Undergraduate Program in Central European Studies

CERGE-EI and the School of Humanities at Charles University
Address: Politických vězňů 7, 110 00 Praha 1
Tel. : +420 224 005 201, +420 224 005 133, Fax : +420 224 005 225
E-mail: upces@cerge-ei.cz
Web: http://www.cerge-ei.cz/abroad

Environmental Policy in the Central European Context

Time: Wednesday 5pm
Location: Coffee Heaven, Můstek

Professor: Jana Krajcova (JK), email: jana.krajcova@cerge-ei.cz
Guest Professor: Andreas Ortmann (AO), email: aortmann@yahoo.com
See also: http://home.cerge-ei.cz/richmanova/TeachingUPCES.html
(and http://home.cerge-ei.cz/ortmann/UpcesCourse/UpcesCourse.html for Spring 2009 course)

10 Environmental Policy in European context – History and current problems

Hey, EU Environmental Policies: A short history of the policy strategies

Six Environmental Action Programmes (EAPs)

- medium term programs and strategic policy documents , often reflect a change in the general political climate of their time
- there has been much more continuity than change over the 30-year period
- contain lists of planned activities, not binding programs for action

1973 – 1976, first EAP, second EAP 1977 – 1982

- following the first United Nations Conference on the Environment in Stockholm in 1972 => growing public and scientific concerns on the limits to growth,
- EC commitment to establish a Community environmental policy
- “economic development, prosperity and the protection of environment are mutually independent”
- “the protection of the environment belongs to the essential tasks of the Community” it already contained many of the later ideas behind sustainable development
- in terms of a practical approach the first EAP (and the second EAP, too) advocated quality values for air and water
- number of framework directives, especially for water and waste, were decided during this period
- “initial enthusiasm declined considerably during the periods of economic recession (1975 – 1978, 1981 – 1983)
- ”although a number of directives (adhortations, game plans) were formulated

1982 – 1986, third EAP, fourth EAP 1987 – 1992

- new focus on benefits of risks of environmental policies to the Internal Market, "issue linkage between the internal market and environmental policies became a key driver for programming and activities" (environmental emissions standards needed to be harmonized to avoid distortions to industry competitiveness, product regulations had to be harmonized)
- third EAP made positive reference to the first global strategy for Sustainable Development
- practice of environmental policies during the eighties was particularly concerned with clean-air policies, and noise and risk management for industrial sites
- 1987: environmental protection received its own chapter in the Treaty …
- "… a more **integrated approach [4th EAP]**. For the first time, environmental protection was not perceived as an additive, but rather as an integrated activity within the whole production process. … to reduce energy or material inputs and to close cycles, so that waste streams could be minimized. Furthermore, pollution control was to systematically control all environmental media (water, air and soil) and involve an evaluation of the problem causing substances. …
- '**sectoral approach**' .. For the first time, the evaluation of the **new, incentive based instruments**, such as taxes, subsidies or tradable emissions permits was announced." (
- change from trade orientation to sustainability frame
- external factors set the agenda:
  (1) the emergence of global threats such as climate change reached the official agenda; number of international conferences urging for dramatic policy changes
  (2) the Community saw chance to become an international "leader", thereby strengthening European integration and the Commission's own role in international politics
  (3) old regulatory (command and control) approach had been discredited, new regulatory approach (market mechanism, deregulation and self-regulation) had taken hold in Scandinavian countries, Denmark, Netherlands, and Germany
  (4) increasing public concern -> at the end of the 1980s, a mounting wave of environmentalism. Membership of environmental organizations increased considerably. Green parties were popular in several EU countries, and achieved good results at national levels and in the European Parliament

1992 – 1994, fifth EAP

- principal aim of sustainable development
- emphasis on sectoral approach, i.e. focus on industries that were particular culprits (transport, energy, agriculture, etc.)
- emphasis on new instruments, "especially on market-oriented instruments such as fiscal incentives or voluntary instruments, which strengthen producers' and consumers' own interests in environmental decision-making." (p. 23)
- a new consensus-oriented approach (increasing role of NGOs and local authorities)
- setting of medium and long-term objectives for the reduction of some pollutants …
- unfortunately, a downward cycle of environmental policies - a roll-back 1992 – 1995, triggered probably by
  (1) member states were not willing to follow paradigmatic change pushed by the Commission, demands to re-nationalize
  (2) difficulties in ratifying the Maastricht Treaty contributed to more cautious attitude of European Commission
  (3) The preference structure/focus in Germany changed because of the reunification and the emphasis on economic problems (high unemployment) that came with

reunification; same true for countries that later the 2004 new members (e.g., Visegrad 4 etc.)

