

## The Global Diffusion of Regulatory Instruments: The Making of a New International Environmental Regime

**Per-Olof Busch, Helge Jørgens, Kerstin Tews**

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### Keywords

policy diffusion, harmonization, regulatory competition, environmental policy, multi-level governance, international regimes, political science

### Abstract

During the 1990s a new regulatory pattern in domestic environmental policymaking has been emerging which is characterized by an increasing use of cooperative, informational and market-based instruments. This pattern is to an important extent a result of international policy diffusion – the cross-national spread of policy innovations driven by information flows rather than hierarchical or collective decision-making within international institutions. Based on four case studies, the paper demonstrates empirically how horizontal diffusion processes accompanied by information and recommendations from international organizations have led to the adoption of new regulatory instruments in an increasing number of countries and how these individual national adoptions add up to an emerging regulatory structure at the international level. At the macro-level, the case studies explore how diffusion interacts with the other two major international mechanisms of domestic policy change: legal harmonization and coercive imposition. Especially within the European Union a typical pattern of horizontal diffusion between individual member states, followed by vertical diffusion from the national to the EU-level and finally leading to an EU-wide legal harmonization through EC-directives can be identified. At the micro-level, the paper investigates which factors promote or obstruct the diffusion of new environmental policy instruments. While the endorsement of regulatory instruments by international organizations or transnational advocacy networks often facilitates their diffusion, the instruments' characteristics determine the extent and speed by which regulatory instruments spread across countries. As regards policymakers' motivation for voluntarily adopting regulatory instruments, the paper argues that it cannot be exclusively explained by rational attempts to improve policy effectiveness. In addition, policy adoption is often motivated by concerns of legitimacy and perceived pressure to conform with international norms.

### Kurzfassung

Während der 1990er hat sich ein neues Regulierungsmuster in der nationalen Umweltpolitik entwickelt, das durch eine gestiegene Anwendung kooperativer, informations- und marktbezogener Instrumente charakterisiert ist. Dieses Muster ist zu einem bedeutenden Teil ein Ergebnis internationaler Politikdurchdringung – die länderübergreifende Verbreitung von Politikinnovationen, angetrieben durch Informationsflüsse vielmehr als hierarchische oder kollektive Entscheidungsprozesse innerhalb internationaler Institutionen. Auf der Basis von vier Fallstudien legt das Papier empirisch dar, wie horizontale Durchdringungsprozesse, begleitet von Information und Empfehlungen internationaler Organisationen, in einer steigenden Anzahl von Staaten zur Annahme neuer Regulierungsinstrumente geführt haben und wie diese individuellen nationalen Umsetzungen zusammen eine aufkommende Regulierungsstruktur auf internationaler Ebene ergeben. Auf der Makro-Ebene untersuchen die Fallstudien, wie die Durchdringung mit den beiden anderen internationalen Hauptmechanismen nationalen Politikwandels zusammenwirkt: Legale Harmonisierung und zwangsweise Auferlegung. Insbesondere innerhalb der Europäischen Union kann ein typisches Muster horizontaler Durchdringung zwischen individuellen

Mitgliedstaaten, gefolgt von vertikaler Durchdringung von der nationalen auf die europäische Ebene und letztendlich zu einer EU-weiten legalen Harmonisierung durch EG-Richtlinien, identifiziert werden. Auf der Mikro-Ebene erforscht das Papier, welche Faktoren die Durchdringung neuer umweltpolitischer Instrumente begünstigen oder behindern. Während die Bekräftigung von Regulierungsinstrumenten durch internationale Organisationen oder transnationale Netzwerke von Befürwortern oft ihre Durchdringung erleichtert, bestimmen die Charakteristika der Instrumente das Ausmaß und die Geschwindigkeit, mit der Regulierungsinstrumente sich über Länder ausbreiten. Was die Motivation von politischen Entscheidungsträgern für die freiwillige Anwendung von Regulierungsinstrumenten betrifft, argumentiert das Papier, dass dies nicht ausschließlich durch rationale Versuche, die Effektivität von Politiken zu verbessern, erklärt werden kann. Darüber hinaus ist die Übernahme von Politik sehr oft durch Anliegen der Legitimität und wahrgenommenen Druck, mit internationalen Normen zu entsprechen, motiviert.

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## I. Introduction <sup>↑</sup>

Since the beginning of the 1990s regulatory patterns in environmental policymaking have changed significantly. We observe a shift from a sectorally fragmented and largely legally based regulatory approach towards a greater use of voluntary, collaborative or market-based regulatory instruments (Figure 1). This shift is not restricted to a small set of pioneering countries, but has rapidly spread from some forerunner countries to almost every industrialized country.

### Figure 1

How can this widespread shift be explained? Structural explanations suggest that governments throughout the world are reacting independently, but in a similar way to similar economic, political or environmental problems (see Levi-Faur forthcoming). International regime theory suggests that the striking parallels are the result of institutional phenomena such as the simultaneous domestic implementation of international agreements. Our empirical data indicate, however, that the international spread of new regulatory instruments has often taken place in the absence of international agreements, and that it cannot be satisfactorily explained by similar domestic reactions to comparable problems. A third explanation, therefore, could be that governments orient their policies to what is already being practiced in other countries. The global spread of new environmental policy instruments, then, could to a large extent be explained by the international diffusion of a new regulatory paradigm.

This paper identifies the conditions under which the policy choices of one country subsequently affect the policy choices of others. Our analysis builds on a data-set on the spread of more than 20 environmental policy instruments and institutions in 43 countries over a period of 50 years. [Figure 1](#) presents the entire data-set in an aggregated form (for a detailed presentation see Busch and Jörgens 2004). In this article, the spread of four environmental policy instruments is analyzed in greater depth (environmental strategies, eco-labels, energy taxes, and legal provisions regulating the free access to information). We analyze the diffusion of environmental strategies, eco-labels, energy taxes, and legal provisions regulating the free access to information. Together, these represent a new generation of collaborative, market- and information-based instruments that has recently emerged in almost all industrialized countries (Jordan et al. 2003).

We first discuss the factors we expect to support or hinder the diffusion of regulatory instruments and consider policymakers' motivations to adopt regulatory instruments which have already been adopted in other countries and communicated internationally. We then apply this framework to the empirical analysis of the four selected cases. Finally, we draw preliminary conclusions about the predominant mechanisms of diffusion processes. In particular, we seek to identify policymakers' motivations in deciding to emulate the regulatory instruments of other countries. Are they motivated by (perceived) competitive pressures prompting them to adopt regulatory instruments in order to sustain or improve competitiveness and to enhance the efficiency of their policies? Or are they driven by normative considerations to enhance the legitimacy of their policies either domestically or internationally? We argue that the adoption of regulatory instruments from abroad cannot be exclusively explained by attempts to improve the performance of environmental policymaking. Additionally, regulatory competition between countries and "ideational" pressures resulting from other countries' policy choices and their promotion by international actors affect policymakers' decisions.

