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Climate Politics in the Multi-Level Governance System

**Emissions Trading and Institutional
Changes in Environmental Policy-Making**

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Abstract

In less than ten years, emissions trading has forged ahead as a climate policy instrument – from the setting of the agenda through the formulation of policy to the stage of implementation. This has happened at several policy levels: on the one hand, as international emissions trading in the framework of the Kyoto Protocol, and on the other hand as emissions trading for energy-intensive companies within the European Union. Not only because of the speed of the process, but also because emissions trading is generally being perceived as an effective means to avoid greenhouse gas emissions, its introduction is mostly regarded as a success story. This claim is here critically examined with the help of a number of theoretical hypotheses borrowed from the field of multi-level governance research. The theoretical discussion is woven into a detailed descriptive-analytic account of the introduction of emissions trading, bringing out the most important players, conflicts and milestones in the process. What were the consequences of this rapid introduction for the interdependence of players and institutions in the multi-level policy system? To what extent was it accompanied with a transfer of authority from national governments to supranational or international institutions? Can we speak here of a further loss of sovereignty by national states in the age of globalization? And has the introduction of emissions trading, as a new generation of climate policy instruments, brought about institutional changes in negotiation patterns and decision-making processes? This set of questions is being derived from the concept of multi-level governance which serves as the framework of analysis of this paper and is then being used to analyse fifteen theses in order to explain the complexity of the introduction of emissions trading and highlight problems and deficits in the negotiating processes. The aim of the paper is to give an answer to the question of whether the meteoric rise of the policy instrument may be described as a ‘success story’.

Keywords

Climate politics, Emissions Trading, European Union, Kyoto Protocol, Multi-level Governance

Zusammenfassung

In weniger als zehn Jahren reüssierte der Emissionshandel als klimapolitisches Instrument vom politischen Agenda-Setting über die Politikformulierung bis zu seiner Umsetzung – und das noch dazu in Form verschiedener Handelssysteme auf mehreren politischen Ebenen; zum einen als zwischenstaatlicher Emissionshandel im Rahmen des Kyoto-Protokolls, zum anderen als Emissionshandel für energieintensive Unternehmen innerhalb der Europäischen Union. Nicht nur wegen der Geschwindigkeit des Prozesses, sondern auch, weil der Emissionshandel als zielführendes und effizientes Instrument zur Vermeidung von Treibhausgasemissionen gilt, wird seine Einführung zumeist als Erfolgsstory betrachtet. Der vorliegende Beitrag beleuchtet diese Erfolgsstory kritisch auf der Grundlage von Hypothesen, die der *multi-level governance* Forschung entlehnt wurden. Dabei erfolgt die theoretische Diskussion entlang einer deskriptiv-analytischen Wiedergabe des Einführungsprozesses, welcher die wichtigsten Akteure, Konflikte und zeitlichen Meilensteine in der Diskussion des Emissionshandels herausarbeitet.

Welche Rückschlüsse lässt die rasante Einführung des Emissionshandels auf die Verflechtung von Akteuren und Institutionen im politischen Mehrebenensystem zu? Inwieweit geht mit ihr eine Kompetenzverlagerung von nationalen Regierungen auf supra- oder internationale Institutionen über, und kann man dabei von einem weiteren Souveränitätsverlust der Nationalstaaten sprechen? Bedingen Politikverflechtung und Souveränitätsverlust ein Demokratiedefizit, oder kann demokratische Legitimation durch die starke Partizipation von zivilgesellschaftlichen Organisationen oder der verstärkten Einbindung etwa des Europäischen Parlaments sichergestellt werden? Die Antworten auf diese Fragen bleiben durchaus ambivalent: Das Agenda-Setting des Emissionshandels kann als ein expertokratischer *top-down*-Prozess betrachtet werden, bei dem sich einige wenige wissensstarke Verhandlungsakteure gegen zahlreiche andere durchgesetzt haben. Andererseits ist der Prozess der Umsetzung durch eine beispiellose politische Partizipation gekennzeichnet, in der auch weiche Formen des Regierens zum Tragen kamen. Die Einführung des Emissionshandels zeigt deutlich, dass Nachhaltigkeit ein gesellschaftlicher Suchprozess ist, der stets neu die unterschiedlichen Machtverhältnisse ausbalancieren und eine Öffnung des politischen Prozesses erwirken muss.

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1 Introduction: The meteoric career of an environmental policy instrument

If environmental policy featured in the *Guinness Book of Records*, emissions trading on the international as well as the European level would certainly occupy a prominent place. For in less than ten years – almost no time at all in international politics – it has been successfully introduced as a policy instrument. This is all the more surprising if we bear in mind that not one but several trading systems have been developed at various policy levels. In 1992, at the United Nations Conference on Environment and Development in Rio de Janeiro, international emissions trading still seemed a long way off. But in 1996 the United States proposed its inclusion in the negotiations for the United Nations Framework Convention on Climate Change (UNFCCC), which then led to the Kyoto Protocol in 1997 and was further developed in the years until 2001 through the Marrakesh Accords. In a parallel process, with only a small time difference, the instrument was also introduced at the European level. In 1998, with the Kyoto agreements in mind, the European Union proposed the adoption of company-level emissions trading; followed by a Green Paper in the year 2000, a draft directive of the European Commission in 2001, and a binding EU framework directive in 2003. And, since this directive had to be implemented at the level of each member-state, the instrument eventually reached the federal level of the EU-members states, again with only a small time lag. In Germany, the first mention of emissions trading was in the Climate Protection Programme adopted in the year 2000; early in 2001 the German government set up an Emissions Trading Working Group to accompany the EU and international negotiation processes and to prepare an emissions trading system; in 2004 the *Bundestag* incorporated the EU Directive on Emissions Trading into German law; and since 1 January 2005 companies have been able to trade in emission certificates throughout the EU.

