

A changing playing field:

European interinstitutional relationships and the negotiating positions for climate conferences

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List of abbreviations

COP	Conference of the Parties
DG XI	Directorate General of the Environment
EC	European Community
EP	European Parliament
ETS	Emissions Trading System
EU	European Union
G-77	Group of 77
GHG	Greenhouse gas
INDC	Intended Nationally Determined Contribution
LDC	Least developed countries
LULUCF	Land use, land use change and forestry
MEP	Member of the European Parliament
MLG	Multilevel governance
NDC	Nationally Determined Contribution
QELRO	Quantified Emission Limitations and Reduction Objectives
QMV	Qualified majority voting
SEA	Single European Act
UNFCCC	United Nations Framework Convention on Climate Change
WPIEI	Working Party on International Environmental Issues

1 Introduction

On the second day in office of the new European Commission (hereafter: Commission), Commission President Ursula von der Leyen announced the European Green Deal during the opening speech of the 25th Conference of the Parties (COP) in December 2019 in Madrid.¹ The fact that she announced these plans is emblematic for the fact that the Commission plays a leading role in pushing for ambitious plans for combating climate change both in the internal and the external policies of the European Union (EU). During the COP in Madrid the Commission played an important role in representing the EU. However, the European Parliament (EP) played a much less prominent role during this conference and makes itself heard by adopting resolutions before the COP.² The actions of the European institutions and the member states at the COP reveal only a small portion of a larger process. The European participation to international climate conferences is a complicated process that has changed significantly over the last two decades. This thesis aims to disclose the process that precedes the participation to the COPs and how this process has changed over the years.

Throughout the last three decades, the EU has been an active international player during the COPs. These conferences are the yearly gatherings of the countries signatory to the United Nations Framework Convention on Climate Change (UNFCCC), which is aimed at preventing human activity from having a dangerous effect on the climate system. The European Union was one of the signatories of the 1992 treaty and has participated in the COPs since then.³ Before the EU participates in each of these COPs, a negotiating position is formulated which outlines the aims of the EU. Formulating this negotiating position takes over a year and is a process in which the member states, the Commission and the EP are involved.

The Commission and the EP nowadays enjoy a reputation of being climate ambitious. In addition, in the last twenty to thirty years we have seen their position within Europe rise in prominence. Therefore, one might expect that their position in international climate conferences have mirrored this development. However, the EP only fulfils a minor role in both the preparation and the participation of the COP at the time of Madrid. The Commission, on

¹ Commission, ‘Speech by President von der Leyen on the occasion of the COP25 in Madrid’, 2 December 2019. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6651 [Accessed on 29 June 2020].

² European Parliament, ‘MEPs push for high ambitions at the COP25 in Madrid’, 9 December 2019. Retrieved from: <https://www.europarl.europa.eu/news/en/press-room/20191209IPR68608/meps-push-for-high-ambitions-at-the-cop25-in-madrid> [Accessed on: 30 June 2020].

³ S. Oberthür and H.E. Ott, *The Kyoto Protocol: International Climate Policy for the 21st Century* (Berlin 1999) 33-34.

the other hand, has garnered a central position in both the internal European negotiations as well as in the external representation.

This thesis will investigate how the relations between the institutions and member states of the EU in coming to a negotiating position for the COPs have changed between 1997 and 2015. Over this period, climate change has become a much more politically salient topic and the COPs have become much more politicised. By using a multilevel governance (MLG) framework, this thesis will argue that the dynamics between the levels have intensified over the years and that the Commission was the main beneficiary of this process.

This thesis is divided into several parts. Firstly, Chapter 2 contains a review of the literature on the EU as an actor in external climate policies and its internal climate policies. After that, Chapter 3 will sketch the theoretical framework that is used to analyse the changes over the period from 1997 until 2015. This chapter will also go into the methodology used to research the subject. Then, the empirical section of the thesis starts. Chapter 4 gives an overview of the legal setting of the preparations for the COP. This chapter will investigate how the institutional powers are divided in the treaties and how treaty changes have altered these relations over the two decades that are studied. Chapters 5, 6, and 7 are case studies of the three different COPs: Kyoto, Copenhagen, and Paris. In these chapters, the process of coming to a European negotiating position for the conferences will be analysed. Chapter 8 contains the conclusions of this thesis and will place the findings of this research in a broader context.

2 Literature Review

There is a vast body of academic literature focusing on European climate policy and international climate diplomacy. This literature review will give an overview of the relevant literature in four categories. Firstly, an overview of the literature on the EU as an international actor in climate negotiations will be given. Secondly, a short overview of the EU's internal climate policies will be given, since these are strongly linked to its external actions. Thirdly, the literature that connects the external climate diplomacy of the EU to internal politics will be discussed. Fourthly and lastly, the literature that specifically investigates the policy process that precedes the negotiating position for COPs will be discussed. We will see that the EU in international climate diplomacy is often deduced to a single actor and analysed from an external point of view. This chapter will show that an analysis of the intra-EU process that leads up to the negotiating positions is duly needed.

2.1 European external climate policies

Much has been written on the European participation to external climate negotiations. The majority of these works can be categorised into one of several themes. One of these themes is the actorness of the EU. Actorness entails the extent to which the EU is able to behave like a single actor in international negotiations, as opposed to acting as a group of individual countries.¹ Scholars have elaborated on actorness by connecting several determining factors to it, such as preference coherence among the member states, the autonomy of the negotiating party, and the recognition that third countries give to the EU as a negotiator on the international stage. Groenleer and Van Schaik argued that during the late 1990s and early 2000s the EU showed a high degree of actorness, mostly due to a convergence of member states preferences that led to firm negotiating positions.² Groen and Niemann also argued that preference coherence among the member states was an important factor for determining the EU actorness. In their case study of the COP in Copenhagen in 2009 there were too many differing preferences among the member states which led to a weak negotiating position. Consequently,

¹ G. Sjöstedt, 'The EU Negotiates Climate Change. External Performance and Internal Structural Change', *Cooperation and conflict* 33:3 (1998) 227-56: 227-29.

² M.L.P. Groenleer and L.G. van Schaik, 'United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol', *Journal of Common Market Studies* 45:5 (2007) 969-98.

the EU lacked actorness and it was unable to secure its interests at the conference in the Danish capital.³ While the literature on actorness provides important insights in the way the EU behaves during international (climate) negotiations, it also has limitations. For example, it mostly describes the relationship between the member states and the EU negotiating party but has relatively little eye for the European institutions, most notably the Commission. This is a serious limitation, as we will see later that the Commission has played a very important role in the pre-COP negotiations throughout the years.

In other strands of literature on the subject, the EU has been simplified even further. The literature on actorness simplifies the Union to a mostly bilateral relationship between the member states and the EU negotiating team. Van Schaik and Schunz reduce the EU to a mostly unilateral actor. They have tried explain what the main drivers were of the EU external climate policies. The multilateralism of the Union was briefly mentioned, but the role of the member states and different institutions was barely discussed.⁴ Other scholars, too, have paid little attention to Europe's internal differences. The EU is presented as an actor that is able to negotiate with a single voice and a single strategy, even though it is – in reality – a multi-layered and multilateral player.⁵

Another strand of literature on the external climate policies of the EU focuses on its role as a leader on the international stage. The EU had established its position of leadership in the field of international climate negotiations in the 1990s by striving for an ambitious Kyoto protocol and higher emission reductions.⁶ Oberthür and Roche Kelly have argued that the climate leadership the EU showed was an attempt at strengthening its position on the world stage and within Europe itself. They also argued, however, that the EU's 'soft leadership' – which is based on leading by example – in the 1990s and 2000s was ineffective. European internal climate policies were not ambitious enough to serve as an example for the rest of the world.⁷ Following the COP in Copenhagen in 2009, many commentators have argued that the climate leadership that the EU had shown in the preceding decade was crumbling. The

³ L. Groen and A. Niemann, 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorness and effectiveness', *International Relations* 27:3 (2013) 308-324: 318-320.

⁴ L. van Schaik and S. Schunz, 'Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm- or Interest-Driven Actor', *Journal of Common Market Studies* 50:1 (2012) 169-186.

⁵ S. Oberthür and L. Groen, 'Explaining goal achievement in international negotiations: the EU and the Paris Agreement on climate change', *Journal of European Public Policy* 25:5 (2018) 708-727.

⁶ S. Oberthür and M. Pallemerts, 'The EU's Internal and External Climate Policies: an Historical Overview', in: S. Oberthür and M. Pallemerts eds., *The New Climate Policies of the European Union. Internal Legislation and Climate Diplomacy* (Brussels 2010) 27-64: 33-36.

⁷ S. Oberthür and C. Roche Kelly, 'EU Leadership in International Climate Policy: Achievements and Challenges', *The International Spectator* 43:3 (2008) 35-50: 39-44.

European failure of securing its goals for Copenhagen marked the end of its ‘soft’ leadership.⁸ After 2009, the Union started mediating on the international stage, instead of being a leader by example.⁹ Parker et al. have underscored this shift. However, they argue that the EU is still considered to be one of the leading actors by 2015.¹⁰ In sum, we have seen that the position and the strategy of the EU within international climate diplomacy has changed over our time period. We will see below that these shifts are reflected in the pre-COP negotiating processes.

2.2 European internal climate negotiations

As we have seen above, the success of external climate policies is often linked to the success of the internal climate policy: the EU leads by example. As we shall see in Chapter 4, this holds true from a legal perspective as well. Therefore, it is important to shortly discuss the literature on the internal climate policies of the EU. This literature is more often based on economics, environmental or policy studies. Scholars that focuses on the European internal climate policies from an International Relations perspective are relatively scarce. The literature strongly focuses on the relations between the member states and the supranational European institutions. Wettestad et al. argue that while the member states hold a considerable amount of influence on the degree of integration of climate policies. However, the supranational institutions – most notably the Commission – also have significant freedom to push for supranational solutions and have the capacity to influence the future positions of member states. The Commission strived for greater centralisation of the emission trading scheme (ETS) and subverted member state opposition by targeting their industry directly.¹¹ Others, such as Schreurs and Tiberghien, have argued that the supranational competencies have fortified over the years. They argue that the ambitions of multiple actors, such as some member states and the Commission, have led internal climate policy to become a more supranational affair within the European system of multi-level governance.¹² Other scholars also emphasise the importance of multi-level

⁸ S. Oberthür, ‘The European Union’s Performance in the International Climate Change Regime’, *Journal of European Integration* 33:6 (2011) 667-682.

⁹ K. Bäckstrand and O. Elgström, ‘The EU’s role in climate change negotiations: from leader to ‘leadiator’’, *Journal of European Public Policy* 20:10 (2013) 1369-1386: 1382-1383.

¹⁰ C.F. Parker, C. Karlsson and M. Hjerpe, ‘Assessing the European Union’s global climate change leadership: from Copenhagen to the Paris Agreement’, *Journal of European Integration* 39:2 (2017) 239-252: 248-249.

¹¹ J. Wettestad, P.O. Elkeland and M. Nilsson, ‘EU Climate and Energy Policy: A Hesitant Supranational Turn?’, *Global Environmental Politics* 12:2 (2012) 67-86.

¹² M.A. Schreurs and Y. Tiberghien, ‘Multi-level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation’, *Global Environmental Politics* 7:4 (2007) 19-46: 22.

governance and argue that the climate change mitigating efforts in different levels of governance reinforce each other.¹³ The role of multi-level governance will be further elaborated upon in Chapter 3.