## II. Policy Diffusion – Mechanisms and Driving Forces <sup>↑</sup>

We define policy diffusion as the process by which policy innovations are communicated in the international system and adopted voluntarily by an increasing number of countries over time (Rogers 2003:5). Diffusion refers to an international spread of policy innovations driven by information flows rather than hierarchical or collective decision-making within international institutions. At the micro-level it is triggered by processes of social learning, copying or mimetic emulation (Jörgens 2004; Tews forthcoming; Dolowitz and Marsh 2000, see also Lazer forthcoming). The essential feature of policy diffusion is that it occurs in the absence of formal or contractual obligation. Moreover, diffusion is basically a horizontal process whereby individually adopted regulatory approaches add up to a decentralized regulatory structure (see Levi-Faur forthcoming). Unlike in the case of multilateral legal treaties, which are negotiated centrally between states and subsequently implemented top-down, with diffusion decision-making procedures are decentralized and remain at the national level. Diffusion becomes manifest only through the accumulation of individual cases of imitation or learning with respect to one and the same policy item (Jörgens 2004; Busch and Jörgens 2004). In the absence of a centralized regulatory regime with highly visible and explicitly stated aims, international policy diffusion may thus result in a "regulatory revolution by surprise" (Levi-Faur and Jordana forthcoming).

The growing body of literature on policy convergence, policy diffusion and policy transfer indicates that diffusion processes are neither coincidental nor driven by any one simple mechanism. Instead, a complex interplay of causal factors has been identified. Drawing on these studies we distinguish three groups of factors that can be expected to affect international diffusion patterns (see also Kern et al. 2000; Tews 2002a).

1. *Dynamics of the international system*: Diffusion presupposes communication. When analyzing the diffusion of policies and instruments across countries, one has to identify the international or transnational channels through which policies and instruments are communicated as well as the actors who actually transmit these messages from one political setting to another (for more detail, see Lazer, forthcoming, who describes the international system as an “informational network”).
2. *Domestic factors*: While transnational communication is a necessary precondition for policy diffusion, it cannot explain individual cases of policy change. Domestic actors, interests, institutions, capacities and policy styles all influence the actual decision of any one country to adopt a policy or instrument that is being communicated internationally.
3. *Policy characteristics*: Finally, diffusion studies need explain why some policies or instruments diffuse more quickly than others. Why, for example, have approximately 140 countries in the world adopted an environmental strategy since the late 1980s while only 11 countries have introduced an energy tax in the same period (Busch and Jörgens 2004)? Taking into account specific policy characteristics which have so far been neglected in empirical diffusion studies (Dolowitz and Marsh 2000:3; Bennett 1997:227) can help to answer this question.

Within this rather general framework lies a wide range of individual motivations for policymakers to voluntarily emulate other countries' regulatory approaches. First of all, policymakers may act in a rational manner by looking across borders for effective solutions to pressing domestic problems. Rose (1991) has labeled this “lesson-drawing”. Where domestic actors face great uncertainties about the chance that present policy options would bring about their preferred outcomes, rational lesson-drawing becomes less feasible. In these cases, domestic policymakers may prefer to model their policy choices on those of countries which are generally perceived as being successful. In the early stages of a diffusion process, policymakers may also be actively persuaded by other national, international and transnational actors (Finnemore 1993; Haas 1992; Keck and Sikkink 1998; see also Lazer, forthcoming, who discusses a range of actors). During the later stages of diffusion processes, when a regulatory approach has already been adopted by a fair number of countries,<sup>(2)</sup> other motivations, such as international pressures to conform, the attempt of political elites to enhance the legitimacy of their actions, and their desire to enhance their self-esteem within an international society structured by emerging normative standards of appropriate behavior, may become increasingly important (Finnemore and Sikkink 1998:895, 902-904).

Besides these motivations, which are related either to a "rational" and effective or to a "socially appropriate" and legitimate way of dealing with environmental problems, other, more complex motivational structures exist which can be subsumed under the label "regulatory competition". In the literature the term “regulatory competition” is used in two ways. The more common notion of regulatory competition assumes that increasing international competition for goods and services and increasing mobility of capital and highly skilled labor pressure governments into reducing regulation in areas such as social and environmental policy (Scharpf 1997). A second notion that has become influential in recent Europeanization literature holds that, by assuming a pioneering role in environmental protection, individual member countries of the European Union (EU) attempt to actively shape EU policies in accordance with their own domestic policy styles and regulatory traditions in the hope of minimizing the cost of subsequent political and administrative adjustment (Héritier, Knill, and Mingers 1996). The basic rationale underlying both concepts of regulatory competition is that policymakers do not necessarily choose those policy options that promise the highest level of effectiveness or legitimacy but also take into account the expected economic and administrative costs which result from an increasingly complex political and economic interdependence of countries. In order to keep the two concepts distinct, hereafter we call them,

respectively, economic and political competition.

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In the context of this article the notion of *political* competition is of particular interest as it implicitly takes into account the potential effects of diffusion processes and applies them to an international multi-level setting. Policymakers are basically aware that policies and instruments may diffuse both horizontally to other countries and vertically to the international level. Once these regulatory approaches have been adopted by a critical mass of countries or are transformed into international law, it becomes increasingly difficult for previously reluctant countries to ignore them. At worst, latecomers may be obliged to implement regulatory schemes that were strongly influenced by pioneer countries and do not match their own administrative structures and policy styles. One possible way for countries to actively influence the design and content of upcoming international regulations is by setting an example domestically and subsequently promoting it at the international level. If several countries choose this strategy, an international dynamic may evolve whereby countries race to adopt regulations which are directed towards the same policy problem but which may differ in administrative and technological details or in the scope and ambition of their goals. The result is an often rapid emergence of numerous domestic regulations in a given area. Together they form a global regulatory structure which in turn increases the prospect of international legal harmonization or further diffusion. Due to the generally higher probability of binding international regulations in institutionally thick environments such as the EU or the OECD-world, political competition can be expected to be most frequent there (Jörgens 2004).

By contrast, *economic* competition may be more likely within institutionally "thin" international environments or in issue areas where formal political authority rests largely with the nation state and has not been handed over to supranational or international institutions. Economic competition is often assumed to result in a "race to the bottom" in which countries lower their regulatory standards in order to avoid capital flight (Drezner 2001:57-58). In practice, however, this process may be more complex, involving changes in policy instruments rather than directly lowering standards of environmental or social protection. In environmental protection there are hardly any examples where existing standards have actually been lowered (Vogel 1997:558). What can be observed instead is an attempt by many governments to complement or even substitute direct and legally binding regulations by softer instruments such as voluntary agreements or unilateral self-commitments by polluters (de Clerq 2002). In the wake of this change of instrument it becomes easier to set less ambitious targets or relax monitoring requirements, and thus to lower de facto the environmental standards that domestic industries have to comply with. Often such indirect weakening of environmental standards occurs through, and is justified by, the emulation of widely acknowledged foreign models, or of concepts advocated by international organizations. Rather than inventing completely new approaches to environmental protection, countries thus often tend to imitate regulatory approaches introduced by their primary competitors in order to relax their own environmental protection standards.

