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Fredrika Cruce

How Did We End Up With This Deal? Examining the Role of Environmental NGOs in EU Climate Policymaking

Bruges Political
Research Papers

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Cahiers de recherche
politique de Bruges

No 19 / June 2011



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European Political and Administrative Studies
Études Politiques et Administratives

Bruges Political Research Papers / Cahiers de recherche politique de Bruges
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This paper reflects the personal opinion of the author and does not represent the views of the European Commission. Any errors or omissions are exclusively the responsibility of the author. I would like to thank Professor Hrbek, Professor Chang as well as the editorial team for their useful comments and guidance.

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Abstract

Much interest has been given to the involvement of civil society in EU policy-making, especially over the last decade, as a mean to counter the so called ‘crisis of politics’. This paper examines the role of environmental non-governmental organisations (ENGO) in the policy process leading to the adoption of the amending emissions trading system directive (ETS-directive), adopted in December 2008 in trialogue and formally in April 2009 by the Council of Ministers.

The aim of this study has been to assess the influence of the ENGOs in the particular case of the ETS-directive. It examines enabling and constraining factors, more specifically the channels used by the ENGOs in achieving their aims as well as the significance of representativeness for ENGOs in EU interest representation. The topic of this paper fits into the wider question of whether external actors actually have a real impact on the final policy outcome in the EU policymaking or if the involvement of civil society remains a procedural issue.

Introduction

The science is clear. Climate change is happening. The impact is real. The time to act is now.[...][U]nless we act, there will be serious consequences: rising sea levels; more frequent and less predictable floods and severe drought; famine around the world, particularly in Africa and Central Asia; and the loss of up to a third of our plant and animal species.¹

Those were the words of Ban Ki-moon during the United Nations climate conference in Bali in 2007. Since then, the EU has adopted the so called ‘climate action and renewable energy package’ (the Climate Package), which is made up of six directives.² In this paper, the focus will be on one of these directives, the amending Directive to improve and extend the greenhouse gas (GHG) emission allowance trading system (ETS-directive), which is the core directive of the Climate Package.

The EU is a *sui generis* political system; it is not like any other political system we are used to studying. The power is fragmented between many different actors, and this is often described as an obstacle to democracy.³ Since the 1990s a discourse on the increased involvement of civil society in the EU policy process has been present. In 2001 the Commission published its White Paper on governance, which reinforced the culture of consultation and dialogue. The idea was that increased consultation of interest groups throughout the policy process will improve the democratic process and take citizens closer to the EU and in that way dealing with the EU’s so called

¹ Full text of a speech by the UN secretary general, Ban-Ki moon, to ministers and heads of state at the United Nations climate change conference in Bali, Guardian.co.uk, 12 December 2007.

² Promotion of the use of energy from renewable sources, Greenhouse gas emission allowance trading system, Shared effort to reduce greenhouse gas emissions, Geological storage of carbon dioxide, Monitoring and reduction of greenhouse gas emissions from fuels (road transport and inland waterway vessels, Emission performance standards for new passenger cars.

³ Justin Greenwood, “Advocacy, Influence and Persuasion: Has it All Been Overdone?” in Jenny Fairbrass and Alex Warleigh, eds. *Influence and Interests in the European Union: The New Politics of Persuasion and Advocacy*, Cornwall: Europa Publications Limited, 2002, pp. 24-25.

democratic deficit.⁴ Interest consultation has in many ways become equal with ‘good governance’.⁵

This paper will focus on the role of environmental interest groups in the policy process that led to the adoption of the ETS-directive. It will examine the impact the Environmental Non Governmental Organisations (ENGOS) had on the policy process, what channels they used to influence, in what manner they interacted with the European institutions⁶, enabling and constraining factors for the ENGOS ability to influence and whether any stakeholder had a disproportional impact related to its size (representativeness).

As regards the wider issue of whether interest groups have any real chance to influence in the EU policy process, the results of this study are largely in line with the conclusions drawn by other researchers in this field.⁷ However, one interesting finding in this study is that, in contrast to what could be expected, the size of an ENGO does not necessarily determine the impact of its advocacy work.

1. Theoretical Model and Methodological Framework

A player exercises political influence if his presence, thoughts or actions cause a political decision-maker to meet his interests or objectives more than would have been the case had this player been absent.⁸

There is no objective way of measuring influence, and however precise and strict the researcher is with his or her methods, the results will remain informed

⁴ Emanuela Bozzini, “The role of civil society organisations in written consultation processes: from the European Monitoring Centre to the European Fundamental Rights Agency” in Vincent Della Sala and Carlo Ruzza, eds. *Governance and Civil Society in EU*, Manchester, Manchester University Press, 2007, p. 94f

⁵ Hélène Michel, “Incantations and uses of civil society by the European Commission” in Bruno Jobert and Beate Kohler-Koch (eds.) *Changing Images of Civil Society – From protest to governance*, London, Routledge, 2008.

⁶ Focus will be on the European Commission (the Commission), the European Parliament (the EP), the Council of Ministers (the Council) and to some extent the European Council.

⁷ Cf. Greenwood, Zito, Peterson and Bomberg.

