgium and Italy performed worse than the average. They populate together with Greece and Ireland the bottom half. The institutional more integrated states such as Denmark, France, the Netherlands and the United Kingdom performed above the average (see for degree of institutional fragmentation: Schmidt 1993: 387, see for performance Wallace and Young 1996: 141). Still, the empirical base for strong conclusions remains limited. The way forward is to further refine the theories of national adaptation to the EU and to expose them to new systematic cross-national and cross-sectoral research.

4. References

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