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RESEARCH ARTICLE

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European environmental policy at 50: Five decades of escaping decision traps?

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Abstract

Rather than being constrained by the least ambitious governments, the European Union (EU) has until recently set the pace of national environmental policy. The contribution examines why the EU was often able to set the pace despite the institutionalist expectation that national diversity and quasi-unanimity should produce joint-decision traps. It also explains why this is no longer the case. Adopting a long-term, diachronic perspective, I argue that the EU's unexpected dynamism and its recent decline are related to distinct institutional exits from the joint-decision trap that have opened and closed in different periods. During the emergence of the policy area, diversity was manageable through bargaining, and joint gains were abundant. Between the late 1980s and the Eastern enlargement, as environmental policy was increasingly adopted under the community method, supranational intervention became an additional exit mechanism, with an activist European Parliament and strong agenda setting by the Commission. Since mid-2000, the green dynamism is in decline, as supranational interventions wane and bargaining solutions become insufficient to cope with increased diversity after enlargement, exacerbated by the economic crisis. However, nonpolitical lawmaking in the regulatory mode is emerging as a novel exit from the joint-decision trap.

KEYWORDS

austerity, enlargement, environmental policy, joint-decision trap, legislative politics

1 | THE UNFORESEEN DYNAMISM OF EUROPEAN ENVIRONMENTAL POLICY

Fifty years after the adoption of the first piece of European Union (EU) environmental legislation, the EU's environmental policy is still widely regarded as a “success story” (Lenschow & Sprungk, 2010, p. 151). That this should be so was far from obvious when environmental protection first became an issue, in an Economic Community[1] without environmental competence. It remains unobvious today, in a Union that includes 28 member states with highly diverse interests, economies, and policy legacies. Given that decisions also hinge on a small blocking minority, it seems that Europe's environmental policy should be strongly shaped by what Underdal (1980) famously called the “law of the least ambitious program.” Scharpf (1988, 2011) similarly argued that the centrality of intergovernmental negotiation with (quasi)unanimous decisions constitutes a “joint-decision trap.” This trap should limit the EU's environmental problem-solving capacity to situations of converging interests.

[1]References to the European Union include the European Economic Community (EEC) and the European Communities.

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Yet rather than representing member states' lowest common denominator, the EU propels their environmental policy forward (Holzinger, Knill, & Sommerer, 2008, p. 578; Tosun, 2013, p. 182). Since the 1970s, European environmental policy quickly emerged from a by-product of economic integration into a full-blown, independent policy area. European environmental law covered ever more issues and reached high levels of protection. The Council adopted more than 600 pieces of environmental law between 1970 and 2013, exceeding one act every month. Although the EU is not a state, it "has some of the most progressive policies of any state in the world" (Jordan & Adelle, 2013, p. 1).

There is thus a theory-practice gap: Despite the EU's well-known institutional rigidity, its environmental policy turned out remarkably dynamic. True, the environment is still degrading at an alarming rate; but at least the EU evaded joint-decision traps (JDTs) and belied the law of the least ambitious program. My first aim is to shed light on this puzzle. I adopt a long-term perspective, drawing on existing case studies in addition to original research and quantitative data on legislative activity. The long haul reveals that the EU's green dynamism has been declining since the mid-2000s. My second aim is to understand this "rise and fall" through the lens of the JDT. The direction of inquiry is exploratory. I survey and complement existing research on five decades of EU environmental politics to develop hypotheses that explain the theory-practice gap. I do not, however, purport to submit these hypotheses to a rigorous test.

The argument of this paper is that, until recently, the JDT has shaped the politics more than the policies. That is to say, the remarkable emergence and expansion of EU environmental policy is owed to "exit mechanisms" (Falkner, 2011) or "subterfuge strategies" (Héritier, 1999) that helped policy making to escape or avoid JDTs. Different exit mechanisms have emerged and disappeared over time, often in conjunction with institutional reform. Since the Eastern enlargement, the escape routes have narrowed and the JDT is returning.

Section 2 spells out the concept of the JDT and its exits. Section 3 shows how environmental policy was strongly limited by the JDT at first. It could be overcome only where interests converged or were made convergent through package deals. The emergence of a European environmental policy owes much to the fact that the potential for joint gains was still unexploited. This phase was followed by two decades of expansion and consolidation, examined in Section 4. Environmental policy relied on new exits, mostly in the form of supranational intervention. As a result, it became highly dynamic and no longer tied to market concerns. Section 5 argues that this dynamism started to decline after the turn of the millennium, leading to a period of (forced) flexibility. Enlargement made bargaining cumbersome, supranational exits became weaker, but more decisions are now made in the nonpolitical regulatory mode.