⁸ Bas Arts, *The Political Influence of Global NGOs – Case Studies on The Climate and Biodiversity Conventions*, Utrecht, International Books, 1998 p. 58

guesses.⁹ In this study Hubert's model was applied in order to assess the influence of the ENGOs. This model has been useful as it introduces clear rules and premises for the assessment of political influence in a single decision-making process. According to Hubert, the likelihood that actor A has influenced actor B increases if:

1. A really intended to change B;
2. A had access to B;
3. the time lag between A's attempt and B's change is short;
4. B's policy change is in A's interest (goal-achievement).¹⁰

Accordingly, the indicators *intention*, *policy change*, *time-lag* and *goal-achievement* are essential in this method.¹¹ In this study, Hubert's model was complemented by the EAC-method, which stands for *Ego-perception*, *Alter-perception* and *Causal analysis*.¹² As a first step, a number of ENGOs involved in the policy process leading to the adoption of the ETS-directive were selected through the participation list of the Commissions stakeholder consultation process, as well as the actors listed in the report of the European Parliament (EP) rapporteur. These actors¹³ were asked to assess their own influence on the outcome (ego-perception). As a second step, officials involved in the decision-making process in the Commission, the Council and the EP were asked to assess the influence of the ENGOs (alter-perception). Finally, these assessments were subject to a causal analysis.

The figure below¹⁴ represents the assumed causal effects and how the different factors are linked to each other. The aim of using this figure is to give the reader a clear structure, as well as explanatory and contextual insights and an overview of the assumptions made by the author. The remaining part on this paper will mostly follow this structure.

⁹ Robert Dahl, *Who Governs? Democracy and Power in American City*. New Haven, Yale University Press, 1961, p.330

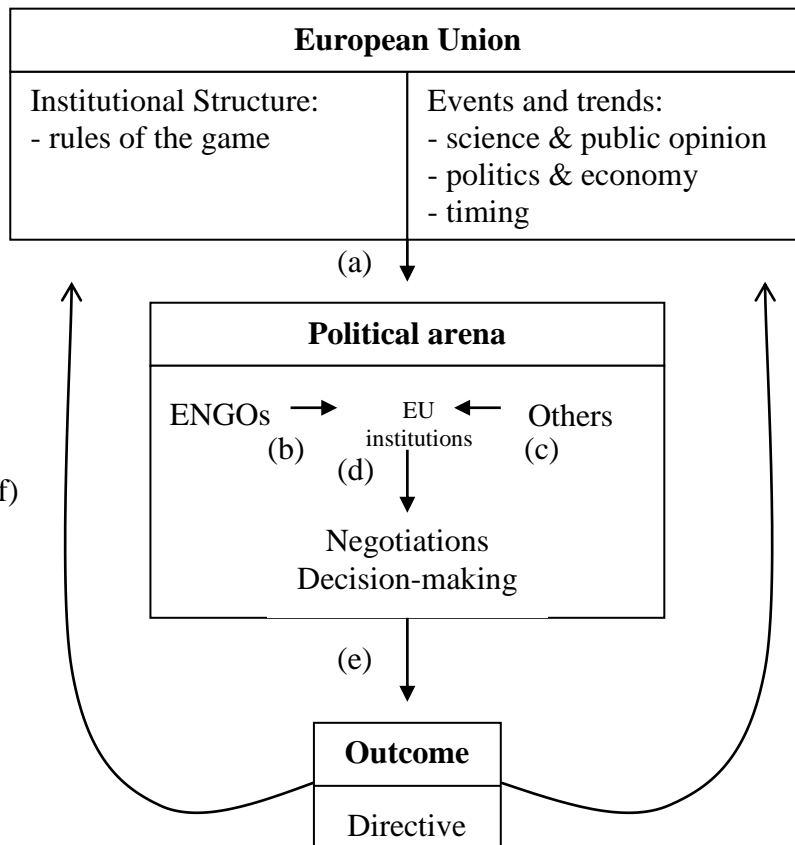
¹⁰ Arts, *op. cit.* p.78

¹¹ *Ibid.* p.78

¹² *Ibid.* p. 80

¹³ CAN Europe, WWF, Greenpeace, Bellona, E3G

¹⁴ Adapted version of Arts, *op. cit.*, p.71



2. The Emissions Trading System: Context

This section will present enabling and constraining factors that contributed to put climate change on the agenda in 2006 and 2007 and that later led to the Commissions proposed Climate Package in January 2008 and the adoption of it in December 2008.¹⁵

The Emissions Trading System (ETS) is a cap and trade system that sets a cap on greenhouse gas (GHG) emissions allowing the polluters to trade emissions permits in order to make sure abatement is made where it is most cost effective. The main problem in the first phase of the ETS was an over-allocation of permits, which resulted in a low market value of the emissions permits. The system also suffered from a low degree of harmonisation among the member states in allocating the allowances. The amending Directive was aimed at tackling both these deficits.¹⁶

The legal basis for the ETS-directive was Article 175 in the EC Treaty, and the procedure to be used was as laid down in article 251, namely the co-decision procedure.¹⁷ According to this procedure the Council and the EP have an equal decision-making power, and the decision in the Council is taken by qualified majority voting (QMV) where the various Member States hold a number of votes relative to the size of their population.

One factor contributing to the political importance of climate change was scientific research and its impact on public opinion. The Stern Review on the Economics of Climate Change soon became the most widely known and discussed report about the impact of climate change on the world economy.¹⁸ The documentary

¹⁵ Some of these factors were presented by Josephine Wood in a lecture at the College of Europe, 17 April 2009.