In searching for an appropriate metaphor for the rapid rise of emissions trading, we face the rival images of a ‘waterfall’ or a ‘game of ping pong’. There can be no doubt that the agenda was set in a top-down movement, such that international emissions trading in the Kyoto Protocol paved the way for negotiations on an EU-wide system and finally shaped discourse on climate policy at national and subnational levels. But what appears as a smooth and rapid progression actually involved complex processes of negotiation, in which a number of players moved nimbly back and forth, as in a ping-pong game, between different policy levels. For a long time the negotiation of international emissions trading involved not only government delegations but also international and supranational organizations such as UNCTAD and the OECD, as well as non-governmental players such as industrial and environmental associations. The latter played an equally important role in the negotiation of EU emissions trading: the

supranational European Commission and European Parliament were the key driving forces, but they exerted a powerful influence on national and subnational players, which in turn were active in the process of European and international implementation.

The complexity of the political processes and the heterogeneity of the interests, goals and shifting alliances in the discussion and introduction of emissions trading – at every policy level and in the interplay among them – may be suitably described as ‘turbulent’ (Haas 1976: 179). To make all this clearer and to discuss its significance, we may use the concept of ‘multi-level governance’ as a way of focusing on governmental negotiation processes at various territorial levels as they interact with supranational, subnational and non-governmental players. The present paper weaves a descriptive-analytic account of the history of emissions trading at different policy levels into a theoretical consideration of hypotheses arising out of multi-level governance research; our aim is to give a definite answer to the question of whether the meteoric rise of the policy instrument may be described as a ‘success story’.

Box: How emissions trading works

Emissions trading is a climate policy instrument that may serve to reduce greenhouse gas emissions. Under the Kyoto Protocol industrial countries are allocated a certain quantity of emission rights, in accordance with their historical emissions (base year 1990) less a specified reduction commitment. In the EU emissions trading system, the market participants are not countries but companies or users of industrial installations with relatively high emission levels, which are allocated emission allowances in accordance with national rules.

An emission allowance entitles the party in question to emit one tonne of carbon dioxide (in the Kyoto Protocol: one tonne of CO₂ equivalent) within a specified period. At the end of this obligation period, the party must demonstrate that the extent of its emissions are covered by its emission allowances. Governments or companies may acquire additional emission allowances either by purchasing them from other market participants or by carrying over any remaining credit from one obligation period to the next. Those which emit more than their allowance have to make up the shortfall by acquiring the necessary credits from other market participants.

Emissions trading allows market participants the flexibility to fulfil their reduction commitment either by their own efforts or through the purchase of additional reduction certificates, but in the latter case, since there is a fixed number of emission allowances within the system, other market participants have to achieve a correspondingly greater reduction. In terms of economic theory, emission allowance trading ensures that reductions are achieved where one tonne of carbon dioxide can be avoided most cost-effectively. It therefore minimizes the total cost to the economy of all avoidance measures.

For environmental policy, the great strength of the emissions trading instrument is its ‘ecological accuracy’, since governments are able to control, and over time continually reduce, total emissions by limiting the total issue of emission allowances. In the process of policy implementation, however, the danger has appeared that individual interests will be given precedence over ecological objectives, which can seriously delimit the instrument’s ecological accuracy.

2 Institutional change through multi-level governance

As long ago as the 1970s, Puchala showed that the existing theories and concepts were not adequate to explain the integration process in the European Union (Puchala 1972: 276). Behind the need for a political reconceptualization of the European arena lay a basic assumption that the EU, as ‘a system of complex, multi-tiered, geographically overlapping structures of governmental and non-governmental élites’ (Wessels 1997: 291), was a distinctive entity that could not be explained by established theories of politics, since the EU could not be classified as belonging to one such object of study (see Gehring 2000: 2). This view was strengthened by the advance of the European integration process following the Single Europe Act of 1987, which for the first time made it possible to reach agreements by qualified majority voting and thereby considerably expanded the room for political action at EU level. In an attempt to theorize the EU integration process, Gary Marks (1992) introduced the concept of ‘multi-level governance’.

In another early article Marks defined ‘multi-level governance’ as ‘a system of continuous negotiation among nested governments at several territorial tiers’ (Marks 1993: 392). But later he and others stressed that both the individual and the common room for action of national states was limited not only by the constraints that other states placed on their representatives within collective decision-making processes, but also by the fact that they had to share their decision-making authority with representatives of supranational, subnational and non-governmental institutions (Marks/Hooghe/Blank 1996: 371). The concept of multi-level governance is thus applicable to policy-making processes beyond the EU, since it may be understood more generally as ‘the dispersion of central government authority both vertically to actors located at other territorial levels, and horizontally to non-state-actors’ (Bache/Flinders 2004: 4). In this conception, the institutional reference of multi-level governance is no longer a hierarchical territorial system limited to formal institutions, but rather non-hierarchical, functionally oriented processes of interaction operating within a certain context of problems and decisions – processes which are constituted, and may at any moment dissolve, through partnerships, networks and agreements among public and private institutions as well as individuals. For the interweaving of different levels and players with one another is not static but dynamic – and dependent upon the respective policy field. Multi-level governance thus proves to be the exercise of authority irrespective of the existence of formal structures of government; it works itself out through complex negotiations among players at different policy levels. The concept highlights the fact that hierarchical political patterns are increasingly replaced with governance in

interdependent networks or ‘network governance’ (e.g., Kohler-Koch 2004), which involves a multiplicity of players without a central hierarchy.