- at the end of 90ies patchwork of different, often contradictory trends, different policies being promoted simultaneously
- but … sustainability remains on the agenda
- strengthened as Community target in the Amsterdam Treaty from 1997
- strengthened by Cardiff Process (an initiative for environmental policy integration moved forward by several presidencies
    - new complex and holistic framework legislation such as the Ambient Air Quality Directive, the Water Framework Directive, or the ICCP [Integrated Prevention and Pollution Control] Directive
    - "new target oriented legislation, setting maximum national emission ceilings for key pollutants, but leaving member states the freedom to choose how to achieve necessary reductions. ... With the 2003 Emission Trading Directive, another target-oriented policy, setting nationally differentiated CO2 targets – the so-called burden-sharing agreement –became legally binding."
    - completion, revision or modernization of existing legislative programs
    - The introduction of many new environmental policy instruments (such as producer responsibility, environmental impact assessment, emission trading…)
    - New procedural legislation or the revision of existing legislation strengthening civil society rights, notably the three Aarhus pillars: freedom to information, participation rights and access to justice.
- each of those pieces of legislation had more or less serious shortcomings, however, the system of environmental programs, duties, rights and incentives made impressive progress during that phase

The starting point of the 6th EAP:

- overall political agenda is driven by the development concerns of new member states, new wave of deregulation and increasing relevance of economic considerations
- New program is reluctant to set targets and to identify key instruments
- starting point is that "so-called persistent environmental problems such as climate change, the loss of biodiversity, or the overconsumption of resource require a broader approach beyond environmental legislation … "
- a cautious approach -> formulates a framework of general themes, principles, and objectives,
- the political strategy is to postpone contentious and controversial political decisions to later phases
- strengthening the role of private and public professionals
- EC is changing its key role form and initiator of legislation to a manager of policy processes, policy to become more and more a theme for small specialist expert communities

Outlook

- future environmental policies need to become re-focused
- persistent environmental problems are the challenge for the forthcoming phase of policy making and should be prioritized.
- Solving persistent environmental problems needs the involvement of other sectors, but environmental policy will have to play a key role
- a great deal of scope for improvement in emissions standards, and restrictions or incentives for further preventative behaviour from business and consumers

Kramer, EU Enlargement and the Environment: Six Challenges

- written before the enlargement of the EU in 2004 (published in Spring 2004)
- a prospective entrant before admission had to adopt the *acquis communitaire (acquis)* – "'the common body of EU legislation' of which the **environmental acquis** [one of 31 thematic chapters] comprises an integral component. In the legal sense …. , 'it means the complete alignment of national legislation so that it complies 100 percent with the requirements of EU legislation. And not just on paper but of course also in fact. [Commission 1997b: 3]" (p. 290) -> transposition (incorporation into national legislation), implementation, enforcement [administrative capacity], [evaluation] … implementation and enforcement being "'the much more difficult nut to crack'" (p. 292, quoting Wallstroem)
- "the challenge is especially acute given the candidate countries must rely primarily on their own financial and other resources to meet it [they can at most count on about 5 percent of the cost being defrayed by EU contributions, see p. 295] – resources already severely strained in meeting numerous other demands including those entailed in the overall accession process." (p. 290)
- do accession countries meet those challenges? Remains an open question but probably not … "as EU officials themselves candidly admit, all of them attach a far lower priority to protecting the environment than their attachment to entering the EU as quickly as possible and in addressing what they consider much more pressing problems of economic revitalization and growth." (p. 291)
- Some EU officials also worry that member states will offer a *quid pro quo* by *"letting them off"* on *environmental acquis* for being especially tough with them on such politically charged issues such as the free movement of labor and refugees?
- In any case, acquis makes for good rhetorical argument in the political national discourse, especially for environmental activists …
- notwithstanding these challenges, substantial progress has been made … relying mostly on their own resources….(says Kramer)
- ad (1) the **fiscal challenge**:
    - EC estimated that it would cost CEE candidate countries cca EUR 80-110bn (in total, see Table 1) to comply with EU requirements for drinking water supply, wastewater management, wate management and large combustion plants
    - Overall, the EU estimates that candidate countries on average must spend 2-3% of GDP to ensure implementation of the environmental acquis and majority of this must come from own resources
    - any transition periods have to be justified, only short-term
    - important issue: "it seems clear that the private sector – both producers and consumers – will shoulder a heavy load in financing EU-related environmental investments. To this end, it becomes critical that candidate countries vigorously pursue the privatization of environmental services such as water and power supply and waste removal and the concomitant establishment of so-called full-cost recovery pricing – in plain English, the elimination of subsidies and the establishment of market-based prices – for them."
- ad (2) **the administrative challenge**:
    - the "administrative capacity to transpose and, even more importantly, implement and enforce the environmental *acquis* is rapidly emerging as one of the key challenges confronting the applicant countries." (p. 297) – enough said (obviously, this is also a question of money, qualified personnel – down to

availability of copying machines -- but not only, lots of organizational issues, and that on the regional and local level)

