

Bridging the value-action gap: Compliance with Kyoto in the Environmental Liability Directive

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ABSTRACT

This paper analyses compliance with the 2004/35/CE Environmental Liability Directive (ELD) in Sweden, the United Kingdom, Greece and Italy. Their compliance with the ELD reflects in how far pro-environmental 'actions' have been taken. Comparing compliance with environmental statements or 'values' made in their national parliaments displays to what extent there is a mismatch between values and actions, or a 'value-action gap'. The four countries each represent one of the *Four Worlds of Implementation*, a model by Falkner and Treib studying general patterns of compliance with EU Directives. The ELD furthers the polluter-pays principle evident in the Kyoto Protocol. In this regard, the value-action gap helps identifying problem areas in European climate governance.

Keywords

Value-action gap, Environmental Liability Directive, Kyoto Protocol, polluter-pays principle, EU legislation.

INTRODUCTION

Despite climate change becoming increasingly evident, a negative trend can be observed in terms of enforceability and commitment in climate treaties. The 1997 Kyoto Protocol contains binding commitments for its ratifying parties, unlike its successor, the 2015 Paris Agreement. Combatting climate change, despite great concern, seems to lose priority at a time where it deserves our uttermost attention. Thus, an environmental value-action gap is evident. How has the value-action gap in the post-Kyoto European Union influenced transposition and implementation of EU environmental legislation?

PARLIAMENTARY ACCOUNTABILITY IN INTERNATIONAL CLIMATE GOVERNANCE

The Kyoto Protocol may be regarded as one of the first international political responses to climate change. This paper argues that the polluter-pays principle is the cornerstone of the Protocol, ensuring that the countries which have polluted most should take the lead in preventing further pollution (Faure, Gupta & Nentjes, 2003, p. 13-15). The polluter-pays principle is evident in both the Articles and flexible market mechanisms of the Protocol and holds parliaments accountable for tackling climate change.

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Polluter-pays principle

The polluter-pays principle is evident in the Kyoto Articles, as these provide binding commitments for its ratifying parties. These commitments require parties to reduce overall emissions by at least five percent in 2008-2012 compared to the base year, which is in most cases 1990 (Kyoto Protocol, 1997, Article 3). Moreover, national systems must be in place to meet these goals and progress is reported annually to expert teams (1997, Article 5, 7-8). Furthermore, the ratifying parties are indeed the most polluting, namely nearly the entire continent of Europe, the United States and Canada, Australia and New Zealand, Japan and Russia (1997, Annex I).

Similarly Kyoto's flexible market mechanisms further the polluter-pays principle. International Emissions Trading (IET) places a cap on the total amount of emission allowances, and allocates sustainable development to enterprises where this is economically most beneficial. Joint Implementation (JI) and Clean Development Mechanism (CDM) allow polluters to invest in sustainable projects abroad whilst adding the reduced emissions to their own account. However, a limited amount of credits may come from these mechanisms, forcing Annex I countries to take domestic action (Derouin, Bellamy, Nelson & Freeze, 2007, p. 1-7).

Parliamentary accountability

Climate change is a political question, which parliaments and governments should solve. First, the liberalisation of energy markets makes investors unlikely candidates to support sustainable technologies and renewable energy sources, as carbon is still the main pillar of this market (Faure et al., 2003, p. 16). Second, climate change is an urgent question as it is already taking place. As parliaments and governments in democratic countries with parliamentary systems both have legislative powers, they are the only players with immediate power to draft and enforce laws. Parliaments eventually pull the strings by making legislation by themselves, and approving or refusing legislation proposed by governments (Heringa & Kiiver, 2012, p. 20-22). Third, as climate change has been defined as the greatest challenge of the twenty-first century, parliaments must show responsibility in order to remain politically legitimate (Faure et al., 2003, p. 22).

CONCEPTUALISING COMPLIANCE WITH EU DIRECTIVES: VALUES AND ACTIONS

National parliaments in Europe encounter difficulties transposing and implementing EU Directives. They do not always succeed in putting their beliefs into concrete policies, even when there seems to be a good 'fit'. This phenomenon is described as the 'value-action gap'.

Blake's model of the value-action gap

Numerous theories explaining the value-action gap focus on the information deficit alone, assigning the existence of the gap to individuals being uninformed, and thereby unable to transform their environmental beliefs into concrete actions. Contrastingly, Blake's model establishes three types of barriers explaining the gap. Individual barriers are located within individuals and can for instance be personality traits such as laziness or a lack of interest. Responsibility barriers are related to the locus of control. If individuals perceive the locus of control to be external to them, they feel incapable to influence or contribute to the fight against climate change. Practicality barriers comprise issues such as a lack of time, money, facilities or indeed information (Blake, 1999, p. 263-270). Unlike many other academics, Blake also acknowledges that the value-action gap is repeated on levels other than that of the individual, for instance in institutions and thus also parliaments.

