
Implementation of Article 16 measures under Regulation (EC) 1257/99 in the German federal state of Brandenburg

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Abstract

Current research on the impact of agri-environmental schemes under the Rural Development Regulation (EC) 1257/99 (RDR) stresses the institutional, structural and cultural diversity, but also the wide range of natural conditions that shape the implementation processes. Furthermore, those agri-environmental policy instruments are closely linked to the development and institutionalisation of an European environmental policy in general and to a number of European directives, such as the 'Habitat' Directive, in particular. While taking the implementation of Article 16 of the RDR in the German federal state of Brandenburg as an illustrative case, we are aiming at developing a wider understanding of the implementation process and its regional impacts. In particular, we argue that it is necessary to understand the regional agri-environmental discourse to which regional administrations refer to, the rationale of the administration itself and the mechanisms of decision making at the regional level. Regional administrations follow their own legitimate agendas and do not simply apply given measures, but modify and try to integrate them into wider regional strategies. In the case presented, we show that the regional administration's foremost concern to link political goals with given budgetary constraints resulted in a reshuffling of funds between schemes funded by different sources. We also show that European regulations are enforcing administrative procedures that do influence the design of agri-environmental schemes in a way that raises doubts about their environmental effectiveness. Finally, we argue, that the presumably sharp distinction between statutory environmental rules versus voluntary agri-environmental schemes is blurred in practice. Instead, they appear to be complementary in nature.

Keywords: Common Agricultural Policy, Regulation (EC) 1257/99 (Article 16), Mid-Term-Review, Germany, Brandenburg

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1 Introduction

Recent reforms of the European Common Agricultural Policy (CAP) and the growing interest in agri-environmental issues have brought about an increasing literature on the impact of agri-environmental schemes and other measures under the Rural Development Regulation (EC) 1257/99 (RDR) of the European Union. Comparative studies usually highlight the diversity of ways of how the options offered under RDR (or earlier regulations) are used in different national and regional contexts in the EU (Buller et al. 2000, Dwyer et al. 2002, Lowe et al. 2000). Those research stresses the institutional, structural and cultural diversity, but also the wide range of natural conditions that shape the implementation processes. Mehl and Plankl (2001) take a slightly different focus. They address the different responses of German federal states to the implementation of agricultural policy measures and stress the existing space for action for regional administrations in a double-bind situation that results from the combination of the process of European integration and the federal policy system in Germany. What we consider of importance here is the shift of the perspective. It is argued, that the regions – i.e., the federal states in the German case – follow their own, legitimate agenda and make use of both opportunities that are provided by the European and by the national level. Finally, a rich body of literature describes Europeanisation as a comprehensive institutional⁴ process that encompasses not only a variety of policy instruments, but also a wide range of legal and procedural issues (Barnes and Barnes 1999, Eislring 2003). Hence, agri-environmental policies are closely linked to the development and institutionalisation of a European environmental policy in general and to a number of European directives, such as the ‘Habitat’⁵ Directive, the ‘Birds’⁶ Directive, and the Nitrate Directive⁷, in particular (Lowe and Baldock 2000).

In this context, we discuss the implementation of schemes according to Article 16 of the RDR in the German federal state of Brandenburg. We are aiming at developing a wider understanding of implementation that goes beyond a perspective that simply asks for the way European schemes are applied in different regions, and that takes further, often qualitative, implications into account. As an extension to the basic ‘Less Favoured Areas’ Article 13 of the RDR that offers compensations for areas with *natural* environmental restrictions, Article 16 applies to those environmental restrictions that are based on Community environmental protection rules. Article 16 measures are of particular interest for the purpose because of two reasons: On the one hand, they are payments designed to compensate “*for costs incurred and income foregone for those farmers who are subject to restrictions on agricultural use in areas with environmental restrictions as a result of the implementation of limitations on agricultural use based on Community environmental protection rules*” (Regulation (EC) 1257/99, Article 16(1)). Therefore, their evaluation must address similar issues as in the case of related agri-environmental schemes, such as the specific economic impact of limitations on agricultural land use and the environmental effectiveness of the measures. On the other hand, the linkage of compensation to limitations on agricultural use *based on Community environmental protection rules* is legally a new construct that overcomes the divide between *statutory* restrictions, where farmers carry the costs of implementation, and *voluntary* measures, where the public carries the costs.