2 | DECISION TRAPS AND THEIR EXITS

The JDT model is based on "two simple and powerful conditions" (Scharpf, 1988, p. 245): (a) central-level decisions depend directly on the agreement of lower level governments and (b) central-level decisions require a supermajority. Under these conditions, which apply for the raft of environmental legislation, decisions should tend to minimal compromises and deadlock, whenever governmental interests are in conflict. Thus, given heterogeneous preferences, the JDT places a strong constraint on policy change. However, the JDT model applies better to the intergovernmental mode of governance and to the community method than to the regulatory mode:

- In the *intergovernmental mode*, decisions are made by national governments, through negotiations, and mostly on the summit level of the heads of state and government. The involvement of supranational actors is minimal, and governments remain in full control as veto players. Agreements are thus limited to solutions that are Pareto superior to the status quo. Intergovernmental negotiations were the dominant mode of environmental rule making throughout the 1960s and 1970s (Scharpf, 2001, p. 8).
- Under the *community method*, environmental policy depends on a formal proposal of the European Commission, a majority in the European Parliament (EP) and a qualified majority in the Council. Policy decisions are not determined by intergovernmental agreement alone, but a divided Council can still lead into deadlock. Over time, the distribution of power within this institutional triangle has changed, as has the extent to which environmental policy was covered by the community method, which dominates environmental policy since the late 1980s (Scharpf, 2001, p. 12).
- In the *regulatory mode*, decisions are taken at arm's length from the Council by networks of national and supranational experts. Agencies as well as implementing and delegated acts by the Commission are examples. Environmental rule making in the regulatory mode is largely decoupled from national governments and influenced more by expert consensus and sectoral constituencies than by intergovernmental bargaining. The regulatory mode has increased in importance since the 2000s, although the major decisions are still made using the community method (Wallace & Reh, 2015, p. 99).

National governments are most central in the intergovernmental mode, less in the community method, and least in the regulatory mode. In the same order, environmental policy decisions are mediated more by third actors and by dynamics other than bargaining. Each mode thereby provides different exits from the JDT (Falkner, 2011).

- *Bargaining exits* include the distribution of bargaining power (a) and strategies to achieve consensus under unanimity (b). (a) Environmental policy decisions in the intergovernmental mode depend on the distribution of bargaining power between environmental front-runners and latecomers. Conventionally, bargaining power is understood as a function of each actor's alternatives to agreement (Moravcsik, 1993). These are strongly linked to the leeway for domestic regulation. For example, if a member state can threaten to unilaterally regulate imported products, it may push for strict common rules as alternative (Scharpf, 1999, pp. 96–96). (b) Strategies to

achieve consensus may leave the level of protection intact, which is often true for side payments and package deals, or they rely on finding the lowest common denominator, which is true for opt-outs and watering down (Holzinger, 2011, pp. 122–123).

- *Interventions by supranational actors* have often facilitated high levels of ambition. The European Commission and the EP tend to promote more stringent policies than the average member state, inter alia because they can form a position by majority vote and promote regulation as a means of integration (Majone, 1996, p. 74). The Commission also acts as a gatekeeper for new policy initiatives. Because member states seek to minimize implementation costs, the green states have actively sought the support of the Commission to promote national blueprints for European legislation (Börzel, 2003). Whereas the Commission's influence has receded, that of the EP has only increased (Burns, Carter, & Worsfold, 2012).
- *Decision rules* other than unanimity are another exit mechanism that became available partly as a result of judicial intervention and partly due to treaty reform. Qualified majority voting (QMV) has freed environmental policy decisions from deadlock. Before codecision became ordinary, the existence of multiple legislative rules made it possible to play the "treaty base game" (Rhodes, 1995), that is, to select the most "change-friendly" institutional rules. Similarly, the delegation of environmental policy to the Commission and to transnational expert committees serves as exit from the JDT, to the extent that public controversy is replaced by technocratic consensus (Deters, 2018).

The following sections examine the development and expansion of EU environmental policy in light of the JDT and its exits, linking institutional changes to changes in policy-making dynamics and substantive policy output. The history of environmental policy making in the EU can be divided into three phases. The emergence of EU environmental policy started at the latest in 1973, with the first Environmental Action Programme. Then, intergovernmental dynamics were dominant. The phase of expansion and consolidation started in 1987 with the Single European Act, when the community method became dominant. The phase of flexibility began in 2004 with Eastern enlargement: The exits of the community method have become weaker, and more decisions have been taken in the regulatory mode.

3 | EXPLORING THE IMPACT OF INSTITUTIONAL CHANGE

Covering five decades, the following sections must portrait the development of EU environmental policy in broad strokes. I review literature from all periods and combine this with original research. My empirical focus is mostly on emissions from automobiles and stationary sources, because this covers contentious issues in which the JDT is most likely to arise, as well as both product and process regulations. These cases are prominent and well researched, which improves the validity of the findings. Looking at similar issues at different points in time allows me to generate hypotheses about the causal role of changes in the institutional environment. A rigorous test of these hypotheses is a matter for future research. In assessing the EU's dynamism, I use the amount of legislative activity as a quantitative approximation, and the stringency of legislation in relation to the demands of high- and low-regulating member states as qualitative benchmark.

4 | THE EMERGENCE OF EUROPEAN ENVIRONMENTAL POLICY (1973–1987)

The origin of European environmental policy is conventionally defined as the adoption of the EU's first Environmental Action Programme in 1973 (e.g., Knill & Liefferink, 2013, p. 13). In these early years, an intergovernmental logic dominated environmental policy making. Decision traps were likely, and legislation often reflected the lowest common denominator of member state interests, namely, creating markets and managing externalities.

4.1 | Few exits …

The first constraint was the lack of a legal basis. The founding treaties did "not expressly permit Community institutions to act in the field of environmental protection" (Rehbinder & Stewart, 1988, p. 15). The goals of the EU were narrow and specific: removal of customs duties and quantitative trade restrictions, common external tariffs, and in the long haul the development of a common market based on the "four freedoms." However, the Commission, supported by sympathetic member states, based environmental legislation on Article 114 of the Treaty on the Functioning of the EU (TFEU) that pertains to the approximation of laws affecting the functioning of the single market and on the "catch-all" Article 352 TFEU (McCormick, 2001, p. 4).