¹⁶ Questions and Answers on the Commission's proposal to revise the EU Emissions Trading System, MEMO/08/35, 2008.01.23

¹⁷ Treaty establishing the European Community (Nice Treaty, consolidated version)

¹⁸ 'Time to get Stern on climate change', The First Post, 30 October 2006.

film and the book, *An Inconvenient Truth*, by former US Vice President Al Gore was shown in cinemas and in schools and was viewed by politicians around the world¹⁹. Finally, the fourth evaluation report from the International Panel on Climate Change stated that the global warming of the 20th century was unambiguous, and that there is a strong correlation between the human emission of greenhouse gases and the measured increase in temperature during the last decades.²⁰

Another factor relates to politics. At the European Council meeting in March 2007, the EU heads of state and government agreed to make a unilateral commitment to cut GHG emissions by 20 percent by 2020 and by 30 percent if an international agreement were reached, the starting point of the process leading to the Climate Package²¹. At the G8 meeting in June 2007 further commitments were made by the large industrial countries²². The issue of energy security had become an increasingly problematic issue, and its connection to climate change policy was also stipulated in the European Council's conclusions from December 2008: "The Union's efforts to combat climate change are coupled with resolute action to enhance its energy security, including interconnections and the connection of the most isolated European countries".²³ Finally the election of Barack Obama as US president in November 2008 signalled an important change after eight years with his rather climate-change critical predecessor. Obama announced in his campaign that he would aim to reduce CO2 emissions by 80 percent in 2050 compared to 1990 levels and to renew US leadership²⁴, which was mainly perceived by the EU as a positive sign of a changed attitude in the US but also as a threat to the EU's leadership role.²⁵

¹⁹ 'Inconvenient Truth' To Continue Arising in Schools', Spiegel Online International, 13 October 2007.

²⁰ Climate Change Report 2007: Synthesis Report

²¹ 'EU energy summit: a new start for Europe?', EurActiv, 13 March 2007

²² 'G8 Leaders agree to a deal', BBC News, 7 June 2007

²³ Presidency Conclusions, Brussels European Council, 11-12 December 2008

²⁴ John M. Broder, 'Obama Affirms Climate Change Goals', NY Times, 18 November 2008.

²⁵ Interview with a representative from PES in the European Parliament, 21 April 2009.

As factors relating to economy should be mentioned, the financial crisis that started to become increasingly evident in the autumn of 2008, and this to some extent turned the game on the Climate Package to the advantage of the business interests. Previously ignored attempts from business interest to influence the MEPs all of a sudden “appeared to attune the politicians’ ears.”²⁶ However, the financial crisis can also be evoked as a factor that may have pushed some of the actors to reach an agreement faster than otherwise would have been the case, since they realised that it would be even harder to agree on an ambitious package when the crisis had worsened.²⁷ According to a representative of the aluminium industry, the industry did indeed manage to use the financial crisis as an argument to push the demands on emissions reductions down, but as an agreement was reached fast, they did not manage to exploit this argument as much as they could have if the process would have lasted longer.²⁸

Finally, as regards the time factor, the Commission presented its package of proposals in January 2008 as a response to the targets set by the heads of state and government during the European Council summit in March 2007.²⁹ The whole package was subject to the co-decision procedure, and the three institutions had agreed to aim for a first-reading agreement due to the urgency of the issue. The ultimate goal of the EU was to be able to show strong leadership by having adopted far-reaching legal obligations for the post-2012 UN meeting in Copenhagen in December 2009. As there were going to be EP elections in June 2009, the institutions were anxious to reach an agreement before that, as a decision after the new EP was in place would have delayed the whole process considerably. The French presidency has also been

²⁶ Joshua Chaffin, ‘Financial crisis a turning point for lobbyists’ fortunes’, *Financial Times*, 13 March 2009.

²⁷ Interview with a representative from PES in the European Parliament, 21 April 2009.

²⁸ Interview with a representative from ALCOA, 27 April 2009.

²⁹ ‘Deal on EU Climate Package by year’s end?’, 3 July 2008, EurActiv.

evoked as a crucial factor since French presidencies are often strong and well resourced, which was considered to be more or less necessary to push the package through. The Czech presidency that followed had not given any indication of prioritising this issue.³⁰

However, in October 2008, French President Nicolas Sarkozy announced that the issue was going to be treated on the level of heads of state and government in the European Council in December 2008 and hence by unanimity instead of QMV.³¹ According to Sarkozy, this decision was made due to the sensitivity of the issue, as some Member States, notably Poland and Italy, had threatened to block the decision due to the downturn in the economy.³² In that sense the EP and the Environmental Council were bypassed, and this caused some strong reactions, mainly from the EP.³³ The fact that a decision was going to be taken by unanimity in practice implied that a veto was given to all the Member States that wanted a less ambitious text. One of the interviewed representatives from an ENGO commented that Sarkozy seemed to want an agreement at any cost, and this was a very hard position for the ENGOS to deal with: “The European Council largely side-lined the EP, the Commission, civil society and the citizens when they did their deal.”³⁴ By side-lining the EP, the European Council indirectly marginalised the role of the ENGOS.

³⁰ Josephine Wood, lecture, 17 April 2009.

³¹ ‘Brussels readies for tough climate negotiations’, EurActiv, 17 October 2008.

³² ‘The EU ‘holds firm’ on climate goals’, BBC, 16 October 2008.

³³ Interview with a representative from the French Permanent Representation, 23 April 2009.

³⁴ Interview with a representative of CAN Europe, 15 April 2009.