However, instead of a "race to the bottom", the result of economic competition may just as well be a "race to the top" whereby countries seek to emulate new and ambitious regulatory approaches at an early stage of their international diffusion in order to secure "first-mover advantages" and not lag behind other countries (Porter and van der Linde 1995). In addition, policymakers may be encouraged by their domestic industries to raise regulatory standards to the level of the more strictly regulated markets, since international firms will in any case have to meet the standards of the most highly regulated markets if they want to sell their products there. Instead of manufacturing products with different environmental properties for different markets, they may be interested in harmonizing product standards at the level of the most highly regulated market in order to be able to produce similar products for all markets at overall lower costs (Vogel 1997:561-563).

In the following four case studies, we show how new regulatory approaches spread internationally, identify the causes and mechanisms underlying this global process of policy change and explore the role of diffusion within this process.

### III. The Global Spread of New Regulatory Instruments in Environmental Policy – Four Cases <sup>↑</sup>

#### A. The Spread of Strategic Environmental Planning: Diffusion, Imposition and Harmonization

Environmental strategies are comprehensive governmental programs of action which are developed with the participation of a wide range of societal actors and which formulate medium- and long-term goals for an economically and socially sound environmental policy (Jänicke and Jörgens 1998). Empirically, two types of strategic approaches can be distinguished: *environmental policy plans* which focus predominantly on environmental problems and view social and economic aspects merely as important constraints, and *sustainable development strategies* which attempt to set separate goals for all the environmental, social and economic dimensions of sustainable development.

Overall, environmental strategies represent an important shift from a strongly fragmented and primarily instrumental environmental policy towards an integrated approach guided by long-term goals. Environmental strategies have spread rapidly since the 1980s not only across industrial countries but also across newly industrialized, developing and transition countries. By 2003, 140 countries around the world and 28 out of 30 OECD member countries had formulated an environmental strategy (see Figure 2). Although marked differences remain in these plans in respect of both the relevance and the specificity of their goals (Jänicke and Jörgens 1998), all use an approach of targeted, cross-media and—at least in intention—participatory environmental planning.

#### Figure 2

Within the group of industrialized countries, the main driving force behind the spread of environmental strategies was diffusion. From their introduction in 1988 to 1997, when a formal resolution of the United Nations (UN) was adopted, environmental strategies were introduced in 16 industrialized countries. Initially, horizontal diffusion played an important role. For example, the Dutch National Environmental Policy Plan of 1989 was rapidly elevated into a widely recognized model. It was imitated by several industrialized countries and served as an important source of inspiration to others (Jörgens 2004).

During the 1990s, the diffusion became increasingly institutionalized at the international level. In 1992 the UN Conference for Environment and Development (UNCED) recommended in Agenda 21 that “[g]overnments should adopt a national strategy for sustainable development”. This recommendation neither was legally binding nor specified any point in time by when compliance was expected. Thus, it involved a relatively low degree of formal obligation and left it to policymakers to decide whether or not to adopt an environmental strategy. Still, during the period following UNCED the number of adoptions rose from seven by the end of 1991 to 16 in 1997. Almost all of these strategies include prominent references to UNCED and Agenda 21. Also in 1992 the EU adopted its Fifth Environmental Action Program (EAP), which was directly modelled on the Dutch environmental policy plan, and which in turn influenced the development of environmental strategies in many other western European countries (Jörgens 2004).

While many European strategies explicitly refer to the EU's action program, some, like the Austrian National Environmental Plan, went so far as to copy central elements of the EAP (Pleschberger 1999:222). Thus, the Dutch model "diffused" from the national to the international level and back – a process to which Padgett (2003:227-228) refers as "uploading" and subsequent "downloading".

Following the UNCED a wide range of domestic or transnational, governmental or non-governmental actors started using the prescriptions of Agenda 21 as a point of reference for their demands. In 1993 the OECD included an environmental strategy among the criteria in its Environmental Performance Reviews. In 1992 an International Network of Green Planners was created, which provided a forum for policymakers to share information, learn from experiences and promote the spread of environmental strategies. At the domestic level, opposition parties as well as non-governmental environment organizations regularly cited Agenda 21 to exert pressure on governments to adopt an environment strategy. Overall, implementing the international norm of sustainable development through sustainability strategies had become a major manifestation of appropriate government behavior (Jürgens 2004).

Diffusion processes also occurred in central and eastern Europe (CEE) and in the so-called Newly Independent States (NIS). Again, the EU's Fifth EAP was an important reference point for domestic initiatives. Another driver was the 1993 Environmental Action Programme for CEE. Implementation of this program, whose main objective was the establishment of environmental strategies in CEE, was to be overseen by a newly created task force which "brought together national environmental officials from all CEE countries and the NIS". Its main function "was to support a mutual effort in 'learning by doing' – exchanging experience, identifying 'best practices', and stimulating co-operation and support among network members" (OECD 1998:20).

However, the dominant mechanism in CEE was the imposition of environmental strategies by means of financial conditionality. The main actor was the World Bank. Its Operational Directive 4.02 from 1992 formally required the preparation of a National Environmental Action Plan as a condition for receiving World Bank loans and effectively made this instrument mandatory for borrower countries. In CEE the adoptions of Albania (1993), Moldova (1995), Macedonia (1997) and Bosnia-Herzegovina (2003) were triggered by World Bank conditionality. In the more developed CEE countries, other organizations took the place of the World Bank as environmental strategies were "being implemented (...) primarily at the direct instigation of aid donors who have insisted on such planning exercises as a necessary prerequisite to cost-effective environmental investments" (Connolly and Gutner 2002).

Ten years after the introduction of an environmental strategy and its remarkable spread across 113 countries driven mainly by diffusion and imposition, the UN General Assembly passed a resolution calling all UN members to complete a sustainable development strategy by 2002 (United Nations 1997). While UN declarations and resolutions do not constitute binding international law, by setting a fixed deadline and establishing supervisory mechanisms the resolution contained two important elements which characterize international "hard law" and which augmented significantly the pressure on governments to comply with the resolution. It can be argued, therefore, that since 1997 "soft-law" harmonization has increasingly become a dominant mechanism influencing the global spread of environmental strategies.