Against this background, emissions trading may be described as an example of multi-level governance. For, on the basis of the Kyoto process, the international level has played a role that has in turn influenced the European emissions trading system. Supranational institutions of the European Union (Commission, Parliament, Council of Ministers) have been and are involved in negotiating and introducing this system, along with national governments (EU delegations to international conferences, EU Council of Ministers) and various non-governmental players (e.g., the Federation of German Industry (BDI), the Chemical Industry Federation (VCI), the Confederation of European Business (UNICE), Friends of the Earth, the Climate Action Network (CAN), Germanwatch, WWF, etc.).

In the extensive literature on the shift from government to governance, and from one-level to multi-level, there has been considerable discussion of various characteristics and effects of multi-level governance. We shall try to synthesize these in four hypotheses, which may provide a suitable basis for discussion of the case of emissions trading.

2.1 Accelerated loss of national sovereignty

One of the key hypotheses of the literature on multi-level governance, which is already inherent in the conception of Marks and others (Marks/Hooghe/Blank 1996), is the loss of sovereignty by the national state. The declining capacity of the nation-state to steer and act was a central focus of the debate on *global governance* (Rosenau/Czempiel 1992), in which loss of sovereignty in the wake of globalization was explained in terms of the growing pressure on states to accept coordination, cooperation and collective decision-making within structures of political interrelations, interdependencies and interactions. Admittedly the issue was ‘governance beyond the nation-state’ (Zürn 1998), but from the point of view of global governance the loss of national sovereignty was examined largely with regard to the level of international relations. This applies especially to policy areas that fall into the so-called ‘multilateralism trap’; sovereign national decisions are particularly limited in matters of cross-border environmental policy, as a go-it-alone approach cannot deal with phenomena such as climate change (cf. Weale 1996: 595). The concept of multi-level governance, on the other hand, also relates the loss of national sovereignty to the interplay of collective interaction and decision among supranational, subnational and non-state players. States appear to lose their sovereignty above all in agenda-setting and policy formulation. For the EU member-states loss of sovereignty is also expressed in the implementation of policies which, though often decided in national processes, are monitored by the institutions of the EU.

Where political decision-making rests upon the principle of concurrent majorities, the number of potential ‘vetoes’ tends to increase – not only because of the involvement of other states or international institutions, but also because powerful interest groups are in play (cf. Weale 1996: 606f.). Weale also notes that successful agenda-setting, and to some extent implementation, rest upon the action of national ‘trailblazers’ or, in the case of the EU, on the power of the European Commission to take initiatives. So many interest groups are involved in the process of policy formation, however, that the outcome may deviate from the original idea and be modified by powerful vetoes.

In contrast to the ‘loss of sovereignty’ thesis, other positions maintain that in some areas the state may actually strengthen its sovereignty through multi-level governance. Mayntz, for example, questioning the notion of a weakened state, argues that state authorities often use the building of better-structured policy networks out of public and private organizations as a regulatory strategy (Mayntz 1987, quoted from Koepfel/Kissling-Näf 1993: 274). Reiche (2005) and Schmidt (2002) also mention that a linking of national and supranational levels may afford the state a greater internal capacity for self-assertion, as member-states are involved in the elaboration of common rules and use the changed institutional framework that comes with EU membership as a structure of opportunity to assert interests that would be thwarted in a purely national context (Schmidt 2002: 5). In the end, this means that national players are capable of using multi-level governance to increase their options in the face of national veto powers.

2.2 Transfer of power to the European level

The European Commission occupies a special place in the EU’s multi-level structure. In agenda-setting and policy formulation, it has in many cases already become more influential than the national states (Wallace 1996: 149). But the extent to which the Commission can exercise its formal power – especially its monopoly right to make formal proposals – depends on how well it anticipates what is required and how accurately it times its interventions (Marks/Hooghe/Blank 1996: 359).

As Wallace has argued, it is also observable how the Commission pursues a multiplicity of direct relations, especially with those at whom its policy is directed, with experts and with discussion partners in the member-states (Wallace 1996: 148). Experts close to the Commission and various interest groups have increasing scope to influence policy-making. Using the example of EU environmental policy, Wallace tries to show that the Commission, unlike national states, has assumed a pioneering role; for the Commission became receptive to new analyses of environmental problems and kept an ear open for ideas and policy preferences formulated by NGOs and the newly formed Green movement (ibid.: 149). Consequently, the decision-making responsibilities of the EU member-states are being transferred not only to the Commission but also to experts in the orbit of the EU.

2.3 A potential democratic deficit

The understanding of democracy looks quite novel within the conceptual optic of multi-level governance (cf. Harnisch 2002: 1). Even when the increased influence of non-state players and interest groups on political processes opens up new scope for participation, non-state participation often goes together with a legitimacy and democracy deficit. Admittedly such a democratic deficit varies with the player or interest group in question, but numerous lobby groups do primarily represent the interests of their members.

In addition, even members of the EU Council of Ministers do not always necessarily represent the overall interests of their country, rather than particular interests within it, since the Council consists of people who are appointed to it by the member-states without being democratically elected. Wallace points out that although they refer to national interests, they would often represent more narrowly defined interests – for example, those of the ruling party of the day or a particular minister or group of ministers, or more specific interests that the government wishes to support (such as those of certain corporations or regions) (Wallace 1996: 154). Of course, the Maastricht accords have enhanced the status of the European Parliament, making it an electorally legitimized body with the power to scrutinize agreements between executive decision-makers at different political levels (for example, between the EU Council of Ministers and the European Commission). Nevertheless, however, political processes within the EU potentially face a democratic deficit, since the political infrastructure that mediates between policy-makers and ordinary citizens is underdeveloped at the level of the EU (Jachtenfuchs 1997).

