

Introduction:

What is the Role of Voluntary Approaches in German Environmental Policy – and Why?

Annette Elisabeth Töller and Michael Böcher

This GPS-Special issue deals with the role of *voluntary approaches* in German environmental policy. While the editors of this volume are rooted in public policy research, with some interest in German environmental policy in particular (see Böcher & Töller 2012a), the authors of this volume come from a broader range of sub-disciplines of political science, including comparative politics, international relations and forest policy analysis. However, this special issue could be of relevance to a much broader audience of scholars and practitioners with an interest in both, environmental policy and public policy as well as, more broadly, regulation, in particular with regard to policy instruments.

What exactly do we mean by *voluntary approaches* and why is this topic relevant? If we look at the world of policy and regulation with a Weberian view of the world in mind, the core of regulation is that the state adopts collectively binding rules that can be sanctioned by courts and – if need arises – can be implemented by the use of legitimate force. Within such an understanding of the world, *voluntary* approaches to regulation provoke puzzlement, because there are no binding rules, no role for courts and no implementation by force, no state that can give orders and in some cases no public agency at all (see Kirton & Trebilcock 2004, p. 9) – yet we call it regulation. We can define voluntary approaches as “rule structures [...] that seek to persuade firms to incur nontrivial costs of producing positive externalities beyond what the law requires of them” (Potoski & Prakash 2009, p. ix).

Thus, the core and the common denominator of these approaches are that they are established, implemented and complied with on a voluntary basis and that – in terms of regulatory substance – they go beyond what is required by law. Conceptually and empirically, the term *voluntary approach* is broader than other terms (such as civil or private regulation, co-operative regulation, negotiated regulation, third party regulation, self-regulation, regulated regulation, soft law, e.g., Gunningham & Rees 1997; Mol et al. 2000; Everett et al. 2008; Kirton & Trebilcock 2004; Porter & Ronit 2006, p. 42). Focusing on environmental policy, there are several specific *instruments* that fall under this label of “voluntary approaches”: *voluntary agreements* between industry associations or companies and the government (either as unilateral declaration by industry alone, as bilateral agreement or as a program offered by the government), *eco-management-schemes* (which belong to the category of procedural instruments, but are voluntary at the same time), *certification schemes* (with or without external verification), *green label schemes* and *reporting programs* (cf. Perez 2011, p. 347; Bartley 2011). Examining such instruments in order to identify and explain their (changing) role in public policy is relevant because, if it is true that policy instruments are much more than technical devices to pursue political objectives (Majone 1976, 1989; Immergut 2011), major changes in the use of such instruments could be indicators of changes in overall *governance patterns* or even “*the state*” (see Levi-Faur 2011; Töller 2012; and Wurzel et al. in this volume). In addition, the question of whether such voluntary approaches are effective at all certainly deserves attention as well. Yet, while the majority of literature focuses on the effectiveness of voluntary approaches (starting from different theoretical assumptions, e.g., Perez 2011; Potoski & Prakash 2011) there is much less literature on either the precise empirical dimensions of their use or their driving forces. Thus, we do not deal with questions of effectiveness here.

1. The Role of Voluntary Approaches in German Environmental Policy

German environmental policy started in the early 1970s. For a long time it has been considered to be characterized by a strong legalistic bias, favoring command-and-control approaches over any other instruments, and it has been criticized for the same reason (Hartkopf & Bohne 1983; Héritier et al. 1996; Jänicke et al. 1999, p. 39). Whereas this characterization is definitely justified, it tends to disregard the fact that voluntary approaches were already being used in the early days of environmental policy (e.g., Oldiges 1973). As early as the 1970s, the first voluntary agreements in various fields were reached, e.g., agreements on the use of CFC in sprays (1978 and 1987) or the use of asbestos in construction (1982), just to mention some early examples. Many others followed, especially between the mid-1980s and the mid-1990s (Töller 2012). Apart from voluntary agreements between industry associations and government, other voluntary approaches were established: In 1978 Germany was the first country to develop an eco-labeling scheme (Blauer Engel) to help consumers choose ecologically sound products (Landmann 1998).

In 1990 EMAS, the European Environmental Management System was established. From 1995 onwards, it offered industrial sites (and later services) the opportunity of improving their environmental performance on a voluntary basis (Heinelt et al. 2001; Wurzel et al. in this volume). In the 1990s, FSC and PEFC, the two most important forest certification programs, were established and also gained relevance in Germany (Klins 2000; Bartley 2003, 2011; Tosun 2012). In this way, voluntary approaches became “an element of a distinctly ‘German’ policy mix” (Lees 2007, p. 175).

