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Linking National and European Governance: Lessons for Poland and Norway

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Influencing the EU's governance poses both a challenge and an opportunity to mid-size countries like Poland and Norway. As an analytical approach, "experimentalist governance"—with its focus on the utility of learning in a multilevel system—should offer both countries clues about influencing the European regime. Yet, the relevance of the theory to policy areas of most interest to both countries—security, energy and migration—remains unclear. As part of the GoodGov project, this paper assesses the applicability of experimentalist learning to these three fields and highlights the need for both countries to strengthen horizontal cooperation with state and non-state actors if they are to exploit it.

As the European Union emerges from the eurozone crisis, its governance system remains in flux. So too does the prevalence of intergovernmental, community, and so-called new modes of governance, including what some analysts have identified as processes conducive to "experimentalist governance" (EG). EG is held up as a good thing, an answer to some of the obvious drawbacks of classic EU governance. Ideally, it strikes the right balance between defining common goals and allowing different ways of implementing them, between setting firm common policy frameworks and altering them in the course of learning processes at European and national levels.

The uncertainty caused by the euro-crisis, the Arab Spring, and the Russia–Ukraine crisis underlines the need for just such an approach—one that balances predictability with a capacity to react to unforeseen circumstances. This matters to Poland and Norway—two countries still on the outskirts of the EU's decision-making core, and at the same time highly dependent on European governance. This paper determines the conditions and limits of experimentalist governance in three key areas: security, energy and migration.

Three Conditions for Successful Experimentation

Sabel and Zeitlin¹ claim that experimentalist governance is especially well-suited to heterogeneous but highly interdependent decision-making settings like the EU, where its use will probably grow and grow. EG thrives under such conditions, based as it is on a decision-making cycle that involves a permanent process of defining and redefining ends and means. It does so by: 1) setting provisional goals and rules at the European level, then 2) permitting local units to pursue these goals with great amount of discretion concerning preferred means of implementation, followed by 3) subsequent revision of these goals and rules based on experience.

The cyclical nature of EG is at the core of the approach. This process is based on interaction between central and local units, with the participation of civil-society stakeholders. In the case of the EU, that means interaction between the European Commission and Member State governments, but leaves room to manoeuvre for interest or professional groups, industry, or NGOs. These latter stakeholders generally comply with the goals set, but should a majority of them see problems or new possibilities, one can expect them to be willing to revise the goals, metrics, and decision-making procedures at the EU level.

Thus, there are certain conditions for the theory to operate. First, it works best when there is *strategic uncertainty*, which allows local units that face similar problems learn from each other's solutions. Second, it requires *polyarchic distribution of power* in which no single actor has the capacity to impose its own preferred solution without taking into account the views of the others, but which nevertheless provides incentives for common goal setting. Third, it is only possible when political actors respond to these two background conditions with a system to facilitate the *cycle of goal-setting, implementation and revision* rather than more classic modes of governance. The efficiency of EG is dependent on the quality of this process.

In what follows, these conditions will be verified in the three chosen policy fields.

Security: Breaking Away from Classic Intergovernmentalism

When verifying the conditions for the development of experimentalist governance in the security field, it is clear that uncertainty plays a high role in the goal-shaping process. In fact, the development of the Union's security policy goals has been driven mostly by external events. The end of the Cold War led to the signing of the Maastricht Treaty and the establishment of a political union with a Common Foreign and Security Policy; the Balkan Wars in the mid-1990s and the lack of a coherent European response led to the development of a Common Security and Defence Policy; and the terrorist attacks on the U.S. in 2001 led to the formulation of the 2003 European Security Strategy.

Despite these efforts to centralise and integrate decision-making structures, moreover, the distribution of power remains polyarchic with a still dominant role for governments but also growing importance of the Commission, European External Action Service (EEAS) and specialised agencies such as the European Defence Agency. No one player can act on its own to define the policy framework and, when it comes to the Member States, there is no clear division between supporters and opponents of integration. And yet, at first sight, EG does not seem to describe the governance trajectory in security and defence policy, which is still framed by the traditional inter-governmental mode of thinking, with the governments guarding their veto over the main decisions.

Still, this may be changing. Intergovernmentalism does not allow for the central-local interaction and evaluation required for effective EG because local units (governments) simultaneously function as central ones. But the EU-level—represented by the Council Secretariat and the Commission—has challenged the intergovernmental mindset since the Amsterdam Treaty in 1999 and the Nice Treaty in 2003. The Lisbon Treaty of 2009 potentially transformed the field with the establishment of the EEAS as a coordinating entity and with a strengthening of the mandate of the High Representative. Moreover, governments, long ready to give the EU competences in the broader security field, are now facing budget constraints in the classic field of defence, not to mention shared problems in the EU's neighbourhood.

