



The Centre for European Policy Studies  
Thinking Ahead for Europe



# European Model: Principal Challenges of EU Regulatory Culture

Christian Egenhofer

Senior Fellow

Centre for European Policy Studies (Brussels)

[www.ceps.be](http://www.ceps.be); +32 2 229 3911



American University Washington College of Law  
Washington, D.C., 17 & 18 November 2005

**EU ETS has strongly been influenced by US SO<sub>2</sub> and NO<sub>x</sub> Budget Trading Programme but big differences exist.**

**Key difference is higher degree of decentralisation of EU ETS (even if compared to NO<sub>x</sub> Budget Trading Programme) ← result of EU political system.**

**EU consists of (25) sovereign member states with specific legal systems & traditions as well as languages. Centralisation not an option.**

**This has important consequences for implementation:**

**The EU sets framework legislation; Implementation is up to Members States. Basic consensus (“multi-partisanism”) is crucial.**

# Principal elements of EU implementation

- **EU framework legislation (incl. some implementation provisions)**
- **Implementation and enforcement by Member States**
- **Supervision by European Commission and European Court of Justice**
- **Bound by EU primary, secondary and case law**

## Management of Implementation

### Formal

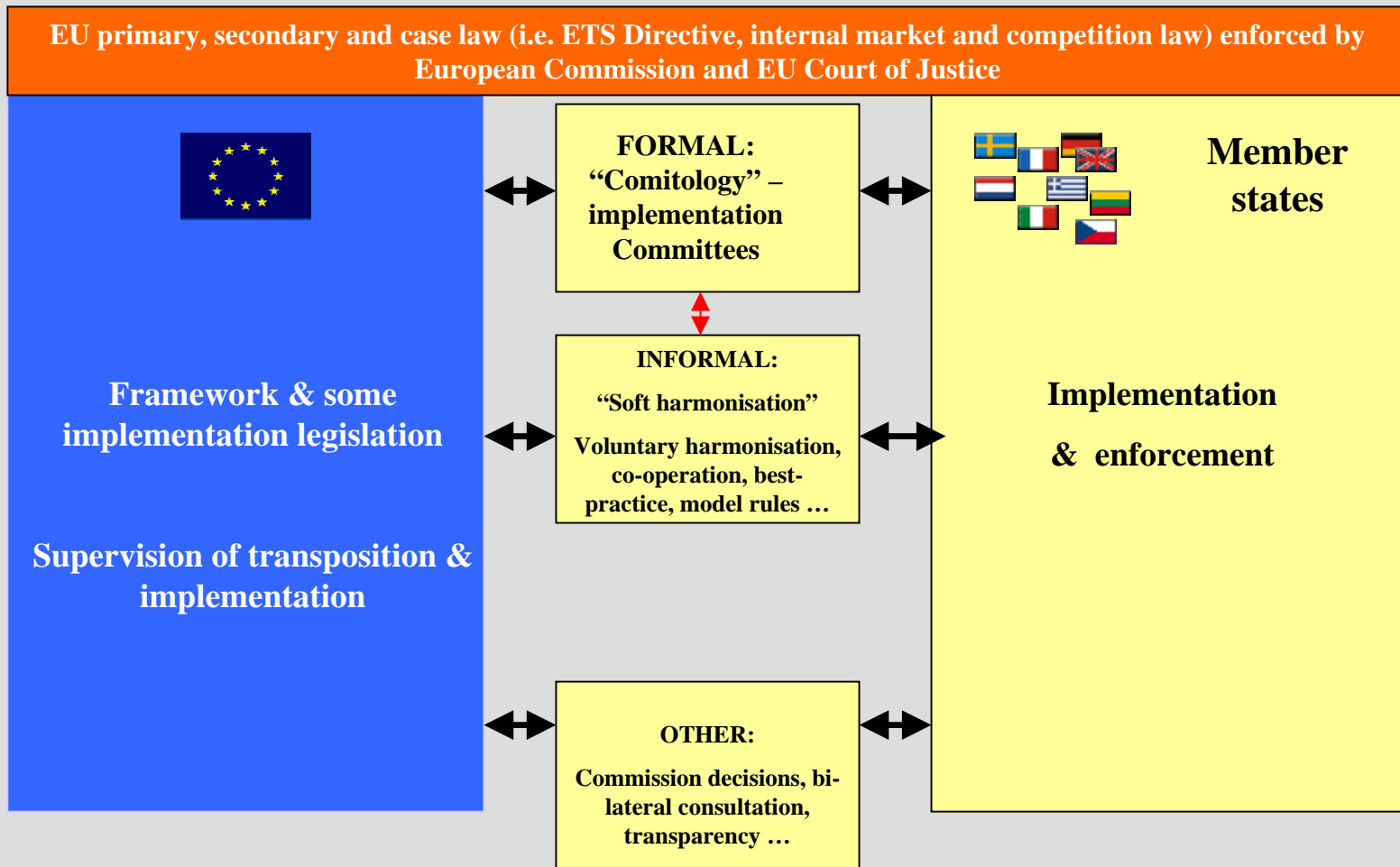
- **Implementation (“Comitology”) Committees consisting of European Commission and Member States officials take implementation decisions;**
- **Built-in review of legislation allows for more centralisation (if necessary);**
- **Commission and Court decisions**

