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**New Modes of Governance and the Climate
Change Strategy in the European Union:
Implications for Democracy in Regional Integration**

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1. A Challenge for EU Political Studies

Comparative regionalism project (CREP) is a challenge for EU political studies. On the one hand, the EU is implicitly regarded as the most advanced project of regional integration, in which a polity has emerged as if it can be compared with other national political systems. On the other hand, the EU is often characterised as a *sui generis* political system, which is neither a federal state nor an international organisation. The former provides a teleological model as if the EU is a goal for other regions (See the insightful criticism by Warleigh 2004). In contrast, the latter prevents comparative studies because it is the features of the EU as an unprecedented political entity that should be explored (See the critical review by Hix 1998). Both understandings cannot be rejected as a myth or an ideology prevailing over EU political studies at a meta theoretical level. In fact, the EU has prompted other regions to launch regional projects, and the characteristics of the EU as a polity have been clarified in qualified empirical studies, and those empirical studies have also illuminated the features of EU governance that should be differentiated from national governance and international governance. In a nutshell, the EU is regarded as a teleological model and at the same time as a *sui generis* model. A puzzle of this sort can be a starting platform of EU political studies scholars in the CREP. How can we overcome a teleological way of thinking and make EU political studies open to comparative regionalism studies in a much more constructive way?

Against this background of concern, this article stresses two research agendas. One is the impact of European governance on democracy (cf. Warleigh 2004) and integration (cf. Kohler-Koch 2005). The other is a relation between the UN system and regionalised responses. An empirical case is the introduction of new modes of governance into EU environmental governance, in particular, the EU climate change strategy. What this article suggests for the CREP is as follows.

1) The evolving EU governance system has raised a question for the democratic legitimacy of integration: the so-called 'democratic deficit'. This problem has required the EU to reform its governance system, and then new modes of governance have been introduced. This 'new' modes implicate, first, the modification of the traditional legal harmonisation approach of the EU and, second, the emphasis of 'democracy based on the nation-state' and 'democracy based on European civil society'. However, the introduction of this new modes can ironically undermine 'democracy based on the Community method' (the traditional EU governance system), thereby leading to 'democracy without the European Parliament'. These experiences of the EU demonstrate that even the 'most successful project' of regional integration causes problems of democracy. Thus, the appearance of

democratic problems can be explored in comparative regionalism project. A focus can be put on the emergence, actual or potential, of problems of democratic legitimacy in each regional project, and types of democracy implied therein.

2) While the EU is, to a large degree, a self-contained regional system in terms of rule-making and conflict settlement, its policy-making is, in some cases, completely embedded into the UN system in terms of the setting of agendas and political goals. The EU climate change strategy is the case. On this view, a focus can be put on the degree of self-containedness within a region and/or the degree of dependence on the UN system, in terms of 'the setting of agendas and political goals', 'the methods of implementing measures', and 'the mechanisms of monitoring/controlling compliance'. What can be assumed at least in the EU climate change strategy is that: the implementation methods and the monitoring/controlling mechanisms are self-contained within the EU governance system; however, the setting of agendas and political goals are dependent on the UN system.

This article gives a specific context to these suggestions for research designs.

Section 2 reviews new modes of governance and traces a trend of moving towards soft governance in environmental issue-areas. In so doing, this article empirically suggests a trend of the modification of the legal harmonisation approach of the EU and, at the same time, theoretically considers the implications of soft governance on democracy in European integration, suggesting contestation between three types of democracy noted above and then stressing the potential risk of democracy without the Parliament and the significance of balancing supranational legal processes and intergovernmental political processes.

Section 3 examines the EU climate change strategy and clarifies that soft governance has become dominant in this wide-ranging, crucial but uncertain issue. In addition, this article indicates that the international climate change regime based on the UNFCCC and the Kyoto protocol contextualises the EU climate change strategy to a large degree, whereas the EU has developed her own monitoring/controlling mechanisms.

On these arguments, this article demonstrates a facet of EU environmental governance: internally soft governance prevails; and the governance is externally embedded into the UN system. This facet should not be rejected as being deviant from the basic structure of the EU. Rather, attention to this facet promotes EU political studies to enter into open communication with other regionalism studies.

2. New Modes of Governance

2-1 The Governance Paper

The White Paper on European Governance (COM (2001) 428) (hereinafter: the Governance Paper) proposes new modes of governance, which modify the traditional legislative policy to achieve EU-wide legal harmonisation based on the Community method. A new legislative policy is an attempt to introduce flexible, differentiated and horizontal institutional arrangements. In the name of 'better law-making, the Commission lists up five newly emphasised instruments.

- 1) Framework directives, in which less heavy-handed legal texts enable greater flexibility in implementation and shorter negotiations between the Council and the Parliament (*ibid.*, 20). The Water Framework Directive (WFD) (2000/60/EC) is one example.
- 2) Co-regulation, in which binding and/or non-binding legislative acts of setting overall objectives, monitoring schemes and non-compliance procedures are combined with voluntary accords between the Commission and the stakeholders who are entrusted to prepare and implement measures (COM (2001) 428: 21). The Governance Paper also suggests self-regulation (*ibid.*, 20), which 'does not involve a legislative act' and is 'initiated by stakeholders' (COM (2002) 412: 7) and in which sometimes there is no recognition of public authorities (Commission 2001: 91-7). An example of co-regulation is an environmental agreement between the Commission and car makers for the reduction of CO₂ emissions (Commission Recom. 1999/125/EC). Self-regulation can also be found in EU environmental governance.
- 3) Open method of co-ordination (OMC), in which common but differentiated targets and guidelines for Member States backed up by each national action plan are established and regular monitoring of progress to meet those targets encourages Member States to exchange best practices and learn experiences of others (COM (2001) 428: 21-22). Examples are found in employment and social policies, immigration policies and education policies (*ibid.*, 21-2). Well known is the European Employment Strategy, which was established in the Luxemburg European Council of 1997 (or the Luxemburg job summit). The burden-sharing agreement to achieve Kyoto targets of EU15 backed up by national action plans, EU emissions trading scheme, EU monitoring schemes and reporting requirements, are quite similar with this OMC.
- 4) Network-led initiatives, in which the Commission promotes businesses, communities, research centres, and regional and local authorities to establish

open network links that have structured relations with EU institutions and focus on specific EU policies. Specifically, regional and city networks that support trans-national and cross-border co-operation under the Structural Funds are one of examples (*ibid.*, 18). In addition, the Commission tries to launch a scheme of target-based tripartite contracts, in which the Commission, a Member State government and a regional/local authority enter into an agreement to implement actions on a contract, especially including multi-level stakeholders, in order to realise particular objectives defined in EU legislation (*ibid.*, 13). In part, this might be fallen into the category of co-regulation. One example is the 2004 Target-based Tripartite Agreement between the Commission, the Italian government and Lombardy Region, which aims at the promotion of sustainable development in transport and energy sectors.

- 5) Regulatory Agencies at EU level, which are autonomous EU regulatory agencies in clearly defined areas. The agencies are granted the power to take decisions enforced across the EU in application of regulatory measures under a clear framework established by EU legislation. The European Environmental Agency in Copenhagen is one example.

One of the features of the EU as a project of regional integration is arguably her prominent legal order, in which EU law prevailing over national laws is supported by the unprecedented supranational judicial system. This is based on the Community method, which establishes supranational legal processes that have contributed to the harmonised legal order in the EU. The introduction of new modes of governance leads to the modification of this traditional Community method. At first sight, environmental protection has been a typical policy area to which the classical governance mode is applied, and the most often debated issue-areas with regard to new modes of governance are social and employment policies. However, the new modes of governance have also been put into practice in EU environmental governance as suggested above.