As a result, from 1997 to 2003 a total of 14 out of 30 OECD member governments formally adopted a National Strategy for Sustainable Development. Even more interesting is that in 2002 alone a total of ten countries either formally adopted their strategy or presented a complete draft. Only four OECD members – Mexico, New Zealand, Turkey and the USA – have not yet adopted a National

Sustainable Development Strategy or announced its publication for the near future (Jørgens 2004).  
(3)

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While the international dynamics of decentralized and largely norm-driven diffusion, external imposition and legal harmonization explain *what* pushed countries into adopting environmental strategies, their specific features explain the impressive *speed* at which they spread. Environmental strategies do not require radical changes and can be easily added to the existing regulatory structure. Only a few countries have introduced thoroughly new and ambitious environmental policy goals or far-reaching institutional changes. The majority of plans have been implemented without drastic consequences (Jänicke and Jørgens 1998). This lack of immediate and serious consequences explains why so many countries have actually been able to adopt an environmental strategy.

## **B. The Spread of Eco-labels: Vertical Diffusion in Multi-level Systems** ↑

Eco-labeling is defined as “the practice of labeling products based on a wide range of environmental considerations” in order to make relevant environmental information available to consumers (EPA 1998:5). Eco-labels enable consumers to orient their purchasing decisions to environmental characteristics of the product, which in turn may prompt producers to devote more attention to environmental attributes in the product design. The following empirical analysis considers only those eco-labels that rely on third-party verification, use a mandatory set of criteria and apply to a broad range of products and product groups.

The first eco-label was introduced in 1978 in Germany. The spread significantly accelerated in 1989 when four Scandinavian countries adopted a multinational eco-label, the “Nordic Swan”, and Japan and the United States introduced eco-labels (Figure 3). In 1992 the adoption of an EU-wide eco-label, the so called European Flower, triggered an unprecedented surge in the spread of eco-labels as 10 EU member countries put in place this instrument. Since the EU eco-label does not oblige member countries to abolish their eco-labels, in many countries the European Flower and domestic eco-labels exist side by side.

### Figure 3

Apparently, adoptions of eco-labels were largely driven by international harmonization. Nevertheless, diffusion was another important mechanism. It influenced the spread of eco-labels mainly in countries outside the EU that were not affected by supranational harmonization. In a majority of these cases, knowledge about schemes implemented elsewhere affected domestic policy choices. In particular in CEE, the German Blue Angel served as model. It was promoted by the German Federal Environment Agency through a series of workshops in the region and, in some cases, through direct assistance in developing eco-labels (Landmann 1998:101). Moreover, the strong similarities between the eco-labels in New Zealand and Australia indicate that an exchange of ideas between these two countries had taken place (Landmann 1998:100).

In addition to these cases of horizontal diffusion between individual countries, a process largely similar to the uploading and subsequent downloading of environmental strategies could be identified. In a process of vertical diffusion the European eco-label was strongly inspired and its design significantly influenced by existing schemes in Germany, France, Austria and the Scandinavian countries (Landmann 1998:113). With the introduction of the European Flower the dominant mechanism of policy change then switched from bottom-up diffusion to top-down harmonization. The adoption of the “Nordic Swan” followed a largely similar pattern. Altogether 12 adoptions resulted from this type of diffusion-based multi-level governance.

### C. The Spread of Energy Taxes: Diffusion in Spite of Unfavorable Instrument Characteristics <sup>↑</sup>

Energy taxes are market-based environmental policy instruments that tax energy consumption or production. Their overarching goal is to reduce CO<sub>2</sub> emissions from the use of fossil fuel in energy production and thereby mitigate climate change. By increasing energy prices they set market incentives for energy conservation or, if the tax base is calculated on the carbon content of energy sources, for the use of renewable energy sources.

The international spread of energy taxes is interesting for at least two reasons. On the one hand, several adoptions were at least partially driven by political competition (Tews 2002b). At least three adoptions – Sweden (1991), Denmark and the Netherlands (1992) – were more or less directly influenced by the European Commission's intention to introduce an EU-wide energy tax. Sweden and Denmark tried to actively shape the design and the adoption of the prospective European energy tax by introducing an operational example at the domestic level which could be soon followed by others.<sup>(4)</sup> They thus pursued what Liefferink and Andersen (1998) call pusher-by-example strategy. In contrast, the Netherlands utilized the Commission's proposal as a template when it transformed its fuel charge into a more comprehensive energy tax (Schlegelmilch 1999:19) and thereby ensured its compatibility with a possible EU-wide regulation.

#### Figure 4

On the other hand, the international spread of energy taxes is interesting because it illustrates the impact of the characteristics of a regulatory approach and concerns about economic competitiveness on diffusion processes. As Figure 4 shows, energy taxes spread relatively slowly, although international policy processes have created rather favorable conditions for their diffusion. The UN Framework Convention on Climate Change, in particular, stimulated the formulation of national CO<sub>2</sub>-reduction targets (Binder and Tews 2004), which subsequently led to the search for regulatory instruments capable of achieving these goals. Energy taxes figured prominently among the policy options discussed in industrialized countries (Tews 2002) and were actively promoted by international organizations such as the OECD (2001) and the EEA (2000). Nevertheless, from 1992 until 2000 only five countries decided to adopt an energy tax. Given the importance of the international climate policy debate, this number is rather low. Moreover, in spite of demands being raised already in the 1970s (Baumol and Oates 1989), it took almost two decades for ecologically motivated energy taxes which went beyond charges on mineral oil to be adopted, and it was not until the international climate protection debate that green taxes became a valid option for policymakers.

This time lag between demand and action, as well as the slow spread of energy taxes, is largely attributable to this instrument's characteristics and related concerns about economic competitiveness. Due to their redistributive character and the fact that winners and losers can easily be identified, energy taxes are regularly opposed by powerful and well-organized domestic interest groups (Jänicke and Weidner 1997). This is particularly true in the energy and transport sectors, which energy taxes target. Moreover, taxes "...imposed on products or key factors of production, where the goods are traded widely in the international market" (OECD 2001:72) are exposed to the economic dimension of regulatory competition. The perceived negative impact of energy taxes on domestic industries' international competitiveness renders governments receptive to industry's concerns.

Against this background, it is even more astonishing that some governments succeeded in adopting energy taxes. Therefore, the international spread of energy taxes shows that, although concerns about competitiveness may restrict domestic environmental policymaking and stifle the international diffusion dynamic, it does not in every case prevent unilateral adoption of those policies. Such adoption 'against the trend' can mainly be explained by domestic constellations of interests. An in-depth analysis revealed that the activation of political support, the political will of decision-makers and consensus among governing elites are crucial for a successful adoption of energy taxes (Tews 2002).

In sum, the international spread of energy taxes was driven by unilateral action in pioneer countries that acted in spite of potential competitive disadvantages, or else countries emulated tax schemes which were already in place in pioneer countries and which were promoted by international organizations like the OECD and the EU. Neither international harmonization nor bilateral imposition played a role in this process. The fact that the majority of adopters are EU member countries shows that the European debate on adopting a common energy tax – which had lasted for many years<sup>(5)</sup> – had the strongest impact on diffusion dynamics. The specific characteristics of energy taxes, however, kept this instrument from spreading across a wider range of countries.