The paper proceeds as follows. In the following section 2, we will briefly introduce the ‘Habitat’ Directive and its implementation in Germany as well as Article 16 of the RDR and its ap-

⁴ Following Douglas North (1991), institutions are the man-made constraints that structure political, economic, and social interactions. These consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights). (North 1991: 7) In other words, institutions are the rules of the game or the rule of conduct within which human actions take place.

⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

⁶ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

⁷ Council Directive 91/676/EEC of 19 December 1991 on the protection of waters against pollution caused by nitrates from agricultural sources.

plication in Europe and in Germany in particular. The generally little uptake of article 16 measures raises the question of why it plays a prominent role in the Rural Development Plan in Brandenburg. Thus, in section 3 we will give an overview on the methodology and the case study context and, after that, we will describe the nature of the regional agri-environmental discourse in this federal state. In section 4 we will address a number of impacts of the implementation of Article 16 measures for Brandenburg's agri-environmental policy. Here, we will in particular stress the significance of institutional implications. In section 5 we will summarise important findings and come forward with some suggestions for further research in this field.

2 Protected areas as disadvantaged space – reasoning for Article 16 and its transposition

The background for the implementation of Article 16 measures is the implementation of European environmental legislation, in particular the ‚Habitat‘ Directive which was adopted in 1992 and came into force in 1994. The main aim of this Directive is “to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States” (Directive 92/43/EEC). Specifically, Member States have to maintain or restore a favourable conservation status, natural habitats and species of wild flora and fauna of Community interest (Article 2). A central element of the ‚Habitats‘ Directive relates to the establishment, safeguard and management of so called ‚Special Areas of Conservation‘ (SACs). Together with the ‚Special Protection Areas‘ of the ‚Birds‘ Directive of 1979, they will form a European network of protected sites: the so called Natura 2000 network. In a two-stage process each Member State is to designate suitable SAC sites: First, proposals for so called ‚pSCI‘ (proposed Sites of Community Interest) are put forward by the Member States after having been evaluated on the national level following specific evaluation criteria laid down in Annex 3 of the Habitat Directive. Second, an evaluation on Community level is carried out that is based on six biogeographic regions, such as continental, alpine, Mediterranean, etc. It is important to note, that selection of sites is based solely on (natural) scientific evidence and evaluation procedures. Thus, a „Member State may not take account of economic, social and cultural requirements or regional and local characteristics when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance“ (European Court of Justice, November 2000, C-371/98, First Corporate Shipping Ltd.)⁸.

The following Table 1 provides an overview of the site proposals of the Member States as of March 2003.

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See also the legal clarification of 2001 in cases C-67/99, C-71/99 and C-220/99, -Commission against Ireland, Germany and France respectively.

Table 1: Overall situation of site proposals for the 'Habitats' Directive as of March 2003

Member State	Number of proposed sites of Community importance	Coverage of proposed sites (km ²)	% of national territory	Assessment of national lists
Austria	160	8,896	10.6	✱
Belgium	270	3,178	10.4	✱
Denmark	194	10,259	23.8	✱
Finland	1,671	60,090	17.8	✱
France	1,174	40,632	7.4	✱
Germany	3,535	32,143	9.0	✱
Greece	236	27,641	20.9	✱
Ireland	364	9,953	14.2	✱
Italy	2,369	41,266	13.7	✱
Luxembourg	38	352	13.6	✱
Netherlands	76	7,330	17.7	✱
Portugal	94	16,500	17.9	✱
Spain	1,276	118,496	23.5	✱
Sweden	3,420	57,476	12.8	✱
UK	576	24,064	9.9	✱
EUR15	15,453	458,276	14.4	

✱ notably insufficient ✱ substantial list but still incomplete ✱ complete
 Source: Based on the Natura Barometer; DG Environment, March 2003;
<http://europa.eu.int/comm/environment/nature/barometer/barometer.htm>

As was reported in Austria, Denmark, Germany, Ireland, the Netherlands, and Spain, both, the public and the regional administrations frequently opposed the compiled national pSCI lists. For example, the Netherlands and several Spanish regions blamed the unclear legal implications and/or the missing financial means to ensure the protection (or to compensate for the costs incurred) of Natura 2000 sites as impediments. Member States responded to these difficulties in different ways, for example, through awareness-raising actions (COM 2004).

