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UMI
Beyond Intergovernmentalism: 
The Europeanization of EU Environmental Policy Making

by

Michelle Anne Cloutier

A thesis submitted in conformity with the requirements for the degree of Ph.D. 
Graduate Department of Political Science 
University of Toronto

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Abstract

"Beyond Intergovernmentalism: The Europeanization of EU Environmental Policy-Making"

Ph.D., 1999

Michelle Anne Cloutier
Department of Political Science
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The question of how to characterize the governance of the European Union lies at the
center of debate among EU scholars. This debate revolves around three main approaches to
European integration and governance described in Chapter One of the thesis. The first is liberal
intergovernmentalism, a state-centric approach to integration whose assumptions are also
applied to questions of governance. The second is an offshoot of the neo-functionalist school
called "transactional" theory, which posits that integration and resultant supranational
governance are driven by transnational societal and organizational activity. The final approach,
is actually two taken together: historical institutionalism (HI), an institutionalist approach to
European integration, and multi-level governance theory.

The main purpose of this thesis is to provide a framework of analysis, here a particular
policy network approach, in order to test the "fit" of each approach or theory against available
evidence within one policy area, that of environmental policy, in the European Union. Using
this framework, I show how historical institutionalism and multi-level governance together
better explain both the "Europeanization" of environmental policy—the shift in both policy-
making arena and actor relationships to the European level—and the general governance of the
policy area. The driving research question of this dissertation is whether changes in decision
rules are necessary to produce changes in governance in a given policy arena. When the policy network approach is used to examine the available evidence one finds that lack of decision-rule change does not preclude either Europeanization or multi-level governance of a policy area. Neither the intergovernmental nor the transactional approaches alone can grasp this nuance. Finally, through the use of a process-tracing, case-study approach to two different cases of environmental policy-making, my own research corroborates the HI and MLG assertion that governance varies not only between policy areas, but also within even a single policy area. The approach used in this thesis can be further applied to other policy areas, and other cases of policy making in order to help scholars answer the fundamental questions about governance in the European Union.
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I owe the Sisters of the Institute of the Blessed Virgin Mary (Loretto) a great debt. They provided a residence for me for two years, let me have more free lunches at their Abbey than I can count, and hired me to design and maintain their web site, thus providing much needed financial assistance. I'm positive that their prayers also helped.

The prayers and support of my "women's spirituality" group have also held an important place in my life since 1993, when Lenore Sullivan, IBVM, introduced me to these wonderful women. Lenore also provided immeasurable spiritual and emotional support during this process, and more importantly, she has become a dear and true friend.

Other friends deserve mention. Shaun Narine, colleague and friend, and sometimes thorn in my side (and I his), has been there for me since day one. My thanks also goes out to Adam Fallenbuchl, who never let me lie to myself, and who never once asked me how my work was going, because he knew better. Jacquie Milner, Becky Lee and Lisa Mills are among the many who helped make the journey easier through their friendship. Finally, I must thank Neb Radojkovic, who showed me that just because I was a Ph.D. student, I didn't have to live or think like one.
# Table of Contents

**Abstract** .............................................................................................................................................................................. II

**Acknowledgements** .................................................................................................................................................................... IV

**Table of Contents** ..................................................................................................................................................................... V

**List of Figures** ........................................................................................................................................................................ VII

**INTRODUCTION: ENVIRONMENTAL POLICY AND EUROPEANIZATION** ............................................................................... 1

**Europeanization: What is it? How can we tell?** .......................................................................................................................... 2

**Scope of Europeanization: Policy Processes and Governance** ................................................................................................ 7

**Case Studies** .................................................................................................................................................................................. 14

**CHAPTER ONE: EUROPEANIZATION IN THEORY AND PRACTICE** ..................................................................................... 17

**Integration vs. Governance** .......................................................................................................................................................... 17

*European Integration: A United States of Europe, or a Europe of States?* ......................................................................................... 19

*Functionalist: Alive and Well* ......................................................................................................................................................... 19

*Liberal Intergovernmentalism: A State-Centric View* ..................................................................................................................... 25

*An Institutional Approach* .............................................................................................................................................................. 29

**Governance: Intergovernmental or Multi-Level?** ....................................................................................................................... 34

*Multi-level Governance* ................................................................................................................................................................. 39

*Institutions as actors* ........................................................................................................................................................................... 40

*Member “states” or Member “governments”?* ....................................................................................................................................... 43

*Interconnected, not nested, politics* ............................................................................................................................................... 45

**Governance and Integration: A Summary** ............................................................................................................................... 48

**Arenas and Actors: A Framework for Analysis** ........................................................................................................................ 51

*Policy Network Analysis: A Framework for Description* ............................................................................................................. 52

*The Policy Community* ................................................................................................................................................................. 55

*Policy Networks: Relationships among Actors* ............................................................................................................................ 57

*The EU and Policy Networks* ......................................................................................................................................................... 63

**CHAPTER TWO: EUROPEANIZATION BEFORE THE SINGLE EUROPEAN ACT** .......................................................... 69

**Early Europeanization of Environmental Policy** .................................................................................................................... 72

*The Early Policy-making Process* .................................................................................................................................................. 77

*Early Environmental Policy Actors* ............................................................................................................................................. 85

*The Environmental Policy Community* ....................................................................................................................................... 88

**Conclusions** .................................................................................................................................................................................. 96

**CHAPTER THREE: EUROPEANIZATION AFTER THE SINGLE EUROPEAN ACT** .................................................. 101

**The Environment in the Treaty** ................................................................................................................................................... 102

*The Post-SEA Environmental Policy Community* .................................................................................................................... 108

*Policy Initiation: The Commission* ............................................................................................................................................... 108

*Decision Making: The Council of Ministers* .............................................................................................................................. 115

*Decision Making: The European Parliament* ............................................................................................................................ 118

*Implementation* ............................................................................................................................................................................... 124

**Post-SEA Environmental Policy: Europeanization of the Policy Arena** .................................................................................. 126

**Conclusions on Informal and Formal Europeanization: Towards “Maastricht”** ................................................................. 131

**CHAPTER FOUR: EUROPEANIZATION AFTER THE MAASTRICHT TREATY** .................................................. 137

**Formal Europeanization in the Maastricht Treaty** .................................................................................................................. 137

*Co-decision: Parliament and Council* ......................................................................................................................................... 139

*Formal Europeanization of Environmental Policy within the Treaty* ....................................................................................... 141

*Subsidiarity* ..................................................................................................................................................................................... 144

*Environmental Policy since Maastricht* ......................................................................................................................................... 147

**The Environmental Policy Community after Maastricht** ....................................................................................................... 150

*Agenda Setting and Policy Initiation* ......................................................................................................................................... 151

*The Commission* ............................................................................................................................................................................ 157
List of Figures

<table>
<thead>
<tr>
<th>Figure</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIGURE 1</td>
<td>DIMENSIONS OF EUROPEANIZATION</td>
<td>3</td>
</tr>
<tr>
<td>FIGURE 2</td>
<td>CONTINUUM OF EUROPEANIZATION: ARENAS AND ACTORS</td>
<td>6</td>
</tr>
<tr>
<td>FIGURE 3</td>
<td>EUROPEANIZATION OF THE POLICY PROCESS</td>
<td>9</td>
</tr>
<tr>
<td>FIGURE 4</td>
<td>EUROPEANIZATION OF THE GOVERNANCE STRUCTURE</td>
<td>10</td>
</tr>
<tr>
<td>FIGURE 5</td>
<td>DECISION RULE CHANGE AND MODELS OF GOVERNANCE</td>
<td>12</td>
</tr>
<tr>
<td>FIGURE 1.1</td>
<td>GOVERNANCE IN THE EUROPEAN UNION: A TRANSACTIONAL VIEW</td>
<td>23</td>
</tr>
<tr>
<td>FIGURE 1.2</td>
<td>LIBERAL INTERGOVERNMENTAL GOVERNANCE</td>
<td>45</td>
</tr>
<tr>
<td>FIGURE 1.3</td>
<td>DECISION RULE CHANGE AND MODELS OF GOVERNANCE</td>
<td>50</td>
</tr>
<tr>
<td>FIGURE 1.4</td>
<td>THE POLICY COMMUNITY—SUB-GOVERNMENT AND ATTENTIVE PUBLIC</td>
<td>56</td>
</tr>
<tr>
<td>FIGURE 1.5</td>
<td>MOVEMENT FROM THE ATTENTIVE PUBLIC TO SUB-GOVERNMENT</td>
<td>57</td>
</tr>
<tr>
<td>FIGURE 2.1</td>
<td>DIMENSIONS OF EUROPEANIZATION</td>
<td>84</td>
</tr>
<tr>
<td>FIGURE 2.2</td>
<td>EARLY ENVIRONMENTAL POLICY MAKING COMMUNITY: A STATE-DIRECTED NETWORK</td>
<td>89</td>
</tr>
<tr>
<td>FIGURE 2.3</td>
<td>EVOLVING ENVIRONMENTAL POLICY MAKING COMMUNITY: BIRTH OF A PRESSURE PLURALIST NETWORK</td>
<td>95</td>
</tr>
<tr>
<td>FIGURE 3.1</td>
<td>DG XI POLICY COMMUNITY: POST-SEA PRESSURE PLURALIST NETWORK</td>
<td>114</td>
</tr>
<tr>
<td>FIGURE 3.2</td>
<td>DECISION-MAKING STAGE: COUNCIL OF MINISTERS WORKING GROUPS POLICY COMMUNITY: SIMPLIFIED</td>
<td>116</td>
</tr>
<tr>
<td>FIGURE 3.3</td>
<td>POST SEA POLICY NETWORKS IN THE DECISION-MAKING STAGE</td>
<td>122</td>
</tr>
<tr>
<td>FIGURE 3.4</td>
<td>DIMENSIONS OF EUROPEANIZATION</td>
<td>133</td>
</tr>
<tr>
<td>FIGURE 3.5</td>
<td>ELEMENTS OF EUROPEANIZATION 1972-1992</td>
<td>135</td>
</tr>
<tr>
<td>FIGURE 4.1</td>
<td>EUROPEANIZATION OF THE POLICY ARENA AFTER MAASTRICHT</td>
<td>147</td>
</tr>
<tr>
<td>FIGURE 4.2</td>
<td>EUROPEANIZATION OF THE POLICY PROCESS</td>
<td>151</td>
</tr>
<tr>
<td>FIGURE 4.3</td>
<td>DG XI EXPERT COMMITTEES (SIMPLIFIED) PRESSURE PLURALIST NETWORK</td>
<td>161</td>
</tr>
<tr>
<td>FIGURE 4.4</td>
<td>CONSULTATIVE COMMITTEES MODIFIED PRESSURE PLURALIST NETWORK</td>
<td>163</td>
</tr>
<tr>
<td>FIGURE 4.5</td>
<td>COUNCIL WORKING GROUPS: STATE-DIRECTED NETWORK</td>
<td>173</td>
</tr>
<tr>
<td>FIGURE 4.6</td>
<td>PARLIAMENTARY POLICY COMMUNITY: PRESSURE PLURALIST NETWORK</td>
<td>176</td>
</tr>
<tr>
<td>FIGURE 4.7</td>
<td>CONCILIATION COMMITTEE: STATE-DIRECTED NETWORK</td>
<td>178</td>
</tr>
<tr>
<td>FIGURE 4.8</td>
<td>IMPLEMENTATION POLICY COMMUNITY: PRESSURE PLURALIST NETWORK</td>
<td>180</td>
</tr>
<tr>
<td>FIGURE 4.9</td>
<td>EUROPEANIZATION OF THE GOVERNANCE STRUCTURE</td>
<td>182</td>
</tr>
<tr>
<td>FIGURE 5.1</td>
<td>SAVE POLICY INITIATION POLICY COMMUNITY: PRESSURE PLURALIST NETWORK</td>
<td>212</td>
</tr>
<tr>
<td>FIGURE 5.2</td>
<td>POLICY INITIATION COMMUNITY: CO2 TAX DIRECTIVE: STATE-DIRECTED NETWORK</td>
<td>223</td>
</tr>
<tr>
<td>FIGURE 5.3</td>
<td>DIMENSIONS OF EUROPEANIZATION IN CLIMATE CHANGE POLICY</td>
<td>237</td>
</tr>
<tr>
<td>FIGURE 6.1</td>
<td>SUB-GOVERNMENT OF DG XI: CONSULTATIVE COMMITTEES</td>
<td>252</td>
</tr>
<tr>
<td>FIGURE 6.2</td>
<td>REVISION OF THE SECOND DRAFT PROPOSAL: PRESSURE PLURALIST NETWORK</td>
<td>253</td>
</tr>
<tr>
<td>FIGURE 6.3</td>
<td>PRESSURE PLURALIST NETWORKS: LOBBYING THE FINAL DRAFT PROPOSAL</td>
<td>259</td>
</tr>
<tr>
<td>FIGURE 6.4</td>
<td>FIRST READING: PARLIAMENTARY PRESSURE PLURALIST NETWORK</td>
<td>263</td>
</tr>
<tr>
<td>FIGURE 6.5</td>
<td>COUNCIL WORKING GROUPS: STATE-DIRECTED NETWORK</td>
<td>265</td>
</tr>
<tr>
<td>FIGURE 6.6</td>
<td>CONCILIATION COMMITTEE: STATE-DIRECTED POLICY NETWORK</td>
<td>272</td>
</tr>
<tr>
<td>FIGURE 6.7</td>
<td>IMPLEMENTATION POLICY COMMUNITY: PRESSURE PLURALIST NETWORK</td>
<td>278</td>
</tr>
<tr>
<td>FIGURE 7.1</td>
<td>CONTINUUM OF EUROPEANIZATION: ARENA AND ACTORS</td>
<td>286</td>
</tr>
</tbody>
</table>
INTRODUCTION:
ENVIRONMENTAL POLICY AND EUROPEANIZATION

Since its founding under the Treaty of Rome in 1957, the European Union (EU) has both widened in membership and broadened in policy-making scope. ¹ Subsequent amendments to the Treaty in the 1987 Single European Act (SEA), the 1993 Treaty on European Union, or Maastricht Treaty (TEU or Maastricht), and the 1996 Treaty of Amsterdam (Amsterdam) have continued the widening and broadening trends. These Treaty changes gave the Community competence and jurisdiction over many policy areas that fell outside the scope of the original Treaty. One such area is environmental protection. The Treaty of Rome made no mention of the environment, and the Community did not have legal competence to make policy in this area, without first couching such policy in economic terms, until the passage of the SEA. The SEA added a separate section, or Title, on environmental protection, and the Maastricht Treaty made environmental protection and its counterpart, sustainable development, part of the goals of the European Union.

Re-allocation of legal competence to supranational institutions and/or inclusion of a policy area in the Treaty do not by themselves ensure a change in the actual dynamics of policy-making or the governance of a policy area. Nor does the absence of policy-making competence guarantee that governance will not change. The question remains as to what effect, if any, the Treaty changes have had on the dynamics of the policy-making process and

¹The use of the terms “European Union” and “European Community” pose difficulties for scholars of the EU. The EU refers to the “union” of the 15 member states and the territory they comprise, as well as to the three-pillar structure created by the Treaty on European Union. The European Community comprises the first pillar of the EU and is the main policy-making pillar of the EU. It has become commonplace, however, to refer to the first pillar structure as the “EU” or the “EU’s institutions” even though this is not technically correct. Little distinction is made, in practice, between the EC and EU, so I will generally refer to the “EU” unless I am referring to its historical predecessors, the EEC (1957-1987) or the EC (1987-1992) or specifically to the “Community” institutions of the First Pillar.
governance of the environmental policy area as a whole, and on specific areas within environmental policy. In order to answer these questions, this dissertation asks whether changes in decision rules are necessary to produce Europeanization and changes in governance in given policy arena.

**Europeanization: What is it? How can we tell?**

I start from the premise that EU environmental policy making has become “Europeanized” over time. Europeanization refers to the process by which policy-making dynamics shift from previously insulated domestic arenas to the supranational arena of the EU’s institutional structure. Europeanization also implies that the decision-making process is opened up from a monopoly of member state (and state-level societal) actors to include non-state actors (EU institutional and societal actors, or “Euro-actors”) operating at the European level. Europeanization of a policy area therefore occurs along two dimensions: a shift in the arena of political action and in the actor relationships within the policy area, as shown in Figure 1. Each dimension of Europeanization lies on a continuum between a purely state-level and purely supranational arena and actor relationships. There is the possibility that Europeanization may be incomplete, allowing “pluri-level” action at both the state and supranational level, and “poly-centric” actors from all levels of decision-making authority to make policy in a given policy area.
The first component of Europeanization is a change in the venue and locus of policy making from the national to the European level; in other words, a change in where policy is made. This transfer of competence can be either formal, informal, or both. Formal Europeanization involves a transfer of authority to the European level through a change in the formal decision rules within the institutional process of policy making. These changes are then reflected in the Treaties governing the EU or through ECJ decisions which are binding on all members of the EU. Informal Europeanization involves the shift in the arena for policy making from the national to the EU level, through practice or necessity, and may occur either prior to, or as a result of, formal Europeanization. The development of policy outputs at the European
level in a given policy area may be an indication that the informal transference of policy competence has begun in a particular policy area. However, while informal Europeanization may occur in a given policy area, there is no assumption that it will necessarily be followed by formal Europeanization. It is also important to note that even the granting of formal authority for policy making at the EU level may not necessarily result in the actual development of policy at the EU level.

The second component of Europeanization as described in this dissertation concerns actors and their strategies for policy-making. It is not enough for a policy area to have moved to the European arena for it to be fully Europeanized. One may have a Europeanized policy-making arena, but it is possible for the policy-making process to remain almost purely intergovernmental. Justice and Home Affairs (JHA), and Common Foreign and Security Policy (CFSP) are cases in point. The member states bargain among each other, producing, when efforts are not vetoed by any single member state, intergovernmental bargains. The policy process remains mainly one of coordinating national policies at the European level. There is little or no involvement of non-state actors, either from the EU’s other institutions or societal actors at any but the national level. Finally, there is little imposition of majority decisions upon individual member states.

Europeanization, therefore, involves the presence and action of non-state actors, both institutional and societal, at the European level in the policy-making process. Like most scholars of the EU, I do not deny the continued power of the member states acting through their collective institution, the Council of Ministers. However, in a Europeanized policy area, other European institutions like the Commission, Parliament and Court may play a greater role in the policy process and in influencing policy outcomes. There may even be representation of
sub-national governmental interests at the European level. Policy outcomes no longer merely reflect intergovernmental bargains among the member states. Societal interest groups also begin to play a role at the European rather than at the national level. Policy outcomes in a Europeanized policy area reflect the interaction between national governments, EU institutions and societal actors all acting at the European level.

Figure 2 shows how the two components of Europeanization interact to produce a continuum of Europeanization.² It should be noted that both extremes of the continuum are "pure" forms of governance, and rarely, if ever, will occur in the reality of policy making. At one end of the continuum lie policy areas which remain solely national, in which the member state level remains the locus of decision-making, and national level actors are the only participants with power and influence in policy making. At the other end of the continuum lie policy areas in which the locus of decision-making is firmly and irrevocably embedded exclusively at the supra-national level. The actors making that policy are also exclusively supranational, leaving no opportunity for member state action or influence below the EU level or outside the EU’s institutional structure.

² A "continuum" of Europeanization is actually somewhat misleading, but it is the closest heuristic device available in a two-dimensional format. The middle of the continuum should actually be a sort of bump protruding outward from the two-dimensional line, thus showing that there are other possibilities for arenas and actors other than purely state-centric or purely supra-centric models.
Figure 2: Continuum of Europeanization: Arenas and Actors

There are, of course, no policy areas that lie at the extreme "supranational" top right of this continuum (and probably none remain at the extreme left within the EU). It is important to remember that Europeanization is a continuum from purely national to purely supranational policy making and governance. A "Europeanized" policy area, lying somewhere in the middle of the continuum on either dimension, is not necessarily "supranationalized." Supranationalism, in its purest form, implies a replacement of the nation-state by a supranational body, as well as a shift in all, or almost all, actor loyalties and activities to that body (Haas 1964). While many policies are now decided at the European level, and both state

---

5 Some scholars posit a continuum of "supranationalization" (rather than Europeanization) moving from purely intergovernmental to purely supranational politics (Stone Sweet and Sandholtz 1997b). I believe that to call anything but purely supranational politics, by the term "supranational" undermines the significance of everything that lies in between pure intergovernmentalism and pure supranationalism. In addition, because of the loaded character of the word "supranationalism," which, like "federalism" is subject to misinterpretation.
and non-state actors focus their attention there, the member states remain alive and well in Europe. The influence, power and capacity for independent policy action of the individual member states have, however, been consistently eroded because of European integration. Neither the policy-making process nor the governance of many EU policy areas remains state-centric and intergovernmental in nature. But neither have they become purely supranational. They have, instead, become "Europeanized." It is also important to note that shifts can and will occur unevenly along the two dimensions. Even if the policy arena has shifted to the supranational level, member states and national-level societal actors may retain much control over the policy-making process, as was long the case in agriculture policy.

**Scope of Europeanization: Policy processes and governance**

One of the primary means of formal Europeanization is formal decision rule change which comes about primarily through Treaty revisions. These can officially shift the arena of policy making to the EU level, or allow greater influence and representation of European-level non-state actors by redefining their formal roles in the policy process. Without institutional decision rule change granting policy-making power to the EU, policy competence officially remains at the national level. This is not to say, however, that the EU does not encroach on member state competencies in the absence of Treaty authority. Informal shifts in arena can occur when the EU makes a policy in a given area, or through certain rulings of the European Court of Justice (ECJ). These have the effect of limiting the scope of further independent member state action in the policy area since EU policy supercedes national policy. When I
speak of formal decision rule changes I am referring to those changes in the Treaty, or to specific ECJ decisions that explicitly give the EU the authority to make policy in a given area. It is to these "constitutional" decision rule changes that I refer throughout this thesis.  

Similarly, these constitutional decision rules circumscribe the activities and influence of institutional and societal non-state actors in the policy-making process. For example, even when formal policy competence is given to the EU, other decision rules can lock out non-state actors from the process, as in JHA and CFSP. Decision rules help determine who will be involved in the policy-making process, at what level, and how much formal power is granted to particular actors in the process. While of substantial importance, this official power distribution does not tell the whole story behind a Europeanized policy area. The informal relationships among actors in the EU are often the most revealing of who has policy influence in a policy area and how the policy-making process actually works. An understanding of these informal relationships cannot be derived from a reading of the Treaty, or even of the formal negotiating process leading up to decision-rule changes contained in the Treaty. Even when formal policy competence is absent at the EU level, non-state European-level actors may influence policy-making in such an informally Europeanized arena. How, then, can one characterize the relationship between the arena and actor relationships in a given policy area?

Questions about policy arenas and actors can be addressed at two levels. First, one may ask questions about decision rules and practices in specific cases of policy-making using the two dimensions of Europeanization. Second, one may ask questions about the larger structure

---

4 But see note 5, below.
5 As will become clearer in Chapter One. Treaty revisions are the focus of one of the dominant strands of EU integration theory today. However, certain European Court of Justice decisions, which are binding on the member states, have also had a "constitutionalizing" effect on the governance of policy within the EU (Burley
of authority in a given policy area or polity. One can therefore discuss the Europeanization of either the policy-making process or of the governance structure of EU environmental policy. The difference between the two is a matter of scope. One may posit, however, that Europeanization of the policy process would likely lead to Europeanization of the governance structure of the larger policy area. This proposition is examined further, below.

Keeping in mind that Europeanization involves the shift in both policy arena and actor relationships, in order to determine whether the policy process for a specific policy issue, bundle of issues, or even for a single decision, has been Europeanized, one must look at the combination of both formal decision rules and informal practices in that policy area. The continuum of Europeanization of the policy process is shown in Figure 3. Purely national decision rules and practices lie at one extreme, and purely supranational at the other. In the middle lie multi-level policy-making processes that present a mixture of intergovernmental relations among the member states, but also include the real possibility for influence and policy action by the EU’s institutions and by supranational societal actors.

**Figure 3: Europeanization of the policy process**

<table>
<thead>
<tr>
<th>Intergovernmental</th>
<th>Multi-level</th>
<th>Supranational</th>
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<tbody>
<tr>
<td>Decision rules and practices</td>
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</tbody>
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One may also look at whether the governance structure of an entire policy domain has been Europeanized, as shown in Figure 4. Questions about governance address the nature of

---

and Mattli 1993, 42). One such case is the *Cassis de Dijon* Case which established the principle of "mutual recognition" which in turn enabled the transition to the Single Market in the Maastricht Treaty.
the structure of authority of the polity: is it an intergovernmental, state-centric international institution, or a multi-level form of governance moving to, perhaps, a state-like polity? While this dissertation cannot hope to answer the governance question definitively for the entire EU polity, it can shed light on at least one important policy area within it from which important lessons can be drawn.

Figure 4: Europeanization of the governance structure

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<tr>
<th>Structure of authority</th>
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<tbody>
<tr>
<td>Intergovernmental</td>
</tr>
</tbody>
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Europeanization of the policy-making process through the shifting of arenas and/or actors to the European level will have an effect on the overall governance of a given policy area. There are competing views on how to conceptualize the interaction between decision rule change that moves a policy to the European arena, on the one hand, and the role of state and non-state actors in the governance of a policy area, on the other hand. This line of inquiry into governance locates this dissertation at the center of the debate among EU scholars as to how to characterize the nature of the European polity.

According to recent neo-functionalist models, rules institutionalize the activities of non-state actors already acting at the European level (Stone Sweet and Sandholtz 1997b). In this view, the formal shift in policy arena follows an informal shift that has already taken place. The formal shift in arena is also a formal granting of policy-making authority to supranational
actors who either have already begun to usurp this authority from the member states, or to whom the member states have already delegated policy-making power informally. Such a view reduces the relative power and influence of the individual member states vis-à-vis the EU's institutions and transnational societal actors, with the ultimate result being the supranational governance of a policy area, or the creation of a supranational "state" (Haas 1964; Stone Sweet and Sandholtz 1997b).

Other scholars of the EU would assert that decision rule change is the result of national bargains that simply facilitate intergovernmental negotiations at the European level (Moravcsik 1993; Moravcsik 1995). In this view, all subsequent transnational and EU institutional activity matters little, since decision rule change is a function of member state preferences. Member states retain ultimate control over the policy making process through their monopoly on future rule change. In other words, according to the intergovernmentalist view, if the member states do not like the direction in which a policy area is moving after a decision rule change in the Treaty, they can always change the rules again later. The member states' residual power over Treaty revisions, and thus over future rule change, means that even if formal decision rule change moves the locus of decision-making for a particular policy to the European arena, and even allows for the influence of non-state Euro-actors on the policy making process, governance of the policy area remains intergovernmental.

According to still another viewpoint, the changes in decision rules may have unintended consequences, which can create gaps in member state control and opportunities for transnational actors to have autonomous influence on policy making (Pierson 1996). Member states may also unintentionally cede control by "locking in" policy preferences in the EU Treaties, and so tie the hands of future actors. "The same requirements that make initial
decision making difficult also make previously enacted reforms hard to undo, even if those reforms turn out to be unexpectedly costly or to infringe on member-state sovereignty."

(Pierson 1996, 143). While this viewpoint, known as "historical institutionalism" mainly looks at European integration rather than policy making or governance, it dovetails well with multi-level governance models of the EU. These latter describe the policy-making process and governance of these policy areas where the member states have ceded control to non-state actors as "multi-level" or poly-centric in nature (Marks 1993; Fuchs 1994; Marks, Hooghe et al. 1995; Pierson and Leibfried 1995; Marks 1996; Marks, Hooghe et al. 1996).

These three competing views will be more fully explored in Chapter One, but Table 1.1 shows a simplified overview of how these models connect decision rule change in arena to key actors and governance.

Figure 5: Decision rule change and models of governance

Decision rule change has moved Arena for policy action to EU level:

<table>
<thead>
<tr>
<th>Model</th>
<th>Type of governance</th>
<th>Key actors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intergovernmentalism</td>
<td>Intergovernmental</td>
<td>state-centric</td>
</tr>
<tr>
<td>Multi-level governance/historical institutionalism</td>
<td>Multi-level</td>
<td>poly-centric</td>
</tr>
<tr>
<td>Neo-functionalism</td>
<td>Supranational</td>
<td>supra-centric</td>
</tr>
</tbody>
</table>

Much of the theoretical debate, discussed in Chapter One, is pitched at the level of governance of the EU as a whole. This dissertation asserts that governance in the EU varies across, and even within sectors. Like other scholars of the EU, this author believes that its governance cannot be characterized "in a blanket fashion" across those policy sectors (Stone
Sweet and Sandholtz 1997b, 304). This dissertation first provides an historical analysis of EU environmental policy, and then traces the policy-making process of two specific environmental case studies to get to the larger question of how to characterize the governance of EU environmental policy. The use of process-tracing case studies, like the general study of environmental policy and the specific cases of that policy contained herein, are essential to understanding the dynamics of EU policy-making. They are also a key element in the exploration of the possibility that the EU is emerging as something other than an intergovernmental polity (Stone Sweet and Sandholtz 1997b, 313). This dissertation does not seek to elaborate a new theory or model of EU governance. It does attempt to see how a Europeanized policy-area fits into existing models of EU governance.

The primary purpose of this dissertation is to develop a framework of analysis to address these questions of how the policy making process and governance of a policy area may change, or become Europeanized. A framework seeks to identify key variables involved in producing a particular phenomenon, here, the Europeanization of environmental policy in the EU. “From a framework, one does not derive a precise prediction. From a framework, one derives the questions that need to be asked to clarify the structure of a situation” (Ostrom 1990, 192). The framework used in this dissertation is a policy network approach\(^6\) that “maps the terrain” of the policy making process so that implications for the governance of EU environmental policy can be made explicit, and further questions can be asked (Ostrom 1990). Further application of the framework to other instances of Europeanization can lead to the development of models, and perhaps theories, to explain and predict this phenomenon.

\(^6\) A discussion of policy network approaches, in general, and of the merits of this policy network approach, in particular, is contained in Chapter One.
In Chapters Two through Six of this dissertation, using information gathered through original research of primary and secondary sources and through elite interviews of EU environmental policy actors, I explore how well concrete evidence "fits" with these alternative views. Chapters Two through Four provide a “thick description” of changes in environmental policy-making over time and across cases. If one seeks to understand the dynamics of policy-making in a given area, it is not enough to read the Treaty and find out how power is officially distributed in the EU. One must also understand the reasoning and the process behind the change in formal decision rules. This involves understanding the impetus behind their development, including who was involved, and at what level. Most importantly, it entails understanding the informal implementation of the formal rules, in other words, who actually makes policy, and at what level. Chapters Five and Six present case studies which provide a more explicit inquiry into the importance of decision rule change to the Europeanization of a policy process by exploring the degree of Europeanization in particular policy sectors within environmental policy.

Case Studies

I take up two policy areas within environmental policy as case studies in Chapters Five and Six. Chapter Five investigates the degree of Europeanization of the policy process in the climate change policy sector by looking at who makes EU climate change policy, and at what level. In this first case, a test of an area that at first glance would seem to validate the intergovernmentalist view, there has been no formal decision rule change granting policy-
making authority to the EU level or to EU actors. I conclude that despite the lack of formal EU competence over this policy area, which crosses over into other important EU policies such as taxation and energy policy which also remain under the control of the member states, there has been Europeanization of the policy-making process in this policy sector. The arena for policy-making has become pluri-level, with both the member states and EU institutions acting as the loci of decision-making. There is policy making at the EU level, and influence and action by EU-level actors, especially elements of the Commission. However, Europeanization along both the arena and actor axes remains limited and tenuous because of existing decision rules. The member states often block action at the EU level, and even when there are policy results at that level, the resultant policy Directives are limited in scope and effectiveness, as the member states retain a veto over this policy area within the Council of Ministers. The lack of formal EU competence, however, has not prevented the Commission from becoming a key actor in the governance of this policy area. There is also evidence of a nascent shift in governance, from pure intergovernmentalism to multi-level governance.

Chapter Six takes up the 1994 Packaging and Packaging Waste Directive (OJ L 365/10 1994) (hereafter the Packaging Directive) which is part of the Waste sector in environmental policy. In this case, there has been formal decision rule change along both the arena and actor dimensions of Europeanization. Formal decision rule change under the SEA granted the EU competence over waste policy, and the TEU changed the dynamics of the relationship among the member states and the other EU institutions through the removal of the member state veto over this policy area. This is a good test case for either the multi-level or the neo-functionalist models of EU governance. This chapter concludes that waste policy is firmly entrenched in the

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describing the action itself. See Geertz (1973).
EU-level arena, but member state and national-level actors still play a significant role in the policy-making process. The policy-making process and governance of this policy area are multi-level rather than supranational in nature.

The concluding chapter summarizes the findings of the preceding four empirical chapters. It concludes that formal decision rule change is important to Europeanization, but it is not necessary to produce Europeanization of the policy-making process in, or changes in governance of, a policy area. Europeanization can occur with or without formal rule change. However, as Chapter Five shows, formal rule change is necessary for the institutionalization and continuance of Europeanization and the move towards multi-level governance. Without formal competence at the EU level, and the ability for Euro-actors to influence and participate in the policy-making process without fear of a national veto of a proposed policy, any burgeoning of multi-level governance of a policy area is subject to slippage and retrenchment into intergovernmentalism. Evidence presented in this thesis backs up the historical institutionalist premise that EU policy-making cannot be seen as a series of static snapshots (Pierson 1996). It must rather be looked at as a moving picture—only then can the researcher capture the nuances of the push and pull, the back and forth along that continuum from intergovernmentalism to supranationalism that occurs in the day-to-day policy making and governance of EU policy.
CHAPTER ONE:
EUROPEANIZATION IN THEORY AND PRACTICE

In the Introduction, I provided a simplified outline of the "governance debate" that has engaged EU scholars for the past decade. Far from settling that debate, this dissertation will likely add fuel to its fire, since I conclude that the only answer to the questions "who makes policy and at what level" in the EU is: "it depends." In order to justify this ambiguous answer, it is necessary for me to first lay out the various arguments, and where this dissertation fits in the larger debate. The primary goal of this dissertation is to provide future scholars a framework with which they can engage each other in trying to resolve the dispute. This dissertation hopes to clear up some of the muddied waters by showing how concrete evidence from one policy area within the EU "fits" with the theories that guide EU scholarship today.

Integration vs. Governance

As Peterson has noted, different theories about the EU work for different aspects of EU integration and governance (Peterson 1995a, 71). No one theory explains everything, but these theories are the only tools EU scholars possess at this time. One of the main difficulties in EU scholarship today is akin to the "levels of analysis problem" in International Relations (Waltz 1959; Singer 1961). Specifically, many scholars of the EU talk past each other because we are not all talking about the same thing, or worse, we are using different words to describe the same beast.

First, there is a seeming difficulty between scholarship on European integration and on European governance. At first glance these two avenues of scholarship seem to be incompatible and mutually exclusive. The integration literature seems to focus on
historical evolution, over time, of the European Union from six member states in 1957 to the current 15, and counting. The governance debate seems to focus on a static picture of what is happening in the EU at any given time. This first impression is misleading, however, since students of European integration also make reference to European governance, and vice versa. In addition, much of the integration literature presents snapshot pictures of the EU rather than an evolutionary moving picture, while much of the governance literature acknowledges the fluid nature of policy making in the EU as it is influenced by the larger integration process. This dissertation is primarily concerned with the governance of one sector of EU policy, but, like much of the newer governance literature, it acknowledges the impact of the larger process of European integration on policy making and governance. I will deal with the theories’ strengths and weaknesses in explaining and describing both integration and governance. It should become clear subsequently that some theories work better than others for explaining and describing different phenomena.

It should be noted that the governance literature evolved out of literature on European integration. In the early years of the EEC, the main “puzzle” that scholars (mainly from the International Relations branch of Political Science) tried to explain was the deepening cooperation among European states that had been at war with each other for major portions of this century. Later, scholars who had predicted that European integration would be a one-way trajectory towards supranational policy-making and political integration needed to explain why this had not happened. Other scholars from the Realist school of International Relations had a ready answer—state self-interest precluded anything but the most “rational” cooperation among states. A supranational European “state” was impossible. As European integration

*Peterson’s views will be more fully explored, below.*
deepened once again in the late 1980s, scholars began to broaden their vision, describing and explaining policy making and governance within the EU. The integration literature expanded to include explanations and predictions for policy making, and a new literature on governance, informed by integration literature, burgeoned.

**European Integration: A United States of Europe, or a Europe of States?**

Functionalism: Alive and Well

The most established integration literature is that of the “functionalist” and “neo-functionalist” school. Functionalism has its roots in World War II Europe, when David Mitrany wrote about breaking away from the “traditional link between authority and a definite territory” (Mitrany 1966, 27). The basic idea behind functionalism was that the creation of “functionally specific” institutions at a supranational level would engender cooperation among states in those policy areas. These organizations, such as transportation agencies for rail, road and air, would have to cooperate with each other, and with other functional organizations. This collaboration would then expand into other political areas, which states could join or opt out of as they chose. Mitrany saw this functional cooperation as promoting peace, and as creating “federalism by installments” (Mitrany 1966, 73-84). Under this view of functionalism, there was no “goal” to create a super-state, instead, the goal was to promote peace among European neighbors who had long been in conflict with one another.

The founders of the European Coal and Steel Community (ECSC), Jean Monnet and Robert Schuman, were functionalists in the sense that they hoped that integrating Europe’s coal and steel producers into the European Coal and Steel Community would engender cooperation in other areas, and produce a lasting peace in Europe (Mitrany 1966, 72). The ECSC, founded
in 1951, worked well enough that by 1955 the foreign ministers of the six ECSC states—West Germany, France, Belgium, the Netherlands, Luxembourg and Italy (the Six)—resolved to work for the creation of a common market, a progressive fusion of national economies, and development of common institutions (McCormick 1996, 52). The result of that original resolution was the Treaty of Rome, signed by the Six in March 1957, which created the European Economic Community (EEC) and entered into force in January 1958.

The founders of the EEC, Schuman, Monnet and Belgian Foreign Minister Paul-Henri Spaak who headed up the committee that drafted the Treaty of Rome, were all motivated by a desire to see political union in Europe. The functionalist ideal of expansion of cooperation from functionally specific institutions into new areas such as security and overall economic policy guided the foundation of the EEC, and its larger vision of “ever increasing political union.” The founders of the EEC went beyond Mitrany’s functionalism in their vision of creating a new state-like entity for Europe.

In the 1960s, Ernst Haas coined the theory of “neo-functionalism” to explain the unevenness of integration since the Treaty of Rome (Haas 1958, 1968; Haas 1964). Neo-functionalism posits a “logic of integration” whereby, when certain conditions are met, supranational institutions replace the functions of the state. The conditions (which had not been met in most areas by the early 1960s) included changes in mass attitudes from nationalism to supranational cooperation, a desire by political elites to cooperate, and the delegation of real policy-making power and authority to supranational institutions. Once these conditions were met, political integration would ensue. Haas defined political integration as “the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new center whose institutions possess or
demand jurisdiction over the pre-existing nation states" (Haas 1964, 367). Integration was driven by a process called "spillover" whereby joint action in one area, because of the interconnected nature of economics and politics, meant that cooperation in other related areas would be needed at the supranational level. Political elites made the decision of when spillover and further integration was required. Seemingly, the public would shift its loyalties accordingly to the supranational level as the functions of the state were usurped or given to the supranational institutions. In the view of neo-functionalism, therefore, supranational policy-making leads logically to supranational governance and finally political integration (Stone Sweet and Sandholtz 1997a, 301).

Neo-functionalism fell out of favor after the mid-1960s, when it became clear that the EEC was not going to become a political union of European states in the foreseeable future. Haas and others argued that the shifting of loyalties to the supranational level had not occurred because of the influence of external and internal forces that functionalism and neo-functionalism had not foreseen (the following is from McCormick 1996, 18). These included the impact and ongoing strength of the forces of nationalism, the influence of external economic events and political/security threats, and social and political changes taking place separately from the process of integration. As "euro-sclerosis" set in during the 1970s and early 1980s, neo-functionalism as a theory of integration seemed dead.9

Recently, scholars have begun to re-think and reexamine the neo-functionalist theory of European integration. The most prominent example is by Alec Stone Sweet and Wayne

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9 "Euro-sclerosis" was a period of economic stagflation and a retrenchment of national policy-making power in the EEC that began with the French "empty chair" crisis of 1966 where De Gaulle boycotted the Council of Ministers, paralyzing it. However, as Stone Sweet and Sandholtz note, while there were no grand bargains or Treaty revisions until 1987, European integration proceeded apace. In fact, this was the primary period for the Europeanization of environmental policy, as described in Chapter Two.
Sandholtz (1997a). Theirs is a view of both European integration and governance that draws on neo-functionalism to a point, but also departs from it. However, since it is not a state or institution-centric view of integration (as described below), it fits best under the neo-functionalist view. In their view, there remains a “functional logic” to European integration, but the causal mechanisms of integration differ from those specified in Haas’s neo-functionalism. Neo-functional integration was mainly an elite-driven process. Society might demand more efficient policy, but it was the policy-making elites who decided whether integration was the preferred solution (Peterson and Bomberg 1998, 25, 27).\textsuperscript{10} Integration was then followed by the identification of societal actors with supranational levels of governance as their center of loyalty. Stone Sweet and Sandholtz’s “transactional theory” of integration departs from this model, and specifies transnational actors and their activities as driving forces in European integration (1997b, 299). In addition, they believe that there is “substantial room for supranational governance without an ultimate shift in identification” (Stone Sweet and Sandholtz 1997b, 301).

Transactional theory, like its predecessor neo-functionalism, proposes a logical, and still somewhat inevitable, movement along the intergovernmental/supranational continuum. Unlike neo-functionalism, however, it acknowledges the fact that integration in Europe has been uneven, and the three dimensions of the institutionalization of supranationalism can vary across policy sectors. Integration—and governance—for the transactional theorists lies along a continuum of intergovernmentalism to supranationalism, as shown in Figure 1.1. As policy areas move along that continuum to supranationalism, the supranationalization of the policy is

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\textsuperscript{10} The actual published book \textit{Decision-making in the European Union} was not available to the author in time to update footnote references. A reference to the book, (Peterson and Bomberg 1999), appears in the bibliography for further reference.
institutionalized through three “crucial indicators” of integration: EC rules, EC organizations, and transnational society (Stone Sweet and Sandholtz 1997b, 304). The more each of these factors, or a combination of these factors, influences a policy domain, the more supranational the governance of a policy area will be.

Figure 1.1: Governance in the European Union, a Transactional View

<table>
<thead>
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<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intergovernmental Politics</td>
<td></td>
<td></td>
<td>Supranational politics</td>
<td></td>
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</table>

Integration therefore occurs within policy sectors, where the three factors of rules, organizations and societal action at the transnational level move together, and “disjunctures that occur in movement are short-lived” (Stone Sweet and Sandholtz 1997b, 305). In other words, if there is movement in one of the dimensions, the other two will soon follow. The authors of this theory posit a logical account of why movement along the supranationalization continuum occurs. Simply put, increased numbers and types of cross-border transactions occurring among and by societal actors results in an increase in the “perceived need for European-level rules, coordination and regulation” (Stone Sweet and Sandholtz 1997b, 306). These actors then demand changes in rules and regulations at the supranational level to overcome the high transaction costs resulting from disparate national regulations, border controls etc. at the national level. This push by transnational society provokes a response by EC organizations, including the member states' institution the Council of Ministers, which in turn

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11 From Stone Sweet and Sandholtz (1997b, 303).
results in changes in EC rules within a given policy sector. The member states, through the intergovernmental bargaining that must precede formal rule change, thus react to pressures from transnational societal actors demanding changes in the rules of the game.

In this transactional theory, the formal intergovernmental bargaining that produces Treaty changes institutionalizes transnational activity and policy making that is already occurring at the European level (Stone Sweet and Sandholtz 1997b, 307). In other words, decision-rule change institutionalizes supranational actors' activity rather than individual member state interests as expressed in the intergovernmental conferences (IGCs) leading to Treaty change. This theory does not deny that much of the policy-making process is dominated by the intergovernmental bargaining that takes place within the Council of Ministers, but the Council is seen as one of the “transnational” organizations. It seems as if the theory assumes that the member states are the agents of the EU organizations and of transnational society. The member states seem to lose the capacity to control the process of integration even within individual policy sectors once it has begun in any of the three dimensions of rules, organizations and transnational society. The proponents of this theory even speak of a “loop” of institutionalization caused by changes in these three factors, where “what is specifically supranational shapes the context for subsequent interactions” (Stone Sweet and Sandholtz

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12 Other scholars have recently criticized Stone Sweet and Sandholtz for privileging transnational actors and EU organizations in the integration process (Branch and Öhrgaard 1999). Stone Sweet and Sandholtz include the Council of Ministers in their definition of “supranational” organizations, which seems to conflate the two very different levels of action (national v. supranational) of member state action and Council action (Branch and Öhrgaard 1999, 134). It also seems to eliminate the power of “agency” of the member states, by assuming that member state and Council action are one and the same.
This is in direct contrast and contradiction to another leading theory of EU integration and governance: the liberal intergovernmentalist model.

Liberal Intergovernmentalism: A State-Centric View

The original studies of the EEC came out of the field of international relations (IR), and were driven by IR theories and their assumptions. Even today, the endurance of IR approaches to the EU is impressive. One of the most highly developed of these is "liberal intergovernmentalism" (LI), a state-centric approach to EU integration and governance whose main proponent is Andrew Moravcsik (1993; 1995). Liberal intergovernmentalism acknowledges that the EU is something more than an international institution (such as the UN), but asserts that the integration and policy-making processes are driven mainly by the rationally determined policy preferences of the member states whose utility functions are defined in economic terms (Risse-Kappen 1996, 56).

LI explains how, in certain limited cases in its view, the EU differs from other international regimes "by pooling national sovereignty through qualified majority voting rules and by delegating sovereign powers to semi-autonomous central institutions" (Moravcsik 1993, 509, emphasis in original). This "pooling" and "delegating" are done by consensus and through the unanimous agreement of the member states through Treaty development and revision. Integration occurs because the member states wish it to occur since it is in their own economic or political self interest. In addition, LI asserts that even though the member states have delegated powers to the EU's other institutions—the Commission, Court and Parliament—the

13 Branch and Øhrgaard (1999, 137) point out that since even the Council of Ministers is "supranational" in this theory, there can be no action that is not "supranational," and the theory risks becoming tautological. The transactional theory is a very recent attempt to cut into the intergovernmentalists' domination of EU integration theory, and so it is not fully developed. I present it here because it has its roots in neo-functionalism, which thus far has been the clear alternative to intergovernmentalism, which I address immediately below.
powers of those institutions are circumscribed and limited by the fact that the member states may rescind that power through further Treaty revision. In addition, the policy-making process remains a matter of bargaining and negotiation among the member states within the Council of Ministers, the member states’ institution at the European level. European Union policy outcomes reflect the decisions of the Council of Ministers, and can be predicted and explained by understanding the state interests that each member state brings to the bargaining table. While liberal intergovernmentalism is both a theory of European integration and of European governance, it does not distinguish between the two, mainly because it sees all EU decisions, from the Treaty making to the policy-making, as the result of a process of intergovernmental bargaining, informed by member state interests.

Liberal intergovernmentalism is “liberal” insofar as it opens up the states, observing how member state preferences are formed within the state by state-level societal, economic, and political influences. Liberal intergovernmentalism models the decision-making process in the EU as a two-step process, incorporating state preference formation and intergovernmental bargaining. First, at the state level, the member state defines its policy preferences based on domestic political concerns. Second, having defined these preferences, it brings them to the bargaining table, where it then negotiates with other member states, each with its own interests and policy preferences, in order to find compromises and solutions to policy problems.\textsuperscript{14} While acknowledging the agenda-setting role of the Commission and the limited enforcement role of the European Court of Justice (ECJ), liberal intergovernmentalism does not attempt to describe, understand or explain the behaviors and preferences of the EU’s supranational institutions.

\textsuperscript{14} Moravcsik (1993) goes into detail as to when cooperative outcomes are more likely to occur than others, and in what kind of policy areas. This thesis will not address these areas in great detail, since the central
supranational interest groups, or subnational actors acting at the European level. In addition, LI assumes that there is a unitary "national interest" in a given policy area—it does not disaggregate the state or its representatives at the EU level. Thus, the environmental minister and the energy minister for a single state would be expected to have the same policy preference regarding Climate Change policy, for example.

LI models EU decision-making, whether for Treaty revisions or for day-to-day policy making, as a "two-level game" where the member states bring unitary national preferences to an international bargaining table. This model ignores the fact that member state preferences may be shaped by factors other than domestic politics, including the fact that when the member states are bargaining at the Council table, one cannot separate their domestic policy preferences from their identity as members of the European Union (Hix 1994, 8). This identity as a "member state" precedes any policy preference formation by the member state, even before domestic political influences attempt to change or shape those preferences. Member state policy preferences are first generated from the member state's identity as "member of the European Union" prior to any response to domestic pressure or bargaining at the Council table (Sandholtz 1993). In addition, Lewis' (1998) research has shown that the assumption that member state representatives in the EU simply "transmit" their state's national position to the

– Moravcsik (1993, 513) states that the delegation of agenda-setting authority to the Commission is a "low risk" proposition for the member states, who restrain the Commission's powers through Council oversight (comitology) and the ability to limit the further delegation of member state power. Hooghe and Marks provide an excellent analysis of the Commission's agenda setting power vis à vis the Council and even the Parliament. They argue that while the Commission is not the agent of the member states, neither does it have a monopoly over agenda-setting: there are multiple actors at many levels who influence the agenda-setting process (Hooghe and Marks 1996).
other member state representatives is too simplified, and does not explain the real role and action of these Council actors.16

Critics of LI point out that this theory is too state-centric to provide an understanding or explanation of the day-to-day policy-making process in the European Union. They believe that the theory’s assumptions about both state preference formation and about the bargaining process in EU policy making are flawed. Peterson has stated that liberal intergovernmentalism’s focus on domestic interests does provide a good understanding of the EU’s “history-making” decisions, such as Treaty revisions, or setting out the broad goals of the EU (Peterson 1995a, 72).

Liberal intergovernmentalists do, in fact, generally focus on the history-making decisions of the EU—the Treaty revisions—mainly extrapolating their theory to the day-to-day policy making decisions by way of particular assumptions. These assumptions rest on the fact that it is within the power of the member states, and only the member states, to change the Treaties. The member states therefore retain the ultimate power over the bargaining processes at the EU level because they can rescind the power that they have delegated to the other institutions, or “unpool” their sovereignty on a given issue if it is within the rational self interest of the states to do so. As Chapters Two through Four will show, LI ignores the capacity of the EU’s other institutions, especially the European Court of Justice (ECJ, or Court) to push the integration agenda forward through its own history-making legal decisions (Peterson and Bomberg 1998, 27).

