

Multi-level Governance in Environmental Risk Management

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Abstract

The article examines regulatory strategies in the field of ecological disaster management with reference to the sociology of risk. The risk perspective draws attention to the fact that political strategies of regulation are to be understood as processes of risk transformation. The behavior of regulatory agencies is related to their perception of risks and opportunities. From this point of view, efforts in the field of disaster management appear as processes that turn perceived environmental threats into risks and opportunities for the agencies involved. The article shows the course of such a governance process which transforms environmental disasters into organizational risks and opportunities. This leads to the following research question: Which types of organizations favor strategies of risk avoidance and which organizations rather allow active pursuit of opportunities? The empirical part of this study is based on data obtained by field research in a multi-level negotiation system set up for managing hazardous wastes. Empirical findings support the assumption that organizational stability is a central condition for active pursuit of opportunities whereas organizational instability supports an orientation towards the avoidance of organizational risk.

Key words

Sociology; law; public administration; political sciences; sociology of risk; public organizations; multi-level governance; Europe; late 20th century

Resumen

El artículo examina las estrategias reguladoras en el ámbito de la gestión de los desastres ecológicos, haciendo referencia a la sociología del riesgo. La perspectiva de riesgo pone su atención sobre el hecho de que las estrategias políticas de regulación se deben entender como procesos de transformación de riesgos. El comportamiento de las agencias reguladoras se relaciona con su percepción de los riesgos y oportunidades. Desde este punto de vista, los esfuerzos en el campo de la gestión de catástrofes se convierten en procesos que transforman las amenazas

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medioambientales (percibidas) en riesgos y oportunidades para las agencias involucradas. El artículo muestra el desarrollo de este tipo de gobierno que convierte los desastres medioambientales en riesgos y oportunidades organizativas. Esto lleva a la siguiente pregunta de investigación: ¿Qué tipo de organizaciones favorecen las estrategias de prevención de riesgos y qué organizaciones permiten la búsqueda activa de oportunidades? La parte empírica de este estudio se basa en datos obtenidos en estudios de campo en un sistema de negociación multi-nivel, creado para gestionar residuos peligrosos. Los resultados empíricos apoyan la hipótesis de que la estabilidad de las organizaciones es una condición básica para la búsqueda activa de oportunidades mientras que la inestabilidad organizacional favorece una orientación hacia la prevención de riesgos en las organizaciones.

Palabras clave

Sociología; Derecho; Administración Pública; Ciencias Políticas; sociología del riesgo; organizaciones públicas; gobierno multi-nivel; Europa; finales del s. XX

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1. Introduction

Topics of risk management have been studied intensively by social scientists over the last decades. Michael Power (2007) states an "explosion" of publications in the field since the mid-1990s. While the designation switches between *risk management*, *risk regulation* and *governance of risk* (Hood, Rothstein and Baldwin 2001), Power demonstrates how the risk management discourse penetrates various areas of social life. This shift in the risk discourse indicates the generalisation of the risk management semantics. Power (2004) alludes to this as the "Risk Management of Everything".

How government *organizations* in particular deal with issues of risk and risk management, however, is still a question that requires more exploration (Hutter and Power 2005). I will connect at this point. This article will show how organizational perceptions of risks and opportunities are shaped and constrained by institutional contexts and organizational settings.¹ On the basis of an empirical case study,² it will examine the following research question: *Which forms of organization and which constellations of organized actors favour strategies of risk avoidance and which allow rather an active pursuit of opportunities?*

The article will refer to a case of environmental risk management in the cleaning up of contaminated land, considering the specific political setting after German reunification. Special emphasis will be put on the institutionalization of a multi-level governance network between federal and state governments in the new federal states of Germany.

In order to investigate the research question of what the conditions and possibilities of active avoidance of risks or pursuit of opportunities on the part of the participating organizations would be, the article will sketch the empirical background and theoretical framework of this study (Section 2). It will then describe the regulatory program and its institutionalization as a multi-level governance regime for regulating contaminated land (Section 3). Section 4 elaborates on the risk and opportunity orientations of the organizations participating in the multi-level governance network. In Section 5 the question is asked as to how organizational structure affects the transformation of environmental hazards into organizational risks or opportunities. The closing section (Section 6) summarizes the results of this study.

2. Empirical background and theoretical framework

Prior to German unification in the year 1990, the political regulation of the cleaning up of contaminated land was not counted among the most politically salient environmental issues in the Federal Republic of Germany. Public attention was limited to individual cases which were at the center of a scandal in the early 1980s and receded again thereafter. With the German unification, this has changed fundamentally. The ecological dangers of industrially produced contaminated land quickly moved to the center of political debate on the environment in the new federal states of Germany.³

¹ Institutional contexts include legal, cultural, political and professional conditions (Scott 1995). Organizational settings are characterized by, amongst others, the type of organization as private or public, the formal structure, the organizational domain and the position of a focal organization within a network of organizations (Pfeffer and Salancik 1978).

