The Politics of Regulation and the Internal Market

ALASDAIR R. YOUNG

INTRODUCTION

The single market programme is probably the most far-reaching and ambitious regulatory project in the world. It has both profoundly affected the relationship between the state and market within European states and fundamentally shifted authority for much microeconomic management from the member states to the European Union. As a consequence, the single market, and with it the politics of regulation, have become central to what the European Union does and have shaped how we understand what kind of political entity it is.

As with traditional states, the study of regulation in the EU has focused on core questions of whose interests prevail in the policy process and what the effects of regulatory changes are. The common question of which political actors are most influential is given extra piquancy by the EU's character as neither a state nor an international organization (Sbragia 1992; Kohler-Koch 1999; Wallace 2005; and see Chapters 6 and 7). The EU's unusual character and the centrality of regulation to the European project also provoke additional questions associated with the appropriate location of authority and the implications for the EU's legitimacy.

Although there were a few early pioneers (Dashwood 1977, 1983), interest in the politics of regulation in the EU really only took off in the wake of the launch of the internal (or single European) market programme in 1985. The study of the politics of European regulation, therefore, is a relatively recent endeavour (Majone 1994). Although the study of EU regulatory politics only really bloomed in the 1990s, it has developed into a vigorous and diverse field of study, with new issues receiving attention as their real-world salience increases. This attention, however, has been concentrated on a relatively limited range of, admittedly important, policy decisions. Further, most accounts focus on single case studies. Together these tendencies limit our capacity to understand the nuances of EU regulatory politics.

After clarifying what this chapter does and does not cover, I discuss how the single
European market programme fits into theories of European integration. I will then examine the characterization of the EU as a 'regulatory state' before discussing the political implications of different types of regulation and modes of economic integration. I will then examine the answers that have been advanced to the core traditional questions – Which political actors are most important? And whose interests prevail? – before considering whether the answers to these questions suggest that the EU represents a new form of governance. I will also consider the limited literature on the politics of the EU’s competition policy, which is both more similar to regulatory policy within states than most EU regulatory activity and directed at creating a common market. To round out the picture, I will also examine the role of regulation in the EU’s external relations (see also Chapter 27). In the light of the central discussion of EU regulatory politics, I will argue that much of the discussion of the EU’s legitimacy crisis is misframed and, consequently, exaggerates the scale of the problem. I will conclude by elaborating on the limitations in the literature mentioned above and suggesting how they might be addressed.

THE BOUNDARIES OF REGULATION AND THE SINGLE MARKET

For the purposes of this chapter, regulation involves public actors adopting and policing rules aimed at disciplining the behaviour of economic actors. The chapter thus focuses on the legal instruments of regulation that have been at the heart of the single market programme, rather than the newer, 'softer' forms of regulation (Knill and Lenschow 2003). Regulation is usually seen as aiming to improve the efficiency of the economy by correcting market failures, such as information asymmetries, negative externalities (such as pollution), and monopolies (Majone 1994). Consequently, regulation is an immensely broad field, many aspects of which are addressed in detail in other chapters of this volume. I will therefore limit my discussion here to the regulatory activity most directly affected by the attempts to build a single European market. That is, it will focus on the politics of regulation as they apply directly to the removal of regulatory barriers to trade in goods and services. This means leaving aside some of the flanking policies, such as environmental protection as an end in itself (see Chapter 21), social policy (see, for example, Chapter 22), and labour market regulation (touched on in Chapter 24). Furthermore, the focus will be on the European level rather than on how regulation at the European level has affected state-market relations in the member states (see Chapter 25).

THE SINGLE MARKET AND INTEGRATION THEORY

Before turning to the politics of how the single market works, it is worth exploring the debate about its origins and how this contributed to broader debates about the process of European integration. The crux of this debate is about which actors were most influential in launching the single market programme: supranational actors or member governments. Framed this way the debate is between neo-functionalism and liberal intergovernmentalism. There is an associated debate about the importance of ideas, which is most developed in the emphasis on supranational actors, versus the bargaining power of states pursuing clear preferences, although some see ideas as important in shaping how the states sought to realize those preferences. Framed this way the debate is between constructivism and rationalism. These linked tensions about which actors matter and the importance of ideas and norms also motivate the debates about the dynamics of regulatory politics in the single market.

The neofunction-intergovernmentalist debate about the origins of the single market is rather miscast as the different camps seek to explain different aspects of the project (Armstrong and Bulmer 1998; Young 2005). Those analysts who concentrate on the single European market programme – the substance of the project – tend to emphasize actors and ideas. Single European market reforms to facilitate this project – tend to be at the core of state politics. As a consequence, accounts are rightly criticized (Armstrong and Bulmer 2005). Nonetheless, it is worth examining continuing relevant debates about regulation policy.

In particular, among those who emphasize barga
project—tend to stress the role of supranational actors and ideas. Those that concentrate on the Single European Act—the institutional reforms to facilitate the realization of the project—tend to stress the role of the member states. As a consequence, it is possible that both accounts are right, but explain different things (Armstrong and Bulmer 1998: 19; Young 2005). Nonetheless, the debate endures and is worth examining in some detail because of its continuing relevance for and resonance with debates about how the EU makes regulatory policy.

In particular, it is worth noting that even among those who emphasize the importance of supranational actors there are differences about which actors matter more, also a central concern of the debates over EU regulatory politics. Some, such as Cowles (1994) and van Apeldoorn (2001, 2002) emphasize the importance of transnational business interests, especially the European Roundtable of Industrialists (ERT), in shaping the EU agenda in favour of the completion of the single market. Sandholtz and Zysman (1989) and Jabko (2006) cast the Commission in the leading role.

Analysts who focus on the SEA, by contrast, emphasize bargaining among the member governments. Moravcsik (1991, 1998), in particular, argues that the SEA was the product of interstate bargaining, principally between the British, French, and German governments, although the preferences of these governments were influenced by business interests responding to increasing economic interdependence. Garrett (1992) argues that the member governments were willing to accept limits on their policy autonomy because they were engaged in an extended cooperative project and wanted to be able to ensure that their partners would comply with agreements. Cameron (1992) concludes that ultimately the member governments were the crucial actors, although he concedes that supranational actors, such as the Commission, EC, and big business, may have influenced their preferences.

