

Diverging Approaches to EU Environmental Policy: An Explanation of the Implementation Deficit

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Abstract

In the European Union, the implementation deficit arises when Union legislation is implemented at varying degrees or not at all. This problem is a common occurrence in the field of EU environmental policy. Although results of the directive are binding, some Member States do not comply with their obligation. In this article, the cases of the national implementation of the Restriction of Hazardous Substances Directive (RoHS) in the Member States Germany and United Kingdom are examined. It sets out to describe the influence of national regulatory styles and structures in the two countries on EU law implementation. Through the lens of historical institutionalism, this paper asks the question: “why are some member states able to implement EU directives more easily than others?”. The article argues that since it is more similar to the EU regulatory styles and structures, the German government can implement environmental policy more easily than the UK government. Consequently, an implementation gap occurs, not through the Member States’ unwillingness to comply, but due to limited capabilities to implement.

I. INTRODUCTION

Throughout the European Union (EU), there exists the problem of an implementation gap or deficit. National implementing measures are texts which are “officially adopted by the authorities in a Member State to incorporate the provisions in a directive into national law” (European Commission, 2011). Article 288 of the Treaty on the Functioning of the European Union states that a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. The implementation deficit is the issue of policies being implemented at varying degrees, late, or, in some cases, not at all. This occurs in spite of the fact that directives are binding and that there are certain procedures in place to bring Member States

(MS) to justice if they do not comply with their obligations to implement.

This paper aims to explain why some countries are able to implement directives in time and some are not. To illustrate this point, environmental policy of the EU, a field in which implementation gaps are predominant, and one particular directive is focussed on. In February 2003, the EU adopted 2002/95/EC: the restriction of certain hazardous substances in electrical and electronic equipment, or, the Restriction of Hazardous Substances Directive (RoHS). The objectives are legal harmonisation and protection of human health, both consumer and manufacturer, and the environment by applying restrictions to components of electrical goods in a world of ‘throw away’ technology. The implementation of the RoHS directive will be looked at in MS Germany and the UK. Environmental policy making and governance

from the 1980's, up to the initial creation of the RoHS directive in 2003 in Germany, the UK and EU provides the basic structure of the paper. Through doing this, the paper seeks to answer the research question: why are some MS able to implement EU directives more easily than others? The claim being that some countries have a similar governmental and policy structure to that of the EU and thus are able to implement directives more easily than those MS which have less similar policy structures. A historical approach is crucial in explaining a number of questions: how did the different policy and government approaches come to exist today in Germany, the UK and the EU? Why are they different in Germany and the UK? Is this a factor of the implementation deficit? Arguably, some countries are simply better prepared than others structurally to implement a directive quickly: hence, the problem of the existence of an implementation gap or deficit.

Mbaye (2001) found that structural reasons, such as poverty or inefficient bureaucracies, can mean that problems arise during implementation. Using the multi-level governance theory, she also points out that the more actors with different interests involved, the more problems arise (Mbaye, 2001, p.264). Mastebroek (2003) examines the complexity of directives. Multiple new measures which need to be introduced complicate transposition (p.377). She emphasizes the 'goodness of fit' theory, or, the "degree of compatibility between EU and national policies and institutions" (p.378). This is related to Knill and Lenschow's (2003, 2011) argument that if states have to dramatically change structures to gain the capacity to implement, their implementation performance will be worse than those MS which are a better 'fit' to the requirements of an EU directive. Using a historical reasoning, the inference is that MS have pre-determined capabilities due to historical context and actions – accordingly they cannot implement at the same time as each other, particularly if the EU policy approach is more 'tuned' to some states than others.

First, the methodology and theory will be explained. Part 2 is an explanation of the two

countries' styles of governance and policy making, describing and comparing the regulatory styles and structures of Germany and the UK. Then the paper will examine the progression of environmental policy and the implementation of the RoHS directive in Germany, the same will be looked at in the following section but with a focus on the UK's history and approach. Afterwards, the two countries and how they are related to the style and structure of EU environmental policy are discussed. This is in order to illustrate the differences in Germany and the UK's structures and subsequent abilities to implement environmental directives. The final section will give the overall concluding remarks and findings of the study.

I. Methodology

After the RoHS directive was created, Germany was able to implement faster than the UK. These two countries are large and influential MS. Particularly in regards to environmental policy, a non-implemented directive in a large MS is more disastrous and dangerous; environmental policy is not successful unless all states comply. Accordingly, the conclusions of this paper are meaningful and significant for the entire EU. In the respective sections, the history of the development and shaping of policy trends and approaches in Germany, the UK and the EU are analysed. Afterwards, how the RoHS directive was implemented indicates why it was implemented at various speeds; this is a reflection of their past policies and degree of harmonisation with the EU. The country analyses serve as evidence of the differing structures explained in part 2. This paper mostly refers to the practical implementation of the RoHS directive as opposed to only examining the legal implementation in order to assess the full transposition.

