

Networked environmental governance in the European Union: Who participates and (how) do they learn?

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To my wonderful parents,

Albert and Ruth Twena,

whose belief in the value of education has been an inspiration

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ABSTRACT

With its traditional (i.e. legislative) modes of governance coming under fire due to their perceived lack of legitimacy and effectiveness, the European Union (EU) has increasingly turned to more flexible means of policy cooperation. One example is the Open Method of Coordination (OMC), which can be viewed as a more decentralised way of coordinating national policy through peer review and mutual learning. Although recent findings suggest that the OMC has largely failed to deliver its promise of a more *participatory* (legitimate) and *learning-based* (effective) policymaking style, there have been few detailed studies analysing OMC-*like* processes in a heavily *regulated* sector, such as the environment, where the potential for synergies between traditional and new modes exists. Fewer still have been underpinned by theory.

To address these gaps in the literature, this thesis explores two mature cases in environmental policy: the European Climate Change Programme (ECCP) and the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL). It derives diagnostic criteria to analyse the prevalence of OMC-type characteristics in these processes, and develops a theoretical framework founded on new institutionalism, to explore whether and how OMC fosters participation and learning, and how informal networks operate alongside existing legal processes (e.g. as rivals or complements).

Findings reveal that the *sociological* institutional perspective is more optimistic about the capacity of OMC processes to coexist alongside traditional modes. It demonstrates that OMC's horizontal and deliberative format, most evident in IMPEL, can achieve context-sensitive learning through the socialising process of peer review. Meanwhile, *rational choice* institutionalism sees the iterative nature of OMC as an opportunity for strategic learning, which leads to greater (often more formalised) institutional harmonisation – something most strongly displayed in the ECCP case.

In both networks, a subtle extension of established participatory patterns is detected. Learning is found to be most *transformative* when OMC processes are more recursive and less politicised, often at the early and late stages of the policy cycle. These findings suggest OMCs can perform a valuable feedback function, and may represent a bridge *between* policy cycles, thus filling a gap typically missing from traditional processes.

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ACRONYMS AND ABBREVIATIONS

| | |
|-----------------|--|
| CDM | Clean Development Mechanism |
| COREPER | Committee of Permanent Representatives |
| CO ₂ | Carbon dioxide |
| DG | Directorate-General |
| DG ENV | Directorate-General for the Environment |
| EAP | Environmental Action Programme |
| ECCP | European Climate Change Programme |
| ET(S) | Emissions Trading (Scheme) |
| EC | European Community |
| ENGO | Environmental Non-Governmental Organisation |
| EU | European Union |
| FIELD | Foundation for International Environmental Law and Development |
| GHG | Greenhouse gas |
| IMPEL | European Union Network for the Implementation and Enforcement of Environmental Law |
| INECE | International Network for Environmental Compliance and Enforcement |
| IPPC | Integrated Pollution Prevention and Control |
| IR | International relations |
| IRI | IMPEL Review Initiative |
| JI | Joint Implementation |
| MEP | Member of the European Parliament |
| NAP | National Allocation Plan |

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| NEPA | Network of the Heads of Environment Protection Agencies in Europe |
| NGO | Non-Governmental Organisation |
| OMC | Open Method of Coordination |
| QMV | Qualified Majority Voting |
| RMCEI | Recommendation on Minimum Criteria for Environmental Inspections |
| TFS | Transfrontier shipment of waste |
| UNEP | United Nations Environment Programme |
| UNFCCC | United Nations Framework Convention on Climate Change |
| WEEE | Waste Electrical and Electronic Equipment (Directive) |
| WG(1) | Working Group (on Flexible Mechanisms) |
| WWF | World Wide Fund for Nature |

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1 NETWORKED GOVERNANCE IN THE EU: THE OPEN METHOD OF COORDINATION

"[W]e have to stop thinking in terms of hierarchical layers of competence separated by the subsidiarity principle and start thinking, instead, of a networking arrangement, with all levels of governance shaping, proposing, implementing and monitoring policy together."

Romano Prodi, President of the European Commission (2000)

1.1 THE EUROPEAN GOVERNANCE CHALLENGE

The Euro crisis has demonstrated all too painfully how difficult it can be for 27 countries, with diverse economic, political and social settings, to reach a common agreement, and stick to it. Indeed, the governance challenge facing the EU remains as tough, if not tougher, than when Prodi issued his call for more networked governance over ten years ago. Externally, it finds itself buffeted by the global financial crisis and confounded by the slower, but equally powerful, forces of globalisation, which have seen 'emerging markets' develop into fierce trading competitors and take on ever greater economic and political clout. All this, at a time when the EU's leadership aspirations on the global stage are ever more ambitious, and when the fight to tackle complex, 'wicked' problems (Rittel and Webber 1973), such as sustainable development, climate change, and transboundary pollution, call for increasingly inventive and cooperative solutions.

At the same time, the EU is well-placed to draw on the multiple experiences of its constituent actors, across national contexts and governance levels, in order to address these contemporary (environmental) problems. With enlargement extending the pool of best practice examples to draw upon, the potential for harnessing the power of the EU's "irreducible diversity" (Scott and Trubek 2002: 7) is considerable. However, finding ways to realise this through systems of governance remains a serious challenge. Internally, the EU has presided over a near-doubling of membership from 12 to 27 states over the last decade (2004-7), and laid the foundations for further expansions across cultural contexts

as varied as Croatia, Iceland and Turkey. Yet, enlargement has been accompanied by protracted constitutional wrangling, and served to magnify the perceived inadequacies of the EU's "institutionally fragmented, hierarchical, and legalistic style of policy-making" (Lenschow 2002: 20).

With traditional legislative methods coming under fire on the grounds of their perceived lack of legitimacy and effectiveness, the EU has increasingly turned to more flexible modes of voluntary policy coordination to complement its conventional authoritative practices. One such form of steering is known as the 'open' method of coordination (OMC). It is a 'soft' mode designed to help Member States develop their own national policies and bring about greater convergence towards EU goals, via the spread of best practice, peer review and mutual learning.

1.1.1 The Lisbon Process: launching the 'Open Method of Coordination'

The Lisbon Strategy (European Council 2000), which aimed to transform Europe into the most competitive world economy by 2010, provides a prime example of the EU's desire to take such a flexible approach to governance, and display its credentials as a world economic leader, a policy innovator and an environmental frontrunner. The initiative was founded on three pillars: the first (and most prominent) was economic – emphasising the need for effective knowledge transfer; the second was social – promoting an inclusive European social model; and the third related to the environment – namely, decoupling economic growth from natural resource consumption. Although most of its ambitious targets were not met, what is specifically relevant to this study is that the Lisbon Summit launched the "open method of coordination" (OMC) as a means for Member States to develop their own policies for achieving these common EU goals (European Council 2000, Paragraph 37). In contrast to traditional hierarchical models of European governance, favouring uniform, blanket legislation, the central aim of this so-called 'new' policy instrument was to promote the spread of best practice rather than impose a single common framework (Wallace and Wallace 2000: 32-33); as such, it bears a notable resemblance to the "OECD [Organisation for Economic Cooperation and Development]

technique” of coordination, which has been in operation since the 1960s (Lehtonen 2007, Schäfer 2006).

The Open Method of Coordination is, in theory, a dynamic and iterative mode of governing, promoting the use of guidelines, benchmarks, monitoring, and exchange of best practice, through peer review and learning (summarised in Figure 1.1). The procedure strives to achieve EU objectives with respect for subsidiarity, through soft (voluntary) coordination of national policies, and by encouraging cooperation and mutual learning across governance levels, and between public and private sectors.



Figure 1.1: Key components of the Open Method of Coordination

Source: Author, based on European Council 2000, Conclusion 37

The significance of the launch of ‘OMC’ at Lisbon was that it sought to formalise a more flexible and ‘experimental’ style of governing which was not new as such, but was nevertheless becoming increasingly apparent in EU policymaking. As Szyszczak observes (2006: 488), “[w]hat is distinctive about the OMC...is the acceptance of a generic name for the[se experimental] processes and the attempt to create a core of common features with a systematic attempt to formally, and proactively, use the OMC in defined policy arenas”. New arenas into which OMC was subsequently applied included: social inclusion, pensions, healthcare, research and innovation, the information society, enterprise, economic reform, education, and training (Sabel and Zeitlin 2008: 290, de la Porte and Nanz 2004, Gornitzka 2006, Lodge 2007, Warleigh-Lack and Drachenberg 2009).

Interest in more flexible methods of governing to some extent reflects the limited political feasibility of further European policy expansion by traditional means alone, and has primarily been introduced in areas where the EU has limited existing legal competence (i.e. employment policy, social exclusion, pension reform, healthcare and education, immigration and asylum) (Sabel and Zeitlin 2008: 290). A case in point are the Broad Economic Policy Guidelines of the Maastricht Treaty (1993), which established a system for coordinating national economic policies in preparation for monetary union, using guidelines, recommendations and a process of peer review (Kohler-Koch and Rittberger 2006: 36, Hodson and Maher 2001: 723, Szyszczak 2006: 486). Further competence creep followed under the auspices of the European Employment Strategy (EES), which was introduced by the Amsterdam Treaty (1997) and follows a similar pattern of common objectives, guidelines, indicators, National Action Plans, peer review and recommendations (Mosher and Trubek 2003: 69). The process remains the cornerstone of EU social policymaking, and has since expanded to include the coordination of social inclusion, pensions, healthcare, and long-term care for the elderly (Sabel and Zeitlin 2008: 290, Trubek and Trubek 2005: 349).

Interestingly, ‘OMC-type processes’ can also be identified as a *complement* to existing legislation in areas such as environmental protection, immigration and asylum, disability, occupational health and safety, fundamental rights and energy (Sabel and Zeitlin 2008: 290, Smismans 2008, Eberlein 2010). Nevertheless, OMC arguably falls within the rubric

of ‘new’ governance, which refers to a “non-hierarchical mode of governing that emphasises the cooperation of state and private actors” (Lenschow 2005: 1). This move, which Prodi referred to in 2000, represents a shift away from traditional legislative regulatory methods and a move towards multi-level and networked governance where a range of “coordinating devices” are preferred, including: self-regulation, soft law, voluntary agreements and open methods of coordination (Jordan and Schout 2006: 5-6, Héritier 2001: 2-3). In this context, ‘soft law’ refers to, “rules of conduct which in principle have no legally binding force, but which nevertheless may have practical effects” (Snyder 1994: 198). The emergence of OMC itself, therefore, forms only part of the EU’s broader response to calls for increased voluntarism (i.e. soft law), subsidiarity, and inclusion (Héritier 2001: 187, COM(2001) 428: 10).

What is less well understood is that *de facto* OMC-‘type’ processes have existed in the environment sector since the early 1990s. But whereas numerous studies have focused on the Open Method in social, economic and employment policy (e.g. Hodson and Maher 2001, Mosher and Trubek 2003, Armstrong 2003, 2010, de la Porte and Nanz 2004, Zeitlin *et al.* 2005, Trubek and Trubek 2005, Radulova 2007, Heidenreich and Bischoff 2008, Armstrong *et al.* 2008, van Rie and Marx 2012), only a handful have drawn attention to its prevalence in environmental spheres (Homeyer *et al.* 2004, ten Brink *et al.* 2005, Homeyer 2007, 2010). Nevertheless, the environment offers a particularly interesting field for empirical investigation, not only because it provides unusually mature examples of OMC in practice (if not in name), but it also presents a unique opportunity to explore how *informal* processes interact with *formal* policy and law.

This thesis investigates the workings of OMC. It makes three claims to originality. First, it draws attention to the prevalence of OMC-type processes in the *environment sector*, which have to date been relatively under-researched within an OMC context; second, it takes a ‘new institutional’ approach to the study of OMC, which is not only a *theoretical innovation* in itself (inventive in combining a rational choice and sociological perspective), but also because application of theory *per se* to OMC has been rare; and third, it presents new empirical data in the form of two unusually *mature case studies* from the heavily regulated environment sector, which allows a uniquely longitudinal approach to be taken

(covering up to 20 years) in exploring how non-hierarchical governance modes function *alongside* traditional, legal processes.

The remainder of the thesis is structured as follows. The next section traces the origins of OMC, as formalised through the Lisbon Process of 2000, and introduces its key features. It explains that although the Open Method is commonly associated with *new* areas of EU activity (such as economic, employment and social policy), processes bearing similar features – if not the formal ‘OMC’ label – have long been in operation in more established spheres, notably, the environment sector. The status of research on OMC is explored in terms of ‘what we know’ (1.2), and ‘what we don’t know’ (1.3). Knowledge gaps are identified across three dimensions: a degree of conceptual confusion, a bias towards descriptive empirical analyses, and a lack of theorisation. It is argued that the literature draws attention to the method’s scope for improving legitimacy (through wider participation) and effectiveness (by stimulating learning); yet empirical studies often report unrealised potential on both counts. To explore why this may be the case, the new institutionalism is presented as a promising analytical framework for exploring OMC. It is hoped that using a *multi*-theoretical perspective will give greater explanatory leverage and enable a deeper understanding of OMC’s empirical strengths and shortcomings than a single theoretical approach. Finally, the case for focusing on the environment sector is presented, before the aims and objectives of the thesis are given, alongside an outline of how they will be met (1.4).

1.2 WHAT DO WE KNOW ABOUT OMC?

“No development in European integration has aroused greater interest or greater controversy in recent years than the Open Method of Coordination.”

Zeitlin (2005a: 19)

Reflecting the rise in the popularity of the Open Method in EU policy practice since 2000, there has been a growth in the academic literature on the new mode in the past decade. Indeed, an online bibliography on the subject, mainly covering European employment and social protection processes (pre-2009), referred to an impressive 300-plus references.¹ Nevertheless, OMC has long been a nebulous concept, even described as an, “unidentified political object’ *par excellence*” (echoing Jacques Delors’ comment about the EU itself) (Zeitlin 2005a: 6). So what ultimately is the consensus about: (a) what the OMC *is*, and (b) how it works? The following sections provide a conceptual, theoretical and empirical stock-take in relation to these two questions.

1.2.1 *Conceptual perspectives*

Despite the array of literature of the subject, conceptual confusion remains over whether OMC represents: (i) an *ideal type* instance of a specific ‘new mode of governance’; (ii) a short-hand term for ‘new modes of governance’ generally; or (iii) a new name for an old policy tool. While many use the description laid out by the Lisbon Presidency as a frame of reference (Mosher 2000, Eberlein and Kerwer 2004, Gornitzka 2006, Homeyer 2007, Lodge 2007), there remains “linguistic and conceptual vagueness” (Metz 2005: 4). This relates not only to the definitional problems surrounding OMC (i.e. is a pre- or post-Lisbon interpretation applicable?), but also to its objectives (i.e. policy coordination or convergence?), and characteristics (i.e. are the features outlined by the Portuguese

¹ OMC Bibliography of the European Union Center of Excellence at the University of Wisconsin, USA, last accessed August 22nd 2008; no longer available.

Presidency pre-requisites for an OMC? Is this a definitive list? Are there additional factors?).

The problem also lies in perceptions of OMC, which naturally, “shape the member states’ ways of actually handling the instrument” (Metz 2005: 6). Many see it as a fluid concept. For example, a Belgian Minister involved in the introduction of the social inclusion and pensions processes in 2001 claimed, “open coordination is not some kind of fixed recipe that can be applied to whichever issue,” but rather, “a kind of cookbook that contains various recipes, lighter and heavier ones” (Vandenbroucke 2001).

In line with Homeyer (2007: 46), this thesis takes the position that some flexibility is both necessary and desirable when defining OMC because adhering strictly to the Lisbon Council’s definition would exclude instances that bear sufficient resemblance to the ‘ideal type’ to be of analytical interest. As Homeyer (2007: 45-6) explains, “as a general definition, [the Lisbon ‘archetype’] does not correspond to existing OMCs, some of which have features that do not appear in the Lisbon Council’s definition or, conversely, lack some of the characteristics mentioned in the definition.” Indeed, “even the most mature ‘high-level’ OMCs – differ in important ways from each other and from the Lisbon Council’s OMC definition” (*ibid.*). Strictly speaking, not even the European Employment Strategy and Broad Economic Policy Guidelines would qualify as OMCs because they have a legal (Treaty) basis, which in theory contravenes the voluntary rationale behind OMC. Instead, it seems more practical to recognise OMC as an evolutionary process reflecting: the policy sphere(s) it relates to, the source of EU competence (Treaty or otherwise), and the extent of members’ commitment to cooperate (Sabel and Zeitlin 2008: 291). As such, “variability may actually be an inherent and intentional characteristic of the OMC, reflecting the need to adapt the OMC to different contexts and over time” (Homeyer 2007: 46).

For the purposes of this analysis, the working definition of OMC used in this thesis retains the spirit of the Lisbon ‘ideal type’ process, but is flexible enough to incorporate *de facto* OMCs, which share its core features, consistent with the approaches of Homeyer (2007) and Jordan and Schout (2006). Central to this perspective is the idea that OMC is a

process of (voluntary) policy coordination in networks, which employs learning, peer review and best practice techniques to promote problem-solving and/or policy convergence among diverse communities of actors.

1.2.2 *Towards a ‘theory of OMC’?*

While a popular (and necessary) approach to researching OMC has been to develop typologies and classifications of new modes of governance (e.g. Treib *et al.* 2007), more recently, increasing effort has been channelled towards analysing how the Open Method functions in practice. Although some have taken a quantitative approach to analysing the performance of OMC in achieving convergence towards EU goals (e.g. van Rie and Marx 2012), a cursory glance over the literature reveals a striking emphasis on the contribution OMC has made towards attaining certain normative, value-based goals, such as democratic legitimacy and deliberative policy-making (e.g. de la Porte and Nanz 2004, Szyszczak 2006, Borrás and Conzelmann 2007, Tsakatika 2007, Mört 2007, Usui 2007, Radulova 2007, Kröger 2007, 2009, Papadopoulos 2007, 2010, Büchs 2008). As stated above, the Lisbon Council conclusions (Paragraph 37) call for the inclusion of public and private actors, and it is this broad *participation* that is widely perceived to give the Method its ‘Open’-ness, and thereby ‘input’ – and potentially also ‘output’ – legitimacy² (at least, in theory) (Borrás and Conzelmann 2007: 542, de la Porte and Nanz 2004: 272, Radaelli 2003: 25, Lindgren and Persson 2010, Scott and Trubek 2002, Scharpf 1999).

A second (generally alternative) evaluative track has focused on the effectiveness of OMC, often using concepts such as lesson-drawing (Rose 1991), policy transfer (Dolowitz and Marsh 1996), shaming (Trubek and Trubek 2005), benchmarking (Arrowsmith *et al.* 2004), and perhaps most significantly, *learning* (Kröger 2008: 43-4, 51). The latter is important because it arguably represents the central process or ‘Method’ through which OMC operates as envisaged by the Lisbon European Council (2000, Conclusion 37). Further, it is the area in which it is anticipated the new mode holds greatest promise

² ‘Input’ legitimacy refers to the participatory nature of a process, and ‘output’ legitimacy to its effectiveness and performance (Schmidt 2010).

(Kröger 2008: 44, ten Brink *et al.* 2005: 61, Radaelli 2003: 26), though many are at pains to point out that participation and learning – and by proxy, legitimacy and effectiveness – are clearly interrelated (Radaelli 2003: 25, Kröger 2008: 51).

In one of the most significant analytical (*and* empirical) contributions to the OMC literature, Zeitlin *et al.* (2005) presented a compendium of case studies on European Employment and Social Inclusion Strategies, and developed a helpful framework for assessing OMC – which is used by this thesis. It is based on four criteria: substantive policy change; procedural and institutional development; participation and transparency; and mutual learning. The editors conclude that social and employment OMCs operate through ‘top-down’ processes of peer pressure, socialisation, discursive diffusion and learning, and also ‘bottom-up’ strategic use of OMC as a ‘leverage’ device by domestic groups to serve their own purposes (Zeitlin 2005b: 480, Barbier 2005, Ehrel *et al.* 2005). Homeyer (2007: 59) applies the same assessment criteria to two cases in the environment sector, finding “performance appears to be highly case dependent”. Also in the environment sector, Jordan and Schout (2006) provide a comprehensive, multi-level framework combining a network management approach with strategic management and networked governance to assess the performance of the EU’s Cardiff Process.

Further research has sought to develop broader “theories of OMC operation”; for example, Trubek and Trubek (2005: 355-9) propose six features, which “could explain why, despite a lack of...rules or formal sanctions... [OMC] might work to bring about change,” namely, diffusion, shaming, networks, deliberation, experimentation and learning. Büchs builds on this conceptual framework in her study of EU social policy (2003), and more recently (2008: 23) demonstrates how OMC can be viewed as a ‘two-level game’ (Putnam 1988), claiming that “top-down and bottom-up perspectives need to be more radically combined to explain how the OMC works”. Interestingly, she proposes adding an *institutionalist* layer of analysis to investigate how domestic structures influence the uptake of European policy initiatives (2003: 38-9). Chalmers and Lodge (2003: 18) also suggest a role for institutionalism:

“institutionalist schools could point to path dependencies...or limited searches according to standards of appropriateness, depending on resource dependencies, mimicry in the face of uncertainty or particular biases due to different trajectories of professionalization which all matter for putting the emergence and impact of OMC into context”.

But perhaps of greatest interest to this thesis, Martens (2006), who takes a multi-level, networked governance approach, uses an ‘organisational’ new institutionalist perspective (March and Olsen 1989) in her study of the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL). Her theoretical structure, intermeshed with the OMC criteria developed by Zeitlin *et al.*, provides the inspiration for the analytical framework employed in this study.

1.2.3 OMC in practice

Early studies have generated different results depending on the sector examined, the precise OMC under investigation, and the performance criteria employed (Zeitlin *et al.* 2005, Radaelli 2003). According to Metz (2005: 4), “five years of open co-ordination have revealed more deficits than positive results”, conforming to the general trend that where praise for the Method is given, it generally comes with qualifications (Trubek and Trubek 2005: 359, Zeitlin 2005b: 483).

The empirical literature has until lately focused on how OMC has been deployed in recently established fields of EU activity, such as economic, employment and social policy (Hodson and Maher 2001, Mosher and Trubek 2003, Zeitlin *et al.* 2005, de la Porte 2002 and 2008, de la Porte and Nanz 2004, Jacobsson 2004, Trubek and Trubek 2005, Radulova 2007, Büchs 2007, 2008, Kröger 2008, van Rie and Marx 2012), innovation policy (Kaiser and Prange 2004), pensions, and the information society (Lodge 2007), largely because these are areas where OMC was first explicitly applied (i.e. economic and monetary union, European Employment Strategy and the Lisbon Process). Where praise exists, it tends to relate to OMC’s capacity for generating learning outcomes (Eberlein and Kerwer 2004: 125-6, Trubek and Mosher 2003, Hodson and Maher 2001), though calls for further research on this issue remain (Citi and Rhodes 2006, Kröger 2009: 9). Indications point to

evidence of learning at the early, information-gathering stages of the policy process (Zeitlin *et al.* 2005), as well as in the sphere of administrative and institutional reform; for example, with respect to European social policy cooperation, Moravcsik (2005: 366) finds mixed results:

“There is some sketchy evidence that governments may have used the information exchange to help plan social reforms, but no solid evidence either of any impact on or policy learning with regard to substantive policy – though some studies point to the ways in which certain governments have improved their administrative procedures, perhaps in part as a result of OMC”.

While it is evident that OMC has been employed, in all but name, in other sectors such as the environment (Jordan and Schout 2006, ten Brink *et al.* 2005, Martens 2006, Homeyer 2007, 2010), there has been limited empirical evidence to substantiate this point. On the contrary, research in the environmental sphere has been cautiously optimistic, with some evidence of learning, and improvements in governance structures – in terms of coordination, monitoring and evaluation (ten Brink *et al.* 2005: 67, Homeyer 2007, 2010).

Certainly, many are positive about OMC’s *potential* for promoting learning (ten Brink *et al.* 2005: 61, Homeyer *et al.* 2004), however, in most policy areas it seems clear that the reality rarely meets expectations. In searching for reasons for the shortfall, some have hypothesised that the level of politicisation associated with OMC policy processes is important:

“learning in the OMC is almost always political, often hierarchical, and invariably based on a mix of cooperative and conflictual attitudes. Consequently, some of the OMC mechanisms work differently (that is, more politically) than one would expect” (Radaelli 2003: 41).

Taking examples from the environment sector, this may explain the failure of the more politicised OMCs, such as the Lisbon and Cardiff processes, compared with the (albeit qualified) success of some of the more technical ones, e.g. the Common Implementation Strategy of the Water Framework Directive (Homeyer 2007: 59, Trubek and Trubek 2007, Jordan and Schout 2006).

Aside from learning, participation is the other key OMC feature consistently identified in the literature as being of significant empirical (and theoretical) interest (Eberlein and Kerwer 2004: 125-6, Radulova 2007: 364-5, Kröger 2009: 5). However, results on this matter have been somewhat bleak, with many studies finding that (improved) participation in existing OMC processes has been conspicuous by its absence (Büchs 2008, Radulova 2007: 373-4, Börzel 2007: 20, Szyszczak 2006: 499, Rhodes 2005: 295-300, de la Porte and Nanz 2004: 283, Eberlein and Kerwer 2004: 126, Borrás and Jacobsson 2004: 193-4, Radaelli 2003: 13, Chalmers and Lodge 2003: 7). A common grievance is that Open Methods have failed to involve private actors:

“OMC is in principle open for the participation of non-state actors. Yet, in practice, it has largely taken the form of inter- and transgovernmental negotiations with hardly any involvement of private actors” (Börzel 2007: 20).

However, there has also been criticism over the lack of inclusion of certain public actors, such as members of EU institutions, national (and European) parliamentarians, regional representatives, and local government officers (Radaelli 2003: 12, 38, Zeitlin 2002, Kröger 2009: 7). Studies into the European Employment Strategy have been somewhat more positive (Szyszczak 2006: 499), but even here, contention remains, with Rhodes reaching the disparaging conclusion that the process has been, “actually rather closed, elitist, and arguably much less democratic and accountable than standard community methods” (2005: 299, de la Porte and Nanz 2004: 283). Again, in the environment sector, studies have been limited, with preliminary indications showing that the Commission and Member States have tended to dominate processes when they are more political (e.g. Lisbon), whereas more technical processes have shown greater openness towards industry and non-governmental organisations (NGOs) (e.g. the Common Implementation Strategy of the Water Framework Directive) (Homeyer *et al.* 2004). But as Börzel (2007: 17) suggests, “we need detailed case studies to find out whether private actors are merely consulted or have a real voice”.

1.3 WHAT DON'T WE KNOW ABOUT OMC?

Evidently learning and participation represent key aspects of OMC, and yet much uncertainty remains about how they function, in theory and practice. Existing study findings point to disappointing outcomes in the case of participation, and often unrealised potential with respect to learning. There has also been a lack of systematic theorisation – applied to real life examples – as to why this should be the case. Before going on to specify the aims and objectives of this thesis, the following sub-sections take a closer look at the interrelated themes of learning and participation, and their importance for the functioning of OMC, before preliminary thoughts are given on the suitability of 'new' institutionalism as a helpful theoretical framework to investigate empirical instances of the method. Finally, a more detailed case is made for focusing on OMCs in the environment sector.

1.3.1 *Learning*

As indicated, the Open Method has generated high expectations in terms of its ability to facilitate policy learning across and within Member States (Radaelli 2003: 26, Zeitlin 2005a: 24, Buchs 2008: 765). The argument goes that OMC's iterative review process and reliance on soft law makes it easier for new knowledge to be incorporated into policy than traditional legislative practices, which effectively enshrine or 'freeze' preferences for a particular solution in legislation. This generates a more organic and fluid policymaking dynamic, with the potential to overcome the inflexibility often associated with hard law, whereby high political stakes encourage states to take a more conservative and strategic stance, "focussing on relatively narrow, short-term interests rather than more risky, innovative solutions" (ten Brink *et al.* 2005: 8). Moreover, OMC's cyclical nature offers multiple (spatial and temporal) points at which new knowledge can be explored and integrated, presenting the potential for regular adaptation of policy practices (*ibid.*). This is particularly useful where there is a high degree of uncertainty surrounding the definition of a problem or an absence of consensus over how to solve it (Trubek and Trubek 2005: 353). In this respect, environmental issues, such as combating climate change or transnational pollution, serve as good examples.

Learning can, of course, take different forms. Three main distinctions can be identified as being of particular interest with respect to OMC. The first relates to the *depth* of learning ('thin' or 'thick'?); the second concerns mutual learning; and the third, indicates the *direction* of learning (top-down or bottom-up?) (ten Brink *et al.* 2005: 8-9). As these dimensions are important for the subsequent analysis, they are explored in further detail.

In relation to the first of these, the work of Peter Hall is especially instructive. He views (social) learning:

"as a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information. Learning is indicated when policy changes as the result of such a process" (1993: 278).

Hall argues that the policymaking process has the potential to bring about three levels of change. 'First order' (or thin) learning is confined to making adjustments to the way in which *existing* policy instruments are used. Policy change progresses beyond this level when policy experiences or new knowledge generate a change in the *type* of instruments favoured ('second order' learning). More fundamentally, however, learning can also call into question the, "framework of ideas and standards that specifies not only the goals of policy and the kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing...[which] is embedded in the very terminology through which policymakers communicate about their work, and it is influential precisely because so much of it is taken for granted and unamenable to scrutiny as a whole" (1993: 279). This is referred to as 'third-order' learning, and corresponds to what Kuhn (1970) terms a paradigm shift. Returning to 'thick' versus 'thin' categorisations, it is argued that the former equates to Hall's 'third order' change, while the latter relates to 'first order' learning, with second order learning falling somewhere in between.

Second, and central to OMC, is the concept of 'mutual learning', which was a term mentioned, but not defined, by the Lisbon Council (2000, Conclusion 37). It arguably implies that all actors have something to learn, and something to teach. This is a point reinforced by the Council's proposed use of interactive processes, such as partnerships,

networks, peer review, and best practice (Conclusions 37 and 38), which promote *social* learning (i.e. through exchange with *others*), as well as a degree of *reflexive* learning (learning from own experiences).

Third, with respect to the direction of learning, the Lisbon Council calls for, “a fully decentralised approach...in line with the principle of subsidiarity” (Conclusion 38), which suggests that precedence is given to ‘bottom-up’ learning, where, “actors at a lower level inspire higher level learning” (ten Brink *et al.* 2005: 9). This is in contrast to ‘top-down’ learning, which, “implies that a central authority ‘teaches’ lower level actors” (*ibid.*). However, there is some ambiguity on this point, as Radaelli (2003: 8) explains,

“Some commentators argue that the method searches and diffuses local knowledge – and in doing so creates the pre-conditions for bottom-up learning. Other commentators think that learning is more hierarchical and that open coordination is a methodology to get Member States in line with EU policy”.

Here the empirical evidence is also unclear. Authors such as Jacobsson (2001) argue that a process whose central aim is to promote adherence to (or at least convergence towards) EU goals is ultimately a top-down one; indeed, Radaelli (2003: 40) himself finds limited evidence of cross-national and bottom-up learning, but some verification of cognitive convergence (*ibid.*: 53). Others (e.g. Trubek and Mosher 2003, Cohen and Sabel 1997, 2003) suggest OMCs have been more deliberative, bottom-up processes. But perhaps the question we should be asking is: why are some processes better at fostering (different types of) learning than others? Does participation have a role to play?

1.3.2 *Participation*

Returning to Hall, indications are that the two processes are indeed linked. He argues that if social learning is to be achieved at a fundamental (or what he calls ‘third order’) level, it, “involves much broader participation...within the political system” (1993: 276). This suggests potential synergies between participation and the *quality* or *depth* of learning. He goes on to propose that public experts are primarily responsible for innovation in first and second order policy change (taking place within the state), but that

the participation of politicians, non-state, and societal interests (unions, media, issue networks) is necessary to bring about third order (paradigm) change (1993: 288). Radaelli (2003: 25) echoes this sentiment, explaining that broad participation gives greater potential and scope for learning:

“Participation is essential for two reasons. One is obvious, that is legitimacy. The other is less obvious: effectiveness. The method can work like a radar searching solutions only if it involved many different actors.”

Furthermore, the cooperation of private actors not only determines the variety and quality of policy proposals, but also the likelihood of them being implemented at all:

“[Private actors] have to be drawn into...policy networks because they provide necessary expertise and because effective implementation depends on their support” (Kohler-Koch 1997: 49).

Finally, at risk of stating the obvious, *multi-level* learning is, to a large extent, dependent on actors participating in policy processes at multiple levels; and more to the point, bottom-up learning is contingent on local and grassroots participation. This is confirmed by OMC research on the European Employment Strategy, which finds that the lack of bottom-up, cross-national learning, “is closely linked to the limited opportunities for participation by non-state and subnational actors in the process at all stages” (Zeitlin 2005b: 476).

1.3.3 Insights from new institutionalism

In light of the significance of and interplay between learning and participation for the effective functioning of OMC, what theoretical insights do new institutionalist theories offer our understanding of how the mode operates? It has already been suggested that institutionalism provides the necessary tools to dissect the workings of OMC, but to what extent is this true? As hinted by Chalmers and Lodge earlier, OMC does not operate in a vacuum, but rather, takes place within existing (multi-level) European, national and local governance structures. As such, OMC potentially represents a novel ‘rule structure’ for participation and learning (Ostrom 1990, 2005) within an already established pattern of

institutional arrangements and actor constellations. Furthermore, an institutionalist approach would imply that the context in which any given OMC exists, and the precise nature of the rules it represents, will ultimately shape its capacity to function effectively.

For example, Chalmers and Lodge (2003: 2) describe how,

"Embedded systemic and territorial path-dependencies will challenge [OMC's] coordinatory capabilities" (also North 1990).

Although a more detailed justification for focusing on *two* of the new institutionalisms – rational choice and sociological – is left for Chapter Three, the two theories are briefly introduced here to demonstrate their relevance to the study of learning and participation in OMC. The remainder of this section presents an overview of how these institutionalisms view the concepts of learning and participation, and what this implies for the way OMC operates.

Taking rational choice institutionalism first, the perspective would posit that the emergence of, and participation in, OMC is a strategic and interest-driven process. It essentially sees OMC as an incentive structure, which actors create, and to which (other) actors respond (if they have something to gain in doing so). The 'rules' for participating (e.g. who is invited to meetings; who exchanges information with whom; who conducts peer reviews; who determines guidelines, benchmarks and 'best' practice) are specified in advance (Peters and Pierre 2005: 217), and introduced (or even manipulated) by those with an interest in bringing about a particular outcome (e.g. policy coordination, convergence or experimental learning). Rules are also likely to reflect resource distributions (and their imbalances). As Eberlein and Kerwer (2004: 124) explain:

"participation is likely to be selective, so that exclusive interests will shape the content of 'best practice'. Decision-making might not be less elitist and opaque than in traditional governance".

By this reasoning, the nature of each specific OMC rule structure developed will dictate who participates (and who doesn't). Where rules fail to entice or enable the participation

of some (e.g. marginal) groups, their involvement will be poor or non-existent. For example, Radaelli (2003: 59) suggests:

“The institutional architects of the OMC have neglected the issue of how to create incentives for participation at the local and national levels”.

Turning to learning, rational choice institutionalism theorises the concept in strategic (political), instrumental, and ‘thin’ (first order) terms. Proponents of the theory would not expect actor preferences to be altered by the (OMC) policy process because interest-formation is essentially exogenously determined and therefore considered to be external to OMC interactions (although actors might update their strategies and preferences between exchanges). The perspective is somewhat pessimistic about the scope for improving participation because new rule structures (such as OMC) will always be shaped (at least to some extent) by existing ones. Marsh and Rhodes (1992: 265) paraphrase Theodore Lowi in stating:

“policy networks [such as OMC] destroy political responsibility by shutting out the public; create privileged oligarchies; and are conservative in their impact because, for example, the rules of the game and access favour established interests”.

While this theoretical approach paints a somewhat bleak picture about the potential for change, it also offers advice about how change can (in theory) be brought about, and the conditions under which OMC is most likely to function. In short, is OMC a “governance architecture based on incentives for learning” (Radaelli 2003: 8)?

At the other end of the new institutionalist spectrum, a sociological interpretation would suggest that participation is determined by notions of propriety, which are embodied in institutional structures, social norms and culture. Like rational choice, the theory anticipates that the ‘usual suspects’ will be included in a given policy process (and others routinely excluded), though in this case, the expectation is founded on socially embedded understandings of who it would be ‘appropriate’ to include (March and Olsen 1984). For example, a technocratic culture would dictate that experts are best placed to give neutral, value-free and scientific policy advice: “[t]he authority of the expert, from this

perspective, ultimately takes precedence over the democratic exchange of opinions" (Fischer 1995: 12). Certain policy cultures (which will vary according to the sector, country, and even locality), will therefore be predisposed towards particular participatory models, i.e.:

"Society participates in the OMC when domestic policy styles are already tuned towards participation" (Radaelli 2003: 38).

On a more positive note, sociological institutionalism opens the potential for analysis of the policy process *itself* as an experiential learning opportunity, which can alter not only the strategies of actors, but also perceptions of their own *interests* (preferences), cognitive understandings of *how* problems can be solved (heuristic learning), and normative beliefs about the very *nature* of the problem ('thick' learning) (ten Brink *et al.* 2005: 34; Hall 1993: 279; March and Olsen 1984: 745; Kuhn 1970). This can take place through social learning, which:

"involves a process whereby actors, through interaction with broader institutional contexts (norms or discursive structures), acquire new interests and preferences – in the absence of obvious material incentives. Put differently, agent interests and identities are shaped through interaction" (Checkel 1999: 548).

In this sense, there is a greater potential for 'thick' and 'third order' learning because OMC processes are understood to be two-way practices, and "should be viewed less as mechanisms for producing 'cognitive harmonization' (Palier 2004) than for the creation of a common language and categorical framework to discuss and evaluate different solutions to similar problems" (Zeitlin 2005b: 457). Under this theoretical framework, rules would only be expected to work when they are context-sensitive, which begs the question of whether tools such as best practice are best placed to bring about deep learning:

"best practice presented as universal laws that are supposed to work under different institutional and political conditions, but in public policy, the *ceteris paribus* assumption of universal laws does not work: the 'other conditions' are not equal" (Radaelli 2004: 726).

In sum, this thesis explores how well placed rational choice and sociological institutionalism are for analysing the workings of OMC. By presenting different understandings about the nature of institutions and their impacts on behaviour, they highlight different motivations for, and limitations to, participation and learning, and thus each contribute a valuable piece to the empirical puzzle.

Furthermore, it is proposed that when combined with Zeitlin *et al.*'s OMC assessment criteria, i.e. substantive change, procedural change, participation and learning, they create a helpful dual analytical framework for exploring the *interactions* between multi-level actors (agency) and institutions (structure) over time, and investigating the implications they have for learning and participation.

1.3.4 OMC in the environment sector

Before outlining the rest of this thesis, it is important to consider why environment policy represents a particularly interesting sector in which to explore the OMC. As already mentioned, the overwhelming focus of OMC research to date has been on the economic and social sectors, which is understandable given that the Broad Economic Guidelines and European Employment Strategy are both founded on Treaty provisions. Yet despite the lack of formal OMCs in the environment sector, “a closer look at EU environmental policy instruments reveals the existence of non-official, *de facto* OMCs, OMC-type mechanisms or elements” (Homeyer 2007: 47). By shifting the focus of research from nominal to such *de facto* instances, “it may be possible to further explore the potential for the OMC to fulfil different functions *vis-à-vis* Community legislation” (*ibid.*: 60). Unlike the above cases where OMC has represented an opportunity to fill a policy vacuum and achieve progress where a legislative framework would have been politically unpalatable, the environment is a sector where the EU has traditionally had strong legal foundations. It is a top-down, regulatory policy sphere, where a legislative approach has been seen as desirable in order to harmonise (the potentially restrictive) conditions for economic actors across the Community (Lenschow 2005: 1; more on this in Chapter 2). Given that governance in the EU remains dominated by this formal style of environmental policymaking – generally referred to as ‘the Community Method’ – focusing on the

environment provides a rare opportunity to explore how ‘new’ non-hierarchical governance modes interact with and may potentially complement existing legislative modes of steering (Trubek and Trubek 2005: 362). Homeyer (2007: 59) suggests the relationship between OMC and Community law is ‘complex’, finding that OMC-types perform better when they complement EU legislation. Will the cases examined in this study confirm his verdict?

A related point is that despite its comprehensive legal framework, the environment is a sector where perceptions of low effectiveness have long pervaded. These have been fuelled by a notably large implementation gap (Lenschow 2005, Weale *et al.* 2000), raising perennial questions about the legitimacy and competence of EU institutions (matters which are elaborated in the next chapter). While the Commission’s Governance White Paper (2001) and Better Regulation agenda (2005) have sought to allay these concerns by calling for greater societal involvement in policymaking and implementation, the Open Method is seen as a means to address many of the perceived deficiencies associated traditional modes, such as inadequate participation, limited scope for integrating policy feedback, restricted learning opportunities, and insufficient respect for subsidiarity (COM(2001) 428; COM(2005) 97; COM(2006) 689; COM(2008) 32; COM(2009) 15). In light of the (predominantly) technical and ‘low politics’ nature of the environment, together with its poor implementation record, the sector provides a particularly good test case for assessing the potential of OMC for bringing about different types of learning and improving the participatory nature of EU policy processes.

1.4 RESEARCH AIMS AND HOW THEY WILL BE ACHIEVED

The central aim of this thesis is to explore whether the OMC exists – and if so, how it works – in the environment sector. Accordingly, three objectives are pursued. The first is to employ two case studies (the IMPEL Network and the European Climate Change Programme) to *empirically* investigate the prevalence of environmental OMCs in EU governance. The second is to develop and apply a *theoretical* approach to help understand the mechanisms through which OMC learning and participation occur (or do not occur). The final objective is to *synthesise* empirical and theoretical insights to better

understand the interaction between ‘soft’ and ‘hard’ modes of EU environmental governance, and the impact this has on the legitimacy and effectiveness of EU environmental policy.

To sum up, the proliferation of OMC-type processes in the EU over the past decade has generated a flurry of scholarly research on OMC, and yet, conceptual confusion remains as to what it is and how it works. In empirical terms, high expectations with regard to the mode’s potential to promote participation and learning appear to have fallen short of reality. But academics are unclear as to how and why this might have happened; crucially, few studies have used a supporting theoretical framework to systematically explore underlying processes. What are the conditions under which they thrive? What creates barriers to participation and learning? Above all, *de facto* OMC-type processes, such as those in the environment sector, have been under-researched and under-theorised, despite presenting particularly promising cases due to their maturity and hybrid status as informal networks operating within the ‘shadow of hierarchy’ (Héritier and Eckert 2008, Börzel 2010).

The remainder of this thesis therefore investigates these questions as follows:

Chapter 2 charts the rise of OMC in empirical and theoretical terms. Conceptually, it provides a background to the framework of governance as a basis for understanding and analysing modes of governance, and more specifically OMC, which is identified as a form of network governance. It sets the scene for the rest of the thesis by discussing how different academic schools understand and use network structures differently – i.e. as tools or as theories of analysis. A governance approach to policy networks, which allows for theory to be combined with network analysis, is presented as an appropriate way forward. The chapter then empirically explores the evolution of EU environmental policy processes since the Treaty of Rome, charting the rise of ‘experimental’ non-legislative modes or ‘new’ governance, and in particular, OMC.

Chapter 3 introduces the analytical and theoretical framework underpinning the thesis. The case is made for a multi-theoretical approach, which incorporates two diverse schools of new institutionalism (rational choice and sociological). The relevance of this

framework to EU governance is elaborated before it is demonstrated how the two institutional approaches can inform the study of participation and learning in the Open Method.

Chapter 4 presents the philosophical foundations underlying the study, and outlines the methodology that is guided by them. It reveals how and why a (multiple) case study approach provides a suitable basis for the research design. Details are given of how the analytical framework developed in Chapter 3 will be applied to two empirical examples of OMC; first, the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL), which was launched in 1992 in as an informal network of regulatory authorities; and second, the European Climate Change Programme (ECCP), which was a Commission-led process to develop an EU strategy to implement the Kyoto Protocol.

Chapters 5 and 7 introduce the IMPEL and ECCP networks respectively, exploring how they have emerged and evolved over time, and assessing the extent to which they have displayed OMC-like institutional characteristics, namely: voluntarism, common EU objectives, guidelines and indicators, and peer review and learning.

Chapters 6 and 8 apply two new institutionalist theories to the empirical cases (respectively), analysing the extent to which the networks have generated substantive and procedural change, and the implications this has had for participation and learning.

Finally, Chapter 9 synthesises the conceptual, empirical and theoretical findings from the two case studies, and Chapter 10 concludes.

2 OMC IN CONTEXT: INTERNAL AND EXTERNAL PERSPECTIVES

[T]he intellectual evolution of a field is often thought of as being closely tied to developments within the object of study. Thus, it might be argued that the trajectory of EU studies in general, and its theoretical repertoire in particular, is a function of the changing nature of the EU over time."

Rosamond (2006: 20)

2.1 INTRODUCTION

Daly (2006: 462) suggests that researching a policy process must be, "doubly contextualized: in terms of its own history and also...how it has been explained and studied". Heeding this advice, the proceeding chapter explores how the Open Method fits into a governance framework *conceptually* and *in practice*, as represented by the 'internal' and 'external' factors (respectively) illustrated in the diagram (Figure 2.1) below (Rosamond 2006).

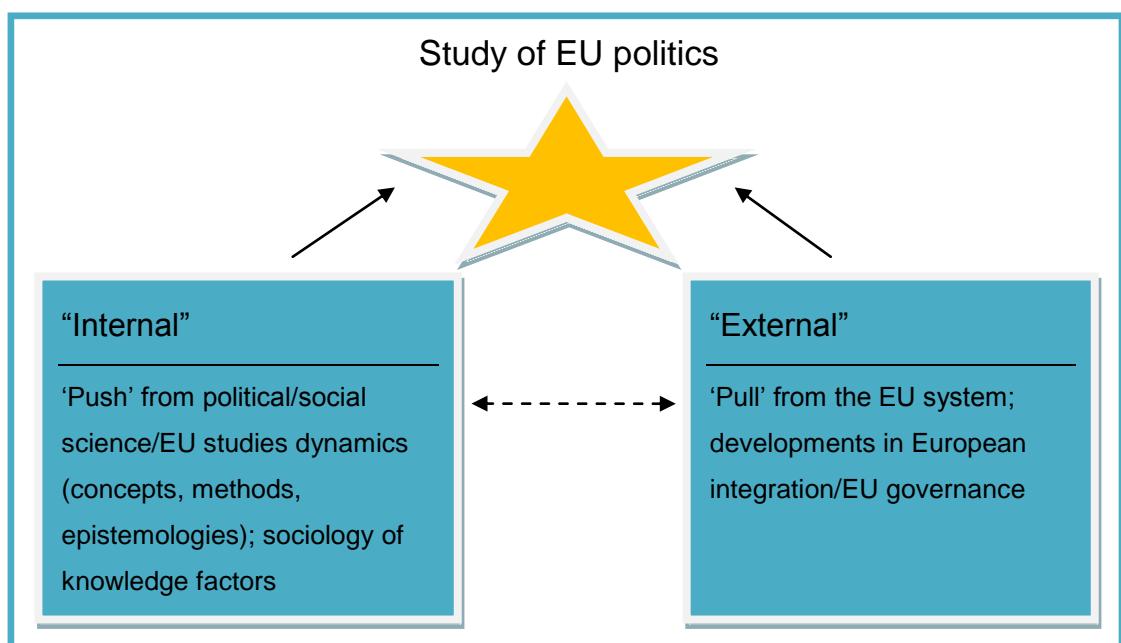


Figure 2.1: A framework for critical disciplinary history of EU studies

Source: Adapted from Rosamond 2006: 23

The following section introduces the ('internal') conceptual perspectives that have characterised the increasingly voluminous academic debate on EU governance, and modes of governance. It explains that the approach of this thesis is to use policy networks as a *conceptual* tool for examining OMC, but in light of there being no theory of networks as such, this is supplemented with a *theoretic* framework offered by two new institutionalisms: rational choice and sociological.

The second section charts the ('external') development of OMC as part of the governance agenda emerging from within the EU system itself, using the traditional 'Community Method' as a frame of reference for discussing the rise of EU environment policy, the emergence of the (post-Maastricht) 'new' governance agenda, and finally, the growth of OMCs in the environmental sphere.

2.2 CONCEPTUAL OVERVIEW

As OMC essentially represents a means of 'governing' the EU, this section begins with an exploration of the "notoriously slippery" term of governance (Pierre and Peters 2000: 7). It is followed by an exploration of how *governance* differs from traditional notions of *government*, and goes on to explain how 'new' (governance) interpretations of old concepts, such as policy networks, present fresh opportunities for conceptualising modes of governance, such as OMC (as networked governance), by marrying them with a theoretical framework (such as new institutionalism), thus creating the opportunity for a deeper understanding of the mechanisms through which they operate.

2.2.1 *A spectrum from 'government' to 'governance'*

To begin with the most fundamental concept of all, governance is an umbrella term capturing many dimensions, which is both a weakness and the "secret of its success" (Schneider 2004: 25). Consequently, there is considerable inconsistency with respect to how it is used (Pierre and Peters 2005: 1, Peterson and Bomberg 1999: 5, Kohler-Koch and Rittberger 2006: 42-3, Klijn and Koppenjan 2000: 136). Rhodes (2000: 55), for example, identifies at least *seven* different understandings. The first step is, therefore, to identify

how governance is to be understood as a concept by this project, before exploring how an analytical framework might be developed to investigate Open Method governance.

In an attempt to clarify the conceptual confusion, Treib *et al.* (2007: 3) classify understandings of governance into three categories, according to, “whether governance is seen as belonging primarily to the realms of politics, polity or policy”. The first conceptualisation – ‘politics’ – focuses on, “the *actor* constellation and power relation between political actors” (*ibid.*, emphasis added). Put simply, it refers to the way “state and society interact” (Pierre and Peters 2005: 6; Pierre 2000: 4) or the “relationship between state intervention and societal autonomy” (Treib *et al.* 2007: 5).

The second – or *policy* approach – understands governance as a means of, “authoritatively allocating resources and exercising control and coordination” (Rhodes 1996: 653). Two key dimensions here are steering (Heritier 2001: 2, Peters and Pierre 2005: 215, Pierre and Peters 2000: 1), and co-ordination (Jordan and Schout 2006). This is highlighted by the recent ideological interest among policymakers in improving policy processes and enhancing the coordinating capacity of government, notably in the UK (Peters 2003: 1, Kavanagh and Richards 2001), but also the EU (Jordan and Schout 2006, European Commission 2001: 6).

The third interpretation – and the one which this thesis employs (for reasons explained below, and in Chapter 3) – is based on the polity dimension, and views governance as an *institutional* arrangement – a structure, process or “system of rules that shapes the actions of social actors” (Treib *et al.* 2007: 3). This can take the form of hierarchies, markets, networks (e.g. OMC), communities – or more realistically – some combination of all four (Pierre and Peters 2000: 14). As each of these ‘governing structures’ (Rhodes 1996: 653) is an ‘ideal type’ (Rhodes 2000: 66, Pollack 2005: 37, Tenbensel 2005: 268), the reality that prevails in any one governance system will be an institutional *mix* – one that will vary over time and cultural (and policy) context (Pierre and Peters 2000: 15; Tenbensel 2005: 284; Knill and Lenschow 2005: 603). As Rhodes (1997: 53) claims, “it’s the mix that matters,” and it is this apparent change in the pattern, nature and composition of governing institutions in Western-European democracies – essentially

shifting away from hierarchy and towards markets and networks – that has sparked the suggestion that a new phenomenon is emerging – that of ‘new’ governance or “governing without government” (Rhodes 1996, Rosenau and Czempiel 1992).

Using these categorisations, a useful way of imagining ‘governance’ is on a spectrum with ‘government’, as illustrated in Figure 2.2.

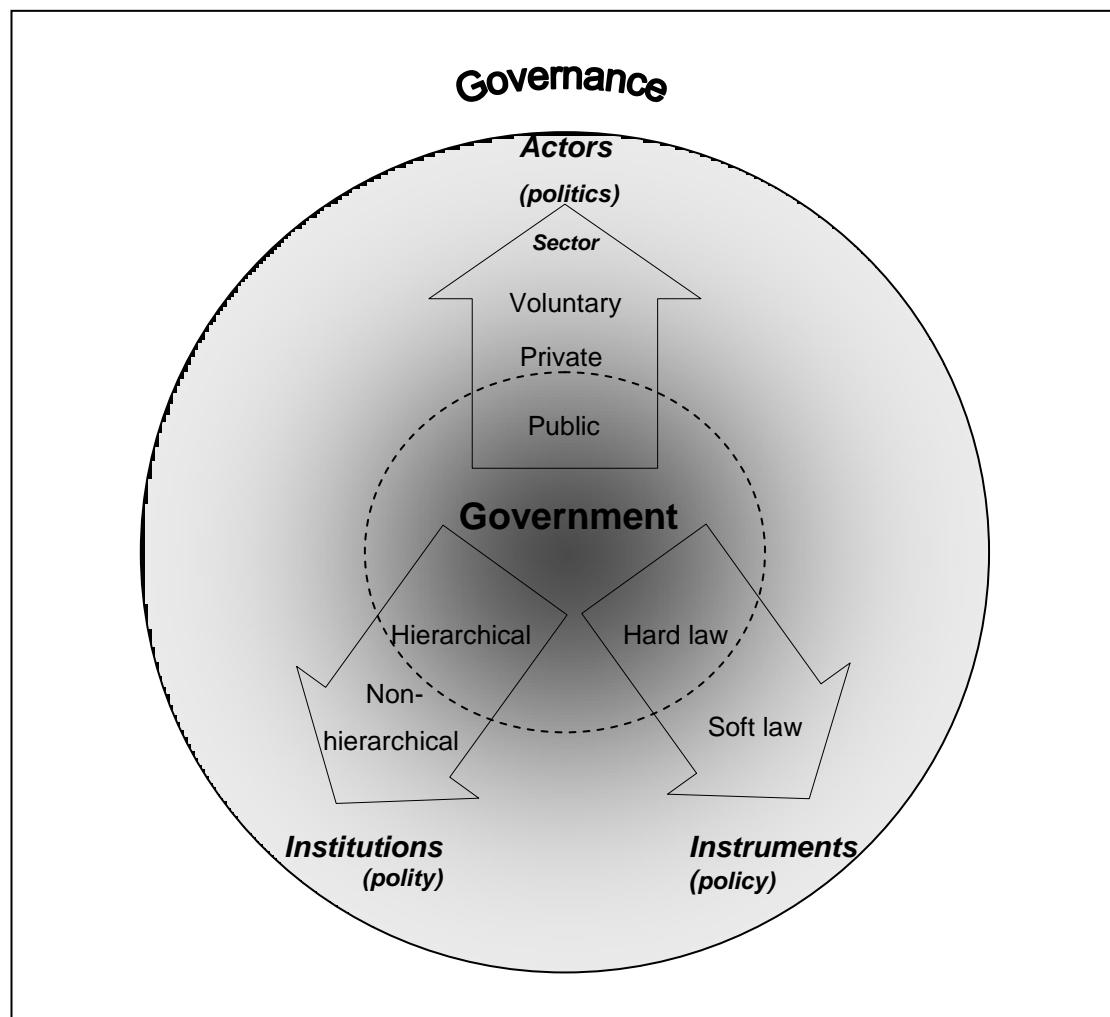


Figure 2.2: A spectrum from ‘government’ to ‘governance’

Source: Author; based on the ideas of Pierre and Peters 2000: 79-83 and Treib et al. 2007

In this context, the archetypal *government* model views the art of governing as the preserve of the public sector. It is characterised by hierarchical decision-making structures and processes, and the use of coercive instruments associated with ‘hard’ power, such as bargaining and binding ‘rules’ set out in constitutional and legal

frameworks ('hard' law). *Governance* perspectives, on the other hand, generally occupy a larger conceptual space (extending outwards to potentially encompass the entire grey space of Figure 2.2) (Rosenau 1992: 4). This includes the private and voluntary sectors, *non-hierarchical* institutions, and non-coercive 'soft' power-based instruments, such as communication, diplomacy and political entrepreneurialism (Pierre and Peters 2000: 83) as embodied in *informal codes of practice* ('soft' law).

As the absence of a clear boundary between the inner and outer circles suggests, it is important not to over-emphasise the distinction between governance and government. The two concepts are best seen as a spectrum (or shades of grey) rather than a dichotomy, mainly because ('new') governance is not new as such (Scott and Trubek 2002: 2-4). While it may seem that recent ideological shifts towards the minimalist state have resulted in private and voluntary sectors taking on greater responsibility for delivering goods and services, it is clear that governments have long cooperated with private actors in service provision (Pollack 2005: 37-38; Peters and Pierre 2005: 211; for examples in Europe, see Katzenstein 1984 and Kraemer 1966). As Knill and Lenschow (2005: 596) explain, "[g]overnance based on communication and information exchange between national policy elites is both a very old and a very modern approach to co-ordinating policy-making of sovereign nation-states in the light of transnational problems...or shared policy objectives". "Hybridity" of 'soft' and 'hard' law is therefore not a novel concept (Citi and Rhodes 2006: 3).

