

International Public Policy Conference, June 2019, Montreal

Panel: T08P15 Session 1 Varieties of behavioural public policy: modes, manifestations and political consequences of a global discourse - Varieties of Behavioural Public Policy: Modes, Manifestations and Political Consequences of a Global Discourse

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Between information and nudging – Governing individual behavior in two EU policy areas and the relevance of target group characterizations for policy-making.

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Introduction

Governing individual behavior is a core feature in many policy areas. Whether individual energy consumptions is being addressed in environmental policy (Momsen & Stoerk, 2014) or organ donations are being fostered in health policy (Thomann, 2018): individual decisions are at the center of instrument selections. Especially, the turn towards behavioral policy tools has put a spotlight on target groups, individual behavior and its foundations (Thaler & Sunstein, 2009; Wilkinson, 2013). While policy analysis has identified a variety of factors impacting instrument selection, we know comparatively little about the process of instrument selection in regard to target populations. While aspects like the “[...] meaning ascribed to [...] instruments” (Linder & Peters, 1989: 35), the role of knowledge and evidence within policy-making processes (Albaek, 1995; Head, 2010) and genuine political factors, like the aim for short-term success or a re-election calculus have been identified as elements influencing the choice of policy instruments (Howlett & Mukherjee, 2014), there is still limited knowledge regarding target groups and their role in policy-making processes: the impact of (different) assumptions regarding individual behavior is seldomly considered in studies investigating policy instrumentation, especially in the context of *nudges*. Although research has identified target groups as a major aspect in policy-making (Schneider & Ingram, 1993) there is still a lack of comprehensive inquiry in this regard. This is especially puzzling since “[...] policy instrumentation is a major issue in public policy, as it reveals a (fairly explicit) theorization of the relationship between the governing and the governed [...]” (Lascoumes & Le Gales, 2007: 3) and behavioral public policy aims at new ways of exerting government powers.

This paper builds on the existing literature on target groups in policy-making processes (e.g. Schneider, 2015) and investigates the relevance of addressees and their characterization for the selection and design of policy-tools. Governing and steering individual behavior is one of the main goals in several policy areas such as consumer or health policy. In some of these areas we see a turn to behavioral instruments while interventions in other areas rely on rather conventional approaches. Research on policy-making is merely at

the beginning of understanding these varieties in (behavioral) public policy. The paper investigates the instrument selection and design in two EU policy areas (environmental and health policy) and aims at explaining why we can see a turn towards behaviorally informed instruments in one case while the tool in the second case doesn't follow this turn, although both policies aim at changing individual behavior. The paper follows two goals. First, I want to advance our knowledge on the role and relevance of target group characterization for policy making and instrument selection. Second, I want to connect these insights to discussions on behavioral policy to further the understanding of mechanisms leading to nudges or factors enabling their use.

The paper proceeds as follows: Chapter one lays the groundwork for the analysis and briefly reviews the literature on policy instruments and their selection. Furthermore, it reviews the research addressing behaviorally informed policy tools and nudges. Chapter two describes the research approach and case selection. Chapter three and four deal with the two cases and investigate the role of target groups in policy-making. Chapter five discusses the results and formulates insights for the consulted literature.

1. Policy instruments, instrument selection and behavioral public policy

Policy instruments are at the core of policy research. They, as Lascoumes and Le Gales describe, are the way governments impact every-day life of the governed (Lascoumes & Le Gales, 2007). A common way to discuss instruments is based on the level of coercion exercised by them. While information instruments (e.g. campaigns, product label) aim to convince addressees without forcing them to change behavior, economic instruments (e.g. subsidies, taxes) increase the costs of a certain behavior and thus create incentives for behavior change. Finally, regulations demand a certain behavior and exercise the highest level of coercion (Vedung, 2007). While this conception of 'conventional' policy instruments is widely accepted, the discussion on how to capture behaviorally informed instruments is vibrant. Especially, Thaler and Sunstein have proposed to treat nudges as a new and innovative category of instruments (Thaler & Sunstein, 2009). They define nudges as ways to alter "[...] people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives" (Thaler & Sunstein, 2009: 6). Following this perspective, nudges can be subdivided into different tools, e.g.: defaults, warnings and

reminders, or design approaches (Baldwin, 2014: 833). All of the nudge tools aim to change the decision situation and make use of mental shortcuts, individual desire to follow perceived norms and basically the fact that individuals “[...] are driven by habits [...] and emotions” (John, Smith, & Stoker, 2009: 363). This perspective, however, does not provide clear instrument categories or a taxonomy incorporating conventional tools and their relation to behavioral ones. While the political science literature has focused on a critical assessment of the nudging claims and the *libertarian paternalism* proposed by Thaler and Sunstein (e.g. Goodwin, 2012; Wilkinson, 2013), recent research aims for a more conceptual integration of behaviorally informed policy tools into existing concepts. A convincing approach on how to treat behavioral instruments was put forward by Kathrin Loer: Instead of dealing with nudges as a separate category she treats behaviorally informed tools as an evolution of more conventional instruments (Loer, 2019). Thus, every instrument can (theoretically) be changed towards a behavioral one by putting a behavioral spin on them. This process can be described as a re-design of instruments by which psychological or cognitive aspects are integrated into the tool without changing the general nature of it. Adding emotions to information does not change the level of coercion, it simply puts a new spin on the tool. The same holds true for regulations: by adding a behavioral supplement policy-makers aim at increasing compliance and not at lowering its intensity or changing the level of coercion used in the first place.