¹ Ch. Sabel, J. Zeitlin, "Experimentalist Governance," in: D. Levi-Faur (ed.), *The Oxford Handbook of Governance*, Oxford University Press, Oxford, 2012.

Nevertheless, the frequency and character of interaction between the EU-level and Member States still depend on the specific sub-field. In a narrow definition, the policy field relates solely to defence and security cooperation in the form of CSDP and CFSP. In its broader sense, however, it extends into additional policy fields. The EU has encouraged this broader definition with its “comprehensive approach” to security with a variety of actors involved at different levels.² This comprehensive approach includes the enlargement process, neighbourhood policy, and other security policy instruments of the EEAS that shape the possibility for applying the experimentalist approach.

In the classic defence field, however, implementation remains voluntary, and Member States do not need to report to the EU on their activities. However, the discussion and reporting takes place in regular meetings in different forums (Foreign Affairs Council, the Political and Security Committee, the Military Committee and the Civilian Committee, the EDA and from time to time also in the European Council). Thus, even though the goal-revision process has not been institutionalised as such, one could claim that these discussions have the makings of an experimentalist system. The transformation of the headline goals in CSDP from 1999 to today is indicative of this (i.e., lowering ambitions on operational capacities and an increasing focus on pooling-and-sharing and more sub-regional cooperation and integration).

Energy Governance: Experimentalist Goal-Setting, Poor Implementation

In energy governance, uncertainty as both a condition for finding out how to handle things better and as a vulnerability to external shocks plays a significant role in policy formulation. The latter is clearly seen in the market-integration process. External conditions have several times become drivers of policy integration, though not as much as in the climate field. The Ukraine gas crises in 2004 and 2009 triggered stricter EU Regulations on the security of European gas supplies, and crisis-management tools (though focused inside the EU’s borders). The 2008 economic crisis and changing global commodities prices have also influenced the particular choices of resources by Member States. They overshadow the traditional climate targets in the discussion on the 2030 agenda and respond to industry calls for cheap energy.

The distribution of power also remains polyarchic. European energy policy is shaped in Brussels, in the Member States, in the headquarters of the major energy companies and in professional groupings. The Commission is a major force; the lower units include governments, ministries, competition authorities, national courts and self-regulatory industry bodies. Stakeholders are organised in self-constituted networks such as the Council of European Energy Regulators, the Agency for the Cooperation of Energy Regulators, the Madrid and Florence Forum for regulators, and gas and electricity European Networks of Transmission System Operators, which tend to institutionalise.³ However, in practice, the Member States have the main stakes in policy formulation, and the main EU players (Germany, France, and the UK) enjoy a central role in shaping policy.

This is a policy field of shared competence (Art. 4 Treaty on the Functioning of the EU, or TFEU, in force from 1 December 2009), however, the scope of competence-sharing between the Member States and the Union has been disputable and will likely remain so, as the Lisbon Treaty remains inconsistent. On the one hand, the EU has the explicit competence to develop energy policy, having won the hard-fought battle for the inclusion of the separate Title XXI on energy in TFEU. At the same time, the Member States retain their right to decide on their energy mixes (Art. 194 TFEU) and energy taxation (Art. 192(2) TFEU). Any matter falling into these categories is subject to unanimity. Thus, in terms of competence-sharing between the Union and Member States, TFEU has changed only as much as allowed by the political will of the Member States.⁴

That impacts the quality of the policy cycle—because of the high importance of the particular interests of the Member States for policy formulation, “pan-European” goal-setting is a tenuous process, as illustrated by the experiences negotiating the so-called 2030 and 2050 agendas. The process of shaping European

² P. Rieker, “Integration, Security and the European Neighborhood: The Importance of the ENP as a Security Policy Instrument,” *Studia Diplomatica*, vol. 65, no. 1, 2012.

³ B. Rangoni, *Testing the Scope Conditions for Experimentalist Governance: Rule-Making Processes for Network Access in the Florence Forum*, LSE, 2013.