## Management of Implementation (2)

### Informal

- **Voluntary co-operation of member states (e.g. joint registries or licensing of software);**
- **identifying and comparing best-practices by member states (e.g. model-rules);**
- **Market solutions (“delegation to the market”)**
- **Networks – EU-wide and beyond (e.g. IMPEL, INECE);**
- **Stakeholder groups**

# Decision-making & Implementation in the EU



# The EU MRV Framework

- **Each installation covered by EU ETS needs to apply for a GHG emissions permit, which requires monitoring and reporting of emissions;**
- **Commission adopts legally binding *Guidelines for Monitoring and Reporting (MRG)***
- **MRG require member states to develop monitoring methodologies for installations in their jurisdiction**  
[ **Combination of emissions factors, fuel use and production data**]

- **MRG sets different “tiers” of monitoring methodologies;**

**[Installations are required to use “top tier” unless impractical or excessive costs – Competent Authority of member states can grant waiver]**

- **Installation-specific methodologies are approved by Competent Authority**

**[All member states except Germany have made installation-specific methodology part of permitting procedure]**

- **Operators of each installation report emissions according to methodology specified in permit;**
- **Independent Third-Party Verifier must verify self-reported emissions**

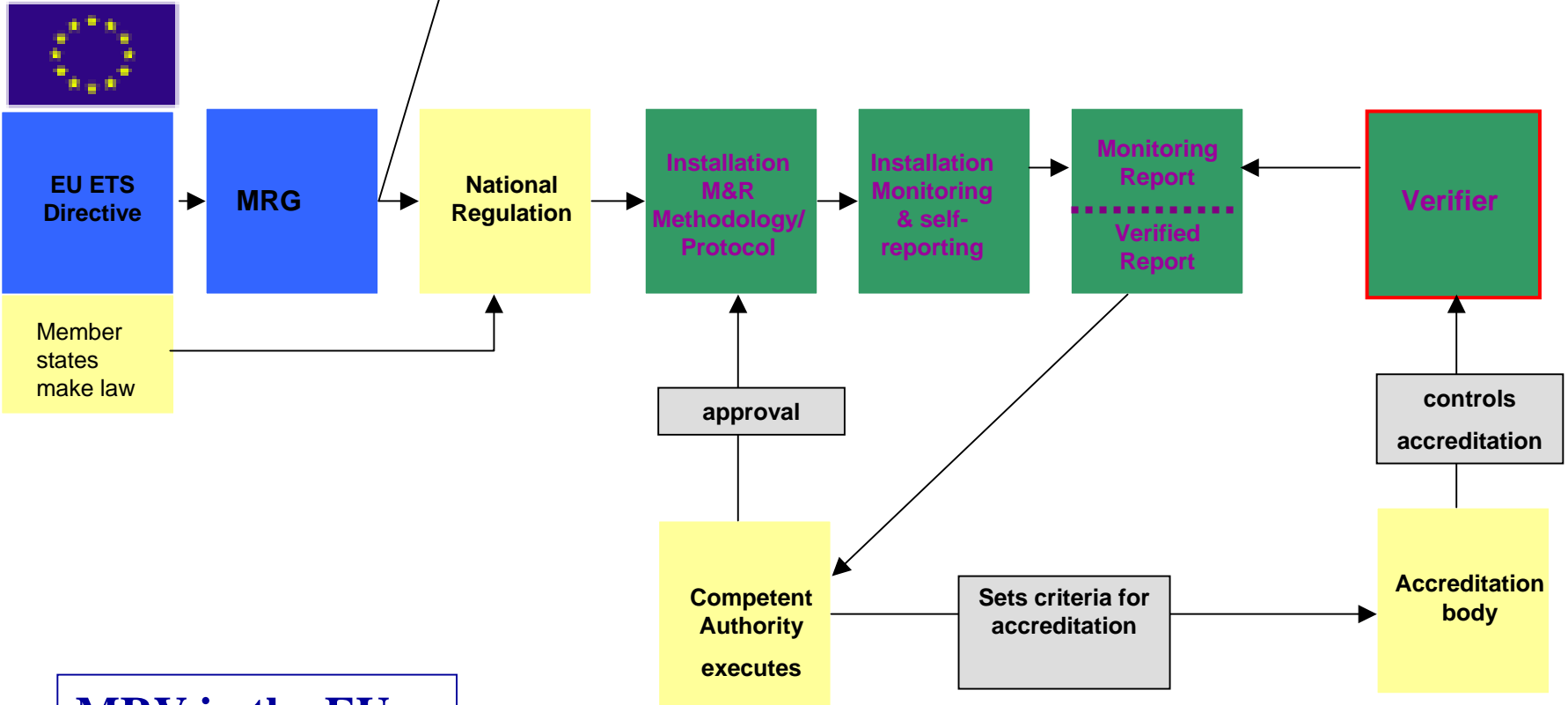
**[Verifier assesses “whether monitoring methodology applied by the operator complies with the installation’s ... methodology as approved by the Competent Authority...;**