3. The Political Arena

One of the most conspicuous features of environmental decision-making is the influence of a wide-array of non-institutional members and interests, particularly in the early 'shaping stages' (scientific experts, business interest groups and ENGOS).³⁵

3.1 EU Institutions

The Commission is often claimed to be the key institution to lobby. The ideal time to try to influence the Commission is prior to the presentation of a formal proposal. The Commission has several reasons to give external interests access,³⁶ since it lacks “resources, support, legitimacy, grass root contact, and [is] in search of allies to develop European integration.”³⁷ In general the Commission is prescribing to the principle of pluralism in its consultation. DG Environment is often described as one of the most open DGs for external interests to access, if not *the* most open DG.³⁸

Once a proposal has been drafted, the lobbyist should turn its attention to the two legislative bodies, namely the EP and the Council. The EP has grown in significance gradually with the successive treaty reforms, especially the Single European Act and the Maastricht Treaty. The EP now acts on an equal basis with the Council in the co-decision procedure, which is applicable to most of the previously so-called first pillar issues.³⁹ In fact, the EP holds a veto power in the co-decision procedure that makes it very important for external interest groups. Michalowitz argues that “[f]ailure to influence decisions at the Commission level could be rectified

³⁵ Peterson and Bomberg, *op.cit.*, p. 192.

³⁶ Simon Hix, *The Political System of the European Union*, Houndmills, Palgrave Macmillan, 2005, p. 227.

³⁷ Greenwood, *op cit.*, p. 27.

³⁸ Peterson and Bomberg, *op.cit.*, p. 195.

³⁹ David Ernshaw, Josephine Wood, and Alex Warleigh, ‘The European Parliament as Entrepreneur: New Trends, New Challenges’ in Jenny Fairbrass and Alex Warleigh, eds. *Influence and Interests in the European Union: The New Politics of Persuasion and Advocacy*, London, Europa Publications Limited 2002, p. 75.

at the Parliament level.”⁴⁰ The consultation in the EP is relatively open due to the directly elected, full-time and active MEPs. This culture of openness has also spread to the other institutions. Just like the Commission, the EP lacks resources, which makes it more open to contacts with interest groups that can sometimes come with direct input via amendments that the MEPs can simply take on.⁴¹ Several of the representatives interviewed for the purpose of this study from the EP mentioned the input from the NGOs as something they considered very valuable.

The Council is generally considered as the least open institution for non-governmental interests to access. This is connected to the nature of the Council as an institution characterised by the interdependency between the Member States that conduct political horse-trading. The officials in the preparatory working groups operate on a national mandate, and the ministers are as a rule not accessible to lobbyists. If external interest groups want to give some input, they are more likely to contact national officials through national lobbying.⁴²

The interviewed representatives from the ENGOs confirmed this, as they described their access to the Council considerably more constrained than their access to the other institutions. It is possible that business interests might have easier access to the Council, as they generally have more leverage due to the effects their decisions can have on the national economies, etc.

3.2 ENGOs

“You’ve got to have access, you’ve got to be relevant and you have to be close to the politics.”⁴³

⁴⁰ Michalowitz, *op.cit.*, p. 47.

⁴¹ Zito, *op.cit.*, p. 85.

⁴² Michalowitz, *op.cit.*, p. 48.

⁴³ *Ibid.*

In Brussels the ENGOS worked partly through public campaigns, *outsider strategy*, and partly through traditional lobbying, *insider strategy*.⁴⁴ This section looks at each in turn.

A big joint-campaign on the Climate Package between Climate Action Network Europe (CAN Europe), Greenpeace, Friends of the Earth and WWF was coordinated by CAN Europe. They set up a website (www.timetolead.eu) where they tracked the policy process and showed what the current state of play meant in terms of rises in average levels of temperature. This was a way to communicate what the EU policy would imply concretely on an issue that is very complex and hard to grasp for the general public. They also encouraged citizens to send emails and letters to MEPs in the Committee on the Environment, Public Health and Food Safety (ENVI), and at a later stage to ministers and heads of state and government, as a way to communicate their message. Films were produced, and they set up loudspeakers outside the EP before the vote in the ENVI Committee in October, with messages from citizens who wanted their MEPs to vote for ambitious targets. They also placed enormous ice blocks outside the Council building before a meeting in the Environmental Council when the policy process begun to come to an end, and they projected a film on the Commission's main building, the Berlaymont, opposite the Council building, where they showed rising sea levels.⁴⁵

Parallel to this, the ENGOS engaged in traditional lobbying. They organised meetings with decision-makers, drafted amendments for 'friendly' MEPs, worked to build support for MEPs, made voting recommendation papers and distributed them.⁴⁶

⁴⁴ cf. Wyn Grant, 'Pressure Politics: The Changing World of Pressure Groups', *Parliamentary Affairs*, 2004, Vol. 57 No. 2, p. 408f

⁴⁵ Interviews with representatives from CAN Europe, 15 April 2009, WWF, 6 March 2009 and the Swedish Permanent Representation to the EU, 28 April 2009,

⁴⁶ Interviews with representatives from CAN Europe, 15 April 2009 and PES, European Parliament, 21 April 2009.