Implementation of EU Directives in the *Four Worlds*

Falkner and Treib have researched processes of implementation of EU Directives in most European countries, and categorised them in four worlds, each with their own characteristics (Falkner & Treib, 2007, p. 2-10).

- The *world of law observance* consists of Denmark, Finland and Sweden. These countries generally comply fast and well without problems in both the transposition and implementation stages. There seems to be a compliance culture in this world, meaning that compliance with EU legislation is a goal in itself and that the necessary infrastructure is present.
- The *world of domestic politics* consists of Austria, Belgium, Germany, the Netherlands, Spain and the United Kingdom. These countries decide on a case-to-case basis whether a Directive will be adopted, based on its fit within the domestic political situation. Transposition can therefore be problematic, and variability amongst the countries in this world can be big. However, once transposition has occurred, implementation usually happens swiftly due to the presence of the developed infrastructure that is needed.
- The *world of transposition neglect* consists of France, Greece, Luxembourg and Portugal. These countries show a posture of national arrogance and compliance with EU Directives is no goal in itself. For these reasons, both transposition and implementation are relatively rare.
- The *world of dead letters* consists of the Czech Republic, Hungary, Ireland, Italy, Slovakia and Slovenia. These countries usually transpose quite well, but lack the infrastructure needed for implementation. Moreover, the decision to transpose is also dependent on the domestic political situation, causing great variability in the transposition stage in this world.

By differentiating between various types of transposition and implementation, new insights might be gained and systematic flaws may be discovered in the process of compliance with EU Directives, thereby enhancing the effectiveness of the Directives.

Limitations of analysing implementation of Directives

Mastenbroek identifies six variables which may cause

misrepresentations when implementation is analysed. On the EU-level, first differing decision-making procedures (via the European Commission, Council, or Council and EP) may impact the speed of transposition. Here, also the quality (high or low) and topic (accepted or sensitive) of the Directive play a role. Second, the character of a Directive is important. A Directive introducing new legislation requires more deliberation than an amending Directive. Third, the deadline of a Directive may cause certain Directives to be prioritised over others (Mastenbroek, 2003, p. 375-376). On the national level, first the type of legal measure used to transpose a Directive may be time-efficient or time-consuming. Second, the fit of a Directive may require extensive measures in case of a misfit. Third, so-called Chinese walls between preparation of transposition and actual transposition may arise, such as miscommunication or conflicts of competence and interest (2003, p. 377). All of these variables may influence the compliance process.

Methodology

This paper assesses the value-action gap in four countries, each representing one of the *Four Worlds of Implementation*. Statements expressed by their national parliaments will serve as environmental 'values', whilst compliance with the ELD will be measured as 'actions'. It is hypothesised that, because of the presence of the polluter-pays principle in both the ELD and the Kyoto Protocol, compliance with the ELD represents the operationalisation that parties ought to take in order to meet their Kyoto commitments. The value-action gap then becomes a helpful tool to critically assess to what extent countries are meeting their commitments, or what might hinder them in doing so.

THE ENVIRONMENTAL FOUR WORLDS

Sweden: world of law observance

Sweden's national parliament, *Riksdagen*, presents ambitious climate policies by wanting to be a strong performer nationally and internationally (Sveriges Riksdag, 2006, p. 7-19). Their compliance with the ELD is also successful due to an impressive implementation of the Directive into national environmental legislation and the application of strict liability to all environmental damage (European Commission, 2013, p. 335-346). The successful compliance is in line with Falkner's and Treib's model for the world of law observance (Falkner & Treib, 2007, p. 15). There is thus a match between bold environmental values and successful environmental actions, resulting in a narrow value-action gap in the Swedish case.

United Kingdom: world of domestic politics

The Department for Environment, Food and Rural Affairs has presented the UK Climate Change Programme, approved of by parliament. Similarly to Sweden, the UK's environmental values are bold as the country aims to be an international forerunner in fighting climate change (Her Majesty's Government, 2006, p. iii). Yet, there are serious shortcomings in terms of transposition and implementation, as the ELD is introduced by means of numerous complex Regulations, preventing harmonisation with national environmental legislation. Moreover, the Court of Justice of the European Union has sanctioned the UK for its slow transposition. Water policy is the only successful component of the ELD (European Commission, 2013, p. 357-368). The problematic compliance is one of the

possibilities for the world of domestic politics in Falkner's and Treib's model, but it is unsure if it applies to all countries of this world (Falkner & Treib, 2007, p. 15). In any case, there is a mismatch between strong environmental values, but shortcomings in terms of actions, resulting in a wide value-action gap in the UK.

