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**Balancing participation in
Technical Working Groups:
the case of the information
exchange of the IPPC Directive**

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1 Introduction

In the 1990's the conditions under which numerous environmental standards are prepared have changed fundamentally. In accordance with the "new harmonisation approach" model, these are delegated from the arena of the law-making institutions to technical committees of varying composition of public and private interested parties. This was considered an appropriate method of relieving the European law-making institutions of a complex and technically challenging task. In the 1990's the EU has become a regular experimenting ground for the formulation of conditions, in an institutional context, for various models of the devolution of political tasks to technical forums. The Information Exchange on Best Available Techniques under the IPPC directive is a case in point.

The following paper shortly discusses the crucial success conditions for balanced participation in technical committees and presents an analysis of the IPPC directive. Some conclusions will be drawn from this.

2 Success conditions for the integration of the environment in technical committees

Key elements of the institutional regime that are crucial for the quality of the work of technical forums in terms of environmental policy are:

- The degree of precision and the level of the demands placed by the ecological protection objective in the mandate for the technical committee,
- The degree of representation by interested parties with environmental interests,
- The formulation of the formal and informal negotiating rules,
- And the nature of the procedural link between the political and technical levels.

This is explained in more detail in the following.

Institutionally defined principles and objectives have an important orientation function for the interested parties. With regard to the objectives, the degree to which the institutional framework clearly specifies a certain level of demands, or places the emphasis on qualified limitations is of importance. The allocation of the burden of proof and environmental rights defines whether environmental objectives or industrial objectives predominate.

High environmental objectives can be embodied to a large degree in the mandate for the technical forums by quantitative or qualitative long-term objectives (e.g. critical pollution levels not to be exceeded, observance of the recommendations of the World Health Organisation) or by procedural principles (burden of proof reversal, worst case assumptions in the case of scientific uncertainty). Indicators for the dominance of industrial protection objectives are the mass of qualifying conditions (cost-benefit analyses, effects on competitiveness) and high requirements on the

scientific proof of the hazardous effects of certain substances on man and nature before it is permitted to start to negotiate.

In respect of the representation of interested parties, particularly the relative weight and the resources of environmentally orientated coalitions of interested parties are important. These can include representatives from environmental groups or experts delegated by them, from environmental authorities or the ministry for the environment in countries with innovative environmental policy. For the most part, the discussion in the technical forums is a mixture of scientific discourse (argument) and negotiation processes (bargaining) such that both technical and also political qualifications are necessary. Environmental groups often do not have sufficient technical expertise - however for such forums this can be mobilised at ecological research institutes and consultants. If these environmental coalitions are relatively weakly represented in the forums, their potential influence is also relatively low. Personnel under-representation can, however, possibly be compensated for by a reasonable standards framework and reasonable decision rules. The appropriate representation of industrial supporting interests that can reinforce environmental coalitions in certain situations can also be of significance.

In respect of the decision rules, a differentiation can be made between minority favouring consensus rules, and forms of majority rules. Minority favouring consensus rules also enable personnel under-represented environmental coalitions to erect a blockade if their interests are not appropriately taken into account. In the theory, the principle of unanimity is not regarded as an incentive to efficiency orientated solutions, this is because the only situation in which there are no losers is in the related positive sum situations. Conversely, in practice in many technical forums a "principle of consensus" is to be found that is in effect similar to an informally operated majority rule. Consensus is what the main stream wants. Opposition against the consensus is only possible in extremely exceptional situations, if one does not want to turn oneself into the ignored outsider in the group. Also, the lack of a formal decision rule can be interpreted as an informal majority principle. "Expert judgement" then applies, a compromise negotiated beyond the official forums (cf. IPPC Directive). In technical forums in which the representation of environmental coalitions is not balanced, such rules can lead to the externalisation of problems.

Possible correction from outside is therefore important - the "shadow of the hierarchy". If such correction is missing, there is the risk of the dominance of private self-regulation. If such correction exists, e.g. through the final responsibility of the political level, the possibility of rejection or the possible recourse to law-making, then incentives are generated for the private interested parties to take seriously, as negotiating partners, the environmental policy challengers considered to be external. The shadow of the hierarchy thus generates incentives for co-operative behaviour towards the environmental coalitions in technical forums. It is thus one of the two key institutional elements of a successful link between the political and technical level. The other important element is the quality and precision of the political mandate at the technical level.

The analysis of the conditions, in an institutional context, for devolution can thus be simplified in the framework of a 4-field matrix with numerous possible combinations.

