How the Financial and Economic Crisis impacts on environmental policy

On mechanisms of and barriers to policy change

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Summary

There is an overall agreement that the financial and economic crisis has brought about major changes – while there is little clarity regarding the nature, the extent and the mechanisms of such change. The paper takes the example of German environmental policy to look for such changes. Starting from a number of hypotheses derived from recent policy debates on the one and literature on crisis-induced change on the other hand it develops a number of hypotheses regarding the kind of policy change that can be expected and the mechanisms behind this change. The empirical analysis then tests these hypotheses by looking for crisis effects in German federal environmental legislation. The result – even though preliminary by nature – is that so far, in spite of the crisis, stability prevails in German environmental policy. Neither do we find signs of retrenchment due to a new emphasis on cost arguments nor a strengthening of environmental policy due to a major ideational change challenging the basic ideas of neo-liberalism.

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1 For a more elaborated (German) version of this paper see: Töller, Annette Elisabeth: Umweltpolitik in Zeiten der Krise, in: Zeitschrift für Umweltpolitik und Umweltrecht, 4/2010, S. 445-470.
1. Introduction

Most observers seem to agree that “the world will not be the same after the financial and economic crisis” (former German financial minister Steinbrück²). While the assumption of profound change due to the crisis seems uncontested, there is little agreement as to the kind, extent and mechanisms of such crisis-induced chance. The paper looks at German environmental policy and addresses basically two questions:

1. How could the Financial and Economic Crisis impact on environmental policy?
2. How has the Financial and Economic Crisis impacted on environmental policy?

In this context “how” refers in to two aspects:

a) With which result and

b) via which mechanisms...

... could and does the Financial and Economic Crisis impact on environmental policy?

When first asking myself this question in summer 2009, I looked at two kinds of literature: First at the actual debate in newsletters and magazines, OECD and other policy-papers (e.g. Shiuqui 2009; Schwarze 2008; OECD-Observer 6/2009). Second I looked at literature that deals with policy change in general (e.g. Kingdon 2003; Capano and Howlett 2009) and with crises as driving force of policy change in particular (e.g. t’Hart and Boin 2001; Birkland 2006; Norstedt 2008; Williams 2009; Boin et al. 2009). From these two sources I developed the following hypotheses regarding the question how the crisis could impact on environmental policy.³

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³ Most publications address a very simple way in which crises could impact on policies: they bring issues on the political agenda, and by doing so, they help to convince a broader audience that “something needs to be done”. Yet, this rather simple mechanism of bringing an issue on the agenda only applies to system-specific crises: airplane crashes induce air safety regulation, September 11 produced masses of new regulations of migration, data control and criminal law (Birkland 2006: 31ff.; Boin et al. 2009: 82), environmental disasters improve chances for environmental regulation (Kingdon 2003: 169; Boin et al. 2009: 82) and financial crises bring about a stronger regulation of the financial markets. Our case, however, is more complicated since we are interested in the effects of a non-system-specific crisis. Thus this simple effect of crises to put an issue on the agenda is of no interest for our purpose.
2. **Hypotheses**

**H1:** The crisis brings about a retrenchment of environmental policy.

This is what one intuitively would expect. The mechanism behind this is mainly associated with an interest-based view of the world: Crises are contexts („framing contest“, Boin et al. 2009) in which issues are strategically re-interpreted and power is shifted. Crises offer an opportunity structure for those actors that have always argued that ecological achievements weaken the profitability of business – de Boin and his colleagues call this “crisis exploitation” (Boin et al. 2009). While the Porter-Hypothesis and the paradigm of ecological modernization had challenged this simple juxtaposition of ecology and economy, in the face of severe economic recession shorthand costs gain more weight than long term structural and ecological gains. When it comes to economic survival, industries cannot bear additional costs for ecological improvements.

**H2:** The crisis strengthens environmental policy...

There are two different mechanisms behind this contra-intuitive hypothesis:

a) ...via delegitimizing capitalism and challenging the low-intervention-philosophy of neo-liberalism.