The potential democratic deficit in the EU is also a problem for the member-states themselves. First of all, the EU's multi-level policy-making process leads to an increasing erosion of the authority of national parliaments and of their influence on EU policy, since the complexity and speed of the decision-making processes mean that they are no longer capable of adequately scrutinizing their own government. Second, the function of national parliaments has been changing as the EU integration process trims them back to their original legislative role; their tasks are successively transferred, both in the implementation of Community law and even in the mere influencing of their government's voting behaviour within the EU Council of Ministers. This process of 'deparliamentarization' (von Beyme 1998: 26) may be attributed to the 'executive-heaviness and lack of transparency of the European political process' (Börzel 2000: 248), and it runs the risk of producing a structural democratic deficit. Since European MPs started to be directly elected since 1979, the decision-making process in the European Parliament has also bypassed national parliaments. It is true that national parliaments have been trying to counter this trend – for example, through the creation of EU special committees – but to put it bluntly this has been reducing them to the status of lobbies.

2.4 Joint-decision trap or suboptimal conflict resolution

The theory of ‘joint-decision making’ [in German: *Politikverflechtung*], which was developed in a German context (Scharpf 1976) and may be applied to relations between EU member-states and European institutions (e.g., Scharpf 1995), starts by assuming that decisions are made on the basis of negotiated solutions among players at different political levels. In the process, the various players are more or less forced to work together, so that an outcome must ensue that involves a broad multi-level consensus.¹ The pressure to reach decisions spanning several different levels may result in a ‘joint-decision trap’ [in German: *Politikverflechtungsfalle*] if one or more levels reject a consensus, or if the players are linked into a policy-making structure that systematically generates inefficient or inappropriate decisions for the issue at hand and is incapable of changing the institutional conditions of its decision-making logic (Scharpf 1985: 349). This may even result in a ‘double joint-decision trap’ if the approval of EU member-states (or, in the German case, of individual *Länder*) is necessary (cf. Scharpf 1985 and Scharpf 1994: 94 ff; and, for a contrary view, Auel 2002).

In light of the ‘joint-decision trap’, theory suggests that the EU is largely incapable of action. The facts show, however, that in such areas as labour or environmental policy, despite the different national approaches and philosophies of government, a degree of protection has been achieved which, at least in parts, goes far beyond any lowest common denominator (Eichener 1996: 249). Such successes may partly be due to the fact that the players in question have found a way out of the ‘joint-decision trap’. Scharpf (1976: 55) offers three strategies, the first two of which were of importance in the negotiations of emissions trading: a reduction in the number of people who need to be involved; a reduction in the number of alternatives requiring a simultaneous decision; and a change in both the procedures and content of the rules governing decision-making.

¹ The theory of ‘joint-decision making’ may be differentiated in two ways from the broader concept of multi-level governance: a) by its focus on policy-makers that takes little account of non-state players; and b) by its narrow attention to decision-making processes involving two or more levels. This means that the theory does not cover processes of hierarchical control (e.g., by the German federal government over individual states, or by the European Court of Justice over EU member-states) or intergovernmental negotiating processes (e.g., within the EU Council of Ministers) or open coordination or diffusion of policies among regions, states and institutions. On this, see also Scharpf 2002.

3 The introduction of multi-level emissions trading

To what extent are these theoretical hypotheses able to explain the complexity of the introduction of emissions trading and to highlight problems and deficits in the negotiating processes? The following discussion of emissions trading will address this question in greater detail, by means of fifteen theses corresponding to the four theoretical hypotheses. Depending on the relevant thesis certain hypotheses might be more relevant than others (see Table 1, p. 13). It should be borne in mind that the introduction of emissions trading involves two distinct instruments: international emissions trading within the framework of the Kyoto Protocol (Chapter 3.1); and company-level emissions trading in compliance with directives issued by the EU and further developed at national level (Chapter 3.2). The account below covers the agenda-setting discussions at international level up to the adoption of the EU directive on emissions trading (late 2003); it pays particular attention to Germany's role in the EU negotiations, but excludes the actual implementation of this directive in Germany.

3.1 International emissions trading in the Kyoto Protocol

Thesis 1: International organizations have set the agenda for greenhouse gas emissions trading

In the negotiations for the Climate Change Convention in Rio in 1992, various states made only marginal use of the emissions trading instrument. On the other hand, the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD), as supranational or international organizations, already placed the instrument on their agenda in the early 1990s. UNCTAD established a Greenhouse Gas Emissions Trading Project and published several studies within its framework (e.g., UNCTAD 1992); while in 1992 the OECD published a study investigating US experiences with sulphur dioxide emissions trading and considering the scope for an emissions trading system at international level (Michaelowa 2000: 27). On the civil society side, the US-based NGO Environmental Defense came out in support of emissions trading in the early 1990s, and in 1991 it published a study that advocated emissions trading as a way of protecting the rainforest (cf. Dudek/LeBlanc 1991).

Table 1: Fifteen theses on the introduction of emissions trading and the corresponding four MLG-hypotheses

This table shows for each of the fifteen theses analysed below those of the four hypotheses derived from the concept of multi-level governance which are being discussed primarily while at the same time non-marked hypotheses are not necessarily irrelevant.