2.2.2 *(New) modes of governance: a toolkit*

To unpack a further conceptual layer, and uncover where OMC fits into this framework, governance can also be seen as an arrangement of – or an attempt to manage – multiple forms or 'modes' of governance (Treib *et al.* 2007: 3), where governance 'modes' are ideal types, "used as heuristic devices for gaining a handle on the complexity of actual public management practices, which involve combinations and layering of different modes" (Tenbensel 2005: 268). They are commonly separated into three (overlapping) categories: hierarchies, markets and networks.

Hierarchies follow a governance pattern represented by *compliance*, and are underpinned by coercive instruments and hard law (Knill and Lenschow 2005: 590, Peters 2003). They correspond to the traditional command-and-control approach to policymaking due to their “top down command structure, where the flow of direction is ‘downwards’ from higher to lower tiers in a pyramid type matrix” (Thompson 2003: 24). According to this model, the state manages society by giving public actors the authority to set the “legal rules of the game” (Börzel 2007: 7). In the environmental sphere, this ‘asymmetrical influence’ pattern (*ibid.*: 27) is reflected through the use of instruments such as standards, bans, permits, zoning, and use restrictions (Mickwitz 2003: 419).

‘New’ modes of governance are not generally associated with hierarchies – because “the new modes of governance all in one way or another diverge from traditional forms of binding legislation” (Caporaso and Wittenbrinck 2006: 473). Within an EU context, they are “[n]ormally...defined in relation to what they are not, i.e. the traditional ‘Community Method’ of coordinating primarily via legislative means” (Jordan and Schout 2006: 6, also see Eberlein and Kerwer 2004: 123). As such, key dimensions of so-called new modes include: participation and powersharing; multi-level integration; diversity and decentralisation; deliberation; flexibility and revisability; experimentation and knowledge creation (Scott and Trubek 2002: 5-6). To locate *new* modes of governance within the government-governance spectrum (Figure 2.2), would find them away from the (government) centre and closer to the (governance) periphery. This is because they (at least, in theory) include private as well as public actors (politics); are characterised by less hierarchy (polity); and represent a move towards soft law (policy). In sum, “the new modes are all part of a more abstract move from ‘government’ to ‘governance’...based on procedures that are voluntary, open, consensual, deliberative, informative” (Caporaso and Wittenbrinck 2006: 471-474).

To turn to the second ‘ideal-type’ mode of governance, *markets* or ‘political competition systems’ represent a more decentralised and egalitarian relationship structure, driven by performance and outcomes. They operate by creating iterative opportunities for feedback or ‘mutual adjustment’ between and within state and society groupings (Börzel 2007: 4). Defined in narrow, economic terms, market mechanisms rely on the ‘invisible

hand' to allocate resources via the price signal, and in doing so, enable the "coordination of economic activities without any conscious organizing centre that directs it" (Thompson 2003: 24). However, state intervention may be necessary to create markets where they are absent (e.g. emissions trading) or correct them when they fail (e.g. carbon taxes and other eco-taxes levied to account for negative externalities). Examples from the environmental sector include grants and subsidies, green/energy taxes and charges, and the creation of markets, such as tradable emission permits or resource-use quotas (Mickwitz 2003: 419, OECD 1994).

Finally, but importantly for this thesis, *networks* are defined as, "a more (or less) stable pattern of social relations between interdependent actors, which take shape around policy problems and/or policy programmes" (Klijn and Koppenjan 2000: 155). They embody, "social coordination based on mutual agreement...[and] are not defined by formal institutions but constituted by mutual resource dependencies and/or informal norms of equality" (Börzel 2007: 4). Networks rely on *communication*, draw on soft law, and follow a logic of legitimacy (Knill and Lenschow 2005: 589, 602). Their existence and functioning can be attributed to features such as solidarity, altruism, loyalty, reciprocity, trust, and common identity (Thompson 2003: 40, Parker 2007: 119, Klijn 2010: 315, Turrini *et al.* 2010). As such, a network is "*qualitatively distinct* social structure which is characterized by the combination of elements belonging to the other two basic forms of governance: the existence of a plurality of autonomous agents, typical for markets, and the ability to pursue chosen goals through co-ordinated action, typical for hierarchies" (Börzel 1998: 268, emphasis added; also see Parker 2007: 116, Warleigh 2006: 88, Thompson 2003: 30, Heinelt and Smith 1996: 2, Mayntz 1993: 11, Marin 1990: 19-20). But that is not to say that these three distinctions are as clear cut in reality. Indeed, in the EU, the 'shadow of hierarchy' cast by supranational institutions (Héritier and Eckert 2008, Börzel 2010) looms large in many OMC networks. As Chalmers and Lodge (2003: 10) point out, "The Lisbon Process takes place in the shadow of the Stability and Growth Pact". In the environment sector, the IMPEL Network participates in legislative processes, carries out implementation duties laid out in Environmental Action Plans, and has long operated under the threat of being superseded by an EU Inspectorate. The EU's Climate

Change Programme, meanwhile, contains market mechanisms (i.e. the emissions trading scheme), and has ultimately led to the creation of a considerable body of EU law (e.g. the Emissions Trading Directive, plus others; more on this in Chapters 7 and 8).

2.2.3 A policy network approach

Having identified the unit of analysis for this thesis (the Open Method) as a policy network in an empirical as well as conceptual sense, one obvious point of departure in seeking analytical guidance is to turn to the policy network approach, which has been widely applied in national and EU settings (Peterson and Bomberg 1999, Peterson 2004, Kickert *et al.* 1997: 1-2, Würzel 2001, Lehtonen 2007, Martens 2006, Pesendorfer 2006), and has been referred to as “the most analytically powerful approach on offer” (Peterson 1995: 403).

The literature on policy networks, however, is “huge and heterogeneous” (Jachtenfuchs 1995: 125, Klijn 1997: 28), and can be confusing (Börzel 1998: 254, Jung 2010: 352). Several attempts have been made to make sense of it (Rhodes 1990, 1996, Jordan and Schubert 1992, Marsh and Smith 2000, Klijn 1997), but perhaps most helpfully, Börzel (1998: 255) distinguishes between two differing conceptions pervading the literature, albeit (often) implicitly. The first, she calls the ‘interest mediation school’, which emerged from the UK and US political science literature at the close of the 1970s, and regards policy networks as a generic term for relations between the state and society (Rhodes 1986, 1990, Marsh and Rhodes 1992, Heclo and Wildavsky 1974, Heclo 1978, Benson 1982, Wilks and Wright 1987, John 1998: 78-85, Peterson and Bomberg 1999, Peterson 1995, 2001, 2004, Richardson 2000: 1006-7). Central to this approach is the belief that *government* provides the focal point for networks (Smith *et al.* 1993), i.e., networks are viewed as: central-local interactions (Rhodes and Marsh 1992: 10), sub-governments (in the US) or government-industry relations (Heclo and Wildavsky 1974, Wilks and Wright 1987). This naturally places the perspective firmly at the ‘government’ end of the governance spectrum. There has, however, been much criticism of the network approach applied in this sense, namely: its absence of theoretical foundations and explanatory power (Dowding 1995: 158, John 1998: 90, Carlsson 2000), neglect of structure and

institutions versus agency and personal relationships (Marsh and Smith 2000, Kassim 1994: 22-4, John 1998: 87, Rosamond 2000: 123-5), and failure to incorporate dynamics of change (John 1998: 91, 200).

2.2.4 Networks and governance

Börzel (1998: 255) refers to the second channel of policy networks literature as the ‘governance school’, which sees networks as an inherently unique form of interactive governing, directly opposed to hierarchy and markets (Kooiman 1993, Kenis and Schneider 1991, Kickert *et al.* 1997: 7). More recent in its origins than the interest mediation school, the governance network approach emerged from two main sources: the German public policy literature in the late 1980s (identified with Max-Planck scholars such as Renate Mayntz, Fritz Scharpf, Patrick Kenis, Volker Schneider and Edgar Grande; see Börzel 1998: 260), and Dutch scholars of public administration in the 1990s (Kooiman 1993, Kickert 1997: 737, Klijn 1997, Kickert *et al.* 1997), although evidence of a similar line of thinking can also be traced in the Anglophone literature through Rod Rhodes. This perspective characterises networks as *informal* interactions between public *and* private actors, whose interests are interrelated and therefore lend themselves to collective problem-solving (Börzel 1998: 258). Indeed, proponents go so far as to claim that they signal “a real change in the structure of the polity” (Mayntz 1993: 5), and a move towards *polycentric* governance (Jachtenfuchs 1995: 125, Kickert 1997: 737). As the name suggests, members of this school gravitate towards the ‘governance’ (rather than ‘government’) end of the spectrum. In this sense, the perspective shares much with the multilevel governance approach, generally associated with Marks and Hooghe (Marks 1992, 1993, Marks *et al.* 1996, Hooghe and Marks 2003), which emphasizes interdependences between state and non-state actors at two levels: vertical (from EU, to national, to sub-national), and horizontal (incorporating public-private networks at all three vertical levels) (Bache and Flinders 2004: 3).

Although the governance approach to networks does not in itself represent a theory (Jordan and Schout 2006: 34), when “embedded in a ‘metatheoretical’ framework,” it can push the network approach “beyond an analytical toolkit” and closer to a conceptual and

theoretical framework capable of commanding explanatory authority (Börzel 1998: 265-6). Examples of such frameworks (*ibid.*: 263) include those using game theory (Scharpf 1992, 1993, Zintl 1992), exchange theory (Marin 1990), and resource dependency theory (Marin 1990, Kenis and Schneider 1991, Mayntz 1993). The Dutch conceptualisation of policy networks goes further than the German school, with some members laying claim to producing a *theory* of policy networks (Klijn and Koppenjan 2000), where public management is a matter of ‘network management’ (Klijn *et al.* 2010: 2), and “government [is] no longer seen as occupying the superior position to other actors, but as being on equal footing with them” (Kickert *et al.* 1997: 9, Klijn 1997: 32). This places the perspective even further towards the governance end of the spectrum than the German school.

2.2.5 Network governance and the new institutionalism

Many of the concerns flagged by critics of the interest mediation approach have arguably been addressed by the (‘new’) governance school. Proponents have been careful to build networks into a broader theoretical framework (generally by wedding them to wider social theory), and accord them explanatory power (Klijn and Koppenjan 2000). Institutions and social structures have been explicitly incorporated by grounding policy networks in neo-institutionalist theory, with the rational choice perspective being most popular with the German governance school (Mayntz and Scharpf 1995, Scharpf 1992, 1993, Zintl 1992, Marin 1990, Marin 1990, Kenis and Schneider 1991, Mayntz 1993). In response to those commentators challenging the Max Planck School’s rationalist approach “for neglecting the role of consensual knowledge, ideas, beliefs and values in the study of networks” (Börzel 1998: 264), the Dutch school proposes some solutions, pointing to the potential for more interactive and cognitive perspectives, and identifying March and Olsen’s (1984, 1989) ‘sociological’ institutionalism as a means of integrating structure and culture into a network context (Kickert *et al.* 1997: 182, Kickert 1997: 741-2).

The governance approach is also better equipped to understand processes of change (Schneider 1988: 2). This is particularly relevant to OMC, which is by design, a cyclical

policy system. Furthermore, when combined with new institutionalism, governance perspectives claim to counter the perennial claim that networks are unable to explain change by devoting “explicit attention to the dynamic change processes of networks” (Kickert 1997: 741; also Peters 2005: 118-9). This is especially true of sociological institutionalism, which views interactions between network structure and network culture as being in a constant state of co-determining flux (more on this in Chapter 3).

A final critique of the network approach – and one not restricted to the interest mediation school – rests on the claim that a concept born out of national (comparative) politics may not be applicable to EU and international contexts. Kassim (1994), for example, argues that translating network analysis to the EU level poses challenges due to the elusive fluidity of EU processes, the complexity of its institutions, and problems associated with delineating network boundaries (because jurisdictional domains are not exclusive) (1994: 22-5). Peterson (2001, 2004), however, mounts a strong defence, arguing that “[p]olicy network analysis is never more powerful an analytical tool than when it is deployed at the EU level” (2004: 119), due to: the non-hierarchical and polycentric nature of its supranational institutions (*ibid.*: 118, 2001: 306); the modest resources at their disposal – making them reliant on national administrations and “ostensibly apolitical committees of officials, experts and other stakeholders” (2004: 118-120); the diversity and insularity of EU policy sectors – rendering coordination and informal agreement even more necessary and challenging; and a predisposition to legislating by directive, which leaves implementation in the hands of national and sub-national networks (*ibid.*: 306-7). Although it is fair to say that policy networks were originally developed for use within a (sub-) national context (Rhodes and Marsh 1992, Kickert *et al.* 1997), their use has been widely advocated and successfully applied in countless supranational settings, including the OECD (Lehtonen 2007), but especially the EU (Warleigh 2006: 90, Dehousse 1997, Peterson 2004, Börzel and Heard-Lauréote 2009, Henning 2009, Christopoulos and Quaglia 2009, Dakowska 2009, Kaiser 2009, to name but a few. Network-based research into EU environmental policy processes include: Ward and Williams 1997, Peterson and Bomberg 1999, Würzel 2001, Peterson 2004, Martens 2006, Pesendorfer 2006, Jordan and Schout 2006, Bugdahn 2008, Braun 2009).

In light of these insights, the intention of the present study is to combine the *conceptual* foundations offered by the governance approach to policy networks with the social *theoretic* explanatory power provided by the two new institutional perspectives proposed above, namely, rational choice and sociological institutionalism. Accordingly, OMC is first *conceptualised* as an instance of networked governance in the EU, i.e. a non-hierarchical governance mechanism characterised by soft law and the inclusion of non-state actors in policymaking. Second, it is *theorised* not only as a policy network, but also an institutional structure, which potentially shapes (and is shaped by) the behaviour of political actors. This synthesis of approaches is presented as a means for overcoming some of the deficiencies associated with using policy networks as a stand-alone analytical tool. The following chapter introduces the theoretical framework in more detail, however, the next section introduces the empirical background to OMC, seen within the context of a rise in EU environmental governance.

2.3 OMC IN CONTEXT: FROM THE COMMUNITY METHOD TO OMC

In order to understand the Open Method, it is useful to have a benchmark for comparison. The Community Method has commonly filled this role, with ‘new’ governance defined as “any major departure from the classic ‘Community Method’” (Scott and Trubek 2002: 1). The following section briefly describes how the ‘classic’ Method functions before outlining the evolution of EU environmental policy and rise of the post-Maastricht governance agenda. Finally, an overview of OMC-use in the environment sector is presented.

2.3.1 *The ‘classic’ Community Method*

Regulations and directives have historically dominated environmental policy in the EU. Both are legislative acts, representing so-called ‘hard’ law. They differ insofar as the former impose uniform, judicially enforceable standards across all Member States, while the latter constitute objectives that can be interpreted according to national conditions before being transposed into domestic law. The so-called Community Method is essentially a formalised decision-making process for establishing these legal procedures

at the Union level. It adheres to a basic procedural format whereby the Commission initiates legislative and policy proposals, the Council of Ministers and European Parliament legislate via the co-decision process, and the Commission with Member States (at different levels) are responsible for executing EU law, which is enforceable by the European Court of Justice (COM(2001) 428 final: 8).

Needless to say, this is a somewhat stylised account of a notoriously complex and evolving process. Recent developments, such as the Protocol on the Application of the Principles of Subsidiarity and Proportionality (Official Journal, C310/207 16 Dec 2004), have served to, “blur...the distinction between ‘hard law’ and the OMC” by promoting consultation, and awarding greater flexibility and discretion to Members in forming national law (Trubek and Trubek 2005: 361). At the same time, it is important to note that despite post-Maastricht deferential moves towards subsidiarity *and* a surge in flexible governance modes more generally (see below), the Community Method retains its central role: “in EU environmental policy we still observe a clear dominance of the coercive, command-and-control approach” (Knill and Lenschow 2005: 591). Moreover, the Commission has continued to stress its desire to for the Community Method to remain central to EU policymaking (perhaps unsurprising, given the central role it plays in the process). Indeed, in its 2001 Governance White Paper, the Community Method was hailed as, “the model for the future”, to be “revitalised” and “strengthened” (COM(2001) 428 final: 8, 29, 34).

2.3.2 The rise of EU environmental policy

The evolution of environment policy into one of the most heavily regulated sectors of the EU has been a piece-meal and punctuated affair, characterized by expansion, deepening, and institutionalisation over the course of half a century. Although hard to believe in light of the 200 laws underpinning environmental policy today – and at a time when the Union’s global leadership ambitions in the sphere are so prominent – the Treaty of Rome (1957) made no mention of the environment at all. Thus, without a legal basis, early environmental measures were ‘incidental’ (Hildebrand 1993: 22-4), and only justifiable in relation to achieving ‘common market’ goals (based on Articles 100 and 235) – the central

rationale behind the European project (Article 3). As a result, legislation required unanimity in the European Council, and the role of the Parliament was only consultative. Early initiatives include: directives introducing product standards for hazardous substances, limiting noise and emissions from vehicles, plus a Regulation on countryside protection (Hildebrand 1993: 23).

The publication of the landmark First Community Action Programme on the Environment (1973-6) was the result of pressure from 'above' in international arenas (e.g. the UN Stockholm Conference of 1972), and from 'below' in Member States (where a string of environmental disasters had mobilised public opinion and political interest) (Peterson and Bomberg 1999: 173). The plan aimed to improve the surroundings and quality of life of its citizens by setting out a range of objectives, priorities, principles, and measures (OJ C112, 20.12.73: 5). Despite this overarching vision of intent, early environmental policymaking remained incoherent and reactive, evolving in response to political and economic events. Policymaking proceeded in a technocratic and centralised style, dominated by legally-binding regulatory measures (Homeyer 2009: 10). It was driven forward in bursts by key environmental champions in Northern Member States (e.g. Germany, the Netherlands, and Denmark), and was boosted by the establishment of a modest Directorate General for Environment (DG Environment) in 1981 (Liefferink and Andersen 1998). Subsequent attempts to shape the overall direction of policy were made in two further multi-annual Environmental Action Programmes (EAPs) (the Second in 1977-81; the Third in 1982-86). By this time, environment policy was based on around 20 key Directives, primarily relating to: water, air, noise, waste, emissions, lead in petrol, chemicals (Seveso), bird habitats, and sewage (von Weizsäcker 1989: 42). Despite the flurry of activity in this fledgling policy sphere, it without doubt remained, "relegated to a subordinate position in relation to Community economic aims" (Hildebrand 1993: 29).

It was the completion of the internal market through the Single European Act (1987) which finally formalised EU environmental policy and gave it a Treaty basis in its own right (Articles 100a EEC and 130r-t EEC). Further, it (legally) reinforced the key environmental norms already laid out in previous EAPs, namely: pollution prevention, 'polluter pays', and the need to integrate environmental concerns into other European policy areas.

Importantly, it also introduced the ‘cooperation’ procedure, which improved the European Parliament’s participation rights, and allowed for qualified majority voting (QMV) in the Council (in certain areas). With unanimity no longer (necessarily) a prerequisite, a prolific burst of activity in environmental policymaking ensued: “Between 1989 and 1991, the Environment Council adopted more environmental policies than in the previous 20 years combined” (Jordan 1998: 11). The ‘Green’ Northern Members were keen to address trade distortions, and ‘upload’ their domestic preferences for certain regulatory styles, promoting top-down, legally-binding, harmonisation measures, such as product and process standards, and the regulation of pollution at source through emissions limits (e.g. vehicle emissions directives, Large Combustion Plant Directive) (Lenchow 2010: 309, Homeyer 2009: 13). In total, “[b]etween 1959 and 1992 there were well over two hundred measures passed at European level, leaving aside amendments, covering a wide range of environmental problems” (Weale 2005: 128)

2.3.3 The post-Maastricht ‘new’ governance agenda

The period following the Maastricht Treaty (Treaty on European Union 1993), and subsequent Amsterdam Treaty (1997), marked a watershed in environment policy for two reasons: they further strengthened the legal and institutional foundations of environment policymaking, and signalled the start of a ‘new’ governance agenda (Lenschow 2010: 309-10). With respect to formal changes, the treaties extended QMV to most areas of environment policy, and created potential for smoother passage of legislation through the Council. Furthermore, Maastricht introduced (and Amsterdam extended) the ‘co-decision’ procedure (now the ‘Ordinary Legislative Procedure’), which significantly raised the profile of the European Parliament in lawmaking, finally putting it on an equal footing with the Council as legislator.

In addition to these formal changes, the Maastricht Treaty also heralded the start of a ‘new’ governance era by ushering in a wave of more flexible approaches to policymaking, partly in response to the perceived shortcomings of existing legislative measures. An overview of the problems new governance sought to address is presented before examples of new governance are elaborated.

The malaise in ‘old’ EU governance

It was becoming clear that the institutional arrangements associated with the Community Method created tensions and pathological behaviours that were ill-suited to creative problem-solving (Weale 1999). A fragmented system and ‘shared authority’ for policymaking, at vertical (European, nation and local) and horizontal levels (European Commission, Council, Parliament and Court of Justice), had created a culture of bargaining, policy instability, and a piece-meal approach to legislation (Lenchow 2005, Weale 1996, Scharpf 1988, 1997). Some argued that the Commission’s agenda-setting prerogative was constrained by limited resources, and a dominant market frame (Radaelli 2003). Moreover, at the Member State level, differential degrees of diligence in implementation and enforcement had led to the emergence of a glaring implementation gap, particularly apparent in the environment sector: “At a level of infringement proceedings as well as court referrals and court rulings...environmental cases amount to the largest policy grouping” (Lenschow 2010: 322, Krämer 2008: 3-5, COM(96)500, COM(2009)15).

Furthermore, poor implementation and disappointing results called into question the effectiveness and legitimacy of EU environmental law. As Lenschow (2002: 21) states, “[t]he old regulatory approach began to face a serious legitimacy crisis, as it seemed to impose high costs on economic actors without producing the desired environmental improvements”. This coincided with, “[sh]ifting patterns of authority and legitimacy in...advanced industrial societies in general”, i.e. declining confidence in state actors, and greater respect for private, market-based and popular authority (Caporaso and Wittenbrinck 2006: 474). It was also reflected in changing practices in US and European domestic public administration more widely, favouring, “power sharing, participation, management by objectives, and experimentation” (Scott and Trubek 2002: 7). This implied an extension of the basic understanding of legitimacy from the narrow ‘Monnet’ sense (emphasising ‘output’ legitimacy: policymaking through formal political/hierarchical representatives) to a post-Maastricht (‘input’-based) interpretation, which called for greater societal involvement in policy processes (Tsakatika 2005, Scharpf 1999).

The persistence and increasing complexity of environmental problems, such as climate change and biodiversity loss, also suggested the need for a more innovative, inclusive, and reflexive policymaking approach (Homeyer 2010: 127). In the case of climate change, for example, uncertainty surrounding the issue and its remedies were not immediately apparent. What's more, tackling 'new' environmental issues required a more *integrated* policy approach, especially in areas where other sectors held some of the responsibility for the damage (e.g. transport, industry, agriculture, energy, cohesion and fiscal policy) (Lenschow 2002: 19-20). This led to calls for greater cross-sectoral coordination and coherence (Peters 2003: 1, Jordan and Schout 2006, Homeyer 2007: 47, Scott and Trubek 2002).

The 'new' governance: a panacea?

The EU responded to these developments by introducing a raft of more flexible modes of governance to support its traditional authoritative approach to environment policymaking, albeit in a sporadic and case-by-case fashion. That is not to say that 'new' modes of governance were an entirely new phenomenon; as Treib *et al.* (2007: 4) explain,

"Some modes of governance may have been historically relatively new in some empirical contexts...but the same governing modes may turn out to be long-established practice in other areas".

Indeed, in environmental policy, important elements bear resemblance to the processes of negotiation, neo-corporatism, and bilateral implementation in use since the 1960s (Caporaso and Wittenbrinck 2006: 475-6, Howlett 2000).

Nevertheless, the move towards new governance can be traced through the development of a more participatory style of policymaking and greater willingness to use non-hierarchical instruments. This is evidenced both in the policy rhetoric and actions emanating from Brussels. The EC's Fifth Environmental Action Programme (1993-2001) demonstrated this shift in perspective; couched in terms of sustainability, subsidiarity and shared responsibility (OJEC 1993, C138), it expressed the desire for a more integrated approach, and consolidated the growing trend in use of voluntary mechanisms, economic

instruments, and networked governance (Martens 2006: 125-6). For example, it prescribed the establishment of an implementation network (later to become IMPEL – a *de facto* OMC, see Chapters 5 and 6), and advocated the use of market-based instruments, in particular: charges and levies (e.g. for water pollution); fiscal incentives to promote sustainable consumption; environmental state aids; and environmental auditing (OJEC 1993, C138/71-2 and 80). The early 1990s also saw the establishment of the Consultative Forum, which allowed stakeholders to feed into policy proposals, and the promotion of high environmental standards using voluntary informational tools, such as eco-labels and the Eco-Management and Audit Scheme (EMAS) (Jordan *et al.* 2003: 564).

A good example of a move towards greater voluntarism was the Auto-oil programme, which was launched in 1992 as a consultative exercise with the oil and car industries to cut vehicle emissions by 2000. Although discussions with industry *per se* were nothing new, the programme arguably marked a departure from the Commission's reliance on 'hard law' and signalled a, "new discourse in DG XI [Environment]" (Peterson and Bomberg 1999: 178). As a DG Environment official commented, it represented a move towards:

"structured dialogue, a shared responsibility approach: agreeing what the problem is, what the solution is, and then trying to agree in policy terms how best to deal with it. It's not enough just to look at the legislative approach." (Interview in *ibid.*)

In terms of policy practice, the Commission's intention to use economic modes in environment policy was perhaps most vividly demonstrated by its ambitious proposals for a carbon/energy tax in 1992 (COM(92) 246). Although the initiative failed to garner sufficient support at the Member State level to succeed, it set an important precedent in displaying the Commission's willingness to explore market-based solutions. Moreover, its failure led to the launch of an early *de facto* OMC, the European Climate Change Programme (ECCP), in 2000. Its main – and considerable – achievement was the establishment of the EU's flagship Emissions Trading Scheme, which, as an archetypal *market* mechanism, illustrates the potential complexity and hybridity of EU governance modes in practice (more on this in Chapters 7 and 8).

Looking at broader trends beyond the immediate post-Maastricht period, the shift from five to ten-year Environment Action Programmes, and increased use of open-ended Framework Directives (e.g. Water, Waste, Marine Strategy, Ecodesign), as well as the introduction of thematic strategies (i.e. air, waste prevention and recycling, marine environment, soil, pesticides, natural resources, urban environment), all reflect a more holistic and longer-term approach to environmental problem-solving, acknowledging the need for greater stakeholder involvement (Homeyer 2009), and allowing greater scope for diversity in national implementation strategies (Jordan *et al.* 2003: 564).

A more integrated outlook was also suggested by the introduction of the concepts of 'environmental policy integration' (mainstreaming environmental concerns into other policy sectors), and 'sustainable development' (meeting the needs of current generations without compromising the needs of future generations) (Amsterdam Treaty, Article 2). These agendas not only signified greater ambitions towards overall policy coherence, but also represent a normative shift away from a purely market-driven approach, towards one acknowledging the interrelated nature of managing economic, social and environmental problems. These integrationist programmes were applied through three key OMCs: the Cardiff Process (1999), the Lisbon Process (2000), and the Sustainable Development Strategy (2001). The development of impact assessments was also designed to promote better coordination and evidence-based policymaking (Jordan and Adelle 2012: 626).

It is also noteworthy that there have been junctures at which the 'internal' push from academia and 'external' pull from within the EU system have converged. For example, a cluster of research programmes commissioned as part of the EU's Sixth Framework Programme were designed to: explore new modes of governance (the New Modes of Governance Project, NEWGOV³); build networks of academic expertise on EU multilevel governance to inform public debate (Connecting Excellence on European Governance,

³ <http://www.eu-newgov.org/> (accessed 6th March 2012)

CONNEX⁴); and evaluate and propose improvements to new modes of governance imposed in the public interest (Reflexive Governance in the Public interest, REFGOV⁵) (Craig and de Burca 2008: 145).

Furthermore, explicit references to new modes of governance have been made in EU programmes (Craig and de Burca 2008: 145), such as: the Commission's White Paper on Governance (2001), the Protocol on Subsidiarity and Proportionality (2004, OJ C310/207), and in relation to the Better Regulation agenda (Governance White Paper 2001; Inter-institutional Agreement on Better Law-Making, 2003, OJ C321/01). Together, they call for greater transparency and inclusion (e.g. promoting consultation, partnerships, networks, and dialogue), as well as improvements in the *quality*, simplicity and implementation of policy and legislation. Importantly in terms of OMC, they emphasise a commitment to subsidiarity and proportionality, i.e., acting at the lowest governance level, and using EU-level initiatives only as a last resort (in accordance with Treaty on European Union, Article 5). They also advocate the use of an appropriate 'mix' of governance instruments, including: co-/self-regulation (as applied, for example, in agreements with European, Japanese and Korean manufacturers to reduce carbon dioxide emissions from cars (Senden 2005)); hybrid instruments (e.g. used in safety at sea, maritime pollution and noise pollution (Chalmers and Lodge 2003: 12)); and not least, OMCs, which are summarised in Table 2.1.

⁴ www.connex-network.org (accessed 22nd January 2012)

⁵ <http://refgov.cpdr.ucl.ac.be/> (accessed 6th March 2012)

Table 2.1: OMC-type processes in the environment sector

| <i>OMC process</i> | <i>Objectives</i> | <i>Guidelines</i> | <i>Indicators and benchmarks</i> | <i>Reporting and (peer) review</i> | |
|--|---|--|---|---|---|
| Implementation and Enforcement of Environmental Law Network (IMPEL) (1992) | Effective implementation and enforcement of EU environmental law | Recommendations for Environmental Inspections, Better Regulation Checklist (for more detail see Chapter 5-6) | Minimum Criteria for Environmental Inspections, Better Regulation Checklist (for more detail see Chapter 5-6) | Performance indicators for inspections (for more detail see Chapter 5-6) | Twice-yearly Plenary/General Assembly; ad hoc IMPEL (peer) Review Initiative; reporting on a project-by-project basis |
| IPPC/Seville process (1996) | Information exchange process to implement the IPPC Directive (which seeks to achieve integrated prevention and pollution control) | Best Available Techniques (BATs) Reference Documents (BREFs) | BREF and BAT benchmarks | Development and review of BREFs, reviewed by the Technical Working Groups, approved by an Information Exchange Forum, and published by the Commission | |
| Cardiff process (1998) | Strategy for integrating environmental concerns into all EU policies | No | Proposed (SEC (1999) 1942 final), but not implemented under Cardiff | Councils prepare sectoral environmental policy integration strategies | |
| European Climate Change Programme (2000) | “To identify and develop all the necessary elements of an EU strategy to implement the Kyoto Protocol” | Guidance criteria to assist Member States in implementation of establishing EU Emissions Trading Scheme | Greenhouse gas emissions targets | National allocation plans (assessed by Commission and Climate Change Committee), annual national inventories | |

| <i>OMC process</i> | <i>Objectives</i> | <i>Guidelines</i> | <i>Indicators and benchmarks</i> | <i>Reporting and (peer) review</i> |
|---|--|---|--|---|
| Common Implementation Strategy of the Water Framework Directive (2000) | Coherent and harmonious implementation of WFD, establishing 'good status' environmental objectives for all waters by end 2015 | Yes | Yes | Best practice: biannual strategic guidance documents from 2002 |
| Lisbon process (2000), environmental pillar (2001, relaunched 2005) <i>Superseded by "Europe 2020"</i> | To make the EU "the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment by 2010" | Integrated Guidelines (no. 11 calls for "synergies between environmental protection and growth", COM(2007) 803 final) | 14 Lisbon indicators; one relates specifically to the environment (GHG emissions), two are indirect (energy intensity and volume of transport) | Member States responsible for National Reform Programmes Action Plans (introduced in 2005 review); Integrated Guidelines updated in Commission Annual Progress Reports, where specific country recommendations can be made (SEC (2005) 622/2) |
| Sustainable Development Strategy (2001, renewed 2005) | Yes | Yes | Yes | Progress reports 2007, 2009: Commission/ Eurostat, Member States |

| OMC process | Objectives | Guidelines | Indicators and benchmarks | Reporting and (peer) review |
|---|---|--|---|--|
| Environmental Technologies Action Plan (2004) | Action plan to stimulate the development and use of environmentally friendly technologies | Guidelines on Environmental State Aid, guidelines and targets for financial investments on eco-innovation encouraged | Eco-innovation indicators are under development | National Roadmaps (biannual reports on ETAP implementation), 2005, 2007 |
| Green Public Procurement (2004) | Yes | Handbook | Defined by the Sustainable Development Strategy | Annual MS reporting from 2006; Commission will monitor MS performance against GPP criteria from 2010 |
| Integrated Maritime Policy (2008) | Integrated management of marine affairs | Guidelines for an Integrated Approach to Maritime Policy, (COM(2008)395) | Annual report to include indicators that can be tracked based on defined objectives | Annual reports on National Strategic Plans from 2009 |

Source: Author; with inputs from Ingmar von Homeyer, Patrick ten Brink, Marc Pallemaerts and Samuela Bassi at IEEP and Ecologic, Brussels (personal communication)

Yet amidst the rhetoric extolling and expounding the use of new governance modes, and the plethora of empirical examples, it is important not to lose sight of the fact that flexible modes have not displaced the Community Method as the dominant tool of environment policy, and were never intended to (Governance White Paper 2001). The undoubtedly (and often explicit) preference of the Commission (and the European Court for that matter) has always been in favour of “approaches that promote maximum possible uniformity across Europe” (Scott and Trubek 2002: 16).

2.4 SUMMARY AND CONCLUSIONS

To return to the Rosamond quote at the head of the chapter, the changing empirical reality – demonstrated by the groundswell in use of new (and often hybrid) governance modes in EU environmental policy *and* practice – suggests the need for new conceptual tools to guide the analysis of contemporary European institutions.

At the *empirical* level, the distinction is not entirely clear between authoritative modes, such as the Community Method, and new governance modes, such as OMC. Rather than discreet categories, they are best viewed as points on a continuum, which will vary on a case-by-case basis (Scott and Trubek 2002: 4, Lenchow 2005). As outlined above, the Community Method is itself an evolving institutional arrangement, and recent developments have sought to further blur the distinction between ‘hard’ and ‘soft’ law – or ‘new’ and ‘old’ governance: the introduction and extension of the co-decision procedure has consolidated the role of the European Parliament in lawmaking; the establishment of implementation committees via the comitology procedure has extended deliberations about legislation to the implementation phase (the Climate Change Committee provides a good example, explored in Chapters 7 and 8); and the evolution of framework directives mark a more inclusive approach to lawmaking, i.e. where “new directives may mandate broad participation in the processes by which general principles are incorporated into national law” (Trubek and Trubek 2005: 359-61; Scott and Trubek 2002: 2-3).

At a *conceptual* level, the development and revision of terminologies, such as networks and governance, in response to these changes (originating in EU and domestic contexts) has been helpful in expanding the analytical toolkit available for investigating European environmental politics, polities and policy beyond the narrow confines of a classic government-centric approach, where attention has traditionally concentrated on public actors, formal institutions, and hard law instruments, and created space for the conceptualisation of OMC networks as non-hierarchical processes that unite public and private actors in an informal policy process.

However, having delved into the policy networks literature, it seems clear that networks *alone* will not provide the theoretical infrastructure and explanatory power necessary to contextualise and analyse the case studies in question. It is for this reason that a theoretical framework supported by new institutionalism is proposed. Combining governance and network approaches makes sense because they are complementary (Pierre and Peters 2004), and using them in tandem has been advocated (Warleigh 2006), and successfully applied (Jordan and Schout 2006, Martens 2006). As Warleigh (2006: 91) explains,

“[i]n isolation, each approach can tell us only so much about the nature of the EU polity (multilevel governance) or the process of EU decision-making (policy networks). Taken together, however, they can allow the scholar to understand both issues”.

The next chapter explores how networks and governance can fit into a new institutionalist theoretical framework.

3 NETWORKED GOVERNANCE AND NEW INSTITUTIONALISM

“Given the staggering complexity of the policy process, the analyst must find some way of simplifying the situation in order to have any chance of understanding it. One simply cannot look for, and see, everything.”

Sabatier (1999: 4)

3.1 INTRODUCTION

In order to make sense of the political world it helps to apply a filter – or as Sabatier puts it – to “look at the world through a lens consisting of a set of simplifying presuppositions” (1999: 5). Yet, as highlighted in Chapter 2, there is no single theory of policy networks to help reveal and decode recent empirical changes in EU environmental governance. This chapter therefore presents the case for bringing together a conceptual framework offered by the governance approach to policy networks, with (two) new (rational choice and sociological) institutionalist theories. This approach allows networks to be used as an analytical *concept* (Börzel 1998: 258, Evans 2001: 548) underpinned by institutionalist *theory*, in order to help explain and understand the behaviour of actors in networks. The combination of networks and institutionalism is anticipated to be useful because it provides the tools to explore the workings of networked governance such as OMC, when understood not only as a pattern of social relations (*à la* networks), but also an *institutional* structure of rules and norms. The synthesis of networks and institutionalism builds on the existing literature bringing together two (admittedly heterogeneous) literatures in political science and EU studies (Martens 2006). It also provides an important counterbalance to the actor-centric nature of policy networks as a stand-alone approach.

The remainder of the chapter proceeds as follows. The family of theories known as ‘new’ institutionalism is introduced, and the main tenets of the two variants used in the rest of this thesis, i.e. rational choice and sociological institutionalism, are explored. Next, their key features are compared, before the theoretical benefits of using a *dual* theoretical

approach are presented and their previous applications to EU governance are outlined. A return is then made to Zeitlin *et al.*'s (2005) OMC assessment criteria, namely: substantive change; procedural change; participation; and mutual learning. It is argued that when these four factors are *reinterpreted* according to the two contrasting institutionalist perspectives, different focal variables are highlighted for analysis. Finally, the analytical framework is summarised.

3.2 INTRODUCING NEW INSTITUTIONALISM(S)

As outlined above, there are many good reasons why “the policy network approach would benefit from incorporation into a broader analytical framework” (Carlsson 2000: 502), and many have proposed that giving it an institutional basis is the best place to start. Institutional perspectives are relevant to the study of the EU’s OMC because they “seek to capture and reflect the complexity and open-endedness of processes of social and political change” (Hay 2002: 11). Even Dowding, who is sceptical about the explanatory power of networks as a *stand-alone approach*, supports Sabatier’s (1991) claim that integrating networks within a rational choice institutional framework, “may prove one of the most useful theories of the policy process” (Dowding 1995: 150). Others point to the complementarity of networks and institutionalism (Kickert *et al.* 1997, Peters 2005, Martens 2006), as well as to empirical research suggesting institutions and institutional linkages are important to the functioning of networks, acting as constraints and resources (Marsh and Rhodes 1992: 261-2).

Turning to institutionalism as a theoretical approach, Jupille and Caporaso (1999: 431) offer a strong justification for its use in the study of the EU, arguing that “institutions matter,” and pointing to the increased use of institutional theory by comparative and international relations (IR) scholars alike. They argue that much of the best work on the EU has drawn from the family of institutionalisms (also see Pollack 1996, 1997, Dowding 2000, Aspinwall and Schneider 2000, 2001), and – perhaps most importantly from the point of view of interdisciplinary innovation – they underline the potential for institutionalism to “unify the analysis of politics and policy making at and across levels of analysis, contributing to the increasing transcendence of the traditional comparative-IR

[international relations] divide" (*ibid.*). So what exactly *is* institutionalism, and what can it offer the study of OMC?

3.3 NEW INSTITUTIONALISM: A BROAD CHURCH

3.3.1 *Networks and new institutionalism*

It is important to emphasise upfront that the new institutionalism is a disparate collection of theories (Lowndes 1996: 182, Peters 2005), displaying a great deal of methodological, epistemological and ontological variation (Aspinwall and Schneider 2000, Jupille and Caporaso 1999, Jupille *et al.* 2003, Schmidt 2005). Peters (1999, 2005), for example, identifies no less than seven strands, namely: normative; rational choice; historical; empirical; sociological; network; and international institutionalism. Although approaches differ in terms of how institutions are defined, their key commonality lies in the understanding that "political conduct is shaped by the institutional landscape in which it occurs" (Hay 2002: 14-15). By this account, institutions not only "contain the bias individual agents have built into their society over time," but also "structure political actions and outcomes, rather than simply mirroring social activity and rational competition among disaggregated units" (Aspinwall and Schneider 2000: 3). Institutions also tend to possess the following commonalities: they are a structural feature of society showing stability over time; they affect individual behaviour, and there is a sense of shared values and meaning among their members (Lowndes 1996: 182, Peters 2005: 18-19).

There are, however, important differences. The theoretical framework proposed here seeks to harness the analytical power of two "disparate schools of thought" falling under the 'new' institutional rubric (Hay 2002: 46), namely, rational choice institutionalism (e.g. Ostrom 1990), and sociological institutionalism (e.g. March and Olsen 1989, Powell and DiMaggio 1991).

3.3.2 *The new institutionalisms: an application*

"[T]here may well be a need in many instances to blend together several of the versions of the 'new institutionalism' if researchers want a more complete perspective...some eclecticism in the use of approaches is likely to pay greater intellectual dividends...than is a strict adherence to a single approach."

Peters (2005: 2)

In response to the advice forwarded by Peters, not to mention Hall and Taylor's (1996: 955) warning that *individual* new institutional perspectives provide only "a partial account," this study incorporates two institutionalisms – rational choice and sociological – in order to raise the possibility of "a more open and extensive interchange among them" (*ibid.*: 957).

As already indicated, a fundamental difference between the two versions, stems from the way they define institutions – and for the purposes of this thesis, OMC networks. In narrow 'rational' terms, institutions are *routines, rules* and *procedures* that guide rational decision-making (North 1990, Ostrom 1990, 2005); they are the "rules used by individuals for determining who and what are included in decision situations, how information is structured, what actions can be taken and in what sequence, and how individual actions will be aggregated into collective decisions...all of which exist in a language shared by some community of individuals" (Kiser and Ostrom 1982: 179).

Understood more broadly – or 'sociologically' – the definition of institutions extends to include the *norms and culture* that "constitute human identity and behaviour" (Aspinwall and Schneider 2000: 4, 7). In this sense, they are defined broadly or 'thickly', "to include, not just formal rules, procedures or norms, but the symbol systems, cognitive scripts, and moral templates that provide the 'frames of meaning' guiding human action" (Hall and Taylor 1996: 947). In doing so, the perspective adds a social and cognitive layer to the primarily incentive-driven and constraining rational choice understandings of institutions (Finnemore 1996: 326).

The rationale for choosing these particular neo-institutionalisms is that they arguably display the greatest epistemological diversity. The former is rooted in the positivist foundations associated with methodological individualism, while the latter is grounded in the holism connected to social constructivism, interpretivism and relativism. While this might seem reason enough for some to avoid the combination (Hay and Wincott 1998: 951), it is argued here that incorporating epistemological variety gives the researcher access to a wider range of variables and methodological tools, and increases the possibility of capturing a fuller picture of the empirical reality (though it admittedly raises the challenge of reconciling ontologies, which is dealt with in Chapter 4) (Checkel 1999: 545). At the same time, it is worth pointing out that despite their clear differences, “there are important areas of agreement between...approaches, so that it is perhaps more appropriate to think of them not as discrete conceptual categories but as points along a continuum, or as independent nodes with areas of commonality” (Aspinwall and Schneider 2000: 3). The key features, and similarities and differences between the two theories are explored in further detail in the following sections, beginning with rational choice and moving on to sociological institutionalism.

3.4 RATIONAL CHOICE INSTITUTIONALISM

Originating in the study of US congressional voting behaviour (Shepsle 1979, 1989), rational choice institutionalism sees institutions as a response to collective action dilemmas (Arrow 1951, Olson 1965, Hardin 1968, Ostrom 1990, 2005). They represent a means of inducing *collective* rationality by providing incentives and constraints for human action where *individual* utility maximisation would otherwise lead to collectively sub-optimal outcomes, e.g. due to free-riding (Olson 1965). Drawing on the logic of neo-classical economics, ‘rational’ behaviour is said to rest on two ‘canonical assumptions’: individualism and optimality (Jupille *et al.* 2003: 12). Essentially, actors create (or participate in) institutions where there are gains to be made from co-operation (Axelrod 1984). As North (1981: 12) explains, institutions “provide the framework within human beings interact. They establish the cooperative and competitive relationships which constitute a society”.

As one might expect of any ‘ism’, rational choice institutionalism is not a homogeneous theoretical approach. Again, Peters (2005: 52-7) identifies several strands: rules-based interpretations rooted in political science and economic history (Ostrom 1986 and North 1990 respectively); principal-agent models focusing on public organisations and the compliance of bureaucrats (Moe 1984); decision rules derived from the welfare economics and public choice literatures (Arrow 1951, Buchanan and Tullock 1962); game-theoretic variants exploring compliance within a context of repeated games (Scharpf 1997, Peters 1997); and approaches exploring how rational actors use institutions to maximise utility.

The first – ‘rules-based’ – version is particularly appropriate to this study because the focus for proponents, most notably, Ostrom (1986, 1990, 2005), has been exploring how to avoid a ‘tragedy of the commons’ situation from arising, whereby individual utility maximisation leads to collectively undesirable outcomes, such as the over-exploitation of common resources and depletion of public goods (Hardin 1968). This has resonance for this study given the types of regional and global collective action environmental problems addressed by the OMC cases under investigation, i.e. global climate change (ECCP) and transboundary pollution (IMPEL). It also respects the *polycentric* nature of EU governance by acknowledging the interdependence between European, national and local environmental governance systems, and advocating a *multi-level* analysis. As Ostrom (1986: 21) explains, “rules operate configurationally rather than separably... [and therefore] ...the study of rules involves multiple levels of analysis rather than a single level of analysis”.

In her more recent work, Ostrom (2005) goes on to specify two conceptual approaches for classifying rules. The first operates *vertically* across levels of analysis (or governance/authority), and understands rules to fall into three ‘nested’ categories: (1) *constitutional-choice* rules, that is, “formulation, governance, adjudication, and modification of constitutional decisions”; (2) *collective-choice* rules, i.e. policy-making, management and adjudication; and (3) *operational* rules, referring to day-to-day decisions about resource deployment, monitoring, information exchange, rewards and sanctions (Ostrom 1990: 52-3). The second approach operates *horizontally* across a single

level of action, focusing on just one of the hierarchical levels of authority identified in the first approach. The horizontal perspective is identified by Ostrom as a preferred point of departure because, “we need to sort the rules at any one level into basic categories that clarify the links between specific rules at that level and the structure of the resulting situation” (2005: 186-7).

As this study understands governance to be a multi-level concept, a broad attempt is made to include references to both vertical *and* horizontal levels of analysis. However, because OMC is the focal unit of this thesis, Ostrom’s horizontal approach, which concentrates primarily on the network level of analysis, is emphasised. (Institutional) change at the IMPEL and ECCP level, therefore, provides the central focus of OMC scrutiny, though the role of national and EU constitutional factors in shaping collective-choice and operational institutions is incorporated, in keeping with the rational choice assumption that such institutions create incentive structures which trigger the creation of networks and shape their development.

Finally, the rules-based approach stands apart from other brands of rational choice institutionalism in terms of its willingness to explore the motivations for and implications of institutional design (Ostrom 1990), as well as because it incorporates incremental institutional adjustments with respect to improving rules and changing strategies in light of changing demands and new information (Peters 2005: 64, Axelrod 1984). Given the cyclical nature of OMC, and the importance of incorporating new information and learning, this makes it a relevant perspective.

3.5 SOCIOLOGICAL INSTITUTIONALISM

As the name suggests, sociological institutionalism has its roots in sociology (Durkheim 1895). According to this perspective, institutions are central to the understanding of individual behaviour because: “(a) the environment in which agents take action is social as well as material; and (b) this setting can provide agents with understandings of their interests (‘constitutes’ them)” (Jupille *et al.* 2003: 14).

As with rational choice, there are several diverse strands of sociological institutionalism. Peters (2005: 111-5) distinguishes five worthy of note: population ecology models, which draw parallels between organisations and biological organisms (Carroll 1984, Singh 1990, Singh *et al.* 1991); institutionalisation and ‘isomorphism’, concerned with predictors of institutional change (DiMaggio and Powell 1991) and the role of symbols and values (Meyer and Rowan 1977); sedimentation, exploring how present behaviour builds on past events (Tolbert and Zucker 1996); organisational archetypes, which compare existing institutions against ‘ideal types’ (Laughlin 1991); and discursive institutionalism, which focuses on the role of ideas, narratives and discourses in bringing about institutional continuity and change (Schmidt 2005). A sixth branch, coined by March and Olsen (1984, 1989), can be added to this list, categorised as ‘normative’ by Peters, but understood to be quintessentially ‘sociological’ by others (Peters 2005: 113, Hall and Taylor 1996, Aspinwall and Schneider 2000), including the present study.

The shades of sociological institutionalism applied here draw primarily on the works of Powell and DiMaggio (1991), and March and Olsen (1984, 1989). This study therefore incorporates not only ‘cognitive’ elements, relating to perceptions, framings and questions about how members of institutions interpret their environment (which Peters associates with sociological institutionalists such as Powell and DiMaggio), but also ‘normative’ factors connected to the way in which institutional attachments influence the course of action deemed *appropriate* by individuals (stressed by March and Olsen).

The contributions of the former are considered to be of particular relevance due to their interest in identifying the conditions for generating institutional homogeneity, specifically, how and why *different* political and cultural contexts often produce *similar* institutional and organisational structures, which they term “isomorphism” (Powell and DiMaggio 1991: 66). This is germane to OMC given its objective of promoting convergence towards commonly agreed EU goals, against a backdrop of diverse national settings. They cite three isomorphic pressures: 1) *coercive*, derived from political influence; 2) *mimetic*, representing a response to uncertainty; and 3) *normative*, relating to professionalisation (*ibid.*: 67).

The works of March and Olsen (1984, 1989) are also instructive due to their emphasis on normative factors, which they argue set the boundaries for defining what behaviour is considered feasible or appropriate in a given cultural setting. As Aspinwall and Schneider (2000: 17) point out, “institutions are not necessarily the product of neutral bargaining or efficient historical evolution. They have ideas built into them,” such as, “the market orientation of European policy...and the ascendant normative bias of liberalism”. The environment is a particularly good example of a policy area where normative conflict has been evident, not least within a European context, and commentators have long drawn attention to the subordinate role green issues have played against a “master discourse of competitiveness” (Radaelli 2003: 11). Indeed, tensions between economic, social and environmental values have long pervaded OMC policy spheres, particularly those of a cross-sectoral nature, such as the Cardiff and Lisbon Processes (Lenschow 2002), with obvious implications for issues such as climate change and transboundary pollution, where environmental aspirations are sometimes perceived to detract from economic priorities. Taking a norm-sensitive perspective, therefore, permits exploration of how notions of propriety embedded in institutional structures are established and redrawn, through processes of experiential learning, socialisation, and structuration (March and Olsen 1984: 739, 745-6, Giddens 1984). For example, one might ask whether the competitive framework implied by OMC’s advocacy of benchmarking provides a bias in favour of strategic behaviour and provides a hindrance to context-sensitive lesson-drawing.

3.6 THE NEW INSTITUTIONALISMS: KEY FEATURES COMPARED

The following sub-sections explore three key dimensions across which rational choice and sociological institutionalism differ in their ideal-type formats (simplified from the eight differences identified by Aspinwall and Schneider 2000: 7, and omitting the definitional issues dealt with already), namely: their scientific world-views and logics of operation; assumptions about the relationships between institutions and human behaviour; and implications for research design.

3.6.1 Worldview and logic of operation

With respect to worldview, rational choice institutionalism follows the tenets of methodological individualism, which views the *individual* as the basic element of social analysis. It implies that “[b]oth individual and collective actions are explicable in terms of unit-level (individual) properties” (Jupille *et al.* 2003: 12). Actions therefore take place *independently* of context, and individuals are classified as strategic utility-maximisers, who make decisions based on their *exogenously* derived preferences. By calculating the consequences of various courses of action in terms of the costs and benefit they offer, actors are able to select the alternatives promising the greatest material reward (though normative and ideational goals could, in theory, be incorporated, see Snidal 2002: 75). By this interpretation, belonging to an institution is ‘rational’ even when it imposes restrictions on individual behaviour because it simultaneously leads to greater predictability in the actions of other members (Olson 1965). Institutions manage actors’ expectations by: influencing the range and sequence of alternatives on the agenda; providing information (and thereby reducing transaction costs); implementing enforcement mechanisms; and reducing uncertainty (Hall and Taylor 1996: 945).

By contrast, drawing on the holistic legacy of French sociologist Émile Durkheim (1895), sociological institutionalism views actors as socially embedded; they not only shape their environment (e.g. political outcomes), but are also shaped *by* it (i.e. it is an input) (Aspinwall and Schneider 2000: 8). Thus, institutions are viewed as independent variables because they, “do not just constrain options; they establish the very criteria by which people discover their preferences” (DiMaggio and Powell 1991: 11). As such, people and institutions are mutually constitutive: “agent and structure are inextricably bound together” (Aspinwall and Schneider 2000: 9), with agents producing and reproducing structure over time – a process known as structuration (Giddens 1984). Whilst agents and contexts are co-determining, social structure is “ontologically primary” (Finnemore 1996: 333) because social context provides actors with perceptions of their interests, identities and preferences (Checkel 2001: 21). The underlying logic driving the approach is therefore one of culturally-determined appropriateness rather than self-determined interest (Schmidt 2005: 115).

3.6.2 Institutions and human behaviour

In terms of the impact of institutions on human action, the rational choice institutionalist approach views institutions as being driven by preferences; institutions are *intervening* variables, and a *means* through which goals are achieved. As such, they are a constraint and opportunity, and can be perceived as a “strategic operating environment” which shapes policy outcomes, but does not affect the actual preferences or goals of actors, which are believed to be exogenously given – the underlying assumption being that “one element has to be fixed in order to reach explanatory power” (Aspinwall and Schneider 2000: 7, 11-12). Change is not well-accounted for in this model, with institutions evolving to some extent through a process of bargaining (*ibid.*: 7), but largely occurring as a “discrete event” when an institution does not fulfil its expected functions (Peters 2005: 62).

Within the sociological institutional family, evolution takes place through a more cognitive (rather than negotiated) process. The driving force is a logic of ‘appropriateness’, which means institutional change occurs when “it enhances the social legitimacy of the organization or its participants” (Hall and Taylor 1996: 949). As Sabel and Zeitlin (2008: 272) explain, “actors’ initial preferences are transformed through discussion by the force of the better argument. Deliberation...is said to depend on the socialisation of the deliberators (civil servants, scientific experts, representatives of interest groups)”.

3.6.3 Institutionalisms and research design

The implications of the rational choice scientific worldview for research design can be traced to Max Weber’s conceptions of ‘value neutrality’ (1904, 1949). This is associated with the notion that the scientist should be “solely concerned with facts and explanations” (Hollis 2003: 208). As a result, rational choice institutionalists commonly search for causal mechanisms, seek parsimonious *explanations*, and use a deductive approach in the hope of being able to draw wider generalisations. When tested

empirically, this often entails the use of quantitative analysis applied to short-term decision-making processes (Aspinwall and Schneider 2000: 2-3, 5, 12).

Conversely, what is of interest to sociological institutionalists is understanding the nature of normative and social change, which involves delving beyond a given social process to the surrounding cultural context within which it is embedded. This can involve research of a more qualitative nature, taking place over a longer-term time horizon. Thus, a sociological institutional approach more typically employs longitudinal case studies, inductive research designs, and ‘thick’ descriptive accounts to gain insight into institutional change (*ibid.*).

Table 3.1: Rational choice and sociological institutionalist approaches: key features

| <i>Key features</i> | <i>Rational choice institutionalism</i> | <i>Sociological institutionalism</i> |
|--|--|---|
| <i>Scientific world view</i> | Methodological individualism | Holism, constructivism |
| <i>Underlying logic</i> | Goal-driven | Context-driven |
| <i>Definition of institutions</i> | Rules, procedures | Norms, rules, culture |
| <i>Role of institutions for human action</i> | Intervening variable; situative constraint and opportunity | Major independent variable; cultural constraint |
| <i>Preference formation</i> | Exogenous | Endogenous |
| <i>Evolution of institutions</i> | Bargaining process | Cognitive and normative process |
| <i>Time horizon</i> | Short-term | Long-term |
| <i>Typical research design</i> | Causal illustrations | Case studies of cultural, cognitive links |

Source: Adapted from Aspinwall and Schneider 2000: 7

To sum up, the core areas across which rational choice and sociological institutionalism diverge are presented in Table 3.1 below. Although the practical (and philosophical) challenges posed for research design by attempting to incorporate such ontologically disparate theories is discussed further in Chapter 4, the case made here is that these differences need not necessarily represent impediments; rather, it is proposed that applying the two approaches in tandem may, in fact, render them complementary.