**In principle third party verifier; private firm must be accredited by member state]**

- **Verifiers have the final word**

**[Competence of verifiers are crucial; Accreditation of verifiers is central element of EU MRV process**

**Steps towards harmonisation and mutual recognition of accreditation are taken]**



**MRV in the EU**

# **Administrative certainty through routine programme operation**

- **Standard validation protocol to ensure that monitoring protocols proposed by operators in their request for permit are approved in uniform way (e.g. NL)**
- **EA (European Co-operation of Accreditation bodies has adopted Guidance on verification)**
- **More Guidance by European Commission is expected.**

# Reliance on information technology

**Some member states (e.g. Finland, Netherlands, UK) have started to use standardised electronic formats.**

# Penalties

- **Non-discriminatory and automatic penalties (do not act as price caps)**
- **Administrative and criminal penalties according to national laws (but relevant provisions need to be notified to the European Commission by member states)**

## Public Access to Data

- Emissions data will be available with the first M&R cycle. Art. 17 requires a full emissions report for each installation;
- The member states authorities will display verified emissions per installation, allowances surrendered and whether the installation is in compliance.
- Emissions figures for each installation can be accessed through the Community Independent Transaction Log to the European Commission by member states)

# Registries

- EU registries are “hub and spokes” system with EU transaction log and 25 member state registries, which communicate through standardised protocols;
- Member states will develop joint registries; software is already licensed

