The Europeanization of Public Policies – Understanding Idiosyncratic Mechanisms and Contingent Results

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Abstract

The debate on the Europeanization of public policies is a specific branch of the new field of research on Europeanization. It aims at understanding how national policies are shaped and changed due to European integration. This research is, however, still in its "infancy". The aim of this paper is threefold: Firstly, it aims at offering an empirically underpinned typology of three mechanisms of Europeanization. Secondly, in doing so, it wants to point to one mechanism of Europeanization that has not been addressed so far (namely Europeanization by evasion) and thus extend the empirical lens. Thirdly, the paper aims at extending the conceptual lens by emphasizing that and why Europeanization is much more than the mere implementation of European policies.

Kurzfassung

Die Diskussion über die Europäisierung von Policies ist ein Zweig des relativ neuen Forschungsgebiets der Europäisierung. Sie zielt darauf ab zu verstehen, wie nationale Policies, also die politische Substanz, durch die europäische Integration gestaltet und verändert werden. Dieser Forschungszweig steckt jedoch noch in den Kinderschuhen. Der vorliegende Beitrag verfolgt daher drei Ziele: Erstens bietet er eine empirisch gestützte Typologie von Europäisierungsmechanismen an. Dabei zeigt er zweitens einen Mechanismus auf, der bislang noch nicht thematisiert worden ist (nämlich Europäisierung durch Evasion) und erweitert so den empirischen Blickwinkel. Drittens schließlich zielt der Beitrag darauf ab, den konzeptionellen Blickwinkel zu erweitern, indem er ausführt, dass und warum die Europäisierung von Policies weit mehr beinhaltet als die Implementation europäischer Politiken.

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1. Introduction

Only recently, Europeanization has been discovered as an issue worth analysing (see Auel 2004). Whereas in former times much effort was made to analyse the dynamics of European decision-making today, in particular since the year 2000, a growing number of publications have been devoted to the analysis of Europeanization, which is understood in this paper as *the impact that European policies in particular and European integration in general have on national polities, politics and policies.*(2)

The debate on the Europeanization of *public policies* is a specific branch of this new field of research, which aims at understanding how national policies are shaped and changed due to European integration (see Knill/Lehmkuhl 2002, Radaelli 2003, Haverland 2003). This research is, however, as Knill and Lehmkuhl have remarked correctly, still in its "infancy" (2002). The aim of this paper is threefold: Firstly, it aims at giving an empirically underpinned typology of mechanisms of Europeanization. Secondly, in doing so, it wants to point to one mechanism of Europeanization that has not been addressed so far and thus extend the *empirical lens*. Thirdly, the paper aims at extending the *conceptual lens* by emphasizing that Europeanization is much more than the mere implementation of European policies.

The analysis of Europeanization has had a very strong focus on the implementation of European policies so far or at least implicitly tends to equate the Europeanization of (national) public policies with the implementation of European policies on the national level (see Kloepfer 2002, Falkner 2003, Haverland 2003, Börzel/Risse 2003, Eising 2003, Haverland 2003). However, more recently some authors have started challenging this far too limited perspective (Knill/Lehmkuhl 2002, Radaelli 2003). It is the overall aim of this paper to support this challenge both, in empirical and in conceptual terms.

Whereas the analysis of whether it is institutional fit (e.g. Börzel 1999, Knill 1998, Knill/Lenschow 1999, see Radaelli 2000a: 10) or actors (and party politics, see Falkner 2003, Treib 2003) that determine the profoundness of national implementation is definitely fascinating and covers a broad range of empirically relevant situations, the *restriction* of Europeanization analysis to this question appears somewhat problematic for reasons of both methodology and content.

In terms of content, it is problematic because it narrows the analysis of Europeanization to only a certain, albeit major segment of empirical reality. As a matter of fact there are other relevant European driving forces with the potential to influence member states' national policies. This can be shown for instance with regard to both, the recent debate on the open method of coordination (OMC) which allows for policies, which do not have the form of directives or regulations (see Radaelli 2003: 30, Eberlein/Kerwer 2004) or the ancient debate on negative integration (which is a very broad, yet most powerful overall project that cannot be labelled precisely as a "policy", see e.g. Shapiro 1992: 132, Scharpf 1991, 1996, Schmidt 2003, see below). As I will argue in this paper, this limitation of the research perspective to the implementation of specific positive policies bears the risk that it implies a conceptual limitation as well.

In methodological terms, the restriction to the implementation of "positive" policies is problematic in four respects: Firstly, implementation studies(3) tend to be characterised by a normative interest in "Making European Policies Work", as the title of the first systematic implementation study clearly illustrates (Siedentopf/Ziller 1988, see also Héritier et al. 1996, Haverland 1998, Heinelt et al. 2001, Mayntz 1980: 2). Thus, when compliance or "success" (Falkner 2003: 2) is a normative aim of research, be it explicit or implicit(4), a bias will be implanted to register policy outputs either as compliant or non-compliant, whereas there will be little conceptual room for discovering contingent effects of Europeanization.

Secondly, the implementation perspective tends to imply a voluntaristic understanding of policy-making suggesting that whenever there is a European impact observable on the domestic level, there must be a certain European "policy" *aiming* at or *seeking* to reach a certain outcome (see e.g. Knill/Lehmkuhl 2002: 258, 262)(5). The approach thus falls short of realising unintended consequences of policies or any kind of consequences of European "driving forces" that cannot be labelled precisely as a "policy".

Thirdly, both, the normative interest in compliance and the voluntaristic understanding of politics suggest a rather simple causality of Europeanization and prevent the understanding of the complexity of national policy-making, in which European impulses are only one factor among others (see Goetz 2000: 220, and below).

Forth and finally, implementation studies work with an implicit subsequent chronology, in which attention is first directed to the European level, where a European measure is being passed, and then focuses on the national level, where implementation is supposed to take place. This approach, however, does not accommodate the complexity of policy processes in the European multi-level-system, in which relevant processes may take place on different levels at the same time or in the "wrong" order.(6)

To sum up, if we limit our understanding of Europeanization to the implementation of positive policies, it is these methodological attributes of implementation studies that yield a conceptual reduction of Europeanization analysis. Based on this conceptual reduction it is particularly difficult if not impossible to analyse the broad range of idiosyncratic mechanisms(7) and contingent effects(8) of Europeanization, and thus to achieve an adequate understanding of this phenomenon.