3.7 CAN THEORETICAL PLURALITY BRING COMPLEMENTARITY?

So, what can be learnt from the way in which these two institutionalisms have been applied to EU governance in existing research? And how might the relative strengths of each perspective offset the weaknesses of the other? The following sub-sections address these questions, one theory at a time.

3.7.1 *Rational choice institutionalism and EU governance*

Applications of rational choice institutionalism in the EU context typically test assumptions of non-cooperation and strategic behaviour, and include studies exploring primarily *formal* supranational institutions, spanning “all three of the major functions of government at the EU level” – incorporating executive, legislative and judicial politics (Pollack 2004: 141, Dowding 2001: 126). Examples include research exploring: the impacts of institutional rule structures on decision outcomes (Scharpf 1988, Peters 1997); principal-agent dynamics in the European Community’s comitology system (Franchino 2000, Gerus 1991); the agenda-setting power of the European Parliament (Tsebelis 1994, Tsebelis and Garrett 1997); the European Court of Justice as an agent of Member States (Garrett 1992, Garrett and Weingast 1993, Garrett *et al.* 1998); and European integration and governance (Pollack 1997).

However, a key criticism has been that “rational choice research has not yet devoted sufficient attention to the impact of *informal* institutions” (Aspinwall and Schneider 2000: 15, emphasis added; Schmidt 2001: 143). This study aims to address this critique via its focus on OMC – which is, in theory, a *voluntary* policymaking process, incorporating public as well as non-state actors in informal networks.

3.7.2 *Rational choice institutionalism: strengths and weaknesses*

Important strengths of rational choice institutionalism are that it invokes generalisable concepts, provides explanatory power, and offers scope for theory-building (Hall and Taylor 1996: 950). Unlike rational choice theory, which emphasises *actor* properties in network analysis, it makes some provision for incorporating structural dimensions, and

therefore offers “a *potential* bridge between the currently separate literatures on networks and rational choice” (Rhodes and Marsh 1992: 19, original emphasis). Further, it is good at accounting for behaviour in competitive, legislative and strategic settings (Hall and Taylor 1996: 953), and although OMC is not itself a legal setting, as has been hinted already, it is not as far removed from legislative processes in practice as the OMC archetype would imply.

Nevertheless, rational choice institutionalism faces ongoing challenges, which even firm advocates (such as Snidal 2002) are prepared to concede. Key weaknesses include its limited capacity to explain interests and preferences, deal with change, incorporate normative concerns, and a tendency to shy away from empiricism (Snidal 2002: 74, Peters 2005: 67-8). First, it is claimed that the theory’s reductionist assumptions (e.g. functionalism, utilitarianism, instrumentalism) provide a “thin theory of human rationality” (Hall and Taylor 1996: 951), making it poorly-equipped to capture the full range of motivations influencing human behaviour (March and Olsen 1984: 735-8). By assuming institutional history is not important and behaviour can be easily changed by rules (Peters 2005: 51), the thrust of this perspective emphasises strategic intra-temporal learning dimensions whilst largely ignoring inter-temporal learning (though this is changing according to Peters, *ibid.*: 49). Indeed, “most formal rational choice models are partial because they assume preferences and a decision making scheme and, as such, tend to ignore crucial questions about the origins of both” (Marsh and Smith 2001: 533). Related to this are issues of incorporating change (touched on above) and a lack of attention to normative considerations beyond utilitarianism.

Finally, there are the perennial claims that rational choice’s “need to create abstractions...removes much of the detail that defines life in an institution” (Peters 2005: 68), and further, that a preoccupation with theorising and producing abstract models has led to “little direct confrontation of theory and evidence” (Peters 2005: 68, Green and Shapiro 1994).

3.7.3 *Sociological institutionalism and EU governance*

Empirical applications of sociological institutionalism to European governance have (unsurprisingly) been more structure-oriented, focusing on the role of institutions in shaping EU identities and preferences (Christiansen *et al.* 1999, Martens 2006, Joergensen 1997), cultural feedback, and the homogenising potential of supranational or global norms across countries (Finnemore 1996). Research has been conducted into constitutionalism (Wiener 2006); norms of 'European citizenship' (Wiener 1998, Checkel 1999); the socialising impacts of EU institutions (Checkel 2005) among Member States (Lewis 2005), as well as among Commission officials (Hooghe 2005); and the construction of institutional interests associated with EU enlargement (Fierke and Wiener 1999).

3.7.4 *Sociological institutionalism: strengths and weaknesses*

Sociological institutionalism offers analytical value-added by incorporating elements of the social process that rational choice traditionally excludes, such as preference and identity formation (Jupille and Caporaso 1999: 432-3, Checkel 1999: 545), historical and cultural contextual conditions (Finnemore 1996: 327), the capacity of institutions to provide 'symbolic guidance' (Jachtenfuchs 1995: 116), and processes of normative learning associated with socialisation (Checkel 2001: 19). To expand the latter point,

"Dynamics of social learning, socialisation, routinisation and normative diffusion, where fundamental agent properties change *during* interaction, are not adequately captured by strategic exchange or other models adhering to strict forms of methodological individualism [and therefore] need to be supplemented by a more sociological understanding that stresses the interaction context through which interests and identities are formed" (*ibid.*, original emphasis).

As a result, the sociological approach is better at accounting for – or at least incorporating – inter- *and* intra-temporal change because it emphasises the role of existing institutional settings in the creation of new ones (Hall and Taylor 1996: 953).

A general critique of institutionalism as a family of theories, which sociological institutionalists are perhaps more guilty of than their rational choice counterparts, is that

the approach tends to “emphasize structure at the expense of agency” (Finnemore 1996: 342). Furthermore, application of the sociological approach, “has led to a rich collection of descriptive analyses of events but with little theoretical generalization” (Aspinwall and Schneider 2000: 24). It has also been criticised for missing the potential for “clash of power” and coercive processes sometimes associated with reform and change (Hall and Taylor 1996: 954, Finnemore 1996: 343). In these respects, rational choice institutionalism provides a helpful antidote by going some way towards redressing the structure-agency balance, offering greater scope for theoretical generalisation, and allowing power relations to be taken into account.

Before going on to further examine the practical implications of applying a dual institutional framework to the Open Method, it is acknowledged that the decision to use a *multiple* theoretical approach comes at the potential expense of a degree of parsimony (an advantage often associated with a single theoretical approach). However, as discussed already (in Section 3.3.2), as the intention of this study is to draw on a breadth of variables and methodological tools in order to achieve a realistic picture of how OMC operates in the environment sector, the sacrifice of an element of parsimony is felt to be worthwhile given the opportunity it presents the researcher to capture a fuller (albeit more complex) account of reality. The philosophical challenges associated with this dual approach (and how they can be overcome) are addressed more specifically in Section 4.3.

3.8 EXPLORING OMC THROUGH A NEW INSTITUTIONALIST LENS

Having discussed the potential complementarity of the two institutionalisms in principle and explored how they have been applied to EU governance in practice, attention shifts to the leverage offered by these theories in analysing OMC. The following sub-sections demonstrate how the two perspectives create different interpretations of Zeitlin *et al.*’s four OMC assessment criteria, introduced in Chapter 1, which together create two parallel analytical frameworks, each discussed below.

3.8.1 Rational choice institutionalism and OMC

Taking a closer look at Zeitlin *et al.*'s (2005) OMC assessment criteria, it is argued that a rational choice institutionalist interpretation of the first criterion – i.e. '*substantive* change' – can be allied with Ostrom's 'constitutional-choice rules', to mean institutional change in the form of law and policy outcomes. Exploring this dimension, gives a strong indication of the formal legal and institutional constraints and opportunities (at multiple levels), which serve to shape actor behaviour.

The second criterion, i.e. '*procedural* change', on the other hand corresponds to (both) 'collective-choice' and 'operational' rules, that is, governance procedures and policymaking processes, as well as daily network management practices and resource allocation. The focus on procedural dimensions is important because, in line with Ostrom's horizontal approach, it allows a closer examination of institutional change at the network level (to a degree a response to constitutional/substantive changes). To focus the analysis on a single level (in this case IMPEL and the ECCP), Ostrom offers a classification of seven types of *interactive* rules (1986: 19, 2005: 187-210):

- 1) *Position* rules: determining who holds which position;
- 2) *Boundary* rules: specifying how participants may enter/leave positions;
- 3) *Choice* rules: stating how actions are assigned to positions;
- 4) *Aggregation* rules: assigning individuals roles in decision-making;
- 5) *Information* rules: authorising certain channels of communication/language;
- 6) *Payoff* rules: designating how benefits and costs will be distributed to participants;
and
- 7) *Scope* rules: defining which outcomes may be affected (and what are the costs/inducements associated with these outcomes).

In combination, these rules act as a heuristic to help analyse how rules restructure situations, which subsequently impacts on outcomes (Ostrom 1986: 22).

Moving to Zeitlin *et al.*'s third assessment criterion – i.e. *participation* – rational choice institutionalism typically understands participatory structures as reflecting the (often

asymmetrical) distribution of power and resources. The motivations for individuals to participate in institutions, such as voluntary networks, are therefore expected to be instrumental, with actors participating in cooperative institutional arrangements when they perceive they have something to gain. As Ostrom explains, “[v]iewing rules as directly affecting the *structure* of a situation, rather than as directly producing behavior, is a subtle but extremely important distinction” (Ostrom 1986: 7).

Finally, the *learning* criterion is defined as being a rational process that is both instrumental and strategic (Hall 1993, Sabatier 1998). It is assumed to be ‘thin’ because it takes place within the existing worldview (and preference structures) of the participants involved. It therefore gravitates towards the more superficial, ‘first order’ level defined by Hall (1993, see Chapter 1), confining actors to making adjustments to the way existing policy instruments are used. Learning via networking, therefore, does not change actors’ preferences, but improves their capacity to negotiate effectively in the next round of interaction: “[t]he skill that an actor has to utilize in bargaining is a product of their innate skill and the learning process through which they go” (Marsh and Smith 2000: 9).

3.8.2 Sociological institutionalism and OMC

Taking a sociological institutionalist view, however, puts a different slant on how the four OMC assessment criteria may be interpreted and applied. For instance, *substantive change* refers not only to formal institutions, such as law, policy and rules, but equally to “broad changes in policy thinking” (Zeitlin *et al.* 2005: 450). This creates the analytical potential to incorporate norms, identity, culture, as well as changes in interests and underlying preferences.

Procedural change in governance and policymaking, meanwhile, extends beyond the tangible operational rules and practices that are of interest to rationalists, to include softer procedural norms associated with “administrative reorganisation and institutional capacity building” (Zeitlin *et al.* 2005: 450). One such example is the process of legitimisation, which can occur through professionalization (Powell and DiMaggio 1991: 70); e.g., in the case of IMPEL, one might expect network activities and interactions

among national and regional regulators to generate common interpretations of problems and appropriate methods of tackling them. Procedural social norms, such as ‘best practice’, can also bring about change by legitimising ‘successful’ national practices and promoting their application to other domestic contexts, which is known as *isomorphism* (DiMaggio and Powell 1991). It does not, however, imply homogeneity, and “it does not create identical behavioural outcomes” (Finnemore 1996: 342). Nor does it presume that cultural authority is always hegemonic; indeed, “deep tensions and contradictions” can limit the powers of one social norm to dominate over another (*ibid.*: 341), as exemplified by the ongoing tensions between economic (growth), social (equality/justice) and environmental goals pervading numerous EU policy areas.

Further, a sociological view would see *participation* as influenced by institutional structure (and structure as influenced by participation). This has to some extent been confirmed by the findings of other studies (Radaelli 2003: 38), but to what degree does it relate to IMPEL and the ECCP? Extrapolating from the individual to the state level, “participation in international institutions constructs or constitutes what states want or, in the case of European Union participation, what they *are*” (Finnemore 1996: 338, emphasis added).

In a sociological sense, understandings of *learning* are broader in scope, extending beyond the informational, instrumental and strategic, to include deep or ‘thick’ dimensions of change, derived from processes such as: context-sensitive lesson-drawing (Radaelli 2003), experiential learning (March and Olsen 2005: 745), cultural feedback (Finnemore 1996), legitimisation (Powell and DiMaggio 1991, Meyer and Rowan 1977), and mutual constitution via socialisation and structuration (Giddens 1984); at the extreme, paradigm change may even be achieved (Kuhn 1970). This opens the possibility that learning may take the form of preference change because in sociological realms, preferences are not always identifiable *ex ante*, but are themselves subject to learning (Hall and Taylor 1996: 950-1): “constructing interests...comes about not only or primarily through strategic choice but also through dynamic processes of persuasion or social learning” (Jupille *et al.* 2003: 15).

The potential linkages between participation and learning are also evident – as demonstrated by findings from research on the European Employment Strategy: “participation in OMC processes can contribute not merely to advancing domestic actors’ pre-existing interests and goals, but also to subtle shifts in their preferences and identities” (Zeitlin *et al.* 2005: 482).

In summary, whilst rational choice institutionalism perceives processes, such as OMC, as a means to allow actors to achieve their exogenously defined preferences, the sociological approach sees the potential for them to be transformational. Whether or not this potential is realised is explored in the empirical chapters.

3.9 ANALYTICAL FRAMEWORK: SYNTHESIS AND SUMMARY

The proposed analytical framework builds upon two layers: the conceptual and theoretical. The foundation is supplied at the conceptual level, which "identifies a set of variables and relationships among them that presumably account for a set of phenomena" (Sabatier 1999: 5-6, Ostrom 1999). This thesis understands the OMC *conceptually* as a policy network and informal institution that encompasses routines, rules and procedures, but *also* norms and identity.

Moving from the conceptual to the theoretical level, there is a need for "a denser and more logically coherent set of relationships" (Sabatier 1999: 6) to be considered in order for networks to take on a less metaphorical and more explanatory role (Dowding 1995, 2000). To this aim, the study adopts a 'multiple-lens strategy' (Sabatier 1999: 6) to investigate whether using both rational choice *and* sociological institutionalist perspectives gives a more complete picture of the empirical landscape in the environment sector. The two approaches represent two ends of a spectrum, and vary, "according to the extent to which institutions are internalized by agents and therefore the extent to which they are susceptible to conscious manipulation" (Aspinwall and Schneider 2000: 4, 2001: 2). As outlined, this has implications for how Zeitlin *et al.*'s OMC assessment criteria are interpreted.

According to the rational choice perspective, preferences are exogenous to the policy process, implying that participation is interest-led and learning is predominantly instrumental. This suggests learning will at best be reflexive and thin because Member States are likely to be bound by their original perceptions of a problem and its solutions, and only likely to shift in terms of their strategic stance. By contrast, in more sociological accounts, participation is driven by a logic of appropriateness, where preferences themselves are subject to change and learning *during* the policy process. This creates the opportunity for innovation at a deeper level – through heuristic, normative and even 'thick' learning.

Interpretations of participation will also differ. Rational choice institutionalists explain that institutional structure is shaped by interests, which dictate who is included in a process and who isn't (based on resources and power distribution). Sociological institutionalists, by comparison, are more interested in the cultural factors which allowed social actors to obtain 'privileged status' – and might be keen to explore why this is the case in some countries, but not others.

As the above suggests, it is anticipated that a dual approach will facilitate inter-theoretical dialogue, and shed light on which pieces of the empirical puzzle each theory is better at accounting for.

The next chapter explores how the multi-theoretical framework proposed above can be empirically *applied* to OMC-like processes in the environment sector.

4 RESEARCH STRATEGY AND METHODS

4.1 INTRODUCTION

Meta-theory and methodology provide a researcher with the necessary guidance to operationalise a theoretical framework. Collectively, they represent the “architectural scaffolding upon and operational directives according to which inquiry unfolds” (Jupille 2006: 209). In the present study, new institutionalist theories are used to investigate the extent to which OMC facilitates participation and learning; however, it is meta-theory and methodology that inform the choice of research design and data collection methods so that theory can be empirically applied. This chapter seeks to outline the means through which the project’s research objectives will be achieved. To begin, the philosophical foundations underpinning the two institutionalist theoretic approaches are described. While it is acknowledged that they have different ontological and epistemological origins, and thus point in different directions in terms of the focal variables they emphasise, and the methodology they imply, it is argued that although challenging, this can be to the researcher’s advantage because it allows for a richer data set to be captured than would otherwise be possible under a mono-theoretic framework. It is then demonstrated how and why a (multiple) case study approach provides the basis for the research design. Next, the methodology is introduced, i.e. data of interest are identified and methods for their collection are proposed. Finally, the research validity of the project is justified, and an explanation is given of how ethical principles have been adhered to.

4.2 PHILOSOPHICAL FOUNDATIONS

To begin, the chapter briefly explores the role of meta-theory in framing the philosophical orientation of this study. Meta-theory relates to the philosophical foundations underlying a social scientist’s perceptions of the social world, and affects the decisions they make with respect to research design and methods (Marsh and Furlong 2002: 17). It incorporates two layers – ontology and epistemology, which are next addressed in turn.

4.2.1 *Ontology*

Ontology concerns the nature of reality as a theory of ‘being’ (Hollis 2002: 8). It relates to what a researcher believes to be ‘real’, in other words, “what exists, what it looks like, what units make it up and how these units interact with each other” (Blaikie 1993: 6). Two positions can be taken on this issue: foundationalist or anti-foundationalist. The former argues the world exists “independent of our knowledge of it,” and that “there are essential differences of ‘being’ that provide the foundations upon which social life is built” (Marsh and Furlong 2002: 18). Anti-foundationalists believe that the social environment is central to our understanding of reality, and sees our understandings of the social world as being constructed *by* that world (*ibid.*).

4.2.2 *Epistemology*

Epistemology is a theory of ‘knowledge’ (Hollis 2003: 8), and represents a framework for distinguishing between knowledge and belief (i.e. what is knowledge and how can it be justified as such?) (Blaikie 1993: 7). One of the most common distinctions in epistemological positions is made between positivist, interpretist (or hermeneutic), and critical realist traditions (Marsh and Smith 2000: 10).

Positivists associate themselves with a foundationalist ontology and are inspired by the natural scientific approach. They see social science research as objective, value-free, and believe that reality can be explained through empirical observation (Weber 1904, 1949). In terms of research aims, positivists emphasise causal relationships, explanatory approaches, and the development of (often quantitative) predictive models and social scientific laws, applicable across time and space (Marsh and Furlong 2002: 19-20, Marsh and Smith 2001: 529).

Interpretists (or interpretivists) perceive the world as being socially constructed and subscribe to an anti-foundational ontology. They believe that interpreting the meaning of behaviour is essentially a subjective exercise, and that causal relationships are difficult (if not impossible) to establish because non-observable structures are likely to underlie social behaviour and decision-making (e.g. patriarchy or capitalism). Instead, they seek to

understand the meanings which actors themselves ascribe to their actions (Marsh and Furlong 2002: 20). Their approach to research is primarily inductive (in contrast to the deductive tendencies of positivists), qualitative, and descriptive or exploratory.

Realists lie somewhere between the two camps. Ontologically, they are foundationalists like positivists, who believe that the world exists independent of our knowledge of it, but epistemologically, they are more closely aligned with interpretists because they argue that social structures cannot be observed directly. This “dichotomy between reality and appearance” has implications for conducting research (Marsh and Furlong 2002: 30). While realists are prepared to make causal statements, they are aware of the limitations to their ability to validate these claims through observation (Marsh and Smith 2000: 10-11). They acknowledge that the best we can expect is “inference to the best explanation” (Hollis and Smith 1990: 207). Nevertheless, the basic assumption – one adhered to by this thesis – is that by at least trying to integrate these ‘invisible structures’ in theoretical frameworks, we have a better shot at understanding the social reality than if we consciously exclude them.

Therefore, the epistemological position taken by this thesis in exploring EU networked governance is that although establishing causal relationships may be possible in principle, it is likely to be difficult in reality, and that any explanation must acknowledge that “institutions, like networks, the cultures within networks and the resources and attitudes of network members are all, to an extent, socially or discursively constructed” (Marsh and Smith 2000: 10-11).

4.3 METATHEORY AND THE NEW INSTITUTIONALISM

As the rationale for theory selection (and the consequences for research design), have already been explored in Chapter 3, the implications of using a *dual* new institutional theoretical approach – with *opposing* epistemological foundations – is focused on next, in terms of the philosophical challenges it poses, and how they can be overcome empirically.

Certainly, there is little doubt that the “divide separating rationalist and constructivist institutionalisms is real” (Jupille *et al.* 2003: 15). After all, the rational choice version is

founded on a positivist epistemological framework, and makes the primary assumption that actors are self-serving, utility-optimising and strategic. However, sociological institutionalists, who generally (but not always) subscribe to an interpretivist epistemology, understand agents as norm-driven, and believe they act in ways appropriate to their surrounding social environment. These theories are not only founded on different worldviews, but their contrasting perspectives also mean they perceive and determine the potential focal variables for a study differently, which also has implications for research design (as detailed in Chapter 3).

Nevertheless, despite the reservations of Hay and Wincott (1998: 953) that rational choice and sociological positions represent “an intractable divide between two contending and incompatible approaches to institutional analysis”, Jupille *et al.* (2003: 15-17) are optimistic that the division is to some extent surmountable. Moreover, they *advocate* the *integration* of understandings of institutions and institutional research, and explain that while philosophical objections to comparing and evaluating theories are valid if one’s focus begins and ends at the abstract ontological and epistemological level, from a “problem-driven, empirically oriented perspective, such divides rapidly begin to melt away” (*ibid.*: 16; Checkel 2001: 20). This study conforms to this viewpoint, and takes the position that cross-theoretical dialogue is desirable and achievable through “empirical testing of middle-range propositions” (Jupille *et al.* 2003: 17). The thesis therefore uses new institutionalism as a heuristic device to steer the empirical investigation (Checkel 1999: 545), highlighting the sequencing, timing and contexts under which one theory presents greater explanatory leverage (Hay 2002: 47).

4.4 A CASE STUDY APPROACH

A case study method is presented as the best means of carrying out the type of empirical exploration alluded to above. This can be defined as “an in-depth study of a single unit (a relatively bounded phenomenon) where the scholar’s aim is to elucidate features of a larger class of similar phenomena” (Gerring 2004: 341). The approach is believed to offer a “distinct advantage” over other methods “when a ‘how’ or ‘why’ question is being asked about a contemporary set of events” (Yin 2003: 9). This is relevant to the present

study because it aims to better understand *how* OMC operates in the environment sector. The approach is also useful because its “proximity to reality” helps to set the process within its real-life context (Flyvbjerg 2006: 236), which is particularly important for interpretivists, and for sociological institutionalism. Case studies can take three forms; they can be descriptive, exploratory or explanatory (*ibid.*: 3). In light of the limited academic research on environmental OMCs to date, this study takes an *exploratory* approach (Martens 2006, Eckstein 1975). However, to an extent, it also incorporates descriptive and explanatory elements, which is one of the benefits made possible by using a multi-theoretical framework underpinned by critical realism. On the one hand, a central aim is to foster greater *understanding* about how OMC works in practice, which entails exploration and ‘thick’ description (Geertz 1993), manifesting itself in narratives encompassing “the complexities and contradictions of real life” (Flyvbjerg 2006: 237). On the other, some attempt is made to incorporate explanatory elements and make analytic generalisations where possible (Yin 2003: 3, 10). The bottom line, however, is that exploration is key, “sometimes we simply have to keep our eyes open and look carefully at individual cases—not in the hope of proving anything, but rather in the hope of learning something” (Eysenck 1976: 9).

4.4.1 *A multiple case study research design*

The research design is based on multiple case studies. Two studies were chosen to strike a balance between the desire to explore as many instances of OMC as possible on the one hand, without compromising descriptive richness and depth on the other. Three cases were thought to go beyond the scope of the study, but two were preferred over one because from an interpretivist perspective this allows OMC to be examined in different contextual environments, and from a positivist position, “the analytical benefits from having two (or more) cases may be substantial,” not least because “evidence from multiple cases is often considered more compelling, and the overall study is therefore regarded as being more robust” (Yin 2003: 53, 46).

A ‘most similar’ comparative approach was not thought to be easily operational or even desirable in this research project because the primary rationale for including two cases

rather than one was to achieve multiple perspectives and understandings, rather than to strive for a strictly experimental comparative approach, which would be problematic anyway given the diversity inherent in OMC processes. That is not to say that identifying similarities and differences across contexts is not of interest (Sørensen and Torfing 2008: 7), but rather that multiple perspectives of the *same* events are also considered important, and therefore, comparisons across contexts have been conducted with caution.

4.4.2 *Strategy for case study selection*

Following the exploratory case study rationale, the method for case study selection was based on an *information-oriented* approach (Flyvbjerg 2006: 230). This was partly because following the positivist tradition, i.e. sampling on the independent variable, would have run contrary to the interpretist perspective, which rejects the very notion of an ‘independent’ variable. Selecting ‘typical’ or representative cases (Peters 1998) was also viewed as problematic due to the diversity of OMCs meaning that “a sample of one or a sample of just a few is unlikely to be a strong representation of others” (Stake 1995: 4). However, Stake has helpfully pointed out that “[c]ase study research is not sampling research”, but rather, “[t]he first criterion should be to maximize what we can *learn*” (*ibid.*, emphasis added). To serve this end, the strategy used to select cases strives for ‘maximum variation’, and is identified by Flyvbjerg (2006: 230) as an *information-oriented* method of selection rather than a random one. Thus the purpose is, “[t]o obtain information about the significance of various circumstances for case process and outcome (e.g. ... cases that are very different on one dimension: size, form of organization, location, budget)” (*ibid.*).

So to take this pragmatic, information-based approach, what dimensions do the literature suggest will give the greatest potential for capturing the range of variation in how Open Methods are thought to operate? Given that institutional and preference change occurs over time, OMC *maturity* is a natural primary consideration. The need for well-established cases makes sense from a realist perspective, as it relates to the availability of time series data over which policy, legislative, institutional and preference change can be

tracked. Downs (1972), Sabatier (1991: 149) and Würzel (2001: 51) all advocate longitudinal analysis in policy research, and Sabatier and Jenkins-Smith (1999) propose that studies of learning should span a decade or more. Selecting on the basis of OMC maturity therefore provides a greater chance that developments (in participation, learning, institutions, identities and policy outcomes) can be detected over time.

Second, the literature on environmental OMCs suggests that the *scope* of the process, with respect to the extent to which it incorporates sectoral breadth (i.e. is sub-sectoral, sectoral or cross-sectoral) and spans several policy stages (i.e. encompassing agenda-setting, policy formulation, decision-making and implementation) can also impact on institutional change (Homeyer 2007: 59). It is suggested that early stages in the process, i.e. agenda-setting, policy formulation and decision-making may be more prone to politicisation, which “can constrain the opportunities for...learning”, while latter stages (implementation and monitoring) are potentially less vulnerable on the grounds of their more technical nature (*ibid.*: 59). This may be especially true for the environment sector, with its potentially greater need for scientific experts to carry out public policy.

The criteria of maturity and policy scope (breadth and stages) have therefore been taken into consideration when selecting the two focal case studies to maximise the chance of learning about different kinds of OMCs (to the extent that they can be classified), in different contexts. Therefore, from the list of examples of environmental OMC-like processes identified in Chapter 2, and in consultation with policy experts at the Institute for European Environmental Policy (IEEP) in Brussels in 2008 (see Acknowledgements), one mature and cross-sectoral OMC was chosen, namely, the European Climate Change Programme (ECCP), alongside another well-established, but sub-sectoral one, namely, the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL). The intention was to enable the two studies to cover a range of different policy stages and breadths, and investigate Homeyer’s suggestion that processes with a wider policy scope may be more open to politicisation, and thus encounter greater barriers to learning.

4.4.3 A multiple, embedded case study design

In addition, an embedded case study design was used because it allowed holistic aspects of the two cases to be examined, while at the same time enabling a finer grain analysis of individual components. As Yin (2003: 46) explains, paying specific attention to subunits “can often add significant opportunities for extensive analysis, enhancing the insights into the...case”. The two cases (and sub-units) are introduced briefly below (and explored in more detail in Chapters 5-8).

The IMPEL Network was established in 1992 to support the implementation and enforcement of environmental law. As such, it is one of the most mature OMC-type processes in the environment sector, with a well-established (and remarkably flat) institutional structure. Yet very little academic output has been published on this rather insular network (the notable exceptions being Martens 2006; 2008). Network members include National Coordinators (usually experts from regulatory agencies) and High Level Representatives (generally members of environment ministries) from EU, accession, candidate and EEA countries. The IMPEL Network’s original focus was narrow, *implementation-oriented* and *sub-sectoral*, relating mainly to industrial pollution control, although it has since extended its remit to cover a total of three key areas, around which working groups or ‘clusters’ have been organised, i.e.:

- Cluster 1: Improving permitting, inspection and enforcement,
- Cluster 2 (TFS): Transfrontier Shipment of Waste, and
- Cluster 3: Better Regulation.

Cluster 1 was chosen as the sub-unit of analysis for the IMPEL case study due to the fact that the working group has been an institutional element of the Network’s activities from the outset (thus giving greater longitudinal scope), however, examples are also drawn from Clusters 2 and 3, where appropriate.

The second case study is the European Climate Change Programme (ECCP), which was a Commission-led initiative launched in 2000, and is arguably the most mature *cross-sectoral* environmental OMC network structure still in operation (at least, nominally; the

Cardiff Process is slightly older, but was relatively short-lived). The ECCP was also organised into Working Groups (WGs), and was unified by its commitment towards achieving Kyoto emissions reduction targets. It was initially managed and coordinated by a Steering Committee, comprised of Commission representatives from the Directorates participating in the Programme. In some respects, it can be described as a 'meta'-OMC because it has incorporated several sectoral and sub-sectoral review processes within its broad umbrella structure (e.g. on flexible mechanisms/emissions trading, transport, industry, agriculture, research, energy demand and supply). The Programme as a whole has spanned the entire policy process, from agenda-setting and policy formulation to implementation – albeit in a somewhat piecemeal fashion. Some individual working groups have focused on the early stages of the policy process (e.g. adaptation and agriculture), while others have seen their role grow from one of policy formulation through to policy implementation, though this has generally involved these networks being taken over by formal legislative processes (e.g. the working group on flexible mechanisms/emissions trading led to the Emissions Trading Directive, and was eventually subsumed in comitology).

Once again, on account of the breadth and complexity of the ECCP process, an embedded sub-unit of analysis was chosen, i.e. the Working Group on flexible mechanisms/emissions trading. This is because it has been perceived to be one of the leading – and most innovative – ECCP groups, and findings from other research suggests there may be lessons to learn: "important learning and legitimization took place in the European Climate Change Programme (ECCP) Working Group 1 on flexible mechanisms" (Skjærseth and Wettstad 2008: 9). Focusing on the ECCP also provides the opportunity to respond to Stephenson's (2010: 711) assertion that "more detailed empirical analysis is required of the role of high-level Commission actors in providing political commitment, and identifying policy-specific solutions (often administrative in nature), which together provide an 'implementation push'".

The overall case study design is illustrated in Figure 4.1.

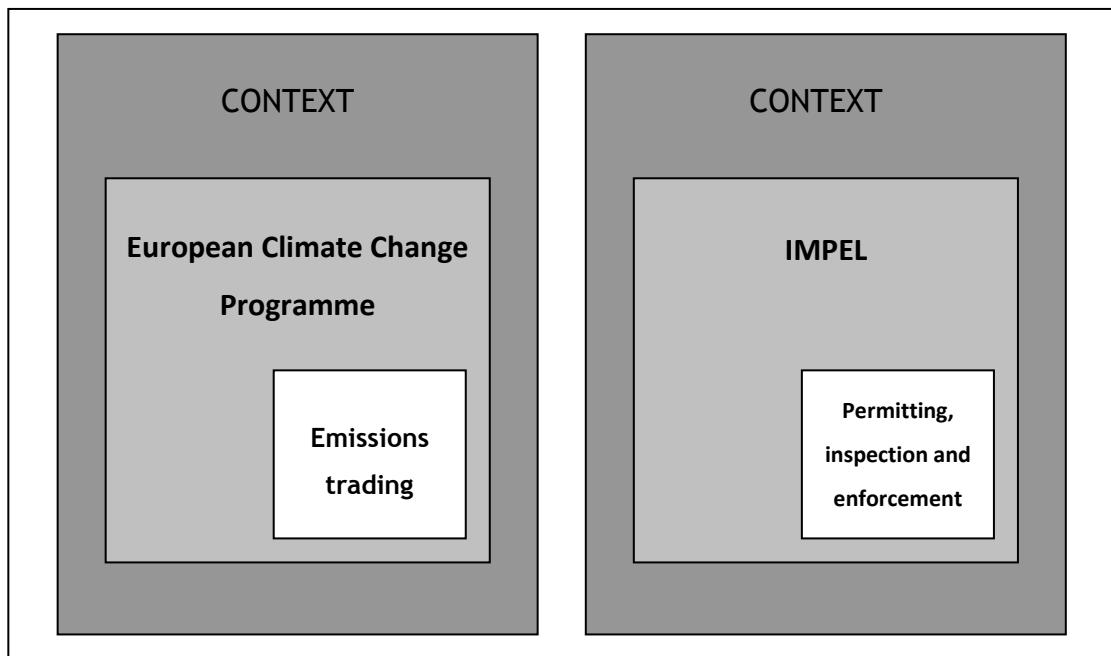


Figure 4.1: Case study design

Source: Adapted from Yin 2003: 40

4.5 METHODOLOGY

The methodology adopted to achieve the aims and objectives of this thesis (set out in Chapter 1) is influenced by the critical realist philosophical position outlined above. It has implications for the research methods employed, and the methodological approach taken, as explored below.

4.5.1 *Research methods*

As a critical realist, employing a dual theoretical framework as a heuristic device, the case is made for taking a *qualitative* approach because the primary aim is to provide explanatory power and identify patterns of association (rather than establish causal relationships between the variables or make predictions). Policy outcomes are of central interest to rational choice institutionalists, and are understood to be visible and quantifiable, e.g. taking the form of law, policy, organisational structure and procedures. However, from a critical realist perspective, it may be the case that some (interesting)

changes occur in a variety of variables that are *unlikely* to be observable, such as policy concepts and ideas, and institutional procedures and norms (Büchs 2003: 32). This is especially relevant when applying sociological institutionalism, which incorporates non-tangible elements, such as ideals, values and culture, identity and preference change, which “would be difficult to verify using quantitative tools alone, as they are notoriously poor at capturing human cognitions and understandings” (Twena 2006: 5).

4.5.2 *Methodological approach*

The corresponding data requirements for this study have therefore involved a mixed methods approach to capture the necessary qualitative information, i.e. primary and secondary data attained from: documentary analysis, elite interviewing and participant observation. Using a multi-method approach has helped to cover the different angles taken by both theoretical standpoints (the issue of triangulation is addressed separately below).

Documentary analysis

Primary documents provided a more ‘official’ source of data from which to analyse the OMC in operation, and was particularly important for the rational choice institutionalist analysis, which placed greater emphasis on *formal* policy *outcomes* from OMC than *informal processes*. Examples of such sources included: legislative proceedings and outcomes (published in the Official Journal, on the *Europa* website, and in national legal databases), proposals and policies (e.g. White Papers, Green Papers, Communications between EU institutions, Council Conclusions, Parliamentary Recommendations), government reports and records (including the minutes and conclusions of meetings), press releases, position statements, and IMPEL reports (and other resources from the Network’s website).

In addition, *secondary* documents, such as academic publications, policy research reports, media outputs, and other grey material were useful, not only for supplementing primary data, but also for helping to *interpret* them, and better understand their significance within their wider (political, social, historical, etc.) *context*. For this reason, it provided a

useful input to the sociological analysis; however, it also served rational choice purposes well as the perspective generally lends itself to preferring large data sets from which to draw conclusions and make generalisations.

Elite interviews

To fill in the inevitable (and often most important) gaps left by the documentary analysis, semi-structured elite interviews were conducted as a means of trying to uncover the motivations and perceptions of participants in the two OMC cases under investigation (Flick 2002). ‘Elites’ are identified as “a group of individuals, who hold, or have held, a privileged position in society and...are likely to have had more influence on political outcomes” (Richards 2001: 199). Elite interviews therefore offer the benefit of supplying, “immense amounts of information that could not be gleaned from official published documents or contemporary media accounts” (Lilleker 2003: 208). This data was vital to understanding how and *why* certain changes took place, partly because many of the changes that occurred resulted from events that took place behind closed doors, but more importantly, because key dimensions of cognitive reasoning and social learning are that they are non-observable and reflexive experiences, and therefore gaining insight into the views and unique experiences of actors involved in these processes represents an invaluable resource, in particular, with regards to conducting the sociological institutionalist analysis, which places an emphasis on values, identities and preference change.

A semi-structured interview format was thought to be desirable to provide a degree of structure, but also offer sufficient leeway for follow-up questions to be asked when discussions revealed a theme of (possibly unanticipated) importance. In elite interviews, it is expected that the balance of knowledge will favour the respondent, largely because they are chosen precisely on account of their expert knowledge, privileged position and/or insider status (Burnham *et al.* 2004: 205). Using a semi-structured interview method, therefore, allowed a list of specific topics for discussion to be prepared in advance (to provide focus), but gave scope for questions to be tailored to individual

interviewees to best capture their unique perspectives (see Appendix A for the list of questions which formed the basis for the interviews in the two case studies).

In total, elite interviews were conducted with 44 key participants for the two case studies. Interviewees included: Commission officials (including a Deputy Director-General, Deputies/Heads of Unit, Principal Administrators); national representatives from over 15 EU Member States (e.g. Deputy and Director Generals, Chief Inspectors, legal and technical experts), industry and NGOs representatives (e.g. Directors, policy advisors and union officials), MEPs and a policy expert. Respondents were selected from the (limited) pool of participants who were involved in these rather closed environmental networks, with the aim (where possible) of getting a rough spread of representation over different time spans, and across EU institutions, Member States, and the private and voluntary sectors (a complete list of interviewees can be found in Appendix B). A deliberate attempt was made to include at least one participant who was *not* directly involved with the network, but who could shed expert light on the policy context and share their perspective as an 'outsider'. Interviewees were identified from WG meeting minutes and records, and by using a (limited) degree of 'snowballing' (Burnham *et al.* 2004: 207).

Fieldwork took place mainly in Brussels, but also in other EU cities, between Autumn 2008 and Summer 2009. Most of the interviews were conducted face-to-face, and if this was not possible, over the telephone. Interview protocol involved giving interviewees an outline of research objectives, and an explanation of the purpose of the interview, in advance. Interviews were recorded (if prior consent was given), and transcripts were produced to provide (confidential) documentary evidence of what was said. A brief, reflexive, written account of key points of interest emerging from the conversation was made immediately prior to the interview. All direct quotes were subject to authorisation, but most of the data has been incorporated into the empirical chapters using an anonymous referencing system (attributing comments to specific – numbered – interviewees, and including references to the page number the comment was derived from in the transcript, in order to ensure research validity, transferability and dependability – discussed in more detail below). Finally, a data validation exercise was

conducted, whereby results chapters were made available to some participants for feedback, comments and validation.

Participant observation

A more ethnographic approach was also required to satisfy the need to understand the cultural setting within which social interaction takes place, in line with the methodological demands of sociological institutionalism. This was achieved by observing participants directly, in the context of the social network environment under study (Corbetta 2003: 135). As Flyvbjerg (2006: 236) states:

“[if] one assumes that research, like other learning processes, can be described by the phenomenology for human learning, it then becomes clear that the most advanced form of understanding is achieved when researchers place themselves within the context being studied. Only in this way can researchers understand the viewpoints and the behavior, which characterizes social actors”.

I therefore attended two IMPEL meetings and one conference (IMPEL Cluster 1 meeting, in Limassol, Cyprus; IMPEL General Assembly, in Clermont-Ferrand, France; and the IMPEL conference, Romania). These occasions gave me valuable opportunities to ask network participants questions on a more informal basis, to see how the groups interacted and operated, and to receive feedback on my work (I presented preliminary results at the General Assembly and Conference). Due to the fact that the ECCP’s WGs on emissions trading were not longer running, it was unfortunately not possible to take the same approach for this case study.

4.6 RESEARCH VALIDITY

4.6.1 Triangulation

In order to safeguard research validity, primary and secondary documentary analyses were supplemented with primary qualitative analysis in the form of elite interviews and participant observation. This adheres to the principle of triangulation, which “entails

using more than one method or source of data in the study of social phenomena” (Bryman 2004: 275). As Zeitlin warns, “statements about the sources of policy change in...official documents cannot be taken at face value but must be carefully contextualized and triangulated with other evidence” (2005: 26-7). Further, Mickwitz (2003: 429) suggests, “(f)our types of triangulations can be distinguished: multiple methods; multiple data sources within one method; multiple analysts; and multiple theories”. Apart from there having been only one analyst (due to the solitary nature of the PhD enterprise), the study incorporates the remaining three elements: mixed methods and data sources have allowed findings from primary and secondary documentary analyses to be verified by outputs from semi-structured interviews and participant observation; and two theories have been applied.

4.6.2 Achieving research reliability and validity

Epistemological diversity also manifests itself in the diverging criteria used by researchers with different perspectives to evaluate the validity of a project. As a critical realist taking a multi-theoretical approach, this inevitably involves using a range of methods to capture the necessary spectrum of variables. Therefore, an effort has been made to satisfy the needs of a positivist as well as interpretivists evaluation criteria for research reliability and validity. Positivists are primarily concerned with internal and external reliability, related to questions such as: whether the study is carried out consistently and can be replicated, if it successfully reconciles empirical and theoretical dimensions and facilitates wider generalisations. Interpretivists, on the other hand, are less concerned with objectivity and generalisations (which they believe are problematic) and instead perceive trustworthiness and authenticity to be central to the ‘legitimacy’ of a research project. The way in which the present study has met these criteria is summarised in Table 4.1 below.

Table 4.1: Achieving research reliability and validity, trustworthiness and authenticity

| Evaluation criteria | Explanation | How evaluation criteria were met |
|--------------------------------------|---|---|
| <i>Positivist perspective</i> | | |
| 1. External reliability | Can study be replicated? | Systematic record of the research process was kept to allow a similar procedure to be carried out again |
| 2. Internal reliability | Is there inter-observer consistency? | Author was the only interviewer |
| 3. Internal validity | Do researcher's observations and theoretical ideas developed match? | Documentary analysis supplemented with elite interviews (including follow-up contact) and participant observation to help the researcher connect observations with theory |
| 4. External validity | Can findings be generalised? | Broad patterns are identified to enable wider generalisations to be made about OMC in general |
| <i>Interpretivist view</i> | | |
| 1. Trustworthiness | (comprised of four criteria): | |
| <i>a. Credibility</i> | Did researcher understand interpretations of respondents? | Respondent validation carried out at the end of the project |
| <i>b. Transferability</i> | Is research transferable? | Detailed records of the research process kept. |
| <i>c. Dependability</i> | Are methods reliable? | Transparency enables methods to be evaluated and repeated |
| <i>d. Confirmability</i> | Have personal values swayed results? | Researcher strove to be reflexive and aware of personal values, but acknowledges findings will be a reconstruction |
| 2. Authenticity | Wider impact of research? | Better understanding of how ECCP and IMPEL operate, interact with law, and foster participation and learning |

Source: Adapted from Twena 2006: 7 (and based on LeCompte and Goetz 1982, Lincoln and Guba 1985, Guba and Lincoln 1994, Bryman 2004: 273-6)

4.7 ETHICAL CONSIDERATIONS

Burnham *et al.* (2004: 253) present five basic ethical principles, which they argue should guide research: avoidance of harm, avoidance of deception, right to privacy, right to confidentiality, and consent. Echoing Twena (2006: 7-8), this study has respected these principles by:

- Informing potential participants about the nature of the research before they were invited to participate;
- Making participation voluntary;
- Respecting participants' right to privacy;
- Seeking consent before recordings of interviews were made;
- Protecting confidentiality by asking for consent before direct quotes were published;
- Providing participants with feedback and access to findings; and
- Inviting participants to take part in respondent validation exercises (for IMPEL).

4.8 SUMMARY AND CONCLUSIONS

In summary, this chapter has outlined the critical realist philosophical foundations underpinning this thesis, and (in combination with Chapter 3) explored the implications they have for: the application of theory, the nature of research design, and the methodological approach taken by the study. The epistemological challenges posed by taking a multi-theoretical approach are discussed, and a case is made for them to be reconciled by taking a problem-driven approach, and using new institutionalism as a *heuristic* device to steer the empirical investigation, which is the stand taken by this thesis. The intention is, therefore, to inform a dialogue between the two institutionalisms, rather than set up a competitive-testing 'mode of theoretical conversation' (Jupille *et al.*, 2003: 19).

With this goal in mind, a multiple case study research design has been derived, based on an exploratory approach (and using information-oriented selection criteria), in order to capture the maximum range of descriptions and explanations about how OMC works in

practice. Two cases were identified as suitable subjects for investigation, based on their maturity (allowing a longitudinal approach), but also their contrasting sectoral scopes – the European Climate Change Programme being a cross-sectoral (more politicised) institution, and the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) representing a mainly (technical) sub-sectoral network.

To operationalise this theoretical, analytical and methodological framework, mixed qualitative methods have been used to capture the full range of variables demanded by combining sociological and rational choice institutionalism. These have included documentary analysis (relevant to the rational choice school due to its: positivist leanings, belief that social variables are observable, and focus on policy outputs); elite interviews (well-suited to informing both theoretical analyses, but in particular, the sociological approach due to its emphasis on invisible social structures, such as values, identity and preference change, and creating the need to gather subjective interpretations of how actors and institutions interact); and also, participant observation (which applies mainly to sociological institutionalism because it stresses the importance of viewing actors within their institutional environments). Finally, an explanation has been given for how the thesis has ensured research validity (via triangulation, and by attending to specific evaluation criteria), and how ethical considerations have been addressed.

In the subsequent four chapters, attention turns to presenting the results and analysis for the IMPEL and ECCP case studies, in turn.

5 THE EU NETWORK FOR THE IMPLEMENTATION AND ENFORCEMENT OF ENVIRONMENTAL LAW

“We can have all the fine directives and regulations in Brussels that we like, but this requires effective legal and administrative mechanisms within Member States to deliver them.”

David McLean, UK Environment Minister
(Inaugural IMPEL meeting, Chester, 1992, Duncan 2000: 3)

5.1 INTRODUCTION

To set the scene for the multi-theoretically-informed analysis in Chapter 6, the function of this chapter is twofold: to present the evolution of IMPEL’s institutional architecture, and explore its credentials as an OMC policy network.

Accordingly, the remainder of this chapter is divided into two parts. The first offers a chronological overview of IMPEL’s anatomical development over its twenty-year history, charting its growth from an insular, 12-Member State network of environmental enforcers, to a more outward-looking, independent association of environmental authorities from over thirty countries, whose remit currently extends beyond implementation to encompass most of the regulatory cycle, including (albeit to a lesser degree) policy formulation. It details how its precursor, a European network of regulators, was established in 1992, and a partnership was forged with the Commission soon afterwards, leading to full membership in 1997. It then goes on to explain how a period of close collaboration was soon followed by a phase of flux and uncertainty, when growing tensions between IMPEL and the Commission eventually culminated in it seeking independence and securing legal status as a non-profit association under Belgian law in 2008.

The second section addresses IMPEL’s credentials as an OMC, that is, as measured against the criteria laid out by the European Council, namely: voluntarism; common objectives;

guidelines and indicators to promote best practice; and “peer review organised as mutual learning processes” (Presidency Conclusions 2000, Article 37). It shows that IMPEL has adopted a subsidiarity-driven approach towards achieving EU objectives, by establishing project groups to determine common guidelines, indicators and benchmarks, and subjecting members’ activities to regular peer review scrutiny, with a view to stimulating mutual learning and spreading best practice across Europe.

Finally, the results are summarised, highlighting IMPEL’s overriding concern for joint environmental problem-solving. This has resulted in an iterative process of institutional evolution, coloured by developments at the EU level, in keeping with the spirit of OMC.

5.2 IMPEL’S INSTITUTIONAL DEVELOPMENT

“[T]he history of IMPEL is characterised by discussions over its structure.”

Schout and Claessens (1999: 256)

As the quote above implies, IMPEL’s development has been the subject of considerable debate and anguish for members throughout its existence. The following section presents an account of the key changes that have occurred, sliced into five time periods – each denoting a significant stage in network growth.

5.2.1 *Institutional origins (1989): emergence of the ‘Chester Network’*

Against a backdrop of burgeoning environmental regulation in the aftermath of the 1987 Single European Act (as elaborated in Chapter 2), the origins of IMPEL can be traced to a United Nations Environment Programme (UNEP) meeting in Paris on ‘Environmental Legislation and Enforcement’ in 1989 (Duncan 2000: 1). According to one of IMPEL’s co-founders – Allan Duncan – who was based at Her Majesty’s Inspectorate of Pollution for England and Wales (precursor to the Environment Agency) at the time, it was here that senior EC regulators and policymakers recognised for the first time that they shared a common concern about the problems posed by the implementation of EC law,

“As the regulators congregated in conversation it soon became apparent that, as a group, we shared a feeling that the inevitable expedites and compromises of policy-making and legislation left us with major challenges in practical implementation and that we might benefit from sharing our experiences in an informal way” (Duncan 2000: 1).

Moreover, they were aware that potential inconsistencies in enforcement systems were likely to result in differential burdens on industry across Europe (*ibid.*). The same sentiment was echoed in a study commissioned for the Dutch EU Presidency, and presented to Environment Ministers in 1991, voicing “concern that the growth of environmental legislation has not been matched by improvements in the quality of the environment” (Goinga 1998: 717). In response, it was proposed,

“as a first step to establish a Network of representatives of relevant national authorities and the Commission in the field of enforcement, primarily aimed at the exchange of information and experience in the field of compliance and enforcement, and at the development of common approaches at a practical level” (*ibid.*).

More *formal* solutions were also floated at the time, such as the establishment of an ‘Inspectorate of Inspectorates’, which could perform an auditing role, or even a European Environmental Inspectorate – under the auspices of the fledging European Environment Agency – an idea which enjoyed the support of the European Parliament and Environment Commissioner, Ripa di Meana (Schout and Claessens 1999: 255, Duncan 2000: 1). However, the politically-loaded prospect of domestic governments ceding such enforcement powers to the Commission – or for that matter, to the new European Environment Agency – proved too great a stumbling block (*ibid.*). Indeed, debate over the need for a strong European enforcement arm among EU actors and Member States (who were themselves divided in opinion) had already been played out in discussions over the role of the European Environment Agency, which was eventually, and somewhat tellingly, given a toothless data-collection function (Interview with Caroline Jackson MEP, 2008).

It also seemed apparent that existing policy arenas were unsuitable for providing Member States with the implementation support they required; for example, the comitology procedure was considered inappropriate due to its narrow focus on legislation as opposed to practical implementation (Schout and Claessens 1999: 255). Thus, in the absence of a universally palatable alternative, it was the *informal* solution of developing a Community network to coordinate national enforcement practices that met with most support, in spite of reservations about the Commission's intentions:

"Despite some initial concern that the ultimate or hidden objective of the Network might be to achieve some form of enforcement role for the Commission, we found general acceptance of the concept [of an EC network] and the need for it" (Duncan 2000: 2).

Certainly, the inspectors themselves, showed little interest in policing environmental policy implementation beyond their own national borders or establishing a pan-European bureaucracy, but rather advocated, "exchanging practical experience" and "flexible and informal co-operation" (Schout and Claessens 1999: 255). It was anticipated that the network's effectiveness would lie in its *informality*: "fathers of the network expected that implementation would be reinforced through the informal peer group pressure that would result" (*ibid.*: 255, 258).

To this end, the 'Network of EC Environmental Enforcement Agencies' met for the first time in Chester in 1992, during the UK's EU Presidency (hence the original name, 'Chester Network'). Representatives from all twelve Member States, plus the Commission, decided the objective would be,

"To provide a mechanism for the exchange of information and experience between environmental enforcement agencies in the EC, in order to address issues of mutual concern and to enhance the quality of enforcement" (de Jong *et al.* 2005: 11).

For practical reasons, the group's initial focus was confined to permitting, compliance and enforcement activities relating to large scale industrial polluters:

“It was agreed that membership would be limited, initially, to those enforcement agencies ‘responsible for control of pollution from major industrial facilities, including releases to air, land and water’. This was to constrain it to a practical size, recognising that to extend it, then, to include all local or municipal authorities responsible for smaller processes would make it unmanageable” (Duncan 2000: 3).

The core structure introduced at that early stage bears a close resemblance to the way the Network operates today (IMPEL website⁶). Its work programme was to be overseen by a biannual ‘plenary meeting’, which was the Network’s decision-making authority, chaired and organised by the country holding the rotating six-monthly EU Presidency. ‘National Coordinators’ were appointed as focal points for each Member State, and activities were assigned to four Working Groups (WGs), each led by a different country in the spirit of intergovernmentalism (Schout and Claessens 1999: 258):

- WG 1: Technical Aspects of Permitting (Germany);
- WG 2: Legal and Procedural Aspects of Permitting (UK);
- WG 3: Compliance Monitoring and Inspection (Denmark); including a sub-group on transboundary shipment of waste (Netherlands); and
- WG 4: Managing the Enforcement Process (Netherlands) (Duncan 2000: 4).

Interestingly, the Commission took a hands-off approach at this stage, electing to confine its role to one of interested observer, mindful of the national sensitivities associated with its participation: “Member States preferred to keep it at bay” (Schout and Claessens 1999: 265). And so, as Duncan explains,

“It was...agreed that, for the time being, the European Commission would not seek membership but would watch developments and consider how it might discharge its own responsibility under Chapter 9 of its 5th Environmental Action Programme” (2000: 3).

⁶ IMPEL website: <http://impel.eu/about/history> (accessed 31st August 2010)

Meanwhile, the focus of national experts was on getting acquainted with their EU counterparts and learning about their varying domestic regulatory contexts. The learning curve was steep, and it was clear from the outset that the informal nature of the Network helped facilitate the development of social relationships among members:

“[IMPEL Working Groups] were soon characterised by comradeship, good humour and by serious and rapid learning” (Duncan 2000: 3).

5.2.2 ‘IMPEL’ is born: partnership with the Commission begins (1993)

Not long after the ‘Chester Network’ was formed, the overlap between its objectives and the Commission’s unfolding environmental agenda became increasingly evident; for instance, the Commission’s Fifth Environmental Action Programme (EAP), approved in early 1993, specifically called for the establishment of an implementation network (OJEC 1993, C138/80). As the Chester Network appeared to largely fit the bill, it was decided at the December Plenary to extend its mandate and fulfil the role (Goinga 1998: 718). The expansion involved improving engagement with local and municipal actors (the previous focus had been on the national level), and more significantly, forging a *new partnership with the Commission*, which involved inviting DG ENV reps to co-chair plenary meetings and chair the Working Group (2) on Legal and Procedural Aspects of Permitting. Operational modes and Work Programmes, however, were not expected to be affected by this new cooperative arrangement (Duncan 2000: 5). Moreover, earlier reservations about the expanding Commission role in environmental law enforcement seemed to have been allayed:

“familiarity with individuals and the good working relationships developed during the relatively unstructured phase of the Network seemed to have dispelled those concerns” (*ibid.* 4-5).

At the fifth Plenary in 1994, the Network officially adopted the acronym ‘IMPEL’ (i.e. “EU Network for the Implementation and Enforcement of Environmental Law”), and work began in earnest. Activities over the next two years focused on: comparison projects (e.g. on enforcement arrangements, technical standards, and monitoring and enforcement

mechanisms for transfrontier shipment of waste); exchange programmes (allowing inspectors to visit each others' authorities and deliver feedback); the preparation of guidelines (e.g. manuals for inspectors, and technical guidelines for regulators of specific industries, such as power plants and refineries) (COM(96) 500: 55); and exploring the implications of EC Directives (e.g. Hazardous Waste, and Integrated Pollution Prevention and Control - IPPC) (Duncan 2000: 5).

