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Public Policy Instrumentation in the EU

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Over the years, and in order to bypass the limits associated to the characteristics of the EU (budget limitations for instance), the Commission has put forward new modes of governance. In part, the EU's legitimacy discourse relies upon systematic innovation around *new modes of governance* promoted by the *newly* enlarged EU for the *new* millennium. Those modes of governance and policy innovations are then operationalised through the selection of policy instruments and if possible, *new* policy instruments of course. One may wonder why the EU is looking so systematically for new policy instruments. Several ideas spring to mind: those new policy instruments might not be so new and are "old wine in new bottles" (Schout and Jordan 2006); in order to attract political attention the commission looks for "new" things all the time to justify its role and dynamics; the EU is a strange polity which is condemned to innovate to achieve anything, sometimes through the back door (Héritier 1999); the search for new policy instruments takes place when other stronger mechanisms of coordination have failed. We focus on policy instruments, because we assume that they offer valuable insights into the functioning of political systems (Lascoumes, Le Galès 2007). The focus on policy instruments also highlights aspects of policy-making at EU-level, as well as the internal dynamics of the EU polity.

The dynamics of growth of the state during the 20th century was accompanied by the development and diversification of public policy instruments and by the accumulation of programs and policies in the different sectors where the state intervenes. This was the case during the rapid growth of the welfare state in the postwar period. The construction of the EU as a distinctive type of polity is therefore logically associated to the rise of a different / specific set of policy instruments in an ever-increasing number of sectors, such as policies

on risk, the regulation of the market and building infrastructures. Within the EU, the proliferation of actors and coordination instruments in an ever-increasing number of sectors has brought out a new paradigm: "the new governance", or "new negotiated governance", in which public policies are less hierarchized, less organized within a sector demarcated or structured by powerful interest groups at the risk of denying the interplay of social interests and of masking power relations. Over and above deconstructing this issue (as well as the limits of government and failures of reform), research into government and public policies has however highlighted the renewal of public policy instruments either for the development of depoliticized formulas in "the

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new governance” or through fostering powerful mechanisms for the control and direction of behaviors (Hood *et al.* 1999).

Within the EU (and beyond), it is essential to disconnect policy instruments from political goals in order to analyse policy changes. The importance given to the policy instrumentation question is often explained by the fact that actors find it easier to reach agreement on methods than goals – although what are instruments for some groups might be goals for others. The point was well made by Renaud Dehousse (2004) in his analysis of the Open Method of Coordination (OMC) where he suggests that the lack of goal and agreement on objectives did not lead to the lack of action: things had to be done. In a period where both the community and the intergovernmental methods could not re-launch the integration process, the development of OMC seemed a good idea, a policy instrument to start a process when there was no agreement on the policy goals, such as health or pensions policies. In both cases, whereas no political solution could be reached at Treaty level, the OMC offered an opportunity to develop a common framework for action at EU level (e.g., the health strategy, the EU social policy and social inclusion process) and to support national initiatives. Policy instruments offer a means of structuring a space for short-term exchanges, for negotiations and agreements, leaving aside the most problematic issues and contributing to depoliticise them.

In the EU literature, the new instruments of the new modes of governance are far too often presented with a rather functionalist perspective. Public policy instrumentation, understood as “the set of problems posed by the choice and use of instruments (techniques, methods of op-

eration, devices) that allow government policy to be made material and operational” (Lascoumes, Le Galès, 2007), is generally treated either as a kind of evidence, a purely superficial dimension (governing means making regulations, taxing, entering into contracts, communicating, etc.), or as if the questions it raises (the properties of instruments, justifications for choosing them, their applicability, etc.) are secondary issues, merely part of a rationality of methods without any autonomous meaning. This is not the case. Public policy instrumentation is a major issue in public policy, since it reveals a (fairly explicit) theorization of the relationship between the governing and the governed: every instrument constitutes a condensed form of knowledge about social control and ways of exercising it. Public policy instruments are a form of power; they are not neutral devices. As a particular type of institution, they produce specific effects, independently of the objective pursued (the aims ascribed to them), which structure public policy according to their own logic. Policy changes can partly be explained by their instruments as disconnected from their goals: public policy is a sedimentation of instruments.

Policy instruments can be differentiated according to the political relations that are implicit. Working from C. Hood’s classic work, Lascoumes and Le Galès (2007) have suggested the following typology of policy instruments.

In that sense, new policy instruments have no reason to be particularly good, transparent, more democratic or more effective. For government elites, the debate on instruments may be a useful smokescreen to hide less respectable objectives, to depoliticize fundamentally political issues, to create a

Figure 1: Typology of Policy Instruments

Type of instrument	Type of political relations	Type of legitimacy
Legislative and regulatory	Social guardian state	Imposition of a general interest by mandated elected representatives
Economic and fiscal	Wealth producer state, and redistributive state	Seeks benefit to the community; Social and economic efficiency
Agreement-based and incentive-based	Mobilizing state	Seeks direct involvement
Information-based and communication-based	Audience democracy	Explanation of decisions and accountability of actors
De facto and de jure standards; Best practices	Adjustments within civil society; Competitive mechanisms	Mixed: scientific/technical, democratically negotiated and/or competition, pressure of market mechanisms

minimum consensus on reform by relying on the apparent neutrality of instruments presented as modern but whose actual effects are felt permanently. Most policy instruments advocated by the EU have to combine, somewhat uneasily, with existing policy instruments at different level, thus creating issues of sedimentation, contradictions, and opening new avenues for coordination mechanisms.