Site selection and proposal has been progressed in a series of stages at the federal states level. Consecutive lists of pSCIs were ratified by the respective regional governments before being passed on to the Federal Environment Ministry for notification to the European Commission. During the public consultation process, stakeholders, such as local authorities, land owners, and non-governmental organisations, were given the opportunity to comment on the proposals. In some cases, several thousands of comments were received. Subsequently, they were processed and considered within the legal framework of the Directive (COM 2003). Commonly, a lack of appreciation and/or support for the selection of sites based on purely scientific, rather than socio-economic grounds has been noted. Moreover, concerned stakeholders often find the legal and economic repercussions of Natura 2000 designation difficult to grasp (e.g., modalities of site protection, significance of potentially adverse impacts on Natura 2000 sites, ecological buffer zones, etc.). Furthermore, a number of scientific 'hurdles' had to be taken during the site selection process. In some federal states, a lack of relevant data on habitats and species has contributed to delays in the site selection and notification process. Ambiguous selection criteria (see Annex III of the Directive) as well as insufficient definitions in the interpretation manual provided by the European Commission have further complicated procedures. These delays on the federal state level, in turn, have hindered the national evaluation of site proposals and held up progress in national site notification (COM 2003).

Based on this national evaluation, the European Commission will compile a list of Sites of Community Interest (SCI) which have to be protected as Special Areas of Conservation (SAC) by the Member States (Article 4(4)). Within six years, Member States have to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as the disturbance of species for which areas have been selected (Article 6(2)). Depend-

ing on the respective ecological requirements, Member States are required to adopt the necessary conservation measures⁹, such as statutory, administrative or contractual measures (Article 6(1)). In conformity with the principle of subsidiarity, the decision on which category of measure (or combination of categories) to be applied on a specific site, however, is left to the Member States as long as the necessary protection goals can be permanently achieved. Thus, even if a Member State chooses contractual measures, it always has the obligation to establish in a *permanent* way the necessary conservation measures which correspond to “the ecological requirements of the habitats of Annex I and the species of Annex II present on the sites“ and respect the general aim of the directive defined in Article 2(1) (COM 2000).

Many Natura 2000 sites are - at least partly - agriculturally used in one way or another. For example, about 50 % of the land in Natura 2000 sites in the federal state of Brandenburg are agriculturally used. Furthermore, some man-made, semi-natural habitat types (of Annex 1), such as meadows and pastures, as well as a number of species (of Annex 2) hosted in these habitats are even depending on some form of (extensive) agricultural land use which is, thus, even a precondition for achieving the specific goals of Natura 2000. Here, habitat-adapted and sustainable management measures are of essential importance.

The European Commission regards agri-environmental measures such as the agreements with farmers within the RDR as adequate (contractual) measures that aim to maintain a favourable conservation status of habitat types and species (COM 2000). However, agri-environmental measures within the RDR are voluntary schemes which, thus, can only take effect where Member States and/or regions offer appropriate measures *and* where farmers are willing to sign them up. Still, if available and actually carried out, agri-environmental measures are seen as well adapted to Natura 2000 site management in agricultural landscapes (COM 2002).

Germany, having a rather ‘law based’ environmental governance tradition, had lobbied strongly for yet another (European policy) instrument within the RDR that would allow to combine disciplinary law - which was regarded as best option to ensure the protection goals in the long run - with compensatory payments for farmers for costs or income losses related to the applied land use restrictions. Thus, Article 16 of the RDR explicitly states that “Payments to compensate for costs incurred and income foregone may be made to farmers who are subject to restrictions on agricultural use in areas with environmental restrictions as a result of the implementation of limitations on agricultural use based on Community environmental protection rules, if and in so far as such payments are necessary to solve the specific problems arising from those rules.” (Regulation (EC) 1257/99, Art. 16(1)). The compensation payments are meant to ensure law-abiding behaviour of farmers, i.e., to reduce violations of disciplinary law, and to ensure a sustainable land use by reducing the probability of land abandonment. In contrast to the ‘classic’ agri-environmental measures of the RDR (Art. 22-24), Article 16 measures must not entail any additional financial incentives, i.e., on average, any overcompensation has to be avoided. The payments must also not exceed a maximum of 200 €/ha/year.