The Court of Justice of the EU (CJEU) encouraged this practice by maintaining that environmental protection was implied in the "accelerated raising of the standard of living" that the preamble and Article 2 of the EEC treaty define as a goal of the EU. Attempts by individual governments to block environmental policy making by challenging the EU's competence were thus thwarted. The CJEU had opened an exit from a systemic JDT by obviating the need to establish an environment title through treaty reform (McCormick, 2001, p. 42; Rehbinder & Stewart, 1988, p. 21).

The second constraint was the rigidity of decision making. Formally, the treaty provided for widespread use of QMV as early as 1969, but the "Luxembourg compromise" practically delayed the transition until 1987 (Garrett & Tsebelis, 1996; but see Golub, 1999, pp. 259–268). Under the consultation procedure, the EP had only a right to issue nonbinding opinions. Council decision making was confined to intergovernmental bargaining under unanimity, and the potential for supranational intervention was tightly circumscribed. At the end of the decade, the Isoglucose ruling[2] afforded the EP the power to delay unwelcome decisions (Rehbinder & Stewart, 1988, p. 268). The mere threat of such a delay was sometimes enough

[2] *Roquette Frères v Council*, Case 138/79.

to convince the Council to take EP positions on board (Judge, Earnshaw, & Cowan, 1994, p. 266), but formally, all power resided with the Council.

Because decision making was restricted to intergovernmental bargaining, the distribution of power between member states determined protection levels. In this regard, the CJEU was again crucial. Compared with its rulings on institutional questions, the Court was much more conservative on the substantive balance between trade and environment. The 1974 *Dassonville* ruling[3] prohibited national measures that potentially restricted the free movement of goods. In *Cassis* (1979), the Court ruled that national measures could only be upheld if, inter alia, they protected "mandatory requirements."[4] This jurisprudence discouraged member states from introducing domestic environmental provisions that affected foreign products. Compromises in the form of European legislation had thus to be sought. As the Court tended to strike down national measures, the green states were in a weak bargaining position (Holzinger, 2011, p. 121).

4.2 | … but many common denominators

Neither the need to secure unanimous agreement nor the lack of formal treaty powers preempted the emergence of a common environmental policy. However, the JDT confined it to the zone of common interests, and decisions were shaped by the distribution of bargaining power in the Council, which was skewed toward the reluctant governments. The reason why environmental policy took shape already in the 1970s was the abundance of "low-hanging fruit." Functional necessities like the working of the single market created needs for coordination, whereas diverse policy legacies posed no obstacle yet. Moreover, this was also the time of emerging environmental movements and green parties on the national level (Weale et al., 2000, p. 246), as a result of which certain countries began to take on the role of environmental pioneers.

One, if not the most, important common concern was to ensure the functioning of the single market (Weale, 2005). Directive 67/548 on the classification, packaging, and labeling of chemical substances is a case in point. The directive, often cited as the first piece of environmental regulation, was adopted as "harmonization" measure based on Article 114 TFEU. Vehicle emissions are another example. Directive 70/220 responded to German and French attempts to set national standards that threatened to fragment the market (Rehbinder & Stewart, 1988, p. 17). "Optional minimum harmonization" for environmental product standards was typical in this period, highlighting their market rationale (Weale et al., 2000, pp. 32–33).

Nonetheless, early EU environmental policy was not limited to ensuring smooth trade. Member states also had partly convergent interests in managing externalities, as combating transboundary pollution required coordination. *Waldsterben* in Germany as well as the acidification of Scandinavian lakes came to be seen as caused by air pollution, in particular by sulfuric dioxide from cars as well as from stationary sources in various countries (Boehmer-Christiansen & Skea, 1991). With its direct effect and supremacy, EU law seemed the right tool to overcome the problem of free riding in the protection of common pool resources (Keohane & Ostrom, 1994). The serious implementation deficits became apparent only much later (Knill & Liefferink, 2007, p. 146).

In addition to product regulation, the EU therefore introduced ambient air quality standards, but these only reflected the lowest common denominator (Hey, 2005, p. 19). Moreover, stationary sources were not regulated before the mid-1980s (Zito, 2000, p. 62). In June 1984, the Council agreed on a directive on air pollution from industrial plants, but the definition of actual emission limits was postponed. The United Kingdom, being the most skeptical actor, agreed only after ensuring that it would retain a veto over those future decisions and as part of a package deal, in which the Commission withdrew a planned directive on heavy fuel (Boehmer-Christiansen & Skea, 1991, p. 233).

The so-called Seveso directives are examples of both externalities and spillover from trade. They were adopted in response to the eponymous industrial accident after which drums of hazardous waste thought to contain dioxin went missing in Italy and resurfaced in France. Environmental policy in this period was often "hot-spot management" responding to incidents (Hey, 2005, p. 18), which in the case of Seveso were also successfully politicized by the EP (McCormick, 2001, p. 53). Member states' interests thereby converged due to the issue's salience and urgency.

In terms of legislative activity, environmental legislation took off after the adoption of the first Environmental Action Programme (see Table 1 and Figure 1). Between 1970 and the entering into force of the Single European Act, the EU adopted 210 pieces of environmental legislation, amounting to 0.82 acts per month. Although far from deadlock, this is the smallest legislative activity of all periods.