Although in the eyes of participants IMPEL was making notable progress with respect to improving communication and exchanging information across EU regulatory authorities (*ibid.*), there were demands from actors outside the Network for more tangible outputs (de Jong *et al.* 2005: 11). The Commission's Communication on Implementing Community Environmental Law reflected this feeling, and proposed a series of changes to IMPEL, including extending its scope from enforcement to *implementation* and *legal policy advice*, and establishing *national* coordination networks (COM(96) 500: 55-56). Importantly, IMPEL was also given a specific *implementation and policy advisory* role in inspections when it was called upon to, "assist in defining minimum criteria for inspections, and help in capacity building, for instance as to the necessary competencies for the carrying out of inspection tasks" (COM(96) 500: 28). As a follow-up to the Communication, the European Council adopted a Resolution reiterating the Commission's demands (OJEC 97/C321/01). Furthermore, it once again dismissed the idea of a Community-level inspectorate, and consolidated support for, "voluntary environmental management and audit schemes," noting that, "IMPEL is a very useful informal instrument" (*ibid.*: 16, 19). Acknowledgement was also made that in order to fulfil its expanding role, IMPEL would require financial support and a secretariat (*ibid.*: 23).

5.2.3 'From infant to toddler'⁷: the Commission joins IMPEL (1997)

In light of the Network's remarkably flat organisational structure up to this point, the next phase in IMPEL's development is particularly interesting institutionally because it signals a marked shift towards centralisation. Strong hints had already been given in the

⁷ Quote from an IMPEL expert, cited in Schout and Claessens (1999: 275).

Commission's Communication of its interest in playing a greater role in steering IMPEL, and its intention to, "make proposals for improving, developing and reorganizing [IMPEL's] tasks" (COM(96) 500: 21, 56). IMPEL, meanwhile, had long feared that more Commission involvement would not only place increased demands on the group and over-stretch its already limited resources (national administrations had funded the bulk of its activities thus far), but also compromise its ability to set its own agenda. However, it was aware of the potential benefits of being closer to the Commission, not least in being able to influence proposed EC legislation and secure a more permanent funding basis. And so, at the momentous December Plenary (1997), it was decided that the Commission would become a full member of IMPEL. DG ENV would also provide direct funding and host an IMPEL Secretariat. The latter was to be a detached national expert, seconded to the Commission to perform an administrative, organisational and coordinating role between DG ENV, National Coordinators, the Plenary, and other stakeholders. It was also agreed that the Commission would share the position of Co-Chair with the Member State holding the six-month Presidency, and preparation of the Plenary was now the joint responsibility of the Secretariat, the Commission and the 'Troika' (i.e. holders of the current, past and future Presidencies).

As called for by the Commission Communication, the Network was also restructured to better "reflect its main tasks" (COM(96) 00, 21). Ad hoc 'Project Groups' replaced Working Groups, and came under the supervision of a new hierarchical layer: (two) Steering Committees, one on Legal Policy and Implementation (comprised of policy and enforcement experts), the other on Enforcement and Management (including inspectors and Commission reps) (Duncan 2000: 6). These Committees were to act as intermediaries between Project Groups and the Plenary. However, they were disbanded two years later (1999) when it became apparent that national experts fell more naturally into informal 'clusters of activity' (as existed at the outset), reporting directly to the six-monthly Plenary.

Four other notable institutional innovations occurred during this period, most of which were driven and/or financed by the Commission. The first was the establishment of the 'AC-IMPEL Network' (1998), which was a parallel IMPEL Network, designed and co-

chaired by the Commission to help Accession and Candidate countries transpose and implement EU environmental law in preparation for EU membership (it fully merged with IMPEL in 2003). Second, the inaugural ‘IMPEL Conference’ took place in Villach, Austria in 2000 to, “raise public awareness as well as to discuss and evaluate the role of IMPEL” (IMPEL 2000: 7). Attended by over 150 delegates from Member States, the Commission, Accession Countries, and Norway, its perceived success led to a decision to repeat the event every three years (Maastricht 2003, Riga 2006, Sibiu 2009). The third change came in response to the publication of the Sixth Environmental Action Programme, which gave legal status to IMPEL for the first time in the context of helping to achieve EU environmental objectives (European Parliament and Council Decision 1600/2002/EC, Article 3.2). In order to better reflect this new responsibility, the Network broadened its objectives from *information exchange* and *enforcement* to formally incorporate a desire to promote the consistent *implementation* of EC environmental law (de Jong *et al.* 2005: 12). Finally, the IMPEL website, managed by the Secretariat, went ‘live’ over this period, giving wider accessibility to IMPEL’s adopted Project Reports (Duncan 2000: 7).

5.2.4 *Childhood to adolescence: strained relations with DG ENV (2003)*

IMPEL’s relationship with the Commission had up to this point been close and productive. As the then Head of Unit – and IMPEL-pioneer within the Commission – Georges Kremlis confirmed, “IMPEL was working as a family” (Interview, Brussels, 2008). Most evident of their close cooperation was the fact that IMPEL’s reports on the Recommendation on Minimum Criteria for Environmental Inspections formed the basis of the Commission’s proposal on the topic, which was adopted by the European Council and Parliament in April 2001 (OJEC 2001/331/EC). Importantly, it assigned specific inspection tasks and responsibilities to IMPEL in a formal (albeit non-binding) act.

However, despite many successful collaborative projects over this period, it was becoming increasingly apparent that the priorities of the Network and Commission were beginning to diverge (Interviews in Brussels, 2008-9). The watershed identified by an interviewee close to the heart of the Network was the Rome Plenary in December 2003 (IMP7: 2008), when the Commission announced it could no longer continue to co-finance

IMPEL projects through direct grants, due to a new financial regulation which had come into force in January that year (IMPEL Plenary Conclusions 2003: 3). The alternative proposed by DG ENV was for IMPEL to respond to restricted calls for tenders made by the Commission on a project-by-project basis. This proved distinctly unpopular with national experts (*ibid.*), who felt it would lead to greater bureaucracy, and ultimately compromise IMPEL's control over its own work programme. Moreover, at the same meeting, the Commission went on to propose that IMPEL conducted two new projects, neither of which members felt represented areas of priority interest⁸. This only served to amplify fears about Commission control-creep, and the proposals met with a cool response (*ibid.*: 3-4):

"A majority of Member States stated that the two projects did not fall under what they consider as being the IMPEL priorities and refused...to consider them".

It was at this stage that the idea of IMPEL pursuing a legal personality was seriously raised, and although several members initially opposed the prospect, a Working Group was set up to explore the possibility, led by the UK and Netherlands, with inputs from the Commission. At around the same time, some senior officials at DG ENV (who had recently rotated seats) were starting to question the Network's value-added, and an audit was commissioned in 1994 to investigate its future.

Meanwhile, IMPEL's work continued apace, rapidly expanding into new areas. One report, on Better Legislation, was received by members with such interest that it was decided, at the Amsterdam Plenary meeting in 2004, to launch a new cluster group dedicated to the subject, comprised of legal experts and policy-makers. By the time the Better Regulation Cluster was up and running in 2005, IMPEL's project-driven activities were organised into three core 'clusters' of activity (as they still stand today):

⁸ One proposed project was on the relationship between the Environmental Impact Assessment and Strategic Environmental Assessment Directives, the other was on screening and thresholds for projects subject to Environmental Impact Assessment (IMPEL Plenary Conclusions 2003: 4).

- Cluster 1: Permitting, inspections and enforcement,
- Cluster 2 (generally referred to as TFS): Transfrontier shipment of waste, and
- Cluster 3: Better regulation.

Nevertheless, discussions surrounding the future of IMPEL continued to cause members anguish. Little comfort was provided by the Commission's announcement at the Cardiff Plenary in December 2005 that, “[IMPEL’s] budget for 2006 is suspended pending the outcome of the evaluation at the senior management level” (IMPEL Plenary Conclusions, 2005: 4), especially coming at a time when customary desk rotations at DG ENV generated a hierarchy that was not favourably disposed towards the Network (Interviews 2008-9). Nor was much consolation offered to the Pötschach Plenary in June 2006, when the conclusions of the evaluation were finally revealed: “researchers recommend initiating a legal personality for IMPEL...the new financial framework makes this necessary” (de Jong *et al.* 2005: 84).

Although IMPEL’s 2006 budget was eventually approved, the absence of guaranteed funding beyond 2007, and evident cooling of Commission policy towards IMPEL (Interview with DG ENV Official 2008, IMP5: 3), cast doubt over whether IMPEL could survive solely on the ad hoc contributions of members and DG ENV. When it eventually became clear that becoming a legal entity would allow IMPEL to apply for funding from new sources, such as the Commission’s LIFE+ Programme, IMPEL made the decision to step into the realm of the unknown – and embrace independence.

5.2.5 Coming of age: IMPEL becomes a non-profit Association (2008)

In May 2008, after a protracted period of detachment from the Commission, IMPEL finally acquired legal status as an international non-profit Association under Belgian law. This led to a raft of institutional changes. Prior to 2008, decisions had been taken by the biannual Plenary, and a degree of leadership had been provided by the Troika. Becoming a non-profit association, however, required the creation of a new decision-making authority, the General Assembly, as well as a Board, which was appointed by the Assembly to execute decisions, administer the budget, and handle day-to-day network

management. Board members included the Chair, Vice-Chair, three National Coordinators (formerly the ‘Troika’), and the three Cluster Chairs.

Until this point, there had been no IMPEL statutes or formal organisational code as such, save the limited notes published in Plenary minutes and annexes. However, attaining legal personality created the need for IMPEL Statutes (2008), Rules (2009), and (revised) objectives (see below), which ultimately led to a degree of formalisation. Controversially, nominal membership fees were also introduced for the 37 environmental authorities from 32 countries then belonging to IMPEL.

Despite IMPEL’s growing institutional framework during its partnership with the Commission and post-independence, the Network has managed to retain a largely decentralised organisational structure; most notably, the majority of key decisions continue to be taken by consensus at General Assembly and cluster meetings. While change has been the norm, many of IMPEL’s fundamental institutional arrangements have remained the same. In particular, task-oriented project groups continue to initiate and execute the bulk of the IMPEL’s work, as they have done from the outset. Groups are still convened on an ad hoc basis, subject to General Assembly approval of their Terms of Reference (which give details of project objectives, outputs, target groups, budget, and provisions for quality control and dissemination) (IMPEL Rules 2009, Article 5.1). Groups also remain obliged to submit a final report for adoption by the Assembly once a task has been completed.

Furthermore, clusters continue to form IMPEL’s organisational backbone, providing informal fora for experts to discuss ideas, develop proposals, and monitor and review project progress and outputs. Cluster 2 (TFS) has historically operated somewhat independently of Clusters 1 and 3, with its own Steering Committee, secretariat, conferences, and ‘national contact points’.

The status of the IMPEL Secretariat, however, *has* been altered by independence; it is now no longer based at (or directly funded by) the Commission, but instead operates from the Brussels Institute for Management of the Environment. In spite of the Network’s considerable expansion, the administration is still run by a single person –

supervised by the Board – who provides support to National Coordinators and Representatives, Project Groups, Clusters, and the Board.

The Commission, meanwhile, continues to play an active role in IMPEL via its status as an observer, and more importantly, by providing a significant proportion of the Network's (indirect) funding through the LIFE+ Instrument. A Memorandum of Understanding was signed between the parties in 2009, highlighting a continued desire to cooperate, though it stipulates that the Commission may not play a part in the management of IMPEL (Article 1.2, 3.1 and 3.3). Instead, its contribution is to a large extent confined to keeping IMPEL up-to-date on forthcoming legislation and policy proposals, and IMPEL's role towards the Commission is predominantly perceived as an advisory one.

In sum, the story of IMPEL to date has been one of ongoing institutional change and adaptation. Table 5.1 distils key events in the Network's development, and along with the narrative above, appears to vindicate the claims made by Schout and Claessens over a decade ago (seemingly as valid today as they were then), and point to the characteristic learning process underlying IMPEL's evolution: “the history of IMPEL's formative years shows that it has been a continuous experiment with network structures” (1999: 262).

Table 5.1: Significant events in the development of the IMPEL Network

| Date, location | Significance |
|------------------------|--|
| 1989, Paris | UNEP meeting, where senior regulators voice common concern about challenges posed by the implementation of EU law. |
| 1992, Nov, Chester | IMPEL forerunner established ('Chester Network'), with biannual Plenary meetings and four Working Groups (permitting-technical, permitting-legal, compliance, enforcement). |
| 1993, Dec | Commission becomes a partner and co-chairs Plenary. |
| 1996, Dec | Plenary concludes outputs should be more tangible: establishes Working Group (WG) to explore minimum criteria for inspections. |
| 1997, Dec, Haarlem | Commission becomes a member , provides direct funding, and hosts Secretariat. WGs replaced by task-based Projects Groups to be overseen by two Standing Committees. |
| 1998, Jan | AC-IMPEL Network established for accession countries. |
| 1999, Berlin | Standing Committees abandoned, Project Groups overseen by Plenary. |
| 2001, Apr, Brussels | Recommendation of the European Parliament and the Council on Minimum Criteria for Environmental Inspections (2001/331/EC) is adopted, and allocates specific tasks to IMPEL. |
| 2002, Summer, Brussels | 6th Environmental Action Programme (1600/2002/EC) gives IMPEL legal basis . Mission and objectives are reformulated (and broadened). |
| 2003, Jan | AC-IMPEL Network merges with IMPEL, membership grows to 29. |
| 2004, Jul, Brussels | Commission-initiated evaluation of IMPEL begins. |
| 2004 Dec, Amsterdam | Plenary adopts proposal to establish 'Better Regulation' Cluster , to comment on new and existing legislation and provide guidance on EU legislation and ECJ decisions (Plenary Conclusions). |
| 2005, Dec, Cardiff | Commission presents findings of IMPEL evaluation, which recommends IMPEL seeks independence; Commission suspends 2006 budget pending internal evaluation by senior management (Cardiff Plenary Conclusions). |
| 2006, Jun, Pörtschach | Commission reports that direct funding for 2006 is secure, but other sources (e.g. LIFE+) must be sought from 2007+ (Plenary Conclusions). |
| 2008, Brussels, Brdo | IMPEL established as a non-profit legal Association under Belgian law. Scope of activities broadened in Statute; Board (with Chair and Co-Chair) takes on day-to-day management; first General Assembly held. |
| 2009, Spring, Brussels | LIFE+ funding approved; IMPEL Secretariat established in new Brussels office; Commission signs Memorandum of Understanding with IMPEL. |

Source: Author (informed by: interviews 2008-9, de Jong et al. 2005 and Duncan 2000)

5.3 WHAT MAKES IMPEL AN OMC?

Returning to the definitional issues raised in Chapter 1, this section argues that IMPEL fits the description of an OMC, understood as a process of (voluntary) policy coordination in networks, which employs learning, peer review and best practice techniques to promote problem solving and/or policy convergence among diverse communities. After briefly addressing the *voluntary* nature of the process, a distilled version of the OMC criteria identified by the Lisbon Presidency is addressed, namely: common objectives; guidelines and indicators; and peer review and learning.

5.3.1 *A voluntary approach*

First and foremost, when IMPEL was established by national environmental enforcement regulators, it was designed as a *voluntary* mechanism for exchanging information and experience (de Jong *et al.* 2005: 11). Although additional responsibilities have been assigned to IMPEL since, in official EU outputs such as the Sixth Environment Action Programme and the Recommendation of the European Parliament and Council providing for Minimum Criteria for Environmental Inspections, members are under no obligation to belong to IMPEL or participate in projects they do not consider of interest, and as such, it remains an entirely voluntary endeavour. This contrasts to other EU environmental networks, such as the REACH Forum of the European Chemicals Agency, which legally requires every Member States to appoint a representative.⁹

5.3.2 *Common objectives*

IMPEL uses voluntary networking to seek agreement on the best means of achieving a series of common goals, organised around the central objective of “ensuring a more effective application of EC environmental law” (IMPEL Rules 2009, Article 2.2). As

⁹ REACH is an EC Regulation, which oversees the ‘Registration, Evaluation, Authorisation and Restriction of Chemical substances.’ (EC 1907/2006). For more information see: http://echa.europa.eu/about/organisation/forum_en.asp

outlined in Section 5.2, the group's objectives (not to mention ideas about how best to achieve them) have undergone several stages of revision, often – at least partially – in response to claims made on its role by EU institutions.

IMPEL's first objective, formulated at the launch of the Chester Network, was self-determined. The group's original aim was predominantly process-oriented: "to provide a mechanism for the exchange of information and experience between environmental enforcement agencies in the EC", with the somewhat vague goal of "address[ing] issues of mutual concern and...enhanc[ing] the quality of enforcement" (de Jong *et al.* 2005: 11). The publication of the Fifth Environmental Action Programme in 1993, which stressed the need for an implementation network, did not change the Network's nominal 'objectives', but it did trigger qualitative adjustments to its direction nonetheless by: (a) adding *implementation* to the group's focus on enforcement (reflected in its new name); (b) introducing a *legislative* focus; and (c) integrating *lower tiers* of regulatory governance:

"It was noted that the European Commission's Fifth Environmental Action Program called for a body similar to the Chester Network. The Commission and Member States agreed to modify the terms of reference for the Network to include a wider mandate for the application and control of environmental legislation. In addition, it was agreed that the Network should look at how to ensure better implementation and enforcement of environmental laws by regional and local bodies. The modified Network was called the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)" (Betske Goinga, first member of the IMPEL Secretariat, 1998: 718).

The Commission's Sixth Environmental Action Programme (2002) mentioned IMPEL as a mechanism for promoting "effective implementation and enforcement of Community legislation on the environment" via "improved exchange of information on best practice on implementation" (Article 3.2). The following year, the Plenary revised its objectives to better reflect its responsibilities:

"The Network promotes the exchange of information and experience and the development of a greater consistency of approach in the implementation, application

and enforcement of environmental legislation, with a special emphasis on Community environmental legislation" (de Jong *et al.* 2005: 12).

When IMPEL became an Association in 2008, it provided the opportunity for a more comprehensive reworking of its objectives. As they stand today (see Box 5.1), these goals embody the spirit of OMC at several levels.

Box 5.1: Core objectives of IMPEL

Main IMPEL objective

"The **objective** of the Association is to create the necessary impetus in the European Community, including the acceding and candidate countries and EEA countries, to make progress on ensuring a more **effective application of EC environmental law**."

Other core objectives

- ★ promote exchange of information and experience between national, regional or local authorities
- ★ promote development of **national networks** of Environmental Authorities
- ★ promote **mutual understanding** of common characteristics and differences of national regulatory systems
- ★ carry out **joint enforcement** projects
- ★ support, encourage and facilitate **capacity building** and training
- ★ identify and develop good and, whenever possible, **best practices**, produce guidance, tools and common standards and actively contribute to further improvements
- ★ develop a greater **consistency of approach** in interpretation, implementation and enforcement of EC environmental law
- ★ provide **feedback on better legislation** issues with regard to practicability and enforceability and provide advice on the practicability and enforceability of new and existing EC environmental law to EU Institutions
- ★ explore use of **innovative regulatory and non-regulatory instruments** as alternatives for or complementary to existing regulation

Source: IMPEL Rules 2009, Article 2.2 (emphasis added)

First, Lisbon Presidency Conclusions see OMC as a, “means of spreading best practice and achieving greater convergence towards the main EU goals” (2000, Conclusion 37); IMPEL’s objectives echo these sentiments by seeking to, “identify...best practices...and common standards,” and achieve, “a greater consistency of approach in interpretation, implementation and enforcement of EC environmental law” (IMPEL Rules 2009, Article 2.2). The Council Conclusions also specify that, “a fully decentralised approach will be applied in line with the principle of subsidiarity” (2000, Conclusion 38); this is reinforced by IMPEL’s objective to “promote exchange of information and experience between national, *regional or local* authorities,” and also, “promote mutual understanding of common characteristics *and differences* of national regulatory systems” (IMPEL Rules 2009, Article 2.2, emphasis added). Furthermore, the iterative method by which objectives have been developed demonstrates a peer review process in itself; many changes having been triggered by the Commission, but ultimately, IMPEL has driven its own agenda, reassessing and reformulating its objectives in line with members’ domestic needs alongside their growing European responsibilities.

Referring back to the Lisbon Presidency’s calls for short-, medium- and long-term objectives (2000, Conclusion 37), these are also met to a degree by IMPEL. The Network’s long-term objective has already been mentioned, but medium-term objectives and tasks are also provided for by IMPEL’s Multi-Annual Work Programme, which specifies the group’s strategic direction, legislative focus, and priority areas over a four-year period. These Programmes are supplemented by *Cluster Multi-Annual* Work Programmes, and *IMPEL Annual* Work Programmes; the latter can be viewed as short-term targets because they are subject to a yearly review process, whereby they are evaluated (at the first General Assembly of the year), on the basis of Cluster reports (IMPEL Rules 2009, Article 5.2: 20). The current Multi-Annual Work Programme (2007-2012) is to a large extent drawn from the EU’s Sixth Environmental Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections (2001/331/EC), which can themselves be seen as IMPEL objectives (Schout and Claessens 1999: 264).

5.3.3 Guidelines and indicators

Setting guidelines and timetables for achieving goals, together with indicators and benchmarks against which to compare best practice, are key features of OMC, as defined by the Lisbon Presidency (2000, Conclusion 37). As early as the Commission's Fifth Action Programme, it was stated that the reports produced by "the proposed Network on practical implementation of Community measures...will serve both as a *performance indicator* and as an incentive mechanism for general improvement of implementation and enforcement" (OJEC 1993, C138/82, emphasis added). IMPEL's objectives reflect a similar desire: "to identify and develop...best practices, produce guidance, tools and common standards and actively contribute to further improvements" (IMPEL Rules 2009, Article 2.2).

Box 5.2: IMPEL projects promoting Minimum Criteria for Environmental Inspections

- ★ Doing the right things for waste shipment (phases 1 and 2)
- ★ Setting inspection targets and monitoring performance (phases 1 and 2)
- ★ Development of risk assessments ('easyTools') in inspection planning (phases 1 and 2)
- ★ Doing the right things III: implementation of the step-by-step guidance book for planning of environmental inspections
- ★ Developing performance indicators for environmental inspection systems
- ★ IMPEL input to the further development of the RMCEI
- ★ Doing the right things II: step-by-step guidance book for planning of environmental inspections
- ★ Doing the right things I: comparison programme on prioritising environmental inspections
- ★ Benchmarking on quality parameters for environmental inspectorates
- ★ Best practices concerning training and qualifications for environmental inspectors
- ★ Management reference book for environmental inspectorates
- ★ Manual on the return of illegal shipments of waste
- ★ IMPEL guidance on compliance with Point VIII of the Recommendation
- ★ Minimum Criteria of Inspections: planning and reporting; frequency of Inspections; operator self-monitoring; general principles
- ★ IMPEL Reference book for Environmental Inspections

Source: IMPEL website, <http://impel.eu/projects> (accessed 19th March 2012)

Here IMPEL has also delivered on several counts. First, the preparation of guidelines has long pervaded the group's work, and is perhaps most apparent in IMPEL's projects dedicated to developing minimum criteria for environmental inspections. These reports have generally focused on providing guidance documents for planning and carrying out inspections, and training inspectors (see Box 5.2 above), but include guidelines on other issues, such as dealing with illegal waste shipments, and assessing the practicability and enforceability of EC environmental legislation. The criteria and benchmarks identified in many of these projects can to a degree be viewed as indicators, though more specific attempts have been made to establish parameters for monitoring national progress, for example, in the project, 'Developing performance indicators for environmental inspection systems' (2009).

Promoting best practice has also formed the cornerstone of many IMPEL projects, extending beyond the Network's traditional interest in inspections and training to areas as diverse as: environmental conflict resolution, criminal enforcement, reporting to the public, complaint procedures and access to justice for citizens and NGOs, and projects relating to specific environmental activities, such as olive oil production and pig farming (for more detail, see Box 5.3 below).

It is worth pointing out that while the 'ideal-type' Lisbon OMC calls for qualitative and *quantitative* indicators, IMPEL's emphasis has thus far been on the former, as one DG ENV Official commented:

"We are working on indicators, but we don't [yet] have...a *quantifiable* objective. Effective inspections...implementation of EU law, those are the objectives, but we haven't quantified them so that we could use benchmarking to compare. We are not that far yet. But at least we want to develop indicators showing how the Recommendation on Minimum Criteria for Environmental Inspections have been applied in the Member States, allowing a more direct comparison" (IMP2: 2).

Box 5.3: IMPEL projects dedicated to promoting best practice

- ★ Africa e-waste project
- ★ Industrial Emissions Directive (IED) – the transition to IED Permits and dealing with change
- ★ Energy efficiency in permitting and inspections, Phases 1-3
- ★ Landfill sites, Phases 1-2
- ★ Joint enforcement actions, Phases 1-3
- ★ Waste sites (good practice and practical guidance tools for inspections), Phases 1-2
- ★ Reporting to the public
- ★ IPPC pig farming - developing practical guidance for permitting and inspections, Phases 1-4
- ★ Environmental inspection guidelines for the cement clinker industry
- ★ Practical application of better regulation principles in improving the efficiency and effectiveness of environmental inspection authorities
- ★ Inspectors exchange days I and II
- ★ Review of compliance promotion, inspections practices, and enforcement for IPPC installations
- ★ Resolution of environmental conflicts by neighbourhood dialogue, Phases 1-4 (toolkit)
- ★ Best practices concerning training and qualifications for environmental inspectors
- ★ Management reference book for environmental inspectorates
- ★ Information exchange on e-reporting
- ★ Implementing Article 10 of the SEA Directive 2001/42/EC
- ★ Criminal enforcement of environmental law in the European Union
- ★ Workshop on the use of chlorinated hydrocarbons in industrial plants
- ★ Good practice fact sheet – printers
- ★ Complaint procedures and access to justice for citizens and NGOs in the field of environment within the EU
- ★ Olive oil project

Source: IMPEL website, <http://impel.eu/projects> (accessed 19th March 2012)

5.3.4 Peer review and mutual learning

Mutual learning is fostered through IMPEL activities such as comparison projects, exchange programmes, joint enforcement projects and, not least, the Network's most comprehensive and longstanding peer review process: the IMPEL Review Initiative (IRI). The latter is, "a voluntary scheme for reporting and offering advice on inspectorates and inspection procedures,"¹⁰ and responds to demands made in the Recommendation on Minimum Criteria for Environmental Inspections (RMCEI) for, "the establishment by Member States in cooperation with IMPEL of reporting and advice schemes relating to inspectorates and inspection procedures [which] would help to promote best practice across the Community" (2001/331/EC: 17). It builds on the Network's tradition of running exchange programmes across inspectorates dating back to the mid-1990s. In its current, revised format, the IRI scheme involves a seven-member strong 'Review Team' of inspectors visiting another country's environmental authority, to explore how it operates and point out "opportunities to develop existing practice"¹¹. Findings and recommendations are published in a report, which is disseminated at cluster meetings, at the Plenary, and via the website. National Coordinators are quick to cite instances where participation in such review projects have led to mutual, technical, organisational and procedural learning, and instigated real institutional change tailored to national circumstances (Interviews 2008-9).

In many senses, the IRI can *itself* be seen as an OMC (within a 'meta-OMC') because it includes many characteristic features: it supports an EU *objective*, i.e. the RMCEI; its *guidelines* are set through IMPEL reference documents, which are themselves formulated through an iterative *peer review* process; inspectors are encouraged to establish targets and performance *indicators* when planning inspections; the 3-4 day review process allows discussions to take place, *best practice* to be identified, and recommendations to be issued; and the findings of reports also *feed back* into subsequent RMCEI-related projects.

¹⁰ IMPEL website, accessed 18.6.2010: http://impel.eu/key-projects/key_1/iri-projects

¹¹ *Op. cit.*

It is IMPEL's aim to conduct three IRI's per year, and to date the following countries have hosted a project: Denmark, UK, Germany, Ireland, Belgium, France, the Netherlands, Spain, Sweden, Scotland, Norway, Portugal, Slovenia, Romania, Croatia and Latvia (IRIs for Iceland and Italy's Lombardia region are in progress).¹²

Projects run by the TFS Cluster have also triggered mutual learning processes. Inspector Exchange Programmes and Exchange Days have promoted the enforcement of the Waste Shipment Directive – which is particularly reliant on international cooperation – by bringing members together to exchange information, methods and experiences. Joint enforcement activities have taken a practical approach; for example, the Seaport project (in 2004-6), involved joint inspections being conducted across 30 ports in 13 European countries; an earlier wave of the same project found 20 per cent of shipments of waste to be illegal (Gosk 2009). Other joint enforcement activities have included projects on the Verification of Waste; Enforcement Actions; E-waste; and End of Life Vehicles.¹³ The aim of the latter was to, "facilitate exchange programmes of inspectors to improve exchange of experience and information, and good communication and information sharing,"¹⁴ and involved participants agreeing minimum criteria for the classification of waste, and developing common inspection procedures and working methods.

¹² *Op. cit.*

¹³ <http://impel.eu/cluster-2#achievements> (accessed 29th June 2010)

¹⁴ <http://impel.eu/projects/end-of-live-vehicles-project> (accessed 29th June 2010)

Box 5.4: IMPEL's comparison programmes

- ★ Linking the Water Framework Directive and IPPC/IED Directive, Phases 1-3
- ★ Waste sites, Phases 1-2
- ★ The licensing of installations in ambient air polluted zones
- ★ Comparison programme on the implementation and enforcement of air quality standards
- ★ Exploring qualitative and quantitative assessment tools to evaluate the performance of environmental inspectorates across the EU
- ★ Strategies of enforcement
- ★ Compliance assurance and company compliance management systems
- ★ Common regulatory frameworks in Member States – comparison project
- ★ Comparison programme on permitting and inspection of IPPC pig farming installations, Phases 1-2
- ★ Comparison programme on the tariffs for environmental permits and environmental inspections
- ★ Comparison of methodologies used for the administrative fine calculation
- ★ Resolution of environmental conflicts by neighbourhood dialogue, Phases 1-4 (toolkit)
- ★ Prioritising environmental inspections ('Doing the right things' I)
- ★ Self-monitoring and electronic reporting – pulp and paper production
- ★ Condoning – compliance promotion – communication – ISO/EMAS – one page permits
- ★ Self-monitoring and electronic reporting of emission data

Source: IMPEL website, <http://impel.eu/projects> (accessed 19th March 2012)

Comparison programmes (see Box 5.4 above) are another example of mechanisms presenting IMPEL Members with peer review and mutual learning opportunities. To cite a recent example, the IPPC Pig Farming Comparison Programme (completed in October 2009) was instigated when a transnational pig farm operator pointed out to inspection officials that he faced considerably different regulatory conditions in different Member States, despite pig farming falling under the jurisdiction of the EU's IPPC Directive (2008/1/EC) (Interviews 2008-9). The project was thus initiated to enable inspectors and permitting authorities to explore this discrepancy through the exchange of experience,

and to identify best practice and develop recommendations to improve the future regulation and environmental performance of pig farms (Farmer and Lewis 2009: 6).

IMPEL's recursive peer review activities are not, however, confined to intra-Network learning, but in many cases, extend to reviewing the outputs of EU institutions, leading to vertical as well as horizontal learning. The work of the Better Regulation Cluster is a case in point; its 'Checklist on practicability and enforceability of legislation' was designed by IMPEL national legal and policy experts to alert domestic *and EU* policymakers, legislators and stakeholders to the potential problems associated with implementing and enforcing EC environmental law. In 2007, the Checklist was applied to the Commission's IPPC Recast Proposal (which led to the Industrial Emissions Directive), and it was used again in 2009 to assess the revised Waste Electrical and Electronic Equipment (WEEE) Directive. On both occasions outcomes were used to inform Commission discussions.

The Network also contributed to the Commission's public consultation on developing new Impact Assessment Guidelines, and its inputs were reflected in the revised guidelines, which now place a greater emphasis on practicability and enforceability issues than the original version, and make direct reference to the IMPEL Checklist as a guidance tool (SEC (2009) 92). The work of these projects underlines IMPEL's capacity to jointly review legislation and foster horizontal as well as vertical learning – the latter providing important feedback from practitioners to EU institutions, who take on board comments as they see appropriate. It also implies a growing willingness in IMPEL to engage in peer review activities across the regulatory cycle – not just in relation to implementation and enforcement, but also to policy formulation and offering legal advice.

Giving 'bottom-up' feedback on legislation is not restricted to the Better Regulation Cluster; it is not uncommon for IMPEL projects to propose recommendations, where relevant, to EU institutions in their final reports. For example, the Pig Farming project cited earlier offered recommendations not only to IMPEL members, but also to the Commission, and the IPPC's BREF Technical Working Group (who prepare reference documents on the application of the IPPC Directive in different settings) (Farmer and Lewis 2009).

On the subject of iterative learning activities, the Better Regulation Checklist has itself been subject to further peer review processes through IMPEL's collaboration with the Network of Heads of Environment Protection Agencies (NEPA), which led to the publication of a revised guidance document (IMPEL-NEPA 2010). The concept of developing second and third 'waves' of projects, which build on the findings of earlier work is another common feature of IMPEL activities, which also produces a recursive learning effect. Although in principle, Projects Groups are disbanded once their objectives have been achieved, follow-up projects are commonplace; selected examples include: the Seaport projects (I and II), Lessons Learnt from Accidents (nine waves to date), Doing the Right Things (I, II and III), Resolution of Environmental Conflicts by Neighbourhood Dialogue (I, II and III), Inspector Exchange Days (four waves to date), and, of course, the IRIs (eighteen waves to date).

5.4 SUMMARY AND CONCLUSIONS

"[IMPEL] was created without much attention to organizational design (of the network and of the internal management in the Commission and in national administrations) and has, therefore, evolved through 'learning by doing'."

Schout and Claessens (1999: 276)

This chapter has outlined the development of IMPEL, and classified it according to the defining characteristics of an OMC. With respect to the former, it is evident that the Network has evolved in a remarkably organic way, adapting its mandate, organisation and activities to suit the changing (internal) needs and responsibilities of its members, and the burgeoning (external) demands and agenda of EU institutions. As the quote above suggests, institutional design has, from the outset, been of secondary importance to IMPEL members, who have long seen the exchange of information and experience among like-minded experts, facing similar problems and challenges, as being IMPEL's primary role (Interviews 2008-9). It is arguably this common desire to learn and problem-solve at a *practical* level – and across national contexts – that has created the impetus for IMPEL

to survive and develop as a transnational, *voluntary* enterprise for two decades, and retain its identity as an *independent* network.

Institutionally, the development of IMPEL's organisational structure has to some extent mirrored the strategy it has used in determining its agenda; it has essentially been a pragmatic, 'learning by doing' exercise, dedicated to addressing challenges as they emerge, often prompted by developments at the EU level. And yet, despite the formalisation of IMPEL institutions required by its transition to a legal entity, not to mention the best efforts of the Commission to perform a greater role in steering the Network's affairs, IMPEL has retained a strikingly minimalistic administrative and organisational infrastructure – very much in keeping with the spirit of OMC. The Commission has nonetheless played a pivotal part in IMPEL's development, perhaps unsurprisingly, given the role of the network in helping to fulfil so many of its objectives under its Environmental Action Programmes and green legislative agenda.

Turning to IMPEL's OMC status, it is apparent that although it is not conventionally identified as an OMC, partly because it predates the Lisbon definition and therefore lacks the nominal authority as such (unlike the 2000 Lisbon Strategy, and other examples given in Chapter 1) (Homeyer 2007: 47), by taking a longer time perspective this chapter has revealed that it possesses key characteristic features, illustrated by Figure 5.1 below. First, it arguably represents a *voluntary* coordinating mechanism for pursuing a *common* interpretation and effective implementation of EC environmental law. Second, it adheres to the spirit of OMC and *subsidiarity* by taking an instinctively decentralised approach, with respect for diverse national conditions (Presidency Conclusions 2000, Article 38; IMPEL Rules 2009). Third, its operations focus on meeting national *and EU* environmental goals, using timetables to achieve *short-, medium- and long-term targets* via IMPEL Annual and Multi-Annual Work Programmes. Finally, exchange of experience through IMPEL's self-steered, *peer review* and *mutual learning* activities has enabled the group to develop common *guidelines* (e.g. Minimum criteria for environmental inspections, the Better Regulation Checklist), as well as (qualitative) *indicators* and *benchmarks* to promote pan-European *best practice*.

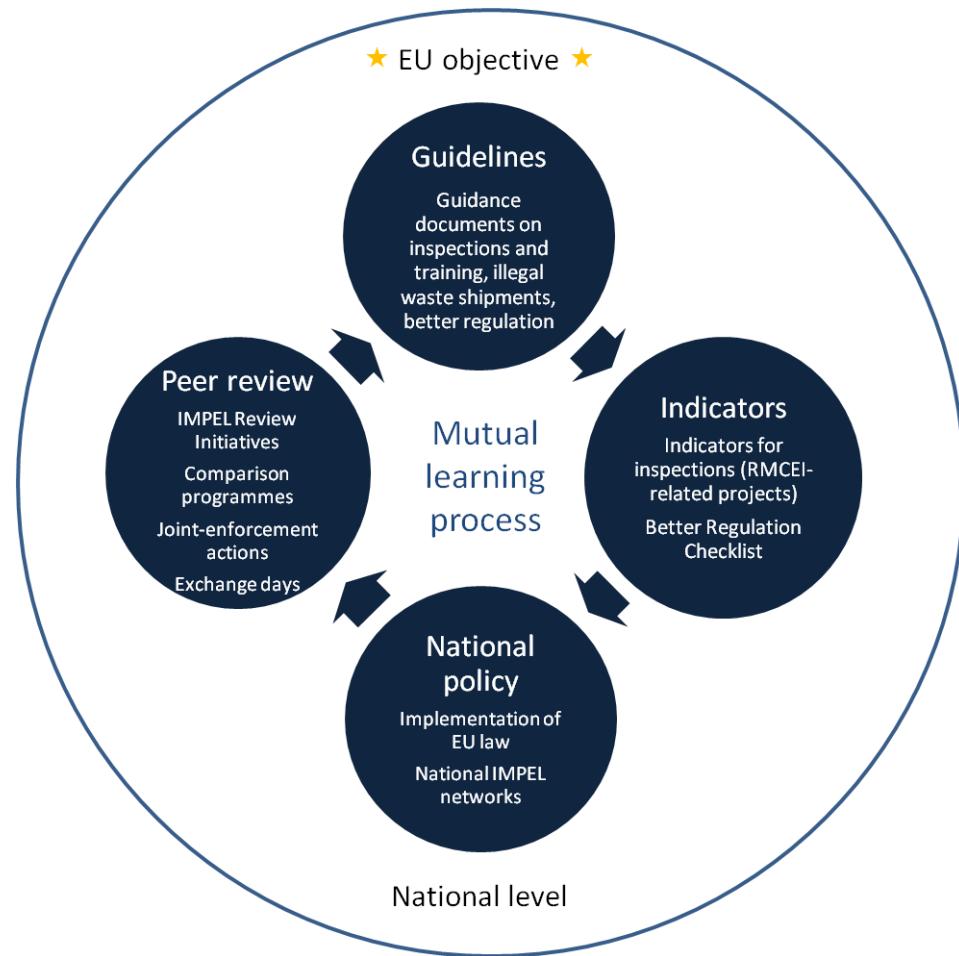


Figure 5.1: IMPEL as an OMC according to Lisbon Presidency criteria

Source: Author (based on European Council 2000, Presidency Conclusions 37 and 38)

To conclude, this chapter has contributed to the fulfilment of the first objective of this thesis, by seeking to better understand how OMC is empirically applied in the EU's environment sector, structured around the Lisbon Council's definition.

Using this outline of IMPEL's institutional architecture and OMC credentials as a point of departure, the next chapter seeks to investigate how and why these changes may have occurred, the implications they have for participation and learning, and what we can learn by applying new institutionalist theory.

6 IMPEL: RECONCILING HARMONISATION AND DIVERSITY?

“It is because we [IMPEL Members] are different that we can get ideas from one another about how we can improve.”

IMPEL National Expert, Interviews 2008-9 (IMP1: 7)

6.1 INTRODUCTION

This chapter explores the evolution of IMPEL from two contrasting new institutional perspectives using Zeitlin *et al.*’s (2005) OMC assessment criteria to frame the analysis (substantive change, procedural change, participation, and mutual learning). As discussed in Chapter 3, the central proposition is that the two theoretical perspectives are prone to define and interpret these variables differently and thus are likely to shed light on different (but complementary) aspects of the Network’s development, mode of operation, strengths and limitations.

This chapter is divided into two main parts: the first presents a rational choice institutionalist explanation of IMPEL’s development; the second, gives a sociological interpretation. Each offers a different version of how IMPEL’s institutional development and outcomes can be perceived, first, assessing the *substantive* and *procedural* changes which have taken place, and then exploring the implications these institutional features have had for *participation* and *learning*. Finally, the conclusions summarise the key differences in approach of the two new institutionalisms in analysing the IMPEL Network.

6.2 RATIONAL CHOICE INSTITUTIONALISM: IMPEL AS A ‘STRATEGIC OPERATING ENVIRONMENT’¹⁵

According to Ostrom’s rules-based approach, institutional structures create *constraints* and *opportunities* for steering human action. In the context of analysing OMC, the stance

¹⁵ Aspinwall and Schneider (2000: 7).

taken by this thesis is to equate ‘substantive change’ with what Ostrom terms, *constitutional-choice* rules; these relate to, “formulation, governance, adjudication, and modification of constitutional decisions” (Ostrom 1990: 52-3). As rules are understood to be ‘nested’ (*ibid.*: 51), ‘substantive’ institutional features shape the overarching conditions within which ‘procedural’ (*collective-choice* and *operational*) rules operate, and define the structures within which participation and learning take place.

6.2.1 *Substantive change*

The rational choice institutionalist analysis begins by exploring how EU and national constitutional-level rule architectures have created incentives for actors to collaborate in voluntary networking, by establishing IMPEL, and thereby generating a new set of rule structures to govern behaviour and policy outcomes.

Addressing a collective action dilemma: Creating IMPEL

“The greatest achievement...must be the simple act of creating the [IMPEL] Network.”

Allan Duncan, Environment Agency of England and Wales (2000: 7)

As Duncan’s quote illustrates, IMPEL’s very existence and persistence over time perhaps represents one of the most significant substantive institutional changes of all, certainly for the purposes of this study. It signifies the creation of a new, self-organised, European governance network for establishing common rules and procedures to help guide environmental decision-making and policy implementation across diverse constitutional settings and governance levels.

A key external catalyst for IMPEL’s emergence was the proliferation of EU legislation at the end of the 1980s, combined with a concern that inconsistencies in domestic enforcement systems would result in differential burdens on industry across Europe (Duncan 2000: 1). Reinforcing the need to address sluggish national implementation (discussed in Chapter 2), one of IMPEL’s co-initiators reflects on the inclination of countries to put individual national interests ahead of the common good:

“[I]n the national practice of transposing and implementing EC law there is a tendency to view EC law as a second rate foreign law, and not to treat it with the same respect as national law. With an ever growing norm production, 25 member states and 20 languages, Community law is overstretching and running the risk of gradually turning into a legal façade behind which member states are playing their games of national interests interrupted only, from time to time, by convictions before the European Court of Justice – a calculable risk with limited consequences” (Eberhard Bohne 2006: xi, German Federal Ministry official, responsible for transposing EC directives until 1996).

In rational choice parlance, therefore, the creation of IMPEL can be seen as a means of promoting credible commitments by imposing collective rationality at the EU level, where individual utility maximisation on the domestic stage was in danger of failing to deliver jointly optimal outcomes (Olson 1965). It was feared that a race to the bottom in the implementation of environmental law would occur if countries showed a continued reluctance to forgo competitive advantages in the interest of preserving a public good (in this case, the quality of the environment) (Hardin 1968). Creating of a ‘level playing field’ can thus be seen as serving the interests of Member States, the Commission, and industry (Duncan 2000: 1; Interviews 2008-9), not to mention European citizens and the environment.

The national level: domestic interests prompt network creation

Constitutional arrangements at the Member State level (i.e. domestic rule structures and national preferences) would also be expected to create opportunities and constraints for transnational network creation, design, and activities in the rational model. As Börzel comments, “Since Member States have their own institutions, they compete at the European level for policies that conform to their own interest and approach” (2002:194).

In this vein, it is noteworthy that momentum for establishing IMPEL was to some extent generated by the Dutch, who had more at stake than most in terms of loss of competitiveness, due to the country’s open economy and diligence as an implementer of environmental law. In relation to the early discussions that took place at the UNEP conference in 1989, Duncan observes:

“it was significant that our Dutch colleague played a key part in this conversation because some months later the Netherlands Ministry of Housing, Spatial Planning and the Environment commissioned a study of EU environmental enforcement agencies for the Dutch Presidency of the EU in 1991” (2000:1).

Importantly, it was the presentation of this report to Environment Ministers that led to the proposal for establishing a network of European enforcers to exchange experience on practical matters. This interpretation again supports the assumption that institutions such as IMPEL represent an *intervening* variable because they, “enable individuals to achieve productive outcomes in situations where temptations to free-ride and shirk are ever-present” (Ostrom 1990: 15).

Second, with reference to setting network priorities, the impact of national preferences can again be traced. A prominent example relates to the theme of Better Regulation – an agenda which The Netherlands and UK have forcefully advocated (Radaelli and De Francesco 2007; World Bank 2007). The development of a new cluster dedicated to the issue – arguably one of IMPEL’s most significant constitutional changes – could thus be seen as a manifestation of the ‘uploading’ of dominant national governance priorities (Schout 2009: 1136; Börzel 2002). Having said that, it should be noted that the decision to instigate the cluster was taken collectively *and* that ‘downloading’ forces were also exercised in the form of the EU’s own Better Regulation programme (Interviews 2008-9; also see COM(96) 500 final, 55, 56 and COM(2005) 97).

The Network’s move to independence signalled a third substantive change to IMPEL’s constitutional format, and was to some extent driven by the preferences of ‘dominant’ Member States, i.e. the Netherlands, UK, and to a degree, France and Germany (Interviews 2008-9). Again, however, the decision to seek legal status was reached by consensus, and was considerably influenced by the Commission’s unwillingness to finance IMPEL directly.

At the same time, national legal contexts also posed *barriers* to change. For example, when IMPEL applied to become an Association, and introduced a membership fee, it transpired that some German Landers, the Wallonia region of Belgium, and Greece had

constitutional structures that prohibited them from entering into a formal fee-paying agreement with the Network. As a result, changes had to be made to IMPEL Statutes to accommodate their concerns (Interviews 2008-9).

These examples demonstrate how *national* constitutional rules, preferences and conventions have also impacted on collective-choice decision-making at the Network level. Attention turns next to the EU domain for evidence of whether IMPEL has provided an opportunity for instrumentalism by European institutions.

EU institutions: networking in the 'shadow of hierarchy'

Commensurate with Börzel's proposition that EU networks are, "embedded in hierarchical structures established by supranational institutions" (2007: 20), the establishment of IMPEL can to an extent be seen as a demonstration of the asymmetric influence of EU institutions (and Member States), and the result of compromises conceded by those with less political authority or institutional capacity to comply with pressure from 'above'. Certainly, there is little doubt that EU-level 'constitutional-choice' rules have to an extent influenced the decision-making parameters and operational procedures of IMPEL members.

From the very outset, the European Parliament has pressed national governments to cede surveillance and enforcement powers to an EU inspectorate or audit. While the prospect has been (and remains) politically unlikely (Duncan 2000: 1-2; Interviews 2008-9), the ongoing threat it presents has helped the Commission to promote its own agenda. As a DG ENV Official comments:

"To put it simply, there is no EU environmental inspectorate, so IMPEL was more or less the proxy whereby the Commission tried to give some incentive or support those Member States willing to do more in terms of the enforcement of Community environmental legislation the on the ground" (Interviews 2008-9, IMP5: 5).

When the Commission finally joined IMPEL in 1997, its interest in championing its own agenda was clear to some of its staff:

“[T]he Commission had, at least in theory, the potential for influencing IMPEL’s agenda, at least, it was envisaged that the Commission would be consulted and would give its opinion, and that this would be taken into account by IMPEL as far as possible” (IMP10: 1, DG ENV Official).

However, when IMPEL began to assert its authority (e.g. at the Rome Plenary), the Commission saw this as a signal to reassess the extent to which the Network was effectively serving its interests, which was arguably the motivation for conducting an evaluation of IMPEL in 2005:

“The first question [addressed by the evaluation] was ‘is IMPEL useful for us?’ Should we continue? The answer was clearly yes, we should continue, but under more strict conditions, linking it more to the needs of the Commission” (IMP2: 6, DG ENV Official).

Moreover, achieving independence did not completely shield IMPEL from Commission influence, not least because the Network continued to rely on EU grants through the LIFE+ Programme,

“We still have some say because...money from the Commission will never be free money. Under LIFE+, IMPEL have to make an application and justify why it is in the public interest that it receives money from the EU” (IMP5: 4, DG ENV official).

Aside from the (punctuated) provision of funding, administrative support, and leadership (as co-Chair), the central method (or ‘constitutional-choice rules’) through which the Commission has generated incentives for shaping IMPEL’s organisational format, jurisdiction and activities, has been via Community legislative programmes, which have served as a powerful institutional constraint to (and opportunity for) national and network-level action. The most obvious meta-rule system has been the Community’s Fifth and Sixth Environmental Action Programmes, to which IMPEL objectives have been aligned and realigned (as outlined in the previous chapter). The former called for the establishment of an implementation network in the first place; the latter explicitly mentioned IMPEL as a means of promoting the exchange of information and best practice on implementation. These Community initiatives also form the basis for IMPEL’s Multi-Annual Work Programmes; indeed, activities and objectives specifically aligned with the

Sixth EAP include: running comparison projects; providing inputs to the Recast Proposal of the IPPC Directive; promoting Better Regulation; combating transfrontier shipment of waste; addressing implementation challenges associated with Emissions Trading legislation; and enhancing environmental management practices. Furthermore, it demonstrates the nexus between the formal and informal, whereby a voluntary network has been assigned a role in a (binding) Decision (1600/2002/EC).

The Network also responds to the European Parliament and Council's (formal but non-binding) Recommendation on Minimum Criteria for Environmental Inspections (RMCEI) (2001/331/EC) via its 'IMPEL Review Initiative' (IRI). The RMCEI elaborates the need to address disparities in inspection practices and capacities across Member States, and a series of IMPEL projects devoted to improving inspection planning have contributed towards its execution; for example, 'Doing the Right Things' began with a comparison project to establish how inspectorates identified priorities and developed inspection plans. It then used this information to produce a guidance manual to inform future domestic planning activities, and subsequently ran a project to test and improve the manual. IMPEL's RMCEI-related projects on the training of inspectors also contribute towards fulfilling the capacity-building demands of the Recommendations (Article 20).

Furthermore, the Transfrontier Shipments of Waste (TFS) Cluster has improved enforcement of the EU Regulation on Shipment of Waste (259/93 EEC), and contributed towards the fulfilment of the international Basel Convention on the Control of Transboundary Movements of Hazardous Waste (1992, Articles 50, 2). As a Commission official explains (IMP5: 5):

"The [IMPEL] work which has been undertaken in the context of Waste Shipment Regulation is of great interest to the Commission, to EU law and to members of the public at large, because it really contributes to strengthening enforcement".

Further, the Seaport Projects allow domestic enforcement authorities to perform in a coordinated way, in keeping with these supranational *and* global 'rules'.

The work of the Better Regulation Cluster, in particular, its 'Checklist on practicability and enforceability of legislation', adhere to the spirit of the Commission's Better Regulation agenda (COM(2005) 97 – discussed in Chapter 2) and comply with Commission Communications calling for improved implementation and enforceability (COM(2012) 95 final, COM(2007) 502).

Tellingly, IMPEL's most recent Multi-Annual Work Programme illustrates the extent to which its agenda is shaped by EC legislation (see Box 6.1, below). It seems apparent, therefore, that constitutional-choice rules at the global, European and national levels have played a key part in defining the parameters within which IMPEL has evolved and operated.

Box 6.1: IMPEL's thematic areas relating to EC Directives

Waste

- ★ Waste Shipment Regulation (259/93 EEC)
- ★ Waste Framework Directive (2006/12/EEC) and waste stream based directives
- ★ Landfill Directive (99/31/EC)
- ★ Waste Incineration Directive (2000/76/EC)

Industrial emissions

- ★ IPPC Directive (96/61/EC)
- ★ Directive on SEVESO II (96/82/EC)
- ★ Waste Water Treatment Directive (91/272 EEC)
- ★ Air Quality Framework Directive (96/62/EC) and Daughter Directives
- ★ EU Emissions Trading Scheme (2003/87/EC)
- ★ Large Combustion Plants Directive (2001/80/EC)

Permitting

- ★ Public participation in environmental procedures (2003/35/EC)
- ★ Environmental Impact Assessment Directive (85/337/EC)
- ★ Water Framework Directive (2000/60/EC)

Source: IMPEL's Multi-Annual Work Programme 2007-10 (2006: 6); extended to end in 2012

6.2.2 Procedural change

Procedural developments are classified in terms of collective-choice and operational rules, and are guided by Ostrom's classification of seven, horizontal-level, rule types, functioning as a configuration (2005: 191). Introduced in Chapter 3, they are applied here largely in pairs: i.e., who is included, and how they are selected (position and boundary rules); which actions are performed by whom, and how this is determined (choice and aggregation rules); how information is communicated (information rules); and finally, how outcomes may be affected by the group, and who benefits/pays (scope and pay-off rules).

a) *Position and boundary rules: Who's included, and how are they chosen?*

The available 'positions' are the building blocks of any cooperative arrangement (Ostrom 2005: 193), and how they are designated creates opportunities (and limits) for participation and learning. Core IMPEL positions are: members (i.e. national, regional or local environmental authorities); the leadership (i.e. the Troika pre-2008, the Board post-independence); the Secretariat; project participants (i.e. project leaders, national experts, and industry representatives involved in ad hoc working groups); and observers.

Two crucial entry rules worth flagging are that membership of IMPEL is *voluntary*, and as of independence, formally *restricted* to environmental authorities with jurisdiction for the implementation or enforcement of EC environmental law (IMPEL Statutes 2008, Article 4.1). This has had important implications for participation. Achieving legal status undoubtedly gave IMPEL the opportunity to undertake a conscious assessment of its procedural positions and boundary rules. This led to the Commission (the only non-nation-based member) being demoted to observer rank, and reinstatement of responsibility for the Secretariat to the Network. It also established a new (and larger) executive authority in the form of the Board, which created a more stable leadership arrangement, in particular, through the more permanent positions of Chair and Vice-Chair, each with two-year (renewable) tenureships. These changes enabled IMPEL to

regain ownership of the chairmanship and build internal leadership capacity. As one IMPEL member pointed out, this had been difficult under the previous arrangement:

“The Commission had the advantage that they had the same person as co-chair for so many years. For IMPEL, the co-chair came from the country holding the [EU] Presidency, so [the National Coordinator] had just one meeting to be Chair” (IMP12: 5).

Procedures for leadership selection (i.e. boundary rules) also changed from a system of rotating Member States (the Troika), to appointment of a Board by the General Assembly (IMPEL Statutes 2008, Articles 12-13). A rational choice institutionalist explanation would suggest it was no coincidence that senior representatives from IMPEL’s two dominant Member States – the Netherlands and UK – were chosen to fill the roles of Chair and Vice-Chair respectively.

Another important change to the Network’s entry rules was signalled by the introduction of a nominal membership fee, which was brought in post-independence to help fund the Association. Marking a break from the group’s tradition of voluntary contributions, the move proved contentious. In the end, to reflect the diverse financial and legal circumstances of members, the charge was set on a sliding scale (€500-5,000 for the first organisation of each country to join in 2009), based on self-defined ability to pay (IMPEL Rules 2009, Article 3.1). While the shift went against IMPEL’s voluntarist instincts, it respected its OMC-type ambitions to take on differentiated, but collective responsibility, in this case, for self-funding.

b) Choice and aggregation rules: who does what, and how are decisions made?

How actors are assigned different roles, and how their potentially diverse preferences are aggregated into a single network stance reflects a critical (collective and operational) institutional choice. In keeping with the character of OMC, IMPEL rules on ‘who does what’ have been distinctly informal. In part due to the limited resources at the disposal of most national environment authorities, the designation of roles has largely been self-selecting. Those with the means and interest in taking on tasks have broadly been encouraged to do so, and although appointments and proposals are officially subject to

authorisation at General Assembly (and Cluster) meetings, this is generally a formality, and in practice it is rare for approval not to be given by consensus agreement.

The importance of consensus as a procedural norm is also paramount (Interviews 2008-9), and the custom was enshrined in internal Network rules post-independence, thus formalising the commitment of the General Assembly, Board, and Clusters to take decisions by consensus wherever possible (Statute 2008, Article 9.7, 14.3; Rules 2009, Articles 4.1, 4.2 4.3). That is not to say that frank discussions have not taken place when there is opposition to a motion (notable examples include: agenda-setting under Commission chairmanship; the move to independence; and introduction of membership fees) or that votes have not been called in exceptional circumstances when decision-making has been deadlocked (e.g. over the status of French as an official IMPEL language, Lisbon Plenary, 2007).