² The empirical basis of this case study are the data I obtained through participant observation and analysis of documents in a process of decision making concerning the redevelopment of areas with contaminated land in the federal state of Saxony in 1994 and 1995. I would like to thank all members of the Operating Committee "Large-Scale Ecological Project SAXONIA" for their support and for consenting to my attendance of their meetings. In order to guarantee the anonymity of individual persons, I will express the following statements in a generalized manner and refer to governing bodies and organizations, respectively.

³ The federal structure was abolished by the East German government in 1952. After re-unification in 1990 the five so called "new" federal states were re-constituted by the Federal Republic of Germany.

The origins of the present type of regulation of the cleaning up of contaminated land in the new federal states of Germany were of an economic nature, which can be traced back to the final phases of the GDR.⁴ The last GDR government, which was in power from December 1989 to March 1990, realized that contaminated land would constitute an obstacle to privatization and investment. It was feared that investors would refrain from taking on the risks which would be passed on to them with the acquisition of contaminated premises and estates. Therefore, the GDR legislators, after coming to an agreement with the then Federal Government of the Federal Republic of Germany, decided that the legal and financial responsibility for cleaning up contaminated land in the area of the former GDR should be taken over by the new federal states.

The taking on of economic risks through State policy followed the political notion that the process of restoring Germany's unity could be forced particularly effectively by restructuring the economy in the new federal states. This required that state government provide for measures to support the economy. The most important policy instrument used was the so-called "exemption from responsibility for contaminated land" (*Altlastenfreistellung*), which was stipulated in the "Obstacle Removal Law".⁵ This provision of exemption meant that whoever purchased stretches of land or property that were polluted by hazardous wastes would be "exempt" from any responsibility and liability for damages incurred before July 1st, 1990 for a period of ten years. Instead, the respective federal state was to take on the responsibility, especially in financial and legal terms, for this ecological contamination.

This decision concerning regulation, made at the federal government level, failed to be implemented due to the resistance of the new federal states. The federal states were soon not willing to take on the financial load that this involved. The sheer flood of applications for *exemption from responsibility* for contaminated land presented by potential investors made it clear that taking over those costs would break the federal state budgets of the new federal states. The five new German federal states practically refused to implement this part of the "Obstacle Removal Law" by not processing a considerable amount of these applications for exemption. The economic-political instrument of exemption from responsibility for contaminated land threatened to fail. But none of the actors representing government wanted this to happen, since the improvement of the economic conditions in the new federal states was considered among the most important signs of political success for both the federal and the federal state governments in the process of unification. The East German federal state governments therefore demanded a noticeable financial commitment on the part of the Federal Government in the cleaning up of contaminated land. In drawn-out negotiations with the Federal Government they succeeded in reaching an agreement on the joint-financing of the cleaning up of contaminated land as far as the enterprises owned by the *Treuhandanstalt* (THA) were concerned.⁶ The ensuing regulation policy and its implementation will be described in further detail below in regard to its function of distributing risk and opportunity orientations among the organizations involved.

The extent of contaminated land in the new federal states - virtually gigantic according to *West* German standards - required a regulatory program in the field of

⁴ The name of the former socialist East German part was German Democratic Republic of Germany (GDR).

⁵ "Law for the removal of obstacles in the privatization of companies and for the support of investment" of March 22nd, 1991 (Gesetz zur Beseitigung von Hemmnissen bei der Privatisierung von Unternehmen und zur Förderung von Investitionen vom 22. März 1991, BGB1. I, p. 766).

⁶ The *Treuhandanstalt* (THA) is a government trust body that deals with the privatization of former state properties. In the following I will consistently use the term "THA", even though the THA was later transformed into the *Bundesanstalt für vereinigungsbedingte Sonderaufgaben* (BvS) (Federal Institute for Unification-related Tasks).

environmental policy which had had no precedent prior to 1990 in the Federal Republic of Germany. Despite this, a new type of regulation, suited to the demands at hand, was *not* developed. In order to deal with contaminated land, politicians thus fell back on a governance structure firmly established in the political system of the Federal Republic of Germany: the *joint decision making between federal and federal state governments* (Scharpf 1978). The mode of joint decision making is distinguished by the fact that concerned actors, by way of negotiation, look for potential decisions or problem solutions, respectively, that all the partners will consent to. The principle of consensual decision making, often shown to be counter-productive in political-administrative measures of regulation, serves this purpose.⁷ This mode of decision making is of more general interest as well. It not only represents a particular mode of problem-solving between federal and federal state governments in the Federal Republic of Germany. Decision making between member states of the European Union, for example, operates on the same basis. This makes it seem plausible that findings in this article provide insights into processes of inter-organizational risk management and multi-level governance beyond specific issues of the empirical case of contaminated land in Germany.