5 | EXPANSION AND CONSOLIDATION (1987–2004)

The period of expansion began with the Single European Act (SEA) and ended with Eastern enlargement. Environmental policy making moved from the intergovernmental mode to the community method. Novel exits from the JDT arose from a dedicated treaty basis,

TABLE 1 EU legislative output in environmental policy

Phase	Legislative acts	Duration (months)	Acts per month
1970—SEA	173	210	0.82
SEA—enlargement	330	202	1.63
Enlargement—2018	232	176	1.32

Note. Directives, regulations, and decisions adopted by the Council in the area of environmental policy (Eur-Lex Directory Code 15.10). 1970: January 1, 1970. SEA: June 30, 1987. Enlargement: Eastern enlargement on May 1, 2004. 2018: December 31, 2018.

Abbreviations: EU, European Union; SEA, Single European Act.

[3] *Procureur du Roi v Benoît and Gustave Dassonville*, Case 8/74.

[4] *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, Case 120/78.

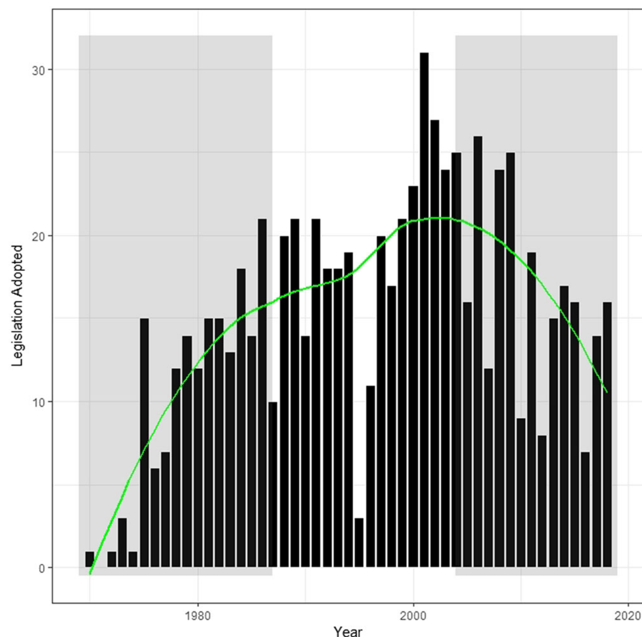

FIGURE 1 Directives, regulations, and decisions adopted by the Council and (where applicable) the European Parliament in the field of environment (Eur-Lex Directory Code 15.10). The shaded areas represent the three phases. Source: Own compilation based on Eur-Lex. See the Supporting Information for details [Colour figure can be viewed at wileyonlinelibrary.com]

reformed decision rules, and increasing opportunities for supranational intervention. Revised jurisprudence on the relation between trade and environment opened up another bargaining exit.

The SEA introduced a distinct environment title, in acknowledgment of case law and informal practice and in an effort to complete the single market. The new Articles 191–193 TFEU brought legal certainty as to the EU's competence to legislate on environmental matters independent from economic objectives. Article 192 TFEU required a unanimous Council, but the harmonization Article 114 TFEU now activated the new cooperation procedure. The cooperation procedure took away veto power from the most reluctant member states, because decisions were taken by QMV. It also enhanced supranational intervention. Since the EP and the Commission saw new environmental policy initiatives as opportunities to advance integration, they promoted more and stricter legislation than the Council (Majone, 1996, p. 74). The cooperation procedure strengthened the Commission's agenda-setting power. Because the Council could now adopt a commission proposal by QMV but amend it only by unanimity, the Commission could target a majority coalition sympathetic to its own goals (Tsebelis & Garrett, 2000, p. 18). Cooperation also introduced a second reading, in which Parliament could amend the council position if supported by the Commission, giving it "conditional agenda-setting power" (Tsebelis, 1994).

The existence of at least two treaty provisions for environmental policy allowed the Commission to play the "treaty base game" (Rhodes, 1995, p. 99). The Commission preferred harmonization to the new environment title, because it activated QMV, involved the environmentally conscious EP, and banned the introduction of stricter national measures (Holzinger, 2011, p. 119). In 1991, the CJEU sanctioned the use of harmonization for environmental policy against the opposition of the Council.[5] By contrast, the CJEU's 1988 landmark ruling in *Danish Bottles* emphasized environmental protection over trade.[6] Deviating from the spirit of *Dassonville* and *Cassis*,[7] the ruling recognized domestic environmental policies as mandatory requirements that could justify trade restrictions. The new leeway for national product regulations improved the bargaining power of green states, which could now walk away from the bargaining table and introduce more stringent national measures (Gehring, 1997, p. 347). The Court had thus opened up a bargaining exit. The ruling was partly institutionalized in the SEA at the insistence of Denmark and Sweden as "environmental guarantee" (Liefferink & Andersen, 1998, p. 258). Now laid down in Article 114 (4–6) TFEU, the guarantee allows derogations from "approximated" laws that do not constitute "an obstacle to the functioning of the internal market" (Article 114 [6] TFEU) under narrow conditions and subject to approval by the Commission (de Sadeleer, 2014, pp. 358–377).