In its function as an umbrella organisation, CAN Europe⁴⁷ worked hard to find common positions between the ENGOs. On some issues the ENGOs did not manage to find common positions. A representative at CAN Europe argued, “The more significant an issue is, the more there is a tendency for ENGOs to split away and do their own thing. Because it becomes important for an ENGO to be seen and not do things wrong, there is pressure on individual organisations to make sure that they are vocal.”⁴⁸

CAN Europe tried to find common positions and to communicate them in press releases and to decision-makers. The interviewee from CAN Europe stressed the advantage of being united: “We have got all the logos on all material because it is much stronger speaking with one voice. If everybody says the same thing and hammers it, then that has more effect. We are considered as a block anyway, so if you are a MEP you prefer to have a meeting with ‘the NGOs’ than a meeting with five different organisations. They want to know ‘the NGO position.’”⁴⁹ In general, lobbyists who “pool their resources” and cooperate “by sharing information and the ‘ear time’ of a Commission official or an MEP” are the most successful ones.⁵⁰

A major difference between NGOs and industry is that industry typically has one or two issues in a legal proposal that they are concerned about and towards which they direct all of their resources, whereas NGOs generally care about the whole proposal: everything is important to them.⁵¹ Much of the difficulty for the ENGOs lies in finding the balance between pushing hard for an ambitious climate policy and at the same time remaining relevant for the political actors. As one of the interviewees

⁴⁷ WWF, Greenpeace and Friends of the Earth are all members of CAN Europe but Bellona is not.

⁴⁸ Interview with a representative from CAN Europe, 15 April 2009.

⁴⁹ *Ibid.*

⁵⁰ Peterson, Bomberg, *op.cit.*, p. 194.

⁵¹ Interview with a representative from CAN Europe, 15 April 2009.

expressed it, “You’ve got to work out where the middle line is, and you have to push your arguments a bit further.”⁵²

4. The EAC-Method Applied

In this section the EAC-method presented in the theoretical part will be applied. To begin with, the aims of the ENGOs as set up in their advocacy documents will be briefly presented and an assessment will be made of their impact based on a comparison with the EP report and the final Directive (casual analysis). Subsequently, the ENGOs’ assessment of their own influence (ego-perception) will be presented and finally the EU-institutions assessment of the ENGOs’ influence (alter-perception) will be presented.

In short, the overall goal for the three main ENGOs (CAN Europe, WWF and Greenpeace) was to achieve emissions reductions that were consistent with the target of keeping climate change below +2 degrees Celsius. They based their analysis on IPCC data, and the calculations were made on the assumption that all Annex I⁵³ countries were making efforts comparable to those of the EU. They argued that the ETS-directive should be the main instrument to reduce GHG in a cost-effective way and called for:

- The level of the cap [to] be set in line with the EU meeting at least 30 percent cut in GHG emissions by 2020. Any use of external credits [to] be set in addition to, not instead of, domestic reductions;
- All permits [to] be allocated through auctioning to ensure a level playing field and reward the least polluting installations;

⁵² Interview with a representative from WWF, 6 March 2009.

⁵³ Annex I countries are the developed countries according to the United Nations Framework Convention on Climate Change (UNFCCC), namely: Australia, Austria, Belarus, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, European Community, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, USA, retrieved 22 May 2011, http://unfccc.int/parties_and_observers/parties/annex_i/items/2774.php

- All revenues from auctioning [to] be used to combat climate change in the EU and in developing countries.⁵⁴

The **causal analysis** consists of “the researcher’s assessment of the ENGO’s claims on the basis of policy documents.”⁵⁵ This section is based on the results from a systematic comparison between: the priority amendments presented by CAN Europe, WWF and Greenpeace⁵⁶; the EP’s report; and the final Directive.

The results show that the ENGOs did not have very much influence after the Commission’s proposal had been presented. In only two cases were their proposed amendments included in the EP report, and only one of their proposals ended up in the final Directive. However, these are the proposed changes to the Commission’s proposal as it stood; it does not reveal anything about how much the ENGOs managed to influence the proposal before it was presented and how much the original proposal reflected the ENGOs wishes to start with. It should also be remembered that ENGOs were there to push for an ambitious Climate Package, and it is normal that they would try for more than they would realistically think they could achieve, to have a margin. How hard the different ENGOs pushed vary, some ENGOs are more radical than others. One interviewee from a large ENGO expressed this as follows: “I view politics as a dance where all the actors have a step to fulfil.”⁵⁷ The credibility of an ENGO is likely to vary according to how hard they are pushing for far-reaching legislation and hence how credible their demands are considered to be by the decision-makers.

The two other ENGOs included in this study, Bellona and E3G, did not stand behind these amendments; instead they focused on one mechanism, namely the financing of the Carbon Capture Storage (CCS), and in the end they were successful in getting this through in the final text. As such they managed to achieve something quite

⁵⁴ NGO briefing on the review of the EU emissions trading system, retrieved 22 May 2011, <http://www.oxfamsol.be/nl/IMG/pdf/EmisTradingSystem.pdf>

⁵⁵ Arts, *op.cit.*, p. 81.

⁵⁶ They will be referred to as ‘the three ENGOs’ in this section.

⁵⁷ Interview with a representative from WWF, 6 March 2009.

remarkable together with a group of other actors. The EAC method can help us understand their impact.

Ego-perception refers to “[v]iews of NGO representatives with regard to their own political influence.”⁵⁸ According to the ENGOs themselves, the votes in the EP were a big success. But once those votes were done they shifted focus to the Council, where it was a lot harder for them to have an impact.⁵⁹

In general, the ENGOs were fairly satisfied with the final result. As expressed by one of the interviewees: “I am quite happy with where we are, I can live with it but it’s not great.”⁶⁰ When asked to assess their own influence on a scale between 1-10 (10 being maximum) the ENGOs assessed their influence to be on average 5.83/10.