The primary and secondary sources which are used throughout the study have been retrieved through Internet and archival research. Secondary literature, both German and British, builds the paper's argument, making the conclusions more meaningful due to the existing

academic literature on and evidence of the EU's implementation deficit. EU Commission White papers, directives and reports, particularly reports on the progress of the directive and those from the DG Environment, have been studied to better understand how the directive was formed and how environmental policy develops; this indicates the type of approach the EU has to this policy field. Historical studies, newspapers, statistics and other indicators to how environmental policy has evolved in Germany, the UK and the EU are vital to this study.

The paper's research question requires an historical-institutional approach as patterns of 'behaviour' of the British and German governments, and of course the EU's, will prove if established norms and practices determine how a MS performs when implementing an EU directive. Historical institutionalism (HI), as one of the forms of new institutionalism, is based on a certain definition of institutions. Different from the organizations commonly known under the term, such as the EU institutions, Hall (1996) defines institutions as "formal or informal procedures, routines and norms and conventions embedded in the organizational structure of the polity or political economy" (p. 938). Examples of such institutions could be a nation's constitution, a set of laws or a policy approach. Historical institutionalists base their research on a few particular assumptions. Firstly, there is an ongoing conflict in politics for scarce resources. States themselves are not single, neutral entities but consist of several institutions able to influence this struggle (Hall, 1996, p. 937 f.). Secondly, institutions in general favour some parties over others (Hall, 1996, p.941 and Immergut, 1998, p. 8). Thirdly, institutions create 'paths' which public policy can follow; they create the context in which political decisions are taken (Immergut, 1998, p. 22). This concept described as 'path dependence' is built upon the idea that past institutions influence future developments; restated: "what happened at an earlier point of time will affect the possible outcomes of a sequence of events occurring at a later point in time" (Sewell, 1996,

p. 262-3).

On the one hand, past developments (previously taken paths) can entail that the government will continue in the same way. As argued by Pierson (2000), governments are highly likely to follow the already taken path due to the logics of increasing returns. Since the costs of changing the path to an alternative are very high (political as well as economic costs), actors are highly likely to stay on the path they are following. Therefore, the longer the actor stays on the path, the less likely he is to change (p.252). However, on the other hand, previous policies can have the exact opposite effect. Seeing the non-effectiveness of the past approach, governmental actors might change their behaviour and leave or change the path. Thus, the fourth assumption is that critical junctures exist: changes of behaviour, sometimes also initiated by historical events or changes in institutions, divide the path that had previously been followed. They create new paths which can then be followed by the government. Furthermore, harmonisation through common EU legislation changes the institutional context in which the national governments act. Through aligning the legislation in environmental policies, national actors have fewer possibilities to follow their past approach independently. HI is therefore useful in analysing the causes of the implementation deficit in order to see if capabilities and structures which have evolved and exist in Germany, the UK and the EU mean that some MS are more able to implement directives in time or faster than other MS. HI is applied to the events leading up to and of the RoHS directive to test if the concept of path dependence holds true for the development of the respective environmental policies and subsequent ability to implement.

II. GERMANY AND THE UK'S POLICY APPROACHES AND GOVERNANCE

In order to understand why Germany and the UK implemented the RoHS directive at different times and also adding to the discussion of a MS implementation gap in general, these coun-

tries' respective regulatory approaches and governance in environmental policy must be examined. The UK has typically created policy using the regulatory approach of cost-benefit analysis (CBA). CBA is rooted in the concept of economic efficiency in the respects of the requirement that any goal must exceed costs for any course of action, and that, where possible, goals should themselves be determined by reference to a maximum excess of benefits over costs (Pearce, 1998). This approach is more economically orientated than Germany's approach. Despite the fact that CBA is widely practiced by many countries, it still remains a controversial tool. In current times, it must be noted that the UK government predominantly uses CBA in environmental policies and much less so in other policy fields. The controversy of this approach in the environmental field lies in the cost orientated policies which emphasise the quality of the environment as opposed to the quantity of pollutants. It is the view that the environment can absorb a certain degree of damage without any harmful side effects arising (Knill & Liefferink, 2007).