Currently, only Austria and Germany are utilising Article 16 compensation for areas with environmental restrictions (Dwyer 2002). Due to the federal organisation in Germany, the federal states (Länder) are responsible for the implementation of respective measures. However, only seven of the 16 federal states have actually implemented measures and pay compensation in accordance with Article 16. Furthermore, these states have applied Article measures in very different ways. There are essentially two implementation strategies:

- (1) *Without new specific regulations.* Before Article 16 was introduced, the federal states of Hamburg and Lower Saxony already used to pay compensations for statutory requirements in conservation areas, thereby applying state or national funds. Now, they are co-financing these payments by Article 16 funds as long as the requirements are met (e.g.,

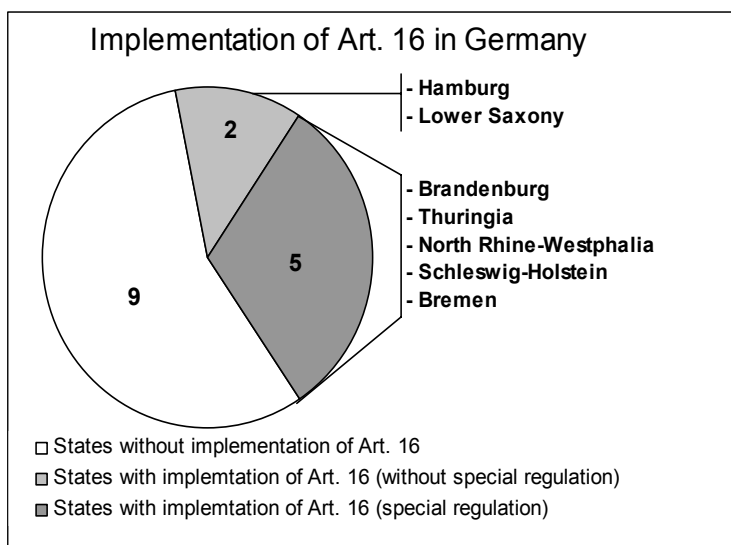
⁹

Despite Article 6 (1) applies only to complete and formally designated SAC, all Member States have, in one way or another, already started applying management measures to some of the pSCIs (COM 2004).

only farmers are eligible, compensation limit of 200 €/ha/year, etc.). In Lower Saxony, for example, compensation regulations (so called *Erschwernisausgleich*) in environmentally protected areas, such as nature reserves, national parks, and specially protected habitats (§ 28a,b NNatG) were established as an obligatory legal tool as early as 1997 (based on §§ 50 to 52 NNatG). Here, farmers were compensated for restrictions of using grasslands, e.g., no use of pesticides and fertiliser, low livestock density, and no changes in water (table) management (Sander 2003). Interestingly, there has been no increase in protected grassland area (about 15,000 ha since 1997) since Article 16 was introduced in 2000 (Sander 2003).

- (2) *Introducing new specific regulations.* Five federal states - Brandenburg, Thuringia, North Rhine Westphalia, Schleswig-Holstein, and Bremen – have introduced new regulations, i.e., measures or schemes, for the implementation of Article 16. These regulations, however, have very different forms. Bremen and Thuringia, for example, have come up with a regulation that takes the special requirements of different Natura 2000 sites into account, using either a point system (Bremen) or a loss-of-income system (Thuringia). Furthermore, Schleswig-Holstein, North Rhine-Westphalia, and Thuringia, have introduced a general grassland premium on Natura 2000 sites. Compensation via Article 16 is constituted by the *general requirements* in protected areas, such as the conservation of grasslands and the restrictions of water management. Brandenburg, in turn, has implemented a comparatively extensive set of specific measures whose design very much resembles the ‘classic’ agri-environmental measures of Brandenburg’s Rural Development Plan (according Article 22-24 of the RDR). Figure 1 shows the actual implementation of Article 16 in Germany.

Fig. 1: Implementation of Article 16 measures (RDR 1257/99) in Germany as of 2003



Source: own figure by the authors

Because of article 10 of the ‘Habitat’ Directive, Member States have the opportunity to support landscape features also on *non*-Natura 2000 sites, most notably those that serve as stepping stones or linear features that may act as wildlife corridors. Schleswig-Holstein, North Rhine-Westphalia and Lower Saxony use Article 16 also for compensation payments for grassland in nature conservation areas as well as for special protected grassland habitats on non-Natura 2000 sites. The variety of very concrete measures makes Brandenburg a most interesting example when investigating the implementation of Article 16 in Germany. Here, the scheme was introduced in 2000 and comprises five groups of measures: (1) extensive use of grassland, (2) late/delayed use of grassland, (3) increased water levels, (4) extensive grassland pasture with sheep, and (5) extensive use of arable land. It is important to note, however, that the measure ‘extensive use of grassland’ is by far dominant in terms of

land size, numbers of compensated farmers and money spent. In the period 2001/02, it accounted for almost 88 % (1.56 million €) of the money spent, and for over 77 % (9.674 ha) of the land covered by Article 16. There were 230 (out of a total of 301) contracts with farmers who received compensatory payments for this measure (Schleyer and Laschewski 2003).