It is interesting to note, therefore, that the new IMPEL Rules also mark a symbolic move away from this convention by making explicit provision for simple majority voting (or a two-thirds majority for constitutional matters) where consensus cannot be reached (IMPEL Rules 2009, Articles 8.3, 13.3 and 21.1). This is perhaps an inevitable consequence of IMPEL's expanding membership and scope, though in rational choice terms, it could also be seen as a means for more ambitious members to prevent obstructions by individual states. Consensus nevertheless remains the guiding decision-making norm, and voluntarism the key determinant of participation.

c) Information rules: authorised channels of communication

Turning to information rules, first and foremost, IMPEL has long aimed to provide an *informal* forum for the exchange of information and experience among practitioners. Such exchanges occur across *and* within national *and* sub-national contexts, bringing into play national IMPEL networks, where they exist. Internally, information streams are generally considered to be inclusive and transparent, though national experts adhere to a code of professionalism in treating informal communications with a degree of confidentiality (in light of their potential political and legal sensitivity). In terms of

external transparency, project outputs and Assembly Conclusions are published on the IMPEL website.

A final point about information rules is that IMPEL's official language is English, after French was (controversially) voted out in 2007 to save translation costs. Countries hosting Assembly meetings remain free to provide translation services at their own expense (as the French did in 2008), but as many countries lack the funds to do so, English remains the dominant mode of communication. Again, a rationalist perspective might interpret this as the institutionalisation of Anglophone predispositions by dominant members, though it is worth pointing out that both the UK and Netherlands abstained from the vote.

d) Scope and pay-off rules: IMPEL's sphere of influence, and who benefits/pays?

How IMPEL is used to shape potential (implementation and enforcement) outcomes, and how costs and benefits are distributed, correspond to Ostrom's scope and pay-off rules (Ostrom 1986: 19). Given the subsidiarity-sensitive nature of OMC as a policy instrument, one would expect a network such as IMPEL to demonstrate an overall emphasis on *scope* rules, which, rather than being prescriptive (like regulation-generating *choice* rules), promote performance standards and give 'targets of regulation' a degree of freedom in achieving commonly agreed regulatory goals (Coglianese *et al.* 2003: 706, Ostrom 2005: 209). Empirically, this appears to be the case for IMPEL: its strategy to set context-sensitive performance guidelines for meeting EC environmental legislative objectives lies at the heart of the Network. It is *formally* embodied in institutional objectives and statutes, and *informally* embedded within its procedures and activities – as demonstrated by numerous projects mentioned in Chapter 5.

The *configurational* nature of Ostrom's rule-based model (Ostrom and Crawford 2005: 191) is particularly evident when analysing *pay-off* rules, which shape who bears the costs and benefits of IMPEL's actions and outcomes (Ostrom 2005: 208). The inter-linkages between the Network's self-selecting membership and participatory structures (boundary and position rules), flexible agenda-setting and consensual decision-making procedures (choice and aggregation rules), and informal communication modes (information rules),

have produced a range of cost-benefit schedules over time, with different actors benefitting from (and contributing to) different IMPEL activities to different extents at different times. Because this ties in so closely with the Network's participation and learning outcomes, this is covered in more detail in the corresponding sections below.

Having taken stock of the key substantive (constitutional) and procedural (collective-choice and operational) rules, and explored how institutional evolution may have been motivated by notions of instrumentalism, the analysis proceeds by exploring how these rule sets have shaped and reshaped incentives structures available to actors, and in doing so, influenced participatory and learning outcomes.

6.2.3 Participation: the impact of rules for inclusion

In terms of IMPEL's constitutional rules, EU institutions have played a key part in creating and defining its *raison d'être*, as outlined above. But how successful have rule-structures been in practice at improving participation?

First, it is worth drawing attention to the fact that entry rules define not only who is 'in', but also who is 'out'; i.e., which groups are constitutionally excluded from the cooperative networking arrangement. By confining membership to authorities with competence for implementing and enforcing EC environmental law, IMPEL automatically rules out corporate, civil society and EU institutional members, which goes against the grain of OMC aspirations to: (a) improve involvement from the private and voluntary sectors, and (b) assign the Commission a coordinating role (Lisbon Presidency Conclusions 2000, Paragraph 37). However, while these groups cannot *belong* to IMPEL, they are permitted to participate in network activities as observers, conference speakers, or project members. Current observers include:

- the Commission (post-2008);
- International Network for Environmental Compliance and Enforcement (INECE);
- GreenForce (EU network of Member States' practitioners in Nature Conservation and Forestry);
- Environmental Compliance and Enforcement Network for Accession (ECENA);

- OECD's Regulatory Environmental Programme Implementation Network (REPIN);
- plus ad hoc observers such as: the European Chemicals Agency; the European Environment Bureau; the European Environment Agency; and the Network of the Heads of Environment Protection Agencies (NEPA).¹⁶

Representatives of many of these groups are routinely invited to speak at IMPEL plenary and conference sessions, and some are involved in projects – the Commission being the most regular participant, but a recent and important contribution also coming from NEPA, which helped produced a revised Better Regulation Checklist (elaborated in Chapter 5; IMPEL-NEPA 2010).

Collaboration with industry is generally viewed positively if corporate expertise is deemed relevant to the project in hand, such as in the case of Resolution of Environmental Conflicts by Neighbourhood Dialogue, where the aim is to help authorities solve environmental problems between industrial sites and their neighbours by developing voluntary communication instruments (IMPEL 2009). As a National Coordinator put it:

“It’s important to have industry [involved] because sometimes they know what their problems are better than experts from public institutions, so they can give good input to IMPEL” (IMP18: 6).

However, restricting Network *membership* to environmental authorities is widely seen as desirable because, in the words of members,

“Industry has *other* interests, different to us; sometimes opposite” (IMP21: 4).

“If you have NGOs or industry reps [as members], it becomes more politicised, and a forum for lobbying. And that is absolutely not the objective of the Network” (IMP3: 5).

Another notable absence, resulting from IMPEL’s status outside the formal EU legislative framework, is involvement of the European Parliament. Although IMPEL has sent four delegations to address the Environment Committee (2003, 2005, 2007, 2010), MEP

¹⁶ <http://impel.eu/about/members-and-observers>, accessed 25th Oct 2010.

awareness of the group's work remains strikingly sketchy, even among active Committee members (Interviews with MEPs Caroline Jackson and Caroline Lucas, 2008-9).

Returning to the interactive nature of rule structures, it appears to be the case that interests and resources influence participation – or to frame that slightly differently, pay-off and agenda control (choice) rules, interact to create incentives as well as disincentives for participation. This is played out, for example, in the differential participation rates among members in IMPEL. For example, rational choice theorists would see it as logical that participation is strongest in countries where IMPEL's work is prioritised and better-resourced, specifically in the UK and Netherlands, but also other northern European countries (e.g. Germany, the Nordic region, Belgium, Austria, France, Ireland, etc). This is reflected at several levels: through project participation (see Figure 6.1 below), propensity to take on project leadership and funding responsibilities, and via institutionalised positions of authority.

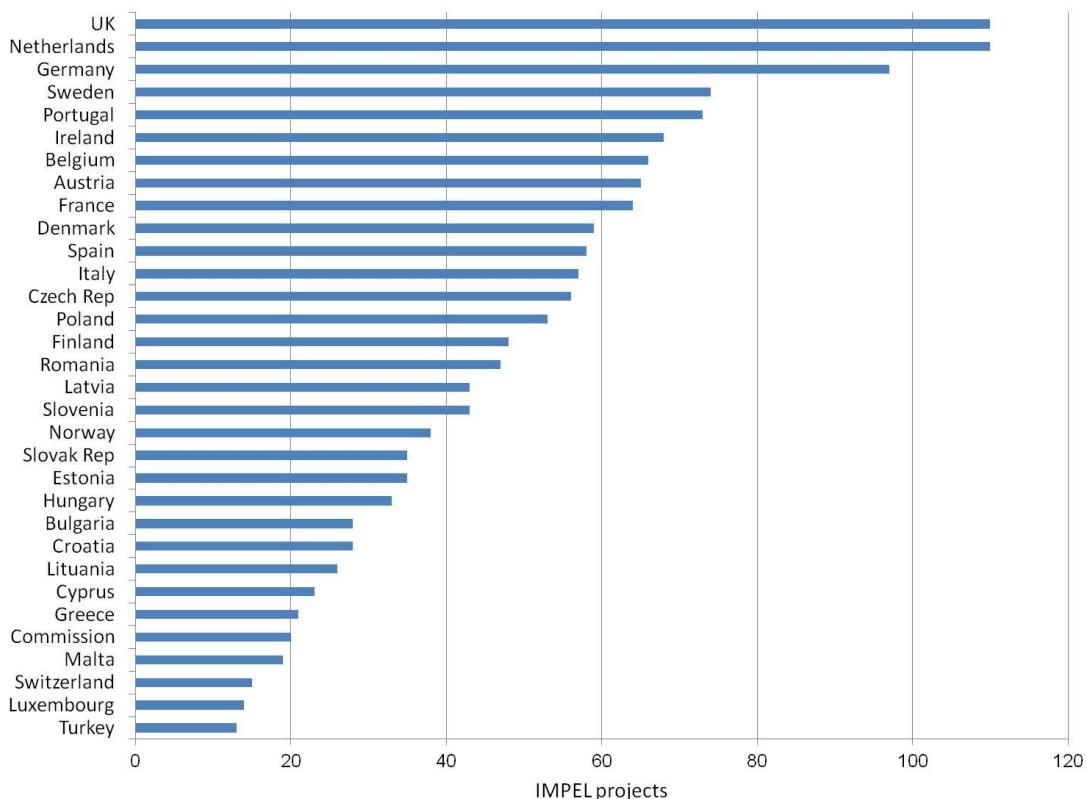


Figure 6.1: Participation in IMPEL projects

Source: Author; data from IMPEL website, <http://impel.eu/projects> (accessed 15th March 2012)

For example, at the time of IMPEL's independence, between them, the UK and Netherlands shared the roles of: Chair, Vice-Chair, chairmanship of Cluster 3, and the Secretariat. The evident disparity has led to concern among some members that those with more resources may enjoy more control, especially in light of the altered position and boundary rules introduced by the Association (i.e. the new leadership hierarchy and differential membership contributions):

"I am afraid there is a potential risk of some countries getting more importance in the Association than others because they have more money or...can pay more membership fees, and I'm afraid that would give them the power to have a stronger voice than countries that don't have those possibilities to pay more or to participate in so many meetings because they have fewer people working. It's a difficult balance to get in the Association" (IMP13: 7).

Furthermore, aggregation and pay-off rules can interact to hamper participation; for example, Members are obliged *and funded* to attend Assembly meetings, but must find their own means to participate in cluster meetings and projects, where preparatory discussions take place:

"[Participation] is not fully satisfactory. The rules now state that everybody should attend General Assembly meetings, where decisions are taken. But now, the development has been that discussions have to be prepared [at cluster meetings] beforehand. And it's not always easy to be involved in the clusters, which prepare these discussions, because there is no finance to take part in these meetings. This could be developed better, so it's possible for everybody to participate... People should not be excluded for economic reasons" (IMP12: 7).

That is not to say that power and resource asymmetries are necessarily considered to be a bad thing; far from it. For many, pay-off rules create opportunities for participation (and learning) that would otherwise not be available. In fact, it was striking how many interviewees from less well-resourced countries expressed gratitude for the inputs and resources provided by more dominant members:

“I think IMPEL has helped a lot of countries. We appreciate the effort that the bigger countries are putting into it. They are doing a lot of good work that is necessary. Maybe we cannot contribute as much, being a smaller state, but we appreciate it” (IMP: 19: 7).

At the same time, the combination of voluntaristic procedural (and constitutional) norms and choice rules – demonstrated by the self-selecting (and often self-funded) nature of project participation – is also a source of frustration for some members:

“There are countries that are not answering at all [to calls for project participation] or are responding very minimally. So at the end of the day, the ‘views’ of IMPEL brought out in the report may potentially only really represent a few of the more active countries” (IMP6: 3).

Moreover, Parliamentarians point out that the Network’s voluntarism creates the opportunity for less conscientious implementers of environmental legislation to evade scrutiny. Caroline Jackson, in particular, has repeatedly lamented the unwillingness of members to publically expose national infringements cases (MEP at the time of interview, 2008). Furthermore, in spite of the best efforts of network members to champion IMPEL Review Initiatives (IRIs) – which are central to the Network’s response to the Recommendation on Minimum Criteria for Environmental Inspections – *and* although the Commission has stipulated it will consider imposing external audits if participation in Review Initiatives is unsatisfactory (Weenink-Driessen 2009), the Network has more often than not failed to reach its target of three IRIs per year. This has led to calls from some quarters in the Commission for the introduction of more authoritative controls:

“[Participation] is really a question of resources and political priorities. And that’s also why we think that only continuing this informal exchange of information is not sufficient. We ultimately need legally binding inspection requirements to force Member States to do more in that area” (IMP2: 4, DG ENV Official).

There is also some evidence that mobilising the ‘shadow of hierarchy’ – in the form of the Commission providing resources, project leadership, and the opportunity for IMPEL to

feed into forthcoming legislation (e.g. the RMCEI) – may have served to incentivise broader participation in the past:

“I don’t know whether it was because it was a Commission-led project or whether it was because we tackled issues that were fundamental for Member States, such as what should be amended or modified in the Recommendations [on Minimum Criteria for Inspections], should it become a directive or not. We didn’t really discuss this topic, but it was always in the air, so they [Member States] were very keen to participate, to make their positions known” (IMP2: 4, DG ENV Official).

6.2.4 *Strategic learning*

Turning finally to learning, the rational choice institutionalist perspective has three key insights to offer. The first relates to the *nature* (depth) of learning, the second to the *direction* of learning, and the third to institutional structures or *mechanisms* identified by the approach as being conducive to stimulating learning.

As implied by the analysis of substantive and procedural change above, the *depth* of learning under rationalist institutionalism is ‘thin’ because preferences are not believed to be affected by social interaction. Rather, learning is understood in terms of rules and outcomes (not processes), assessed in terms of independently observable, legislative, implementation, and enforcement structures, routines and outputs. The nature of learning under this theoretical framework is also strategic and instrumental. As demonstrated above, IMPEL’s evolution, and Commission actions towards the Network, have been the outcome of step-wise re-calculations by DG Environment – and indeed members themselves – of IMPEL’s relevance for helping them to achieve EU and national (and international) goals.

This suggests learning is a one-way adjustment, whereby *iterative* IMPEL interactions (a key feature of OMC) allows strategies towards achieving predetermined (European and national) goals to be reassessed and redirected. This occurs through feedback and peer review in projects, but also in discussions and debates at cluster meetings and General Assembly.

Further, because learning is not believed to be transformative under rational choice, it is argued that outcomes will have a homogenising effect. Certainly there is evidence that participation in IMPEL has improved national institutional harmonisation, as one National Coordinator explains:

“We have a network with the regional networks and national agency to harmonise issues. I give feedback on IMPEL to see what we can do [in terms of contributing to projects]. We have the problem that each region is organised differently. And so it’s also a lot easier if we can homogenise some of these organisations” (IMP1: 2).

Secondly, rational choice institutionalism finds the *direction* of learning to reflect asymmetries in the institutionalised distribution of information and resources. This is because, as far as they occur, changes in behaviour are shaped by the incentive structures created by dominant interests. At the OMC Network level, this would see information flows and rules – such as common standards, indicators, guidelines and best practice – determined largely by dominant and/or better-resourced actors (serving as ‘teachers’), and transferred to institutionally weaker members (or ‘learners’). Further to the examples already given in the preceding sections, a Commission official confirms this directional bias to be evident (if welcome),

“Southern and new Member States who go to the meetings, even though they say, ‘yes, it’s dominated by the UK and NL’, they are very happy because they can take away the things which are useful for them. The ‘new’ Member States...are more on the learning side, but they are very active” (IMP2: 5, DG ENV Official).

In this model, the role of hierarchy – i.e. the authoritative influence of European institutions (and to some extent leading Member States) – is emphasised as a motivating force for change (cooperation, rule-making and learning), creating incentives (opportunities to contribute to EU lawmaking and shape best practice) and constraints (imposing law, mobilising threats of an EU inspectorate, and making access to resources conditional). Learning, in this sense, is predominantly asymmetric and top-down.

In this respect, it is interesting to note that IMPEL peer reviews have been criticised for their lack of coercive mechanisms, such as naming and shaming. Schout and Claessens found peer pressures were ‘weak’ (1999: 268), adding:

“interviewees pointed out that Member States are sometimes reluctant to follow IMPEL conclusions up with changes in national inspection systems. The informality of the network also acts as a shield against obligations to do something with the outcome” (*ibid.*).

A former (German) member of IMPEL expresses this point more forcefully:

“The crucial instrument for the effectiveness of the OMC is the organization and publicity of peer reviews. Their results are intended to motivate EU member states to achieve the agreed objectives. The problem with the peer review is the tendency of peers to commend rather than criticize each other. A case in point are the [IRI] peer reviews of national inspection authorities which were conducted in seven EU member states within the framework of the IMPEL network. The final report does not contain a single critical observation on national inspection activities” (Bohne 2006: 570).

Indeed, it is fair to say that IMPEL peer reviews rely more on ‘carrot’ than ‘stick’ learning mechanisms. However, it is important to point out that Schout and Claessens (1999: 268) qualify their censure by adding, “positive examples of peer group pressure are already available” (more examples follow in Section 6.3).

Finally, taking IMPEL’s institutional structure as a whole, it is important not to lose sight of the counter-factual, i.e., that without with the learning and participatory opportunities provided by the Network’s cooperative and iterative rule structure, many members would have struggled to implement improvements at the domestic level. As one Member explains:

“Participating in IMPEL allows us to see how things can be done better, so we have a best practice example to follow. Joining the group gives us the chance to take a break from domestic pressures and distractions, and commit to making these improvements where we might not otherwise have the opportunity at home. And because there is *follow-up*, we force ourselves to do the right things” (IMP 19: 3).

6.3 SOCIOLOGICAL INSTITUTIONALISM: THE ‘IMPEL FAMILY’

The next section explores the same processes from a sociological institutionalist perspective. As touched upon in Chapter 3, Powell and DiMaggio (1991: 67) highlight three ‘isomorphic’ pressures, which can cause institutions to take on a similar shape *in spite of* the different social contexts from which they have emerged, these are: 1) *coercive*, derived from political influence and cultural expectations; 2) *mimetic*, representing a desire to copy other institutions deemed more legitimate or successful; and 3) *normative*, relating to professionalization.

What does this perspective help us to understand about IMPEL that the rational choice perspective fails to integrate by its instrumental approach? Has IMPEL been more than a tool of the EU (and national coordinators)? To what extent has it established an identity and agency of its own? Each of the four criteria is again addressed in turn.

6.3.1 *Substantive change: network identity and agency*

First and foremost, sociological institutionalism would define ‘substantive change’ in a broader sense, where institutions are not only self-serving rules, but also reciprocal (ex)changes, which shape (and are shaped by) the wider social and cultural environment. Thus, once established, IMPEL would be expected to develop an identity and interests, and serve as an *independent* variable in its own right (subject to local, national and European norms). In this section, the rise of IMPEL is examined from a sociological perspective, and the question of whether the Network has demonstrated agency, and contributed to broader normative changes in policy thinking at the national and European level, is explored. As institutions are perceived to (mutually) redefine preferences at each level of analysis, the remaining sections do not treat the European, Network and national levels as distinct entities, but examine them simultaneously.

First, reinterpreting the rise of IMPEL, the sociological approach concurs with rational choice insofar as it acknowledges the powerful role legislation can play in instigating institutional change. As Powell and DiMaggio (1991: 67) explain, “[t]he existence of a

common legal environment affects many aspects of...behaviour and structure"; and they go on to add:

"[coercive isomorphic] pressures may be felt as force, as persuasion, or as invitations to join in collusion. In some cases, organizational change is a direct response to government mandate: [e.g.] manufacturers adopt[ing] new pollution control technologies to conform to environmental regulations" (Powell and DiMaggio 1991: 67).

This description clearly has much resonance with the creation of IMPEL when seen as a cooperative response to national obligations to implement EC environmental law, and comply with duties laid out in subsequent Environmental Action Programmes.

What is unique to the sociological approach, however, is that it sees IMPEL as performing not only an *aggregating*, but also a *transformative* role. Accordingly, it creates the possibility (even expectation) that the Network will eventually take on its own identity and agency, which is supported by the reflections of a senior DG Environment Official:

"IMPEL wanted to become more independent. And I think the crisis started there... A moment came when the children have grown and they say, 'OK, we don't need the father or the mother'... and suddenly they [IMPEL] wanted to take their decisions and do things on their own. The Commission lost interest in it because if you don't have ownership of something, then it's not the same thing. And the Commission was not seeing the complete added-value of being there" (IMP7: 5).

This desire to exercise independent authority is further evidenced by IMPEL's willingness to produce reports that have upset the Commission (e.g. inputs to the IPPC Recast Directive in 2007) and even members' own national governments (e.g. the early Minimum Criteria for Environmental Inspection Conclusions; Interviews 2008-9, Schout and Claessens 1999: 271). It is also demonstrated by the Network's readiness to assert agenda-setting control when diverging interests between IMPEL and the Commission became apparent (e.g. Plenary Conclusions, Rome, Dec 2003). As a former IMPEL member explained:

“What is unique and very special in IMPEL is that they are always concerned with the problems *they* are interested in. They focus on key problems they know are important, not only for one, two or three Member States, but for more. They are in the best position to identify what is a general problem, to analyse the situation, and to give hints for best practice. That is what keeps the Network alive” (IMP11: 6).

Unsurprisingly, post-independence, the desire within the Network to act autonomously vis-a-vis EU institutions has been stronger than ever:

“We are on more of an equal basis with the Commission now. If we don’t like the reaction of the Commission, we can now do things our way” (IMP 8: 11).

Furthermore, there has been a discernible change in emphasis from a reactive to proactive strategy in influencing EC environmental law (Interviews 2008-9).

A second, related, point is that the sociological approach sees substantive change as a *mutual* process, characterised by multi-way feedbacks between the EU, Network and national levels. For example, IMPEL has helped to shape European norms on minimum criteria for inspection practices (by contributing to the Recommendation), and these standards, in turn, have directly affected the work of regulatory agencies at the national (and to some extent sub-national) level. Outputs from the Better Regulation Cluster also represent IMPEL-driven substantive change at the EU level because Network activities have fed into processes contributing to the reframing of EC law (e.g. contributions to the IPPC Recast Proposal and revised WEEE Directives were used to inform Commission legislative redrafts). Furthermore, Network calls for the mainstreaming of procedures for assessing the legislative quality, implementability and enforceability of law have been institutionalised in European Impact Assessment procedures, which has laid normative foundations at the EU (and subsequently domestic) level for heightened attention to end-of-regulatory-chain concerns.

A further substantive change relates to the contribution IMPEL has made towards improving common understandings of national regulatory contexts, which has obvious

implications for the effective implementation of EC law, as explained by a former (founding) IMPEL member,

“One should assume that the European Commission and the Council are well aware of the functioning and eventual shortcomings of national regulatory systems when they draft and adopt EC legislation in order to harmonize 25 national legal systems. Unfortunately, this is not the case” (Bohne 2006: xi).

The absence of such awareness when the Network was first formed was striking according to the same member; he recalls a meeting in Madrid in 1993 whereby,

“The discussion among the national and Commission experts revealed an almost complete ignorance of the regulatory systems of other countries. There were enormous difficulties to reach a mutual understanding of common characteristics and national differences of regulatory systems” (Bohne 2006: xi).

These comments demonstrate the inherent deficiencies of hegemonic EC environmental law-making, and the need for greater awareness among legislators (at all levels) of the institutional idiosyncrasies of national regulatory systems. In the early years IMPEL worked hard to ameliorate this situation, which paid dividends:

“time spent...on developing mutual understanding of national regulatory systems is now allowing work in specific legislative issues to proceed unhindered by failure to recognize the unique characteristics of different regulatory cultures” (Duncan 2000: 7).

Its work has continued in this vein, compiling summary data about the structure and operations of national inspectorates, as well as by producing detailed reports about national regulatory systems and their constitutional and legal contexts (e.g. IMPEL Review Initiative Final Reports). Furthermore, where proposed or existing legislation has posed implementation challenges nationally, IMPEL has played an active role in bringing this to the attention of the Commission, as well as national authorities, as one legislator explains:

“Legislation [from the EU] comes very quickly into our hands. We need quick reactions, but don’t always have time to make a proper national impact assessment. So I see the

Better Regulation Cluster as a regulatory impact assessment in the sense that it gives feedback for the Commission on what we can implement and what might not be easily implementable. Because we have a Europe that is so diverse...we have different issues. Everything decided in Brussels is not enforceable in all countries" (IMP6: 2).

This is very much in keeping with OMC's decentralised approach, as well as IMPEL's core objective to, "promote mutual understanding of common characteristics and differences of national regulatory systems" (IMPEL Rules 2009, Article 2.2).

Numerous other projects have led to changes in the way environmental problems and legislation are understood and interpreted by the implementing authorities across Europe. Two early projects – the IPPC-linked IMPEL project on the Food Production and Processing Sector, as well as 'Best Practice in Compliance Monitoring' – both "contributed to the development of EU reference documents on Best Available Techniques" (IMPEL Brochure 2003: 6). Others explore the feasibility of pan-EU frameworks, such as the Comparison Project on Common Regulatory Frameworks in Member States (2010).

Finally, there is evidence that IMPEL has been a vehicle for reshaping domestic perceptions and redefining national interests among members (and their constituent parts). In particular, the Network has served to support the ('meta') norm of sustainable development, and upturn preconceptions in some countries that environmental protection runs counter to economic growth, as these quotes from new *and* old members illustrate:

"We have learnt [from IMPEL] that environmental protection legislation doesn't have to run counter to economic growth – it can be interpreted within the context of sustainable development. In [my country] there is a very authoritarian approach to environmental protection, and the standard of protection is low because people see it as suppressing growth. Now we see it's possible to take a more positive and balanced view of economic and environmental concerns" (IMP21: 2).

"Inspection is always seen as something that goes against economic growth. Countries are reluctant to invest in it. We often have many critics, but we are doing a really good

job [at setting standards]. IMPEL is a platform from which we can sell what we are doing" (IMP15: 11).

6.3.2 *Procedural change: norm-building via professionalisation*

As demonstrated, the *collective* development of procedural norms through deliberation is a major dimension of IMPEL work, inherent in its best practice projects and preparation of guidance documents. These norm-building exercises – termed ‘normative isomorphism’ – can to some degree be attributed to processes of professionalisation, i.e., “the collective struggle of members of an occupation to define the conditions and methods of their work...and to establish a cognitive base and legitimisation for their occupational autonomy” (Powell and DiMaggio 1991: 70). A national expert confirmed that “professionalisation of enforcement in Europe is an important drive” (IMP14: 2).

Powell and DiMaggio also state that networks can be a “vehicle for the definition and promulgation of normative rules about organizational and professional behaviour” (Powell and DiMaggio 1991: 71). Indeed, Schout and Claessens (1999: 272) verify that prior to IMPEL achieving status as a non-profit Association, its independence was driven by the professional standards of its members. Thus, while IMPEL has ‘officially’ taken a light-touch approach to formal procedural processes, professional norms – characteristic of most epistemic communities (Haas 1992) – have provided an implicit guiding hand throughout. This may also perhaps explain the Network’s traditional focus on practical problem-solving, training and capacity-building (as opposed to organisational design, administration and negotiation).

With respect to procedural operating norms *within* IMPEL, informality, consensus and transparency were repeatedly mentioned by interviewees as critical features for the functioning of the Network, primarily due to the importance participants placed on these elements for establishing trust, ownership and solidarity:

“The informal dimension of IMPEL should remain, otherwise it will not be IMPEL anymore...I would like to see it remaining informal, honest and transparent” (IMP1: 6, 9).

“It’s important that people can admit that they are experiencing problems – that they might not be the best at something. It’s highly important to have this openness” (IMP12: 7).

Even Margot Wallström (IMPEL 2003: 5), former EU Commissioner for the Environment, acknowledged the significance of informality:

“I particularly appreciate the informal nature of the IMPEL network since I think that this enables it to achieve objectives that would otherwise be much more difficult to realize in a formal context where only official positions are expressed.”

Under sociological institutionalism, informality serves a subtle, but useful, *socialisation* function, building an open environment for dialogue and mutual problem-solving. As Lehtonen (2005: 177) explains (in reference to OECD peer reviews):

“[O]ne should not underestimate the importance of the informal discussions at the margins of the peer review meetings – over lunch, during coffee breaks or receptions organized by the reviewed country following the formal meeting – as occasions of ‘dialogue as open conversation’”.

In fact, it is these informal channels which experts state they value most because they give direct access to their counterparts in other countries for advice when implementation challenges arise. As one veteran IMPEL member explains:

“We have a lot of useful exchanges outside meetings, where we phone or mail each other. If you are confronted with a topic, and it’s something other countries are already experiencing problems with, instead of hiring a consultant, you can make direct contact with...someone who has experience” (IMP15: 5).

It is often through these informal interactions that common problems are identified and projects are proposed to address them (such as the Pig Farming Project, mentioned in Chapter 5). Of course, once Terms of Reference have been developed, communication channels become more formalised, and proposals must be submitted for approval by the General Assembly (generally following discussions at cluster level); however, informal channels remain open.

As hinted by Wallström in her quote above, informality has also to some extent sheltered the Network from politicisation, which has arguably helped promote the openness and trust upon which scope for deep (transformative) learning depends:

“It has been a really great benefit that IMPEL is outside the political system of the Member States. It has been free and not obligatory, so people can talk freely from their own experiences, and they are not bound by state policy” (IMP6: 1).

In contrast to the rational choice approach, which promotes competitive rule structures for incentivising compliant behaviour, Klijn and Koppenjan (2000: 145) argue that trust helps to *minimise* opportunistic behaviour because in this model strategic actions are not always seen to be helpful; rather than constraining, rules are seen as important “pillar[s] of trust”, which “regulate but do not determine and can be changed” (*ibid.*). Certainly, in the view of many members, (further) formalising IMPEL, for example, through greater involvement in legislative negotiations or by awarding the Network legal surveillance authority with right of entry, would only serve to politicise their expert advice and erode the trust upon which IMPEL depends, and in practice diminish its capacity to perform some of its most useful cooperative support and learning functions (Interviews 2008-9). Some interviewees cited IMPEL’s contributions to the Commission’s IPPC Recast proposal as a case in point, explaining that because it ran parallel to Council discussions, it potentially compromised their ability to speak freely about the practicability of EU law, to the extent that they did not participate in the relevant IMPEL project for fear of contradicting their own official national delegations (*ibid.*).

Adherence to the procedural norm of consensus is also seen as a means of generating trust and ownership, and ultimately, sensitively managing the diversity within IMPEL:

“There are huge differences between the countries, and the challenge is to deal with those differences in a reasonable way because if those issues aren’t managed in a reasonable way, maybe we’ll have countries that will stop participating, and that would be the worst thing that could happen to IMPEL” (IMP13: 7).

Whilst the principle of consensus as a core decision-making norm has rarely been compromised, on the rare occasions when a vote has been called, the implications have been detrimental to Network relations (Interviews 2008-9). This demonstrates the dangers associated with imposing majority or authoritative rules on a group used to horizontal, consensus-based decision-making norms. As an expert from an active Member State commented:

“[Calling a vote] was a shock for everyone, and not something you want to repeat too often as it’s not good for a voluntary network” (IMP14: 12).

Interestingly, the IMPEL case demonstrates that in contradiction to the rational approach, the imposition of hierarchy may undermine cooperation, whereas norms of consensus and informality can generate authority and give credibility to group decisions:

“Consensus is important. Now we have the statutes, which give the opportunity to hold a vote, but I think that we should try to decide by consensus. It gives authority to the decisions” (IMP12: 7).

6.3.3 *Participation*

Understanding participatory structures as being shaped by ‘rules of appropriateness’ has resonance in IMPEL because professional norms, national institutions and customs, and EU policy culture all have a role to play in influencing ideas about inclusion.

Taking professional norms first, according to members, restricting Network entry to environmental authorities reinforces trust and increases communication and openness internally (Interviews 2008-9). While IMPEL welcomes greater participation by industry and NGOs on an ad hoc basis, the majority of members draw the line at their involvement in projects dealing with enforcement matters, citing grounds of *propriety*,

“IMPEL is mainly a network of enforcers, and in some projects it is not *appropriate* for NGOs or industry to participate. If we are speaking about enforcement, then it is a matter for the authorities. We don’t need to share our views with those we enforce” (IMP3: 5).

It is also possible that extending Network membership beyond the natural bounds of its epistemic community could undermine its professionalization rationale, and thereby impede normative isomorphic drivers. To some degree, the introduction of legal and policy experts when the Better Regulation Cluster was formed resulted in a more fragmented Network environment, however, epistemic communities were protected by IMPEL's multi-cluster institutional structure, which gave each group its own channel for meeting and communicating.

Second, national contexts also have a role to play in shaping a country's willingness and capacity to participate in IMPEL, "What is appropriate for a particular person in a particular situation is defined by the political and social system [within which they operate]" (March and Olsen 1984: 741). A poor institutional 'fit' between IMPEL and domestic constitutional arrangements can therefore impede participation (and learning), for example, in countries with decentralised structures where, "formal regulatory structures vary across regions", such as Germany, Italy and Spain (Bohne 2006: 522). This is confirmed by IMPEL members:

"Depending on your national setting, it can be more difficult to get really involved in IMPEL. Some regions don't have the power to make changes or maybe the political will – because maybe the agencies want to change, but it may put them in conflict with the regional authority on which they depend... It is certainly more difficult to participate in IMPEL if you have a federal or regional administrative structure" (IMP1: 3; also Schout and Claessens 1999: 261).

National norms and culture can also determine the political priorities (reflected in budgets) and capacity (e.g. language skills) of Network members:

"In a lot of Member States, the agencies who work [in IMPEL] are dependent on the Ministries, who determine their budget. Inspections and enforcement have a low priority, so these agencies are understaffed" (IMP14: 4).

"Very few [regional agencies] give feedback [on IMPEL projects] because there is a big problem of language" (IMP1: 2).

At the same time, domestic and European norms, which shape participatory structures (at all levels), are to an extent malleable under the sociological perspective. For instance, perceptions of who it is deemed appropriate to involve in the regulatory process (and in what role) seem to have changed as a result of IMPEL coming into being. As Georges Kremlis, former Head of Unit for Infringements at DG Environment explained:

“An important point of IMPEL was to bring together the people involved in the life-cycle of a piece of legislation, starting with the policy-makers who draft laws and those who implement and enforce them. Often these people didn’t even know each other – some were in the inspectorate, some in the ministry, others in the [environment] agency, and others still in the permanent representation (who might be from the ministry or agency). It was a good thing to bring them to together and work in a proactive and upstream process”.

The overall result has been a more integrated and holistic approach to environmental policymaking at the national and European levels, in many cases, incorporating a broader spectrum of (public) actors across the life-cycle of EC legislation than had previously been customary. The ability of IMPEL to foster trust between these groups and redefine European norms collectively is evident from the following quote, made in reference to the first five years of IMPEL:

“We, as members of national enforcement agencies, were well aware of our national policy-making colleagues’ concern that we might be drawn into usurping their position in regard to development of Community legislation, and we were sensitive to this concern. However, by 1997, satisfactory working relationships and trust had been established and...policy-makers were now directly involved in IMPEL activities” (Duncan 2000: 6).

Similar reservations on the part of the Commission about cooperating with IMPEL were also apparent at the outset:

“[S]ome corners of the Commission were, at first, reluctant to co-operate and were afraid that IMPEL would enter into Commission territory and, in particular, encroach upon the right of initiative and the drafting of legislation. In addition, the Commission

feared that its watchdog function could be compromised. Others in the Commission thought that practical implementation was not of immediate concern to them" (Schout and Claessens 1999: 266).

But as outlined above, increased collaboration soon dissolved these fears and led the Commission to view involvement in IMPEL as being (mutually) beneficial.

Participatory structures at the Network level have also brought about changes to national norms. For example, IMPEL representatives from some of the newer EU Member States reported that belonging to the Network gave them better opportunities to communicate and cooperate with industry than would otherwise be customary in their national settings, where the separation between government and industry was more distinct (Interviews 2008-9). It also gave them a more outward-looking perspective, giving them access not only to participants in other Member States who would not otherwise have been known to them, but also to international networks and EU officials whom they may not have had contact with had they not belonged to IMPEL (*ibid.*).

The desire to feed as many different members' experiences as possible into IMPEL processes for its own sake also suggests that participation is not just a strategic means to broaden the Network's homogenising and coercive reach (as per rational choice), but rather a more socialising, harmonising and "organic process" (IMP8: 3). As illustrated by the quote heading the chapter, participants see IMPEL's diversity as an opportunity to draw ideas from a broader pool of perspectives than would otherwise be possible, which ultimately improves the quality of their work:

"The more opinions you hear, the more effective you can be" (IMP18: 6).

"In the Association, you have different people with different cultures from different countries. That's the richness of IMPEL" (IMP13: 7).

Inclusiveness is also perceived to foster a sense of ownership and solidarity within the group:

“Everybody has to be involved. Everybody has to feel they *belong* to IMPEL because if things are done just by a small group, people might feel uncomfortable and wonder what they are doing there” (IMP1: 9).

This appears to apply even when plurality means the efficiency of decision-making processes is compromised:

“It is positive that we get a lot of experiences. Are there any negatives? Perhaps in decision-making – If there are wide differences of opinion then it might take longer to reach a decision, but I think the positives more than outweigh the negatives” (IMP19: 6).

6.3.4 *Learning as socialisation*

Finally, a return is made to the three focal categories of learning (i.e. nature/depth, direction, mechanisms), which are treated concurrently in the following analysis due to their interrelatedness according to the sociological institutionalist interpretation.

As presented in previous sections, learning is viewed sociologically as a dynamic *process* (rather than outcome). It is driven by a logic of appropriateness, with institutions representing structures for pursuing legitimacy. In this sense, the sociological approach incorporates preference change and gives scope for institutional agency: “preferences may change to correspond with what the institution has found it can accomplish, and both the institution and the individuals change” (Peters 2005: 62). Certainly, IMPEL’s institutional evolution and development can be viewed in this light, as has been demonstrated.

As the central *mechanism* for learning is socialisation (March and Olsen 1984: 741), the *direction* of learning is diffuse and mutual, and its *nature* is transformative (i.e. all actors learn something by interacting with one another). This is supported by Network members, who report their experiences of learning to be reciprocal rather than asymmetric (expressed here by an ‘old’ and ‘new’ member respectively):

“It’s a two-way thing. You give your experience, and you also receive other experiences” (IMP: 15: 8).

“We gain a lot from ‘old’ members’ experiences, but we can also contribute ideas. We have proposed projects which we were unable to fund, but which other countries have been able to take the lead on. We all have a lot of the same problems. Sometimes not all countries are willing to admit it until we bring it to the table, but when we go deeper into the problem, they realise we have the same problems” (IMP18: 4).

That is not to say that funding and know-how are not predominantly sourced in certain key countries, but crucially, the motivation for learning is different – rather than being a coercive and competitive enterprise, it is derived from a desire by members to exercise propriety; again, in IMPEL, professionalisation is a notable ‘normative isomorphic’ (socialising) force in this respect.

Furthermore, where mimicry does occur, it may be attributed to ‘mimetic isomorphism’ whereby, “[o]rganizations tend to model themselves after similar organizations in their field that they perceive to be more *legitimate* or successful” (Powell and DiMaggio 1991: 70, emphasis added). The umbrella name for IMPEL projects associated with planning and carrying out inspections underlines this point succinctly, “Doing the Right Things”.

Multi-level feedbacks are also a feature of learning under the sociological approach. These are demonstrated by the Swedish example, presented in Box 6.2, which shows how institutional learning through project participation can reshape EU *and* domestic processes, bringing about mutually constitutive normative change at the IMPEL, national and EU levels.

Box 6.2: Feedbacks between national and EU policymaking via IMPEL

Multi-level learning synergies: an example from Sweden

“I was on the project team developing guidelines for Minimum Criteria for Environmental Inspections. It was very successful because we were working on improving Swedish legislation on inspections at the time, so we, along with other countries, were able to influence the report through our findings and experiences at the national level.”

“Not only did we influence the IMPEL report considerably, but the report was used as the basis for the new Recommendations [on Minimum Criteria for EU Environmental Inspections, adopted by European Parliament and Council, 2001].”

“Furthermore, we took the contents of the report into account when preparing the Swedish legislation [on inspections]. If you look at the Recommendation, it looks very much like the Swedish regulation. There was feedback both ways.”

Source: Interview with the Swedish National Coordinator, 2009

Importantly for OMC, the transformative nature of learning under this perspective also incorporates scope for *contextualised* learning, which pervades the work of IMPEL – the most obvious example being the IMPEL Review Initiative, though it is also achieved via twinning programmes, bilateral initiatives, IMPEL projects, and informal ad hoc interactions. One instance cited by the Portuguese National Coordinator is particularly instructive in this respect (see Box 6.3). It highlights the way in which informal and formal Network interactions have instigated *nationally-adapted* institutional change, which has supported the implementation of EC law, by drawing on the experiences and capacities of diverse members and institutions.

Box 6.3: Contextualised learning and capacity-building via IMPEL

Context-sensitive learning: An example from Portugal

Inspired by IMPEL's 'Doing the Right Things' project, the Portuguese National Coordinator explored how she could implement an evaluation model for environmental inspections planning (including IPPC installations). Informal conversations with IMPEL Members led her to research the risk assessment tools used in the UK, Spain and Ireland.

Having identified the Irish version to be most suitable, an informatics tool based on this model was developed, and tailored to Portuguese circumstances, with collaboration from Dutch experts (via a bilateral IMPEL programme), and help from students at a local university.

Once implemented, the tool was evaluated via an IMPEL Review Initiative, which was hosted by the Portuguese Inspectorate later that year.

Source: Interview with the Portuguese National Coordinator, 2008

As demonstrated, peer exchanges and learning under the sociological approach need not be strictly formal or coercive, but may be intermeshed with informal processes. Furthermore, peer review is not seen just a means for comparison and competition by, "ranking and rating...and performance measurement", but also "constitutes an instrument establishing normative criteria of appropriate behaviour" (Lehtonen 2009: 73).

Returning to the direction of learning, mutuality and transformation are both significant elements of the socialisation process. Moreover, it anticipates that learning from peers will be a reciprocal exchange:

"Somewhat paradoxically, it may well be the members of the review team themselves that learn the most through the dialogue during the review mission" (Lehtonen 2005: 177).

This was confirmed by IMPEL Members, who mentioned that being on a Review Team often provided the opportunity for reflexive and mutual learning, presenting reviewers and reviewed alike with the chance to discuss and develop new ways of doing things,

which could be applied at home (Interviews 2008-9). Furthermore, members who had been the subject of IMPEL Reviews revealed that rather than being averse to critical feedback (as proposed by Bohne above), it was the identification of areas in which they could do better (and how) that they valued most:

“Examples where we got information and conclusions about areas we could *improve* were actually the most productive” (IMP12: 3).

These OMC-like peer review processes in the manifestly sensitive area of law enforcement, function in spite of their *informal* basis because they are:

“*non-adversarial* and rely on mutual *trust* among the States involved, as well as their shared *confidence* in the process. With these elements in place, peer review is assumed to create a system of mutual *accountability*” (Lehtonen 2009: 73, original emphasis, also see OECD 2003: 9).

In fact, many members argue that it is rather *because of* its informal nature that IMPEL functions so effectively:

“The learning curve was steep, and it was clear from the outset that the informal nature of the Network helped facilitate the development of social relationships among members” (Duncan 2000: 3).

“Informality and projects are really what IMPEL work is all about” (IMP22: 8).

“IMPEL has shown that allowing participants to ‘test the temperature of the water,’ and to co-operate in an informal way that is constructive and allows development of trust and familiarity, can achieve objectives that would be more challenging otherwise” (Duncan 2000: 8-9).

Finally, the socialisation and professionalisation of members, founded on a ‘learning by doing’ ethos, represents an important bridge between participation and learning processes. Recursive interactions over two decades have been key to fostering Network identity, ownership, loyalty and trust. The socialisation effect is perhaps most strikingly evidenced by the repeated references made by members (and non-members) to ‘the

IMPEL Family', and use of terms such as 'band of brothers', which point to the strong, familial-style bonds that apply in the Network (Interviews 2008-9).

6.4 SUMMARY AND CONCLUSIONS

Both new institutionalist analyses highlight the interplay between formal and informal rule structures as being significant for the evolution, operation and outcomes of IMPEL, and both provide a broadly complimentary evaluation of the Network's achievements when compared to the counterfactual (i.e. no IMPEL), and as measured against Zeitlin *et al.*'s OMC assessment criteria (which they define differently).

However, each theoretical approach has presented a different analytical slant on IMPEL's creation, development, and the implications it has had on EU environmental governance. They differ in terms of how they define the *nature* of the Network (as an intervening versus independent variable); *assess* its contributions to policy, participation and learning (as outcomes versus processes); and identify the *mechanisms* through which they believe substantive and procedural changes have taken place (step-wise re-strategisation versus socialisation).

Together they highlight the 'sticky' nature of participatory structures, but account for it in different terms - i.e. asymmetric resource distributions (under rational choice), and norms of appropriateness (according to sociological institutionalism). Nevertheless, the IMPEL case demonstrates that inclusiveness can be broadened (to a degree) using formal and informal constitutional rule arrangements (e.g. financial instruments/regulations, binding Decisions, non-binding Recommendations), and also deepened via socialisation (because participation over time builds stronger and more durable network ties, founded on trust, ownership and a sense of common identity).

Summarising the rational choice perspective first, in terms of substantive change, constitution-choice rules at the European level, combined with national interests and institutional arrangements, have played an important role in creating and shaping IMPEL over time. Nevertheless, differing national priorities and resource capacities have resulted in different activity levels among members. These asymmetries have had

implications for the shape of IMPEL's participatory structures (dominated by more interested and resourced members), and the nature of the learning that has taken place, which rational choice defines as the transfer of (thin and strategic) knowledge and best practice from better to less-well resourced Member States, often at the behest of (or under threat from) European institutions. This has doubtless brought about: better communication and coordination between environmental legislators, inspectorates and law enforcement agencies; improvements in institutional capacity at the Network and domestic levels; and greater harmonisation with respect to inspection, implementation and enforcement procedures and outcomes than would have been possible had IMPEL not existed.

However, rational choice institutionalism also highlights the limitations to learning resulting from IMPEL's largely *informal* participatory rules, which rely on self-selection, especially in projects, where the 'real work' of IMPEL is done (Interviews 2008-9). In particular, voluntarism in peer review processes allows poor implementers to side-step scrutiny, and the absence of more coercive mechanisms (such as closer monitoring, shaming and sanctions) can lead to weak peer review pressures, which rational choice theorists would claim, in turn, limits the reach and effectiveness of learning outcomes.

The sociological institutionalist account, on the other hand, is useful for helping understand how processes of socialisation and isomorphism (e.g. professionalisation) – motivated by notions of propriety and duty – have led to the development of an *independent* Association, with its own preferences, identity, and agency. Its informal and consensual format has, according to members, cultivated a climate of openness and trust, which has inspired collective experimentation, norm-building, and reflexive and context-sensitive learning. In this sense, the substantive and procedural changes associated with IMPEL have been multi-level (spanning EU, Network, national and regional strata), two-way (reciprocal) processes, which *transform* members and institutions via networking.

In short, Lehtonen's (2005: 177) comment referring to OECD networks (Environmental Performance Review Programmes) is equally relevant to IMPEL:

"Participation...helps the delegates build professional networks, develop a common language, identify issues of common concern, start using the same kind of causal reasoning when discussing these issues, learn from 'best practices' and, at a deeper level, even develop a common frame of reference and a common worldview".

The extent to which similar patterns are detected in the case of the European Climate Change Programme is investigated in Chapters 7 and 8.

7 THE EUROPEAN CLIMATE CHANGE PROGRAMME

7.1 INTRODUCTION

This chapter examines the European Climate Change Programme (ECCP), and explores how an informal networking arrangement – innovative both in cross-sectoral scope and multi-actor representation – was established by the Commission as a framework for devising an EU climate strategy. Using emissions trading as the analytical focus, it reveals how a policy instrument that was widely unpopular in EU policy circles during the international climate negotiations in the late 1990s, ended up being introduced via the ECCP and implemented as “the new grand policy experiment” (Kruger and Pizer 2004: 8).

Taking a similar format to the IMPEL case study, the following analysis is divided into two parts. The first, gives a chronological account of the ECCP’s development, sliced into five stages (and summarised in Table 7.1). It begins with an exploration of the institution’s origins in the late 1990s, inspired by the EU’s desire to honour its Kyoto commitments following the failure of the energy/carbon tax. It details the launch of the ECCP by the Commission in 2000, created to engage support for concerted climate action. Most notably, the process helped determine what came to be the EU’s flagship climate policy tool, the Emissions Trading Scheme (ETS) (2003) – the first international trading system of its kind – which today covers over half of the EU’s CO₂ emissions. The section goes on to explain that although the EU ETS started out as an ‘OMC-like’ coordinated system overseen by the Commission, inter-state cooperation quickly degenerated into ‘decentralised anarchy’ (Wettestad 2009: 313). This led to the highly unusual situation whereby Member States, consulted as part of a second ECCP in 2005-7, called for *greater* centralisation of authority, which led to a more harmonised system being implemented as part of the 2008 EU Climate and Energy Package. Overall, this, “represent[ed] a huge centralisation of powers, of the sort that EU member states have resisted for decades” (Carbon Trust 2008: 19).

In order to provide a framework for exploring how these extraordinary changes came about, the second section returns to the conceptual issues raised in Chapter 1, namely, the extent to which the ECCP represents an OMC, as measured against the Lisbon criteria.

Finally, the results are summarised, highlighting how an *informal* OMC-like process has, paradoxically, led to *greater* centralisation of climate policy, via processes of peer review and experimental learning.

Table 7.1: Significant events in the development of the ECCP and EU ETS

| Date | Significance |
|--------------|---|
| 1992, May | Commission publishes strategy to limit CO ₂ emissions, including proposal for carbon/energy tax , and monitoring CO ₂ emissions (COM(1992) 246) |
| 1997, Dec | Kyoto Protocol (Article 17) commits EU to reducing GHG emissions by 8 per cent (from 1990 levels) by 2008-12; introduces emissions trading as one of three flexible mechanisms to be used internationally |
| 1998, June | Commission Communication (COM(1998) 353) launches target of 2005 for EU ETS; advocates cost-effective and step-by-step approach to developing EU ETS |
| 1999, May | Communication (COM(1999) 230) states urgent need for informed ETS debate |
| 2000, Mar | Green Paper on EU GHG ET (COM(2000) 87), establishes consultation process |
| 2000, July | ECCP I Phase 1 launched: 'Flexible Mechanisms' WG has 10 meetings with reps from Member States, industry and NGOs to discuss ETS (July 2000-May 2001) |
| 2001, June | First ECCP Report proposes 42 policies and measures to meet Kyoto targets |
| 2001, Oct | Proposal for a Directive for a Community GHG ETS (COM(2001) 581) |
| 2002, Spring | Kyoto Protocol rejected by Bush in USA (March), and ratified by EU (May) |
| 2002-3 | ECCP I, Phase 2: Working Group on Flexible Mechanisms explores JI and CDM |
| 2003, Apr | Second ECCP report emphasises importance of ECCP and ETS for climate policy |
| 2003, Dec | ETS Directive (2003/87/EC) establishes EU ETS in Jan 2005; NAP I process begins |
| 2004, Oct | Linking Directive allows credits from CDM (in 2005) and JI (in 2008) in EU ETS |
| 2005, Feb | Commission announces second ECCP (COM(2005) 35); Kyoto enters into force |
| 2005, Oct | ECCP II , launched at conference attended by 450 stakeholders |
| 2005-7 | First (pilot) trading period; NAP II process underway |
| 2006 | Verified emissions data published; Commission revises NAP criteria |
| 2008, Dec | Climate and Energy Package approved, including revised and centralised EU ETS |
| 2008-12 | Second trading period (in line with Kyoto); fully harmonised ETS with EU-cap |
| 2013-2020 | Third trading period |

Source: Author (informed by Bang et al. 2007: 283; Euractiv.com, accessed 23 Apr 2012)

7.2 THE ECCP'S INSTITUTIONAL DEVELOPMENT

7.2.1 *Responding to climate change*

Climate change is an issue on which the EU has expressed a desire to demonstrate global leadership from the very outset. The subject began to emerge in official EU documents as early as the mid-1980s (Usui 2006: 73), and in 1988, when global awareness was first becoming evident (e.g. demonstrated by the establishment of the Intergovernmental Panel on Climate Change the same year), the Commission published its first Communication on “The Greenhouse Effect and the Community” (COM(88) 656).

In 1992, it went on to propose a strategy for stabilising Community carbon dioxide (CO₂) emissions, which included a combined carbon and energy tax (COM(92) 246). As described in Chapter 2, using fiscal measures in environment policy was unusual at the time, and therefore marked a departure from Community policy norms, which had been dominated by regulatory harmonisation. On a scale evidently unanticipated by the Commission, the proposal was fiercely opposed, not only by industry groups (who feared for their external competitiveness and objected to the EU taking a slice of their revenue), but also by a majority of Member States, some of whom had acted early and were already employing domestically-approved environmental policy tools (e.g. voluntary agreements in Germany), and others for whom climate change hardly registered on domestic political radars and thus scarcely warranted intervention (e.g. much of southern Europe). The net result was deep opposition to the tax (Skjærseth and Wettstad 2008: 3-4).

More to the point, being a financial instrument, it was subject to unanimous approval by the Council, and without broad-based support, it was ultimately doomed to failure. The Commission had learnt an important lesson, however, and a different, more inclusive, policy-making approach would need to be taken in future if its intentions to attain ambitious climate change objectives were to be realised.

Meanwhile, at the international level, support for action on climate change had continued to gather pace throughout the 1990s, culminating in the landmark Kyoto Protocol, which

was adopted in 1997 as part of the United Nations Framework Convention on Climate Change (UNFCCC). Importantly, in order to reach agreement, the EU had made a major concession to the United States, who had made their support for the Protocol contingent on the inclusion of three so-called ‘flexible’ or market-based mechanisms as possible means for achieving Kyoto targets, namely, emissions trading (ET), Joint Implementation (JI), and a Clean Development Mechanism (CDM) (Article 17). The rationale behind emissions trading was that the broader the scope of the scheme, the greater the opportunity for greenhouse gas (GHG) reductions to take place where it was most economically efficient. Such economic instruments were unfamiliar in European policy circles, and therefore they were met with considerable initial scepticism. However, once a global agreement had been successfully negotiated, attention soon turned to how the EU could best honour its Protocol pledge to collectively reduce greenhouse gas emissions by 8 per cent (from 1990 levels) by the period 2008-2012.

A flurry of activity ensued in the two years following Kyoto, most notably in DG ENV, where a change of personnel ushered in a more favorable attitude to market instruments, evidenced in two Communications, the first of which was published just six months later, and already (boldly) suggested:

“the Community could set up its own internal trading regime by 2005 as an expression of its determination to promote the achievement of [Kyoto] targets in a cost-effective way” (COM(98) 353: 20).

The Communication also announced the need for development of an EU post-Kyoto strategy, including a coordinated means of “sharing the responsibilities” (*ibid.*: 1). This was applied soon after via a Burden Sharing Agreement (1998), which gave Member States different GHG targets to reach the Community’s joint objective of an 8 per cent emissions reduction. In spite of further enthusiasm for emissions trading being voiced in a second Communication the following year (COM(99) 230), it was clear that familiarity with the instrument was limited to US academic circles and select business interests (Christian and Wettestad 2003: 6).

To address this knowledge deficit – not to mention the glaring lack of consensus on both emissions trading and the urgency of climate change more generally – a Green Paper was published in the spring of 2000, proposing a stakeholder consultation on EU emissions trading (COM(2000) 87), and the ECCP was launched soon after to explore implementation of the Kyoto Protocol (COM(2000) 88).

7.2.2 *The (First) European Climate Change Programme (2000-3)*

At a time when few Member States had yet established domestic climate change policies, the ECCP process was seen by the Commission as a pragmatic way of fostering consensus among key stakeholders, and identifying priority areas for climate action – mindful of its recent failed attempt to instigate an EU-wide carbon tax, and conscious of EU Kyoto obligations (Skjærseth and Wettestad 2008: 74; Braun 2009: 473; Bang *et al.* 2007: 284). As a national representative in the process explained:

“Essentially, DG ENV didn’t have sufficient clout to get anything through the system without an ECCP-like process to legitimise its proposals” (ECCP 9: 3).