- ad (3) **the environmental challenge:**
  - " .. the challenge of promoting sustainable development remains a work in progress." (e.g. failure to integrate the principle of sustainable development throughout the assistance programs – e.g. subsidization of agriculture and motorization)
- ad (4) **the 'democratic deficit' challenge**:
  - role of NGOs insufficient, many of CEE NGOs in unstable, poor, or very poor financial state; CR: slightly better developed NGO sector but still a 2001 poll showed that 58% of respondents could not name any environmental NGO
  - "In CEE countries, as former President Havel of the Czech Republic has observed, strengthening Vox Populi has been a 'difficult process' with many public officials retaining the communist view of the citizenry as an adversary, not a partner, in the exercise of power. … the EU itself, even if unintentionally, has managed environmental accession in such a way largely to exclude CEE environmentalists from substantial meaningful participation in it. … initiative are underway to mitigate this bleak situation … the EU has established a 'Public Right to Know Project' that works closely with environmental NGOs and private individuals to pressure CEE governments to establish minimum standards for public access to information regarding the environment." (pp. 302 – 3)
- ad (5) **the energy challenge:**
  - energy intensities in CEE countries way too high (compared to old EU countries and US, e.g., five times higher in Bulgaria, and twice as high in Czech and Slovak Republics, in East Germany production and consumption increased yet CO2 emission were reduced by more than half after reunification), legacy of socialism/communism; heavy reliance on nuclear power (and nuclear power plants that are wanting in their quality – a highly controversial point).
- ad (6) **the political challenge:**
  - Jehlicka & Tickle article: "after accession, the status of political will may become more problematic given that … the EU inevitably will have diminished leverage over the former applicant countries and the latter will have more opportunity to set their own agendas and priorities, including those towards the environment."
  - Are the lowest anticipated benefits (134 billion Euro) really upwards of 18 percent greater than the highest estimated costs (110 billion Euro) of fully implementing the environmental *acquis*? (p. 309)
  - in the words of Bedrich Moldan of the Czech Republic, that *"what we are doing is not because we want to satisfy Brussels clerks but because we, of course, want to have a better environment' (CTK, 27 October 1999)."*
  - If this effort is to succeed, it also becomes critical that the EU eschew the mixed messages that it too often sends on the environment – messages that in word typically say all the right things about environment and the need for sustainable development but in deed frequently entail policies such as the stress on large-scale intensive agricultural development that directly conflict with its rhetorical commitment to sustainability [see Beckmann and Dissing, this volume]. Such mixed messages only weaken those environmentalists in CEE countries pressing their polities for a substantive transformation in environmental policy to promote sustainable development in the face of considerable political indifference, at times, even overt opposition, to this end.
- **Conclusion**

- "This author is cautiously optimistic that the EU is evolving in ways – albeit at times hesitantly, erratically, and perhaps overly slowly – that will make it a much more 'environmentally friendly' institution than it is now. The clear thrust of this evolution is towards more openness, transparency, accountability and a greater utilization of market-based solutions to environmental challenges."

Kruzikova, EU Accession and Legal Change: Accomplishments and Challenges in the Czech Case

- published spring 2004
- examines the accomplishments of, and the challenges to, the reform of environmental laws in CR as driven by the EU (<= harmonization and implementation efforts)
- an enormous and somewhat rushed efforts to conform to all EU requirements
- EU environmental protection law considered among the most difficult to comply with
- " … many remaining barriers to the effective administration, implementation and enforcement of EU environmental policy are posed by the challenges of merging the existing legal cultures, expectations and practices of EU Law with those of candidate countries."
- three waves of Czech environmental legislation since 1990… while the character of the Community law presents accession states with one set of challenges, the domestic legal cultures, practices and participant expectations present a second set…
- 1st wave – main body of legislation approved and brought into effect (transforming the communist system to a democratic one)
- 2nd wave mainly concerning internatonal obligatons of CR to be incorporated into national law
- 3rd wave – to achieve compliance with EC's law, at the same time EU environmental law continued to develop….

TABLE 1

THREE WAVES OF CZECH ENVIRONMENTAL LEGISLATION SINCE 1990

First Wave (1991–1992)
Act on the Air Protection (1991)
Act on Waste (1991)
Act on the Czech Environmental Fund (1991)
Act on the National Environmental Fund (1991)
Act on Environment (1992)
Nature and Landscape Protection Act (1992)
Agricultural Soil Protection Act (1992)
Act on Environmental Impact Assessment (1992)
Second Wave (1995–1998)
Act on the Right to Access to Environmental Information (1998)
Act on Forests (1995)
Act on Waste (1997)
Act on the Ozone Layer Protection (1995)
Act on Conditions of International Trade with Endangered Species of Wild Fauna and Flora and Other Measures of Protection of Such Species (1997)
Act on Peaceful Use of Nuclear Energy (1997)
Act on Technical Requirements for Products (1997)
Third Wave (1999–2002)
Act on Chemicals and Chemical Preparations (1998)
Act on the Prevention of Major Accidents caused by Certain Dangerous Chemical Substances and Preparations (1999)
Act on Handling with Genetically Modified Organisms and Products (2000)
Act on Indemnification of Damage Caused by Certain Protected Animals (2000)
Act on Hunting (2001)
Act on Environmental Impact assessment (2001)
Water Act (2001)
Act on Waste (2001)
Act on Air Protection (2002)
Act on Integrated Prevention and Pollution Control (2002)
Act amending Penal Code in the Field of the Environment (2002)
Act amending the Act on Peaceful Use of Nuclear Energy (2002)
Act on Conditions for Introduction on the Market of Biocide Preparations and Substances (2002)

- The Czech Republic was the first candidate country to close negotiations on the Environment chapter, on June 2001. Only two transition periods were agreed by the European Commission for the CR: the first for packaging waste and the second for municipal wastewater. (In comparison, nine for Poland, four for Hungary, seven for Slovakia, and two for Slovenia)
- "In many respects, the Czech Republic has been **quite successful** in the transposition of the major EU environmental directives." … but long way to go on implementation and enforcement (and related assessment measures)
- all in all legal changes have been positive for CR (number of acts, such as that on IPPC or some in areas of waste and water management and air protection, would not have been enacted without the need to comply with EU requirements)
- **Implementation challenges stemming from the Community Law**