The size of land cover that is eligible for Article 16 payments depends on the progress of the general implementation process of Natura 2000, i.e., the (legal) designation of protection areas. In Brandenburg, it is estimated that the Natura 2000 network will finally cover about 443,000 ha (15 % of the total land cover), whereas about 140,000 ha will be agriculturally used land (10 % of the total agricultural land) and about 52,000 ha of this land will finally (2006) qualify for Article 16 measures and payments. Currently (2001/02), 1.78 million € are spent for Article 16, that accounts for less than 3 % of the whole RDP budget.

3 Brandenburg: Genesis of a conflict and its cure

In this section, we will focus on the case study context and the methodology we choose to investigate the implementation process of Article 16 in Brandenburg. Therefore, we will pay particular attention to the regional agri-environmental discourse. This will set the scene for the detailed analysis of significant impacts of the implementation of Article 16 measures for Brandenburg's agri-environmental policy and their institutional implications in section 4.

3.1 Context and Methodology

The federal state of Brandenburg is located at the eastern German border surrounding the city of Berlin. It is separated from Poland by the river Oder and has borders with the federal state of Mecklenburg-Vorpommern in the north, with Saxony-Anhalt in the west, and with Saxony in the south. Population density (88 inhabitants per km²) is among the lowest in Germany (MLUR 2003). While there are urbanisation tendencies in areas around Berlin, most rural areas including smaller cities suffer from population decline.

Almost half of the land in Brandenburg is used for agricultural purposes of which more than three quarters is arable land (MLUR 2003). The landscape is characterised by a large number of lakes and rivers. Rainfall is comparatively limited, thus, in combination with light soils, we find a substantial proportion of land that suffers from a lack of water as well as fen lands. More than half of the meadows and pastures can be found on reclaimed fen land, and in most cases, they are only suitable for extensive grazing. Because of the combination of open waters, forests, and open land and the heterogeneity of natural conditions the countryside is characterised by a partly very high biodiversity. Of particular importance are birds in wet lands, but also dry meadows and certain pond areas. Large parts of the agricultural productive land can be characterised as marginal land (average soil fertility level (AZ) of 32), of which more than 75 % is classified as less favoured areas (MLUR 2003). Above all, interests regarding nature conservation have become much more prominent since 1990. In the last days of the German Democratic Republic (GDR), but also the first years after 1990, a large number of Environmental Protection Areas (EPA) were designated covering a high share of Brandenburg's land cover. These EPA are, e.g., National Parks, Biosphere Reserves, or Nature Parks. Thus, more than 32 % of the total land cover is classified as so called *Land-schaftsschutzgebiet (LSG)*, and more than 5 % as so called *Naturschutzgebiet (NSG)* (LUA 2002). While restrictions on land use are comparatively low in LSG, the requirements in NSG are much more substantial. Areas where any human interference is forbidden (total reserves) only account for a small fraction of this EPA.

The development of Brandenburg's agricultural structure has been marked by the economic and political transformation that followed the breakdown of the socialist regime in 1990. The agricultural co-operatives and state-owned farms were restructured and reorganised completely. The average farm size (about 194 ha) is still very large. Furthermore, farms with more than 100 ha manage more than 96 % of Brandenburg's agricultural land. There are also about 400 agricultural firms that are farming more than 1,000 ha. Organic farming plays an increasingly important role in Brandenburg. In 2000, about 6.5 % of the agricultural land

was used organically. This is far beyond the national (German) average of about 2 %. (MLUR 2003).

The paper is based on interviews carried out and environmental and economic data material collected in the course of the Mid-term-Review of the Rural Development Plan of the federal state of Brandenburg. In order to evaluate the Article 16 measures we carried out, among other things, case studies in two districts (Landkreise) where the vast amount of those measures had already been applied. The case study approach appeared to be most suitable because of the diversity of natural conditions, the lack of up-to-date statistics and the fact that Article 16 is a very 'young' instrument, which may be still in some experimental phase where an institutional routine may not yet be in place. Study regions have been the district *Uckermark* in the north of Brandenburg and the district *Oberspreewald-Lausitz* in the south-west. In both regions, Article 16 plays an important role since they are characterised by attractive cultural landscapes and, thus, very large areas of their agricultural land are part of some forms of Environmental Protection Areas (EPA), such as National Parks or Biosphere Reserves.