The ENGOs gave three main reasons why they got a deal on the ETS that was somewhat acceptable to them: a reasonably good proposal from the Commission that “did as much as they thought that they could get away with”⁶¹; a very progressive position in the EP with an impressive contribution from the rapporteur who held her group together even though she was under enormous pressure; and finally “a more united than ever ENGO position.”⁶² The Climate Package involved an unparalleled workload for the ENGOs, and as the interviewee from WWF expressed, “During the last two months, very few people slept.”⁶³

The **alter-perception** refers to the views of decision-makers⁶⁴ with regard to the political influence of the ENGOs. All the decision-making actors interviewed somewhat agreed that the result was more or less balanced. As expressed by the assistant to the shadow rapporteur, “The ENGOs got a lot of influence even though

⁵⁸ Arts, 1998, *op.cit.*, p. 81.

⁵⁹ Interview with a representative from CAN Europe, 15 April 2009.

⁶⁰ Interview with a representative from WWF, 20 March 2009.

⁶¹ *Ibid.*

⁶² Interview with a representative from CAN Europe, 15 April 2009.

⁶³ Interview with a representative from WWF, 20 March 2009.

⁶⁴ In this case, the Commission will also be considered as a decision maker (even though it does not have any legislative power) since it had an essential role in formulating of the proposal.

they said publicly that they were disappointed. That is part of how they speak, they are never satisfied.”⁶⁵ On average the decision-making actors assessed the influence of the ENGOs at 7.17/10. As could be expected, the ENGO’s own perception of their influence is in most cases lower than the alter-perception. There is a notable difference, but it is not enormous.

All in all, the proposal set up by the Commission remained intact and only some details were changed. Most importantly for the ENGOs, the cap on emissions remained the same, which was the most important aspect for the environmental integrity of the ETS-directive.

Following the parameters of Hubert’s model, it can be argued that the parameters were, to a reasonable extent, fulfilled. The ENGOs certainly had the intention to influence the decision-makers, there was a policy-change, the time lag was short and the ENGOs attained some goal-achievement. This indicates that the ENGOs indeed were successful in exercising political influence on the ETS-directive. In the following chapter, the nature of this influence will be analysed.

5. Discussion

This section will focus on the last two research questions, namely the enabling and constraining factors for the ENGOs’ ability to influence, and the question of representativeness vs. good ideas, which is highly interlinked to the issue of large vs. small ENGOs.

5.1 Enabling and constraining factors

Public interests, such as environmental groups, generally have allies in the EP.⁶⁶ This was confirmed in this case by the interviewed ENGOs: “Our power lies in

⁶⁵ Interview an assistant to the shadow rapporteur, European Parliament, 15 April 2009.

⁶⁶ Greenwood, *op.cit.*, p. 24-25.

the EP. Outside the EP we are relatively weak.”⁶⁷ Hence, the fact that the co-decision procedure was supposed to be used in the case of the ETS Directive could be considered as a key enabling factor that would have increased their chances to influence, as this procedure gives the EP more decision-making power than any other decision-procedure.

As the French Presidency later decided to move the issue to the European Council, the possibility for the ENGOs to have an impact decreased considerably. The access to heads of state and government is largely restricted or non-existent for the ENGOs.⁶⁸ Private interests may have better chances to be influential on this level, as they have better leverage in terms of threats of job-losses or threats to move their activities outside the EU.⁶⁹ The fact that the final agreement was to be reached in the European Council can hence be regarded as a constraining factor for the ENGOs.

Another constraining factor, interlinked with this, was the financial crisis that became increasingly pertinent during the autumn of 2008. The financial crisis framed the discussion about the ETS, and it was used by industry to lobby against imposing extra costs on industry. The steel workers went out on the streets to demonstrate against the ETS since they were afraid to lose their jobs. The ENGOs had trouble communicating their cause - to fight a change in the climate that is not yet visible in most parts of the world, when some people were told they might lose the job because of that particular legislation - an inherent problem tackling climate change.

However, what can be regarded as constraining factors for the ENGOs’ ability to influence may also in the end have worked in their interest. A second reading, as opposed to a ‘first reading agreement’, would probably have given industry more

⁶⁷ Interview with a representative of WWF, 20 March 2009.

⁶⁸ *Ibid.*

⁶⁹ Interview with a representative of ALCOA, 27 April 2009.

chances to get their concerns listened to⁷⁰ and hence the end result might have been less in line with the aims of the ENGOs. A representative from the Party of European Socialists (PES) argued that the financial crisis made the actors who were in favour of an agreement push even harder, knowing that the economic situation was not going to make the chances of getting an ambitious package better.⁷¹ Interlinked with this, the French Presidency's decision to move the final decision to the European Council produced an agreement that otherwise might not have been possible in the first reading. Both these factors contributed to a speedy conclusion that, if taking the argument of the representative of the aluminium industry into account, gave fewer chances for industry to get their points across. Hence although it contributed to limit the possibilities for ENGOs to have a direct impact, it probably worked in their interest to make the final text more ambitious than would otherwise have been the case.

5.2 Small versus large ENGOs

As mentioned above, Bellona and E3G formed part of a multi-stakeholder group that managed to get a new article added that was not part of the initial proposal, and that indirectly contributed to enlarging the EU's budget (the mechanism for the financing of CCS). Considering the relatively small size of these two ENGOs, it is quite remarkable that they managed to achieve this result, even when taking into consideration their cooperation with other actors.⁷² The technique that captures carbon dioxide has been quite controversial among environmentalists, and many of the large ENGOs were opposed to the use of it.⁷³ This was one of the areas in which CAN

⁷⁰ *Ibid.*

⁷¹ Interview with a representative of PES in the European Parliament, 21 April 2009.

⁷² The multi-stakeholder group consisted of E3G, Bellona, Climate Change Capital, Alstom, Shell and Vattenfall.