5.1 | Bargaining exits

This new bargaining exit strengthened environmental legislation. Building on *Danish Bottles*, the Court ruled in 1992 that a Belgian waste import restriction was justified as protecting a mandatory requirement.[8] As a result, the Council adopted a regulation (259/93) on the transborder shipment of waste, which expressly allowed national waste import bans (Wheeler, 1993, p. 95). The 1991 German packaging ordinance is another example. It required companies to take back packaging waste or pay to handle the collection. Foreign companies operating in Germany lodged complaints with the Commission. The latter refrained from taking the matter to Court, partly due to the risk of legal defeat under the new case law. Again, the domestic scheme therefore prompted EU legislation. The resulting directive (94/62/EEC) exceeded the conservative positions, although this time, it fell behind the aspirations of the most ambitious governments (Gehring, 1997, pp. 350–351; Weale et al., 2000, pp. 419–424).

Legislation on car emissions illustrates the point further. In February 1988, the Commission proposed the small cars directive (89/458/EEC) to replace a regulation (88/76/EC) that barely exceeded the lowest common denominator. At issue was whether the new directive should mirror the strict US-83 or even US-87 standards. The Netherlands, Germany, and Denmark were in favor, whereas Italy, France, and the United Kingdom were against. The Commission proposal went beyond the positions of France and Italy, but it fell short of the U.S. standards. The Commission had also prevented the green states from granting tax rebates for cars meeting U.S.

[5] *Commission v. Council*, Case 300/89, 1991.

[6] *Danish Bottles*, Case 302/86, 1988.

[7] See footnotes 3 and 4.

[8] Because mandatory requirements only apply without common rules and Directive 84/631/EEC regulated hazardous waste shipments, the prohibition remained unlawful, of all kinds, for toxic refuse. See *Wallonian Waste*, Case 2/90, 1992.

standards, by opening an anti-subsidy investigation. After the *Danish Bottles* ruling, the Commission dropped the investigation, and the Netherlands implemented their tax plan. Denmark went even further. It required US-87 standards within 2 years and granted tax reductions for cars meeting the standard earlier. In April 1989, also Germany announced that it would adopt more stringent standards. As a result, the Council approved a compromise that required standards equivalent to US-83 and allowed national tax incentives (Holzinger, 1994, pp. 248–258; Hubschmid & Moser, 1997).

5.2 | Supranational intervention

The judge-made bargaining exit facilitated harmonization of product standards on a high level of protection. European production standards, however, could still be defeated by the less ambitious member states (Scharpf, 1999, p. 97). Nevertheless, the EU also adopted its first major production regulations in this phase.

Supranational interventions were crucial to break away from the lowest common denominator in production regulation. Consider the large combustion plants (LCP) directive (88/609/EEC). The LCP marked a significant change from the ambient quality standards of the 70s toward emission abatement at source. The Commission's role as initiator and gatekeeper meant that member states with strongly entrenched domestic policies were eager to convince it of their own approach. In the case of the LCP, German officials handed the Commission a copy of the German Large Combustion Plant regulation and suggested to develop it into a directive (Zito, 2000, p. 60). The German proposal was centered on strict emissions limits based on the current state of technology and was therefore much less flexible than what the United Kingdom, Spain, and Greece could stomach. The Commission, however, used it as blueprint for the draft directive. Later on, the Commission's role was largely reduced to mediation, but the stringent, technology-based German approach was maintained (Héritier, Knill, & Mingers, 1996).

In the early 90s, the United Kingdom played the role of pacesetter and succeeded in pushing elements of its innovative Environmental Protection Act onto the agenda. For example, the Commission proposal on the Directive on the Free Access to Environmental Information (90/313/EEC) "was essentially written by an expert from the British Environment Ministry" (Knill & Liefferink, 2007, p. 113). Because the Commission acted as gatekeeper for European policy proposals, member states competed to be heard by the Commission in order to promote their preferred concepts. The environmental pioneers with their high adaptation costs and readily available blueprints dominated the competition (Börzel, 2003; Héritier et al., 1996).[9]

Overall, legislative action increased after the SEA had entered into force in July 1987. The number of acts per month almost doubled, from 0.71 to 1.26 in the 76 months between SEA and Maastricht. Inversely, the rapid expansion suggests that policies were indeed bottled up in the first period, indicating a strong effect of the JDT during these years.

5.3 | Consolidating the green acquis

Subsequent treaty reforms were less consequential. In 1993, Maastricht extended the cooperation procedure to environmental policy.[10] A new codecision procedure further empowered the EP. It first applied whenever the harmonization article was used and in all of environmental policy once the Amsterdam Treaty entered into force in 1999. QMV became the default, and the EP was coequal with the Council. The Commission, however, lost agenda-setting power, because amendments no longer required a unanimous Council in the last stage of codecision. The EP was thus empowered also at the expense of the Commission (Tsebelis & Garrett, 2000, p. 26).

Maastricht emphasized the subsidiarity principle. Although already part of the SEA, it was now more often referred to. The United Kingdom, France, and Germany prepared national "hit lists" for EU policies (Collier, 1997, p. 10), which may partly explain the sudden drop in legislative activity in the first half of the 90s (see Figure 1). For the first time, the Commission started to withdraw environmental policy proposals, explicitly referring to subsidiarity (Golub, 1996, pp. 699–700). Ten initiatives were removed from the agenda between 1991 and 1995.[11] Substantively, environmental policy turned to less intrusive instruments built around self-regulation, access to information, and incentives (Holzinger, 2011, p. 112; Knill & Liefferink, 2007, p. 19). The Commission's readiness to cave in to member states' reluctance and place subsidiarity over sustainability (another Maastricht goal) can be interpreted as a result of its weaker agenda-setting power under codecision.