	Reasonable opportunities for influence of environmental coalitions	Bad opportunities for influence of environmental coalitions
Environmental protection objectives dominant	Sustainability	Unused opportunities
Industrial protection objectives dominant	Risk of the participation trap	Problem externalisation

The dominance of environmental protection objectives and real reasonable prospects of influence (representation + minority favouring decision rules + - ecological correction) contribute most likely to preventive negotiating strategies. If real prospects of influence are missing, then the interested parties required for the implementation of the reasonable system of objectives into practice will also be missing. Potential for suitability for the future will thus remain unused. If there is a possibility of influence, but the system of objectives is unreasonable, the environmental interested parties in the forums would put up unsuccessful resistance in the forums without being able to effect anything substantial. The forums thus risk falling into a participation trap. In the case of overall unreasonable contextual conditions, there is the risk that the process will be controlled by interested parties who are interested in a removal or reduction in ecological standards.

3 BAT and the implementation of the IPPC Directive

Directive 96/61 approved in 1996 on "Integrated Pollution Prevention and Control" (IPPC directive) formulates permit requirements for new and old industrial plants. The directive incorporates a high level of demands. Permits are intended to contribute to the avoidance of pollution, the integrated reduction of emissions in air and water, the minimisation of flows of waste, the efficient utilisation of energy and precautions in case of an incident (Art. 3). The directive is however in its core only a procedural directive that refrains from implementing its general objectives in harmonised limits or to define other instruments of environmental policy. The implementation of the directive is performed decentrally. Member states have to enact emission limit values that are based on the "Best Available Techniques (BAT)", and also take into account the technical aspects of the business, its geographical location and local environmental aspects (Art. 9.4). This integrated, decentralised, flexible approach strongly aligned with local environmental conditions corresponds to a large degree with British permit system.

What the BAT is, is on the one hand the subject of an attempt at clarification in a comprehensive definition. On the other hand it is intended to specifically identify the BAT in the context of a process of information exchange between the governments and industry for all key industrial sectors. The objective of this information exchange process is the documentation of suitable techniques with their related environmental performance for 30 industrial sectors. The result of the process of information exchange is recorded in so-called "BREFS" (Best Available Technique Reference Documents) and is intended to be used by the national approval authorities as the information base for the definition of standards in their respective approvals. This exchange of information is the remnant of the harmonised emission control originally supported by Germany. The directive thus represents a compromise between the British environmental quality and the German emission control approach. Part of this compromise is, however, that the conflict between the two approaches is shifted to the technical level.

This can already be seen in a detailed analysis of the normative reference framework for the information exchange process, the definition of BAT. The comprehensive definition with numerous qualifying comments raises more questions than actual clarification. In particular the definition of "available" significantly limits the level of environmental policy demands. Through the conditions for commercial justifiability and the cost/benefit relationship, the British philosophy orientated towards local environmental conditions has again crept in. In this way the level of environmental policy demands becomes itself the subject of a political confrontation in forums set up for the clarification of technical questions. Some member states and the industries involved expect a diffuse result from the information exchange process with a large range of recommended techniques and emission limits. The environmental orientated interested parties on the other hand expect an ambitious European standard for innovative techniques.

The process of information exchange was overshadowed for several years by the conflict on the content of the IPPC directive. Only in February 1999 was a compromise formulation reached that makes it clear that the result of the information exchange process does neither lie in a large range of techniques nor in a particularly ambitious standard. Using this "clarification", made in 1999, of the level of the environmental policy demands in the direction of an above average, but not best possible environmental performance of BAT, a normative framework for the further work on the information exchange process has been created.

Institutionally, the process of information exchange takes place at several levels. For the clarification of political and strategic questions, an "Information Exchange Forum" (IEF) has been set up that comprises representatives from the member states, industrial umbrella organisations, the European Commission and the European Environmental Bureau. The actual exchange of information takes place at the level of the technical working groups. The composition of these technical working groups is formally pluralistic and informally selective. Formally experts from environmental groups are invited in the same way as experts from the respective sectors of industry.