Taking this perspective on behavioral instruments as a starting point, we must clarify how this redesign of instruments occurs. Investigating policy-making processes and the selection of policy instruments dates back to early days of policy analysis. Charles Lindblom famously concluded that policy-making can be characterized as a “muddling through” process rather than a rational one since policy makers have to deal with limited resources (Lindblom, 1959). Cohen et al. described the process of choice with their a garbage can model in which “[...] choices are made only when the shifting combinations of problems, solutions, and decision makers happen to make action possible” (Cohen, March, & Olsen, 1972: 16). The idea of different streams Cohen et al. described was refined by John Kingdon and his multiple streams framework (MSF) in which *problem*, *policy* and *politics streams* flow independently. While expert communities discuss instruments and their design within the policy stream, problems are debated and framed in the problem stream. The politics stream captures genuine political aspects, e.g. election results (Kingdon, 2003: 143). Thus, the MSF

assumes that solutions look for problems and both elements are combined in favorable situations. This idea of coupling elements is crucial in Kingdon's model (Howlett, McConnell, & Perl, 2015). The linking of problems and instruments depends on policy entrepreneurs and the framing of problems and tools (Kingdon, 2003). The MSF and modifications of the approach have gained considerable scholarly attention (e.g. Zohlnhöfer, Herweg, & Rüb, 2015). Recent research addresses analytical perspectives, e.g. discursive approaches within the MSF (Winkel & Leipold, 2016), the application of MSF approaches to empirical material (Zohlnhöfer, 2016) or crucial aspects of the MSF, like the process of coupling the streams (Blum, 2017).

In this paper, I adopt Kingdon's perspective on policy-making and consider the process of instrument selection to be affected by a coupling of elements. Drawing on a post-positivist perspective in policy research, I understand the coupling of elements as a creation of convincing policy story lines (Fischer, 1998; Hajer, 2002). By combining reasons for *policy-action*, *problem interpretations* and *instruments* policy-makers aim at creating convincing policy packages that get accepted as a proportional reaction to problems (Zittoun, 2013). To better understand instrument selection and design in the context of behavioral public policy I concentrate on target groups as an element impacting the creation of policy packages. Drawing on policy design research, this paper concentrates on the characterization of target groups as an element in the policy making (Schneider & Sidney, 2009). The description of certain groups as deserving or indigent is a major factor for the selection of instruments (Schneider & Ingram, 1993). While the policy design research mostly considers target groups within the context of (re-)distributive policies, it might also foster our understanding of policy-making aiming at behavior change (Bell, 2019; Nedlund & Nordh, 2018). The policy design research explicitly allows for the integration of social constructions and thus helps us understand how different world views on addressees "feed forward into [...] policy processes" leading to behavioral instruments (Schneider & Sidney, 2009: 105).

2. Investigating the relevance of target group characterizations for instrument designing

There is a range of research strains dealing with target groups, consumers, and behavioral foundations of individual decisions. Yet, neither policy analysis has developed comprehensive approaches incorporating target-groups into research on instrument selection and

design, nor are consumer research and behavioral science attentive to public policies and their evolution. For instance, studies on the application of nudges highlight the opportunities and successes of tools based on behavioral insights (Lehner, Mont, & Heiskanen, 2016) but lack an inclusion of policy processes and factors fostering the application of these tools. On the one hand, Ölander and Thøgersen identify limitations of information approaches to reach behavioral change and emphasize the opportunities of behavioral tools (Ölander & Thøgersen, 2014). Studies on consumer policy on the other hand highlight the persistence of ideal-type conceptions in policy-making despite scientific insights into the drivers of individual behavior. Especially, the idea of sovereign consumers who make rational choices based on cost-value assessments is a mostly undiscussed basis for many policies aiming at individual behavior change (McShane & Sabadoz, 2015; Rauh, 2016). Despite a growing awareness of cognitive factors its impact on policy-making seems limited. Finally, although consumer research underlines the superficial conception of consumers in policy-making, empirical studies on its relevance for instrument selection and design are still very rare.

This paper attempts to combine these perspectives. Drawing on consumer (policy) research I use two ideal-type configurations to investigate how policy-makers deal with consumers (see table 1). McShane and Sabadoz point to the persistence of a “consumer-as-rational” assumption in many policy areas (McShane & Sabadoz, 2015: 545). This characterization of *sovereign consumers* fits a more laissez-faire model of consumer policy (Rauh, 2016: 37). On the other hand, consumer research increasingly emphasizes “[...] overspending, impulse buying and desire-driven decisions [...]” that characterize consumer behavior more accurately and relates to *weak consumer ideal type* (McShane & Sabadoz, 2015: 546). These ideal-type characterizations allow for an investigation of policies and underlying assumptions regarding consumers and their behavior. My assumption is, that different consumer characterizations impact the selection and design of policy instruments since these ideal types correspond with certain governing approaches, a more or less intensive intervening in markets, and aims to either empower or protect consumers (Cseres, 2005; Rauh, 2016). Thus, policy approaches resting on neutral information or economic incentives should rely on a *sovereign consumer characterization* while more coercive interventions should relate to *weak consumers*. Therefore, behavioral approaches should at least acknowledge the many aspects impacting individual behavior and should therefore rest on a more nuance consumer ideal type instead of a sovereign characterization. Furthermore,

referring to either one of these characterizations should enable policy-makers to create convincing policy-packages containing a perspective on behavior and sufficient policy instruments to address it.

Table 1 – Consumer ideal types and implications for policy

Ideal Types and Policy Implications	Sovereign consumer	Weak consumer
Assumed consumer behavior	Rational cost-value assessment, information-seeking consumers as sovereign market actors	Overburdened consumer, vulnerable towards misleading information or advertisement, weak actor on markets
Features of the decision-making process	Simple decision-making process based on information	Complex decision-making based on norms, influenced by decision context and cognitive factors
Role of governments	Laissez-faire model, policy aims at functioning markets	Interventionist model, policy aims at protecting consumers on markets
Implications for policy	Non-interventionist policy and focus on reliable information to strengthen market processes	Policy measures to protect consumers and citizens, reflecting their limitations

Author's own compilation based on Rauh 2016, McShane and Sabadoz 2015

To investigate different consumer characterizations and their impact on policy-making and instrument design, I concentrate on two areas of EU policy. In the first case, European environmental policy, the analysis focusses measures to foster sustainable consumption. Especially, the EU Ecolabel is used to indicate products with a good environmental performance. This instrument can be characterized as a conventional information instrument that seeks to empower consumers on the market by providing them with product information (Jordan, Wurzel, Zito, & Brückner, 2009). Therefore, the discussions on the instrument design should be dominated by a sovereign consumers characterization. In the second case, EU health policy, I concentrate on the measures addressing tobacco consumption. Particularly, the product labeling containing warning messages and graphic elements follows the goal to detain consumers from buying these products and to reduce smoking overall. This labeling instrument does use information on consequences of smoking but also incorporates so called shocking pictures using emotional reaction to the symbolic images. Thus, it can be characterized as an information instrument with a behavioral spin. The question I seek to answer is, whether a certain consumer characterization is linked to this instrument design and how policy-makers use consumer characterizations in this case to create convincing policy-approaches to reduce smoking.