This mechanism is associated with a policy-subsystem-based, cognitivist view of the world: If we look at policy-subsystems, crises can result in systemic perturbations (Howlett and Ramesh 2002), which fundamentally challenge routines and question the cognitive and normative bases of these actors (Norstedt 2008: 260).4 Crises are events that allow for experiences being made and for learning as „a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information“ (Hall 1993: 278). However, whether such learning takes place is one question (t’Hart and Boin 2001: 37), whether it results in policy change, another.

In our case there has been much debate that as a consequence of the financial and economic crisis, the so far dominant paradigm of neo-liberalism is seriously challenged: Not only

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4 Strangely enough, in the Advocacy Coalition Framework crises result in policy change only when they bring about changes within the dominant coalition, while learning occurs via experience or new information. Learning via crises is not part of this framework (Sabatier and Weible 2007: 198f.). Even though most empirical studies show that crises do not bring about new information but help old information to be considered important, this is also a kind of learning.
in fields that are directly related to the financial crisis (such as the regulation of financial markets) the relationship between market and state is being reevaluated. State intervention into the capitalist economy with the aim to secure the common good is seen more necessary than before. There is a specific ecological version of this argument: The capitalist system which encourages shorthand profit and neglects the common good is neither sustainable in ecological nor in economic terms, since it is dependent on non-renewable and emission-intensive energies, it externalizes the ecological costs and it does not allow for the identification of ecological responsibilities which altogether in the long run threatens the basis of our life (e.g. FAZ 01.12.2008; SRU 2008; Schwarze 2008; Ecologic 2009: 3; Statz 2009; BMU-Pres-sedienst 11/8/09; 30/5/09)\(^5\). Thus state intervention for pursuing ecological aims is re-evaluated positively which might facilitate the adoption of more demanding environmental regulation.

b) \(... as a coincidental effect of economic stimulus policies.\)

Kingdon’s Multiple Streams Approach emphasizes that often policy-making is not a rational problem-solving process. Rather, policy processes are much driven by coincidences, and situational aspects play a major role (Kingdon 2003; Zahariadis 2003: 71ff.). Crises are events that may open policy windows. In our case it is the economic stimulus policies that basically all OECD counties adopted that do not have an ecological aim at its core, but – to strongly varying degrees\(^6\) – entail some resources for ecologically sensitive measures (see Klepper 2009; Barbier 2010).

H3: The crisis does not impact on environmental policies at all.

While studies disagree considerably as to their ideas how crises could impact on policies, they agree to quite some extent in that they are sceptical if they induce policy change at all (Sabatier and Jenkins-Smith 1999: 148; t’Hart and Boin 2001: 40; Howlett and Ramesh 2002:

\(^5\) Very typical of this view is a statement of the German Minister for the Environment, Norbert Röttgen: “The natural basis of life is a common good. On the backdrop of the financial collapse it becomes more than clear that we cannot allow for the endangering of this good. Yet this is what is going to happen if we do not change towards a more sustainable way of life and economy. The financial crisis is the product of an excess of short-termism. (Original quote: „Die natürlichen Lebensgrundlagen sind ein Menschheitsgut. Auch vor dem Hintergrund der Erfahrung mit dem Finanzmarktkollaps ist klar, dass wir die Gefährdung dieses Gutes niemals zulassen dürfen. Genau das droht aber, wenn wir uns nicht zu einer nachhaltigen Lebens- und Wirtschaftsweise entschließen. Die Finanzmarktkrise ist schließlich das Produkt eines Exzesses der Kurzfristigkeit und einer groben Verletzung der Nachhaltigkeit.” (Die Zeit, 12.11.2009).  

\(^6\) According to a recent study by Barbier, the global share of “green stimulus” among all fiscal stimulus policies was 15,4 %. In South Korea this share was 95 % while it was 13,2% in Germany (Barbier 2010: 155).
Rather they all see change as highly dependent on certain conditions, such as the degree of cognitive dissonance that the crisis produces or if core actors manage to exploit the crisis for their aims. Thus while the political debate assumes that change is rather probable, the scholarly debate on policy change finds a lack of change all but improbable.