Unlike the familiar cases of joint political decision making in the Federal Republic, there are two aspects peculiar to this case which we have to take into consideration: firstly, in the management of the hazards of contaminated land within the area of the former (socialist) German Democratic Republic (GDR), federal state-level was represented solely by the five new federal state governments, which had little experience of the joint decision making institutionalized in the system of the Federal Republic of Germany, and from whose developing administrative system neither the required structures of implementation nor the professional patterns of orientation found in *West German* administrations could have been expected. Secondly, a third prominent actor entered the scene with the THA, which played a decisive role in shaping the relationship between the Federal Government and the new federal states. An essential factor of great consequence in this respect was that it was not the Federal Government and the federal states which met on the operative level of negotiations in regulation policy development. The details and the implementation of the regulation policy were accomplished by the THA and the new federal states.

In contrast to the negotiation theory of joint decision making, which describes multi-level governance as an arena characterized by conflict in which particular interests are put into effect, I will start from the assumption that organizations are not primarily related to the pursuit of interests but much rather the perceptions of risks and/or opportunities.⁸ The distinction between pursuit of interests and perception of risks is a crucial line of reasoning in this article.

With the *risk perspective*, attention is drawn to regulatory measures in terms of processes of risk transformation (Luhmann 1993, Hiller 1993). Thus a standard assumption of negotiation theory is abandoned, according to which problem-solving oriented organizations participate in systems of negotiation established for the purpose of solving identifiable problems of regulation. "Efficiency" or "capacity for problem-solving" of negotiation systems, central to a control theoretical perspective is not of primary concern from a risk perspective. Instead, processes of regulation are described as processes of organizational risk management which deal with risks and opportunities that pertain to the respective organization as such. These processes of managing political risks typically take place within and through inter-organizational networks of negotiation in a multi-level governance framework.

⁷ Scharpf (1993) has investigated this mode of decision making in a number of studies and thereby gained valuable insight into a theory of multi-level governance. With respect to the European Union see Scharpf (1988).

⁸ A similar approach is taken by Hutter (2005) in her article "*Ways of seeing*": *understandings of risks in organizational settings*.

Hence, this paper analyzes institutionalized modes of (risk-) regulation in policy-making with respect to their specific capacity for distributing risks and opportunities perceived by participating actors as being attached to certain policy decisions. It will show how such processes of risk transformation come about and what conditions they are subjected to. Such an analysis requires taking a closer look at the orientations towards risks and opportunities, respectively, which chiefly influence the way that organized actors operate.

3. The regulatory program and its implementation

But what did the risk regulation between Federal Government, THA and the new federal states look like in detail? The mode of *financing the redevelopment of areas of contaminated land* in the new federal states which the Federal Government and federal state governments agreed on was specified in an administrative agreement.⁹ In the following I will only deal with one part of redevelopment regulated in this administrative agreement: the large-scale ecological projects in the five new federal states. Large-scale ecological projects are areas of enterprise or former state-owned co-operatives (large state-owned enterprises) of regional importance which have particularly extensive problems with contaminated land. The measures provided for by the "administrative agreement on financing environmental contamination" relate to two dimensions of regulation: the mode of financing and the mode of decision making. As far as the mode of financing is concerned, the administrative agreement decreed that the THA and the federal states must share the costs of redevelopment in the area of large-scale ecological projects at a ratio of 75 (THA share) to 25 (federal states share). It turned out that the resulting unequal distribution of financial liability (mainly held by the THA) versus administrative responsibility (mainly held by the federal states) would prove to be a major obstacle to the implementation process. The structural line of conflict of such arrangements was further exasperated by the mode of decision making set up for large-scale ecological projects since the Federal Government and the new federal states agreed that all decisions on measures of redevelopment with large-scale ecological projects had to be reached *consensually*. This meant that, at the same time, each party had the power to veto any decision. The legal framework solely regulated the modes of financing and of decision making which delimited the parameters which all decisions had to be fitted into. These parameters constituted the basis for decision making and, as such, were not negotiable on the subsequent levels.

For the administrative implementation in the area of large-scale ecological projects, a multi-level negotiation system was created involving the Federal Government, THA and the five new federal states of Germany. This governance structure was designed to keep a formal division between the *decision-making* and *operative levels*. At both levels there are solely administrative bodies participating and no public participation of any kind. In this organization network Federal Government, THA and federal state administrations met according to the rules of joint political decision making, as had been typical of the Federal Republic of Germany.