There are also many scholars who have put emphasis on the role of the member states. After all, diverging interests among member states remain a major impediment to a harmonised European policy.¹⁴ In recent years, member states from Central and Eastern Europe have proven to be critical opponents of many of the climate policies. These member states, such as Poland, Hungary, Slovakia and Romania, argue that they have little to gain from them and the costs are high. Consequently, they have blocked several proposals of binding targets concerning ETS or energy-efficiency.¹⁵ On the other hand, however, there also exists a sizeable group of member states – and some supranational institutions – that have pushed for more ambitious climate plans. Skovgaard has argued that this dichotomy within the Union has only grown in the last ten years. The financial crisis induced politicians to use more polarised frames, which has made the search for common ground more difficult.¹⁶

This is not the place to conclude whether the internal climate policies of the EU are determined more supranationally or intergovernmentally. The process and dichotomy above extend into the external climate policies are relevant to the negotiating position for the COPs in four ways. Firstly, Europe's credibility as leader by example on the international stage is based on its internal performance. Secondly, we will see in Chapter 4 that the legal status of internal climate policy determines the distribution of competences at the external level. Thirdly, we will see that the dichotomy between ambitious member states and institutions on the one hand and conservative member states on the other is also present in the pre-COP negotiations. Fourthly, we will see that the process of negotiating the negotiating position is partly a direct extension of internal governance, especially in Chapter 6.

2.3 Linking the national, the European, and the global level

¹³ M. Jänicke and R.K.W. Wurzel, 'Leadership and lesson-drawing in the European Union's multilevel climate governance system', *Environmental Politics* 28:1 (2019) 22-42: 37-38.

¹⁴ K. Szulecki et al., 'Shaping the 'Energy Union': between national positions and governance innovation in EU energy and climate policy', *Climate Policy* 16:5 (2016) 548-567.

¹⁵ J.B. Skjaereth, 'Linking EU climate and energy policies: policy-making, implementation and reform', *International Environmental Agreements* 16 (2016) 509-523: 519.

¹⁶ J. Skovgaard, 'EU climate policy after the crisis', *Environmental Politics* 23:1 (2014) 1-17.

While there is literature that shows how internal climate policies influence the European external position, there are few works that elaborately connect the internal governance levels to the international negotiations. An example of such a work is that of Wurzel and Connelly. Their book features several chapters describing member states and their stance towards both towards the internal and external EU climate policies, as well as their position on the global stage. In addition, by using multi-level governance theory they are able to show how the member states use different levels of governance to pursue their interests.¹⁷ For example, it is argued that Germany ‘uploads’ its ambition policies to the European level so that it avoids domestic backlash.¹⁸ Schreurs and Tiberghien have, in the same article as above, also given due attention to the multi-level character of the EU in climate negotiations. In their article on the climate leadership of the EU, they analyse various different member states and institutions in the EU and how they – at different times – all fulfilled a leadership role in climate policy. According to them, the European system created a competitive arena which incentivised them to take on a leadership role.¹⁹ Jordan et al. have continued on this framework and linked the internal European politics on climate change to the international behaviours of the EU on the subject. Their analysis gives greater consideration to external influences from outside the EU, and discusses several paradoxes that haunt European external climate policy. These paradoxes are characterised by a European wish for greater unity and decisiveness in external politics on the one hand and a limiting factor, such as internal division or limited supranational powers, on the other hand.²⁰

These contributions are very valuable to understanding the role and the workings of the EU in global climate change politics. One cannot fully understand the position of the EU on these topics if the internal side of European politics is not considered. The works above provide good examples of how the different governance levels can be linked within climate policies. This thesis will add to this body of literature by linking the national, European and international level in the case of the negotiating position for the COPs.

¹⁷ R.K.W. Wurzel and J. Connelly, *The European Union as a Leader in International Climate Change Politics* (Abingdon 2011).

¹⁸ M. Jänicke, ‘German climate change policy: political and economic leadership’, in: R.K.W. Wurzel and J. Connelly, *The European Union as a Leader in International Climate Change Politics* (Abingdon 2011) 129-47: 142.

¹⁹ Schreurs and Tiberghien, ‘Multi-level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation’, 22.

²⁰ A. Jordan et al, ‘Understanding the Paradoxes of Multi-level Governing: Climate Change Policy in the European Union’, *Global Environmental Politics* 12:2 (2012) 43-66.

2.4 COP preparations

While there is ample literature on the EU in external climate politics and its participation to the COPs, there are few works that study the EU internal process that precedes the participation. A notable exception is a report by Ringius, which contains a detailed study of the process that preceded the European participation to the Kyoto negotiations. He gives a detailed account of the process that led up to the European burden sharing agreement.²¹ More recently, Christian Downie showed the power struggles that took place in the various member states' government and in Brussels prior to the COPs in Berlin, Kyoto, and the Hague. He analysed the power struggle within the national governments and on a European level that led to the ambitious negotiating positions of the late 1990s.²² These works provide valuable insights into the EU's participation to the COPs, but also to the workings of European climate change policy more generally. While the COPs and climate change in general have only become a more salient subject over the last two decades, similar studies that dive into the European preparations prior to more recent COPs are absent. This thesis will add to this body of literature by not only researching the intra-EU negotiating process before Copenhagen and Paris, but also by providing a temporal comparison between the COPs.

2.5 Conclusion

This chapter has shown that while there is a sizeable body of literature on the subject of European climate policy and the European participation to the COPs, this subject area is far from saturated. However, there are several shortcomings in the literature that this thesis will address. In addition, this thesis will also expand and build upon much of this literature. Firstly, there is a tendency in the literature to portray the EU as a single actor in international climate conferences, as if it functions as one of its member states. However, it is a highly multipolar entity whose inner workings cannot be easily compared to those of other national governments. This thesis will do justice to this and analyse the EU's participation to the COPs with its multipolar nature in mind. Secondly, this thesis will add to and build on the existing literature on the multilevel policymaking on climate change within the EU. There is some literature that

²¹ L. Ringius, 'Differentiation, Leaders and Fairness. Negotiating Climate Commitments in the European Community', *Center for International Climate and Environmental Research – Oslo* 1997:8 (1997) 1-49.

²² C. Downie, 'Shaping International Negotiations from within the EU: Sub-State Actors and Climate Change', *Journal of European Integration* 35:6 (2013) 705-721.

analyses external climate policy from this perspective, but a lot of processes, such as the negotiating positions, are as of yet unexplored. Thirdly, this thesis will add to the limited list of literature on the negotiating positions. Works that analyse the negotiating positions and the processes that lead to them for more recent COPs are very scarce.

What the literature has also shown us is the more general relevance of analysing the process that leads to the negotiating period over a longer period of time. Investigating this process grants us insights into how internal climate policies influence the external behaviour of the EU and vice versa. In addition, it will grant us insights into the functioning of the EU as an international negotiator in a wider setting. Lastly, the temporal element of this thesis will grant us an insight into how external climate policies have evolved over time.

3 Theoretical and methodological framework

3.1 Multi level governance theory

In order to analyse the evolution of institutional relations in the process of coming to the negotiating positions, this thesis will use MLG theory. This theory was devised by Gary Marks and Liesbet Hooghe in the early 1990s and positioned itself in between supranationalism and intergovernmentalism. MLG sees the EU as an arena with several different actors and no clear constitution. This means that the relations between institutions and member states are often ambiguous.¹ What further complicates this arena is the fact that there exists a degree hierarchy and that institutional actors within it are highly heterogeneous. Or, put in different terms, the Commission, EP, and the member states are very different types of actors and their relations are subject to hierarchical and institutional rules.² Over the years, MLG has seen many different types of interpretations and applications. However, the application to foreign policy has been very limited. Many have argued that MLG is a theory that hinges on the interconnectedness of European, national, and subnational governments. The latter governmental level is mostly absent in the EU's foreign policy, hence the absence of MLG from this policy field.³ However, some exceptions exist. Smith, for example, has used MLG theory to explain the behaviour of member states regarding the Common Foreign and Security Policy.⁴

In the field of climate change, this focus on subnational governmental bodies is clearly present. There is a myriad of works that research how cities have become more and more embedded in the European climate policy structure.⁵ Some scholars have argued that the extra-European, international level can also be incorporated into a European MLG framework. For example, Wurzel and Connelly's book, already mentioned above, does incorporate the international level in MLG. They describe how the actions of the member states and the

¹ G. Marks, L. Hooghe and K. Blank, 'European Integration from the 1980s: State-Centric v. Multi-level Governance', *Journal of Common Market Studies* 34:3 (1996) 341-378: 372.

² M. Smith, 'Toward a theory of EU foreign policy-making: multi-level governance, domestic politics, and national adaptation to Europe's common foreign and security policy', *Journal of European Public Policy* 11:4 (2004) 740-758: 743.

³ P. Stephenson, 'Twenty years of multi-level governance: 'Where Does It Come From? What Is It? Where Is It Going'', *Journal of European Public Policy* 20:6 (2013) 817-837: 827-829.

⁴ Smith, 'Toward a theory of EU foreign policy-making', 740-758.

⁵ For example, see: K. Kern, 'Cities as leaders in EU multilevel climate governance: embedded upscaling of local experiments in Europe', *Environmental Politics* 28:1 (2019) 125-145.

European institutions are intertwined with the considerations and interests on an international level.⁶

3.2 Applying multi-level governance to the EU's COP preparation

This thesis argues that the process of coming to a European negotiating position for the COPs takes place in a framework of MLG. As has been explained above, MLG is characterised by a playing field with governmental actors at different levels with often ambiguous relations. In the case of the negotiating positions there are three levels which are relevant: the national level, the European level, and the international or external level. Each level has their own set of actors. The individual member states are the primary actors on the national level and the Commission and the EP are the actors on the European level. While there are no actors that actively participate in forming a negotiating position on the international level, this level does strongly influence the process. The position of third countries vis-à-vis the issues discussed at the conferences had a significant impact on the position of the European institutions and the member states.

Over the period between 1997 and 2015, the process of coming to a European negotiating position for the COPs has become increasingly embedded into this MLG framework. It was already a process characterised by MLG at the time of Kyoto, but the interaction between the different levels of governance has intensified over the following two decades. This is due to three reasons. Firstly, the treaty changes have caused a shift in competences from the national level to the European level. At the time of Kyoto, it were primarily the member states who were responsible for formulating a negotiating position. As we shall see in Chapter 4, several treaty changes shifted more power toward the Commission and the EP. The national level thereby became more dependent on the European level. Secondly, a changed situation on the international level led to a more intensified relationship between this level and the European and national levels. As the world of climate change negotiations became more multipolar and the European position lost in significance, the EU had to become more adaptive to the situation outside of Europe. The international level thereby became more intertwined with the national and European levels. Thirdly, the expansion of the national level by admitting numerous new member states to the EU has intensified the relations

⁶ Wurzel and Connelly, *The European Union as a Leader in International Climate Change Politics*, 15, 103-104, 142.

between the national and the European level. Due to this increased complication at the national level, the actors at the European level gained a more important function as mediators.

The intensification of MLG has led the institutions at the European level, the Commission mostly, to gain a more prominent role in the process leading up to the European negotiating positions. Especially the Commission has been empowered by the increasing multi-leveledness of the process. On the one hand, it grew in prominence simply due to the fact that it was granted more formal powers after treaty changes. However, these linkages between the national and European level enabled it to fulfil a mediating role between the member states when the national level became more fragmented. In addition, closer integration between the international level on the one hand and the European level on the other, required that the EU had a single negotiating ‘face’, one institutional actor that represented all member states. The multipolar world in which the EU was no longer a primary power required a more coherent act on the world stage.