#### **D. Free Access to (Environmental) Information: The Diffusion of a Normative Notion of "Good Governance" ↑**

Legal provisions on free access to information (FAI) regulate citizens' access to information held by public authorities. They increase the transparency and accountability of administrative action by ensuring the availability, comparability and public accessibility of relevant information. Two types of FAI provisions can be distinguished: general provisions regulating the access to information on all areas of public policy, and issue-specific provisions exclusively regulating access to environmental information. Overall, FAI provisions are an important element of what has recently become known as "good governance".

From 1945 to 2000 about 80 percent of all industrialized and transition countries adopted FAI provisions (Figure 5). This spread can be divided into two phases. The first phase is characterized by a relatively slow spread of general FAI provisions. The adoptions in Scandinavian countries (Sweden 1949, Finland 1951, Norway and Denmark in 1970) can at least partially be attributed to regional policy diffusion between geographically linked countries. In particular the adoptions in Sweden and Finland can be traced back to a deep historic and cultural connection between both countries. Such interrelations of countries within the same region are often perceived as structural determinants for diffusion (Lutz 1987). Finally, with the U.S. Freedom of Information Act of 1966 a first model for emulation, recognized by environmental organizations worldwide as well as many policymakers, was established during this first phase.

#### Figure 5

The second phase began in 1991 with a significant and sudden acceleration in the international spread of FAI provisions, which lasted until 2000. Most provisions in this phase addressed exclusively environmental information. On the one hand, this remarkable spread was the result of supranational harmonization as EU member states transposed EC Directive 90/313/EEC on free access to environmental information into national law. On the other hand, the directive itself was influenced by processes of vertical diffusion. In the course of policy formulation, European environmental NGOs, the European Parliament and the European Commission drew upon regulations in the Scandinavian countries, the Netherlands, France and the USA.

Thus, similar to eco-labels and environmental strategies, the concept of FAI provisions diffused from the national to the supranational level, where it was then transformed into binding supranational law and subsequently implemented by the remaining EU member states. During this process the instrument of a general FAI provision regulating all areas of public policy was downsized to a regulation dealing exclusively with environmental information.

A closer look at the data shows, however, that only eight(6) out of 29 adoptions were actually driven by this supranational harmonization. Additional developments at the national, international and global levels contributed to the remarkable spread of this instrument.

In 1992, the Rio Declaration explicitly called on governments to grant citizens free access to information. Six years later the UN Economic Commission for Europe (UNECE) adopted the Aarhus Convention on Access to Information, Public Participation and Justice. By the end of the twentieth century, the issue of free access to environmental information had developed into a widely recognized international norm of good governance and had captured the political agenda of almost all international organizations.

An additional factor contributing to the spread of FAI provisions was the collapse of the Communist regimes in eastern Europe in 1989/90. As a response, the new governments started to realign predominantly with the Western model of democracy and adapted to the norm of transparency and accountability of public actions. This was also a response to requests by societal actors. In several countries, environmental groups even constituted a leading part of the regime opposition. In 1992, four out of six adoptions took place in CEE. It is interesting to note that FAI provisions were adopted even by countries with little capacity to provide such information and with weak NGOs (such as Macedonia in 1996 and Albania in 1998). Thus FAI adoptions were motivated not only by their expected impact but also by their symbolic value or normative status derived from their relative importance on the global environmental agenda. FAI was increasingly seen as an essential prerequisite of an environmentally responsible international society of which the various adopters intended to be legitimate members.

Finally, some of the CEE countries were motivated to adopt FAI provisions by the prospect of EU membership. The adoption of the whole *acquis communautaire* – including the EU directive on free access to environmental information – was a necessary prerequisite for accession to the EU (Tews 2002c).

To summarize, the spread of FAI provisions began to accelerate when the issue entered the agendas of supranational bodies and international organizations. It was driven by both harmonization and diffusion. Many of the diffusion-driven adoptions can be attributed to the normative idea of transparency and accountability in public (environmental) policymaking.

## IV. Conclusion

Diffusion has become an alternative or supplementary mode of global governance across a broad range of cases. It has been influential in the international spread of all four regulatory instruments studied here; and its effects, together with other mechanisms of change, add up to a new regulatory order. Diffusion processes may well be the first step in the emergence of international environmental regimes.

While horizontal diffusion – the accumulation of individual cases of imitation or learning regarding one and the same policy item – may eventually lead to a de facto regime where a majority of countries implement similar policies without any formal multilateral agreement, vertical diffusion – the direct transfer of ideas or programs from the national to the supranational level – inspires or leads directly to the adoption of international environmental laws. Both types of diffusion have been present in our case studies. In the case of environmental strategies, horizontal diffusion, accompanied by information and recommendations from international organizations, has eventually created a critical mass of adopters that made it difficult for any single government to openly refuse to adopt this instrument. In the case of eco-labels and FAI provisions, basic regulatory ideas have diffused from the national to the EU level and led to the adoption of EU-wide regulations which subsequently had to be transposed by all member countries.

Across all cases, promotion at the international level has proven to be a decisive driver of policy diffusion. Often international actors crucially accelerated diffusion processes. However, as the example of energy taxes reveals, the specific instrument's characteristics determine the extent to which international promotion actually leads to domestic policy change. The spread of energy taxes was relatively slow and did not reach a critical mass. At the same time, vertical diffusion failed for a long time to trigger an EU-wide harmonization of energy taxes. The case illustrates that policies with a high potential for conflict are less likely to diffuse rapidly. In contrast, policies that do not necessarily induce any fundamental policy change, like environmental strategies or eco-labels, spread significantly faster.

Finally, the empirical analysis reveals that normative considerations played an important role in the decisions of policymakers to adopt regulatory instruments that had been implemented elsewhere or had been communicated within the international system. In a number of countries the adoptions, in particular of environmental strategies and FAI provisions, were not exclusively driven by rational motivations to improve the effectiveness of environmental policies. Rather, many adoptions could be interpreted as a response to an international norm which, promoted by international policy processes, increasingly became recognized and internalized by policymakers.

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## Endnotes <sup>↑</sup>

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(2) Finnemore and Sikkink (1998) speak of a 'critical mass' of countries; see also Kern (2001:10-11).

(3) The reason that not all adoptions are reflected in the proliferation curve in [Figure 2](#) is that many of these countries had already adopted an environmental strategy at an earlier point in time (e.g. Denmark, France, Austria, Portugal and the Netherlands) and only this first national adoption of a national environmental strategy is shown in the graph.

(4) Although Sweden was not an EU member at that time, it would have been affected by an EU-wide energy tax and thus had an interest in influencing EU policy developments.