The *level of decision making* consisted of the "Joint Operating Committee with representatives of the Federal Government, the THA and governmental organizations of the five new federal states" and the "joint operating committees with representatives of the Federal Government, the THA and the (respective) federal state". The activities of the Joint Operating Committee whose members represent the Federal Government, the THA and all five new federal states were restricted to dealing with basic questions and specifying a framework for the

⁹ Administrative agreement on the regulation of financing the cleaning up of contaminated land of December 1st, 1992 (Verwaltungsabkommen über die Regelung der Finanzierung der ökologischen Altlasten, VA-Altlastenfinanzierung, Bundesanzeiger of March 10th, 1993, p. 2842). The "administrative agreement on financing environmental contamination" became effective on October 15th, 1992.

subsequent policy decision making units, i.e. the federal state-specific joint operating committees. These were in charge of approving the skeleton redevelopment plan that had to be produced for each large-scale ecological project at the operative level. The federal state-specific joint operating committee was the body that decisions could be relegated to if conflicts could not be resolved at the operative level. The joint operating committee was composed of representatives from the Federal Government, the THA and the five new federal states as well as the respective federal state joint operating committees in which, in addition to the THA, the Federal Government and federal state Departments of Finance, Economics, Employment and Environmental Affairs were represented. This particular constellation of organizations shows in which way the implementation of the "administrative agreement on the financing of environmental contamination" was not just about regulating ecological hazards but fundamentally about the transformation of political risks involving employment and the economy as well.

The *operative level* has a preparatory function with regard to decision making. It consists of federal state-specific "coordination committees" and "operating committees" specifically related to each large-scale project. In some cases the *coordination committee* is omitted, since its tasks can be taken over by the operating committee. The task of the *operating committees* is to turn contaminated land into something that can be managed in a financially viable way. If we look at a concrete case this means: to work out a skeleton redevelopment plan for the respective large-scale ecological project and submit it for approval at the decision-making level. If the skeleton redevelopment plan is approved, it is the committee at the operative level's task to specify and carry out the individual measures it contains.¹⁰ At the operative level, thus, the fundamental decisions are made, following a pattern of "bottom-up policy making". It is here that actual plans are worked out. At this level the recommendations that are submitted to the "joint operating committee with representatives of the Federal Government, the THA and the specific federal state" are produced. The content of these recommendations is hardly ever altered any more at the decision-making level. Amongst other reasons, this is due to the fact that, for one thing, all measures presented here have to be decided upon in a consensual vote by the federal state and the THA in the operating committee. Moreover, the level of preparing recommendations to be decided upon and the level where final pertinent decisions are made are intricately interwoven through the negotiating parties' participation at more than one level.

4. Risk and opportunity orientations within the multi-level governance network

How do the processes of administrative decision making then develop in a large-scale project? Despite the large number of participants, we can reduce what is going on within the operating committee "Large-scale Ecological Project SAXONIA"¹¹ to the two main organizations leading the negotiations: the THA and

¹⁰ This is why the enterprises that regulatory measures are directed at are represented in the operating committees, beside the THA and the federal state's environmental administration authorities. The operating committee "Large-scale Ecological Project SAXONIA" consisted of the following members who were formally entitled to make decisions: State Department for Environmental Conservation and Land Development, Hazardous Wastes Division (Chair); Government Headquarters, Division Waste, Hazardous Wastes and Ground Conservation; State Environment Office, Hazardous Wastes Division; District Magistrate's Office, Environment Office; THA, Directorate Environmental Conservation/Hazardous Wastes. The following were members in an advisory function: Engineering firm hired for this project; Land Office for Environment and Geology, Hazardous Wastes Division; Land Office for Environment and Geology, Geology Division; Federal Environment Office, Hazardous Wastes Division; responsible company granted exemption, SAXONIA AG i. L.

¹¹ The land mass of today's SAXONIA AG i. L. had a history of exploitation reaching back to the 12th century. The decision-making process took place within the "Large-Scale Ecological Project SAXONIA", concerning a former *state-owned co-operative* of iron and steel works whose real estate property is highly contaminated to a great extent due to centuries of mining and smelting. The estate's area as a whole comprised about 53 hectares. The premises of the SAXONIA AG i. L. were classed as an area

the Saxon Department of Environmental Affairs, which, as opponents in carrying out the project, shape the course of negotiations. With regard to the orientations of these actors in the operating committee we might hypothesize the following:

Normatively one would have expected the THA and the federal state's environmental administration to have been interested in finding a joint solution to the problem and to have cooperated in removing any obstacles to investment created by contaminated land in order to make subsequent economic use of industrially unused land possible. Finding a joint solution to the problem should have seemed a rational goal, since the outcome would, in any case, have been a positive one for both sides. If the cleaning up of contaminated land were carried out, then privatization of the property by the THA would be possible. Expedient privatization would serve both partners in the negotiations, the federal state as well as the THA. It would save jobs in the region and address environmental policy concerns. Lastly, conflicts should not have been expected since financial means made available through the administrative agreement (at least a hundred million German marks per large-scale project) had been estimated to be "sufficient".