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16 This is more fully explored in Chapter Four.
An Institutional Approach

Much of the recent literature on the EU has been an attempt to redress the intergovernmentalists’ lack of attention to the role EU institutions play in the policy process (Peters 1992; Sbragia 1992; Andersen and Eliassen 1993; Hull 1993; Jachtenfuchs and Huber 1993; Mazey and Richardson 1993c; Bulmer 1994; Dehousse and Majone 1994; Peterson 1995b; Pierson 1995 among others; Pierson and Leibfried 1995; Pollack 1995; Wincott 1995). The most important insight of this “institutionalist” viewpoint is that, although the member states created the institutions of the EU and delegated authority to them through the Treaty and its subsequent revisions, the institutions themselves have taken on a “life of their own.” The basic assumption of this literature is that institutions do matter, and that to understand the actual governance of the European Union, one must focus on how institutional arrangements mediate the political struggles among all the relevant policy actors (Bulmer 1994, 355). The institutionalist perspective does not deny the continued power of the member states, especially in decisions that set up the “rules of the game” of the Community. It does, however, recognize that their influence and power have become circumscribed, “embedded in a dense, complex institutional environment that cannot easily be described in the language of interstate bargaining” (Pierson and Leibfried 1995, 6).

Institutionalist approaches have generally been applied to the larger process of EU integration rather than to an analysis of its policy-making process or its day-to-day governance.

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17 This is especially true of the European Court of Justice, which has, through its judicial decisions, helped make principles such as “mutual recognition” part of the governing principles of the European Union (see especially Koppen 1993; Rinze 1993; Alter and Meunier-Aitsahalia 1994; Weiler 1994). Examinations of the Court and the Commission reveal that both institutions have played major roles in furthering the integration of the EU, even over the objections of the member states, through their decision-making and pro-active roles in policy-making (Koppen 1993; Rinze 1993; Alter and Meunier-Aitsahalia 1994; Lenaerts 1994; Weiler 1994; Pollack 1995). On the Commission’s role in the SEA and Maastricht negotiations, see especially (Dehousse and Majone 1994).
These approaches counter Moravcsik's argument that the member states have, through the Treaty, not only given authority to the other Community institutions—to the Court for interpreting Community law, and to the Commission for agenda-setting, and increasing power to the Parliament for legislative decision-making—but also that the member states retain the power to take back that delegated authority (Moravcsik 1993). In reality, the actual delegation of authority to the Community's institutions has tended to be in the form of frameworks which must later be "fleshed out" (Pierson and Leibfried 1995, 13). It is during that "fleshing out" of their roles that the Commission and Parliament in particular seek both to strengthen their own positions vis-à-vis the other institutions and the member states, and to pursue their own institutional interests (see Chapters Two through Four). When examining the general policy areas of the EU, one can look at the Treaty and assess that, for instance, the Commission has a much greater scope of control over competition policy than over energy policy. However, the institutional distribution of power contained within the Treaty and its revisions are not much use to the scholar who wishes to discover the politics behind the day-to-day decision-making in the EU.

The historical, or "new," institutionalist perspective attempts to get at these politics by looking beyond the formal institutional arrangements of the EU and at the decision-rules, inter-institutional relations, internal institutional procedures and organizations, and even the institutional norms within the organizations that shape patterns of behavior in the policy-making process (Thelen and Steinmo 1992; Bulmer 1994; Risse-Kappen 1996). As Risse-Kappen (1996, 61) notes, politics at the state level are increasingly characterized by "informal patterns of interest mediation involving societal, political and state actors," so why should the less hierarchically structured EU be any different?
Historical institutionalism (HI), one of the more fully developed institutional approaches, is "Historical because it recognizes that political development must be understood as a process that unfolds over time. ...Institutionalist because it stresses that many of the contemporary implications of these temporal processes are embedded in institutions—whether these be formal rules, policy structures, or norms" (Pierson 1996, 126). HI looks at European integration not as a series of snapshots of key events, such as Treaty Revisions, but as a moving picture of those events, and what has come before, and especially after, each. It is in those time periods following Treaty revisions that the Community's other institutions and other actors attempt to stretch the limits of newly delegated power or the opening up of the policy process (Pierson 1996, 131-133). HI counters LI's assertion that the member states retain control of the governance of the EU during these hiatuses between Treaty revisions.

While the member states do, indeed, hold residual power over further Treaty revisions—including the right and ability to rescind powers previously delegated to the other institutions—the very rules that give the member states the power to change the Treaties also make it exceedingly difficult for them to do so. Unanimity is required for any Treaty revision. regardless of whether that revision moves integration forward or rolls it back (Peterson and Bomberg 1998, 35). Thus, Treaty revision is a high hurdle, and the hurdle to roll back integration is higher still. As integration has proceeded, new procedures, rules and norms (written and unwritten) and behaviors have been added to the old, adding layers of complexity to an already complex process. In addition, the member state governments control neither the governance of policy nor the path of integration. This is due to the fact that each successive member state government must accept the decisions of its predecessors that led to EU
integration, as well as to the growing number and complexity of issues dealt with at the EU level (Pierson 1996, 137, 140). All of these factors together produce a very “sticky” political institution that is resistant to, and difficult to change (Peterson and Bomberg 1998, 35).

While new institutionalism mainly looks at the integration process, it also sheds light on EU governance. Its focus on the institutions of the EU reveals that those institutions are not merely agents of the member states. Institutions are actors in their own right, helping to determine who is “in” and “out” of the political game (O'Riordan and Jordan 1996, 71). The Commission and Parliament have consistently attempted to expand their powers and influence (Pierson 1996, 132-133). Furthermore, policy governance tends to “get away” from the member states, according to Pierson (1996, 137) because of policy “overload” or the sheer number and types of legislation made at the EU level. This allows the Commission, especially, more leeway for policy innovation. The Court has not mounted an active campaign to extend its own power, but rather has managed to expand European integration through its own delegated day-to-day actions and through its case law. As Chapters Two through Four will show, the Court’s decisions about procedure (which decision rule applies) and about values and norms (such as the value of environmental protection as being integral to the completion of the internal market) have affected both governance and integration.

Even as the member states try to regain lost control in between Treaty revisions, the other institutions are actively consolidating their power and influence in the intervening time periods (Pierson 1996, 148). In fact, HI “emphasizes how the evolution of rules and policies along with social adaptations creates an increasingly structured policy that restricts the options

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18 Peterson and Bomberg (1998, 35) note that after the Maastricht Treaty there were more than 23 distinct policy making procedures available for making binding decisions in the EU.
available to all political actors" (Pierson 1996, 147, my emphasis). In other words, institutions (including the larger institutional rules set up by the Treaties) both enable and constrain actors' choices (O'Riordan and Jordan 1996, 71). There is a balance of power game going on in the EU in the periods between Treaty revisions—between the member states and the other institutions, and even within the institutions themselves (Peterson and Bomberg 1998, 36). That game is part of the governance of the EU—who makes policy and at what level?

Historical institutionalism falls short of being a "theory" with propositions for predicting future outcomes of systemic decision-making (Peterson and Bomberg 1998, 37). It is rather a set of assumptions for developing analyses about EU integration and governance that is far more expansive than liberal intergovernmentalism. While liberal intergovernmentalism opens up the state to see how its preferences are formed at the domestic level, it still ignores the EU level's influence on the member state, and it does not account for the preferences and actions of the EU's other institutions or societal actors. It does this because it is mainly a theory about European integration, rather than governance, yet it extrapolates its assumptions onto the governance debate by asserting that the daily governance of the EU is intergovernmental because of the member states' hold on the Treaties and because of the Council's domination of the policy-making process. Historical institutionalism, through its focus on institutions, rules and norms, shows that while the member states are indeed still the main architects of the "history-making" decisions that shape and change EU Treaties, they are not the only players in the integration game.

19 Chapter Five shows how the Parliament, and even committees within the Parliament, can use their power of co-decision against the Council of Ministers.
Thus far, I have discussed three theories that focus mainly on European integration rather than governance. While they all make forays into the governance debate, liberal intergovernmentalism, neo-functionalism/transactional theory, and historical institutionalism are mainly concerned with changes, over time, in the power and influence of various actors in the EU. But what about governance, or the “imposition of overall direction or control on the allocation of valued resources,” (Peterson and Bomberg 1998, 8) within the EU? Can it be described and explained without recourse to the integration literature? In other words, what really does happen in between those “history making” decisions when the member states and the EU’s institutions try to make policy on the increasingly varied and growing number of issues under their control?

**Governance: Intergovernmental or Multi-Level?**

It may help to look at the integration v. governance debate in terms of levels of analysis. Intergovernmentalism and neo-functionalism generally describe the overall process of EU integration, or “history-making” decisions of the EU. Proponents of these theories, through the use of the assumptions within them described above, then extrapolate them to the next levels of decision-making, which fall under “governance” rather than “integration.” These levels are where “policy-setting” and “policy-shaping” decisions are made (Peterson and Bomberg 1998, 20). If one looks at the types of decisions made at these lower levels, one can see the problems inherent in trying to use theories of European integration to describe its governance. Some other theory or approach will be necessary to adequately comprehend EU governance.
Peterson has done the most work in separating "integration" from "governance." In his work, alone and with Elizabeth Bomberg, he describes the three levels of analysis of EU decision-making (Peterson 1995a; Peterson and Bomberg 1998, 20). The first or super-systemic level is the level of Treaty revisions, or "history-making" decisions. These are decisions that change the institutional structure of the EU, and they transcend the EU's policy process; in other words, they are not day-to-day policy-making. These super-systemic decisions include those that arise from IGCs, from the direction of the European Council as it determines the EU's priorities (even though the decisions of the European Council are non-binding), and those decisions that allow for enlargement of the Union.

This is the level at which we can study the trajectory of EU integration. Liberal intergovernmentalists study and attribute the fits and starts of integration to the activities and preferences of the member states. Neo-functionalists attribute the path of integration to the member states' continual pursuit of more "efficient" policy-making as more state functions are taken over by the supranational level, and these history-making decisions institutionalize the EU's functional role (Peterson and Bomberg 1998, 27).20 Transaction theorists, similarly, view these history-making decisions as institutionalizing transnational activity already occurring at the EU level. Their focus is not so much on the preferences of the member states, but rather on the activities of transnational actors as they try to reduce their transaction costs. Historical institutionalists look beyond this super-systemic level to the policy processes that occur in between these history-making decisions. It is there, they believe, that the story of the governance of the EU can be found.

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20 As Peterson and Bomberg (1998, 27) note, the EU is actually highly inefficient.
At the next level of decision making, the systemic level, policy-setting decisions occur. According to Peterson and Bomberg, "policy-setting decisions are taken when the EU actually legislates, and operates as a political system in which powers are shared between institutions.... Policies are 'set' when the EU arrives at a policy decision point—only after a great deal of inter-institutional sparring" (1998, 32). This is EU "governance" as I described it in the Introduction. The final level of decision making, the sub-systemic level, is where "policy-shaping" decisions are made. These are the decisions about what the policy will look like, including what policy options will be considered. Decisions made at this level of policy making include, for example, whether to use a Regulation or Directive, and the setting of standards and methods of implementation within the proposed legislation. This level coincides with my notion of the "policy-making process" as I have described it in the Introduction. At the center of both governance and the policy making process lies the question of Europeanization: who makes policy, and at what level?

Theories of governance are much less developed than those for EU integration. Liberal intergovernmentalists, while not having a separate theory of governance, assert that the member states are the primary actors in governance as well as integration, since the goal within the Council is still to find consensus on policy, even where qualified majority voting (QMV) applies. For intergovernmentalists, societal actors are only important as they act at the national level, to help shape domestic policy preferences. The institutions of the EU have a role to play in the process, but in the case of the Commission, that role is in setting up the policy proposal to pass muster in the Council, and, to the liberal intergovernmentalists, the Parliament still matters little. The direction of policy-making (or policy-setting), to the
intergovernmentalists, is consistent with member state control of the policy-making process (Marks, Hooghe *et al.* 1996, 345). Policy making for the intergovernmentalists remains "nested" in neat levels, with member state executives determining policy outcomes (Marks, Hooghe *et al.* 1996, 345). When one opens up the policy-making process to further scrutiny, however, one sees that the member states' preferences and actions cannot tell the whole story.

Transactional analysis, the descendent of neo-functionalism, investigates the role that transnational society plays in the integration process. But this theory, like intergovernmentalism, is a theory of European integration not governance. It does not analyze the day-to-day governance of the EU. In this strand of theory, integration (or more precisely, the "institutionalization" of integration) causes changes in governance along the continuum from national to supranational governance. "The expansion of transnational society pushes for supranational governance... Once in place, supranational rules alter the context for subsequent transactions and policy-making. Actors—governments, supranational organizations, and non-state entities alike—adapt their preferences, strategies and behaviors to the new rules" (Stone Sweet and Sandholtz 1997b, 313). If one undertakes an investigation of EU governance using this theoretical approach, one must study the transnational society, EU institutions, and supranational decision-rules that are the theory’s causal factors of European integration. But this theory alone does not give us the tools to study the policy-shaping and policy-setting levels of EU governance.

Historical institutionalism sheds some light on the activities of institutions during the hiatuses between Treaty revisions. Unlike the intergovernmentalists' static view of governance, 

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21 This is a form of weighted voting, whereby larger states receive more votes in the Council than smaller states. A decision is adopted if it receives at least 62 votes (out of 87).
and the neo-functionalist/transactional view that sees integration as causing changes in governance, HI asserts that changes in governance between Treaty revisions promotes further integration. While not a theory of governance, it does shed light on the inter-institutional “turf battles” in the EU, and even on the intra-institutional battles within the Council of Ministers and Commission (Peterson and Bomberg 1998, 36). Often when the EU is setting policy—that is, deciding what general form policy will take, and what general means will be used to get there—the battles are not so much between conflicting domestic preferences, but between different ideological and normative preferences over what “should” be done. An example of this is shown in Chapter Five, concerning the EU’s climate change policy. There were normative differences of opinion between the Energy and Environment Directorates within the Commission at the start of the policy-setting process, and between the Environment and Energy Councils when the policy moved into their arena. Granted, there were also national differences of opinion based on domestic policy preferences, but the inter (and intra) institutional ideational differences of opinion helped determine the path of EU policy as much as the national differences. HI therefore sheds important light on the time-periods in between the major “history-making” decisions of the EU. It does not, however, make predictions about future governance, policy making or policy outcomes (Peterson and Bomberg 1998, 37).

Is there a way to study EU governance without privileging either particular actors’ or determinants’ role in integration? In other words, can we simply study governance for its own sake, not as a cause or effect of European integration? There exists one approach to EU governance that dovetails quite nicely with the historical institutionalist approach to European integration. This is the “multi-level governance” approach.
Multi-level Governance

Recent literature on the European Union has begun to characterize the policy-making process as "multi-level governance" or to describe the EU itself as a "multi-tiered" polity (see Marks 1993; Marks, Hooghe et al. 1995; Pierson and Leibfried 1995; Marks, Hooghe et al. 1996). This approach to EU governance avoids privileging either the member states (as does liberal intergovernmentalism), or the transnational society or institutions of the EU (as do neo-functionalism and transactional theory) as key actors in either governance or integration. While acknowledging that the member states are still very powerful actors and strong players in determining policy outcomes, these multi-level approaches emphasize the fact that decision-making authority is shared by many actors from different levels of governance. The main assertions of this model are, first, that the member states are not the sole determinants of policy outcomes in the EU. The EU's other institutions, the Commission, Court and Parliament, all influence policy-making in a way that cannot be attributed to their actions as "agents" of the member states. Second, policy-making in the EU involves a "significant loss of control for individual state executives" through QMV and other decision rules. Finally, there is no clear separation of interests or actions at the three levels (subnational, national and supranational) of governance. According to this model, politics in the EU is not a "nested" game of subnational, national and supranational politics, where the member states connect subnational groups to European affairs. Rather, actors—including societal and institutional actors—from each level play a role in EU governance and policy making.

MLG is mainly a descriptive model of EU governance, but it does provide a way to test the fit of state-centric vs. multi-level governance. State centric governance requires three

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22 The analysis that follows in this paragraph is taken from Marks, Hooghe, et al. (1996), 346.
conditions—conditions that can be found within the LI approach to EU governance. First, according to MLG, state-centric governance requires that the national governments, through their institutions of the Council of Ministers and the European Council, be able to impose their preferences collectively on other European Institutions. Second, national governments should be able to “maintain individual sovereignty vis à vis the other national governments.” Finally, national governments should control the mobilization of subnational interests acting in the European arena—giving or denying these groups and authorities the right to act beyond the national level. The MLG model reveals that these conditions are no longer met in EU governance.

Institutions as actors

While not strictly institutionalist in nature, the multi-level governance approach does focus a great deal of attention on the importance of EU institutions as shapers of policy. Arguing against state-centric approaches, multi-level governance advocates point out that in order for the EU to remain an intergovernmental union controlled by the member states, the states would need to be able to impose their preferences on the other EU institutions such as the Commission and the Court. Instead, if there is multi-level governance, there is mutual dependency among the institutions as they exchange information and interact in order to influence one another (Marks, Hooghe et al. 1995, 11). For example, the Commission’s agenda setting function gives it an important role in building policy. Specifically, the Council only deliberates those policy proposals that the Commission chooses to present (Pierson and Leibfried 1995). The Court, as discussed briefly above, is probably the least fettered institution

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23 The following is taken from Marks, Hooghe, et al. (1996, 356).
of the EU in terms of bowing to national interests. Other studies have shown that the Court’s European outlook has led to an activist nature in terms of pursuing more integrative goals and in setting legal policy precedents, such as the principle of mutual recognition (Lenaerts 1990; Sands 1990; Rinze 1993; Alter and Meunier-Aitsahalia 1994; Bulmer 1994; Weiler 1994; Pierson and Leibfried 1995).

Liberal intergovernmentalism asserts that the member states retain power over the other EU institutions, which were designed by, and remain the agents of, the member states. In a way, this assumes a sort of unified interest on the part of the Council of Ministers if it comes into conflict with one or more of the other institutions. It also assumes a unitary national interest on the part of the member state once it begins acting at the European level in its “two-level game.” As MLG points out, this is also a false assumption when one looks at the actual actors involved in the policy-making process—not unitary national governments, but individual agents acting within and for bureaucracies and other structures within the national state. The role of shared norms and ideas enters into the governance process here.\(^\text{24}\) Agricultural ministers (and their COREPER and working group representatives within the Council) may have much more in common with each other and with the Agricultural Directorate within the Commission than with the Environment representatives from their own member state, for example.

Even when the Council displays consensus among its members, it cannot and does not control the other institutions of the EU, according to the MLG advocates. They point out that the co-decision procedure, for example, gives Parliament the “final word” (Marks, Hooghe et al. 1995).

\(^{24}\) See Risse-Kappen (1996) for a fuller explanation of norms and ideas as important factors of transnational governance. I do not provide a full exposé of this approach, as it is, in part, subsumed within MLG which accounts for the role of shared norms among actors.
This final word is a negative one, however. The Parliament can only veto or reject proposed legislation; no legislation can be passed without the Council's approval. Thus, the intergovernmentalists are correct in stating that the Council retains the preponderance of power in the policy-making process, but that power is by no means absolute. Like historical institutionalism, MLG accounts for the actions and preferences of the other actors in the policy-making process, namely the Commission and Parliament. The Council "is locked in a complex relationship of co-operation and contestation with the other two institutions. This is multi-level governance in action, and is distinctly different from what would be expected in a state-centric system" (Marks, Hooghe et al. 1996, 365).

At the other end of the state-centric/supranational continuum, the transactional theorists assert that the institutions (or organizations) of the EU adapt with each Treaty change, developing more and more autonomy as they move rightward on the supranationalization continuum (Stone Sweet and Sandholtz 1997b, 304). In turn, the autonomy of the Commission, Parliament and Court creates further opportunities for political action on the part of transnational societal actors (Stone Sweet and Sandholtz 1997b, 305). As governance moves to the far right of the continuum, the organizations of the EU are better able to "innovate, in policy relevant ways, at times even in the face of member state indifference or hostility" (Stone Sweet and Sandholtz 1997b, 304).

The multi-level governance approach provides a middle ground for looking at the role of the EU's supranational institutions. Governance can be "multi-level" as the member states, which remain powerful actors, and the EU's other institutions work together to shape and set policy. MLG does not posit a "zero-sum" power struggle whereby the acquisition of power by the Commission, Parliament or Court necessarily means a reduction in the power or influence
of the member states acting through the Council of Ministers. But, as discussed below, it may mean a ceding of sovereignty and control by the individual state in order to achieve policy goals that might otherwise be impossible to achieve, either alone or with strictly intergovernmental decision rules.

Member "states" or Member "governments"?

The liberal intergovernmentalists' strongest argument seems to be their assertion that despite all the institutional activity of the EU, and all the integration and pooling (not ceding) of sovereignty to the larger institution of the EU (not to any one institution within the EU), the member states retain control of its governance through their power to reshape the Treaty. Treaty revisions remain subject to unanimity, therefore, according to intergovernmentalists, subject to individual member state control. In areas where QMV prevails, the intergovernmentalists assert that member states can still rely on the Luxembourg veto if their vital interests are at stake. Therefore, there is no real loss of state sovereignty either through Treaty revisions or day-to-day policy making and governance.

The multi-level governance model reveals the flaws in this logic. By focusing on the actual actors involved in both the integration and policy-making processes, MLG reveals that the "member state" is not the monolithic institution the intergovernmentalists make it out to be. In keeping with the historical institutionalist analysis of integration, MLG points out that it is governments—made up of people representing particular party and ideological interests—that negotiate Treaty revisions. Governments have different reasons for ceding sovereignty (furthering the integration process) to the EU level. These include the fact that the political
benefits may outweigh the costs of losing political control, or the fact that there may be benefits to shifting the responsibility (and therefore the blame) for unpopular policy decisions to the supranational level (Marks, Hooghe et al. 1996, 349). The short time horizons of politicians may induce them to “give away the farm” in order to reap a short-term political gain at home. Sovereignty, in other words, is not the only or even the most important goal of national leaders, as the intergovernmentalists assert (Marks, Hooghe et al. 1996, 349).

Returning to the member states’ guarantee of sovereignty in policy making, MLG asserts that qualified majority voting and other decision rules (the role of the Parliament and Commission in a particular policy-making process, for example) do, in fact, reduce member state sovereignty, and the Luxembourg veto is no guarantor of that sovereignty. The veto, in fact, is a defensive measure, rarely invoked, and its use by a member state can be, and has been, rejected by the other member states (Marks, Hooghe et al. 1996, 351). Qualified majority voting, now the rule for most EU policy areas including agriculture, trade, competition, transport and environment policy, has encroached on member state sovereignty. A state that votes against a proposal that eventually passes under QMV is just as responsible for implementing the resulting Directive or Regulation as a state that voted in favor of the proposal. Add to this the fact that once the EU has made policy on a particular matter, the member state can no longer make policy that undermines or contradicts the EU policy, and it

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25 The “Luxembourg veto” is an instrument available to the member states in areas where they feel their vital national interest is at stake. States may use this veto to block proposed policy, even if it falls under QMV rules in the Council.

26 See Marks, Hooghe, et al. (1996) and Nugent (1994) for an in-depth analysis of four major cases where member state attempts to invoke the Luxembourg veto have failed. As Marks, Hooghe, et al. state, the member states (actually their executives) “can no longer independently determine whether their vital national interest is at stake” because they are dependent on the acquiescence of other state executives (1996, 363).
becomes obvious that the scope of action for member states is increasingly limited simply by virtue of their participation in the EU.

**Interconnected, not nested, politics**

The final assertion of MLG is that EU politics is not a nested "two-level" game played out by national executives at the domestic and EU levels of governance. As an examination of the other two assertions of MLG has shown, politics in the EU is indeed much more nuanced than the LI approach posits. The liberal intergovernmentalist approach to EU policy making and governance is portrayed in a linear fashion, as in Figure 1.2. In the state-centric approach, societal and institutional actors are adjuncts to the "real" game of policy making and negotiation among the member states in the Council of Ministers. Once agreement has been reached within that institution, the story ends, since even the Parliamentary veto under co-decision is a negative, rather than positive power. The status quo is always an option in this state-centric view.

![Figure 1.2: Liberal Intergovernmentalist Governance](image)

| Domestic societal interest groups lobby | national governments negotiate | Council decides |

Importantly, according to this view, societal actors are confined to acting at their "appropriate" level of governance. Domestic actors use their member state to act as their voice at the European level. To the liberal intergovernmentalists, the member state is the sole intermediary between societal interests and European policy making. European level interest groups have very little influence on policy, since they cannot lobby the Council directly, and must target the "weaker" institutions of the Commission and Parliament. Since the Council is
the final arbiter of policy decisions (both policy-setting and policy-shaping), there is no need to open up the policy process to further investigation of arenas, actors and actor strategies for the intergovernmentalists. The multi-level governance advocates, on the other hand, assert that the policy process looks much different from this linear, simplified LI representation.

The advent of qualified majority voting ushered in an era of interest group representation in Brussels that has only increased with time and further Treaty changes under Maastricht. QMV meant that an individual member state would not be able to veto a policy proposal within the Commission. Domestic interest groups that formerly relied on their member state government to represent their interests in Brussels now have to work both the domestic and the European levels to ensure they have a chance at influencing EU legislation. Since the Commission prefers to work with groups that represent a "European" rather than national interest, many groups have formed transnational alliances with like-minded groups from other states in order to aggregate their interests at the European level (Greenwood, Grote et al. 1992, 24). It is this transnational activity that the transactional theorists point to as being a "push" towards further European integration. In their view, the changes in decision rules within the Treaty, the activities of transnational societal actors, and the role of EU institutions act together to further integration.

European level of interest intermediation has not replaced the state level, but it has supplemented it. Groups that have no outlet of representation at the national level may bypass that level in favor of the European level. Interestingly, groups are unlikely to be represented at the European level if they are not already represented in some form at the national level, and groups that are strongly entrenched at the state level are more likely to have a strong presence in Brussels (Marks, Hooghe et al. 1995, 20). MLG provides a descriptive model for
understanding the presence and activity of subnational authorities as well as interest groups from all levels of representation acting in the European policy-making arena.

In addition to traditional interest groups representing business, industry, labor, environmentalists, women, etc., subnational authorities from different levels of government are now intensely active in Brussels (Marks, Hooghe et al. 1996, 358). These groups act as lobbyists, consultants and even advisors for the Commission in the first stages of policy making, and increasingly as coordinators in policy implementation (Marks, Hooghe et al. 1996, 366-369). The establishment of the Committee of the Regions in 1993 was the first step at institutionalizing regional participation in EU policy making (Marks, Hooghe et al. 1996, 359). Intergovernmentalists might point to the fact that this Committee has a non-binding, advisory role in the policy process, much as the Economic and Social Committee (ESC) does. While this is indeed true, the existence of the Committee has given regional authorities more access generally to European institutions, and an outlet for their interests that previously did not exist.

Multi-level governance (MLG) asserts, contrary to liberal intergovernmentalism, that the member state is no longer the sole intermediary between domestic and European interests (Marks, Hooghe et al. 1995, 5). However, unlike transactional theory, this model of governance also does not privilege the role of transnational actors in the governance and integration process. According to this approach, Community institutions, while not replacing the member states, play a key role in mediating societal interests in EU governance. With the expansion of qualified majority voting in the Council of Ministers, the relative importance of the individual member states has decreased. No longer can a powerful domestic interest group rely on its national government to be able to block objectionable policies through the use of its veto in the Council. Instead, groups must form alliances with similar groups in other member
states in order to achieve a blocking minority in the Council, or focus their attention on the Commission or Parliament to change policy proposals.

**Governance and Integration: A summary**

The multi-level governance model is the only approach to the EU that specifically addresses the policy-making process and the governance of the EU. MLG asserts that the governance of EU policy is neither state-centric nor supranational, it is something in between. In addition, it can, in turn, shed light on the integration process, since it privileges neither the member states nor the institutions as primary actors pushing integration forward. MLG describes a sharing of power among the EU’s institutions, among the member states, and across levels of policy making. I believe that MLG describes the vast majority of governance and policy-making in the EU today. This approach can also help explain the variance in type of governance across and even within policy areas in the EU.

The liberal intergovernmentalist approach, on the other hand, while actually a theory of integration, makes assertions concerning EU governance as well. To liberal intergovernmentalists, governance in the EU remains static during the periods between Treaty changes. However, with changes in the Treaties, beginning with the Single European Act, it has become more difficult for state-centric EU theorists to bastion their argument that the member states retain control of the policy-making process and the governance of the EU’s increasingly numerous policy areas. For example, as historical institutionalism points out the member states have begun to experience policy “overload”—their representatives at the EU level cannot keep their fingers on the button of every little policy detail. While the member states maintain tight control over Treaty revisions, what happens in between these gets away
from them (Pierson 1996, 137). Even where Treaty revisions are concerned, the member states have, contrary to LI’s assertions, ceded sovereignty—if not to any one particular institution of the EU (as would be the case in a zero-sum two-level policy game) but to the process and goal of integration as a whole. The main method whereby the member states have ceded this sovereignty is through changes in decision rules, especially the move from unanimous to qualified majority voting, in an increasing number of policy areas.

Transactional theory asserts that these decision rule changes are a key to the supranationalization of EU policy-making and governance. Along with the actions of the EU’s transnational institutions and the activities of transnational societal actors, decision rule change encourages and moves integration forward along the supranationalization continuum. Transnational activity often precedes decision rule change, and these three factors co-vary (Stone Sweet and Sandholtz 1997b, 305). For the researcher, this means that if there is change in one of these three factors—decision rules, supranational organization autonomy, or transnational societal activity—one can expect to see changes in the other two dimensions, leading to a furthering of supranationalization.

Decision rule change, therefore, plays a key role in all three theories of European integration. For the intergovernmentalists, decision rule change reflects the interests and desires of the member states. According to the transactionalists, decision rule change often follows patterns of behavior already established at the supranational level. Decision rule change may result from the activities and interests of transnational actors or organizations other than the member states. The member states, through IGCs, simply institutionalize the integration that has already begun. Finally, historical institutionalists see decision rule change as a facilitating factor in changing the governance and furthering the integration of the EU. While the member
states may control the process of decision rule change within the IGCs, once the rules are in place, other actors may use the opportunities that new rules create to promote their own interests in the system. The member states, in other words, while they may create the changes in decision rules, do not control the consequences of that change.

Decision-rule change is a key variable in linking the two components of Europeanization—arena shift and a change in actor relationships and roles—as defined in the Introduction. Decision rule change generally formalizes one of two things, either policy making competence at the European level or non-state actor roles in the policy making process (and sometimes both at once). For example, the Single European Act included an “Environmental Title” which gave formal competence to the EC for this policy area. In the Maastricht Treaty, the co-decision procedure gave a much greater role to the Parliament in policy areas having an impact on the internal market. Except when viewing decision-rule change through the lens of intergovernmentalism, one should expect a change in the policy making process and in the governance of the policy area as a result of the modification in decision rules. As I pointed out in the Introduction, each theory privileges a different set of actors as the result of decision-rule change that shifts the policy-making arena to the European level. This is shown in Figure 1.3.

**Figure 1.3: Decision Rule change and models of governance**

<table>
<thead>
<tr>
<th>Model</th>
<th>Type of governance</th>
<th>Key actors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intergovernmentalism</td>
<td>Intergovernmental</td>
<td>state-centric</td>
</tr>
<tr>
<td>Multi-level governance/historical</td>
<td>Multi-level</td>
<td>poly-centric</td>
</tr>
<tr>
<td>institutionalism</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neo-functionalism/transactionalism</td>
<td>Supranational</td>
<td>supra-centric</td>
</tr>
</tbody>
</table>
The question for the researcher is, therefore, how actual evidence from case studies actually “fits” any one of these models. Does decision-rule change merely institutionalize member state preferences and continue the intergovernmental governance of a policy area? Or does it signify a move along the supranational continuum by institutionalizing extant transnational activity that may or may not be in the immediate self interest of the member states? Or can it have other, less predictable effects, resulting in uneven Europeanization even within a single policy area.

**Arenas and Actors: A Framework for Analysis**

Europeanization is mainly a question of who makes policy, and at what level. Theories of integration and models of governance all try to answer this question. The European Union is not a static entity—it is evolving with each Treaty revision. On the one hand, intergovernmentalists are pressured to explain how they can still call policy governance “intergovernmental” as new decision rules give more power and influence to non-state actors within the EU. On the other hand, neo-functionalists/transactionalists are pressured to explain why the EU is not more supranational than it is, given the same decision rule changes. Multi-level governance advocates and historical institutionalists in turn describe the EU as a multi-level polity where decision-making power is shared among institutions and actors. Who is correct?

One way to try to answer this question—who makes policy and at what level, or “what does governance look like in the EU”—is to develop a framework of analysis that can be applied to any given policy area or policy issue. This framework can help the researcher describe the actual policy-making process and governance within a policy area. How much
control do the individual member states retain in the policy-making process? Is that process supranational in nature? Or is it multi-level, with interconnected arenas and actors? Different decision rules apply in different policy areas within the EU. Do these variations in decision rules result in variations of governance? How can we tell?

This thesis does not answer these questions for all policy areas of the EU. It tries to answer the question about governance of the environmental policy sector of the EU, and for specific policy issues within environmental policy. In so doing, it reveals great variations in governance and in the Europeanization of policy making even within this single policy area. It does this by applying a policy network framework of analysis to the historical evolution of environmental policy in the EU and to two specific policy issues within the environmental policy area.

**Policy Network Analysis: A Framework for Description**

Policy network models attempt to shed light on the age-old question of where the power lies in political decision-making—with the “state” and its institutions, or with society through the actions of public interest groups and business and industry organizations.²⁷ The so-called “state-society debate” generally focuses on the contests for power that happen at the state or macro-institutional level, generating theories that operate at the macro-level of policy making, generalizing state-society relations across all policy sectors. Policy network models also attempt to show how the state interacts with interest organizations, but at a meso or

²⁷ I have put “state” in quotation marks for two reasons. The first is that, obviously, the EU is not a state, and I want to make it clear that I do not see it as such. Secondly, in the state-centric literature in both international relations and comparative politics, the state is sometimes seen as a unitary actor. Since the policy network model disaggregates the state, I do not want to refer to it as a unitary actor. Henceforth, quotations will not be used.
sectoral level of decision-making. These models posit that decision-making power is distributed unevenly throughout the state (here the EU), and that in some sectors, the state institutions or bureaucracy will have more power relative to outside interests than in others. A core hypothesis of these models is that variations in this distribution of power between the state and society between sectors at the meso level will affect policy outcomes.

The distribution of power within the state at the meso level is not random. Policy network models posit that the structure of the state and its macro-level institutions will shape the relations between meso-level bureaucracies and non-state actors (Coleman and Skogstad 1990, 17; Atkinson and Coleman 1992, 165-166). The sectoral level of state-society interactions can in turn help restructure the macro-level institutions (Atkinson and Coleman 1992, 167). These models can shed light on questions about the EU that cannot be answered simply by looking at the “official” distribution of power among the institutions as dictated by the Treaty. A great deal of EU literature has pointed to the fact that there is variation between policy sectors, and that generalizing about “EU governance” across the entire institutional structure of the Union is no longer theoretically or empirically useful or appropriate (see, among others Greenwood, Grote et al. 1992; Bulmer 1994; Peterson 1995a; Peterson 1995c; Peterson 1995d). A policy network approach, because it focuses on sectoral policy-making, reveals distinctions across sectors in the way that the member states, EU institutions and societal actors interrelate.

There are several policy network models or approaches, all having the same focus on the meso-level of governance, and the understanding of state-society relations at that level, but

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28 The “meso” level of governance provides a link between the micro-level, at which one studies the individual decisions and decision-makers, and the macro-level at which one studies the broader institutional structures of the government or state (see Rhodes and Marsh 1992, 1).
each model has different operational definitions of key concepts. As stated above, all policy network models focus on the mediation of interests between state institutions and society. How they describe and define these interactions differs from scholar to scholar. One of the problems with the literature on policy networks is the lack of agreed upon definitions of terms among scholars. Even the term "policy network" has different meanings to different people, and what some scholars see as variables that define their concept of policy network, others see as attributes of the network themselves that result from other key variables. Although I do not claim in this thesis to solve all the definitional problems of this varied literature, I do hope to clarify some of the confusion surrounding the concept of policy networks that has led skeptics to criticize its usefulness (see for example Kassim 1994).

This thesis uses what I refer to as the "Canadian" approach, from the definitive book, *Policy Communities and Public Sector Policy in Canada: A Structural Approach* (Coleman and Skogstad 1990). Of all policy network models, that of Coleman and Skogstad most clearly differentiates the actors involved and interested in sectoral policy-making from the kinds of relationships these actors form with each other. This leads to greater clarity in the definition of types of policy networks.

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29 In the context of this thesis, I do not address the debate on the usefulness of all the different models that fall into the category of "policy networks models." I state, below, the reasons why the Coleman and Skogstad model proves more useful than other models, to which I briefly contrast it, in describing and explaining policy networks. For elaboration on the debate, and for more information on the various models, see (Rhodes and Marsh 1992; van Waarden 1992; Kassim 1994; 1995d; Peterson 1995a; 1995c).

30 I use "Canadian" simply because the authors first applied their approach to a study of Canadian public policy making. This contrasts with the other dominant policy network approach, often referred to as the "British" approach, for the same reasoning. For more complete descriptions of the "British" definition of policy networks, see (Marsh and Rhodes 1992; Rhodes and Marsh 1992; Peterson 1995d; Peterson and Bomberg 1998).
The Policy Community

In this policy network approach, the actors are referred to as the "policy community", and the relationships among them as the "policy network" (Atkinson and Coleman 1989; Coleman and Skogstad 1990; 1992). The policy community includes "all actors or potential actors with a direct or indirect interest in a policy area...who share a common 'policy focus' and who, with varying degrees of influence shape policy outcomes..." (Coleman and Skogstad 1990: 25). While this definition may seem at first glance to include anyone with a passing interest in a policy area, the concept of the policy community is further divided into the "sub-government" and the "attentive public." The former includes government agencies, business firms, industry associations and organized interest groups that actually make policy in the given field (Coleman and Skogstad 1990: 25). The attentive public may include media representatives and interested expert public and private individuals who follow and try to influence policy, but who do not participate in the actual policy-making process (Coleman and Skogstad 1990: 26).

For the reader used to encountering "policy network" as the generalized term, and other terms such as "policy community" or "issue networks" as the specific definition of the types of network, the Coleman and Skogstad model may seem to be an unnecessary muddying of the already murky waters of this concept. I suggest, however, that this model is more precise than other models, which combine membership and relationship into the definition of the network. Thus, "issue networks"—networks where membership is fluid, and societal actors play an advocacy role, and "policy communities"—networks where membership is defined and societal actors play a more integrated policy-making role—are here redefined. First, one must
look at the membership of the policy community, and only then can one look at the actual relationships—the policy networks—that arise among the members of the policy community.

One of the main strengths of this model is its use of the term “attentive public” to define the diffuse interest groups that generally use lobbying and other forms of advocacy in order to try to influence policy. Including the “attentive public” in the policy community is especially useful in an area such as environmental policy, where there is often a large public interest in the policy, but where there may be a limited amount of societal participation in the actual policy-making process. Environmentalism and environmental interest groups in Europe, at both the European and member state level, helped propel environmental protection onto the European agenda and still play an active role in trying to influence EU environmental policy (Vogel 1993a; 1993b; 1995). Rather than focusing solely on who actually sits at the policy-making table, this approach to the policy community can incorporate a more pluralist approach to policy-making that assumes that such diffuse interests do affect policy outcomes. A model of a national level policy community is shown in Figure 1.4, where both environmental groups and industry associations remain in the attentive public, and the environmental ministry makes policy. The role of organizations in the attentive public is limited to attempts to influence policy through advocacy. The strength of influence of the groups in the attentive public is indicated by a solid line where there is more influence, and a dashed line where there is less.

Figure 1.4: The Policy Community—Sub-government and Attentive Public

![Diagram of the policy community showing environmental groups and industry associations as part of the attentive public, with the environmental ministry making policy decisions.](image)
Having separated the policy community into the distinct divisions of the sub-government and attentive public, this model also allows one to study and observe what happens when a group or organization moves from the attentive public into the sub-government. Since members of the sub-government actually participate in policy-making rather than simply advocate positions and interests to the state bureaucracy in a particular sector like the environment, a group’s movement into the sub-government increases its power and influence in the policy-making process. Such a movement is shown in Figure 1.5, where, as an example, environmental groups have been invited to sit at the policy table, as advisors or consultants, where they will actually help draft policy. The movement of groups and organizations between the attentive public and sub-government does not change the membership of the policy community, but it does change the relationships within the policy community: the policy networks.

**Figure 1.5: Movement from the Attentive Public to Sub-government**

![Diagram showing movement from the attentive public to sub-government](image)

**Policy Networks: Relationships among Actors**

In this model of policy networks, the relationships that develop between the state agencies and the societal interests are the actual “policy networks.” The type of relationship that develops reflects a combination of the strength of the state bureaucracy in the policy sector.
in question and the degree of organizational development of interest groups and the strength of their larger associational system in the policy sector. Bureaucratic “strength” includes the degree of autonomy and capacity for independent policy-making vis-à-vis other state bureaucracies and societal groups. The strongest bureaucracies combine both capacity and autonomy. They have a clear mandate for their functions and responsibilities, are able to generate the information and resources they need in order to make policy decisions, and are able to act independently from powerful societal groups (see Atkinson and Coleman 1989, 51-52). The weakest bureaucracies lack autonomous decision-making power; they will need to rely on outside sources for information and resources, they may be heavily influenced in their capacity to make decisions by other state agencies, and may be easily penetrated and “captured” by outside interests. In between lie bureaucracies that combine a combination of weak capacity and strong autonomy, or strong capacity and weak autonomy.

Societal interest groups can also be described in terms of their “strength,” or their level of “organizational development,” based on their autonomy and capacity. An organization with strong capacity is able to generate “in-house” information, not needing to rely upon the state or outside sources for this resource (Atkinson and Coleman 1989, 53). The most highly developed organizations have a monopoly on information and resource generation in the larger associational system of societal interests, which leads other organizations and groups to “fall in” behind the strongest organization. The ability to independently generate resources and information leads to the second property of a highly developed organization: the autonomy of its leaders from both its members and the state. This autonomy gives the organization’s leadership the ability to rise above the short-term demands of members, and take a long-term view of the policy process, advocating policy suggestions which the general membership then
supports (Atkinson and Coleman 1989, 53; Coleman and Skogstad 1990, 21). It follows that since organizations with weak capacity lack the ability to generate needed information and resources independently, they also lack the autonomy necessary to speak for a large segment of the associational system of which they are a part. These groups are less likely than those with strong capacity for information-generation and an ability to speak for members of the larger associational system to be invited to participate in the sub-government of the policy community.

The second variable that influences the policy role of societal interest groups is the structure of the associational system, which is the composite of groups within a sector, and into which all interest organizations are embedded. This associational system can be highly organized and mobilized, or weakly organized and fragmented. A fragmented associational system includes many weakly organized interest groups, none of which can claim to speak for the entire sector, whereas a highly mobilized system is represented by highly developed groups as described above. According to Coleman and Skogstad, a weakly developed associational system lends itself only to a policy advocacy and not a participation role for the groups within it, since there is no dominating organization or organizations to coordinate the interests of the groups in the sector (Coleman and Skogstad 1990, 22). Conversely, a highly developed associational system will contain only a few, highly organized interest associations, which can then participate in the policy-making process.

The state is more likely to bargain with, and invite the participation of, well-organized interest organizations in a highly developed associational system because those organizations have the authority and autonomy to speak for a large part of the membership in the sector (Coleman and Skogstad 1990, 22-23). Even when this organizational strength is lacking, a
shared ideology or world-view between societal groups and the bureaucracy may encourage the participation of those groups in the sub-government (O'Riordan and Jordan 1996, 74). As with the degree of bureaucratic strength, the strength of the associational system lies on a continuum. At one end are extremely weak and fragmented systems, characterized by numerous competing organizations, none of which has any real autonomy or authority. At the other end lie coordinated and comprehensive associational systems in which one peak organization can effectively represent the interests of all groups and interests within the sector.

The three main types of policy networks for Coleman and Skogstad are Pluralist, Closed and State-Directed (1990, Chapter 1). Because the EU is not, in fact, a state, some of the variations of policy networks within these three main types are not present at the EU level. Therefore, I will only detail those that are present, or which might conceivably develop, within the EU. A typology of the different network types is shown in Table 1.1.

Table 1.1: Typology of Policy Networks

<table>
<thead>
<tr>
<th>Policy Role of Societal Groups</th>
<th>Bureaucratic Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Stronger</td>
</tr>
<tr>
<td></td>
<td>(autonomous/high capacity)</td>
</tr>
<tr>
<td></td>
<td>Weaker</td>
</tr>
<tr>
<td></td>
<td>(not autonomous/low capacity)</td>
</tr>
<tr>
<td>None</td>
<td>State-Directed</td>
</tr>
<tr>
<td>Advocacy</td>
<td>Pressure Pluralism</td>
</tr>
<tr>
<td>Participation</td>
<td>Concertation (bilateral)</td>
</tr>
<tr>
<td></td>
<td>Clientele Pluralism</td>
</tr>
<tr>
<td></td>
<td>Corporatism (multilateral)</td>
</tr>
</tbody>
</table>

The first type of policy network is the Pluralist network. According to Coleman and Skogstad (1990, 28), all pluralist networks “involve bilateral relations between the state and
groups with weak associational systems. The main type of pluralist network is the pressure pluralist network, where many divergent groups within a sector compete for the "ear" of the state, and are relegated to a policy advocacy role. Pressure pluralist networks arise in sectors where state authority is fragmented, and the bureaucracy is not captured by any particular societal interest associations (1990, 27). The Commission (in most cases) is a typical bureaucracy at the center of a pressure pluralist network. Policy-making authority within the Commission is shared, not only with the obvious Council of Ministers, but also among the various Directorates General within the Commission itself. Other types of Pluralist networks include the parentela network, or a party-sponsored network of like-minded groups (unlikely to arise in the EU) and clientele pluralism. This latter, which arises when bureaucratic officials become dependent on particular societal groups for information or resources, does arise within the Commission, and varies (as with all policy networks) across sectors. The dependence of the Commission on outside information will be explored in depth throughout this thesis.

In the second type of network, the Closed networks, the state agency has a high degree of decision-making capacity concentrated within it, and there is a highly developed associational system (Coleman and Skogstad 1990, 28). Two types of closed networks can arise, based primarily on the number of interest organizations that participate in the policy process. The first is the corporatist network, where a small number of well-organized and competing organizational interests are brought into the policy-making process by the state which shares its autonomy in order to mediate societal competition, similar to macro-level corporatism (Atkinson and Coleman 1989, 57). The second type of closed network is the concertation network, where one interest association, such as business, is dominant, and other interests within the policy community, such as consumer groups or unions, are weak and
fragmented (Coleman and Skogstad 1990, 29). This type of network is rare at the European level, due to the fragmentation of the bureaucracy within the Commission, and the weak associational systems of most policy sectors. Corporatism requires that there be strong vertical alliances within interest associations, and that particular interests, such as industry, environmental, consumer or business groups, be represented by “peak associations” which can speak for the sector as a whole in the policy-making process. Some early analyses of the European Community thought that perhaps the corporatist arrangements and closed policy networks of some of its member states would be replicated at the European level (Streeck and Schmitter 1991, 134-136). Such vertical integration never developed on the European level; interest representation remained fragmented and competitive, even among organizations with similar interests (Streeck and Schmitter 1991, 136). However, the Directorates General in the Commission did develop small closed networks around themselves with European interest associations sharing similar functional interests and values (Streeck and Schmitter 1991, 137). This latter factor of shared interest, or world-view, does play a role in EC policy communities, especially those surrounding the DGs in the Commission, since they need the expertise of outside interests in order to develop and ensure the implementation of European policy.

The final type of network is the state-directed network that arises when there is a highly autonomous state bureaucracy with a high capacity for independent policy-making dealing with a very weak or even non-existent associational system (Coleman and Skogstad 1990, 29). This type of network often arises in areas where policy outcomes affect a wide variety of interests, or where the state can take advantage of both its own strength and the weakness of the associational system to impose its own policy views. In other words, the state controls who is in the policy community, and the role that interest associations will play in the policy
networks that develop within the policy community. The state's interest is also the main
determinant of policy outcomes, since the state has a high degree of autonomy and decision-
making capacity. Such state-directed networks arise within the EU within the policy
communities centered on the Council of Ministers—an organization with an undeniably high
degree of policy-making capacity and autonomy from societal interests. This is the type of
network one would expect to see if governance in the EU in fact remains "intergovernmental."
The question arises, however, as to whether the implementation of QMV has affected the
autonomy and independent capacity of the Council, and thus changed the policy networks
within it.

The EU and Policy Networks

I am not the first scholar to apply the concept of policy networks to the EU. Peterson,
alone and with Elizabeth Bomberg, has done so repeatedly, using the "British" model of policy
networks (Peterson 1995d, Peterson 1995a; Peterson and Bomberg 1998). When the concept of
policy networks has been applied to the EU in the past, it has been, appropriately, applied to
particular sectors, but not to particular stages of the policy-making process. It is my contention
that not only do policy communities and policy networks vary from sector to sector, but that
within the EU, because of its peculiar policy process, they vary at different stages of the policy-
making process. One cannot simply say that the policy network for environmental policy is
"loose and fragmented," where as that for agricultural policy is "coordinated and integrated."
The questions arise—why fragmented, and coordinated by whom?

In order to solve this difficulty, I divide the policy-making process into three stages,
and concentrate mainly on the first two within this thesis. These are the stages of policy
initiation, policy decision-making, and policy implementation. This is because within the EU, a
different institution forms the center of the policy community at each stage. In the first stage, policy initiation, the Commission is the "state" bureaucracy at the center of the policy community. In the second, decision-making, the Council of Ministers, and increasingly the European Parliament, forms the bureaucracy of the policy community. Finally, in policy implementation, the most contentious stage both theoretically and in practice, both the Commission and the individual member state governments are "in charge," while it is actually regional, local and other sub-national authorities who are given the responsibility for on-the-ground implementation.

According to the Canadian policy network model, the type of network that develops within a sector is influenced by the larger macro-institutional structure in which both the sectoral bureaucracy and societal organizations are embedded. This macro-level institutional structure includes decision-rules as well as institutionally mandated access to government bureaucracies. If the larger macro-institutional structure changes, one may expect changes in the membership of the policy communities, or in the policy networks within them. As noted above, this model posits that change in policy community membership (including the movement of groups from the attentive public to the sub-government) and in policy networks can be expected to influence policy outcomes. Because this thesis is examining the role of decision-rule change in the Europeanization of environmental policy, I will test whether this last proposition of this model is, in fact, true. Do changes in the policy communities and policy networks affect policy outcomes?

In terms of the case of Europeanization of environmental policy, I first investigate how Europeanization of the policy arena (a formal, macro-level change) affects actors' relationships at the European level. Intuitively, this shift to the European level should allow the presence and
activity of more societal actors in the policy-making process within the policy communities at the European level. Secondly, I investigate the Europeanization of actors’ relationships, including formal and informal changes in the role of EU institutions and societal actors operating at the EU level. Has this Europeanization of actor relationships had any effect on the policy process or policy outcomes in areas governed by these new decision-rules? Or do relationships and outcomes remain intergovernmental and state-directed?

The use of the policy network framework will allow me to open up the policy-making process to precise investigation. Application of the policy network framework will allow me to determine two things. First, whether decision-rule change is necessary and/or sufficient to produce Europeanization in the arena and actor relationships. Second, whether actor relationships in the governance of a Europeanized policy arena remain intergovernmental or become multi-level in nature. The absence of decision-rule change and the presence of multi-level governance would demonstrate the weakness of intergovernmentalism’s assertions, and the robustness of those of multi-level governance and transactionalism. If, on the other hand, actors’ relationships are not Europeanized by a change in arena, then there is no sense in trying to develop a new theory or model of EU governance; governance remains intergovernmental.