Germany's environmental policies also take into account a form of CBA, *Wirtschaftliche Vertretbarkeit* (economic viability), which is the proportionality of cost and gain. However, in contrast to the UK, how the environment should primarily be governed is a technology-orientated consideration. "Regardless of local conditions which might vary (e.g. the state of the environment or the economic situation of an industrial firm) the 'best available technology' (BAT) should be used uniformly in order to reduce the emission of pollutants" (Knill & Liefferink, 2007, p.36). This is very much in line with the environmental policy principles of precautionary and prevention. Both stipulate that action should be taken before damage to the environment arises (ibid). The damages to the world should be avoided in advance; dangers to health and environment should be detected early by comprehensive research. It also means to develop, in all sectors of the economy, technological processes that significantly reduce environmental burdens (O'Riordan &

Cameron, 1994).

Further disparities between the UK and Germany's approach to environmental policy can be found in their regulatory styles and structures. Regulatory style is defined as patterns between administrative and societal actors, the mode of state intervention and level of administrative interest (Knill & Lenschow, (2011). The two types of style are interventionist and mediating regulatory styles: command-and-control and limited flexibility versus self-regulation and discretion (ibid). The definition of command-and-control which will be used hereafter is the direct regulation of an industry or activity by legislation that states what is permitted and what is illegal (McManus, 2009). The 'command' is the standards by a government authority that must be complied with; 'control' signifies negative sanctions that may result from non-compliance (Baldwin, Cave & Lodge, 2011). Regulatory structure is focussing on whether governance is centralised or decentralised and assessing the level of administration coordination and control. The UK government's regulatory style is characterised as a mediator. Typically, flexible environmental policy instruments are favoured which allow greater discretion and take into consideration particular circumstances such as local environmental quality, available technology and the economic situation of the regulated polluter (ibid). Policy shapers in the UK tend to form informal relationships with public actors which can influence bargaining and the negotiations are then relatively separate to the government. On the other hand, the German regulatory style is of the interventionist type. Germany is the European leader in terms of command-and-control environmental regulation and insists on uniform substantive standards (ibid). Negotiations between authorities and industry in Germany take place "under the shadow of the law" (p.597). This means that these types of negotiations take place under the watch of the government and access for third parties is quite limited (Winter, 1996).

In terms of regulatory structure, both could equally be characterised as decentralised and

fragmented. However, the UK is decentralised in the sense of sectors of government, as in the case of the Department of the Environment (DOE) which has devolved implementation competencies to a whole range of different inspectorates and authorities at the central and local level. There is no hierarchical control of local day-to-day activities by central government, implying high variation of local authority performance throughout the country (Steel 1979: 34; Weale 1996). In Germany, however, the decentralisation is rooted in the federal structure. There is a division of competences between the federal (policy formulation) and regional level (implementation and practical application), although these are obviously interlocking under the umbrella of the federal government. The difference in regulatory styles and structures is illustrated more simply in Figure 1. It is important to say that these different approaches in Germany and the UK have resulted in about the same amount of pollution reduction, although the political costs have been significantly lower in the UK than in Germany (Kollman & Prakash, 2001). This paper sets to examine if the UK or Germany's approaches are more similar to that of the EU's and if this is the cause of the implementation gap.

	Germany	Britain
Regulatory style	'Interventionist ideal'	'Mediating ideal'
State intervention	- hierarchical - substantive - low flexibility/discretion	- more self-regulation - procedural - high flexibility/discretion
Administrative interest	- formal - legalistic - more adversarial - closed	- informal - pragmatic - consensual - closed
Regulatory structure	- functional decentralization - sectoral fragmentation - hierarchical co-ordination	- sectoral decentralization - sectoral fragmentation - lacking hierarchical co-ordination of local activities

Figure 1: A comparison of the German and British administration patterns (regulatory style and structure) in environmental policy (Knill & Lenschow, 2011, p.598)

I. Germany and the RoHS

To understand why Germany implemented the RoHS directive faster than the UK, the regulatory style and structure and its history as a 'green' MS shall be examined. To implement this directive into national law, the German government created the 'ElektroG' law, which entered into force in August 2005. This act combined the RoHS and the Waste Electrical and Electronic Equipment (WEEE) directives.