Hypotheses Theses	Loss of national sovereignty	Transfer of power to EU-level	Potential democratic deficit	Joint-decision trap
Thesis 1: International organizations have set the agenda for greenhouse gas emissions trading	x			
Thesis 2: The US withdrawal from the climate talks limited the EU's room for negotiation	x			
Thesis 3: The process of international discussion and negotiation involved strong non-governmental participation but only weak democratic legitimacy	x		x	
Thesis 4: The European Commission played the role of think-tank in setting the agenda for emissions trading at the level of the EU		x		
Thesis 5: Experts close to the Commission operated as a policy trailblazer	x		x	
Thesis 6: Stakeholder dialogues proved to be learning forums with only token participation	x		x	
Thesis 7: Joint-decision making at the level of the EU was dominated by three or four 'policy entrepreneurs'	x		x	
Thesis 8: Policy subsidiarity in the shaping of the emissions trading directive was confronted with the central handling of the negotiations	x	x		x
Thesis 9: The negotiations were subject to strong democratic control by the European Parliament			x	
Thesis 10: Some of Germany's central demands were marginalized in the Council of Ministers, Parliament and the Commission	x	x		
Thesis 11: Skilful negotiations allowed a 'joint-decision trap' to be avoided	x			x
Thesis 12: The EU debate helped to set the agenda and course of the discussion in Germany	x	x		
Thesis 13: The powers of the German <i>Bundestag</i> were eroded by the European policy-making process	x		x	
Thesis 14: The quasi-veto powers of German industry cast doubt on the negotiating authority of the German government	x			
Thesis 15: The German process of discussion and opinion formation was steered by the 'Emission Trading Workgroup'	x			

After the Rio conference, the OECD and UNCTAD expanded their sphere of influence through informational activity and lobbying work for specific emissions trading negotiations. At the same time, the International Energy Agency (IEA) together with the OECD provided the framework for the Annex-I Expert Group in the talks leading up to the United Nations Framework Convention on Climate Change – the group which, in the course of the international negotiations, developed into the most important forum for the elaboration of an emissions trading system (Oberthür/Ott 1999: 245). The OECD and IEA also produced studies and information reports on major issues in the negotiations, which proved useful to the Annex-I countries in the international climate talks (Merziger 2005: 26 f.). UNCTAD made a further commitment by publishing between April 1997 and June 2002 a number of newsletters and studies on the issue of emissions trading, and in 1997 it worked with the Earth Council to establish the Policy Forum on International Emissions Trading.

It is difficult to assess the precise influence of the OECD, IEA, UNCTAD and Environmental Defense in relation to particular issues or decisions. In any case, however, they played a central agenda-setting role in emissions trading, and their impact on the debate was probably greater than that of most countries until the United States, in 1996, demanded that emissions trading should be made part of the Kyoto Protocol.

Thesis 2: The US withdrawal from the climate talks limited the EU's room for negotiation

When the United States in late 1996 began seriously to back the idea of emissions trading, other countries in the so-called JUSSCANNZ Group (Japan, the US, Switzerland, Canada, Norway, and New Zealand) lined up behind the American positions (cf. Agrawala/Andresen 2002: 48). The EU countries, for their part, rejected emissions trading until the 3rd Conference of the Parties in Kyoto, as they feared that Europeans would regard emission certificates as a 'right to pollute' or as 'trading in indulgences' and might deny legitimacy to the instrument as such and the international climate talks. EU governments also doubted that trading in this new and complex instrument would prove possible within the specified time period, and they feared that the USA had introduced the proposal in order to delay negotiations (see Grubb/Vrolijk/Brack 1999: 92). The developing countries, organized as G77 + China, also rejected the proposal. But, since Washington made its agreement to the Kyoto Protocol dependent on acceptance of emissions trading, the EU Commission first tied its consent to emissions trading to international agreement on the level of reduction commitments, then finally accepted it on condition that it would take place 'supplementary' to domestic policies and measures (Grubb/Vrolijk/Brack 1999: 94). Thus, in the negotiations between the EU Commission and the JUSSCANNZ Group there can scarcely be any question of loss of sovereignty by the EU as a group, since its most important demand was met in return for concessions over emissions trading.

The EU's leeway was dramatically reduced in Spring 2001, when the United States withdrew from the Kyoto Protocol negotiations. In 1999 the European Council had substantiated the EU's claim for 'supplementarity' by agreeing that a maximum of 50 per cent of national obligations should be met through the deployment of flexible mechanisms (Torvanger 2001: 2), and the EU had called for a corresponding reduction of international emissions trading (UNFCCC 1998: 3). Hence in Autumn 2000, when Dutch minister Jan Pronk, the chairman of the negotiations, tabled a 'soft' compromise in The Hague calling for Annex-I countries to meet their obligations 'primarily' through national measures (UNFCCC 2000: 10), his proposal was rejected by the EU. After the US withdrawal from the Kyoto process, however, the EU was left with virtually no leeway to strike a bargain with other countries over their respective demands. As the EU's top priority was now to bring the talks to some conclusion, even without the US, it could not give definite shape to the supplementarity clause but had to abandon its demand for an upper limit on the use of emissions trading in favour of the legally weaker formulation that Annex-I countries would meet their reduction obligations 'chiefly' through national measures (UNFCCC 2001: 3). Collective decision-making at international level thus led to a major watering-down of the EU's positions on emissions trading.