The paper investigates the two latest revisions of each instrument. While the Eco-label remained mostly unchanged (although it was revised in 2000 and 2009), the tobacco labeling gradually changed from neutral information (indicating tar and nicotine levels) to an incorporation of warning messages in 2001 and the addition of daunting pictures in 2013. Furthermore, the investigation concentrates on the European Commission and the European Parliament and its committees. Despite the important role of the member states in EU policy-making, I focus the interplay of the Commission and the European Parliament as the two supranational actors in European policy-making. Both can be seen as drivers of policy change on the supranational level (Hix & Høyland, 2011). The Commission is in an advanced position since it is the only actor with a full competence to initiate policies (Nugent & Rhinard, 2016). Therefore, Commission proposals on policies and instrumentation also set course in terms of the overall policy approach. The European Parliament (EP) on the other hand is the representative body of EU citizens and in a powerful position to shape EU policy (Princen, 2011; Shackleton, 2017). Furthermore, it has acquired a reputation as a driver of progressive legislation not only in environmental policy and as an actor giving a voice to minority groups and NGOs (Burns, 2013). Whether and how the Commission and the Parliament incorporate target groups or link them to their preferred policy approach and instrument design is subject to my investigation.

Analytically, I trace different consumer characterizations by investigating whether policy-makers describe target groups as rational and sovereign market actors or weak and vulnerable. Therefore, the analysis relies on a coding scheme with pre-defined key words, e.g. *information* or *choice* indicating a sovereign consumer perspective and *protection* or *misleading* marking a vulnerable target group characterization. After identifying consumer characterizations, I investigate how target groups are linked to the design and selection of instruments in a two-step approach. Following the story line approach in policy analysis, I analyze the overlapping of topics in a first step. Especially, the paper focuses on the connection of the two topics *instrument* and *target group*. If both aspects are discussed within a sentence or paragraph, we can assume that policy makers relate the two aspects to each other. Second, I investigate those passages linking instrument and target group following Mayring (2015) and his perspective of content analysis. Thus, a deeper understanding of how target group and instrument are linked can be provided.

Empirically, the paper relies on policy documents, e.g. Commission proposals, impact assessments, or committee documents written by the rapporteurs in the European Parliament and shadow rapporteurs of advisory committees (see Thierse, 2019). Furthermore, the paper is based on the minutes of the EP's plenary to account for (different) party positions and on twelve expert interviews to verify the results.

3. Sovereign consumers and information instruments in EU sustainable consumption policy

European environmental policy has gradually transformed from flanking market integration to a major area of supranational activity. While the development of a common environmental policy was based on “the fear that trade barriers and competitive distortions [...] could emerge due to different environmental standards” (Knill & Liefferink, 2013: 14) it developed into an area of intensive policy action. The focus on environmental protection, sustainable development and an integration of environmental objectives into all relevant policy areas coined supranational activity (Delreux & Happaerts, 2016; Jordan & Lenschow, 2010). The EU also focused sustainable consumption measures in the early 1990s following the Brundtland Commission and increasing attention paid to consumers' role in sustainable development (Murphy, 2001). With the introduction of the Ecolabel in 1992 the EU aimed at providing all consumers in the Union with product information on environmentally friendly products (Jordan et al., 2009). The label was revised in 2000 and 2008 to improve its visibility and proliferation in the market. The following sections investigate, how policy makers take consumers into account in these revisions and what kind of consumer behavior they assume.

3.1 Ecolabel revision 2000

The Ecolabel revision leading to a Regulation adopted in 2000 was started by the Commission in 1996 after a 4-year-long pilot phase in which the labeling scheme was set up. Following the Commission proposal, the European Parliament's leading environmental committee drafted its opinion containing the views of several other committees (e.g. for industry) advising the rapporteur. The investigation of the relevant Commission and committee documents shows that all actors in the policy making incorporate consumers in their proposals. More importantly, an assumption of sovereign consumers is evident and

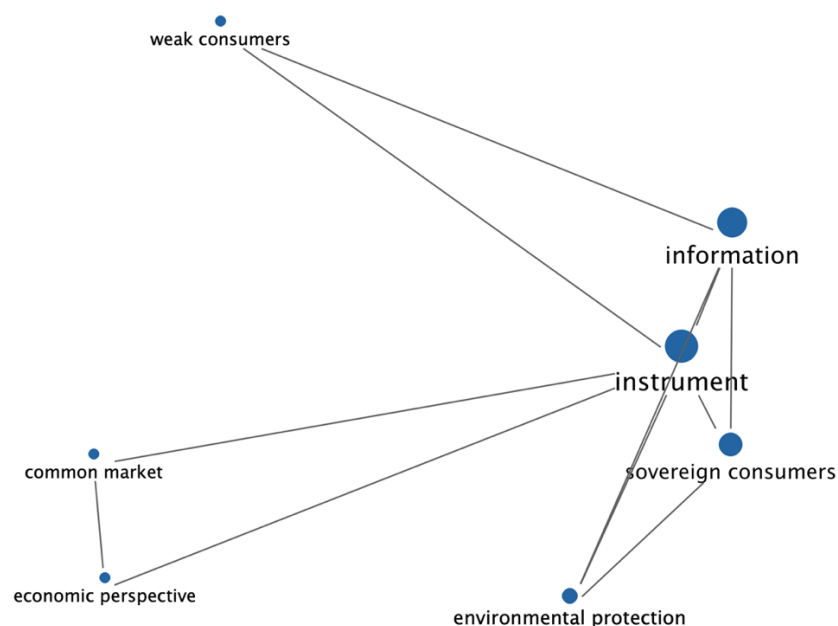
dominates all documents. Table 3.1 lists the frequency of code combinations. A combination of codes is displayed when two topics, e.g. a reference to the instrument and to the issue of environmental protection, occurs within the same paragraph.