(5) In 2003 a European minimum energy tax was adopted (Directive 2003/96/EC). However, its

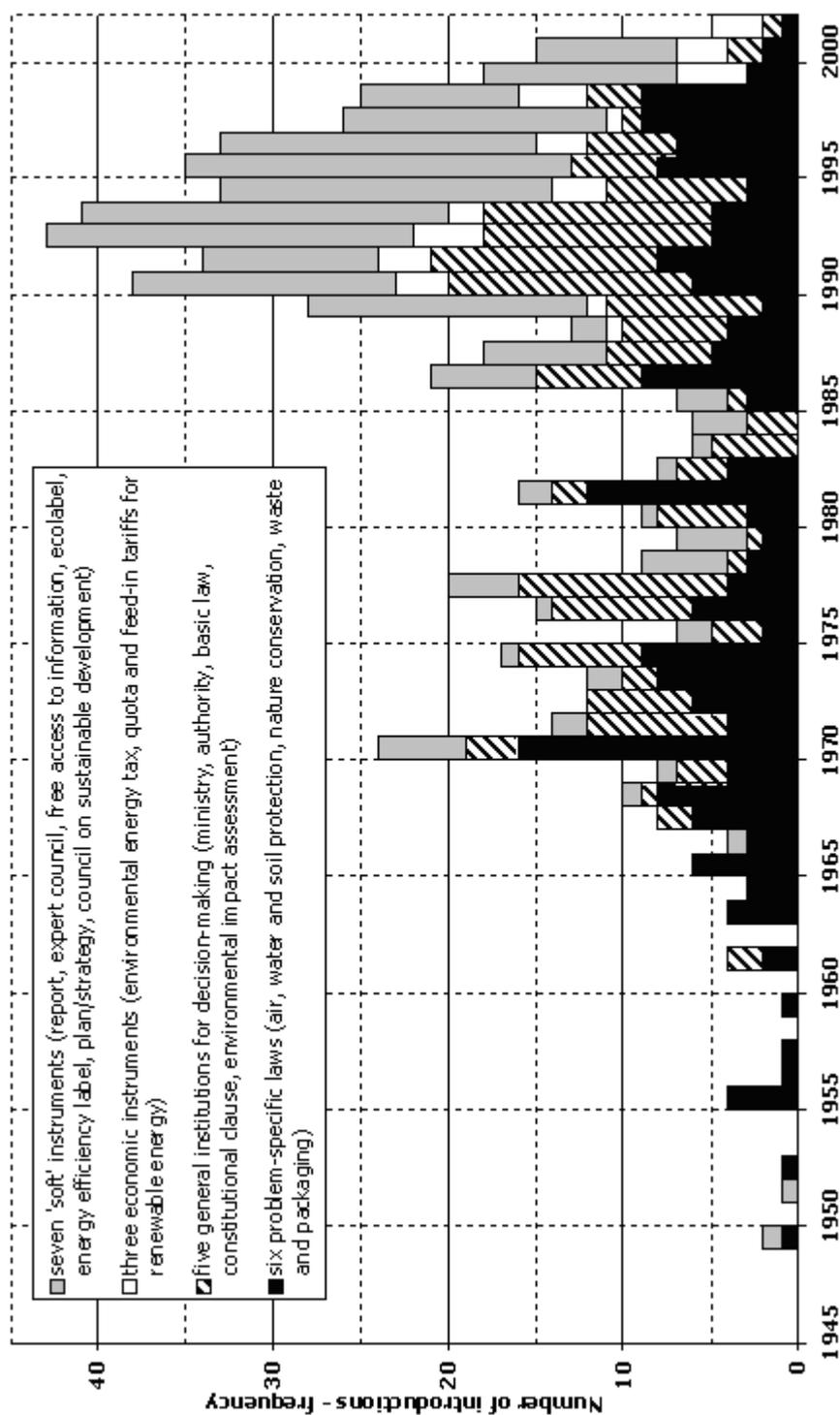
level remained far below the initial ambitions of the European Commission and existing tax rates in the more progressive EU member states.

(6) 1992: United Kingdom, Luxembourg; 1993: Ireland, Portugal; 1994: Belgium, Germany; 1995: Spain; 1997: Italy.

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**Figure 1: International Spread of Regulatory Instruments and Institutions 1945-2001**