Majone (1994, 1996) contends that the interaction of both supranational actors, particularly the Commission (supply side), and the member states (demand side) is necessary to explain the transfer of regulatory authority to the EU that the single market programme implied. More specifically, he argues that because the EU’s budget is so limited, the Commission must seek to develop through task expansion, hence its ‘entrepreneurial’ promotion of the single market. The Commission was supported by internationally-oriented European firms, which wanted to avoid dealing with multiple, competing national regulations. The member states were willing to delegate regulatory authority to the EU in order to minimize transaction costs—associated with identifying interlocutors, bargaining, and, particularly, policing, monitoring and enforcement—and flesh out the relational contract of the EC Treaty (agenda setting). These pressures persist and help to explain the continuing, albeit at a diminished rate, transfer of regulatory authority to the EU level even after the bulk of the formal single market programme has been adopted.

The preceding discussion has focused on the debate about why regulatory policy authority was shifted to the EU. That, however, is only part of the story. The other part concerns why that common policy took the form it did. This is where the role of ideas becomes prominent. Strikingly, however, the discussion of the role of ideas in the launch of the single market programme does not really engage with the broader constructivist-rationalist debate. This is because all of the accounts of ideas in the single market programme depict them more in terms of affecting understandings of ends–means relationships than changing underlying preferences. The key differences, therefore, revolve around the interaction between actors and ideas. Liberal intergovernmental authors tend to emphasize a convergence of policy preferences around neo-liberal economic ideas during the early 1980s (Sandholtz and Zysman 1989; Majone 1991; Moravcsik 1991; Cameron 1992). Others, however, stress the role of supranational institutions in promoting particular ideas. Garrett and Weingast (1993) contend that the idea of mutual recognition, developed by the European Court of Justice in its cassis de Dijon ruling, provided a focal point for agreement among member governments that favoured
liberalization. Alter and Meunier-Aitsahalia (1994) and Pollack (2003a) recognize that the idea of mutual recognition was important, but stress the Commission's entrepreneurial exploitation of this idea as a formula for liberalization.

Both Jabko (2006) and van Apeldoorn (2001, 2002), however, stress that there was not one unambiguous understanding of the single market programme. There was a neo-liberal vision of boosting economic efficiency by liberalizing trade between and within the member states, but there was also a more competitiveness-oriented vision, in which the creation of the single market, not least through enabling European firms to take advantage of greater economies of scale, would enable European firms to compete more effectively with their international rivals, notably in Japan and the US. European market liberalization, therefore, served quite different purposes for different governments and different economic actors. While Jabko (2006) contends that the Commission strategically exploited the ambiguity about the meaning of the market in order to advance European integration, van Apeldoorn (2001, 2002) contends that there was a clash between competition and competitiveness factions within the ERT, which the competitiveness faction initially won, but was unable to realize because of opposition from neo-liberal member states.

THE EU AS A 'REGULATORY STATE'

The success of the single market programme has been such that many authors see it as a defining feature of the EU (Majone 1994; Begg 1996; Gottweis 1999; Egan 2001). In fact, regulation is so central to the EU's functioning that it can usefully be considered a 'regulatory state' (Majone 1994, 1996; McGowan and Wallace 1996; Egan 2001). According to McGowan and Wallace (1996: 563), a regulatory state attaches greater importance to the processes of regulation than to other forms of policy-making, it focuses on rule-making and it has 'an attachment to the rule of law and, normally, a predilection for judicial or quasi-judicial solutions'.

This is theoretically significant because it situates the EU's regulatory politics within a comparative politics framework. Majone (1996: 55) explicitly states that conceptualizing the EU as a regulatory state is 'heuristically useful' as it opens the door to comparison with the other prominent example of a 'regulatory state', the US, and to the extensive literature on regulatory politics in the US.

Although it is extremely useful to situate EU regulatory politics in a comparative framework, care needs to be taken when applying the lessons from the study of politics in the US to the EU. Crucially, the EU, unlike the US, is rarely directly involved in regulating the activities of firms or individuals; there has only been a very limited transfer of regulatory powers to the EU (Eberlein and Grande 2005). Rather European rules often focus on regulating the (national) regulators (McGowan and Wallace 1996), although the EU also makes extensive use of detailed legislation in areas of social regulation (Kelemen 2004).

Further, care needs to be taken that, in focusing on decision-making at the EU level (where the 'regulatory state' analogy is strongest), we do not lose sight of the multilevel character of EU regulatory governance. The comparative federalism literature provides a corrective to this within the context of comparative politics (Nicolaisi and Howse 2001; Kelemen 2004), as does the focus in international political economy on the interaction between domestic and international politics (Katzenstein et al. 1998; Friedman and Martin 2002).

In addition, it is dangerous in the EU context to equate regulatory policy-making with technocratic policy-making (Harcourt and Radaelli 1999). As the single market programme involves reconciling different national regulatory approaches, each of which embodies complex compromises and reflects national attitudes and preferences, there is contestation about the objectives of regulation, not just its means. These are intensely political issues. When combined with the fact that regulation (and de- and re-regulation) creates winners and losers, it is not surprising that the politics of regulation are questioned.
of regulation in the EU are often vigorous and that the legitimacy of EU regulation is questioned.

DIFFERENT TYPES OF REGULATORY POLITICS

One of the important lessons from the US study of regulation is that different types of regulation are characterized by different types of politics. One basic distinction is between economic regulations, which govern entry to and competition within particular sectors, and social regulations, which are aimed at addressing negative externalities (such as pollution) and information asymmetries (e.g. consumer protection). These different types of regulation distribute costs and benefits differently, and, therefore, are characterized by different types of politics (Wilson 1980). Where anticipated costs are concentrated and benefits are diffuse, as in social regulation and the liberalizing of economic regulations, 'entrepreneurial' politics are necessary to overcome the resistance of the better organized interests that will incur the costs of policy change. A political entrepreneur sees advantage in pursuing policy objectives that benefit large numbers of people who are not mobilized within the policy process (Derthick and Quirk 1986). With regard to economic regulation the benefits of being protected from competition are concentrated among the firms in the regulated sector. Where the costs are diffuse, as, for example, in airlines and telecommunications where the consumers are individuals, client politics, in which producers dominate, is likely, although Wilson (1980) notes that established civic interest groups can make such politics more transparent and therefore make producer dominance harder. In other cases, where the consumers are other firms, such as in road haulage and maritime transport, Lowi's (1964) characterization of regulatory politics as interest group politics prevails.