The aim of the WEEE directive was to decrease the rising amount of electronic goods waste through increasing the producer's responsibilities. ElektroG addresses two different groups: the consumer and the producer of electronic equipment. Consumers are informed, by the local authorities, of their obligation to bring electronic waste to the collection point provided by these authorities. Producers face a more complex set of tasks. Firstly, the products must be labelled with a logo which makes it easier for consumers to recognize products which have to be recycled. Furthermore, every producer has to register with the authority responsible before introducing new products onto the market. Under the guidelines provided, producers must ensure that their products are easy to recycle and do not contain any of the hazardous substances stipulated in Article 4 of the ElektroG act. Furthermore, Article 6 of the ElektroG states that all producers must provide a guarantee that they will reimburse all the costs occurred from handling their products when brought back to be recycled. Products must have the producer's permanent logo on them, in case infringement of the ElektroG standards is detected. That way, the infringing company can be found more easily.

Although the RoHS directive was intended to be implemented by the MS by August 2004, Germany implemented the directive one year later. As the RoHS directive is highly complex and detailed, this delay is somewhat understandable. As Knill and Lenschow (1998) state, one reason why some MS have difficulties implementing directives is that their administrative structure does not have the capac-

ity to fulfil the requirements of EU policies quickly enough. If administrative structures are not fully established and then have to be altered dramatically to adhere to the EU directives, it can delay the implementation process. Likewise, the implementation process moves quickly if only comparatively minor organizational changes are required for already existing structures. Germany was able to transpose the directive relatively fast. This is because the governance and administration system already has the necessary structures and capacity for directives such as the RoHS. Due to Germany's formal decentralization (Knill et al., 1998), the ElektroG law was decided upon at the national level but the implementation, or practicalities, was carried out at the regional and local level. Moreover, Article 9 of the ElektroG law stipulates that local waste disposal organizations have to organize how the waste is collected. This made the overall implementation easier as the practical arrangements could be delegated to the local authorities; the existing authorities were given new tasks but no new authorities had to be created. Germany's interventionist approach supports a 'command and control' type of regulatory rules. This is reflected in the ElektroG law as there are strict measures which have to be followed by the companies producing electronic products. They have no discretion in fulfilling the requirements as they are not allowed to bring their products onto the European market if they do not comply with the standards. This creates high pressure on producers which are affected by the RoHS. However, as companies have to abide by the law and there is no mediation or negotiation between the government and each industry, the implementation process is quite fast.

A further derivative of the German approach can be found in the historical development of environmental policies. Typically, Germany is considered a highly industrial and hugely populated country; this entailed serious problems of air and water pollution. Especially in the 1980's and the 1990's, the environment and its policies gained attention. Events like the Waldsterben (deforestation) in the 1980's

created a climate of concern for the protection of environment in Germany. Acid rain, which was suspected to have caused the deforestation, fuelled actions against air pollution. The Party "*Die Grünen*", Germany's green party, also gained support. Even though Germany's reunification in 1990 distracted the policy focus away from the environment to a certain extent, the 1986 nuclear accident in Tschernobyl and the debate on climate change had provided a base for further action in environmental matters (Jänicke, 2009). Moreover, water pollution, in rivers such as the Rhein or Elbe, and increasing air pollution made stricter and faster measures necessary. However, German environmental policy has not been successful in protecting natural diversity (Markham, 2008) which could reduce its 'green' image.

The policy path which Germany has historically taken, and still continues along today, makes an abandoning of this approach unlikely. Historical events and choices which the government at the time made, have determined Germany's modern interventionist approach. Environmental organisations gained influence in the past decades and now hold a strong position in policy creation. It would be difficult for the government to adopt a more mediating style as German policy is focused on uniform, state governed policies throughout the country. This is all more easily obtained by a command-and-control approach. Due to the German administrative system, the government had an automatic capacity and means by which to implement the RoHS directive and incorporate it into existing structures and therefore national law.

II. The UK and the RoHS

In the UK, the RoHS directive was implemented through The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulation 2006 and is closely related to the WEEE Directive. The law was introduced by the Parliament in October 2005, intended to apply to the whole of the UK. It came into force on the 1st July, 2006.

The implementation process of the Regulation was supervised and enforced by an executive agency of the Department of Trade and Industry (DTI), the National Weight and Measurement Laboratory (NWML) (Willson, Williams & Kemp, 2010, p. 338). The British government supported efforts to facilitate the practical implementation for stakeholders and national enforcement bodies. Nevertheless, several transposing problems within the UK remained. In this section of the paper, the UK's general position in regards to the implementation of EU environmental policies is investigated to explain the implementation delay in the UK.