I first investigate the larger governance of EU environmental policy, over time, from its inception through up to the Amsterdam Treaty. Specifically, I look at the relationship between the arena and actors involved in the policy-making process through the macro-level changes of both the SEA and TEU. Using the policy network framework as a template for examining the actors’ relationships within the larger environmental policy community (which fragments into separate policy communities at the different stages of policy making through the stages of decision-making), I examine the effect of both formal and informal Europeanization on the
governance of this policy area. Chapter Two deals with the EU’s environmental policy from its inception to the Single European Act, and Chapter Three from the SEA to the Maastricht Treaty. Chapter Four investigates the changes brought about by the Maastricht Treaty itself. If intergovernmentalism holds true, then the Europeanization of the arena and the formal changes in decision rules should not fundamentally change the dominance of the Council’s state-directed policy network in the policy-making process or its influence on policy outcomes. If transactionalism holds true, then decision-rule change and the increased role of Euro-actors should have a significant supranationalizing effect on environmental policy governance, producing a “loop” of further supranationalization. Finally, if the multi-level governance advocates have it right, then the arena should be pluri-level and there should be significant influence of Euro-actors in policy networks outside the Council’s state-directed network.

I then turn to two specific case studies. The first, in Chapter Five, is an example where there has been limited formal (and even informal) Europeanization of the policy arena, and no formal Europeanization of actor-relationships at the European level. Climate change policy, because of its energy and taxation implications, remains governed by intergovernmental (unanimous) decision-rules within the Council of Ministers, and does not allow for a significant role by the Parliament. This is an ideal case for testing the validity of the intergovernmentalists’ claims. The policy community should be dominated by the Council, and there should be little or no influence by Euro-actors, either societal or institutional. The lack of substantive policy outcomes, specifically the repeated failure of the Commission to pass its proposed “carbon/energy” tax through the Council seems to validate the intergovernmental viewpoint, and show that decision-rules do make a significant impact on governance. Investigation using the policy network framework sheds surprising light on this case, and the
governance of the policy area, that cannot be gleaned from investigating only the formal, institutional distribution of power or decision rules in this sector.

Chapter Six specifically investigates the impact of decision-rule change on governance, or at least on the policy-making process for one particular environmental Directive on Packaging and Packaging Waste. This is an “ideal” case for studying the role of decision-rule change on policy-making and governance. The Packaging Directive policy-making process spanned the post-SEA to post-Maastricht time frame, which allows the researcher to study, as if in a lab, the effect of decision-rule change on actor relationships (policy networks). Most significantly, this Directive ultimately fell under the co-decision procedure instituted by Maastricht, and the Conciliation Committee process was used in coming to a final Directive. If decision-rule change does have a significant impact on governance, we should see a substantial change in policy community membership at the decision-making stage of the process, and changes in the policy networks that reflect the increased role of the institutional bureaucracies and transnational societal actors. This is a perfect test case for the transactional model of EU integration, which states that changes in decision rules, EU organizations’ roles, and the increased activity of transnational society all lead to the supranational governance of a policy area. All three variables are present in this case, but is the outcome truly “supranational?”

Application of a policy network framework may not “prove” the validity of any one theory. In fact, testing the “fit” of these theories with actual case study evidence by using the policy network framework may prove more problematic in terms of raising more questions than it answers. However, I believe that the development of a framework of analysis for investigating policy making and governance in the EU is the most important first step for researchers who want to study the governance of the EU. This framework can be applied as
generally across sectors as one wishes (as in Chapters Two through Four) or to specific instances of policy making (as in Chapters Five and Six). This is an important first step to solving the governance debate in the EU.
CHAPTER TWO:
EUROPEANIZATION BEFORE THE SINGLE EUROPEAN ACT

In contemporary Europe, environmental policy is no longer the purview of the member states alone, but has become a Europeanized policy area that reaches into the member states, sometimes against their own stated policy preferences. According to one prominent EU scholar, one can no longer speak about a member state’s environmental policy without accounting for Community legislation in that same area (Sbragia 1993, 344). This is even the case for the member state with the most developed national environmental policy, the Netherlands. The Dutch environmental attaché estimated that over 40 percent of the country’s “national” environmental policy consists of transcribed Community Directives or implemented Community Regulations (Interview 2). In other countries with less impressive records of national environmental legislation, the figure can reach 90 percent.

It was not until the 1987 Single European Act that the Treaty explicitly gave the Community competence over the environmental protection sphere. The founders of the European Community could not have foreseen that promoting environmental protection would one day become one of the Community’s primary tasks. The Treaty of Rome included neither the word “environment” nor any legal means for the Community to regulate environmental protection. This did not mean, however, that the Community did not develop environmental policy or attempt to regulate the environment prior to 1987. According to the legal, institutional delineation of power in the Community, governance of this policy area should have remained at national level. However, as this chapter will show, both the Community (through the

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31 See Article 2 of the Treaty on European Union (TEU) which states that one of the tasks of the EU is to promote “sustainable and non-inflationary growth respecting the environment”, as well as Article B in which
institutions of the Commission and Court) and particular member states deemed it necessary to establish EC policy in this area.

The Europeanization of environmental policy at first proceeded through an informal shift of policy-making competence from the member states to the EC level. Even after this informal Europeanization of this policy area, the member states retained control over environmental policy. Their control came from the decision rules governing environmental policy prior to the SEA. The SEA then formalized the Europeanization of the policy arena when it constitutionalized and legalized the making of environmental policy at the EC level in 1987. The SEA also provided for a change in decision rules to qualified majority voting (QMV) for environmental policy having an impact on trade, and furthermore, called for environmental protection to be part and parcel of all Community policy-making. This chapter follows two main lines of inquiry throughout. The first deals with the question of which theory of European integration best fits with the evidence of how and why the formal and informal Europeanization of the policy arena occurred. The second addresses the question of governance, and of what factors are necessary for changes in governance of a policy area.

The early attempts to harmonize member state environmental policy at the European level seem to be a good test of either the intergovernmentalist or the functionalist perspective of European integration. Intergovernmentalists would point to the fact that the "green" member states individually pushed the policy to the European level by creating unacceptable trade barriers, or by demanding that other states bear the same pollution-control costs as they. The Commission introduced legislation at the demand of particular member states—acting as their

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the Union sets itself the objective of "economic and social progress which is balanced and sustainable" (Commission and Council of the European Communities 1992).

32 "Green" (or "leader") and "laggard" member states are discussed in detail below.
“agent” as it were. This view, however, does not explain why the “laggard” member states accepted the Community’s attempts to regulate the environment. Environmental pollution was not evenly spread across Europe, nor did all member states have similar levels of transboundary pollution. I question whether intergovernmentalism alone can explain the gradual but continual rise in salience of environmental policy in the Community’s overall policy framework. By the time the SEA was implemented, environmental policy became the one policy that had to be taken into account in all other policy areas. How did this policy area, not envisaged in the original Treaty at all, become so important to the functioning of the Community thirty years on?

Functionalists would argue that the Europeanization of environmental policy proceeded mainly as a matter of efficiency of policy-making. Specifically, the individual member states came to realize that alone they could not regulate this policy area, and that their costs would be lowered if the Community provided harmonization and centralization of some areas of environmental policy. Policy-making activity helped build European institutions for environmental policy-making, including a separate Directorate General for Environmental Protection by 1981. The advent and evolution of the Community’s Environmental Action Programs, which, after 1981 were developed proactively mainly by the Commission rather than the member states, seems to bear out two of the functionalist arguments. First, that as more policy was made, more policy control and innovation were needed at the European level. Second, that the increased activity of non-state actors drove this process, which culminated in decision-rule change in the SEA. The SEA, which institutionalized many of the principles within the Environmental Action Programs, seems to validate the functionalist viewpoint, since it formalized the Community’s competence over environmental policy matters at the
supranational level. One argument against the functionalist model is that the policy produced at the European level was neither the “best” policy (the argument is that it was actually very weak, “lowest common denominator” or LCD policy), nor was the European level the most efficient level at which to make this policy.33

In addition to testing the “fit” of these two theories of integration with evidence from the evolution of environmental policy-making in the EC, this chapter examines the governance of this policy area. There is no question that governance of environmental policy-making in the EC began as intergovernmental attempts to regulate an increasingly important policy area. The question arises as to whether, as the functionalists would argue, the shift in competence to the European level (both informal and formal) implied a shift in governance to the supranational, or whether governance remained state-centric, as the intergovernmentalists would assert. Perhaps neither theory presented above fully explains the governance of this policy area as it evolved over time. An application of the policy network model indicates that an increasingly multi-level governance structure evolved over time, and was clearly evident after the implementation of the SEA. This brings in a central question of this thesis: whether the changes in the decision rules under the SEA were necessary and/or sufficient to produce changes in governance.

**Early Europeanization of Environmental Policy**

In 1957, political concerns about social, consumer, energy and environmental policy at the European level were virtually nonexistent, therefore, provisions for governing or regulating these areas were not included in the Treaty of Rome. The European Community literally built

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33 This argument is adapted from Fritz Scharpf’s “The Joint-Decision Trap” (1988).
legislation in these policy areas from the ground up, using no blueprints, and having no program or goal in mind from the outset. This was in sharp contrast to the goals and frameworks that existed from the outset of the European Economic Community (EEC) regarding internal market and trade policy, and even agriculture policy. One must keep in mind that for many years no institutional, legal or political means existed to enable the European Community to govern the environmental and several other policy areas. How, then, did the Community get into the business of environmental regulation?

From its inception, the European Community's raison d'être has been as an economic and trading area among its member states. Of principal importance is the internal, or single market, which has as its current goal free movement of goods, services, capital and persons. Whatever causes a barrier to the movement of one of these is unacceptable under Article 30 of the Treaty of Rome. In theory, any environmental measure by one state that either restricts the import of other states' goods, or makes them more costly, would be incompatible with the internal market. However, the Treaty also provides a provision for member states to restrict trade if such trade poses a threat to the protection of human health, animals and plants. This provision, contained in Article 36 of the Treaty, also states that such restrictions or prohibitions should not "constitute a means of arbitrary discrimination or a disguised restriction on trade" (European Communities 1961).
During the late 1960s and early 1970s, some member states began to introduce environmental legislation that created barriers to other member states’ goods. In addition to posing trade barriers, such unilateral legislation held the possibility that industries within states with more stringent standards would be at a disadvantage vis-à-vis other member states’ industries. The introduction of stricter pollution control standards, especially in the heavily industrialized areas of northern Europe, was a policy response to increased pollution and pollution-related problems in those areas. The idea of less rather than more environmental legislation in already polluted areas was one that could not be supported by those governments, and so they sought to spread the costs of environmental protection more evenly among the EEC states. These states pushed the Commission to develop environmental policy during this early period (Rehbinder and Stewart 1988, 16-17; Judge 1993, 2). Much of this early EEC policy did not go beyond attempts at harmonizing existing national legislation on the environment. By the early 1970s, however, partly as a result of the increased degradation of the overall environment in Europe, the Community began to introduce legislation to set common standards in the areas of water and air pollution, chemicals, waste, nature conservation and nuclear safety (Hull 1994, 145).

The confluence of an increase in transboundary environmental problems and a growing public awareness and domestic public pressure on governments to address the growing environmental degradation across Europe led to the desire to create a framework for environmental protection at the Community level. The Community’s Environmental Action Programs, beginning in 1972, provided this framework, and set up the basic principles by which the Community began to regulate environmental policy.
In 1972, at a Conference of the Heads of State and Government (a precursor to what is now the European Council), the member states developed the first Environmental Action Program. France, heading the conference in its role of President of the EC, used the environmental enthusiasm that had surrounded the United Nations Stockholm Conference on the Environment to propose the Action Program (Hildebrand 1993, 24). This plan, adopted in November 1973 to cover the years 1973-1976, recognized the need for the Community to preserve and protect the environment, and to deal with increasing trans-border pollution problems within the Community. This first Program was directed primarily at reacting to pollution problems after their occurrence; it did not give the Community a wide mandate for pollution control, and it was not legally binding on the member states. It did, however, establish the "polluter pays" principle, and it called for the harmonization of national environmental policies at the Community level (Johnson and Corcelle 1989, 13-14). In 1977, the Second Action Program was adopted as a continuation of the first Program.

The Third Action Program, adopted in 1981 to cover the years 1982 to 1986, introduced new elements that reflected the thinking of the Community regarding the environment. These elements reflected the desire of the Council and Commission to integrate environmental policy into other Community policies, to reduce pollution as close to the source as possible, and to implement a Community level environmental impact assessment procedure (Johnson and Corcelle 1989, 17; Hildebrand 1993, 21). The Program emphasized prevention, requiring the Community to adopt preventative measures "even where the subject matters in question are not regulated by the member states" (Meltzer 1990, 26). This gave the Community the authority to act in areas which had been previously restricted by the Treaty and resulted in
an increased number of legislative instruments dealing at least in part with the environment (Hildebrand 1993, 22).37

During 1986, while the Community was negotiating and ratifying the SEA, it developed its Fourth Action Program for the environment which it adopted in a Resolution by the Council on 19 October 1987 (OJ C 1987 156, 138). This Program outlined the Community's environmental objectives for the years 1987 to 1992. The Program differed from the previous three in its new conceptual approaches to the area of pollution control and prevention, including a multi-media approach, a substance-directed approach and a pollution source-directed approach (Johnson and Corcelle 1989, 18). The Fourth Program called for the integration of environmental policy into all other Community policies, the principle that would also appear in the SEA Environmental Title, discussed later in this chapter (Zacker 1991, 263). It recognized that a high level of environmental protection was essential for the future economic success of the Community (Zacker 1991, 263 note 76). In addition to an emphasis on rectifying environmental problems at the source and a continued confirmation of the polluter-pays principle, the Fourth Program began to focus on economic and other non-regulatory instruments to encourage environmental protection.

The Action Programs provided a sort of evolutionary ladder for the Community to climb in the development of a unified Community environmental policy. Each subsequent Program placed more emphasis on integrating the environment into other Community policies, harmonizing national standards into a Community standard, and on looking at the whole environment rather than only at its individual parts. Many of the objectives and goals of the

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37 Specifically, this program freed up the use of Article 235 (explained more fully, below) to expand the areas in which the Community could legislate. There was less requirement that the environmental protection policies be directly tied to the economic goals of the Community.
Fourth and previous environmental Programs were included in the Single European Act, which amended the Treaty of Rome in 1987. These included preventive and remedial action, and reducing pollution at the source; the polluter-pays principle; a high level of protection; and the prudent use of natural resources (Vandermeersch 1987, 414-417).

These Action Programs were, as stated above, merely a framework in which EC environmental policy could evolve. The Programs, though non-binding on the member states, did, however, give the Community the informal competence it needed to address environmental problems, even while it still lacked the juridical authority to do so under the Treaty. The above description seems to indicate a smooth progression of ideas and policy in the environmental arena. However, the Programs evolved only as EC environmental policy itself evolved. The accumulation of policy outputs in between the Action Programs led to changes in thinking about environmental problems and environmental policy. They would also eventually lead to changes in the policy-making process under the SEA.

The Early Policy-making Process

Because of its lack of explicit legal authority in the area of the environment under the Treaty of Rome, the Community was required to use two primarily economic articles of the Treaty as the basis for environmental legislation. If the environmental problem directly affected the development of the common market, i.e., if the regulatory solution would affect the free movement of goods from one member state to another, the Community passed the legislation using Article 100, which governed the establishment of the common market (European Communities 1961). If no such direct connection could be made with the common market, environmental legislation was passed using Article 235, which dealt with the attainment of the objectives of the Community when the Treaty did not provide the specific powers to do so.
These other objectives needed to be essential to the functioning of the Community and have a link with the functioning of the common market (European Communities 1961). The Community could also pass legislation using both Articles as its legal basis.

Until 1987, environmental legislation based on both Article 100 and Article 235 followed the same developmental path. In the earliest years of environmental policy-making, the process was dominated by the member states through the Council of Ministers. Generally, policy initiatives came from the Council or a coalition of member states which would request that the Commission develop a proposal. The Commission then drew up the proposed legislation. The European Parliament had the opportunity for a reading of the proposal, through the “consultation” procedure, but its opinions were not binding in any way. In the Council, working groups of environmental attachés reviewed the proposal prior to the vote in the actual Environment Council, made up of the member states’ environment ministers.

The final policy decision lay with this Council. Prior to the SEA, all legislation based on Articles 100 and 235 was subject to a unanimous vote. The rule of unanimity meant that in order for a proposal to pass, the final compromise by the Council sometimes reflected the lowest common denominator of agreement found among the member states. What is most striking, however, is not the predictable lack of agreement in a unanimous forum, since all policy at that time was subject to unanimity, but the scope of the environmental protection legislation that the EEC was nonetheless able to pass. The 1975 drinking water and bathing water directives are cases in point. Each of these provided far-reaching policy goals which the member states had to implement, and which went far beyond any existing member state legislation (Sbragia 1993, 342, my emphasis). The bold stringency and scope of environmental
standards was due in large part to the growing activism of the Commission (Sbragia 1993, 342-343), which will be further explored, below.

The primary instruments of environmental legislation during this period were Directives, in part because legislation using Article 100 as its basis could only be implemented by Directive (Rehbinder and Stewart 1988, 33). In addition, Directives had to be transposed into national law before they were binding law within member states, and so gave the member states somewhat more flexibility in applying the law. Regulations, which were immediately binding on member states, were (and still are) less frequently used (Zacker 1991, 259). In either case, Community law superseded existing national law for that policy.

The lack of explicit Treaty authority to regulate the environment meant that the Community was vulnerable to challenges from member states as to its right to make policy in this area. Despite this, no member state ever used Article 173 of the Treaty to directly challenge the Community’s competence to propose or initiate environmental legislation. However, in one landmark case the Commission brought Italy before the ECJ for non-implementation of an environmental Directive. Italy countered that the Community had, in fact, had no power to issue the Directive in question based on Article 100, despite the fact that Italy had obviously (due to the unanimity rule) voted in favor of its passage (Case 91/78, in Krämer 1987, 661-662). In that case, the Court upheld the use of Article 100 as a basis for environmental legislation, and cited the Environmental Action Program upon which the Directive was based as a legitimate foundation for pursuing Community environmental policy. This ECJ decision was binding on the parties involved. Thus, although the Environmental

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38 They are, however, directly binding through "direct effect" on member states if the state fails to adopt the national legislation within a specified period, or if national legislation fails to comply with the Directive.
Action Programs themselves were non-binding, through its interpretation the Court set the precedent for using them as the legal basis for its judgment. In so doing it helped further not only the informal but also the formal Europeanization of environmental policy making in the EC.

Through this and other judgments on existing Community policy, the Court helped expand the Community's role in protecting the environment. In a case decided in 1985, prior to the Single European Act, France challenged the validity of a Directive on waste oils (Dir. 75/439), since the Directive restricted the movement and trade of these oils (Case 240/83). In the landmark Waste Oils case, the Court stated that:

(T)he principle of freedom of trade is not to be viewed in absolute terms but is subject to certain limits justified by the objectives of general interest pursued by the Community provided that the rights in question are not substantively impaired.... The Directive must be seen in the perspective of environmental protection, which is one of the Community's essential objectives (Krämer 1987, 663, italics in original).

It must be remembered that at the time this case was heard, environmental protection was not even mentioned in the Treaty governing the Community. However, the Court, through this case, established the principle that environmental protection was, in fact, one of the Community's "essential objectives."

During the years prior to the Single European Act, the tension between environmental protection goals and the economic objectives of the Community was palpable. Prior to the

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(Reh binder and Stewart 1988, 38; Zacker 1991, 259). If a member state fails to adopt or implement a Directive properly, the Commission may take the member state before the European Court of Justice.

59 The environment is by no means the only area in which the Court has expanded competence or established principles. Judgments of the Court in the area of social security have extended the Community's competence into that policy area (Nugent 1994, 220). The Court established the principle of "mutual recognition" through its judgment of the Cassis de Dijon case, eliminating the need for the Community to harmonize legislation, declaring that products legally manufactured in one state could be sold without barriers to trade in any other member state (Nugent 1994, 221).
SEA, the Community’s environmental legislation was in large part secondary to the completion of the internal market and to the principle of free movement of goods within the Community. In 1986, the Court produced a judgment on the case *Commission v. Denmark*, better known as the *Danish Bottles Case* (Case 302/86). The Court upheld a Danish recycling law, establishing the precedent that “the protection of the environment is a mandatory requirement which may limit the application of Article 30 of the Treaty” (Sands 1990, 696).\(^{40}\) The Community would later reinforce both the *Waste Oils* and *Danish Bottles* judgments through a requirement in the SEA that the Community establish a high degree of environmental protection within the Single Market.

In addition to the lack of an explicit Treaty basis for environmental policy and the tension between economic and environmental requirements, an important factor that limited the “greenness” of European environmental policy in this early period was the disparity among the strength of member states’ own national environmental programs.\(^{41}\) Within the Council the member states faced off against each other as “leaders” and “laggards” in environmental policy (Sbragia 1996).\(^{42}\) Some member states such as Germany, the Netherlands and Denmark had already established stringent environmental standards, which they hoped could be replicated at the Community level. Much EC-level environmental policy was “inspired” by the national

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\(^{40}\) Article 30 is the guiding principle on the freedom of movement of goods and services (and now persons and capital) in the Treaty. See note 3 above.

\(^{41}\) Vogel’s argument that “green” states can force environmental policy convergence works best when dealing with product-oriented standards where the environmental regulations of one state can pose a trade barrier to another (Vogel 1995). This argument works less well in case such as the Bathing Water Directive (see Golub 1994) or Ozone Depletion.

\(^{42}\) Germany, Denmark and the Netherlands are generally recognized as the “leader” states which pushed the EEC into the environmental policy field (after the 1994 enlargement, Sweden, Finland and Austria joined this group). Greece, Spain, Portugal and Ireland are seen as the “laggard” states which must be brought up to speed with European level policy. Britain, France, Luxembourg and Belgium are often seen as “middle” states, but when compared to the “leaders” they lag behind (Sbragia 1996, 238, and note 2). Britain is, however, a
regulations of these countries (Sbragia 1996, 238). These states, in part, wanted European-level legislation in order to protect their industries from unfair competition from industries in states without strong domestic environmental policy. In addition, these states were reacting both to strong domestic public pressure to preserve and protect the environment and to increased levels of domestic and cross-border pollution. Other member states like Britain were dead set against the Europeanization of environmental policy, especially in areas such as water pollution which they regarded as a domestic issue (Golub 1994, 7). Britain did not have the cross-border pollution problems facing the Continental European states and successfully blocked a number of proposals with its veto (Golub 1994, 7).

As noted above in the discussion of the institutional structures of environmental policymaking, the Council was the final arbiter of all policy proposals. Although the Commission proposed the legislation, often at the request of the “leader” states, any single member state in the Council had final veto power over it, while the Parliament played only a non-binding advisory role in the policy-making process. The goal of Council negotiations was consensus, which could only be achieved by unanimity. This meant that states such as Britain could merely threaten to use their veto in order to gain concessions from the “leader” states who were pushing for the EC-level legislation (Golub 1994, 8). Since other laggard states also used this tactic, the result was often legislation that left a great deal of leeway to the states as to how the Directive would be implemented at the national level (Rehbinder and Stewart 1988). For example, in the case of Britain and the 1975 Bathing Water Directive (OJ L 1976, 31), the Government originally “believed that the proposal would not entail any significant changes in

“laggard” in that it resisted giving up sovereignty over environmental policy to the EC, and still views many areas of environmental legislation as essentially the purview of domestic politics (Golub 1994).
UK practices” (Golub 1994, 8 note 29). Finally, because of the lack of monitoring of implementation, states such as Italy often voted for a proposed piece of legislation in order to appear “green,” but had little or no intention, or indeed ability, to implement it (Interview 1, and Stewart 1992, 48-49).

At one point, the Commission responded to this disparate application of Community Directives by including strict and detailed implementation requirements in its proposals in order to try and ensure their uniform application throughout the Community (Dehousse 1992, 392). These stricter requirements often did not take into account disparities in the industrial or environmental circumstances among the member states. In addition, the regulatory traditions of the member states played a role in how well the member states’ administrations could transpose and implement Community Directives. In the Southern member states, where there was no strong regulatory tradition, stricter Directives did not translate into stricter environmental policy in practice (Dehousse 1992, 392 note 21, Interviews 1 & 8).

The overwhelming importance of both the Council and of the individual member states in the policy-making process is reflected in the fact that the Europeanization of this policy area was in its infancy during this time period. While the EC was the arena for some environmental policy making, the member states still retained great leeway of unilateral action, since the EC had barely begun regulating this policy area. Even when it did regulate environmental policy, the Council of Ministers and the member states were the primary actors, with the Commission playing a follower rather than a leader role. This lack of Europeanization along both the Arena and Actor dimensions is shown in Figure 2.1.

43 Britain did not take environmental policy seriously, especially at the European level when it first joined the Community. It soon learned its lesson when the actual costs of implementing EC legislation such as the bathing water Directive later became apparent (Sbragia 1996. 248).
Figure 2.1: Dimensions of Europeanization

**ARENA**

**Europeanization Continuum**

- Exclusively national
- Pluri-level: (national + inter-national + supra-national)
- Exclusively supranational

**ACTORS**

**Europeanization Continuum**

- Exclusively national
- Pluri-level: (national + inter-national + supranational)
- Exclusively supranational

Despite the lack of Treaty competence and the resistance by member states such as Great Britain to the encroachment on their sovereignty in the area of environmental policy, between the early 1970s and mid-1980s the Community issued 120 Regulations and Directives concerning the environment (Vogel 1993b, 116). The question then arises as to how this was possible in an environment of conflict within the Council, where unanimity rules held sway. Were there other dynamics at work, and other actors who had more impact on the environmental policy process than an intergovernmentalist examination at the policy-making process shows? In order to answer this question, we must open up the policy process, and trace
Early Environmental Policy Actors

Until the mid-1970s, the primary arena for environmental action remained at the member state level. For action to be taken at the European level, the impetus needed to come from the member states. Whether this impetus resulted from spillovers of environmental pollution between member states, from a need to harmonize existing national environmental legislation that posed barriers to trade, or from the desire of a government to appear "greener" during a time of heightened environmental awareness, the member state governments were the primary players on the European environmental scene. The member states drove European environmental policy initiation as they recognized the need to harmonize their policies to overcome trade barriers, and because of self-interest in protecting their own environment from degradation caused by pollution in other states (Hildebrand 1993, 25).

During the earliest years of EC environmental regulation, the Commission was reactive rather than proactive. It was only with the development of the Action Programs that the Community itself had a program or vision with which to deal with the environment as a separate policy area. After 1973, the Commission developed a fuller awareness of the link between the environment and the establishment of the common market, and of the fact that environmental degradation increasingly affected both the member states and the Community. The Commission's greater focus on these linkages resulted in the widening of the scope of EC environmental legislation as well as more pieces of legislation (Hildebrand 1993; Golub 1994, 6; Vogel 1995, 58-59).
Prior to the establishment of the Commission's Directorate General for the Environment, Nuclear Safety and Civil Protection (DG XI) in 1981, environmental groups focused their main efforts on lobbying their national governments for environmental action, and, as noted above, the more environmentally aware states generally drove EC environmental policy standards. As the Community began to make environmental policy it established a "task force" within the Commission to draw up policy proposals. Mazey and Richardson (1993b, 121) point out that this task force quickly became dependent on environmental groups for information and even moral support, due to its lack of status within the Commission. Environmental groups at the European level, while united in their general world-view, were not well organized and no particular groups arose to become "peak associations" at the European level. In general, especially in these early days of environmental policy making, environmental groups acting at the European level lacked the resources to lobby effectively outside this task force or later DG XI (1993b, 122). As far as other Directorates were concerned, environmental groups could not even get a hearing. Even after 1981, the European Environment Bureau (EEB), the umbrella organization for European-level environmental interests, had a one-person secretariat, no working groups, and met only "occasionally" throughout the year (Kirchner and Schwaiger 1981, 20). This organization had few opportunities to meet with contacts in the Commission, as compared to the Union of Industries of the EC (UNICE), which had a secretariat of 25, and 38 permanent working groups that met in 250 meetings throughout the year (Kirchner and Schwaiger 1981, 48). In the earliest years of EC environmental policy making environmental interest groups were most likely to achieve results through lobbying their own member state government rather than trying to apply influence at the European level.
There is evidence that national level environmental groups played an important role in intensifying the Community's efforts to deal with environmental problems during this time frame, supporting a liberal intergovernmentalist interpretation of the transmission of domestic public interest to the EC bargaining table. The 1960s and 1970s were the peak of the student and environmental movements in Europe, and of a growing concern for the environment by the public as a whole (Vogel 1993a, 183). While most national level environmental groups began as local single-issue organizations, an increase in anti-nuclear activism, much of it directed against NATO’s deployment of intermediate range nuclear missiles in Western Europe, helped consolidate disparate groups into a single “movement” (Kamieniecki 1991, 350). In some member states, “green” Parties evolved out of the environmental movement, while in others general public interest and concern for the environment increased. This latter transnational activity and mobilization at the supranational level would seem to support a functionalist/transactionalist interpretation of the rise of salience of environmental policy at the EC level.

It is important to note that while the environmental movement and public interest in protecting the environment had wide support among the public, green parties did not gain significant power within national legislatures. Since the representatives within the Council of Ministers ostensibly represent their home governments, one could assume, from an intergovernmental point of view, that the ministers within the Council would be no more apt to support environmental protection policies than their governments at home. How, then, does one explain the fact, stated by some scholars of EU environmental politics, that the rise of environmental movements, increased public interest, and general public support for
environmental protection within the member states did, in fact, help result in a general move by the member states and the Community to deal with the environmental concerns of the public (Vogel 1993a, 183; Vogel 1995, 58)? The environmental task force and later DG XI in the Commission were both extremely weak bureaucracies, with little autonomous policy-making power or decision-making capacity. Environmental lobbies were still focused on their member state governments even as late as 1981. If the transactionalist interpretation is correct in its assertion that transnational activity leads to the supranationalization of policy, where was the "transnational" action? In order to answer this question, it becomes necessary to open up the policy process to further scrutiny.

The Environmental Policy Community

The main actors in the early environmental policy community are shown in Figure 2.2. The policy community shown includes DG XI, since it has played a role in the policy community since its establishment in 1981. The primary members of the sub-government were the member states' Environmental Ministers within the Council of Ministers (shown in the darkest grey circle). They were, of course, answerable to their member state governments, (shown in a slightly lighter shade of grey). The Commission, through DG XI and other DGs, is shown in still lighter shades of grey.\(^4^5\) Environmental and industry groups at both the national and European level remained part of the attentive public, mainly lobbying the member state governments or the Commission in order to try to influence policy. The exception to this is

\(^{44}\) For example, even in Sweden, one of the "greenest" states in Europe and a late-comer to the European Union (in 1995), the Green Party gained only 5.6 percent of the vote in 1988 (Kamieniecki 1991, 350).

\(^{45}\) It should be noted that there is always a representative from the Commission in any Council deliberation, including meetings of the COREPER's working groups and the meetings of the Ministers. This provides continuity between stages of the policy-making process.
shown within the Environment Council’s circle. Because of the secrecy of Council deliberations, it is impossible to say exactly who sat with the ministers, or their representatives on the Council of Permanent Representatives (COREPER). Interviews of environmental attachés and members of European business associations reveal, however, that the “national experts” who advised the representatives were often from business or industry concerns rather than members of environmental groups (see also Benedick 1991).

The Council of Ministers was the primary arbiter of European environmental policy in the pre-SEA time frame. As noted above, the Commission’s early proposals were often reactions to pressure from the member states or came as the result of the need to harmonize national policies. Even after the development of the Action Programs and the growing body of
environmental policy, the Council still remained the focus of any debate and bargaining at the European level. This was due to the requirement of unanimity in the Council, and to the fact that the Parliament had only one opportunity to influence policy through its non-binding opinion. One can characterize the pre-SEA policy network as *state-directed* because of the predominance of the Council within the network. Its overwhelming capacity and authority for decision-making made the possibility for Euro-level interest groups to influence policy slim, at best. Environmental groups mainly acted at the national level, with a few lobbying the Commission in Brussels. After its inception, DG XI was very amenable to the lobbying and expertise of environmental groups, since it lacked the technical and personnel resources of the larger, well-established DGs within the Commission (Interview 12 and Sbragia 1996, 245). The influence of these groups and of DG XI was nevertheless formally restricted in the extreme by the need to propose policy that the member states would accept unanimously.

The difficulty the EC faced in passing environmental legislation should be clear: laggard member state governments with little concern or interest in the environment, lack of Green representation within those governments and even within the “leader” member states, and an inability of environmental groups to penetrate the closed circle of the Council of Ministers, all this within a framework of unanimous voting. Given this seemingly overwhelming pressure against the possibility of passing stringent environmental legislation, how and why *did* the European Community pass 120 Regulations and Directives concerning the environment by the mid-1980s (Vogel 1993b, 116)?

Two main aspects of the inner workings of the policy process seem to stand out, neither of which fits well with the intergovernmental explanation of European integration and governance. These factors are a lack of unitary interest on environmental matters within
member state governments, and the role of the Commission as policy entrepreneur. When the Community made its first forays into environmental policy in the early 1970s, there were only 9 members of the Community. Environmental policy was by no means a key policy either to the Community or to all of the member states. Britain, as noted, did not take environmental policy or the Community's action in it, very seriously. They, for example, sent junior ministerial representatives to Brussels, even for Council meetings of the Ministers (Sbragia 1996, 248). Britain was not alone in its low prioritizing of environmental protection on the scale of policies, especially when compared with the importance states placed on competition, trade or agriculture policy. Environment ministers were generally weaker than their economic, agriculture, or transport counterparts within their own states (Sbragia 1996, 247). In Brussels, however, they negotiated with each other as equals.

If, instead of looking at each member state as having a unitary interest which it then bargains at the European level, one looks at EU politics as a series of bargains among and within European-level institutions, a clearer picture emerges. As Alberta Sbragia points out (1996, 247), environmental matters within the member states were, and in some cases still are, seen as a minor portfolio when compared to ministerial positions such as agriculture, economics or transport. Many states did not even have a separate portfolio for the Environment until the mid-1980s (1996, 248). These environmental ministers (or their proxies) who were weak at home could, however, go to Brussels, where they negotiated as equals among their environmental counterparts. This equality tended to "empower" these junior ministers, making them "more important in Brussels than at home" (1996, 247). While the "green" member states

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46 The original Six, plus Great Britain, Denmark and Ireland, which all joined in 1973.
47 Until Spain, Portugal and Greece joined the EU in the 1980s, they had neither an Environment Minister nor an environmental policy, for example.
pushed for strong environmental policy at the European level, this push was often motivated by the dual need to reduce pollution at home while remaining competitive vis-à-vis the other member states. They could actually push through stricter policy at the European level than they could have done at the national level within their own government (1996, 247). The “laggard” states either did not see, or did not give very much credence to, the possible costs of implementing environmental policy at home. Environment ministers in Brussels could thus push or accept policy that actually was not necessarily in line with the “national” interest, as defined by the home government.

This dynamic served to combine with another institutional dynamic at the European level. As noted in the Introduction, historical institutionalism asserts that the European institutions are always pushing the edges of their power as given to them in the Treaties. While the member states did delegate the power of policy initiative to the Commission, they did not, and do not, oversee every aspect of the Commission’s operation. Such “comitology,” as the Council’s oversight of the Commission is called, is much too costly and time-consuming for the Council or the member states (Pollack 1997, 109). There were other, macro-institutional, means of constraining the Commission. For example, the Council’s veto provided an institutional brake on the Commission’s aspirations to power, since all Commission proposals had to be designed with an eye to passage in the Council of Ministers. Since no legislation could pass without full agreement of the member states, these states presumably effectively could control policy proposals from their inception to implementation.49

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48 The Italian member state environmental attaché noted that early on, Italy often agreed to environmental legislation in order to look “Green” to its public, even when it knew it lacked the capacity for implementing the policy (Interview 1).

49 See Pollack (1997) for an excellent analysis of the Commission’s formal and informal agenda-setting power.
In environmental policy, however, there arose what institutionalists call "unintended consequences" from letting the Commission carry out its Treaty-mandated powers. The Commission, even before the establishment of DG XI, but even more so afterwards, exploited the gap between the member states interest in (and the importance they placed upon) the environment, and their need to pass harmonized environmental policy at the European level. The need for European environmental policy was real, either to prevent and control transboundary pollution, or to harmonize national measures preventing and controlling industrial and other pollution in order to keep the competition playing-field even. To those in the Commission tasked with proposing environmental policy, the fact that many of the member states did not take environmental policy seriously provided a "window" for pushing the strictest possible legislation forward (Sbragia 1996, 248; Pollack 1997, 125). This, combined with the desire of environmental representatives from states such as Germany to have a greater impact from Brussels than was possible at home, meant that many times the Commission’s proposals went far beyond what even the "leader" member states had envisioned or had implemented nationally (Sbragia 1996, 241, 247-248).

By the early to mid-1980s, then, there was already an established inter-institutional power struggle within the Community over environmental policy making. DG XI and the "leader" member states pursued environmental policy following the most highly-developed thinking on the topic, such as the precautionary principle, the polluter-pays principle and the application of uniform emissions standards and "Best Available Technology" (BAT) at the European level (Sbragia 1996, 251). While members of this rather loose coalition may have disagreed on why a European environmental policy was important—whether to protect the environment per se or to protect domestic industries while protecting the environment—it is
clear that the Council of Ministers was no monolithic policy-making body. Within the Council itself the member states disagreed on how much importance to place on environmental policy, and how to regulate it at the European level. The Commission and the leader member states were, for a time, able to exploit this division.

The evolving state-directed policy network is shown in Figure 2.3. While the Council still held the final power of decision-making, the split within it between the laggard and leader member states helped give DG XI a greater opportunity to influence policy within the sub-government of the policy community. Its heightening importance began to draw more environmental groups to the European level in the early 1980s. These groups remained outside the sub-government, but their shared world-view with DG XI granted them a greater degree of consultation with Commission officials than might otherwise be expected of such a loose and fragmented associational system. At the very least, they were allowed to consult widely within DG XI, in a sort of "free for all" consultation (Mazey and Richardson 1993b, 111). This was the beginning of a weak pressure pluralist policy network. Such shifts are predicted by the policy network model, which posits that state-directed networks often give rise to pressure pluralist networks, especially in neophyte policy areas where there is no associational system until the state begins to make policy in a particular area (Coleman and Skogstad 1990, 29). While there were national level environmental policies and environmental groups, it was not until after 1981 that groups at the European level had their own "ear" within the Commission. The impact and influence of environmental groups acting at the EC level on actual policy at this early stage is hard to judge, since both DG XI and European environmental groups were both adjusting to the Europeanization of the environmental policy arena (Mazey and Richardson 1993b, 111). It is more likely that DG XI took its cues from the "green" member
states, and then pushed the limits of policy stringency as much and as often as it could, expecting some watering down of the policy proposals within the Council of Ministers as they sought consensus.

There were several consequences of the Commission's entrepreneurship. First, the member states' governments quickly realized that implementing the EC's environmental policy did entail costs to the member states. Second, many member states attempted to forego the implementation of the policy, which in turn meant that the Commission could bring them before the ECJ. Third, as the EC began to make more environmental policy at the Community level, it reduced the ability of the member states either to act on their own in making national legislation (in the case of the "leaders"), or to continue to ignore this policy area (in the case of
the "laggards"). Even as environmental problems were growing within the Community and as
the public began to take a greater interest in this policy area, the Council began to take longer
to deliberate proposals, and it became more difficult to find a compromise between "leader"
and "laggard" states (Vogel 1993a, 185; Sbragia 1996, 248). All of these factors subsequently
resulted in the member states attempting to regain "control" over this policy area. Once the
window of opportunity that had given the Commission greater leeway in policy agenda setting
began to close, it became increasingly difficult to pass environmental legislation at the
European level.

Conclusions

Informal Europeanization—a shift in the policy-making arena from the member state to
the EC level, and a small but growing role for non-state actors such as the Commission and
Court—occurred in spite of the lack of Treaty competence for environmental policy-making at
the European level. Liberal intergovernmentalists might point to this and assert that given the
rule of unanimity and the lack of formal competence at the EC level, many of the policy
outputs in environmental policy could reflect no more than the "lowest common denominator"
of policy making (Marks, Hooghe et al. 1996, 345). Even if policy went beyond that lowest
common denominator, intergovernmentalists would attribute the resultant policy to bargaining
outcomes within the Council. However, as described above, the Community's environmental
policy often went far beyond that of even the "leader" states, reflecting the activity of European
actors such as the Commission, as well as the fact that member state interests on the
environment were not so "unitary" as intergovernmentalists would suppose. In addition, even
though the "leader" member states acted as the primary proponents of EC environmental
policy. Intergovernmentalism cannot capture the divisions within and among the member states which the Commission was able to exploit in its bid to expand its influence in this policy area.

Functionalism/transactionalism also fails to fully explain the Europeanization of this policy area, limited as it was. Focusing on their three components of change: organizations, transnational activity, and rule change, the above account shows that, at least until the mid-1980s, only the first—organizational activity—played any role in the Europeanization of this policy area. The Commission’s role as policy entrepreneur helped push forward policies which were then binding on the member states. However, the Commission was mainly taking its lead from the “green” member states, whose own national legislation had pushed the issue to the European level. For a time, the “laggard” states accepted the Community’s advance into legislating this policy area, but once these member states realized the costs and implications of EC level environmental policy, they closed the Commission’s “window of opportunity” and returned to intergovernmental haggling within the Council. Interestingly, despite the increased salience of the environment to the general public, there was little transnational activity at the European level prior to the Single European Act. Environmental groups were limited to lobbying DG XI, a weak DG within a Commission limited by the larger macro-level institutional structure to proposing policy for the approval of a unanimous Council.

Moves forward by the Community were most evident in the Environmental Action Programs, (developed by the Council in consultation with the Commission) which, because of their non-binding nature, provided a framework for EC environmental policy. As these progressed they became more forward looking, taking up many of the principles already embodied in German environmental policy, such as the “precautionary principle” (Sbragia 1996, 250). The Action Programs reflected a progressive evolution in thinking about the
environment—from a nuisance policy affecting trade, to a policy which ran through all other policy areas because of their impact on the environment. The Commission (DG XI after 1981) and the leader member states had great influence on the development of these Action Plans. The Action Programs, however, left the member states free to debate and reject, within the Council, specific policy proposals meant to implement the Plans.

While the Action Programs were, indeed, non-binding, they did set out some of the main principles that were to guide EC environmental policy in its further evolution. The establishment of these principles, their application within actual environmental policy, and their acceptance by the Court as guiding principles for policy reveal some of the "unintended consequences" inherent in EC policy-making, according to the institutionalist view. The Court, as discussed above in the 1985 Waste Oils Case, provided the Community with the logic that the goal of protection of the environment, although not present in the Treaty, should be considered one of the Community's essential objectives. This, and the earlier decision of the Court upholding the use of Article 100 as a basis for environmental policy, helped give the Commission greater latitude in proposing policy, since it no longer needed to justify its action in this policy area. For a time, it seemed that environmental policy "got away" from many of the member states, especially states like Britain that paid too little attention to a policy that was steadily growing in importance both politically and economically. By the time the member states began to retrench their own power within the Council of Ministers, a great deal of policy had already been made, all of which was binding on the member states and further limited their own power to make legislation in this policy area. Historical institutionalism thus seems best equipped to grasp the dynamics of the informal Europeanization of environmental policy-making prior to the Single European Act.
The governance of this policy area was largely intergovernmental for most of the period preceding the Single European Act. The member states retained a high degree of control over policy outcomes through the requirement for unanimity in the Council of Ministers. However, as this chapter has demonstrated, the activities of the Commission and even of particular internal dynamics within the member states cannot be ignored. The lack of attention paid to environmental politics by many of the member states allowed their ministers at the EU level to pursue their own personal goals in this policy area, supported by DG XI which also wished to extend its power. It is important to note, however, that the institutional decision rule of unanimity in the Council allowed the member states within it to regain control over this policy area once they realized that the Commission was overstepping its formal bounds. This retrenchment did not last long, however.

With the accession of the three “Southern” member states of Greece, Spain and Portugal, the need for harmonized environmental policy became even more salient, since these states had no formal environmental policy and were primarily focused on their own economic development (Sbragia 1996, 249). There was a very real danger that without a harmonized approach to pollution prevention at the European level, industries in “leader” member states would be at a severe competitive disadvantage compared to industries in states such as Spain which did not face the costs of implementing pollution control. In addition, increasingly severe environmental pollution such as acid rain, industrial pollution, water pollution, and hazardous waste spills that crossed borders or affected rivers running through many states made European-level action on the environment a necessity (Vogel 1993a, 184). Institutional change, either in the form of granting formal competence of this policy area to the EC, or a change in
the voting decision-rules, became essential in order for the EC and the member states to break out of the stalemate that ensued within the Council of Ministers.

The next chapter turns to the Europeanization of environmental policy after the Single European Act. Many scholars and EC policy makers alike consider the Single European Act as the turning point for environmental policy-making (Interviews 7 & 10, and see especially Mazey and Richardson 1993a; Sbragia 1996). The next chapter examines the institutional changes that brought environmental policy onto the EC’s formal policy-making agenda. At the center of this analysis is the question of whether and how the formal Europeanization of the environmental policy arena caused the Europeanization of actor relationships strategies, and whether this resulted in an evolution of governance in this policy area.
In July 1987, the Single European Act amended the Treaty of Rome. The primary goal of the Single European Act was the completion of the internal market of the Community by December 31, 1992. This market was defined as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured" (Commission and Council of the European Communities 1986, Article 8a). The movement toward this union began in 1985, when the Commission drew up a detailed program and timetable for the completion of the internal market (Task Force 1990, 35). The Single European Act had several important goals beyond the completion of the internal market. The Treaty governing the Community needed to be amended to help accommodate the enlargement of the Community from the original six members to the twelve it would include in 1986 (Hildebrand 1993, 29). One of its primary goals was to accelerate the Community's economic growth and put an end to the perceived "Eurosclerosis" of the late 1970's and early 1980's (Task Force 1990, 5; Hildebrand 1993, 29).

The negotiators of the Single Act realized that the establishment of the Single Market would have increasingly harmful effects on the environment, and so sought to heighten the importance of the environment as a policy area in the SEA (Zacker 1991, 264; Hildebrand 1993, 29-30). In addition, the Community's past experience with environmental policy that affected competition and trade among the member states played a role in institutionalizing this policy at the EC level. Environmental policies affecting the completion of the internal market, or
having a bearing on competition and trade within that market, would henceforth be set at the European level (Hildebrand 1993, 33).

The SEA formally moved environmental policy-making into the Community arena. By 1987, when the SEA came into force as the Treaty governing the Community, the Community had already had a great deal of environmental policy-making experience. With this formalization of the Community’s policy-making authority in this policy arena came changes in the macro-level structure of policy making. Some of the formalization simply institutionalized the process the Community had been using for over 15 years of environmental policy making. Some changes in the macro-level structure included major changes in the decision-rules governing policy affecting the internal market, including the application of qualified majority voting and an increased role for the Parliament. The remainder of this chapter outlines the formal changes under the SEA, and then addresses how and whether these changes had an impact on the dynamics of governance within the environmental policy arena.

The Environment in the Treaty

The environment received its own section, or Title, within the new Treaty. The Environmental Title stated that the environment was an integral part of all other Community policies—the only policy area specifically designated to be taken into consideration when making all policy (Koppen 1993, 137; Vogel 1995, 60). The Environmental Title, Articles 130r-130t, gave the EC competence to make environmental policy on its own merit for the first time, without having to tie this policy explicitly to economic goals. Article 130r set out five principles for Community environmental policy: 1) the “prevention principle” stating that

\[\text{See Task Force 1990, for specifics. For example, one of the most important consequences was seen to be}\]
wherever possible environmental problems should be prevented rather than rectified later; 2) the principle that environmental damage should be rectified at the source; 3) the “polluter pays” principle that polluters should bear the cost of their polluting, giving them incentive not to pollute in the first place; 4) the principle that environmental protection is a part of all other policies; and 5) the principle that member states and the Community share responsibility for protecting the environment (Wagenbaur 1992, 24). All of these had appeared in one or more of the Environmental Action Programs.

Under the Single Act, legislation dealing primarily with environmental protection, with little or no connection to the internal market, was made using Article 130s, the procedural Article in the Environmental Title, as its legal basis. The procedure for legislation passed under Article 130 was identical to that prior to the SEA. The Parliament retained only an advisory role, and the Council still needed to vote unanimously to pass environmental legislation proposed under the Environmental Title.51

The environment also received a prominent place in Article 100a, which replaced Article 100. The new article stated that the formation of the internal market would have as its basis “a high level of protection” for the environment (Commission and Council of the European Communities 1986). Environmental legislation having a direct impact on the formation of the Single Market was based on Article 100a. The policy-making procedure for 100a differed from both Article 130 and from the old Article 100. Article 100a called for

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51 This was true unless the Council had previously voted, by unanimous decision, to pass legislation in a particular area by qualified majority (Commission and Council of the European Communities 1986).
qualified majority voting (QMV) by the Council.\textsuperscript{52} Qualified majority voting meant that one member state could no longer veto a proposal, and thus decreased the probability of lowest common denominator decisions, or the blockage of legislation in the Council.\textsuperscript{53} Because Article 100a had as its primary focus the completion of the Single Market, the authors of the Single European Act wanted to improve the efficiency of the policy-making process, and so eliminated the veto from the Council procedure.

In addition to QMV, legislation based on 100a was now subject to a "co-operation procedure" with the Parliament. This "co-operation procedure" entailed a second reading by the Parliament, which could then amend the proposal after the Council delivered its common position. If the Council did not wish to take into account the Parliament's amendments, it then needed to vote by unanimous decision to pass its original common position. If the Council accepted the Parliament's amendments, it voted by qualified majority, and passed its common position with Parliamentary amendments.

Another procedural difference under the SEA was the development of legalized means for member states to adopt more stringent environmental standards than those agreed upon by the Community. These procedures were put in place to ensure that the more environmentally progressive states did not have to regress in their environmental policies as they waited for other member states to catch up. Article 130t gave member states the ability to enact environmental legislation stricter than that of the Community, as long as it did not interfere with the internal market or pose a trade barrier to other member states. This Article could be invoked whenever the Council voted on environmental legislation using Article 130s, which

\textsuperscript{52} The enhanced role of the Parliament in the decision-making process will be covered in more detail in the next chapter.
required unanimity. The inclusion of Article 130t in the Treaty helped reassure states such as Denmark, Germany and the Netherlands which had feared that a more harmonized European environmental policy would endanger their own, strong national environmental policies (Vogel 1995, 60). The essence of this "opt-out" clause had often been included within Directives prior to the SEA, and so this paragraph neither represented anything new and innovative in actual policy, nor was it a step backwards in the Europeanization of Community environmental policy (Krämer 1987, 677).

In addition to the provisions within Article 130t, an "opt-out" clause was included in Article 100a, paragraph four. Article 100a(4) allowed member states to maintain their existing environmental legislation if it was stricter than that of the Community, provided it did not become a non-tariff barrier to trade. The paragraph, according to a prominent Community legal scholar, was not meant to be used to introduce new environmental provisions which would interfere with the functioning of the Single Market (Krämer 1987, 680, see also Vogel, 1995 #54, 76-77).