  - The Community law itself since based on the legal culture of West European democratic countries that has been developing since the end of World War II, while CEE countries went through a 40-year breach of legal continuity, with different set of principles and mechanisms
  - national law is subordinated to Community law and candidate countries are not accustomed to this supremacy
  - Community environmental law has not developed systematically and continues changing its nature [the moving target problem], …plus community law provisions not always clear and unambiguous
  - certain directives set out new, innovative instruments and approaches, which (as e.g. IPPC) might require coordination and integration of different administrative/permitting procedures
- **Implementation challenges from within the Czech Republic**
  - " … related to attitudes, traditions and practices within the Czech Republic … "
  - lack of institutional capacity ensure full and correct implementation, lack of clear allocation of competencies and overlapping
  - intensive training of civil servants at all levels of public administration, as well as of judges and other lawyers will be necessary"
  - " … a number of challenges are engendered by the rapid rush towards implementation. … there has not been enough time or institutional capacity to establish a sufficiently conceptual and systematic approach towards the implementation of environmental law. In many respects. Czech officials have missed opportunities to improve the whole system of environmental law. … In the Czech Republic, there are currently about 40 environmental acts, more than 30 Cabinet regulations and about 90 ministerial decrees – and these numbers change monthly. … The rush towards implementation has left overlapping, and potentially contradictory, legislation and administrative procedures to be carried out under the law. This is likely to result in unclear interpretations of law."
- **The ECJ as a Potential Surprise**
  - When a member state does not comply with the ECJ's judgements, the Court – after another action of the Commission – may impose penalties (this goes back to Treaty of Rome 1956)
  - A second 'surprise' for which candidate country legal systems may be unprepared lies in Article 234 of the Treaty of Rome. Accordingly, the ECJ interprets Community environmental law with **preliminary rulings**, which are initiated by national courts asking for ECJ interpretation, in particular cases, of Community provisions vis-à-vis national rules. Preliminary rulings contribute to the uniformity of interpretation and application of Community environmental law. Yet, in candidate countries such as the Czech Republic, courts lack expertise on the ECJ and its powers. They are not used to asking higher courts for an opinion concerning the interpretation of legal norms.
  - The ECJ has historically, through its rulings, contributed to the progressive, participatory democratic nature of environmental law and decision making – some policymaking processes are open to public
  - "The Czech Republic and the other candidate countries will have to accept this significant change in domestic legal systems upon EU membership."

Jehliaka & Tickle, Environmental Implications of Eastern Enlargement: The End of Progressive EU Environmental Policy?

- the authors ask whether indeed the one-way process of CEE adaptation to EU requirements, and the management of this process by EU institutions, justifies the "Europeanisation" perspective of CEE national environmental policy, or whether indeed this top-down process, especially after accession, is supplemented by a bottom-up process reflecting national preferences.
- [there are incentives for as well as historical evidence of more progressive environmental legislation in member countries; moreover, EC's high degree of influence, insistence on full adoption of environmental acquis and only a limited number of transition periods should lead to relatively high degree of harmonization]
- Method: 29 in-depths interviews with environmental policy experts in Visegrad (V4) countries (in 2000), and five interviews with experts from EU countries (in 2000/2001) [i.e. already in the middle of the negotiations about the environmental acquis]
- Is there a need for an "applicant states-centered approach"?
- **Two sets of questions** were the basis of the questionnaire:
    - What is the domestic base of environmental policy in the V4 states? [any signs indicating passive adaptation contra more proactive approach?]
    - What is the capacity that V4 countries have to shape EU environmental policy?
- **Finding**: "Despite initial evidence of a proactive approach to international environmental policy in the V4 countries, this model became quickly subsumed by the 'hierarchical imposition' of EU requirements, which since has become the dominant framework for the development of their domestic environmental policy." (p. 92) And, "Owing to the weak domestic base of environmental policy [lack of experts with appropriate training and experience, weak role of green parties] as a hegemonic model, it is highly unlikely that V4 states are, in the short run, capable of adopting a proactive approach to environmental policymaking at the EU level when they become full members. … We also find that V4 states have not, and do not seem likely to coordinate their strategies – either among themselves or with environmentally 'laggard' member states. Instead, it appears that they would rather align themselves with the north-western 'pioneer' member states that have been most active in transferring environmental know-how and have made environmental policy discourse in V4 countries largely compatible with their policy models." (p. 93) -> No danger of watering down of European environmental policy.

Optional readings

Carmin & Vandeveer, Enlarging EU Environments: Central and Eastern Europe from Transition to Accession

- Essentially this is introduction to special issue of *Environmental Politics*; hence there is much overlap and reliance on the articles that were discussed above in more detail.
- overview of massive structural and legal changes after the fall of communism….Europeanization…. some cost estimation
- On pp. 19 – 20, the authors summarize the key themes and arguments:

Key Themes and Arguments

Collectively, the contributions in this volume examine environmental initiatives driven by EU policies and programs and the desire of CEE officials and publics to gain EU membership. They also **explore the impacts of the EU on environmental policy and protection**, as well as the relationship between government and civil society actors in the policy process. When reviewed

as a whole, the authors suggest that **CEE states have significant capacity limitations**, but are making **concerted efforts to address them** even in the face of the mixed messages they are receiving as a result of the EU's conflicting priorities. The authors further note the **importance of non-state actors,** both with respect to their present accomplishments, and, more importantly, as an untapped resource that can benefit CEE states and the EU alike. Finally, the contributions suggest that **individual CEE states and NGOs could bring knowledge to the EU**, in contrast to the unidirectional dynamics of the accession process that have assumed that CEE states and societies were only recipients of expertise. A more concerted effort to promote a **multi-directional exchange of ideas and information** between the EU15, accession states, and NGOs and officials in Brussels is likely necessary to realize this **joint learning potential**. Some of the points raised by the authors reinforce prevailing arguments in the literature. In particular, they maintain that EU pressures are not only altering environmental policies and incentives, but also are changing values and behavioral norms in individual countries. However, while the Europeanisation debates centre on EU–member state relations, the authors suggest that external pressures in the race to accession are promoting Europeanisation in applicant states and that all three of the pathways associated with Europeanisation are contributing to the changes in environmental governance and behavior that have taken place across the CEE region. They observe that the **transition and accession processes** of the last several years **have changed both the strategic environment in which CEE domestic actors operate and the values, beliefs and norms held by some CEE individuals, groups and organizations**. Together, the contributions indicate that accession does not preclude opportunities for independent forms of national and sub-national action in the new member states**. CEE states potentially offer perspectives, resources and innovations that could enhance EU policy along important dimensions**. In other words, not only are opportunities present for independent state action and the influence of domestic actors, but the potential exists for CEE countries **to strengthen EU governance**. These views represent different framings of Europeanisation and EU enlargement than have been articulated to date. In effect, the contributions collectively suggest that, although various environmental policy and civil society capacities are limited in CEE states, these countries have the **potential to make genuine contributions to EU environmental policy and quality**. Further, despite the many challenges associated with eastern accession documented in the contributions that follow, this volume suggests that **enlargement presents the EU with numerous opportunities to enhance its leadership role in regional and global environmental politics**.

Carter, Transforming enviromental policy: Does Europe lead the way (EP 2007)

- review of four books published in 2004, 2005, one of them by Toelke & Torgerson a second edition
- good review: integrative, comparative, reflecting
- all books about "environmental governance" – "an approach to environmental problems that involves decentralization, flexibility, a 'hands-of' approach to regulation, better integration of policy-making and greater dialogue and cooperation between government and non-state actors" (p. 523)
- "So where is progress towards environmental governance most advanced? In 1990, when the first edition of *Managing Leviathan: Environmental Politics and the Administrative State* was published, it was normal to look to the USA for leadership in environmental policy. Since then, as Paehlke & Torgerson observe … the emergence on

the global stage of 'American exceptionalism' – first visible at Rio, then fulsomely embraced by George W. Bush, in his rejection of the Kyoto Protocol. Even … in the Clinton /Gore years …little [was done] for the environment. Today, few people now look to the US federal government for innovation in the environmental arena, although there are still interesting developments at state [e.g., California, see p. 528] and municipal levels. Instead, most observers turn to Europe – to the pioneer nations of northern Europe and to the European Union (EU) itself – for environmental leadership and innovation."

- **Dovers**: good starting point, the first part identifies particular issues and problems associated with environmental policy, then in the last two chapters he focuses on some familiar problems: need for greater public participation, more transparency, accountability and openness, better policy coordination and integration, the institutional change; uses illustrative examples rather than specific case studies
- **Hatch;** "adds to the growing literature on alternative, or 'new', environmental policy instruments. Its familiar premise … is that the traditional command-and-control approach to environmental regulation, employing regulation, employing uniform standards or specifying particular technologies or processes, has proven inadequate. Hence there is growing interest in alternative policy instruments.… the book contains nine case studies … such as the three German case studies … covering instruments such as eco-audits, voluntary agreements, tradable permits, eco taxes and environmental impact assessment which together support the case for European innovation. Certainly, the willingness to use a greater number and a wider range of national eco-taxes in Germany and other European countries, notably as part of a climate change strategy to reduce greenhouse gas emissions, is unmatched across the Atlantic. Yet, as Gary Bryner shows, the US has taken the lead in the use of tradable permits, and … there has been some diffusion and lesson-drawing from the US experience. Bryner concludes that emissions trading works best when, *inter alia,* it is based on accurate emissions information, the emission limits adequately protect the environment and the system is stable, predictable and rigorously enforced. These are lessons that the EU might note as it tries to manage its carbon emissions trading system, in which carbon prices have fluctuated wildly and several countries have issued far too many permits based on highly unreliable data. … reminder that policy instruments seldom work effectively when operating alone, but are better as part of a battery of tools and measures."
- **Paehlke & Torgerson:** " to advance an "alternative orientation to environmental administration" based on democratis principle and wider aprticipation … the book's strong commitment to deliberative democracy gives it a distinctive and radical edge … " (p. 526)
- **Jordan & Lieferink**. "unlike the loose editorial reins that characterize the other two edited volumes, this is a carefully designed, tightly organized and systematic comparative analysis that investigates the 'Europeanisation' of environmental policy in 10 countries (nine EU member states and Norway). .. The book is a model for everyone planning a comparative study: … There is only limited evidence of convergence on a single European model of environmental policy. …every dimension of national policy has been Europeanised to some extent…. yet there is only limited evidence of the EU influencing a selection of policy instruments and a progress in some of the more innovative areas of environmental governance, such as the use of policy instruments. Those countries, including Denmark, Sweden, Germany, Netherlands and the UK, that have introduced a range of new policy instruments have generally not done so in response to EU pressure."
- "Finally, in these contributions whilst Europe emerges as a leader in environmental innovation, its record is still somewhat patchy. There is no doubt that the large body of

EU environmental legislations is more progressive and tougher than anything coming out of Washington (although perhaps not California), but, unfortunately, these books show only isolated examples of European innovation in terms of democratic and citizen initiatives or in the use of new policy instruments."