However, what one finds empirically and what topic is ‘en vogue’ to be addressed in scholarly work can be different things. It was mainly the debate on “new” forms of governance in the late 1990s that focused on these voluntary approaches, often addressing them as *new instruments* (which they were elsewhere, but not in Germany) (e.g., Ingram 1999; Aggeri 1999; Jänicke et al. 1999, p. 41; Salamon 2002; Eliadis et al. 2005; Jänicke & Jör-

gens 2006, Bäckstrand et al. 2010, Perez 2011, p. 347; Wurzel et al. 2013) and often expecting them to increase both their number and relevance for environmental policy overall (e.g., SRU 1996, p. 96; 1998, p. 147; Hansjürgens & Köck 2003, p. 10). Seen in a broader context, many authors considered these voluntary approaches – particularly in the field of environmental policy – as an element of a broader shift either in instrumentation or in governance (e.g., Benz 1994, p. 305, Kleger 1995; Kloepfer & Elsner 1996; Trute 1999), or, more generally, a “transformation of statehood” towards a “new regulatory state” (Braithwaite 2000), for example, or even a “post-regulatory state” (Scott 2004, p. 164, Black 2001).

However, in the late 1990s and early in the new millennium, precisely as academic debate “discovered” voluntary approaches as “new” instruments and as some countries started to introduce, or continued using them, the excessive use of voluntary agreements as *the* major instrument in German environmental policy as seen in the mid-1990s came to a sudden end, while the number of legal acts increased (Töller in this volume). Furthermore, after the 1990s had celebrated the overwhelming success of EMAS in Germany (measured in registered sites, see Heinelt et al. 2001), more recently, companies opted for the scheme’s less demanding international sister, ISO 14001 (see Wurzel et al. in this volume). At the same time, under the conceptual roof of Corporate Social Responsibility (CSR, or Corporate Environmental responsibility, CER), new schemes, operating on a transnational level, such as Responsible Care, or the Global Reporting Initiative, were established and gained support from big multinational firms (Schwindenhammer 2011 and in this volume; Perez 2011, p. 348-349). In the field of forest certification, the PEFC, driven by the forest sector, became much more powerful than the FSC, especially in Europe and Germany: In Germany, more than 60% of the forest is certified according to the PEFC scheme, whereas only approx. 4% is FSC-certified (Schreiber 2011, p. 44). Here, it is interesting that two competing voluntary approaches have emerged: one (PEFC) driven by the economic interests of the forestry actors (forest owners associations, wood industry etc.), and the other (FSC) initiated by environmental NGOs. Additionally, in new

subfields of environmental policy, such as biodiversity, voluntary agreements are being used as first steps towards a more encompassing and strong regulation (see Hubo & Krott in this volume). Traditional, law-based command-and-control approaches have not decreased in number and relevance (see Töller 2012, p. 82; OECD 2012), and market-based approaches that had had serious and prolonged problems in becoming established in Germany have since found their way into German environmental policy (Böcher 2012, OECD 2012; Böcher & Töller 2012, p. 83).

Thus, to summarize the empirical findings of this volume, voluntary approaches have become part of a more diverse instrumental toolbox in German environmental policy, in which both market based approaches and traditional command-and-control approaches play important roles. The changing use of policy instruments, in general, and voluntary approaches, in particular, is much more inconsistent and complex than is generally assumed, and this does not support claims of a shift in overall governance patterns, e.g., towards “governance” instead of “government” (see Wurzel et al. in this volume). If we are interested in capturing broader patterns of change, we would suggest the term “regulatory capitalism” as defined recently by Levi-Faur (2011, p. 668). Accordingly, the patterns of a diversified toolbox, including voluntary and compulsory instruments, involving new actors and third parties building hybrid forms (without necessarily replacing one with the other), exactly as identified here, are a core feature of regulatory capitalism.

2. How to Explain the Use (and Non-use) of Voluntary Approaches?

What are the causes driving the use (and non-use) of voluntary approaches? Most studies on voluntary approaches tend to be either descriptive (e.g., contributions in the book by ten Brink 2002), or deal with questions of effectiveness (e.g., Perez 2011). As far as studies on voluntary approaches address the question of why these approaches are being used, they tend to focus on either “power” or “better regulation”, as we will show in the next para-

graphs (Töller 2011, for an exception see Bartley 2011, p. 445-446).