Prior to the Single European Act, it was possible to use either Article 100, Article 235, or both, as the legal basis for environmental Directives. After the Single Act, because of the difference in the policy-making procedures of Article 100a and Article 130s, the Commission could not use both Articles; it had to choose between the two. The Commission favored the use of Article 100a whenever possible, because the qualified majority voting procedure lessened the likelihood that the resultant environmental policy would be a lowest common denominator compromise to satisfy the least environmentally progressive state (Hildebrand 1993, 32). The

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51 Under the Single European Act, and until the 1995 accession of Austria, Finland and Sweden, a total of 54 of 76 votes was needed to pass a proposal. (Nugent 1994, 143).
Council, on the other hand, wishing to retain member state veto power wherever possible, preferred the use of Article 130s (Hildebrand 1993, 32). The Council could change the basis of a Commission Directive, if it so chose. This would seem to give the Council a great deal of power vis-à-vis the Commission, but it was another institution, the European Court of Justice (ECJ) that would have the final say.

The ECJ quickly emerged as the arbiter of this tug-of-war between the Commission and Council. For example, in developing a Directive for regulating the waste from the titanium dioxide industry, the Commission had based its Directive on Article 100a because the waste was potentially a tradable product. The Council changed the basis of the Directive to 130s, stating that the main purpose of the Directive was protection of the environment, not regulation of trade. In 1991, the Court, in what has become known as the Titanium Dioxide Case (Case 300/89, Commission v. Council), ruled that the Directive should, in fact, have remained based on Article 100a because the regulation of this industry affected the internal market (Wgenbaur 1992, 22; Hildebrand 1993, 32). In a similar case, referred to as the Waste Case (Case 155/91, Commission v. Council), the Court was asked to review the basis of the Directive on Waste (Dir. 91/156). As in the Titanium Dioxide Case, the Commission had based the Waste Directive on Article 100a of the SEA, and the Council had approved it based on Article 130s. In contrast to the Titanium Dioxide Case, the Court decided that the primary objective of the Directive was not the free movement of waste throughout the Community, but rather the protection of the environment. According to the Court, the Directive not only did not establish

54 While in general it could be stated that the Commission and Council did not see "eye to eye" on the question of the use of Article 100a (Hildebrand 1993, 32), there were certainly member states that likely preferred the use of 100a and its provision for QMV since it generally meant that consensus was easier to find without resorting to LCD outcomes.
the principle of the free movement of waste, but in places seemed to contradict this principle through its emphasis on self-sufficiency and localization of waste disposal (Wachsmann 1993, 1059). With this case, the Court re-established the importance and use of the Environmental Title of the Single European Act, which might have been rendered defunct as a result of the Titanium Dioxide Case. The Waste Case helped refine the use of Articles 100a and 130s when applied to Community environmental legislation.55

The debate about the use of Article 100a and 130s was at its core a struggle about the relative power of the Community’s institutions. Directives based on Article 100a were decided in the Council by qualified majority, and gave the Parliament more power to influence the Directive through its second reading (discussed more fully below). This increased influence came at a cost to the power and influence of the individual member states, which now lacked veto power in the Council under 100a. Intergovernmentalism can explain why the member states gave up their veto power for internal market related policy: because it was in the overall self-interest of the states to make policy in this important economic area at a time of stagflation and flat growth in the Community. It fails to explain, however, the role of the Court in mediating the struggle between the Council and the Commission over the use of Article 100a for areas on the edges of internal market policy. While the Court did not rule out the use of 130s, cases like Titanium Dioxide stretched the limits of “internal market policy” far beyond what the Treaty makers had envisioned. Historical institutionalists would not be surprised at

55 One legal scholar clarifies: “Community environmental measures having a direct impact on the internal market process must be based on Article 100a exclusively.” These include product related measures. “Community measures having an indirect or incidental impact on the internal market must be based on Article 130s. Among such measures are anti-pollution regulations of a general character such as Directive 91/156. Community environmental measures having no impact on the internal market process must also be based on Article 130s” (Geradin 1993c, 424).
the power struggle that ensued, and which was fought largely within the ECJ.\(^{56}\) The “unintended consequences” of the inclusion of Article 100a in the SEA included the fact that any environmental policy with potential impact on the internal market could “fit” under that Article and be decided by QMV in the Council.

Like the historical institutionalists, transactionalists would not be surprised at the Commission’s attempt to use the Article that would enhance its role in the policy-making process. With the formal Europeanization of environmental policy making in the European arena in the Single European Act came a shift in actor roles and strategies at that level. The *formal* change in the institutional structures of the environmental process, especially the use of Article 100a in matters dealing with both the environment and the completion of the Single Market, created new relationships—new policy networks—within the European environmental policy community. Whether or not these changes institutionalized a “supranationalization” of EC environmental policy-making and the governance of this policy area must be thoroughly investigated before we can say the transactionalists “got it right.”

**The Post-SEA Environmental Policy Community**

**Policy Initiation: The Commission**

Most intergovernmental analyses of EU policy-making and integration treat the Commission as a monolithic entity from which policy proposals issue on an orderly and regular basis. In fact, the Commission is composed of layers of competing bureaucracies that both cooperate and compete with each other. While the Commission as a whole seeks to increase its

\(^{56}\) The debate was, in fact, later resolved in favor of the Commission and Parliament’s view by the further
power and legitimacy in both European integration efforts and in overall policy-making, the different Directorates General within the institution also fight to gain power and prestige within the Commission itself. Studies that deal with the institutions of the EU on a more specific basis acknowledge the "bureaucratic politics" that goes on within the Commission long before a policy proposal ever reaches the Council of Ministers (Peters 1992; Hull 1993; Cram 1994). The relative power and influence of the different Directorates General vary from sector to sector based on many determinants, including institutional, relational and even ideological factors (Cram 1994, 201).

Institutional factors include the policy instruments available to the DG such as the choice between Regulations and Directives, and, after the SEA, whether QMV or unanimity was the rule in the Council. The degree of institutionalization and "embeddedness" of the policy area in EU policy also played a role. For instance, agriculture policy had already been deeply institutionalized within the EC prior to the SEA, whereas environmental policy was still a "new" policy area for the EC. Relational variables—which are certainly not dictated in the Treaties—include the degree of support for a policy from other DGs and the President of the Commission, and the strength and reputation of both the Director General and the Commissioner for a policy area. Also important is the degree of perceived support for the policy area, based on past rulings and practice, from the European Court of Justice. (Cram 1994, 201). Finally, ideological factors center on a Directorate's world-view of a problem or policy. For example, DG XI is a proponent of forward-thinking and precautionary approaches in environmental policy, which often comes up against the predominant "free-market decision-rule changes within the Maastricht Treaty. discussed in Chapter Four.
liberalism” thinking that underlies most of the Community’s policy (Hooghe 1998; Lenschow and Zito 1998).

The policy proposals that emerge from the Commission result from a complex bargaining process that begins within the policy units of a Directorate General tasked with a policy area, and expand to include different Directorates General, sectoral actors, and national representatives (Cram 1994, 200). Prior to the Single European Act, DG XI, the Directorate for Environmental Protection, was at best a weakling among the other DGs, especially in comparison to those dealing with Agriculture, Competition, and Trade. The inclusion of the Environmental Title in the SEA helped legitimize and strengthen DG XI (Vogel 1995, 60). No longer did the Directorate have to cobble together legislation based on the catch-all Article 235, or need to justify the use of Article 100 for environmental protection. Environmental protection was to be part and parcel of the completion of the Single Market in addition to having its own place within the Treaty through the Environmental Title.

The SEA gave DG XI a “window of opportunity” upon which it was able to capitalize (Cram 1994). The Commission as an institution, and DG XI in particular, became more important in the environmental and single market policy-making processes after the SEA. The Commission’s scope and power for proposing legislation on environmental protection had been expanded—there was no longer any area of environmental protection that DG XI could not touch, if there was a perceived need for a European level policy. Prior to the SEA, DG XI was essentially restricted to those areas that had appeared in the Environmental Programs, or to those that needed European regulation due to cross-border pollution, or because they directly affected competition within the internal market. The legitimization and institutionalization of
environmental policy within the SEA helped legitimize and strengthen DG XI's role within the larger Commission policy community.

The relationship of DG XI with other DGs changed as it became clear that environmental protection policy was no longer a trivial, "add on" policy. As Laurens Brinkhorst, former Director General of DG XI (1987-1994) noted, "There has been quite clearly, at a number of levels, from the beginning, a very resentful, sort of reactionary attitude towards environmental policy (from other Directorates General). I think DG XI has been rowing against the stream in the Commission, and thanks to the institutional change (of the SEA), outside structures and outside support, such as the European Parliament, we've been winning. But it has been sometimes like guerrilla warfare" (Interview 12).

After the SEA, it did not take long before environmental groups began to see the importance of getting in on the early stages of a proposed piece of EC environmental legislation—through lobbying DG XI directly. Prior to the SEA, there was no doubt that the key level for influencing the outcome of an environmental Directive was at the level of the national representatives of the member states. If even one state could be persuaded to vote against a proposal in the Council, the proposal was dead. Industrial, commercial and business groups were formed mainly at the national level, with a few representatives in Brussels to lobby Council representatives directly. After the SEA, and the opening up of the entire Single Market policy to qualified majority voting, actor strategies changed drastically. Several studies have noted the increase in lobby groups at the European level after the SEA (Greenwood, Grote et al. 1992; Gorges 1993; Mazey and Richardson 1993a; Mazey and Richardson 1993b). While umbrella organizations had existed in the EC for many years, the number and scope of
the groups that came to Brussels after the SEA increased sharply (Mazey and Richardson 1993a, 114).

In general, societal organizations heard about proposed legislation through networks of like-minded groups in Brussels—environmental groups would keep others informed about policy proposals in their particular areas of interest, for example. Efforts were made by organizations to lobby the “appropriate” DG. For instance, until about 1994, UNICE (the Union of Industry and Employer Confederations of Europe), the umbrella group for industry, did not lobby DG XI directly, preferring to go through DG III, the DG for Competition policy (Interviews 12 & 15). That DG would then take on DG XI as the proposed legislation moved to inter-Directorate General bargaining. Within their “own” policy area, groups tried to lobby their Commission Directorate at the earliest possible stage. Different DGs privileged different groups—groups that could provide them with the information and expertise that they needed. As other analysts have noted, the European level groups often were unable to speak authoritatively for all the members of their association (Gorges 1993; Middlemas 1995, ch. 6, 10, 11). The pervasive national and cross-sectoral differences within the European level interest associations generally prevented corporatist or clientelist networks from arising with the Commission. In addition, the general openness of the Commission provided access to anyone who was able to catch wind of a proposal and get organized around it (Mazey and Richardson 1993a, 121). In most policy areas the Commission did try to deal with those groups and associations that represented the most pan-European point of view, and sector-specific industry associations began to outnumber the larger, horizontal groups such as UNICE (Gorges 1993, 75).
Generally in the Commission lobbying process, the stronger, better organized, larger and more able the organization is to speak for a particular sector or interest, the more closely it is tied into and able to influence the policy-making process (Mazey and Richardson 1993a, 116; Middlemas 1995, ch. 10-11). Mazey and Richardson (1993a, 122) point out the strength of CEFIC (European Chemical Industry Council) with its size, technical expertise and ability to speak for a pan-European sectoral interest. Environmental groups do not fit this description, yet somehow they formed a powerful lobby at the European level. The EEB remained small—even in 1995, it had only about 25 full-time staff. But under its umbrella are groups like Greenpeace, Worldwide Fund for Nature (WWF), and Friends of the Earth (FOE). While these international groups did not work for the EEB, they represented specific interests within the environmental sector and could lobby the Commission (and Parliament) effectively. What the EEB lacked in size, it more than made up for through its generalized support of an overall approach to environmental problems that was pan-European, and which recognized that most environmental problems could not be dealt with on a national basis.

It was during this time period that DG XI gained the reputation of having been "captured" by environmental interests (Mazey and Richardson 1993a, 121). Environmental interest groups gained a sympathetic ear from this Directorate General, and the DG, in turn, needed information and expertise in order to draft policy proposals. The common focus and outlook of a variety of environmental groups working within a transnational network at the European level helped them gain the Commission’s ear through DG XI soon after the SEA. Thus, the ideas and values of the environmental groups coincided with those of the DG XI officials, and became more important than the strength and size of the actual interest groups involved in determining the influence and participation of these groups in the policy process.
during the Commission’s initiation stage. This evidence contradicts traditional interest group literature, and supports the argument of those like Risse-Kappen who focus on shared ideas and values as a key to understanding policy-making in multi-level polities and in transnational settings (Risse-Kappen 1995; Risse-Kappen 1996).

The networks that formed around DG XI in the post-SEA time frame, while having a shared world-view, were not concertation or corporatist style Closed networks, but pressure pluralist in character (Figure 3.1). The networks remained fluid and open to other interests, and, while there was consistent lobbying on the part of the environmental groups, there were no formal arrangements to include them in the actual policy formulation process. They remained outside the sub-government, yet became an integral part of the policy community, providing their information and expertise to DG XI. The policy community also included member state representatives who were included in the sub-government, along with the rest of the Commission. The member states were not only formally involved in the sub-government, by way of the Treaty’s outline of the policy-making process, but they also used informal contacts throughout the Commission and with other like-minded member states in order to influence the Commission’s policy as early in the process as possible (Interview 2).

**Figure 3.1: DG XI Policy Community, Post-SEA Pressure Pluralist Network**

- ○ = sub-government
- ▶ = attentive public (heavier or dashed line indicates strength of relationship)

European industrial groups

Other DGs

Member State attachés

European Environment Groups

DG XI
DG XI began to take on a role as a "policy mediator" both within the Commission and between the Commission and the member states' representatives within the Council. In policy areas that fell under Article 100a, it was important to find a balance between single market and environmental policy within the Commission. Qualified majority voting meant that DG XI and the "leader" member states could work together as policy advocates to ensure that, as one environmental attaché put it, European environmental policy was as powerful and as strong as possible (Interview 2). The SEA enhanced the Commission's policy entrepreneurial role across the EC's institutions and throughout the policy-making process. The Commission's role as observer/mediator in all working group meetings of the Council, and even in all committee meetings within the Parliament, meant that it was able to build bridges and connect previously isolated policy communities. While a new policy community and policy network still formed at the decision-making stage of policy making, the increased legitimacy and policy-making role of DG XI meant that the lines between the initiation and decision-making policy communities began to blur.

Decision Making: The Council of Ministers

Prior to the SEA, there was an institutionally mandated need to find consensus among the member state representatives in the Council of Ministers if a proposal were to be approved by the Council itself. Under the SEA, QMV eliminated the necessity of consensus in all policy areas dealing with the completion of the internal market (Article 100a). After the SEA, the possibility therefore existed that member states would have to comply with legislation that they
had rejected in the only state-representative legislative body in the Community.\(^\text{57}\) States that opposed a proposed Directive needed to form coalitions with like-minded states within the Council in order to block such proposals. Likewise, states that supported the highest levels of environmental protection also needed to form their own coalitions. These coalitions were formed, not at the highest Council levels, but within the working groups that conduct the bulk of Council business, and are shown in Figure 3.2.

**Figure 3.2: Decision-making Stage: Council of Ministers working groups policy community: simplified**

- \(\bigcirc\) = sub-government (darker shading indicates importance of actors/institution)
- \(\cdots \rightarrow\) = links with attentive public
- \(\leftrightarrow\) = formal links with member states

The working groups (sometimes referred to as committees) in the Council of Environmental Ministers were made up of environmental attachés from the national environmental ministries. Generally, environmental attachés characterize their relationships

\(^{57}\) While the other member state representative body, the European Council, is more intergovernmental and representative of member state interests, it is not actually involved in the policy-making process. It often sets
with their colleagues as collegial, rather than contentious (Interviews). It is likely that all member state environmental attachés, if left on their own, would pursue the highest level of environmental protection—but they are all constrained by their governments’ interests in a given issue area. Again, this points out the fact that member state “interests” are not monolithic, even within the Council of Ministers. Even with the advent of QMV under the Single European Act, the goal of finding consensus in policy-making continued within the working groups. If they could not achieve agreement, the search for consensus continued at the higher COREPER and Council levels. However, as in other policy areas under QMV, when an agreement could not be reached, the proposal was subject to a formal vote, which could leave up to four states in a minority position (Hayes-Renshaw and Wallace 1995, 565).

Overall, then, for proposals subject to QMV, the importance of strong coalitions within the Council began to eclipse the individual member states. The need to build coalitions to either push a proposal forward or to block it moved the policy-making process beyond intergovernmentalism. Policy making, even in the Council-dominated decision-making stage, became more multi-level in nature. Member states’ positions were no longer solely reflective of their own “national interests” as defined by government policy, or domestic societal input, but they were profoundly shaped by the need to build coalitions within the Council through compromise with other member states. This created room for non-state actors, particularly different Directorates General within the Commission, to use the coalitions to push their own agendas at the European level. In addition, national level interest associations, no longer assured of their state’s veto at the European level, began to focus more attention and resources the course for future European policy, but its suggestions only become policy if they are taken up by the Commission and developed into policy proposals.
at the European level. In addition to their increased lobbying of the Commission, groups began
to try to influence the EU’s other decision-making institution, the European Parliament, which
had been given increased powers under the cooperation procedure of the SEA.

Decision Making: The European Parliament

Prior to the Single European Act, the Parliament had only a consultation role in the
policy-making process. In all policy areas it was given the opportunity for a first reading of a
proposal, and could recommend amendments to the Council of Ministers. There was no need
for the Council to adopt those amendments, or to consider them or the Parliament beyond that
initial reading. Under Article 100a, the Parliament was given a “cooperation” role in policy-
making through its second reading of a proposal. Once the Council had adopted its Common
Position, the Parliament could amend the Council’s text by re-stating its amendments from its
first reading or by adopting new ones.

The cooperation procedure was instituted for two primary reasons. The first was to help
overcome what was perceived to be the lack of openness, or transparency, in the EC’s policy-
making process, with its concentration of power within the closed and secretive Council of
Ministers. The second reading would open the process up to further public scrutiny through the
elected Parliament. The fact that the Parliament was the only elected body at the European
level led to the second reason for instituting the cooperation procedure: the attempt to

58 The divisions between environmental Ministry officials and officials representing other ministries will be
fully explicated in Chapter Five, on the EU’s Climate Change policy.
59 The only concession the Parliament had gained was a requirement that the Council could not put forth its
common position on a proposal before the Parliament had submitted its opinion. This concession was gained
through a case in the ECJ after the Council, in fact, published its Common Position on a proposed Directive
before the Parliament had considered the proposal (the 1980 Isoglucose Case). The main implication of this was
that if the Parliament did not support a particular Directive, it could delay or derail the policy-making process
by failing to put a proposal on its agenda.
overcome a perceived "democratic deficit" at the European level (Hildebrand 1993, 32). The Parliament's recommendations from its second reading were not binding on the Council, but the implications for openness and democracy of ignoring the Parliament's second reading meant that the Council had to take this process seriously. The second reading began to take on a greater degree of importance as interest groups found the Parliament open to their lobbying efforts. The cooperation procedure gave societal interest groups another point of access at the European level, outside the Commission and at a later point in the policy-making process. Environmental, industry and business groups began to use the Parliament as a lobbying ground with increasing frequency after the SEA.

The structure of the Parliament is such that national interests are muted, and political groupings of conservatives, liberals, and socialists, become more important. Members of Parliament (MEPs) run through national parties, and are elected by national electorates. While there are national party groups within the larger European level party groupings, there are few organizational links between the home party and the Parliamentary party (Nugent 1994, 196). Coalitions of parties form ideological political groups, which are represented proportionately within the various Committees in the Parliament, with the larger groups having more seats in the Committees. The Committee structure is the key to the organization and understanding of the Parliament. The Parliament is organized into 19 standing committees, along the lines of policy issue areas, but not necessarily coinciding with the Directorates General of the Commission, and additional ad hoc committees as needed for specific issues (Nugent 1994, 201). The power and influence of the standing committees varies according to several factors. These include the importance of the policy area in the EU's policy framework, the expertise and experience of the people within the Committee (Nugent points out the difficulty of finding
technically qualified members for the Committee on Energy, Research and Technology, for example), the power of Parliament in the policy area (the Budgetary Committee’s influence is quite strong because of the Parliament’s budgetary approval powers), and the individual leadership ability and personal influence of the Committee’s Chairperson (Nugent 1994, 203-204).

The Environment Committee of the Parliament was and is one of the most active and respected in the Parliament. Even prior to the SEA, the Environment Committee won the respect of members of the Commission and Council of Ministers. Its chairperson, Ken Collins, has been in place since the first direct elections of the EP in 1979. He has played an activist role both within the Parliament and outside the Parliament in pushing for strong environmental policy at the European level. With the advent of the cooperation procedure after the SEA, the environmental policy community centered on the Parliament, and the networks within it and between it and the other institutions, became increasingly important.

Like the Commission, the Parliament has always given open access to lobbyists, and, over time, has become more “plugged in” to European information networks, research institutes and universities, in order to gain expertise and information on issues or proposals (Judge, Earnshaw et al. 1994, 47). While the possibility for policy influence by the Parliament increased after the SEA because of its second reading capability, the time for lobbying the Parliament came as it took up the proposed legislation for its first reading (Andersen and Eliassen 1993, 31, my emphasis). Again, this was all part of the attempt by sectoral interest associations to influence policy in the earliest possible stages—before the Council had come to

60 Collins’ role is explained in more detail in Chapters Four and Six.
a final common position. If Parliament amended the Commission’s draft proposal in the first reading stage, there was a greater chance that the Council would include the amendment in its own second reading of the proposal, knowing that the Parliament had supported the amendment from the beginning. Thus, lobby groups tried to get their positions reflected in the Parliament’s amendments during the first reading. Within the Parliament, the Environment Committee generally debated proposed legislation, presented its recommended amendments to the Plenary, which then adopted or rejected them, and often added more. Sometimes more than one Committee in the Parliament was tasked with reading the proposal, and the amendments of these Committees would be voted upon in the plenary session of Parliament.

With the advent of the cooperation procedure, new relationships developed between the Parliament and the Commission and Council (Andersen and Eliassen 1993, 31; Judge, Earnshaw et al. 1994, 45). These relationships reflected the recognition by both Commission officials and member state representatives within the Council that the Parliament now had the potential for influencing policy well into the policy-making process, and could no longer be ignored. While the networks within the Council of Ministers remained tightly closed to European level lobbyists, the larger policy community active at the actual decision-making stage of the process now included the Parliament in a strengthened role. The policy networks that formed within the Parliament-centered policy community were pressure pluralist in nature, with open access to all lobby groups, and fluid and informal communication between these societal interests and MEPs and between members of the Parliament’s Committees.

The policy community at this stage of policy-making expanded, with the Parliamentary representatives from the Environment Committee and the environmental representatives in the Council linking the Parliament’s open, pluralist networks with the closed ones of the Council,
as shown in Figure 3.3. In addition, the links between national lobbyists and members of Parliament (MEPs) are shown, since national level groups often use their MEPs as sounding boards and lobbying targets. The Commission, which holds the pen during Council and Parliamentary meetings, and later decides which of the Parliament’s amendments to submit to the Council, has strong formal, as well as informal, links with both institutions.

Figure 3.3: Post SEA Policy Networks in the Decision-making stage

With the advent of QMV in the Council, and the addition of the Parliament’s second reading in the decision-making process, inter-institutional contacts between the Parliament and the Commission became more important (Andersen and Eliassen 1993, 32). From 1981 onwards, a network of like-minded, pro-environment members of the EP and DG XI had developed, and the SEA helped to strengthen this informal relationship. The use of the cooperation procedure often encouraged the Parliament and Commission to exploit differences
between the member states in the Council in order to build coalitions that favored the Commission and Parliament's propositions (Andersen and Eliassen 1993, 32). In addition to more shared substantive policy interests, the Commission and Parliament increasingly found themselves natural allies in the inter-institutional power game among the Commission, Parliament and Council of Ministers. (Peters 1992, 106). The informal relationships between DG XI and the Environment Committee and the Green Group in Parliament helped shape these inter-institutional games. In addition, interviews with several member state environmental attachés confirm the fact that even though only a very small number of pieces of environmental legislation were actually decided by the cooperation procedure at this time (Hildebrand 1993, 35), they found it important to cultivate a strong relationship with Collins and his Committee. The environmental attachés were generally more pro-environment than their fellow representatives in the more traditionally “economic” policy areas, and so Parliamentary support could actually help bolster their own positions within the Council. The “green” member states especially began to work closely with both DG XI and the Green Group and the Environment Committee in Parliament to help push their environmental agenda. These informal relationships intersected the pluralist, open networks of the Commission and Parliament, and the state-directed ones of the Council. Through these increasingly important informal relationships, the state-directed networks of the Council were penetrated, not by societal actors directly, but indirectly through the efforts of Commission and Parliament representatives.

If one were to take a snapshot of the overall policy community for environmental policy making in the post-SEA time frame, one would still have to characterize it as dominated by the state-directed network of the Council. Because all environmental legislation passed using Article 130s was still subject to unanimity in the Council, the Council still held the
preponderance of power even after the SEA. For policy passed using Article 100a, however, the overall policy network was becoming decidedly more pluralist in nature, owing to the increasing influence of the Commission and Parliament in the policy-making process. The informal networks among the EC’s policy-making institutions, even in when unanimity was the decision rule, also enhanced the pluralist nature of the policy networks. European, state, and regional level societal organizations began to take advantage of the openness of the Commission and Parliament to their lobbying efforts, becoming part of a multi-level pressure pluralist network.

Implementation

The third stage in the environmental policy process is implementation. As noted in Chapter Two, this is the stage where the Community had had the most difficulty prior to the SEA. Despite the fact that the SEA had legitimized EC level environmental policy-making, it did not expand the Commission’s implementation or enforcement powers. The Commission still relied on the member states to provide documentation and evidence both of policy transposition into national law and actual implementation. The member states remained officially responsible for implementation even when the actual process of implementing Directives and Regulations “on the ground” was done by local or regional authorities, or even by individual industries. This added to the disparity and unevenness of implementation among the member states.

Just as in pre-SEA environmental policy implementation, the different regulatory mechanisms and policy styles of the member states made uniform enforcement difficult. One problem was a lack of information and understanding about the effective implementation of
environmental policy. In order to remedy that problem, in 1990, the European Community established the European Environment Agency (EEA) to work with the Community’s institutions and the member states to help improve implementation of European environmental policy (Reg. 1210/90). Unlike the U.S. Environmental Protection Agency, which has monitoring and limited enforcement powers through the federal government, the EEA was designed as an information gathering and sharing organ of the Community. The premise behind the institution was that member state compliance with Community environmental directives was more likely if there was objective, reliable information upon which to base their actions. The EEA was designed to improve overall Community implementation by providing those states with less developed environmental programs with the information they needed in order to apply Community Directives and Regulations effectively. In addition to providing information to the member states, the EEA was tasked with public environmental education—an offshoot of the 1987 Year of the Environment. Membership in the EEA was not restricted to Community members. Several states from Central and Eastern Europe became members of the Agency receiving and sharing environmental information with it and with the EU’s member states.

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61 Multiple interviews with member state attachés, DG XI officials and one of the architects of the European Environment Agency (discussed below) indicate that many of the implementation problems are not deliberate attempts to thwart the Community’s or Commission’s authority in this policy area. There are many obstacles to implementation, including the lack of information within the member states with fledgling environmental ministries, lack of money to apply to specific programs, or even problems with the federal structures of member state governments whose representatives in Brussels may not speak for the regional entities responsible under the state’s constitution for implementing environmental policy.

62 Despite having been established by a Regulation in 1990, it was not until 1994 that the Agency began working. The Agency was without a home during that time as member states wrangled over the political problem of where to establish the Agency. The establishment of the EEA was linked for a time with the possibility of a new home for the Parliament to replace its headquarters in Strasbourg, France, so that France blocked the siting of the Agency until the debate over Parliament had been resolved (Wagenbaur 1992, 35). The member states finally resolved the siting problem, and the Agency is now located and functioning in Copenhagen, Denmark.

63 Since its inception, many analysts have been proposing an increased role for the Agency in monitoring Community environmental policy (see for example: Curtin 1991; Wagenbaur 1992; European Environment Agency 1995, interviews with EP members, and DG XI officials, Brussels June-August 1995). The Parliament
Implementation of environmental policy is difficult even within national states, especially those of a federal nature. Canadian environmental policy, for example, is beset by difficulties in the sharing of powers between the Federal and Provincial levels of government.\textsuperscript{64} As Sbragia notes (1993, 348), the nature of environmental policy, and the requirement that it be implemented mainly by local and regional authorities, presents difficulties for enforcement even in systems like the US where there is strong capacity and political will at the central government level. The European Community, therefore, is not unique in its implementation difficulties. Although some member states had markedly stricter national environmental policies than others, the Community’s legislative history in this area helped to even the playing field among the member states. Both Commission representatives and member state environmental attachés note that this “California Effect,” while not perfect, brought the member states with weaker environmental policy closer to those with the most stringent programs.\textsuperscript{65}

\textbf{Post-SEA Environmental Policy: Europeanization of the Policy Arena}

Even after the SEA, the institutionalization of environmental policy-making at the European level was by no means a complete delegation of authority by the member states to the Community level. The Single European Act contained an Article whose purpose was to establish the Community’s legal competence to regulate the environment. Article 130r(4) proposed an increased inspectorate role for the Agency, which was considered at the 1996 Intergovernmental Conference (European Environment Agency 1995, 39).

\textsuperscript{64} For a comprehensive investigation into the political struggles over environmental policy between the Federal and Provincial governments in Canada, see Doern and Conway (1994).

\textsuperscript{65} The California Effect occurs when one political unit with high environmental standards effectively raises the floor of environmental policy for other units who interact with each other through trade. This effect is in stark contrast to the “race to the bottom” in environmental standards that occurs when political units lower their own standards to become competitive with the unit with the lowest level of environmental policy. See Vogel (1995) for a fuller explanation of the “California Effect.”
stated that "The Community shall take action relating to the environment to the extent to which the objectives (of Community environmental policy) can be attained better at the Community level than at the level of the individual Member States" (Vandermeersch 1987, 422). This was the first Treaty reference to the principle of "subsidiarity" that later would become so hotly contested and debated under the Maastricht Treaty. This Article actually brought into question when and whether the Community was actually "better able" to make environmental policy than the member states. In the early days after the passage of the SEA, some scholars concluded that this principle gave residual powers to the member states, and so was a step backwards in the Europeanization of Community environmental policy (Vandermeersch 1987, 422; Meltzer 1990, 592). In other words, they feared that the primary responsibility for environmental protection policy would fall back to the member states, and that Community legislation in this area would become the exception rather than the norm, generally weakening European Community environmental policy (Hildebrand 1993, 36; Sbragia 1993, 343). Other Community legal scholars saw this principle as a "political guideline" rather than an instrument to be used to test the division of powers between the member states and the Community (Krämer 1987, 668). It is interesting to note that during the pre-SEA time frame, there had been, in general, a distinct lack of controversy over the fact that the Community was making environmental policy, despite the lack of Treaty authority for it to do so (Sbragia 1993, 342). The controversies and Court cases on environmental legislation did not question the authority of the Community in this area, but instead, often concerned the character and level of standardization and harmonization, as with the Dangerous Substances Directive.67

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66 See Chapter Four.
The fact that the EC passed a plethora of environmental legislation after the SEA, widening the scope of that legislation to include new areas of environmental policy previously within the purview of the member states, essentially put to rest the legal and scholarly controversy over who would make environmental policy. The transnational nature of many environmental problems made having European standards appear more effective than having a series of diverse member state standards regulating the same issue. The disparity in the environmental consciousness and programs among member states, with Germany the Netherlands and Denmark on one environmental extreme, and Greece, Spain and Portugal on the other, added further pressure to the development of a common policy. Ideally, a high-standard European level policy ensured that member states with weak environmental programs would continue to improve their record of environmental protection, and that environmental restrictions in one state did not become trade barriers to another. Generally, it was in the interest of the “leader” member states to pursue strict European environmental legislation in order to protect their industries from unfair competition from member states with lower standards and pollution control costs. The opt-out clauses in Article 130t and 100a(4) allowed these member states to continue to pursue their high environmental standards, while at the same time enabling the Community to find environmental solutions that would satisfy the remainder of the member states.

These opt-out clauses did not allow member states to use national level environmental legislation in order to effectively restrict trade into their countries, however. The ECJ would be

roughly the same to implement throughout the Community (Vogel 1993b, 120). Britain, however, favored water “quality objectives” for the overall quality of the water, since the fast-moving water on their coasts generally swept away any pollutants (Johnson and Corcelle 1989, 65; Vogel 1993b, 120). The result was a compromise where the most dangerous substances would be regulated by emission standards, and less hazardous substances by water quality standards (Johnson and Corcelle 1989, 26; Vogel 1993b, 120).
called upon to adjudicate this fine line between environmental protection and trade barriers. The Danish Bottles Case had set the precedent that member state environmental legislation could supercede Article 30’s call for unrestricted movement of goods within the Single Market. The scope of that precedent and the limits of Article 130t were tested in a case before the ECJ in 1990.

In the Walloon Import Ban or Belgian Waste Case (Case 2/90 Commission v. Belgium) the Commission brought Belgium before the Court for its prohibition on imported waste into the region of Wallonia. Belgium argued that it was protecting its environment through the import ban, and that waste that could not be recycled was not a tradable “good” under Article 30. The Commission argued that imported waste was not inherently more dangerous to the environment than waste from Wallonia, and the import ban constituted a trade barrier. The Court’s decision in this case focused on three main points (Geradin 1993a, 147). First, it found that waste, recyclable or not, should be considered as a product, the “free movement of which should not be hindered.” Second, the Court ruled that the region of Wallonia had the right to protect its local environment from over-accumulation of waste. Finally, and most controversially, the Court found that “the specific nature of the waste” had to be taken into account, and that the region could discriminate between imported and domestic waste in order to protect its local environment.

The Court’s reasoning has been the subject of legal debate, which cannot be fully explored within the confines of this thesis. Some important points should be highlighted, however. The Court, in deciding that waste of any kind was a tradable good, rejected the viewpoint of states such as Belgium and Germany that had taken the view that disposal of
waste fell outside the rubric of “economic activities” whose fundamental freedom of movement was envisaged by Article 2 of the Treaty and protected by Article 30 (von Wilmowsky 1993, 544). In light of this aspect of its ruling, the Court’s decision in this Case to uphold Wallonia’s ban on imported waste seems contradictory. Two main points in the Court’s reasoning stand out (von Wilmowsky 1993, 551-553). The first is that such a ban might legitimately promote environmental protection in the Community as a whole insofar as it impedes states who wish to export their waste (and the consequent pollution problems associated with it) to other states rather than deal with it themselves. The Court’s ruling applied the Article 130s principle of self-sufficiency to waste disposal, arguing that waste elimination should be done as close to the source of the waste as possible. This principle, and the Court’s ruling, recognized the fact that given completely free movement of wastes within the Community some states would take advantage of others who were willing to subject their populations to the harmful effects of waste disposal for the economic gains garnered from “buying” other states’ waste. Second, and most interestingly, the Court does not mention that member states can restrict imports, but “concedes such an authority to the local or regional bodies responsible for waste disposal” (emphasis in original).

In general terms, this case had two major effects on the Europeanization of the environmental policy-making arena in the Community. The first is that it went further than the Danish Bottles Case in establishing that protection of the environment was a Community goal to be pursued even at the risk of restricting trade. Second, it can be seen as devolving powers onto the regions or localities of the Community to allow them to protect the local environment

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68 Geradin (1993a) and von Wilmowsky (1993) both provide in depth analysis of this case.
69 This would have repercussions on both member state and Community waste legislation, which will be explored in Chapter Six on the Packaging Directive.
even at the risk of reducing intra-Community trade in waste. The first aspect of this case constitutes *informal* Europeanization of the environment policy-making arena. Even though the case established the right for localities to govern their own environment, the overall reasoning was that this would protect the Community's environment as a whole. The second part of the Court's ruling established the legitimacy of local and regional actors in protecting the Community's environment, especially at the implementation stage of the policy-making process. Thus, this case also helped institutionalize the multi-level nature of actor relationships in environmental policy-making.

**Conclusions on Informal and Formal Europeanization: Towards “Maastricht”**

The member states' experience in coordinating the regulation of the environment prior to the Single European Act, together with key decisions of the ECJ, had provided the path of informal Europeanization that paved the way for the Single European Act. The institutional and legal changes contained in the Act—the *formal* Europeanization of the policy arena—included the incorporation of the Environmental Title in the Treaty, the requirement that environmental protection must be a part of all other EC policy-making activity, and the possibility for qualified majority voting on environmental issues that were closely linked to the establishment of the Single Market. This formal Europeanization of environmental policy in turn set the Community further down the path towards increasing informal Europeanization of the environmental policy arena, as evidenced by the expanded scope and number of pieces of European level environmental policy in the post-SEA period.

The institutional changes in the SEA also led to both formal and informal Europeanization of actors' roles in environmental policy making. Formal Europeanization of
actors at the European level centered on the increased role of the Parliament in areas that fell under the cooperation procedure. This procedure, with its qualified majority voting in the Council, also increased the influence and standing of DG XI as a policy initiator within the Commission. Informal Europeanization included the expansion and increased importance of the pressure pluralist networks surrounding the Commission and Parliament. Lobby groups from all sectors of society began to focus more of their attention and effort at the European level. Since in areas that fell under QMV one could no longer rely on one's own member state veto to quash proposed legislation. In the Council, finding consensus among the member states remained the primary goal, but now legislation could be enacted that "raised the floor" of many states' environmental policy while not "lowering the ceiling" of those with forward-looking policy. With the advent of the cooperation procedure members of the environmental working groups in the Council began to develop important, informal relationships with members of the Parliament. In addition, the Council's strategies in its relationships with the Commission changed. Since a single member state could no longer block proposed legislation, it became important for states to form coalitions that would attempt to influence the Commission's proposals as early as possible.

The formal Europeanization of environmental policy at the EC level was established through the Single European Act. Between 1989 and 1991 the EC enacted more environmental legislation than it had in the previous twenty years (Vogel 1995, 62). This legislation became increasingly stringent in addressing a widening range of environmental issues, thus limiting the scope of unilateral action by the member states (Sbragia 1993, 343; Vogel 1995, 62). The Europeanization of the policy arena is shown in Figure 3.4. The formation of increasingly pluralist policy networks at the European level began to push the Europeanization of actors
toward the poly-centric point on the Europeanization continuum of Actor relationships, also shown in Figure 3.4.

Figure 3.4: Dimensions of Europeanization

Figure 3.5 summarizes the trends in *informal* and *formal* Europeanization of environmental policy up to 1993, when the SEA was replaced by the Treaty on European Union. As this and the previous chapter have shown, much of the early impetus for Europeanization was intergovernmental and member state driven. Even the environmental programs were developed by the member states, acting with the Commission, to further Community goals. However, while the member states controlled the decision-rule change that formalized the EC's policy-making competence for environmental policy, they neither promoted nor controlled the changes in the actor strategies, relationships, and the policy
influence of non-state actors after the SEA. In addition, the member states could not direct or predict the outcomes of the ECJ decisions that set precedents or established principles for governing the environment at the European level. These “European” actions (as they are designated in Figure 3.5) promoted both further Europeanization of environmental policy in the European arena and in actor strategies.
Figure 3.5: Elements of Europeanization 1972-1992

IG = Intergovernmental Action
Eur. = “European” Action (not controlled by member states)

<table>
<thead>
<tr>
<th>Year</th>
<th>Action Programs/Policy (IG):</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>Program I → II → Programme III → IV → Programme V</td>
</tr>
<tr>
<td>1980</td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>1991: EEA</td>
</tr>
</tbody>
</table>

Institutional Changes (IG):
- 1981: DG XI established
- 1982: Program III allows wider scope for Art. 235
- 1987: SEA introduces QMV

Key Court Cases (Eur.): (year is when the case was brought to Court)
- 1979: Italy—Art. 100 as basis for environmental legislation
- 1983: Waste Oils—environment as “essential objective
- 1986: Danish Bottles—environment can supersede Art. 30
- 1989: Titanium Dioxide—Art. 100a as environmental basis
- 1991: Waste Case reestablishes use of Art. 130s
- 1992: Belgian Waste import ban upheld to protect local environment

Policy Community/Network Change (Eur.):
- National environmental groups: influence on member states
- European environmental groups: influence on DG XI
- European environmental groups: influence on Parliament after SEA
- Informal networks Council-Commission
- Informal networks Council-Parliament
The "European" aspects of the Europeanization process come as no surprise if one is looking at the evolution of this policy area through an historical institutionalist perspective. This moving picture approach to the Europeanization of environmental policy shows how gaps in member state control developed over time, especially as a result of the Court’s decisions. These gaps widened with the institution of QMV in the Council for policy related to the Single Market, which allowed for the inclusion of more societal actors in European-level policy communities. Formal Europeanization in the SEA begot further informal Europeanization, especially of actor relationships. These trends point to a shift in the governance of the policy area. That change was a shift from strict intergovernmentalism to something increasingly multi-level in nature. This shift would continue after the further formal Europeanization of environmental policy under the Maastricht Treaty. The next chapter deals with the subsequent formal Europeanization of environmental policy within the Treaty on European Union and the continued informal Europeanization of policy after that Treaty’s implementation.
CHAPTER FOUR: EUROPEANIZATION AFTER THE MAASTRICHT TREATY

By the time the member states and the Commission began the intergovernmental conference (IGC) that would result in the 1991 document referred to as the Maastricht Treaty, the post-SEA Europeanization of Community level environmental policy already needed further legal recognition and refinement. This was especially evident from the Community’s Fourth Environmental Action Program, which ran from 1987 to 1992. This program stressed the importance of combining sound environmental policy into all other policy areas. In order to recognize legally the significance of this policy outlook by the Community, the scope for the use of QMV in environmental policy needed to be widened. This was accomplished through the further formal Europeanization of both the environmental policy-making arena and actor roles and relationships in the Treaty on European Union. The Maastricht Treaty, officially the Treaty on European Union (TEU), fundamentally amended the Treaty of Rome and erected the three-pillar structure called the European Union.

Formal Europeanization in the Maastricht Treaty

The institutional and legal changes to environmental policy-making contained in the Maastricht Treaty reflected the Community’s past legislative, legal, and policy experience. As noted in the previous two chapters, environmental protection had been seen implicitly as a goal

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70 The primary focus of the TEU, like the Treaty of Rome and the Single European Act, was economic. The TEU set the rules for the operation of a single market for goods, services and people, and for establishing a common monetary policy.

71 The TEU set up the three pillars of the European Community (formerly the entity called the European Economic Community), Common Foreign and Security Policy (CFSP), and Justice and Home Affairs (JHA). CFSP and JHA remain largely intergovernmental in nature, whereas the Community pillar has become more Europeanized in many policy areas, including environmental policy. To reiterate a previous footnote—I will
of the Community since the 1975 *Waste Oils* Case in the ECJ. The Maastricht Treaty *explicitly* institutionalized environmental protection as one of the goals and objectives of the Community, stating in Article 2 that the promotion of “sustainable and non-inflationary growth respective of the environment” was a principle governing the operation of the Community (Commission and Council of the European Communities 1992). In addition, Article 3 of the TEU *required* that the Community set out a policy in the sphere of the environment, in the same way that it was tasked to complete the Single Market and govern agriculture policy (Commission and Council of the European Communities 1992). As one scholar notes, these Treaty changes placed environmental policy on equal footing with the Community’s economic policies, representing a “greening” of the Treaty (Wilkinson 1992, 223).

The most important institutional changes to Community environmental policy under Maastricht were procedural changes in the policy-making process. In the TEU, as in the Single European Act. Article 100a dealt with legislation that had as its object the establishment and functioning of the internal market, and Article 130s with procedures for developing environmental legislation at the Community level (Commission and Council of the European Communities 1992). Qualified majority voting for environmental policy became the norm for environmental policy after Maastricht with the adoption of the “co-decision” procedure for use with Article 100a, and the application of the co-operation procedure to Article 130s, in the Environmental Title of the Treaty.\textsuperscript{72}

\footnote{General action programs for the environment also came under the co-decision procedure (Article 130s(3)). Under Article 130s, limited areas of environmental legislation are still subject to unanimous voting in the Council under the coordination procedure, which also limits Parliament to one reading. These areas are: provisions primarily fiscal in nature (such as eco-taxes); town and country planning, land use (except for waste management) and management of water resources; and measures affecting member states’ choice of energy generally refer to the European Union (EU). However, because the European Community (EC) is the Pillar in which environmental policy is made, I will often to Community policy.}
Co-decision: Parliament and Council

The new co-decision procedure expanded the role of Parliament even further than the co-operation procedure used for Article 100a in the SEA. In the co-operation procedure, the Parliament had a second reading of a proposal, after the Council gave its common position, but the Council of Ministers could reject the Parliament's amendments by adopting its own common position by a unanimous vote. Under the co-decision procedure, contained in Article 189b of the Treaty (see Annex B), the Parliament received new powers to veto a proposal in one of two ways. First, if, through its second reading of the proposal, the Parliament chose to reject the proposal outright by an absolute majority of the Plenary, the proposal was deemed not to have been adopted. Second, the Parliament could amend the Council's common position, and if the Council rejected the Parliament's amendments, the Council and the Parliament then convened a "Conciliation Committee" in order to come to an agreement on the proposal. If this Committee could reach a common agreement, the Parliament had a final veto power over the proposal, and again could reject it by an absolute majority (Commission and Council of the European Communities 1992, 77; Wilkinson 1992; Nugent 1994). In essence, the co-decision procedure meant that no act could be passed against the will of an absolute majority of the European Parliament (Weidenfeld and Wessels 1997, 64). However, if the Parliament could not garner the votes to reject the proposal by absolute majority, the Council, under Maastricht, could then adopt its original common position by qualified majority (Commission and Council of the European Communities 1992, 77).
In practice, according to a 1998 report from the Parliament, the co-decision procedure produced cooperation rather than conflict between the two institutions (European Parliament 1998). In 127 of 130 acts that fell under co-decision, agreement was reached between the two institutions. Of these 130 cases, 43 were environmental proposals. With the entry-into-force of the Amsterdam Treaty, co-decision becomes even more important to environmental policy making. If agreement cannot be reached in Conciliation, the proposal dies on the table, rather than granting the Council the opportunity to pass its original common position by unanimity. This strengthens Parliament’s role considerably, since the bulk of environmental policy now falls under the co-decision procedure (Council of the European Union 1997).

Co-decision fundamentally changed the operations of both the Council and Parliament, since it required closer communication and cooperation between the two institutions. Co-decision presented a significant change to EC policy-making within the Council of Ministers itself. QMV is now the norm not only for co-decision, but also for areas that still fall under the co-operation procedure. Co-decision was designed by the member states to facilitate the implementation and functioning of the Single Market, and to reduce the democratic deficit inherent in previous EC policy making. While the design of the procedure was in the control of the member states during the IGC leading up to Maastricht, and then to Amsterdam, its use in current practice, by its very nature, is more open-ended and unpredictable. The “communitarian” nature of the decision-making process—the necessity for consensus seeking

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74 The following information is taken from the Parliament’s report on Conciliation (European Parliament 1998).
75 It is interesting to note the breakdown of these cases. Of the 127 cases where agreement was reached, 78 were concluded without convening the Conciliation Committee, and 49 with a joint text of Conciliation Committee. In the environmental cases, of the 43 procedures, 26 were concluded without having to go to Conciliation (European Parliament 1998.22).
76 It is worth noting that co-decision has been widely expanded under the Amsterdam Treaty. and now applies to virtually all policy areas (Council of the European Union 1997).
and coalition building—brought in under the SEA became more salient after Maastricht.\textsuperscript{77} The continued expansion of the norm of QMV in the Maastricht Treaty and in Amsterdam means a greater possibility, across a wider range of policy areas, that member states now have to implement Community policies that they vote against in the Council.\textsuperscript{78} When the Parliament's role in co-decision is factored in to the policy-making equation, the ability of individual member states to control policy outcomes is further reduced. By adopting co-decision in the Maastricht Treaty, the member states exchanged both their former control over the policy process and their sovereignty over policy areas having an impact on the internal market for the smooth functioning of that market in the competitive international trading environment. While this latter goal is still in the states' overarching interest, it is often achieved at the expense of, and in contradiction to, stated national interests in particular policy areas.

**Formal Europeanization of Environmental Policy within the Treaty**\textsuperscript{79}

The Maastricht Treaty expanded the scope of EU environmental policy objectives. In addition to preserving and protecting and improving the quality of the environment, these now include, the following: the protection of human health, prudent and rational utilization of natural resources, and the promotion of measures at the international level to deal with regional or international environmental problems (Article 130r(1)). In addition to expanding the

\textsuperscript{77} The coalition-building, consensus-seeking behavior of Council representatives is often referred to as the "community method" (Lewis 1998, 485). One member state environmental attaché referred to this consensus seeking and cooperation in the Council as "communitarian" which frees its analysis from some of the more problematic definitions of the "community method" in the wider literature. For a brief summary of these problems, see Lewis (Lewis 1998).

\textsuperscript{78} When the Community expanded to 15 members, the weighting of votes in the Council, and the number needed to pass a proposal changed. Proposals now need at least 62 votes (out of 87) to pass.

\textsuperscript{79} While this chapter mainly deals with changes in environmental policy making after Maastricht, it also includes commentary on provisions of the Amsterdam Treaty (Council of the European Union 1997). I refer the reader to the fact that all references to the contents of the Maastricht Treaty are taken from (Commission and Council of the European Communities 1992), and all references to Amsterdam are from (Council of the European Union 1997).
Community’s environmental policy objectives, both Maastricht and Amsterdam state that environmental protection requirements “must be integrated into the definition and implementation” of other Community policies and activities. Amsterdam adds the phrase “in particular with a view to promoting sustainable development.” This goes beyond the SEA language of making those requirements “a component” of the Community’s other policies, compelling the Community to include environmental protection requirements as a part of policies such as agriculture, transportation, fisheries, etc., from their inception through their implementation.

Maastricht recognized the emergence of multi-level governance within the European Community. It established the Committee of the Regions to provide consultation, information and advice to the Council and other institutions. Specifically in environmental policy, it institutionalizes a trend toward the recognition of the diversity of the regions within the European Community within the Environmental Title in Article 130r(2). This “diversity of situations in the various regions of the Community” was taken into account as the Community aimed at its “high level of protection” for the environment. The recognition of regional differences had often been included in environmental legislation produced prior to Maastricht. Both Maastricht and Amsterdam specifically require that the Community take into account both the environmental conditions in the various regions of the Community, and the balanced development of its regions when developing its environmental policy.