Thesis 3: The process of international discussion and negotiation involved strong non-governmental participation but only weak democratic legitimacy

International negotiations constantly face the problem that it is mainly representatives of the executive who make policy decisions, and that parliamentary legitimation occurs only subsequently. In practice, this means that the only choice is between unconditional acceptance and outright rejection. Neither in the German *Bundestag* nor in the European Parliament has there been a decision or motion to develop international emissions trading. It was negotiated with such speed, and at such a level of complexity, that national parliaments had no possibility between conferences to assess or even comment on the interim results of the negotiations; the participation of individual parliamentarians in the negotiating teams did not alter this fact.

The influence of supranational or international organizations such as the OECD, IEA or UNCTAD in agenda-setting and the negotiations on emissions trading scarcely made up for the democratic deficit, since they themselves are not democratically legitimated bodies. It is even possible that the scope for participation by these few international organizations actually increased the democratic deficit, given that they represent only selective interests.

In the period leading up to the Kyoto Protocol, non-state players initially had little say on the issue of emissions trading – abstracting, that is, from the pioneering role of Environmental Defense (Oberthür/Ott 1999: 245). The environmental NGOs, most of which worked together in the Climate Action Network (CAN), were sceptical about the

idea of emissions trading, while business representatives gave it a cool response and the scientific community discussed it only in passing in the run-up to Kyoto (Michaelowa 2000: 28). But, in the period from Kyoto to the 7th Conference of the Parties in Marrakesh in 2001, non-state players lobbied more extensively on the issue of emissions trading and made a significantly larger number of public statements. The environmental NGOs continued to regard their criticism of emissions trading as justified, but now they concentrated on influencing the development of the instrument. Their main aim was to ensure that actual emission reductions did take place (Friends of the Earth 2000: 3; FUE 1999; CAN 2000). A wide range of business organizations – e.g., the World Business Council for Sustainable Development (WBCSD) or the Union of Industrial and Employers' Confederations of Europe (UNICE) (see BIAC/OECD/IEA 1999: 8) – as well as newly established business associations such as the International Emissions Trading Association (IETA) or the Emissions Marketing Association (EMA), came forward as strong advocates of emissions trading; only a few representatives of business interests, most notably among energy-intensive corporations, remained sceptical about the whole idea. However, although the participation of non-state players became more lively, it is hard to assess the actual impact they had on the emissions trading negotiations. It cannot be said that certain unlegitimated interest groups imposed their will at the expense of others, but nor can it be maintained, in view of the opinions that continued to be held, that a majority of non-state players legitimated international emissions trading in its present shape.

3.2 The EU Framework Directive on Emissions Trading

Thesis 4: The European Commission played the role of think-tank in setting the agenda for emissions trading at the level of the EU

The setting of the agenda for emissions trading is clearly attributable to the European Commission, or rather its Environment Directorate General (DG). In January 1998, just a few months after the conference in Kyoto, the DG Environment issued invitations for an informal meeting with environmental NGOs (which had already rejected international emissions trading), to sound them out about emissions trading within the EU itself (Singer 2005). In June 1998 the Commission gave a strategy report on EU climate policy to the European Parliament and the Council of Ministers, in which it recommended that EU-wide emissions trading should be introduced for companies in 2005 (European Commission 1998). In May 1999 a second report followed on Europe's climate protection strategy, in which the Commission announced a Green Paper on emissions trading for the year 2000 (European Commission 1999: 15). Only with its publication in March 2000 did public debate begin at a European level. Although some member-states, such as Britain, Norway and Denmark, had already begun to discuss emissions trading systems of their own, the influence of member-states at the level of the EU had previously been extremely slight (Vis 2005).

Thus, the Commission unreservedly performed its role as think-tank for the European Union and presented itself to member-states as a pioneer of emissions trading; its own cognitive leap opened a window of opportunity for the EU. It had anticipated early on that member-states would need instruments such as emissions trading to deliver on their reduction targets, and it used not only its right to take initiatives but also the ‘moral pressure’ of invoking Kyoto targets and the EU’s demand that these should to a significant extent be achieved through domestic measures.

Thesis 5: Experts close to the Commission operated as a policy trailblazer

Non-state players and teams of experts around the EU exerted a clear influence in the composition of the Green Paper and later of the draft framework directive. In Autumn 1998 the DG Environment contacted scientists at FIELD (Foundation for Environmental Law and Development) to discuss a possible EU-wide emissions trading system. At the same time, in the work on the Green Paper, four studies were commissioned to prepare and accompany the development of an emissions trading system (CCAP 1999; FIELD 2000; Capros/Mantzios 2000; IPTS 2000). All four had a lasting influence in the negotiations on EU emissions trading, and the recommendations of FIELD and CCAP (Center for Clean Air Policy) were indispensable in the initial phase for ‘capacity-building’ in the Commission (Vis 2005).

The influence of the FIELD study was even the reason for one of the earliest disputes over EU emissions trading, concerning whether emission certificates should first apply ‘downstream’ (to emitters) or ‘upstream’ (to fuel suppliers or producers). In the position they took on the Green Paper, environmental groups and the European Parliament supported an upstream model on the grounds that it would be easier to administer and that the transport and household sectors were responsible for a large part of Europe’s CO₂ emissions; they accordingly demanded that there should at least be a discussion of the two systems (cf. CAN-Europe 2000: 5; European Parliament 2000: 13). Yet the Green Paper’s decision in favor of a ‘downstream’ approach, which can be traced back to the recommendations of the FIELD study, ruled out an upstream model and eventually carried the day (cf. FIELD 2000: 23). Arguments over the method of allocation were also connected with the FIELD study, since for political reasons it had recommended a ‘grandfathering’ principle based on historical emission levels, whereas the Parliament and environmental NGOs had backed a (partial) auctioning of certificates. In the end, the EU’s emissions trading compromise provides for a system of free emission allowances, with the possibility for member-states voluntarily to auction 5 per cent in the first trading period and 10 per cent in the second period (European Commission 2003, Article 10).