With this paper I would like to argue that if we do want to understand how European integration impacts on national policies, we cannot restrict our perspective to one particular aspect, namely the effects of particular European polices (legal acts). Rather, we have to *work with a broader notion of European "impulses"* that may impact on national policy making. For example, if we want to analyse the Europeanization of say German environmental policy, we cannot restrict ourselves to looking at the impacts of European environmental policy in the sense of passed positive measures and how they are being implemented. First, broader debates and exchanges (e.g. in the context of measures that are not passed in the end) may trigger Europeanization effects, too. Second, we also have to look at the impact of other policies, for example at competition and internal market policies ("negative integration") that might account for as much Europeanization of German environmental policy as all the environmental directives. The same argument holds true for other regulatory policies.

Moreover, we cannot maintain the implementation-study approach. Instead, we have to use a *more comprehensive conceptual basis*. For instance, the application of a neo-institutional approach as presented by Kiser/Ostrom 1983 and by Mayntz/Scharpf 1995 could provide for a better analysis of Europeanization processes. They could help to see European "impulses" for what they are: one factor among others in dynamic national policy processes (see Radaelli 2000b: 31, Goetz 2000: 220, Böcher/Töller 2003).(9) However, European "impulses" are not single spots that enter into a national policy process. Rather, national policy processes must be conceptualised as being linked in one way or other to European policy processes.

Based on this extension of the analytical perspective on the Europeanization of public policy, I will address three different mechanisms of Europeanization, namely:

- **Europeanization by Adaptation,** which is without any doubt a major force in Europeanization and has been addressed by literally all authors that have dealt so far with the Europeanization of public policies (e.g. Radaelli 2000a, 2003, Knill/Lehmkuhl 2002, Haverland 2003, Falkner 2003, see chapter 2.).
- **Europeanization by Learning,** which has received less attention (but see e.g. Olsen 2002: 11, Knill/Lehmkuhl 2002, Radaelli 2000a, 2003, see chapter 3.), and
- **Europeanization by Evasion,** which has been widely disregarded in the Europeanization debate so far (see chapter 4.).

The paper proceeds in an inductive manner by analysing cases from German environmental policy and drawing conclusions respectively. This has a practical reason since this is the field the author knows best, and a reason in terms of content: In environmental policy we can study a particularly broad variety of different mechanisms of Europeanization. Case studies, as is commonly recognised, do not allow for statistical generalization. But they do have a certain potential for theoretical progress (Radaelli 2000b: 38, see Ladrech 1994: 85). Cross-sectoral quantitative analyses of the Europeanization of public policies show that environmental policy is subject to a particularly high degree of "Europeanization" (Töller 2004a: 33) and thus represents a good starting point for a broader debate. Empirical research comparing different policy sectors and different countries has yet to follow.

When analysing the three different mechanisms I want to distinguish between three different elements: The "*impulse*"(10) coming from the European level (I deliberately do not call this policy for reasons I have made clear above); the *national policy process*, on which this impulse comes to bear as one institutional factor in the context of other institutional factors, actors, problems and dynamics; and the *policy output* as a result of the impulse affecting the policy process. The analysis of the cases will be based on the folio of the aforementioned neo-institutional approach, although a systematic application is beyond the scope of this paper.

2. Europeanization by Adaptation (11)

Changes in national policies due to specific, positive Community policies, mostly in form of a directive or a regulation, seem to be the most frequent cases of Europeanization.

2.1. The Mechanism: Adaptation

Member states are obliged to follow European law due to a number of legal principles developed by the European Court of Justice (see Weiler 1982, 1991, Shapiro 1992, Burley/Mattli 1993, Alter 2001). Member states have to translate directives into national law, they have to apply regulations, and they have to follow decisions. If they do not, the Commission has the right to issue an infringement procedure before the Court of Justice, which it is most likely to do. In addition, individuals can rely on European law before national Courts.

Particularly in cases, in which there is a major difference between the European measure and the situation in the member state, the duty to comply with European law demands for adaptation. In order to demonstrate how this need for adaptation may trigger Europeanization effects, I would like to employ two examples that show both, the mechanism and the extent that the Europeanization of public policies can reach. The European "impulses" are two measures of European environmental policy that can be subsumed under the category of "new" environmental policy tools. The idea of these new instruments is to abandon reactive, sector-specific command-and-control-measures and to put more emphasis on proactive, trans-sectoral approaches (Heinelt et al. 2001: 7-8). The European Commission has put strong emphasis on these instruments particularly since the 5th environmental action programme in 1992 (O.J. 1993 No C 138/16, 67, Héritier et al. 1996). In reality, however, these instruments have always been seen as complementary and not as an alternative to regulatory instruments.(12) Two major examples of these new instruments are the *directive on the environmental impact assessment* (EIA), passed in 1985 and revised in 1997, and the *regulation on the eco-audit and management scheme* (EMAS), passed in 1991 and revised in 2000. Both measures presented a strong challenge to the German standard approach in environmental regulation that is

characterized by a highly regulatory, legalistic and sector-oriented style (Müller 1986, Jänicke/ Weidner 1997).

2.2. The Cases: EMAS and EIA

The EMAS concept was initially developed as an internal management tool for the industry to cope with ecological (and thus potentially economic) hazards. In the late 1980s, it was established as an industrial standard in the UK and then brought onto the political agenda in Brussels by the British Government (Héritier et al. 1996, Töller/Heinelt 2003: 25). When, after quite a number of changes, the final proposal for the regulation was almost ready to be voted in the Council, it still faced fierce resistance from the German Federal Government. The Federal Government mainly represented the position of German industrial associations that simply considered the scheme to be superfluous (Töller/Heinelt 2003: 26). In addition, ministry officials saw problems of compatibility between the integrated, management-oriented approach and the German environmental law.

The core of the regulation that was passed in 1991 was a voluntary scheme, in which industrial sites can take part.(13) If they do so, they have to establish an environmental management system, which would enable them to analyse their environmental impacts, to define objectives for improvement and to coordinate their implementation. The two basic pillars of the system are the demand for "continuous improvement" of the environmental performance and the obligation to comply with all legal requirements (see Töller/Heinelt 2003: 27). In the end, an independent verifier has to check the whole process and its result, which is then documented in a public environmental statement. Only if all demands are met, the site is registered and can use this registration in its PR-communication. The process has to be repeated regularly.