Empirically one would have expected the federal state's environmental administration to have an interest in gaining some political profile within their policy domain and therefore to aim for a "large-scale solution" in regard to cleaning up contaminated land. The structure of the mode of financing (75% THA, 25% federal state) would have created the incentive for both organizations to try to spend as much money as possible within the boundaries of the redevelopment program, because all measures that it would not be possible carry out within this framework would have become the federal state's responsibility in the long run. With respect to the THA, it should most probably have wanted to, for one, to as quickly as possible privatize the businesses that had been included in the large-scale ecological projects program and been granted exemption. Secondly, for this reason as well as due to expenses, the THA would have pushed for a "small-scale solution" in redevelopment. Furthermore, in doing so, it would assumedly have been guided by investors' interests and the market. This means that the THA would have had to deal with protests from the public and the press and a dispute between experts about requirements of redevelopment, health hazards and redevelopment alternatives.

What did *actually* happen? In actual fact, the Saxon environmental administration acted as a supporter of the economy rather than as an organization concerned with environmental preservation. The THA, on the other side, appeared to be a money-saving inspector hindering investment rather than an active agency of privatization.

How is it that the environmental administration and the THA seemed to have exchanged roles with regard to the cleaning up of contaminated land? In the following I will show that this finding as well as the dynamics of the negotiating process in addition to the conditions for cooperation (which were lacking in the case of the "Large-scale Ecological Project SAXONIA") can be very well described if we recognize the organizations' ways of risk transformation as the factors which largely influence the actions taken.

In the case at hand, the Saxon Department of Environmental Affairs saw the possibility to take advantage of political opportunities in dealing with the contaminated land issue. The Department of Environmental Affairs transformed the regulation problem "dangers resulting from contaminated land" into political preferences of the agency. With the THA, the transformation proceeded in the

polluted by hazardous wastes of the most harmful kind; parts of the estate are impossible to redevelop. The area contained a considerable potential of hazardous wastes, such as arsenic, cadmium, lead, zinc and copper (heavy metals). At the time when the skeleton redevelopment plan was worked out, the "Large-scale Ecological Project SAXONIA" consisted of fifty-one individual projects and over seventy expert assessments and reports.

opposite direction: the THA perceived the ecological dangers being addressed as risks for the organization itself. Accordingly, the efforts made by the THA were directed at developing strategies of risk avoidance. The Saxon Department of Environmental Affairs, however, was concerned about "making some progress in the federal state". Anything that seemed to serve this vague concern was understood as an opportunity and pursued more or less actively. It is important to note that what is meant by the pursuit of opportunities here is not about gaining specific advantages. The Department of Environmental Affairs pursued multiple opportunities which could be related to expectations of economic, ecological, financial, administrative, political and other kinds of benefits. The capability to identify potential opportunities in a policy decision-making arena characterizes an actor who would also make sure to seize opportunities in such a context. And the implementation of the "Large-scale Ecological Project SAXONIA" is an example of a situation of policy development in which potential opportunities abounded. The effects of the measures to be taken which the Saxon Department of Environmental Affairs aimed for were not necessarily tied to actually realizing the large-scale project. This project merely offered a *potential* opportunity structure and potential outcomes were thus basically contingent.

What form did the Department of Environmental Affairs' orientation towards opportunities take within the operating committee "SAXONIA"? A most significant factor, which shaped the way large-scale ecological projects were implemented in Saxony, was the Department's decision to pursue a "firm line" in carrying out the project. In comparison to the practices of carrying out large-scale ecological projects in the other new federal states, the greatest degree of centralization with respect to the steering of decision-making processes took place in Saxony. The federal state saw a chance for gaining a profile in labour market and economic policies and increased to the extent possible the political weight of the large-scale ecological projects. Besides the chance of gaining *political* profile, the federal state's environmental administration also saw opportunities of gaining *administrative* profile, which it could seize in implementing the "administrative agreement on financing environmental contamination". We can thus observe that the Saxon Department of Environmental Affairs succeeded in keeping the regulation costs low by acting as the "first mover" and defining the implementation process, thereby imposing its practices of implementation upon the THA as well as the other new federal states. The operating committee "Large-scale Ecological Project SAXONIA" had submitted the first financing framework to be approved and thereby established a model framework for the other large-scale projects in the new federal states of Germany. Another indicator of the achievement of administrative profile is that Saxony was early on the first federal state to receive funding to a considerable extent authorized by the administrative agreement. The Saxon environmental administration thus became a forerunner in "regulative competition". By succeeding in defining the way the projects were carried out, it would be able to influence multiple policy contents - in this case, labour market and economic policies in addition to environmental policy.