The Commission was the institution that was in the right place to take advantage of these developments, whereas the EP was not so fortunate. However, the shift in power must not be exaggerated. The Commission played a leading role in Paris, but this does not mean that it had come to dominate the process. As we will see, the member states still held most of the formal power and much of the final say on the negotiating position.

3.3 Methodology

In order to analyse the shift of power that has been outlined above, this thesis will look at three important COPs in the two decade period: Kyoto, Copenhagen and Paris. We can thereby investigate how the process of coming to a negotiating position changed over a longer period of time. In the case studies, the roles of the different institutions in the process will be analysed. The emphasis within this thesis is put on the changing institutional relationships between 1997 and 2015. How has the playing field, which became more characterised by MLG, changed the institutional relations in this period?

3.4 Case selection

In order to make this subject feasible for the scope of this thesis, only three out of the many yearly COPs that have taken place will be investigated. These are COP3 in Kyoto (1997), COP15 in Copenhagen (2009), and COP21 in Paris (2015). There are multiple reasons for choosing these three COPs. The COPs in Kyoto and Paris proved to be turning points in the global efforts of the UNFCCC. The meeting in Kyoto produced the first binding climate agreement featuring a top-down structure. The Paris agreement proved to be another turning point in the international climate regime because it was a testament to a new, much more fragmented climate regime, characterised by a bottom-up structure.⁷ The EU played vital roles in both negotiations. In contrast to Kyoto and Paris, the COP in Copenhagen in 2009 was decisive due to its lack of success. During the negotiations in the Danish capital, the Union attempted to hammer out an ambitious climate treaty but was sidelined by other major countries participating in the COP.⁸ The European debacle in Copenhagen led to major shift in the EU's external policy, and enabled the bottom-up approach taken in Paris. These three COPs all featured extensive preparation, as it was expected beforehand that climate treaties would emerge from these conferences. Consequently, the intra-European preparations featured extensive discussion and deliberation on the most vital international climate issues. They therefore provide the perfect case studies for this thesis.

3.5 Source material

In order to investigate the preparation of the EU negotiating position for these three COPs, a variety of sources will be used. Firstly, policy documents will be used to obtain an overview of the positions of the different institutions. Prior to the COPs, the European Parliament, the Commission, the Council of the European Union, and some of the individual member states publish a communications or position papers containing their ideas and proposals for the negotiating position. Content analysis will be used to analyse the documents. This entails a systematic analysis of communication, in order to determine what is being said rather than why or how.⁹ The official documents published by the institutions and the member states will be

⁷ E. Lövbrand, M. Hjerpe and B-O. Linnér, 'Making climate governance global: how UN climate summitry comes to matter in a complex climate regime', *Environmental Politics* 26:4 (2017) 580-599: 581.

⁸ S. Afionis, 'The European Union as a negotiator in the international climate change regime', *International Environmental Agreements* 11 (2011) 341-360: 347.

⁹ A.H. Pashakhanlou, 'Fully integrated content analysis in International Relations', *International Relations* 31:4 (2017) 447-465: 449.

analysed in order to determine the positions of the different institutions. The implications of these statements for the interinstitutional relations will be analysed with the help of other sources, such as secondary literature and expert interviews.

This brings us to our second source: expert interviews. Three interviews have been conducted with civil servants involved in the three COPs. These civil servants are the leader of the Dutch delegation to Kyoto, the Dutch Climate Envoy at the time of Copenhagen, and the leader of the Dutch delegation to Paris. These interviewees were present and participating in the negotiations that led to the EU negotiating positions. They were able to give insight into what happened in the negotiating rooms. Since the proceedings of these negotiations are not publically available, their insights are very valuable. The interviews were semi-structured interviews in which the interviewees were asked about the course of the negotiating process and the positions of the European actors.

4 The institutional foundations of external climate negotiations

In order to fully understand the actions and positions of the various institutions in the EU regarding the international climate conferences, a firm grasp of the legal and institutional foundations of these relations is necessary. The institutional framework on which European external climate diplomacy is based is laid down in the treaties. Several treaty changes took place between Kyoto and Paris that altered the institutional foundation of the preparations for and participations to the COPs. This chapter will give an overview of how the institutional division of power as laid down in the treaties has changed. In addition, it will shortly sketch how the institutions have wielded different interpretations of the treaties. In the end, we will see that the Commission and the EP have grown in power thanks to the treaty changes. Despite this increase of competences on paper, the practical consequences have been rather limited.

This chapter is divided in several different parts, each part will discuss the legal evolution of a theme that is relevant in the process of joining international climate negotiations. Firstly, the evolution of the relationship between the Commission and the Council will be investigated. Secondly, the manner of decision-making within the Council, which is intrinsically linked to the internal climate policies of the EU, will be analysed. Thirdly, the evolution of how the EU is represented at the COPs will be examined. The last part of this chapter focuses on the role of the EP.

4.1 A Community affair?

The question of who is able to represent the European Community (EC) at international climate negotiations became a point of contention in the course of the 1980s. At an international conference on the protection of the ozone layer, the Commission already participated without a strong legal basis in the treaties. This, however, resulted in a complicated negotiating position for the Commission.¹ It was the Single European Act (SEA) that first established that the Community was able to take an active role in negotiating international environmental conferences.² The tension between member state and Community participation was, at the time,

¹ M. Jachtenfuchs, 'The European Community and the Protection of the Ozone Layer', *Journal of Common Market Studies* 28:3 (1990) 261-278: 263-266.

² S. Woolcock, *European Union Economic Diplomacy. The Role of the EU in External Economic Relations* (London 2012) 118-119.

solved by a decision of the European Court of Justice. Only when the subject of the environmental negotiations concerned a field of exclusive competency for the Community or when it was judged that it was vital for reaching the prime environmental goals stipulated in Article 130r(1) of the SEA, was the Community able to participate.³ Whereas the SEA contained an exclusive formulation of Community powers, the Treaty of Maastricht, adopted in 1992, did not.⁴ Consequently, the many subjects in environmental negotiations that were considered ‘mixed competences’ in internal affairs, now fell under the shared responsibility of the institutions of the EU and the individual member states. There was no clear delineation of where member state competencies end and Union competencies begin, which led to complications and internal tensions.⁵

Throughout the 1990s and 2000s, this uneasy balance between Community competence and member state competence continued. This mixed competency also resulted in a duplicate system wherein both the Union and its member states are represented at the negotiations themselves, something which will be discussed in further detail below.⁶

While the Lisbon Treaty has had a considerable influence on the practicalities surrounding the closing of an international climate agreement – something which also will be expanded upon below – the effects on the role of the Community has remained mostly symbolic. This does not make the treaty insignificant however, as the treaty has established climate change as an official policy. The treaty stipulates that combating climate change on an international level is one of the primary goals of the environmental policy of the EU.⁷ Participation to the COPs has thereby been legally entrenched within among the core objectives of the Union.

4.2 The relationship between the Commission and the Council

³ C. Zacker, ‘Environmental Law of the European Economic Community: New Powers Under the Single European Act’, *Boston College International and Comparative Law Review* 14:2 (1991) 249-278: 270-271.

⁴ Art. 228, of the Treaty of Maastricht.

⁵ R. Macrory and M. Hession, ‘The European Community and climate change: the role of law and legal competence’, in: T. O’Riordan and J. Jäger, *Politics of climate change. A European Perspective* (London 1996) 106-154: 134.

⁶ M. Rhinard and M. Kaeding, ‘The International Bargaining Power of the European Union in ‘Mixed’ Competence Negotiations: The Case of the 2000 Cartagena Protocol on Biosafety’, *Journal of Common Market Studies* 44:5 (2006) 1023-1050: 1031-1032.

⁷ Art. 191, para.1, of the Treaty on the Functioning of the European Union.

The relationship between the Commission and the Council leaves – as it does in many EU affairs – the most prominent mark on the participation of the EU in international climate negotiations. Here too, the relationship between the two institutions depends strongly on internal policymaking. If the internal policymaking of the subject field is considered an exclusive competence of the Commission, then the Commission gains the exclusive competences to negotiate the external policies. However, since most affairs discussed at climate change negotiations concern subjects of mixed competence, the situation is more complicated. The Treaty of Maastricht first established a formal procedure for Union-level participation in international climate talks. The Commission is able to propose participation to an international conference. The Council effectively has greater power over the participation process, however, because it is able to accept or reject both the proposal to participate and the final deal that is negotiated. Furthermore, the Council often formulated a mandate for the negotiating team, thereby constraining the negotiating space for the representatives to the wishes of the member states.⁸ Figure 1 contains a visualisation of this process, together with the ratification process after the international conference has been held.

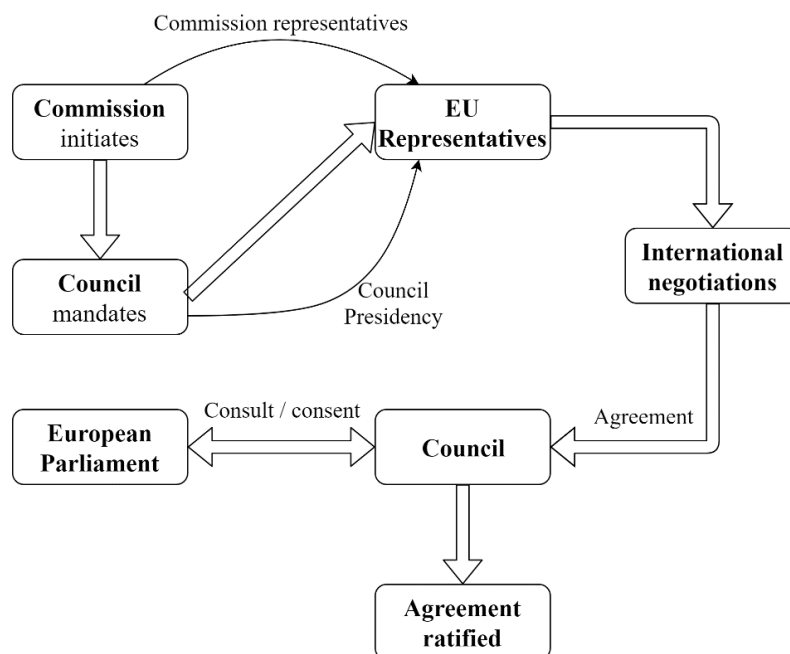


Figure 1: the internal process for participation in international climate negotiations depicted in a flowchart.

⁸ Macrory and Hession, ‘The European Community and climate change’, 135-136.

Already in the early days of international climate diplomacy, the Commission made significant claims of competence in the negotiation of external agreements. When the SEA gave environmental policy a treaty basis, the Commission was able to claim competency over this policy area given its competencies vis-à-vis the single market. They argued that national environmental legislation was able to inhibit the single market's functioning.⁹ Over the years, however, it has become clear that the Council retains a final say when it comes to climate negotiations. As we will see below, the representation is a shared responsibility between the Commission and the Council, but the final decision lies in the hands of the latter.