A second important difference between economic and social regulation is that at least since the 1970s they have been subject to very different ideational frameworks. The rise of neo-liberal economic ideas, and the critiques of regulatory economists, challenged the idea that markets should be protected from competition, thereby paving the way for deregulation in the US and the single market programme in the EU (Derthick and Quirk 1986; Majone 1991; Armstrong and Bulmer 1998). By contrast, the spread of post-material values in the US and western Europe contributed to greater support for social regulation (Vogel 1989; Weale 1992).

These different ideational frameworks have been buttressed by technological and scientific change. Technological developments have undermined the view that a number of industries, most notably in telecommunications, are natural monopolies and therefore cannot be subject to competition (Dyson and Humphreys 1990; Thatcher 1999). In contrast, scientific advances have enhanced awareness of environmental problems and consumer safety issues and contributed to pressure to resolve them (Vogel 1989; Weale 1992). Thus economic and social regulation are characterized by different types of politics operating within different ideational frameworks.

THE POLITICS OF DIFFERENT TYPES AND MODES OF REGULATORY INTEGRATION

Although these broad trends and political dynamics broadly characterize regulatory politics in all countries, precisely how they translate underlying preferences into policies differs between countries. There are a number of reasons for this (Hancher and Moran 1989; Vogel 1995, 2003; Previdi 1997; Holmes and Young 2001): countries face different problems; they may have different historically and culturally influenced attitudes towards risk; and they have different constellations of interests and different political institutions for aggregating them.

With regard to social regulation, such differences, whether intentionally or not, can impede trade between states as all products must meet the standards of the state in which
they are sold and all service providers must comply with the rules of the state in which they operate. Economic regulations, which are particularly common in services, also impede trade as they directly restrict access to (national) markets. Economic integration among states, therefore, requires overcoming these different national rules. The single market programme was intended to do precisely that.

There are, however, a number of different ways of addressing differences among national regulations. These different modes of economic integration engage different actors and take place within different institutional frameworks within the EU; they, therefore, have different political dynamics.

**Negative and Positive Integration**

Pinder (1968) posited that there are essentially two ways to remove regulatory barriers to trade: one is to simply remove them ('negative integration'); the other is to replace them with a common rule ('positive integration'). Negative integration can occur through a decision of the member governments, in which case it is not dissimilar to positive integration (see below). More commonly, however, it comes about through the European Court of Justice (ECJ) finding a national rule incompatible with the Treaty of the European Community, a process that began in the early 1970s. The most obvious manifestation of negative integration within the EU is the mutual recognition principle, which was articulated on the basis of the ECJ's 1979 *cassis de Dijon* judgement. The mutual recognition principle holds that, assuming the member governments' rules are equivalent in effect, products sold legally in one member state should be allowed to be sold in all member states. Thus, with regard to negative integration, the ECJ is a key actor, as are those actors, usually firms, that challenge the national rules.

Most regulations, however, are aimed at delivering public policy objectives and, as discussed earlier, may not actually be equivalent in effect. Consequently, they cannot simply be eliminated or considered equivalent. As a result, in order to both liberalize trade and continue to realize desired public policy objectives, regulation must be shifted to the EU level — 'positive integration'. In this context, the member states' governments, the European Commission, and the European Parliament become the main players, with numerous interest groups seeking to influence them. Given its more overtly political nature, it is not surprising that the vast majority of the literature has examined the politics of positive integration.

What attention has been paid to the politics of negative integration has focused the implications of the ensuing regulatory competition for public policy objectives. This attention has been motivated by two related concerns. The first concern, now familiar in discussions of globalization, was whether increased economic exchange among the member states would put pressure on governments to relax their social regulations, which increase the costs of their domestic firms (Siebert and Koop 1993). Economic integration implies both increased competition from imports and greater opportunities for firms to relocate to less regulated, and therefore less costly, or lower taxed countries. Faced with the prospect of firms either going out of business or moving their activity (and jobs) to other member states, there was concern that governments would relax their social regulations. This could lead to a competitive 'race to the bottom' in which each member state sought to give its firms the greatest competitive edge. Thus, the concern was that national social regulations would be eroded.

The second, related, concern was that the high threshold for agreement and diversity of interests among the member states would make it difficult to adopt common social regulation to the EU level, which would eliminate the incentive for competitive deregulation among the member states. Thus, the EU's regulatory capacity would not be sufficient to compensate for the erosion of the member states' regulatory capacity resulting from negative integration (Scharpf 1988). The central thrust of these concerns was that the market would be strengthened at the expense of the state and that over other concerns.

Despite the logics of these concerns, in most part, both of studies have shown a competitive race to the bottom (Woolcock and Walls 2001). In large, a variety of member states and regulatory frameworks produced highly different results. In the 1990s, positive integration does not appear to have eroded the regulatory capacity of the member states.

Moreover, the EU has increasingly used the powers granted by the Lisbon Treaty (Pope and Smelser 2007) to adopt new regulations aimed at strengthening the regulatory capacity of the member states. This has been facilitated by the establishment of the European Unitary Market, which allows for the integration of goods, services, capital, and persons across the member states, and the establishment of the European Economic Area, which allows for the integration of goods, services, capital, and persons across the member states.

In conclusion, the politics of negative integration have been characterized by a concern that the market would be strengthened at the expense of the state and that over other concerns. However, despite the logics of these concerns, in most part, both of studies have shown a competitive race to the bottom. In large, a variety of member states and regulatory frameworks produced highly different results. In the 1990s, positive integration does not appear to have eroded the regulatory capacity of the member states. This has been facilitated by the establishment of the European Unitary Market, which allows for the integration of goods, services, capital, and persons across the member states, and the establishment of the European Economic Area, which allows for the integration of goods, services, capital, and persons across the member states.

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state and that economic interests would prevail over other considerations.