Starting from the Olsonian wisdom that specific interests are easier to integrate, organize and represent than diffuse interests (Olson 1965), power-centered explanations argue that globalization has intensified the difference in power between business and collective interests (such as environmental protection, etc.). Business has become more powerful relative to the regulatory state because under the conditions of globalization, it can credibly threaten to dislocate production – some call this the erosion of sovereignty (Greer & Bruno 1996, p. 21). “Whether real or not, the perception of mobility of firms and capital has limited the range of policy instruments used by governments” (Peters 2002, p. 558). In such a perspective, voluntary regulation is the result of successful rent-seeking, particularly by transnational corporations, and as such a merely symbolic event. It aims at averting serious statutory regulation and only gives the appearance of regulation while individual business can continue its activities, to the detriment of the collective good. Therefore, voluntary approaches serve business interests by “greenwashing” their activities by giving “an organization the appearance of ethicality and leadership when no such commitment exists” (Laufer 2003, p. 257) without seriously having to change their practices (Greer & Bruno 1996, p. 31; Gunningham & Rees 1997, p. 370; Beder 2002, p. 99; cf. Perez 2011, p. 347). It is not difficult to see that from this perspective voluntary approaches appear to be inadequate.

With a less antagonistic view of the world, the debate on corporate social or environmental responsibility (CSR/CER) also addresses voluntary regulation. Coming from the field of management, this approach emphasizes that, with the increasing vulnerability of firms’ reputation in times of globalization, and also due to rising NGO-activities (Kirton & Trebilcock 2004, p. 25), initiatives are taken by businesses themselves, to try to become “part of the solution rather than part of the problem” (Gunningham 2009, p. 215). CSR predominantly identifies a change in attitude within corporations. This involves broadening their focus from solely profit-maximizing to also accommodating the needs

and interests of other stakeholders, such as employees, neighbors and the environment. In so doing, they accept a share of responsibility for the collective good. CSR is basically an ideology to overcome the alleged conflict between economy and ecology, or other collective assets, following in part arguments by Porter and van der Linde (1995). Here, companies do not have to disregard their profit making interest, yet they may define their interest within a different framework, e.g., by acknowledging the innovative potential, and thus competitive advantage, that certain forms of regulation can bring in the long run (Dashwood 2004; Gunningham 2009, p. 218). Accordingly, voluntary approaches express mainly a change in attitude in corporations that accept being responsible for the common good and at the same time try to save costs, improve products and polish their image (Gunningham 2009, p. 215).

In contrast, the better regulation-hypothesis draws on the extensive criticism with regard to the deficits that traditional regulatory policy instruments display, according to this view. The regulatory law is seen as inflexible and too simple in its nature, it requires full knowledge, which either the government does not have or which does not (yet) exist at all (Black 2001, p. 107). The law is unable to meet all the specific requirements in regulated firms, builds on antagonism and is unable to motivate its addressees. What is more, society is far too complex and too idiosyncratic to be purposefully influenced by such simple instruments (Teubner & Wilke 1984; Black 2001, p. 106). In such a view, particularly new policy objectives, such as the fundamental modification of business logic, the pursuit of innovation or sustainability, require new instruments. Voluntary instruments are faster to adopt, more flexible, less antagonistic and less costly, and allow for the use of regulatory knowledge on part of the regulated or even allow for collective learning (Gunningham & Rees 1997, p. 366; Hofmann & Schrama 2005, p. 42; de Bruijn & Norberg-Bohm 2005).

It is not our point here to determine whether these assumptions are correct or not. We want to show that many authors – implicitly or explicitly – argue in a functionalistic vein that the advantages of voluntary instruments, as opposed to statutory regu-

lation, *explain* their use. Not surprisingly, these authors tend to see voluntary approaches as something innovative and positive (e.g., Norberg-Bohm & de Bruijn 2005, p. 380).

The problem with these approaches is that they appear plausible in some ways, but they look at the phenomenon from one side only and do not reflect an adequately complex concept of politics. Politics is not interests automatically producing outcomes (without actors and institutions) nor is it business players deliberating on how to save the world (after having focused on profits over the last centuries), nor is it the process of benevolent government actors solving problems regardless of their interests. Furthermore, the shortcomings of traditional policy instruments tend to be exaggerated, and they do not automatically have the consequence of bringing about new instruments, which requires evaluation and learning, making political decisions for change and the successful overriding of contradictory interests and institutions (path dependencies).

3. ASPP as a Tool to Explain the Use of Voluntary Approaches

Seeing some truths in the explanatory approaches just mentioned but criticizing their restricted understanding of policy-making, we would like to present briefly an analytical tool that we developed to explain the results of environmental policy decision-making (Böcher & Töller 2007; 2012) that should also help to explain the use of voluntary approaches. We developed this analytical approach in part by drawing on ideas by Kiser & Ostrom (1983) against the background of German environmental policy and the emergence of different policy instruments for environmental policy.