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80 In the Maastricht Treaty, this provision was stated within the Environmental Title, in Article 130r(2). This has been removed from the Amsterdam Article 130r(2), but its placement in Article 6 heightens its importance in overall Community policy making. In addition, Article 95 (ex Article 100a) states that the Community will take as “as a base a high level of protection” of the environment in formulating policy having an impact on the single market (Council of the European Union 1997).
In a similar vein, Article 130s(5) in Maastricht allowed for "temporary derogations" by member states that felt that the costs of implementation were prohibitive. Under Amsterdam, this trend is continued in Article 175(5). To facilitate implementation of environmental directives in the less developed member states, the Community provides financial assistance through the Cohesion Fund. This addition to the Treaty legitimizes the recognition that environmental problems vary in intensity across the Community. What may be a problem in one member state, may not be an issue at all in another. In the past, especially prior to QMV, a member state may have voted against environmental proposals to avoid the cost of implementing legislation with little beneficial effect to the environment within that state. Furthermore, financial help from the Cohesion Fund enables member states to slowly "grow into" a policy, catching up with other states without holding back the overall protection of the European environment. The Cohesion fund was not specifically developed to aid states in implementing environmental legislation. One contentious issue in the Maastricht negotiations was Spain's particular reluctance to accept QMV for environmental policy. In exchange for agreeing to this, the Cohesion fund was expanded to provide funds to states to implement environmental policy (Interview 20).

The Maastricht and Amsterdam Treaties also take into account the situation of member states with more serious environmental problems, or stricter environmental legislation. As in the SEA, these states may maintain or introduce more stringent protective measures compatible with the Treaty under Article 130t. These measures “must be compatible with the Treaty,” which leaves them open to possible conflicts with other member states or to challenges before the European Court of Justice (ECJ) for causing trade barriers. However, as discussed in
previous chapters, the Court has upheld protection of the environment as a legitimate barrier to trade if the means of national legislation are proportional to the environmental protection achieved. National environmental measures by member states are still a driving force behind initiation of Community environmental policy, as will be shown in Chapter Six on the Packaging Directive.

Finally, the Maastricht Treaty institutionalized a key principle that had governed Community environmental policy since the early 1980s. This was the “precautionary principle” which had underlain many of the Community’s environmental programs and some of its specific legislation prior to the TEU. The addition of this principle reinforced the principles that had already been included in the SEA, “preventive action,” “rectification of environmental damage at source”, and the “polluter pays” principles (Commission and Council of the European Communities 1986, Article 130r(2)). The inclusion of the precautionary principle in the Treaty allows the Commission to push for tighter pollution standards in areas such as ozone depletion, global warming and other areas where environmental damage may not yet have occurred, but can be expected if there is no policy change (Wilkinson 1992, 224).

Subsidiarity

One of the more controversial aspects of the Maastricht Treaty was the introduction of the principle of “subsidiarity” to EU policy-making in Article 3b. This Article states that the Community will only take action on an issue outside its exclusive competence, “in accordance with the principle of subsidiarity if the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community”. The Article and the principle within it

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81 In the Amsterdam Treaty this becomes Article 176.
sparked a great deal of academic and legal debate (Barnard 1992; Laffan 1993; Teasdale 1993; Axelrod 1994; Bongaerts 1994; Lenaerts 1994; Toth 1994; van Kersbergen and Verbeek 1994).

The member states had radically different views of the meaning of "subsidiarity." Britain saw it as a way to stop further erosion of its national powers, whereas Germany perceived it as a vehicle to strengthen the federal nature of the Community as well as its own internal federalism (Teasdale 1993, 189-190). In general, federal states saw this principle as strengthening the recognition of federalism from the subnational to the supranational level (Teasdale 1993, 190). In contrast, non-federal or unitary states such as Britain saw it as a measure to protect the member state from further encroachment by the EU (van Kersbergen and Verbeek 1994, 225). Finally, the less industrialized states saw subsidiarity as a justification for "burden sharing" and for increased transfer payments from the Community (Axelrod 1994, 122-123).

Since the Community does not have exclusive competence in the environmental protection sector, the principle of subsidiarity conceivably could have meant a re-nationalization of environmental policy-making powers. The principle embodies a belief that action should be taken at the lowest possible level, but that higher levels of government have the responsibility to intervene if objectives cannot be met at those lower levels. The principle, as applied to federal systems, means that policy competence should be exercised at the lowest possible level. Thus, in the EU this could mean at the sub-national, national or Community level, depending upon the policy in question. In a way, then, the principle of subsidiarity, when

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82 See the Danish Bottles Case, Chapter Two, p. 12.
83 See van Kersbergen and Berbeek for a thorough discussion of the principle of subsidiarity as it evolved from Roman Catholic social doctrine and adoption by Christian Democrats in Europe (van Kersbergen and Verbeek 1994).
interpreted in this manner, is another recognition of the multi-level nature of Community governance.

To resolve the debate over the meaning and application of subsidiarity, at the Edinburgh Summit of the European Council in 1992, the member states set up three criteria for the interpretation of the principle of subsidiarity:

- The issue has transnational aspects that cannot be sufficiently regulated by Member States; and/or
- Actions by Member states alone, or the lack of Community action would conflict with the Treaty; and/or
- The Council must be satisfied that action at Community level will produce clear benefits by reason of its scale or benefits compared with action at the level of the Member States (Lenaerts 1994, 878)

As Lenaerts (1994, 879) notes, the first two criteria refer to the Community’s ability to act more effectively than the member states, the third to the Community’s ability to act more efficiently than the member states.

While the Community has moved to a stance whereby it believes that action should be taken at the lowest possible level, for policy-making in the environmental field that level is often the European level (Axelrod 1994, 128). Many pollution and atmospheric problems such as acid precipitation, ozone depletion and global warming are transboundary in nature, and so cannot be effectively dealt with by any single member state. In areas such as waste management, there is a risk that member states with lax policies will end up being the dumping ground for the other member states’ garbage. Finally, national product-oriented standards in one state may cause trade barriers to goods from other states. In this latter case, some basic level of European harmonization of environmental laws is necessary to ensure the efficient operation of the Single Market. The hope of some states, like Great Britain, that subsidiarity
would devolve a vast array of powers back to the member state level has not been realized in the environmental arena. The overall objectives of the Community and the nature of environmental problems have meant that the Community level has remained a primary arena for environmental policy-making in the European Union since Maastricht.

The continuing formal and informal Europeanization of the environmental policy arena is shown in Figure 4.1. The specific recognition of regional differences, member state implementation diversity, and the principle of “shared responsibility” at all levels of governance and among several key actors meant that supranationalization did not occur. Rather, this was a pluri-level arena.

**Figure 4.1: Europeanization of the policy arena after Maastricht**

<table>
<thead>
<tr>
<th>Europeanization Continuum</th>
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<tbody>
<tr>
<td>Exclusively National</td>
</tr>
<tr>
<td>pluri-level</td>
</tr>
<tr>
<td>(national + inter-national + supra-national)</td>
</tr>
<tr>
<td>Exclusively Supranational</td>
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**Environmental Policy since Maastricht**

The post-Maastricht period of environmental policy making and policy outputs has been marked by two significant trends. The first is the integration of environmental policy into other policy sectors, as called for in the Treaty. The second is a continuation of the post-SEA trend of balancing economic development and environmental protection. Together, these two trends are embodied in the Community’s overall focus on “sustainable development”—attempts to develop and prosper economically without destroying the environment for future
generations. The Community’s Fifth Environmental Action Program provided the foundation for these trends and for the policy instruments that have resulted from them (CEC 1993).

The Fifth Program, published in 1993, addressed the problems inherent in balancing continued economic growth and environmental protection. This Program went further than the previous four Action Programs in its goals and objectives. The legal bases for environmental policy-making institutionalized in the Single European Act and Maastricht meant that this program could set out a long-term strategy for the Community that was more than “lists of actions required and vague principles” (Hull 1994, 151). The Fifth Program was based on the principle of subsidiarity among institutional actors at the Community, the member states and local or regional levels of government. It also included the principle of “shared responsibility” of these levels with industries and enterprises on the ground and with NGOs and the public (CEC 1993, 113-114). The concept of shared responsibility:

involves not so much a choice of action at one level to the exclusion of others but, rather, a mixing of actors and instruments at the appropriate levels, without any calling into question of the division of competencies between the Community, the member states, regional and local authorities. For any one target or problem, the emphasis (actors and instruments) could lie with the Community/national/regional government level and for another with the regional/local/sectoral level or at the level of enterprises/general public/consumers (CEC 1993, 113).

The Program represented a shift away from a top-down Community regulatory approach, to an approach that included all relevant actors, in many different policy areas, at all levels of European policy-making and implementation.\(^8^5\) It not only recognized that the Community and the member states must work together to establish the framework for

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\(^8^4\) See below, regarding the Fifth Action Program.
\(^8^5\) The role and importance of non-state actors in the policy-making process will be covered further, below.
sustainability, but also that industry, private enterprise, local and regional authorities and individuals shared the responsibility of carrying out and implementing the program and its objectives (CEC 1993, 49). The goal was to integrate the environment into all other relevant policies "through a broadening and deepening of the instruments for control and behavioural change including, in particular, greater use of market forces" (CEC 1993, 49).

The Fifth Program was developed at the same time as the Maastricht Treaty was wending its way through national parliaments and popular referenda. The Fifth Action Program and the new Environmental Title of the TEU were developed to coincide with and complement each other. The Fifth Program and the philosophy behind the development of environmental legislation since the TEU marked a trend away from a focus on specific environmental or industrial media to an overall pollution-control approach by the Community (European Environment Agency 1995, 18). This move helped eliminate the trend of developing Directives that only dealt with one part of a larger environmental problem. For instance, in the past, the Community produced legislation on emission limits for automobiles and trucks, but failed to deal adequately with the problem of increased overall transport on European roadways. The Fifth Program addressed the larger area of transport, focusing on a multi-media approach to dealing with pollution and other environmental degradation from this sector. The Fifth Program addressed several important EU sectors in much the same way. Like the TEU it emphasized the integration of environmental protection into all Community policy making.

To help integrate environmental policy into other sectoral policies, and to approach environmental problems from a wider perspective, the Commission began to make systematic use of the Environmental Impact Assessment (EIA). First used in the late 1980s, the EIA requires all major projects, such as road building or siting of waste disposal facilities, to be
assessed for their environmental impact (Hull 1994, 154). The impact assessment process, in keeping with the principle of transparency and public participation in all EC environmental policy-making, allows public access to the process and recourse for NGOs to notify the Commission if a member state is not complying with a policy or implementing it properly (CEC 1993, 106, 117). In one case, according to a high level Commission official in DG XI, Portugal attempted to build a motorway to get tourists from the World Expo in Seville, Spain to the Portuguese coast without doing an environmental impact assessment (Interview #8). This incident stirred up public sentiment among those adversely affected by the project, and helped lead to a greater awareness of the legal avenues to which individuals in the EU have access. Environmental groups appealed to the Commission for action. When resultant communications from the Commission fell on deaf ears in Portugal, the Commission blocked the money earmarked for the road, which came in part from Cohesion Funding. The integration of the environmental impact assessment into member states' ability to qualify for and receive Cohesion funding thus partially helped rectify the problem of environmental policy implementation in the Community.86

The Environmental Policy Community after Maastricht

Many of the changes in both the policy-making arena and among actors in environmental policy-making began with the Single European Act. The SEA formalized and institutionalized the Community's environmental policy-making power, which it had informally developed in the fifteen years prior to that Treaty. The TEU, through its changes in the decision-making process, also changed the formal rules of policy making. The Europeanization of the policy process after Maastricht is shown in Figure 4.2. However,

86 The problem of implementation is more specifically dealt with, below.
Europeanized decision-rules may not necessarily tell the whole story. Like the SEA, the Maastricht Treaty proceeded to cause changes in the informal mechanisms of policy making, and in actor relationships.

Figure 4.2: Europeanization of the policy process

<table>
<thead>
<tr>
<th>Decision rules and practices</th>
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</thead>
<tbody>
<tr>
<td>Intergovernmental</td>
</tr>
<tr>
<td>Multi-level</td>
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<tr>
<td>Supranational</td>
</tr>
</tbody>
</table>

Two questions remain to be addressed in this chapter. The first is whether the trend toward the Europeanization of actor relationships in environmental policy-making continued after Maastricht. The second, and more important, question for the remainder of this and the following chapter is whether the structure of authority has been transformed into a multi-level governance arrangement. To address both these questions, I again turn to an analysis of the actors (the policy community) and their relationships (the policy networks) in post-Maastricht policy-making.

Agenda Setting and Policy Initiation

Who sets the “agenda” of the European Community has become increasingly harder to pin down over time, as formal, institutional mechanisms are complemented (or complicated) by informal relationships among actors. Intergovernmentalist approaches tend to disregard the actions and importance of the Commission’s agenda-setting function, seeing the Commission as an agent of the member states, the Council of Ministers or of the European Council. Intergovernmentalists often focus on the enhanced role of the European Council in agenda-
setting over the past 20 years from the institutionalization of its meetings in 1974 to its recognition as an institutional actor in the EU under the TEU. The European Council often sets the general trends for the Union, and may appear as the primary agenda setter as it proposes items like the Social Charter, or relations with the Central and East European Countries (CEECs). What this state-centric focus overlooks is the fact that the Commission often draws up the position paper or White Papers on which the European Council’s statements or positions are based (Nugent 1995, 620; Marks, Hooghe et al. 1996, 359).

Intergovernmentalists acknowledge that the European Council cannot directly set the Community’s policy agenda. They therefore turn to an analysis of the role of the Council of Ministers. The Council Presidency can decide what proposals the Council will place on (or leave off) its agenda during its six-month tenure, so in this way can shape the agenda, but the Council remains dependent upon the Commission to draft the actual proposals. A member state, or a coalition of states, may strongly desire a particular policy program, but until the Commission acts on it, the Council cannot address that issue. While it is true that the Commission often responds to policy direction statements from the European Council, and to specific policy requests from the Council of Ministers, and (after the TEU), even from the Parliament, the Commission retains the sole right of policy-initiation in the EU. In the agenda-setting process, the Council, and therefore the member states, are dependent upon the Commission to perform its policy initiation role, turning direction and agenda statements into

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87 The heads of state and government had met informally for many years prior to 1974, when their meetings were institutionalized by the Paris Summit. The SEA formally recognized the European Council as an institutional actor in the EC, but the European Council remains outside the actual Treaty, and its actions, unlike those of the other EU institutions, cannot be challenged in or by the European Court of Justice (Nugent 1994, 154-155).

88 This institutional set-up works much like the checks and balances between the U.S. President and Congress. The President cannot pass laws without the Congress taking up the policy and developing a bill for the President to sign.
policy proposals. This inter-institutional dependence is one of the attributes of multi-level governance, and is increasingly present in the EU. As will be discussed below, the dependence between the Commission and Council is mutual, since the Council controls the second stage of the policy-making process: decision-making.

The Commission is charged each year with developing an annual “work program” which is then reviewed by the Council, and, since the TEU, the Parliament, both of which may suggest additions and deletions to the program. The 1995 program was the first post-Maastricht work program (since it was developed in 1994), and its implementation was delayed due to the additional input by the Parliament, which had made several recommendations that the Commission decided to take up. Prior to the development of its work program the Commission entertains suggestions for possible policies from the other institutions, and is lobbied heavily by regional, national and European interest groups for inclusion of their agendas onto the official European agenda. Prior to the TEU, the Commission’s annual program was not published outside the official channels of the EU. Now, in an attempt to increase “transparency” within the EU as a whole, the program is widely published, and interest groups use it as a guide for their lobbying.

There are also a number of other actors pressing their agendas on the Commission. These include regional governments which have been unsuccessful in their own state, national and European-level interest groups, and even epistemic (scientific knowledge-based) communities (see for example Fuchs 1994; Peters 1994; Hayes-Renshaw and Wallace 1995; Marks, Hooghe et al. 1995; Pierson and Leibfried 1995). The nation-state is often by-passed by regional or local actors, especially where these groups have little representation in their national governments, in favor of the EU where, after the TEU, regional representation and
recognition have become more important (Marks and McAdam 1996, 265). Given all the political maneuverings between the EU’s institutions, between institutional and societal actors seeking to influence the EU’s agenda, and within the Commission itself, as discussed below, it is virtually impossible to determine “which institution(s) or actor(s) played the key role in bringing an issue on to the agenda” and to disentangle who did what in bringing an issue to European agenda (Nugent 1995, 620). It is clear, however, that the Commission is central to the agenda-setting process, since the other institutions and actors must convince the Commission to place their interests onto the Commission’s policy initiation agenda.

It is important to acknowledge that if the European Council or Council of Ministers strongly wants an issue or policy on the Community’s agenda, it will be taken up by the Commission. The distinguishing feature, however, between an intergovernmentalist and a multi-level governance reading of the agenda setting stage is in the capacity for independent action by the Commission (Marks, Hooghe et al. 1996). Intergovernmentalists leave little scope for the Commission’s own agenda-setting capacity, or for the ability of actors other than the member states’ institutions to influence the policy agenda. This is not the case in reality however, even if the Treaty (from the Treaty of Rome through the TEU) has implied that the Commission follows the lead of the Council of Ministers, and increasingly the European Council.

In addition to the other institutional and societal actors pressing their demands on the Commission, within the Commission itself there is competition for control over new policy agendas, and control over policy areas. While not the subject of this thesis, the telecommunications sector provides insight into the way in which the Commission, acting as a policy entrepreneur, can capture a policy area and institutionalize it at the European level, even
over the objection of the member states. Fuchs' (1994) study on telecommunications policy in the EU shows how the Commission's combination of entrepreneurial skill and close relationship with telecommunications experts resulted in the development of a comprehensive information technology (IT) policy at the Community level, at a time when the Community had no legal competence over the policy area. The Commission was aided in its endeavor to be the sole regulatory body over this sector by the ECJ, which granted it *direct* regulatory competence in this area through the use of Article 90.3 of the Treaty.\(^8^9\) Once the policy was developed, different DGs fought internally to control the telecommunications sector at the European level (Fuchs 1994, 183).

Agenda setting not only includes the introduction of specific policy proposals onto the Community's agenda, but also the manipulation of the relative importance of a given policy area in the overall scheme of Community policy making. A strong Commissioner with an "agenda" of his or her own can increase the prominence and relative power of his or her policy area (and therefore the DG in charge of it) just as a weak Commissioner can weaken his or her DG and decrease the salience of a policy sector within the EU. A good example of the former is the tenure of Ripa De Meana, the Commissioner for the Environment from 1989 until 1994. During his tenure, environmental policy in the EC grew, not only in number of pieces of legislation, but also in scope. Most notably, he headed the drive toward the 1992 Río Summit on Environment and Development (Middlemas 1995, 232, note 21).\(^9^0\) While sometimes failing to push through his policies over the objections of the member states or even other

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\(^8^9\) Article 90 of the Treaty states that "The Commission monitors the application of the provisions of this article and when necessary sends the appropriate directives or decisions to the member states". The ECJ decided against member state complaints that this Article, rather than 100a (which would have required the directive to be submitted to the member states in the Council and not directly adopted by the Commission under Competition policy) was in fact appropriate. See Fuchs (1994) for a full account.
Commissioners (Middlemas 1995, 232, note 21), De Meana certainly ensured that environmental policy was not forgotten in the overall scheme of EC policy-making during his tenure. Under Paleokrassiss in 1994, EC environmental legislation did not experience the heightened significance it had under de Meana, and, while overall environmental policy was not weakened, it was certainly challenged by the economic problems of unemployment and recession. Of course, neither all the blame nor all the praise can fall on the shoulders of one person, but clearly, a strong Commissioner can play a major role in enhancing his or her policy area. When Ritt Bjerregaard, the Commissioner for the Environment from Denmark, took over the position in January 1995, there was fear within DG XI that if she turned out to be weak in her dealings with the other Commissioners, environmental policy could suffer serious setbacks in the prevailing climate of economic uncertainty in the EU (various interviews). However, during the 1996 Intergovernmental Conference (IGC), she showed that she was committed to strengthening EU environmental policy despite economic problems facing the Union (Bjerregaard 1996). She called for continued strengthening of EU environmental policy relative to other policy areas, and for widening the application of the co-decision procedure into general environmental policy under the Environmental Title. The Amsterdam Treaty that resulted from the IGC has done both.

Agenda-setting in the EU, then, is not merely an intergovernmental process, controlled by the member states, or even their institutions at the EU level, but rather an inter-institutional and even *intra*-institutional bureaucratic politics process. There is little doubt, however, that the Commission has both an institutional and political advantage in the agenda-setting and policy-initiation stage. First, "constitutionally," the Commission is the only institution tasked with the

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91 De Meana's role in the Rio Conference is covered in depth in Chapter Five.
right and duty of policy initiation. The constitutional right and duty of the Commission to initiate policy, and to “guard the Treaty” and the principles of integration within it, has meant that the Commission has developed considerable resources in pursuit of its function as policy initiator. These resources include information, knowledge and ideas, which can often be as important as, and even substitute for, “power” in the political process (Peters 1994, 13). While the Commission cannot generate all the information it needs “in house,” it has considerable capacity to acquire the information it needs, contract for the experts and consultants needed to fill knowledge gaps, and consult widely on the policy issues under its jurisdiction (Nugent 1995, 608). The Commission’s “institutional memory,” born of its involvement in every proposed policy from initiation through decision-making to implementation, gives the Commission a strategic advantage in knowledge and expertise throughout all stages of the policy process over the other EU institutions (Nugent 1995, 613).

The Commission

Even before the Commission begins work on developing actual policy proposals, then, there is the possibility of influence not only from the member states and their institutions, but also from the Parliament and societal actors. Once the Commission begins drafting a proposal this influence becomes an important element in the policy making process in the Commission’s policy initiation stage. While the type of policy networks arising during this stage might be completely ignored in an intergovernmentalist analysis, a closer look reveals the influence of many non-state (institutional and societal) actors on both the policy process and on policy outputs. In environmental policy, for instance, the heightened salience of the environment under the SEA and later under the TEU increased the Commission’s need for technical expertise on a widening number of environmental policy issues. After the SEA, environmental
policy was no longer restricted to areas that had a direct impact on the internal market. There arose a need to understand and develop policies on issues like car emissions, acid rain, and noise pollution. This required the Commission in general, and DG XI in particular, to seek the expertise and knowledge of a wide range of actors. According to DG XI officials, these actors included national policy experts (who share their technical expertise, not their state’s political position on the issue at hand) seconded to the Commission, technical experts from industry, scientists and even environmentalists. The Commission is also “hungry for information,” especially from sub-national actors, who bear increasing responsibility for implementing EU legislation (Marks and McAdam 1996, 265). Since the Commission does not have the internal capacity to generate policy without seeking the advice and expertise of outside actors, these external actors play a major role in helping develop EC environmental policy as they sit on working committees or are seconded to the Commission during the development of a policy.91

The Commission’s openness to, and its need for, outside expertise and opinion since the SEA meant a change in the dynamic of lobbying in the EC. By 1992, there were 3000 special interest groups with offices or representations in Brussels (Greenwood and Ronit 1994, 33). The importance of influencing the Commission, specifically the working committees within the DG responsible for a policy’s development, was further heightened by the TEU. DG XI, once thought to have been “captured” by environmental interests, sought to broaden its contacts and information gathering to business and industry implementers and through better relations with other DGs (Mazey and Richardson 1994, 24). According to both DG XI officials and representatives of industry groups (including UNICE, the main Industry Umbrella

91 For example, the primary person tasked with the initial draft of the Packaging Directive, discussed in Chapter Five, was a Belgian from the Flemish Environmental Agency (OVAM) in Belgium (Interview # 9).
organization at the European level), the latter have become less suspicious of DG XI and spend more effort lobbying it as well as "their own" DGs. In addition, industry began to take the complementarity of the goals of environmental protection and market-led growth seriously (Mazey and Richardson 1994, 24). This has resulted in their intensified lobbying of DG XI for two main reasons. First, EU environmental policy has a major impact on industry's national and transnational operations, and so these groups seek to influence policy early in the policy initiation process.\(^{92}\) Secondly, the inclusion of environmental protection goals in the Community's Treaty objectives heightened the relative importance of DG XI vis à vis other Directorates General (Mazey and Richardson 1994, 23-24; Vogel 1995, 60). The Commission in general has also been characterized as "consistently progressive" on environmental issues, even when faced with strong member state positions to the contrary (Marks and McAdam 1996, 269). DG XI, with its focus on implementing environmental policy as part of the larger goals of the EU, has therefore become enough of a force to be reckoned with within the Commission that one needs to lobby it directly in order to influence environmental policy proposals.

The post-Maastricht Commission-centered environmental policy community includes members of the Commission (in the environmental case obviously DG XI, but it may also include representatives from other DGs concerned with the policy in question), societal interest groups, members of the European Parliament (MEPs) and Council representatives. As a pluralist network, the interaction within the policy community is generally loose and open—not all members of the policy community meet constantly to discuss the ongoing proposal.

\(^{92}\) Just how seriously they take environmental policy will be shown in the Packaging Directive chapter.
While many members are not part of the sub-government, they remain part of the policy community.

The two types of pluralist networks that develop around DG XI are shown in Figure 4.3 and 4.4. The difference between the two is subtle, yet important. In the first type of network, DG XI establishes expert committees in order to develop policy. The expert committee network is the more common type in DG XI. In other policy sectors, such as agriculture or information technology, societal associations or epistemic communities are drawn into the actual policy process because of their expertise or control over a sector (on IT policy see for example Fuchs 1994, 182). This results in almost corporatist or concertation networks in these policy sectors. In environmental policy, however, societal organizations lobby rather than participate within the sub-government of the expert committees. The “experts” generally are seconded from the member states’ bureaucracies, and societal organizations generally play an advocacy rather than a participatory role. In DG XI, these policy networks are pressure pluralist in nature, allowing many sectoral associations, environmental interest groups and even member state and regional representatives to discuss proposals with the Commission.
The other type of network, which is becoming more common since the Fifth Action Program, centers on consultative committees within DG XI and is shown in Figure 4.4. Recognizing that the member states often transpose directives into national law, but leave the implementation up to regional or local authorities, DG XI began to target these subnational actors, along with industry representatives, when it developed its policy proposals. Instead of filling in details of emission limits or precise modes of implementation, the Commission now prefers to find out what is feasible on the ground, and recognizes that implementation may take distinct forms in different countries and even across different regions. These implementers, along with recognized environmental experts and often regional or local representatives form

93 Consultative committees are not unique to the environmental Directorate. Along with expert committees, which are more common in DG XI, consultative committees are one of the tools the DGs use in ensuring that they gather all necessary information and expertise on a policy issue prior to developing the proposal.

94 For an analysis of the impact of regional policy communities on policy implementation in the area of Regional Policy, see Smyrl (1995).
part of the sub-government of the policy community in the consultative committee. The requirements of these consultative committees necessarily favor the inclusion of some societal actors over others. Those actors with the most technical expertise or those most strategically positioned in the implementation process are more likely to participate in the committee than loosely organized and weakly authoritative sectoral associations who cannot speak for their members (see Middlemas 1995, ch. 6, 10). In other DGs, these committees might be more corporatist or clientelist in nature, depending on how restrictive the membership is. In DG XI, they remain pluralist, since the membership of these committees includes more than just sectoral associations speaking on behalf of their members. Because of the close relationship between DG XI and environmental groups, and because of the public nature of the policy area, DG XI consultative committees also include representatives from environmental interest groups. In consultative committees the Commission gives groups the opportunity to help write policy in exchange for their expertise and knowledge of that policy area. These groups are more likely to speak for a wider public interest than for a specific implementing group, industry or organization. Member state and regional government representatives may also participate in the sub-government of the consultative committees, since the Commission must still determine what proposals have a chance of passage by QMV in the Council. In addition to those specific actors within the sub-government, many environmental and industrial lobby groups remain outside the sub-government, in a policy advocacy role. As with all proposed legislation, the unit within DG XI responsible for policy development maintains contact and

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95 These consultative committees, while not unique to DG XI are relatively new to it. The general consultative forum for the environment envisaged by the Fifth Action Program is a sort of umbrella forum, and the consultative committees are set up to deal with specific topics or issues (CEC 1993, 117). See "Implementation" below, for more on the Fifth Action Program's consultative forum.
consultation with other DGs within the Commission, and with member state and Parliamentary representatives.

Figure 4.4: Consultative Committees Modified Pressure Pluralist Network*

*This is merely a general example of such a network. The actual membership in the sub-government depends on the issue at hand.

These consultative committee networks, like the expert committee networks, remain pressure pluralist in nature, but include a wider variety of members in their sub-governments than expert committee-centered networks. Certain groups, rather than national experts, are invited to participate in the actual development of policy proposals. These particular societal groups move from a purely lobbying role to a participatory role in the sub-government of the policy process. If a group or sectoral association can move into the sub-government, it can actually participate in writing the first drafts of the Commission’s proposal.
After a proposal is drafted in DG XI, it is then open for review by the rest of the Commission. There is a great deal of little-understood intra-institutional bargaining within the Commission as a whole, specifically among the chefs de Cabinet—the heads of the Commissioner’s Cabinets—as well as between the various DGs affected by a policy proposal. A proposal may travel up and down from the DG in charge of it several times before final approval by the College of Commissioners. During all this time, societal interest groups try to influence the content of the proposal, at every possible access point. These points include the DG in charge of the proposal, the other DGs for whom the proposal is relevant, and, especially for national level interest associations, the Commissioner from their country, or the Cabinet of that Commissioner. While the Commissioners as a whole represent the “European” interest, they also keep a close eye on the positions of their home governments, informing the other Commissioners in charge of particular portfolios of their state’s position on an issue. The Commissioners in turn have the opportunity to influence the national position in their home country through their wider understanding of other policies that may be linked to, or bargained for, in return for concessions in another area.

At this first stage of the policy-making process, the informal inter-institutional contacts between Council members (often the working group attachés discussed below) and Commission officials (generally in the relevant DG) have increased significantly with the expansion of qualified majority voting in the Council. While the Council as a whole still decides on its own policy agenda (what the Council will address during the six month tenure of a Presidency), the individual member states simply cannot individually control what comes out of the Commission. They must seek to influence the policy proposal before it leaves the Commission, and they do so at every possible level from committees within the DGs to the
Commissioners. Finally, the Parliament also participates in the pressure pluralist networks surrounding the Commission. In the case of environmental policy, the informal contacts and relationships between the Environment Committee in the Parliament and DG XI are highly developed and routine. The TEU has made garnering Parliamentary acceptance of a proposal almost as important as getting an indication of its likely passage in the Council. This is because of the co-decision procedure, in which the Parliament can veto a proposal at the very last stage of the policy-making process. It is far better, according to DG XI officials, to ensure wide Council and Parliamentary support of a proposal before it leaves the Commission rather than facing the possibility of its demise in either the Council or Parliament. In addition, the Parliament has also stated the importance of working with the other institutions in the earliest possible stages of policy-making in order to make the next stage of the process—decision making—smoother and less cumbersome (European Parliament 1997).

**Decision-Making**

The Council of Ministers

The Council of Ministers remains the chief decision-making body in the European Community, after both Maastricht and Amsterdam. No legislation can be passed without the approval of the Council. For post-Maastricht environmental policy, this approval was, with the few exceptions noted above (Note 3), by qualified majority voting, under either the cooperation or co-decision procedure. After Amsterdam the co-decision procedure was expanded to include all environmental policy, with the same exceptions. This means that there are few chances for a single member state to block the passage of a proposal, and more opportunity for the Council to approve environmental legislation to solve the growing environmental problems in the Community.
While QMV became the official voting procedure for most environmental policy after Maastricht, the goal in the post-TEU Council remained one of trying to achieve consensus among all the member states. That consensus is worked out primarily in the working groups of the Council. As with post-SEA policy making that fell under the QMV rule, proposals are only voted upon by QMV in the Council if the working groups and CORPER cannot achieve consensus. The importance of the working groups and the policy networks that form within and around them cannot be overstated, especially if one believes that even within the Council decision-making is based on consensus building and compromise, and is not simply about the defense of "national interests."

The working groups are made up of civil servants from the member states. They often work within their domestic ministries as policy experts prior to coming to Brussels. They are neither politicians nor diplomats; they do not have the political and diplomatic clout of the actual Ministers in the Councils, or even of the Permanent Representatives (in COREPER II) or their deputies (in COREPER I). However, they are the "resident experts" on the subject of their working group—in this case, experts, either scientifically or experientially, on environmental policy.

These civil servants are not the "Chiefs of Government" (COGs) or the "Executive representatives" often spoken of by Moravcsik in his liberal intergovernmentalist approach (see Moravcsik 1991; 1993; 1995). While these environmental attachés undeniably represent their state’s interest in discussions with the other attachés and national experts within the working groups, they have some freedom of maneuver because of their experience and expertise, and because of the more informal nature of the working group meetings (Lewis 1998). Lewis' work on COREPER shows that "national positions" are often much more flexible than
intergovernmentalism analysis can grasp. While the capital does issue instructions to its
permanent representative, the "transmission-belt" also goes the other way; the representatives
also recommend new positions to their home governments (Lewis 1998, 490).

The environmental attachés refer to each other as "colleagues," and exhibit a high
degree of respect for each other, if not always for the other country's position on a particular
matter (Interviews 1-3). There is a shared culture within the Council, rooted in formal practice
and informal relationships. "The decision-makers in the Council, in spite of their national roots,
become locked into the collective process, especially in areas of well-established and recurrent
negotiation. This does not mean that the participants have transferred loyalties to the EU
system (in the neo-functionalist sense), but it does mean that they acknowledge themselves in
certain crucial ways as being part of a collective system of decision-making" (Hayes-Renshaw
and Wallace 1995, 364). What cannot be worked out in the working groups is referred upward
to COREPER and eventually to the Ministers themselves, where the actual voting takes place.
But the actual bargaining on policy proposals occurs primarily, and repeatedly throughout a
proposal's life, in the working groups (for a detailed analysis see Rasmussen and Andersen
1996).

Member state attachés have referred to the bargaining process as "communitarian"
rather than conflictual in nature. By this they mean that the members of the working groups,
and even the higher level COREPER members attempt to achieve consensus, and to pass
reasonably implementable policy. While this communitarian process may not be a pure
"problem solving" style, it is more than a straightforward "bargaining" decision-style (Scharpf
1988). Generally, in the environmental policy arena, the possibility of non-agreement or the
status quo (an acceptable outcome in a purely bargaining style negotiation) is excluded. This is because the consequences of non-agreement in environmental policy have become unacceptable both for individual member states and for the European collective. The Packaging Directive case, described in Chapter Five, was a case where any collective agreement was preferable to non-agreement.97

The Council's decision-making process might be seen by intergovernmentalists as a "two-level game": a political game of bargaining where the participants sit at both national and international "tables" (see Putnam 1988). Moravcsik's liberal intergovernmentalist description of how member state policy positions are formed through the influence of domestic politics, and then brought to the supranational bargaining table of the EC, fits into this two-level game framework. In a liberal intergovernmentalist interpretation of the bargaining within the Council, the representatives of the member states are constrained at both levels: first, by what their domestic constituents will accept as a bargaining outcome, and second, by what the other negotiators at the EU table will accept if agreement is to be reached at that level.

Intergovernmentalism makes two assumptions.98 First, intergovernmentalism assumes that the Council members represent a rational, comprehensive "national interest." In fact, some "national" representatives are more reflective of their political party's interests at home, or of the particular government in power, rather than of a wider national interest (Hayes-Renshaw and Wallace 1995, 563; Marks, Hooghe et al. 1996). The permanent representatives represent

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96 See note 6, above.
97 One member state attaché claimed that the member states could have accepted the status quo, but the trade impacts of the Packaging Waste Directive belie that assertion—without a Directive, national-level policies on packaging would have caused major competition and trade disruptions in the Community.
98 Hayes-Renshaw and Wallace (1995) and Lewis (1998) have provided evidence from their more comprehensive and detailed study of the Council that corroborates my research into the inner workings of the Council.
their state's interest in COREPER, but represent the Community's interests back home (Lewis 1998, 483). Sometimes, they may even have their own position on an issue, and try to convince their home government to change its position (Lewis 1998, 490-493). They are caught in a tension between state and Community interest, even describing themselves as being "Janus-faced" (Lewis 1998, 483). Member state positions in the Council, therefore, are not formed by a unitary, economically rational, predetermined self-interest dictated by member state governments.

The second assumption of the two-level game/intergovernmental view is that a clear division between "home" and "abroad" exists between the national and transnational arenas (Hayes-Renshaw and Wallace 1995, 563). There is evidence that the environmental attachés are part of a larger, transnational (and within the Council, transgovernmental) network surrounding environmental policy, and embrace its culture of consensus and commitment to integrative "European" policy-making (on transnational networks see Risse-Kappen 1996). Lewis' research into COREPER reveals that both new state members of the Community and new COREPER representatives undergo a "socialization process" (Lewis 1998, 487). While representatives from new member states may at first try to hold firmly to a national position, they soon learn that compromise, and not conflict, is the rule for negotiations within COREPER (Lewis 1998). In addition, the attachés' ongoing, informal contacts established after the SEA with members of the Commission and Parliament make them part of a network where consensual knowledge about the environment becomes as much a factor in their decision-making as their government's "official" position. As Risse-Kappen (1996, 63-65) notes, the domestic structures in each state help mediate the possible influence of such a transgovernmental coalition on shaping domestic policy positions, so the existence of the
network will not have the same influence in each state. However, the very existence of these EU-wide networks—the transgovernmental one among the environmental attachés, and the larger knowledge/issue-based network surrounding the environment that cuts transnationally across all the EU’s institutions—plays an important role in shaping both the policy process and policy outcomes. There can hardly be a clear-cut division between the domestic and supranational when the preferences of the negotiators are shaped by their ongoing presence at the supranational table, and by their continued participation in the supranational game. Finally, as Pierson (1995, 12) notes, “...the institutional framework and past policy decisions of the EU work to constrain member-state autonomy.” This means that even if a clear national interest could be defined, that interest has already been shaped by the member state’s participation and membership in the European Union, and its acceptance upon joining of the acquis communautaire.

Two important institutional actors are often overlooked at this stage of the policy-making process. The first is the Commission representative who sits in on all Council meetings, from working group to Ministerial meetings. This representative plays an important role in representing the “European” point of view, reminding the member states that their goal is compromise and coordination of policy at the European level rather than deadlock and unilateral policy-making. Other players that are rarely discussed in policy-making or institutional literature are the representatives from the Council Secretariat. While the primary function of the Secretariat is to keep the Council functioning smoothly through its translation and document dissemination services, members of the Secretariat also assist the President of the Council, and encourage cooperation between the member states. They often help find positions of common agreement that they can build on instead of concentrating on their
differences (Middlemas 1995, Ch. 7, Interview # 13). In addition, the representative from the Secretariat may have other informal inter-institutional relationships, for example with members of the EP, with whom he or she shares information about goings-on in the Council (Interviews #11 & #13).

The fact that the actual bargaining on proposals takes place at the low level of the working groups significantly shapes the types of policy networks that can form even within the closed institution of the Council of Ministers. The policy community centered on the Council during the decision-making stage includes members of other EU institutions in addition to the representatives of national governments. As noted in the previous chapter, the environmental attachés keep up regular, frequent and informal contacts with members of DG XI and of the Environment Committee in the Parliament. These contacts have increased significantly with the advent of co-decision and the extension of the number of areas where co-operation with the Parliament has become the norm rather than the exception.

While closed to the direct lobbying influence of societal interest groups, the meetings of the working groups may include national experts of the attaché’s choosing (and these can represent industry, environmentalists, scientists, etc.), and will always include a Commission representative involved in drafting the proposal. The “national” positions taken in the working group meetings by the environmental attachés are not rigid and inflexible in the face of influence and information from other EU institutional actors. These national positions are influenced by the logic of bargaining and relationships among the environmental attachés, and between the attachés and members of the Commission and the Parliament. Even among the

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99 Much of the following information on the Council-centered policy community and its network is based on interviews conducted with several environmental attachés, Parliament and Commission representatives, and with a representative from the Council Secretariat.
three institutions, the goal is often policy consensus (unless one cynically assumes that the Council and the member states are intransigently against any policy at the European level, which is decidedly not the case). The close ties between the institutions can help resolve potential conflicts between “European” and “member state” interests (Peters 1992, 81). In addition to these informal contacts and formal representations at working group meetings, there is evidence to show that there is a growing trend toward a “floating exchange of personnel between the permanent representations, the relevant Commission directorates and domestic line ministries,” further blurring institutional lines (Rasmussen and Andersen 1996, 22).

The policy network for environmental policy within the Council, shown in Figure 4.5, remains state directed rather than pluralist in nature. This is because there is no direct opportunity for societal interests to lobby the Council, and the Council members choose with whom they will actually consult in the process of decision-making at this stage of the policy process. However, as described above, the actual policy community includes many members other than the national representatives, the most important of whom are from the other EU institutions. While the member state environmental attachés still defend their state’s position (however it is formed and defined) within the Council, there are many opportunities for other member states and the other EU institutional representatives to help change that position. The institutional changes under the SEA and then Maastricht that increased the role of the Parliament have reshaped the Council-centered policy community at the decision-making stage (see also Hayes-Renshaw and Wallace 1995, 562). The structure of the post-Maastricht policy community within the Council reflects a nascent sharing of decision-making competencies described by the multi-level governance model (Marks, Hooghe et al. 1996).
This sharing of policy competence, and the mutual dependence of the institutions, starts in the agenda-setting stage and continues through policy initiation into the decision-making stage. The co-decision procedure reinforces the interdependence of the Community’s institutions. The procedure has fundamentally altered the relationship between the Council and Parliament, and the Parliament and societal interest groups.

The Parliament

Until the advent of the SEA, the old adage was “The Commission proposes, the Council disposes” to describe the policy-making process in the European Community. The SEA threw a wrinkle into this equation with the introduction of a second reading by the Parliament in the cooperation procedure, described in Chapter Three. The TEU and Amsterdam Treaties have essentially eliminated this simple description of the policy process through the introduction and expansion of the co-decision procedure.

100 It is interesting to note that the original version of this proverb, the French “l’homme propose, Dieu dispose” implies that the Commission is like a penitent person, and the Council has divine powers to grant or reject the wishes of the Commission.
The enhanced role of the Parliament in the policy-making process means that parliamentary representatives have begun to get involved in the policy process much sooner, and stay in the process through to the (sometimes bitter) end. Like the member state and societal interest group representatives, parliamentary representatives try to influence the policy proposal as it is being developed within the Commission. Strong ties have developed between DG XI and the Parliament's Environment Committee. Ken Collins, the head of the Environment Committee, also has strong, informal links with the environmental attachés in the Council's working groups, and with the Environment ministers themselves. He keeps up these relationships both by informal exchanges over the phone or dinner, and through formal meetings with the ministers. As a member state prepares to assume the Presidency of the Council, Collins tries to work closely with that state's environmental minister to inform that person of the Parliament's priorities or positions on environmental issues in the ensuing six months of the Presidency.

In addition to these inter-institutional links surrounding the parliamentary environmental policy community, there are the Parliament-society links that form as interest groups try to influence the Parliament's position on environmental policy proposals. Interest groups increasingly recognized the importance of lobbying Parliament with the advent of the co-decision procedure. The Parliament has a strong chance of influencing a proposed Directive or Regulation through the amendments it adopts in its second reading of the proposal. If the Council chooses to reject these amendments, it will be faced with a Conciliation Committee. Business groups, industry and, of course, environmental groups now target the Parliament in

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101 Information gathered from interviews with Collins, as well as with member state attachés and DG XI representatives.
order to get their policy position into a Parliamentary amendment, if at all possible. While in environmental matters the Environment Committee is the primary committee working to propose amendments, other committees, the political groups in the Parliament, and individual parties may also bring forward amendments. Interest groups will find a person or party with a sympathetic ear somewhere within the Parliament who can introduce amendments or rally support within the plenary to reject amendments proposed by the Environment Committee. This is particularly true of business and industry groups who do not find the Environment Committee particularly sympathetic to their interests, but who may find another Committee or a particular political Group more amenable to their position. The importance of lobbying widely in the Parliament, and the importance of business/industry links with Parliamentary Groups, will be further analyzed in Chapter Six.

The policy network in the environmental policy community surrounding the Parliament, shown in Figure 4.6, is *pressure pluralist* in nature. The Environment Committee has a reputation of being strongly supportive of forward-looking environmental policy, and the Parliament as a whole is "greener" than the other institutions, partly as a result of the strong Green Party presence within it. This does not mean, however, that environmental interests have "captured" the Parliament or even the Environment Committee, or that there is a corporatist or concertation network at work in this policy area. The Parliament is open to the lobbying efforts of all interest groups, and some approach the Political Groups within the Parliament on an ideological basis. In general, the Environment Committee does not follow particular interests, but rather a particular normative standpoint in its policy making.
As shown in Figure 4.6, there is a Commission representative present in all meetings of the Environment Committee as part of formal procedure. In addition to this formal representation, members of DG XI maintain informal relationships with members of the Environment Committee. The Commission also remains formally involved in the policy-making process through the Parliament’s second reading, often mediating between the Parliament’s and Council’s positions. If those positions cannot be reconciled a Conciliation Committee must be convened.

**Co-decision and Conciliation**

The Conciliation Committee is made up of an equal number of Parliamentary and Council representatives, and includes a Commission member whose role it is to reconcile the
Council and Parliament’s positions. Conciliation is really a meeting, as equals, of the Council and Parliament. It represents an inter-institutional process that has increasingly put the Parliament on a more equal footing with the Council. Changes under the Amsterdam Treaty enhance that equality. Under Amsterdam, if the Conciliation Committee cannot reach an agreement, the proposed legislation is not adopted. No longer can the Council revert back to its first common position (prior to the Parliament’s second reading). In essence, under Amsterdam, if conciliation fails, so does the proposed legislation.

Even prior to the Amsterdam amendments, Conciliation represented a phase in the decision-making stage where the Council and Parliament shared power in a state-directed policy network, shown in Figure 4.7. This network is closed to outside lobbying, containing only members of the EC’s institutions. In environment policy, members of the Environment Council, or their representatives, sit at the table with members of the Environment Committee of Parliament. Since the majority of environmental legislation will fall under co-decision under Amsterdam, the relationships between Environment Council, environment attachés, and members of the Parliament’s Environment Committee will likely become even more closely intertwined than they are now.¹⁰²

¹⁰² A study of the work of one Conciliation Committee is contained in Chapter Six.
Implementation

Under Maastricht, the enforcement of implementation of Community Directives was strengthened through an amendment to Article 171. Under this amendment, if the Commission may bring a member state before the ECJ for failure to comply with a previous Court decision, and may recommend the state remit a "penalty payment" (Wilkinson 1992, 233). While this Article has been in effect since the entry-into-force of Maastricht in November 1993, it was not until December 1997 that the Commission began to launch substantial numbers of Article 171 cases against member states for non-compliance with prior Court decisions.¹⁰³

The Fifth Action Program specifically addressed the problem of implementation and enforcement of EU environmental policy. There was general agreement among both Commission and member state representatives interviewed for this research that the political and cultural experiences and differences within states play a major role in the discrepancies between the implementation of Community, and even national, environmental policy between the “Northern” and “Southern” states. For example, Spain, Portugal and Greece developed their environmental policy largely as a result of accepting the *acquis communautaire* when
they joined the Community. One major problem within the Community, especially for the less industrialized states, is inadequate experience in dealing with environmental policy, and a lack of adequate information about means and methods of implementation (CEC 1993, 115). To counter this, the Fifth Program set up a consultative forum and an implementation network on the environment (CEC 1993, 115). Both of these provide for the exchange of information and experience among various levels of governance (from the sub-national to EU level) and among enterprises tasked with implementing legislation. These implementers of environmental policy, whether they are regional and local authorities, or individual industries or sectors, are brought into the policy-making process during the drafting of EC legislation in order to ensure that policy reflects the actual abilities of the on-the-ground implementers. An example of this is described in Chapter Six, on the Packaging Directive.

Another key element in the sharing and dissemination of information is the European Environment Agency (EEA), whose inception was discussed in Chapter Three. The Fifth Program called the role of the Agency “crucial” for the task of disseminating information to both the Community’s institutions and the member states (CEC 1993, 102). The Agency has taken up this role and provides information not only to these levels of governance, but to regional and local governments, and to the general public as well.\(^\text{104}\) The role of the public in helping the Community to enforce environmental policy also was highlighted in the Fifth Program. Throughout the document, the public is tasked with participation either as a consumer of goods/services, or as watchdogs, for example for environmental impact assessments such as the one described previously. One Commission official, long tasked with

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\(^{103}\) These may be found in an ENDS report, reproduced by Envirolink (1997).
\(^{104}\) As an example of their openness, all of their reports are available on the internet (European Environment Agency 1999).
implementation and enforcement of environmental policy, highlighted the growing importance of such "watchdog" public interest groups in the Southern member states (Interview 8). This role brings the public and environmental groups into the pressure pluralist policy network in the implementation stage as shown in Figure 4.8. DG XI is at the center of this policy community but it relies on the member states for reporting their implementation, environmental groups to monitor them, and the Court for enforcement.

![Figure 4.8: Implementation Policy Community: Pressure Pluralist Network](image)

The Community is slowly leveling the playing field between the Northern and the Southern states, by bringing the South up while (for the most part) not holding the North back. It is also playing a major role in educating and informing the public in all member states of their rights and duties as citizens of the European Union. Although there are significant differences in the legislative experience and political cultures of the member states, it is generally agreed that without a European level environmental policy, the less developed
member states would be less well off in terms of both their environment and economics. The Northern member states had to agree to give the Southern states the incentive of the Cohesion Fund and the Regional Funds in the Maastricht negotiations. With these, the less developed member states have an incentive not only to agree to Community level environmental legislation, but also to implement it. As noted above, in the Portugal environmental impact assessment case, non-implementation of Community rules, such as the EIA, may result in the loss of these valued funds.

**Policy Networks and Policy Making**

This chapter has described both the formal and informal Europeanization of the EC environmental policy making arena, and actor relationships. Decision rule changes such as co-decision have led to the changes in the relationships among policy actors, including state, EC-institutional and societal actors. As the Community’s environmental policy has become more institutionalized, and more Europeanized, a significant policy community has developed in this policy area. The policy community includes actors from the member states, the EU’s institutions, and societal actors at the sub-national to supra-national levels. Together these actors make policy. While the member states still bargain for their ‘national interests’ in the Council, the actual people doing the bargaining are involved in a transnational, and transgovernmental, policy community at the EU level that influences the logic of their decision-making. They seek to influence, and are influenced by, other actors in the policy community and their relationships with those actors in the policy networks that form at each stage of the policy-making process. The policy networks that have developed because of the changes in institutional decision-rules under Maastricht have opened up the policy process to
societal and institutional actors outside of the Council to an extent ignored by intergovernmentalists.

Decision rule change has helped to institutionalize a trend toward multi-level governance of this policy area. That trend is shown in Figure 4.9. Notably, while the structure of authority has become increasingly multi-level in nature, it is not supranational. The member states still retain a great deal of power in the policy making process. This is neither state-centric nor supranational governance. It is something else entirely, not grasped by either the intergovernmentalist or the functionalist/transactionalist approaches to the EU. The application of the policy network framework to the policy-making process revealed the importance of interpreting exactly who was involved in the environmental policy community, and these actors' relationships with one another in policy networks at each stage of the decision-making process.