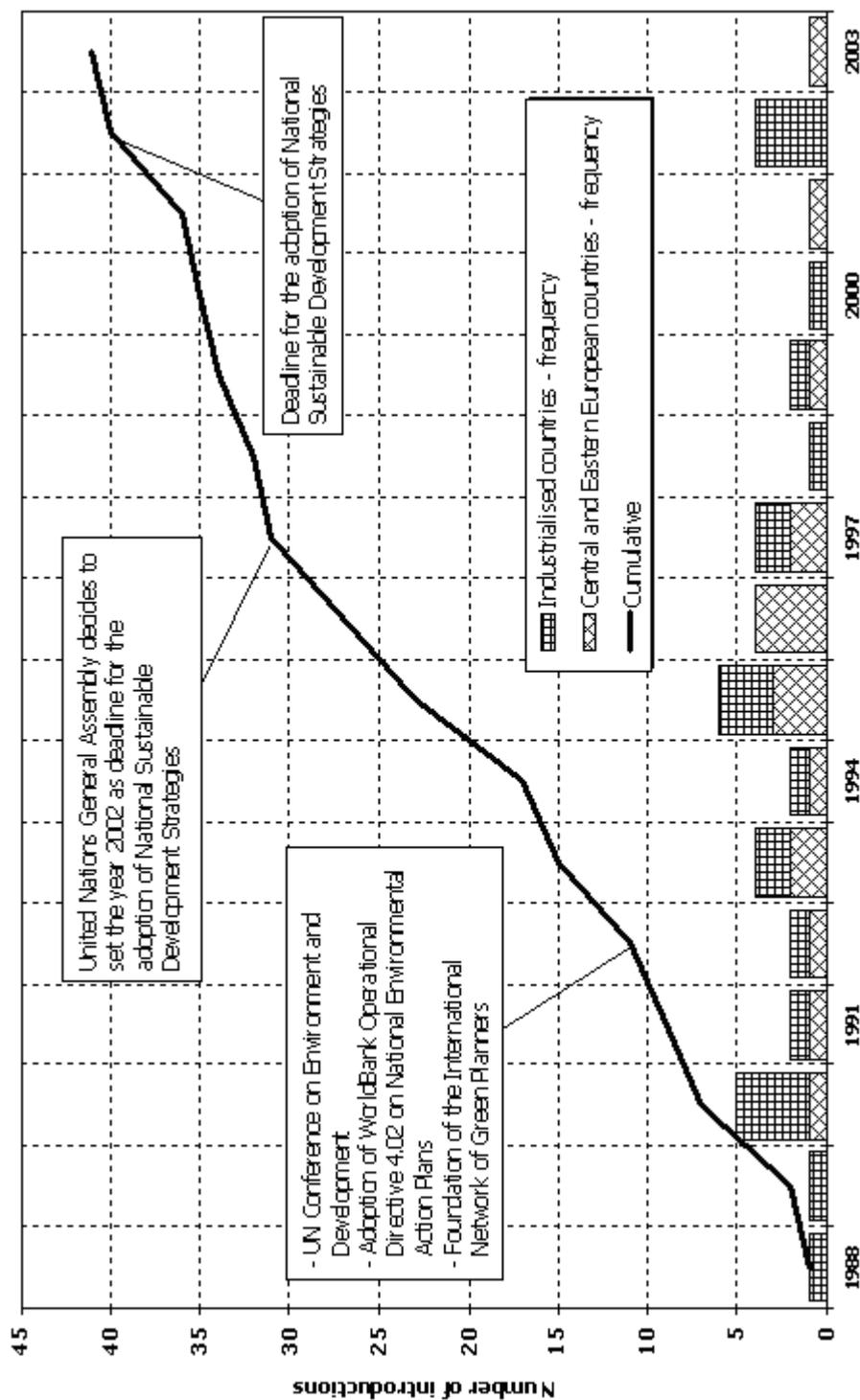


Note: The set of 43 countries in this figure and all subsequent figures comprises industrialized countries and countries in transition, namely, Albania, Australia, Austria, Belarus, Belgium, Bosnia Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Iceland, Italy, Japan, Latvia, Lithuania, Luxemburg, Macedonia, Moldova, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Sweden, Switzerland, South Korea, Spain, Turkey, Ukraine, United Kingdom and United States of America

Source: Binder (2002)

## Figure 2

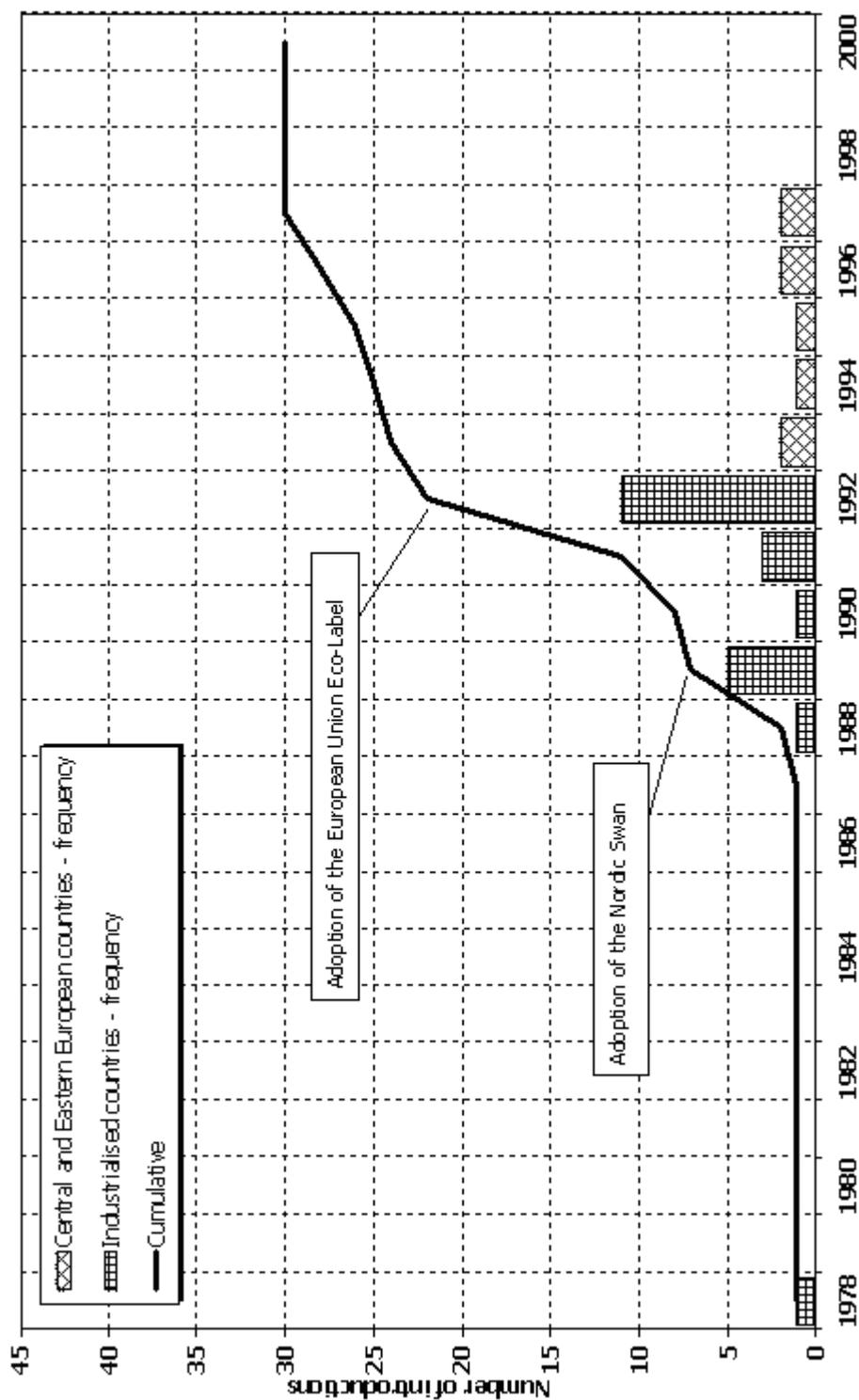
### International Spread of Environmental Strategies



Source: Busch and Jörgens (2004)