To sum up, if we interpret large-scale ecological projects as having offered participants in a decision-making process a chance to pursue opportunities, the strong commitment of the Saxon Department of Environmental Affairs in the implementation of the "administrative agreement on financing environmental contamination" becomes understandable. This means that the environmental agency was not concerned about improving the situation with regard to the contaminated land for its own sake. The problem of regulation became relevant only in a transformed shape. These transformations were constructions of the organized actors which led them to be able to interpret decision-making situations with orientations towards risks or opportunities.¹²

¹² How cognition and organization are related is shown in Hiller (2005).

The THA's view of the situation was completely different from that of the Saxon Department of Environmental Affairs. Its behaviour in decision making was not characterized by the perception of opportunities but by that of risks. The THA transformed the problem of regulation (contaminated land) into risks that pertained to the organization itself. Its selective attention to the regulation process was directed at discovering the risks which, for the THA, were associated with the implementation of large-scale ecological projects. For the THA, anything which interfered with their criterion of success, "saving money", counted as a risk. It is this mono-referential risk perception that the decision-making behaviour of the THA triggered.

Since the new federal states had long been disputing the THA's competence in the domain of redevelopment of contaminated land, it was under pressure to justify its role. The THA is associated with the Federal Department of Finance and this association defined its position in the negotiating process. In this process it served as a controlling authority, without making any substantial contributions to problem-solving. The THA was therefore seen as the "extended arm" of the Minister of Finance by the other actors in the operating committee. To the Department of Finance the THA could present itself as successful and as necessary by controlling the expenditure in a restrictive way with regard to large-scale projects. Its formal structure was directed towards fulfilling this function.

5. Organizational structure and risk transformation

Organizations specify the roles of their members by setting three parts of formal structure: decision programs, hierarchical structure and personnel structure (Luhmann 1976, 2000). The decision program of the THA followed its criterion of success, "saving money", through a rigid course of minimalist policies of redevelopment, restricting itself solely to measures directed at averting dangers. Decision-making was reduced to a simple conditional policy following Police and Regulation Law: according to this, there has to be an *immediate danger to people* in order to trigger measures to avert this danger.¹³ In the view of the five new federal states of Germany the THA thus created its "own" environmental legislation which remained far behind the regulative standards of federal state-legislation. Seen against this background it was most apparent that the THA's use of the legal definition of danger clearly serves the goal of saving money: one cannot do less in the redevelopment of contaminated land than restrict oneself to such measures that prevent an immediate hazard to people.¹⁴ Very early on the THA had already committed itself to this very simple conditional policy (Bonnenberg *et al.* 1994, p. 82). This policy is "simple" particularly because it was directed at only *one* level of contamination, i.e. immediate hazards to people. The former head of the THA explicitly refused to include other aspects in the process of considering factors relevant for redevelopment: "We operate on an economic level and are business-oriented, the political system operates on an economic-political level and is region-oriented" (Rohwedder 1991, p. 61).

Concerning hierarchical and personnel structure of the THA, restructurings took place in 1993, involving an increase in the importance of contract management, particularly in the area of controlling (Küpper and Mayr 1993, p. 332 ff.). The task of controlling privatization is to analyze sales contracts with regard to potential risks for the THA and to rectify mistakes that have been made in previous contractual agreements. Even in the area of contaminated land it was not engineers and lawyers of the division of hazardous waste but the controllers who had the final say as far as the realization of redevelopment projects was concerned. Controlling

¹³ For a critical discussion of the causal concept of danger in Police and Regulation Law, compare Hiller (1993, pp. 116 ff.).

¹⁴ In legal publications it is questioned whether the Police and Regulation Law can be applied to the complex subject matter of the hazardous wastes issue, in particular with regard to ground conservation (Kühl 1994 and the publications mentioned there in footnote 4, p. 54, Ladeur 1995).

became the critical authority in the decision-making process related to regulation within the THA and this facilitated its imposing restrictive practices on third parties. By increasing the importance of controlling, the THA institutionalized the risk orientation within the organization. It searched its field of operation for risks, trying to avoid those. Doing so, it destroyed potential opportunities at the same time: by staking everything on the business management rationale of controlling at the expense of engineering and administrative expertise, it could not assume a constructive and creative role in the negotiating process concerning the cleaning up of contaminated land. For the environmental agency of the federal state of Saxony, the THA was not a professionally competent partner in negotiations, with whom solutions could be worked out constructively. The THA transformed the regulation policy of the "administrative agreement on financing environmental contamination" into a question of monetary expenses, and conflicts were only dealt with as issues of expenses at the operative level of the negotiating process of the operating committee "Large-scale Ecological Project SAXONIA". By reducing the perspective of its representatives in negotiations to controlling financing, the THA caused itself and thereby the whole operating committee to be unable to negotiate. The THA had in this way indirectly resigned from its role as a partner in negotiations.