Table 3.1 frequency of code combination in all policy making documents

Code combination	Instrument and sovereign consumers	Instrument and information	Instrument and common market	Instrument and environmental protection	Instrument and weak consumers	Instrument and economic objectives
Frequency	15	23	2	12	3	2

The analysis shows that the instrument is mostly dealt with in regard to the provision of information and by referencing sovereign consumers. To further illustrate the combination of topics in the policy making, figure 3.1 depicts a code-landscape. The closer together two topics appear on the map, the more frequent they are linked in the documents (meaning that both themes are being discussed within one paragraph). The bigger the code name is illustrated, the more numerous this one was identified in the documents.

Figure 3.1 code landscape Ecolabel revision 2000, generated with MAXQDA



The code landscape clearly shows a clustering of topics in the documents: the main cluster contains the topics *instrument*, *sovereign consumers*, and *information*. All actors

continuously deal with consumers in a way that clearly corresponds with a sovereign consumer characterization. In that context, the objective to provide information to these consumers is frequent and in conjunction with the discussion on the instrument design. While the EP also points to limitations of mere information and mentions the risks of overburdening consumers, this perspective is only marginal in the documents. Furthermore, the Commission proposed a revision of the instrument design to change the label from simply indicating environmentally friendly products to a three-level and multi-indicator label. The proposal would have included three indicators (e.g. on used resources) and rated them between one and three. The objective of this proposal was to thoroughly inform consumers and improve the amount of information communicated by the instrument. This proposal, that was well received by the Environmental Committee of the Parliament, heavily relied on the assumption of sovereign consumers and their demand for information (A4-0119/98: 28, COM 96/603: 19). The redesign was ultimately rejected due to disputes over its actual application but the discussion shows how assumptions on consumer behavior are integrated in arguments on instrument designs.

3.2 Ecolabel revision 2009

The Ecolabel was again revised in 2008 to change awarding procedures and increase its presence on the market (COM 2008/401: 4-6). The analysis shows a dominance of references to consumers corresponding with a sovereign ideal type combining instrument and addressees (see tab. 3.2). The most frequent combination of topics in the document is the combination of references to the instrument and to sovereign consumers.

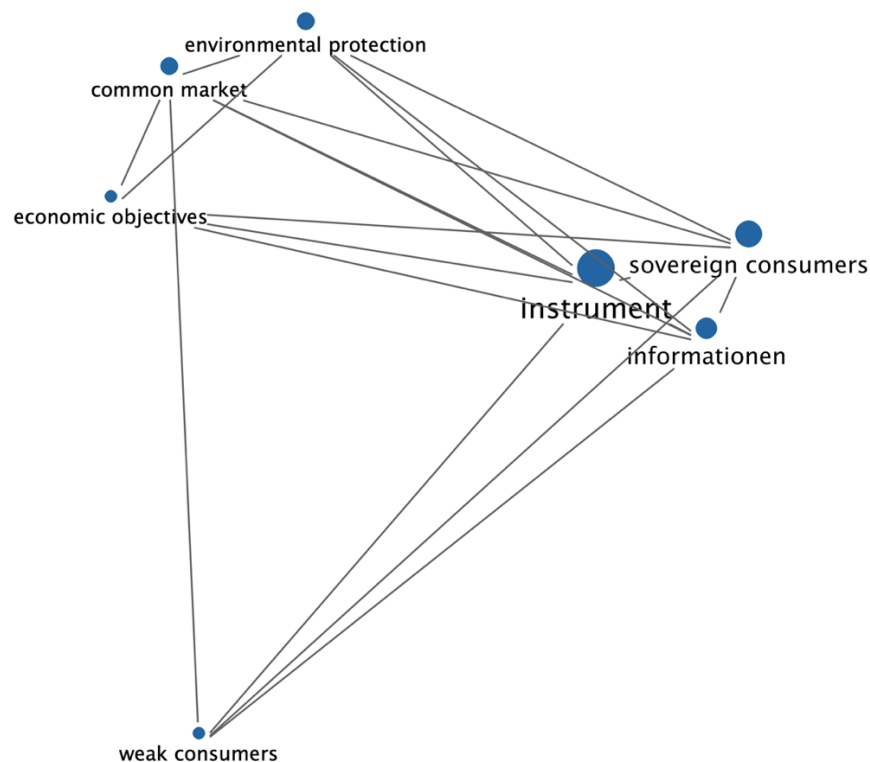
Table 3.2 frequency of code combination in all policy making documents

Code combination	Instrument and sovereign consumers	Instrument and information	Instrument and common market	Instrument and environmental protection	Instrument and weak consumers	Instrument and economic objectives
Frequency	23	19	10	10	6	5

Again, the code landscape (fig. 3.2) illustrates the clustering of themes discussed in the policy making. Even more sections of the documents are marked by an overlapping of discussions on the instrument and the mentioning of consumers compared to the revision in

2000. The way actors deal with consumers (e.g. by assuming information-seeking individuals and a rational decision-making process) corresponds almost exclusively with the sovereign consumer ideal type¹. As with the earlier revision, a reference to environmental protection or the common market is evident but only loosely coupled with the main cluster indicating the core of the discussion.

Figure 3.2 code landscape Ecolabel revision 2009, generated with MAXQDA



Additionally, the conducted expert interviews and minutes of the plenary sessions confirm these results. For instance, one MEP (S&D) emphasizes that consumers would like to have a choice. Therefore, a label should signal green products but leave the decision to individualsⁱ. Furthermore, an expert from the ALDE group stated that liberals assume a sovereign consumer and focus on market-mechanismsⁱⁱ. Thus, the instrument should indicate certain options but not limit decisions or push consumers in a more environmentally friendly direction. On the other hand, an expert from a European Consumer NGO pointed to consumers' limited capacities to process information and an overburdening of consumers in general. But the EU's approach to environmental protection rests on an integration in

¹ Throughout the documents there is no mentioning of a more nuanced consumer characterization. This is especially interesting, since the discussion on behavioral foundations, heuristics, or nudges etc. was already intense in this time period.

market processes and therefore might emphasize sovereign consumers as rational participants in market processesⁱⁱⁱ. Furthermore, an expert from the Commission's DG Environment pointed to the limits of consumer information^{iv}. While NGOs and the DG Environment seem to have more nuanced perspective on consumers, the majority of actors emphasizes aspects of consumer behavior that relate to a sovereign consumer characterization.