According to Senden, this new legislative policy process towards new modes of governance had a background in national de-regulation trends in the last half of the 1980s and the internal market programme since 1985 (Senden 2005: 4). Senden also points out two landmarks of this process (*ibid.*, 3-5). The first was the Edinburgh European Council (Bull EC 12-1992), the Presidency Conclusion of which emphasised the principle of subsidiarity just after the Danish rejection of the Maastricht Treaty. The second landmark was the Lisbon Strategy of 2000, which emphasises open method of coordination. In this process, the Governance Paper tried to systematise new legislative policy instruments. On this basis, the 2002

Commission's Action plan for simplifying and improving the regulatory environment (COM 2002) 278) and the 2003 Interinstitutional Agreement on better law-making (OJ 2003 C321/1) follows (Senden 2005: 3-5). It can be said that the attempt by the current Commission College led by the President Barroso to dilute 'the Brussels conveyor belt of legislation' (Parker 2005) is in part along the lines with this new legislative policy process.

In sum, new modes of governance are the modification of an EU-wide harmonisation based on the traditional Community method, by establishing flexible and horizontal institutional arrangements. The new legislative policy process towards the introduction of this new modes of governance has emerged against a background of de-regulation trends at European and national levels. On the one hand, market-orientedness under the de-regulation trends require to be paid attention to, with a view to understanding characteristics of the EU climate change strategy as will be discussed later. On the other hand, new modes of governance never mean non-regulation. On the contrary, this new modes are based on 'a new regulative culture' (Senden 2005: 3), which is orientated not only towards 'do less in order to do better' (*ibid.*, 5-8) but also 'diversification of modes of governance' (*ibid.*, 8-9).

2-2 Democracy

The implications of the use of new modes of governance on democracy in regional integration are deep and far-reaching. In order to consider those implications, there is a need for in-depth analysis of the concept of governance. In the Governance Paper, the Commission defines governance as follows:

"Governance" means rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence (8, footnote 1).

This definition exclusively pays attention to the power exercise of EU institutions. This is because the aim of the Commission is practical institutional reform. However, this definition is too narrow to grasp the impact of new modes of governance on the process of 'integration through law' and the potential of an emerging European civil society in terms of the building of Europe. When we look at above-mentioned new modes of governance, it is easy to understand that a more far-reaching definition is required. The introduction of new modes of governance has an impact on EU politics, by affecting roles of EU law in European integration.

On the one hand, governance is an accumulation of formal and informal institutions that are established for public problem-solving. On the other hand, political

contestation emerges to a lesser or greater degree in the public problem-solving. Accordingly, governance modes reflect political contestation around material and/or ideal interests and at the same time the change of a governance mode affects those politics. This is because the change of governance modes affects political opportunity structures of both national governmental actors and societal groups (Kohler-Koch 2005: 6). For example, European governance can be 'stumbling stone for national system coherence and stepping stone for European integration' (*ibid.*, 9). Furthermore, governance can be another name of dominance-subjugation relationship, no matter how soft it is. Therefore, a question must always emerge: how to bridge a gap between governance and democracy. There is a need to adopt a more politics-oriented approach on governance.

At this point, instructive is the definition by Kohler-Koch, who defines governance:

. . . as the continuous political process of setting explicit goals for society, of providing incentives and sanctions for their achievement, of monitoring and controlling compliance (Kohler-Koch 2005: 6).

In this way, governance is neither just only about competences of institutional actors nor just mere political steering for public problem-solving. Rather, governance is a political process in which political goals are set up and incentives/sanctions are provided for controlling compliance. Then, two questions emerge. One is how this political process becomes socially inclusive or exclusive. The other is to what extent law guarantees inclusion/exclusion, provides incentives and imposes sanctions. The introduction of new modes of governance implicates the activation of the political process that has two characteristics: civic inclusion and softer legalisation at EU level. Ironically, the combination of civic inclusion and softer legalisation may dilute the power of the European Parliament, despite the emphasis of democracy in the Governance Paper. However, in ideal terms, civic inclusion is for democracy based on European civil society, and softer legalisation is for democracy based on the nation-state. Accordingly, there is a need to consider three types of democracy.

1) Democracy based on European civil society

The Governance Paper offers five principles of good governance (COM (2001) 428: 10): openness, participation, accountability, effectiveness and coherence. According to the Commission, these principles are to strengthen constitutional principles of the EU: proportionality and subsidiarity (*ibid.*). A social philosophy is here assumed that

the enhancement of participatory capacity leads to the improvement of policy effectiveness.¹ A working group for preparing the Governance Paper clarifies that the study of European governance assumes the existence of a European society and points out democratic concerns behind governance concerns (Working Group No.5 2001: 7). The Governance Paper defines the concept of civil society as follows.

Civil society includes the following: trade unions and employers' organisations ("social partners"); non-governmental organisations; professional associations; charities; grass-roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities (COM (2001) 428: 14)

While the Commission reiterates in various documents that EU legislation based on the Community method should be the main instrument of environmental actions, the philosophy of effective public problem-solving through civic participation seems to be opposed to the traditional command-and-control approach of EU environmental legislation. Of course, 'a command-and-control from the headquarter in Brussels' is to a large degree a political rhetoric, however, there is also the fact that a huge amount of environmental instruments have been issued. The result is implementation deficit and a long queue for the judicial review by the Court of Justice. The improvement of policy effectiveness by civic participation into policy-making can be supported by a viewpoint of 'new approaches to public administration and law' that accentuates increasing complexity and uncertainty of issues on agendas under irreducibly diversified societies (Scott and Trubek 2002: 6-7). From this point of view, Scott and Trubek characterise new modes of governance as an attempt to activate: participation and power-sharing; multi-level integration, diversity and decentralisation; deliberation; flexibility and revisability; and experimentation and knowledge creation (*ibid.*, 5-6).

2) Democracy based on the nation-state

In general, policy documents such as the Governance Paper that put forwards new modes of governance, always reiterates the significance of two principles: subsidiarity and flexibility (or differentiation). On the one hand, these principles are envisaged to be applied to civic empowerment (subsidiarity) and social learning under uncertainty (flexibility). On the other hand, those principles implicate, in a

¹ For the concepts of 'participatory capacity' and 'policy effectiveness', see Héritier (2003: 108, 113-4).

political context, that binding legislation to a large degree needs to be replaced with non-binding instruments so that Member States have final say in as many policy areas as possible. In this context, subsidiarity means to respect the autonomy of Member States in EU common actions, and flexibility/differentiation means to respect the political will of a Member State that does not desire to participate in a policy project. A background of this emphasis of subsidiarity and flexibility or differentiation is the long-standing legitimacy crisis of the EU. The nightmare of the Danish shock of 1992 has just been repeated in the year 2005 by French and Dutch 'no' against the European Constitution in their referenda.

A logic in the emphasis of subsidiarity and flexibility or differentiation cannot be ignored as a political rhetoric. The logic seems to be that in international legal terms the EU is an international organisation based on state consent, and the state consent means democratic self-determination based on sovereignty of the people. Therefore, the EU is required to respect the principle of conferred powers. The strengthening of European governance may lead to the weakening of national democracy. In this logic, which seems to have still power in European integration discourses, 'supranational centralisation' (Scharpf 2003: 81-3) must be restrained as much as possible, and 'intergovernmental negotiations' (*ibid.*, 84-5) need to be given clear priorities on the Community method, or 'joint decision-making' between Member States and EU institutions (*ibid.*, 83-4). In this context, Scharpf considers the potential of new modes of governance for 'effectively Europeanized responses to the new challenges facing the Union that are also able to accommodate legitimate national diversity' (*ibid.*, 103), and recommends that 'the open method of co-ordination could be employed for the implementation of European 'framework directives' that legally binding but leave the specification of more detailed substantive and procedural rules to national governments' (*ibid.*, 104).

These arguments also suggest that governance modes have an impact on European integration (Kohler-Koch 2005: 4). A point is 'the purpose of European legislation' for integration (Senden 2005: 5). We can assume three patterns: unification, harmonisation and coordination (*ibid.*, 25). As Senden suggests, unification has never been pursued in its strict sense, rather, harmonisation of Member States' law and policies for the building and functioning of common markets has been the prime purpose. It is possible that the introduction of many non-binding instruments for coordination of Member States policies changes a subtle balance between the EU institutions and Member States in both legal and political terms. Democracy based on self-determination of the nation state, which new modes of governance implicate, may have an adversarial impact on European integration.

In sum, the move to new modes of governance contain two democratic trends: democracy based on the nation-state and democracy based on European civil society. Both can be supplementary sources of democratic legitimacy of the EU.