The plummeting of legislative activity in the second half of this phase was only short lived. It was "a sign of consolidation rather than deterioration" (Lenschow & Sprungk, 2010, p. 139). After the accession of Austria, Finland and Sweden, more environmental legislation was produced than ever before. With the newcomers, the green states now had a blocking minority that increased their bargaining power in the "shadow of the vote" (Liefferink & Andersen, 1998, p. 260). However, the peak in legislation before the Eastern enlargement is also consistent with member states "gearing up the legislative process" (Leuffen & Hertz, 2010, p. 69) in anticipation of more difficult decision-making postaccession.

6 | FLEXIBILITY OR ROLLBACK?

The 2004 Eastern enlargement marks the beginning of the current phase, in which we observe a revival of the JDT. Supranational exits are waning, whereas bargaining exits are becoming insufficient to cope with increased diversity. As a result, legislation has slowed down,

[9]The LCP Directive and the Small Cars Directive were eventually linked. France and the United Kingdom were ready to accept the stringent German compromise proposal on LCP in return for Germany accepting a more lenient car emission standard (Holzinger, 1994, p. 308; Zito, 2000, p. 64).

[10]Spain, Portugal, and Ireland opposed the concomitant extension of QMV, fearing more stringent EU policies and higher implementation costs. They agreed in exchange for side payments in the form of the newly established cohesion fund (Börzel, 2002: 205–206).

[11]Own calculation based on Eur-Lex.

and policy is becoming less ambitious, leaving more room for derogation and flexibility. In the area of clean air and water protection, "the EU has entered a four-year period of almost complete regulatory inactivity after the year 2010" (Steinebach & Knill, 2017, p. 430). Ever since the Lisbon Treaty came into effect, legislative output has fallen almost to the level of the 1980s (see Figure 1). Whereas environmental policy has resisted dismantling, "the policy area is increasingly characterized by stasis, calling into question Europe's famed environmental leadership" (Burns, Tobin, & Sewerin, 2018, p. 199). At the same time, however, more decisions have been adopted in the regulatory mode, outside of political lawmaking and contestation (see Figure 2).

The Treaties of Nice (in force since 2003) and Lisbon (2009) reformed voting in the Council to make the EU fit for enlargement. Nice introduced a triple-majority rule, which Lisbon replaced by today's double-majority rule (55% of the countries representing 65% of the population). It was widely expected that the accession of 12 new member states with weak environmental policies and a need to catch up economically would hamper the EU's environmental decision making (Holzinger & Knoepfel, 2000; Vandeveer & Carmin, 2004). Empirical tests of these expectations on a small number of cases during the first years after enlargement came to a more optimistic conclusion and emphasized issue-specific differences (e.g., Skjærseth & Wettestad, 2007). Thanks to conditionality, the transposition of the existing green acquis in the accession countries was above average (Braun, 2014, chapter 4). The new member states also exercised restraint in legislative bargaining; they did not yet form a permanent veto coalition opposed to ambitious environmental policy

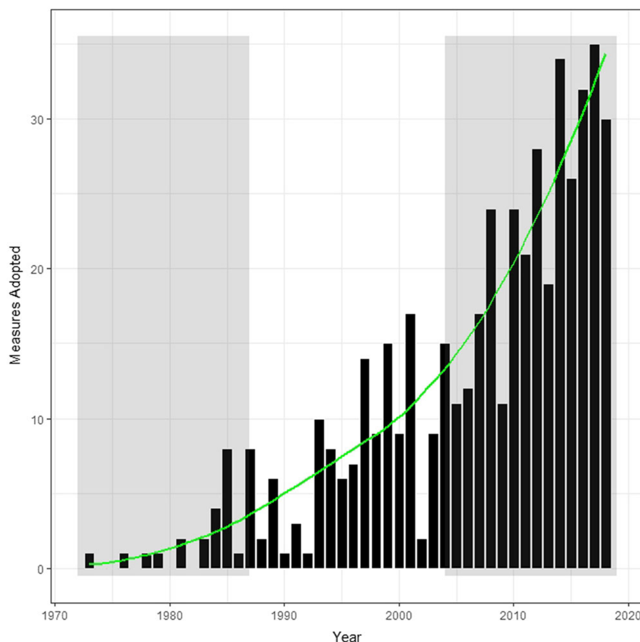

FIGURE 2 Directives and regulations adopted by the Commission alone in the field of environment (Eur-Lex Directory Code 15.10). The shaded areas represent the three phases. Source: Own compilation based on Eur-Lex. See the Supporting Information for details [Colour figure can be viewed at wileyonlinelibrary.com]

across the board (Skjærseth & Wettestad, 2007), perhaps because the newcomers perceived the first new environmental policies as "extension of their accession criteria" (Braun, 2014, p. 152).

But more recent studies suggest that the new member states have started to flex their muscles. Clearly, the Council has not ground to a halt, but decision-making scholars now find an impact of enlargement in terms of polarization, voting coalitions (Mattila, 2009; Thomson, 2011, pp. 64–66), legislative output (Toshkov, 2017, p. 182), and decision-making speed (Hertz & Leuffen, 2011).[12] These impacts are visible only on some issues and in some policy areas. Environmental policy is one of them (Toshkov, 2017, p. 189).