⁴ L. Hancher, F.M. Salerno, “Energy Policy after Lisbon,” in: A. Biondi, P. Eeckhout, S. Ripley (ed.), *EU Law after Lisbon*, Oxford University Press, New York–Oxford, 2012, pp. 367–402.

energy policy has also been predominantly regulatory, rather than experimentalist.⁵ The experimentalist cycle is nevertheless something of a blueprint for the decision-making process, though the overall efficiency of the policy remains low. EG thus seems to explain rule development but not its enforcement, as the mere “agreements on best practice principles did not remove political conflicts of interests.”⁶

The efficiency of the goal-setting and evaluation cycle is hampered by the difficulty of balancing the three overall goals of energy policy: market integration, climate protection and security of supplies. Even in market integration, the level of progress is far from satisfactory. The so called Third Energy Package—the set of strategic documents that define the shape of the European gas and electricity markets—does not provide for the full liberalisation and integration. Judging from the financing earmarked for energy in the Multiannual Financial Framework 2014–2020, discretion lies with the Member States and regional groupings. Member States integrate on a regional scale, and at different speeds.⁷ Also, despite the discussion on the 2030 climate goals, the current “20-20-20” benchmarks introduced by the Climate and Energy Package face not being implemented.

Migration Governance: The Legacy of Top-Down Strategic Planning

Dealing with uncertainty is a very substantial feature of migration governance, be it on a national or supranational level. It is one consequence of a lack of or limited control over the drivers of migration, such as crises provoking forced migration flows or economic disparities giving incentives for labour migration. And it results from the dynamic nature of the migration flows and insufficient knowledge of the phenomenon. Both are reasons for EU willingness to build common knowledge on migration and consequently contribute to common policy building.⁸ External factors play an important role in shaping policy. These conditions may frame both the preference for tighter regulation and the introduction of solidarity mechanisms, as well as an experimentalist approach aimed at mutual learning.

As for the distribution of power, Member States remain the central actors and have exclusive power over the volume of third-country nationals admitted to their territory in order to seek work (Art. 79 TFEU) and integration policy is a subject of an open method of coordination. In the entire field, many of the adopted texts regulating specific problems take the form of recommendations or, if binding, leave wide margin for autonomy amongst local units regarding ways to achieve the objectives, including interior ministries and EU agencies.⁹ Similarly, the creation and development of agencies do not prevent national administrations from having a high level of control of their strategic and operational decisions.¹⁰ Last but not least, the European Council formally bears responsibility for adopting strategic guidelines for JHA legal and operational planning (TFEU, Art. 68).

While the polyarchic distribution of power is a precondition for experimentalist governance, one can point to interdependence as a stronger incentive for the EG or even a factor influencing its success.¹¹ In JHA policies, interdependence results not only from the nature of the migration flows but also from the principle that free movement requires greater cooperation between the EU’s “sending” and “receiving” countries, as well as the consequences of the Schengen Agreement, which by removing internal borders checks makes countries more vulnerable to the potential failure of others. Consequently, the EU creates incentives to cooperate on a variety of migration-related policies. Other factors such as the diversity of the policy fields covered, a strong operational dimension, and the differentiated character of integration may also shape the preference for the experimentalist mode of decision-making.¹²

The goal-setting and evaluation cycle has been driven mainly by five-year programmes adopted by the European Council: Tampere (2000–2004), The Hague (2005–2009) and Stockholm (2010–December 2014).

⁵ R. Youngs, “The EU’s Global Climate and Energy Policies: Gathering or Losing Momentum?,” in: A. Goldthau (ed.), *The Handbook of Global Energy Policy*, Wiley-Blackwell, Chichester, 2013, p. 421.

⁶ B. Eberlein, *EU Experimentalist Governance in the Energy Sector*, University of Wisconsin-Madison, Madison, April 2007, p. 65.

⁷ J. De Jong, K. Groot, *A Regional EU Energy Policy?*, CIEP Paper 06.2013, Clingendael, 2013.

⁸ A. Geddes, *The Transformation of European Migration Governance*, KGF Working Paper No. 56, November 2013.

⁹ J. Monar, “Experimentalist Governance in Justice and Home Affairs,” in: C. Sabel, J. Zeitlin (eds.), *Experimentalist Governance in the European Union: Towards a New Architecture*, Oxford University Press, Oxford, 2010, pp. 245–247.

¹⁰ S. Wolff, A. Schout, “Frontex: More of the Same?,” *Perspectives on European Politics and Society*, vol. 14, no. 3, 2013.

¹¹ D. de Burca, “New Governance and Experimentalism: An Introduction,” *Wisconsin Law Review*, no. 2, 2010.