4.3 Decision-making within the Council

As we have seen above, decision-making in the Council depends on the status of the subject in internal European affairs. Since the SEA introduced qualified majority voting (QMV) for climate policies in the Council, many internal climate policies have been adopted by this voting procedure. However, several policy fields still warrant unanimity voting in the Council. Examples are policies relating to fiscal measures and the member states' choice of energy source. These policies are too important for member states to risk being outvoted on them.¹⁰ Because an ambitious international climate agreement will likely touch upon either the subject of taxation or the choice of energy source, it is usually possible for member states to demand unanimity voting. Furthermore, member states still retain the right to participate in the international conferences on their own. Due to these significant powers, the informal practice of consensus voting became standard for international climate agreements.¹¹ Even though the implementation of the Lisbon Treaty has changed the setting for decision-making on climate change policies, these changes fall outside the temporal scope of this thesis. Following the recognition of climate change as an official policy area, QMV was established as the official voting procedure in the Council for international climate agreements. While this change of voting procedure entered into force in 2014, the old voting procedure could still be requested

⁹ C. Damro, I. Hardie and D. MacKenzie, 'The EU and Climate Change Policy: Law, Politics and Prominence at Different Levels', *Journal of Contemporary European Research* 4:3 (2008) 179-192: 182-183.

¹⁰ N. Haigh, 'Climate change policies and politics in the European Community', in: T. O'Riordan and J. Jäger, *Politics of Climate Change. A European Perspective* (London 1996) 155-185: 177-178.

¹¹ L. van Schaik, 'The Sustainability of the EU's Model for Climate Diplomacy', in: S. Oberthür and M. Pallemarts eds., *The New Climate Policies of the European Union. Internal Legislation and Climate Diplomacy* (Brussels 2010) 251-280: 263.

up until 2017, two years after the COP in Paris.¹² In sum, the voting procedures surrounding the COPs from Kyoto up to Paris *de facto* came down to consensus voting.

4.4 The Council's 'Christmas tree'

For the sake of preparing the negotiating positions for the COPs, there is an entire administrative structure beneath the ministerial Council meetings. This so-called 'Christmas tree' of sub-groups does most of the preparatory and detailed work. Only the final decision making is done by the ministers of environment. When it concerns a controversial subject or a subject of high political salience, the ministers are able to transfer the decision-making to the European Council.¹³ The Working Party on International Environmental Issues (WPIEI) is the most important sub-ministerial body in the Council when it comes to international climate agreements. Whereas most other working groups consist of representatives of the Permanent Representation, the WPIEI consists of the negotiating delegations that come directly from the member states' relevant ministries. In addition, the Commission also holds a seat within this working party. The WPIEI, in turn, forms the top of another pyramid of numerous expert groups. These expert groups do the preparatory work and negotiations before the issues are passed on to a higher level. Just like the WPIEI itself, these expert groups are also manned by civil servants from the ministries of the member states as well as from the Commission.¹⁴

At the COPs themselves, the representation of the EU lies in the hands of the so-called troika. Before the Nice treaty in 2003, this troika consisted of three member states: the member state holding the rotating presidency as well as the preceding and the upcoming rotating presidents. They lead and coordinate the negotiations.¹⁵ The Nice treaty changed this setting: the seat of the preceding rotating president was abolished and the Commission was now the third member of the troika.¹⁶ The Commission, as a non-rotating member of the troika, could build up experience over the years and was therefore able to deliver a more consistent quality

¹² L. Groen and A. Niemann, 'Challenges in EU External Climate Change Policy-Making in the Early Post-Lisbon Era: The UNFCCC Copenhagen Negotiations', in: P.J. Cardwell, *EU External Relations Law and Policy in the Post-Lisbon Era* (The Hague 2012) 315-334: 329.

¹³ L. van Schaik and C. Egenhofer, 'Improving the climate. Will the New Constitution strengthen the EU's performance in international climate negotiations?', *CEPS Policy Brief* 63 (2005) 1-11: 3.

¹⁴ Interview with Dutch delegation leader to Paris, 24 April 2020.

¹⁵ N.S. Lacasta, S. Dessai and E. Powroslo, 'Consensus among Many Voices: Articulating the European Union's Position on Climate Change', *Golden Gate University Law Review* 32:4 (2002) 351-414: 364-365.

¹⁶ Oberthür and Roche Kelly, 'EU Leadership in International Climate Policy: Achievements and Challenges', 38.

of negotiation and representation. Not much later, in 2004, rotating presidents started appointing lead negotiators and issue leaders. These were experts that were not tied to a single rotating president. Therefore, they too ensured more experience among Council negotiators and could provide counterweight to the Commission.¹⁷ This troika is responsible for the negotiations, but also for the coordination of the rest of the member states at the COP. The EP, on the other hand, plays no role in the representation of the EU.

The Lisbon Treaty, implemented in 2009, has not effectively changed this situation. However, an attempt was made by the Commission to expand its representative responsibilities, as the treaty contained an explicit stipulation that the Council had to appoint a Union negotiator.¹⁸ The wording implied that the Commission should become the sole representative.¹⁹ The Commission tried to assert this role in 2010, but its attempt was thwarted by the rest of the member states.²⁰

4.5 Role of the EP

At the time of Kyoto, the role of the EP was negligible in the external climate policies of the EU. The Treaty of Maastricht established that the Council was obliged to ask the EP for its opinion on a negotiated agreement within a certain time limit. The Council could set the time limit itself however, and the opinion was not binding in any way.²¹ While the EP often did have a significant role in internal European decision-making on environmental subjects, the treaty did not grant the EP these powers in the decision-making on international climate treaties.²² During the 1990s and early 2000s, some informal influence was obtained on the basis of interinstitutional agreements, as the Commission had pledged that it would inform the EP. Furthermore, MEPs were able to hold debates on international agreements in the event that a

¹⁷ T. Delreux and K. Van den Brande, 'Taking the lead: informal division of labour in the EU's external environmental policy-making', *Journal of European Public Policy* 20:1 (2013) 113-131: 121-122.

¹⁸ Art. 218, para. 3, of the TFEU.

¹⁹ M. Buck, 'The EU's Representation in Multilateral Environmental Negotiations after Lisbon', in: E. Morgera, *The External Environmental Policy of the European Union. EU and International Law Perspectives* (Cambridge 2012) 75-92: 90-92.

²⁰ T. Delreux, 'EU actorness, cohesiveness and effectiveness in environmental affairs', *Journal of European Public Policy* 21:7 (2014) 1017-1032: 1023-1024.

²¹ Art. 300, para. 3, of the Treaty establishing the European Community.

²² T. Delreux, 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process', *International Environmental Agreements* 6 (2006) 231-248: 240.

majority of MEPs disagreed with its content. However, these measures did not entail any binding influence on the external negotiating process.²³

With the Treaty of Amsterdam coming into effect in 1999, the position of the EP was improved somewhat. It obliged the Council to fully inform the EP once a decision had been taken on an agreement.²⁴ It took until the Lisbon Treaty, implemented in 2009, for the EP to acquire any binding powers. This treaty notably increased the EP's influence in two ways. Firstly, the treaty provided the EP more assurance of full disclosure by the Council and the – newly established – High Representative on negotiated agreements.²⁵ Despite this extra assurance, however, much of the information exchange still takes place with the Commission. The exchange of information that does take place with the Council is usually limited to a few relevant MEPs.²⁶ The second – and much more significant – change that the Lisbon Treaty effected is the fact that the EP now has veto power over the international agreements. In addition, the treaty made it necessary for the Council to ask for the consent of the EP on the negotiated deal, instead of merely requiring a consult.²⁷ This meant that the formal position of the EP had increased significantly at the time of Copenhagen, compared to Kyoto.

4.6 Conclusion

We can see that the legal basis on which the process of negotiation and representation is based, primarily comes down to a struggle between the Council and the Commission. At the time of Kyoto, the member states clearly fulfilled the primary role within the pre-COP negotiations, as well as at the COPs themselves. In more recent years, power has most definitely shifted in the direction of the supranational institutions: the EP and the Commission. However, the treaties give an unclear indication of the extent of this shift. The Commission has become one of the three negotiators at the COPs, but their role in the process leading up to the negotiating position has seen little change. In addition, the EP has gained the *ex post* power of consent, but what this entails for the position of the EP in the pre-COP process is still unclear.

The remainder of the chapters will analyse the process of coming to a negotiating position for three different COPs. We will see that the treaties offer an important foundation

²³ Delreux, 'The European Union in international environmental negotiations', 240-241.

²⁴ Art. 228, para. 2, of the Treaty of Amsterdam; Art. 300, para. 2, of the TEC.

²⁵ Art. 36, of the Treaty on European Union; Art. 218, para. 10, of the TFEU.

²⁶ K. Biedenkopf, 'The European Parliament in EU external climate governance', in: S. Stavridis and D. Irrera, *The European Parliament and its International Relations* (Abingdon 2015) 92-108: 97.

²⁷ *Ibidem*, 94.

for this process, but that many of the norms and standards in this process have evolved beyond the treaties. In addition, we will examine if and how the trend that we have seen in this chapter – a slight shift of power away from the member states to the EP and the Commission – was reflected in the processes that led up to the COPs in Kyoto, Copenhagen and Paris.

5 The Kyoto negotiations

The third COP negotiation took place in Kyoto, Japan at the end of 1997 and is still considered by many to have been the most successful UNFCCC meeting, even more than 20 COPs later. The negotiations owes its status to the fact that they were able to conclude with a treaty containing legally binding targets. The most notable aim was the reduction of greenhouse gas emissions of at least 5 per cent for developed countries between 2008 and 2012.¹

The negotiations in Japan were preceded by a build-up spanning several years. With the UNFCCC having been established five years earlier, the Kyoto negotiations were the third COP. At the first COP, which took place in Berlin, the intent to create a protocol for the diminution of greenhouse gas (GHG) emissions had been established. Furthermore, pilot projects for the joint implementation scheme – where countries are allowed to reach a shared GHG emissions reduction – were established.² This joint implementation scheme would fall under the category of flexibility mechanisms in the Kyoto negotiations, since it allows countries more room for manoeuvring through cooperating with each other.

As we can already see above, the participating countries to the Kyoto negotiations were divided into several camps. The EU found itself on the progressive side of the spectrum – favouring GHG reductive measures – together with a large group of small island states. Other developed countries, like the US and Japan, were more reluctant to accept far-reaching measures. Lastly, there was the Group of 77 (G-77), which was a group of developing countries that were not interested in the bills of a problem which had been caused by the developed world.³ The EU favoured far-reaching measures such as a 15 percent reduction emissions compared to 1990. Countries like the US favoured much lower targets. In addition, they favoured emissions trading, while the EU and the G-77 were much more sceptical of such mechanisms. In the end, several mechanisms were incorporated in the final protocol, including one that allowed the EU to divide the burden of GHG reductions among its member states.⁴

The issues above were discussed at an international level but also found their way into interinstitutional European debate. This chapter will continue by analysing the positions of the

¹ J. Gupta, *The History of Global Climate Governance* (Cambridge 2014) 82.

² J. Jäger and T. O’Riordan, ‘The History of Climate Change Science and Politics’, in: T. O’Riordan and J. Jäger eds., *Politics of Climate Change. A European Perspective* (London 1996) 1-32: 25-26.

³ F. Yamin, ‘The Kyoto Protocol: Origins, Assessment and Future Challenges’, *Reciel* 7:2 (1998) 113-127: 113-114.

⁴ C. Breidenich, D. Magraw, A. Rowley and J.W. Rubin, ‘The Kyoto Protocol to the United Nations Framework Convention on Climate Change’, *The American Journal of International Law* 92:2 (1998) 315-331: 323-325.

different European institutions on these topics in the process of coming to a negotiating position for Kyoto.