Despite the plausibility of the underlying logics of these concerns, neither has, for the most part, been born out in the EU. A number of studies have found little evidence of regulatory competition among the member states (Woolcock 1994, 1997; Sun and Pelkmans 1995; Gatsios and Holmes 1997; Scharpf 1997, 1999). In large part this is because firms, for a variety of reasons, have not put the EU’s member states under intense pressure to relax their regulatory regimes (Woolcock 1994). A central reason for this is that for most firms environmental regulations (Vogel 1997b) and health and safety regulations (Eichner 1997) do not significantly increase costs. Further, even when firms do press for changes, governments have strong incentives to resist them as the policies were adopted to address domestic political concerns in the first place (Sun and Pelkmans 1995; Scharpf 1997). Thus, negative integration does not appear to have extensively eroded the regulatory capacity of the member states.3

Moreover, a number of studies have established that the EU has demonstrated significant regulatory capacity in adopting quite stringent rules across a wide range of policy areas, including health and safety and environmental product regulations; environmental process regulations, and rules governing banking and insurance (Eichner 1993, 1997; Sbragia 1993; Vogel 1995; Peterson 1997; Pollack 1997; Scharpf 1997, 1999; Young 1997; Young and Wallace 2000). The political dynamics that explain this outcome are examined in detail in the section on the politics of positive integration below, but it is worth summarizing here the key explanatory factors: advocacy by particular member governments; sponsorship by supranational institutions, notably the Commission and European Parliament; and lobbying by constellations of civic and, crucially, producer interests. As will be explored below, these factors are more prevalent and influential in some circumstances than others. Consequently, there are some exceptions to this positive picture of EU regulatory capacity, most notably with respect to social policy, industrial relations, and taxes on firms and capital (Scharpf 1997, 1999).

### Types of Positive Integration

The overwhelming majority of the literature on the politics of EU regulation examines different types of positive integration. Most of that work concentrates on relatively few sectors within two types of positive integration: market making and approximation (see Table 19.1).

'Market-making' regulation (Scharpf 1999: 104) involves the adoption of EU-level rules to replace national economic regulations that restrict access to particular sectors, which are particularly common in services. It typically involves eliminating (gradually) national quantitative restrictions on market entry and replacing them with EU-level qualitative restrictions.

Regulatory approximation, arguably the high water mark of positive integration, involves replacing national product standards with detailed, common EU standards so that products can circulate freely within the single market. Approximation is reserved for those products that are too complex and/or politically sensitive to be left to the vagaries of negative integration.

Less attention has been paid to the ‘new approach’ to standardization and to ‘home country control’, its analogue in financial services regulation. Under the ‘new approach’ only minimum essential requirements are agreed politically at the EU level. Responsibility for developing detailed technical standards is delegated to the independent European standards bodies, but national and even firm standards that are certified to meet the essential minimum requirements are also acceptable, hence there is also an element of mutual recognition. Likewise, with regard to ‘home country control’, only minimum standards for the national regulation of financial services are agreed at the EU level. Financial service providers can operate throughout the single market regulated by the government of the country in which they have their headquarters (home). These approaches blur the distinction between
Despite the different approaches that have been adopted, there are important parallels between those adopted by the EU and the various regional groupings of the world. The two diverge in that the EU’s approach is more comprehensive, as there is an interplay between the national and European levels of policy-making, whereas these are largely separate in the world’s major regions. However, the two systems of governance are interdependent and share a common set of principles. Therefore, there are significant similarities between the two systems.

### The Spread of Positive Integration

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### Table 1: Partial survey of the literature on the politics of positive integration

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positive and negative integration because they involve a degree of positive integration in setting common minimum standards before mutual recognition applies.

The Spread of Regulatory Agencies

A relatively new feature of regulation in Europe, which is attracting a great deal of academic interest, is the proliferation of regulatory agencies (see, for example, Majone 2000; Kelemen 2002, 2004; Thatcher and Stone Sweet 2002; Coen and Thatcher 2005). Although this phenomenon is prevalent within individual EU member states and the emergence of supranational regulatory agencies is central to the characterization of the EU as a 'regulatory state', the delegation of regulatory powers to the EU level has actually been extremely limited. Even the most powerful European agencies, such as the European Medicines Evaluation Agency and the new European Food Safety Agency, do not have independent regulatory authority, but refer opinions to political committees for decisions (Krapohl 2004; Eberlein and Grande 2005). Perhaps not surprisingly, therefore, most of the literature on the European regulatory agencies has focused on why they were established rather than their impact on regulation.

THE POLITICS OF POSITIVE INTEGRATION

Despite the different types of positive integration and the variety of sectors that have been studied, there is a striking degree of accord about how regulatory politics within the single market work. Within that broad accord, however, there are important differences of emphasis. These differences are found in answers to the two distinct, but related, questions that have motivated most of the research: (1) which institutions are most important, particularly are supranational institutions more important than the member states? And (2) which societal actors' interests prevail? Taking the different answers to these two questions together leads to a third question – Does the EU represent a new form of governance? (Eising and Kohler-Koch 1999a).

Which Institutions are the Most Important?

To a significant extent the question about which institutions are most important is an echo of the neo-functionalist – liberal intergovernmentalist debate: do the EU's supranational institutions simply serve the interests of the EU member states or do they have an independent impact on outcomes? Within this broader discussion there is a subsidiary debate about the relative importance of the different EU institutions, particularly concerning the policy impact of the European Parliament.

Given the European Commission's exclusive formal right of initiating policies, it is not surprising that it is at the heart of EU regulatory politics. It is frequently characterized as a 'policy entrepreneur', which has its own interests and pursues them strategically (Majone 1996; Holmes and McGowan 1997; Pollack 1997; Schmidt 1998, 2000; Aspinwall 1999; Kohler-Koch 1999; Egan 2001). This emphasis on the Commission as a policy entrepreneur is striking, because the literature on US regulatory politics emphasizes the importance for deregulation (market making) and social regulation (approximation) of a policy entrepreneur championing the interests of diffuse actors against the resistance from vested interests (Wilson 1980; Derthick and Quirk 1986).

The existing literature provides a wide variety of explanations about why the Commission should be inclined to play such an entrepreneurial role. Majone (1996) emphasizes the Commission's non-majoritarian character, which insulates it from electoral politics so it can better consider the common good. This inclination is reinforced by the Commission's perception that pursuing popular policies is a prominent way to address concerns about its democratic legitimacy (Peters 1994; Young and Wallace 2000). Further, in order to advance the single market the Commission must challenge existing (national) arrangements, which tend to favour
powerful interests (Majone 1996; Kohler-Koch 1999; Young and Wallace 2000). Further, by extending European regulatory activity the Commission increases the scope of its authority with respect to the member states (Majone 1994; Pollack 1997; Kohler-Koch 1999). Although these explanations of Commission entrepreneurship are different they are reinforcing rather than competing.