In its First Phase (2000-1), the ECCP began as a loose collection of seven core thematic and sectoral working groups (WG) on: flexible mechanisms, energy demand, energy supply, agriculture, transport, industry, and research. It was coordinated by a ‘Steering Committee’ of Commission officials, primarily from the Directorate General for Environment (DG ENV), but with inter-service inputs. By far the most active was WG1, which was devoted to exploring Flexible Mechanisms, specifically, emissions trading. In the spirit of the ECCP – *and* OMC – the WG brought together representatives from European industry, environmental NGOs, relevant Commission departments and national finance and environment ministries. At the time, it was widely perceived by participants to be groundbreaking in terms of its inclusive and deliberative nature, especially because a Commission-wide policy on stakeholder consultation did not come into play until 2002 (ECCP9: 9). Nevertheless, members were carefully handpicked, and those *not* invited certainly felt excluded (more on this in Chapter 8):

“There was certainly a feeling among some delegations that [ECCP] wasn’t a transparent process” (ECCP9: 7).

During an intense first year of rapid capacity-building, ten monthly meetings followed a tight, Commission-led schedule, with a different topic discussed at each session (again, determined by DG ENV). Frank, and often heated, discussions took place behind closed doors as contentious issues were thrashed out, laying the foundations for what was to become the centrepiece of EU climate policy – the Emission Trading Scheme (ETS). Although DG ENV was clearly in the driving seat from the outset, the novelty of the issue meant that inputs from sympathetic proponents were welcomed:

“It was the necessity for learning – the exchange of knowledge – which was the point of origin for the emergence of an (informal) policy network on emissions trading as there were a number of people knowledgeable on emissions trading outside DG Environment” (Braun 2009: 478).

The UK government and industry, for example, enjoyed leverage due to the expertise they gained in setting up their own domestic trading scheme. From the private sector, Shell and BP were able to share experience of their company-wide pilot systems, while the Union of the Electricity Industry (EURELECTRIC) contributed with simulations and scenarios-based research (EURELECTRIC 2002, 2004). From the voluntary and academic spheres, several organisations, most notably, the UK-based FIELD (Foundation for International Environmental Law and Development), were commissioned to prepare background feasibility studies (FIELD 2000, 2001; Capros and Mantzos 2000; IPTS 2000, CCAP 1999). However, disagreement at the outset was rife, transcending public-private, intra-/inter-industry and national boundaries to the extent that inter-ministerial and intra-industry positions were, at times, embarrassingly polarised (Interviews 2009). Certain German industrial sectors (e.g. chemicals, aluminium and energy) were particularly vocal in their opposition to the idea, and went so far as to run national ad-campaigns against emissions trading in the attempt to influence what had become a hotly contested national and European debate (Butzengeiger *et al.* 2003: 221). Although the Commission used its theoretical knowledge and steering capacity to place itself in the role of ‘teacher,’ it relied on others for practical experience and political support. For first-

movers, the network provided proponents with the opportunity to argue their case, and identify potential allies and obstacles. For newcomers, the learning curve was particularly steep – not least on the technical side. Yet it was the normative dimension that posed the greatest difficulty: some participants opposed the very idea of trading ‘permits to pollute’ (e.g. environmental NGOs and France), and others were instinctively against market solutions in environment policy *per se* (e.g. the German Greens). Even among staunch proponents there was disagreement over what they felt an EU-wide ETS should look like in practice (e.g. the Danes promoted a mandatory scheme, the Belgians advocated centralisation, and the UK wanted the system to be voluntary and devolved).

At the end of the first phase in June 2001, the Commission led a stock-taking exercise, summarising the findings of each WG, and specifying priority measures to be implemented and monitored in the next ECCP wave (Commission 2001, Long Report). In total, the report specified 42 proposals for making ‘cost-effective’ emissions reductions, which if implemented, would be expected to collectively achieve double the GHG reductions pledged by the EU at Kyoto (*ibid.*: 1).

In terms of the conclusions of WG1, bearing in mind the conspicuously divergent views on emissions trading at the start of the ECCP process just a year ago, it was little surprise that a degree of disagreement continued to prevail (*ibid.*: 11). However, what was remarkable was the extent to which a consensus had been reached over the *desirability* of an EU system; in fact, the nature of disagreement was now largely confined to the *design* rather than *principle* of a future European scheme. Interestingly, the same report announced:

“Working Group 1 recommends that emissions trading should start as soon as practicable” (*ibid.*: 12).

The Commission had evidently scored a striking victory in its goal to establish an EU ETS – and in record time. It therefore quickly changed its focus to exploring how a pilot scheme could be operationalised, aiming for a start as early as 2005-7 to comply with Kyoto requirements to demonstrate progress towards emissions targets by 2005 (Article 3, Annex I). If the EU was to retain its credibility as a pioneering climate actor, it would need to act fast.

In spite of the monumental change in attitudes towards emissions trading, the precise design of an EU-wide scheme remained the subject of deep contention, most notably with respect to:

- *participation* in a pilot scheme (i.e. voluntary or mandatory?);
- *centralisation* (i.e. EU-level emissions cap or limits set by Member States?);
- *allocation* of permits (auctioned or free via ‘grandfathering’?);
- *scope* of the scheme (which gases and sectors should be included?)

The Commission drew on findings of its Phase 1 progress report when it published its concrete proposals for combating climate change (COM(2001) 580), which included ratification of the Kyoto Protocol (which followed in May 2002), and a proposal for a Directive on an EU ETS, which was published in October (COM(2001) 581).

Soon after, the ECCP was mobilised into a second phase, running from 2002-3. Again, DG ENV took the lead role in the process. Most of the original WGs were dissolved, though some were extended (e.g. flexible mechanisms, agriculture), and others created (e.g. agricultural and forest sinks). In addition, a WG was established to review Phase 1 progress, much in keeping with the ECCP (and OMC’s step-by-step review and learning-based approach. The new Flexible Mechanisms WG had shifted its focus to exploring how credits from CDM and JI could be integrated into a future EU ETS. This groundwork eventually paved the way for the so-called ‘linking directive’, which was adopted in 2004 (2004/101/EC).

In April 2003, the Commission once again assessed progress towards implementing climate measures in the ECCP’s second phase, stressing that ETS continued to lie at the heart of EU climate policy (European Commission, April Report 2003: iv), and confirming that implementation of the scheme was on target (*ibid.*: i).

7.2.3 *Experimental learning: establishing the EU ETS (2003-5)*

After further rapid and lively negotiations, the Directive establishing an EU ETS (2003/87/EC) was adopted – at breakneck speed – in October 2003, ahead of the UNFCCC

climate negotiations in December. So what shape did EU ETS finally take in light of earlier disagreement across the four dimensions mentioned above? In purely economic terms, there had been a strong argument for a mandatory and *centralised* ‘cap-and-trade’ system with common trading rules, which would ensure a level playing field and secure emissions targets in line with Kyoto commitments (through an EU cap). This was the case that had been presented by the Commission early on (i.e. at the time of the Green Paper), until the politically infeasibility of a harmonised scheme had become obvious. An ETS with a broad scope (in terms of gases, sectors and geographical coverage) was also the most economically-sound option because it would allow abatement measures to take place where it was least costly to do so. Auctioning allowances (rather than giving them away) would also limit the potential for “windfall profits, perverse incentives and competitive distortions” (Carbon Trust 2008: 19). However, the scheme adopted in the Directive for the pilot (2005-7) phase was:

- *mandatory*: participation was compulsory for all EU members;
- *decentralised*: the EU-level cap was the sum of Member States’ allowances;
- based on *free allocation* of emissions permits(via grandfathering)¹⁷; and,
- *narrow in scope* (for CO₂-only; including: power generation, ferrous metal production, cement, refineries, pulp and paper, glass, ceramics, and large combustion sectors, and incorporating (limited) opt-outs subject to national circumstances; allowing CDM credits to be used from 2005 and JI from 2008).

The system established by the Directive was therefore a *decentralised* one because Member States retained the right to determine the overall *quantity* of emissions allowances, as well as responsibility for *allocating* them domestically (Annex II). The safeguards put in place did, however, introduce a degree of centralisation; Member States were required to submit National Allocation Plans (NAPs) for approval by the Commission, based on given criteria (set out in Annex III), some of which were identified

¹⁷ “At least 95%” of allowances were to be allocated free of charge in the pilot phase (2005-7), rising to 90 per cent in the trading period 2008-12 (Directive 2003/87/EC, Article 10).

as being mandatory (COM(2003) 830 final) (more on NAP criteria and guidance follows below). This gave the Commission an important watchdog role in ensuring allocations were both fair, and in line with Kyoto targets. Although the Directive establishing EU ETS was a watershed in terms of formalising cooperation among Member States in implementing climate policy, agreement had been contingent on a decentralised model:

“The most fundamental political deal that enabled the EU ETS to be launched as a Europe-wide venture was that Member States would retain the right to allocate allowances—and that they would give out most of their allowances for free” (Carbon Trust 2008: 19).

In spite of the need for a swift NAP (I) process in order to ensure timely implementation of the pilot European trading scheme (2005-7), two-thirds of Member States submitted their plans *after* the March 2004 deadline (Skjærseth and Wettestad 2008: 53). Against a backdrop of heavy industry lobbying and suspicions of free-riding, the majority of plans appeared to lack environmental integrity in terms of their emission reduction ambitions. The process was further prolonged by fierce resistance from Member States and industry to Commission demands for (albeit rather modest) NAP revisions, which culminated in messy outcomes, with two of the largest and most polluting states, Germany and the UK, taking the Commission to the European Court of Justice.

7.2.4 Towards centralization: the Second ECCP (2005-8)

Not long after the EU’s flagship ETS came into operation in January 2005, the ECCP was resurrected from a period of dormancy. At its re-launch, the Environment Commissioner, Stavros Dimas, explained that the new initiative was designed to:

“give a new push to EU Climate Change Policy. It is time to take stock of what we have achieved and how efficient we really are in delivering on our Kyoto reduction target. It is also necessary to look at the future – the post 2012 regime – where deeper emission cuts will be necessary.”

In the interim, key discussions had mainly taken place within the context of the Climate Change Committee¹⁸, which was given a formal regulatory function – via ‘comitology’ – to approve legislative decisions (via QMV), under the 2003 ETS Directive. This marked a significant departure from the informal and experimental ECCP format, but it is interesting to note that the core network of (national and non-state) ETS actors established by the ECCP – has largely remained the same (ECCP19: 3, ECCP1: 5).

As part of the Second Programme (ECCP2) (2005-8), a raft of Working Groups was established, both to review existing progress (i.e. Emissions Trading Review, Programme 1 Review), and explore how climate policy could be expanded into new areas (i.e. carbon capture and storage, aviation, adaptation, and CO₂ and cars). Most of the newly created WGs deliberately had a more specific remit than those in ECCP1, which had been broadly sectoral or horizontal (ECCP19). They were also much bigger in terms of participants (in part, owing to the number of players by now involved in climate policy), and took on a much more formal and broad stakeholder consultation style, more in keeping with standard practices today. Contributions took the form of written submissions, position statements, and formal presentations at stakeholder conferences. However, participation was again, by invitation (from DG ENV). An overview of the development of the ECCP’s WG structure is illustrated in Figure 7.1 (below).

¹⁸ The Committee was initially created as an advisory body in 1993, but Confusingly, it was not given its current name until 2004 (Decision No.280/2004/EC, Article 9).

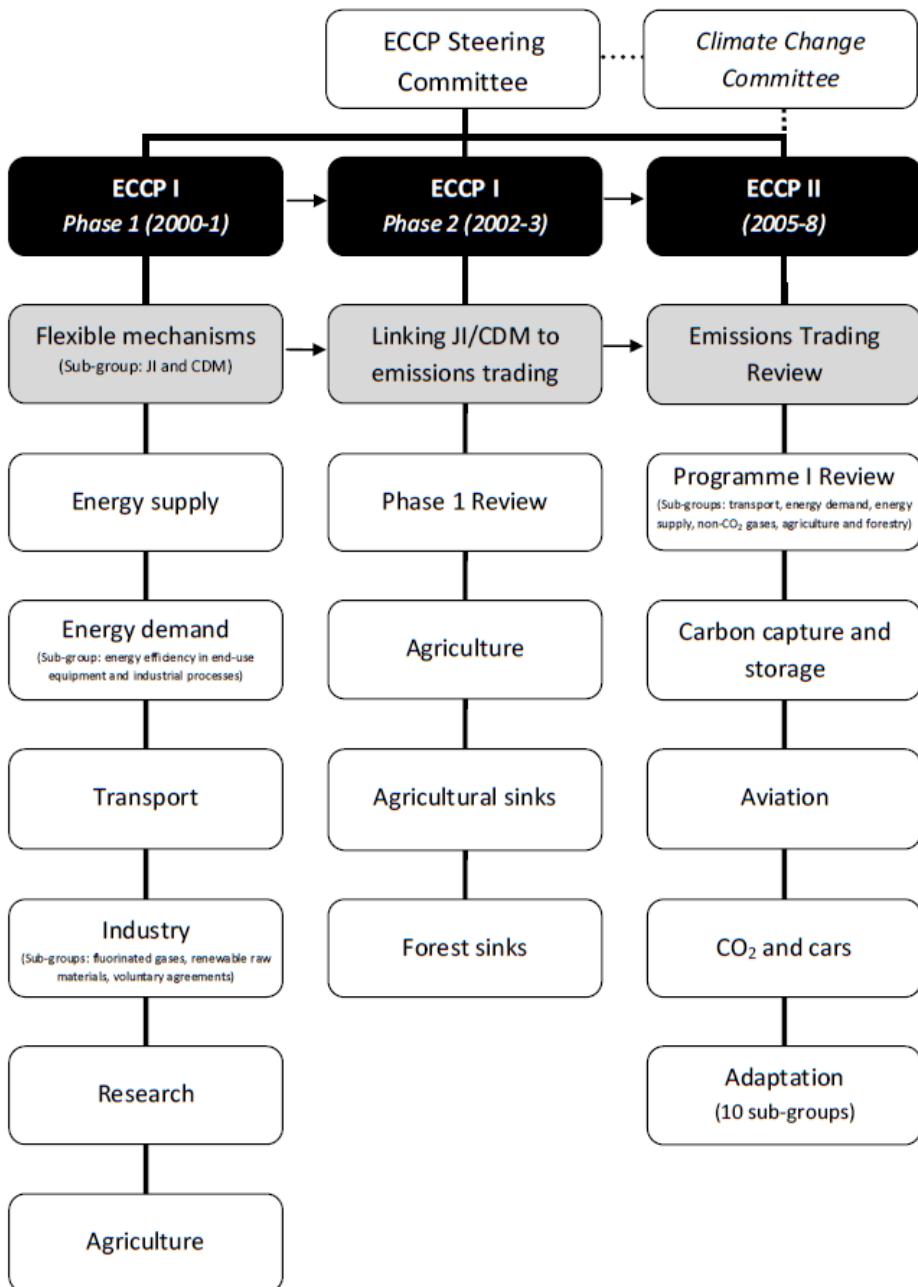


Figure 7.1: Overview of the European Climate Change Programme

Source: Author; Interviews in Brussels 2009

By this stage, climate change measures under the auspices of the ECCP had proliferated and been formalised in a web of legislation; they now incorporated not only *non-binding* measures such as the biomass action plan and voluntary agreements with EU car manufacturers, but more significantly, *binding* instruments, including regulation on fluorinated gases, and directives on: ETS, energy performance of buildings, promotion of

renewable energy sources, combined heat and power, biofuels for transport, energy labeling, and landfill (Delbeke 2006: 5-6, also see Chapter 8). Nevertheless, the central mechanism for delivering the bulk of the EU's GHG reductions, was – and remains – the EU's ETS.

The second round of allocation negotiations (NAP II) for the next trading period (2008-12) was well underway by this stage, and proving every bit as painful as the first. The publication of the first verified emissions data for 2005 in May 2006 (just a month before the 31st June NAP II submission deadline) did not help matters. It confirmed Commission fears that there had been an over-allocation of allowances – to the tune of 4 per cent – which put the ETS, as well as the EU's Kyoto implementation credibility, firmly on the line. The effective functioning of a carbon market, after all, relied on scarcity, and the news that allowances had most likely been oversupplied sent the price per tonne of CO₂ plummeting from €30 in April 2006 to just €0.5 in April 2007. This made incentives for making carbon abatement measures almost meaningless, and led the Commission to quickly release (yet another) revised 'formula' for NAP preparation (the third in as many years) (COM(2006) 725 final), this time, calling for the 2005 emissions data to be taken into account.

On the basis of the revised NAP assessment model, the Commission presided over a (somewhat more forceful) total *downward* adjustment of NAPs by 5 per cent against a proposed *increase* of 5 per cent, amending Czech, German and Polish NAPs significantly (Wettestad 2009: 316-7). Insiders at DG ENV at the time had not anticipated taking on such a vigorous supervisory role, but the apparent cautiousness evident in NAP proposed emissions reductions had begun to call into question the economic effectiveness and environmental integrity of the EU ETS scheme; and more to the point, Member States themselves were calling for greater stringency in allocations following their recent experiences with NAP1 (ECCP9: 3).

With this in mind, a revised ETS was discussed as part of the ECCP2 ETS Review. The WG's agenda (again, determined by the Commission) covered four topics, each discussed at a two-day stakeholder meeting (between March and June 2007), i.e., scope of the

Directive; ‘robust’ compliance and enforcement; further harmonisation and increased predictability; and linking the ETS with those of third countries.

Again, pointing in the direction of a less coherent and more fragmented EU climate policymaking framework, no overarching ECCP2 review report was published (unlike for ECCP1, Phases 1 and 2). However, opinions gathered in the ETS Review Working Groups, led the Final Report (European Commission 2007: 3) to conclude in favour of a move towards centralisation:

“There is a unanimous call for improved cap setting..[and] a general, very strong message calling for more harmonisation, if not a centralised EU cap.”

7.2.5 A harmonised ETS? The Climate and Energy Package (2008)

In 2008, after two protracted NAP cycles had been completed (where an impressive 23 NAPs were rejected and revised due to over-allocation), it was proposed – with tacit approval from Member States themselves – that for subsequent trading periods, an *EU-wide* cap would be set *centrally* (i.e. from 2013 onwards). Thus, the revised ETS Directive (2009/29/EC), adopted as part of the EU’s Climate and Energy Package, signalled a symbolic end to the decentralised NAP process, and represented a move towards greater centralisation of EU climate policymaking with fully harmonised allocation rules and targets. Perhaps most striking about the turnaround, was the lack of resistance:

“hardly any countries will resist the demise of the National Allocation Plans or the centralisation of power this implies. This is one of the most remarkable indications of the ability of the EU ETS to evolve in ways that vastly surpass the initial political constraints” (Carbon Trust 2008: 19).

Commission officials themselves expressed surprise at the acquiescence by Member States:

“I am still surprised by the degree to which it [a centralised system] was accepted because, of course, it makes intellectual sense, but that doesn’t mean it makes political sense [for everyone]” (ECCP9: 5).

Indeed, returning to the initial key areas of contention on ETS, the new system (for 2013-2020) was to be heavily centralised as compared to the shape of the early scheme, including:

- a *centralised EU-cap*: calculated as a linear decline in GHG emissions (by 1.74 per cent annually) to reach an EU-wide 20 per cent reduction by 2020;
- allocation of permits based on *auctioning* (after free allowances), with harmonised rules (with some differentiation based on national factors); and,
- a broader *scope*, including: additional (limited) industrial gases; sectors such as non-ferrous metals, gypsum, rock and stone wool; combustion installations above 20MW; emissions from aviation (already from 2010/11), and carbon capture and storage; but a *limit* of 50 per cent was imposed on use of CDM credits.

Furthermore, reviewing the outputs of the ECCP2 as a whole, it is significant to note that almost all of the WGs generated adopted legislation, including: a Regulation setting emission performance standards for new passenger cars ((EC) No 443/2009), and Directives on: aviation in the EU ETS (2008/101/EC); geological storage of CO₂ (2009/31/EC); and promotion of the use of energy from renewable sources (2009/28/EC). Additionally, sectors outside the jurisdiction of the ETS (e.g. transport, buildings, agriculture and waste) collectively adopted national binding targets to reduce GHG emissions by 10 per cent (by 2020, compared to 2005 levels) under the Effort Sharing Decision (406/2009/EC).

The notable exception is the Adaptation White Paper (COM(2009) 147 final), which is the last thematic area where traces of a softer ECCP-like process are evident. It is also interesting to note that in February 2011, a new ECCP WG was convened to explore reducing GHG emissions from ships.

Before going on to consider whether or not this subsumption of informal policy networks in traditional legislative processes heralds the end of the ECCP – and use of OMC-like processes – in climate policymaking, a summary of key legislation developed as part of

the ECCP is presented in Box 7.1, whilst the next section takes a closer look at the OMC credentials of the ECCP process.

Box 7.1: Key legislative outcomes attributed to the ECCP

Controlling GHG emissions

- ★ 'Climate and Energy Package', comprises four legislative acts, marked '*' below
- ★ Directive amending ETS (2009/29/EC)*
- ★ Effort-sharing Decision (406/2009/EC)*
- ★ Directive on geological storage of CO₂ (2009/31/EC)*
- ★ Emissions Trading Directive (2003/87/EC), plus 'Linking' Directive (2004/101/EC)
- ★ Regulation on fluorinated gases ((EC) No 842/2006)

Energy

- ★ Directive on promotion of energy from renewable sources (2009/28/EC)*
- ★ Directive on the promotion of cogeneration (2004/8/EC)
- ★ Directive on the energy performance of buildings (2002/91/EC)
- ★ Directives on energy labelling (92/75/EC and 2010/30/EU)

Transport

- ★ Regulation setting emission performance standards for new passenger cars ((EC) No 443/2009)
- ★ Directive on inclusion of aviation in the EU ETS (2008/101/EC)
- ★ Directive on biofuels for transport (2003/30/EC)

Waste

- ★ Landfill Directive (99/31/EC)

Source: Author, based on Delbeke (2006: 5-6) and Withana et al. (2010: 48-50)

7.3 THE ECCP: DEFINING CHARACTERISTICS

In light of the piecemeal nature of the ECCP, this section explores the extent to which the sum of its institutional parts can be viewed as a ‘whole’ OMC-like process. After briefly addressing the issue of voluntarism, a distilled version of the Lisbon Council’s OMC criteria are addressed, namely: common objectives; guidelines and indicators; and peer review and learning.

7.3.1 *A voluntary approach?*

When the ECCP was launched by the Commission, participation in WGs was voluntary, and continued to be so throughout the Second Programme. As a Commission official involved in the process of setting up the ECCP explained:

“There was no legal basis for the consultation, which was unorthodox” (ECCP5: 1).

With respect to emissions trading, however, once legislation had been passed, involvement adhered to formal comitology protocol, and the process therefore entered a more traditional, ‘Community Method’ style of policy-making. As was evident during ECCP2, the formal and informal processes were, at times, operating in tandem, and the boundaries between these WGs were sometimes blurred.

7.3.2 *Common objectives*

The overarching goal of the ECCP from the outset has been to help meet EU Kyoto commitments, namely, quantified emissions targets for achieving a reduction of 8 per cent by 2008-2012. In the Communication launching the Programme in 2000 (COM(2000) 88 final, Annex 2), the Commission announced:

“The ECCP’s overall objective is to identify and develop all the necessary elements of an EU strategy to implement the Kyoto Protocol.”

In this sense, the ECCP has been very much in line with the Lisbon understanding of OMC as a means of, “achieving greater convergence towards the main EU goals” (2000, Conclusion 37).

Crucially, in the spirit of OMC (European Council 2000, Presidency Conclusion 38), the development of Community-level proposals was to take place in partnership with stakeholders:

“The objective of each WG is to identify and develop the most important elements in the area of (e.g. energy supply, energy consumption, transport, etc.) that are necessary for the implementation of the Kyoto Protocol. This preparatory work, achieved by *a co-operative effort of all stakeholders*, will enable the Commission to propose in due course concrete policy proposals to Council and the European Parliament” (European Commission, Working Group 1, Mandate, 2000, emphasis added).

This dimension of the process is not only an OMC-like trait, but was very much seen as an innovation at the time, on three counts. First, Commission meetings would hitherto have generally been conducted separately with individual lobby groups, such as industry and NGOs; it was therefore a novel approach for the Commission to instigate a *collective* discussion with industry *and* NGOs, not to mention Member State *and* cross-DG representatives. Second, it was not normal practice for soundings to be taken *before* a proposal had been put on the table, and certainly not in such a systematic manner. Third, the *regularity* of the meetings, with fixed membership, and a structured agenda, was also unusual (ECCP17: 9):

“Certainly at the time, it [the ECCP] was quite unprecedented. It was experimental in a way, you can certainly say that” (ECCP9: 9).

While it was never part of a conscious strategy on the part of DG ENV to specifically employ OMC in the ECCP (ECCP19, ECCP9), Commission officials had from the start intended to spearhead a *coordinated* and *iterative* climate policy process, as demonstrated in the 1998 Communication on post-Kyoto strategy, which called for:

“the introduction of the flexible mechanisms in a *step-by-step* and *co-ordinated* way within the Community” (COM(98)353: 21, emphasis added).

Furthermore, although the ECCP was clearly – and *strongly* – steered by DG ENV from its inception (more on this below), two key elements of the process were nonetheless in-step with OMC’s core “decentralised approach” (European Council 2000, Presidency Conclusion 38). First, in *quantitative* terms, a firm degree of decentralisation was represented by the burden sharing agreement (1998), which designated *different* emissions targets to Member States as part of a joint effort to reach the overall 8 per cent Kyoto emissions reduction target. Some countries were obliged to take on more stringent commitments than others, based on their different capacities and national circumstances, with targets ranging from ambitious emission obligations (e.g. 21 per cent for Germany and Denmark; 12.5 per cent for the UK), to agreed *increases* in GHG outputs in poorer southern Members – so as not to jeopardise their growth potential (e.g. 27 per cent in Portugal, 25 per cent in Greece, 15 per cent in Spain). Secondly, an element of *qualitative* differentiation was built-in to the EU ETS specifically, through the decentralised allocation caps and rules determined at national level. In addition, national/sectoral opt-outs and pooling possibilities were granted in the pilot phase (largely under pressure from Germany) as a further nod to subsidiarity.

Finally, in keeping with the OMC prototype, the ECCP also incorporated intermediate objectives (2000, Conclusion 37), via the ETS NAP requirement to demonstrate interim progress towards reaching (long-term) Kyoto targets for each trading period (i.e. 2005-7, 2008-12). Of course, when harmonised rules and a centralised cap were introduced by the Climate and Energy Package, this key aspect of the “decentralised approach” fell away.

7.3.3 *Guidelines and indicators*

Setting guidelines and timetables for achieving goals, together with quantitative and qualitative indicators for monitoring progress, are key features of OMC (European Council 2000, Conclusion 37), and have also featured visibly under the ECCP, and in particular, the ETS.

With respect to indicators, as discussed already, Kyoto targets have served as the central quantitative goal. As the centrepiece of EU climate strategy, the launch of the ETS triggered a more structured, OMC-like review process, whereby the ETS Directive laid out guidance *criteria* for preparing NAPs (2003/87/EC, Annex III), which are summarised in Box 7.2. Although they were somewhat vague, Article 22 made provision for further revisions in the next trading period (2008-12) in light of Commission assessments of NAP reports, and experience of ETS implementation in the pilot phase.

Box 7.2: Criteria for preparing National Allocation Plans (M = mandatory)

1. Consistency between total quantity of allowances and **Kyoto commitments**
2. Consistency between quantity of allowances and **emissions development assessments (M)**
3. **Technical potential** to make emissions reductions
4. **Consistency** with **other Community legislative instruments**
5. **Non-discrimination** between companies or sectors (M)
6. Information on the treatment of **new entrants**
7. Information on how **early action** will be taken into account
8. Information on how **clean technology** will be taken into account
9. Information about how **public involvement** will be incorporated (M)
10. **List of installations** and their respective allowances (M)
11. How **competition** from **outside the EU** will be taken into account

Source: Skjærseth and Wettestad (2008: 50); 2003/87/EC (Annex III); COM(2003) 830 final

As mentioned already, the Commission published *guidelines* for implementing the criteria soon after (COM(2003)830 final), identifying four (out of the eleven) as being mandatory (i.e. emissions development, non-discrimination, public involvement, and list of installations); DG ENV then revised the list down to three, adding the verified data for 2005 when they were published.

The process of developing criteria and issuing guidelines for assessing NAPs, subject to ongoing revision in light of new information and experience, also consolidates the OMC-

like 'learning-by-doing' exercise which the ECCP has undertaken. In practice, it is possibly because the NAP assessment criteria were so numerous, vague, and open to interpretation by the Commission (Wettestad 2009: 321), that the ETS survived the agonising, decentralised NAP process with sufficient integrity to warrant saving, even at the cost of wholesale centralisation of the scheme.

Perhaps counter-intuitively, as the EU ETS has become more centralised and formalised, it has taken on institutional elements more in keeping with OMC than the decentralised model had been, i.e. there appears to be *greater* use of targets, timetables, indicators, best practice, and benchmarks under the new (post-2012) system. The introduction of OMC-type instruments, such as *benchmarks* and *best practice*, for allocating free allowances, was an aspiration of the original ETS Directive (2003: Article 30). However, it was not applied to ETS until the 2009 Directive for a revised scheme, mainly because allocation had been free in the early scheme, but also because their use relied on there being a knowledge-base of practical experience from which to determine 'best available techniques' (*ibid.*) and 'most efficient' technologies (2009/29/EC). Further, in keeping with OMC, the revised Directive takes an inclusive approach to making these institutional changes:

"In defining the principles for setting ex-ante benchmarks...the Commission shall consult the relevant stakeholders" (Article 10a).

Procedural time pressures, commonly associated with OMC (Jacobsson 2004: 365), were also built-in to ECCP and ETS processes from the beginning. Basic time constraints have been provided by Kyoto targets, with EU timetables and deadlines determined within this context via iterations of the ECCP (two programmes, plus two phases), and more systematically, through the ETS NAP process, which has determined multi-annual trading periods, reporting requirements and emissions targets through the burden sharing agreement. Although the revised ETS from 2013 renders the NAP-review system redundant, it does retain use of *quantitative* indicators, through the so-called '20-20-20' targets, adopted as part of the Climate and Energy Package. They commit the EU to: (a) cutting total GHG emissions by 20 per cent below 1990 levels (30 per cent if other major

emitters follow suit); (b) supplying 20 per cent of energy from renewable sources; and, (c) reducing energy use by 20 per cent through gains from energy efficiency (2009/29/EC).

Returning to ETS more specifically, the Package incorporates *annual* (rather than multi-annual) reporting requirements, and integrates *benchmarks* for allocations based on *best practice*, which means that in spite of its more formalised and centralised format, it retains strong recursive element (Homeyer 2010: 125).

7.3.4 Peer review and mutual learning

Although it is evident that links with formal legislative structures have pervaded the ECCP's evolution (visible in the plethora of legal outputs from the process detailed in Section 7.1), the argument presented here is that the institution has generated an underlying *informal* network of key (state and non-state) actors, brought together in a processes of recursive learning activities and exchange of experience.

The ECCP has always had a loose and informal structural format, which has been closely – and centrally – driven by DG ENV. Nevertheless, a centrally-steered process does not preclude the ECCP from being in-step with the basic principles of OMC. Indeed, the juxtaposition of informality *and* a degree of centralisation seem to lie at the heart of the OMC definition itself; the same Lisbon Presidency Conclusion advocates, “a fully decentralised approach” *and* identifies the Commission as the means for guiding the process:

“A method...[for]...managing change will be devised by the European Commission networking with different providers and users, namely the social partners, companies and NGOs” (European Council 2000, Conclusion 38).

Further, as a whole, the ECCP has had a broadly cyclical structure, comprised of two Programmes (plus two phases in the First), not to mention the iterative, WG format, best exemplified by the ETS network (WG1). At the start, the ECCP's overall ‘nested’ WG structure integrated stakeholders in clusters of activity, exploring (42) specific sectoral

and horizontal policy areas as part of a “screening exercise” to identify priority policies and measures (Delbeke 2006: 5), based on three criteria:

“their contribution to the reduction of greenhouse gas emissions, cost effectiveness and the time-frame within which they could be realised” (Commission 2001, Long Report: 2).

Reflecting clear OMC sentiments, the ECCP1 Final Report (for Phase 1) emphasised best practice and experiential learning as being important ingredients of the climate policymaking process:

“The *exchange of experience* and *best practice* have been equally mentioned by almost all the Working Groups in order to activate a useful complementary range of measures” (Commission 2001, ECCP Long Report, 2001: 158, emphasis added).

In ECCP Phase 2 (2001-3), the institutional structure of the ECCP was extended when the Commission established additional WGs, and called for a further review of progress towards the measures proposed in the previous phase. At this stage, areas for action (42 of them) were whittled down (to a more realistic 12), and an assessment of progress towards Kyoto targets concluded that more work needed to be done,

“the EU would not achieve the Kyoto target with the measures currently in place, but could exceed the target with additional policies and measures” (European Commission, April Report 2003: iv).

It was within this context that the proposed ETS was presented as the centrepiece of EU climate policy, alongside the Kyoto flexible mechanisms and the establishment of an overall monitoring system for GHGs at the EU level (with its own OMC-like review process) (*ibid.*: 11). A pilot EU ETS scheme was seen as the basis for an experiential learning exercise:

“A pre-Kyoto EC [emissions trading] system should be viewed as a ‘learning-by-doing’ process” (Commission, Long Report 2001: 12).

It was also becoming clear that the ECCP was beginning to take on a more traditional legislative structure, and starting to be seen by insiders more as “a collection of legislative processes” than a scoping and cross-sectoral, deliberative network (as it had been during ECCP1) (ECCP9: 6, ECCP5: 2).

Nevertheless, the development of the EU ETS can *itself* be seen as a *de facto* OMC (within a ‘meta-OMC’) because it included many characteristic features. First, it supported an EU *objective* (i.e. the Kyoto targets), and, second, *guidance* criteria were issued (and re-issued) by the Commission to help Member States compile National Allocation Plans (NAP), which set out how countries would distribute permits in order to meet domestic emissions reduction targets (the key *indicator*). In the interest of subsidiarity, the criteria left “a degree of scope for Member States to take different approaches, to suit their individual circumstances” (Vis 2006: 188) – again following OMC rationale. *Monitoring* was the responsibility of the Commission, who had primary authority for assessing NAPs (in two rounds), but *peer review* took place in the form of ‘robust discussions’ in the Climate Change Committee (Article 9). The latter feature implied a *decentralised* review process very much in keeping with OMC. Furthermore, a Commission official involved in the NAP process highlighted key components of the work of these WGs as being experiential learning, deliberation and best practice:

“Experience with the Climate Change Committee shows it plays an important role as a forum for exchanges of views of Member States on their experience of the EU ETS, on best practice, and for reflections on issues that will be raised in the future” (Meadows 2006: 98).

However, the introduction of comitology inevitably added a *formal*, intergovernmental dimension to the ECCP and ETS, which led to the fading out of ECCP WGs, and phasing in of those of the Climate Change Committee. As a senior Commission official plainly put it:

“The Climate Change Committee has become the hidden vehicle to make [climate policy] work” (ECCP19: 3).

Meanwhile, as informal processes were becoming more formalised, there was evidence that OMC-like review processes were starting to creep into legislative structures relating to climate policy. For example, the 2003 EU ETS Directive made explicit provision for the review and further development of the ETS, specifically taking into consideration experience from the pilot scheme and relevant international developments. In addition, the monitoring and reporting guidelines put in place by daughter legislation of the ETS Directive also integrated an OMC-like, centrally coordinated national reporting-and-review process, which established the “nuts and bolts” of the EU-wide GHG monitoring scheme (Hartridge 2006: 215).

In line with this ‘formalisation of the informal’, when the ECCP ‘meta-OMC’ process was revived in a Second Programme (2005-8), it took on a much more conventional, multi-stakeholder exercise to “review progress and explore new actions” (COM(2005) 35 final: 10-11); though, by this stage, ‘convention’ itself had evolved to become a more inclusive process (e.g. integrated in Impact Assessments; COM(2002) 704). This was, in part, due to changing norms within the Commission and public policy more widely (see Chapters 2 and 8).

In addition, ECCP2 was much more focused in its coverage, and the establishment of new WGs (in particular, on aviation and carbon capture and storage) could be traced to a concerted effort on the part of the Commission to lay the foundations for specific legislative proposals (ECCP19). The overall structure and review function of the process, in particular when compared to the First ECCP, was largely superficial:

“ECCP II was much less structured, with unclear procedural guidelines and minimal incorporation of monitoring, peer review, synthesis and evaluation” (Withana *et al.* 2010: 47).

With respect to the ETS Review WGs, it was clear that the ECCP was now only providing the formal framework for lobbying and discussions on ETS to take place, and in the background, parallel – and more useful – informal networking was underway among core ‘ETS’ actors (e.g. via the Task Forces of the Centre for European Policy Studies (CEPS), and in an informal network of national representatives, which had sprung up when ECCP1

WGs were made redundant) (see Chapter 8). Nevertheless, the consensus forged through the ECCP framework on the need to overhaul the ETS (European Commission, 2007: 3), proved that it still served an important networking function, not least in legitimising the establishment of a harmonised scheme as part of the Climate and Energy Package – something which would have been politically unthinkable only a decade earlier.

So, does this herald the end of OMC in climate policymaking? Certainly, the Climate Change Committee may now be the ‘hidden vehicle driving climate policy’, but that is not to say that future use of the ECCP or OMC-like processes has been ruled out. Indeed, proposals such as the White Paper on Adaptation, and the Effort Sharing Decision, contain OMC-like elements and suggest that OMC still has a role to play in coordinating national policy, though it is likely to be more relevant in new (especially cross-sectoral) policy areas, in particular, those where climate impacts and/or solutions are potentially diverse and localised, and where blanket legislative tools (such as industrial and product standards, associated with mitigation) are less likely to be effective or politically feasible (ECCP19).

7.4 SUMMARY AND CONCLUSIONS

This chapter has explored the ECCP’s institutional architecture and OMC characteristics, and has highlighted the extent to which informal and formal processes have been closely intertwined over time. Thus, some of the original policy streams established by the ECCP network (most notably, WG1 on Flexible Mechanisms) were eventually channelled into legislative processes, such as directives with comitology (in this case, the Climate Change Committee). Furthermore, softer and more experimental policy tools, such as peer review, best practice, and recursive learning have become increasingly institutionalised in hard legislative processes (such as ETS).

In terms of formalisation, the ECCP has evolved from being an *informal* process, driven by the Commission to trigger more coordinated action towards honouring relatively soft international climate agreements, to becoming a *formal* and highly-legislated policy area,

geared to meeting ambitious EU climate targets and timetables (i.e. '20-20-20' targets), with a view to shaping future international action.

Institutionally, the development of the ECCP and ETS structure has been an iterative and strategic, 'learning by doing' exercise, steered by the Commission to forge consensus on the need for climate policy, with emissions trading as its centrepiece. It was founded on deliberation and experiential learning, in order to accommodate diverse national circumstances, and overcome the severe political and normative constraints facing it at the outset.

As with IMPEL, although the ECCP is not conventionally identified as an OMC, partly because it (also) predates the Lisbon definition (Homeyer 2007: 47), by taking a long-term perspective and using clear diagnostic criteria, this chapter has revealed that in its early stages (up to 2012), the process possessed many key OMC-like characteristics, as illustrated by Figure 7.2 below. First, it was set up as a *voluntary* coordinating mechanism for pursuing a *common* strategy towards meeting EU environmental commitments (i.e. Kyoto emissions reduction targets). Second, it originally adhered to the spirit of OMC and *subsidiarity* by taking a decentralised approach, with respect for diverse national conditions in determining burden-sharing efforts, and setting allocation targets and rules (Presidency Conclusions 2000, Article 38; Vis 2006: 188). Third, its operations have focused on meeting national *and EU* environmental goals, using timetables to achieve *interim- and long-term targets* through the preparation of NAPs. Finally, deliberation and consensus-building in the ECCP WGs, alongside exchange of experience through the centrally-steered Climate Change Committee *peer review* and NAP *learning* activities, enabled the Commission to develop common *guidelines* (e.g. criteria for drawing up NAPs), as well as review progress towards quantitative (emissions reduction targets) *indicators*.

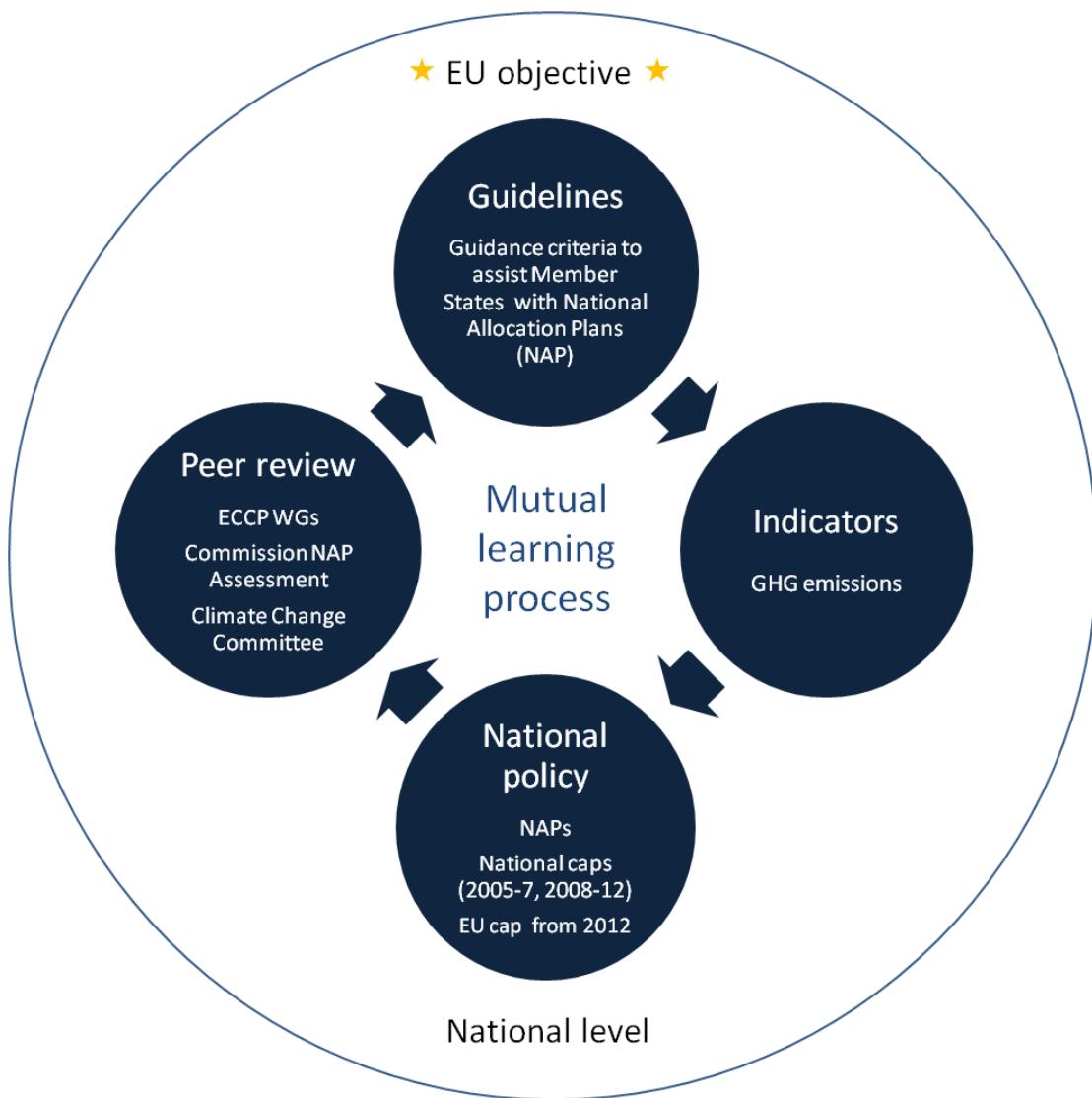


Figure 7.2: The ECCP as an OMC according to Lisbon Presidency criteria

Source: Author (based on European Council 2000, Presidency Conclusions 37 and 38)

Furthermore, in spite of its centralised structure and formal status in legislation, the revised ETS retains a range of measures that are in keeping with the spirit of OMC (albeit less so than previously). These include: common, but nationally differentiated, indicators and targets (i.e. '20-20-20' and Effort-Sharing goals); peer review processes – managed by the Commission, in cooperation with stakeholders – for developing benchmarks to determine national allocations; and schedules for reporting and monitoring progress towards reaching short- and long-term targets, in order to promote learning and best practice at the EU level. In short, the OMC lives on within the hard shell of regulation.

To conclude, this chapter has fulfilled the first objective of this thesis, by applying diagnostic criteria to systematically explore the prevalence of OMC in the EU's environment sector, using the Lisbon definition. Using this outline of the ECCP as a point of departure, the next chapter explores how and why these developments may have taken place, the implications they have had for participation and learning, and what can be learnt by applying new institutionalism.

8 THE ECCP IN PERSPECTIVE: TOWARDS GREATER CENTRALISATION?

8.1 INTRODUCTION

This chapter investigates what institutionalist theory adds to the analysis of the ECCP. More specifically, what do rational choice and sociological institutionalist approaches reveal about the way the network emerged and developed? How was the ECCP affected by (and did it shape?) the regulatory and cultural context within which it operated? What have been the implications for participation and learning?

To investigate these questions, the individual contributions made by each theory are presented in turn, again framed around Zeitlin *et al.*'s (2005) four OMC assessment criteria. Each institutionalist approach presents a different account of how ECCP institutions evolved, first, by analysing the *substantive* and *procedural* changes that have occurred (i.e. what was the impact on rules and norms, and outcomes and process?), and next, the effects these developments have had on *participation* and *learning*. Finally, the conclusions investigate the advantages and disadvantages of taking a multi-theoretical approach.

8.2 RATIONAL CHOICE INSTITUTIONALISM: ECCP AS A 'STRATEGIC OPERATING ENVIRONMENT'

Ostrom's rules-based theory assumes that institutional structures create *constraints* and *opportunities* for guiding behaviour. Analysing 'substantive change' in the ECCP, therefore, involves exploring the *constitutional-choice* rule architecture, i.e. the legislative framework (Ostrom 1990: 52-3). As rules are 'nested', the overarching regulatory structure is also expected to shape conditions for collective action at the 'procedural' level, i.e. formation of *collective-choice* and *operational* rules, which make up the organisational basis for OMCs such as the ECCP. These institutions determine the 'rules of the game' within which participation takes place, and any learning outcomes are generated.

8.2.1 Substantive change

The rational choice institutional analysis focuses on how international and EU rule architectures have created incentives for cooperation in the form of the ECCP, which has in turn facilitated the formation of a revised set of rules for governing collective behaviour, predominantly through a new body of climate legislation and institutions.

Taking *international* rules first, the Kyoto Protocol played an important role in framing EU and domestic discussions about climate change, by establishing a common framework for action at the global level. In setting emissions targets and designating deadlines by which they should be achieved, it committed EU countries to act on climate change within a specified timescale. Once Kyoto was ratified, it created formal obligations for the EU and Member States to achieve these goals, which put in place outer boundaries within which countries could operate. However, the Kyoto agreement also presented EU and national actors with new opportunities. The fact that emissions trading was included as an option (Article 17) – albeit against the will of (most) EU states – meant it presented a dormant path for policymakers to explore (via OMC), if they so desired; and it introduced a novel instrument, which could fill the policy vacuum left by the failed energy/carbon tax (Bang *et al.* 2007: 298).

At the *European* level, rules embodied in EC law were also significant in affecting outcomes. With respect to emissions trading, the most critical was that the original ETS Directive was founded on Article 175(1) of the EC Treaty, which brought into play the co-decision rule (Article 251), and meant that agreement in the Council would be subject to QMV. To demonstrate the rule's constraining influence, it has been claimed that the UK and Germany's decision to concede to a *mandatory* ETS was coloured by the technical possibility of their being outvoted in the Council (Skjærseth and Wettestad 2008: 155-6). Had the decision been subject to unanimity (as in the case of the energy/carbon tax), no single opponent could have been overruled, which may have created a stronger incentive to obstruct the process.

Although the original mandate to develop a climate programme to implement Kyoto came from the European Council, the Commission's role as policy initiator also provided a formal structural framework within which Member States and stakeholders could operate. The right of initiative was exploited to the full by DG ENV, who had warmed to the idea of emissions trading in the post-Kyoto period. However, because the authority of the Commission was confined to the right to *propose* policy, it had to work within the constraints of its remit in order to succeed (and avoid the fate of the carbon/energy tax). It was therefore imperative that any proposal had sufficient support in the Council and Parliament, which meant maximising the leverage available to it, as a WG1 participant commented:

“There was definitely a – I would even say *explicit* – policy decision by the Commission to use these *soft* legislative processes. The only power available to the Commission is the power of proposal. You don’t have the power to impose – you have to *argue* for it. You make a poor proposal and it will probably die. [Soft processes] are a way of building a coalition for your proposal” (ECCP21: 8).

A rational choice approach interprets the instigation of the ECCP as a strategic move on the part of DG ENV to create a sympathetic network to support its objective of implementing an EU ETS to meet Kyoto commitments. It was also tactical from the point of view of establishing the EU as a global frontrunner, with a view to influencing any future international GHG trading scheme. As far back as 1998, Environment Commissioner Ritt Bjerregaard, had appealed for early EU action on emissions trading, claiming, “we cannot let others dictate the rules” (International Environment Reporter, June 1998).

Once the ECCP was created by DG ENV, it presented state and non-state actors with a new strategic operating environment for achieving their *own* preferences, within the confines of their own domestic constitutional rule arrangements (Börzel 2002: 194). The amenability of actors to consider new climate tools was also heightened by the failure of the energy/carbon tax, and consolidated by a general feeling that the command-and-control approach was not delivering optimal outcomes, as an industry representative explained:

“There was great dissatisfaction, not only in industry, but also in government, at the way previous legislation was working. It was evident that there were anomalies that made it rather inefficient” (ECCP21: 10).

Nevertheless, as revealed in Chapter 7, the positions of Member States and non-state actors on climate policy were fundamentally polarised at the time of the ECCP’s instigation. A key example is that two climate pioneering nations, Germany and the UK, had already begun implementing very different national programmes, which included progressive (if comfortable) emissions reductions targets of their own. Germany, with its corporatist domestic traditions, had been employing voluntary agreements with industry since 1995, whereas the instinctively pro-market UK had been one of the few European voices in favour of flexible mechanisms during the Kyoto negotiations (Skjærseth and Wettstad 2008: 87), and were implementing a voluntary, domestic ETS (*ibid.*: 93). Other governments were also beginning to engage with climate change: Denmark was preparing to establish a national ETS in 2001; the Netherlands planned to follow suit; Sweden had a CO₂ tax, and the French were pursuing domestic energy reform. Indeed, it was partly this high degree of emerging diversity that led the Commission to realise it would need to act fast if there were to be any hope of coordinating such diffuse climate policy implementation models at the EU level, not to mention stimulating absent ones (e.g. among Southern Members).

The ECCP was therefore established to explore *what* form climate action should take – not *whether* it should occur in the first place. With emissions abatement measures potentially imposing disproportionate costs on more diligent GHG carbon-reducers, it was feared that a race to the bottom in climate policy implementation may occur. Creating a ‘level playing field’ in the form of a common regulatory framework was thus seen as serving the interests of Member States, industry, global citizens, and the environment. The Commission, therefore, set about promoting emissions trading by using its authority to change the rules of the game (Ostrom 1986: 6-7). In particular, the creation of the ETS (and subsequent move towards a more centralised scheme in the revised Directive), can be interpreted as a means of introducing new rules to impose collective rationality at the EU level, where (individual) national utility maximisation was in danger of failing to

deliver (collectively) optimal outcomes. The development of EU climate policy and legislation to achieve this aim can thus be viewed as the *outcome* of bargaining within the new operational structures represented by the ECCP. These network rules are examined next.

8.2.2 Procedural change

Analysis of procedural change is informed by Ostrom's interpretation of 'collective-choice' and 'operational' rules. They are applied to the ECCP level using seven *horizontal* rule-types (2005: 148, 187-214), which are again introduced in pairs, and then explored as a configuration to analyse the extent of participation and learning.

a) *Position and boundary rules: who's included, and how are they chosen?*

As Ostrom (2005: 193) points out, the available 'positions', and how they are determined, provide the foundations for cooperative arrangements. In the case of the ECCP, the key positions were: WG membership and chairmanship, the Steering Committee, and later, in relation to the ETS, the Climate Change Committee (CCC).

The ECCP started out as a centralised and informal network of WGs. It was officially coordinated by the Steering Committee, which included representatives from DGs with portfolios relating to climate change (COM(2000) 88, Annex 2: 8), but in reality, was closely managed by DG ENV. From the outset, the process was viewed as a "co-operative effort" involving the Commission, Member States, and stakeholders from industry and NGOs (*ibid.*). Yet, in spite of the explicit (and unprecedented) effort made by the Commission to incorporate a broad range of state and non-state actors, the intended membership of individual WGs was formally restricted to 15 (*ibid.*), though in practice it was more like 20-25. Nevertheless, this (low) limit on participants, combined with an implicit 'invitational entry rule' (Ostrom 2005: 196), gave the Steering Committee considerable freedom to handpick participants. As a member of WG1 put it, "there were no *objective* criteria" (ECCP21: 2).

The role of the Parliament in these WGs was very limited, with only one documented occasion of an MEP participating (in an ECCP Industry sub-group on voluntary agreements) (Usui 2006: 79). Parliamentary attempts to influence the network took the form of a Resolution calling for the ECCP to consider GHG emissions from agriculture and non-CO₂ gases (which was ignored), and stated regret that the ECCP was, “merely...a consultative body, and not, as was to be hoped, as a strategically oriented policy tool designed to meet the commitments to reduce greenhouse gas emissions in the EU” (European Parliament 2000). Of course, once the ETS proposal was published, the process shifted into pre-legislative mode, which formally introduced the Parliament and Council, and after the Directive was adopted, decision-making was devolved to the Climate Change Committee, where intergovernmental conventions applied.

With the pilot ETS in operation by the time ECCP2 was launched, Member States and industry groups were now directly responsible for implementation, and so a broader representation of interests became necessary. This increased attendance at the ETS Review WG to around 100 registered participants. Written submissions were also admitted via the EU’s website.

b) Choice and aggregation rules: who does what, and how are decisions made?

How actors are assigned responsibilities and preferences are aggregated at the network level reflect significant (collective and operational) institutional choices. In this respect, the Commission – and DG ENV, in particular – played a central role throughout, with responsibility for setting agendas, timetables, and terms of reference via the Steering Committee (COM(2000) 88 final, Annex 2: 8). Further, meetings were subject to a ‘closed agenda control rule’ (Ostrom 2005: 201), which was closely adhered to (ECCP21: 6).

In addition, senior officials from the appropriate DG were responsible for chairing WGs, as well as preparing the minutes, final reports (in ECCP1), and meeting conclusions (ECCP1 and 2). Bearing in mind that the outputs from these networks were intended to inform forthcoming legislation, the latter function conferred considerable authority on the Commission, the significance of which was not lost on participants, who wrangled over the wording of summaries (ECCP3: 5). Certainly, many WG1 members felt DG ENV used

its authoritative position as convenor and chair to build a coalition (albeit adeptly) in favour of an EU ETS:

“I think they [DG ENV] used it [ECCP] to create a political consensus. Sometimes you got the feeling they almost scripted the meetings; they had a good sense of what they wanted to get out of them” (ECCP18: 5).

Similarly, the Commission’s capacity to instigate a second wave of the ECCP, with even less transparent procedural rules, was a concern for some at the time, who felt the ECCP’s mandate was unclear:

“There should have been a clear description of the process [upfront]. What will happen to the results of these WGs? Through which channels are they fed into the decision-making process? This was not clear at the time. What happens to the conclusions, especially if they don’t fit with the Commission’s view?” (ECCP16: 5)

Thus, choice and aggregate rules were designed by the Commission to provide maximum latitude for shaping outcomes in favour of an EU ETS Directive (in ECCP1), and a more harmonised scheme (in ECCP2).

c) Information rules: how is communication channelled?

Information rules authorise certain channels of communication and determine the frequency of exchange (Ostrom 2005: 206). By giving the Steering Committee responsibility for information exchange and dissemination, the Communication establishing the ECCP (COM(2000) 88, Annex 2: 8) provided WG chairs with a key role in determining the regularity and content of meetings (e.g. who presented what), and meant they held the pen when summary reports were written. Under ECCP2, four (conference-like) meetings took place, but its formal consultation-style structure meant time for discussion was limited and set-piece presentations dominated. Once the Directive on ETS was adopted, however, the Climate Change Committee took over as the core forum for exchange (more on this below).

d) Scope and pay-off rules: ECCP's sphere of action, and who benefits/pays?