¹² J. Monar, *op. cit.*

Evaluation was clearly recognised in the Stockholm Programme as one of the key tools for the development of the field. But as the relevance of the Stockholm Programme was diminished by inter-institutional tensions and general policy developments, there has been no evaluation of the programme as such. Instead, the Commission adopts annual reports on immigration and asylum, biannual reports on the Schengen *acquis* as well as on the so-called Global Approach to Migration and Mobility. Important evaluations were conducted relatively independently of the planning process (the second phase of the Common European Asylum System) or were set in motion in response to sudden events (adoption of the Schengen Governance Package¹³).

Following the “normalisation” (i.e., growth in the Commission and European Parliament’s powers) in Justice and Home Affairs and intense development of the field, the new strategic guidelines adopted by the European Council on 27 June 2014 were comparatively concise and put emphasis on the proper implementation of existing measures as well as the connections to other policies.¹⁴ The growing importance of migration policies was reflected in the “Strategic Agenda for the Union in Times of Change” adopted by the European Council as an agenda for the new legislative cycle as well as in the priorities set by the president-elect of the European Commission.¹⁵ Nevertheless, large deficiencies in implementation as well as divergent views among the Member States may remain difficult to bridge as there is no inter-institutional consensus.

Conclusions

In all of the three areas it seems that the preconditions for experimentalist governance—uncertainty and the polyarchic distribution of powers—are more or less in place. Nevertheless, in all three policy fields EG at best coexists with other forms of decision-making¹⁶ and is by no means predominant. Experimentalist practice struggles when policy is hierarchic, too heavily politicised, or does not properly include all stakeholders.¹⁷ It is also unlikely to emerge in areas in which tighter regulations are required to ensure proper implementation and legal certainty.¹⁸ Moreover, although uncertainty is a push factor for engaging in the experimentalist governance learning cycle, it seems less applicable when an acute crisis arises and requires decisive action—a situation likely to pertain to all three policy fields examined here.

At the same time, strengthening some of the features of EG across various areas of the EU decision-making system appears to be a profitable exercise that can provide the EU with proper instruments to deal with the inevitable tension between common goals and particular Member State needs. The key to it lies in the efficiency of the revision cycle—especially the evaluation and learning parts as well as proper implementation. Here, better cooperation between EU institutions and Member States as well as third parties seems crucial.

The efficiency of governance would also profit from clarification of the distribution of competences. However this would require revision of the Lisbon Treaty—a politically tricky endeavour. In the absence of this option, the lack of efficiency may be helped by increased horizontal cooperation among actors. Thus, the winners of tomorrow will be countries with skilful diplomacy, developed networks and strong communication with non-state actors. Poland and Norway will be no exception to this rule, even though their situation is shaped differently by the mode of their affiliation with the EU—Poland is a Member State while Norway is an EEA member with a huge set of agreements strongly linking it to EU governance but deprived of direct decision-making powers. The possible cooperation of the two on EU, bilateral and national levels will be further analysed in the framework of the GoodGov project.

¹³ Y. Pascouau, “The Schengen Governance Package: The Subtle Balance between Community Method and Intergovernmental Approach,” in: *European Policy Centre*, Discussion Paper, December 2013, available at: www.epc.eu/documents/uploads/pub_4011_schengen_governance_package.pdf.


¹⁴ European Council (2014) European Council 26/27 June 2014 Conclusions, available at: www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143478.pdf.

¹⁵ J.C. Juncker, *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission*, 2014, available at: http://ec.europa.eu/about/juncker-commission/docs/pg_en.pdf.

¹⁶ T.A. Börzel, T.A., “Experimentalist Governance in the EU: The Emperor’s New Clothes?,” *Regulation & Governance*, vol. 6, no. 3, 2012, pp. 378–384.

¹⁷ B. Eberlein, B. Doern, “Conclusions: Complexity, Coordination and Capacity,” in: *German and Canadian Energy Regulatory Governance*, 2009.

¹⁸ J. Monar, *op. cit.*



The GoodGov project explores how Poland and Norway can learn from each other in the crucial policy areas of security, energy and migration. This paper is one of three initial analyses: how unequal partners can learn from each other; how this process can be structured within the EU and EEA frameworks; and how this would function specifically between the two countries in the three chosen fields. The project is conducted by PISM in cooperation with the Norwegian Institute of International Affairs and the Institute of Political Studies of the Polish Academy of Sciences. The project is managed by Lidia Puka (PISM). The content editor is Roderick Parkes (PISM).

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