3) Democracy without the Parliament?

However, the excessive use of new modes of governance may lead to undermine the Community method, which has been the driving force of European integration. The Governance Paper reiterates the advantages of the Community method. First, it 'guarantees both the diversity and effectiveness' of the EU (COM (2001) 428: 8). Second, 'it ensures the fair treatment of all Member States from the largest to the smallest' (*ibid.*). Third, 'it provides a means to arbitrate between different interests' through the following filters: 'the general interest at the level of the Commission'; European democratic representation at the level of the Parliament; and national democratic representation at the level of the Council (*ibid.* 8). In this institutional design, we can find the ideal balance between supranational legal processes and international political processes. However, this governance mode has fallen short of the Commission's expectation, and both types of democracy based on the nation state and European civil society may be supplementary to this Community method. Nevertheless, there is also a problem that two types of democracy might lead to democracy without the Parliament.

Under the current Nice Treaty, there are four types of procedures in which the Parliament is involved into decision-making processes: assent; co-decision (Article 251 EC); co-operation (Article 252); consultation. Under the assent procedure, the Council is required to obtain the Parliament's assent before decisions are taken. This is a veto power, and at this point, the assent procedure is the same as the co-decision procedure. However, these two procedures certainly empower the Parliament as a political arena in which European parties are emerging. Especially, the co-decision procedure is applied to the conclusion of international agreements that cover a field for which Article 251 EC (co-decision procedure) requires to be referred to (Article 300 (3) EC). Incidentally, the UN Framework Convention on Climate Change and the Kyoto Protocol are the case. In contrast, the co-operation procedure weakens the veto power of the Parliament. All the Parliament can do is to reject Council's common positions so as to oblige the Council to act unanimously, not by qualified majority voting. Under the consultation procedure, the Parliament becomes just a consultative assembly. The Council must consult the Parliament before voting on the proposal, however, all the Parliament can do is just to give its opinion on a proposal from the Commission.

The consultation procedure still remains in crucial areas, though the co-decision procedure has gradually become normal. The Parliament can be circumvented even in the Community method. Much worse are new modes of governance. The open method of coordination, co-regulation/self-regulation, tripartite contracts, specialised agencies and network initiatives may leave the Parliament out of scheme. Certainly, in the Governance Paper the Commission cares for the roles of the Parliament and carefully restricts the conditions on which new modes of governance are adopted. With regards to OMC, the Governance Paper states that:

‘In particular, it should not exclude the European Parliament from a European policy process. The open method of co-ordination should be a complement, rather than a replacement, for Community actions’ (COM (2001) 428: 22).

In addition, the 2003 Interinstitutional Agreement on better law-making (OJ 2003 C321/1) obliges the three institutions (the Commission, the Council and the Parliament) to co-operate one another by enhancing the quality of information exchange. While the Agreement formulates co-regulation and self-regulation and requires these two alternative regulation mechanisms to be used only ‘in suitable cases or where the Treaty does not specifically require the use of a legal instrument’ (para.16), the Agreement obliges the Commission to:

‘. . . notify the European Parliament and the Council of the self-regulation practices which it regards, on the one hand, as contributing to the attainment of the EC Treaty objectives and as being compatible with its provisions and, on the other, as being satisfactory in terms of the representativeness of the parties concerned, sectoral and geographical cover and the added value of the commitments given. It will, nonetheless, consider the possibility of putting forward a proposal for a legislative act, in particular at the request of the competent legislative authority or in the event of a failure to observe the above practices.’

However, careful opinions remain in the Parliament. For example, in a Parliament debate concerning tripartite agreements for sustainable development offered by the Commission, an MEP drew on the 2003 Interinstitutional Agreement and reconfirmed that:

‘Here the Commission fully shares the European Parliament’s opinion that consultation cannot be a substitute for parliamentary democracy and emphasises that the aim of having minimum requirements for consultation is to give stakeholders a voice, but not a vote. In other words, this is not

about deciding, but about being heard. The representatives of the people of Europe will still have to decide' (Fischler (DE), Debates of the European Parliament, sitting of Wednesday, 3 December 2003).

It is still understandable why the Parliament is sceptical for the trends towards new modes of governance. They may mean that the Parliament is circumvented in policy making (Héritier 2002).

In the Community method, a subtle balance is implied between supranational legal processes and intergovernmental political processes. On this delicate balance, the EU has evolved as a *sui generis* polity, which are neither a federal state nor a traditional international organisation. European civil dialogue, by mobilising civil society organisations in pre-legislative processes and at implementation phases, can ideally reinforce the legitimacy of this *sui generis* polity. On the one hand, we cannot ignore the possibility that the excessive use of new modes of governance upsets the balance of those two policy processes and then adversely impacts on the traditional style of European integration. On the other hand, there is also the fact that the best mix of supranational legal processes and intergovernmental political processes has not always been achieved and a gap between them has often been deepened and widened. The cases are: EU legislation finally leads to implementation deficit in Member States; or intergovernmental political negotiations do not lead to EU legislation but remain political common positions that have no monitoring schemes.

3. Soft Governance in EU Climate Change Strategy

3-1 General Features

(1) Legal Harmonisation

EU environmental governance has two dimensions. On the one hand, it has been supported by legal harmonisation. On the other hand, new modes of governance have been introduced, which stimulate and promote multi-level networking and a market mechanism.

EU environmental law comprises a huge amount of instruments. The number seems to be more than one thousand! (Wilkinson et al. 2004: 7; IEEP 2004), though it depends on whether or not to include modification and soft instruments such as recommendations, opinions, notices, international political agreements and so on. Presumably, the range from 580 to 850 may be plausible (MacCormick 2001: 17-8; Weale et al. 2000: 2). The consequence of this huge legislation is the heavy burden of their transposition in Member States and of judicial review by the Court of Justice.

An estimate shows that 'over 80 per cent of UK environmental policy now originates from the EU' (Wilkinson et al. 2004: 7). The Commission reports that, as of December 31 2003, there were 3927 infringement cases and the total volume of infringement cases initiated by the Commission were 2708 (COM (2004) 839: point.1.1). The Community method has produced this troublesome situation, which is a background against which new modes of governance have been introduced. Héritier points out that, in terms of policy development, environmental policy can be compared with social policy. In the former, the use of soft instruments means the shift from hierarchy to self-regulation. In contrast, even the adoption of non-binding targets means the first step towards European policy-making (Héritier 2002).

(2) Soft Governance

Environmental legislation has been seen as an area in which better lawmaking and simplification need to be pursued. For example, the Commission lists up European sustainable development strategy in which an impact assessment of legislation must be conducted (COM (2002) 275: 3). This trend of reviewing existing legislative policies is in line with the Governance Paper. In some degree, non-legalistic approaches in the Governance Paper is followed by the Sixth Environmental Action Programme (Decision 1600/2002/EC) (hereinafter the 6th EAP), which states that '[o]ther options [than legislation] for achieving environmental objectives should also be considered' (Preamble, point.12), and advocates that '[a] strategic integrated approach, incorporating new ways of working with the market, involving citizens, enterprises and other stakeholders is needed. . . ' (*ibid.*, point.14). This trend already begun in the 5th EAP of 1992 (OJ 1992 C138/7), which indicated that legislative measures alone were not sufficient and participatory schemes based on the principle of shared responsibility needs to be sought. On this view, non-legislative measures such as market-based instruments and environmental agreements have been offered as cost-effective policy instruments (ex. Commission Recomm. 96/733/EC, preamble). Civic inclusion and softer legalisation thus became the features of EU environmental governance in the 1990s.

Scholarly attention has already been paid to characteristics of new modes of EU environmental governance. Héritier explores the mode of EU environmental governance by paying attention to methods of target development and implementation: one is 'by reputation mechanisms and learning'; the other 'voluntary accords' (Héritier 2002). A point is institution-building for multi-level participation into target-setting and time-table setting and publicising of monitoring results. Scott formulates EU environmental governance as 'the "procedurally constrained Member States flexibility in implementation" model' (Scott 2000: 280), drawing on the IPPC

Directive. In this model, substantive obligations are soft, however, procedural obligations are hard. Scott submits that this model implicates five values: flexibility; decentralisation; participation; reflexivity and deliberation (*ibid.*, 265-6). Weale et al characterises EU environmental governance as being multi-level, horizontally complex, evolving and incomplete (Weale et al 2000: 6). In this open-ended governance oriented to learning,

‘National state executives and supranational institutions, distinctive national systems of policy-making and international mechanisms for problem solving coexist and will continue to play important role in environmental policy-making’ (*ibid.*, 6).