# Figure 3

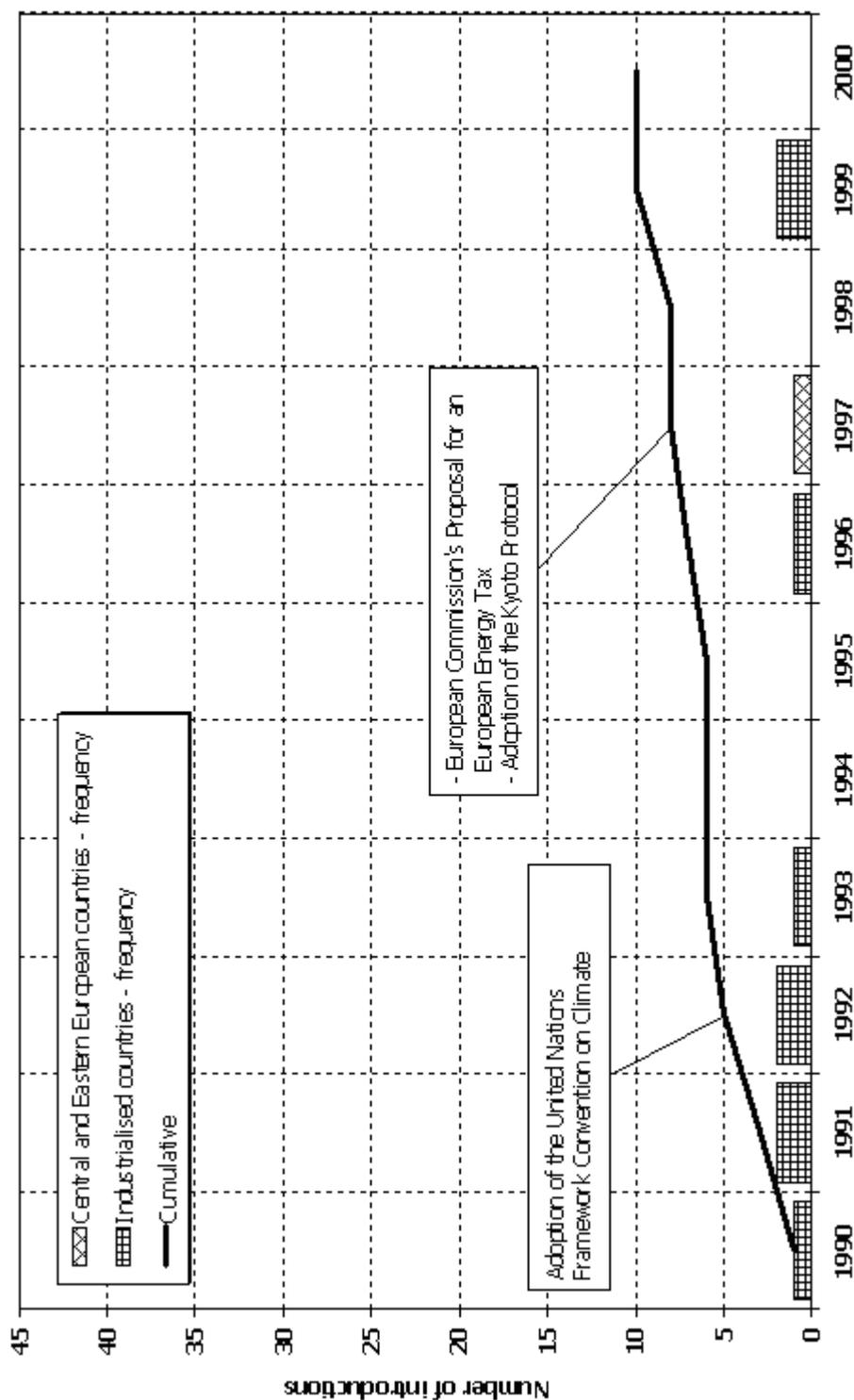
## International Spread of Eco-labels



Source: Busch and Jörgens (2004)

# Figure 4

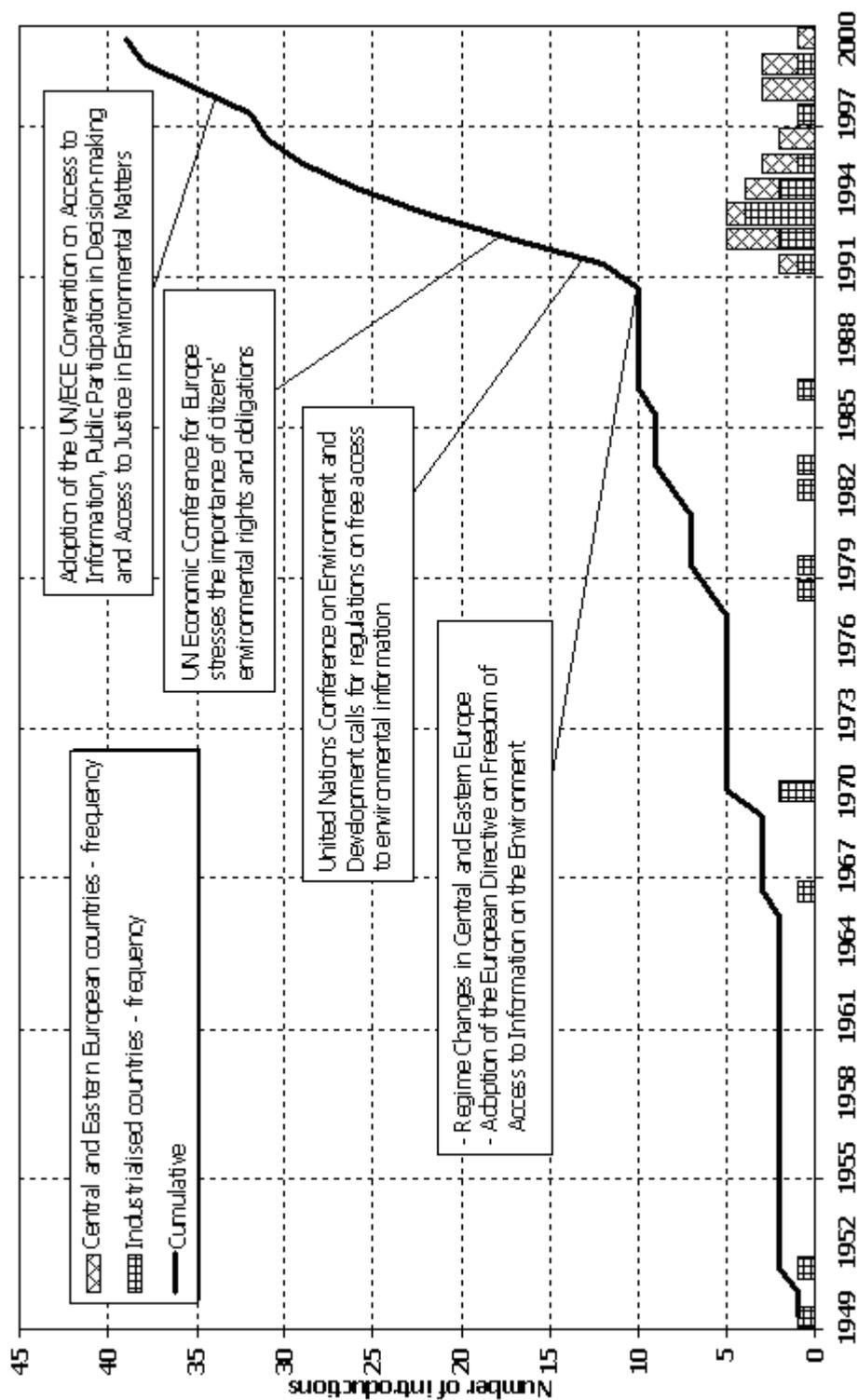
## International Spread of Energy Taxes



Source Busch and Jörgens (2004)

**Figure 5**

**International Spread of Provisions on the Free Access to (Environmental) Information**



Source: Busch and Jörgens (2004)

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