Irrespective of the lack of enthusiasm on part of the German Government in the Council, the regulation, once passed, had to be applied in the member states. In addition, its application demanded the establishment of some organizational provisions, namely for the accreditation and supervision of the verifiers and the registration of verified sites. The question of how exactly these institutions were to be designed touched very sensitive issues concerning the division of responsibilities between government and private, in particular business, actors. On the one hand the credibility of the entire scheme depended highly on the qualification and independence of verifiers, which according to German tradition was an argument for substantial involvement of governmental agencies. On the other hand, the voluntary character of the scheme required the co-operation of business, which suggested a relevant role for business actors in its administration. The major dispute between "business" players (including the Federal Ministry of Economics) and "environmentalists" (including the Federal Ministry for the Environment) was whether the accreditation and supervision of verifiers was to be assigned to the environmental agency (UBA) as "environmentalists" demanded or if it was to be located close to the Chambers for Industry and Commerce, as "business" suggested.

The relatively weak position of the Federal Ministry for the Environment within the cabinet and the strong influence of business players on the liberal-conservative Government, coupled with the general scepticism of environmentalists with regard to the scheme brought about a compromise that reflected mainly the ideas of business. Yet, due to the legalistic tradition in Germany, the scheme also entails some major elements of governmental supervision. The substantial involvement of non-governmental actors (business, environmental groups, trade unions) in the very administration of the system was quite a novelty to German environmental policy (Malek et al. 2000: 389). Moreover, once established, the scheme became quite a success in Germany.(14)

The idea of the environmental impact assessment (EIA), similar to that of EMAS, is based on a procedural approach: environmental protection can be reached more effectively by offering a procedure that induces relevant actors to reflect the ecological impact of what they are doing. In the case of EIA this applies to major (particularly public) construction projects. It aims at giving environmental concerns the same weight in planning processes as social and economic considerations. It is supposed to reach this aim mainly by means of interest articulation, transparency, participation and public debate (Staeck et al. 2001: 33).

Decision-making on the European directive was extremely difficult and took more than ten years under conditions of unanimity in the Council. Those countries that already had concepts of environmental impact assessment feared demand for adaptation. Germany, in contrast, did have detailed approval procedures but no environmental impact assessment and thus simply considered the instrument to be unnecessary (Albert 1997: 125).

The directive was finally passed in 1985. It envisaged, as part of the planning approval procedure, a systematic assessment of the likely impact on the environment of specific public and private construction projects and public access to the information based on the assessment. A broad range of possible effects on ecologically relevant goods and likely interactions between them was to be addressed. Member states, however, had a broad discretion in terms of the scope of application of the assessment (Staeck et al. 2001: 36).

Transposition of the directive into German law proved to be a particularly difficult and troublesome task. Until the passing of the directive, governmental officials had not paid too much attention to the concept and now discovered a certain need for discussion. The major delay in the adoption of the respective laws had organisational and structural reasons, as well as reasons connected to its content. Conflicts emerged rather between the federal state and the Länder and between individual federal ministries than between government and business (Albert 1997: 260). In terms of content, it was criticised that the directive did not provide for clear-cut criteria for the assessment. Furthermore, the participation of the public seemed to go relatively far and did not find undivided support, since it entailed the danger of delaying planning procedures. In terms of organizational concerns, the trans-sectoral approach and its (logical) blindness for the very complex distribution of legislative and executive competences between the federal state and the Länder produced severe problems. Particularly so, because the transposition of the directive involved a major number of federal Ministries and demanded for substantial co-ordination between the federal state and the Länder as well as among the Länder. Finally, in terms of regulatory structure, it proved highly difficult to integrate the EIA into the sectorally segmented German law that is characterised by rigid criteria in each sector and very limited administrative discretion (Albert 1997: 226, Staeck/Heinelt 2001: 62). The German EIA-law entered into force only in 1990, integrating the environmental impact assessment into the highly specialised approval procedures (Staeck/Heinelt 2001: 63).(15)

2.3. Sectoral Conclusion

What are the overall patterns in terms of the Europeanization of German environmental policy? Both cases have in common that the European “impulse” was a legally binding measure, which provided for relatively clear institutional concepts that demanded to be translated into law (EIA) or organizational provisions (EMAS). In addition, in both cases the German Federal Government had not been in favour of the measure, since they did not conform to the dominant German regulatory approach.

In terms of the policy processes triggered by these "impulses", in the case of EMAS the transposition of the measure touched the sensitive, constitutionally protected area of professionalism. This circumstance activated business interests against too much governmental interference in the administration of the system, but there was no pre-existing legal structure that made transposition or application difficult. The reverse was the case with EIA, where translation into the bulk of already existing technical planning laws under conditions of administrative federalism seemed almost impossible.

In terms of policy results, in spite of all the problems and conflicts in the policy processes, in both cases, the implementation yielded major policy changes in the regulatory approach: not only were two completely new instruments introduced, these instruments also reflected an entirely novel approach in German environmental policy. At least considerable changes could be observed with regard to the distribution of responsibilities between societal and governmental actors (EMAS). The same holds true in terms of the administrative handling of planning, particular in terms of the co-operation between specialised and environmental authority and in terms of the participation of a broader public (EIA).

The extent of policy change due to the need and efforts to adapt to European law is relatively high in the cases chosen, given the unfamiliarity of the procedural approach with the German tradition.(16) Naturally, in the UK the transposition of EMAS demanded much less effort and brought about much less change (see McIntosh/Smith 2001). Vice versa, the implementation of a European measure closer to the German regulatory tradition (as e.g. the directive on large combustion plants passed in 1988) exerted less "adaptational pressure" and brought about less change in German environmental policy (Héritier et al. 1996). In our cases, institutional or regulatory "misfit" was a factor that made transposition both, difficult and controversial, and also shaped the final version of the instrument. From recent studies we know, however, that in other policy sectors the institutional "fit" is of less explanatory power, whereas, for instance, the characteristics of actors (particularly the party in government) may play a decisive role (Treib 2003).

3. Europeanization by Learning

In this section I would like to address a second mechanism of Europeanization, which is not triggered by any policy measure that has been passed and that produces any duty to comply and adapt. Rather we can see that *perceptions* and *persuasions* were incrementally changed by way of learning, due to a policy discourse, in which the European Commission played a major role.

3.1. The Mechanism: Learning

In the last decade, ever more authors have stressed the independent role played by ideas and arguments in the dynamics of policy processes and in the shaping of their results (e.g. Majone 1989, Sabatier 1993, 1999). This is particularly the case when decisions have to be made under conditions of high complexity and uncertainty – as is quite often the case in environmental policy (Godard 1995). Although ideas and arguments do not replace the role of power, they may influence how actors perceive their preferences and interests and they can strengthen or weaken their power (Liberatore 1995). Given the extent of European integration and "globalisation", discourses, in which ideas and arguments are being exchanged, cannot be conceptualised in strictly national terms any longer. Rather, European integration (among other forces) has brought about a universe of multiple, issue-specific, overlapping discourses that have a trans-national character by nature. The European Commission as the main initiator of European policy ideas and initiatives is able to initiate such trans-national discourses.