One main assumption of the so-called “approach of self-perpetuating policy processes” (ASPP) (Böcher/Töller 2012a; 2012b) is that political processes are neither the direct result of interest struggle (as public choice theory would suggest) nor are they driven by the search for solutions alone (as policy analysis often tends to suggest). Rather, policies are seen as the result of

complex political processes and as such, of the contingent interactions between different explanatory factors, namely:

- More or less powerful *actors* trying to implement their preferences (sometimes driven by party politics, sometimes by their wish to solve problems and sometimes by their wish to increase their own power or to impede the projects of their political adversaries).
- *Institutions* (defined most generally as formal and informal rule structures on various levels) influencing actors' perceptions and behavior, not only through compliance but also through idiosyncratic reactions;
- *Problem structures*, such as the physical and technical properties of environmental problems as well as the expected distribution of costs and benefits of possible regulation among different societal groups;
- *Policy instruments* and their ideological framings. We suggest, in particular, that the ideological character of instruments is at least as important for their use as their problem-solving capacity.

The concept of self-perpetuating processes suggests that a process advances on its own, cannot be planned, and is beyond the control of the participants in it. As suggested, the explanatory factors mentioned each produce inherent perpetuations (which are difficult to foresee) and interact with each other in contingent ways, thus influencing the course of policy processes and their results. ASPP is an analytical frame – not a theory – that can help to identify relevant causal driving forces in particular cases in environmental (or other) policy fields. So far, ASPP has been used to analyze instrument choice and change in environmental policy (Böcher/Töller 2003; 2007; Böcher 2012).

With regard to the rise and fall of voluntary approaches, we want to illustrate only briefly how our explanation differs from other approaches: For instance, in the beginning of the 1980s the rising ideology of deregulation and neo-liberalism questioned the role of the state in regulation and also framed the debate on environmental policy instruments. In the mid-1990s certain actors,

like the German conservative-liberal-government (in power until 1998) and business associations like the BDI demanded the deregulation of environmental policy, favoring voluntary approaches over traditional command-and-control regulation while (surprisingly to some) wholly rejecting market-oriented instruments. This ideological development was one driving force toward an increased use of voluntary approaches.

Another important aspect of our framework challenges the common view of public policy making, which holds that it is a process that first identifies problems and then seeks to develop solutions for these problems. In agreement with authors like Cohen et al. (garbage can, 1972) or Kingdon (2003) we observe that sometimes solutions are the first to come into being and then start looking for suitable problems. This has been typical of environmental policy since the 1970s: Experts then developed ideal “textbook” environmental policy instruments (solutions) as alternatives to the dominating command-and-control approach. But it was only after the discovery of man-made climate change that (with some “help” from the EU level) some of these instruments from the textbooks, like tradable permits, became real policy alternatives. In this case, policy instruments had existed for a long time before they were applied in policy practice. Voluntary approaches, born more in practice than in textbooks, filled this void for a long time. They even became (as mentioned above) ideologically dominant in Germany in the mid-1990s and for some time were applied to almost any new environmental problem.

That leads us to problem structure as another important aspect of our framework: Environmental policy problems differ in their individual problem structure. Some environmental policy problems can be reduced to zero in a short time, others cannot be reduced completely and need long periods of time to show any effects. Some environmental policy problems are more complicated than others due to their complex causes and effects: The problem structure helps us to understand why some environmental policy problems, like the loss of biodiversity or soil protection, are addressed less and later by German environmental policy than others. Another aspect of the problem structure affects the distribution of “political” costs and benefits resulting from any

particular political decision on policy instruments. Distributional conflicts among social groups emerge and lead to resistance on the part of groups that have the most to lose given the choice of a particular policy instrument. Governments have difficulties implementing economic instruments because such instruments make individual abatement costs highly visible, and these costs affect groups in different ways. Due to their resources, industrial lobbies that are the potential losers if such instrument choices are made are often able to influence environmental politics successfully. The expected distribution of costs and benefits and conflicts of interest that emerge from one special policy instrument lead to limitations on possible instrument choices (Böcher and Töller 2003, p. 17). The problem structure leads to further consequences for environmental regulation: command-and-control is better suited to solving certain simple environmental problems in a short time (e.g., ban of hazardous waste), whereas economic instruments seem more suitable to dealing with long-term problems, like climate change. Command-and-control also represents an environmental policy with more diffuse individual costs compared to market-based approaches. Regarding the distribution of costs and benefits among societal actors, it would be another reason why governments have preferred command-and-control for a long time. According to the problem structure, voluntary approaches can be an answer in cases in which supranational or intergovernmental regulation would be necessary but cannot be reached. The forest certification mentioned above can serve as an example: Voluntary approaches like FSC emerged due to the failure in establishing a global forest convention after the Rio Conference of 1992.