5.1 The Council

The process of coming to a negotiating position for the Kyoto conference in 1997 was for the most part dominated by the negotiations within the Council. About six months prior to the negotiations in Japan, the Council concluded that they would strive for a quantified emission limitation or reductive objective (QELRO) of 15 per cent in 2010 for its member states. The burdens would be distributed among member states according to their respective size, wealth and their possibilities for reductions. This burden-sharing agreement would be responsible for a 10 per cent reduction of the 1990 levels of emissions. The remaining 5 per cent in reductions would be further allocated after the Kyoto agreement had been signed.⁵ The member states that sat in the Council can be coarsely divided into three groups. Firstly, there was the green six, a group of member states from northwest Europe – Austria, Denmark, Finland, Germany, the Netherlands and Sweden – that were climate ambitious. Secondly, there was a group of Western European countries that were ‘rich but not-so-green’. This group consisted of Belgium, France, Italy, Luxembourg and the UK. The last group contained mostly southern member states, such as Greece, Spain, Portugal, but also Ireland, who were not at all climate ambitious.⁶

The emissions reduction targets concluded in March 1997 were the result of a long negotiating process, spanning back six months. The first negotiation sessions were organised in September 1996, under the Irish presidency, and were aimed at finding a common reduction target for the entire EU. The Irish had suggested reductions in the range of 10 to 20 percent by 2010. These suggestions were all rejected over the latter half of 1996.⁷ It was under the Dutch presidency, starting in January 1997, that successful strides were taken in achieving a burden sharing agreement. The Dutch presidency introduced a new methodology, called the Triptych approach, which divided the emissions of member states in three sectors; the options for emissions reductions were calculated per sector.⁸ The most important difference between the Triptych method and earlier proposals for burden sharing agreements was the fact that the

⁵ Council Conclusions of 3 March 1997, *Community strategy on climate change*, para. 5-10.

⁶ Ringius, ‘Differentiation, Leaders and Fairness’, 36.

⁷ N. Kanie, ‘Leadership in Multilateral Negotiation and Domestic Policy: The Netherlands at the Kyoto Protocol Negotiation’, *International Negotiation* 8 (2003) 339-365: 349-350.

⁸ Ringius, ‘Differentiation, Leaders and Fairness’, 20-23.

former offered less generalised targets for the member states. But the idea behind the approach was also to create a sense of understanding between the member states of what can reasonably be expected from each other.⁹

While the triptych approach initially seemed to be successful in coming to a shared fifteen percent reduction, it did not take long before several member states backed down on their commitments. Germany, UK, Belgium, France, and Finland were displeased about the height of the targets that the Dutch proposal had set for them and they lowered their commitments.¹⁰ Furthermore, several of the economically weaker member states from Southern Europe were also sceptical of the proposals, despite the fact that they had been allowed space for increasing their emissions. They argued that they deserved more room to expand their emissions and grow their economy. In the end, the remaining commitments were only enough to come to a 10 per cent reduction. However, the member states still agreed to push for a 15 per cent target and leave the rest of the burden division until after the conference. It was argued that an ambitious European position was necessary in order to push third countries to take similar far-reaching measures at the conference in December.¹¹

While the height of the reduction targets and reaching a burden sharing agreement were the two most important issues that had to be solved in the run-up to the Kyoto protocol, other issues were also relevant and discussed in the Council. One of the most debated issues was the possible incorporation of flexibility mechanisms, such as emissions trading. There was disagreement among the member states on whether or not emissions trading was a sound mechanism for reaching the emission reduction targets. The Council conclusions preceding the Kyoto conference only mentioned emission trading once, as it is deemed a measure that should only be supplementary to other domestic actions.¹² The reasoning behind emission trading was quite simple: it uses market forces to come to the cheapest possible reduction. However, several of the member states opposed it on the basis of principal or moral grounds. They argued that trading in pollution was morally reprehensible.¹³ Other member states, such as the Netherlands, as well as the Commission were proponents of emissions trading. At the Kyoto negotiations, however, the member states that opposed trading had to cave as it was a necessary concession to bring the US along.¹⁴

⁹ Interview with Dutch delegation leader to Kyoto, 18 December 2019.

¹⁰ Ringius, 'Differentiation, Leaders and Fairness', 30-31.

¹¹ Interview with Dutch delegation leader to Kyoto, 18 December 2019.

¹² Council Conclusions of 19 and 20 June 1997, *Community strategy on climate change*, para. 9.

¹³ Interview with Dutch delegation leader to Kyoto, 18 December 2019.

¹⁴ *Ibidem*.

5.2 The Commission

In the year preceding the Kyoto negotiations, the Commission proved to be an active player in the preparations of the third COP, despite having very limited formal powers. The Commission's position on the topic became clear in a communication from May 1997, which stated:

(...) we need to be aware of the fact that it will not be through gradual change, but through radical changes in the political choices, that the imperatives of environmental protection and of sustainable economic development could be met.¹⁵

The Commission has clearly no confidence in the commitment of the member states. This is reiterated later in the same communication by stating that the historical record of several of the member states on promised emission reductions was not impeccable.¹⁶ Through emphasising the large political will that is necessary and the 'radical' nature of the required measures, the Commission tried to exert some pressure on those member states in order to fulfil these commitments. The Commission's choice of words is indicative, here, for its ambitious positions concerning the climate goals. The idea that 'radical' changes were necessary might have been widely accepted within the Commission, many of the member states were not convinced of this at all.¹⁷

Despite openly supporting radical changes, there were few differences in position visible between the Council and the Commission in their publications. Both were concerned with creating a position of leadership for the EU at the Kyoto negotiations. By taking an ambitious stance before the conference, the EU could influence the negotiations in the same direction.¹⁸ Environmental Commissioner Ritt Bjerregaard also tried to push for more far-reaching measures at Kyoto. She deemed the positions taken by the US and Japan to be too

¹⁵ Communication COM(97) 196 final of 14 May 1997 from the Commission on the energy dimension of climate change, para. 5.

¹⁶ Ibidem, para. 17 and 18.

¹⁷ Interview with Dutch delegation leader to Kyoto, 18 December 2019.

¹⁸ Ibidem.

modest and urged the EU to propose legally binding reduction targets for all industrialised countries.¹⁹

The Commission was closely involved in the negotiations leading up to the negotiating position in Kyoto. The Commission also participated in preparatory workshops in 1996 and actively participated in the debates. In one of these sessions a member of the Commission's Directorate General of the Environment (DG XI) even submitted a proposal for a burden sharing agreement that was not so different from the position that would be adopted in the following year.²⁰ The proposal failed a result of the fact that it was submitted without the support of the rest of DG XI.²¹ But the proposals also lacked substance. The Commission's approach towards the burden sharing agreement had been too 'flat' and simplistic; they lacked the necessary back-up to support them.²²

In the intra-European negotiations preceding Kyoto, we have seen that there was significant opposition towards flexibility mechanisms such as emissions trading in the Council.²³ The Commission proved to be quite open to the idea and emphasised the role that emission trading could play in reaching the reduction targets. Furthermore, it was argued that flexibility mechanisms also provide possibilities of keeping the costs of emission reductions down. Because emission trading is driven by market forces, emission reductions will take place in the least costly places.²⁴ In the end, the EU accepted emission trading in the Kyoto protocol as a concession to the US. The Commission's support for emission trading might have made this concession somewhat easier, but its influence on the negotiating position concerning this subject was quite marginal.²⁵

The influence of the Commission on the decision-making process should not be overstated in the negotiations for the mandate for Kyoto. In the intra-European negotiations, it had a seat and a voice at negotiating tables in the WPIEI. However, the Commission did not play the guiding or leading role in the negotiation process that it would play in more recent negotiations.²⁶ Surely, the Commission's voice did leave its mark on the discussion, but they

¹⁹ R. Bjerregaard, Speech for the European Parliament, 'Climate change', 17 November 1997, accessed at: https://www.europarl.europa.eu/doceo/document/CRE-4-1997-11-17-ITM-004_EN.html [accessed on: 15 September 2019].

²⁰ Ringius, 'Differentiation, Leaders and Fairness', 18-19.

²¹ J. Nolin, 'Timing and Sponsorship: The Research to Policy Process and the European Union's Kyoto Proposal', *Minerva* 37 (1999) 165-181: 172-173.

²² Interview with Dutch delegation leader to Kyoto, 18 December 2019.

²³ Council Conclusions of 19 and 20 June 1997, *Community strategy on climate change*, para. 4.

²⁴ Communication COM(97) 481 final of 1 October 1997 from the Commission on Climate Change – The EU Approach for Kyoto, 2.

²⁵ Interview with Dutch delegation leader to Kyoto, 18 December 2019.

²⁶ *Ibidem*.

left ample room for member states to take a leading role in the discussion.²⁷ Furthermore, the Commission did not have any formal power in the negotiating process and was generally not trusted very much by the other member states.²⁸ The Commission held a difficult position within the negotiating process and differed vastly from the role it would play years later. Representatives present at the meetings of the WPIEI have described the Commission as the ‘sixteenth member state’.²⁹

5.3 The European Parliament

At the time of the Kyoto negotiations in 1997, the role of the EP can be described as consultative at best. As we have seen earlier, the formal powers of the European Parliament are limited to a consult they can give the Council after the negotiations have taken place.

Many MEPs within the EP are staunch supporters of an ambitious climate policy. While there were many who welcomed the negotiating position from the Council and the Commission, there were also those who argued it did not go far enough. According to parliamentarians from the Party of European Socialists, these positions were not ambitious enough. MEPs from other groups, such as the European People’s Party were also critical.³⁰ Criticism was primarily aimed at the credibility of the Council and the Commission, as it was feared that their commitments would not be fulfilled. They argued that the track record of both the Commission and several of the member states on climate issues did not do much to strengthen their credibility. MEP Linkohr even called the Council’s commitments ‘pure propaganda’, as he argued that there are not enough follow-up measures to back up the negotiating position presented by the Council and the Commission.³¹

While voices with clear opinions did emerge from the EP in the course of 1996, the actual impact of these voices remained very limited. As has already been said, the formal power of the EP on the preparatory negotiations for Kyoto was practically non-existent. The informal

²⁷ Interview with Dutch delegation leader to Kyoto, 18 December 2019.

²⁸ Downie, ‘Shaping International Negotiations from within the EU’, 713.

²⁹ Interview with Dutch delegation leader to Kyoto, 18 December 2019.

³⁰ Debate in the European Parliament of 17 November 1997, ‘Climate change’. Retrieved from: https://www.europarl.europa.eu/doceo/document/CRE-4-1997-11-17-ITM-004_EN.html [Accessed on: 24 June 2020].

³¹ Debate in the European Parliament of 17 September 1997, ‘CO2 and other greenhouse gas emissions’. Retrieved from: https://www.europarl.europa.eu/doceo/document/CRE-4-1997-09-17-ITM-007_EN.html [Accessed on: 24 June 2019]; Debate in the European Parliament of 17 November 1997, ‘Climate change’. Retrieved from: https://www.europarl.europa.eu/doceo/document/CRE-4-1997-11-17-ITM-004_EN.html [Accessed on: 24 June 2019].

power was quite limited. In the negotiation processes of late 1996 and early 1997, the opinions of the parliamentarians played hardly any role at all, neither actively – they did not have a seat at the negotiating table and were not actively lobbying – nor passively – to the extent that the people that did have a seat at the table hardly took into account what the EP might think of the decisions taken. According to the Dutch representative at the debates within the WPIEI, the EP did not play any role in the process at all.³²

5.4 Conclusion

In the run-up to the Kyoto negotiations in December 1997, we can distinguish several different roles for the institutions of the European Union. In formal terms, almost all of the decision-making power lay in the hands of the Council and the member states. The Commission was in a position to influence the policy-making process in the year prior to the Kyoto negotiations at workshop sessions. Its position can best be characterised by being a ‘sixteenth member state’: it had a seat at the negotiating table in 1996 and 1997, but its voice did not supersede that of the member states. The role of the EP was completely marginal at the time. It had a forum to voice its opinion, but nothing more than that. The process was dominated by the national level, while the European level played a marginal role. The influence of the international level was quite limited at this stage, too.