⁷³ See for example 'Greenpeace report finds CCS is unproven, risky and expensive', 5 May 2008.

Europe did not have a position, due to the fact that its members did not agree on this point.⁷⁴ As expressed by the interviewee from Bellona:

It's not a thing that wins members, I think it was a sort of 'good cop, bad cop situation' where the large NGOs kept shut about CCS financing and they respected our role as being an NGO to favour CCS financing and making sure that CCS financing does not end up as perverse subsidies for the utilities.⁷⁵

Consequently, one can envisage that one of the reasons why Bellona and E3G were able to take such a strong position on such a controversial issue was due to the fact that they are less abundant on members. As a consequence they did not have as much to lose in terms of members while the big organisations, especially an umbrella organisation like CAN Europe, were unwilling or unable to take that fight. The hypothesis that 'small' ENGO's can be influential despite their smallness and umbrella organisations' tendency to be paralysed is therefore strengthened by this case.

5. 3 Representativeness vs. 'good ideas'

The question about the importance of representativeness for interest groups is dependent on what is aimed to be achieved by the inclusion of external interests in the policy process. If the aim is to create *input legitimacy*, then representativeness will be an important factor. If instead the aim is to achieving 'good' legislation, i.e. *output legitimacy*, then it is likely that more attention will be directed to it if the interest groups have good ideas and are well informed. One of the interviewees at the Commission emphasised that they listened to the stakeholders to see if they had a case. If there was a case, it had to be tested to see how serious it was.⁷⁶ In fact, most of the interviewees from the institutions seemed to agree that 'good ideas' were more important than representativeness. On the other hand, they also said that it is harder to

⁷⁴ Interview with a representative of CAN Europe, 15 April 2009.

⁷⁵ Interview with a representative of Bellona, 20 March 2009.

⁷⁶ Interview with representative of DG Enterprise and Industry, 20 March 2009.

ignore an organisation that represents a lot of members than it is to ignore one with few.

Ruzza found that many institutions stress the importance of representativeness.

For example, the Economic and Social Committee declared,

A basic precondition and legitimising basis for participation is adequate representativeness of those speaking for organised civil society [...] when consulting civil society organisations, the European Institutions should check how representative these bodies are.⁷⁷

However, the Commission also recognises that good ideas and representativeness are not always the same thing, representativeness:

...should not be the only determining factor for membership in an advisory committee, or to take part in dialogue with the Commission. Other factors such as their track record and ability to contribute substantial policy inputs to the discussion are equally important.⁷⁸

This implies, as Ruzza points out, that “considerations of output legitimacy can conflict with considerations of political legitimacy.”⁷⁹

A representative from the Member States brought forward the argument that it was important to listen to the large international ENGOs in the case of the Climate Package, as they could be instrumental in framing the public debate about the international post-Kyoto negotiations and in pressuring other countries to take on similar commitments (the second step in the EU’s aims in its fight against climate change).⁸⁰ This may have contributed to giving the international ENGOs more ‘ear time’ than the European or national based ones.

Multi-stakeholder groups tend to be influential since they are often considered as more credible than single interest groups, and for that reason they considerably facilitate decision-making. The decision-makers do not need to weigh the different

⁷⁷ Ruzza, *op.cit.*, p. 63.

⁷⁸ *Ibid.* p. 63f.

⁷⁹ *Ibid.* p. 64.

⁸⁰ Interview with a representative of French Permanent Representation, 23 April 2009.

interests against each other when public and private interests have already managed to come to an agreement. As expressed by a representative of a small ENGO:

“As an NGO, it is not whether you have five or five million members that matter the most, of course it does matter in your ability to appeal to the media, etc., but that’s not what matters most. What matters most is your ability to find solutions and create alliances that work for people, both as voters, as workers, citizens, as consumers, that’s how we think. But of course if you have 5 million members, you may not have to think like that.”⁸¹

One interesting observation in the case of the ETS-directive that may be relevant for other cases is that the various interest groups seemed to focus their attention on the actors that were already ‘on their side.’ As expressed by one of the interviewees, “On the ETS there were very few lobbyists that seemed to cross the divide.”⁸² The interest groups representing industry focused much of their attention on their traditional allies, such as the conservatives in the European People’s Party, the trade unions focused their attention on the Socialists in the PES, and the ENGOs paid much attention to the Green MEPs, even though they spoke to the others, too. One could have expected the lobbyists to put more effort into trying to convince the ‘other side.’ The same interviewee argued that a more proactive and successful lobbyist should speak to everybody and should adapt their arguments and points to what the receiver is interested in: “It is about adapting your argument and working with the different stakeholders that are more credible with their particular audience.”⁸³ Instead, the interest groups focused on trying to strengthen their allies by giving them various types of support. The fact that they largely stayed on the side of their ‘likeminded’ interlocutors could indicate that the positions of the different actors were rather fixed, and that they did not judge it worthwhile to try to convince ‘the others’.

⁸¹ Interview with a representative of Bellona, 20 March 2009.

⁸² Interview with a representative of PES in the European Parliament, 21 April 2009.

⁸³ *Ibid.*

6. Conclusion: General findings

The final ETS-directive was broadly in line with the Commission's proposal - no radical changes were made. The fact that the centralised cap on emissions was kept was of great importance to the environmental integrity of the directive and hence to the ENGOs. The three large ENGOs⁸⁴ aimed high but only got one of their proposals through in the final directive, while the 'small' ENGOs, as part of a multi-stakeholder⁸⁵ group, managed to get a new article included that was not initially proposed by the Commission. Political influence can be assessed in counterfactual terms by asking if the result is more in line with the goal of the advocacy actor involved than would have been the case had it not intervened.⁸⁶ Following the results of this study, this question must be answered in the affirmative: the three 'large' ENGOs managed to get one of their proposals through in the final text, and the multi-stakeholder group also got one. Therefore the result must be more in line with the goal of the advocacy actors involved than had been the case had they not intervened.