These characteristics of EU environmental governance seem to be a contrast to the orientation to legal harmonisation. While it may be said that new modes of governance are supplementary to ‘hard’ environmental legislation, the softness of the new modes has much more entered into EU climate change policies, as will be examined below.

3-2 Climate Change Policy Development

The EU climate change strategy has developed since the last half of the 1980s. The noteworthy is the ‘softness’ of instruments. Formation of soft governance for dealing with climate change in the EU are summarised in Table 1.

The development of the EU climate change strategy can be divided into two phases: before and after the year 1997. The first phase was for the construction of a shared understanding. Individual instruments were simple and not successful.

In 1985, the Commission first raised a need for EU (EC) policies on climate change, by issuing a research policy statement (McCormick 2001: 280). It seems that this was response to the 1985 Villach international research conference on climate change. The 1988 UN General Assembly recalled the conclusion of this Villach conference (A/RES/43/53, December 1988) and graded up climate change as an international agenda. The development of EU Climate change policies have been contextualised by evolving international climate change regime. The UN Framework Convention on Climate Change (UNFCCC) of 1994 (Decision 94/69/EC) and the Kyoto Protocol of 1997 (Decision 2002/358/EC) have framed the EU climate change strategy, as will be examined below. What needs to be paid attention to is the fact that the international agenda of climate change had been incorporated into the EU through Commission communications, Council resolutions and European Council Presidency Conclusions, not through political statements by Member States leaders, and in turn the UNFCCC and the Kyoto Protocol were incorporated into the EU legal order.

This demonstrates that soft law is a tool of developing a shared understanding between EU institutions and Member States. The following shows this process.

- 13 October 1986. Resolution on measures to counteract the rising concentration of carbon dioxide in the atmosphere (the “greenhouse” effect). OJ 1986 C255/272.
- 16 November 1988. COM (1988) 656-1 Communication to the Council: the greenhouse effect and the commission work programme concerning the evaluation of policy options to deal with the greenhouse effect / COM (1988) 656-2 Draft Council Resolution on the Greenhouse effect and the Community.
- 2-3 December 1988. Rhodes Declaration on the Environment. Presidency Conclusions, Rhodes, December 1988 (Bull. EC 12-1988).
- 20 July 1989. Council Resolution on the greenhouse effect and the Community. OJ 1989 C183/4.
- 25-6 June 1990. Declaration by the European Council on the Environmental Imperative. Presidency Conclusions, Dublin, June 1990 (Bull. EC 6-1990).
- 29 October 1990. Conclusions of the joint Council of Environment and Energy Ministers (EC Bull. 1990 October, point. 1.3.77).

In this process, scientific uncertainties were rejected as an excuse of delaying policy responses to climate change. The 1988 Rhodes Declaration on the Environment underlined ‘the greenhouse effect’ along with depletion of the ozone layer and the loss of biodiversity (Bull. EC 12-1988, point.1.1.11), and then the 1989 Council Resolution stated that:

‘Such a response [to problems of climate change] should be made without further delay, irrespective of remaining uncertainties on some scientific aspects of the greenhouse effect’ (OJ 1989 C183/4: para.1).

In part this is because the EU aimed at establishing a strong position in preparation for UN Conference on Development and Environment (or the Rio Summit) of 1992, as the 1990 Dublin Declaration claimed (Bull. EC 6-1990: Annex II, point 1.36). In this process of norm-building, the EU established the first target-setting in the 1990 joint Energy/Environment Council. This target was the ‘stabilization of the total carbon dioxide emissions by the year 2000 at the 1990 level in the Community as a whole’ (cited from Dir. 93/76/EEC (SAVE Programme), Preamble). It was non-binding and quite flexible. The conditions were that ‘. . . other leading countries undertook similar commitments’ (*ibid.*). Furthermore,

. . . Member States which start from relatively low levels of energy consumption and therefore low emissions measured on a per capita or other appropriate basis are entitled to have carbon dioxide targets and/or strategies corresponding to their economic and social development. . .’ (*ibid.*)

Though other leading countries did not begin to undertake similar commitments in a visible manner after the signing of the Kyoto Protocol of 1997, this flexible commitment anticipated the principle of ‘common but differentiated responsibility’ provided by the UNFCCC.

The Commission announced the start of climate change policies in the 4th EAP of 1987 (OJ 1987 C328/5, point. 2.3.20) and envisaged a set of climate change policies in the 5th EAP (OJ 1993 C138/5) (see, Krämer 2003: 299). The strategy in this early stage of the development of climate change policies was simple. Measures to combat global warming was ‘a three part climate package’ (McCormick 2001: 281): energy efficiency and alternative/renewable energy, monitoring mechanisms and a carbon/energy tax (COM (1991) 249). These measures had been proposed and implemented in forms of directives and decisions; however, they were by and large ‘soft’ in terms of flexibility in meeting obligations. With regards to energy, financial supports were provided for national programmes: SAVE Programmes for an energy efficiency; and ALTENER Programmes for a renewable programme. However, the amount of financial supports was small. Energy policies have developed by arranging indicative targets and annual report requirements (ex. Dir. 2003/30/EC). A monitoring mechanism was set up by Decision 93/389/EC, under which Member States are required to submit national reports concerning the monitoring of all anthropogenic GHGs and the Commission publishes regularly reports. This monitoring mechanism has evolved in order to meet the Kyoto commitments (Decision 280/2004/EC). Fiscal measures did not reach consensus. At first, the Commission envisaged a carbon tax (COM (92) 226). Although the Parliament supported the adoption of a carbon tax, the Council did not accept it. For any fiscal measure, Member States were quite sensitive and, even after the carbon tax was ‘dressed up as an energy tax’, strong opposition continued (Wettestad 2005: 8). Later on, a fiscal policy on climate change has been established as a flexible energy tax directive (Dir. 2003/96/EC), as will be examined below.

The EU climate change strategy, not a mere aggregation of individual measures, has emerged since the signing of Kyoto Protocol of 1997. After this year 1997, a renewal policy-making started. That is illustrative of a spread of soft governance in the EU.

3-3 Governance Modes

As noted above, the huge amount of EU environmental instruments seem to be illustrative of 'Brussels conveyor belt of legislation' (Parker 2005); however, new modes of governance for the environment have also become marked in the EU. While Trubek et al properly points out 'hybridity' (Trubek et al 2005), EU environmental governance as a political process for setting a political goal and controlling/monitoring compliance (Kohler-Koch 2005) seems to gradually become characterised as stakeholder inclusion and softer legalisation, as suggested above. The emergence of this soft governance in the EU climate change strategy can be grasped from four dimensions of governance system: target-setting; policy-framing; policy-making; and individual measures.

(1) Target-setting

The burden-sharing of the target of GHGs emissions reduction in the EU was set up as a political common position in the Environmental Council. After this 'pure intergovernmental political process', the legal translation of the burden-sharing agreement was carried out. Table 2 shows the outcome.

The Kyoto Protocol (signing in December 1997) set up binding targets of GHGs emissions reduction for the so-called Annex I countries, which are 38 developed countries including EU15. In March 1997, under the Dutch Presidency, the Environmental Council already reached an agreement for sharing the burden of GHGs emissions reduction, 'the adoption of which were initially seemed impossible' (Lefevere 2000: 363). This agreement was nine months before the Kyoto COP3 (the third Conference of the Parties to UNFCCC). The target was so ambitious: a 15% cut in EU emissions of three GHGs (CO₂, methane and nitrous oxide) from the 1990 level by 2010 (Lefevere 2000: 363), and the burden of each Member State was allocated as if the principle of common but differentiated responsibility was applied (for burdens of each Member State, see Table 2). This burden-sharing agreement was far from perfect because the total emissions of agreed burdens 'amounted to only two-thirds of the 15%' (*ibid.*). Notwithstanding, this become the EU position on the international negotiation in the Kyoto COP3.