3. Empirical Investigation

3.1 Research design

In order to empirically test these hypotheses I decided to look at German federal legislation. Arguably, in Germany there is relevant legislation on other levels, too (such as the Länder-level), and there is also much policy beyond legislation (e.g. on the level of ministerial regulations, broader policy-programs or voluntary instruments, cf. Töller 2011). Yet, while in general legislation is still considered the major output of the political system (see e.g. Schmidt and Ostheim 2007: 51), this is particularly true for environmental policy which is a strongly regulatory policy. What is more, due to the centralization of environmental competence under the German Constitution, the federal level is not the only but the most important level on which environmental legislation is adopted.

Thus I looked at federal environmental legislation before and after (i.e. since) the crisis.

Phase 1 (before the crisis) lasts from October 2007 to September 2008.

Phase 2 (since the crisis) lasts from October 2008 to September 2009.

I first looked at quantitative parameter: With regard to the legislative output one could state that if H1 (retrenchment due to crisis) is correct, then since the crisis less legal acts should have been passed than before the crisis. While it is imaginable that a breakdown in environmental policy is expressed in less legislative productivity, a strengthening of environmental policy (H2a) would not necessarily lead to more legal acts being passed. I also looked at the pass rate of environmental acts, i.e. the share of legislative proposals by the Government that were adopted by the Parliament. And in the cases in which legal acts failed I checked if the crisis may have been a reason. Third, I looked at legal the acts passed since the crisis and
tried to identify whether a) in the discussions in the committees, public hearings and debates in the Parliamentary plenum the crisis played a role in that it was referred to by the political players; b) I checked whether (due to the crisis) there was any weakening (or strengthening) of the regulatory substance in the legal act that was finally passed.\(^7\)

### 3.2 Results

As to the sheer numbers of adopted legal acts, there has been no decrease of legislative productivity after the crisis: While in *Phase 1* 10 legal acts were adopted, in *Phase 2* 11 legal acts were adopted. Also the pass rate did not suffer from the crisis: In *Phase 1* 10 out of 12 proposed legal acts were passed (83%) while in *Phase 2* it was 11 out of 13 (84%).

If we look at the two cases in which formally proposed legal acts failed (ban on seal products and legal framework for carbon capture storage technology), the crisis played no role at all. I furthermore checked if there were cases in which legislation failed before it reached the stage of a formal proposal. There were indeed three legislative projects which – in *Phase 2* – failed at that stage: The Environmental Code, the Act on Energy Efficiency and the Federal Forest Act. In none of these cases there was any evidence that the crisis played a role.\(^8\)

Beyond the sheer numbers of legal acts adopted or not and the reasons for legal acts not being adopted, I looked at 10 out of 11 legal acts that were adopted\(^9\) since the crisis and checked if in the discussions and debates the crisis played a role and if due to the crisis there was any weakening (or strengthening) of the regulatory substance in the legal act that was finally passed.

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\(^7\) My sources for each case were parliamentary documents, in particular proposals for legal acts and final versions, committee reports, minutes of public hearings and in particular of Parliamentary debates; as a control, newspaper articles on these issues were analyzed (on the use of these sources for policy case studies see Töller 2011).

\(^8\) For a more detailed discussion of these cases see Töller 2010: 457.

\(^9\) Out of these 11 cases there was one in which there were no parliamentary debates or any other analyzable documents, thus the case could not be covered here.
Table 1: Environmental legal Acts adopted Oct. 2008-Sept. 2009 without reference to the crisis