4. Weak, specific target groups and the turn towards a behavioral instrument in EU tobacco consumption policy

Health policy in the EU is characterized by a strong role of member states, e.g. in regard to health care or insurance systems. The European Union started to address health-related topics with programs like the Europe against cancer agenda in 1987 (Randall, 2000). Policy action in this field grew slowly: "While implicitly health has never been excluded from treaty provisions pertaining to the single market, there were no serious health competencies for decades [...]" (Greer, 2006: 138). With the Amsterdam treaty the EU gained competencies to foster health protection but "[...] national governments have [...] successfully tried to prevent the transfer of substantial health policy competences to the supranational level" (Lamping, 2005: 19). With increasing attention on tobacco products and their negative impact on citizens' health, the EU "[...] adopted a range of legislative acts relating to tobacco and tobacco products that led to the gradual build-up of a body of EU anti-smoking legislation" (Princen, 2007: 21). EU health policy concentrated on market harmonization and used supranational competencies related to the Common Market to push for stricter tobacco control (Studlar, Christensen, & Sitasari, 2011). The following sections investigate how the gradual shifts of the tobacco product labelling towards a behavioral informed instrument are based on target group characterizations.

4.1 Revision of the Tobacco Products Directive 2001

In 2000 the EU Commission proposed a draft for the Tobacco Products Directive (TPD) that addressed the production as well as the presentation of tobacco products². The Commission

² The Directive combined several policies addressing tobacco production and consumption.

recommended to prescribe warning messages on product packaging, e.g. ‘smoking kills’ to be featured on cigarette packs.

The document analysis shows that the instrument and its design is discussed in relation to target groups, the provision of information but also includes references to health protection. Table 4.1 lists the most frequent combination of topics in the policy documents. Several passages in the Commission’s proposal link the product label to sovereign consumers or emphasize the need for clear information. For example, the Commission states that the “[...] consumer has the right to be informed of the presence of [...] substances [meaning nicotine and tar] when purchasing or consuming the product and to have such information conveyed in a clear, legible and comprehensible manner” (COM 1999/594: 2). This passages hints at a sovereign consumer characterization and a crucial role for information in individual decision-making. But on the other hand, the Commission proposed the use of warning messages to underline the dangers of smoking and to overcome the limitations of neutral information: “One of the most effective methods of presenting this information is through the medium of warning labels on tobacco product packaging” (COM 1999/594: 2).

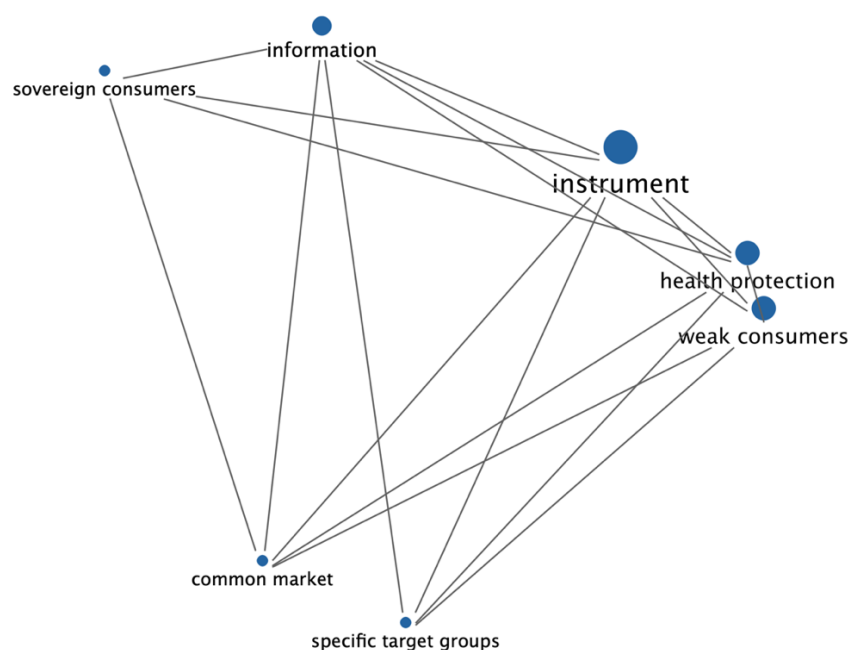
Table 4.1 frequency of code combinations in all policy making documents

Code combination	Instrument and weak consumers	Instrument and information	Instrument and common market	Instrument and health protection	Instrument and sovereign consumers	Instrument and specific target groups
Frequency	13	11	3	14	5	3

While the Commission combines an assumption of sovereign consumers as well as weak consumers and the use of warning labels, the EP’s committees emphasize the protection of specific and weak groups. For instance, the lead Committee in the EP refers to vulnerable addresses like adolescents and women (A5-0156/2000: 13) and emphasizes that there is no safe tobacco product but that every form of consumption causes health impacts (A5-0156/2000: 18). The way addressees are characterized in the documents corresponds in many cases with a weak consumer ideal type (see table 1). While the instrument is supposed to provide information to individuals on the health consequences of tobacco consumption the inclusion of warning messages is supposed to underline the information and protect the health of smokers and non-smokers. By warning consumers explicitly, the label is supposed to overcome limitations of individual decision making, the (potential) misleading effects of information and to counter a social acceptance of smoking (A5-0156/2000: 35-37). Figure

4.1 illustrates the overlapping of topics in the documents and shows the code clusters. Clearly, the instrument is discussed in relation to a weak consumer perspective and the goal of health protection. But policy makers also incorporate the objective of information or the idea of sovereign consumers.