Figure 4.9: Europeanization of the governance structure

<table>
<thead>
<tr>
<th>Structure of authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intergovernmental</td>
</tr>
<tr>
<td>Multi-level</td>
</tr>
<tr>
<td>Supranational</td>
</tr>
</tbody>
</table>

The overall policy community, and its policy networks, for environmental policy in the post-Maastricht period is shown in Table 4.1. The policy networks seem evenly split between pressure pluralist-type networks, and state-directed ones. However, the overall policy network can be considered pressure pluralist in nature. Even though the networks surrounding the Council remain state-directed and closed to societal lobbying, the influence and importance of the pressure pluralist networks of the Commission and Parliament have grown over time. The
formal Europeanization of environmental policy through both the SEA and Maastricht Treaties, with the increase in QMV in the Council and the enhanced role of the Parliament, have made the three institutions more mutually dependent. The pressure pluralist networks at the initiation and implementation stages centered on the Commission, and during the Parliamentary amendment stage allow societal actors a great deal of opportunity to lobby and influence the development and amendment of any proposal. The pressure pluralist networks also do not operate in their own vacuums, separate from the policy network of the Council in its decision-making stage. The informal relationships among institutional actors play a major role in blurring the edges of the policy communities, unifying this into one transgovernmental, Europeanized policy community.
### Table 4.1: Environmental Policy Network Overview

<table>
<thead>
<tr>
<th>Policy Initiation: Consultative committees</th>
<th>Sub-government</th>
<th>Attentive Public in relevant institution</th>
<th>Type of Network</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DG XI, other DGs environmentalists, industry, member state representatives</td>
<td>societal groups not invited into consultations</td>
<td><em>Modified pressure pluralist</em></td>
</tr>
<tr>
<td>Policy Initiation: Expert committees</td>
<td>DG XI, other DGs</td>
<td>environmentalists, industry, member state representatives</td>
<td><em>Pressure pluralist</em></td>
</tr>
<tr>
<td></td>
<td>Parliament Environment Committee</td>
<td>other committees</td>
<td>Council State Directed</td>
</tr>
<tr>
<td></td>
<td>member state environmental attachés, environment committee representatives, President of Council, Chair of Environment Committee</td>
<td></td>
<td>Council State Directed</td>
</tr>
<tr>
<td>Decision-making: Conciliation Phase</td>
<td>DG XI, member state administrations, regional administrations, industrial associations</td>
<td>other industries, environmentalists (as &quot;watchdogs&quot;), general public (consumers and &quot;watchdogs&quot;)</td>
<td>State Directed</td>
</tr>
</tbody>
</table>

### Conclusions on Post-Maastricht Europeanization

The European Community's environmental experience since Maastricht is, in large part, a continuation of its post-SEA program. While environmental policy-making is very much entrenched at the Community level both through experience and through the institutional and legal changes under Maastricht, this does not necessarily imply a supranational monolith where the interests of the member states are no longer important. The changes under the SEA
and Maastricht have made it easier, however, for the member states to compromise on their interests and have eliminated the need to search for lowest common denominator solutions to European environmental problems. The institutional changes wrought by the both SEA and Maastricht influenced the scope and type of environmental regulation at the EU level, and have also opened up the policy-making process to new actors at the European, national, and even sub-national levels.

The Community has gradually expanded the areas that it regulates, while at the same time trying to find more efficient and effective ways of regulating them. In environmental policy, following post-SEA practice, there has been a shift away from detailed Directives with strict and uniform implementation requirements toward the use of “framework” legislation, and the use of non-regulatory instruments such as incentives and market-oriented or financial instruments to facilitate compliance. The Fifth Action program, developed during the Maastricht negotiations to take into account the new distribution of power among EU institutions in the Treaty, embodies the post-Maastricht vision and focus of the Community. Its focus on sectoral policies that seem well outside the purview of environmentalists—industry, energy, transport, agriculture and tourism—reflects the Maastricht provision that protection of the environment must be integrated into all sectors of EU policy-making. The broader range of instruments at the disposal of the Community—market based instruments, provision of statistical data and improved research, and financial support mechanisms—in addition to traditional command-and-control legislative instruments, shows a recognition that environmental policy does not exist in a vacuum apart from other policy considerations. It must be regulated in a more constructive and rational way if environmental legislation is going to have any impact on the ground.
Environmental policy continues to become more “European” as the focus remains on creating a more level playing field for all the member states. The “opt-outs” included in the Maastricht Treaty which allow derogations for the Cohesion states are actually part of the leveling of the EU playing field. The purpose of Article 130s(5) is to allow these states the opportunity to “catch up” economically with the other member states, and implement more advanced environmental policies gradually. The alternative to these temporary derogations would be to hold the more environmentally conscious states back, and to lower the ceiling of the EU’s environmental policy, rather than trying to raise its floor. As previously noted, there is little doubt in the institutions or among the member states of the EU that the environmental policies of these less developed states are vastly better than they would have been without the EU’s environmental policy experience. The existence of an EU level policy also protects these states from becoming the dumping ground for Europe’s less environmentally friendly industries or for its garbage.

Despite fears or calls for subsidiarity in environmental policy-making, the post-Maastricht experience has continued to build on past policy experience, and produce environmental policy at the European level. For product-oriented environmental problems, such as recycling requirements or even waste disposal, market forces often drive the need for a European-wide policy. For other areas of transboundary pollution or environmental degradation, the European level is the only conceivable level for regulation or protection. While the Community has moved away from a top-down regulatory approach, it is still widely recognized that it is the best level for developing a coherent environmental policy for all the member states. Domestic and European level environmental concerns can no longer be neatly separated, and the Community’s legislative and institutional experience reflects this reality.
As historical institutionalists would predict, any possibility of substantial retrenchment of environmental policy making to the national level has become, if not impossible, at least difficult in the extreme. Such re-nationalization would require changing the institutional structures that have developed over time, negating past policy outcomes which have become part and parcel of national environmental policies, and disconnecting their representatives from the transnational policy community at the European level.

This chapter has looked closely at both the formal and informal Europeanization of the environmental policy arena and the actors’ relationships within it. The decision rules contained within the Maastricht Treaty continued the formalization of the Europeanization of the policy-making arena. They also encouraged the stepped-up activities of both institutional and societal non-state actors at the EU level. The Parliament’s role in co-decision heightens the importance of that institution in the policy-making process, and brings societal actors back into the process late in the game. Decision rule change has also led to the Europeanization of the policy process through the interactions of state and non-state actors acting at the European level within the environmental policy communities at each stage of decision-making. Governance of this policy area—the structure of authority within it—has also become more multi-level in nature as decision rules under Maastricht and Amsterdam, and provisions in the Fifth Action Program, have opened up the policy-making process to actors from all levels of EU policy making.

* A report on the rationalization of EC policy, sometimes referred to as the “Molitor Report” was touted by some member states to be the justification of the re-nationalization of environmental policy (the report was a direct response by the Commission to the difficulties of interpreting the principle of subsidiarity in already existing policy areas). The report, however, concurs with the thrust of the Fifth Action Program, the setting of broad targets rather than specific emissions limits for environmental Directives and Regulations, and says nothing about governing the policy area at the member state rather than national level. If anything, the report calls for a stepping up of the functions of the European Environment Agency in the area of implementation and enforcement and calls upon the member states to take greater responsibility for uniform enforcement throughout the Community (CEC 1995b).
Certain decision rules seem to be of paramount importance for the institutionalization of environmental policy in the European arena. Those are qualified majority voting in the Council of Ministers, a second reading by the Parliament, and clear delineation of authority for environmental policy-making to the European level. These rules also help structure who is “in” and who is “out” of the sub-government (and therefore the authority structure of governance) in the policy area. Are these decision rules necessary for governance to be multi-level? Does the absence of these decision rules guarantee intergovernmentalism in the policy-making process and in governance, as intergovernmentalists would assert? Or does the activity of transnational actors in the absence of these decision rules (informal Europeanization of actor strategies) result in the formal Europeanization (the granting of authority to the European level) of this policy area as the transactionalists would assert? The next two chapters turn to case studies that test the importance of these particular “Europeanizing” decision rules on governance within the environmental policy-making sector.
CHAPTER FIVE: 
EU CLIMATE CHANGE POLICY

The focus of this thesis thus far has been an investigation into how macro-level institutional changes, specifically the decision rule changes embodied in the Treaties, have influenced the environmental policy-making process in the EC. Having provided an assessment of the Europeanization of general environmental policy, I now turn to the study of two specific policy areas within the larger environmental policy sector. The first policy area, climate change policy, covered in this chapter, is a critical case for testing the limits of intergovernmentalism. The key decision rules of QMV and co-decision, and a formal Treaty competence for this policy area are lacking. The policy arena has not been formally Europeanized, since the member states retain policy-making power over energy and fiscal policy—two important aspects of climate change strategies. One would expect to see almost purely intergovernmental governance of this policy area, similar to the type of governance of the earliest years of general environmental policy-making in the European Community.

There are, however, aspects of climate change policy that would point to the possibility of Europeanization. Climate change is a transboundary issue of international scope, closely related to ozone depletion policy. The European Union’s ozone depletion policy is now highly Europeanized in terms of both arena and actors. The Europeanization of ozone depletion policy, covered briefly in this chapter, followed a trend typical of the general environmental policy covered in the previous chapters. Similarly, both policies were put on the agenda of the

\[106\] The exceptions to QMV in environmental policy include issues of a fiscal nature or those involving a choice of domestic energy sources. Both these exceptions to the decision-rules of the TEU are present in climate change policy. It is an environmental issue with important energy implications, and the primary policy instrument attempted by both the EC and by some member states is an energy tax, an obvious fiscal matter. EC legislation on these exceptions is still subject to unanimous voting in the Council, thus limiting the role of the
European Union's institutions at least in part by international efforts to deal with these environmental problems. Ozone depletion policy is now formally a European level policy competence, subject to QMV. Climate change policy is not.

Intergovernmentalists would assert that the member states have used their power of unanimity to keep this policy area out of the formal European policy-making arena. However, as this chapter will show, a great deal of informal Europeanization has occurred in climate change policy, and European actors such as the Commission, industry and environmental groups are very active in the policy-making process, both in the sub-government and attentive public of the policy community. Transactionalists would assert that such transnational activity precedes the supranationalization of governance in the policy area. The question this chapter asks is whether governance of this policy area has actually changed, and whether it can do so in the future, despite the lack of change in the decision rules governing this policy area. This, in turn, raises the question of whether it was, in fact, the member states alone who have resisted the Europeanization of this policy area, or whether there are larger, structural issues not unique to the European Union that have made policy-making in climate change policy so very difficult.

What should be surprising to the researcher is not that the EC has been unable to make a great deal of tangible progress on this issue, but that it has been attempting to do so for most of the 1990s. In addition, the EU continues to take a leadership role in international negotiations and discussions of climate change. The member states have reached unanimous agreement that climate change is a very real threat to the environment, and that preventive...
action now, rather than clean up in the future, is the way to handle it. While critics may point out that this is merely paying lip service to rather than solving the problem, such rhetorical commitment is a necessary part of larger institutional change (O’Riordan and Jordan 1996, 96). This agreement that the EU needs to take action and develop European legislation represents a commitment to the informal Europeanization of this policy area. What the states, and even the institutions within the EC, have not been able to agree upon, however, are the exact measures to be taken to combat this problem.

The EC’s recognition that this environmental issue requires the concerted action of all member states, as well as the Community’s stumbling attempts to take that action within existing institutional constraints, resembles the EC’s approach to general environmental policy-making prior to the Single European Act (SEA). Prior to the SEA, the European Community did not have the Treaty competence to make environmental policy, a matter that the Treaty had left in the hands of the member states. Yet the member states and the Community as a whole decided that the protection of the environment was, in fact, a policy to be pursued at the European level, and so managed within the constraints of the Treaty to make environmental policy. As it did with general environmental policy prior to the SEA, the EC has pursued a climate change policy within the constraints of unanimous voting in the Council, resulting in a policy that is lowest common denominator (LCD) at best, and merely rhetorical at worst.

Prior to the EC’s first collective attempts to develop a Community climate change strategy, several EU countries developed measures and legislation of their own (Haigh 1996, 162). These measures included carbon/energy taxes, changes in national energy policy, and energy efficiency schemes, among others. However, both the member states and the Commission realized that this policy could not remain at the member state level because
disparate state policies threatened to distort competition among the member states. As with past environmental policy-making, the avoidance of competition problems was an impetus behind the EC's attempts to develop a coherent climate change policy. Climate change policy is therefore in the process of being Europeanized in the most rudimentary sense: through their own actions, the member states are pushing into the European arena, away from the member states.

Since 1992, the European Union has had a stated climate change policy goal: to stabilize greenhouse gas (GHG) emissions at 1990 levels by the year 2000. This is the goal that many countries throughout the world agreed to at the 1992 Earth Summit in Rio de Janeiro (United Nations Conference on Environment and Development: UNCED, or "Rio Conference") in the Framework Convention on Climate Change (Framework Convention, or FCCC). All EU countries and the EC ratified that convention, which, though non-binding, set out goals and commitments for a global strategy on climate change. Since signing that convention, the EC has been attempting to find tangible ways to meet its target through a variety of measures contained in the EC strategy described in this chapter. The EU further committed itself to new targets at the Kyoto climate change conference: an eight percent reduction (rather than stabilization) of 1990 levels of greenhouse gases by 2012.

While the unanimity requirement distinguishes this policy from the vast majority of post-Maastricht environmental policy-making, it is important to note that although the member

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107 By May 1994, 166 countries had signed, and 69 parties, including 19 members of the OECD and the EC, had ratified the Convention. The text of the Convention referred to in this chapter is printed in full in International Energy Agency (1994).
108 The Community signed the Convention intending to meet the stabilization goal through joint implementation (JI) or "burden sharing" among the member states. All parts of the strategy described in this chapter contain references to burden sharing among the EU states. The targets set by the EC are Community
states are the major players in this policy-making game, they are not the only players whose influence matters. An analysis of the development of current EC climate change policies reveals an inter-institutional as well as an inter-state battle as some member states, along with the Commission, attempted to move climate change policy more permanently into the European arena. In addition, there are intra-institutional battles within the Commission upon which societal actors capitalize. For example, as discussed more fully below, different Directorates General have different “world-views” that shape their understanding of the climate change problem, and the possible solutions that they favor (Allison 1971; O'Riordan and Jordan 1996, 82).

Climate change is fraught with obstacles to both Europeanization and to the achievement of collective policy action. In addition to being an environmental policy concern, climate change cuts widely across other policies, including energy and transport. It is also a policy area that touches on an area of state sovereignty, namely taxation, still carefully guarded by the member states. It remains the subject of scientific and economic debate, since the consequences of global warming, even when the actual phenomenon is accepted as fact, are uncertain and vary widely by country. Finally, as a truly international problem, climate change requires an international rather than state-by-state, or even regional response. It should therefore come as no surprise that the EC had difficulty in developing and adopting a policy in this area. The fact that it attempted to do so in the face of all these difficulties makes the study of what has been tried and accomplished that much more interesting. Most interesting are the latest endeavors by sub-national actors, including regional governments and towns, to attempt
to take action on the problem since some member states seem determined to stop any real action at the European level (Collier 1995; 1996a; 1996b). While the results of these more local attempts to fight climate change remain inconclusive, they point to the very real possibility of multi-level governance in this environmental policy area. Real progress on this issue will require guidance and goal-setting at the Community level, but may be best served by action at the most localized level. This is both subsidiarity and multi-level governance in action.

The Early Stages of Climate Change Policy

The issue of climate change was first addressed by the EC in the mid 1980s, through the Fourth Environmental Action Program, as a sub-program for research into the possible climatic effects of such “greenhouse gases” as carbon dioxide (CO2) (Jachtenfuchs and Huber 1993, 41). In November 1988, the Commission reviewed the available scientific findings and stated in a report that “Reduction of greenhouse gas concentrations does not seem at this stage a realistic objective but could be a very long term goal” (Skjaersest 1994, 26). This report was not based on the result of any extensive EC research program, despite the provisions for one in the Fourth Action Program, but rather on reports from various US scientific organizations and government departments (Jachtenfuchs and Huber 1993, 42). The 1988 Commission report called for further clarification of the “economic, industrial, energy, social and institutional implications and impacts” of measures to combat the greenhouse effect, but there was no attempt to combine all these elements into a coherent strategy (Jachtenfuchs and Huber 1993, 42).

The Council’s draft resolution annexed to the 1988 Commission report simply endorsed the Commission’s factual findings, and approved its future research program (Jachtenfuchs and
Huber 1993, 42). In 1989, the Commission set up an ad hoc committee to develop a strategy on climate change. It was the Commission, then, rather than the Council, which took the initiative on this issue. The committee included representatives from the ten Directorates General likely to be affected by a climate change policy (Collier 1996a,124). The three most important Directorates involved were the Energy Directorate (DG XVII), the Environment Directorate (DG XI), and the Directorate for Indirect Taxation (DG XXI).

Although the Energy and Environment Directorates worked closely together, their respective foci on the problem of climate change diverged. The Environment Directorate looked at the environmental impact of further greenhouse gas emissions. In so doing, it focused on the importance of reducing energy consumption, and chose a scheme of taxation on energy consumption as its primary goal (Jachtenfuchs and Huber 1993, 43). The Energy Directorate, on the other hand, strongly opposed any such taxation strategy, preferring a traditional focus on energy security for the EC (Jachtenfuchs and Huber 1993, 43; Skjaerseth 1994, 27). It rejected the focus on reducing energy consumption because such a strategy might hamper economic development, especially in the Southern member states. The resultant 1989 Commission document on environment and energy reflected this difference of views, and gave no recommendations to member state authorities (Jachtenfuchs and Huber 1993, 43).

A divergence of perspective between the Energy and Environment Directorates is not surprising to students of institutional bureaucratic politics (Allison 1971). This “where you stand (on an issue) depends on where you sit (in the bureaucracy)” (Allison 1971) method of policy determination permeates not only the Commission and Parliament, but the member states as well (O'Riordan and Jordan 1996, 82). While this breaking open of the state (or EC institution) may complicate matters, it reveals that a stated “national interest” or institutional
position is actually the result of bargaining among internal bureaucracies, each with different viewpoints, capacity and authority.

In addition to internal bureaucratic "turf" interests, a bureaucracy's position in the larger policy world, or its own "world-view," plays a role in the constitution of policy networks, helping filter who is "in" and who is "out" of the sub-government (O'Riordan and Jordan 1996, 76). Energy producers, large industries and automobile manufacturers were actors in, and members of the sub-government of, the policy community centered on the Energy and Industry Directorates in the Commission. In contrast, environmentalists focused their attentions on the Environmental Directorate, with whom they shared similar understandings of the climate change problem. Commission, Parliament and industry representatives interviewed all assert that this shared world-view between lobbyists and relevant DGs or even the Cabinets is important to the EC lobbying process. This divergence of views within the Commission was apparent in its first attempt at a climate change strategy in the 1989 Commission document on climate change. The document, described above, was not killed outright, but its lack of clear direction for policy action made it useless as a policy document.

**A New Direction for EC Climate Change Policy**

In 1990, this vague problem definition and series of half-hearted acknowledgments that "something" should be done gave way to specific policy recommendations, programs, and, importantly, international leadership by the EC regarding the climate change problem. This sea change can be partially attributed to a series of international discussions from 1988-1990, culminating in a conference in the US in April 1990. At that conference, the US government

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109 These relationships are explored more fully, below.
adopted a wait-and-see attitude toward the problem, rejecting any concrete measures to combat it (Jachtenfuchs and Huber 1993, 43). Encouraged by the international political vacuum thus created, the Commission, led by Environment Commissioner Carlo Ripa di Meana, decided to promote EC leadership on the international stage (Jachtenfuchs and Huber 1993, 43). The European Council, in its June 1990 meeting in Dublin, endorsed this leadership role, and called for the adoption of targets and strategies for limiting greenhouse gas emissions (Skjaerseth 1994, 27). The European Council’s resolution paved the way for a declaration by a joint session of Environment and Energy Ministers in October 1990. This declaration (though non-binding) set out the target of stabilizing CO₂ emissions at 1990 levels by the year 2000, which was the backbone of EC climate change policy until late 1997.

In addition to the stabilization target, the declaration by the joint Energy and Environment Council contained key elements of the Community’s nascent climate change policy which have carried through subsequent international negotiations to date. The first was the caveat that some states, both members and non-members of the EC, were not yet in a position to commit to the stabilization objective due to their lower levels of development. Since lower levels of development generally were accompanied by lower energy requirements, the declaration called for targets and strategies to help these states accommodate development while improving energy efficiency. A second key element was an assumption that “other leading countries” would undertake similar commitments to stabilize CO₂ at 1990 levels. Finally, achievement of the targets within the EC was based on total emissions within the Community rather than on a state by state measurement.

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110 The following is from (Haigh 1996, 162).
111 See note 108, above.
Following this declaration, the EC was able to lead the way at the Second World Climate Conference (SWCC) in November 1990, where several other states also declared national targets for CO₂ emissions (Bergesen, Grubb et al. 1994, 17). The EC was able to state its emissions targets for both economic and political reasons. Economically, the targets looked feasible, since several member states had already established similar targets, and the declaration said little as to how these targets would be specifically achieved (Bergesen, Grubb et al. 1994, 17). Politically, the EC needed to take a leadership stance in the international environmental arena at that time, in part because it had made such a poor showing during the negotiations for the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), signed in 1987.

While not directly the subject of this chapter, a brief analysis of the EC’s international performance on this ozone protection policy provides an important backdrop to the initial development of EC climate change policy. The experience of the member states and the EC in the ozone depletion negotiations shaped the EC’s approach to both the international SWCC in November 1990, and its own internal climate change policy. First, the member states learned the importance of presenting a unified EC front at international negotiations, because the power and influence of the member states acting together is greater than if they act separately and contradictorily. Second, the role of science and scientific uncertainty, which played a major role in the ozone negotiations, highlighted the need to apply the precautionary principle in other scientifically uncertain policy areas like climate change.¹¹² This principle became a starting point for the EC’s climate change policy. Finally, the policy communities within some member states—including both whom the ministers listened to and whom they invited to the
policy table—changed as a result of the ozone negotiations. This in turn changed the policy community within the Council of Ministers and later carried through into climate change policy.

Ozone Policy: A Prelude to Climate Change

In 1974, CFCs were used widely in industrial and domestic uses including refrigeration and air conditioning, aerosol sprays, as cleaning solvents in electronics and other industries, and in fire-fighting chemicals. It was thought that these chemicals were safe and non-toxic, and their greatest advantage was that they were non-flammable (Renzulli 1991, 346-347). In that year, the scientists Molina and Rowland found that CFCs were not breaking down in the lower atmosphere. Instead, CFCs were traveling to the stratosphere, where the ultraviolet radiation from the sun was breaking the chemicals down into chlorine particles, which were responsible for destroying the thin layer of ozone in the stratosphere (Jachtenfuchs 1990, 262; Renzulli 1991, 347). Even as they made this discovery, other scientific investigation showed that many other chemicals remained in the atmosphere, and might be responsible for the breakdown in the ozone layer (Benedick 1991, 11-12). Since scientists could not agree that CFCs were actually harming the ozone layer, the chemical industry was able to credibly deny any connection between the chemical and the layer’s destruction. They were so sure of their position that one DuPont representative said, “If creditable scientific data show that any CFCs cannot be used without a threat to health, DuPont will stop production of these compounds” a promise they had to make good on only a few years later (Benedick 1991,12).

112 While the science of ozone depletion is no longer uncertain, as discussed below, this was not always the case, even during the international negotiations on ozone depletion.
Despite the uncertainty of the scientific evidence, growing public opinion led to the U.S. "can ban" in 1977. This use of CFCs as aerosol propellants was also banned in Canada, Sweden and Norway in 1978, 1979, and 1980, respectively (Brunnée 1988, 285). The U.S. soon began pushing for a worldwide ban on the use of CFCs, and negotiated a bilateral agreement with the EC through the Council of Ministers. The subsequent EC ban was not a total ban of the use of CFCs as aerosol propellants, but a reduction of the production capacity of the EC of 30 percent of 1976 levels by 1982. Evidence shows that this was not a difficult goal for industry, since production capacity was far greater than consumption (Benedick 1991, 25; Haas 1993, 156; Brack 1996, 11). Instituting a full can ban in the EC would have caused major problems for industry, since approximately three-quarters of all CFCs used in the EC were used in aerosol sprays, compared to only one-third in the US (Rowlands 1996, 6, note 11). Some states, like Britain, vociferously objected to any further regulation, since their trade in CFCs produced major revenues for the country, and any sort of can ban or further reduction in use of CFCs would seriously damage the chemical industry (Rowlands 1996, 7). There was also suspicion on the part of European industry that DuPont and other US chemical companies were well on their way to developing CFC substitutes, a suspicion that was later proven to be unfounded (Benedick 1991, 33; Brack 1996, 53).  

During the Montreal Protocol negotiations in 1986-1987, the EC, mainly because of the intransigence of France and Britain, was a foot-dragger until near the end of the negotiations.  

The European Commission representative, Laurens Brinkhorst, given the task of presenting the

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113 Benedick notes that DuPont admitted in 1986 that it had ceased researching alternatives for non-aerosol CFC use in 1981 (Benedick 1991, 33).

114 The ozone negotiations have been thoroughly described and analyzed by several scholars and government representatives. (see Jachtenfuchs 1990; Benedick 1991; Haigh 1991; McConnell 1991; Renzulli 1991; Haas 1992; Haas 1993; Rowlands 1996).
Community’s position at the negotiations, was unable to move beyond the least common denominator policy of the member states, since the Protocol was an international agreement needing unanimous agreement of the member states. The Environment Council had authorized the Commission to speak for the Community at the negotiations, but on the condition that no modification of existing EC policy on CFCs could be made without prior approval of the Council (Jachtenfuchs 1990, 265). In essence, the Council had the last word. This also meant that where there was disagreement among the member states, or between the member states and the Council, individual member states could advance their own positions contrary to the “official” EC position (Haigh 1991, 173). In the Montreal Protocol negotiations, individual member states such as West Germany, Belgium, Denmark and the Netherlands openly supported the US position, and Brinkhorst was helpless either to endorse their positions or to prevent their dissent (Benedick 1991, 84).

To complicate matters further, the Council-centered policy community included representatives and advisors from the chemical industries, but excluded environmentalists and representatives of points of view that opposed the often nationalized chemical industries (Benedick 1991). The potential power and influence of a united 12-member EC was reduced to internecine squabbling. Finally, hanging over the negotiations was the constant US threat of unilateral action on the ozone problem if no Protocol was reached. Such action would have put the EC at an economic disadvantage similar to the US 1977 unilateral “can ban.”

It was only a fortuitous combination of intergovernmental politics that pushed the EC into an ozone agreement with substantial production and consumption targets. One explanation has attributed the change in the EC’s negotiating position to the change in the Council
Presidency "troika" in the summer of 1987.\textsuperscript{115} The British held the Presidency in the second half of 1986; therefore they were part of the troika from January 1986 to June 1987. According to both Benedick (1991, 36) and Jachtenfuchs (1990, 265), the reluctance of the British Presidency to broker a compromise in the Council left the Commission unable to formulate a cohesive position at the negotiation table, or react to compromise proposals put forth by other negotiating parties, and resulted in the period of stalemate described above.\textsuperscript{116} In June 1987, Belgium took over the Presidency. Britain left the troika, and Denmark and Germany (the President of the Council in the first half of 1987) joined Belgium within the troika. All three of these states were pro-active and positive about signing a Treaty, and favored stringent controls which they pushed forward in the Council (Benedick 1991, 36). The British position on ozone depletion finally changed in the late summer of 1987 with a change in the position of Britain's major chemical consortium, on whose advice the government had built its policy (Rowlands 1996, 13). A combination of the easing of the British position and the strong influence of three forward-looking member states in the troika helped bring about a conclusion of the negotiations in September that went beyond the restrictive position the EC had espoused since the start.

Despite its poor showing during the Protocol negotiations, the EC soon became a leader in ozone policy, beginning with its unilateral decision in March 1989 to eliminate CFCs completely by the end of the century. Jachtenfuchs (1990, 271, 271) provides an explanation of

\textsuperscript{115} The Council Presidency operates in a system called a "troika" representing the current, past and next Presidents (countries) of the Council.

\textsuperscript{116} While Benedick (1991, 36) attributes a great deal of EC recalcitrance on the Protocol to the British position, and to its place in the troika. Fiona McConnell, the U.K. ambassador to the Protocol negotiations, states that the "suggestion that during the British presidency of the EC the ozone layer problem was downgraded by the U.K. is incorrect" (McConnell 1991, 319). Interestingly, Benedick points out that "the U.K. delegate at Montreal (McConnell)… was nonplussed when she showed up at the first…" closed-door meeting
this sudden turn-around in EC policy, which led to the EC positioning itself as global environmental leader in the subsequent meetings of the parties to the Protocol. France’s President Mitterand was to play host to an international environmental convention in The Hague in March 1989, only a week after the March Environmental Council meeting, and he realized that a French veto of further CFC reductions during that meeting would mean a loss of credibility for France at the international level. As Jachtenfuchs notes, the EC also needed to improve its political position on environmental problems given its poor showing throughout most of the Protocol negotiations. Hence, even the more pragmatic suggestions of Germany and Denmark to eliminate 95 percent of CFCs and allow some essential uses of the chemicals was rejected in favor of a more politically astute position on the problem. Growing European level public pressure and concern for the ozone problem meant that national leaders and the EC needed to react politically even before it had been proven scientifically that such action was necessary.

Interestingly, during the actual Environmental Council meeting in March 1989, no advisors from the chemical industries were present. At this meeting, a Spanish proposal for an 85 percent reduction in CFCs was expanded to include the total elimination of all CFCs by the end of the century (Jachtenfuchs 1990, 271). Despite the fact that the Council’s negotiations can be considered the epitome of intergovernmentalism, even the closed policy networks of the Council are not entirely immune to societal interest influence. In this case, the absence of any societal actors within the sub-government led to the most stringent agreement on the reduction of CFCs possible at that time. In looking at the overall history of EC ozone policy, then, much was dependent upon exactly which societal interests the member states chose as their advisors. 

of the September 1987 troika... “and was excluded by EC colleagues on (the) technical grounds” that Britain
The EC carried its new “green leadership” stance into the Second World Climate Change meeting in 1990. As will be discussed further below, it tried to keep the momentum going through the 1992 Rio Conference. To be a leader on the international climate change stage, however, meant that the EC itself would have to develop an internal climate change policy that consisted of more than lofty goals and rhetoric.

**Internal EC Climate Change Policy**

During 1990, the Commission focused on developing a comprehensive climate change policy. The climate change issue was seen not merely as an environmental issue, but an issue that “centered around the very future of the Community” given the possible consequences of climate change (Jachtenfuchs and Huber 1993, 43). From the highest levels of the Commission, including President Delors, down through the Directorates General, the policy focus became economic as well as environmental. Overall, in assessing the effects of environmental and economic policy to combat the greenhouse effect, the Commission concluded that an “active policy on energy efficiency would be beneficial for the economy, although some energy intensive sectors would lose” (Jachtenfuchs and Huber 1993, 44).

While the Commission had a Commissioner and a DG for energy, the Community as a whole did not have an energy policy, *per se*, because of the sensitivity of energy security in the individual member states. In other words, energy policy to this point had not been Europeanized in any fashion. Prior to this growing debate on climate change, however, the Energy and Environment Directorates had worked together to develop a Directive on emissions from large combustion plants. That Directive, drawn up in response to the EC’s participation in

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117 was no longer in the troika (Benedick 1991, 36).
the Long Range Transboundary Air Pollution negotiations regarding acid rain, "gave the Commission the confidence that it could tackle a major environmental issue transcending national frontiers with considerable implications for the cost of energy" (Haigh 1996, 160). The eventual cooperation between the Environment and Energy policy communities within the larger climate change policy community was key to the development of the Commission's proposed climate change strategy.\(^{118}\) The resistance to that policy community from other, more powerful, DGs within the Commission played a major role in limiting the Community's climate change action.

The need for economic and energy-centered strategies to deal with the climate change problem became more explicit as various DGs worked on developing a climate change strategy.\(^{119}\) DG XVII, the Energy Directorate General, organized a conference in Brussels on "Energy for the New Century: The European Perspective" in mid-1990. During 1990, both DG XI (Environment) and DG II (Economic Affairs) advocated the use of economic instruments, and specifically a CO\(_2\) or combined CO\(_2\)/energy tax. In 1991, the Economic Policy Committee of the Commission sent a statement to the Commission and Council stressing the use of market-based instruments as a central feature of any Community climate change strategy.\(^{120}\)

In the same way that the SWCC meeting had spurred the EC into its initial target-setting action, the impending 1992 UNCED in Rio de Janeiro encouraged the Commission to develop the Community's "Strategy to Limit Carbon Dioxide Emissions and to Improve

\(^{117}\) Even the Maastricht Treaty mentions "measures" but not a "policy" in the energy field (Collier 1996a, 131).

\(^{118}\) The eventual common perspective of the Environment and Energy Directorates is described below.

\(^{119}\) The following is from Liberatore (1995, 63-64).

\(^{120}\) The role and use of economic and market-based instruments is dealt with fully in the section on the carbon/energy tax.
Energy Efficiency” in early 1992, after much debate between the Energy and Environment Councils, and among the relevant DGs within the Commission (CEC 1992). The Communication from the Commission asked the Council to adopt a package of four measures that would form the Community’s plan to combat climate change (CEC 1992, 10).

These were:

- A framework directive on energy efficiency
- A decision on specific action for greater penetration of renewable energy resources
- A directive on a combined carbon/energy tax
- A decision concerning a monitoring mechanism for Community CO$_2$ and other greenhouse gas emissions.

**UNCED**

The Community approached the 1992 UNCED using the Commission’s proposed strategy and the stabilization targets as the backbone of its climate change strategy. The Community (as of 1992) was responsible for about 13 percent of global CO$_2$ emissions, the US about 23 percent, Japan 6 percent, and the former USSR and Central and Eastern European Countries (CEECs) about 25 percent (CEC 1992, 1). The Commission’s proposed strategy of a carbon tax combined with energy efficiency measures and the increased use of renewable energy sources would reduce CO$_2$ emissions in the Community by 9.3 percent by 2000, as compared to a projected increase of emissions by 11.3 percent between 1990 and 2000 in the absence of any policy intervention (Carraro and Siniscalco 1993, 3).

The Community’s strategy at Rio was forward-looking but cautious. The Commission’s communication contained a caveat, known as the “conditionality clause,” that the Community would only implement the carbon/energy tax upon the adoption of a similar tax by other OECD countries, specifically the US and Japan. Several concurrent factors meant that,
from the start, it was highly unlikely that an international consensus on concrete measures to reduce CO\textsubscript{2} emissions would be forthcoming at Rio. These included a general lack of agreement among the other OECD countries as to the efficacy of a tax as a measure to combat climate change, the lack of US support for any measures on global warming, and the EC’s own conditionality clause. It has been suggested that this backpedaling in what was to have been the EC’s most glorious moment in international environmental leadership, and the conditionality clause specifically, contributed to EC Environment Commissioner di Meana’s resignation from his post, and his decision not to participate in UNCED (Carraro and Siniscalco 1993, 5; Bergesen, Grubb et al. 1994, 32).

The preliminary negotiations for UNCED began in 1991, and continued until the actual convention in Rio in June 1992. Throughout the UNCED negotiations, the EC pressed for targets similar to the ones they had adopted (the stabilization of emissions at 1990 levels by the year 2000), in direct opposition to the US position. The US, after signaling its initial willingness to accept a stabilization target, later became vehemently opposed any such timetable or targets (Bodansky 1994, 63-69; Dasgupta 1994, 134). Unlike the Montreal Convention negotiations, the EC was able to take a unified stance at Rio since there was general agreement among the EC countries as to their negotiating position (Kjellen 1994, 158). Some EC states were more skeptical about strict emissions targets and timetables than others, but, overall, these differing points of view did not cause nearly as many problems as they had in the Montreal negotiations (Borione and Ripert 1994, 83; Godemberg 1994, 179). While the British favored a position somewhere between the EC’s strict targets and the US lack of any targets (Dasgupta 1994, 135), they helped break the deadlock on targets and timetables through high level discussions between the UK and US in late April 1992 (Bodansky 1994, 69).
Although the Framework Convention that resulted from the Rio Conference did not require stabilization at 1990 levels, it used those levels as an aim, in Articles 4(2)a and Article 4(2)b, calling for a return to those levels of greenhouse gases by the end of the present decade (the year 2000) (Kjellen 1994, 166).

The EC’s experience at and before Rio was much more positive and unified than that leading up to the Montreal Protocol. In the post-Rio time frame, the EC and the 15 member states ratified the Conventions from Rio, and made steady progress in passing legislation implementing the Climate Change Convention, the Bio-diversity Convention and Agenda 21. More importantly, much of the Community’s effort was aimed at developing the legislation required by the Commission’s declared strategy of 1992 (CEC 1992). It was in pursuing this latter legislation that the EC run into difficulties.

**EC Climate Change Policy after UNCED**

As noted above, the Commission’s proposed four-pronged strategy for managing climate change included elements of energy efficiency, efforts at using renewable energy resources, a carbon/energy tax, and a monitoring mechanism for greenhouse gas emissions. In 1995, the Commission also proposed a strategy for minimizing CO₂ emissions from cars (CEC 1995a), which was only given final approval in the Commission in October 1998. Overall, as described in detail below, the EU has made little forward progress on developing enforceable policy instruments to combat the problem of climate change.

The three main factors that seem to contribute to policy failure in this area are as follows. First, the problem of climate change does not lend itself to easy end-of-pipe solutions as in traditional environmental policy. While the EU has been and remains committed to
finding a way to prevent climate change, it has had difficulty in developing policy instruments to further this policy. Second, the instruments deemed most effective center on energy and fiscal policies. The institutional and macro-level structures of the EC as they apply to these climate policy instruments seem to have made developing an effective policy on climate change nearly impossible. Third, related to these macro-level institutional constraints such as the absence of QMV, intergovernmental wrangling among the member states would seem to be an intuitive explanation for the general failure of the EC to develop a comprehensive climate change strategy. However, a more nuanced approach to understanding the actors involved and their relationships with each other reveals a third factor that may help explain the failure. This is the influence of several non-state actors, including the Commission and societal actors acting at the European level, especially early in the policy-making process. This final factor does not fit well with an intergovernmental explanation of the failure of EU climate change policy, and it reveals that, in fact, some Europeanization of actor relationships in this policy area did indeed occur. The informal Europeanization of the policy arena agreed upon by the member states in their earliest agreements to try to develop such a policy had the unintended consequence of opening up the policy-making process to those non-state actors. In fact, because of the disagreements among the member states, and within the EC’s institutions as influenced by societal actors, implementation and forward progress has required innovation by subnational groups and actors. Both the activities and influence of non-state and pluri-level actors in this policy area seem to indicate the possibility that changes in governance do not necessarily require specific decision-rule changes that formalize the Europeanization of the policy arena and actor relationships. How durable this governance change really is, however, in the absence of such Europeanization remains to be seen.
Because climate change policy involves an interaction between environment, energy and taxation policy (the latter in the case of the proposed energy tax), it becomes important to tease apart the relationships involved in the climate change policy community in order to understand the difficulties encountered in this policy area, and to be able to discuss the probable future of this policy. The climate change policy community was large and diverse, with many competing interests represented within it. These ranged from the governmental interests of the member states as expressed in the Council, to national and European level industry interests, national and European level environmental interests, regional and local interests, and sectoral institutional interests within the Commission. The following sections describe the programs that the EC adopted (or attempted to adopt), and the difficulties it encountered in the policy-making process.

**Energy Efficiency: The SAVE Program**

The Commission had been under pressure to design an energy efficiency program even prior to the Community’s efforts to combat climate change. As early as 1986, in an effort to reduce energy imports, the Council had adopted a target of improving energy efficiency by at least 20 percent by 1995 (Haigh 1996, 174). The renewed emphasis on energy efficiency explicitly stated in the Community’s climate change policy put additional pressure on the Community, specifically the Commission, to design a comprehensive program. Other elements of EC energy efficiency policy already in place or under development were subsumed under the SAVE (Specific Actions for Vigourous Energy Efficiency (CEC 1992)) umbrella, resulting in policy development that was haphazard and disorderly (Haigh 1996, 174). When the Commission designed its proposals for the SAVE Directive, it was under pressure to quickly implement an energy efficiency strategy. Its attempts to do so were both too comprehensive
and too rushed, and played a significant role in the watering down of the actual SAVE Directive (Skjaerseth 1994, 31, note 12). The SAVE program originally contained specific requirements, standards and timetables, but was later turned into a "framework directive" leaving implementation, and most importantly standard setting, to the member states, with limited guidance by the Commission (Bergesen, Grubb et al. 1994, 19; Collier 1996a, 128-129).

The difficulty of combining the goal of increasing energy efficiency with the goal of reducing an environmental problem certainly did not improve the policy-making efficiency of the Commission or add to the coherence of the policy. Within the Commission, DG XVII (Energy) was still primarily concerned with the overall goal of reducing Community energy imports, and energy efficiency was seen simply a means to that end (Skjaerseth 1994, 27). The highly technical and politically sensitive nature of the energy sector meant that the Energy DG was far more likely to seek expertise on cost, feasibility, etc., from actors directly involved in implementing proposals, such as energy producers and users, than from environmental lobbyists. The latter were less likely to be able to offer necessary information and expertise to those drawing up proposals.

Figure 5.1 shows the Commission policy community for the SAVE Directive. Within that larger policy community there were several policy networks. The policy network centered on DG XVII (Energy) was closed, allowing only industry and energy producers and users into the sub-government of the policy community. In the pressure pluralist network around DG XI (Environment), environmentalists remained part of the attentive public, despite their close relationship with DG XI. The overall policy network at this stage was closed in nature because DG XVII, and not DG XI, was central to the energy efficiency Directive, leaving
environmentalists outside of the policy-making sub-government and weakening the overall influence of DG XI.

**Figure 5.1: SAVE Policy Initiation Policy Community: Pressure Pluralist Policy Network**

- **sub-government**: darker shading indicates a greater degree of influence in sub-government
- **attentive public**: more solid line indicates a stronger relationship with sub-government

The other major element that weakened the SAVE plan was disagreement among the member states. The influence of the Council as a whole, and the member states as individuals, is never stronger than when unanimous voting rules govern a policy area. This was the case for voting on the SAVE Directive in the Council. Further exacerbating the difficulty of developing an energy efficiency strategy was the initial flush of "subsidiary fever" that struck the Community during and after the Maastricht negotiations. Fear of giving up sovereignty in yet another policy area, and the overall mood of deregulation and re-nationalization that gripped the Community in the early 1990s, made the member states even more willing to eviscerate the Commission's proposed Directive. The UK, a proponent of the "re-nationalization" version of subsidiarity also showed (and still shows) the greatest reluctance to move any sort of energy
policy onto the European agenda (Collier 1996b, 17). In addition, the disparate energy policies and energy consumption patterns within the member states made it very difficult to find unanimous agreement on how best to achieve energy efficiency (Collier 1996b, 14). All these factors that produced disagreement among the member states meant that the SAVE Directive, which had contained specific requirements on items ranging from building insulation to car inspections, was watered down considerably in the Council. The resultant 1993 SAVE Directive (OJ L 1993, 237) gave the member states a free hand in designing programs for energy efficiency in six main areas, rather than setting any kind of EC standards, but retained the goal of improving energy efficiency by at least 20 percent (Collier 1996a, 128). SAVE, though a framework Directive, is binding, and as such goes beyond the non-binding Environmental Action Programs developed in the early years of Community environmental policy making.

One of the only exceptions to the unanimity rule in the SAVE program, indeed in the entire Community climate change strategy, was in the area of tradable goods. While most of the specific requirements originally contained in the Commission's proposal were removed and left to the member states, the Community retained the authority to set energy efficiency and labeling standards of traded products, such as refrigerators and stoves (Haigh 1996, 175). This was one of the only areas related to energy policy where the community, in fact, could claim formal competence, and that was only because national level product standards could pose barriers to trade.

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122 These are: Minimum insulation standards for new buildings; energy certification of buildings; billing of heating costs based on actual consumption; promotion of third-party financing for public sector investments; inspection of boilers; energy audits for businesses with high energy consumption (Collier 1996a, 128).
The fact that the EC had no mandate in the Treaty for energy policy severely hampered its (particularly the Commission's) ability to propose and develop policy in this area. This is similar to the experience of the EC in environmental policy prior to the SEA. In the same way that worsening environmental conditions within Europe and the 1972 Stockholm Conference had put pressure on the EC to Europeanize environmental policy in the 1970s, the World Climate Change Conferences and UNCED had put pressure on the EC to Europeanize the energy policy area as it related to climate change. This meant, however, that the EC was forced to try to develop a comprehensive energy efficiency strategy prior to the evolution of institutional mechanisms that could facilitate effective policy making, and without formal Treaty competence. The Community had developed common measures in energy policy prior to SAVE, but it had not attempted a true energy "policy." The lack of formal Community competence in energy policy, the subsequent lack of Europeanized institutional decision-making rules such as QMV in that area, and widely disparate internal approaches to energy use and conservation within the member states all contributed to the gutting of SAVE, and affected some of the Community's other efforts to combat global warming.

**Renewable Energy: The ALTENER Program**

The Directive on renewable energy sources, ALTENER, suffered a fate similar to that of the SAVE Program. The initial proposal began as a forward-looking, detailed, well-financed program for implementing investment in renewable energy sources in the Community. This program was severely watered down to a Directive that still maintained specific targets, but which the member states were to simply "take into account" in their own energy programs.

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123 Collier (1996b, 13-14) states that by 1994 the Commission listed over 190 measures in this policy area, but notes that "members states have managed to retain their sovereignty in all crucial areas of energy policy."
(Haigh 1996, 173). The budget for the program was severely reduced, placing the onus for implementation and financing onto the member states (Bergesen, Grubb et al. 1994, 19-20; Collier 1996a).

Like SAVE, the weakness of ALTENER can be attributed mainly to the macro-level institutional constraints of this policy area. These included the lack of EC Treaty competence in energy policy and unanimous decision-rules in the Council. In addition, the bureaucracy in the Energy Directorate of the Commission was unable to be independent from both the demands of the member states, and those of energy producers and industry. This severely limited the policy innovation of the Commission, even prior to Council deliberations. Societal input into the Directive, except for those industry groups in the sub-government of the Energy Directorate, was limited by the decision-rules governing the Directive. The Parliament had only a minimal policy-making role, and European environmental interest groups were in essence limited to lobbying the Environment Directorate. Since DG XI was not the primary DG responsible for the ALTENER program, it carried less clout within the Commission than it would have had it been solely responsible for drafting the proposed Directive.

The CO2 Monitoring Mechanism

Compared to the SAVE and ALTENER programs and the proposed energy tax discussed below, the design and implementation of a monitoring mechanism for CO2 and other greenhouse gases can be considered a success story, albeit a very qualified one. The Monitoring Mechanism Committee, established by Council Decision 93/389, has met each year since 1990, and in 1996 prepared and presented its second, comprehensive report on the evaluation of national programs under the monitoring mechanism (CEC 1996).
The report provides a thorough look at where the Community and the member states stand in implementing measures to meet Community stabilization targets. While there is some uniformity in the member states' reporting due to the requirements of both the Community Monitoring Mechanism and the reporting requirements under the Framework Convention for Climate Change (FCCC), using the information for any kind of Community-wide evaluation remains difficult for several reasons. Many problems in the report are due, in part, to the fact that not all the member states have even set national or EC level CO\textsubscript{2} targets, and because targets are not uniform across the Community. Some states, such as Greece, Ireland and Portugal have objectives to limit increases in CO\textsubscript{2} emissions, consistent with the FCCC and the Community program which allow increases in emissions for less developed countries. Other states measure their targets based on different base years, or different target years (Germany and Denmark use 2005, for instance). The Netherlands calculates its emissions correcting for temperature and weather conditions in its base year of 1990. Other difficulties with the report include inconsistencies in, as well as a lack of, information.

There are discrepancies between the Community’s information and that of the member states on greenhouse gas inventories, and between the future trajectories presented by the member states and those calculated by the Commission. The inconsistencies in information from the member states are due mainly to the fact that the Community’s strategy leaves the implementation of measures entirely up to the member states’ discretion. The three main strategies used by the member states are energy efficiency improvements, consumption changes and fuel switching. However, there is a range of different policy measures introduced

\[124\] The information in the following analysis is taken from the Commission’s Second Evaluation of National Programmes Under the Monitoring Mechanism (1996), unless otherwise noted.
by the member states to implement these strategies to limit CO₂ emissions. These include economic instruments, such as CO₂ or energy taxes; regulations on energy efficiency requirements; information and education programs for firms and households; government action in energy intense sectors, such as deregulating energy markets; and research and development. The member states have used different combinations of these approaches, and their reporting of the implementation of these programs is inconsistent and often insufficient.

The Commission found a lack of information on inventories of greenhouse gases as well as on actual implementation measures within member states. For example, the lack of objectives for Finland, France and Germany, which produced 43 percent of total Community emissions in 1990, for the year 2000 (the year the Community program uses as its goal) makes calculating trajectories and targets for the year 2000 especially problematic for the Commission.125

The report states that there has been “considerable improvement in the quality of reporting in the National Communications/Programmes since the first National Programmes were submitted for evaluation in 1993,” but goes on to say that “the information provided in them is still insufficient, in terms of specific details, to evaluate progress towards the Community stabilisation (sic) target in a satisfactory way.” One of the final conclusions of the

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125 The Report (CEC 1996) indicates some significant trends in CO₂ emissions, especially when reviewed on a sector-by-sector basis in energy production, industry and transport. While energy related CO₂ emissions decreased by 2.2 percent between 1990 and 1993 in the Community as a whole, these emissions only fell in three of the fifteen member states (Austria, Germany and the UK), and the downward trend in Germany is likely to stop once the eastern Länder are converted from brown coal use (6–7). Economic growth in the Community as a whole was slow for the years 1990-1993, so industrial emissions of CO₂ leveled off, but are expected to increase as the European economy grows (7). Emissions in the transport sector are expected to continue to grow, as they did by 7 percent between 1990 and 1993, mainly due to the completion of the internal market (7). Based on member state developed trajectories, five countries expect to reduce CO₂ emissions by 2000, four aim to stabilize emissions, and six countries project an actual increase in emissions by 2000 (8). Because of differences in methodology and assumptions by the member states, the Committee’s projections and trajectories for the year 2000, especially in the energy sector, project higher CO₂ emissions than the member states (20–21).
report is an equivocal statement that “It appears therefore that, at this stage, the Commission is not in a position to claim that the adopted policies will be sufficient to meet the agreed targets and certainly not to ensure reductions in CO₂ emissions after the year 2000.”

The Carbon/Energy Tax

The Community has never wavered from its initial commitment to deal with climate change, regardless of both continuing scientific uncertainty and lack of action on the part of other states. It played a leadership role in the 1997 Kyoto Conference of the Parties where targets and deadlines were finally written into the Framework Convention.\[^{126}\] It has, however, been limited by the overall intractability of the problem, and by the institutional structures of the Community that prevent anything but a lowest common denominator policy at the Community level. Having learned lessons about international environmental leadership from the Montreal Protocol negotiations, the EC approached the climate change problem very differently, as noted above. The problem of climate change, however, was not so easily solved as that of ozone depletion by the phase-out of a few specific chemicals. The root cause of climate change, greenhouse gas emissions, results from the very factors that make a country prosperous—industry, transportation, energy use, and general consumption. This meant that traditional “end-of-pipe” or medium-based environmental policy solutions would not solve the problem. It also meant that a clash between the more industrialized states of the EU and those that were striving for further economic development was inevitable.

\[^{126}\] The Kyoto Conference on Climate Change covers six greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride—and establishes reduction commitments for the period 2008-2012 based on 1990 levels for all developed countries. These vary from 8% for the EU and most countries in Central and Eastern Europe, to 7% for the US and 6% for Japan and Canada. The conference agreed on stabilization at current levels for New Zealand, Russia and Ukraine, and increases in emissions for Norway (1%), Australia (8%) and Iceland (10%).
Before recounting the saga of the EC’s carbon/energy tax, it is important to note that the idea of such a tax, while defeated in the Council once, seems to have a life of its own. It never quite disappears from the Community’s climate change strategy, reappearing in various forms like a phoenix rising from the ashes. Even at the time of this writing, the tax is merely moribund, not dead. There have been several major impediments to the implementation of a Community carbon/energy tax, which can be separated into two main groupings. Some difficulties can be attributed to the nature of the climate change problem itself. It requires collective action not only by the EU, but by the vast majority of states in the international arena in order to prevent and control. As is clear from the Community’s experience in trying to develop policy instruments, there is no single quick-fix solution to the problem. It requires the coordination of environmental, energy, and possibly taxation policy. If a tax is chosen as a primary policy instrument, this then leads to a second group of problems, which are “political” difficulties. At the international level, there has been lack of international agreement on the efficacy of such a tax to combat climate change, and reluctance by other industrialized countries to implement similar taxes. At the Community level, the current macro-level institutional structures and decision-rules governing fiscal and energy policy in the Community make using such a policy instrument to solve an environmental problem unfeasible and ineffective.