An aim of the EU in the negotiation in Kyoto was to gain the entitlement for the EU15 as a whole to meet the Kyoto targets, such as a model of the 1997 burden-sharing agreement, and the EU won the negotiation. This method is called Joint Implementation, which is based on Article 4 of the Kyoto Protocol. The Kyoto commitments of EU countries were all -8%; however, the EU15 are allowed to re-allocate the burden of emissions reduction. This is called 'bubble' (see table 2).

The March 1997 burden-sharing agreement was a model of this method, and now this agreement, which was for –15% reduction, required to be modified according to the new –8% reduction target. Then, the 1998 burden-sharing agreement was adopted in the Environmental Council. For the ratification of the Kyoto Protocol, the ‘legal translation’ of this agreement (COM (2999) 88: 2) was needed, and it was incorporated into Decision 2002/358/EC, which transposes the Kyoto Protocol into the EU legal order. In this way, the so-called ‘EU bubble’ (joint fulfilment of the EU target: -8% reduction) was established² (See table 2).

Here attention needs to be paid to the fact that these two burden-sharing agreements were not owing to the proposals of the Commission (Krämer 2003: 303). They were outcomes of a pure intergovernmental political processes. Soon after the adoption of the 1998 burden-sharing agreement, the EU climate change strategy has begun to develop.

(2) Policy-framing

A non-binding guideline for developing the principle of environmental integration (hereinafter PEI), which the Amsterdam Treaty of 1997 graded up by newly establishing Article 6 EC as one of basic principles of the EU, has framed EU Policies for Climate change as a single and fundamental issue against which the EU must tackle. This process of developing the PEI is, to a large degree, not legislative but political process. That non-binding guideline is the 1998 Guidelines for a partnership for Integration of Environment into other policies (COM (98) 333), which initiated the Cardiff process that is followed by the EU Sustainable Development Strategy.

Climate change is a cross-sectional issue. This means that wide-ranging legal bases are required for climate change policies. The expected legal bases are agriculture (Article 37 EC), transport (Article 71 or 80 EC), taxation (Article 93 EC), internal market (Article 95 EC), trade (Article 133 EC) and energy (Article 175 (2) or 308 EC) (Krämer 2003: 300). However, many instruments for climate change policies have been based on Article 175 (1) EC (*ibid.*). Climate change policies have been framed as a single issue through the process of developing the PEI. While the PEI does not set any substantive obligation but procedural obligations and has been

² New Member States are out of this joint fulfilment of the EU target. They have their own targets, which are –8% except Hungary and Poland. These two have -6% reduction commitment. See the Commission (2003: 10).

applied by the Court of Justice to the legal base disputes in which environmental legislation based on non-environmental legal bases is contested (Usui 2005), this PEI also seems to have a sort of policy-framing effect. In the process of developing the PEI, climate change policy-making has been stressed as one of major objectives of the EU. This development has been prompted and supported by 'Guidelines for a Partnership for Integration of Environment into other policies' (COM (98) 333), proposed by the Commission and agreed by the Council. The Guidelines require the EU institutions to co-operation one another as follows (*ibid.*, 6-7):

- All Institutions review organisational arrangements and ensure that environmental requirements are reflected in their own decisions;
- The Commission review existing policies and incorporate environmental concerns into all key proposals;
- The Council and the Parliament identify a set of priority actions for PEI;
- The European Council review periodically environmental integration into key sectoral policies.

On this base,

'The Council, Parliament and Commission should jointly discuss the development of mechanisms for implementing these guidelines and for monitoring their implementation.' (*ibid.*, 7)

In the policy document that proposed this Guidelines, the Commission states that 'Fulfilment of (Kyoto) commitment . . . must become a primary consideration in the framing of all key policy areas (*ibid.*, 9). This Guidelines have initiated and activated the Cardiff process since 1998 and the EU Sustainable Development Strategy since 2001 And these policy processes have produced policy responses of the Council in the form of policy planning reports.³

³ Gonzalez-Calatayud shows us the following: Agriculture: 2218th Council Meeting, 15 Nov. 1999 (Strategy on Environmental Integration and Sustainable Development in the Common Agricultural Policy established by the Agriculture Council); Transport: 2204th Council Meeting, 6 Oct. 1999 (Transport and Environment: Report to the European Council in Helsinki); Energy: 2230th Council Meeting 2 Dec. 1999 (Strategy for Integrating Environmental Aspects and Sustainable Development into Energy Policy); Internal Market: 2210th Council Meeting 28 Oct. 1999 (Integration of Environmental Protection and Sustainable Development into Internal Market Policy); Development: 2215th Council Meeting 11 Nov. 1999 (Development Council Report including Elements of a Comprehensive Strategy on the Integration of Environment and Sustainable Development into EC Economic and Development Cooperation); Industry: 2214th Council Meeting 9 Nov. 1999 (Integration of Sustainable

(3) Policy-making

EU climate policy-making has been carried out by the European Climate Change Programme (ECCP), which was initiated by the Commission in the year 2000. The document, 'Main Elements of the ECCP to be initiated by the European Commission' (COM (2000) 88, Annex 2), launched 'a multi-stakeholder consultative process' (Commission 2001: 6) for adopting instruments of EU climate policies. This can be said to be done in some degree at the expense of the Commission's prerogative of the 'initiative' (COM (2000) 88: 5-6), because the Commission announced that the ECCP results would be converted into 'a clear political commitment from the Commission' (Commission 2003: 6) in supranational legal processes based on the Community method. However, the expected list of common and co-ordinated policies and measures on climate change was attached with the Annex 3 of that document (COM (2000) 88), as if the Commission confines results of the ECCP within an expected scope.

The origin of the ECCP was the Commission Communication for preparing for the implementing of the Kyoto Protocol (COM (1999) 230). On this base, the Environmental Council made proposals in June 1998 and October 1999, in which the Commission was urged to put forward a list of climate policies and measure and to prepare policy proposals (Commission 2003: 4). Soon after this political process, the ECCP has become 'an essential part of the EU Sustainable Development Strategy' (Commission 2001: 157). There were consensus between the Commission, the Council and the Parliament. In October 2000, the Environmental Committee of the Parliament adopted an opinion on the ECCP, which stressed the priority of the ECCP (Commission 2001: 7). In November 2000, the Commission submitted a progress report to the 'special climate Council'. In the second ECCP report, the Commission emphasises the broad consensus at this first phase, stating that:

'Despite the very short time available, the Programme already set out a first list of likely measures in all the relevant sectors taking fully into account the proposals made in the Parliament's Resolution and by the Council' (Commission 2003: 7).

The objectives of the ECCP is 'to identify and develop all those elements of a European Climate Change Strategy that are necessary for the implementation of the Kyoto Protocol' (COM (2000) 88, Annex 2, 8) and to pursue 'a co-operative effort

Development into EU Industrial Policy). See Gonzalez-Calatayud (2002: 307).

of all relevant stakeholders such as representatives of the Commission, the Member States, industry and the NGO community' (*ibid.*). The policy target is quite a simple no matter how the effect of anthropogenic GHGs emissions on the rise of global surface average temperature, or global warming, is still uncertain: the reduction of 336 MtCO₂eq in 2010 with respect to 1990 (Commission 2001: 5). This amount of reduction is what the Commission calculated for corresponding to an 8% reduction in GHGs emissions from 1990 levels by 2008-2012, that is the Kyoto commitment of the EU15 (*ibid.*). A multi-stakeholder consultative process was launched for envisaging policies and measures to achieve this objective.