This leads to the hypothesis that the forms of risk and opportunity orientation described above regarding the Saxon Department of Environmental Affairs and the THA are related to differences in their qualities as organizations. The THA was mono-referential in defining its risks and thus acted as a *single self*, the Department of Environmental Affairs applied a complex framework for defining its opportunities and thus acted as a *multiple self*. "Single selves" pursue one objective, "multiple selves" operate in relation to various objectives at the same time (Wiesenthal 1990).¹⁵

Multiple selves have the more complex pattern of orientation, are more flexible and have more options to deal with insecurity, since they (for the purpose of distributing risks, for example) can point to varying levels of reference. Since they simultaneously follow different orientations (temporal horizons, definitions of benefits), multiple selves have no clear, single criterion of success. In this sense, the Saxon Department of Environmental Affairs must have made the rather vague statement of "some progress to be made in the federal state", which could have referred to economic, labour market political or ecological aims. In any case, the environmental administration did not act solely as a representative of the "environment" and thereby increased its strategic flexibility in the policy-making process. In implementing large-scale ecological projects the Department of Environmental Affairs was in this way capable of cooperating with, for example, the Department of Economic Affairs, which was represented on a super-ordinate level of decision making in the joint operating committees. It would have been much more difficult to proceed if the Saxon Department of Environmental Affairs had understood itself as a single self, solely in terms of being responsible for the "environment". In that case, too, one would have hardly expected any support from the federal state's government, which would have been first and foremost interested in economic success. The most crucial factor, however, was that the environmental agency had a stable organizational structure, which is what makes operating with multiple reference points possible in the first place.

Unlike the environmental administration of the federal state of Saxony, the THA was from the outset supposed to be a temporary organization. Its task was to render itself redundant. It was not only exposed to an unstable environment, but

¹⁵ In a similar way Morgan (1986, p. 112) distinguishes "effective" from "less effective" managers according to their abilities of interpreting situations of decision making. Morgan sees these abilities as innate or acquired competences of the individual agents. What matters in this article is to show that the possibility of making use of this ability critically depends on the organizational setting that the agents (in the case at hand the negotiators) are tied up in.

also had to struggle with internal organizational problems, which resulted in a weakening of the organization. Internal power struggles and restructuring efforts were among the internal problems of the organization. A centralization of authority, a splitting of decision-making processes and frequent changes of often temporarily employed staff resulted. Personnel could hardly be expected to show outstanding commitment within the THA, since frequent staff fluctuation and the limited existence of the THA did not provide for reliable career prospects there. The staff's commitment and their identification with their task were thus considerably lower at the THA than they were in the Saxon environmental administration.

Such structural instabilities as within the THA also emerged in the operating committee "Large-scale Ecological Project SAXONIA". Responsibilities and authorities kept shifting during negotiations at that level. New representatives did not know or recognize arrangements and agreements that had been arduously worked out within the operating committee. Many things that seemed to have been decided upon were repeatedly questioned anew. The environmental administrations interpreted this as deliberate strategies on the part of the THA to cause delays.

Organizations such as this with turbulent external and internal environments are only steerable by simple conditional policies. Instead of following a "problem-centred orientation" which presupposes long-term strategic planning and complex, non-linear behavioural patterns, the THA, due to its problematic organizational structure, was guided by a rigid norm-centred orientation in accepting the Police Law's definition of danger. Given this state of affairs, the THA could not develop a complex pattern of orientation, including multiple temporal perspectives and varying preferences. It could only act as a single self in this decision-making context. In relation to the large-scale ecological projects, this took the form of an orientation towards risks related to the organization's stability: a risk was considered the lack of control over financial means. From a legal and financial point of view this was supposed to be the least risky course of action - at least if one thinks in the short term.