However it has also been argued in the case of the 'large' ENGOs that they had influence when they found allies in the institutions. Therefore, in that case it is more pertinent to talk about the ENGOs providing support for institutional actors than to talk about influence in the sense of making somebody do something that she or he would otherwise not have done. It can be argued that the role of the ENGOs is more central when looking at the long-run. Rather than exercising direct impact on the legal text, their most important role is in framing the public opinion and raising awareness on climate change.

⁸⁴ CAN Europe, WWF, Greenpeace

⁸⁵ E3G, Bellona, Climate Change Capital, Alstom, Shell and Vattenfall

⁸⁶ Arts, *op.cit.*, p. 59

The ENGOs used both outsider and insider strategies in their lobbying. They organised campaigns, made films, wrote press releases but they also had frequent meetings with officials in the Commission, with MEPs and with representatives from the Member States.

As regards to enabling and constraining factors, several aspects worked in favour of an ambitious Climate Package: the Stern report from 2006, the IPCC report from 2007, the commitment made by the heads of state and government in March 2007, the election of a new more ‘climate-friendly’ president in the US and the upcoming post-Kyoto summit in December 2009, etc. In addition to these factors, the fact that the ETS-directive was to be taken by the co-decision procedure increased the chances for the ENGOs to have a say through the EP. The financial crisis clearly worked against the ENGOs chances to get their arguments listened to, and some of them complained that the climate issue soon became forgotten when all media attention was given to the financial crisis.

The necessity of a speedy process made a move of the issue to the European Council more or less necessary in order to achieve an agreement before the end of the French Presidency, following the threats of certain Member States to form a blocking minority. This resulted in a somewhat marginalised role of the EP and the Council of Ministers who normally would have shared the decision-making power between them. However, this should not be overstated as the agreement in the European Council was made within the framework of the efforts made by the EP and the Council of Ministers beforehand. Since the ENGOs generally do not have any access to the heads of state and government, their role became heavily reduced by this decision. On the other hand, it should be remembered that most of the influence from these organisations does not

happened during the decision-making phase but well before. Also, the fact that the final agreements on several issues were made in the European Council made an early agreement possible and probably worked in the interest of the environmentalists, since this reduced the chances for business interests to exploit the emerging financial crisis as a reason to refrain from putting extra costs on industry.

The results show that ‘small’ ENGOs sometimes have disproportionate power. Under some circumstances, it is easier for ENGOs with few members to lobby for a controversial policy than it is for ‘larger’ ones. This does not imply that representativeness does not have any significance. Rather, it should be understood as an indication that small and the large ENGOs are playing different roles. The large ones are superior in producing input legitimacy for an issue. But when it comes to finding good solutions to problems, the large ENGOs could be less effective if the solution at stake is controversial among environmentalists. Many members can work both as an asset and a constraint.

Divided views exist on whether interest groups have got any real chance of influence in the EU policy process. Greenwood argues “only when the wider discourse is a favourable one are they able to make a direct contribution, and otherwise it is a long-term game of planting and cultivating seed corns of ideas.”⁸⁷

In line with this, according to Zito,

In the EU negotiation process, ENGO position and support may change the opinion of institutional actors, but this is less likely; the more likely scenario is that they provide support and ammunition for the coalition of actors that shares a similar position. Thus, other actors adopt the ENGO position to assist their campaign and perhaps use the ENGO position to mask their own position from attack.⁸⁸

⁸⁷ Greenwood, *op.cit.* p. 33.

⁸⁸ Zito, *op.cit.*, p. 86.

Peterson and Bomberg argue that the composition of EU environmental policy networks are loose and ad hoc, and that their “policy impact is seldom decisive.”⁸⁹ All this is in line with what has been found in this study in the case of the ‘large’ ENGOs: their lobbying was successful in the EP report, but it was rather due to the fact that the MEPs were agreeing with them from the beginning than that they changed the opinion of the MEPs. In that case, we cannot talk about political influence following the definition “modification of one actor’s behaviour by that of another”⁹⁰ but rather of auto-causation with support from ENGOs.

Several explaining factors on how we ended up with this deal in the case of the ETS-directive have been evoked throughout this study, *inter alia* the need for a speedy decision due to the EP elections in June 2009 and ultimately the need for the EU to have a clear policy in the run-up to the post-Kyoto summit. A combination of factors contributed to this particular outcome, not least the dedicated work of ENGOs that has been the focus of this paper. However, one of the most decisive factors might have been the commitment made in the European Council conclusions of March 2007, as it forced heads of state and government to reach an agreement, despite being faced by what was possibly one of the most severe financial crises ever seen. To use an expression by Schimmelfennig, the Member States were ‘rhetorically entrapped’⁹¹ by the commitments made in 2007 and this, in an indirect way, forced them to deliver.

⁸⁹ Peterson and Bomberg, *op.cit.*, p. 198.

⁹⁰ Arts, *op.cit.*, p. 57.

⁹¹ Frank Schimmelfennig, *The EU, NATO and the Integration of Europe, Rules and Rhetoric*, Cambridge, Cambridge University Press, 2003.

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