The directive is clear in its targets, namely the harmonization and protection of human health. However, within the industry sector, preventative assumptions and definitions are expressed to a lesser extent (Martin, Mayers and France, 2007, p.213). Therefore, the exact meaning is left to interpretation, the directive does not straightforwardly say how MS must monitor and enforce it to achieve compliance. In the UK, further agencies were announced to supervise the compliance with RoHS which left them great discretion (Willson, Williams & Kemp, 2010, p.337). The group of assessment bodies self-regulates and deals with complaints and issues in cooperation with the NWML to bolster RoHS compliance (*ibid*, p.141). However, through the emphasis on 'self-declaration' in the system, problems arise. Without being asked to provide documentation over compliance to the authorities, producers are not obliged to do so. Only when the relevant technical information documents are demanded, the companies have to provide them within 28 days (Commission Final Report, 2008, p.131). When the documentation is not presented, fines rising up to £5000 can be enforced and even an unlimited fine can be demanded (p.142). Nevertheless, both pressure by British authorities and documentation are lacking for the RoHS implementation (Willson, Williams & Kemp, 2010, p. 326 & 338).

The mediating style used by the British government means that no exact method to monitor producer compliance is used. The decen-

tralized structures entail the risk of exploitation by producers. Typical for British environmental policy, the idea of self-regulation is linked to the CBA. The RoHS brought costs for both the producers and the government which had to set up teams to conduct market surveillance in order to detect non-compliant producers. The task of practical transposition was given to agencies, which means that the administrative burden for the government and the expenditures are kept to a minimum. The problem of a complete and all-encompassing adoption of directives is not a new or isolated case in the history of the UK's environmental policies. The UK government conducts as a mediator; thereby the emphasis is on self-regulation by producers. The UK's means of governance is not to be confused with a badly exercised policy style, it is merely a product of determining factors from the past.

Britain was the first industrialized country in the world. The initial focus of the industrialization was on the benefits to the economy rather than the possible negative environmental effects. This choice of action has filtered down to its performance today, in relation to path dependency theory. Despite the economic focus, a serious problem of pollution emerged in the modernizing Britain. This problem was tackled by a case-by-case approach due to varying degrees of pollution and the fact that it was harder at that time to measure pollution. In the past, environmental actions in the UK have also proven to be "pragmatic rather than radical; tactical rather than strategic; reactive rather than proactive" (Lowe & Flinn, 1984, p.254). Environmental policies were handled by "a whole range of different inspectorates and at the central and local level" (Knill & Lifferink, 2011, p.597). These structures resulted in personal negotiations between local authorities and producers and had a great influence on flexibility (*ibid*, p.598). No centralised supervisory body that ensured homogeneous implementation was created; the department placed in charge for enforcement takes full responsibility. Today, measures undertaken to ensure implementation and compliance are independent from hi-

erarchical structures and the enforcement body acts autonomously (ibid, p.598). Further differences can be found surrounding the precautionary principle ('acting in advance'). It is one of the main principles in environmental policy that carries some controversy in UK environmental policy. As previously stated, the British government has the stance that the environment can take certain levels of pollution before it becomes harmful. It is also dependent on individual circumstances, taking into account "the cost of the preventative technology and the economic situation of the company" (Knill & Liefverink 2007). The UK's path dependency of its history in environmental policy making has determined the decentralised, individual case approach of today. Although in recent times the UK's focus on environmental protection has raised remarkably, the actual improvement and the challenge to untie from a merely cost orientated approach seems to be difficult. The implementation of the RoHS directive demonstrates the UK's path dependency, since past structures still determine recent behaviour.

III. EU policy making trends and approaches in relation to Germany and the UK

To compare the EU environmental policy approach with the German and UK approach, this part of the paper analyses the history of EU environmental policy. The continuous change of the policy approach, regulatory style and structure of EU environmental policy illustrates how CBA and BAT contributed to the formation of the EU's current policy approach. Comparisons can be drawn between the EU and Germany and the UK respectively. European environmental policy has its beginning in the early 1970s, with the first Environmental Action Plan (EAP) in 1973 (Hey, 2005, p. 18). It was mainly concerned with basic environmental issues, like the prevention and reduction of environmental damage, or the rational use of natural resources. Furthermore, the first EAP was concerned with the idea of sustainable development and saw the need for comprehen-

sive actions within other policy fields, which suggests a first sign of a future interventionist approach. During the second EAP (1977-1981), the Union further developed these goals (ibid.).