Since the tax has been the main instrument pursued at both the Community and the international level, it is important to discover how the above difficulties relate to one another. The following section demonstrates that much of the failure of the EU carbon/tax policy can be attributed mainly to the structural/institutional impediments of the Treaty and its decision-rules, and to the intergovernmental wrangling of the member states. This is as far as an
intergovernmental analysis would go, attributing the failure of EU climate change policy primarily to its failure to adopt the tax. But what if the choice of a taxation strategy is misguided and ineffective? Following the discussion on the Community’s difficulties in adopting the tax, I provide evidence that shows that other avenues such as local or regional action, guided by the Community may provide a way out of the conundrum over the tax. Finally, I analyze whether other instruments, such as a tradable permit system, show more promise both for garnering political agreement and solving the actual problem of climate change.

The Road to the Carbon/Energy Tax

The 1990 conclusions of the joint Environment and Energy Councils paved the way for the Commission to develop legislation to meet the stabilization targets. The SAVE and ALTENER programs were aimed at the problem of energy efficiency and development of renewable energy sources, but these programs were not enough to meet the Commission’s proposed goal of the 1990 stabilization target. Some other policy instrument had to be developed.

As in the early stages of the ozone regime, a great deal of scientific uncertainty surrounded the nature and scope of predicted climate change. The Community had long followed the “precautionary principle” in developing environmental policy. This principle was enshrined in the Single European Act and in the Fourth Action Program. It should not surprise the observer, then, that the EC took a much different approach to the scientific uncertainty of climate change from that of the US. Rather than denying that any action was necessary prior to total scientific certainty, as the US did, the EC took a combined “no-regrets”
and precautionary approach.\textsuperscript{128} The development of the carbon/energy tax was part of that approach. Rather than seeing the use of innovative, economic approaches to climate change as costly to the EC, it saw the key to innovative policy as lying “in the connection between energy futures and climate change on the one hand, and economic development and energy efficiency measures on the other” (Haigh 1996, 165). The Community could only benefit economically in the future if it were to import and consume less energy overall, regardless of whether climate change predictions came true.

The Task Force Report on the Environment and Internal Market (1990) had advocated the use of economic and market-based instruments to improve environmental policy implementation, and these became part of the Fourth Action Program. Many of the DGs in the Commission, the European Parliament and several member states had begun to favor the use of such instruments as alternatives to command-and-control regulation at the Community level (Liberatore 1995, 66-67). Specifically, they recognized that environmental taxes often have certain advantages over traditional regulatory instruments.\textsuperscript{129} Taxes correct distortions in the economy, namely the externalities that arise from the excessive use of environmental services or particular resources. They provide incentives to users of the resource to introduce new technologies that promote efficiency and conservation. Finally, they can raise revenues that can be applied to subsidize other environmental programs. At the Community level, the proposed energy tax was to be aimed primarily at changing behavior and promoting energy efficiency rather than at raising revenues (Liberatore 1995, 66).

\textsuperscript{127} See Chapter Two.
\textsuperscript{128} A “no regrets” approach is generally used as part of a larger cost-benefit approach to regulatory policy. A no regrets approach means that there must be benefits to the policy even if the scientific evidence about a projected environmental problem turns out to be false, or even if the environmental problem does not occur.
\textsuperscript{129} The following is adapted from Botteon and Carraro (1993, 257)
The Commissioner for the Environment, Ripa de Meana, was one of the most vocal supporters of such a tax. The Energy DG also supported the tax, having developed models and studies that showed the cost-effectiveness of the strategy and its energy saving potential (Liberatore 1995, 67). Even though these two DGs had different goals—DG XI to protect the environment, DG XVII to promote energy efficiency and security—they worked closely together on the climate change strategy and carbon/energy tax. Opposition to the tax was the Commissioner for Indirect Taxation, Christine Scrivener, and her DG XXI. She opposed any new Community-wide taxes, including eco-taxes (Skjaerseth 1994). She was supported by the DGs for Economics (DG II) and the Internal Market (DG III). These DGs mainly feared a unilateral implementation of the tax by the Community would reduce its competitiveness internationally. Once Ripa di Meana later gave in and accepted the principle of conditionality for the tax, however, these other DGs and Scrivener lost their main argument against the proposed tax (Skjaerseth 1994, 30).

Other DGs were not the only ones opposed to a Community tax. The energy tax was the target of some of the most vicious lobbying ever seen in Brussels, lobbying headed by UNICE, the voice of business in Europe (Skjaerseth 1994, 28-29). Industry and business groups lobbied, and even worked with, the DGs most favorable to their viewpoints as the Commission developed the tax proposal. DG XI and DG XVII’s original proposal was slowly eviscerated as it made its way into the larger arena of the Commission. Environmental groups, with their limited budgets and staffing, could not compete with the more numerous industry and business groups which were better staffed and had far greater financial resources. In addition to these conflicts within the Commission, the decision-rule of unanimity in the
Council for measures of a fiscal nature meant that the individual member states had a great deal of influence over the proposed Directive.

The state-directed policy network for the initiation stage of the CO$_2$ Directive is shown in Figure 5.2. Like the policy initiation network for the SAVE Directive, the closed networks of DG XVII and other Directorates dominated this stage of policy making for this Directive. Environmentalists were left out of many of the important negotiations leading up to the Draft Directive. The member states played a key role in this policy network as part of the sub-government, since the Directive would ultimately have to pass through the Council unanimously.

**Figure 5.2: Policy Initiation Community, CO2 Tax Directive: State-Directed Network**

- Darker shading indicates greater influence within the sub-government.
- More solid line indicates a stronger relationship with the sub-government.

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![Policy Initiation Community Diagram](image)

**Opposition**
- DG XXI
- DG II
- DG III
- Member States (opposed)

**Proponents**
- DG XI
- Other DGs
- DG XVII
- Member States (proponents)
- Environmentalists
The Energy and Environment Directorates originally conceived of a simple CO₂ tax that would target only that particular greenhouse gas. Such a tax would have favored states relying on nuclear power (such as France) and put states that were heavily dependent upon coal (such as Britain) at a disadvantage. Even environmentalists opposed such a singular tax, since they generally opposed nuclear power (Liberatore 1995, 66). The tax was thus proposed as a combined CO₂ (or carbon) and energy tax. It would be based half on CO₂ emissions, and half on the calorific value of the fuel (Collier 1996a, 127). Even this compromise was not enough to achieve consensus among the member states.

By the time the Commission presented the final proposal for a Council Directive on the tax in June 1992, the original conception of DG XI and XVII was hardly recognizable. The original idea for the tax called for a gradual introduction of the tax, to increase year by year, until it amounted to $10 a barrel by the year 2000. The timetable was the first casualty of the proposal. While the tax still would be gradually raised, its implementation, and thus any subsequent timetable, depended on the condition that other countries implement a similar tax. Another change granted the member states the authorization to grant tax reductions from 25 to 90 percent to those industries whose energy costs ranged from eight to 30 percent of their total operating costs (Skjaerseth 1994, 31, note 11). In addition, member states could grant exemptions to those industries that were making “substantial efforts” to reduce CO₂ emissions or reduce their energy costs (Collier 1996a, 127). Finally, based on the principle of “burden sharing” within the Community, lesser developed member states would be able to suspend application of the tax altogether (Skjaerseth 1994, 31).

That the Commission as a whole approved the proposal at all was mainly due to the political pressure of the impending Rio Conference. The Community wanted to go to the
UNCED with a plan in place, even if that plan had holes in it, and was incomplete. Following the Rio Summit, the Council of Ministers reviewed the Commission’s Proposed Directive on the carbon/energy tax. Despite the changes made to the proposal that favored both industry and particular member states, the Council could not and did not approve the Commission’s proposed Directive. Although it was the Council that had given the Commission the mandate to develop a plan for reaching the stabilization targets, the Council balked when it came time to pass the most important one, the tax Directive. Having already gutted the SAVE and ALTENER plans, the Council simply stopped the tax dead in its tracks. Britain was staunchly opposed to any introduction of a European tax, and claimed that it did not need such a tax to meet the targets for CO₂ stabilization (Haigh 1996, 165). The less developed member states opposed the tax, despite its provisions for burden sharing, because they feared the tax would impede their development (1996, 165). France continued to oppose the combined carbon/energy tax, preferring a carbon tax alone.

The importance of the institutional structures of the EC, especially decision-rules within the Council, cannot be overstressed in the case of the carbon/energy tax. The fact that fiscal measures for environmental policy were subject to unanimous voting in the Council meant that any such Directive directly imposing or even regulating taxes from the European level could be stymied by a single member state opposed to them. Both the Greek Presidency of January to July 1994, and the German Presidency from July to December 1994, tried to amend the Directive within the Council so as to make it palatable to the other member states (mainly Britain). These efforts failed, and the Directive failed to pass.

Surprisingly, in early 1995 the Commission decided to amend the moribund Directive, in part because Finland, the Netherlands, Sweden and Denmark had already introduced their
own energy taxes, threatening the harmonization of the internal market. In addition to the internal difficulties these individual taxes presented for the Community, the Community itself still needed to act because of pressures from the international level. The Community had become a party to the Climate Change Convention, along with the member states. It had done so in part to continue to exercise political leadership on the issue, but also to ensure the participation of several of the member states. The “Cohesion countries” (Spain, Greece, Portugal and Ireland) would not have signed the Convention without the participation of the EC since it is doubtful they could have reached the stabilization targets individually (Haigh 1996, 181). Instead, they were relying on the notion of “burden sharing,” or joint implementation, within the Community, as the Community as a whole stabilized its emissions.

The new tax proposal sought to simplify and streamline the European level procedure in order to make the development of a specific list of taxable products unnecessary. The amended tax Directive called for an energy excise tax on “all products intended to be used or sold as combustibles or motor fuels,” except for products used in renewable forms of energy. The Community had previously adopted a change in the harmonization of excise duty structures which provided a framework for the imposition and administration of a possible energy tax. The Commission’s amended energy tax proposal set target rates for different fuels based on energy content, all of which were to be harmonized at the end of a transitional period. Most importantly, the amended proposal abandoned the conditionality of a European tax on the introduction of such a tax by other OECD countries. The Commission, and DG XI’s Commissioner Ritt Bjerregaard, sought to take the lead and set an example in this policy area rather than waiting for other states to do so.
The adoption of this proposed tax was optional. Spain, Portugal and Greece would not feel pressured to choose between development and energy efficiency, and only member states "which so desired" would implement the tax. The SAVE and ALTENER programs, though weak, still encouraged energy efficiency, and provided some funding to member states pursuing energy efficient development. The Directive set European level guidelines and parameters so that states that chose to tax the carbon/energy contents of fuels would have a level playing field of rates and products in order to avoid competition problems and trade barriers.

When the proposal left the Commission, it went to the Finance, Energy, and Environment Councils. Prior to the Council's readings of the proposed Directive, European level industry mobilized against the proposal. Groups ranging from the oil, chemical and cement lobbies to UNICE issued statements against the proposed tax (Europe Environment 1995b). The Finance Ministers actually gave the proposal a "reserved welcome," but questioned whether it went far enough to meet the Community's goal of stabilizing CO₂ emissions at 1990 levels by 2000 (Europe Environment 1995b). When the proposal reached the Environment Council in late May 1995, it received stronger opposition by certain member states. While the cohesion states and Britain still did not want a European level tax, they did not block it, because adoption of the tax was optional. Surprisingly, Germany became the most vocal opponent of this latest incarnation of the tax proposal. Germany, which had been accused of playing "hide and seek" by threatening to impose its own taxes but never doing so, believed the proposal was under-ambitious, stating there should be one tax for all, or no tax at all.

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130 The information in this paragraph is from Europe Environment (1995a).
This move effectively stalled the carbon/tax proposal once again, perhaps permanently this time.

It is clear that the member states’ ability to veto the tax played a major role in its demise both times when it came before the Council. However, as this section has shown, action and disagreement about the tax also centered heavily on the Commission. DG XI (Environment) and DG XVII (Energy), two “minor” Directorates in the Commission, were from the start pitted against the strength of DG II (Economics), DG III (Internal Market) and DG XXI (Taxation). It is important to note that despite the rule of unanimity in the Council, industry associations found it important and necessary to lobby and provide information to the Commission in order to help eviscerate the tax. Member states pressured the Commission to allow for exemptions of particular sectors and for tax reductions for certain industries. While it was eventually the member states who vetoed both proposed taxation Directives, the Commission played a major agenda setting role, especially when it developed its 1995 amended tax proposal.

The problems inherent in the Community’s attempts to develop a carbon tax seem to overdetermine its failure. The nature of the climate change problem as one that requires collective action at the international level, the double-whammy of the tax being a fiscal instrument dealing with energy sources (both of which fall under unanimity in the Council and are still largely in the member state arena) all seem to point to the inevitable failure of this policy. The question of whether a change in decision rules would have allowed passage of this tax seems almost moot. However, I do not believe it is. When one observes the repeated attempts and action by the Commission (rather than the Council) to propose a tax acceptable to the member states, one can see that the member states did not entirely control this policy area.
In its 1995 attempt to pass a tax proposal, the Commission almost succeeded. The tax met with approval in the Finance Council, but failed in the Environment Council. It failed in the latter because of the vote of one member state, Germany. Even Britain and the developing member states did not oppose it. It seems likely, therefore, that Germany could not have garnered a blocking minority in the Council under QMV rules, and that the tax proposal would have passed. However, this is a counterfactual question that leads more to speculation than to resolution. As with all counterfactuals, we cannot know for sure what the outcome would have been. There would have been a different pattern of interest intermediation in the Commission prior to the proposal reaching the Council. Finally, no one can say what points of contention might have rallied a blocking minority had the passage of the proposed tax in the Council been likely under QMV.

To Tax or not to Tax

Many analysts of EC policy look at the failure of the carbon/energy tax as evidence of the failure of EC climate change policy in general. It is important, however, to first look at the effectiveness of the tax as a policy instrument for preventing climate change. A European-level carbon tax would, indeed, be more efficient and effective than unilateral taxes by the member states, but the nature of climate change may mean that a tax will not solve the problem, for two reasons. First, climate change is related to concentrations of CO$_2$ in the atmosphere, which accumulate year by year, rather than simply CO$_2$ emissions in any given year (Barker 1993, 243). Thus, even if yearly emissions are reduced, the emissions themselves are still accumulating in the atmosphere. In order to effectively reduce these emissions (assuming that the tax is the main strategy by which to do this), the tax level will have to increase every year, and be designed as an escalating tax on the value of energy rather than reaching a ceiling as
proposed by the Commission (Barker 1993, 243). Second, a unilateral EC carbon/energy tax will not stop global climate change, since the EU accounts for only about 15 percent of worldwide CO₂ emissions. EU leadership in this area may lead to other states adopting similar CO₂ stabilization and abatement strategies, but just as a single state cannot combat climate change, neither can the EU fight it alone.

An important political consideration in applying an EC-level tax is that some member states will be better off economically than others with a uniform tax (Hoel 1993, 221). Some states can set high stabilization goals and meet them easily, either because of their national energy strategies, or because they simply are not large emitters of greenhouse gases, while others will have difficulty meeting any stabilization goals at all (Bergesen, Grubb et al. 1994, 35). The adoption of a tax on energy may reduce the economic competitiveness of some industrial sectors, and so reduce the competitiveness of a state or region as a whole. While the total costs of stabilizing emissions through a uniform EC tax are less than through individual state targets, some countries will bear more of those costs of a uniform stabilization than others, and will pay more than if they set individual stabilization targets and taxes (Hoel 1993, 222). An alternative to this politically unacceptable scenario would be to tax each country separately in proportion to its CO₂ emissions, with the revenue being returned to the state (Hoel 1993, 231). Finally, in the case of at least some countries, the internal distributional effects of any carbon tax will fall disproportionately on lower-income consumers, who must still use energy, and will pay a larger portion of their disposable income for heating and motor fuels (Smith 1993, 63). These inequalities work against concerted action at both the EU and even the member state level.
New Instruments and Actors in Climate Change Policy

The latest solution proposed to deal with member state disparities is the idea of tradable emissions permits (TEPs) (see Bergesen, Grubb et al. 1994; Collier 1996b). TEPs are an incentive-based instrument, rather than a regulatory one. The TEP system eliminates many of the sticking points of the tax including the fact that the Community must set the level of the tax, determine a timetable for raising it, and manage the revenue with the member states. With a strategy of tradable permits each member state would have its own emissions target as a share of the larger European level target for CO₂ emissions. The Community would need to agree only on how many permits should be issued by country or by industry sector. Once they determined the number of permits, the market would determine the permit price (Freeman 1997, 199). Each year, the Community would review the number of permits, and determine how many permits to renew for the following year. A slow, but continuous, reduction in the number of total permits would provide the incentive for industry to reduce emissions. As the number of permits is reduced, the price of each permit rises, making it more costly to purchase permits, and more cost-effective to reduce emissions and even sell unneeded permits (Freeman 1997). This system goes far beyond any effort previously tried in the EC, and would require considerable coordination within the Commission, and within the member states themselves, between environment, finance, energy and industry concerns at the European level, and with individual industry sectors and firms within member states.

Contemplating such a system highlights the importance of involving sub-national actors in the climate change policy process. Since any climate policy will be implemented at a regional or local level, or on the level of individual industry sectors, these actors need to be
involved in the policy-making process from the start. The open nature of the Commission lends itself to developing this kind of pluralist policy network, even on an issue as complicated as climate change. The key for the Commission will be to focus its efforts within environmental and trade policy, where institutional decision-rules result in QMV in the Council, and a larger role for the Parliament in the decision-making stage of policy making. Instead of focusing on fiscal, or tax, related measures or energy conservation measures, the Commission could focus on these tradable permits. While this may be pure speculation at this point, the Community’s trend toward using voluntary agreements with industry and general market-based instruments for environmental protection points in the direction of such coordination with industry sectors in the future.

 Tradable permits would allow the participation of both industry and environmental groups at the European level in the policy formulation stage in the Commission. Until now, European level environmental groups have been at a disadvantage in the climate change policy-making process. The Community’s institutional constraints keep environmental groups out of the sub-government of the Community’s policy-making process. At the national level, many of the individual member states themselves lack a coherent national climate change policy, and so environmental groups’ access is limited there as well. In other states, environmental NGOs are beginning to mobilize at the subnational level. This subnational action is being coordinated at the European level by two organizations: The International Council for Local Environmental Initiatives (ICLEI) and the German-based Climate Alliance.

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131 An example of such participation in the policy formulation stage of EU policy making is described and analyzed in Chapter Six.
Both encourage local authorities in cities or towns to voluntary reduce their CO₂ emissions by restricting both industrial and transport output (Collier 1996a, 134).

Most of the towns and cities involved are in Germany and the Netherlands, where considerable power is often devolved to local authorities in energy and transport. In contrast, in the UK. Climate Alliance lacks the resources to even establish a baseline for emissions reductions, and local authorities, while signing up for CO₂ reductions, have no scope for action on transport and energy (Collier 1996a, 135). While such local action is laudable, its small scope and the lack of resources in most member states limit its possible effectiveness.

Local initiatives and action are in line with the principle of subsidiarity contained in the TEU. A combination approach of tradable permits and local initiatives funded by the member states through funds administered at the European level (such as the Cohesion or other funds) may be a more feasible approach to climate change policy than the CO₂/energy tax. However, haphazard programs and implementation will not solve the climate change problem. Some coordination is, in fact, required at the European level. As noted in previous chapters, in many environmental policy areas, some member states would not act at all without coordination at the EU level. Climate change policy seems to be one of those areas, since states such as Spain and Portugal are much more concerned with their ability to develop and catch up with their northern European neighbors. This is the same argument used by the developing states in international climate change conferences.

The EC and many of its member states obviously have a strong commitment to combating climate change, since their initial target for the Kyoto Conference was a fifteen percent reduction. At the conference, the EC agreed to an 8 percent reduction of its greenhouse gases by 2010. In June 1998, the Commission produced a communication calling on the
Council to begin action towards meeting the Community's Protocol commitments (Environment Watch 1998a). One of the solutions it recommended was the development of an emissions-trading regime. It faces many political challenges in the next few years if it hopes to meet these goals. Many of these challenges are due to the lack of Europeanization of EC energy policy, and the need to develop innovative policy on climate change in an institutional structure that precludes innovation.

Conclusions on EC Climate Change Policy

This chapter has reviewed the EC's difficulties in trying to develop Community legislation in a policy area that has not been formally Europeanized. Climate change presented a conundrum to the Community. The Community had long since formally Europeanized the environmental policy area, and it had many years of successful environmental policy making behind it by the late 1980s. Buoyed by its success in ozone depletion policy (after several initial years of inter-state struggle) and a newfound enthusiasm for leading in the international environmental arena, it at first approached the climate change problem with confidence. Climate change, however, presented a number of obstacles to the institutionalized experience and patterns of Community environmental policy making.

Dealing with climate change turned out to be fundamentally different from dealing with ozone depletion. The causes of climate change were myriad, and centered not on one particular source but a variety of sources of "greenhouse gas" emissions, such as energy consumption, that remained primarily in the member states' purview. This meant that although the Community easily and quickly developed a stabilization target for \( \text{CO}_2 \) emissions, it was unable to implement a workable European policy to address the problem. In keeping with its
Fourth Action Program the Community chose several market based instruments to deal with the problem. Climate change involves choices in energy sources, and the main instrument thus far developed to deal with greenhouse gases is a tax on their emissions. Energy and taxation policies are still closely guarded by the member states. Fiscal instruments for the environment and choices of energy sources and strategy are two of the exceptions under Article 130s that require unanimity in the Council, and the coordination procedure with the Parliament. The decision rules for the policy instruments chosen for climate change in essence would seem to guarantee the intergovernmental governance of this policy area. As the analysis in this chapter shows, however, the member states may have had the last word (to date) in the debate over the various policy instruments—SAVE, ALTENER, and the CO2/energy tax—but the process for the development of those instruments involved other actors and institutions.

Of all the climate change policies, the proposed tax met with the most protracted resistance by the member states and by societal groups at both European and national levels. When the Community began considering a European level energy tax, the first response by DG XXI and the tax Commissioner Christiane Scrivener was a flat opposition to any new Community wide tax (Skjaerseth 1994, 28). While Commissioner Ripa di Meana and DG XI provided the initial leadership for the tax and other climate change proposals, they were unable to prevail when the DGs representing tax (DG XXI), and internal market interests (DG III) insisted on the conditionality clause in the tax proposal and weakened the effectiveness of the proposed tax by exempting energy-intensive sectors. The original tax proposal generated intense lobbying at both the member state and European levels. The environmental lobbies at the European level could not match the numbers or activity of the industrial bloc, which had
many willing ears in the more economically oriented Directorates of the Commission (Skjaerseth 1994, 31).

The Commission was able to keep the tax alive as long as it did because the policy arena had been partially Europeanized. While formal competence for energy policy still resides mainly at the national level, the Community, through its participation in international agreements and through declaring targets and strategies for combating climate change, had, in effect, informally Europeanized the policy arena. This in turn allowed more latitude for European-level actors such as the Commission to act in pursuing policy. It also provided an arena in which societal actors could oppose policy, such as the tax, that they saw as costly or detrimental to their operations. However, as historical institutionalists point out, institutional constraints and decision-rules do provide limits to the activities and influence of actors such as the Commission, and empower others, like the member states within the Council of Ministers. The lack of QMV in the Council meant that even with a tax proposal that was optional and which provided great leeway for member states in its implementation, one state could block it, and Germany, in the Environment Council, did. It is interesting to note that even the Council is not a monolithic body, in that the Finance Council actually found that the proposed Directive did not go far enough in meeting the Community's CO₂ strategy (Europe Environment 1996). The Europeanization of the arena and actors in climate change policy is shown in Figure 5.3. Despite the absence of QMV and the strongly intergovernmental nature of the policy area and the negotiations of the tax, some Europeanization of actors occurred, mainly because of the informal Europeanization of the policy arena.
While a truly successful climate change policy has not been forthcoming, the limited informal Europeanization of this policy area has had other impacts. Even in the face of strong intergovernmentalism, the Community is still attempting to forge a climate change policy. The member states' own competing policies forced the beginnings of the Europeanization of the policy-making arena for climate change, and the member states and the Community have signed and ratified the FCCC and the Kyoto agreement. This latter action requires the Community to address the problem at the European rather than member state level. The possibility of using new instruments such as tradable permits bodes well for the Community. Given the climate of subsidiarity, more participation by sub-national groups may be welcome,
especially by the Commission. The local and regional efforts to combat climate change are inconclusive, but point to a trend of multi-level governance that cannot be ignored. Environmental groups at the regional and local levels are reaching beyond the member states to groups at the European level and to the Commission itself in order to participate in the implementation of EC environmental policy.\textsuperscript{132}

Interestingly, it was the member states’ political goal of participating in and leading global climate change policy that began the Europeanization of this policy area. This action, instead of “reaction,” by the member states does not fit well with the transactional theory which posits that it is either transnational societal activity, organizational activity or decision-rule change that begins the “supranationalization” process. Informal Europeanization has, in fact, opened up the policy-making process and governance of this policy area to transnational (and subnational) societal actor activity. Without formal Europeanization, however, the nascent multi-level governance will not become institutionalized. This counters the transactionalists’ claim that once transnational activity has begun, the other factors of decision-rule change and organization follow. It is clear in this policy area that while transnational societal activity and even European organizational activity are present, the member states are very much in control of decision-rule change. Fiscal instruments and energy choice remain under the cooperation procedure and unanimous voting in the Council even after the Amsterdam Treaty. Transnational activity would be best aimed at circumventing rather than trying to change these decision rules by focusing on policies that lie fully in the environmental or competition fields, rather than in the energy and fiscal fields.

\textsuperscript{132} From interviews with European level umbrella organizations and Commission officials. One such coordinating group is the Climate Action Network in Brussels.
Climate change policy both tests the limits of intergovernmentalism and shows the weakness of transactional theory. The member states continue to control the decision rules under which climate change policy is made, and no amount of transnational activity will alter these. Even though this policy area remains highly intergovernmental, there has been some Europeanization of the policy arena and actors, and even a degree of multi-level governance in this policy area. This trend points to a confirmation of the historical institutionalists' claim that while the member states may control the larger Treaty changes, they do not necessarily entirely control the actions and activities of Community policy making in between those changes.

This chapter presented a case that showed the power of multi-level governance even in an area that seems to be overdetermined for intergovernmentalism. The next chapter tests the limits of multi-level governance in auspicious conditions for that governance and tests the power of intergovernmentalism even in the presence of Europeanized decision-making rules and procedures. In contrast to the climate change case, the making of packaging waste policy, the subject of Chapter Six, took place within macro-institutional structures and decision rules that presented favorable conditions for the Europeanization of the policy-making process and for the governance of the policy area.
CHAPTER SIX:
THE PACKAGING AND PACKAGING WASTE DIRECTIVE

The case study undertaken in the previous chapter on climate change policy presented a case of environmental policy making atypical for general EU environmental policy. The institutional structures and decision rules for climate change policy resemble those present in environmental policy making prior to the Single European act. The lack of formal policy competence at the European level, the unanimity of decision-making in the Council of Ministers and the absence of the Parliament from the policy-making process made it an ideal case for studying the robustness of intergovernmentalism. Even in these auspicious circumstances for intergovernmental policy-making, however, informal Europeanization of the policy arena and actor relationships has occurred, and there is an increasing trend toward multi-level governance as non-state actors attempt to bypass the decision rules and structures. I turn now to a more typical case of EU environmental policy in which there is formal policy-making competence at the European level, and QMV voting within the Council of ministers. These macro-level institutional structures present an ideal opportunity for the development of multi-level governance through the activities and influence of European-level non-state actors in the policy community.

In this chapter I analyze the development of a particular Directive within the waste sector of environmental policy. The Directive chosen, the 1994 Packaging and Packaging Waste Directive,\textsuperscript{133} is a Directive typical of much EU environmental policy and policy-making. Packaging waste policy can be considered a "typical" environmental policy area for the EU for the following reasons. First, like much environmental policy-making in the Community's
experience, the Packaging Directive resulted in part from disparate member state policy on the issue. Packaging and packaging waste is an environmental problem that has trade impacts, typical of much of the EU’s environmental policy to date. As the cause of an environmental problem, packaging and packaging waste have a serious impact on Europe’s environment. Landfills in the EU are filling up, and there is little room for more waste in many of the smaller or more industrialized countries.\textsuperscript{133} Packaging waste also has specific trade impacts. Member states may trade the waste itself. In addition, any member state’s restrictions placed on packaging content, or regulations governing waste recycling, reuse and recovery may place an undue trade burden on other states wishing to export products to that state. Because of these impacts on the internal market, EC-level policy on packaging and packaging waste falls under Article 100a.

Second, packaging and packaging waste falls under the auspices of an environmental Action Program, specifically the Fifth Program. Packaging is an area that lends itself well to the “life cycle approach” of the EU’s Fifth Action Program, since packaging is produced, consumed, and then must be disposed of or reused (CEC 1993). Third, it is a policy area that has been Europeanized both through informal practice, as has much of the EU’s environmental policy, and through formal institutional changes in the Treaty. Like many environmental issues, the regulation of packaging and packaging waste was originally under member state control, but the increasing openness of the internal market meant that packaging and packaging waste policies could no longer be confined within state borders.

While general packaging and packaging waste policy may be considered “typical” or representative of environmental policy in the EU, the development of this Directive also


\textsuperscript{134} The 1992 Fifth Action Program cites a “13% increase in municipal waste, over the (previous) five years, despite increased recycling of paper, glass, plastics” (CEC 1993, 54).
presents a unique research opportunity. The Packaging Directive had its origins in pre-SEA legislation, but was adopted using the post-Maastricht decision-making process. This makes it an ideal case for studying the impact of the institutional and decision-rule changes of the European Community on actual policy making. Specifically, a study of this Directive addresses the effects of the changes in the decision-rules brought in by the Treaty on European Union. To paraphrase Ostrom, who writes about scientific inquiry and choice of cases for observation, "The (case) is chosen not because it is representative of all (cases). Rather, the (case) is chosen because particular processes can be studied more effectively using this (case) than using any other" (Ostrom 1990, 26, (case) has been substituted for "organism"). The Packaging Waste Directive may be unique in that it is both typical of most policy sectors in general EU environmental policy-making, and an ideal case for studying the impact of decision-rule change.

My research demonstrates the following. First, the arena for Packaging Waste policy has moved securely to the European level, and both state and non-state actors involved focus their energies at this level. Second, although the member states, through their representation in the Council of Ministers, still play a key role in deciding European policy, there are so many other interests represented in the policy process that it can no longer be said that the "Commission proposes and the Council disposes." While few would argue that the member states or the Council are the only actors that count in the policy-making process, Golub has argued, using the development of the Packaging Directive, that the member states, through the Council, retain the preponderance of power in that process (Golub 1996b). I do not deny the continued power of the Council, which holds the final say in the adoption of any Directive. Like Golub, I seek to refute the intergovernmentalists’ claim that policy outcomes reflect the domestic, national interests of the individual member states as negotiated in the Council. I
depart from Golub, however, in my assertion that the other institutions of the Community, as well as societal interest groups from the subnational to the supranational level, play an increasingly important role in the policy-making process in the EU.

While Golub focuses on the content of the final Directive, I focus on the interplay between actors throughout the process. In EU policy making, content analysis is not necessarily the best way to measure power or influence. Much of the development of the Packaging Directive occurred prior to officially published proposals and positions. In addition, the informal mechanisms of interest intermediation, especially among the institutions, played a major role in the formulation of the Directive. Looking at the policy-making process through a policy network framework reveals the additional influence, and even power, of particular non-state actors throughout the policy process. This influence had little to do with member state interests or the bargaining that went on in the Council. The policy-making process for the Packaging Directive was an example of inter-institutional, multi-level gamesmanship at the European level, and was communitarian not intergovernmental in nature. This example of multi-level governance also reveals the dependencies between institutions, and between "state" and societal actors predicted by the multi-level governance advocates.

This chapter concentrates on tracing the development of the Packaging Directive through different stages of policy-making. At each stage, a different institution of the EU provided the central bureaucratic focus for the policy community. However, all three policy-making institutions—the Commission, Council and Parliament—interacted at each stage. A new policy network—a different set of state-societal relations—developed at each stage of the Directive's development. The type of network that developed depended upon the strength and autonomy of the bureaucracy at the center of the sub-government in the policy community, and the role of societal interest groups in that policy community. The networks were also shaped by
the macro-level institutional decision-rules that constrained and shaped actors' relationships with the other participants. I show how the changes wrought by the Maastricht Treaty altered the macro-institutional framework in which the policy community and networks were embedded. These changed decision-rules allowed non-state actors that previously would have been unable to participate as fully in the policy-making process to have greater impact on the final Directive.

I also briefly address the policy implementation stage of this Directive. The policy community for the implementation of this Directive includes multiple levels of government and a great deal of societal influence. One can see the impact of past policy experience, as embodied in the Fifth Action Program and applied in the case of the Packaging Directive, on the EU's efforts to ensure proper and timely implementation of its Directives. Many of the players involved in the implementation policy network were, by design, part of the development of the Directive in the policy initiation stage. The member states were given five (and in some cases ten) years to fully implement the Directive after they transposed it into national law by June 1996. However, some member states have been lax even in their transposition and reporting, and implementation policy community now includes the Court as the Commission moves to enforce the Directive's implementation.

The Policy Initiation Stage

Background of the Directive—Agenda Setting

The 1994 Packaging Directive has several antecedents in both Community and member state legislation. The first Community Directive on waste was the 1975 Framework
Community Directive on Waste, which left a great deal of leeway to the member states.\textsuperscript{135} The Community's first attempt to regulate packaging and packaging waste specifically was the 1985 Directive on Containers of Liquids for Human Consumption (the "Liquid Containers" Directive).\textsuperscript{136} During the 1980s, waste from packaging began to place an increasing burden on the environment, exposing the inadequacies of the 1975 Framework Waste Directive. Member states began to take matters in their own hands, with Germany developing the strictest packaging and packaging waste legislation (Mastropierro 1994). The Danish bottle return system was another example of a national attempt to regulate waste. The Danish requirements were stricter than those in the Liquid Containers Directive, which came into force after the Danish bottle legislation, and posed a trade barrier to other states that did not meet the Danish minimum requirements for re-use and recycling. The Court in the Danish Bottles Case decided in 1988, held that the intent of the Danish law was to protect the environment, and as such, it could override Article 30.\textsuperscript{137} The results of the case made it clear that the Community needed a harmonized approach to packaging waste. Such legislation was needed in order to set reasonable and clear re-use, recovery and recycling objectives that would not interfere with the primary objective of the Community, the formation of the Single Market. Within the Commission, then, the Packaging Directive began as a simple attempt to amend the 1985 Liquid Containers Directive. Over time it would grow to become a model for post-Maastricht policy and policy-making.

The initial steps toward developing a European Packaging Directive began in early 1990 when Commission officials began to consider amending the 1985 Liquid Containers

\textsuperscript{135} (OJ L 1975, 194/39, Dir 75/442) later amended by the 1991 Waste Directive (OJ L 1991, 78/32, Dir 91/156). Such Framework Directives that lacked specific targets or left implementation and target-setting to the member states were typical of pre-SEA environmental legislation. The unanimity decision rule in the Council meant that many of these Directives represented lowest common denominator (LCD) solutions to problems.

\textsuperscript{136} (OJ L 1985, 176/18, Dir 85/339).
Directive in order to improve the re-use and recycling of those containers. Then, in May 1990, the Council asked the Commission to come up with a proposal for a Directive that had two main goals. The first goal was a Directive that would address the general environmental problems caused by waste from packaging. The second was a Directive that would try to harmonize the burgeoning packaging and packaging waste legislation of the individual member states. This latter goal had two purposes embedded within it. The first was to ensure that national legislation, such as that of Denmark or Germany with their strict rules dealing with the importation and recovery of certain types of packaging, would not pose a barrier to trade from other member states.\textsuperscript{138} The second was to prevent excessive shipments of packaging waste from states with strict recycling and recovery levels to other states with less strict requirements, turning these latter states into a garbage dump for the EU. This latter purpose meant that a state such as Germany, which was becoming increasingly unable to meet its own waste recycling and recovery requirements, would no longer have the freedom to export mountains of waste to other member states (Golub 1996b, 317). Despite what seemed to be in direct conflict with at least Danish and German national interests, these goals were approved by the member states in a Council Resolution on 7 May 1990.\textsuperscript{139}

In developing the initial proposal for the Directive, the Commission cited several possible responses to the growing problem of packaging waste management (COM (92) 15

\textsuperscript{137} See Chapter Two.
\textsuperscript{138} The German system, for example, put the responsibility for the ultimate recycling, reuse or disposal of packaging onto the manufacturers of that packaging, which would mean that imports would need to be recovered later by the manufacturers from other member states. This would increase the costs for export to Germany, causing trade distortions and inequalities vis à vis German manufacturers whose transport costs would be far less than those of the exporters.
\textsuperscript{139} The final Directive contains both goals in its preamble: Whereas the differing national measures concerning the management of packaging and packaging waste should be harmonized in order, on the one hand, to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community:... (OJ L 94, 365/10: my italics).
July 1992). These included, at one end, non-action, which was quickly deemed unfeasible. The next approach was for a simple expansion of the Liquid Containers Directive to include all waste. Actual waste disposal practices within the Community and disparities between the member states' existing legislation had already eliminated this alternative as well.\textsuperscript{140} The language of the Liquid Containers Directive would not have allowed the Community enough scope to overcome member state disparities. Another suggestion was to adopt, wholesale, the German approach of collection and charges at the Community level. However, the German approach was not feasible since other member states had already adopted measures incompatible with such an approach. Voluntary agreements, although often cited as a new approach to dealing with environmental problems, were rejected because of the large variety of the packaging materials to be regulated, and the difficulty in doing so without setting some European level harmonization measures and criteria (COM (92) 15 July 1992, 9). Finally, the Commission decided to develop a comprehensive packaging Directive that would encompass environmental objectives while ensuring the functioning of the Single Market. The twin goals of environmental protection and the functioning of the Single Market meant that the Directive would be based on Article 100a, subject to qualified majority voting (QMV) in the Council.

Participants in the packaging waste policy community were keen either to take credit or assign blame for the initiation of the Packaging Directive.\textsuperscript{141} Like many other environmental Directives, the competing and contradictory interests of the many participants clashed throughout the development of the Directive. Commission officials took credit for the initial idea of amending the Liquid Containers Directive so that it would fall into line with the idea of

\textsuperscript{140} Germany, the Netherlands and Belgium had either recently adopted or were formulating packaging waste legislation of their own, some of which would have posed non-tariff trade barriers to packaging from other member states (Mastropierro 1994).
sustainability enshrined in the Fifth Environmental Action Program. That the Directive would expand to include all packaging and packaging waste was seen as only natural. Some members of Parliament felt that Germany, which eventually voted against the Packaging Directive, had forced the Community’s hand through its national legislation. Some observers believed that Germany had developed its own severely restrictive packaging ordinance deliberately, as a means of compelling the other member states to bear the same level of costs as Germany in reducing packaging waste. More insidiously, these observers said Germany, and German industry, saw Community legislation as a way to develop a Directive less strict than the German legislation, so that the burden on German industry would be reduced. German participants, however, said that their vote against the Directive speaks for itself—that Germany felt that the final Directive did not go far enough.

Societal actors played a major role in the development of the Directive. Some industry representatives said that they sought a way to reduce their packaging waste in a way that could be uniformly applied across the Community. They stated that they worked together with each other rather than at the national level in order to push the Community into deliberating on the packaging problem. The actual record of participation by industry, outlined below, often refutes this “green” stance, however. Finally, others, especially environmental interest organizations and members of the Greens in Parliament, blamed the poorer, less environmentally conscious member states for forcing the Community’s hand. These states objected to the disparate legislation in countries like Germany, Belgium, the Netherlands and

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141 Many opinions contained within this section were expressed in non-attributable interviews with members of the packaging waste policy community done in Brussels. June-August 1995. Where permitted, I attribute the argument or opinion to the interview source.

142 The European Recovery and Recycling Association (ERRA), which represents some of the leading multi-national industries in Europe, had already begun devising an intra-industry approach to packaging and packaging waste, beginning in 1989 (Interview 16). It is in the interest of industry to be pro-active in the environmental field, since they are the ones who eventually have to change production and disposal methods when new regulatory instruments are implemented, either by the member states or the EU.
Denmark, saying that national laws were too restrictive to trade. All of these views are partially correct, and all these different reasons and the players behind them ultimately influenced the development of the Directive.

Policy Initiation

In July 1990, the Commission set up a project group of Commission officials and independent experts which held its first meeting on 17-18 October 1990 (Porter 1994, 23). The project group produced a discussion paper in March 1991 from which it planned to develop a final proposal for a Packaging and Packaging Waste Directive (Porter 1994, 23). This was a precursor of the typical expert committee in the Commission, mainly comprised of industry and packaging experts, and national policy experts on waste management. Generally, such project groups give way to a few experts seconded to DG XI from the national governments and a small number of Commission officials who write and develop the proposed legislation within the expert committee. These few people then become the bureaucratic core (the "state" component) of a pressure pluralist network open to the influence and lobbying of sectoral industry associations, environmental groups, and consumer advocates, as well as national and subnational governmental representatives.

At the same time as it was developing the Packaging Directive, DG XI was in the process of developing and refining the Fifth Environmental Action Program, which stressed greater dialogue at the initial stages of policy proposals between the Commission and those responsible for implementing the policy on the ground (CEC 1993). To put this into effect even prior to publishing the Fifth Action program, DG XI instituted a new procedure for developing the policy proposal. Rather than relying on informal lobbying by industry and environmentalists, the Commission held two rounds of formal consultation meetings, through
consultation committees, to which it invited all interested or affected parties (the member states, trade and industry associations, and consumer and environmental groups).^{144}

This method of consultation, which DG XI now tries to use to develop many of its policy proposals, differed from its past approach. Prior to the Packaging Directive, the expert committee working on a proposal would invite experts to share their knowledge, and would be open to lobbying and consultation by outside interests from industry, trade, environmental groups, and the member states. However, this consultation was loose, fragmented and informal. Former Director General of DG XI and current MEP Laurens Brinkhorst, criticized the former, looser procedure saying that in essence, groups or associations would be able to participate only once they "got wind" of a proposal. This meant that important interested parties such as plastic manufacturers might never contribute to the development of policy, yet would be expected to implement that policy later. Other Commission officials gave several reasons for the development of the consultation committees in DG XI. These included the belief that early, formalized consultation ensures that the legislation will pass legislative hurdles in both the Commission, Council and Parliament. Such formal consultation also increases the likelihood of proper and timely implementation since many of those invited to the table are the actual implementers of the policy.

The formal consultation had the effect of bringing industry representatives, member states' delegates and environmental and consumer group advocates directly to the policy table, and therefore into the sub-government of the policy community at the policy initiation stage. The expert committee within DG XI exemplified a weak state bureaucracy typical of a pluralist network. While having the authority to draft the initial proposals for the Directive, DG XI had

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143 See Chapter Four on expert and consultation committees.
144 The first round of meetings occurred in April and May of 1991, the second in November of that year (Porter 1994, 24-25).
neither the capacity for in-house information generation or implementation. Thus it needed to consult with those parties who had the expertise and knowledge on packaging and packaging waste issues, and with those who would implement the Directive. The network remained open and pluralist in nature for the following reasons. First, the Commission, while preferring to invite European level interest associations into the committee meetings, did not limit entry to specific peak sectoral organizations or specific environmental groups as it would in a corporatist or clientelist network. Second, although DG XI made a deliberate effort to include the concerns of all relevant interests, there was no development of a partnership or regularized arrangement between Commission officials and particular sectoral groups. The boundaries of this network were flexible and permeable, unlike those of a closed network. Finally, unlike in a typical closed or clientelist network, few industrial and no environmental associations at the European level were organized and single-minded enough to represent their sectoral interests with a hierarchical authority over their members. Thus, a wide range of representatives from different sectoral interests participated in the network.

Figure 6.1 shows the sub-government of these consultative committees. Together, this sub-government—consisting of DG XI officials and experts, industry, environmental and consumer groups, and member state representatives—created the first draft of the proposed Directive which appeared in May 1991. The first draft of the Directive written by this sub-

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145 DG XI, like other Commission Directorates, does try to limit access to European level interest groups. However, it encourages participation in the policy development process by regional and subnational organizations responsible for on-the-ground implementation. DG XI encouraged the participation of these latter groups in particular throughout the development of the Packaging Directive.

146 For a list of lobbyists see Porter (1994, Annex 3). On the inability of European federations to represent their sectors hierarchically and with authority see Middlemas (1995). In addition, DG XI officials state that it is not uncommon that even a cohesive sector like the petroleum industry can be split by the factional interests of particular companies depending on the issue.

147 There were three drafts from DG XI (Draft No. 1 in May 1991, Draft No. 2 in August 1991 (with a second version of the same draft appearing in September), and a third in December 1991) before a “final draft” emerged in February 1992 (DG XI A-4, 21 February 1992). This last draft was then subject to revision within
The government at the earliest consultation meetings was an ambitious document, containing strict time limits for implementation, high requirements for recycling, recovery and reuse of packaging materials, and a hierarchy of waste management options (Porter 1994, 23; Golub 1996b, 317-318). A less rigid, but still formal, consultation procedure took place in June 1991, when the Packaging Chain Forum (PCF) and other interested parties, including the EEB, provided submissions to DG XI regarding the first draft of the proposal. Two versions of a second draft appeared, one in August, and one in September, and these retained high targets, and the hierarchy of waste contained in the first draft. The first two drafts of the proposed Directive generally reflected a balance of industry and environmental concerns.

Figure 6.1: Sub-Government of DG XI: Consultative Committees

When DG XI requested opinions on the second draft of the Directive it was inundated by submissions by trade and industry. At this point, the policy process reverted back to a more typical mode of policy development within DG XI. Instead of formal consultations, interested parties competed with each other for the “ear” of DG XI. This effectively moved both

environmentalists and industry representatives out of the sub-government and into the attentive public, where they would compete in a pressure pluralist network for the DG's attention and interest. After the second draft of August/September 1991, the lobbying of DG XI became intense and competitive (Porter 1994, 25). This competition was mainly between industry and environmentalists, but also included member state and subnational governmental representatives. Figure 6.2 shows the change in the policy network that took place once the consultative committees gave way to more typical lobbying. The member states and industry had more influence than environmentalists and regional actors, as indicated by the solid, rather than dashed lines.

**Figure 6.2: Revising the Second Draft Proposal: Pressure Pluralist Networks**

Porter's study of lobbying and the Packaging Directive shows that of 279 entities that lobbied DG XI during the development of the Directive, 196 were from trade and industry (Porter 1994, 14). Consumer groups, trade unions and environmental groups accounted for

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148 Porter acknowledges the significant overlap in membership of industry representatives: they endorse their individual company position, belong to European level trade and industry associations, and they participate in
only 5.7 percent of total lobbyists to DGXI from July 1990 to December 1993, while industrial and trade interests accounted for over 70 percent (Porter 1994, 15). As the proposed Directive proceeded through its drafts in DG XI it became more and more favorable to the position of trade and industry and less and less “environmental” (Porter 1994; Golub 1996b).

The sheer number of industrial lobbyists may help account for their influence on the proposal.\(^{149}\) However, other factors that put the environmentalists at a disadvantage must also be considered. While the Community’s problem of disposing of packaging waste was very real, its impact varied across the member states. Where it generated any public interest, it was at the local or regional rather than European level. Put simply, the issue of packaging waste did not capture the public’s attention as other issues such as the ozone hole or acid rain had. This meant that environmentalists’ lobbying position, already weaker than that of industry because of their smaller organizations and comparative lack of resources, was not backed up by strong public opinion calling for strict recycling and recovery targets.

When the development of the proposed Directive reverted to open lobbying, the environmental groups had to compete with the stronger, better organized industrial groups. While many companies in industry made individual representations to DG XI, they were also represented by larger sectoral associations. These included the Association of Plastics Manufacturers of Europe, the European Organization for Packaging and the Environment, and the European Recovery and Recycling Association, all of which had major industrial players in their memberships (Porter 1994; Golub 1996b, 319). Generally, these associations have the money and other resources to prepare effective position papers, send highly qualified experts to

\(^{149}\) In addition to evidence in Porter’s study of lobbying for the Packaging Directive, in a more general example, one long-time Commission official estimates that 95 percent of visitors or lobbyists to DG XI
meetings, and otherwise remain apprised of developments in any number of proposed pieces of EU legislation. Environmental associations, like the European Environment Bureau, are often so short staffed that they cannot send a representative to an important debate or meeting, or may miss important developments in a proposal because their attention is focused elsewhere.

Industry waged a successful battle within DG XI, and within the Commission as a whole, to water down the Directive in its favor. In addition to direct lobbying of DG XI and participation in the consultations there, industry representatives also lobbied Directorates more amenable to industry's point of view as the rest of the Commission reviewed the proposal. Industry was better placed than environmentalists to lobby other DGs because of its organizational strength and capacity to generate needed information about implementation for the Commission. Since any draft Directive must pass muster in the Commission as a whole, DG XI eventually had to give up some of its goals, such as the waste management hierarchy. It did, however, maintain high targets for recovery (90 percent) and recycling (60 percent) over the objections of industry and several of the member states.

In addition to industrial and environmental lobby groups, several representatives from national, regional and local authorities also consulted directly with DG XI. As Porter (1994, 17) points out:

(Their) contact with the Commission is significant in terms of the recognition of the mutual dependence of the Council and the Commission on the one hand, and of a more proactive lobbying stance by some member states in an environment where the national veto can no longer be considered sufficient and the formal fora for consultation are only one way to influence the policy process.