In doing so, it has a certain chance to influence primarily national discourses, for instance on policy objectives and suitable instruments (see Radaelli 2000a: 9, 2000b, 2003: 36, Knill/Lehmkuhl 2002: 271f.).(17) National actors then have a chance to *learn* from a trans-national discourse and to change their respective policy, but they do not have any duty to do so.(18)

3.2. The Case: Eco-Tax

The introduction of the German eco-tax in 1999 is an example of Europeanization by learning. Here of course, the European "impulse" that induced change is much more diffuse and less easy to determine than in the cases mentioned before. In the late 1980s the European Commission was one of the major agenda-setters of an early debate on man-made climate change and what could be done about it. Particularly in the beginning of the debate, the Commission played a crucial role in issuing scientific knowledge about the interrelation between the emission of so-called greenhouse-gases and climate change. The Commission proved to be a strong advocate of preventive measures (in the absence of ultimate scientific proof) and of the definition of priorities for action (Liberatore 1995: 65).

It was particularly the former Commissioner for the Environment, Ripa de Meana, who committed himself to advocating climate policy and to seizing the initiatives of OECD for the use of economic and fiscal instruments (Liberatore 1995: 64-68, Zito 2002: 246). In doing so, he expected the European Commission to become a global player in international climate policies (Zito 2002: 246). The Commission supported research clarifying technical questions of fiscal instruments and anticipating potential micro- and macro-economic effects, with a particular emphasis on reconciling economic and ecological objectives (Liberatore 1995: 64-68). Thus, the Commission was the agenda-setter that initiated and continually supported a European learning process, particularly by developing a *common language* (e.g. categories like precaution, cost efficiency, energy efficiency). With the common language bits and pieces of a *common understanding* came along (Liberatore 1995: 68-69).

In 1992 a first formal Commission initiative resulted from the discourse: the proposal for a European eco-tax directive was a response to the fear that national schemes for eco-taxes (as had been adopted in the Netherlands and Denmark) might result in a distortion of trade in the new internal market (Zito 2002: 246, see Radaelli 2000b: 33-34). The directive, however, had no chance of being passed with the unanimity needed in the Council, due to the fundamental resistance of the British Government (Zito 2002: 250). Yet, after the first failure to pass a European eco-tax, the Commission explicitly encouraged member states to adopt national schemes for eco-taxes (Böcher/Töller 2003: 26). Thus, the issue remained on the agenda (Zito 2002: 252), but was shifted more into national discourses. The European directive on eco-taxes, which was finally adopted in 2003, differed considerably from initial ideas and stipulated only minimum tax rates.

Yet, irrespective of the problems to adopt a European measure, the European discourse had an essential impact on the political debate in Germany (Böcher/Töller 2003, Böcher 2004). German environmental policy, as mentioned before, was strongly characterised by a regulatory command-and-control-approach, and displayed an almost total neglect of market-based instruments, as had increasingly been criticised (e.g. OECD 2001, see Kirchgässner/Schneider 2003). The debate on market based instruments in general and eco-taxes in particular that has taken place in Germany from the 1970s onwards, remained within expert cycles led by professors of economics (Zittel 1997). This changed only when in the early 1990s the diffusion of the European discourse into the national debate coincided with the activities of "policy-entrepreneurs" (for instance E.U. von Weizsäcker, Greenpeace) in fevour of eco-taxes.

Only then, a broad public debate emerged, in which the idea of internalising external costs was ready to be popularised ("prices must say the ecological truth", see Zittel 1997, Böcher 2001, Böcher/Töller 2003).

That the passing of an eco-tax scheme nevertheless did take some years was partly due to the uncertainty whether there would be a European directive or not. In addition, after a more general debate, distributive concerns became quite visible and activated strong resistance on the part of German business. Only the new German Government elected in 1998 had the political will to reject the business protest and to pass the eco-tax in 1999. This was due to the fact that for the first time the government was formed by social democrats and the green party, which had been a strong advocate of green taxes for many years. This scheme was meant to reach two objectives at the same time: to help to comply with German (self-)obligations resulting from the Kyoto-protocol(19) and to improve the labour market (Böcher/Töller 2003).

3.3 Sectoral Conclusion

What does this case tell us about Europeanization? It has shown that in the absence of positive policy measures, policy debates initiated by the Commission and spread all over Europe can represent a relevant European "impulse" that has an impact on national policy and thus triggers Europeanization. This was particularly the case because the Commission managed to shape a debate and to create a *common understanding* of a problem and to offer possible solutions.

This discourse had a significant effect on the national policy process, since from a certain time on, different actors proved *willing to learn*. Yet, causality is less simple here than with Europeanization by adaptation: without the activity of policy entrepreneurs (individual and corporate) in the mid-1990s and the change in government in 1998, Germany might not have an eco-tax today in spite of some actors' learning. However, without the sustained European discourse on climate change and market instruments, embedded in an international debate, a German eco-tax would definitely not exist today.

However critical experts may judge the *ecological effect* of the scheme (see e.g. Ziesing 2003), in terms of regulatory substance there is little doubt that the adoption of this instrument marks a decisive change in German environmental policy, which so far had proven to be remarkably resistant against this kind of "new" instrument.

Research has shown that there are other cases, in which national policy processes were influenced by European discourses, which were particularly initiated and nourished by the European Commission (see Knill/Lehmkuhl 2002: 272-275, Radaelli 2000b, see Auel 2004). It goes without saying that this kind of policy learning can be expected to take place particularly in the context of adopted policies (see e.g. Töller 2002: 364-367, 491), whereas it was the aim of this chapter to demonstrate that there are relevant European "impulses" triggering the Europeanization of national policy even in the *absence* of a positive policy measure.