Although there is agreement that the Commission has interests distinct from those of the member states, the characterization of the Commission as a policy entrepreneur masks disagreement about how its interests interact with those of the member states. A number of authors stress the Commission's strategic use of its competition policy powers to undermine the viability of the status quo in air transport (Holmes and McGowan 1997; Aspinwall 1999), telecommunications (Cram 1997; Sandholtz 1998; Schmidt 1998), and a number of other sectors (Schmidt 2000), thereby paving the way for liberalization. The Commission has also been known to encourage actively coalitions of interests in order to build support its proposals, such as for liberalizing telecommunications (Sandholtz 1998). Other observers, however, tend to see the Commission playing an entrepreneurial role by selecting among a range of options for which a winning coalition is possible (Garrett and Tsebelis 1996; Majone 1996; Pollack 1997; Young and Wallace 2000).

There has been rather less attention paid to the impact of the European Parliament on regulatory policy-making, at least by those studying regulatory politics rather than the Parliament. Most of what literature there is focuses on the Parliament's impact on regulatory approximation, rather than market making, for example, on sweeteners (Earnshaw and Judge 1993), novel foods (Burns 2004), pharmaceutical advertising (Young and Wallace 2000), the EU's new food safety regime (Kelemen 2004) and, in particular, automobile emissions (Judge et al. 1994; Tsebelis 1994; Young and Wallace 2000). The Parliament has, however, been drawn into normative questions in conjunction with market making in public utilities, such as electricity, gas, and postal services (Lord 2003).

The work focused on the Parliament's influence has stressed that the extent of the Parliament's impact on policy – through its agenda setting and veto powers – depends on its policy preferences in relation to those of the Commission and the member states, although crucially there is considerable disagreement about how much room for manoeuvre it has (Crombez et al. 2000; Garrett et al. 2001; Kasak 2004). This is significant because the Parliament is usually assumed to favour more European regulation and to defend diffuse interests (Pollack 1997; Young and Wallace 2000; Lord 2003), although these preferences may vary with the ideological composition of the Parliament (Lord 2003).

The Parliament has also used non-legislative powers to influence the single market. Its successful ECJ case against the Council for failing to adopt a common transport policy raised the spectre of court-imposed deregulation of road haulage. This raised the cost-of-no-agreement for those opposed to liberalization and, thereby, strengthened the hands of those that wanted more far-reaching liberalization (Young 1995; Héritier 1997; Aspinwall 1999; Schmidt 2002).

The example of road haulage highlights nicely the role of the ECJ in regulatory politics. As a court it does not play a direct role in the policy process. It can, however, have a profound impact on the contours of the policy adopted because it can eliminate the status quo as a viable alternative. In such circumstances, the issue is not whether there should be reform, but what form it should take.

In contrast to its role with respect to economic regulations, the ECJ has had an important impact on EU regulatory politics as a result of up-holding the legitimacy of national social regulations (Joerges and Neyer 1997). As a result, national rules that serve legitimate public policy objectives (as defined by Article 95 of the EC Treaty) and are not unnecessarily trade restrictive are permitted even if they interfere with the free movement of goods. Thus, the ECJ has required that member states justify their policies with respect to specific legitimate objectives. In this situation option and stringent standards, which are excluded from consideration by the Court, may vary with the ideological composition of the member states, the character of the ECJ, and the composition of the Court (Young 1999; Aspinwall 1999).
legitimate objectives (Joerges and Neyer 1997). In this situation, the status quo is a viable option and the member state with the more stringent standard is under no pressure to change it, while its trading partners' firms are excluded from its market or have to comply with different national standards. Thus, it is the ECJ's upholding of national regulatory autonomy that enables the dynamics of 'trading-up' to occur (Vogel 1995; Scharpf 1999; Young and Wallace 2000).

Although there is broad agreement that the member states are the most important players in EU regulatory politics, different authors emphasize different roles: 'leaders' or 'laggards'. As 'leaders' the member states play a crucial role in putting issues on the EU's agenda by adopting national policies that disrupt the single market (Héritier 1996; Kelemen 2004; Scharpf 1999; Vogel 1995; Young and Wallace 2000). As Gottweis (1999) stresses, however, the trade disrupting effect of national rules translates into pressure for a common policy only because of the accepted objective of creating a single market; impeding trade is not inherently a problem. The disruptive impact of national regulations on intra-EU trade has been an important factor in explaining much of the approximation of social regulations within the single market, including automobile emissions (Young and Wallace 2000); the ban on growth hormones in beef (Vogel 1995); the approval process for genetically modified crops (Young 2001); pharmaceutical regulation (Kelemen 2004); the EU's food safety regime (Kelemen 2004); and chemicals regulation (Eckley and Selin 2004), as well as occupational safety, which has been largely pursued through approximation of equipment standards (Scharpf 1997). In these accounts the focus is on how the EU's institutions facilitated the translation of the leader's policies to the EU level.

By contrast, with regard to market-making regulations the member states are usually depicted as 'laggards', resisting change (Young 1995; Héritier 1997; Holmes and McGowan 1997; Sandholtz 1998; Schmidt 1998, 2002; Aspinwall 1999; Eising and Jabko 2001; Eising 2002). To be sure there are member states that favour market-making regulations, usually because they have already liberalized their national markets, but they are usually depicted as supporting the Commission against the 'laggards' rather than leading the charge (Young 1995; Holmes and McGowan 1997; Padgett 2003). In most of these accounts, therefore, the focus is on how the EU's supranational institutions and the broader institutional context of the EU enabled the opposition of the 'laggards' to be overcome.

It should be noted, however, that this is not a universally shared view. Thatcher (2001) argues that the Commission and the member governments were largely in accord on the substance of telecommunications liberalization, but differed over 'constitutional' issues concerning the allocation of powers between the Commission and the Council. Bartle (1999) and Levi-Faur (2004) argue that broader processes of globalization and technological change were more significant than the EU context for explaining the liberalization of electricity and, particularly, telecommunications.