The first real 'wave of change' came about in the early-1980s when the third EAP (1982-1986) orientated the targets of environmental policies towards the internal market. It proposed a more emission-centred approach, away from the quality-oriented ideas of earlier years (Hey, 2005, p. 19). This shift towards the internal market can be seen as a first step towards the UK's decentralised and quality-oriented approach, which should become stronger in later times. The Single European Act from 1986 can be seen as a major turning point for the Union's environmental policy. First, environmental policy, for the first time, was given a treaty-status and environmental protection received its own chapter in the Treaty (Hey, 2005, p. 20). Second, the Commission tried to extend its influence and urged for uniform substantive standards on Union level, mirroring the German command-and-control approach (ibid., p.21). The fourth EAP (1987-1992) therefore proposed a more integrated and 'sectoral approach', 'analysing the impact of strategic economic sectors on the environment' (Hey, 2005, p. 21). The Union tried to introduce new instruments in the policy field, such as taxes, subsidies or tradable emission permits. This would change the current situation into a hierarchical structure with less flexibility and more power to the institutions. In the beginning of the 1990s, the Commission published a white paper on "Growth, Competitiveness and Employment" in which they proposed a new development model that would benefit both the economy as well as the environment (CEC 1993). Hey therefore talks about a paradigm shift during that time from "trade orientation" to a "sustainability frame" (2005, p. 21). The fifth EAP should have been another step in that direction. It proposed to move the policy approach beyond environmental protection and favoured the German idea of BAT by focusing on sustainable development without harm to environmental and natural resources

(McCormick, 2001, p. 63). However, the Commission's initiative did not find much support among the MS. Therefore they promoted a new agenda in the policy field and urged for more decentralisation, rather concerned about the competitiveness of their industries than setting uniform environmental standards (Hey, 2005, p. 23). In their view, the German approach, favoured by the Commission, did not take into account the problem of multiple speeds between the MS (McCormick, 2001, p. 66). Furthermore, it led to economic inefficiency on the national and local level. Thus, the MS encouraged a more flexible, cost-effective and market oriented solution to environmental problems (ibid.), according to the UK model. They wanted a renationalisation of environmental policies in line with the subsidiarity principle (Hey, 2005, pp. 23-24).

One reason for the UK's approach gaining such marked support during that time is the German shift of focus, away from environmental policies. Due to the re-unification of the German state, the country directed its focus to essential national economic problems. "The discussion on the modernisation of environmental policies there came to a standstill" (Hey, 2005, p. 24) and this gave the UK approach the chance to become stronger, gaining more popularity among the MS. The Commission realised the unwillingness of the MS to follow the paradigmatic change (ibid.). Therefore, the fourth, and last, change can be seen as a compromise between the Commission and the MS or the German interventionist approach and the UK approach of decentralisation and flexibility. "The Commission shifted from its previous top-down approach and instrumental focus of environmental policy integration towards a broader and less committed approach" (Hey, 2005, p. 26). Even though most of the national environmental policies have become mainly EU driven, the process of policy preparation became much more participatory as it now includes environmental NGOs, expert networks, numerous consultation processes and national bureaucrats (ibid.). Furthermore, since the sixth EAP (2002-2012) there is a wider use

of standardization for environmental policies and a more cooperative approach with the industry, such as integrated product policies. The Commission changed its key role from the initiator to rather the manager of environmental policy (ibid., p. 27). A compromise and overlap of the two different approaches emerged: The EU sets out the substantive standards or the general framework of general principles and objectives and identifies themes and principles (ibid.), which is similar to the German model. More decisions and tasks are delegated to the MS as well as their freedom to choose how to achieve necessary goals for reduction (ibid., p. 25), which is similar to the UK model.

IV. Discussion

Having discussed the different policy styles and structures and their historical development in EU environmental policy, Germany and the UK, the paper now turns to combining the findings. UK environmental policy encompasses a voluntary approach for companies, and public actors have strong influence on policy making. German governance encapsulates uniform policies, strong state intervention and controlled access of third parties in policy negotiations. As the EU is a supranational entity, EU policy falls into the category which involves greater state intervention and limited involvement of private actors in order for directives to be uniform throughout the EU. The EU emphasises a more centralised approach in order for directives to be as similar as possible throughout the Union. During the time of the policy process of the RoHS directive (late 1990s – early 2000s) it has moved away from the 'command-and-control' approach of earlier times towards a more integrated and holistic approach (Hey, 2005, p. 18). In that sense, the EU's approach is comparable to the German approach. The bureaucratic structure in particular is very similar to that of Germany; it is divided into different stages and involves several actors. On the one hand, the division between policy formulation on the European level and implementation on the national level is comparable (McCormick,

2001, p. 65). On the other hand, several actors are involved in the formulation process already: different DGs have to coordinate with each other; Commission committees and national bureaucrats as well as industry and environmental NGOs have an interest in the formulation (*ibid.*). Additionally, as shown in the fifth EAP, there has been a trend toward sustainable development, the idea of the BAT and precautionary measures.