4. Europeanization by Evasion

The third mechanism of Europeanization I want to present here is somewhat less obvious than the other ones and thus needs a bit more explanation.(20)

4.1. The Mechanism: Evasion

In addition to the legal duty to transpose directives and to apply regulations, member states have to respect a number of *restrictions* on autonomous(21) national action imposed by European law, particularly by those Treaty norms establishing the concept of *negative integration*. For instance national environmental schemes promoting an ecologically desirable method of *production* are generally regarded as indirect state aids that are likely to distort competition and thus to violate the EC-rules on state aids (Art. 87 Par. 1 ECT, see Hancher et al. 1999: 323-335) even though some exceptions are made.(22) Furthermore, national ecological standards for *products* must not hinder the free trade of goods within the Community (Art. 23 ECT).(23)

However, when a national government is planning to adopt a regulatory measure, say: in environmental policy, and given the precondition that no European regulation had been passed, it is extremely difficult to judge what measure is or is not allowable.(24) This *legal uncertainty* has a number of reasons that lie in the treaty itself(25) and in the working methods of the ECJ that is in charge of balancing the demands of the internal market with the needs of environmental protection in every single case.(26) Another reason is the complexity of interrelations between member states and Community as can be shown with regard to notification procedures. For the field of environmental policy *three relevant procedures of information and notification* exist that help the Commission supervise the member states' regulatory activities:(27)

1. *State aid notification:* Member states have to notify all measures that could be regarded as (direct or indirect) state aid in accordance with Art. 87/88 ECT (McGowan 2000: 130).
2. *Technical regulations notification:* A similar procedure was introduced in 1985 and established by directive 98/34 for the area of technical regulations and product standards (Shapiro 1992: 139, von Bogdandy 2003: 34). The relevance of this procedure has increased drastically since the mid-1990s when the Court decided that any omission to notify a national measure could result in the non-applicability of the measure (ibid. 2003: 38). Today, about half of all national product-related technical regulations are subject to notification. For instance in 2001 the German Government notified 50 such measures, 11 of which were related to environment protection in a broader sense (European Commission 2003b: 76).
3. *Notification procedure for environment regulation:* Finally there is a notification procedure for any environmental regulation that is not covered by the other two procedures. Even though it is based on a "gentlemen's agreement" adopted in 1973 (O.J. 1973 No. C 009/1) it has been applied in practice ever since (see also Art. 176 ECT).

The consequence of the procedures (as different as the three procedures are in terms of their legal clout) is at least a delay in the adoption of the proposed national measure, since the procedures provide for a duty to "standstill". In some cases the Commission can demand the abandoning of the measure from the member state (in the case of state aid notification) or the Commission may decide to regulate the issue on the European level (in case of technical or other environmental regulations relevant to the free trade of goods). These notification procedures are designed to clarify what measures member states can or cannot pass and if there is a need for a Community measure instead. They establish a "communicative universe" within the multi-level-system (von Bogdandy 2003: 36, see also Sommer 2003). In any case, these procedures cast a shadow on member states when they plan a particular national measure.

In sum, all the rules that constitute the concept of negative integration – only roughly outlined here – are highly relevant though quite cloudy European "impulses" that seem to have a high potential to trigger Europeanization by changing the policy activity of member states. But how do they influence

the policy process and what is the result in terms of policy change?

Whereas it is generally assumed in the literature that negative integration fosters regulatory competition (Radaelli 2000a: Fig. 2), new research has shown that this is not necessarily the case (Schmidt 2003). One quite obvious possibility is that nothing happens at all. A member state, which under different conditions (e.g. before EC-membership or before SEA) would have passed a measure of environmental policy, does not do so.(28) In German and other national environmental policy there is an extensive record of national environmental measures not taken due to negative integration, of measures passed and rejected by the Commission in notification procedure, and of measures adopted and found incompatible with EC law by the Court afterwards (see e.g. Krämer 1995: 118-127). Is the non-passing of a measure due to European law a case for the Europeanization of public policy? I'm inclined to say yes, but there is another fascinating option that I want to discuss.

When faced with the strong, yet somewhat unclear restrictions of negative integration, in a situation, in which an environmental measure needs to be passed, the German Government has developed an interesting mechanism to literally *evade* the hardship of negative integration: it by-passes EU-law by using co-operative forms of action, namely agreements. Voluntary agreements have a certain tradition in German environmental policy (Wicke/Braeseke 1998, BDI 2003). Their particular characteristic is that they de facto but not formally constitute state action (see Töller 2003: 169). Thus, they cannot be subject to any claims from the Commission or the Court that this policy measure violates the Treaty, because in legal terms they do not represent a measure.(29) In terms of practical policy-making, however, environmental agreements are instruments that, according to empirical evidence, are not too unlikely to reach defined policy goals (Wicke/Braeseke 1998). I would now like to present some cases from the areas of chemical hazards and of climate policy to illustrate this mechanism.

4.2. The Cases: Banning Hazardous Substances and Promoting less Harmful Procedures

In the 1970s the suspicion arose that asbestos, as used in construction work, could cause severe damage to health (cancer and lung disease). When this suspicion was verified in the early 1980s, the German Federal Government initially considered passing a ban on asbestos, but instead ended up concluding an agreement with the branch association of those companies producing fiber cement in 1984: By 1986, the use of asbestos in cement would be reduced by 30-50 per cent (in 1988 a second agreement stipulated the total end of its use by 1990, see Troge 1997: 137, Wicke/Braeseke 1998: 142). In return, the Government did not pass a statutory ban. In fact, the passing of such a ban would have been a risky step, because the banning of products – however hazardous – would have had a high potential of being rejected in notification for being a barrier to free trade.(30) The later negotiations for a European ban on asbestos, however, proved extremely difficult due to the strong national interest of the French Government to hinder a ban (due to the significant French asbestos industry, Troge 1997: 138).

The case with PCP (pentachlorophenol) is quite similar: In the late 1970s, there was a public debate that the chemical substance PCP, included mainly in wood preservatives, might put a severe risk to human health when used inside the house (Jacob/Jänicke 1998: 527). In the early 1980s, the Government felt inclined to ban the use of the substance, but in the end abandoned this plan. Instead, in 1984 it concluded an agreement with the branch association for construction chemicals and wood preservatives that from April 1985 on no PCP would be used (Wicke/Braeseke 1998: 134). In fact, the use of PCP had already drastically decreased in the 1970s and came to a complete end in 1985.

In 1987, the Government presented a decree banning PCP forever that had to be notified with the European Commission.(31) After the Belgian Government had opposed the measure, the Commission rejected it and decided to propose a European measure (Jakob/Jänicke 1998) that was passed in 1989.