6.1 | Waning supranational intervention

Increased conflict and diversity compounded the JDT and weakened its exits. This pertains first to supranational intervention. The year following enlargement, the Commission renewed its "Better Regulation" initiative with a focus on deregulation (Radaelli, 2007). In the aftermath of the 2008 financial and economic crisis, the Commission moreover came under attack from business and member states for the alleged burden imposed by environmental regulation (Steinebach & Knill, 2017, p. 433). As a result, it launched a "Regulatory Fitness and Performance Programme" in December 2012, under which 53 items were withdrawn, including two major environmental policy projects: the planned Soil Framework Directive (COM/2006/0232) and the Directive on Access to Justice in Environmental Matters (COM/2003/0624). The Commission's decreasing legislative activity has been attributed to it being more constrained by member states' reluctance (Kreppel & Oztas, 2017, pp. 1139–1140). The Juncker Commission has also seen major organizational restructuring: Responsibilities for environment and climate have been placed in the "project team" of Vice President for Energy Union Šefčovič from Slovakia. Similarly, the hitherto separate portfolio for environment was merged with Maritime Affairs and Fisheries, and the climate portfolio, created in the second Barroso Commission, was combined with Energy. Čavoški (2015, p. 501) interprets these organizational changes as part of a "post-austerity agenda to stabilise national economies and boost jobs growth and investment." This observation may support the "new intergovernmentalist" thesis that the supranational institutions are no longer "hard-wired to seek ever-closer union" (Bickerton, Hodson, & Puetter, 2015, p. 712). Possible examples are the Commission's announcement in 2014 to withdraw the Clear Air Quality and Waste Packages. The latter was in fact replaced by a revised proposal. By contrast, the Commission maintained the Air Quality Package in response to pushback from the EP (Air Quality News, 2015).

Also, the EP is no longer an obvious environmental champion. Although a majority opposed the withdrawal of the Air Quality Package, the plenary failed to agree on the wording for a resolution. Codecision empowered an EP that has become less green. Burns et al. (2012), examining EP amendments to environmental legislation

[12]Using descriptive statistics, in contrast to Hertz' and Leuffen's (2011) survival analysis, Best and Settembri (2008) found that enlargement *accelerated* law production.

from 1999 to 2009, found that they became tamer (but more successful) under codecision. This may suggest that the EP has become less aggressive as the interinstitutional turf wars are over. It may also be due to the influx of Members of the European Parliament from new member states. Moreover, the EP has shifted to the right. The European People's Party was elected the largest group for the first time in 1999, and it increased its share of seats further in 2004 and 2009, with a rather stable left–right ratio in 2014 (see Table 2).

6.2 | Narrow bargaining exits

With supranational intervention waning, environmental politics has to rely on bargaining exits. Unfortunately, bargaining is now more cumbersome, as more latecomers than before need to be compensated. The exceptional case of relative success is the climate-energy package (Gravey & Moore, 2018), a set of measures to ensure the EU meets its climate and energy targets for the year 2020. It was relatively ambitious, because decision makers linked stringent climate targets and the reform of the EU's emissions trading system to a new directive on carbon sequestration. The latter made it possible to secure assent from coal-based member states like Poland and thus to adopt the entire package on the European Council level, although at the instigation of the Visegrád group, the decision had to be unanimous (Jankowska, 2011, p. 171). Moreover, the revenues generated from emission allowance auctioning could be used as side payments in the form of subsidies for climate projects (Skjærseth, Eikeland, Gulbrandsen, & Jevnaker, 2016). In spite of this, the less enthusiastic central and Eastern European countries were able to extract major concessions (Bocquillon & Maltby, 2017, p. 94).

In addition to increased heterogeneity, the recent sluggishness may also be caused by decreasing ambition on the part of former pioneer countries, which, like the waning activism of the Commission, coincides with the economic recession in the wake of the Euro crisis

TABLE 2 Party–political composition of the European Parliament, 1984–2017

Election	Left seats	Right seats	Ratio
1984	191	236	0.81
1989	265	241	1.09
1994	249	291	0.86
1999	270	329	0.82
2004	283	420	0.67
2009	274	435	0.63
2014	288	422	0.68

Note. "Left seats" include European United Left-Nordic Green Left (GUE/NGL), Progressive Alliance of Socialists and Democrats (S&D), Greens, Greens & Regionalists, and their respective predecessors. "Right seats" include Alliance of Liberals and Democrats for Europe (ALDE), European People's Party (EPP) (with Forza Europa), European Conservatives and Reformists (ECR), and their respective predecessors, as well as various far-right nationalists and Eurosceptics. Source: European Parliament (n.d.).

(Burns et al., 2018). As example of reduced pioneer activism and the need for summit-level bargaining, consider the regulation on carbon dioxide emissions from passenger cars, negotiated outside of the climate-energy package between 2007 and 2009. It ran into stalemate between the EU's major car producers in France, Germany, Italy, and to a lesser extent the United Kingdom, as well as their respective suppliers. A compromise could only be reached, again, on the summit level between France and Germany, leaving the more ambitious Italy at the sidelines. The compromise resolved the distributional battle between producers of more and less efficient cars through a burden-sharing mechanism. Germany's reluctance to agree, given the importance of big cars for its automobile industry, may also have been alleviated by France's sudden decision to drop support for the soil framework directive, which Germany wanted to stop. This example shows that package deals may undermine the aggregate level of protection. It also shows that car emission policy is no longer pushed forward by leader states but is negotiated among (the less and the least ambitious) producer states, suggesting that the decline in the EU's green dynamism is partly due also to old member states no longer acting as pacemakers. Bargaining power in the fuel efficiency directive was slanted toward Germany, the least ambitious actor. There were no plans to push ahead with national regulation, as this would have had technical and legal drawbacks (Deters, 2018).