In each district, up to eight semi-structured interviews were carried out with local actors, such as farmers, local representatives of farmers' unions, local environmental agencies, and the local agricultural administrations. Furthermore, representatives of different departments within the Brandenburg Ministry for Agriculture, Environmental Protection and Rural Development (MLUR) as well as regional experts who had been involved in a number of planning processes in the study regions were interviewed. Due to this predominantly qualitative data material (e.g., interview protocols), the character of the paper is explorative rather than explanatory.

3.2 Agri-environmental Political Discourse

Interviews with representatives of the MLUR revealed that the progressing designation of agricultural productive land as some kind of EPA after 1990 which was often accompanied by the introduction of various forms of land use restrictions has led to increased tensions between the strong lobbies for both farmers' and environmentalists' interest. Farmers opposed the further - and seemingly limitless - extension of the EPA network. Their resistance was not to be ignored since the installation of EPA - more precisely, the drafting of the respective disciplinary law (so called *Schutzgebietsverordnungen*) in these areas - must be accompanied by a compulsory participation process where, among other (public) interest groups, farmers association(s) have to explicitly agree to the regulations before they become statutory law. Following the interviews, in 1995, a political compromise was found: Farmers accepted the presently discussed, - i.e., planned - number (and not more than this number) of areas to be installed as EPA - in particular those planned as NSG - in the medium term under the condition that they were largely compensated for the income losses or costs incurred. Whenever possible, respective environmental protection goals in these areas should attempted to be achieved without disciplinary law. Instead, voluntary agri-environmental programs (financed by the federal state or the EU) were to be utilised to compensate farmers for the restrictions in land use. Indeed, the installation process - in terms of introducing formal law - slowed down in the subsequent years, whereas state-financed contractual agreements (so called *Vertragsnaturschutz* (VN)) as well as EU-funds were used to ensure the protection goals.

As was frequently pointed out in the interviews with environmentalists at all administrative levels, there was - and still is - a substantial scepticism with regard to the *voluntary* character of the environmental measures. Overall, there is a clear preference for disciplinary law on this side for two main reasons. First, it is argued that only statutory regulations would ensure the environmental protection goals in the long run. Second, administrative costs would be much less since - in contrast to voluntary agri-environmental programs - no schemes were to be administered (*paperwork*) and monitoring efforts could be reduced (*law is law*). Not surprisingly, on part of the farmers and the agricultural administrations at all levels, voluntary schemes were preferred to strict laws. However, the extensive paperwork accompanied by

those schemes and their often rigid measures as well as their hardly predictable 'life-span' was noticed in a critical way.

The political pressure to dedicate Natura 2000 areas in Brandenburg has brought some dynamics into the agri-environmental policy field. In the first tranche, Brandenburg predominantly reported its already existing EPA (those, installed during socialist times and those, installed after 1990) but also many of the so-called 'planned' EPA without formal disciplinary regulations installed (yet). Practically, the time pressure caused confusion in the administrative process. Thus, sufficient communication between the administration and public interest groups about the reported areas and the intended measures could not take place. In many cases, there was even no co-ordination of activities and information between environmental and agricultural departments in the local authorities. This has led to a number of (technical) mistakes, such as missing land plots or wrongly defined protection objectives. At that time it was also still unclear, if Article 16 compensation would have been possible. This combination of lack of communication and information, uncertainty of financial compensation together with the perceived priority of the environmental administration for legal restrictions led to a strong resistance of farmers' against the "excessive" declaration of Natura 2000 areas. It was in this context, that Article 16 measures have become important. At least, they have helped to calm the protest.