In both cases the Federal Government felt the urgent necessity to act in order to protect its citizens from severe health hazards. The fact that European law made the national banning of a product a difficult thing even before the SEA, however, limited the eligibility of a legal ban as a measure. The Government anticipated that the ban would meet difficulties in the notification procedure, which indeed was exactly what happened later with the PCP ban in 1987. Thus, it evaded the dilemma by acting in a non-legislative way, which in the end was quite successful. This is not to say that the restriction by European law was the only reason for this governmental choice. There were two more major reasons: strong pressure by industry that an immediate ban of the substances would imply high job losses; and the lack of unambiguous scientific evidence of the health risk that was needed for passing an legal ban.

The agreements were successful also in terms of policy outcome: the objective of first restricting and finally ending the use of the hazardous substances was reached in both cases (Wicke/Braeseke 1998: 134, 142f.). There are a number of similar cases, for instance the banning of CFC (chlorofluorocarbon) for various applications (Lautenbach et al. 1992: 61, Wicke/Braeseke 1998: 116).

The third case deals with the promotion of ecologically sound energy generation, namely the so-called “co-generation”.(32) It became an issue in 1999 when two debates coincided: the need to reduce greenhouse-gas emissions due to the obligations from the Kyoto protocol, and the very urgent need to prevent “stranded investments” in the co-generation branch (mainly in the hands of medium-sized municipal power plants) due to the consequences of the liberalization of the European electricity market (Töller 2004b).

When a first measure passed hastily in 2000 proved to have severe deficiencies (SRU 2002: 380), the German Government had to look for a better solution. For a considerable time there seemed to be a broad advocacy coalition in favour of a certificate system(33): scientific experts, environmental NGOs, some of the trade unions, some business players involved in co-generation, the parliamentary majority and the Minister of the Environment supported the project that had been elaborated by experts from a major think tank for economics (Praetorius/Ziesing 2001). However, in late 2000 this mood changed and in early 2001 the coalition opposing the scheme (the Minister of the Economy and business association in conjunction with the other part of trade unions) managed to erode the parliamentary majority in favor of the scheme (Töller 2004b: 5-7).

There are a number of reason for this development: The effect on jobs in different sectors of the energy branch was a highly disputed issue. In addition, industry pulled out all the stops it could so that even the Chancellor became involved in what finally turned out to be a major conflict between two Federal Ministries. However, when in autumn 2000 the issue came up that the Commission had reservations against the scheme for reasons of state aid rules, this was received with high sensitivity in the Government.(34) This was systematically exploited by the adversaries of the ambitious certificate-scheme (see Frenz 2001, Gronau/Topp 2001) and definitely helped a great deal to close the “window of opportunity” for this measure. This was particularly the case, because in the very situation, the Government was waiting for the Commission to examine two more energy-related cases (the former co-generation law and the law on the promotion on renewable energies), in which the compatibility with state aid rules was at stake (Töller 2004b: 6).

In the end, in summer 2001 a voluntary agreement was concluded that was less ambitious and less elegant in terms of regulatory aesthetics – but at the same time without any problem in terms of European state aid law.(35)

All in all, it is exactly this mechanism that – as a major factor among other factors – accounts for a gradual shift towards a much stronger use of voluntary agreements in German environmental policy from the late 1980s on (Böcher/Töller 2003: 32).

4.3. Sectoral Conclusion

What can we learn from these cases about Europeanization? Firstly, the very broad and yet vague concept of negative integration provides for an almost infinite variety of European "impulses", which significantly affect national policies by restricting a great deal of previously autonomous governmental action.

Negative integration plays a particular role in national policy processes, because it tends to produce uncertainty about what national measures can or cannot be taken. This uncertainty plays a role in the policy process particularly by changing relative power, undermining the legitimacy of political arguments in favour of legal arguments and eroding political majorities – in short, by changing opportunity structures (see also Knill/Lehmkuhl 2002: 260, Schmidt 2003).

The output in terms of policy results can vary greatly. As mentioned above, Europeanization can result in no measure being taken at all or in a less ambitious measure being passed. However, the effect of the European "impulse" mentioned above can also be the government evading from the realm of law by adopting forms of action other than laws. This is not equivalent to what Radaelli calls "retrenchment" (2000a: 7).(36) I do not claim that this mechanism appears frequently, even though in the field of German environmental policy there is clear proof that it is much more than a single phenomenon. But I want to make clear that such kind of idiosyncratic mechanisms and effects are one possible form Europeanization may take and that research must be open enough to account for this.

5. Conclusion

In the beginning, the paper outlined its basic understanding of Europeanization: Europeanization means the impact that European policies in particular and European integration in general have on national polities, politics and policies.

This definition excludes both, an understanding of Europeanization as "success or failure" in implementing a European policy at the national level (see above), and an understanding of Europeanization as a process, by which a national policy becomes more or less "European" (see Radaelli 2000a: 8, 2003: 37).(37) This broader approach to Europeanization implies a certain criticism of those studies that equate the Europeanization of public policies with the national implementation of European policy measures.

The paper presented three different mechanisms of Europeanization: Europeanization by *adaptation*, Europeanization by *learning* and, last but not least, Europeanization by *evasion* which is new to the debate. Distinction was made between European "*impulses*", namely what exactly comes from Brussels and triggers any kind of impact on national policy process; *mechanisms*, as the way how these impulses are or are not taken up and reacted to in national policy processes; and *policy output*

covering the regulatory approach, instrument and substance that is changed in the one or other way.

Firstly, we had positive measures (a directive and a regulation), bringing about processes of adaptation. Secondly, we saw a mere debate, which initiated learning in the national policy process. And thirdly, we had the broad concept of negative integration, producing mainly legal uncertainty in the policy process and resulting in attempts to evade from restrictions due to European law by bypassing the legislative route. In terms of policy substance, all three mechanisms brought about change – major changes with regard to the regulatory approach and substance in the cases of the (formerly unknown) procedural instruments (EIA and EMAS) and the eco-tax, less fundamental but still considerable changes as concerns the stronger use of voluntary agreements that had already had a certain tradition before.