³² Interview with Dutch delegation leader to Kyoto, 18 December 2019.

6 The Copenhagen negotiations

The contrast between the Kyoto negotiations and the Copenhagen negotiations, twelve years later, could not have been starker. Whereas Kyoto is widely seen as a success, scholars have argued that the Copenhagen conference resulted in ‘disillusionment and acrimony’.¹ The accord proposed no strong reduction targets. Instead, it urged countries to take on mitigation pledges, most of which were far from sufficient for staying below the two degree Celsius global warming, an increase in temperature that scientists warn must not be exceeded in order to avoid disastrous global warming effects. Moreover, the accord was not legally binding and was stricken by numerous legal ambiguities.² Other scholars have nuanced Copenhagen’s abysmal reputation by noting the fact that – for the first time – developing countries agreed to have their domestic climate targets embedded in a framework for international scrutiny.³ In addition, the accord contained a clause that global warming must not exceed 1.5 degrees Celsius, a safer warming ceiling that the EU has strived for.⁴ However, with high expectations and disappointing outcomes, Copenhagen was not a European success story.⁵ The ambitious proposals of the EU were not welcomed by numerous third countries. In addition, the EU did not have a back-up plan and its lack of unity prevented it from acting quickly and decisively during the conference.⁶ Others have attributed the EU’s inability to strike a global deal to weak representation by the Council’s rotating president, Sweden, and to a weakening negotiation position due to its declining share in the total global greenhouse emissions.⁷

This chapter will focus on the intra-European dynamics that preceded the Copenhagen summit in 2009. Since the Kyoto negotiations twelve year earlier, the EU continued to strive for ambitious climate policies. However, the Union found itself in a very different situation than it was in at the time of Kyoto. The accession of several Eastern European countries in 2004 and 2007 significantly increased the size of the Union and further complicated decision-making processes. Moreover, we have seen in Chapter 3 that institutional changes had led to shifts in competences concerning climate negotiations. The EP enjoyed a significant increase in formal

¹ Parker, Karlsson and Hjerpe, ‘Assessing the European Union’s global climate change leadership’, 239.

² L. Rajamani, ‘The Making and Unmaking of the Copenhagen Accord’, *International and Comparative Law Quarterly* 59.3 (2010) 824-844: 826-835.

³ D. Bodansky, ‘The Copenhagen Climate Change Conference: A Postmortem’, *The American Journal of International Law* 104.2 (2010) 230-240: 239-240.

⁴ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

⁵ C. Haug and F. Berkhout, ‘Learning the Hard Way? European Climate Policy After Copenhagen’, *Environment: Science and Policy for Sustainable Development* 52:3 (2010) 20-27: 23-26.

⁶ Groen and Niemann, ‘The European Union at the Copenhagen climate negotiations’, 317-318.

⁷ Haug and Berkhout, ‘Learning the Hard Way? European Climate Policy After Copenhagen’, 22-25.

power. The Commission, too, saw its representative powers more securely enshrined in the period since the Kyoto negotiations. In addition, the intergovernmental aspects had become more complicated due to an increased number member states participating. As a result, the European level could play a more central role in the run-up to the Copenhagen conference.

6.1 The Council

During the negotiations for the negotiating position for Copenhagen, the 27 countries that made up the EU in the 2009 could roughly be divided into two different blocs. Firstly, there was the ‘Green Six’, which consisted of Germany, the Netherlands, Denmark, Sweden, Finland, and Austria. These member states were proponents of more ambitious measures. A second bloc was formed by a combination of eastern and southern member states: Poland, Greece, Italy, and Spain were its most notable members, but Ireland often joined their ranks, too. They primarily focussed on limiting the ambitiousness of the negotiating position. The remaining countries held more ambiguous positions during the preparations for Copenhagen. The UK, for example, did not stick to any bloc but switched sides depending on the subject that was discussed.⁸ The dichotomy within the Council, with the ambitious member states of the northwest and the more prudent member states of the south and east, would dominate the discussions on the negotiating position.

The foundation for this negotiating position had already been laid by internal legislation. Debate had taken place on the ‘2020 climate and energy package’, which entailed a 20 per cent reduction in CO₂ emissions by 2020. The package would be eventually adopted by April 2009.⁹ The initial position of the Council towards the Copenhagen COP was an extension of this package; it, too, established that the EU would pledge for at least a 20 per cent reduction in GHGs.¹⁰ While this 20 percent formed an uncontroversial starting point, there were still significant differences of opinion within the Council and among the institutions – all of which complicated the process.

⁸ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

⁹ Decision 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020.

¹⁰ Council conclusions of 3 March 2009, *Contribution of the Council (Environment) to the Spring European Council (19 and 20 March 2009): Further development of the EU position on a comprehensive post-2012 climate agreement*.

One of these differences related to the reductions itself. The March conclusion of the Council called for a 20 per cent reduction minimum, but this would be increased to 30 per cent in the event that enough third countries would commit to ambitious targets at Copenhagen.¹¹ This awkward construction – which would eventually end up in the final negotiating position – was the result of a fierce debate. As will be explained in further detail below, the Commission played a decisive role in this debate, as they argued for ambitious targets. The opposing side was formed by the aforementioned larger member states of the south and east. They were supported by a number of smaller member states, such as Bulgaria, Estonia, Hungary, Latvia, Romania, Lithuania, and Slovakia.¹² The Green Six clustered on the side of the Commission. They had agreed to follow the aims of the Commission, a 30 per cent reduction, in order to form a stronger front against the prudent member states.¹³ According to them, the 2008 economic crisis would already cause a temporary decrease in emissions and a higher target was subsequently necessary in order to reach lasting reductions. In addition, they argued that more investment in low-carbon technologies would stimulate economic growth.¹⁴ The debate eventually resulted in a compromise: the EU would commit to a 30 per cent reduction only if third countries were to take similarly ambitious pledges in Copenhagen.¹⁵ This compromise proved to be problem in itself, since it required defining a threshold at which the EU would commit to the higher reduction target. In the end, no agreement could be reached over this threshold and it was postponed until after the COP. In hindsight, the compromise turned out to be a victory for the non-ambitious side of the negotiations. While the compromise combined the wishes of both sides, a very successful Copenhagen conference was required in order to sway the compromise in favour of the Green Six.

Discussion on forestry was marked by the opposition of several member states that had large forestry industries. Finland was a notable member of this opposition. While the country was a member of the ‘Green Six’ and ambitious when it came to most topics on climate change, it proved a strongly conservative member state when it came to forestry.¹⁶ The most debated aspect of these regulations on Land Use, Land Use Change, and Forestry (LULUCF) was the question of whether or not organic carbon material (such as wood or peat) could be used to count towards the emission reduction target. The idea behind this was that using organic

¹¹ Council Conclusions of 3 March 2009, para. 5.

¹² Groen and Niemann, ‘The European Union at the Copenhagen Climate Negotiation’, 6.

¹³ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

¹⁴ J. Vogler, ‘EU Climate Diplomacy – Internal and External Dimensions’, in: W. Hofmeister and P. Rueppel eds., *Climate Change Diplomacy. The Way Forward for Asia and Europe* (Singapore 2014) 71-88: 82.

¹⁵ European Council Conclusions of 29 and 30 October 2009, *Climate Change*.

¹⁶ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

material instead of fossil fuels results in fewer emissions. After all, growing trees absorb carbon dioxide.¹⁷ The accounting rules for these emission compensations were complicated and often prone to loopholes, and therefore formed an endless source of debate. In 2009, the climate and energy package for 2020 had already deferred legislation on this topic to an international climate treaty, such as the possible upcoming Copenhagen treaty.¹⁸ The Commission only noted that the rules on forestry must not hinder reaching the reduction targets for Copenhagen.¹⁹ Due to the opposition of several member states with large forestry industries, such as Finland and Austria, consensus was hard to reach within the Council.²⁰ Consequently, the negotiating position for Copenhagen only featured an acknowledgement of the problem and the welcoming of further discussion, but contained no conclusive remarks.²¹

During the entire run-up to the Copenhagen conference, a schism within the Council existed between the northern and western member states on the one hand and the southern and eastern member states on the other. Only on specific issues, such as the LULUCF, was this constellation of member states not relevant. As we will see below, the divide between the ambitious Green Six and the less ambitious rest would influence the role of the Commission in the entire process.

6.2 The Commission

The ambitions of the Commission concerning the COP in Copenhagen already became clear in January 2009. A communication was published that called for all developed countries to commit to a 30 per cent reduction. The EU had already set the initial example by committing to a 20 per cent reduction and – if enough developed countries committed to a higher target – it would increase its commitment to 30 per cent.²² Aside from these measures, the Commission proposed more far-reaching financing schemes to fund climate adaptation measures both within and outside of Europe.²³ The Commission aimed for far-reaching reductions within the EU, but

¹⁷ K. Macey, B. Hare, C. Chen, 'LULUCF: Guide', *AirClim Briefing* 8 (2011) 5. Retrieved from: <https://climateanalytics.org/media/lulucfguide.pdf> [Accessed on: 21 May 2020].

¹⁸ Decision 406/2009/EC.

¹⁹ Communication (2009) 39 final of 3 February 2009 from the Commission, *Towards a comprehensive climate change agreement in Copenhagen*.

²⁰ Groen and Niemann, 'The European Union at the Copenhagen Climate Negotiation', 6.

²¹ Council Conclusions of 21 October 2009, *EU position for the Copenhagen Climate Conference (7-18 December 2009)*, para. 33.

²² The emission reductions that were not effected through ETS were – just like in Kyoto – divided among the member states on the basis of a set of indicators. See: Decision 406/2009/EC.

²³ Communication (2009) 39 final.

also tried to increase climate effort beyond the European borders. Initially, the Commission had even strived for a 30 per cent reduction target regardless of what the rest of the world would do. However, this proposal had stumbled upon too much opposition from several southern and eastern member states. The 20/30 aim outlined in the January communication was a compromise following a discussion with the Commission and the ‘Green Six’ on the one hand, and numerous southern and eastern member states on the other. The latter group feared that an outright 30 per cent reduction would be technically or economically unfeasible. They were afraid of over-performing in comparison to third countries and thereby making it harder to keep up with international economic competition.²⁴

Overall, the Commission was the engine of the ambitious side of the EU. As we can see above, the ambitious member states gathered around the proposals of the Commission. It was acknowledged as an important central actor by the rest of the member states. The fact that the Commission was an actor on the European level enabled it to play such a role, as it was considered a relatively neutral party among a divided and complicated field of member states. The fact that the Commission played a proactive role at the onset of the negotiating process also helped. This can be seen in the date of publication of the Commission’s first communication, already in January. On top of that, the fact that the Commission occasionally served as a mouthpiece for the member states enhanced its central position, too. Member states asked the Commission, because of its relative neutrality and its central role, to propose their ideas.²⁵

In the documents that were published throughout the year 2009, the Commission gave ample attention to climate change mitigation and adaptation.²⁶ The Commission also gave attention to mitigation and adaptation outside its borders. In the communication of January 2009, it had called for reduction goals for developing countries. It argued that the increasing emissions from these countries warrant action on their side, too.²⁷ It was only in September, however, before the Commission would fully elaborate on the financial side of its plans, in its communication on international climate finance. There, the Commission again called for adequate reduction measures by developing countries. It also made predictions for the international financial streams necessary to fund the mitigation and adaptation measures in the

²⁴ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

²⁵ Ibidem.