Figure 4.1 code landscape TPD 2001, generated with MAXQDA



4.2 Revision of the Tobacco Products Directive 2014

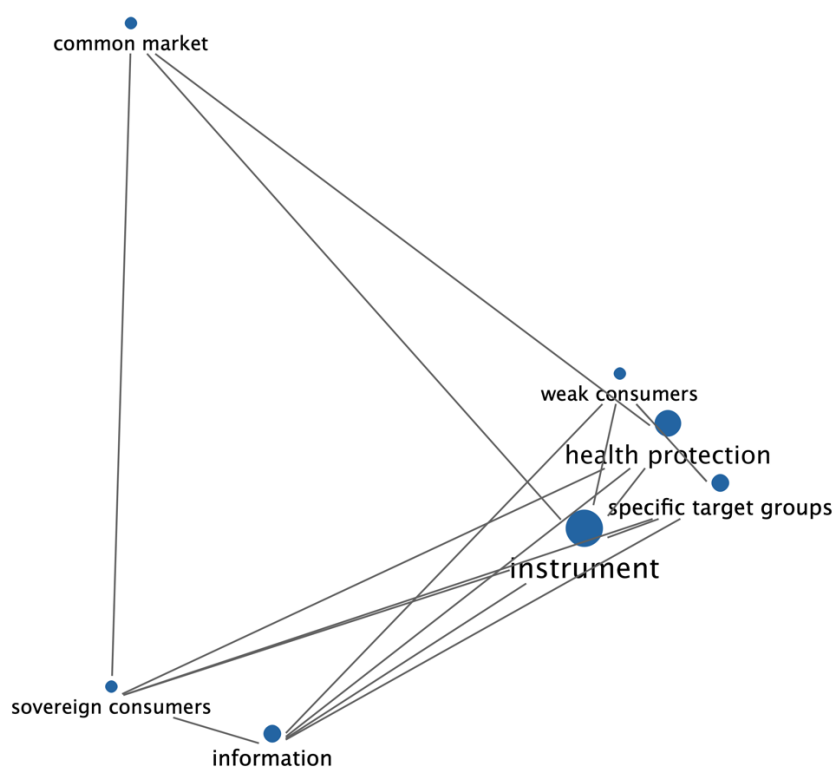
The TPD was revised in 2014 and changed the labeling of tobacco products. Warning messages were combined with graphic elements and enlarged. Overall, the document analysis shows a frequent combination of passages dealing with the instrument's design and consumers. In many cases consumers are described in a way that relates to the weak consumer ideal type. For instance, the Commission argues that information in nicotine yields "[...] have proven to be misleading as it makes consumers believe that certain cigarettes are less harmful than others" (COM 2012/788: 18). To overcome these misleading effects of product information the Commission proposed the use of combined text and graphic warning messages. This example neatly shows how the Commission combines aspects of individual behavior and the proposed instrument design to follow the objective of reducing smoking and protecting citizens' health.

Table 4.2 frequency of code combinations in all policy making documents

Code combination	Instrument and weak consumers	Instrument and information	Instrument and common market	Instrument and health protection	Instrument and sovereign consumers	Instrument and specific target groups
Frequency	17	16	4	22	7	16

To further illustrate the combination of topics, figure 4.2 demonstrates the overlapping of themes as coded in the documents. It clearly shows a clustering of references to the instrument's redesign, assumptions on individual behavior related to a weak ideal characterization of consumers, to the goal of health protection, and specific target groups. Again, this clustering indicates that the topics are closely linked in the documents.

Figure 4.2 code landscape TPD 2014, generated with MAXQDA



Especially, the reference to specific target groups is more prominent in the TPD revision compared to the policy making in 2001. This has to do with the slightly changed focus of the labeling instrument. While the text warnings were supposed to underline the information provided on tobacco packages, with the graphic labels the EU aimed at deterring individuals from smoking. This manifests in an extensive reference to younger consumers, women and others in the documents. For instance, the EP's lead committee pointed to

tobacco products designed to attract young or underaged consumers (A7-0276/2013: 17). To counter the industry's strategy, the label was redesigned to discourage tobacco consumption by especially vulnerable groups. The EP's rapporteur, Linda McAvan, emphasized this perspective: "The key aim is to stop young people from being recruited as the next generation of smokers. We know it is children, not adults, who start smoking" (EP debate 05.10.2013). Furthermore, the MEPs in favor of the TPD revision underline the relevance of measures to reduce the acceptance and attraction of tobacco products, "[...] which will help make smoking less appealing to young people so that fewer take up the habit" (MEP ALDE, EP debate 05.10.2013). Clearly, these arguments *do not* relate to an assumed rational decision-making process of consumers but to emotional or social factors discouraging smoking.

Additionally, the consulted experts stress the multi-factor approach in EU's tobacco policy that aims at changing the way tobacco consumption is seen in society. Therefore, the addition of shocking pictures is a way to "[...] make it possible to change [...] lifestyle[s]"^v. Again, this perspective on individuals relates to a weak consumer ideal type since it addresses lifestyles, routines or habits instead of an information-based decision process weighing pros and cons of smoking. It is also supported by the responsible DG in the EU Commission^{vi}. This perspective is linked to the label, its revision and redesign including shocking pictures.

4.3 Case comparison – Different target group characterizations and different instruments?

After looking into the policy making in both cases this section compares the instruments and their revisions and focuses on the design of the tools and the integration of a target group perspective.

The analysis clearly shows that in the case of the Ecolabel the policy making centers on the idea of informing sovereign consumers with an instrument that provides a neutral indication of sustainable product qualities. Both, Commission and EP use a consumer perspective that relates to the ideal type of sovereign individuals. They link this perspective to the instrument's design and thus create a story line to support this policy approach (see tab. 5.1). The overlapping of topics in the documents clearly shows the dominance of the proposed policy package combining instrument and target group. A closer look into how the actors link the instrument to consumers confirms the result. Only a few sections in the

documents address limitations of this approach or hint at a more complex decision-making process.