**Which Societal Actors' Interests Prevail?**

Although there is a significant degree of disagreement about which actors matter more in the policy process, there is considerable agreement that the process of building the single market has by-and-large benefited diffuse interests at the expense of vested (economic) interests (Bomberg and Peterson 1993; Majone 1996; Joerges and Neyer 1997; Pollack 1997; Young and Wallace 2000). There are several reinforcing explanations for this: one focuses on the preferences of the political actors discussed above (Bomberg and Peterson 1993; Pollack 1997); another emphasizes the relative openness of the EU's policy networks (Héritier 1996; Kohler-Koch 1999; Jachtenfuchs and Kohler-Koch 2004); and a third pays attention to the role of ideas, including public perceptions of policy failures (Weale 1992; Woolcock 2002; Vogel 2003). As these are reinforcing rather than competing explanations, some authors integrate all three (Majone 1996; Young and Wallace 2000).
As discussed above, the Commission and Parliament have incentives to promote policies that benefit diffuse interests. Although there is debate about precisely how much they matter in the policy process, they clearly have an impact. Further, the dynamics of market integration tend to enhance the influence of those member states that have policies more beneficial to diffuse interests – stringent social regulations and liberalized economic regulations. Thus, a range of political actors have incentives to promote diffuse interests and the power resources to do so.

In addition, the relative openness of policy networks at the EU level affords (organized) diffuse interests access to the policy process. Although the Parliament is very open to interest groups, the Commission, as the initiator of policy proposals, is the focus of most interest group activity and scholarly attention. There are several reasons why the policy networks surrounding the Commission are particularly open. Some of these are essentially accidental. For example, when the Commission enters new policy areas there are no firmly established networks of actors (Peters 1994). Further, because the Commission is not directly involved in policy implementation, EU policy networks are less stable than at the national level (Eising and Kohler-Koch 1999b), although they become more stable as EU activity in a policy area progresses (Mazey and Richardson 2001). In addition, because an EU policy will apply in all member states more actors with more diverse interests than within any one member state will be affected and are thus likely to mobilize to try to influence the policy (Young and Wallace 2000). As a side-effect of this, ‘Baptist and bootlegger’ coalitions between producer and civic interests may be particularly prevalent at the EU level as some firms seek to extend the regulations that they are used to the rest of the EU (Young and Wallace 2000).

EU policy networks are also open as a result of the Commission’s strategic action. The Commission’s policy-making staff is actually very small, so it depends on interest groups to provide it with information about problems and possible solutions (Young and Wallace 2000; Mazey and Richardson 2001). In addition, the Commission consults widely in order to enhance the credibility and legitimacy of its policy proposals in the eyes of the member states (Peters 1994; Kohler-Koch 1999; Mazey and Richardson 2001). More recently, the Commission has sought to enhance its legitimacy more broadly through encouraging interest group activity (Mazey and Richardson 2001; Greenwood and Young 2005).

As in the US context, prevailing political ideas have been important in shaping policy outcomes. With respect to market-making regulations neo-liberal economic ideas about boosting economic efficiency and, thereby, growth through freeing competition have had a role. This has been most evident in air transport (Holmes and McGowan 1997) and road haulage (Young 1995). The norm of the market was also significant in the liberalization of electricity (Eising and Jabko 2001; Jabko 2006).

Also as in the US, social regulations have been largely immune to the logic of neo-liberal ideas. With regard to social regulations different ideas have supported more comprehensive and more risk averse regulation. ’Ecological modernization,’ which, among other things, challenged the assumption that environmental protection was incompatible with economic growth and called for the objective of environmental protection to be integrated into other policies, has been influential in Europe (more so than in the US) and has facilitated the fit between creating a single market and stringent environmental (product) standards (Weale 1992; Weale and Williams 1992).

An outgrowth of ecological modernism, the ‘precautionary principle,’ which justifies taking action to address uncertain but potentially significant risks before scientific proof has been established, is likely to tilt the policy-making presumption towards more stringent regulation (Majone 2002). Moreover, the ’precautionary principle’ has subsequently been extended to human, animal, and plant health (Woolcock 2002). There are, however, some indications that the ’precautionary principle’ has had an impact more at the level of discourse than in policy outputs, where the impact of a more important (Eagan 2001) that the shifting of attention in the EU from regulatory failure to a crisis of legitimacy in the wake of regulatory failures (Eagall 2006). Whether regulation or distrust, social innovations are an intellectual exercise with a place within an institutional order and not a tendency arising from design.

**EU Regulatory Failure: A New Form of Governance**

In light of the regulatory failure, some authors, particularly Eagan (2001), has put forward some new ideas about what constitutes order. Although institutions in the US context display relative openness, some authors present a new form of governance (Egan 2001). In Eagan’s analysis, if states are well adapted to the institutional design.

As the precedent in the US regulatory field, something different at the EU level is active and important for how it distinguishes.

Second, the
the impact of ‘leader’ states has been more important (Eckley and Selin 2004). It is possible that the shift towards more stringent regulation in the EU is actually a political response to a crisis of legitimacy in European regulation in the wake of a number of high-profile regulatory failures (Vogel 2003; Ansell and Vogel 2006). Whether as a principled approach to regulation or as a political reaction to public distrust, social regulation within the EU takes place within an ideational context that favours more rather than less stringent regulation.

Although there is some disagreement about which are the most important factors explaining the tendency of EU policy to favour diffuse interests, there is a consensus that there is such a tendency. Further, it would seem that this tendency arises more by accident than by design.

**EU Regulatory Politics as a New Form of Governance?**

In light of the importance of the supranational institutions in EU regulatory politics and the relative openness of the EU’s policy networks, some authors have argued that the EU represents a new form of governance – ‘network governance’ (Eising and Kohler-Koch 1999a: 6; Egan 2001). In effect there are two dimensions to this argument: one horizontal, the other vertical. The horizontal dimension concerns whether state-society relations at the EU level are substantially different from those found in conventional states. The vertical dimension concerns whether sustained participation in the crucible of EU policy-making transforms the way that actors, particularly the member governments, understand and pursue their preferences. This vertical dimension, therefore, intersects with the broader rationalist-constructivist debate.

As the preceding discussion of participation in the EU regulatory politics suggests, there is something different about interest representation at the EU level. First, interest groups are active and important in the policy process, which distinguishes the EU from statist systems. Second, the policy networks are often open and fluid, which distinguishes it from corporatist networks. Third, the Commission plays an activist role and is not simply refereeing among competing interests as implied in an ideal-type pluralist system (Majone 1996; Eising and Kohler-Koch 1999a; Egan 2001). Although Commission-society relations do appear to be distinct from these ideal types found in some EU member states, they are frequently compared to policy networks (Peterson 1995, 2004) or ‘policy subsystems’ (Sabatier 1998), which are found within traditional states, such as the UK and US.