As might be expected of a flexible instrument such as OMC, the focus of the ECCP was initially *scope* (i.e. performance-based) rather than *choice* (prescriptive) rules (Ostrom 2005: 209). This is because the national emissions targets determined by Kyoto (and burden sharing), left individual countries with the freedom to decide *how* best to achieve their individual commitments. However, as the ECCP progressively solidified into a collection of European legislation *prescribing* specific measures for reducing emissions (e.g. use of renewables, biofuels and CCS, plus performance standards relating to cars and buildings), climate policy came to embody a higher degree of choice rules. The key exception was the ETS, which maintained the spirit of scope rules by allowing the 'targets of regulation', i.e. Member States and installations, to decide how and where emissions would be reduced, i.e. via abatement or trading (Coglianese *et al.* 2003: 706).

As with the IMPEL Network, no specific *pay-off* rules applied to the ECCP setting (e.g. salaries, fines, sanctions, loss of rights, etc.), though it is likely (if impossible to verify) that the exclusive nature of the WGs put participants at a strategic advantage over outsiders. More relevant perhaps, are the pay-off rules *resulting from* the ECCP, for instance, the method for allocating emissions allowances in the ETS Directive (grandfathering, then auctioning) represents a significant pay-off rule choice (and policy *outcome*).

Having surveyed the substantive (constitutional) and procedural (collective-choice and operational) rules individually, the next section explores them as a *configuration*, to see how interactions between rule sets have shaped incentives structures and influenced participatory and learning outcomes.

8.2.3 Participation: the impact of rules for inclusion

The rational choice approach anticipates that institutions privilege certain interests and exclude others (Pierre and Peters 2005: 217, Kassim 1994: 17). The ECCP fits this model because its membership was selective, and the configuration of collective-choice and operational rules reinforced prevailing resource asymmetries, giving more powerful actors greater access to ECCP processes. As a national expert explained:

“The big Member States got to be everywhere, of course, which is the way the system works. The small [countries] were invited to one, two or three WGs, depending on where the Commission thought they had particular expertise or interest. And that system was not very transparent” (ECCP9: 4).

Working Group 1 was always seen to be central to the ECCP (ECCP9: 4), and it is evident that those who were selected as members were seen by DG ENV to be strategically important, either due to their technical expertise and/or predispositions towards emissions trading. Participants included (Commission, Summary Records of Meetings 2000-1):

- *DG officials*, from DG ENV, DG ENTR (Enterprise and Industry), DG ECFIN (Economic and Financial Affairs), and DG TREN (Transport and Energy);
- *National experts*, from Austria, France, Germany, Sweden, and the UK;
- *Industry representatives*, from the UK Emissions Trading Group (ETG), European Chemical Industry Council (CEFIC), International Federation of Industrial Energy Consumers, European Roundtable of Industrialists (ERT), Union of Industrial and Employers’ Confederations of Europe (UNICE), Federation of German Industry (BDI), and the Union of the Electricity Industry (EURELECTRIC); and
- *ENGO groups*: World Wildlife Fund, Climate Network Europe and FIELD.

Key proponents *as well as* opponents were included because the success of any subsequent proposal was viewed to be contingent on reaching a consensus within this critical cohort of interests (ECCP5: 3). It was anticipated that the UK would be able to share practical experience from its national system; Austria and Sweden had developed capacity on Kyoto mechanisms; and EURELECTRIC and FIELD had conducted research on ETS. In other cases inclusion was on more strategic grounds, as Commission officials explained:

“The process that went on in constructing the WGs was to bring people who would otherwise have been opposed to the process, *inside* the process” (ECCP17: 5).

Nevertheless, the ECCP’s limited membership meant that many interests would inevitably be excluded, as a national expert pointed out:

“Not every Member State was represented in every WG nor were they invited to observe. And that, of course, upset quite a few Members” (ECCP9: 4).

In spite of the exclusivity of WG1, it was widely perceived to be one of the more participatory processes in the ECCP (ECCP18). For instance, the WG on industry, which was led by DG Enterprise, was so heavily dominated by corporate interests, that industry groups were not only given the majority of invitations (around 20), but on one occasion, the (only) ENGO spokesperson was asked to give up his (only) speaking slot for an *alternative* industry representative (ECCP6: 3, ECCP18: 1). Further still, the weight given to different opinions also reflected the institutional biases of individual DGs, as an ENGO representative complained:

“Even if we’d outnumbered industry [in the Industry WG], we still wouldn’t have got what we wanted because it’s always a power game in the end” (ECCP6: 3).

In addition, the capacity of ENGOs to engage effectively with the process was diminished by the sheer breadth, intensity, and speed of the ECCP’s multi-WG framework, causing their limited resources to be spread very thinly across the programme (ECCP18: 1, Withana *et al.* 2010: 50). Nevertheless, ENGOs were aware that their presence in these groups gave them greater voice than would have been customary under standard pre-legislative procedures at the time, and provided a rare opportunity to present their case directly to others:

“[The ECCP] was very useful, especially around flexible mechanisms; we used these meetings to get important points across to the Commission and other stakeholders” (ECCP18: 4-5).

In the second phase of ECCP1, the number of representatives in the CDM/JI WG was doubled to include: a larger group of DGs, more Member States (i.e. the Netherlands and Denmark, who were pursuing schemes of their own, plus Accession countries, Czech Republic and Poland), a broader range of industry interests (including individual companies, such as BP and Shell), and the consulting sector.

When the ETS Directive was adopted, however, the informal networking dimensions of the ETS WGs were absorbed into formal processes, and by the time the ECCP2 was launched, it ceased to be the ‘brainstorming’ forum it had once been (ECCP5: 4), and instead, “served as a vehicle to endorse measures the Commission had already decided to introduce.” (Withana *et al.* 2010: 50). Membership was more traditionally ‘representative’ than the earlier groups had been, and included delegates from *all* EU Member States (now party to the Directive), as well as the plethora of industry groups who were now directly involved in implementing ETS.

8.2.4 Strategic learning

Turning finally to learning, the rational choice institutionalist perspective has three main insights to offer. The first relates to the *nature* (depth) of learning, the second to the *direction* of learning, and the third to institutional structures or *mechanisms* conducive to stimulating learning.

The nature of learning under the rational choice approach is believed to be *strategic* and *instrumental*. Certainly, the lead role taken by DG ENV in establishing and administering the ECCP and ETS networks has been widely documented, including its ability to dominate the process (Braun 2009: 482). Its authority has pervaded the ECCP framework, and was arguably facilitated by the complexity of the issue and diversity of opinion at the time (Underdal 1994: 192), which gave it a strategic first-mover advantage:

“DG Environment made tactical use of their head start in knowledge in order to be able to steer the policy-making process” (Braun 2009: 483).

More to the point, it is evident that the ECCP was used *instrumentally* by the Commission to achieve its objectives, within the constraints posed by constitutional-choice rules. Indeed, key officials in DG ENV, most notably, Jos Delbeke (who was Head of Unit), Peter Vis (who became Secretary of WG1), and Peter Zapfel (an economist who moved to DG ENV from the DG for Economic and Financial Affairs), exercised skill in crafting the ECCP clustered network to their advantage (Braun 2009), carefully determining the rules of participation, setting the agenda, and shaping the focus and timing of the process to

create rules favourable to the creation of an ETS as the centrepiece of the EU climate policy (ECCP9: 3). As a senior DG ENV official confirmed:

“before we launched the [ECCP] process, we knew where we were landing” (ECCP19: 9).

The ‘shadow of hierarchy’ was also brought to bear by the Commission in *framing* its arguments in favour of an EU ETS. Attention was drawn to the possibility of even less favourable legislative outcomes than ETS being imposed, the nature of which depended on the actor in question. For example, to soften industry groups’ opposition to ETS, the threat of a revamped energy/carbon tax was wielded, whereas in discussions with NGOs, whose longstanding demand had been a green tax, concerns about the EU renegeing on Kyoto commitments were emphasised – along with the negative signal this would send an already ambivalent international community; therefore ETS with a stringent cap was presented as the next best alternative. When it came to Member States, on the other hand, launching the ECCP gave a strong (if informal) signal of intent from the Commission to act on climate change, which sent a clear message, both to countries not previously engaged with the issue (that it was firmly on the agenda), as well as to those with active climate policies *not* featuring ETS (that they would need to engage with the process if they wanted to *shape* it). In this sense, formal and informal constitutional rules created a set of incentives and decision-making parameters, which presented stakeholders with, what an industry representative involved in the ECCP process diplomatically described as a “guided choice” (ECCP3: 5). A national expert further confirmed that in the context of WG1, “the phrase ‘strategic bargaining’ is pertinent” (ECCP20: 5).

As implied by the analysis of substantive and procedural changes above, the *depth* of learning under rationalist institutionalism was ‘thin’ because preferences were arguably not changed by network interactions. Instead, learning is understood in terms of the *rules* and *outcomes* generated by the network, exemplified by the numerous legislative outputs detailed in Chapter 7, not to mention the institutional achievements associated with the development of a coordinated EU system for monitoring and reporting GHG emissions, and registries to support the ETS (Hartridge 2006). Given that the main

objective of the ECCP was to implement a strategy to deliver the GHG reductions agreed at Kyoto, a further outcome to consider is the EU's progress towards meeting these targets. The most recent data from the European Environment Agency shows that total emissions for the EU-15 – to whom the 'burden sharing' agreement applies – were down by 10.6 per cent for the period 2008-2012, i.e. below the Kyoto target of an 8 per cent reduction (EEA 2012, which includes figures for 2010). It would appear, therefore, that the central objective of the ECCP has been achieved, though, of course, it is impossible to ascertain the degree to which this accomplishment can be attributed to the ECCP itself.

With respect to the *direction* of learning, it seems to be the case that learning has predominantly been 'top-down' in the sense that the Commission and powerful domestic interests were able to exercise their influence over legislative outcomes, such as the 2003 ETS Directive (Skjærseth and Wettstad 2008: 45-6). For example, this was reflected in the decentralised structure of the scheme that was eventually established, which gave Member States primary responsibility for determining national emissions targets, overseeing permit allocation, and conducting NAP peer reviews (in conjunction with the Commission). Further concessions were made to individual countries, who were able to stamp their authority on the design of the pilot scheme by incorporating 'opt-outs' for installations (demanded by the UK), pooling opportunities (a condition introduced by the Germans), and reducing penalties for non-compliance (called for by France) (*ibid.*: 113). In addition, fierce campaigning by the German chemicals lobby paid off – certain installations were excluded from the scheme (Bang *et al.* 2007: 297).

In terms of the pay-off rules *resulting from* the ECCP, the decision to favour 'grandfathering' as an allocation method in the ETS Directive is a good example of how outcomes reinforced prevailing resource asymmetries because the rule gave countries with strong polluting legacies greater entitlement to emit than others, thereby institutionalising historical development patterns in the pilot ETS.

The move towards a more centralised ETS can also be interpreted in terms of instrumentalism because the two OMC-like NAP rounds presented critical learning opportunities for actors to redefine their strategies in light of past actions (Ostrom 2005:

64). Most obviously, experience from the pilot scheme showed that concessions to national material interests had created market distortions and impaired the effectiveness of the young carbon market, as explained by a Commission official:

“The process was incredibly complicated, extremely bureaucratic, took a long time, both nationally and at our level, and was leading to a situation where different companies in the same sector, but in different Member States, were being treated very differently” (ECCP17: 7).

Amidst accusations of windfall profits and free-riding, Member States eventually called for the Commission to intervene and tighten NAP proposals. It then used the opportunity presented by the ECCP2 consultation to signal a warming of opinion towards a more harmonised ETS. This effectively paved the way for a centralised cap and a greater harmonisation of rules in the revised ETS Directive (Skjærseth and Wettestad 2010: 80). The justification for such a move, as given by the rational choice perspective, is that countries were willing to agree to these more stringent collective rules because it was expected to increase the *predictability* of each others’ actions (Olson 1965). Again, national interests played a part in determining the character of the revised scheme, in particular, Eastern Members (Poland, in particular), were fiercely protective of their coal industries, and managed to delay the onset of auctioning until (potentially) 2020. Nevertheless, it is worthy of note that the end result was an outcome more ambitious than a lowest common denominator agreement would have produced (*ibid.*).

In summary, the rational choice institutionalist perspective explains that the ECCP was a *means* for establishing common rules to guide cooperative environmental action across national and European constitutional contexts. It was used *instrumentally* by the Commission, as well as dominant state and corporate interests, to facilitate strategic learning and bring about *new* rule configurations, in the form of legislative outputs, and climate institutions, which have largely *reinforced* (i.e. institutionalised) existing power biases.

8.3 SOCIOLOGICAL INSTITUTIONALISM: AN ETS COMMUNITY?

The next section presents a fresh account of the same events, reinterpreting Zeitlin *et al.*'s OMC assessment criteria through a sociological institutionalist lens. Essentially, it asks what this perspective helps us to understand about the ECCP that the rational choice perspective fails to account for. This version of institutionalism highlights processes of socialisation and 'isomorphism', which can cause institutions to imitate each other even when they emerge from different social contexts. Isomorphist pressures may be: *coercive* (due to political control or cultural expectations), *mimetic* (driven by a desire to copy 'legitimate' or 'successful' institutions) or *normative* (based on professional aspirations to achieve a common cognitive platform and legitimacy) (Powell and Dimaggio 1991).

8.3.1 Substantive change: reframing the climate debate?

This section begins with a focus on substantive change, understood in sociological terms as the development of agency and identity, as well as normative influence.

Taking agency first, although there is limited evidence to suggest that the ECCP has *itself* evolved into a network with its own distinct character and preferences, there are hints that a degree of *transformation* has occurred. One development which stands out, took place in the aftermath of WG1, when preparation for the pilot ETS was underway, and senior national representatives, led by Germany, the UK, Netherlands and France, decided to set up their own high-level network to discuss salient climate issues. The move signalled an important departure from centralisation because it was self-steered, and excluded the Commission. However, not long after meetings began, DG ENV began to express disquiet about being excluded from what were perceived to be important discussions on climate matters, and tried to put a stop to the network (ECCP1). As a result, officials were eventually admitted, and interestingly, the network continues to exists today, and performs what national experts perceive to be an important informal, deliberative function (ECCP15). More to the point, the fact that the development of the network was inspired by the informal and open format of the early ECCP WGs, suggests that whilst specific examples of agency may be hard to identify, a degree of *mimetic*

isomorphism may have been at play because the network was established to replicate elements of an institution which members perceived to be ‘successful’ (Powell and DiMaggio 1991: 70). There are also indications that the network has played a transformative role in establishing common Council positions, as revealed by one of its members:

“We informally discuss topics that are of interest to us all, and on the basis of those discussions, we try to come to a common approach in the Council group” (ECCP15: 1).

Further to these subtle displays of agency, there is also reason to believe that the ECCP itself *did* project a degree of normative influence early in the process, creating – or at least, consolidating – new normative frameworks for understanding climate change and its solutions. From the time of the Kyoto conference, discussions about climate change – and ETS in particular – had taken a distinctly moral tone (Ott and Sachs 2000). The main argument used against ETS by EU negotiators themselves in the run-up to the Kyoto conference in 1997, was that it authorised “trading in indulgences” and sanctioned the “right to pollute” (Grubb *et al.* 1999: 92). Further, global emissions trading raised additional questions about equity between developed and developing countries (Skjærseth and Wettestad 2009: 2). The Commission therefore invoked *coercive* isomorphist pressures in a bid to build a consensus, by using “not only its right to take initiatives but also the ‘moral pressure’ of invoking [Kyoto] targets” (Braun 2009: 477). Moreover, by establishing the umbrella framework of the ECCP, and inviting a cross-section of representatives to regularly contribute towards developing an EU climate strategy, it increased the political salience of climate change and thereby projected the issue into domestic debates (ECCP1). The most fundamental normative change to have occurred arguably relates to the contributions made by the ECCP – and specifically, WG1 – towards cementing a *consensus* on ETS, and by default, validating the need for climate action in the first place. This was not a given at the time, especially in business communities, who saw ETS discussions as being primarily about whether emissions reductions were a desirable proposition at all, as opposed to deciding how they should be achieved, as an ENGO participant in WG1 explained:

“Stakeholders, especially on the industry side, saw the choice as being between making [the Kyoto emissions] reductions or not, but the choice was between different instruments *for* making the reductions. On the specifics of climate policy and instruments...people didn’t have a *clue* before, in the Flexible Mechanisms WG. There had been no such thing as environmental policy instruments with certification at the EU level, and very little experience at the national level. So people didn’t know” (ECCP18: 4).

Commission representatives also attributed WG1 with some responsibility for redirecting the debate:

“It’s difficult to judge how much positions changed or softened, but what became clearer over a series of meetings was that a lot of concerns that were being raised about ETS were actually about *climate policy*. The WG, I think, helped to clarify the issue” (ECCP17: 3).

Admittedly, only a small part of the normative shift that took place with respect to opinions on climate policy and ETS can be specifically attributed to the ECCP because these issues were also discussed heavily outside this network. However, there was little doubt in the minds of participants *themselves* that it represented a crucial framing device for subsequent EU and domestic climate debates, and that the incipient socialisation processes in the ECCP helped generate a consensus on the matter, as one participant recalls:

“Coming together to discuss the issues in a quite structured way helped a lot, at least, in developing a common language or frame of reference. I wouldn’t go so far as to say that *everyone* agreed with the conclusions, but certainly, it helped to build a broader consensus on the merits of ETS than would have been the case at the outset of the WG1” (ECCP17: 2-3).

Finally, although the network was heavily centrally steered, the fact that its outputs (e.g. WG reports and conclusions) were seen as a joint endeavour, not only served to legitimise ETS as a climate policy solution, but also legitimised climate policy *per se*. In particular, winning the favour of NGOs conferred environmental integrity upon the

scheme, which paved the way for the subsequent support of the traditionally ‘green’-leaning European Parliament. In short:

“Taken together, supportive convergence between industry strategies representing ‘economic growth and prosperity’ and the green movement representing the ‘public interest’ would constitute a significant legitimizing force and thereby facilitate an EU ETS” (Skjærseth and Wettestad 2008: 29-30).

8.3.2 *Procedural change*

In terms of the procedural norms embodied in the ECCP, the combination of inclusiveness (i.e. private and NGO participation) and informality, arguably made the process better disposed to socialisation processes than pre-legislative soundings would traditionally have been. Even industry members, who were accustomed to accessing policymakers, felt the process marked a departure from the norm:

“You saw a lot of stuff that you wouldn’t have been able to see – or you hardly had time to go around and see. [Members] had to disclose their hands and say where they were coming from and why, and people were ready to counter it. And that was very helpful... Lobbying takes place in any case. I think it’s a good thing to actually have it brought into the open” (ECCP3: 6-7).

As with IMPEL, the closed nature of the network also fostered trust and a sense of ownership, which participants valued (ECCP14: 2, ECCP4: 3). For example, the regularity of meetings, continuity of membership, and recursive peer review design of the ECCP created a uniquely intimate environment for discussion, at least in the early days of WG1, as three members recalled:

“regular meetings...helped to build trust. That was a good thing. You knew the people face-to-face. You could develop quite a good feeling of where someone was coming from and where they would stand” (ECCP16: 2).

“To an extent it was a sort of *family* debate” (ECCP 3: 7).

“It was a lot about the chemistry. We were in the same room for each [monthly] meeting, small enough for everyone to be heard, without interpretation, without microphones. When we went for lunch or took a break, some of us would sit and eat together. I think the method of working was helpful” (ECCP5: 8).

Participants unanimously reported that the unusual breadth of representation made it feel inherently different to other EU policy processes they had participated in before (or since, for many). As a WG1 national expert explained,

“It certainly felt very innovative in terms of the government-industry-NGO mix. From the Commission, it felt quite daring to actually have that *spread* [of representation] directly engaged in developing a policy, and a pretty important one at that” (ECCP20: 8).

Although participatory structures shifted into conventional legislative modes once the ETS proposal was published, ECCP participants maintained that there remained, “informality in the background” (ECCP14: 2), which was founded on the relationships built up in WG1:

“For sure they [the ECCP WGs] reinforced networks which went on afterwards. They were definitely, definitely very important” (ECCP21: 6).

8.3.3 Participation

The sociological institutionalist approach to analysing participation, highlights that decisions regarding the selection of ECCP members by DG ENV were not only dictated by material interests, but also by perceptions of *propriety*. For example, the normative criteria used to determine the membership of different WGs varied depended according to which DG had jurisdiction over its activities, which in turn, shaped perceptions of who it was considered ‘appropriate’ to include, as an ENGO representative pointed out:

“There was definitely a different tone to different WGs, depending on which DG ran them, in terms of the topic and the DG involved. That had an impact on the kind of stakeholders that were there, and the perspectives which they had coming at these things” (ECCP18: 1).

An influx of economists to DG ENV in the late 1990s may also have created a predisposition towards market mechanisms among a critical mass of officials, and may also have framed notions of propriety about who it was necessary to include in the ECCP process, especially in WG1, whose membership was clearly dominated by economists (many of whom had pro-ETS UK links) (ECCP6, ECCP20). The fact that the group, to a degree, represented an epistemic community may also have facilitated the socialisation process, and created ‘normative’ isomorphic influences, whereby ETS was perceived as a new cognitive platform through which market mechanisms could gain traction and legitimacy in national and European policy environments (ECCP5, ECCP21). To some extent, this also set in motion a normative multiplier effect because membership of WG1 conferred a badge of authority on its members, who were invited to speak at conferences outside the remit of the ECCP. In this respect, certain core participants saw themselves in a quasi-‘evangelical’ role, persuading other significant actors, through deliberation and moral suasion, inside *and* outside the group, that ETS was the best solution to the climate change challenge:

“We had to persuade the NGOs that [ETS] was *good*. And we succeeded by explaining that emissions trading is about *rationing* the right to pollute. It’s not about giving unlimited rights to pollute” (ECCP5: 6).

Further, norms of cost-effectiveness were often invoked (Bang *et al.* 2007, COM(98)353), which chimed well with the Commission and industry groups, some of whom became ‘ETS ambassadors’ themselves. As an industry representative explained:

“I think you have to *believe* in what you are doing. My way of doing that was to persuade those around me that [emissions trading] was the *right* thing to do... I have always believed the environment is something economists should get involved in, and here is a classic example of internalising an externality. I am a true believer in emissions trading as a way to efficiently bring down emissions” (ECCP21: 3).

8.3.4 Learning as socialisation

Finally, the analysis of learning is conducted with reference to the three categories, (i.e. *nature/depth, direction, mechanisms*), which are treated concurrently in the following section due to their interrelatedness. Overall, the learning that took place within the framework of the ECCP structure can be understood as a socialisation process, which to varying degrees, have incorporated elements of mutual and reflexive learning, normative influence, and even transformation and preference change.

First of all, the deliberative nature of the early ECCP1 WGs was arguably conducive to supporting socialisation processes, and fostering the technical, cognitive and normative learning which took place on climate policy and ETS. This point was overwhelmingly confirmed by participants, expressed here by a Commission representative:

“The [early ECCP] set-up meant that stakeholders were involved in a *dialogue* - not just a set of set speeches – but a *dialogue* where you argued, counter-argued, and teased out where the sticking points in the process were. If you enter new territory, you need this kind of open and very frank exchange of views” (ECCP9: 10).

Commission officials also felt the process was a *mutual* learning exercise, at least prior to the development of the ETS proposal. From their point of view, the early WGs helped lay the foundations for developing a proposal where different standpoints could be accommodated:

“It was a way of carving everyone into the process. It was about avoiding misunderstandings because with understanding, you can find much better compromises. We could identify the problems and hurdles, and find solutions as part of the preparation process. We could say, ‘It’s a problem, but let’s solve it together’” (ECCP19: 12).

This view was also confirmed by an industry representative in WG1 (speaking at the time):

“The WG is still very much in the exploratory stage with a genuine attempt by the European Commission to learn from all sides about the subject. To a large extent we are advancing together into unknown territory relating to the interaction of different emissions trading systems” (Boyd 2002).

There is also evidence that the deliberative and recursive nature of the ECCP provided a valuable opportunity for reflexive learning, which helped actors to redefine perceptions about where their interests lay, and in so doing, arguably led to a degree of *preference change*. At the time of the early WGs, many actors who in theory shared a common interest, were in reality divided over climate change, and in particular, EU ETS. This applied as much to the Commission itself as anyone else, as an official explained:

“normally, the Commission doesn’t speak with more than one voice, certainly ‘outside’, in the Council or the Parliament, we always have one view. And we have to settle our differences privately. Now, in this particular group, we had different Commission departments with *different* opinions. We used [ECCP WGs] for the same purpose as for the NGOs and industry - trying to draw out their arguments. We had a platform on which we could try to persuade other [Commission] services. And that was an important dimension in the Commission’s own thinking process” (ECCP5: 9).

It also provided a focal point for the deeply divided European industry lobby to come together and air their grievances, against a background where pro-ETS members were branded ‘traitors’ and even excluded from certain industry meetings (ECCP6: 4). As industry representatives from WG1 elaborated:

“You get influenced by the *argument*, and at the end of the day you can agree with things that maybe you didn’t before. And you understand better. Things are explained properly – when someone asks a question, argues against it, you understand the whole thing so much better. That’s the great thing about these networks, they were real *Working Groups*” (ECCP21: 6).

“People had to come straight out and explain their concerns... There was kind of a give and take. You don’t get that unless you put people in that kind of pressure cooker of trying to do it *together*” (ECCP3: 6).

Although the ECCP's inclusive approach reflected a broader trend in the Commission and domestic public management more widely (see Chapter 2), there is reason to suggest that the ECCP may have stimulated 'mimetic isomorphism', by causing new institutions to ape the characteristics of a process perceived to be successful in order to enhance their own legitimacy and performance (Powell and DiMaggio 1991: 69). The development of an informal network for senior national policymakers has already been mentioned, however, the two-way influence of participatory norms is also exemplified at the *domestic* level by developments that took place in the UK and Germany, which closely mirrored the European model. Specifically, the German Emissions Trading Group was launched a few months after the ECCP in October 2000, and took a similar participatory format to its European counterpart, bringing together representatives from Federal and Länder governments, NGOs and industry (Bang *et al.* 2007: 296). The UK Emissions Trading Group, on the other hand, had evolved as an informal partnership between bureaucrats and industry in the mid-1990s, *before* the ECCP, however, it is likely to have influenced the informal and participatory character of the European network because DG ENV had close contact with the group towards the end of the decade, and the UK model was widely viewed as being successful in fostering a sense of ownership in ETS among industry groups. As a WG1 participant reflected:

"It felt quite exciting at the time as it genuinely felt like you were breaking new ground, both in terms of the *process* and content, at the national *and* EU level" (ECCP20: 8).

Although DG ENV is known for being one of the more open Directorates (Peterson and Bomberg 1999: 195), the ECCP was arguably also influenced by the deliberative style of policymaking promoted by the then Environment Commissioner, and former Swedish politician, Margot Wallström. This was mentioned by several participants as providing a supportive (if not motivating) backdrop for implementing such an innovative (and Nordic) participatory structure for developing EU climate policy (ECCP5: 1, ECCP6: 6, ECCP5: 1). Demonstrating the multiple – and 'mimetic' – feedbacks between institutional norms and structures, it has also been suggested that the more open consultative style of the ECCP may have influenced the development of subsequent consultation procedures

established by the Commission not long afterwards (COM(2002) 704). As a national expert observed:

“It was pretty innovative when the ECCP began. It was started *before* the Commission had established Commission-wide policy of participation and consultation of stakeholders because that came in 2002. It is possible that [the ECCP] served as a laboratory experiment for some of those developments that came later” (ECCP9: 9).

Furthermore, certain aspects of the participatory policymaking style evident in the ECCP have persisted as informal add-ons to formal comitology structures, demonstrating the mutual and transformative nature learning can have under the sociological institutional approach. In two related developments that poignantly demonstrate the *hybridity* of EU policy networks, a DG ENV official explained that although the ECCP has largely been subsumed within comitology institutions, WGs *similar to those created under the ECCP framework* are still being used on an occasional basis to support climate policy (ECCP19: 3). For example, even though the Climate Change Committee is strictly speaking an intergovernmental institution (*ibid.*), WGs that do not formally exist under comitology procedures have been created to include stakeholder participants on an ad hoc basis. Furthermore, although comitology is officially a means of delegating *implementing* powers to the Commission and the Council, it appears that the CCC has continued to take on some of the policy *scoping* and formulation functions performed by the original ECCP network. As a Commission official explained:

“We started with a Steering Group [in the ECCP], and we ended up with the Climate Change Committee that is taking care of the implementation and also the *emerging* issues” (ECCP19: 3).

In sum, the sociological institutionalist perspective emphasises the way in which learning in the ECCP has taken place through processes of socialisation, deliberation and isomorphism, based on motives of appropriateness and the pursuit of legitimacy. It finds that the transformative nature of learning has led to a certain degree of preference change that cannot be anticipated by the rational choice approach, and institutionalised

elements of the ECCP that were deemed to be successful in informal *and* formal domestic and EU climate processes.

8.4 SUMMARY AND CONCLUSIONS

To conclude, each theoretical approach has presented a different perspective on the ECCP's evolution. However, they have differed in terms of how they: define the *nature* of the ECCP (as an intervening versus independent variable); *assess* its contributions to policy, participation and learning (as outcomes versus processes); and identify the *mechanisms* through which substantive and procedural changes occur (i.e. strategisation versus socialisation).

Both approaches, again, provide a broadly complimentary evaluation of the ECCP's achievements, compared to what might have been accomplished in its absence, and as measured against Zeitlin *et al.*'s OMC assessment criteria. Collectively, the theories suggest that the ECCP has played an important role in bringing about substantive and procedural change: the rational choice approach highlights the network's utility in helping actors create a new body of climate institutions and law; the sociological variant interprets the ECCP's main achievements in terms of fostering a consensus about the need for collective action on climate change and reframing ETS as a legitimate climate policy solution.

Both theories view the ECCP as an innovative participatory model. Although it has reproduced existing institutional biases to a degree, it can also be viewed (in the true spirit of OMC) as marking a departure from conventional patterns (i.e. the Community Method) by extending the range of public, private and voluntary sector actors involved in the policy chain, in particular, at the formulation and implementation stages. The reframing of participatory norms about *who* it is appropriate to include in climate policy settings is demonstrated in the CCC, which today counters convention by involving *stakeholders* in ad hoc WGs. Further, the value of informality, deliberation and consensus in decision-making has been perpetuated in the establishment of an *informal* network on climate change for senior national experts, as well as in the CCC, which today plays a role

in discussing emerging climate issues (despite the fact that its official mandate is restricted to *implementation*). The ability of the Commission to gain entry into this network, however, demonstrates the way in which a ‘top-down’, centrally steered policymaking-style (also reflected in the ECCP), continues to persist.

With respect to their different interpretations of learning, rational choice institutionalism highlights the utility-maximising and instrumental use of the ECCP’s networking structures by stakeholders, operating within the bounds of constitutional and collective rules. The sociological analysis, however, points to the significance of socialisation and deliberation processes in bringing about normative change that has served to reinvent the EU as a ‘maker’ rather than ‘taker’ of global climate policy (Oberthür and Pallemaerts 2010: 53).

In summary, taking two institutional theoretical approaches to exploring the ECCP has created not only two different sets of analytical frameworks and focal variables, but together, creates a fuller picture of the empirical reality than a single approach allows. The next chapter synthesises these findings with those from the IMPEL case study.

9 THE OMC: WHY THE INSTITUTIONAL ‘MIX’ MATTERS

“It is not obvious that any one approach is superior to the others in capturing the complexities of change. There are several stories to be told and a necessary humility associated with the telling of any one of them.”

March and Olsen (1998: 958)

9.1 INTRODUCTION

This chapter addresses the (third) synthesising objective of the thesis by integrating findings from the IMPEL and ECCP case studies across three dimensions: the conceptual, empirical, and theoretical. First, a *conceptual* synthesis spans both case studies and focuses on the prevalence of OMC characteristics in these EU environmental policy processes. Second, a combined rational choice and sociological *theoretical* analysis explores the role OMC institutions have played in bringing about substantive and procedural change, and fostering participation and learning across the two *empirical* cases. Third, the coexistence of OMC processes alongside traditional modes of governance in the environment sector is investigated. Finally, the chapter examines the analytical value of using these two new institutionalist theories in practice, and assesses whether or not viewing the two sets of findings in combination rather than separately, gives a fuller picture of OMC in the environmental sector.

9.2 CONCEPTUALISING OMC: AN INSTITUTIONAL ANATOMY

This section compares the ECCP and IMPEL networks in conceptual terms by exploring their OMC-like institutional characteristics identified in Chapter 1, i.e. voluntarism; common objectives; guidelines and indicators; and peer review and mutual learning. The underlying questions are: how well do they empirically fit with the Lisbon Council’s conceptualisation of an OMC, and how different are they in reality to traditional governing methods in the environment sector?

9.2.1 Voluntarism

It is primarily the voluntary nature of OMC that distinguishes it from the Community Method, and marks it out as a ‘soft’ mode of governance. In line with the growing prevalence of *informal* methods in EU environmental governance, both IMPEL and the ECCP were originally established as voluntary networks. At the same time, they were designed to support *formal* processes, and what has clearly emerged from the findings in previous chapters is that their relationships with formal institutions have evolved over time. The IMPEL Network was established to promote the exchange of information and experience on the enforcement (and later implementation) of ‘hard’ EU environmental law, and (at least partly) responded to calls in the Fifth EAP for a formal implementation network. The launch of the ECCP by the Commission was designed to initiate a coordinated approach to achieving Kyoto emissions reduction targets – and consolidate the EU’s credibility as a global climate forerunner. The ‘shadow of hierarchy’ has also created an important incentive for cooperative action to succeed, with the threat of an EU inspectorate (and infringement proceedings for non-compliance) looming over the IMPEL Network, and the prospect of an energy/carbon tax softening actors’ resistance to the notion of an EU ETS in the ECCP.

Yet findings from the two studies reveal that the degree of voluntarism displayed by these networks has varied by case, and changed over time. A critical area in which they diverge is that whereas the actors in IMPEL have staunchly preserved the Network’s voluntaristic ethic (reasserted by its legal move to independence in 2008), the ECCP set in motion the development of a raft of *new* Community Method processes, which resulted in the original ECCP networks (specifically WG1) being absorbed into formal institutions, i.e. the Climate Change Committee.

Although the degree of voluntarism displayed by these networks represents the most obvious means of demarcating them from conventional governance modes in the EU, they have also possessed other characteristics which signal their departure from the traditional Community Method, some of which continued to be displayed even after their institutional structures became more formalised. These are explored further below.

9.2.2 Common objectives

Also in line with OMC, the ECCP and IMPEL networks were designed to promote coordination towards pre-determined EU goals, i.e. Kyoto emissions targets, and implementing and enforcing EU environmental law, respectively. Network objectives were broad in both cases, but much more so in IMPEL, which gave scope for revision over time in response to the evolving domestic challenges and changing expectations of the Commission. These objectives expanded from their initial focus on information exchange and enforcement, to include implementation, and eventually, providing collective feedback on the implementation of EU law to the Commission. For the ECCP, network objectives have remained the same throughout – to implement Kyoto targets. Even though ECCP WGs continue to operate nominally under the network's umbrella framework in the *post-Kyoto* period, no attempt has been made to update this goal to reflect the EU's new ('20-20-20') emissions targets.

9.2.3 Guidelines and indicators

The use of guidelines and indicators is another feature which IMPEL and the ECCP share with the OMC archetype. The use of guidelines was introduced by the ECCP to support a *formal* and centrally-steered process, established by the ETS Directive. Guidance criteria to steer the preparation of National Allocation Plans were issued and revised by the Commission, and indicators took the form of *quantitative*, time-sensitive and *binding* emissions targets, which were determined by the Kyoto Protocol and EU Burden Sharing Agreement. For IMPEL, *non-binding* guidance documents have been jointly developed as a *voluntary* process, albeit in the 'shadow of law' (e.g. IMPEL were asked to provide inputs to the Recommendation on Minimum Criteria for Environmental Inspections). The Network has focused on establishing common standards and procedures for best practice, and developing *qualitative* indicators (e.g. the Better Regulation Checklist, and performance indicators for environmental inspections).

9.2.4 Peer review and mutual learning

In both networks, there has been a strong problem-solving rationale and peer review dimension, focusing on *how* best to achieve EU objectives in the context of diverse national circumstances. In the case of IMPEL, a concerted effort has been made – by what is, at heart, an epistemic community – to understand the different domestic regulatory environments, identify common problems, and arrive at shared understandings about their solutions, based on horizontal peer-review and the exchange of practical experience. Although the shadow of hierarchy has towered over IMPEL's work – and the Commission has played a key role in shaping the Network's objectives, development and agenda – IMPEL has largely remained a decentralised and self-steered network, demonstrated by it recently becoming an independent association. On the other hand, the high degree of centralisation evident in the ECCP has meant that DG ENV not only determined *who* participated and *what* they learnt (via agenda-setting), but also *how* they did this, by closely managing the peer review process (e.g. determining guidelines and timetables, and assessing and authorising NAPs). The iterative nature of both processes, however, has integrated opportunities for environmental policy processes to be assessed, and for OMC outcomes *and* structures to be revised over time, which has facilitated a high degree of mutual and experiential learning among participants in both cases (a more detailed discussion of learning follows in a separate section).

In summary, therefore, IMPEL and the ECCP appear to have displayed many of the key empirical features envisaged by the 'Lisbon OMC' archetype, but to rather different degrees. However, to draw out the most striking differences, whilst IMPEL has remained a *voluntary* network, using *horizontal* peer review to collectively determine non-binding guidelines and qualitative indicators, the ECCP has developed from a voluntary, but *centrally-steered* network for delivering quantitative GHG emissions targets, into an umbrella framework for a set of *formal* Community Methods relating to climate change. How and why this happened is addressed next.

9.3 HOW DOES THE OMC (NET)WORK?

This section synthesises the key findings from the two empirical studies, and *combines* the analytical frameworks presented by the two new institutionalist approaches (each providing different interpretations of the same assessment criteria). It poses two questions. To what extent have IMPEL and the ECCP brought about institutional change (in law, policy and norms)? And how have they influenced participatory patterns, and learning processes and outcomes?

9.3.1 *Substantive and procedural change: law, policy and norms*

Taking rational choice institutionalism first, the theory has been applied to derive an explanation for institutional development, and account for substantive and procedural outcomes from network activities, in light of the fixed preferences and differential resource capacities of interested actors. It perceives OMC networks to be *intervening* variables, i.e. tools instigated by national and European actors as means of achieving premeditated goals and objectives: in the case of IMPEL, this involved establishing rules to promote a level playing field for implementing and enforcing EC environmental law; and for the ECCP, it concerned developing a common strategy for undertaking climate action. The strong role played by formal EU institutions and actors in creating these OMC networks has been evident in both cases, as have the contributions made by these networks to new and existing environmental policy and legislation. This has been demonstrated by the plethora of directives emanating (directly and indirectly) from the ECCP, most notably the EU ETS (with its considerable supporting institutional structures, such as registries and a carbon market), but also on: renewable energy; biofuels; combined heat and power; CCS; and performance standards on vehicle emissions and energy in buildings). The IMPEL Network has also made formal contributions to EU institutions, e.g. by providing inputs to the WEEE and Industrial Emissions Directives, and the Recommendation on Minimum Criteria for Environmental Inspections.

On the other hand, sociological institutionalism helps us to understand institutional change within a context of malleable cognitions and norms, and highlights how

preference change has been brought about through the mutually constitutive effects of socialisation via networking. The sociological institutionalist account highlights that a community of environmental practitioners created IMPEL out of a shared feeling that they faced common (often professional and technical, but also political) challenges from implementing and enforcing EC law. Such an approach understands the Network as an *independent* variable, that is, a *preference-shaping* environment, where members have generated collective understandings about how best to achieve joint standards of implementation and/or enforcement practice. This is demonstrated by the fact that IMPEL has contributed to the *redefinition* of (mainly procedural) norms at the EU level (e.g. via its Better Regulation Checklist and contributions to Impact Assessment Guidelines). In addition, it has led to greater acceptance among some actors and institutions of the sustainable development ethic – i.e. that high environmental standards can go hand in hand with economic progress.

Furthermore, there has been evidence of changes, not only to formal EU policy and institutions, but also to normative policy thinking at the domestic level. For example, the informal (and later formal) processes instigated by the ECCP network in establishing ETS as a viable climate tool, involved a significant change in attitudes (even *preferences*) of key actors, such as France and Germany (who had initially favoured a tax and voluntary agreements, respectively). It also firmly entrenched – and further legitimised – the EU's role as an instigator of climate policy, and consolidated its reputation as a credible global environmental leader, by putting its promises into practice.

9.3.2 *Participation: do OMC networks lead to greater inclusion?*

A much aired grievance about 'new' modes of governance (highlighted in Chapter 1), is that they do not result in greater 'hierarchy' (Smismans 2008). The evidence presented by this thesis supports this allegation: the 'usual suspects' do appear to dominate OMC-type environmental policy processes. This falls in line with the rational choice institutionalist expectation that asymmetric distributions of resources will be institutionalised in new network structures because they are created instrumentally by powerful actors (principally states) to serve their own interests. For example, the

Commission and key Northern Member States were active in creating IMPEL and pushing for an EU ETS because they shared an interest in creating new rule structures to promote competitiveness and a level playing field on climate action and environmental policy implementation.

Furthermore, both IMPEL and the ECCP are relatively *closed* policy networks. In the case of IMPEL, interactions have largely taken place between public officials based at national regulatory agencies and environment authorities, and have often included EU officials. In the ECCP, membership was highly selective and closely overseen by the Commission. In both cases, the role of private and sub-national actors has been limited (the former being more true of IMPEL, the latter of the ECCP). More to the point, the involvement of the European Parliament has been negligible (until formal legislative processes were set in motion). Certainly, neither process was “open to the participation of all those with a stake in the outcome” (Zeitlin *et al.* 2005: 460).

Nevertheless, there is evidence to suggest that ‘input’ legitimacy has been improved in both cases. For example, in the ECCP, private and voluntary actors were routinely included in WG1, and have remained involved in the subsequent legislative processes (if to a lesser degree); meanwhile, IMPEL has created a means for channelling national expert advice to the Commission, and their inputs have on occasions been used to inform formal legal processes (see Chapters 5 and 6). Taken together, the more participatory nature of both these networks has also improved ‘output’ legitimacy to a degree, in terms of the quality of environmental law and its implementation (Oberthür and Pallemaerts 2010: 54, IMP5: 5).

The synergies between input and output legitimacy (Lindgren and Persson 2010, Schmidt 2010, 2012) are emphasised even more strongly by the sociological institutionalist interpretation. According to this perspective, the new participatory norms established via these OMC-like networks resulted in new perceptions being formed about who it was appropriate to include in formal and informal environmental policy institutions, through processes of isomorphism and socialisation. Whilst it is impossible to prove the counterfactual, it is reasonable to say that the focal networks have displayed broader

participatory structures than were originally the case before they were established. Certainly this was a perception confirmed by many participants interviewed for this study. For example, in the case of the ECCP, although consultation with industry and the voluntary sector was becoming more common in the late 1990s (as outlined in Chapter 2), it was unprecedented for the Commission to consult representatives from such a broad spectrum of interests (i.e. NGOs, industry, national governments and different DGs), not only simultaneously, but also as routinely and comprehensively as they did in WG1. In keeping with findings from the social and employment sectors (Zeitlin *et al.*'s 2005: 468), this greater openness often most benefitted those with traditionally less privileged access to policymakers, such as NGOs (ECCP16, ECCP18). Furthermore, ECCP networks opened up new communication channels which (in many cases) had not previously existed before, for example, between national experts performing similar roles in different countries, and between NGOs and industry. This led to the development of personal contacts and relationships, many of which have outlived the ECCP, and resulted in new networks (e.g. the informal WG for national high-level representatives), and a shift towards more progressive participatory structures even in *formal* institutions, as exemplified by the involvement of stakeholders in comitology WGs (albeit on an occasional basis), and the proposed involvement of stakeholders in determining benchmarks for allocating emissions under the revised ETS Directive.

Meanwhile, the IMPEL Network, has created, coordinated and improved communication links among public actors performing similar functions both *between* and *within* Member States. It has institutionalised contacts between domestic implementers and inspectors in environmental authorities on the one hand, and the Commission on the other. More recently, it has generated regular contact between national legislators in different countries through the establishment of the Better Regulation Cluster, increasing their opportunities to exchange experience, as well as provide inputs and feedback to the Commission on proposed and adopted EU legislation. National IMPEL Networks have also been established *within* some countries, connecting actors in different domestic institutions involved in implementing and enforcing environmental law, at different horizontal and vertical levels. Finally, IMPEL has provided a forum for including actors,

such as industry, in (select) project activities in a way that might not have otherwise been politically acceptable in a domestic setting (e.g. NGOs may well have frowned upon inspectors consulting regulatees) had it not been for the development of IMPEL projects legitimising this form of cooperation.

9.3.3 *Who is learning what from whom (and how)?*

Turning next to *who* is learning *from whom*, both IMPEL and the ECCP have used networking and peer review as drivers for reflexive and mutual learning in (broad) epistemic communities. *Mutual* learning has been noticeably stronger in IMPEL, perhaps because the review function of the network has been more instinctively horizontal, *peer-led*, and tied in with norms of professionalisation. Moreover, it has taken place within a more clearly identifiable epistemic community than the ECCP, whose membership was only loosely constructed on the basis of epistemic credentials (i.e. expertise on flexible mechanisms), and more closely determined by political status (i.e. who they represented). The direction of learning has been much more bottom-up in IMPEL, if to a large degree dominated by the flow of expertise and ‘leading models’ (Knill and Lenschow 2005: 590) from Northern to Southern/Eastern Members. The ECCP, by contrast, was a heavily centralised and top-down learning process, instigated and managed by the Commission, but once again, the influence of Northern (public, private and ENGO) members with pro-market dispositions was noticeable (as were the concessions made to dominant members, as explained in Chapter 8).

Understanding *what* is being learnt involves exploring the *depth* of learning. For rational choice institutionalists, learning is ‘thin’ and strategic, whereas sociological institutionalists view it as ‘thick’ and more value-based. For example, the establishment of the EU ETS, through the ECCP network, is a classic example of what Hall (1993) refers to as ‘second order’ learning because key actors amended their instrument *choice* to achieve *pre-existing* goals. Subsequent revisions to the scheme constituted ‘first order’ learning as they primarily involved making adjustments to an existing instrument. Learning in IMPEL has generally been of a first order (technical/procedural) type, although there have been examples of second order learning, where members have employed *new*

instruments and methodologies as a result of network interactions (e.g. applying a risk-based approach, and concepts such as administrative burdens and regulatory budgets). The sociological perspective, however, is unique in incorporating ‘thick’ learning into the theoretical framework, which Hall terms, ‘third order’ learning, and is reciprocal by definition because it relates to changes in *common* perceptions and frames of reference for understanding the *nature* of a policy problem in hand. This has been empirically demonstrated (to a degree) by the normative convergence involved in establishing a consensus on the norms of sustainable development (in IMPEL), and the need for climate change action (in the ECCP, as explained in Chapter 8).

With respect to the *mechanisms* for learning, again the two theories have provided different interpretations for how learning ‘works’. Rational choice institutionalism has presented the ECCP and IMPEL as (new) nested rule structures, which bring about change by reframing the conditions (constraints and opportunities) within which *strategic* bargaining takes place. By creating new fora for information exchange and peer review, these networks have allowed actors to collectively and serially incorporate new information in decision-making in punctuated bursts (e.g. via the iterative structure of WG1 and NAPs assessments, and the cyclical nature of IMPEL reviews and projects).

Sociological institutionalism, on the other hand, is founded on an argument that the logic of appropriateness matters and actors are driven by the pursuit of legitimacy. These two OMC networks have therefore provided opportunities for social exchange and deliberation, where normative values and procedures are reinforced and reinterpreted, and isomorphic drivers cause them to become incorporated in new and existing institutions (as demonstrated by IMPEL’s ‘Doing the Right Things’ projects). In this respect, the approach is better at accounting for learning in the early (more deliberative) stages of the ECCP (e.g. WG1), and in the IMPEL case in general, where a culture of informality and deliberation led to relationships being founded on trust, and evolved to create a common identity (agency) for members. Learning has also been more reciprocal, contextualised and normative, leading to (mainly procedural) co-constituting innovations at the EU *and* domestic levels (as demonstrated by the examples from Portugal and Sweden in Chapter 6).

9.4 THE OMC AND THE COMMUNITY METHOD: COMPLEMENTS, RIVALS OR TRANSFORMATIVE PARTNERS?

In light of the very different ‘shades of OMC’ represented by these environmental networks, it is worth investigating more closely how they have developed in relation to the body of existing environmental law, policy and norms. To this end, Trubek and Trubek (2007: 5) outline three ‘varieties of coexistence’ for new governance modes (in this case, OMC) alongside traditional regulation (i.e. the Community Method). The first is a ‘complementary’ relationship, where both methods operate in parallel (independently and simultaneously) towards achieving common objectives. The second is a situation of ‘rivalry’, where new governance methods are established to improve the functioning of old modes, which implies a choice will eventually need to be made between them. The third is referred to as ‘transformation’, where mixed governance modes are not only complementary, but become hybrids, whereby they are “integrated into a single system in which the functioning of each element is necessary for the successful operation of the other” (*ibid.*).

In both the ECCP and IMPEL cases, OMC networks appear to have initially been established as a ‘complement’ to regulatory frameworks (i.e. the Kyoto Protocol and EC law respectively). To varying degrees they have represented, “two systems working for common goals” (Trubek and Trubek 2007: 6). Thus, they were not *rivals* because they supported rather than competed with formal legislation. In the case of the ECCP, it was the *absence* of a legislative basis for climate change policy at the EU level that led to the *pre-legislative* deliberations being undertaken in ECCP1 (the Kyoto Protocol had not yet been ratified). The IMPEL Network, meanwhile, was designed to provide *post-legislative* guidance on policy implementation and enforcement in practice.

In each case, however, it is argued that a situation of rivalry eventually began to emerge. For the ECCP, this occurred when the proposal for an ETS Directive was published; in IMPEL, it took place when the Commission felt it no longer had sufficient control over the Network’s agenda, and withdrew its direct financial support. At these critical junctures,

largely imposed from ‘above’, the two networks took very different turns, and the different paths they took had different implications for their coexistence with formal modes of governance. Again, the two new institutionalisms offer different perspectives of these events.

The rational choice institutionalist interpretation sees the ECCP as an example of an informal mode (i.e. pre-legislative network) being succeeded – and essentially replaced – by a formal mode (i.e. climate legislation). This took place in stages, with the most significant change occurring when the ECCP’s WG1 was subsumed into the Climate Change Committee, established by the ETS Directive. This gave the network a formal and intergovernmental role within comitology, the implication being that policy-making had reverted to traditional legislative modes (i.e. private and voluntary actors were no longer members). Nevertheless, the peer review function continued to operate between national representatives within the realms of the CCC (and among a wider range of stakeholders in the informal ECCP2), until experiential learning led Member States to conclude that the transaction costs of a decentralised ETS were simply too high, and called for a harmonised scheme to be established as part of the Climate and Energy Package. The IMPEL network, on the other hand, is seen by rational choice institutionalism as maintaining its complementary status, because it continued to function informally, and in tandem (rather than competition) with EC environmental law and institutions.

A sociological interpretation would see both case studies – to differing degrees – as examples of *transformation*, i.e. a merging of conventional and new modes to create “a new type of law making and application of the law” (Trubek and Trubek 2007: 11-12, Jacobsson 2004: 355). In this context, the ECCP is largely seen as an example of *ex ante* transformation because the network was set up with the intention of informing future EU legislative processes, and therefore the OMC-like characteristics embodied in the ECCP network and ETS Directive were a conscious effort to create a recursive framework for integrating learning towards achieving this collective legislative goal. However, in line with the multi-way feedback processes inherent in the sociological interpretation, *ex post* transformation also took place to an extent via the non-traditional nature of the CCC

WG_s, both in including stakeholders (on an ad hoc basis) in what is formally an intergovernmental negotiation process, and in incorporating discussions of *emerging* issues in CCC agendas, when the jurisdiction of the Committee officially relates to implementation. The IMPEL Network, on the other hand, is predominantly an example of *ex post* transformation, whereby a new governance structure has evolved as a reaction to new needs that have emerged during implementation (*ibid.*). There has also been a move towards *ex ante* transformation, highlighted by the establishment of the Better Regulation Cluster, which has provided inputs to *future* legislation.

Further to the sociological institutionalist perspective, both processes have contributed to redefining traditional participatory patterns, and irrevocably reshaped norms and expectations about who should be involved in climate change policymaking processes and the implementation and enforcement of environmental law, not only in relation to existing processes, but in both cases, new networks have been created by these processes (directly and indirectly), which have extended the ECCP and IMPEL's scope to include policy *formulation* (e.g. the Better Regulation Cluster in IMPEL, and in the ECCP, the Climate Change Committee, High-Level WG on climate change, and potential use of OMC for EU climate adaptation policy).

9.5 THEORETICAL SYNTHESIS: THE NEW INSTITUTIONALISM AND OMC

9.5.1 *The value-added of a dual approach*

This thesis has demonstrated that taking an institutional perspective on networks is helpful for uncovering the complex relationships between actors (agency) and institutions (structure), not least because what constitutes network 'theory' tends to be descriptive (as illustrated in Chapter 2). The rationale underlying the use of a *dual* new institutional theoretical framework has been a desire to underpin the analysis of governance networks (OMC) with a social theoretic foundation capable of dissecting all three "interactive or dialectical" sets of relationships which they potentially embody, i.e. (1) actors and network structure, (2) the network and its context, and (3) the network and its policy outcomes (Marsh and Smith 2000: 4). This thesis argues that this multi-faceted task has

been made empirically possible by employing theory as a heuristic device, and utilising the full range of tools offered by both rationalist *and* sociological institutionalists (Checkel 1999: 545). The rest of this section therefore summarises the parts of the empirical puzzle illuminated by each theory.

9.5.2 Rational choice institutionalism: hierarchy stimulates action

The rational choice approach highlights the need for rule structures and authority to motivate cooperation, encourage compliance, and punish errant behaviour. In both case studies, legal frameworks and the shadow of hierarchy have motivated network formation against a background of traditional modes either producing a stalemate (e.g. on the carbon/energy tax) or delivering poor outcomes (as demonstrated by the 'implementation' gap highlighted in Chapter 2). Where the 'institutional fit' was poor, and EU objectives ran against the grain of domestic constitutional arrangements (i.e. on flexible mechanisms as a climate policy instrument or the need for environmental implementation/enforcement), coercive measures were brought to bear by EU institutions. The approach therefore conforms to the view that "politics is not about learning or problem solving, but about power" (Visser 2009: 54), whereby resource asymmetries are institutionalised in constitutional-choice rule structures, which in turn, constrain the capacity of actors to shape their own collective-choice and operational rules.

It has also highlighted that institutional biases are built into political systems, and create different asymmetric dependency relationships in networks, which shape the participatory and learning capacities of actors, and therefore policy outcomes. For example, in the ECCP case, the propensity of different actors to accept ETS as an EU and domestic policy instrument was much higher in countries where flexible mechanisms were institutionalised in national culture and political systems (e.g. Northern Europe) than in those where environmental taxation was the instrument of choice (e.g. France and Scandinavia). Similarly, in the case of IMPEL, in countries where environmental concerns and norms of sustainable development have sometimes run counter to mainstream thinking (e.g. parts of Central, Eastern and Southern Europe), the resources

devoted to environmental implementation and enforcement have often been more limited, which makes participation (and therefore learning) more restricted (e.g. due to limited of funds for experts to travel to meetings and/or receive translation assistance). Importantly, it also reduces the capacity of actors to adapt and *implement* what they have learnt from EU networks in their domestic institutions.

9.5.3 *Sociological institutionalism: socialisation leads to transformation*

Taking a different view of the empirical reality, the sociological approach provides a more dynamic account of how institutional change occurs, and addresses three gaps in the rational choice institutionalist explanation, namely, its limited capacity to integrate change (especially in a context of uncertainty), neglect of the role of social norms and values, and a lack of attention to *intra*-temporal learning.

Sociological institutionalism has been useful for explaining how preferences are formed and change by assuming actors and institutions are mutually constitutive. It incorporates the dimensions of network culture and identity, and the capacity of processes of deliberation and socialisation to bring about normative and *transformative* change. In both case studies, therefore, the normative and cultural institutional context incorporated by sociological institutionalism has helped to provide an explanation for *why* preferences took the form they did (i.e. worldviews were shaped by *inter alia* professional norms, disciplinary backgrounds, personal beliefs, and domestic cultural and regulatory contexts), and why these preferences might have *changed* through network interactions (i.e. because processes of socialisation, argumentation and deliberation redefine actors' understandings of problems and the best ways to solve them – e.g. the need for climate action and ETS as a credible policy solution).

The sociological approach has also allowed inter- and *intra*-temporal learning dimensions to be incorporated by highlighting the influence of existing institutions in creating new and shaping existing ones (Hall and Taylor 1996: 953). This is more relevant in the IMPEL case, where identity formation and informal processes have been key, and where strategic behaviour was generally found to be subordinate to deliberative problem-

solving. It also relates to the early stages of the ECCP process (albeit to a lesser extent), where national predispositions towards certain policy instruments were evident, and a degree of preference change was apparent.