However, as suggested here and there in the sectoral conclusions, the cases chosen display only possible, and somehow plausible, ways of how *impulses*, member states' *mechanisms* and policy *results* can be interrelated. In some cases positive policies may cause learning with the effect of major or little change. In other cases positive measures may bring an end to evasive measures, as can be shown in a number of very recent cases in German waste policy (Töller 2004c). Some European debates do not impact on national debates because there is no interest in learning, or because major societal powers or institutional settings hinder a national debate from being transposed into a national policy, as was the case in Germany with emission trading before the European directive was passed. In some cases, the legal uncertainty of negative integration does not automatically yield evasion. Rather, it changes nothing, because the national government is fiercely decided to pass a measure and to take up the conflict with the European Commission, as in the recent case of the German "tin deposit scheme" (Töller 2004c), or, because a member state is little sensitive to the threat of legal scrutiny, as was France in the cases mentioned by Schmidt 2003. Clearly a difference must be made between "old style" and "new style" regulatory policy (Shapiro 1992: 135): Whereas old style regulation, such as road haulage, airline or rail regulation was evidently discredited by the paradigmatic shift to neo-liberalism partly due to the internal market program, new style regulation such as the protection of workers, consumers or other people from the effects of too much economic liberty (e.g. exploitation at work, dangerous food, unfair contracts, hazardous substances) enjoys much more credibility and thus legitimacy. This does, however, not exclude conflicts about the level where regulation is to take place and the degree of regulation.

The paper aims at extending the analytical perspective, but at the same time, it tends to de-couple the direct inter-relation between impulses, mechanisms and policy results. Unfortunately, it does not offer more than a few suggestions as to the very question under what conditions impulses, mechanisms and policy results interact in which way. This is clearly a desideratum. Thus, future empirical research beyond implementation studies will have to scrutinise national policies, concentrating on a broader range of phenomena of Europeanization, which flow from different *impulses*, are translated into idiosyncratic mechanisms, and result in contingent impacts in terms of policy. This calls for a cross-sectoral and cross-country approach, and more emphasis has to be placed on national policy processes, in which European impulses are one factor among others. This is where regularities may be observable with a potential for generalization.

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Endnotes

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(2) See the early work by Ladrech 1994; Hanf/Soetendorp 1998, Kassim/Peters/Wright 2000, Derlien 2000, Radaelli 2000a, Kohler-Koch 2000, Bulmer/Burch 2001, Knill 2001, Héritier 2001, Olsen 2002, Featherstone/Radaelli 2003, Falkner 2003, Töller 2004a, Auel 2003, 2004. I do not address the broader controversy on the concept of Europeanization in detail because this is not of much interest here. Although there has been certain confusion about the very meaning of the notion, the point has gained support that Europeanization as a concept makes sense only when it is different from "integration" (different: e.g. Börzel 1999, Risse/Cowles/Caporaso 2001: 3) or from the process of increasing European responsibility for a policy sector (e.g. Haverland 1998, Dyson 2003; critical: Radaelli 2000a, Kohler-Koch 2000, Olsen 2002, Radaelli 2003, Auel 2004). Thus the term *Europeanization* as it is used here describes the *impact of European Integration on the domestic governmental and governance system* including the three dimensions of polity, politics and policy, while taking into account that it is the same member states that help to shape the European decisions they are affected by afterwards (Kohler-Koch 2000, Auel 2004). Thus, Europeanization is not "an explanatory concept", but "an attention-directing device and a starting point for further exploration" (Olsen 2002: 20).

(3) The following criticism applies to the standard approach of numerous implementation studies (e.g. Siedentopf/Ziller 1988, Héritier et al. 1996, Haverland 1998, Heinelt et al. 2001, Falkner 2003, Treib 2003). It must be stressed, however, that implementation studies are not criticised as such. Implementation studies have provided research and practice with most valuable insight into how European policies do or do not work. My criticism applies only to their re-labelling as "Europeanization studies", for the reasons set out above.

(4) See for example Olsen referring to Jacobson, who mentions the impact of and the compliance with EU "institution, regimes and organizations" as almost synonymous (Olsen 2002: 11). Similarly, Falkner speaks of "success and failure of Europeanization" (2003: 1). In my understanding, successful implementation might be a miracle, but it is not Europeanization. Rather, Europeanization is something we can observe in particular forms and degrees and which we may try to analyse or measure (even though degrees of Europeanization are particularly difficult to measure, see Töller et al. 2004: chap. 5.1), it is nothing that can succeed or fail.

(5) Knill and Lehmkuhl generally transcend the restriction to the implementation perspective, but in some of their terminology remain relatively close to it.

(6) One example mentioned in chapter 4 are notification procedures, which accompany national

policy processes. Another example is comitology, where even in the absence of a European measure, implementation on a European scale may already start (see Töller/Heinelt 2003) or the revision of a directive is already prepared during implementation with a high degree of member states involvement (Töller 2002: 491).

(7) With *idiosyncratic* mechanisms I mean all kind of member states' reactions that deviate from what exactly the Community or researchers specialised on EC policy would suggest or expect, as far as there are general patterns and not only interesting single cases.

(8) With *contingent* results I mean policy results that lie beyond the categories of "more" or "less" European or of convergence or divergence. These concepts tend to be one-dimensional and to loose the complexity of reality out of sight.

(9) I cannot elaborate further on this approach here, but see Böcher/Töller 2003. An analytical approach is neither a theory nor a model, but simply a heuristic device that draws our attention to particular aspects of reality (Manytz/Scharpf 1995: 39). In the version that I apply (see Kiser/Ostrom 1983, Böcher/Töller 2003), institutional factors, actors and the structure of problems play a role in shaping the policy process, but particular emphasis is put on dynamics of the process itself and on situational factors (see e.g. Kingdon 1984, Majone 1989, Howlett/Ramesh 1995, Sabatier 1999).

(10) I have borrowed this notion from a database of the German Parliament (GESTA, see http://www.bundestag.de/bic/standgesetzgebung/index.html). The organisers of this excellent database, when some decades ago looking for a notion to cover what we today might call sources of "Europeanization", came to chose the term "European impulse". The notion covers a broad range of things coming from Brussels, Luxemburg and Strassburg, namely, EC directives and regulations, ECJ-decisions, and "other" things. The latter include planned measures, Community frameworks, implementation decisions taken by the Commission in the context of comitology, or measures adopted by the Justice and Home Affairs Council (Töller 2004a: 32). Implicitly operating with a very broad understanding of what "Europeanization" might be, these data might also allow for a first step of a comprehensive quantitative analysis of the Europeanization of public policies. However, since they are restricted to the scope of adopted German *legislation* they are systematically blind to those areas, in which national legislation is no longer possible (see Töller 2004a: 33-34, Töller et al. 2004).

(11) The labels that are used for this mechanism differ: Knill and Lehmkuhl use the term "institutional compliance" (2002: 263), Radaelli calls this "coercion" (2003: 41).

(12) Moreover, the number of "new" instruments actually adopted does by no means reflect the programmatic weight it was given in Commission's rhetoric, as recent studies have revealed (Holzinger et al. 2002, Rittberger/Richardson 2003, see SRU 2004: 918).