The second dimension of the governance question is more controversial. The proponents of the network governance approach contend that at the EU level the actors are oriented towards the ‘upgrading of common interests in the pursuit of individual interests’ (Eising and Kohler-Koch 1999a: 6). This takes place through deliberation, argument, and persuasion – ‘deliberative supranationalism’ – which is made possible by the intensive, institutionalized interaction of individuals in the EU regulatory process (Joerges and Neyer 1997: 610).

Much of this characterization focuses on the issue networks around the Commission and, in particular, the comitology system, which brings together the Commission, member government, and other experts and stakeholders. There is a fair degree of agreement that at the policy formation stage, where the Commission is to the fore, expertise and persuasion are the currencies of influence (Héritier 1996; Joerges and Neyer 1997; Eising and Kohler-Koch 1999a; Young and Wallace 2000). Deliberation is arguably particularly likely in policy areas where there is a heavy emphasis on science and risk assessment (Pollack 2003b).

More controversial is the contention that the process of ‘deliberative supranationalism’ can lead to the member governments changing their positions. This is based on two widely accepted observations. First, the member governments almost always try to find consensus within the Council of Ministers (Young and Wallace 2000; Padgett 2003). Second, during the policy process member governments’ positions sometimes change (Sabatier 1998; Eising...

Although there is a fair degree of agreement that these observations are accurate at least some of the time, there is disagreement about how prevalent they are and what motivates them. For instance, while some contend that the member governments seek consensus because of ‘informal understandings of principles of conduct’ (Eising and Jabko 2001: 747), others see such behaviour as consistent with the rationalist logic of diffuse reciprocity (Keohane 1986).

Significantly, even the advocates of the constructivist approach accept that there are times when the member governments will not compromise (Eising and Kohler-Koch 1999b; Joerges and Neyer 1997). In fact, Joerges and Neyer (1997) specify that ‘deliberative supranationalism’ is most likely to occur when the distributive consequences of a policy are unclear and so the member governments are unsure where their preferences lie. In practice, although ‘market integration’ is one of the areas in which network governance is claimed to be particularly prevalent (Eising and Kohler-Koch 1999a), explicit votes in the Council of Ministers are more common on single market issues than other policy areas (Hayes-Renshaw et al. 2005) and governments frequently do not change their positions at all (Arregui et al. 2004).

There is a range of non-constructivist explanations for why governments sometimes change their positions. Several authors (Sabatier 1998; Eising and Jabko 2001; Padgett 2003) stress policy learning, which is related to, but distinct from, deliberative supranationalism. Policy learning is related to deliberative supranationalism in that the EU framework provides an intensive forum for the exchange of ideas, but it is distinct in that policy learning, because it concerns understandings of ends-means relationships rather than preferences, is fully compatible with rationalist explanations. Alternatively, some (Arregui et al. 2004) emphasize the importance of bargaining dynamics, such as package deals or being faced with a situation where any deal is better than no agreement. It is in this respect that the Commission’s use of its competition policy rules to change the default condition can be significant.

Other explanations for changes in the member governments’ positions come from explicitly treating them as the aggregates of domestic preferences. The process of negotiation within the EU, as in international negotiations more generally, tends to bring new actors into the policy process and may legitimize the positions of domestic critics of existing national policies, as a consequence of which the government’s position may change (Eising and Jabko 2001; Eising 2002). In the case of tobacco advertising, it would seem that changes in the party composition of member governments led to shifts in positions (Duina and Kurzer 2004).

This discussion suggests that the case for deliberative supranationalism is stronger in the policy proposal stage than in the decision phase, as Krapohl (2003) found in his study of the EU’s response to the BSE crisis. This is consistent with the view that a problem-solving approach characterizes only the process through which the Commission formulates its policy proposal, while decision-making in the Council is characterized by bargaining and compensation (Peterson 1995; Héritier 1996).

COMPETITION POLICY

Competition policy is not part of the single market programme and significantly predates it. It warrants discussion here for several reasons, however. First, the member states have delegated antitrust and merger control to the Commission, subject to procedural requirements, so the Commission’s exercise of its competition policy authority is the closest the EU comes to an independent regulatory agency. As a result, it is central to the understanding of the EU as a ‘regulatory state’ (Wilks 2005b). Second, competition policy – at least its antitrust and merger control aspects – in the EU, like the single market programme, is aimed at market integration, but targets private barriers to trade (McGowan and Cini 1999; Wilks 2005b). In addition, as discussed above, the Commission has used its competition policy power to make market-making decisions. The politics of these decisions received relatively little attention (Allen 1983), but focuses on retail competition policy regularly the 1990s (McGowan and Wilks 1997; Allen 1983). Regulation in the market power not to the College of Commissioners, but to the foreign firms (McGowan and Wilks 2005b), sometimes permit non-EU firms to compete (McGowan and Wilks 2005b), but other times among them from member states that has the interest of some Commission (McGowan and Wilks 2000b), despite the Commission’s antitrust powers (McGowan 1999). The major except is the competition law, which is deployed by the Commission from antitrust enforcement in the automobile industry, which result from EU competition policy, which is dependent on the independent regulatory agency.
policy powers to alter the political climate for market-making regulations.

The politics of EU competition policy has received relatively little, some would say surprisingly little, attention from political scientists (Allen 1983). Most of the politics literature focuses on reforms of the institutions of competition policy (Cini and McGowan 1998), particularly the 1989 Merger Control Regulation (McGowan and Cini 1999), the 1962 Regulation 17 (Allen 1983), and the 2003 Modernisation Regulation (Wilks 2005a). While Regulation 17 is depicted in terms of delegation from the member governments to the Commission (Wilks 2005a), in the Merger Control and Modernisation Regulations the Commission is depicted as playing a leading role (McGowan and Cini 1999; McGowan and Cini 1999; McGowan 2000a; Wilks 2005b). Thus, competing policy objectives among directorates general, pressure from member governments, and lobbying by affected interests have influenced policy decisions (McGowan and Cini 1999).

Rather less attention has been paid to the Commission's anti-trust activities (McGowan 2000b), despite their relative importance in the Commission's workload (McGowan 2000a). The major exception has been with regard to the Commission's approval of 'block exemptions' from antitrust rules to permit cooperation among European firms. The most studied example of which concerned the block exemption for automobile distribution, which effectively permitted the continued segmentation of national markets after the creation of the single market, which in turn enabled the member states to maintain national restrictions on Japanese automobile imports. Unusually for an antitrust decision, this case involved extensive lobbying by interest groups, notably consumers, and conflict between the different policy priorities of different parts of the Commission (Holmes and McGowan 1997; Young and Wallace 2000).