Greece: world of transposition neglect

Greece lacks a national climate strategy in which environmental values can be expressed. Therefore, the program for Sustainable Development presented by the Ministry of Environment and Energy in 2007 is the best alternative. Here, Greece acknowledges that in the field of sustainability and risk management, there are still major shortcomings in terms of infrastructure (Ελληνική Δημοκρατία Υπουργείο Περιβάλλοντος, 2007, p. 33-36). The country's environmental values are thus not as high as these of Sweden and the UK. Compliance with the ELD is not so successful either, as no harmonisation exists between the ELD and national environmental legislation. Moreover, Greece has also been sanctioned by the Court of Justice of the European Union due to a two-and-a-half year delay in transposition of the ELD (European Commission, 2013, p. 135-149). Yet, despite shortcomings in compliance, Greece's value-action gap is quite narrow because of its acknowledgement of these shortcomings on the value-side. This is completely in line with Falkner's and Treib's model which classifies the world of transposition neglect as an unwilling and unsuccessful complier (Falkner & Treib, 2007, p. 15).

Italy: world of dead letters

Italy's first national climate policy dates from 2014, complicating the assessment of the value-action gap. Nonetheless, the country seems to recognise its responsibility in the fight against climate change and calls upon the status of 'cultural heritage' Italy's understanding of climate change supposedly has (Ministero dell'Ambiente e della Tutela del Territorio e del Mare, 2014, p. 49). Moreover, Italy displays an overall desire to implement the ELD. Analysing Italy's compliance with the ELD, the country generally performs well. For instance, it is the only one of the four countries studied to have transposed the ELD before the deadline. Yet, the mandatory strict liability is applied nowhere, seriously violating the basic principle of the ELD and causing the European Commission to start an infringement procedure against the country (European Commission, 2013, p. 201). This coincides with Falkner's and Treib's definition of the world of dead letters, as transposition goes well, but major shortcomings arise in the implementation stage (Falkner & Treib, 2007, p. 15). There is a mismatch between strong environmental values and weak environmental actions. Yet, more countries must be studied in the environmental case in order to determine whether transposition is always successful in this world.

CONCLUSION

This paper has, with the help of Blake's model, confirmed the existence and importance of the institutional value-action gap, something which has largely been neglected by academics so far. By studying compliance with the ELD as operationalisation of the polluter-pays principle in the Kyoto Protocol, the efficiency of climate treaties has been analysed. The assessment of the value-action gap in the *Environmental Four Worlds* shows that Falkner's and Treib's model can be transferred without much problem to the environmental division. Sweden and Greece, the countries with narrow value-action gaps, are full representatives of the worlds of law observance and

transposition neglect, as these worlds do not show great variability amongst the countries constituting these respective worlds. The United Kingdom and Italy, on the other hand, are only partially representatives of their respective worlds, as the worlds of domestic politics and dead letters do show differing results in the countries constituting them. More countries of the environmental worlds of domestic politics and dead letters need to be studied in order to conclude whether this variability occurs here too. Yet, it is still difficult to point out what exactly causes the (institutional) value-action gap to prevail. Although Blake's barriers provide great insight, real life political situations cannot easily be improved by the abstract labels Blake's barriers come with. Where in politics does lack of trust or lack of efficacy for instance exactly occur? A combination of Blake's barriers with Mastenbroek's variables might help. Indeed, the response of national politics reveals whether a Directive is for instance politically sensitive, how well it fits and whether Chinese walls arise. Evaluating Mastenbroek's variables in the light of Blake's model – for instance, by linking *political sensitivity to lack of encouragement*, or *Chinese walls to lack of facilities* – may then help in decoding what exactly constitutes the value-action gap.

All in all, as in no environmental world compliance is seamless, there is still a lot to gain in terms of transposition and implementation. The content of climate treaties is only one side of the coin: by improving compliance infrastructure and paying more attention to the differing compliance processes of the *Environmental Four Worlds*, international climate policy can be executed much more effectively.

ROLE OF THE STUDENT

Fascinated by the concept of the value-action gap and aware of its existence on the level of the individual, most notably in environmental psychology and consumerism, I wanted to investigate whether the gap was somehow linked to politics' inability to respond effectively to pressing environmental issues. I discovered that the institutional value-action gap was, except for in Blake's model, almost entirely absent in the academic world and wanted to highlight it more. Similarly, the problems in terms of infrastructure when complying with EU legislation felt as something that has been underestimated as a 'silent killer' in terms of effective execution of environmental policies. I have chosen the ELD and the Kyoto Protocol, as the results of compliance are already present and thus suitable for analysis. Hopefully, the Paris Agreement and future climate policy can benefit from my analysis and evoke the effects they promised to.

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