4 Impact of Article 16 in Brandenburg

The implementation of Article 16 measures has brought about intended but also a number of unintended side effects. In the political discourse, Article 16 helped to calm farmers' fierce opposition against the further extension of protected areas. In the interviews, representatives of environmental agencies and administrations positively evaluated the measures in this regard, too. They additionally stressed that, in practice, in those areas, where plans existed to install environmental restrictions on agricultural land, farmers responded more openly to these plans. Here, the Article 16 instrument offered and still offers financial incentives to speed up the participatory installation process and to allow for the fixation of more restrictive disciplinary laws. In some cases, Article 16 was even a precondition to get started with the installation process in the first place. Farmers appeared to welcome the payments. In some regions, particularly on marginal lands, where only an *extensive* agricultural production is economically sensible given the economic and natural conditions, it was also stated that farmers have even asked to become integrated into protected areas, so that they may become eligible for Article 16 payments. However, they, and also some representatives of the local agricultural administrations, were concerned about the long-term financial commitment of both the federal state government and the European Union with regard to Article 16 measures. Given the constantly declining agri-environmental budget due to Brandenburg's strained financial situation and the increasing likelihood to lose the privileges of objective 1 status¹⁰ from 2007 onwards this appears to be a very important concern.

Logically, the design of Article 16 measures are supposed to follow the respective restrictions in the concrete EPA by-laws. Environmental restrictions, however, are very diverse in the different protected areas. Reasons for that can be found in the diversity of natural conditions, but also in the compulsory participatory installation process where the actual restrictions to be applied in the EPA are negotiated. In Brandenburg, the situation in different EPA is even more diverse due to historical reasons: First, there are protected areas that had been designated before 1990, i.e., in the GDR. Here, the GDR by-laws, were not yet 'updated' due to the complicated and time consuming formal procedures this would entail. Second, there are protected areas that have been installed shortly after unification, which brought about a 'window of opportunity' for the environmental movement. Here, the present by-laws often do not match the limited set of restrictions that are eligible to be compensated by Article 16. These

¹⁰ Having 'objective 1' status means that schemes are co-financed by the EU with 75 %, instead of 50 %.

by-laws need to be updated, too. Finally, there are a number of protected areas, where installation processes are currently under way.

In contrast to the diversity of environmental restrictions in environmentally protected areas in Brandenburg, the design of Article 16 measures does not reflect those realities. Instead, the design of Article 16 measures followed a more pragmatic approach. In fact, a major consequence appeared to be a kind of streamlining of standards and measures due to administrative reasons. By and large, Article 16 measures were adapted from the already existing agri-environmental schemes of the RDP, and they were only slightly modified to match the specific rules of Article 16.¹¹ As a consequence, Article 16 measures in Brandenburg have their (almost) identical counterparts in the 'classic' agri-environmental schemes. The arguments for that were threefold. First, there has been a concern to keep the number of measures 'administrable'. Second, regarding the process of getting Brandenburg's Rural Development Plan accepted by the European Commission it was considered to be easier to get through well established rather than newly designed measures. Finally, in many cases farmers that were due to sign up to Article 16 measures had already taken part in similar agri-environmental schemes on a voluntary basis before.

An immediate consequence of this strategy is that environmental restrictions laid down in many EPA by-laws often do not match the limited set of restrictions that are eligible to be compensated by Article 16. In some cases it was also considered to adjust given by-laws to the new measures in order to make financial support applicable to more farmers. Another consequence is that 'tailoring' of EPA by-laws takes place in those areas that are currently in the process of installation. Thus, instead of professional aspects of nature protection a very limited set of Article 16 measures determines the very design of EPA by-laws. This may not be a problem in many cases, but the question arises to what extent more specific yet necessary regulations will and can be applied.

It would be a misconception to assume that Brandenburg has not spent substantial amounts of money for agri-environmental measures in EPAs. The most important instrument for that used to be contractual nature protection (so called *Vertragsnaturschutz (VN)*). Here, the local environmental agencies make contracts with individuals to provide, on a voluntary basis, environmental goods or to agree on environmental restrictions. For that they are compensated. Since the mid-1990ies, however, expenditures for contractual nature protection has been steadily declining (see Table 2). *Vertragsnaturschutz* is fully financed by the federal state budget. Due to the persistent and even more sharpening financial crisis in Brandenburg expenditures for contractual nature protection have almost been halved since 1995. In 2003, the available budget for VN is only about 6.1 million € (MLUR 2004). What is more, application of VN measures will be restricted to non-agriculturally used areas from 2004 onwards.

Table 2: Expenditures for contractual nature protection (VN) in Brandenburg 1995-2001 in million €

	Expenditures for contractual nature protection (VN) in million €
1995	11.8
1996	11.0
1997	8.6
1998	7.6
1999	7.2
2000	6.7
2001	6.5

Source: 1995 and 1996: Brandenburger Landtag 2000; 1997-2001: LUA 2002

Given Brandenburg's budget constraints there is an official strategy of the regional government to use the money for contractual nature protection partially to co-finance Article 16 measures in order to maximise budget available for environmental protection (Brandenburger

¹¹ For example, Article 16 compensation must not (on average) exceed the actual income losses or costs incurred. There is no additional financial incentive allowed.