Something on allowances trading in the CR/Europe

Kyoto Protocol

From Wikipedia, the free encyclopedia

The **Kyoto Protocol** is a protocol to the United Nations Framework Convention on Climate Change (UNFCCC or FCCC), an international environmental treaty produced at the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, held in Rio de Janeiro, Brazil, from 3–14 June 1992. The treaty is intended to achieve "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."[1] The Kyoto Protocol establishes legally binding commitments for the reduction of four greenhouse gases (carbon dioxide, methane, nitrous oxide, sulphur hexafluoride), and two groups of gases (hydrofluorocarbons and perfluorocarbons) produced by "Annex I" (industrialized) nations, as well as general commitments for all member countries. As of 2008, 183 parties have ratified the protocol *[The signature alone is merely symbolic, as the Kyoto Protocol is non-binding unless ratified]*, which was initially adopted for use on 11 December 1997 in Kyoto, Japan and which entered into force on 16 February 2005. Under Kyoto, industrialized countries agreed to reduce their collective GHG emissions by 5.2% compared to the year 1990. National limitations range from 8% reductions for the European Union and some others to 7% for the United States, 6% for Japan, and 0% for Russia. The treaty permitted GHG emission increases of 8% for Australia and 10% for Iceland.

Kyoto includes defined "flexible mechanisms" such as Emissions Trading, the Clean Development Mechanism and Joint Implementation to allow Annex I economies to meet their greenhouse gas (GHG) emission limitations by purchasing GHG emission reductions credits from elsewhere, through financial exchanges, projects that reduce emissions in non-Annex I economies, from other Annex I countries, or from Annex I countries with excess allowances. In practice this means that Non-Annex I economies have no GHG emission restrictions, but have financial incentives to develop GHG emission reduction projects to receive "carbon credits" that can then be sold to Annex I buyers, encouraging sustainable development. In addition, the flexible mechanisms allow Annex I nations with efficient, low GHG-emitting industries, and high prevailing environmental standards to purchase carbon credits on the world market instead of reducing greenhouse gas emissions domestically. Annex I entities typically will want to acquire carbon credits as cheaply as possible, while Non-Annex I entities want to maximize the value of carbon credits generated from their domestic Greenhouse Gas Projects.

Emissions trading

Kyoto is a 'cap and trade' system that imposes national caps on the emissions of Annex I countries. On average, this cap requires countries to reduce their emissions 5.2% below their 1990 baseline over the 2008 to 2012 period. Although these caps are national-level commitments, in practice most countries will devolve their emissions targets to individual industrial entities, such as a power plant or paper factory. One example of a 'cap and trade' system is the 'EU ETS'. Other schemes may follow suit in time. This means that the ultimate buyers of credits are often individual companies that expect their emissions to exceed their quota (their Assigned Allocation Units, AAUs or 'allowances' for short). Typically, they will purchase credits directly from another party with excess allowances, from a broker, from a JI/CDM developer, or on an exchange.

In **1997 Kyoto Protocol** was ratified, mandating that industrial states commit to reduce their 1990 greenhouse gas emissions by 5.2% by 2012, with each state also taking up individual

commitments. There are three main instruments (the so-called Flexible Mechanisms) that are intended to help reduce the costs for emission reduction. These include:

- **Clean Development Mechanism** (**CDM)**
  - projects supported by industrialized countries in developing countries, that reduce greenhouse gas emissions.
  - Investors may use the emission reduction achieved in the projects to increase their emission quotas.
  - The emission quotas for the host country that transfers the emission reduction are lowered proportionally.
  - The ways of using CDM include not only technology transfer, but also planting new trees and investment into carbon sinks in general.
  - The utilization of this mechanism is not currently too relevant for the Czech Republic, as CR has enough allowances and will instead act as a "supplier" of emissions allowances.

- **Joint Implementation** (**JI)**
  - analogous to CDM, but the host and the investor countries, which are both industrialised states, exchange emission quotas that affect the total reduction targets.
  - The ME currently lists 134 JI projects; the approved JI projects represent a total emission reduction of 1 million tons of CO2 a year

- **International Emissions Trading** (**IET)**
  - As opposed to the preceding two mechanisms, this mechanism is not tied to any specific project.
  - The commitment is defined in the form of AAU units (Assigned Amount Unit), which will be calculated with the help of national emission inventories. Should a state's emissions exceed its allocation of AAU units, it has the option of covering the necessary balance either by buying them from a state that has a "surplus", or possibly by investing into JI or CDM projects that will cover the excessive emissions.

In order to fulfill the commitments ensuing from the Kyoto Protocol, the EU has set up its own **European Union Emissions Trading Scheme (EU ETS)** pursuant to **Directive 2003/87/EC**. As an EU member state, the Czech Republic has transposed the Directive into **Act No. 695/2004 Coll.**

A specific number of emission allowances is allocated to every company in the steel and iron sectors, cement and lime production, pulp and paper production, manufacture of glass and ceramics, and refineries and thermal power plants that are listed in the **National Allocation Plan**.