Even though the EU has a tendency to lean towards the German approach, there are still some influences from the UK's regulatory structure, which are especially favoured by the MS. They urge for flexible and rather independent policy instruments that allow them greater discretion and more freedoms in regards to national environmental problems (Hey, 2005, p. 25). Therefore, due to the subsidiarity principle, more and more tasks and decisions are delegated to the national level and leave it to the MS as to how to achieve certain goals (*ibid.*). Nevertheless, the German regulatory style of an interventionist is more consistent with the EU's structures whereas the British structure shows greater difficulties to adjust to the EU's policy style. It is because of this that the German government found it easier to implement the RoHS directive than the UK did.

III. CONCLUSION

Although Germany and the UK's differences are not as apparent or broad-ranging as they once were, the contrasting regulatory styles and structures of Germany and the UK were focussed on: the interventionist and the mediator, the BAT versus the CBA. The latter of the two aspects of environmental governance has been reasoned by these countries' histories. This approach was applied to the study to explain why Germany and the UK implemented the RoHS directive at different times and with the broader significance of why implementation gaps exist.

The UK's current governmental approach is rooted in its history as the first industrialised country. CBA in the UK is derived from a time

where Britain was a leader in industrialisation and benefits to the economy were high on the agenda. Conservative groups also influenced early environmental actions; today's actions tend to be more decentralised. Policies are also made more on a case-by-case basis than in Germany where uniform policies are the rule. Historically, Germany industrialised later but also suffered from negative environmental consequences of heavy industry. When faced with the negative, polluting effects of such industry, mass environmental movements occurred on a larger scale than in many other European countries. Subsequently, the public voice was ignited, and it demanded strict environmental policies. This has created a strong political will; politicians in Germany must adhere to demand. Therefore, current German environmental policies are strict and focussed on the latest technology, relatively regardless of the cost, using the BAT to ensure uniform high standards.

Germany's regulatory style is the interventionist which requires uniform policies and rules throughout the country, operating more along the lines of command-and-control. Access for third parties is quite limited in negotiations of environmental policies. Conversely, Britain's policies are exercised by using much more flexible policy instruments, which allow for variations in policy to occur due to individual circumstances. Negotiations are also much more inclusive of private actors than in Germany. Both regulatory structures are decentralised in certain ways, but, Germany has interlocking competences between the federal and regional level whereas the UK uses agencies and certain departments to organise the practicalities of policies. We find that despite an implementation delay in both countries, Germany arguably implemented more successfully. This stems from the EU's environmental policy approach being more similar to the German approach than to the British one. These findings help understand why implementation works better in some MS than in others.

The limitations of the paper can be used for future research on this topic. Only one theory,

two MS and one directive have been examined. Researching the implementation of other directives in the environmental field would build the argument which has been put forth as to why the implementation deficit exists. Looking at different MS and their administrative

structures, and therefore potential capacity to transpose directives into their national systems, would further prove that there is a relation between non-implementation and existing national structures.

REFERENCES

Baldwin, R., Cave, M. & Lodge, M. (2011). *Understanding Regulation: Theory, Strategy and Practice*. 2nd ed. Oxford: Oxford University Press

Bozonnet, Jean-Paul (2004), *De-institutionalising Environmentalism - The Shift from Civil Institutions to Fake State Institutions*, CIDSP-PACTE, France

Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit, *Naturbewusstsein 2009 - Bevölkerungsumfrage zu Natur und biologischer Vielfalt*

CEC (1993), *White paper on Growth, Competitiveness and Employment*, retrieved 09.12.2012: http://europa.eu/documentation/official-docs/whitepapers/pdf/growth_wp_com_93_700_parts_a_b.pdf

European Commission http://ec.europa.eu/eu_law/directives/directives_en.htm

European Commission, DG Enterprise and Industry (2008) *Study on RoHs and Weee Directive No 30-CE-0095296/00-09 Final Report*, retrieved 09.12.2012 from http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=3529

Espejo, D. (2010). *Assessment of the flow and driving forces of used electrical and electronic equipment from Germany to Nigeria*. Retrieved from <http://isp.unu.edu/publications/scycle/files/master-thesis-david-espejo.pdf>

Hall, P. and Taylor, R. C. R. (1996). *Political Science and the Three New Institutionalisms*. *Political Studies*. 44 (5). p. 936-957

Hey, C. (2005) *EU Environmental Policies: A short history of the policy strategies*, in Stefan Scheuer (ed.) *EU Environmental Policy Handbook A Critical Analysis of EU Environmental Legislation*, European Environmental Bureau, chapter 3