Landtag 2000) . For the practise of environmental protection this budget driven rationality has two major implications. On the one hand, a very flexible instrument that has been used for a variety of very divers and locally specific measures had to be abolished and to be replaced by a standardised and fairly unspecific scheme. Here, however, the budget maximising rationale has not been a substantial problem in itself, because otherwise the total budget to finance any agri-environmental schemes would have been much less. The main problem, therefore, is the 'streamlining' of the measures as a consequence of switching to European funded programs and their bureaucratic procedures.

There is also a second, very ironic implication resulting from such a strategy. Due to the fact that agri-environmental schemes and also the Article 16 measures are part of the Common *Agricultural* Policy the shift of funds is accompanied by a shift of administrative and financial responsibilities. While contractual nature protection has been managed by the *environmental* agencies and administrations, Article 16 measures are now administered by the *agricultural* administrations at state and district level. From our experience, in the case of Brandenburg, this appears to be not only a sensitive issue due to the given conflict between agricultural and environmental interests, but also due to divers social backgrounds of these groups. Indeed, in particular at the local level we find former GDR citizen movement activists in the environmental agencies that were newly established after the German unification, while the staff in the agricultural administrations has, in many cases, already been working there in the GDR.

5 Summary and Conclusions

The paper started with the intention to develop a wider understanding of 'impacts' that go along with the implementation of agri-environmental measures according to the EU Regulation (EC) 1257/99. Therefore, we have taken the implementation of Article 16 of this regulation in the German federal state of Brandenburg as an illustrative case. This allowed for both a deeper insight into the mechanisms of decision making at the regional level, i.e., the federal state level, and a more detailed account of the regional impact. This approach is also based on the assumption that regional administrations follow their own agendas and do not simply apply given measures, but modify and try to integrate them into wider regional strategies. Therefore, on the one hand, it is necessary to understand the regional agri-environmental discourse to which regional administrations refer to, and, on the other hand, to understand the rationale of the administration itself.

We have shown that the prominence of Article 16 measures in Brandenburg is to a large extent caused by a fundamental regional conflict upon the strategy to protect the environment in agriculturally used areas. The pressure to dedicate additional Natura 2000 areas and to ensure the respective environmental protection goals, but also the financial possibilities made available with Article 16 has brought some new dynamics into this regional debate. However, as we have shown in section 3, the particular design of measures according to the RDR and the particular rationale of regional policies have brought about some unintended side-effects that partly reduce the measures' economic and ecological effectiveness and also raise questions about the (future) sustainability of such measures. There are several conclusions that can be drawn from the observations made in Brandenburg:

- (1) The most important and in most analysis neglected aspect is the strategic behaviour of the regional administration. In our case study, its most important concern was to link political goals with given budgetary constraints. The consequence was the reshuffling of funds between schemes funded by different sources, where budget maximisation and, thus, the acquisition of as much external funds as possible played an important role. In order to achieve that goal, the administration applied a rather pragmatic approach accepting even potentially restrictive or unspecific regulations, in particular in the by-laws of protected areas. Assessing the full impact of the implementation of agri-environmental schemes, therefore, has to take a wider perspective that also considers potential impacts

of the substantial re-organisation of the portfolio of agri-environmental and related measures, but that also takes changes in environmental restrictions into account.

- (2) Another aspect is related to the Europeanisation of Environmental Policies, in particular agri-environmental measures. In the case presented, European regulations are enforcing administrative procedures that do influence the design of agri-environmental schemes. Here, these impacts are not necessarily positive with respect to the environmental effectiveness of the schemes.
- (3) The results also demonstrate that the presumably sharp distinction between statutory environmental rules versus voluntary agri-environmental schemes is blurred in practice. Instead, they appear to be complementary in nature rather than as distinct alternatives.

The research highlights the need for a closer look at institutional procedures within the European agricultural and agri-environmental decision making process. Within such process regional governments or administrations play an important role. It appears to be necessary to conceptualise them as actors with a significant influence on the design and implementation of rural policies. Further research is needed to develop a better understanding of their behaviour as well as the nature of regional environmental discourses.

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