Thesis 6: Stakeholder dialogues proved to be learning forums with only token participation

The Commission offered various forums for stakeholders to participate in the discussion process. Thus, the European Climate Change Programme (ECCP) involved a consultation process on European emissions trading in which more than thirty representatives from member-states, business circles and a few environmental NGOs discussed various options for emissions trading at a total of ten meetings (European Commission 2000a; European Commission 2001). In addition, the publication of the Commission's Green Paper introduced a broader process of consultation on the designing of an EU emissions trading system (cf. European Commission 2000a: 4). Nearly ninety representatives of various interest groups took up the offer and commented on the Commission's list of questions published together with the Green Paper (cf. European Commission 2001a). In the course of negotiations, the Commission also organized a series of hearings.

However, although all state and committed non-state players thus had an opportunity to express in public their opinion on European emissions trading, it remains unclear to what extent these dialogues really fed into the development of the draft directive – or whether they did rather serve the Commission as a tool for increasing the knowledge of various interest groups about emissions trading, for dispelling sceptical attitudes (European Commission 2000: 4) and promoting awareness of the issue within the EU and member-states. Vice versa, the early stakeholder dialogue in the framework of the ECCP certainly did assist 'capacity building' in the Commission, enabling ideas to be tried out and further developed (Vis 2005). However, the positions advanced by those who took part left scarcely any mark in the Green Paper or the draft directive. Only the two stakeholder meetings that the Commission organized in September 2001 – with representatives of industry and with the member-countries – had a lasting impact on the directive; they threw up demands for particular installations to have an 'opt out clause' and for 95 per cent of certificates to be distributed free of charge, and in the course of the negotiations these proposals found their way into the directive.

Notwithstanding the 'token' participation, the instructional side of the stakeholder dialogues meant that they were partly responsible for the broad consensus that was built around the architecture of the directive. For social interaction within relevant networks of players is a central part of the individual and collective learning process in the formulation and development of policy content and instruments (Schüle/Hartmann 2005).

Thesis 7: Joint-decision making at the level of the EU was dominated by three or four ‘policy entrepreneurs’

Joint-decision making is particularly distinctive (because, in part, institutionally formalized) between the EU Commission staff and the EU Council of Ministers, and to a lesser extent the European Parliament. In the negotiations over EU emissions trading, these political interdependencies essentially involved collaboration between particular individuals – most notably Jos Delbeke, Peter Vis and from 2000 on also Peter Zapfel, as the ones in the DG Environment responsible for the directive, and Jorge Moreira da Silva as the rapporteur in the European Parliament. These individuals assumed the function of ‘policy entrepreneurs’ who, in the search for solutions and mediations, repeatedly found ways to speed up the policy process, to expand the room for manoeuvre and to create new latitude for other players (Majone 1996). In this, the staff at the DG Environment benefited from the experience they had gained between 1998 and 2001 (when discussion on the directive became public) in commissioning studies, organizing stakeholder dialogues and internally working on the directive; they were then able to use these systematically acquired skills and know-how to give them a strategic advantage in negotiations with staff from other directorates, as well as with representatives of member-states in the Council, European MPs and miscellaneous stakeholders. The relative loss of power by other participants in the negotiations did not have a destructive effect, however, but was accompanied with a leap in confidence towards the people in question from the Commission (Vis 2005).

Although the conduct of negotiations after the proposal of a draft directive by the Commission is formally the responsibility of the Council presidency, the DG Environment maintained a guiding role throughout the emissions trading negotiations (Singer 2005; Vis 2005). Peter Vis attended all the sessions of the Council working group, and Jos Delbeke the meetings of the Committee of Permanent Representatives. Moreover, through Commissioner Wallström, with whom they kept up a close relationship, the DG Environment also had a dominant influence on negotiations within the Council of Ministers. The regular contact with Moreira da Silva in the Parliament was further used to anticipate differences of opinion among the Council, Parliament and Commission, to search for compromises and to prepare processes of coordination (ibid.). Moreira da Silva, as a young, conservative deputy in the European Parliament, displayed a capacity to put together a cross-party consensus on the directive, covering both progressive-environmentalist and conservative pro-business fractions (Vis 2005). The negotiating process was everywhere conducted with such speed that other players had little time to develop negotiating skills or to put forward alternative conceptions (Singer 2005; Steffe 2005).

In its dealings with other directorates within the Commission, the DG Environment was able to take such advantage of its superior knowledge and argument – supported by the move of Peter Zapfel, who had studied emissions trading at Harvard University, from

DG Economic and Financial Affairs to DG Environment in 2000 – that the directive moved essentially unchanged from the first informal draft in May 2001 through the second informal draft in September to the third and now official draft in October 2001. To be sure, a number of other directorates general – DG Enterprise and Industry, DG Competition, DG Transport and Energy, DG Economic and Financial Affairs and DG Internal Market and Services – expressed their reservations about certain points, but they were not able to assert themselves.

Thesis 8: Policy subsidiarity in the shaping of the emissions trading directive was confronted with the central handling of the negotiations

Against the great influence of the Commission and its expert advisers, it may be said that already at the draft stage the directive gives member-states a completely free hand in implementation, especially with regard to the two main issues in dispute: the total quantity of certificates to be issued, and the methods of allocation. Looking back at the highly politicized debate on the national allocation plan in Germany (see, e.g., Lafeld 2002), we may conclude that there was no transfer of authority to the Commission on issues where the democratic debate was sharpest, described as an important and ‘clever entrepreneurial move’ of the Commission by Wettestad (2005: 14).