The aforementioned document, 'Main Elements of the ECCP', set up Steering Committee and Working Groups. The former is composed of all DGs that take part in the ECCP (COM (2000) 88, Annex2, 8). The WGs of the latter have their 'specific set of stakeholders representing a European rather than a national or regional clientel' and about 15 person par WG (*ibid.*, 8). Respective WGs have reporting requirements to the Steering Committee (*ibid.*, 9) so that on this base the Commission can prepare 'policy proposals containing instruments such as technical regulation, taxation, voluntary agreements, or flexible mechanisms' (*ibid.*). Initially, five WGs were set up, and further WGs were expected to be established later (*ibid.*, 10). In the course of the ECCP, the following WGs and sub-WGs have been activated (Commission 2001: 6 and Commission 2003: 5):

- WG1: 'Flexible mechanisms';
Sub-WGs: 'JI/CDM' and 'Emission trading';
- WG2: 'Energy supply';
- WG3: 'Energy consumption';
Sub-WGs: 'Energy efficiency in end-use equipment and industrial processes' (a joint sub-working group with WG5);
- WG4: 'Transport';
Sub-WGs: 'Vehicle technology and fuel', 'Transport infrastructure', 'use and charging', 'Freight logistics and intermodality', 'Awareness raising and behavioural change', 'Data validation';
- WG5: 'Industry';
Sub-WGs: 'Fluorinated gases', 'Renewable raw materials', 'Voluntary agreements', 'Energy efficiency in end-use equipment and industrial processes' (a joint sub-working group with WG3).

- WG6: 'Research';
Sub-WGs: 'the scientific aspects of sinks'
- WG7: 'Agriculture';
- WG: 'Sinks in agricultural soils' (WG number is unknown);
- WG: 'Forest-related sinks' (WG number is unknown).

Wide-ranging stakeholders have been invited to these WGs and submitted each policy report as if they are policy-makers in collaboration with the Commission. Table 3 summarises participants into the WGs. They are as follows (see Table 3; cf. Michaelowa 1998):

- Commission officials (from various DGs such as ENV, ENTR, ECFIN, ELARG, TREN, RES, RTD, AGRI);
- National experts, independent researchers,
- Emitters groups such as UNICE, sector-specific groups and national lobby groups;
- Climate protection industry such as COGEN Europe (www.cogen.org);
- Environmental lobbies such as Climate Network Europe (a network group of various national NGOs), WWF, Greenpeace and ICLEI (this is a local government network group for local environmental initiatives).

Attention must be paid to the participation of one member of the Parliament into WG5's sub-group that addresses voluntary agreements, with which the Parliament has been concerned because of the possibility that the Parliament may be circumvented and left out of policy-making processes. In addition, the participation of officials of CDM Executive board of UNFCCC and EBRD and EIB into JI/CDM sub-group needs to be kept in mind in terms of understanding a policy-making process in the EU climate change strategy.

To a large degree, the Commission has orientated these WGs towards the use of new modes of governance, though improvements in the implementation of existing legislation and the planning of new legislation are at the same time stressed (Commission 2001: 157). Basic strategies produced by the ECCP are as follows:

- Taking the full range of policy instruments including legislation (existing, new and planned); voluntary actions, supporting measures, awareness and best practice initiatives, market instruments and research/technology development (*ibid.*, 158);

- Taking the full range of stakeholders in the process of developing a strategy with a view to launching a process that gathers the required expertise and promotes consensus-building (Commission 2003: 4-5);
- Horizontal policy integration that enables all DGs to collaborate one another and establishes a single coherent strategy (*ibid.*, 4 and Commission 2001: 157);
- Target-sharing and monitoring with a view to underlining 'the responsibility of Member States in establishing their own policies and measures' for reducing GHGs (Commission 2003: 6).

The first phase of the ECCP identified 42 cost-effective measures, which was expected to total 'a technical potential of 664-765 MtCO₂eq' (Commission 2003: 6). While some of them are, or going to be, taken shape in forms of directives, such as the 2003 EU Emission Trading Scheme Directive, the 2004 JI/CDM Directive, and directives on biofuels, energy performance of building, energy efficient public procurement, fluorinated gases, combined heat and power, energy services, and so on, these contain more or less measures for target-sharing and monitoring schemes. Following the first phase in which 'the ECCP acted predominantly as an initiator, catalyst and discussion forum to prepare a strategy, the second phase of the ECCP has moved to 'monitoring and implementation of the agreed measures' (*ibid.*).

(4) Individual Measures

In this way, the EU climate change strategy has been produced. Examples of individual measures are as follows.

(a) Market Instruments

In January 2005, the 2003 EU ETS (emission trading scheme) Directive (Dir 2003/87/EC) entered into force. In the first phase, about 12000 plants in the industries of iron & steel, glass, cement, pottery and bricks across EU25, which cover about 40% of total CO₂ emissions in the EU, are under this scheme (EurActiv.com, 21 April 2005). Allowances to emit CO₂ are now a goods for businesses to be able to sell and buy; however, if emissions exceed the allowances, which are subject to Member States' national allocation plans (NAP), fines of 40 euros per excess tonne of CO₂ will be imposed. Three years later, the fines will rise to 100 euros. This EU ETS is a typical market instrument, which the 5th and 6th EAPs have envisaged.

A point is the allocation of the allowances (Wettestad 2005: 19; Butzengeiger and Michaelowa 2004: 117-8). In the EU ETS Directive, this allocation of emission entitlements is arranged in accordance with NAP. Although the Commission

provided a broad criteria, Member States can decide the amount and opt-out of some individual plants, unless the Commission vetoes it. Already legal disputes occurs, for example between the UK and the Commission, concerning the amount of the allowances (EurActiv.com, 11 March 2005). Member States are also allowed to issue additional allowances in case of *force majeure*. In addition, the allocation mechanism is basically not auctioning but grandfathering, though the Scheme prescribes 5% auctioning up to 2008 and 10% after (Wettestad 2005: 6). Incidentally, the 100% auctioning can be said to theoretically implicate the introduction of a sort of carbon tax in terms of its effect on businesses. Following this EU ETS Directive, the 2004 JI/CDM Directive has been adopted so that flexible Kyoto mechanisms can be activated.

(b) Co-/Self-Regulations

In 1999 and 2000, the Commission reached environmental agreements with ACEA (the European automobile manufacturers associations) (Commission Recom. 1999/125/EC), with JAMA (the Japanese automobile manufacturers associations) (Commission Recom. 2000/304/EC) and with KAMA (the Korean automobile manufacturers associations) (Commission Recom. 2000/303/EC). The ACEA also represents the major US car manufacturers (Gonzalez-Calatayud 2002: 304), and therefore these agreements cover almost all car manufacturers. All legal bases are Article 211 EC, which is competences conferred on the Commission. The commitments are to achieve the reduction of CO₂ emissions from new passenger cars as follows:

- ACEA: 140g/km CO₂ by 2008 and 120g/km CO₂ by 2012;
- JAMA: 140g/km CO₂ by 2009 and 120 g/km CO₂ by 2012;
- KAMA: 140g/km CO₂ by 2009 and 120 g/km CO₂ by 2012.

These environmental agreements also provides a scheme of collaboration between the Commission and these automobile manufacturers associations, and the structure of the scheme is the same in three agreements, as follows:

- Cooperation between the Commission and an association in monitoring of the commitments;
- Interim evaluation of the potential for additional fuel-efficiency improvements towards the objective of 120 g/km CO₂ by 2012;
- Trial by individual members of an association to place on the market the models emitting 120 g/km CO₂ or less;
- Intermediate CO₂ emission target in the range of 165 - 170 g/km CO₂ in an

early stage;

- The additional counting of target achievement in cases of the technological innovation for replacing conventional cars to new cars that do not produce CO₂ emissions or using alternative fuels.

It can be said that these agreements are an outcome of political exchange between the Commission and the associations. The Commission would not make a legislative proposal, and not provide fiscal measures, on CO₂ emissions from passenger cars, unless the associations would fail to achieve the targets to reduce CO₂ emissions at their own initiatives and methods.

The Parliament has rejected the use of environmental agreements, and instead claimed the adoption of legislation and fiscal measures (Lefevre 2000: 368; cf. OJ 1997 C132/210). The policy process has certainly proceeded in the collaboration between the Commission and the Council. ACEA initially rejected the proposal of the Commission and proposed 'a target of 150-160g/kmCO₂s by 2005 (*ibid.*); however, in December 1997, the Environmental Council rejected this ACEA's proposal, following the suggestion of the Commission (*ibid.*). The threat of legislation can be said to function in this case. ACEA revised its proposal and offered the target of 140g/kmCO₂ by 2008. The Commission accepted it, and then finally the Environmental Council approved the agreement with ACEA (*ibid.*, 368-9).