6. Conclusion

It has been shown that the problem of regulation, "dangers resulting from contaminated land", became relevant in the multi-level negotiating processes of the "Large-scale Ecological Project SAXONIA" only in a transformed state, namely in the form of risks or opportunities perceived by the organizations in the process of decision making. "Problem-solving" and "cooperation" in the process of the development of the regulatory program thus appear to be chance products of convergent definitions of risks and opportunities of the negotiating partners. Therefore an analysis of negotiating processes (following the mode of joint decision making) must inquire which circumstances lead organizations in the negotiating process to tend to avoid risks, and which circumstances lead them to make the perception of opportunities the guiding principle of their actions. The case of the regulatory program of the cleaning up of contaminated land in the new federal states of Germany supports the hypothesis that different forms of risk transformation depend on an organization's quality as a single self or a multiple self in the decision-making process. Organizational *stability* constituted the basis for relating to the environment in multiple ways and was a precondition for an active pursuit of opportunities. Inversely, organizational *instability* promoted mono-referential orientation towards risks.

Bibliography

Bonnenberg, H., *et al.*, 1994. Zur Behandlung der Altlastenproblematik im Arbeitsablauf der Treuhandanstalt. *Zeitschrift für angewandte Umweltforschung*, 5, 81-95.

- Hiller, P., 1993. *Der Zeitkonflikt in der Risikogesellschaft. Risiko und Zeitorientierung in rechtsförmigen Verwaltungsentscheidungen*. Berlin: Duncker und Humblot.
- Hiller, P., 2005. *Organisationswissen. Eine wissenssoziologische Neubeschreibung der Organisation*. Wiesbaden: VS.
- Hood, C., Rothstein, H. and Baldwin, R., 2001. *The Government of Risk. Understanding Risk Regulation Regimes*. Oxford University Press.
- Hutter, B.M., 2005. 'Ways of seeing': understandings of risk in organizational settings. In: B. Hutter and M. Power, eds. *Organizational Encounters with Risk*. Cambridge University Press, 67-92.
- Hutter, B.M. and Power, M., eds., 2005. *Organizational Encounters with Risk*. Cambridge University Press.
- Kühl, C., 1994. Altlastensanierung in Deutschland - ein föderales Finanzierungsmodell. *Zeitschrift für angewandte Umweltforschung*, 5, 51-62.
- Küpper, H.-U. and Mayr, R., 1993. Vertragsgestaltung und Vertragsmanagement der Treuhandanstalt. In: W. Fischer, H. Hax and H.K. Schneider, eds. *Treuhandanstalt. Das Unmögliche wagen*. Berlin: Akademie-Verlag, 315-353.
- Ladeur, K.-H., 1995. Öffentlich-rechtliche Haftung für Altlasten - retrospektive Zurechnung unerkannter Risiken? *Umwelt und Planungsrecht*, 15 (1), 1-8.
- Luhmann, N., 1976. A General Theory of Organized Social Systems. In: G. Hofstede and M.S. Kassem, eds. *European contributions to Organization Theory*. Assen: Van Grocum, 96-113.
- Luhmann, N., 1993. *Risk. A Sociological Theory*. Berlin: de Gruyter.
- Luhmann, N., 2000. *Organisation und Entscheidung*. 4. Aufl. Wiesbaden: VS.
- Morgan, G., 1986. *Images of Organization*. Beverly Hills: Sage.
- Pfeffer, J. and Salancik, R.G., 1978. *The External Control of Organizations: A Resource Dependence Perspective*. New York, NY: Harper & Row.
- Power, M., 2004. *The Risk Management of Everything*. London: Demos.
- Power, M., 2007. *Organized Uncertainty. Designing a World of Risk Management*. Oxford University Press.
- Rohwedder, D., 1991. Alles muß hoppla-hopp gehen. Spiegel-Gespräch. *Der Spiegel*, 45 (5), 55-61.
- Scharpf, F.W., 1978. Die Theorie der Politikverflechtung: ein kurzgefaßter Leitfaden. In: J.J. Hesse, ed. *Politikverflechtung im föderativen Staat*. Baden-Baden: Nomos, 21-31.
- Scharpf, F.W., 1988. The Joint-Decision Trap: Lessons from German Federalism and European Integration. *Public Administration Review*, 66 (3), 239-279.
- Scharpf, F.W., 1993. Coordination in Hierarchies and Networks. In: F.W. Scharpf, ed. *Games in Hierarchies and Networks. Analytical and Empirical Approaches to the Study of Governance Institutions*. Frankfurt, et al.: Campus, 125-165.
- Scott, R.W., 1995. *Institutions and Organizations*. Thousand Oaks, et al.: Sage.
- Wiesenthal, H., 1990. *Unsicherheit und Multiple-Self-Identität: eine Spekulation über die Voraussetzungen strategischen Handelns* [online]. Max-Planck-Institut für Gesellschaftsforschung. MPIFG Discussion Paper 90/2. Köln. Available from: http://edoc.vifapol.de/opus/volltexte/2011/2756/pdf/dp90_2.pdf [Accessed 13 March 2013].