THE EXTERNAL DIMENSION OF EU REGULATION

The preceding discussion has focused upon political conflicts within the EU over regulatory policies. The politics of regulation also has an important external dimension. The single market has been extended beyond the borders of the EU in the European Economic Area and has provided the focal point for all of the enlargement negotiations since 1986 (Young and Wallace 2000; Sedelmeier 2005a, b). In addition, given the EU's generally liberal trade regime in manufactured goods, regulations are now the most important barriers to imports of goods and establish the conditions for foreign firms wishing to provide services within the EU. Consequently, single market measures have been the source of numerous trade disputes, particularly with the US (Woolcock 1991; Hocking and Smith 1997; Vogel 1997a; Petersmann and Pollack 2003; Young 2003, 2004; Princen 2004a, b). In addition, as alluded to above, EU competition policy decisions have had significant implications for foreign firms, including Boeing and Microsoft.

Further, the Commission has actively sought to export some of the EU's regulatory practices to the rest of the world. This has been most evident with respect to competition policy (Holmes et al. 1996; Cini and McGowan 1998; Damro 2001) and the 'precautionary principle' (Majone 2002; Woolcock 2002).

LEGITIMACY

Given the centrality of regulation to the EU's activity, it is not surprising that general
concerns about the EU’s lack of input legitimacy resonate in discussions of regulatory politics, even though the European Parliament’s involvement in regulatory politics, where the co-decision procedure first and most extensively applies, is relatively significant (Eising and Kohler-Koch 1999b; Harcourt and Radaelli 1999; Skogstad 2003; Eberlein and Grande 2005). Two opposite approaches have been presented for addressing this problem. Majone (1996) has advocated creating truly independent regulatory agencies with proper mechanisms of accountability. Others have stressed deliberative supranationalism and network governance as ways of bolstering the EU’s input legitimacy (Joerges and Neyer 1997; Eising and Kohler-Koch 1999b), and the Commission seems to have been moving in that direction (Greenwood and Young 2005).

A central problem with both these approaches, however, is that neither can cope with fundamental differences over desired outcomes. Technocratic decision-making works only when the decisions really are technical – how to realize desired objectives, not what the objectives should be (Harcourt and Radaelli 1999). Such agreement on objectives is often lacking within the EU. There are even competing visions of the appropriate objectives of competition policy – promoting competition or competitiveness (McGowan and Cini 1999). Skogstad (2003) explicitly speculates that network governance, and particularly deliberative supranationalism, may not work on ideologically charged issues, such as genetically modified crops. This is consistent with Ansell and Vogel’s (2006) concept of ‘contested governance’, which applies to situations, such as EU food safety, in which contestation is not simply about what a particular rule should be, but also concerns who should make policy, on what basis and at which level of governance. Arguably, it is the attempt to reconcile fundamentally different preferences that is the heart of the EU’s legitimacy crisis, rather than the lack of democratic input into common policies.

Further, the focus on the perceived procedural shortcomings of EU regulatory policy making is arguably misframed. To the extent that the EU is a regulatory state, comparing it to the democratic features of a traditional state is inappropriate. In fact, the European Parliament’s participation in and scrutiny of EU regulation is actually significantly greater than that found in most EU member states, where regulatory decisions are taken largely by executives, albeit within established legal and administrative frameworks (Young and Wallace 2000). The apparently greater powers of national parliaments relate to their role in redistributive policies. Thus, the problems with the legitimacy of EU regulatory policy may have more to with what it tries to do than with how it does it.

FUTURE DIRECTIONS

There is a surprising degree of common ground among observers of EU regulatory politics. With a few exceptions (Gottweis 1999; van Apeldoorn 2002), studies of EU regulatory politics explicitly or implicitly adopt neo-institutionalist approaches. Where the differences arise is between the more rationalist and more sociological/constructivist variants. Even here, however, there is a degree of agreement, at least with regard to observed behaviour, if not with what motivates it.

The study of EU regulatory politics, however, suffers from its fragmentation and narrow focus. With a few exceptions (Majone 1996; Eising and Kohler-Koch 1999a, b; Scharpf 1999; Young and Wallace 2000), the study of EU regulatory politics focuses on detailed studies of individual pieces of legislation or sectors. Although these provide a wealth of information, this fragmentation of the field makes it very difficult to move beyond the rather crude questions about whether the member governments or supranational institutions matter more or whether actors engage in arguing or bargaining, to specifying the conditions under which these different factors prevail.

Further, as Table 19.1 illustrates, most of the analytical activity has been concentrated on relatively few sectors, where EU regulation has been most controversial. This creates two blind spots. The first concerns the vast majority of EU regulatory activity that has not been controversial.

NOTES

1. For discussion see McGowan and Vos.
2. A form of rational contractarianism with regard to price and quality, the two monies are equivalent indeed.
3. In an elaboration on the same idea.
4. The use of the same idea.
5. Member state preferences are different and...
389 

THE POLITICS OF REGULATION AND THE INTERNAL MARKET

controversial. Why policies have not been controversial may be as revealing about the nature of regulatory politics in the EU as understanding why controversial decisions came out the way they did. The second blind spot concerns areas where integration has not occurred. As a consequence, more theoretically guided and explicitly comparative work across a much wider range of cases is necessary before we can really understand the politics of EU regulation.

NOTES

1. For discussions of different meanings of regulation in the European context see Begg (1996); Majone (1994); and McGowan and Wallace (1996).

2. A form of negotiated mutual recognition also applies with regard to professional services, as the member governments must agree that their professional qualifications are equivalent in effect (Loven 1999).

3. In an elaboration on this concern, Hay and Rosamond (2002) argue that whether the argument that intensified economic competition requires governments to change their policies is 'true' may matter less than whether it is deemed to be true or just useful to those employing it.

4. The use of 'leaders' and 'laggards' here is not precisely the same as Heritier's (1996), but it captures broadly the same idea.

5. Member states also play a 'leader' role with respect to process regulation, but the pressures for a common policy are different and emanate from the adopting state.

6. With regard to the role of supranational institutions performing a similar role in environmental process standards, see Chapter 21.

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