(13) After revision in 2000, participation was extended to cover other branches as well.

(14) German industry, and since the revision also service companies, are very interested in the scheme. Today, Germany is the country with the highest number of registered organizations. About 2250 German organizations were registered in the end of 2003, see http://europa.eu.int/comm/environment/emas/index_en.htm. Even though compared to other EU-members, German numbers are still high, it should not be neglected that the support for EMAS in Germany is decreasing, as is the number of registered organizations, whereas the support for the international standard ISO 14001 is increasing. During the revision of the scheme between 1998 and 2000, the German Government fought toughly in Brussels for maintaining the core character of the scheme and preventing a perceived threat of ecological devaluation due to a too strong alignment with the international standard ISO 14001 (Malek et al. 2000: 294).

(15) Nowadays about 1000 EIAs are conducted each year in Germany (European Commission

2003a). The directive has brought about relevant changes in the modes of administrative interaction in so far as the specialised authority in charge of the approval now co-operates with the authority for nature conservation more often, and they really strive to develop a trans-sectoral approach (Staeck/Heinelt 2001: 68). Environmental concerns of construction processes are identified more often than before. In general, environmental groups have earlier access to decision-making procedures (Jung 2000: 455), and the transparency of major construction projects has increased. However, there are strong variations as to how single assessment procedures operate: they can be characterised by a rather consensual or conflictive style, they can be very open in terms of actual result or already quite clear in advance, and environmental groups may play a major role or none at all (Haunhorst et al. 2001: 98).

(16) The ongoing implementation of the directive on emission trading might bring about a similarly drastic change in Germany.

(17) Radaelli calls this “soft framing” (2003: 43).

(18) On trans-national learning see e.g. Howlett/Ramesh 1995: 176-178.

(19) Germany had obliged itself to reduce 25% of its carbon-dioxide emissions of 1990 until 2005 (see Böcher 2001).

(20) One of the anonymous referees criticised that Europeanization by *evasion* is only a sub-category of a broader mechanism, namely the Member states acting under conditions of restricted autonomy. In this situation they can, as is elaborated on later, do three things: 1. not do anything, 2. pass a measure in spite of restrictions, 3. evade by passing an informal measure as is the main focus of this chapter. The referee suggested to better use the term “Europeanization by restriction” for this broader category. I liked the idea of being more systematic and making Europeanization by evasion a sub-category of a broader mechanism. However, the term is problematic because in the choice of my terminology I put emphasis on using terms that reflect *what Member states do* (adapt, learn, evade) and not what the Community does (e.g. “change domestic opportunity structures”, “frame domestic beliefs and expectations”, as e.g. Knill and Lehmkuhl use in part). “Restrict” is also related to the Community and not to member states. This is essential for my argument since in the beginning I have explicitly criticised approaches starting analysis from the European level and giving only limited attention to idiosyncratic ways member states react to European impulses. Beyond aesthetics (which I do not disrespect) the “discovery” of the evasion mechanism is striking, whereas a member state not acting at all is not so surprising. Thus, for reasons of argumentative sex-appeal I would like to keep the notion, clearly conceding that the referee’s criticism is entirely correct. Any suggestions for an overall term are welcome!

(21)On the difference between state autonomy and state sovereignty see Kassim/Menon 1996 who argue that sovereignty is an outdated concept for the analysis of EU member states whereas autonomy is not.

(22) Exceptions for the field of the environment are laid down in the Community framework on environmental state aids (O.J. 2001 No. L 37/3, SRU 2002: 205ff.).

(23) Again, a number of exemptions are established: measures aiming at protecting public security, or the health and life of humans, animals or plants, for example, do not violate the Treaty, provided that they do not constitute means of arbitrary discrimination of trade (Art. 30 ECT, Shapiro 1992: 130). And in areas where a Community measure has already been adopted, member states may still maintain or pass stricter regulation under certain conditions (Art. 95 and 176 ECT, Krämer 1995: 99-106).

(24) Even though e.g. in the German Federal Government, a whole section within the Ministry of

Justice is occupied with scrutinizing the compatibility of bills with European law, a substantial degree of legal uncertainty prevails.

(25) Reasons are, for instance, its highly abstract nature and the inconsistencies among the single norms (Shapiro 1992: 136), plus the constant change of Treaties during the last 18 years.

(26) The actual result of the balancing process tends to be profoundly open. Moreover, when applying the abstract law to the single case, the ECJ does not develop much of an abstract interpretation (as tends to do e.g. the German Constitutional Court). Furthermore, the way, in which ambivalences inherent in the Treaty are reconciled may alter over time, which can be interpreted as a process of adaptation to the course of integration (Schmidt 2004).

(27) Two of these procedures apply to all other national regulatory policies, too.

(28) It may instead try to launch the problem in the Brussels arena and make the Commission present a proposal (i.e. attempt to shift from negative to positive integration).

(29) Yet, another legal problem may emerge if such agreements are considered to be cartels (see Wicke/Braeseke 1998).

(30) However, it was not totally sure the that ban would be considered to violate European law, for reasons explained above. That is where legal certainty and legal uncertainty make a clear difference: Only as long as industry could not be sure that a legal ban would be against the treaty, the Government could keep up “the shadow of hierarchy”, without which no industry would ever agree to conclude a voluntary agreement.

(31) The Government saw a need to clarify the legal situation in case any new or foreign company would like to sell the substance. This, of course, also helped to protect the market situation of those companies that had endeavoured to find substitute substances (see Jacob/Jänicke 1998).

(32) In co-generation, energy and heat are produced at the same time which – under certain technical conditions – implies a particularly high efficiency of the used primary energy (usually non-renewable energy sources).

(33) Based on the stipulation of specific quotas for co-generation, which all producers would have to fulfil, those producers that do not reach the stipulated quota of co-generated energy would have to buy certificates from other producers that go beyond the required quota (see Praetorius/Ziesing 2001).

(34) Since even most thorough inquiry directly with the Commission did not bring about any formal statement of the Commission, the rumour that the issue was brought up deliberately by the Ministry of Economics, to erode the majority in favour of the scheme seems highly plausible – but cannot be verified.

(35) In contrast to the cases mentioned before, in this case we cannot yet give any information on the success of the measure because evaluation is expected for 2004 only.

(36) I would tend to criticise the term as equally normative in terms of what good and successful Europeanization ought to be (see above).

(37) This does not contradict the idea that we should be able to measure degree of Europeanization, meaning the extent of change, which, however, does not imply that a policy becomes more or less “European”.