<table>
<thead>
<tr>
<th>Nr.</th>
<th>GESTA Database Ref.</th>
<th>Subject</th>
<th>Context</th>
<th>Debate, Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>N034</td>
<td>Rechtbereinigungsgesetz Umwelt</td>
<td>Left overs of Environmental Code</td>
<td>PIPr 16228: 25451-25468</td>
</tr>
<tr>
<td>2</td>
<td>N032</td>
<td>Gesetz zur Neuregelung des Rechts des Naturschutzes und der Landschaftspflege</td>
<td>Left overs of Environmental Code</td>
<td>PIPr 16228: 25451-25468</td>
</tr>
<tr>
<td>3</td>
<td>N035</td>
<td>Gesetz zur Neuregelung des Wasserrechts</td>
<td>Left overs of Environmental Code</td>
<td>PIPr 16228: 25451-25468</td>
</tr>
<tr>
<td>4</td>
<td>N033</td>
<td>Gesetz zur Regelung des Schutzes vor nichtionisierenden Strahlen</td>
<td></td>
<td>PIPr 16228: 25451-25468</td>
</tr>
<tr>
<td>5</td>
<td>N025</td>
<td>Gesetz zur Änderung des Atomgesetzes</td>
<td>Asse II</td>
<td>PIPr 16199: 21537-21543, PIPr 16203: 22014-22021</td>
</tr>
<tr>
<td>6</td>
<td>N026</td>
<td>Batterieabfallgesetz</td>
<td>EU-Directive</td>
<td>PIPr 16211: 22914-22919, PIPr 16217: 23735-23739</td>
</tr>
<tr>
<td>7</td>
<td>N023</td>
<td>Geodatenzugangsgesetz</td>
<td>EU-Directive</td>
<td>PIPr 16183: 19465B-195467B; PIPr 16187: 29131B-20135C</td>
</tr>
</tbody>
</table>

Out of these 10 legal acts, 7 were debated in Parliament (and discussed in the public) without any reference to the Financial and Economic crisis and without any weakening of the level of environmental protection (see Table 1).\(^\text{10}\)

In two cases (Act on the Saving of Energy and Act on the Promotion of Biodiesel) the crisis did play a role in the debate but had no impact on the legislative substance.\(^\text{11}\)

Finally, there was one case only – the Act on the Reform of Car Taxes – in which the crisis did have an impact on the policy. The Grand Coalition had already from 2007 on planned to change the system of car taxes into a more ecological direction. So far, the amount of taxes that a car-owner had to pay was based on the capacity of the motor. This was considered inadequate in times of climate change, while a system based on CO\(_2\)-emissions was held

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\(^{10}\) I am fully aware that my categories in terms of „retrenchment or strengthening“ of environmental protection are rather crude. Certainly one could apply a finer tuning, for instance using Hall’s three different orders of change (Hall 1993) or concepts of density or intensity of regulation (see e.g. Knill et al. 2010). Yet, for the (very limited) kind of change that is identifiably in our cases, such crude categories seem sufficient.

\(^{11}\) For a more detailed discussion of theses cases see Töller 2010: 458-460.
more suitable. Yet, as long as this reform appeared to be a zero-sum game, the Grand Coalition could find no agreement as to how to distribute costs and benefits of the system. While the Christian Democrats wanted a cap on the emission-ratio (which would have benefitted Germany-produced “Luxury” cars), Social Democrats supported a more straightforward orientation at the CO₂-Emission which would have benefitted the mass producers (and users). A compromise seemed far away, when in early 2009 the first economic stimulus package (Konjunkturpaket) provided 1.8 billion Euro for exactly this car tax reform which transformed the former zero-sum-game into a positive sum game. The result was a change in the modalities of car taxes (a somehow half-hearted combination of capacity-orientation and emission-orientation) which made everybody at least a bit happy: The German car industry – struck by both, the structural crisis and the financial and economic crisis, received a little aid for the sale of their products (because for most new cars taxes were reduced). Those who had advocated a more ecological orientation of car taxes were happy because emissions did at least play a greater role than before (even though the scheme was far away from a consequential ecologically oriented car-tax-system as e.g. the Greens advocated, VDC 2009). Thus here, we have a clear case of Hypothesis 2b: a rather coincidental effect of the stimulus package which allowed for the passing of an ecologically reformed car tax scheme which otherwise would not have been possible.

To sum up, in terms of numbers of passed legal acts and in terms of pass rates the crisis had no effect, nor was the crisis the reason for failure in those cases in which environmental legal acts did fail. Among the 10 cases of legal acts that were adopted since the crisis (Phase 2 until September 2009) and subject to our analysis, 7 cases were debated without any reference to (and impact of) the crisis, while in two cases only rhetoric reference was found with no impact on the legal act as such. Thus we found neither cases supporting Hypothesis 1 (re-trenchment of environmental policy by strengthening actors critical of regulation) nor cases supporting Hypothesis 2a (a strengthening of environmental policy via the delegitimizing capitalism and challenging the low-intervention-philosophy of neo-liberalism). Only one case out of 10 could be found in which the crisis had an impact at all: namely a rather coincidentally positive effect (H2b). Thus the prevailing result of this little investigation – even though clearly preliminary by nature – is stability in spite of the crisis rather than change. Ranjan, by the way, who based his study on expert interviews, came to the same result (Ranjan 2010).
4. Discussion of the results

As far as we are surprised by the finding of only very limited change of German environmental policy in spite of the crisis we might ask for explanation.