# **Future EU Compliance Challenges :**

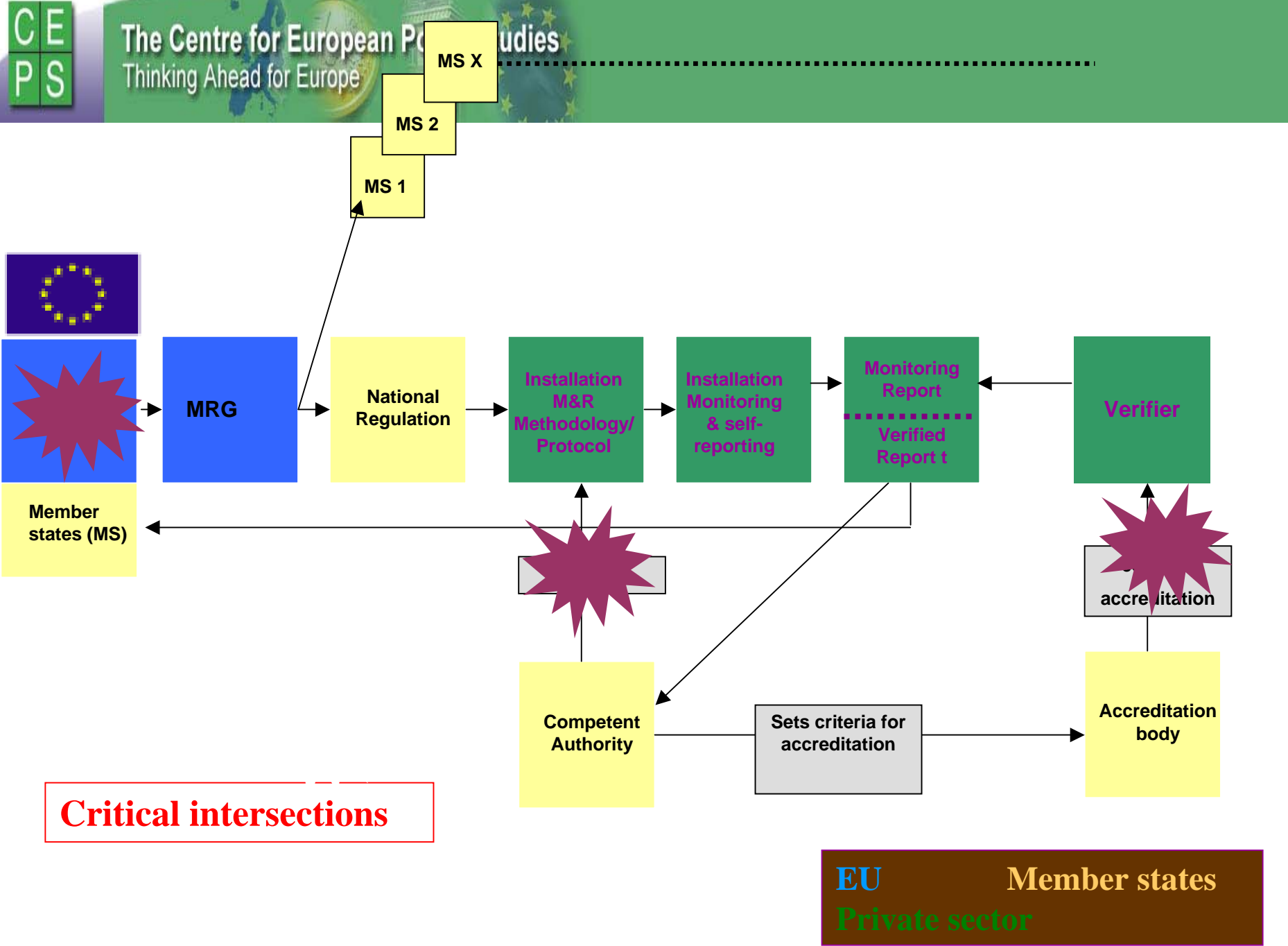
## **Capacity Building and Cost consciousness**

# 1. Clarification of institutional responsibilities

**Current responsibilities for MRV lies with European Commission, 25 member states, even more Competent Authorities, 11,500 installations, a yet uncertain number of verifiers and accreditation bodies.**

**Critical intersections are:**

- **European Commission – member states**
- **Competent Authorities – companies**
- **Accreditation bodies - verifiers**



**Critical intersections**

## **2. Consistency of Member State Implementation**

**Transposition in national legislation needs to take into account the national institutional landscape and legal circumstances**

- Too many differences affect level playing field**
- Risk of regulators' intervention**

### **3. Verifiers: competence and accreditation**

- **No record of verifiers**
- **Rules for accreditation**
- **“Internal market for verification” (e.g. cross-border operation of verifiers)**

## 4. Cost considerations become more important

### Verification

- Harmonisation of verification
- Harmonisation of accreditation
- EU-wide accreditation or mutual recognition

### Monitoring

- Requirements for small installations

**M&R Guidelines (MRG) will be  
revised in Spring 2006.**



The Centre for European Policy Studies  
Thinking Ahead for Europe



**CENTRE FOR  
EUROPEAN  
POLICY  
STUDIES**

Place du Congrès 1

B-1000 Brussels

T: +32 2 229 3911

F: +32 2 219 4151

[www.ceps.be](http://www.ceps.be)

[Cegenhofer@ceps.be](mailto:Cegenhofer@ceps.be)