- If the emissions from a given company exceed the limit (the number of allowances it owns), it must buy allowances from another business that has some to spare.
- The fulfillment of the obligation is monitored for a pre-defined period, the first of which was between 2005 and 2007; the second period is from 2008 to 2012.
- For each period, a **National Allocation Plan** has been developed that distributes the allowances among the installations' operators. In the Czech Republic, **an average of 97.6 million allowances** was distributed in the initial period and **86.8 million allowances** were distributed in the second period.

Emissions trading within EU:

- producers are, within EU Emission trading Scheme, allocated certain amount of EU Allowances (1 Allowance=1 ton of CO2) - EUA
- allocation of allowances according to National Allocation Plans. NAPs have to be approved by European Commission
- trading => new market commodity EUA
- every company that is part of the National Allowance Plan NAP has an account to which its allocated EUAs are automatically credited
- even entities (dealers, brokers, banks…. simply the traders) that are not part of the NAP can trade – they ask NPA for a "personal account" and use it for transactions
- one of the important trading sites is European energy exchange. Data about trades can be found http://www.eex.de/.
- So, how does it work in reality:
    - CR joined EU ETS in 2005-2007. Trading started 1. 1. 2008 and the first phase will end in 2012 central registry necessary for trading: ITL (International Transaction Log – international evidence of transactions), administered by **UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE**
    - European allowances EUA, valid only in EU are recorded in CITL (Community Independent Transaction Log – independent registry of community transactions), and administered by European commission
    - registries on national levels, EU levels and Kyoto levels are interconnected
    - in member states, national electronic registries to provide update info on all allowances (re)distribution – not a market just information

more info at:
http://ec.europa.eu/environment/climat/emission/index_en.htm
http://ec.europa.eu/environment/climat/emission/2nd_phase_ep.htm
http://ec.europa.eu/environment/climat/pdf/nap2006/cz_decision_en.pdf
Translations of some environmental legislation:
http://www.env.cz/ris/vis-legcz-en.nsf/

CZECH REPUBLIC:

More on how does it work specifically in CR at www.povolenky.cz

BASIC TERMS AND FACTS

Permission – a decree issued by the Ministry of Environment of CR (MECR) which

1) permits emission of GHG to the extent of allocated allowances
2) sets the conditions for assessment, declaration and verification of emissions

Allowance ("povolenka") – asset value equivalent to the right to emit 1 ton of CO2 (or equivalent = for other GHGs amount that has the same GH effect as 1 ton of CO2) to the atmosphere in given calendar year

Trading periods:

- 1st trading period – 1.1.2005- 31.12.2007
- further trading periods – 5-year periods, 1.1.2008-31.12.2012, etc…

Procedure:

1. Apply for permission
2. Permission issued by the MECR, contains conditions for assessment, specification of methodology and frequency of assessment; conditions for declaration and public disclosure of emissions
3. Administrator of the facility assesses and declares emissions, declaration must be submitted to the MECR by Feb 28 of the next calendar year
4. Administrator of the facility is responsible for verification of emissions by the authorized person (which must be accredited, later on that…); a certificate must be submitted to the MECR by March 31 (if not, MECR informs the administrator of the national registry for allowances trading who then does not transfer new allowances before certification)

Trading:

For each trading period, MECR together with the Ministry of Industry and Trade prepare a proposal of the National Allocation Plan (NAP) in which total number of allowances and also their distribution to individual facilities is specified for given trading period. The proposal is published at public portal where (Facilities can respond by 30 days, if they don't it means they agree);

Final version of the proposal is approved by the government, then it goes for approval to European Commission and it is also sent to other member states at least 18 months before the relevant trading period starts. If there are any objections, the process repeats.

For each trading period, the administrator of the registry issues and allocates the allowances to individual facilities according to NAP by Feb 28.

In the first trading period, MECR can issue additional allowances to facilities whose increased need is caused by unavoidable event unrelated to operation of the facility, if such practice is approved by EC.Such allowances are then non-transferable. New additional allowances are assigned by the administrator of the registry according to pre-specified rules.

In general, allowances can be traded, in case of death or dissolution the allowances are transferred to the legal successor.

By April 30, every facility is responsible for removing from trading the number of allowances that corresponds to their emissions in the preceding calendar year.

MECR and the Czech inspection of Environment are the governing bodies

MECR is responsible for

- state supervision (to make sure the law is obeyed)
- permission issuance and changes approvals

- certifies persons authorized to verify emissions
- submits NAP proposal
- decides about issuance and assignment of additional allowances
- assigns number of allowances to new facilities (emerging after NAP approval)
- discloses the blacklist of facilities that have not complied with their obligations (to report)
- coordinates adoption and implementation of European law
- deals with offences

Czech inspection of Environment

- controls compliance with obligations and fulfillment of conditions set in permission(s)
- controls compliance with obligations related to certification of authorization to verify emission
- sets corrective measures
- deals with offences such as:
    - operation without permission or in conflict with permission (fine up to CZK 5mln)
    - failure to report change of conditions that may require change of permission (fine up to CZK 0.5 mln)
    - failure to report change of facility data/background information (fine up to CZK 0.1mln)
    - reports the data in conflict with permission or with law (fine up to CZK 2mln)
    - failure to remove corresponding number of allowances from trading (fine: in the 1st reporting period EUR 40, in the 2nd rp EUR 100 for each ton of CO2 equivalent not removed)