A first explanation could be that, as a rule, policies tend to be stable. One reason, in addition to the usual suspects of path dependency (Pieson 2004; t’HartBoin 2001: 40), is the stability of policy-subsystems in which specialized experts hold a monopoly to define problems (and solutions) which is considered as a strong barrier to policy change (Howlett et al. 2009: 12, 203). This is what we find in our (negative) cases: The environmental policy subsystem is driven by highly issue-specific arguments and by an approach that is somehow based on the convictions of ecological modernization. I.e. other logics (i.e. the crisis) seem to barely reach these discussions. Fittingly, in the only case in which we do find an impact of the crisis, the decision was taken not in the environmental policy subsystem but in an overall political context with strong impact of the financial policy subsystem (see e.g. the minutes of the financial committee hearing, Finanzausschuss 2009).

A second explanation (of the lack of changes according to Hypothesis 2a) could be that the paradigm of ecological modernization has so far been able to neutralized fundamental challenges of the present economic system, since its core is the agreement between ecology and economy (Jänicke 1992).

A third explanation (at least for the lack of changes according to Hypothesis 1) is that for the conflict between ecology and economy (see Wilson 1980) to break through due to the crisis exploitation by strategic actors there needs to be such a conflict after all. However (and surprisingly), most of the 10 cases did not display this conflict structure.\(^{12}\)

While these three points just mentioned give reasons for a finding that is perceived to be correct, there are two other points that could make us speculate whether the segment of reality we looked at could have been tailored to narrow, either in terms of time or in terms of territory.

One point is that legislation is not only a very complex but also long term business (e.g. Ismayer 2000). This implies that those legal acts passed since the crisis have been developed

\(^{12}\) Exploring the reason for this lies beyond this paper, but see below.
and shaped for many years. This makes it seem little probable that these legal acts that have made all their way through would be changed seriously on the last 20 meters. This would also mean that in order to find crisis effects we would have to wait for another couple of years. There is no doubt that for a full account of crisis effects we have to look at longer periods of time (and also greater numbers). Yet, that does not make it less relevant to show that at least immediately after the crisis we see little impact on legislation.

A more fundamental challenge to my findings is of institutional nature: It is common wisdom that nowadays German environmental policy is subject to multiple international and European stipulations. Studies that quantitatively measure the impact of European policies on German federal legislation have shown that environmental legislation is the policy field with the strongest European impact: At least 80% of German Federal environmental legislation is subject to some kind of European influence (Töller 2008). This covers, among other things, directives that have to be translated into national law. For the study of crisis effects this means that probably most of the political conflicts are no longer carried out on the national but on the European level. This implies that “the crisis” could reach German environmental legislation with a delay of three or four years (usual timespan for the transposition of directives). What is more, our claim to be able to include a relevant share of German environmental policy by looking at Federal legislation certainly needs to be put into perspective. Future studies will also have to include what the German Government does in the Council in Brussels.

However, one should beware of easily finding all crisis-impacts that we are missing in the national context on the European level. At least the cases which are considered as reference cases for crisis effects (namely the pre-decision on distribution of emission rights in the context of the Emission Trading System and the compromise on the European car-emission regulation, both in December 2008, Knopp and Piroch 2009; Hey 2010) should be looked at more closely: In both cases the core of the compromise was already found in summer 2008, months before the crisis hit Europe (see e.g. Howarth 2009).13

It is not the claim of this study to have looked for crisis effects in all possible fields and thus to be able to rigorously exclude such crisis effects. Rather, this study is meant as a first ex-

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13 For a more detailed discussion of theses cases see Töller 2010: 465.
ploration in a relevant field that has called our attention to options, but also to problems of such an undertaking.

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