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represent industry. He believes that despite the environmental focus of the DG, the long-term effect of constant industry lobbying, information and influence has an effect on the outlook of Commission civil servants.
Mutual dependence among institutions, and the bypassing of national governments by subnational authorities in favor of lobbying at the supranational level, are two of the key indicators of multi-level governance (Marks, Hooghe et al. 1995, 11). These are apparent in the earliest stages of the development of the Packaging Directive. The national and subnational authorities of the more environmentally pro-active member states no longer saw their member state governments as the best defenders of their interests at the European level (Porter 1994, 17). Interestingly, when “politicians” are added to the tally of lobbyists, one finds that 15.8 percent of the lobbyists fell into this category of “governmental authorities” (Porter 1994, 16). This compares to the 5.7 percent of lobbyists coming from environmental, consumer and trade union groups. Since the eight MEPs from the UK each represented a company from their constituency, this translated into even greater influence for industry in the development of the Directive at its earliest stages (Porter 1994, 16).\footnote{It is interesting to note that MEPs rather than national MPs or government representatives lobbied for particular interests in their constituencies. This is an indication that even local industry sees using the EU’s institutions as an effective way to influence policy without relying on national governments to do so.}

Because of the intense lobbying after the second draft proposal, DG XI deemed another round of formal consultations necessary before it could submit a final draft to the Commission as a whole (Porter 1994, 24). In the two months between the September second draft and the final round of consultation in November, industry had already made great inroads into the Directive. It had succeeded in stepping up the emphasis on the Single Market in the objective of the Directive, and in removing the call for a strict hierarchy of waste management options (Porter 1994, 26). Even though environmentalists were brought back into the sub-government in the final round of formal consultations, it was clear that industry had won the day in the open lobbying that preceded these meetings. The reverses to the environmentalism of the Directive wrought by industry were not changed in the third draft that came out of the November
consultations. DG XI and the environmentalists, who shared the same world-view of environmental policy making, did manage to retain the 90 percent target for recovery, and the 60 percent target for recycling. This third draft underwent minor revisions between December 1991 and February 1992. In February 1992, DG XI presented its final draft to the Commission for its review.

Between the DG XI's final draft in February 1992 and the Commission's Proposed Directive in July 1992, industry again lobbied the Commission heavily (Porter 1994, 25). At this stage, industrialists had much greater influence than environmentalists. Their ongoing relationships with other DGs gave them further avenues through which to influence the proposed Directive. An example was the Industry Directorate, where on industrial policy, industrialists are often involved in Closed networks and participate in the sub-government. The environmentalists had great input into the first and second drafts of the Directive, but once removed from the sub-government, they simply could not compete with these better organized, and better funded, industry associations. Environmental groups are generally "frozen out" of Directorates General other than DG XI: it is very hard for them to penetrate the mindset of other Directorates who still look on environmental policy as largely contradictory to economic growth (Mazey and Richardson 1994, Interview 17). Once the proposed Directive left DG XI, it was at the mercy of the other "economic" Directorates such as Internal Market and Industry. Since this Directive was just as much about barrier-free trade as about environmental protection, it is not surprising that the trade aspects of the Directive were stepped up, and the environmental aspects were watered down, once it left DG XI.

151 While he did not use the language of policy networks to describe the relationship of industry and business with the Competition and Industry Directorates, Laurens Brinkhorst described the close, corporatist arrangements that often prevail there.
The member states were part of the sub-government of the policy initiation network (shown in Figure 6.3) because of their close consultation both with Commissioners and with the DGs as they reviewed the Directive. At this stage, the member states consulted closely with their national Commissioners, since the Directive would then go to the Council. It must be remembered that, just as in the Commission the Environment Directorate is a relatively weak Directorate when compared to the Internal Market or Industry Directorates, environment ministers of the member states are often junior ministers and so do not carry the clout of industrial or economic ministers. This is especially true in the “Southern” member states where environmental policy takes a back seat to development and economics. It is interesting to note that since the Directive would be decided by QMV in the Council, even though at least three member states (those with the strongest environmental policies and environmental ministries, coincidentally) thought that the Directive did not go far enough in environmental protection could not stop the Directive from leaving the Commission.
The Decision-Making Stage

Even before the proposal reached the most state-centric body in the EU, the forces of multi-level governance and the influence of non-state actors had played a major role in shaping the policy on which the member state representatives would later vote. As noted above, the Commission had chosen to base the Packaging Directive on Article 100a because divergent member state waste management policies often led to trade barriers within the internal market. At the time the proposed Directive went before the Council, Parliament and Economic and Social Committee (ESC) in July 1992, Article 100a called for QMV in the Council, and the cooperation procedure with the Parliament. The Maastricht Treaty, which came into effect in November 1993, would change the relationship between these two institutions with the implementation of the co-decision procedure. The effects on this relationship and on larger state-societal relations at this stage of the policy process will be discussed, in depth, below, when the Parliament's second reading is addressed.
Two new state-societal relationships emerged at this stage of the policy-making process. The first was a state-directed policy network, centered on the Council of Ministers, and the other, a pressure pluralist network, centered on the Parliament. Members of the Commission were present in the sub-government of both relationships, through sitting at the Council table and in the Parliamentary committee meetings. They therefore provided continuity from the policy initiation stage through the decision-making stage. The following analysis will continue to trace the progress of the Packaging Directive through the Community’s policy-making process, concentrating on the state-societal relationships that arose at each phase of the process. Since the Parliament is given the first reading of any proposal before the Council can vote on it, the Parliamentary policy network will be explored first.

Decision-making Stage: Phase I Council and Parliament’s First Readings

The Parliament: First Reading

The Environment Committee, headed by Ken Collins, and the Committee on Monetary Affairs and Industrial Policy (EMAC), had primary responsibility for the first reading of the proposed Packaging Directive in the Parliament, but EMAC was subordinate to the Environment Committee. As with most Directives under review by the Parliament, the two main committees were the most important target for lobbyists and consultants. As a general rule, other committees, individual MEPs and party groupings also influence proposals, so lobbyists also concentrated some efforts on those actors. In the case of the Packaging Directive, however, the Environment Committee “was of overwhelming importance” to the final Parliamentary position (Rigler 1994, 8). Its rapporteur, Luigi Vertemati, was himself the

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152 The Environment Committee was assigned as reporting Committee, and EMAC was assigned to give its opinion (Rigler 1994, 2). Thus the Parliament had deemed the Environment Committee as the primary Parliamentary committee for this reading of the Directive. All of EMAC’s opinions went through the Environment Committee for adoption or rejection to become part of the Environment Committee’s report to the Plenary (Rigler 1994, 7).
primary author of almost half the amendments carried in the Plenary (Rigler 1994, 8). The strength and position of the Environment Committee within the larger Parliament was reflected in the number of Parliamentary amendments that came out of the Environment Committee. The Plenary adopted 84 amendments, of which 75 were from the Environment Committee. In adopting its amendments, the Plenary adopted 75 of the 79 amendments presented by the Environment Committee in June of 1993, and added five of its own.

The policy community centered on the Environment Committee had an open, informal, pressure pluralist network, with flexible relationships and contacts between key players. Collins' informal relationships outside the Parliament with industry and trade groups and environmental organizations were as important to the functioning of the policy network as the formal lobbying done by these groups. Members of the Environment Committee as well as the larger party grouping of Greens in the EP cultivated relationships with representatives from other EU institutions. Collins had strong ties to the highest levels of DG XI, for example, and both formal and informal relationships with the environmental attachés from the member states. In addition, there was a particularly close relationship between the Green Group and the representatives from Germany, Denmark and the Netherlands in the COREPER during the development of the Packaging Directive. All three countries, because of their strict national legislation on packaging and packaging waste, looked to the Greens in Parliament as allies for achieving higher requirements for recycling and re-use of packaging, to avoid having to lower their own standards in the future (Interviews 10, 11). Some member state representatives used their links with MEPs from their state who in turn tried to influence their government's position on the Directive. These relationships reveal the mutual dependence between the Council and the

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153 This number includes 5 amendments from EMAC which were adopted by the Environment Committee.
154 The following is an overall analysis taken from interviews within the Parliament, with member state attachés, and with DG XI officials. I have made note of specific interviews where particular points were made.
Parliament that has grown from the implementation of the SEA and the advent of the cooperation procedure between the Council and Parliament.

In addition to encouraging informal links with members of other EU institutions, the open institutional structure of the Parliament admitted a great deal of interest representation through the pressure pluralist network. The Environment Committee was particularly open to meeting with and hearing from interests both within and outside its own viewpoint.\textsuperscript{155} By one estimate, over half of the lobbyists to the Parliament during this first reading represented associations of industrialists, and another 26 percent of the lobbyists were either from individual companies or were consultants to industrialists (Rigler 1994, 4). Despite the heavy lobbying from industry, the Environment Committee remained committed to a pro-environmental stance.

The pressure pluralist network centered on the Environment Committee is shown in Figure 6.4. The more solid the lines linking outside interests to the Parliament sub-government, the stronger the relationship between that group or entity and the sub-government. Note that although the environmentalists were not in the sub-government of the policy community, their links with the Environment Committee were particularly strong. This is because the Committee and the environmentalists shared the same world-view, which allowed the environmental groups more access to the inner policy making circle than their resources and personnel would suggest. It is important to note that because of the "green" point of view of the Environment Committee in particular, and the Parliament in general, industrial groups found it important to lobby the Parliament during this first stage of amendment.

\textsuperscript{155} See Rigler (1994) for a detailed analysis of those who lobbied the Parliament, and when.
The Committee did not simply listen to environmentalists and ignore industrialists. Rigler (1994, 10-14) points out that the key factors influencing whether a policy stance was reflected in a Parliamentary amendment included meeting personally with the rapporteur and presenting clear, concise position papers with only one or two main ideas or changes. It was also very important for lobbyists to articulate their interests early in the first reading stage, and to maintain contact with the rapporteur or key members of the Committee throughout the amendment process. Finally, more moderate views, whether from industry or even from environmentalists, were more likely to make their way into an amendment than more radical or extremist positions from any group. By being moderately pro-environmental in their stance, many industry representatives were able to have their proposals accepted by the Environment Committee.

The Commission's proposed Directive had been very favorable to industry's viewpoint. Since the majority of the content of any Directive is set by the time it leaves the Commission,
there was no guarantee that the pro-environmental Parliamentary stance would balance out the pro-industry bent of the Commission's proposal. This explains, in part, why, despite the "greenness" of many of the Parliament's amendments, the environmentalists' views were not well represented in the final Directive. This was certainly a complaint of the Greens in Parliament and of other environmental organizations concerning the final Packaging Directive.

The Directive then returned to the Commission, which voted whether to accept or reject the amendments. The Commission, after another heavy bout of lobbying by industry, rejected a Parliamentary amendment calling for a strict hierarchy of waste management options (Porter 1994, 21, 27-28). This contentious item that environmentalists had lobbied strenuously for, and industrialists against, in both the Commission and Parliament, would be revisited in the latter stages of the decision-making process. The Commission was "extremely eager" to present a balanced Directive to the Council, to ensure its adoption there (Porter 1994, 28). This is reflected in the fact that the Commission adopted approximately half of the Parliament's 84 amendments in September 1993, presenting the amended proposal to the Council of Ministers where the environmental working group took it up.156

The Council: First Reading

While the Council deliberated on the Packaging Directive, as with any other Directive, it officially acted on its own until the Parliament's second reading. There was informal interaction and communication between the member state representatives in the Council and the Parliament as each body looked at the proposal independently, but there were no formalized ties or interactions prior to the Parliament's second reading. In theory, the Council could have


157 This working group was considering the Commission's proposal of August 1992 (OJ C 263. 1992) at the same time as the Parliament's first reading. The Council could not deliver its common position until the Parliament had given its first reading.
ignored the Parliament’s first reading entirely. However, this tactic, though widely used in the past, does not work to the Council’s advantage during either the cooperation or co-decision procedure, and many of the permanent environmental attachés met regularly with the Chair or other members of the Environment Committee as the Parliament proceeded in its first reading.

The policy network within the Council was as closed as the Parliamentary network was open. In this state-directed network, shown in Figure 6.5, only government representatives and “technical experts” were allowed to deliberate on the Commission’s revised proposal. Whether these experts came from within the governments themselves or represented particular sectoral interests within the member state, there was no opportunity for European level interest associations to lobby the Council or to participate in the sub-government of this policy network.

Figure 6.5: Council Working Groups: State-Directed Network

- = sub-government (greater influence is indicated by darker shading)

- = relationships: greater influence is indicated by more solid line
Since bargaining among the member states plays such an important role at this stage, it is tempting to call the process "intergovernmental," and then try to predict and explain the final outcome of the Directive simply by analyzing the member states' positions. The process cannot be characterized as merely intergovernmental, however, for three reasons. First, this was not a Directive shaped by the member states alone, but by an intra-institutional, pluralist bargaining process in the Commission and Parliament. Second, this Directive was voted on by QMV, and so no single state had a veto over the Directive. The application of this decision rule led to several of the member states' representatives (mainly the pro-environmental Northern states) lobbying both the Commission and Parliament in order to try to influence the proposal in their favor prior to the proposed Directive reaching the Council's deliberations stage. The member states were dependent on the other institutions of the EU in their attempts to ensure that their individual governments' positions were reflected in the final Directive. Third, QMV also meant that even the member states who voted against the proposal were still required to implement the final Directive. Having given up the veto power over Single Market initiatives in the SEA, the member states faced this "unintended consequence" each time a Directive fell under Article 100a.

The Council's common position lowered the targets for recycling and recovery substantially from the Commission's proposed Directive. However, as a compromise, the "greener" states would be allowed to pass more stringent national standards (under the provisions of Article 100a(4)), provided these would not interfere with the internal market.

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158 In both the original and amended Directives of the Commission, the targets were set at removing 90% of the packaging waste output from the waste stream for recovery, and removing 60% for recycling, within a period of 10 years from the implementation of the Directive. In the final Directive, which reflected the Council's common position, these targets were set much lower, at a maximum of 65% and 45% for recovery and recycling, respectively, but within a five year time period. Member states were allowed to keep higher targets, as long as these did not pose trade barriers. These targets are scheduled for periodic review by the Commission.
States setting targets higher than those in the Directive were required to possess sufficient recycling and recovery capacity to meet those targets. This was inserted to ensure that they would not be able to simply ship their waste to other states to meet their national targets. The less environmentally progressive states such as Portugal, Greece and Ireland were given extra time to implement the Directive and allowed to set lower targets because of their low levels of packaging consumption. This "common" position was as much of a compromise as the Council could garner. In an intergovernmental body, such a "common" position could not have been passed over the objection of three member states, but pass it did.\(^{159}\)

An analysis of the Council and Parliamentary networks in the first phase of the decision-making stage reveals the following. First, the Council maintained a preponderance of power in the decision-making process since the Directive could not pass into law without the approval of this body. Second, while officially the Council network was closed to lobbying and influence, the Council did not operate independently of the other Community institutions. Many of the changes in the Directive came not only from the member states, but from societal interests—usually industrialists—acting through the other institutions. The overall policy network during this first phase of decision-making was influenced by the pressure pluralist nature of the Parliamentary network, but dominated by the power of the state-directed network surrounding the Council.

**Decision-making Phase II: The Council and Parliament's Second Reading**

The Council presented its common position, with the three dissenting states opposed, to the Commission and Parliament in March 1994. The TEU had entered into force in November 1993, which meant that the Directive, based on Article 100a, was now subject to the co-

\(^{159}\) At this time (prior to the TEU), the number of votes needed to block a proposal was 54 of 76. Together, Germany, Denmark and the Netherlands had 18 votes, short of a blocking minority.
decision procedure. During its second reading, the Parliament had three months to consider the Directive, and to accept, amend or reject the Council’s common position. The European Parliament faced elections in June of that year, and the Greens in the EP wanted to postpone the second reading until after the elections. This would have allowed an extension of the time limit for the second reading. Some Greens in the Parliament believe that the rush to complete the second reading was pushed by other parties and committees motivated by the goal of having the Council’s final decision before the end of 1994. At that time the new member states of Austria, Finland and Sweden (and at the time Norway was expected) would join the Union. Since the Council’s common position had lowered the targets for recycling and recovery, there was a good chance that these new, pro-environment member states would have cast their vote with Germany, Denmark and the Netherlands, effectively killing the Directive. There was tension inside the Parliament, and even within the Environment Committee itself, between having no Directive on packaging, and having one that was less than environmentally innovative but nonetheless an improvement over the prevailing situation of disparate member state legislation. The vote inside the Environment Committee was 8 against and 14 in favor of moving forward with the reading prior to the June elections. The reading therefore proceeded and was completed in May 1994.

While the Environment Committee was indeed a powerful and determined force within the Parliament, there were other equally determined committees, such as the Industry Committee, opposing some of the “greener” amendments to the Directive. Trade and industry groups extensively lobbied these other committees and party groupings during the second reading. The Parliamentary policy network remained pressure pluralist in nature, and many varied groups took advantage of the openness of the Parliament to disseminate their views as widely as possible. Interviews with Parliamentarians reveal that the second reading of this
Directive was one of the most volatile periods of lobbying that Parliament had ever seen. In addition to lobbying committees and party groups, lobbyists broke into MEP offices to steal documents. Then, having full knowledge of what the "other side" wanted, they used these to formulate their countering positions, somewhat redefining the meaning of the word "pressure" in pressure pluralism.

The Environment Committee once again attempted to include an amendment specifying a strict hierarchy of waste management options, but this amendment was rejected by the Plenary (European Parliament 1994). Golub (1996a, 19) attributes the demise of this amendment to the pressing influence of the member states, asserting that the Commission had rejected the amendment after the Parliament's first reading to make the adoption of the Directive more palatable to the member states. However, other evidence (Porter 1994, 27-28; Rigler 1994) shows that industry groups had previously lobbied both the Commission and Parliament, strenuously opposing such a hierarchy throughout each stage of the Directive's formulation. In addition, according to a member of the Green Group, the amendment was rejected by the coalition of Conservative and Christian Democratic parties in the Parliament's Plenary (Interview 11). These groups were more interested in passing a sound internal market, rather than a sound environmental, Directive. This also explains why only half of the Environment Committee's amendments were adopted in the Plenary. The rejection of these amendments in the Plenary had little to do with national positions on the amendments, and much to do with keeping industry throughout Europe from bearing the cost burden of recycling and re-use efforts.

In its Plenary session in the spring of 1994, the Parliament adopted 19 amendments to the proposal, and forwarded the amended proposal to the Commission. The most contentious
amendment from the Parliament dealt with economic instruments, such as "eco-taxes." This amendment called on the Council to adopt such economic instruments at the Community level, and that in the absence of such instruments, member state economic instruments should not create distortions in competition or "obstruct the free movement of goods or discriminate against imported goods" (European Parliament 1994, 17). The Parliament, specifically the Environment Committee, used this amendment as a device to force the Council into a Conciliation Committee, where the two institutions could deal with each other on a more equal footing. The Parliament was not just pushing for the adoption of economic instruments at the Community level. Additionally, it was using this amendment as a lever against one of the member states, Belgium, in order to force it to vote against the proposal (Interview 11). Belgium had proposed an eco-tax on packaging in order to fund its collection and recovery systems for packaging waste (Interview 16). This tax likely would have posed a barrier to trade and competition under the language of the Parliamentary amendment, and Belgium had to reject the Parliament’s amended proposal in order not to vote against its own interests.

The Commission accepted all 19 of the Parliament’s amendments. With regard to the eco-tax amendment, it stated in its explanatory opinion that new forms of protectionism arising from member state use of economic instruments did indeed pose “one of the essential potential dangers relating to these instruments” (COM(94) 204, 5). Finally, the amended proposal

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160 “Eco-taxes” are economic instruments that work in one of two ways, either as charges or as incentives. The “eco-taxes” in question here were charges levied on producers and consumers of packaging in order to fund its recovery and recycling at the national (or regional) level. If the taxes are applied only at the national level, they may put national producers at a competitive disadvantage vis-à-vis outside producers. If outside packaging is kept out of a state to alleviate this disadvantage, it can pose a trade barrier. The Fifth Action Program calls for the use of economic instruments for the environment, coordinated by the EU so as to avoid “distortions of competition” (CEC 1993, 105).

161 The Council’s original language stated merely that “Member states may adopt economic instruments, in accordance with the provisions of the Treaty, to promote the objectives of this Directive” (European Parliament 1994, 17).

After adding its opinion to the Parliament's amendments, the Commission sent the modified proposal to the Council on 25 May 1994. As expected, Belgium, the Netherlands, Denmark and Germany rejected the amended proposal, and the Council and Parliament convened a Conciliation Committee in order to work out the differences between Parliament's opinion and that of the Council. According to both member state environmental attachés and Parliamentarians, the Council objected to no more than six of the 19 amendments proposed by the Parliament, but, as the Parliament had expected, the key disagreement centered on the amendment on economic instruments.

Conciliation Phase

The final bargaining on the proposal that reached the Conciliation phase was inter-institutional. The Council's delegation consisted of the representatives of the twelve member states plus the President, who spoke for the Council as a whole. There were an equal number of members of Parliament, plus the Chair of the Environment Committee, on the Parliament's side. The primary bargaining in the Committee was between the Chair of the Environment Committee and the President of the Council rather than between twelve individual members of the Parliament and the Council's delegations. Within the larger Council delegation, the German representative remained opposed to much of the Directive, and agreed with the Parliament on many of its positions in the Conciliation Committee meetings.

162 While the Packaging Directive was decided after the TEU came into force, it preceded the accession of Sweden, Finland and Austria into the EU, and so with Belgium's five votes added to the votes of Germany, the Netherlands and Denmark, these four states constituted a blocking minority.
As shown in Figure 6.6, the policy network during the Conciliation phase was an inter-institutional, state-directed network. Societal interest groups played no role in the sub-government at this stage. European level organizations had already lobbied the Parliament during its second reading, and the member state representatives were aware of the positions of their national level interest organizations, but these groups did not participate in the decision-making process in this final stage of the Directive’s development.

The Conciliation Committee provided an opportunity for Parliamentary influence in the policy-making process unprecedented prior to the TEU. The Parliament used this Conciliation Committee to press some of its earlier amendments, including the inclusion of the amendment on fiscal instruments (eco-taxes), and a five-year versus a ten-year timetable for meeting the objectives of the Directive. They were, however, unable to strengthen the objectives back to the Commission’s original proposal of 90 percent of waste for recovery and 60 percent of waste for recycling. The Council was able to reach a compromise on the use of economic instruments that satisfied both the Parliament and Belgium, so that in the end, Belgium voted in favor of the Directive.
Some members of the Parliament, (and most environmentalists outside the institution) felt that the proposal should have gone before the Plenary for rejection of the Conciliation Committee’s position, since the Directive did not go far enough in protecting the environment. While the Council held the final power to approve its previous common position if the Parliament could not muster a majority vote to reject a Directive, the Parliamentary Plenary could have brought the policy process to a grinding halt by rejecting the Conciliation compromise. It had done so twice prior to the Packaging Directive, proving that its new powers under Maastricht were not merely words on paper. Taking a rejected proposal to the Plenary for an absolute majority vote is a risky business, however, since at any given time only about 500 of the entire Members of Parliament show up for the Plenary meetings, and an absolute majority vote requires more than 60 percent of these to vote to reject the proposal. In addition, the majority of the Environment Committee believed the compromise position was preferable to having no Directive at all.

Representatives of each institution view their “power” in the Conciliation phase, and specifically in the negotiations for this Directive, very differently. When interviewed, each claimed greater “strength” than the other side, and a victory in the case of the Packaging Directive. Interestingly for students of the policy-making process, what one side sees as a strength for its own position, the other interprets as a weakness, and vice versa.

Parliamentary representatives viewed their position as “strength through flexibility.” The respected position of the Environment Committee within the Parliament increased its capacity to negotiate for the Parliament as a whole. It was likely that any position put forth by Collins and the Parliamentary delegation, as long as it was reasonable and along the general

163 The information, below, is taken from interviews with Ken Collins, President of the Parliament delegation to the Conciliation Committee, other Parliamentarians, and with member state environmental attachés.
lines as the previous Parliamentary amendments and positions, would be approved by the Plenary. Collins felt he could make suggestions for negotiation and amendment fairly easily, without the need for major consultation with either the full Environment Committee or the Plenary of the Parliament. This in turn gave the Parliament’s delegation bargaining strength as it tried to ensure a conciliatory outcome to the proceedings.

Members of the Council’s delegation viewed the flexibility of the Parliament as a weakness, seeing it as “wishy-washy.” The Council saw its strength in its firm stance on the Directive; they did not sway with the breeze on every amendment. Unlike Collins, the Council President could not act independently of the rest of the Council delegation. The President first negotiated the Council’s Common Position with Collins, and then brought back the Parliament’s suggestions to the Council delegates for their approval. Most of the member state representatives then had to seek approval for any changes to the Council’s common position through their governments; they were not empowered to negotiate unilaterally. This slowed the process down considerably and put severe constraints on the President in his ability to negotiate new positions.

It is evident that the Council had a much smaller margin of possible outcomes, or “win-set” in which to maneuver. Member state attachés reported that they felt this was a primary strength of the Council. In contrast, the Parliament’s “win-set” was relatively large. This gave it the flexibility to come up with innovative solutions to the deadlock at the inter-institutional table. Both the Parliament and the Council are correct in believing that their flexibility or rigidity, respectively, gave them a particular bargaining strength at the negotiating table. This is particularly true in a case like the Packaging Directive. Both sides preferred a compromise to

164 See Putnam (1988) on the language of state bargaining at the international level. Though Peters (1992) is generally correct in noting that policy-making in the EU is not a “two-level game,” Council negotiation within
the alternatives. Neither the Council nor the Parliament wanted to face the possibility of a
Plenary vote of rejection in Parliament. On the one hand, the Environment Committee wanted
to reach conciliation to avoid the arbitrary adoption of the Council’s former common position
had the Plenary been unable to garner a majority to reject the Directive. On the other, it wanted
a true conciliation between the two institutions, and a resolution to the packaging waste
problem itself. Likewise, the Council wanted to see a Directive adopted because of the growing
trade barriers and waste management problems packaging and packaging waste was causing.
Each side had an incentive to compromise, and the final outcome of Packaging Directive
reflected that compromise.

The Implementation Stage

The Packaging Directive entered into European Law on December 31, 1994. Many of
its targets call for implementation by the member states five years after the Directive was to be
transposed into national law, which was not until 30 June 1996. As with most other
environmental Directives, the Packaging Directive set targets and goals, but left the means of
implementation up to the member states. As both member state attachés and Commission
officials point out, this is the stage where Directives that may look feasible on paper are often
discovered to be impossible to implement. It is also the stage at which the differences in
political systems and political cultures of the member states become key variables in the
policy-making process. As noted in previous chapters, the implementation of environmental
directives in the EU has often left a great deal to be desired. In the formulation of the
Packaging Directive, the Commission made an effort to include many of the on-the-ground
implementers such as industry and regional representatives in the formal consultations during

the Conciliation Committee to come up with a common position resembles that described by Putnam, and so his
language is accurate here.
the initial proposal development. This not only strengthened their participation in the sub-
government during the initiation stage, but also kept them in the packaging policy community
once the Directive entered into force.

The key actors in the implementation policy community are Commission officials,
member state and regional administrations, and industry associations directly tasked with
applying provisions of the Directive to their products, and the European Court of Justice.
According to one high level Commission official who monitored environmental policy
implementation for many years, the member state governments play a relatively small role in
the actual implementation process (Interview 8). Once they have transposed the Directive into
national law, the member state governments' main role is receiving information on
implementation from subnational authorities and industry, and reporting this to the
Commission. The Commission has no direct oversight powers within the member states and
must rely on these implementation reports from the national governments. However, if these
reports are incomplete, the Commission holds the member state responsible and can begin
Court proceedings.

The implementation of the Packaging Directive thus far seems fairly typical of most
EU environmental policy implementation. Some states quickly reported transposition into
national law, while others were very slow. According to a Commission official, all states
except Greece had reported their transposition of the Directive into national law by February
1999 (Communication 1). However, given the following evidence, it is obvious that this is not
the whole story. During 1998, the Commission began Court action against several member
states mainly because the plans they transmitted to the Commission for implementing the
Directive were inadequate or incomplete. The Commission began action against Ireland,
Luxembourg and Greece in June 1998 for their failure to adopt and send to the Commission all
the necessary national legislation to implement the Directive (Environment Watch 1998d). At that time neither Greece nor Luxembourg had communicated their legislation, and Ireland's legislation on packaging was incomplete. In December 1998, the Commission decided to notify a Reasoned Opinion to Germany for its failure to include packaging waste chapters in its reports from the Länder (Environment Watch 1998c). Finally, again in December 1998, the Commission took action against Belgium for two separate infringements of the Directive (Environment Watch 1998b). The first infringement concerned the failure by Belgium to communicate to the Commission measures transposing certain requirements of the Directive into national law. The second infringement related to the failure of Belgium to ensure a separate chapter on packaging waste in its waste management plans. Finally, France also failed to provide a specific chapter on packaging waste in its waste management legislation, and the Commission began infringement proceedings against it in January 1999 (Environment Watch 1999).

As the implementation of a Directive progresses, non-state actors will become more involved. Environmental activists and other members of the attentive public may raise non-compliance issues to the Commission. The Commission is aided by these consumer and environmental groups in monitoring the progress of implementation. Also included in the implementation policy community are industry groups. At times, industry can be the prime mover in the implementation and even innovation of environmental policy, and this has been the case so far with the Packaging Directive. As early as 1995, a forum of industry groups made specific proposals about both the materials and the marking system required by the Directive.165 Rather than developing new markings, this group proposed adopting markings

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165 ERRA, the European Recovery and Recycling Association, heads this task force. ERRA members include some of the largest multi-national manufacturers in Europe in most industry sectors from the beverage industry, cosmetics, household products high-tech electronics.
already in use in various industries and member states, and applying them at the European level. This consultation group, representing all levels of the packaging chain, preferred to work with the Commission in order to ensure that the final requirements would be feasible. Since these industries were primarily responsible for the marking and identification of material for recycling, re-use and recovery, they became an integral part of the sub-government in the implementation stage, as represented in Figure 6.7.

**Figure 6.7: Implementation Policy Community: Pressure Pluralist Network**

Sub-government = ○ darker shading indicates increased influence
Attentive Public = solid line indicates a more formal relationship

As with many other European environmental Directives, implementation of the Packaging Directive is likely to be uneven among the member states. Industries with plants in more than one member state will likely be the primary implementers for the requirements on the production and marking of packaging, and local authorities for the implementation of recycling and recovery centers. The less industrialized member states were given a longer timetable for implementation, reflecting a more general trend in both EU and international
environmental agreements that allows them to "raise the floor" of their environmental policy, while not "lowering the ceiling" for the rest of the EU (Vogel 1995). Most importantly, the Directive prevents these states from becoming Europe's dumping ground for packaging waste from the more heavily industrialized and populated countries of the EU.

Conclusions

This chapter provided an analysis of the policy-making process in a policy area that had been formally Europeanized in terms of arena and actors. This provided highly auspicious circumstances for multi-level governance, as defined in Chapter One. Tracing the policy-making process using the policy network framework in fact reveals the actions and activity of actors from the sub-national to supranational level. At each stage of that process, there was a great deal of both formal and informal inter-institutional interaction that helped shape the final Directive. The ability of any given actor or group of actors to influence the proposed Directive depended heavily on the macro-level institutional decision rules extant at each stage of the process.

This case was chosen specifically because it allowed the researcher to study the impact of the change in decision-rules between the SEA and Maastricht Treaties, especially during the decision-making stage of the policy process. The changes in the decision-rules under Maastricht allowed new actors to influence the policy outcome through their enhanced role in the policy networks that developed at this stage of policy making. Specifically, the decision-making rules of the TEU strengthened the influence of the pluralist networks surrounding the Parliament, by creating a new policy community which included the Parliament in the latter phases (second reading and Conciliation) of the decision-making stage.
Table 6.1 shows the various policy networks involved throughout the development of the Packaging Directive. The presence of societal actors at every stage of the policy-making process characterizes the overall policy network for the Packaging Directive as pressure pluralist. As this chapter has shown, industry was able to influence the Directive significantly throughout the policy-making process, and it continues to play a major role in the pressure pluralist network in the implementation of the Directive. The Parliament's second reading kept societal actors in the game longer than was possible prior to the SEA. These groups participated vigorously in the pressure pluralist network surrounding the Parliament during its first and second readings. The web of relationships among the institutional actors and between societal actors and the institutions cannot be ignored when examining the final shape of the Packaging Directive.

**Table 6.1: Packaging Directive Policy Network Overview**

<table>
<thead>
<tr>
<th>Sub-government</th>
<th>Attentive Public in relevant institution</th>
<th>Type of Network</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy Initiation:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>formal consultation</td>
<td>DG XI, other DGs, environmentalists, industry, member state representatives</td>
<td>societal groups not invited into consultations</td>
</tr>
<tr>
<td>traditional lobbying</td>
<td>DG XI, other DGs</td>
<td>environmentalists, industry, member state representatives</td>
</tr>
<tr>
<td><strong>Decision-Making:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phase I: Council and Parliament First Readings</td>
<td>Council member state environmental attaches</td>
<td>Parliament Environment Committee, EMAC</td>
</tr>
<tr>
<td>Phase II: Council and Parliament Second Readings</td>
<td>Council member state environmental attaches</td>
<td>Parliament Environment Committee, EMAC</td>
</tr>
<tr>
<td>Conciliation Phase</td>
<td>member state environmental attaches, environment committee representatives, President of Council, Chair of Environment Committee</td>
<td>Parliament Environmentalists industry</td>
</tr>
<tr>
<td>Implementation</td>
<td>DG XI, member state administrations, regional administrations</td>
<td>Other industries, packaging associations, environmentalists (&quot;watchdogs&quot;)</td>
</tr>
</tbody>
</table>
Changes in the institutional decision rules governing environmental policy-making have fundamentally altered the relationships among the key players in the policy-making process. The Council cannot and does not operate in an institutional vacuum, isolated from the other EU institutions, or even from societal pressures that may be channeled through those institutions. No longer can the policy-making process or the governance of environmental policy such as the Packaging Directive be characterized as intergovernmental.

In his study of The Packaging Directive Golub declares the final Directive a victory for the member states, and a confirmation of the power of the Council (Golub 1996b). He especially criticizes the Parliament, and specifically the Environment Committee, for failing to put its amendment on a strict hierarchy of waste management options into the Directive. He points to the fact that the amendment appeared in the Parliament’s amendments after the first reading, but was then rejected by the Commission. Even worse, though the Environment Committee re-tabled it in its second reading, it failed to get Plenary approval. To Golub, the failure of this amendment proves the strength of the Council, and the relative weakness of the Commission and Parliament.

In fact, the final Directive, while not declaring a strict hierarchy of waste management options, reads that “reuse and recycling should be considered preferable in terms of environmental impact” and that life-cycle assessments should be completed as soon as possible in order to justify a more specific hierarchy of waste management options (OJ L 365/10). This language is that of the Parliament, from its second reading, replacing the Council’s common position that “reuse, recycling and recovery can be considered as equivalents for the purposes of reducing the environmental impact of packaging” (COM (94) 204). As the evidence presented here showed, the rejection of the amendment for a strict hierarchy in the Plenary was a political move among party groupings and the result of intensive lobbying by industry rather
than a victory for member state efforts. The fact that a modified version of the amendment appears in the Directive shows instead that the Environment Committee was actually very influential. The new ordering of preferential options as a replacement for the Council's statement that all options are equal flies in the face of the position industry took in lobbying the Commission and Parliament. It even demonstrates the strength of the Environment Committee relative to the rest of the Parliament since it was able to include this modified version of the hierarchy amendment in the Directive even after the Plenary had rejected the original wording.

In the formulation of this Directive, and others that fall under the same decision rules, the power of the Council was not eliminated, but it was muted. The Council, under the TEU's decision rules, could not ignore the 19 amendments that came out of the Parliament's second reading. It ultimately had to negotiate with the Parliament in the inter-institutional Conciliation Committee. Clearly the Council still holds a great deal of power in the environmental policy-making process, but that process cannot in any way be characterized as intergovernmental in situations where the institutional rules call for QMV and a second reading for the Parliament. The process for the Packaging Directive reveals the competition of interests among institutions and societal groups, not just among member states.

Policy-making in the EU is not a zero-sum game, where one institution loses and the winner (often assumed to be the Council) takes all. Tracing through the policy-making process for this Directive revealed the "mutual dependencies" between the Commission and Council, and between the Council and Parliament. Informal relationships and shared world-views among actors also had an effect on the policy-making process. For example, environmentalists got a better hearing from the Environment Committee in Parliament than did industrialists, especially in the second reading phase. Relationships between institutions were equally important in keeping actors apprised of developments elsewhere. Interviews with
environmental attachés revealed that the move into Conciliation, and possibly the final outcome of the Directive, came as no surprise to these member state representatives, since many of them had close relationships with Collins or other members of the Parliament.

The use of a policy network approach as an organizational framework also provides evidence to confirm the MLG prediction that subnational actors and interest groups will attempt to influence policy at the supranational level once the member states are no longer the sole determiners of policy. National level industrialists, who were to be the primary implementers of the Directive, provided the Commission with much needed information and expertise at the early stages of the Directive’s development, and so were able to influence the Proposed Directive that emerged from the Commission. Regional representatives participated in the pressure pluralist network in the policy initiation stage, and in the state directed network in the policy implementation stage. The member states are no longer the sole interface for these actors who wish to influence policy outcomes (Marks, Hooghe et al. 1995, 5).

Such multi-level bargaining also contradicts the neo-functionalist/transactionalist view that “integrated” policy areas are necessarily supranational. “Supranational” policy making (despite the transactionalists vague statement that supranational governance is the “competence of the EC to make binding rules in a given policy sector” and the “jurisdiction over specific policy domains” (Stone Sweet and Sandholtz 1997b, 297, 303)) implies, at a minimum in the view of this author, a control over the policy area by the supranational institutions of the Commission and Parliament.¹⁶⁶ This was clearly not the case in the Packaging Directive. The “green” member states fought for and received their right for stronger policy, and the “Southern” member states fought for and received the right to derogations and slower

¹⁶⁶ By the authors’ own definition of “supranational” governance. EU environmental policy has been “supranational” since 1987, when the EC was given formal competence to make policy in this area.
implementation. Bargaining within the Council, and between the Council and Parliament produced the final Directive, which bore little resemblance in terms of targets to the Commission’s original proposal. The member states, through their institution of the Council, still influence and manage policy, but they do so within a wider inter-institutional bargaining framework, which includes the opportunity for societal interest groups to influence policy at all stages of the policy-making process. Multi-level governance can account for the influence and activity of a multitude of actors, acting at a plurality of levels in policy areas such as this where the member states clearly do not control the Community’s other institutions or the outcomes of policy making.
CONCLUSION

The main purpose of this thesis has been to provide a framework of analysis to address the questions about governance dominating EU scholarship today. Specifically, I applied a policy network framework as a descriptive, heuristic device for understanding the Europeanization of EU environmental policy making over time, and in two particular sectors of the policy area. This framework helped flesh out the "textbook" understanding of policy-making in the EU by describing, with its language of policy communities and policy networks, who governs, and at what level. These questions are fundamentally questions about governance. My intent was not to develop a new theory of governance, or even prove unequivocally any one of the existing theories of governance and integration. I hoped to provide an analysis, using an historical overview and process-tracing case studies, of how these existing theories "fit" with actual evidence in one policy area. I applied the policy network framework to analyze EU environmental policy, in order to derive an understanding of how governance changes with time, and varies even within the policy sector.

I used the term "Europeanization" to describe both the shift in arena from the member state to European level, and to describe changes in actor relationships at that level, specifically the opening up of the policy process to new, non-state actors at the European level. By studying both the arena of action (where policy is made) and the actors' relationships within that arena (who makes policy), this thesis showed that Europeanization can vary along these two dimensions. It is possible, as in the case of climate change policy, for there to be a limited Europeanization of the policy arena, but a growing Europeanization of actor relationships as non-state Euro-actors attempt to make policy. The Europeanization of arena and actors for
general environmental policy in the three periods studied (pre-SEA, inter-Treaty, and post-Maastricht), and for the two policy areas (climate change and packaging waste), is shown in Figure 7.1.167

The role of decision-rule change proved to be a key variable for understanding both changes and variations in Europeanization. Decision rule change, through Treaty revisions or major Court decisions, was a necessary condition for the formal Europeanization of the policy arena, because it granted the Community legal competence for policy-making in a given area. It was not, however, necessary to produce the informal Europeanization of the policy arena, especially prior to 1987, or of the climate change policy sector. In the case of pre-SEA

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167 As noted in the Introduction, the continuum is an imperfect heuristic device for showing the changes in arenas and actors. The pluri-level arena and multi-level actors would be better represented by a three dimensional "bump" in the graph, since they actually lie off the straight-line continuum altogether.
environmental policy, the policy arena became increasingly informally Europeananized over time. Formal Europeanization of the arena did not occur until 1987, after more than fifteen years of environmental policy-making in the Community. Similarly, in the case of climate change policy, there was informal Europeanization of both the arena and of the actors involved. These moves toward informal Europeanization altered the governance of the policy area, despite the lack of formal decision-rule change.

The application of the policy network approach helped reveal which actors were responsible for both policy making, and for the impetus behind shifts in Europeanization. In the early years of European environmental policy, the member states were largely responsible for that impetus, as well as for the governance of the policy area. This would seem to support the intergovernmentalist view of integration and governance. However, through Court decisions and the accumulation of policy outputs, gaps were created in member state control of environmental policy. The SEA, which was originally a member state-driven move towards economic integration, eventually created fundamental changes in the governance of environmental policy as environmental and economic policy became increasingly inter-related. In addition, the application of QMV to certain environmental policies opened up the policy process to non-state actors at the European level, reducing the individual member states' control over policy outcomes.

The change in governance after the SEA was followed by further formal Europeanization of the policy arena under Maastricht. Functionalist/transactionalist theory would attribute this institutionalization of increasingly Europeanized decision rules to the member states' response to the previous shift in policy governance to the European level and to the increased activity of European actors. In other words, according to this view, the member states seemed to have no choice but to further Europeanize this policy area. However, as
Chapter Four described the member states’ attitudes toward a broader application of QMV in the Maastricht Treaty, there were clearly opposing viewpoints among the member states. Those states that sought further QMV wanted it in order to maintain their national competitiveness while maintaining stringent environmental policies. There was more chance for the EU to make similarly strict policy if QMV rules applied to environmental policy. The Southern tier member states opposed QMV, but were partially placated by an extension of Cohesion funding to environmental policy implementation. The transaction costs involved in the bargaining process had little to do with a response to transnational societal activity, and much more to do with internal, national economic interests of the individual member states.

The post-Maastricht time frame described in Chapter Four, and the packaging Directive case in Chapter Six, showed how the member states not only “pooled” their sovereignty in environmental policy-making, but gave up sovereignty over this policy area where QMV, and especially co-decision, applied. Historical institutionalism, rather than liberal intergovernmentalism, better explained how actors such as the Commission, Parliament and societal groups (especially industry in the case of the Packaging Directive) came to have a great deal of influence over policy outcomes in general environmental policy making after Maastricht. The policy network analysis of the governance of the post-Maastricht policy-making process and of the Packaging Directive revealed that governance is now multi-level in nature. The structure of authority fundamentally changed with the Maastricht Treaty, especially where co-decision (which after Amsterdam will be applied to all environmental policy excluding the Maastricht exceptions) applies.

Overall, then, the evidence of this thesis points to a better “fit” for multi-level governance and an historical institutionalist approach to integration, at least in general environmental policy making. But what about the glaring exception to formal Europeanization
of climate change policy? Does intergovernmentalism still hold? Can multi-level governance models only be applied to policy areas that have been formally Europeanized? Do the transactionalists have anything to say about this policy area?

Climate change policy actually pits the intergovernmentalists head-to-head with the transactionalists. The intergovernmentalists can point to the continuing dominance of the member states in this policy area, and their refusal to change the decision rules that would formalize policy competence at the EU level as proof of their theory’s validity. The member states have largely driven whatever informal Europeanization of the policy area there has been through their collective stance on climate change policy and their attempts to make policy at the European level. However, the Commission and some transnational societal actors (especially industry in its attempts to block the policy) play a major role in the policy sector. Actor relationships are becoming Europeanized even in the absence of formal Europeanization of the policy arena. The transactionalists assert that when there is a shift in one of their three variables of transnational activity, organizations and decision-rules, the other two soon follow. In the case of climate change policy, there has been an increase in both transnational activity and in the organizations (including the Council of Ministers) towards a more “supranational” policy. However, the individual member states clearly hold the power when it comes to changing the decision rules, and they refuse to do so, thus proving the seeming inevitability of the “loop” of supranationalization false. If both dominant theoretical approaches are wrong, is anyone right?

In climate change policy, as in other environmental policy, the configuration of decision rules plays a major role in structuring the governance of the policy area. The decision rules for energy-related environmental policy and for the use of fiscal instruments in that policy area remain intergovernmental. Evidence provided in Chapter Five showed, however, that there
has been some Europeanization of both the policy arena and actor relationships in this sector. The inclusion of non-state actors, especially from the sub-national level, points to a nascent multi-level governance of this sector. The member states have locked themselves into climate change policy, which will likely produce further Europeanization of the policy arena (at least informally) especially if the Commission continues to push for an emissions-trading regime, which will involve sub-national actors. Unlike the other two theories, historical institutionalism privileges neither the member states nor transnational actors in the integration process. In so doing, it can account for the locking in of the policy at the European level, and the unintended consequences (here the increase in non-state actor activity in policymaking) of this policy sector, as well as the lack of decision-rule change in the “history making” decisions of Treaty revisions.

Lack of decision-rule change, therefore, does not preclude either Europeanization or multi-level governance of a policy area. While it is not necessary for Europeanization, it certainly enables and encourages it, as shown in general environmental policy making and in the case of the Packaging Directive. Neither the intergovernmental nor the transactional approaches alone can grasp this nuance. Only an analysis of the actual governance of a policy area using a framework approach that reveals the roles and actions of all actors in the policymaking process can fully grasp the connection between decision-rule change, Europeanization and governance. This dissertation has shown that such a framework—the policy network approach applied herein, which can be further applied to other policy areas, and other cases of policy making—can help scholars answer the fundamental questions of who governs, and at what level, in European policy making.
### ANNEX A: ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Meaning</th>
</tr>
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<tbody>
<tr>
<td>CEC</td>
<td>Commission of the European Communities or Commission</td>
</tr>
<tr>
<td>COM</td>
<td>Commission document</td>
</tr>
<tr>
<td>COREPER</td>
<td>Committee of Permanent Representatives (in Council of Ministers)</td>
</tr>
<tr>
<td>DG</td>
<td>Directorate General (in Commission)</td>
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<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
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<tr>
<td>EEB</td>
<td>European Environment Bureau</td>
</tr>
<tr>
<td>EEC</td>
<td>European Economic Community</td>
</tr>
<tr>
<td>EP</td>
<td>European Parliament</td>
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<tr>
<td>ERRA</td>
<td>European Recovery and Recycling Association</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FCCC</td>
<td>Framework Convention on Climate Change</td>
</tr>
<tr>
<td>HI</td>
<td>Historical Institutionalism</td>
</tr>
<tr>
<td>IR</td>
<td>International Relations</td>
</tr>
<tr>
<td>LCD</td>
<td>Lowest common denominator (policy)</td>
</tr>
<tr>
<td>LI</td>
<td>Liberal intergovernmentalism</td>
</tr>
<tr>
<td>MEP</td>
<td>Member of European Parliament</td>
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<tr>
<td>MLG</td>
<td>Multi-level governance</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>OJC</td>
<td>Official Journal of the European Communities, Commission</td>
</tr>
<tr>
<td>OJ L</td>
<td>Official Journal of the European Communities, Law</td>
</tr>
<tr>
<td>QMV</td>
<td>Qualified majority voting (in the Council)</td>
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<tr>
<td>SEA</td>
<td>Single European Act</td>
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<tr>
<td>SMEs</td>
<td>Small and medium enterprises</td>
</tr>
<tr>
<td>TEU</td>
<td>Treaty on European Union (Maastricht Treaty)</td>
</tr>
<tr>
<td>UNICE</td>
<td>Union of Industrial and Employers Confederation of Europe</td>
</tr>
</tbody>
</table>
ANNEX B: CO-DECISION (ARTICLE 189B) TEU

Commission Proposal
Parliament First Reading

Council Common Position First Reading (QMV)
Parliament Second Reading

Approval
No Decision
Act adopted after three months
EP proposes amendments by absolute majority

Accepted by Council
Rejected by Council (QMV)

By QMV if Commission approves Parliament’s amendments
Act Adopted
By unanimity if Commission does not approve EP amendments
Act Adopted

Conciliation Committee convened by EP and Council Presidents

Conciliation Committee does not approve joint text
Council confirms Common position from First Reading by QMV

Rejection by EP by absolute majority within six weeks
Act Rejected
no rejection by EP
Act Adopted
Adoption by Council by QMV within six weeks
Act Adopted
Adoption by Parliament (absolute majority) within six weeks
Act Adopted

Notification of Parliament Rejection by absolute majority (Article 189b(2)(c))
ANNEX C: CO-DECISION (ARTICLE 189B) AMSTERDAM

Commission Proposal
Parliament First Reading
Council Common Position First Reading (QMV)
Parliament Second Reading

Approval
No Decision
Act adopted after three months
EP proposes amendments by absolute majority
Accepted by Council
Rejected by Council (QMV)

By QMV if Commission approves Parliament's amendments
Act Adopted
By unanimity if Commission does not approve EP amendments
Act Adopted

Conciliation Committee convened by EP and Council Presidents

Conciliation Committee does not approve joint text
Act Rejected

No action within six weeks
Act Rejected

Adoption by Council by QMV within six weeks (absolute majority)
Act Adopted

Adoption by Parliament within six weeks
Act Adopted
## ANNEX D: QUALIFIED MAJORITY VOTING

<table>
<thead>
<tr>
<th>State</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>10</td>
</tr>
<tr>
<td>Germany</td>
<td>10</td>
</tr>
<tr>
<td>Italy</td>
<td>10</td>
</tr>
<tr>
<td>U.K.</td>
<td>10</td>
</tr>
<tr>
<td>Spain</td>
<td>8</td>
</tr>
<tr>
<td>Belgium</td>
<td>5</td>
</tr>
<tr>
<td>Greece</td>
<td>5</td>
</tr>
<tr>
<td>Netherlands</td>
<td>5</td>
</tr>
<tr>
<td>Portugal</td>
<td>5</td>
</tr>
<tr>
<td>Austria</td>
<td>4</td>
</tr>
<tr>
<td>Sweden</td>
<td>4</td>
</tr>
<tr>
<td>Finland</td>
<td>3</td>
</tr>
<tr>
<td>Ireland</td>
<td>3</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>87:</td>
</tr>
<tr>
<td></td>
<td>(62 needed for passage under QMV)</td>
</tr>
</tbody>
</table>
ANNEX E: TABLE OF INTERVIEWS

**Member state attachés**
1. Italy
2. Netherlands
3. Germany

**DG XI**
4. DG XI
5. DG XI Legal
6. DG XI
7. Robert Hull, DG XI *
8. DG XI Waste
9. DG XI Waste

**Parliament**
10. Ken Collins, Head of Environment Committee
11. Member of the Greens in EP

**Other EC Officials**
12. Laurence Brinkhorst (Commission and Parliament)
13. Member of Council Secretariat

**Interest Groups/Societal Groups**
14. Climate Action Network
15. UNICE
16. Jacques Fonteyne, ERRA
17. Tony Long, WWF
18. C.J. Lugtmeijer, Proctor and Gamble Europe
19. Head of European Environment Bureau

**Other Interview**
20. Member of the French delegation to Maastricht Treaty IGC

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167 The listed interviews were either used as background or cited within this thesis. Where interviewees stated that the interview was attributable, I have used their names.
BIBLIOGRAPHY