Instruments partly determine the way in which the actors are going to behave; they create uncertainties about the effects of the balance of power; they will eventually privilege certain actors and interests, and exclude others; they constrain actors, while offering them possibilities; they drive forward a certain representation of problems. The social and political actors therefore have capacities for action that differ widely according to the instruments chosen. As Knudsen (2006) analyses the origins of the Common Agriculture Policy (CAP), she shows how the instruments adopted came from Germany and France. By contrast, deficiency payments, the main British instrument was not even considered. Progressively, the adopted instruments shaped the policy and the collective capacity to change the policy. In many ways, national errors were replicated at EU level, whilst the CAP emerged as a policy made up of the sum of agricultural policies operating in member states.

In the heavily institutionalized world of the CAP, W. Grant (2008) shows the rise and fall of the amount of monetary compensation, target prices, threshold price, guaranteed thresholds, budgetary stabilizers or declining ones such as intervention purchasing, export subsidies or quotas. By contrast the introduction of decoupling, single farm payment, modulation of the financial discipline mechanism are progressively changing the representation of the problem and changing the behaviour of actors. He argues that the systematic defence of certain instruments by farming lobbies in Brussels, instruments that failed and led to unwelcome effect delegitimised those actors in the Commission.

The strange death of the relatively “young” urban policy can also be analysed through the lenses of its instruments. When the URBAN programme started, it was in part opposed by groups within the DG Regio (then DG XVI). In order to avoid too much autonomy, the emerg-

Further reading

This policy brief is based on research carried out within the NEWGOV project no. 9 on “Choice and Combination of Policy Instruments”. The project explores when new policy instruments, based on non-hierarchical steering modes, result in policy change. The project analyses the use of new policy instruments in different policy sectors, including regional and environmental policy, and state reforms and demonstrate under which conditions the choice of policy instruments contributes to structure policy outcomes and the implementation process in the countries (CEE and SE) under consideration. It will underline the contradictory impact of different policy instruments and the rise of NMG as a response to the coordination problems raised by the use of new policy instruments. It will critically examine the import of EU policy instruments and their combination in different regional and national contexts. Further information can be found on the NEWGOV Website in the [special section](#) of project 9.

ing urban policy was bound to use existing instruments within the regional policy (partnership, zoning, etc.). There was no or little autonomy in terms of policy instruments. A decade later, “integrating” the urban policy within the regional policy in the name of rationalization proved relatively easy precisely because of this lack of autonomy in terms of policy instruments. However, when shifting from the EU to the member state level, the analysis of the outcomes resulting from the implementation of the URBAN programme allows the identification of common trends in the emergence or restructuring of national and / or regional urban policies. The diffusion of EU urban policy instruments (zoning, partnership, etc.) through hybridization mechanisms shows some elements of convergence in the way urban issues are framed and tackled.

In the environmental world, instrument innovation has been stunning. Policy instrumentation firstly led to a series of uniform standards – aimed at harmonizing national regulations. The link between the single market and the environment constituted a powerful vector towards the emergence of formalized environmental competence of the EU (Weale et al., 2000). It

nevertheless resulted in a strong interconnection between this policy domain and others, such as trade or regional policies, and in remaining “pockets of intergovernmentalism”, which still blocks the development at the EU level of fiscal instruments, such as an eco-tax. Secondly, the Commission promoted more procedural instruments and a less interventionist approach, in order to promote a higher degree of environmental protection through the use of competitive mechanisms. It also adopted a wide range of “soft” instruments, such as voluntary agreements, codes of conduct, self-regulations or consultation devices, etc., both in sectors where EU competence was not yet established, or in sectors where this competence was contested. In some cases, these soft instruments paved the way towards the broadening of the EU’s environmental competence, and were progressively combined with more constraining instruments, such as zoning, mapping, labelling, or techniques such as the systematic use of the ‘best available technology’. More recently, developments in international environmental politics led the Commission to address the issue of climate change at EU level, thus offering an opportunity to develop a framework of action in the energy policy domain. Although the EU emission trading scheme can be considered as the largest and the most developed in the world, this highly innovative instrument nevertheless relies on more traditional mechanisms (e.g. grandfathering instead of auctioning, setting of targets, etc.), which offered major opportunities to member states and / or industries to influence the decision-making and implementation processes. The analysis of current negotiations with the aviation industry, aimed at including this industry’s emissions in the second phase of the project, exemplifies the process through which compromises are progressively reached and locked-in indicators and target-setting mechanisms.

Conclusion

The focus on policy instruments offers valuable insights into the functioning of political systems and highlights the internal dynamics of the construction of a distinct polity at the EU level. It firstly contributes to current debates on the distinction between “old” and “new” instruments. Empirical evidence from the agricultural, the environmental or the urban policy domains show that the policy instruments chosen at EU

level are rarely new. In many ways, forms of instrumentation at EU level either reorganize pre-existing elements, as shown by recent trends in environmental policy, or borrow from other political and institutional contexts (e.g. member states, international politics, etc.) or policy sectors. Secondly, the supposedly “new” instruments of the “new” governance are at times chosen to depoliticise some issues (e.g. health and pension reform) or to shed light on transparency and efficiency issues in the public debate, whereas the strategic use of discreet / non-visible instruments contributes to (re)creating new oligarchies.

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