The approach also demonstrates that in both case studies, OMC networking has altered (extended) participatory structures (at least in certain phases of these processes), by challenging notions of propriety about who should be involved in European environmental policymaking processes, e.g. contesting the traditional institutional propensity to exclude practitioners and private actors in implementing and enforcing EU law (in the case of IMPEL), and in policy formulation (in the case of ECCP, and to a lesser degree, IMPEL). It is also more optimistic about the scope for OMC to bring about truly innovative and context-sensitive (here read *transformative*) results.

In summary, rational choice institutionalism has been helpful for explaining why actors create networks (i.e. relationship 1, mentioned above), and how these networks structure the conditions for producing policy outcomes (relationship 3), but has failed to draw explanatory power in relation to how networks *shape* actors and their environments (relationship 2). On the other hand, the strength of sociological institutionalism has been to illuminate the co-constitutive relationship between a network and its context (relationship 2), and point to the mutual links between actors and network structure (relationship 1). The intention, however, has not been to offer a competitive-testing research design because the question of when one institutionalism should be favoured over another in theorising network governance is an empirical one – there have been occasions when logics of consequence have dominated, and others when logics of appropriateness have been more applicable (Checkel 1999: 547). Instead, the thesis advocates a ‘sequencing’ approach, whereby “variables from both approaches work together over time to fully explain a given domain” (Jupille *et al.* 2003: 22).

9.6 CONCLUSIONS

This chapter has demonstrated that the way OMC is conceptualised is to a large degree shaped by the theoretical approach used to inform the analysis. Taking a rational choice

institutionalist perspective ascribes a more limited role to OMC networks – seen largely as a *complement* or *rival* to formal modes of governance. The rational choice account anticipates that the need for hierarchy to police informal commitments will eventually emerge (due to free-riding), and result in a more traditional legislative process (as exemplified by the ECCP leading to a largely harmonised EU ETS). The sociological approach, on the other hand, envisages a potentially more durable and *transformative* role for informal modes, and anticipates that when networks remain true to the OMC voluntarist, decentralist, and ‘open’ learning rationale, they can in time develop agency and identities of their own, and importantly, *shape* their institutional contexts. For example, It is possible that IMPEL’s durability – in contrast to the ECCP’s (effective) subsumption – can to an extent be attributed to the higher degree of flexibility afforded to it by its decentralised and voluntary nature, which has made its survival contingent on the Network staying relevant and responsive to the needs of its members (which were in turn affected by the EU context).

The two theoretical approaches have also provided contrasting but complementary analytical frameworks for understanding OMC networks. Each highlights different focal variables, which taken together, provide a more comprehensive picture of how OMC operates in the two case studies. Coupling networks with two new institutionalisms has been particularly useful for analysing participation and learning in OMC because they present different theoretical lenses for explaining and understanding OMC as a model of participation (i.e. based on resource dependencies versus propriety), and for identifying and distinguishing between different learning processes and their motivations (i.e. whether learning is strategic or socialising; thick or thin; top-down or bottom-up), which naturally has different (but complementary) implications for how opportunities for and barriers to participation and learning will be perceived.

Marrying the two new institutionalisms in the same analytical framework has demonstrated that when taken together *sequentially*, these theories are each able to provide the missing links in the empirical chain that the other fails to incorporate. Each also offers different explanatory leverage in terms of the different institutional mechanisms they identify as being important for bringing about change (in law, policy and

norms), and promoting participation and learning in OMC. The rational choice version highlights the role of rules and hierarchy in creating constraints and incentives, and providing the motivation for network formation and evolution. This has been more relevant in the ECCP case, but has also been pertinent to explaining IMPEL's initiation, as well as understanding why its development has fallen so closely in line with the Commission's EAP frameworks and legislative programmes. On the other hand, sociological institutionalism understands change as taking place through processes of socialisation, motored by the pursuit of legitimacy. It sees social learning as a reciprocal exchange, reliant on informality and openness to foster ownership, trust and a common identity. This, in turn, leads to conditions where 'thick' learning and transformative innovation can take place, creating genuinely new ways of understanding and addressing problems, which are more implementable because they are sensitive to (and mutually constituted by) local institutional conditions. This latter account of institutional change is helpful for illuminating the early open and deliberative stages of the ECCP1 (WG1), but has been particularly useful for interpreting IMPEL's development, especially its capacity to generate national-level innovation, thereby improving the quality of implementation and enforcement of EU law at the national level, and implying a synthesis of input and output legitimacy.

To conclude, there are contradictions built into the OMC concept in theory as well as in practice. Paradoxically, informality creates deliberative space and flexibility for transformative change, but without an element (shadow) of hierarchy, it is unlikely that voluntarism alone would have created sufficient impetus or focus for bringing about the changes inspired by the IMPEL and ECCP networks. This suggests that Rhodes (1997: 53) was right in claiming, 'it's the mix that matters', which seems to apply both to the prevalence and role of hybridity in environmental governance modes, as well as the need to apply a mix of new institutionalist theories in order to better understand the empirical reality.

These points are further explored in the next and final chapter, which draws together the main conclusions of this thesis.

10 CONCLUSIONS: HYBRID THEORY FOR HYBRID GOVERNANCE?

"[T]here is no one truth...evaluation should be continuous so that common understandings (not mere assertions) can grow."

Wildavsky (1979: 7)

10.1 INTRODUCTION

This study has sought to explore the role of OMC in promoting learning and participation in EU environmental governance. It has set out to pursue the following objectives: (a) to *empirically* investigate the prevalence of OMC in the environment sector, specifically, the extent to which it facilitates participation and learning in EU governance; (b) to develop and apply a *theoretical* approach to help understand the mechanisms through which OMC learning and participation occur; and (c) to *synthesise* empirical and theoretical insights to better understand the interaction between 'soft' and 'hard' modes in EU environmental governance processes.

This chapter explains how these goals have been achieved. It does so by presenting the main empirical insights and theoretical contributions made by this thesis, and examines the implications for future research and policy practice in this important and changing area of governance.

10.2 EMPIRICAL CONTRIBUTIONS: THE OMC AS HYBRID GOVERNANCE

The approach to the empirical study of OMC employed in this thesis has been novel in three key respects. First, it has highlighted the prevalence of 'OMC-type' networked governance processes in the environment sector. As explained in Chapter 1, this is a policy area which has been relatively neglected by the considerable academic literature on OMC, which has instead tended to focus on spheres where the EU's regulatory competence has been more limited (e.g. social, employment and economic policy).

Second, it has presented new empirical data in the form of two detailed, longitudinal case studies to help shed light on how the process operates in practice, especially with respect to promoting two themes – participation and learning. These were identified in Chapter 1 as being of particular importance to OMC because: (a) they have been used as proxies for analysing the impacts of soft governance modes on legitimacy and effectiveness respectively (two dimensions across which traditional methods have increasingly been criticised for being deficient); and (b) research from other sectors has reported limited participation and only some learning.

Third, the maturity of these environmental networks (spanning 20 years in the case of IMPEL), has provided a rare opportunity to empirically investigate how these OMCs have emerged and developed over a much longer period of time, and importantly, how they have coexisted with formal modes of governance. This has created the temporal space for the analysis to capture long-term changes that may have been missed by a short-term perspective. Furthermore, there has been little by way of academic research on the IMPEL Network to date (apart from Martens 2006; 2008), and although scholarly output on EU climate policy has been prolific in recent years, framing the ECCP within an OMC context is still unusual. So what have been the main empirical conclusions across these three dimensions?

The first set of findings relate to the prevalence of OMC in the environment sector, and their wider implications for conceptual understandings of the mode in academic study and policy practice. Although IMPEL and the ECCP were not consciously designed as 'OMCs', this study has illustrated that the two processes have shared key empirical features with the 'official' ideal-type, launched by the Lisbon European Council in 2000. For example, both processes were established as *voluntary* networks (IMPEL by national experts, the ECCP by the Commission), and were introduced to meet *common EU objectives* (to enforce EU environmental law in IMPEL, and implement Kyoto targets in the ECCP). Further, they have made use of *guidelines and indicators* (to establish qualitative performance-based standards in IMPEL, and to help meet quantitative emissions targets in the ECCP), and integrated *peer review and mutual learning* processes (e.g. via IMPEL's Review Initiative and recursive cluster activities, and the ECCP's WGs,

NAP process, and Climate Change Committee). This leads to the empirical finding that although OMCs incorporate elements of processes which have long been in existence, the mode is unique in presenting a *specific* and *systematised* model of a recursive peer review process (Jacobsson 2004: 355).

Despite their similarities, however, the two networks have also differed from one another – and from the standard OMC archetype – across these same criteria. So, although the ECCP and IMPEL have both adhered to the voluntaristic spirit of OMC, they have also operated in the ‘shadow of hierarchy’ because EU law and institutions have been key motivators for network formation, as well as for sustaining cooperative action over time. This therefore provides further empirical support for the claim that soft modes in the environmental sector are often founded on harder ones (Scott and Trubek 2002, Zeitlin 2005).

Whilst both networks were established to support legislative processes, they were designed to do so in different ways. IMPEL’s objectives were developed *ex post*, i.e. during the implementation process, whereas the ECCP’s role was established *ex ante*, with the intention of informing *future* implementation (i.e. EU and domestic climate policy) (Trubek and Trubek 2007: 12). Therefore, although both networks addressed policy implementation, in the case of IMPEL, a legislative framework was already in place (and the question was how best to apply it), whereas for the ECCP, it was only a *commitment* to a target that provided authority for the objective (because at the time the Kyoto Protocol had not yet been ratified), so the ECCP was established to formulate policy – and legislation – towards achieving that goal. The diversity in use of the OMC in these cases, therefore, demonstrates the degree of flexibility the mode has to offer (in contrast to the formulaic Community Method).

It is also noteworthy that although IMPEL began with a focus on implementation, the establishment of the Better Regulation Cluster (a network of policy and legal experts) signalled a symbolic move towards supporting (the Community Method of) lawmaking. Meanwhile, the Climate Change Committee (which effectively housed the ECCP WGs once the ETS Directive was approved), has become a forum for members to discuss *emerging*

climate policy, even though its official jurisdiction relates to implementation. This suggests that although OMC networks may be introduced to support a process at one end of the policy cycle, they may end up expanding to support (the same or new) processes at the other end; in fact, in these cases they appear to have provided a bridge between the two stages. For example, the Climate Change Committee, established under the ETS Directive, was used to discuss the shape of the *revised* ETS as well as to brainstorm new issues, such as carbon capture and storage *prior* to legislation, and IMPEL has contributed to a variety of post- and pre-legislative processes – discussed further below.

The second group of findings relate to how these two networks have employed different methods for implementing these objectives, and what the implications have been for participation and learning. In IMPEL, the emphasis has been on the use of deliberative peer review to develop tools and guidance for best practice, common standards, and “a greater consistency of approach in interpretation, implementation and enforcement of EU environmental law” (IMPEL 2009). Guidelines, indicators and benchmarks were self-determined, qualitative, and performance-based (e.g. quality parameters for environmental inspectorates, benchmarks for inspections systems). Peer review has taken place mainly through project activities (such as comparison projects and joint enforcement activities), and ‘best practice’ has been collectively determined as part of a horizontally-driven (rather than centrally-imposed), mutual learning process.

The ECCP, on the other hand, was much more top-down in structure: it was established and steered by the Commission (whose intention was always that the network should be a precursor to legislation), and quantitative emissions targets were guided by the Kyoto and EU burden sharing agreements. The peer review process in the early days (i.e. ECCP1) consisted of an informal exchange of information and expertise in Working Groups, but became intergovernmental once the ETS Directive was adopted, and the Climate Change Committee took over responsibility for implementation. Although this marked a distinct move in the direction of the Community Method, what was of significance was that the process not only retained some of its OMC-like distinguishing features (i.e. involvement of stakeholders in ad hoc CCC WGs), but it even acquired some *new* ones. For example, guidelines for the preparation of National Allocation Plans were

introduced, timetables and short-term targets were established (in relation to NAP preparation), and NAP approval was subject to peer review by Member States in the Climate Change Committee, led by the Commission (in keeping the dictates of comitology). This leads to the empirical lesson that even *informal* OMC-like networks are not devoid of hierarchy and steering, and they can have flat (e.g. IMPEL) or hierarchical (e.g. ECCP) institutional structures.

The third and final set of empirical contributions relate to the way in which these two informal networks have developed in relation to formal modes of governance over time. Here, findings (explored in Chapter 9) have indicated that although both networks started out as *complements* to traditional processes (mainly filling gaps not conventionally performed by them), they soon reached a point at which they began to *rival* the authority of EU institutions, which had transformative effects in each case (to different degrees).

As highlighted in Chapter 7, the ECCP was gently absorbed by the Community Method (in effect becoming a sequence of climate-related ‘community methods’), where its peer review responsibilities became increasingly performed by the Commission (at the behest of Member States). Finally, the more harmonised system emerging from ECCP2 (ETS Review) brought the NAP process to an end, and interestingly, left several *transformative* institutional legacies, which have irrevocably changed the shape of EU climate policy-making institutions, in subtle (but significant) ways. First, as described in Chapter 8, the Climate Change Committee has retained two important OMC-like characteristics (which run contrary to comitology convention): it continues to perform a deliberative role in assessing current – and *future* – climate policy, and it continues to involve *stakeholders* in these deliberations (in ad hoc Working Groups). Second, the revised ETS scheme agreed under the Climate and Energy Package appears to continue in the OMC-like tradition of its predecessor by advocating the use of targets, timetables, indicators, best practice, and benchmarks in the new (post-2012) scheme. It also calls for the involvement of stakeholders in determining ‘best available techniques’ and ‘most efficient’ technologies (2009/29/EC, Article 10). A further institutional change, partly inspired by personal experiences in ECCP1, was instigated by national representatives shortly after the ETS Directive was adopted (when ECCP1 ceased to operate), and took the form of the

establishment of an informal high-level network on climate change for national representatives, with the aim of reaching common positions in the Council (ECCP1, ECCP15). Finally, the German Emissions Trading Group, launched a few months after the ECCP, was a domestic deliberative network in the mould of the ECCP. This and the high-level network continue to operate today and are perceived by members as making an important contribution to the climate policy debate (Interviews, 2009).

Turning to IMPEL, the point at which it began to take on ‘rival’ status to formal institutions began to emerge at the Rome Plenary (2003), when IMPEL declined to carry out certain projects proposed by the Commission (and thus visibly started to demonstrate agency). A painful and protracted period of transition followed, and eventually uncertainty about its future, culminated in IMPEL attaining legal status as an independent association under Belgian law (in 2008).

Nevertheless, in spite of its informality (and perhaps even because of it), IMPEL has demonstrated a capacity to influence EU legislation and procedures, as well as formal institutions at the national (and sometimes sub-national) level (as detailed in Chapters 5 and 6). The Network’s complementary – *as well as* transformative – role in relation to formal environmental policymaking has been exemplified in several ways. Its input to the IPPC Recast Proposal and revised WEEE Directives, which were used to inform Commission legislative redrafts, contributed to the reframing of EC law to incorporate domestic feedback on implementation and enforcement issues. The work of the Better Regulation Cluster (of national legal and policy experts) has led to the development of a ‘Better Regulation Checklist’, which outlines measures for assessing the legislative quality, implementability and enforceability of law, and has not only been institutionalised in the EU’s Impact Assessment procedures, but also applied in some members, with knock-on effects on the quality of domestic law.

Other multi-way transformational feedbacks between modes at the national and EU level include the Network’s key role in drafting the Recommendation on Minimum Criteria for Environmental Inspections, which has fed into national inspection practices and legislative processes (illustrated by the Swedish example in Chapter 6). Further, countless

examples were provided by IMPEL national experts interviewed for this study of *contextualised* procedural and practical changes they had been able to make on the ground as a result of participating in IMPEL's peer review activities.

This leads to the final set of empirical findings supporting the conclusion that OMCs can complement *and* transform formal (and informal) modes of governance. First, soft law can infiltrate the structures and outcomes of formal processes, as demonstrated by the persistence of OMC-like characteristics in the ETS Directive (and revised ETS), and IMPEL's impacts on EC environmental law (i.e. its content, quality, implementation and enforcement). Second, OMC networks can change (and extend) participatory patterns in hard law processes (e.g. by integrating domestic implementers, enforcers and lawyers in EU lawmaking; by including stakeholders in ECCP WGs and comitology). Third, the life of an OMC network doesn't necessarily end with legislation (as displayed by IMPEL's durability). And fourth, soft law can generate *new* soft law (e.g. IMPEL's Better Regulation Cluster is a new network of national legal experts; the high-level network on climate change is a new informal forum for building an EU consensus on climate policy between national actors).

In sum, this thesis has demonstrated the prevalence of OMC-like processes in the environment sector, and used diagnostic criteria to identify shared OMC-type features in the ECCP and IMPEL networks. However, the high level of institutional diversity represented in these cases points to the uniqueness of individual OMCs in the sector. Indeed, combined with the other environmental OMC examples cited in Chapter 2, this thesis suggests that complex variation may well be the norm (Homeyer 2007: 46), and possibly where the strength of OMC lies. This echoes Vandenbroucke's (2001) comment in Chapter 1 that OMC is a cookbook of recipes rather than a single dish. But which recipe suits which occasion? Insights from theory are employed in the next section to answer this question.

10.3 THEORETICAL INNOVATION: TOWARDS A THEORY OF ‘HYBRIDS’

This thesis has demonstrated that ‘hybrid’ theory is well-suited to investigating ‘hybrid’ environmental governance, thereby integrating the ‘internal’ and ‘external’ dimensions of EU studies and policy practice (highlighted in Chapter 2). The study therefore represents a move towards better ‘theorisation’ of OMC (because much of the analysis to date has been relatively descriptive), and responds to the scarcity of academic research applying theory to empirical cases. It has achieved the second objective of this thesis, by developing a ‘dual’ theoretical approach to OMC, combining networked governance with rational choice and sociological institutionalism. In doing so, it takes a broad view of OMC networks, seeing them not only as a “strategic operating environment” in which goal-seeking behaviour can take place (in keeping with rational choice institutionalism), but also, “a political environment or cultural context which alters the individual’s sense of what is in her best interests” (corresponding to the sociological perspective) (Aspinwall and Schneider 2000: 6-7). This also allows the (multi-level) relationships between actors (agency) and OMC networks (structure) to be opened up to scrutiny.

The thesis has also acted on Peterson’s (2001: 291) call for a “portfolio of middle-range theories to understand the EU”, and promoted inter-theoretical dialogue to bridge the gap between theory and empirical reality (Merton 1957: 5). It has shown that although using ontologically diverse theories may be challenging, if a pragmatic (rather than philosophical) approach is taken, it can provide a more complete empirical picture. The commensurability of the two theories is therefore possible, if the researcher is driven by pragmatism, i.e. favouring empirical explanation over theoretical parsimony.

Theory has therefore been used in this thesis as a heuristic device, and a ‘sequencing’ approach has been applied to promote theoretical dialogue (Jupille *et al.* 2003). It has also allowed variables from both perspectives to be incorporated in order to draw on the explanatory power of both theories in order to capture the full complexity of hybrid processes of networked environmental governance.

The thesis has also demonstrated that the criteria for assessing OMC vary according to the theoretical lens applied: each theory presents a different perspective on substantive and procedural change, and participation and learning. Coupling networks with two new institutionalisms has been particularly useful for analysing participation and learning in OMC because they present different theoretical lenses for explaining and understanding the method as a model of participation (i.e. based on resource dependencies versus propriety), and for identifying and distinguishing between different learning processes and their motivations (i.e. whether learning is strategic or socialising; thick or thin; top-down or bottom-up), which naturally has different (complementary) implications for how opportunities for and barriers to participation and learning are perceived.

The sociological perspective is more optimistic about the capacity of OMC processes to coexist alongside formal modes. It demonstrates that OMC's horizontal and deliberative format, most evident in IMPEL, can achieve context-sensitive learning through the socialising process of peer review. Meanwhile, rational choice institutionalism sees the iterative nature of OMC as an opportunity for strategic learning, which leads to greater (often more formalised) institutional harmonisation – something most strongly displayed in the ECCP case.

The different theories also suggest different scope conditions may be necessary for overcoming barriers to change, and for promoting and coordinating inclusive learning processes to support policymaking at the EU level. For example, rational choice does not see hierarchy or politicisation as a barrier to learning – in fact, it implies that the imposition of authoritative rules can create incentives for ('thin' and strategic) learning. By contrast, the sociological perspective points out that transformative (thick, i.e. third order learning) is less likely to occur when an issue is politicised because this can undermine trust – and thus impede scope for deep innovation and context-sensitive implementation. In contrast to the emphasis of rational choice institutionalism on rule structures, hard(er) law, and the need for authoritative coercion and competitive to bring about change, sociological institutionalist theory suggests that the role of softer deliberative structures may better support effective cooperative efforts, and promote problem-solving and normative convergence through socialisation. Instead, it stresses

the importance of diversity for providing a wider pool of experiences from which to draw innovative solutions to common problems. Successful environmental policymaking, implementation and enforcement will therefore depend on bottom-up participation because reciprocal feedbacks between formal *and* informal EU, national, and regional structures will be necessary to apply EC law and EU norms to national and local structures.

Both cases have highlighted that informality and trust are key to (thick) learning, and that politicisation can undermine this. As alluded to above, the success of both processes in reframing normative understandings may also have been partly due to the receptive dispositions of the actors participating in the networks resulting from them belonging to an epistemic community (more apparent in IMPEL), and possibly also due to the technical nature of issues involved, which may have shielded the processes from politicisation during their most transformative phases. It is possible that as policy areas become more politicised or connected to conventional lawmaking processes, traditional power structures tend to be mobilised, for example, in the case of ECCP, when the ETS proposal for a directive was launched, the process shifted into traditional intergovernmental bargaining mode, leaving Member States vulnerable to conventional domestic lobbying by powerful industry interests, and reverting to established participatory patterns – bringing the European Parliament into the picture, but removing structured access to policymaking by ENGOs. This was also demonstrated in IMPEL, when preparing inputs to the recast of the IPPC Directive caused some national experts to withdraw from (the informal IMPEL project) process for fear of generating conflict with national official positions. Conversely, when issues remain primarily technical in nature (e.g. much of IMPEL's inspection planning work), it frees up room for inclusion (e.g. of national experts in policymaking), and extends the intellectual and social space available for learning. Further, it creates greater scope for synthesis between input and output legitimacy, and importantly, for 'throughput' legitimacy, i.e. the *quality* of environmental governance processes (Schmidt 2010, 2012).

Finally, a new institutionalist approach highlights the institutional paradoxes inherent even in the 'ideal type' OMC, which has implications for the potential character (and

depth) of learning processes (Kröger 2009: 9). As these cases have demonstrated, the Lisbon Presidency envisaged that the emphasis of OMC would be on mutual learning and peer review mechanisms, but by specifying that the Commission should be at the heart of OMC networks, it builds-in a dimension of hierarchy that is at odds with the philosophy of OMC. For example, rational choice institutionalism implies that more authoritative structures would lead to homogenised (rather than innovative) learning outcomes, and that the nature of participation and learning will be determined by the interests of powerful and resourced members. The sociological variant, however, would warn that centralisation is likely to compromise a network's capacity for socialisation, and therefore its ability to foster mutual, bottom-up and thick learning.

Furthermore, a top-down approach may also fail to pay sufficient respect to national circumstances, and thereby thwart the likelihood of implementation as well as the depth of innovation, and more to the point, run counter to Presidency calls for OMC structures to be "tailored to the needs of different Member States" (European Council 2000, Conclusion 37). Similarly, the instruments mentioned in the OMC archetype may actually serve to weaken learning processes; for example, prescribing the use of guidelines, (quantitative) indicators and performance standards runs counter to the open learning rationale and may undermine trust, and cause actors to resort to 'thin' competition and bargaining (Kröger 2009: 7). Furthermore, benchmarking and best practice (especially when it is centralised) may sideline valuable alternatives with less powerful allies, and could dampen the innovative potential of national diversity (*ibid.*).

The complexity of hybrids is demonstrated by the conundrum highlighted in IMPEL: if the Network becomes more formalised, and even takes on an environmental policing role as an EU inspectorate, it would doubtless gain status domestically, and generate a stronger sense of national political commitment towards implementing and enforcing EC law. It would be authoritatively equipped – and most likely be better resourced – to exercise leverage in imposing common EU environmental standards domestically (as per rational choice institutionalism), but at the same time (according to the sociological interpretation), having a surveillance role would serve to politicise the group, and thereby erode the trust, openness and solidarity upon which the Network relies to facilitate frank

deliberation, innovation and problem-solving (and thus undermine the depth of and scope for mutual learning) (IMP15, IMP16). This, in turn, may have adverse implications for the practical implementability and enforceability of EC law on the ground, and in doing so, undermine the rationale behind IMPEL (and the OMC more generally).

In summary, hybrid theory highlights the need for hybrid governance. The two cases suggest that soft and hard modes are often mutually supportive: traditional modes provide political commitment, focus, and resources; soft modes provide the supporting mechanisms for alternative structures to emerge and develop more organically through processes of socialisation and experimentation, thereby improving the capacities of actors to participate in policy processes in new ways and learn from each others' "nationally diverse responses" (Chalmers and Lodge 2003: 14, Sabel and Zeitlin 2010: 8, Eberlein 2010).

10.4 FUTURE PROSPECTS FOR ENVIRONMENTAL RESEARCH AND GOVERNANCE

"The moral I wish to draw is not what is wrong but rather how to think right about public policy as a beginning, not an end."

Wildavsky (1979: 83)

For some time policy analysts have suspected that policymaking is an ongoing process, which will continue to generate challenges for policymakers and scholars alike; each needing to adapt and develop the tools they use for shaping and understanding political institutional processes and their outcomes. 'Official' and *de facto* OMC networks are still evolving, alongside the theoretical models and methodological tools for analysing them. Therefore, the hybridity of governance modes, as well as the tools available to dissect them, are – and will always be – moving targets. What is deemed to 'work' or be 'right' in one policy sphere at a given time and context, will depend on the theoretical framework (and associated normative criteria) deployed to assess (or evaluate) them, and thus will vary from one case and sector to another, over time and space. Therefore, the much

rehearsed question of whether OMC is ‘old wine in new bottles’ loses its relevance if Wildavsky’s advice is heeded – that policy is not only an endpoint (as per rational choice), but also a beginning (i.e. more in keeping with the sociological interpretation).

So what insight does this thesis provide in the search for ‘better’, more participatory and effective, governance processes in future policy practice? And where next for future research? The case studies pointed to the fact that these two OMC networks have, over time, adhered to certain scope conditions, which Checkel (1999: 549) has hypothesised are conducive to social learning. They are, therefore, instructive in providing policy recommendations about the conditions under which OMC may be more suitably applied to EU policy.

First, OMC may be most appropriate in policy spheres where there is an element of uncertainty about the nature of the problem or the best solution (*ibid.*). In both case studies, networks were instigated as a response to a collective feeling of crisis or policy failure (e.g. the demise of the carbon/energy tax, and the perceived need to address the continuing implementation gap). The need for collective action, combined with a willingness by actors to subscribe to a common objective, proved to be a useful starting point in both cases. For example, both IMPEL and ECCP have displayed an emphasis on *scope* (i.e. performance) rather than *choice* (prescriptive) rules in their most innovative phases (Ostrom 2005: 209). This has allowed socialisation to take place via informal networking and peer review in order to establish common frames of reference about policy problems and share ideas and experiences about how to address them. However, once a consensus or agreement on the direction of action is established (e.g. on the need for climate action and ETS in the ECCP), a different *type* of rules may be needed, which could require a shift from scope to choice rules, and the need for a return to traditional legislative modes, which have the coercive authority to promote ‘hard’ compliance with law (rather than ‘soft’ problem-solving).

The second policy-relevant conclusion is that OMCs may be most innovative when they create EU networks of epistemic communities rather than political actors (Checkel 1999: 549). This perhaps explains the relative failure of the OMC-like Cardiff and Lisbon

Processes, which were political rather than technical in nature; and might also be partly explained by the cross-sectoral scope of their objectives, which would make integrating like-minded experts more challenging (especially in an already politicised process). Bringing together epistemic communities, with shared goals and perspectives, is more likely to set into play the normative isomorphic rationale of professionalisation rather than the strategic motivations of political actors (who are likely to employ ‘thin’ bargaining and negotiation techniques). Insulating networks from political pressure is more likely to lead to greater policy innovation and enhance the potential for divergence from entrenched (and asymmetric) participatory patterns.

The third policy insight is that OMC may best support legislative modes at the beginning and end of the policy cycle (*ibid.*), i.e. during the formulation and implementation phases, as illustrated by the ECCP and IMPEL cases respectively. This partly relates to the lower level of politicisation during these policy stages, but OMC is also particularly well-suited to operate at these stages because it provides important iterative feedback to traditional policymaking modes, and in this sense, it can be seen as a dynamic motor feeding ideas (and flagging relevant obstacles) about policy processes *before* they are crystallised in law. But the value of OMC can extend even further: once law is in place, OMC networks can also offer regular opportunities for revision and improvements to be made to legislative (and implementation and enforcement) frameworks. The fact that both IMPEL and the ECCP ended up extending their spheres of policy influence to new policy stages (IMPEL moved from implementation into formulation, the ECCP did the opposite), suggests that OMC may also have the potential to bridge the gap between policy stages, by feeding back inputs from policy implementation into the development of new policy (and the revision of existing legislation). This is particularly important where the rationale is problem-solving because formal and reflexive *ex post* policy evaluation is often very limited (Huitema *et al.* 2011).

Finally, OMC networks with a high density of interaction may also be more likely promote innovative learning and active participation due to the deliberative and socialising opportunities it presents (as illustrated by the recursive nature of WG1 and IMPEL cluster activities) (Checkel 1999: 549).

In terms of future EU governance and research pathways, the EU's policy on adaptation to climate change is an area where OMC may be of interest. The Adaptation White Paper published by the Commission in 2009 hinted at the establishment of an OMC-like coordinated process: specifying the need for an EU strategy to be developed in cooperation with a Steering Committee of Member States and stakeholders (including networks of sectoral, technical groups) (COM(2009)147). This is also a policy area with many of the right ingredients to suggest that an OMC recipe might be applicable: adaptation impacts are uncertain; they will be felt locally (so contextualised responses will be more appropriate than blanket legislation); and the need for technical experts lends itself to a decentralised and unpoliticised network. To what extent this potential has been realised, is, as yet, unclear. However, the low level of recursiveness built-in to the process has meant that the Steering Committee has only met once since its establishment in 2010, which suggests that the potential for improving learning and participation may be limited. The process thus lends itself to more detailed analysis in order to investigate why a network possessing such conducive scope conditions for coordinating the development of an EU adaptation strategy has been so slow in acting (although it may not be ripe for analysis for some years if a longitudinal approach is to be taken, as would be desirable).

The applicability of these findings to issue areas beyond the environment is also evident. A prime – and highly current – example is the OMC-like Broad Economic Policy Guidelines, which provide the basis for coordinating the EU's Economic and Monetary Union (Hodson and Maher 2001, Schäfer 2006). Returning to the policy relevant conclusions highlighted above, although this OMC-type process may be well-suited to the EMU policy area (it undoubtedly possesses a high degree of uncertainty, and more recently, a collective feeling of crisis), it could be argued that the increasingly prominent involvement of political actors (e.g. the European and Ecofin Councils) as opposed to epistemic communities (e.g. central banks, national banking authorities and regulators) may have undermined the scope for honest knowledge exchange and trust-building upon which deep learning relies. Further, political forays into dictating the specifics of national policy content and execution (as opposed to restricting attention to policy formulation and

implementation, where OMC arguably performs best), breaches the decentralist rationale upon which the OMC is founded (and where the heart of its legitimacy resides). Finally, a higher density of interaction between national actors from the outset (guidelines and recommendations have traditionally been issued annually) may also have been helpful in order to foster greater deliberation and ownership, and generate scope for transformation. Clearly, the policy area would benefit from further detailed investigation.

This leads on to the more general need for a clearer understanding of the scope conditions under which OMC operates in EU (environmental) governance, and the associated implications for participation and learning. A closer exploration of how and when formal and informal modes of governance are: mutually supportive, exclusive, and transformational would therefore be a fruitful exercise. For example, what triggers a complementary OMC to become a rival? And does rivalry always end in formalisation? Or might it lead to the process being disbanded altogether (as could have been in the case in IMPEL had circumstances been different, and the group not sought independence)? To use Heclo's (1974) well-known terminology, how might the right combination of 'puzzling' and 'powering' be achieved?

In exploring these questions, this thesis has provided a good starting point for further research, by developing and applying a set of diagnostic OMC criteria, and using a new dual institutional theoretical framework to investigate environmental OMCs; it supports Jessop's (2000: 13) proposal that the 'institutional turn' in political science, "could also be supplanted by a pragmatic turn".

The exploratory methodological approach of this thesis has also demonstrated that the environment sector provides mature and relatively 'successful' examples of OMC in practice (at least, as perceived by participants), with respect to broadening the range of actors participating in environmental policy processes, and bringing about transformative change (in informal, as well as formal institutions). This begs the question of whether the sector provides other interesting examples of OMC-like processes to fuel new investigations on the scope conditions under which OMC operates.

In contrast to the ‘most different’ approach to case selection taken by this thesis, a potential research path could be to focus on other mature environmental OMCs, operating at a particular policy stage or sectoral level. For example, a comparative study between more ‘similar’ environmental OMC cases could be instructive, e.g. between Common Implementation Strategy of the Water Framework Directive and IMPEL, where both have had a more technical, sub-sectoral and implementation remit (and both are increasingly moving into the realms of policymaking). Scope conditions for learning are high in both cases, so exploring how they may differ, could pay dividends. Alternatively, attention could be directed towards exploring meta-OMCs, such as the Sustainable Development Strategy, which are more political and multi-sectoral by nature – and could form an interesting comparison with the ECCP case. ‘Failed’ OMCs, such as the Lisbon and Cardiff Processes, could also be of interest, in terms of the lessons they have to offer.

With respect to policy practice, further examples of environmental OMCs under development include Green Public Procurement and the EU strategy for an Integrated Maritime Policy. There are even signs that OMC may play a part in environmental tax reform, where the unanimity requirement for legislation would make EU action otherwise difficult. Indications are therefore that OMC-type processes will remain in the EU toolkit for the foreseeable future.

To conclude, the (perennial) challenge ahead is how to reconcile ‘top-down’ steering and ‘bottom-up’ learning in a way that incorporates context sensitivity in EU networked governance. Again, the Euro crisis has demonstrated all too clearly how painful it can be when policymakers get the balance wrong. Maybe it is the OMC’s inherent ambiguity that contributes the most to its usefulness, i.e. different mechanisms can be applied where suitable, in keeping with the flexible spirit of the process. This also reflects the political reality – with coercive and socialising mechanisms being necessary to manage conflict and cooperation, and bring about the institutional changes necessary to implement EC law effectively (Radaelli 2003: 41).

‘Soft-hard’ law hybrids therefore present a taste of the future, and lessons from heavily regulated environment are likely to have resonance in other sectors as the EU’s scope for

competence creep diminishes, and policy areas become increasingly saturated by European law; new ways of consolidating and improving the quality, implementation, and enforcement of legislation will become the new challenge, and here OMC may well have a part to play, though what signifies the 'right' balance of hybridity might well depend on the case (and context) in question.

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APPENDIX A: GENERALISED INTERVIEW QUESTIONS

(asked as appropriate)

ECCP Case Study

Preamble

- Introduce my background, research aims, purpose of interview
- Establish how interviewee would like to be cited (anonymous; position only; name and position; name, position and attributable quotations – prefer prior approval?)
- Permission to record? How much time do they have?

Background

- Confirm position held (at time of involvement), and dates
- How did involvement in ECCP begin and develop?

Motivations and Learning

- What were your/your institution's motivations for participating in ECCP?
- Did you/your institution participate in any other WGs (than WG1 on ETS)?
- What changes occurred in your institution's disposition to ETS over that period?
- Did ECCP participation affect your/institution's understanding/preferences/position with respect to ETS/ECCP/climate policy?
- Was it your perception that participation in the ECCP changed *other* actors' understandings/perceptions/preferences?
- Did you see ECCP meetings as a bargaining arena?
- Do you believe 'learning' took place? E.g.s? (technical, strategic, conceptual, etc.)

Participation

- What was your impression of the way participants were selected?
- Was this an appropriate selection method, in your view?
- What were the advantages and disadvantages of incorporating diversity within WGs? Was an appropriate balance of viewpoints represented, in your view?
- How do you account for the different levels of activity in different WGs?

Steering, structure and Norms

- How was ECCP/WG's agenda steered?
- Did you feel you had a say in shaping the agenda? *[If yes:]* In what way?
- To what extent was there an open atmosphere for dialogue?
- To what extent was the process transparent?
- What were the main drivers for the shift towards a (more) centralised ETS?
- Do you think the ECCP process allowed for an appropriate balance to be struck between subsidiarity and convergence/harmonisation?
- To what extent do you think professional and/or cultural norms shaped members' predispositions towards ETS/certain climate policy *tools* (e.g. legal/regulatory options v. economic instruments v. voluntary agreements) and policymaking *practices* (formal/top-down/bargaining v. informal/bottom-up/consensus)?

Formal v. Informal institutions

- How formal or informal did you perceive the ECCP to be? Did this change over time?
- To what extent do you think the ECCP/WG structure could be described as a (policy) network? An iterative review process?
- To what extent do you perceive ECCP as an OMC (*explain if necessary*)? In the early stages (only)? A coherent policy-making 'meta-structure'?
- To what extent is it still a 'live' process? *[If not live:]* When did it end?
- Did you see ECCP as complementary to 'Community Method' or a separate process?
- To what extent do you feel Climate Change Committee is a continuation of ECCP?
- How do you feel about the Comitology procedure?
- To what extent could ECCP process be described as *unique*? Any parallels?
- How useful do you think the ECCP process is/was as a model for EU policy-making?
- What lessons can be learnt? What did you (personally) learn from the experience?
- To what extent is the model transferable? What improvements could be made?

- *[If transferable:]* Where would you like to see an ECCP-like process applied?

Snowballing

- Is there anyone else you recommend I speak to in connection with this research?

[Ask European Commission Officials:] ECCP and the Commission

- Who participated in the ECCP's 'Steering Committee'? How were they chosen?
- How active was it? How structured were meetings? How did this change over time?
- How did you determine who was invited to participate in ECCP WGs? (e.g. why were the Danes – who had established their own ETS – not included? Belgians also excluded – despite clear interest/position; and Southern MSs – who did not have a position/interest at that stage)?
- On what basis were decisions made about launch of subsequent ECCP phases/WGs?
- Are there any plans for an ECCP-like policy-making model to be used again? (*If so:*) In which areas? Adaptation OMC? (mentioned by Slingenbergh – White Paper)
- Any parallels with IMPEL?

[Ask interviewees who didn't participate directly in the ECCP process, i.e. MEPs, policy analysts, excluded Member States:] External perceptions of the ECCP

- What was your overall perception of the ECCP as a policy-making process?
- How aware were you of WG 1 [ETS] activities before the formal (pre-)legislative process began?
- What level of contact did you have with the ECCP, especially WG1 (ETS)? Any contact with other WGs?
- To what extent was it your perception that the ECCP process was: (a) democratic, (b) transparent, (c) inclusive?
- How appropriate do you think it is that informal networks (such as IMPEL and ECCP) play a role in policy-making and implementation? Advantages and disadvantages? Implications for legitimacy/accountability?

- Do you think it is proper that the European Parliament keeps a 'distance' from 'OMCs' such as ECCP?

IMPEL Case Study

Preamble

- Introduce my background, research aims, purpose of interview
- Establish how interviewee would like to be cited (anonymous; position only; name and position; name, position and attributable quotations – prefer prior approval?)
- Permission to record? How much time do they have?

Background

- Confirm position held (at time of involvement), and dates
- *[National experts:]* Relationship between their institution and the [Env.] Ministry?
- How did their involvement in IMPEL begin and develop?

Motivations and learning

- What are your [institution's] motivations for participating in IMPEL?
- To what extent has belonging to IMPEL changed *[ask for examples in each case]:*
 - ... your understanding of environmental problems [in your country or institution]?
- ... routines and practices [in your country or institution]?
- ... the way you understand *other* [national or institutional] perspectives?
- ... *[National experts only:]* the way you perceive EU institutions?
- How far can 'best practice' in one country be applied in another? Limitations?
- To what extent does diversity help or hinder learning?
- [How] could IMPEL be better at promoting learning (key barriers)?

Participation

- Which Clusters do you [and your country/institution] participate in?
- *[National experts:]* Do you have a national IMPEL network? How does it operate?
- How satisfied are you with participation in IMPEL? (Membership, activity levels?)
- What do you see as the main barrier(s) to participation? (Challenges associated with integrating 'new' members? How can these be overcome?)
- *[National experts:]* Why do you (not) have a High Level Representative?
- How do you feel about IMPEL's relationship and level of involvement with:
 - ... EU institutions: European Commission? The European Parliament?

- ... other networks?
- ... regional and local actors?
- ... NGOs and industry?

Steering, structure and Norms

- Does IMPEL have an 'identity'? *[If yes:]* Do Clusters 1 and 3 have different identities?
- Who or what steers IMPEL? (distinguish between Plenary and Cluster levels)
- Do you feel you have a say in shaping the network's agenda?
- To what extent is there an open atmosphere for dialogue? Transparency?
- How did you feel about the introduction of the Better Regulation Cluster?
- How do you feel the transition to independent legal status was managed?
- How satisfied are you with the way conflict is dealt with in IMPEL? *(If interviewee has leadership role: How do you manage conflict?)*
- What do you see as the main constraints to IMPEL's work (and governance)?
- Do you see yourself primarily as a national expert or an EU expert (or both)?
- To what extent do you think the structure or dominant culture of IMPEL affects participation (e.g. does it fit more with centralised, northern European model)?
- To what extent does IMPEL aim at convergence towards common ways of addressing environmental problems and identifying solutions? In your view, is this good thing?

Formal v. Informal institutions

- To what extent is IMPEL influenced by EU law and policy, *and vice versa?* Has the balance changed over time? *[If so:]* How? Are you happy with this development?
- Have IMPEL activities shifted from policy *implementation* to *formulation*?
- To what extent is IMPEL becoming more 'formal'? How do you feel about this?

Future change

- (How) do you think IMPEL is likely to change in future (institutions, scope, membership)? What changes would you like to see? What would you like to retain?

Snowballing

- Is there anyone else you recommend I speak to in connection with this research?

[Ask European Commission Officials ONLY:] IMPEL and the Commission

- What is the value-added of IMPEL for the Commission?
- In terms of Commission 'learning', what have been the most important IMPEL contributions to EU law, policy, procedures (Commission perceptions)?
- What does the Commission contribute to IMPEL? Does it have a steering role?
- Which [other] Units are involved with IMPEL? Nature of relationship?
- What in your view have been the advantages and disadvantages of the Commission:
 - ... hosting the Secretariat?
- ... providing direct funding to projects?
- ... being Co-Chair?
- What prompted changes in the Commission's involvement in IMPEL over time?
- What prompted the Commission's 2005 evaluation of IMPEL?
- What are the implications of the Commission now being an Observer (not Member)?
- How feasible is IMPEL as an EU Environmental Inspectorate (as demanded by EP)?

[Ask MEPs only:] External perceptions of IMPEL

- What are your overall perceptions of IMPEL (as a policy-making process)?
- How aware are you of IMPEL's activities?
- What level of contact have you had with IMPEL? Would you prefer more contact?
- How do you perceive the relationship between IMPEL and the Commission?
- Do you see IMPEL's transition to independent status as a positive development?
- To what extent was it your perception that IMPEL is: (a) democratic, (b) transparent, (c) inclusive?
- How appropriate do you think it is that informal networks (such as IMPEL and ECCP) play a role in policy-making and implementation? Advantages and disadvantages? Implications (e.g. for legitimacy/accountability)?

APPENDIX B: LIST OF INTERVIEWS

IMPEL case study interviews

| | Name | Position (at time of interview, unless otherwise stated) | Country/EU institution | Role in IMPEL | Interview details |
|---|---------------------|---|------------------------|---|--------------------------------------|
| 1 | Vilis Avotins | Director General, Ministry of Environment, State Environmental Service, Riga | Latvia | National Coordinator; Latvian High Level IMPEL Representative | 17 Dec 08, telephone |
| 2 | Mihaela Teodora Beu | Chief Inspector for County Commissariat Cluj, National Environmental Guard, Cluj-Napoca | Romania | National Coordinator | 2 Feb 09, telephone |
| 3 | Annick Bonneville | Chef du bureau de la réglementation, du pilotage de l'inspection, des contrôles et de la qualité, Ministry of Ecology, Energy, Sustainable Development and Spatial Planning (DPPR/SEI), Paris | France | National Coordinator | 20 Jan 09, telephone |
| 4 | Alessandra Burali | National expert, Institute for Environmental Protection and Research, Rome | Italy | Cluster 1 representative | 4-5 Dec 08, Clermont-Ferrand, France |
| 5 | Hilda Farkas | Head of Waste Unit, Ministry of Environment and Water, Budapest | Hungary | IMPEL Secretariat (2005-8) | 12 Jan 09, telephone |

| | Name | Position (at time of interview, unless otherwise stated) | Country/EU institution | Role in IMPEL | Interview details |
|----|--|---|------------------------|---|------------------------------------|
| 6 | Will Fawcett | EU and International Relations Advisor, Environment Agency for England and Wales, Bristol | United Kingdom | UK National Coordinator; formerly Secretariat (2008) | 11 Nov 08, Bristol, England, UK |
| 7 | Julio García Burgués | Head of Unit, Infringements (A2), DG Environment | DG ENV | Previously IMPEL Co-Chair | 24 Sep 09, Sibiu, Romania |
| 8 | Stelios Georghiades | Senior Labour Inspection Officer, Department of Labour Inspection, Ministry of Labour and Social Insurance, Nicosia | Cyprus | Cluster 1 representative | 5 Dec 08, Clermont-Ferrand, France |
| 9 | Gisela Holzgraefe | Head of Division, Chemical Plants and Safety, Ministry for Agriculture, Environment and Rural Areas of the Federal State of Schleswig-Holstein, Kiel | Germany | Cluster 1 representative for Germany since 2001; Cluster 1 Chair 2007-9 | 20 Jan 09, telephone |
| 10 | Joanna Huczko (in consultation with Hanna Jastrzebska) | Chief Specialist (and Hanna is Deputy Director), Department of Inspection and Administrative Ruling, Chief Inspectorate for Polish Environmental Protection, Warsaw | Poland | Joanna: Cluster 1 and 3 representative; Hanna: National Coordinator | 19 Feb 09, telephone |
| 11 | Caroline Jackson | Member of European Parliament for South-West England; Group of the European People's Party, European Democrats | United Kingdom | MEP; Chair of European Parliament Environment Committee 1999-2004 | 17 Dec 08, telephone |
| 12 | Jean-Pierre Janssens | Director, Head of Division, Inspection and Soil Pollution, Brussels Institute for the Management of the Environment | Belgium | National Coordinator | 7 Nov 08, Brussels, Belgium |

| | Name | Position (at time of interview, unless otherwise stated) | Country/EU institution | Role in IMPEL | Interview details |
|----|-----------------------|--|------------------------|---|------------------------------------|
| 13 | Anna Karamat | Administrator, Infringements Unit (A2), Communications, Legal Affairs and Civil Protection, DG Environment | DG ENV | IMPEL Coordinator for Cluster 1 since 2006 | 10 Dec 08, Brussels, Belgium |
| 14 | Georges Kremlis | Formerly Head of Unit for Infringements (A2), Communications, Legal Affairs and Civil Protection, DG Environment | DG ENV | IMPEL Co-Chair (1997-2004) | 16 Dec 08, Brussels, Belgium |
| 15 | Inga Birgitta Larsson | National expert, Implementation and Enforcement Department, Swedish Environmental Protection Agency, Stockholm | Sweden | National Coordinator, involved in IMPEL since mid-1990s | 5 Feb 09, telephone |
| 16 | Hans Lopatta | Principal Administrator, Infringements Unit (A2), Communications, Legal Affairs and Civil Protection, DG Environment, European Commission, Brussels | DG ENV | Current IMPEL Coordinator for DG Environment; former IMPEL Co-Chair; Cluster 3 member | 27 Nov 08, Brussels, Belgium |
| 17 | Lenka Němcová | Department for International Cooperation, Czech Environmental Inspectorate, Prague | Czech Republic | National Coordinator | 7 Jan 09, telephone |
| 18 | Charles Pirotte | Previously Commission representative to IMPEL, Principal Administrator, Infringements Unit (A2), Communications, Legal Affairs and Civil Protection, DG Environment, European Commission, Brussels | DG ENV | IMPEL Coordinator for DG Environment, IMPEL Co-Chair, and Cluster 3 member (2005-7) | 2 Dec 08, Brussels, Belgium |
| 19 | Elise Sahivirta | National legal expert, Ministry of Environment, Helsinki | Finland | Cluster 3 representative | 4 Dec 08, Clermont-Ferrand, France |

| | Name | Position (at time of interview, unless otherwise stated) | Country/EU institution | Role in IMPEL | Interview details |
|----|-----------------|--|------------------------|---|------------------------------------|
| 20 | Isabel Santana | Head of Portuguese Environmental Inspection Service B (Chemical Sector), Lisbon | Portugal | National Coordinator | 6 Dec 08, Clermont-Ferrand, France |
| 21 | Terrance Shears | Head of EU and International Relations, Environment Agency for England and Wales, Bristol | United Kingdom | IMPEL Vice-Chair; IMPEL Secretariat (1999-2002) | 11 Nov 08, Bristol, England, UK |
| 22 | Jan Teekins | Manager for International Affairs, Inspectorate of the Netherlands, Ministry of Housing, Spatial Planning and the Environment, The Hague | Netherlands | National Coordinator | 18 Nov 08, The Hague, Netherlands |
| 23 | Gerard Wolters | Inspector General for International Enforcement Co-operation, Inspectorate of Netherlands, Ministry of Housing, Spatial Planning and Environment, The Hague; Co-Chair of the International Network for Environmental Compliance and Enforcement (INECE) | Netherlands | IMPEL Chair; Dutch High Level Representative to IMPEL | 8 Dec 08, The Hague, Netherlands |

European Climate Change Programme interviews

| | Name | Role during ECCP/Emissions Trading process | Representation | Participation in ECCP | Interview details |
|----|------------------|--|-----------------------------------|---|-------------------------|
| 24 | Christopher Boyd | Formerly: represented European Roundtable of Industrialists in WG1; Lafarge (French cement producer) 1999-2007; DG Environment 1983-98 (Assistant to Environment Director General, Jim Currie 1997-8); Chair of International Emissions Trading Association (IETA) | Industry | ECCP1, Phase 1 (2000-1) | 19 May 09, telephone |
| 25 | Ian Coates | Economic Advisor on Climate Change, Department of Environment, Transport, and the Regions (DETR), UK | UK national expert | ECCP1, Phase 1 (2000-1) | 3 Jun 09, Guildford, UK |
| 26 | Jos Delbeke | Deputy Director General and Head of Climate Change and Air (C), DG Environment, European Commission | DG Environment | All phases | 17 Jun 09, Brussels |
| 27 | Matthias Duwe | Director, Climate Action Network – Europe, Brussels | NGO | Parts of ECCP1, Phases 1&2 (2000-2); ECCP2, ETS Review (2007) | 17 Jun 09, Brussels |
| 28 | Mark Hayden | Deputy Head of Unit, Economic Service – Reforms under the sustainable development strategy, DG Economic and Financial Affairs, European Commission, Brussels | DG Economic and Financial Affairs | ECCP1, Phases 1&2 (2000-2); ECCP2, ETS Review (2007) | 10 Jun 09, Brussels |
| 29 | Joachim Hein | Energy, Climate and Environment, Federation of German Industries (BDI) | Industry | ECCP1, Phases 1&2 (2000-2); ECCP2, ETS Review (2007) | 24 Jun 09, Brussels |

| | Name | Role during ECCP/Emissions Trading process | Representation | Participation in ECCP | Interview details |
|----|------------------------------|---|-------------------------|--|----------------------|
| 30 | Maurits Blanson Henkemans | Senior Policy Officer (and Project Leader on Auctioning), Climate Change and Emission Trading, Ministry of Economic Affairs, The Hague, Netherlands | Dutch national expert | ECCP1, Phase 2 (2002); ECCP2, ETS Review (2007) | 12 Jun 09, telephone |
| 31 | Bill Kyte | Chief Advisor on International Climate Policy, EURELECTRIC; Senior Advisor on Climate Change at E.ON; founder member and Honorary President of the UK Emissions Trading Group | Industry | ECCP1, Phases 1&2 (2000-2); ECCP2, ETS Review (2007) | 25 Jun 09, telephone |
| 32 | Åsa Leander | Formerly Junior Officer at the Swedish National Energy Administration (until 2001) | Swedish national expert | ECCP1, Phase 1 (2000-1) | 16 Jul 09, telephone |
| 33 | Jürgen Lefevere | Formerly Director of the Programme for Climate Change and Energy at the Foundation for International Environmental Law and Development (FIELD) | NGO | Pre-ECCP, and ECCP1, Phase 1 | 29 May 09, Brussels |
| 34 | Marco Loprieno | Monitoring, reporting and verification, Market-based instruments, including GHG Emissions Trading (C2), DG Environment, European Commission, Brussels | DG Environment | ECCP1, Phase 1 (2000-1) | 29 May 09, Brussels |
| 35 | Stefan Lorenz-Meyer | Formerly Policy Officer, Unit for Steel, Non-Ferrous Metals and other Materials, DG Enterprise (1999-2006), European Commission, Brussels | DG Enterprise | ECCP1, Phase 1 (2000-1) | 26 May 09, Brussels |

| | Name | Role during ECCP/Emissions Trading process | Representation | Participation in ECCP | Interview details |
|----|------------------------|--|---|---|--------------------------|
| 36 | Damien Meadows | Deputy Head of Unit, Market-based instruments, including GHG Emissions Trading (C2), DG Environment | DG Environment | ECCP1, Phases 1&2 (2000-2), ECCP2 ETS Review (2007) | 29 May 09, Brussels |
| 37 | Caroline Lucas | Member of European Parliament; Member of EP Environment Committee, Shadow Rapporteur for ETS | European Parliament | MEP 1999-2010 | 24 Jun 09, Brussels |
| 38 | Jorge Moreira da Silva | Formerly: MEP (Portugal, Group of the European People's Party and European Democrats) June 1999-Oct 2003; Rapporteur for the Emissions Trading Directive and Standing Rapporteur on Climate Change, Committee on Environment, Public Health and Consumer Policy | European Parliament | Legislative phase (2002-3) | 21 May 09, telephone |
| 39 | Marc Pallemaerts | Senior Fellow at IEEP; formerly: policy adviser to the Flemish Regional Environment Minister; advisor to the Belgian Federal State Secretary for Environment; Deputy Chef de Cabinet to the Federal State Secretary for Energy and SD; Chair of EU Council working party for 2001 CC negotiations; lead negotiator for 2001 Belgian/EU Presidency at COP6bis | Academia; think tank; Belgian national expert | ECCP2, ETS Review (2007) | 11 May 09, Brussels |

| | Name | Role during ECCP/Emissions Trading process | Representation | Participation in ECCP | Interview details |
|----|------------------------|---|--------------------------|---|----------------------|
| 40 | Franzjosef Schafhausen | Deputy Director General for Environment and Energy, German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Berlin | German national expert | ECCP1 (2000-2002); ECCP2, ETS Review (2007) | 7 Sep 09, telephone |
| 41 | Stephan Singer | Director of Energy Policy, WWF International, formerly Head of European Climate Unit, Brussels | NGO | ECCP1 (2000-2), ECCP2 ETS Review (2007) | 9 Jun 09, telephone |
| 42 | Peter Vis | Formerly: Principal Administrator at DG Environment; main author of 2000 Green Paper; Secretary of WG1 Phase 1 and chaired several WG1 meetings; attended Council Working Groups; later represented DG Tren (A2) as part of ETS Review | DG Environment | ECCP1 (2000-2002); ECCP2, ETS Review (2007) | 11 May 09, Brussels |
| 43 | Gertraud Wollansky | Deputy Director of Climate Unit, Federal Ministry for Agriculture, Forestry, Environment and Water Management, Vienna, Austria | Austrian national expert | ECCP1 (2000-1) | 16 Jun 09, telephone |
| 44 | Michael Wriglesworth | Centre for European Policy Studies (CEPS); formerly: BP-Europe; Union of Industrial and Employers' Confederations of Europe (UNICE) (now known as Business Europe); European Roundtable of Industrialists; European Chemical Industry Council (CEFIC); Europa | Industry | ECCP1 (2000-2002), ECCP2, ETS Review (2007) | 26 May 09, Brussels |