In reality, however, the European Environmental Bureau (EEB) only achieves partial staffing of the technical working groups with experts, as the work is on a voluntary basis and the EEB and its members lack the resources to pay the customary market fees for experts. Since 1999 the EEB has however set up a limited budget for experts from the general EU support. Representatives from industrial plant builders are just as little formally involved in the process as representatives from science. This has been justified with the view that, under the pressure from its users and customers, plant builders are hardly in the position to talk about technical options and costs. Informally, plant builders are however consulted. The infrastructure for the information exchange process is provided by the European IPPC Bureau (EIPPCB) in Seville. This supports an office with one expert per sector who prepares draft reports based on the information provided and the results of the expert's own research. As the process of information exchange is generally under-financed, the EIPPCB is dependent on support from the member states. It can be seen that some member states have recognised the strategic role of the specialists in the EIPPCB and dispatch such to Seville. With the dispatch of experts, countries with ambitious environmental policy have the opportunity to influence the quality of the BREFS. Representatives of the member states, partially from the ministry for the environment and partially from the ministry for economic affairs, are also involved in the information exchange process. An important role as moderator is mostly also played by the representative from the European Commission. From the side of industry, there are reports of, in some cases, dozens of participants from the affected sector. The affected branches of industry are investing in some cases considerable resources in influencing the process. In this way they demonstrate a willingness to co-operate, however they are also not deterred from making strong threats to stop the work. The exchange of information process is thus pluralistic, however in actual fact between unequally equipped partners. The balance of the interests represented in each case is rather random and depends on the ability of the involved interested parties in the affected industrial sector to mobilise support.

There is also an institutionalisation deficit in respect of procedural aspects. The information exchange process does not include any formal conflict resolution and decision mechanisms. This deficit can be traced to the unrealistic conception of the information exchange process as a purely technical data collection process. In general, the informal consensus principle is adopted, that is, in effect, a majority rule. If, under these conditions, it is nevertheless not possible to reach agreement, compromise rules are applied: The reference values for emissions based on BAT are, e.g., the result of the mean of that which the experts consider possible ("bazaar"). Finally there is the option of recording differing opinion in a footnote. Sometimes the EIPPC Bureau also further worsens the figure in agreement with the affected industries. This, however, not unusually triggers political conflicts.

Political conflicts at the working group level can also be resolved at the IEF level, which, however, also does not have a formal decision procedure. At this level negotiations are more along the lines of the principle of informal pressure to agree,

the rule of "no sustained opposition". The Commission and the EIPPCB often have a pivotal role in identifying and determining what they consider as "consensus".

As the Commission publishes the results of the information exchange in the EU Official Journal, formally it has a political recall facility that it, however, does not in reality consider using - the Commission does not want to endanger the overall process.

The process thus takes place under conditions of high time pressure, significant shortage of resources for the representatives of public interests, an informal pressure to agree, and in an institutional vacuum that does not include any adequate rules for a balanced representation of interests and allocation conflicts. The formally reasonable offer to the environmental groups of participation thus changes into an informally rather unreasonable institutional framework. The results of the information exchange process depend on a series of random groups of conditions.

4 Conclusions

The IPPC directive contains ambitious environmental objectives; the information exchange process on BAT is, on the other hand, based on only a moderate level of environmental protection. A policy for balancing the resource differences between non-government and private interested parties is only in the early stages. The conflict solution mechanisms are insufficiently formalised and opaque. Under these conditions, environmental interested parties have prospects of influence; these are however in need of improvement. The unclear normative reference framework provides repeated impetus for political conflicts over the level of the environmental policy demands sought.

A potential solution to compensate for the lack of decision-making rules might be, to give the Art. 19 Committee a say in adopting the BREFS. Then the information exchange would take place in the shadow of a comitology procedure, which has clear decision-making rules. Political conflicts on the level of ambition of individual BREFS - which are unavoidable due to the many subjective judgements and decisions to be taken in the process - can then be solved by a widely accepted procedure.

Rules of procedure should also be amended in order to give minority positions a proper standing and to draw a clearer borderline between information exchange and decisions of a political dimension. In the latter either Member States should have a clear say or a tiered approach should be chosen, that lack of consensus requires a decision at the next level (e.g. IEF or Committee). Consensus should be defined in a way that the opinion of minorities count.

Important is also that the resources for the information exchange process are extended in order to allow the participating representatives of public interests (member states, environmental NGO's, EIPPCB) verify information and to collect information not provided by the respective industries.

A forthcoming revision of the IPPC-Directive should give environmental NGO's a clear legal standing. It should also give better guidance on the level of protection intended by the BAT approach.

Note: This is an extract of a forthcoming EEB Publication on: Towards Balancing Participation: A Report on Devolution, Technical Committees and the New Approach in EU Environmental Policies: The cases of Standardisation, Chemicals Control, IPPC and Clean Air Policies in a Comparative Perspective, April 2000

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