Immergut, E. M. (1998). *The Theoretical Score of the New Institutionalism*. *Politics & Society*. 26 (1). p. 5-34

INRA (Europe)- ECO (1995), *Europeans and the Environment in 1995*. Report to the European Commission, DG Environment, Brussels

Jänicke, M. (2009): *Bundeszentrale für politische Bildung (bpb): Geschichte der deutschen Umweltpolitik*, Retrieved from <http://www.bpb.de/gesellschaft/umwelt/dossier-umwelt/61136/geschichte>

Jordan, A. & O'Riordan, T. (1994) *The Precautionary Principle in U.K Environmental Law and Policy* retrieved 09.12.2012 from http://www.cserge.uea.ac.uk/sites/default/files/gec_1994_11.pdf

Knill, C. & Liefferink, D. (2007): *Environmental Politics in the European Union: policymaking,*

implementation and patterns of multi-level governance, Manchester University Press, pp.1-57

Knill, C. & Lenschow, A. (1998) Coping with Europe: the impact of British and German administrations on the implementation of EU environmental policy. *Journal of European Public Policy*, 5(4), 595-614.

Kollman, K & Prakash, A. (2001). *Green by Choice? Cross-National Variations in Firms' Responses to EMS-Based Environmental Regimes in World Politics*, Vol. 53, Iss. 3

Liefferink, D. & Skou Anderson, M. (1998). Strategies of the Green Member States in EU Environmental Policy-Making in *Journal of European Public Policy*, 5 (2), p.254-70.

Mastenbroek, E. (2003) Surviving the Deadline. The Transposition of EU Directives in the Netherlands. *European Union Politics*. 4 (4). p. 371-395

Mbaye, H. A. D. (2001). Why National States Comply with Supranational Law: Explaining Implementation Infringements in the European Union, 1972-1993. *European Union Politics*. 2, p. 259

McCormick, J. (2001) *Environmental Policy in the EU*, Basingstoke: Palgrave Macmillian.

McManus, P. (2009) *Environmental Regulation*. Australia: Elsevier Ltd

McRae, S.(2005), *Hidden Voices-The CBI, corporate lobbying and sustainability* retrieved 09.12.2012 from: http://www.foe.co.uk/resource/reports/hidden_voices.pdf

O'Riordan, T & Cameron, J. (1994). *Interpreting the Precautionary Principle*. London: Earthscan

Pearce, D. (1998) Cost Benefit Analysis and Environmental Policy. *Oxford Review of Economic Policy*. (14) 4. Retrieved 09.12.2012 from http://www.landecon.cam.ac.uk/up211/PGR06/readings/pearce_1998b.pdf

Pierson, P. (2000). Increasing Returns, Path Dependence, and the Study of Politics. *The American Political Science Review*. 94 (2). p. 251-267

Sewell, W. H. (1996). Three Temporalities: Toward an Eventful Sociology. In *The Historic Turn in the Human Sciences*. ed. Terrance J. McDonald. Ann Arbor: University of Michigan Press. p. 245-280

Steel, D.R. (1979) 'Britain', in EE Ridley (ed.), *Government and Administration in Western Europe*, Oxford: Oxford University Press.

Turner, M. & Gallagher, D. (2006) Will the UK become greener? -The impact of the new UK Regulations on the use of hazardous substances in electrical and electronic equipment retrieved 09.12.2012 from <http://www.sciencedirect.com/science/article/pii/S026736490600015X>

Weale, A. (1996) 'Environmental regulation and administrative reform in Britain', in Gian-domenico Majone (ed.), *Regulating Europe*, London: Routledge, pp. 106-30.

Weidner, H. (1995). Twenty-five Years of Modern Environmental Policy in Germany: Treading a Well-Worn Path to the Top of the International Field. Working paper.

William T. Markham. 2008. *Environmental Organizations in Modern Germany – Hardy Survivors in the Twentieth Century and Beyond*, Oxford: Berghahn Books, pp.1-6

Wilson, C., Williams, D. & Kemp, S. (2010) Compliance with Producer Responsibility Legislation: Experiences from UK Small and Medium sized Enterprises retrieved 09.12.2012 from <http://>

[//onlinelibrary.wiley.com.ezproxy.ub.unimaas.nl/doi/10.1002/bse.698/pdf](http://onlinelibrary.wiley.com.ezproxy.ub.unimaas.nl/doi/10.1002/bse.698/pdf)

Winter, G (1996) Freedom of environmental information, in Gerd Winter (ed.), *European Environmental Law. A Comparative Perspective*, Aldershot: Dartmouth, pp. 81-94.