²⁶ Commission, *White Paper – Adapting to climate change: Towards a European framework for action*, COM(2009) 147 final.

²⁷ Communication (2009) 39 final.

future. An estimated €100 billion would be necessary to fund the measures in developing countries, the Least Developed Countries (LDC) in particular.²⁸

Climate development aid was not a controversial topic in Brussels. There was relative concordance among the European institutions over the fact that additional aid was necessary in order to help third countries, LDCs in particular. This was also the result of the fact that these negotiations were done by the ministries of development aid, who generally looked more favourable upon any form of development aid than other ministries. The commission played a leading role in this debate advocating for climate aid.²⁹ So much can also be deduced from the relevant communications mentioned above, which give a relatively detailed outline and specification of the climate finance measures. While the Council had endorsed the aid for developing countries several times, its wording remained much more ambiguous, and did not adopt explicit targets concerning these measures in its final position.³⁰

During the preparations for Copenhagen, we see that the Commission is very active profiling itself as a central actor in the intra-European negotiations on the one hand and as an international actor on the other. Its position as an actor on the European level enabled to fulfil a more central among the divided member states. In addition, we see that the Commission started profiling itself as an international actor with its initiatives in climate aid.

6.3 European Parliament

In March 2009, the EP published its first resolution on the Copenhagen conference. The EP supported a binding agreement to be struck in Copenhagen and asked for further details on the organisation of climate aid. However, the majority within the EP was critical of the lack of ambition of the member states.³¹ The fact that these resolutions reflected the opinions of a majority and that differences still existed within the EP became clear in the debates. Opinions on where to raise money for climate action both in and outside the EU were one of the main points of contention. Some political groups in the EP, such as the Europe of Freedom and Democracy party, doubted whether climate change was even happening. The majority of MEPs

²⁸ Communication COM(2009) 475 final of 10 September 2009 from the Commission, *Stepping up international climate finance: A European blueprint for the Copenhagen deal*.

²⁹ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

³⁰ Council Conclusions of 21 October 2009.

³¹ European Parliament Resolution P6_TA(2009)0121 of 11 March 2009 on an EU strategy for a comprehensive climate change agreement in Copenhagen and the adequate provision of financing for climate change policy.

argued that the current measures were not drastic enough to combat climate change. They argued for stronger cooperation with developing countries or more ambitious commitments.³²

In November, after the Council had adopted a negotiating position, a second resolution was adopted that focussed on the upcoming COP. This resolution reflected the ambition on the side of the EP. It called for sanctions against third countries such as China, India and Brazil, in case they did not adhere to the terms of the treaty.³³ This went beyond the calls of the EU negotiating position, who had only urged these countries to take on higher commitments.³⁴ In addition, the EP argued for more far-reaching measures concerning climate aid. However, the most interesting feature of the resolution is the call for a higher commitment by the EU itself. The EP argued that a 40 per cent emissions reduction by 2020 would be required to combat climate change; the possible 30 per cent reduction would not suffice.³⁵

While the resolutions and several MEPs made strong remarks in the run-up to the COP in Copenhagen, it seems unlikely that this had any significant impact on the process of coming to an EU negotiating position. The EP did have more leverage than it did at the time of Kyoto. With the Lisbon treaty going in effect on 1 December 2009, the EP had to give its consent to international environmental agreements before they could be ratified. Earlier, the EP had only been able to consult. The EP could now reject the European ratification if an agreement would have been made in Copenhagen. One might expect that this would give the EP some leverage in the process of coming to a European negotiating position. However, since any treaty is better than no treaty for those MEPs that favour ambitious measures, it has been argued that the EP would most likely not have voted down any climate agreement.³⁶ Consequently, the enhanced powers were not reflected in the EP's influence on the negotiating process prior to the COP. Negotiators on the side of the member states did not give any special consideration to the opinions of MEPs. This was also due to the fact that the MEPs themselves often did not try to play a role in the pre-COP negotiations. The EP's support for a 30 per cent reduction of EU emissions did play a role in coming to the 20/30 compromise. The support of the EP made it easier for the Commission and the Green Six to push for a middle ground. Overall, however,

³² European Parliament summary of the debate of 20 October 2009 on *Climate change and developing countries in the framework of the UN Conference on Climate Change in Copenhagen*.

³³ European Parliament Resolution P7_TA(2009)0089 of 25 November 2009 on the EU strategy for the Copenhagen Conference on Climate Change (COP15), para. 5-6.

³⁴ Communication COM(2009) 475 final.

³⁵ European Parliament Resolution (2009)0089, para. 8 and 24.

³⁶ S. Afionis, 'European Union Coherence in UNFCCC Negotiations Under the New Treaty of Lisbon (Reform Treaty)', *Sustainable Development Law & Policy* 9.2 (2009) 43-47: 45.

the EP's influence was hardly felt. The process of coming to an EU negotiating position for Copenhagen remained a 'ping-pong game' between the member states and the Commission.³⁷

6.4 Conclusion

The final negotiating position that was adopted by the Council in the course of October 2009 remained one of limited ambition, especially in comparison to the opinions held by the EP and the Commission. The preparations for the EU participation at the COP remained a ping-pong game between the Council and the Commission. In this process, the Commission played a leading role. In an informal alliance with the Green Six, it called for far-reaching emissions reductions and an extensive climate aid programme. The opposing side was formed by mostly the southern and eastern member states. That the Commission was able to play a central role can be seen from the fact that the ambitious member states clustered around it. Its opinion was not dominant, however, as the less ambitious member states were able to offer successful opposition to its ambition. The role of the EP remained very limited throughout the process. It played an important supporting role at times, but a lack of initiative on the one hand and a lack of recognition by the other parties on the other inhibited its effectiveness in the negotiations. This lack of recognition can most clearly be seen in the Council's rejection of the EP's request to participate in the EU coordination meetings during the COP in Copenhagen. EP delegates may not represent the EP at the COP nor may they participate in the negotiations.³⁸ The EP was still requesting this right of attendance over five years later, in the run-up to the COP in Paris.³⁹

³⁷ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

³⁸ Letter of the Chairman of the Permanent Representatives Committee to Mr. Jerzy Buzek President of the European Parliament of 17 September 2009.

³⁹ T. Delreux and C. Burns, 'Parliamentarizing a Politicized Policy: Understanding the Involvement of the European Parliament in UN Climate Negotiations', *Politics and Governance* 7.3 (2019) 339-349: 343-344.

7 The Paris negotiations

Following the failure in Copenhagen, the EU had lost its eminence as an international leader in climate change negotiations. Commentators have argued that Copenhagen signified a drastic change in how the EU conducted external climate diplomacy. Up until Copenhagen, the EU attempted to lead by example and to push others to follow. By 2009 however, the EU had become a middle power in climate diplomacy. It had become the third GHG emitter, after China and the US, and was weakened by economic crises.¹ The EU had less weight to bluntly pressure others in following its position and, as a result, became more focussed on coalition-building after Copenhagen. The EU started forging alliances with small island states and G-77 countries. As a result of this new strategy, scholars have called the EU a ‘leadiator’.²

The run-up to the Paris COP was not characterised by the optimism which had been present before the Copenhagen conference. Compared to 2009, some important changes had taken place that influenced the participation of the EU in Paris. Firstly, the internal changes caused by the Lisbon treaty had crystallised by 2015; the *ex post* veto power of the EP over the treaty was still a new feature due to the absence of an agreement in Copenhagen. Secondly, the emission reduction target for the EU had already been determined well over a year before the conference would take place. The European Council concluded the long and difficult negotiations on the 2030 energy and climate framework in October 2014 with a reduction target of 40 percent compared to 1990.³ Thirdly, an important external change was the fact that the Paris agreement would be structured quite differently. Instead of the goals of the treaty being enforced in a top-down manner, in which reduction targets were imposed upon the signatory countries, a bottom-up approach was now taken. This bottom-up approach meant that each country was able to submit its own reduction target in their Intended Nationally Determined Contribution (INDC). However, these INDCs only gave a limited indication of the national plans. For example, the EU – which submitted a joint INDC – did not go into any detail on policy measures it would undertake to achieve the 40 per cent reduction target.⁴ As we will see below, these changes significantly altered the playing field for coming to a European negotiating position.

¹ S. Oberthür and L. Groen, ‘The European Union and the Paris Agreement: leader, mediator, or bystander?’, *WIREs Climate Change* 8 (2017) 1-8: 4-5.

² Bäckstrand and Elgström, ‘The EU’s role in climate change negotiations: from leader to ‘leadiator’.

³ European Council Conclusions of 23 and 24 October 2014.

⁴ Latvian Presidency of the Council Submission of 6 March 2015, *Intended Nationally Determined Contribution of the EU and its member states*.

7.1 The Council

Within the Council, the dichotomy between the Green Six on the one hand and the southern and Eastern European member states on the other hand had disappeared in favour of a situation in which only a few Eastern European member states were trying to minimise ambitions.⁵ Poland was the most vocal opponent of ambitious plans, as its prime minister publically spoke out his concerns over the EU position for the COP in Paris.⁶ The other major change that made Paris so different from Copenhagen – abandoning the top-down structure in favour of a bottom-up pledge system – had significant effects on the process of coming to an EU negotiating position. The European INDC was now submitted well before the negotiations itself and was the result of negotiations on the internal European climate policy. These affairs were not negotiated in the WPIEI. However, there are two other issues that were discussed in the WPIEI and that merit attention here.

Firstly, there was the review system that the EU vouched for at the COP in Paris and that eventually ended up in the Paris Climate Agreement. This ‘pledge and review’ system entailed obliging signatory countries to submit a nationally determined contribution (NDC) at least every five years. Each successive NDC has to be more ambitious than the previous.⁷ The review system had been devised by Dutch civil servants several years prior to the Paris conference. A Dutch non-paper from 2012 first proposed the review system. Initially, the Dutch had lobbied for support outside of the EU. It was only in early 2014 that they first presented these ideas to the rest of the EU. This ambition mechanism was a major point of debate for the negotiating position for Paris. Poland, together with several neighbouring Eastern European countries, proved to be the most notable opponent of the mechanism. The Poles argued that they had already gone as far as they could reasonably go by accepting the 40 per cent emissions reduction in the INDC.⁸ The Slovaks, too, argued for a less ambitious ambition mechanism, consisting of 10-year cycles.⁹ Poland and Slovakia were joined by a few other neighbouring

⁵ Interview with Dutch delegation leader to Paris, 23 April 2020.

⁶ K. Oroschakoff and A. Gurzu, ‘Duda’s climate critique gets chilly reaction’, *Politico*, 21 August 2015. Retrieved from: <https://www.politico.eu/article/duda-climate-emissions-poland/> [Accessed on: 25 January 2020].

⁷ United Nations Framework Convention on Climate Change, Paris Agreement, 2015, Article 4.