Various industry associations welcomed the agreement. In contrast, environmental NGOs and the Parliament were opposed to this (*ibid.*). In addition, attention also needs to be paid to the fact that the CoR and the ECOSOC have no say (Krämer 2003: 284). The Commission already issued Communication on environmental agreements (COM (96) 561) and Commission Recommendation concerning them (96/733/EC), in which a guideline was set up: consultation, contractual form for the legal status of agreements, quantified objectives, staged approach, monitoring of results, public information, transparency, independent verification of results, and so on (COM (96) 561: 11-17). Already many and various environmental agreements have been concluded at European and national levels (for example, see Table 1), and these guidelines require to be further refined. And the Commission issued the Communication concerning Environmental Agreements at Community Level (COM (2002) 412). Notwithstanding the checklists and their further refinement, environmental agreements continue to be controversial.

(c) Monitoring and Reporting Requirements

In 1993 the EU adopted Decision for a monitoring scheme (Decision 93/389/EC), in which Member States were required to monitor all anthropogenic GHGs. This

Decision has been amended twice by Decision 1999/296/EC and Decision 280/2004/EC. The last one is entirely devoted to implementing Kyoto mechanisms, which are ET (emission trading), JI (joint implementation) and CDM (clean development mechanism). These mechanisms need the national registry system of Kyoto units (for example, CRU (certified reduction unit) for JI and ERU (emission reduction unit) for CDM). These Decisions have obliged the Commission to issue regular reports with a view to grasping the state of affairs in GHGs emissions in the EU. Therefore, this monitoring scheme is not only for a learning system between Member States, but also for the implementation of the Kyoto Protocol.

The EU has also operationalised an issue-specific monitoring scheme, which is to monitor the average specific emissions of CO₂ from new passenger cars (Decision 1753/2000/EC). As noted above, this is to supplement the environmental agreements with car manufacturer associations. Article 8 of this Decision reads that:

‘The data collected under the monitoring system from the year 2003 onward shall serve as the basis for monitoring voluntary obligations to reduce emissions of CO₂ from motor vehicles agreed between the Commission and the automobile industry and, where necessary, for their revision.’

This Decision was adopted based on Article 175 (1) EC. In the process of co-decision procedure, the Parliament and the Council formulated ‘an objective of 120g/km (5 litres/100km for petrol engines and 4.5 litres/100km for diesel engines) as a mean value for CO₂ emissions in 2005 (2010 at the latest) (*ibid.*, preamble). In this way, monitoring schemes support environmental agreements.

(d) Indicative Targets and Reporting Requirements

Despite the fact that energy policies are the prerogative of Member States, already around 100 instruments (directives, regulations and decisions) have been adopted in the EU, though this is far from an EU common energy action (Collier 2002: 177). As noted above, in the early stage of EU climate change policies before the year 1997, financial supports were carried out in SAVE for energy efficiency and ALTENER for renewable energy. In addition to these financial supports, two directives have been adopted in the course of the ECCP: the 2001 Directive on the promotion of electricity produced from renewable energy sources in the internal electricity market (Dir 2001/77/EC) and the 2003 Directive on the promotion of the use of biofuels or other renewable fuels (Dir 2003/30/EC). The former set the indicative target of 22.1% share of electricity produced from renewable energy sources in the EU (Krämer 2003: 307). The latter set the indicative target of 5.75% share of biofuels in total sales of fuels in the EU (*ibid.*). Both directives obliges Member States to submit

progress reports. Attention must be paid to legal bases of these two directives, which are Article 175 (1) EC, not 175 (2) EC despite the fact that energy is listed up in the latter. This means that the Parliament can be involved into the legislative process not with consultation procedure but co-decision procedure.

(f) Flexible Fiscal Arrangements

As noted above, the Commission aimed at the adoption of a carbon/energy tax in the early stage of EU climate change policies. While the Commission's effort was in vain, the use of 'enhanced cooperation' for EU tax policies has sometimes been suggested in the Council (Gonzalez-Calatayud 2002: 303). The 2003 Directive for restructuring the EU framework for the taxation of energy products and electricity (Dir 2003/96/EC) seems to be one of examples for a differentiated policy co-ordination model. On the one hand, The legal base is not Article 175 but 93 EC (Taxation). This means that the consultation procedure was applied in which the Parliament cannot have a veto power. On the other hand, the PEI is referred to in the preamble (para.6), and the notion is reaffirmed such that 'energy prices are key elements of Community energy, transport and environment policies' (para.12). On this basis, this Directive offers the view that 'The taxation of energy products and, where appropriate, electricity is one of the instruments available for achieving the Kyoto Protocol objectives' (ibid., preamble, para.7). In this way, the rationales of this Directive are found not only in the building and functioning of internal markets but also in climate change.

This Directive sets the minimum levels of taxation on electricity and energy products. On this basis, flexible arrangements are set up. In other words, almost all competences remain in Member States. They can 'define and implement policies appropriate to their national circumstances' (preamble, para.9). 'Fiscal arrangements . . . for the taxation of energy products and electricity are a matter for each Member State to decide' (ibid., para.11). Only if Member States wish to introduce those taxation, they are required 'to comply with the Community minimum taxation levels' (ibid., para.10). In addition, if Member States apply 'differentiated national rates of taxation to the same product', they are obliged to respect 'Community minimum levels of taxation and internal market and competition rules' (ibid., para.15). It can be said that the softness in this type of legislation would become beneficial insofar as a mutual learning of effective taxation policies on GHGs emissions reduction must be carried out in a huge variety of national circumstances.

5. Concluding Remarks

The EU climate change strategy is illustrative of this emergence of soft governance, in which the political process emerges that can be characterised as civic inclusion and softer legalisation in terms of the process of political goal setting and the instrument for monitoring and controlling compliance. This softening of environmental governance theoretically implicates democracy based on the nation-state and democracy based on European civil society; however, it may ironically lead to democracy without the Parliament. The challenge in soft governance is how to balance between supranational legal processes and intergovernmental political processes, by putting civic participation and national self-determination into a proper place. Thus, the transformation of EU environmental governance must be seen in terms of democracy in integration. The EU climate change strategy can be one of fruitful research fields.

Studies of regionalism have been primarily concerned with economy and/or security, whereas environmental issues rank low despite the trans-border, external effects of environmental problems. Rather, a global approach based on the UN system might be suitable for environmental issues. However, a regional approach for environmental protection is often recommended in the implementation of environmental treaties deposited to the United Nations (ex. CEPS 2004). In fact, the European Union have carried out many regional common actions for global environmental issues. While EU environmental actions are embedded into environmental regimes based on the UN system, the EU still shows her own autonomous institutional responses. Here we can find an interaction between global arrangements and regional responses, which might be compared with contestation between regional economic agreements and the WTO regime. Climate change is the case. Modes of EU governance also need to be considered from this viewpoint.

This article has demonstrated the prevailing of soft governance under international commitments. In this trend, the EU faces the question of sources of democracy. This should not be regarded as being deviant from the basic structure of the EU. The meanings of integration needs to be reconsidered. While a more detailed research is required, this viewpoint promotes EU political studies to enter into comparative regionalism studies in an open-ended way.