    (fines are collected and enforced by the competent customs office; 70% go to the state environmental fund, 30% to corresponding district)

Types of facilities involved

(typically, there is a threshold on production capacity, only those exceeding given threshold are involved)

A. Power industry
    a. combustion plant
    b. mineral oil refinery
    c. Coke oven plants
B. production and processing of metals
    a. processing of iron ore
    b. production of iron and steel
C. processing of minerals
    a. production of cement and lime in rotary ovens
    b. production of glass and glass fiber
    c. ceramic production
D. other – Manufacturing plants producing
    a. cellulose from wood or other materials
    b. paper or cardboard

Verification of emissions:

Emission verification is based on the emission report prepared by the facility. Reliability, credibility and precision of the data is checked (data about the activity, measurements, computations, choice of emission factors, used measurement methodology).

Verification is performed by an authorized person (auditor). Full access to the facility and to the data must be allowed. Auditor issues a report about verification for the facility.

Whole process of assessment, declaration and verification of emission is in detail described in corresponding gvmt regulation (procedure, methodology for measurement and computation; precision level, declaration, administration of the data, control mechanisms to ensure quality of the data, methodological directives for the authorized person, etc…)

Certification of auditors:

Candidate must get a license/certificate from the Czech institute of accreditation (ČIA – www.cia.cz). CIA's team of referees evaluates auditors' "specialized skills" and methods of verification. They check ex-ante competence and equipment, as well as "on-site" performance (so-called "witness audit"). The certificate is issued for the period of 3 years, with yearly "on-site' checks.

First certificate was issued to "Technické služby ochrany ovzduší Praha" (Prague technical services for air protection).

National allocation plan of the Czech Republic for period 2008-2012:

- must be in line with CR's commitment to reduce emissions based on the Kyoto protocol
- number of allowances must be based on true and on expected progress towards fulfillment of the commitment and must take into account the possibilities (financial, technical, looking at average emissions) of given facility
- cannot discriminate among facilities
- contains full list of facilities and allocated allowances

Total # of allowances for each calendar year of the current trading period

Celkové množství povolenek, které bude vydáno v každém kalendářním roce obchodovacího období	
Celkové množství povolenek pro stávající zařízení TOTAL # OF ALLOWANCES FOR EXISTING FACILITIES	85 445 875
Rezerva pro projekty společné realizace RESERVE FOR JOINT IMPLEMENTATION PROJECTS	99 389
Rezerva pro nová zařízení RESERVE FOR NEW FACILITIES	1 290 000
Celkem TOTAL	**86 835 264**

Recall - Joint Implementation (JI)

The mechanism known as "joint implementation," defined in Article 6 of the Kyoto Protocol, allows a country with an emission reduction or limitation commitment under the Kyoto Protocol (Annex B Party) to earn emission reduction units (ERUs) from an emission-reduction or emission removal project in another Annex B Party, each equivalent to one ton of CO2, which

can be counted towards meeting its Kyoto target. Joint implementation offers Parties a flexible and cost-efficient means of fulfilling a part of their Kyoto commitments, while the host Party benefits from foreign investment and technology transfer. A JI project must provide a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to what would otherwise have occurred. Projects must have approval of the host Party and participants have to be authorized to participate by a Party involved in the project.

More details from NAP

- total allocated number of allowances for the period of 2008 - 2012 is 5times the yearly quota set by the European Commission that is 86 835 264 allowances.
- 1 allowance is a right to emit 1 ton of CO2
- all allowances are distributed free of charge except of unused reserve allowances for new facilities, which will be sold in auction at the end of the second trading period.
- Volume of CO2 emissions in EU ETS allocated to CR for existing facilities corresponds to cca 61,5 % of predicted total emissions in CR in 2010.
- Basic allocation is based on the emissions between 2005 and 2006 that were certified by an independent auditor and on total emissions set for CR by EC
- reserve for new facilities is 1.29mln of allowances per year
- allowances can be transferred to the next year (banking), in fact, they can be used over given trading period, until the limit for given facility is reached

Assignment of allowances (facility level)

- there is 394 facilities registered in EU ETS system. 303 of those emitted in 2005-2006 less than 50 thousand tons of CO2 – small facilities. Altogether, small facilities produced 4.6% of total 2005 emissions and 4.4% of total 2006 emissions.
- Remaining 95 facilities produced 95.4% (95.6%) of all emissions in 2004 (2006) – large facilities. It was also shown that between 2005 and 2006 for large emitters the trading is very efficient tool for reduction; it motivates facilities to search and implement saving measures and increases the use of renewable energy sources.
- small facilities are more complicated, smaller diversity of production (and customers), lower elasticity of energetic efficiency of their production, higher transaction and administration cost together with limited yield from trading, limited capital reserves (to use for modernization); their emissions are more volatile => more difficult to predict
  - ⇨ therefore the classification for the purpose of assignment of allowances is based on size of the facility, not on the field
  - ⇨ For small facilities - average (small) 2005-2006 emissions +7%
  - ⇨ For large facilities - average (large) 2005-2006 emissions +1.279%
  - ⇨ for facilities with large year-on-year deviation (more than 20%) – upwards correction