⁸ Interview with Dutch delegation leader to Paris, 23 April 2020.

⁹ Council Conclusions of 18 September 2015 on *the preparations for the 21st session of the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC) and the 11th*

countries in their opposition. On the other side there was also a large group of member states that did support the mechanism. Germany, for example, was an outspoken supporter of a five yearly review mechanism.¹⁰ In the end, these differences between the eastern and western European countries was solved by the wording of the clause on the review mechanism. The ambiguous wording made it possible for the Poles to present the clause as a possibility for reducing targets after Paris, whereas the ambitious member states could argue the opposite.¹¹

The second point that merits attention was the discussion on LULUCF. There were already disagreements on this topic during the preparations for Copenhagen. In Paris, the discussion centred around the question of whether the system of compensation of emissions from fossil fuels by using organic material should be included in the 40 per cent reduction target. As has been discussed in the previous chapter, countries with large forestry industry could use their forests to count towards their reduction target, but could also abuse loopholes in this system. In the negotiations preceding Paris, the same schism that was present five years earlier arose. Member states with a large forestry sector, such as Finland, were again proponents of including LULUCF in the 40 per cent reduction target.¹² Other member states with significant forestry industries are Sweden, Austria, Poland, Germany, and France.¹³ During the preparations for the Paris COP, this issue again proved to be too dividing within the EU. The Union did not include an outspoken opinion on the LULUCF regulation in their negotiating position for the conference in Paris.

By moving the negotiations on the emissions reduction targets to a different working group, we see that the debate within the WPIEI and among the member states became limited to a smaller number of topics. We see that the same schisms emerge in the LULUCF debate, whereas the relatively new member states of Eastern Europe have come to dominate the opposition.

7.2 The Commission

session of the Meeting of the Parties to the Kyoto Protocol (CMP 11) (Paris, 30 November – 11 December 2015).

¹⁰ Council Contributions from member states of 22 June 2015 on *The road to the UNFCCC Conference of the Parties in Paris.*

¹¹ S. Fischer and O. Geden, 'The Changing Role of International Negotiations in EU Climate Policy', *The International Spectator* 50.1 (2015) 1-7: 5.

¹² Interview with Dutch delegation leader to Paris, 23 April 2020.

¹³ Eurostat, 'Forestry statistics in detail', August 2016, 4-5. Retrieved from: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/29576.pdf> [Accessed on: 22 May 2020].

Before Paris, the Commission built much more strongly on earlier publications on internal climate affairs than they did before the other two conferences. This can be interpreted as a sign that external climate policy has become more entangled with internal climate policy. The only Communication published before COP 21 outlined the Commission's position on the climate conference. It showed many similarities in terms of position and wording to the Council conclusions that would be published in the following months. For example, the Commission, too, called for a five-year global review period and they, too, vouched for the increased transparency and accountability.¹⁴

From the content of the Commission's communication, we can deduce that it remained active on the same fronts as it was in Copenhagen. It was still a climate-ambitious player and vouched for more international climate finance, something that was generally accepted among member states.¹⁵ The Commission also played a role in adding the 5-year review mechanism to the negotiating position. As has been explained above, Dutch negotiators had been lobbying for such a mechanism for a long time before Paris, but the Commission incorporating it in their communication in early 2015 helped it in winning acceptance.¹⁶

The formal role of the Commission did not undergo any changes between the Copenhagen and Paris COPs. Consequently, the Commission continued to play a leading role in the negotiations for the European negotiating position. Negotiators argue that its importance was further enhanced by the fact that it was able to deliver sufficient administrative capacity and expertise that the rotating president was often unable to provide. They could build on the institutional experience they had gained over the course of many COPs before. The Commission did take a new approach to its international role. It played an active role on the international stage in bringing various stakeholders together. Especially Energy and Climate Action Commissioner Miguel Cañete proved effective in representing the Union and building international coalitions.¹⁷ Commentators have argued that this coalition-building was decisive in reaching success in Paris.¹⁸

Here, we see the Commission adapting to the altered playing field. We see that the international level played an even greater role in the preparations for the COP in Paris. The Commission became a mediator on the international stage too and got involved in coalition

¹⁴ Communication COM(2015) 81 final/2 of 4 March 2015 of the Commission on *The Paris Protocol – A blueprint for tackling global climate change beyond 2020*, 5-6.

¹⁵ Interview with Dutch delegation leader to Paris, 23 April 2020.

¹⁶ Ibidem.

¹⁷ Ibidem.

¹⁸ Parker, Karlsson and Hjerpe, 'Assessing the European Union's global climate change leadership', 248.

building at an early stage. On the internal side, we see that the Commission continued to play the leading role it had played in Copenhagen.

7.3 European Parliament

The European Parliament made its position on the Paris conference clear about a month after the Council had come to a European negotiating position. In line with its reputation, the EP's position was ambitious. The EP urges both the EU member states as well as the rest of the countries signatory to the UNFCCC to step up their reduction measures.¹⁹ However, the role of the EP in the preparation was not very significant. As was the case in the previous COPs, it did not have a voice in the Council gatherings nor in the working parties. The opinions of the MEPs received only very little attention from the members of the working parties. Only the Commission might have paid some attention to the opinions of the EP due to the fact that the Commissioner had to justify its position in the EP.²⁰

The insignificant position of the EP in the negotiations is interesting, especially considering the changed legal position. As was mentioned above, the EP was now required to give its consent in order for a binding treaty – such as the one from Paris – to be ratified. In Copenhagen this treaty change just been effected and the consequences might still be unclear, but in Paris, where a binding treaty loomed, one would expect that the EP's opinions would be given more serious consideration. However, this was not the case.²¹ Why did this 'shadow of consent' not grant the EP a more influential role in the run-up to Paris? As we have discussed in the previous chapter, the EP is unlikely to veto the treaty because it would thereby risk having no treaty at all.²² It seems likely that this still played a decisive role in the preparations for Paris. Others have argued that the positions of the EP and the Council concerning the international climate negotiations had been converging more and more up until 2015. Consequently, there was less and less reason for the EP to use its veto. After all, their interests had become more similar to those of the Council.²³ It is likely that both these reasons have played a role in the absence of the EP in the process. However, MEPs themselves also showed little initiative to

¹⁹ European Parliament Resolution P8_TA(2015)0359 of 14 October 2015, *Towards a new international climate agreement in Paris*.

²⁰ Interview with Dutch delegation leader to Paris, 23 April 2020.

²¹ *Ibidem*.

²² Van Schaik, 'The Sustainability of the EU's Model for Climate Diplomacy', 273.

²³ Delreux and Burns, 'Parliamentarizing a Politicized Policy', 344-347.

engage with the representatives negotiating the EU negotiation position, before Copenhagen at least.²⁴ In addition, negotiators of the Council have argued that the EP – as a purely legislative power – did not have a place at the negotiating table.²⁵ Furthermore, the Commission and the Council also had to take into account the positions of other countries vis-à-vis the upcoming climate treaty. Whereas the EP advocated for a more ambitious treaty, including stating the 1.5 degree Celsius, the EU negotiators were afraid that the 2 degree Celsius border would not even be accepted by third countries.²⁶ There is no one reason why the EP was standing at the side-line during the preparations. Rather, it was the cumulative of the reasons above that caused the absence of the EP in the process.

7.4 Conclusion

The playing field for the institutions of the EU had changed significantly between Copenhagen and Paris. On the one hand, the international level played an enhanced role during the intra-European negotiations. The bottom-up structure of the Paris agreement and the new strategy of the EU brought a greater necessity of coalition-building, which enhanced the role of the Commission as the face of the EU on the international stage. On the other hand, we see that the internal shifts – most notably the fact that the reduction target had become a part of internal climate policy – also altered the course of the negotiations. The member states in the Council remained divided. These divisions did alter. There was no longer a strong division between the ambitious northwest and the less ambitious south and east. Rather, it were mostly the Eastern European member states that joined the opposition.

Despite many changes, many facets of the intra-EU negotiations before Paris remained similar to as they were before other COPs. LULUCF remained a dividing issue that cut across traditional dividing lines and the role of the EP remained limited, despite its enhanced legal position. Moreover, the Commission continued to play a leading role in pushing for an ambitious negotiating position throughout the process. The changes between Copenhagen and Paris altered the negotiating landscape but did not, however, lead to a drastic change in the relations between the institutional actors. The negotiating process remained an affair between the member states in the Council and the Commission.

²⁴ Interview with Dutch climate envoy in Copenhagen, 28 January 2020.

²⁵ Interview with Dutch delegation leader to Paris, 23 April 2020.

²⁶ Ibidem.

8 Conclusion

In the analysis of the European preparation for the COPs, we have seen that it is the playing field in which the negotiations took place that changed over the years and not so much the players themselves. The Commission and the EP were relatively climate ambitious institutions at the time of Kyoto and remained so over the years. Among the member states, similar divisions emerged across the years. A group of member states from northwestern Europe strived for ambitious climate agreements and was countered by reluctance from initially the southern member states and later the eastern member states. All the while, some issues, such as forestry, cut across these divisions. The playing field changed much more drastically over the years. Not only the treaty changes caused a shift in the distribution of competences in the process, other developments had influence too. The increasingly multipolar world that increasingly intertwined with the European preparations caused the Commission to act proactively. Initially this had only been by making Europe an example by striving for ambitious climate plans. Later, the coalition-building activities of the Commission would become more important. On the other hand, the addition of numerous new member states complicated the process of coming to a common negotiating position. The Commission was the designated actor to fulfil a mediating role between the member states. The Commission was in the right place to benefit from these changes, whereas the EP was never in such a place at all. The treaties had only granted it an indirect way of influencing the process through *ex post* consultation or ratification. The MEPs were quite unsuccessful in influencing the preparatory process, and the negotiators of the member states did not consider the EP a relevant player in the process. It is important to note that Commission did not dominate the process at all, the member states still had considerable influence on the entire process.

This thesis has shown that treaty changes that result in different competences have limited explanatory power for the actual division of power and the institutional relationships in such a negotiating process. Other factors, such as changes on the international stage, are also important. The methodology of this thesis might also be applied to other international negotiations. This framework is especially relevant for international negotiations on subject which are also relevant in internal European politics. As we have seen with climate change, the boundary between internal policymaking and external policymaking is often very blurry.

This research also has its limitations, however, which future studies might address. Firstly, it has only investigated the preparations for a limited number of COPs that were highly

politicised. It might be interesting to look at the preparations for other COPs, too. Secondly, this thesis is based on several in-depth interviews with negotiators negotiating for the Dutch government. However, in order to gain a better insight in the entire process, interviews with negotiators from different member states or with representatives of the Commission or the EP must be conducted. These might a more diverse insight and detailed insight into the process. Unfortunately, due to practical constraints and time constraints, this thesis was unable to incorporate this into the research design.

As we have seen in the introduction, the Commission is still in the frontline of proposing ambitious plans to combat climate change. Its role as a central actor in the preparation of the EU before the COPs is unlikely to go away any time soon. With leaders sceptical of climate change in countries such as Brazil and the US, the multipolarity on the international stage has not diminished. In addition, there are still many differences among the European member states on the subject. In sum, there is enough space for the Commission to keep fulfilling it's a role as a mediator on the external side, and a mediator and driving force of ambitious climate plans on the internal side. For the EP, it seems that not much change is on the horizon either. A treaty change granting it the power of consent did not change much. It does not seem likely that this is going to change without major alterations of the EP competences.

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