6.3 | Decision rules

With supranational interventions waning and bargaining exits becoming narrower, more environmental policy is now created using the regulatory mode. In 2002, Tsebelis and Yataganas argued that the Nice reform and enlargement would not only empower the Council and make it "almost impossible to alter the legislative status quo" (Tsebelis & Yataganas, 2002, p. 304), it would also lead to greater bureaucratization (p. 300, see also Thomson, 2011, p. 192). For example, the particulate matter count under the most recent Euro 6 norm for Diesel engines was adopted by the Commission under its executive powers.

The nonpolitical decisions adopted by the Commission at arm's length from the legislative branch have not followed the declining trend of environmental legislation, to the contrary (see Figure 2). The decisions include matters with real consequence and potential for conflict. One example is the definition of the Best Available Technology by the so-called Article 75 committee, on which industrial plant permits depend. Another example concerns the phaseout of traditional incandescent light bulbs, which was adopted by a committee under the eco-design directive (2005/32/EC). The countless product regulations for appliances under the eco-design directive are not even included in Figure 2, because EUR-Lex lists them under energy policy. To be sure, bureaucratic lawmaking presupposes that secondary law, on which the Commission can base its decisions, already exists. In that sense, the regulatory mode complements rather than supersedes the joint-decision mode.[13] However, once secondary law has delegated the task of adopting regulatory decisions to the Commission, the very

[13]Thanks to one reviewer for pointing this out.

combination of JDT and diversity that constrains legislative lawmaking often makes it more difficult to revoke the delegation and results in more bureaucratic discretion (Tsebelis & Yataganas, 2002, p. 300).

6.4 | The need for flexibility

In addition to making more use of the regulatory mode, the EU has responded to the difficult political decision making with flexible and potentially weaker policies, including framework directives, market-based, and voluntary instruments. "The practice of delegating discretionary powers to national authorities to resolve controversy has increased since the 2004 enlargement" (Thomson, 2011, p. 254; see also Wurzel, 2012, p. 230), confirming the "need for flexibility" that was expected at "the brink of eastern enlargement" (Holzinger & Knoepfel, 2000). Already the Sixth Environmental Action Programme (2002–2012) was more cautious than its predecessors. It stuck to general objectives and frameworks that were subsequently fleshed out in so-called thematic strategies, which are essentially "frameworks to further frameworks" (Hey, 2005, p. 27). Costly and potentially controversial decisions were postponed. For example, EU emission trading began with a long pilot phase with free emission allowances, and even after the 2009 reforms, most costs "will not unfold their full effect in the next 15 years" (Müller & Slominski, 2013, p. 1436).

Starting with the Water Framework Directive (2000/60/EC), EU environmental policy adopted a "mandated participatory planning" (MPP) approach (Newig & Koontz, 2014), in which directives specify very broad overall goals (such as "good water quality") and procedures for adopting measures on the national level, giving member states substantial flexibility (see also Blühdorn & Deflorian, 2019). In contrast to traditional framework directives, in which the substantive targets were defined in subsequent "daughter directives" adopted on the EU level, the MPP approach leaves the target specification to the member state, but even the MPP approach does not prevent deadlock, as evinced by the 7 years of negotiations and eventual withdrawal in 2013 of the soil framework directive proposal (Deters, 2019).

7 | CONCLUSION

The remarkable evolution of EU environmental policy to one of the EU's most successful policy areas is puzzling, given the heterogeneity and number of veto players on whose agreement policy change depends. This setting creates a risk of joint-decision traps. But the EU's changing institutions also provide different opportunities, at different times, to escape or avoid deadlock, shaping the dynamics more than the outcomes of environmental politics.

This article explored the impact of institutional change on these dynamics and outcomes. In the first phase, environmental policy was made in the mode of intergovernmental negotiation. Only bargaining exits were available, and the JDT was therefore a powerful constraint. However, abundant low-hanging fruit and single-market spillovers left much room for agreement. In the second phase, the community method added supranational exits, as the EP and Commission could intervene into or catalyze intergovernmental decisions. The CJEU moreover improved the bargaining position of pioneer states whose number also increased in the Northern enlargement. In the current phase, environmental policy is increasingly complemented by decisions made in the regulatory mode. However, political legislation has become more cumbersome and prone to JDTs after the Eastern enlargement and as indirect result of the economic crisis. Bargaining must cope with more diversity, and supranational interventions are less powerful. As the constraint of the JDT is again increasing, the legislative output is sliding back to 1980s levels and is becoming more flexible.

Spanning five decades of coevolution of institutions and the policy area, the analysis had to paint in broad strokes. It generated a number of hypotheses as to how environmental politics escapes the JDT; these could be picked up with theory-testing designs to estimate the various exit mechanisms' relative contributions to environmental policy change, as well as the precise impact of increased postenlargement heterogeneity. Future research could moreover attempt to disentangle the impacts of enlargement and economic crisis, which are temporally overlapping, on the EU's decreasing green dynamism in general and on the declining activism of the Commission in particular. Most pertinent contributions examine the impact on the level of former accession countries (e.g., Andonova & VanDeveer, 2012) rather than on the EU level (but see Bocquillon & Maltby, 2017). Finally, the move from intergovernmental negotiation to the community method and eventually to the regulatory mode is not limited to environmental policy, which opens room for comparison with the evolution of politics and policies in other areas.

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