Table 5.1 Comparison of the instrument type, target group characterization and dominant story line in the two cases

Instrument	Ecolabel		Tobacco Label	
	2000	2009	2001	2014
Type of Instrument	Neutral information	Neutral information	Information and warning message	Warning message and shocking pictures <i>Turn to behavioral instrument</i>
Target group	Sovereign consumer	Sovereign consumer	Mainly weak consumer characterization, marginal reference to sovereign consumer	Dominance of weak consumer characterization, reference to specific (vulnerable) target groups
Story line to couple elements and streams	Instrument shall provide neutral information to consumers	Instrument shall provide neutral information to consumers	Warning messages shall support the information provided by the instrument	Instrument shall deter (potential) consumers from buying/using products

In the second case, the tobacco labelling scheme, the instrument was redesigned twice and the analysis shows a different result in regard to target group characterizations. On the whole, all actors in the policy making use a consumer characterization that relates to the weak ideal type. Commission and MEPs assume that consumers can be misled, that the presentation of products and their (perceived) attractiveness impacts the consumption behavior, and that there is not a rational decision-making process at play. Especially, in the discussion on the instrument revision in 2014 specific targets groups (e.g. adolescents) are described as vulnerable and identified as crucial for the policy's objective and the instrument's design.

These characterizations are linked to changes in the instrument's design from informing to warning and finally to shocking consumers. My analysis shows that actors combine consumer characterization and discussions on instrument designing. A closer look into the combination of topics revealed a story line in which vulnerable consumers play a crucial role for arguing in favor of the redesign (see also table 5.1).

Overall, two very different story lines combining a distinct characterization of target groups and the design of the instrument dominate the policy making in the cases. While actors in the first case link the Ecolabel to sovereign consumers, they combine weak and vulnerable target groups and the tobacco labelling in the second. The next section discusses the role these target group characterizations play for the instrument design before I link the results of this study to literature on instrument selection, behavioral governance and target groups.

5. Discussion – what role for target group characterizations in instrument selection and design

Clearly, there are differences in the way policy makers deal with consumers and what kind of decision-making process they assume. Furthermore, my investigation shows that these different consumer characterizations are linked to instrument designing. While I do not assume policy makers to think of consumers only in stereotypes the analysis points to a relevance of a distinct consumer perspective in the policy making. First, consumers are linked to the instrument frequently. Second, the assumed individual behavior is in line with the selected instrument. Therefore, I argue, that target group characterizations are a crucial element in coupling streams and to support a certain instrument or a distinct design. This is especially relevant for the redesign of the tobacco label.

Linking the development of the two instruments to target group characterizations the analysis shows that in the case of the Ecolabel assumptions on consumer behavior remain stable. Accordingly, the label was not changed. However, in the case of the tobacco label the focus on target groups changed: towards a dominant assumption of weak consumers and an additional focus on specific target groups. These changes in the target group focus are closely connected to the turn to a behavioral instrument. Policy makers used the idea of vulnerable groups to create a story line that justifies the use of an instrument that goes beyond mere information and focuses on warning and deterring consumers. Thus, the analysis shows that target groups do play a crucial role for designing policy approaches. Again, I am not assuming policy makers to simply ignore varieties in individual behavior in the case of the Ecolabel, but they emphasize the idea of sovereign consumers and a rational decision-making process to argue in favor of the policy approach and to create persuasive

policy packages. The same holds true for the second case, in which policy makers concentrate on the opposite assumption: they underline individuals' sensitivity to misleading information and manipulation, social accepted behavior, or group pressure. This perspective is linked to the instrument's design and used to justify the measures proposed. Neither the combination of weak consumers and neutral information, nor the linking of sovereign individuals to a behavioral instrument aiming at shocking consumers would make sense or constitute a reasonable policy approach.

In this regard, the perspective on policy making as a combination of elements and streams (Cohen et al., 1972; Kingdon, 2003) provides an explanation for the use of target group characterizations by policy makers. Considering target group characterizations as part of the policy stream, policy makers can combine them with instruments to present convincing packages (Zittoun, 2013). In the case of the Ecolabel, this package fits the overall approach in EU's sustainable consumption policy. While the Union aims for environmental protection it follows the idea of a green economy and focuses market mechanisms (Brand, 2012). For instance, the EU's 6th Environmental Action Program described the approach to sustainable development as "working with the market" (Decision 1600/2002: 2). Limiting options or even deterring consumers from certain products would not fit this objective. Recent research also supports this perspective. Machin shows, how the perspective of environmental modernization, emphasizing the role of markets and combining economic growth and environmental protection, developed into the dominant discourse in EU environmental policy and furthermore depoliticized discussions on alternative paths (Machin, 2019). Overall, recent research "[...] suggests a retreat of EU ambition [...]" in environmental policy (Zito, Burns, & Lenschow, 2019).

On the other hand, ambitious tobacco policy has been pushed forward, especially by the World Health Organization (WHO). With the 2005 Framework Convention on Tobacco Control (FCTC) the WHO formulated ambitious goals for tobacco policy. Most importantly, it framed tobacco as an epidemic (FCTC: v) and described measures including tobacco warning labels (FCTC Art. 11). Furthermore, the EU discussed tobacco policy in the green paper "Free from tobacco smoke" (2007). This agenda highlights the importance of protecting vulnerable and specific groups, e.g. young women (COM 2007/27: 8). Therefore, the policy stream in EU's area of health and tobacco policy provides a different interpretation of target groups (put forward by the WHO and also the Commissions own agenda on tobacco policy) that can

be linked to the instrument. Underlining the need to protect vulnerable addressees and warn potential consumers fits the label's design. Thus, the use of certain target group characterizations opens up a possibility to connect the streams.

To summarize my argument: The research shows that different consumer characterizations enable different instrument designs. Policy makers combine those instruments and target groups that make for a reasonable policy approach. While the policy stream in EU's environmental policy is focused on sovereign consumers, the stream in health policy provides a more nuanced idea of individual behavior enabling a different package of instrument, policy goal and target group. Therefore, target groups can be considered as enabling elements in the coupling of streams and the creation of policy packages. This insight is also of relevance for research on behavioral public policy.