Table 1: Formation of EU Soft Governance to address Climate Change

<p>Target-setting</p>	<ul style="list-style-type: none"> • The 1990 Target Setting in the joint Environment and Energy Council. October 1990. Non-binding • The 1998 Burden-sharing Agreement in the 2106th Environmental Council. June 1998. Legal translation by Decision 2002/358/EC of transposing the Kyoto Protocol.
<p>Policy-framing</p>	<ul style="list-style-type: none"> • The Principle of Environmental Integration. Article 6 EC. • Guidelines for a Partnership for Integration of Environment into other Policies. COM (98) 333. The Cardiff Process since the 1998 European Council. The EU Sustainable Development Strategy since the 2001 Gothenburg European Council.
<p>Policy-making</p>	<ul style="list-style-type: none"> • Main Elements of the European Climate Change Programme (ECCP) to be initiated by the European Commission. COM (2000) 88, Annex 2. Steering Committees. All DGs involved. Working Groups. Each has a specific set of stakeholders. A multi-stakeholder consultative process. End Product and Timeframe. On this basis, the Commission will make proposals to the Parliament and the Council.
<p>Individual Measures</p>	<ul style="list-style-type: none"> • Market Instruments EU Emission Trading Scheme. Dir. 2003/87/EC. JI/CDM Scheme. Dir. 2004/101/EC. • Co-/Self-Regulations General Guidelines for the use of Environmental Agreements. Commission Recom. 96/733/EC. Environmental Agreements with ACEA, JAMA and KAMA (Commission Recom. 1999/125, 303 and 304/EC. Another examples (Commission 2003: 58) <u>Voluntary agreements:</u> industry-wide + quantitative targets: Standby TV and TCR / Washing machines / Refrigerators, freezers and their combinations / Detergents (energy saving consumer behaviour washing machines) / Standby Audio / Dishwashers <u>Codes of conduct:</u> individual companies + quantitative targets: Digital TV services / External power supplies <u>Voluntary programmes:</u> individual companies + best practice: Green Light (non-residential lighting) <u>Voluntary energy labelling:</u> EU energy star (for office equipment): EU environmental product declarations <u>Eco-label:</u> The granting of the eco-label is subject to demanding energy efficiency levels • Monitoring and Reporting Requirements A Mechanism for Monitoring Community GHGs Emissions and for Implementing the Kyoto Protocol. Decision 280/2004/EC. A Scheme to Monitor the Average Specific Emissions of CO₂ from New Passenger Cars. Decision 1753/2000/EC • Indicative Targets and Reporting Requirements The Promotion of Electricity Produced from Renewable Energy Sources in the Internal Electricity Market. Dir. 2001/77/EC. The Promotion of the Use of Biofuels or other Renewable Fuels. Dir. 2003/30/EC. • Flexible Fiscal Arrangements Restructuring the Community Framework for the Taxation of Energy Products and Electricity. Dir. 2003/96/EC.

Table 2: EU Bubble

	The March 1997 Agreement (Pre-Kyoto COP)	The June 1998 Agreement (Post-Kyoto COP)
Luxemburg	-30.0%	-28.0%
Germany	-25.0%	-21.0%
Denmark	-25.0%	-21.0%
Austria	-25.0%	-13.0%
UK	-10.0%	-12.5%
Belgium	-10.0%	-7.5%
Italy	-7.0%	-6.5%
Netherlands	-10%	-6.0%
France	0.0%	0.0%
Finland	0.0%	0.0%
Sweden	+5.0%	+4.0%
Ireland	+15.0%	+13.0%
Spain	+17.0%	+15.0%
Greece	+30.0%	+25.0%
Portugal	+40.0%	+27.0%

Sources: Decision 2002/358/EC, Annex II and Lefevere 2000: 365.

Table 3: Participants into ECCP Working Groups

	Commission DGs	National Experts	Industry	Environmental NGOs	International Organisations
WG1 Flexible Mechanisms	<ul style="list-style-type: none"> • DG ENV • DG ENTR • DG ECFIN • DG TREN 	<ul style="list-style-type: none"> • Austria • France • Germany • Sweden • UK 	<ul style="list-style-type: none"> • EURELECTRIC • BDI • ERT • European Chemical Industry Council • Emissions Trading Group UK 	<ul style="list-style-type: none"> • Climate Network Europe • WWF • FIELD 	
WG1 sub-group: JI/CDM	<ul style="list-style-type: none"> • DG ENV • DG DEV • DG ELARG • DG ENTRE • DG TREN • DG RES 	<ul style="list-style-type: none"> • CZ Republic • Poland • Netherlands • Greece • France • Austria • UK 	<ul style="list-style-type: none"> • RWE Rheinbraun • UNICE • EUROFER • ABB • Gaz de France • Euro-Heat & Power • E5 • Edison • Shell • Lafarge 	<ul style="list-style-type: none"> • Climate Network Europe • FIELD 	<ul style="list-style-type: none"> • CDM Executive Board (UNFCCC) • EBRD • EIB
WG2 Energy Supply	<ul style="list-style-type: none"> • DG TREN • DG ENV • DG RTD • DG ENTR 	<ul style="list-style-type: none"> • Belgium • Finland • UK • Italy 	<ul style="list-style-type: none"> • ERES representing EPA, ESIF, EWEA, EUBIA, ESHA, EUREC • OGP • EUROPIA • EUROGIF • EUROGAS • COGEN • EURELECTRIC • CECSO • VATTENFALL AB representing EURISCOAL 	<ul style="list-style-type: none"> • INFORSE-EUROPE • WWF • Climate Network Europe 	
WG3 Energy Consumption	<ul style="list-style-type: none"> • DG ENTR • DG ENV • DG JRC • DG RTD • DG TREN 	<ul style="list-style-type: none"> • France • Germany • UK • Denmark • Italy • Finland • Spain 	<ul style="list-style-type: none"> • ACE-CAE • BASF • BDI • CEFIC • CELMA • Cembureau • CEPI • COGEN Europe • Esoterica • Eurima (European Insulation Manufacturers Association) • EUROHEAT • FEDARENE (European Federation of regional Energy and Environmental Agencies) • FIEC (European Construction Industry Federation) • JHA • Orgalime 	<ul style="list-style-type: none"> • ICLEI • Climate Network Europe • ECEEE (European Council for an Energy Efficient Economy) • Greenpeace • WWF 	<ul style="list-style-type: none"> • IEA
WG4 Transport	<ul style="list-style-type: none"> • DG TREN • DG ENV • DG RTD • DG ENTR 	<ul style="list-style-type: none"> • UK • Netherlands • Sweden 	<ul style="list-style-type: none"> • PSA • ACEA • EUROPIA • European Biodiesel Board 	<ul style="list-style-type: none"> • SNM (Stichting Natuur en Milieu) • IEEP (Institute for European Environmental 	

			<ul style="list-style-type: none"> • WERD • ASECAP • Logistic/Telematics • UNICE/Transport • Alliance Internationale du Tourisme 	<ul style="list-style-type: none"> • Policy) • T8E 	
WG5 Industry	<ul style="list-style-type: none"> • DG ENTR • DG ENV • DG RTD • DG TREN 	<ul style="list-style-type: none"> • UK • France • Austria • Italy • Denmark 	<ul style="list-style-type: none"> • CEFIC • CEMBUREAU • CEPI • EUROFER • EUROPIA • Orgalime/CECED • UEAPME • UNICE 	<ul style="list-style-type: none"> • Climate Network Europe • WWF • Greenpeace 	
WG5 Industry sub-group: Voluntary Agreements	<ul style="list-style-type: none"> • DG ENTR • DG ENV • DG RTD • DG TREN • the European Parliament 	<ul style="list-style-type: none"> • Denmark • Finland • Germany • Italy • Sweden • UK 	<ul style="list-style-type: none"> • BDI • CECED • CEFIC • CEMBUREAU • CEPI • DSM • EURELECTRIC • EUROFER • UEAPME • UNICE 	<ul style="list-style-type: none"> • Climate Network Europe • WWF 	
WG6 Research	<ul style="list-style-type: none"> • DG RTD • DG ENV • DG JRC • DG TREN • DG ENTR • DG AGRI 	<ul style="list-style-type: none"> • France • Sweden • Italy • Portugal 	<ul style="list-style-type: none"> • European Business Council for Sustainable Energy Future • Gerling Insurance Company 	<ul style="list-style-type: none"> • Climate Network Europe 	
WG7 Agriculture	<ul style="list-style-type: none"> • DG AGRI • DG ENV • DG ENTR 	<ul style="list-style-type: none"> • Germany • UK • Italy • Netherlands • France • Ireland 	<ul style="list-style-type: none"> • COPA/COGEGA • COPA • Hydro Agri Deutschland GmbH • ENCA • Norsk Hydro Porsgrunn – Norway 	<ul style="list-style-type: none"> • Birdlife International • CEPF (Confederation of European Forest Owners) 	

Sources: the 2001 report; other Commission's documents (Commission's Web Site <http://europa.eu.int/comm/environment/climat/eccp.htm>).

* This table does not cover all working groups and independent external experts such as academic institutions and consultants. Alternates members are also excluded.

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