This example leads to the next important factor within our ASPP: Institutions not only cause adaptation in the sense of compliance, but also lead to self-perpetuating adaptation processes. Institutional problems in establishing a global forest regime induced the emergence of forest certification driven by environmental NGOs. This new institutional arrangement in global forest governance exerted pressure on the forestry sector, especially in the EU. As a reaction, the PEFC was founded as an answer by the traditional forest sector and as a counterforce to the

rising influence of environmentalists on forests. Here, a vacuum in state regulation led to the emergence of a new voluntary instrument (Cashore et al. 2005). What is more, problems in passing statutory regulation might be a driving force to adopt “at least” voluntary regulation, even at the national level (see Hubo & Krott in this volume). The examples demonstrate how our framework can be applied to analyze policy processes in general and to explain specific patterns in the rise and fall of voluntary approaches in particular. According to our analytical framework, self-perpetuating policy processes cause the rise and fall of the use of voluntary approaches as our dependent variable.

This leads us back to our special issue of German Policy Studies: It presents four analyses of different aspects of the use of voluntary approaches in German environmental policy which are interesting on their own and which are, at the same time, interrelated in some aspects.

Wurzel, Zito and Jordan analyze the use of voluntary (which they call “soft”) instruments in German environmental policy: voluntary agreements and environmental management schemes. They aim to answer the question of whether the use of such voluntary instruments can serve as an indicator for a change in state regulation “from government to governance”. Their main empirical finding is that it cannot be stated that in Germany a shift from government to governance took place. They show the relevance of institutional factors (as emphasized by ASPP) for analyzing developments in the use of environmental policy instruments. The authors argue that due to the emergence of new institutional schemes in environmental policy, like emissions trading and ecological tax reform, the room for voluntary instruments shrank, and that voluntary instruments are out of fashion against such a changed institutional background.

The chapter by Töller presents a combined macro study and in-depth case study on the use of voluntary agreements in German environmental policy, and discusses the rise and fall of voluntary agreements. She shows that the climax of the rise was reached during the mid-1990s, but that the use of this instrument has since then come to a sudden end. The explanation of this surprising finding by using the ASPP shows that European law in

particular, as an institutional factor, and party politics influenced the rise and the fall of voluntary agreements much more than did business power or better regulation arguments.

Hubo and Krott present a case study from German biodiversity policy. They highlight that voluntary agreements did play a major role in the specific German policy of developing a national strategy against invasive alien species. They analyze different patterns in the use of policy instruments in biodiversity policy, in which voluntary agreements play a role as a first choice, supplementing or replacing regulatory instruments, and also as an escape strategy in cases in which such powerful actors as land-users block alternative, more hierarchical, interventions. Influenced by our ASPP concept, Hubo and Krott show the importance of the different factors but specify the framework by analyzing the interrelations of policy sectors that are very relevant for land-use policies and consist of sector-specific programs, policy actors, institutions, and decision-making procedures.

Schwindenhammer presents a case in which voluntary approaches originally are not a part of state regulation but completely driven by private actors like enterprises involved in voluntary transnational private regulation schemes like the Global Reporting Initiative (GRI). Again institutional factors, here a mixture of national and transnational, affect the emergence and impact of this voluntary approach. Similar to the described “institutional void” (Hajer 2003) regarding a global forest regime we can observe that the absence of statutory institutions demanding sustainability reporting while growing pressure comes from external stakeholders and the market lead companies to release voluntary sustainability reports.

These very brief summaries of the chapters in this special issue against the background of our ASPP approach demonstrate that the ASPP can help to understand and to analyze patterns, and in particular, causes of the use of voluntary approaches in German environmental policy (and beyond). It is particularly noteworthy that even the absence of institutions (namely the state) in a concrete case has to be understood as an institutional factor that might lead to voluntary approaches initiated by private actors, like companies. Often in such cases, external pressure applied by

such actors as environmental NGOs becomes powerful within heated debates about sustainability or the environment, and leads to the emergence of private voluntary approaches in environmental policy.

We believe that the collection of these chapters is an important contribution to help illustrate typical patterns of voluntary approaches in German environmental policy. By doing so we wish to correct the impression that an increasing use of such approaches was an overall trend. Furthermore, we wish to contribute to the explanation of this finding. We hope that the ASPP framework presented here can serve as tool to explain empirical findings and possibly to draw more general conclusions beyond specific cases.

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