5.2 Target groups, policy making and behavioral policy

To increase our understanding of behavioral policy and the mechanisms behind it the case of the tobacco label is crucial. The 2014 version of the tobacco label, and to some degree also the 2001 version, do not fully fit the category of information instruments. They do transport information but there are also emotional elements added to deter consumers and support a repelling message conveyed by the label. Therefore, I argue, it qualifies as a behavioral instrument. Taking Thaler and Sunstein's view (Thaler & Sunstein, 2009), the tobacco label does not forbid an option (tobacco consumption is still legal) and neither does the label change the incentives³. Thus, it qualifies as a nudge. Although this perspectives helps to understand the nature of the tool, Loer's approach takes us further in understanding the nature of the policy-making behind it (Loer, 2019). The tobacco label was focused on warning consumers. Policy makers redesigned it by adding a behavioral spin. The label is still based on the original idea of informing consumers but gradually shifted towards using emotions to underpin the information. This policy process aimed at increasing the tool's impact on individuals. However, there was no distinguished process in which policy makers appeared as choice architects. Neither did the structuring of choices, e.g. by changing the

³ There are measures changing incentives, e.g. tobacco taxes. But this aspect is not part of the labeling instrument. Furthermore, tax policy is exclusively left to the EU member states and thus not a genuine supranational tool.

decision context, or the use of defaults play a role in the instrument design⁴. Policy makers simply aimed at a more powerful design of the instrument that was already in place. The case of the Ecolabel further illustrates this aspect: While this label also aims at individual behavior change, it rests on a simpler assumption of individual behavior. In both cases policy makers aim for a reasonable way to impact consumer behavior.

The research presented in this paper shows that the conventional information instrument and the behavioral one are both selected and discussed in a similar way and are subject to policy making processes. Behavioral instruments might be an innovation in policy makers' toolbox but the process of instrument selection, at least in the case of tobacco labeling, does not vary from the process leading to 'conventional' instruments. Rather, the difference in instrument design is linked to opportunities for a coupling of instrument and target group to create a convincing policy package.

While Thaler and Sunstein propose nudges as a completely new type of tool to enact governmental power, the evidence presented in this paper rather points to gradual changes in instruments. Therefore, the perspective on policy makers as choice architectures should be used with great caution. There are examples in which different designs of policy instruments are discussed against the background of insights from behavioral science or where policy integrates the suggestions of behavioral experts. However, the cases considered in this paper point to a different mechanism. First, policies follow existing paths. While gradual changes are possible, a complete overhaul of a policy approach in place seems unlikely (Rose, 1990). Second, singular policies are part of broader policy areas that set goals, or problem interpretations (Rochefort & Cobb, 1993). The case of sustainable consumption policy in this paper shows how the focus on market mechanisms predetermines, or at least limits, the available options for instruments. Therefore, policy areas need to provide opportunities for instruments that incorporate human flaws and behavioral aspects. The case of EU's tobacco policy shows how a focus on vulnerable target groups enabled a coupling of weak addressees and a behavioral instrument. Third, to understand the use of behavioral instruments, we must look into the actual policy making process. The idea of streams and their coupling proved to be useful in understanding the processes leading to different instruments. Within the setting of EU policy making the Commission played a crucial role in

⁴ In fact, consumers still can buy tobacco products at checkout counters in some EU member states. The labeling scheme does not address this aspect of consumer behavior. It simply is a way to inform them of the consequences of tobacco consumption.

proposing the use of shocking pictures and introduced the story line containing weak addressees and an instrument to warn consumers. Thus, it appeared as a policy entrepreneur proposing a policy package that other actors – especially the EP – considered proportionate and reasonable (Kingdon, 2003; Zittoun, 2013). Fourth, research on nudges puts a focus on behavioral science to inform policy making. While this certainly is a crucial aspect in designing behavioral interventions, we should also consider science's limited influence. For instance, research on sustainable development proposes much stricter measures to impact consumer behavior (Di Giulio & Fuchs, 2014). Yet, policy has not adapted these ideas, since they don't seem to fit the overall focus on market mechanisms. Therefore, research on behavioral instruments must consider how policy makers use, or ignore, scientific evidence. Additionally, we should keep established explanations for policy change in mind. For example, the idea of policy diffusion is crucial to understand changes in instruments. While the FTC importantly pushed for stricter measures, some countries already used pictorial warning labels, e.g. Canada introduced the measure in 2001 (Hammond, 2011). Therefore, an explanation for the use of these measures might be found in policy makers adopting tools and designs that worked in other countries.

Conclusion

This paper concentrated on two policy instruments in EU policy aiming at individual behavior change. While the Ecolabel can be defined as a conventional information instrument, the tobacco label is a behavioral instrument (adding a behavioral spin to information). To better understand the mechanisms leading to the use of different instruments I proposed to focus on target group characterizations and their use in the policy making. By using ideal-type characterizations of consumers as sovereign or weak to investigate different conceptions of target groups I could show how policy makers emphasize certain features of individual behavior to create reasonable policy packages. Therefore, target group characterizations can be seen as a facilitating element enabling the use of certain instruments. Furthermore, the broader policy context, e.g. the policy areas or international agendas, impact the availability of consumer characterizations. This novel perspective on policy making and instrument selection proved useful to understand the mechanisms behind behavioral policy. The analysis shows that sovereign consumers and rational decision-making processes are emphasized in

the context of information instruments whereas more nuanced forms of individual behavior are underlined in relation to instruments going beyond neutral information.

In regard to research on nudges and behavioral instruments this paper argues to consider policy making processes and the context of instrument selection and design. While behavioral insights can have a transformative effect on policy approaches, the cases in this paper suggest that policy makers do not act as choice architects but simply aim for gradual changes in instrument design. In changing instruments, they can turn to behavioral add-ons if the policy area and the dominant consumer characterization are favorable. Overall, I suggest to be very attentive to these processes and factors impacting instrument designing. For instance, even the tobacco label is subject to gradual policy change. Therefore, policy research must develop comprehensive approaches integrating behavioral instruments as well as factors facilitating their use. By proposing to focus target group characterizations this paper puts forward an analytical perspective that increases our knowledge on mechanisms leading to behavioral instruments. While policy design research mostly applied a target groups perspective to the analysis of (re)-distributive policies it also proved useful in the context of non-interventionist approaches. Furthermore, the concept of nudges as behavioral spins changing but not transforming 'conventional' instruments is another starting point for more comprehensive research on behavioral policy.

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ⁱⁱ Expert interview, 19.07.2018.

ⁱⁱⁱ Expert interview, 04.04.2017.

^{iv} Expert interview, 22.06.2017.

^v Expert interview, 27.06.2017.

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