On the other hand, the dispute over integration of the project-based mechanisms may be mentioned as one case in which member-states could impose something in the Council against the views of the Commission. Because the ecological effects were an open question, the first draft of the directive did not initially provide for compulsory inclusion of the project-related mechanisms (Joint Implementation and Clean Development Mechanism), but rather announced that there would be a study of how they could be integrated at a later time (European Commission 2001b: 18). The European Parliament, in its first reading, also agreed to exclude certificates of project-based mechanisms from the first stage of the emissions trading system (European Parliament 2002: 25). However, most of the member-states held the view that JI and CDM certificates should be included from the year 2005: the great majority of business representatives (cf. UNICE 2003a: 1) and a number of scientific institutes (e.g., Michaelowa 2003) supported this demand, whereas environmental NGOs shared the critical attitude of the Commission (CAN-Europe/Bird Life/WWF/Friends of the Earth Europe 2002: 1). The Council proposed that the Commission should submit a separate directive by mid-2003 to make integration possible by 2005 (Council of the European Union 2002: 21). Although, formally speaking, the Commission alone has the right to change or withdraw a draft directive, it did not insist on it in this particular case. The project-based mechanisms were mentioned in the directive as passed and were later formally included by means of the so-called ‘linking directive’ (European Commission 2003a).

Thesis 9: The negotiations were subject to strong democratic control by the European Parliament

In contrast to the common assumption that the executive plays an excessive role in EU policy-making, the negotiations on emissions trading featured the European Parliament so strongly that we may speak of a parliamentarization of EU politics. In its first reading of the directive, on 10 October 2002, the Parliament called by a large majority for it to be adopted but also proposed more than a hundred amendments (European Parliament 2002). Consequently, in the run-up to the second reading, a number of meetings and hearings took place between Parliament and Commission and Parliament and Council to discuss the proposed amendments (Vis 2005). It proved possible to clear up most of the differences of opinion in time for the planned start of trading on 1 January 2005, and a number of the Parliament's amendments – such as the demand for an 'opt out' on strict conditions – were accepted. Parliament passed the directive on 2 July 2003 at its second reading, but not without again referring seventeen amendments to the Council. Only on its demand for compulsory auctioning of some certificates was Parliament unable to get its way against the Council, which was unwilling to accept any reference to auctions in the directive; a compromise was eventually found, such that member-states will be free to issue 5 per cent of certificates by auction in the first phase, and 10 per cent in the second phase beginning in 2008 (European Commission 2003, Article 10).

All in all, then, we can say that the European Parliament played a strong role in the legislative process. But it remains an open question whether MEPs have for the most part continued to represent particular national interests. Even if it cannot be conclusively demonstrated, there is a suspicion that at least German MEPs have not been representing 'European opinions', and that national media, and especially national parties, have made a powerful mark on their opinion-forming process (Singer 2005). For instance, the attitudes of German MEPs to emissions trading have mostly coincided with those of the respective German parties: the majority of Social Democrats, in harmony with the then economics and labour minister Clement, rejected the instrument, whereas a majority of Christian Democrats, in line with their usual 'anti-Clement stance', supported emissions trading (*ibid.*).

Thesis 10: Some of Germany's central demands were marginalized in the Council of Ministers, Parliament and the Commission

Negotiations on the EU emissions trading directive proceeded in accordance with the rule whereby individual countries can be outvoted by a simple majority in the council of EU environment ministers. No use was made of this in the actual negotiations. However, disputes over whether participation should be voluntary or compulsory, and over the 'pooling' of installations, might have suggested the idea of overcoming Germany's resistance or demands by means of a qualified majority vote. But it seemed politically important that a large country such as Germany, which was seen as major

potential seller of emissions certificates, should agree with the outcome of the negotiations.

The dispute over the conditions of participation initially concerned the question of whether the emissions trading system should be completely voluntary, at least in the pilot period between 2005 and 2008. After the demands for a voluntary system found no echo in the Council of Ministers, Britain and especially Germany supported the exclusion of certain sectors of the economy (cf. Boie 2002: 18) – whereas most EU countries continued to back a compulsory model without exceptions. Germany's demand was explicable mainly in terms of the influence of industry, which regarded any compulsion as incompatible with the 'Voluntary Agreement on Climate Protection between the Federal Republic of Germany and German Industry' (cf. BMU 2000). The European Parliament agreed that at most a temporary exception might be made for installations until 2007, but it voted by a large majority against any general opt-out clause. In the end, agreement was reached in the Council of Ministers that certain installations, but not whole sectors, should be excluded from trading until 2007 (Council of the European Union 2002: 11). Other EU countries demanded the same dispensation, and so the compromise reduced the number of vetoes. In principle, then, participation in emissions trading remained compulsory, and the compromise did not meet the demand of the German government that its national industry should continue with voluntary obligations.

Thesis 11: Skilful negotiations allowed a 'joint-decision trap' to be avoided

The German government was equally unsuccessful with an amendment that sought to make emissions trading compatible with voluntary obligations, by means of a 'pooling' of installations under the auspices of a trustee. This was supposed to bring sector-based emission reduction targets into line with the targets for specific installations. At first the German government demanded the establishment of a 'compulsory pool', but this made no headway in the face of determined opposition from the Commission, the Parliament and other member-states as well as various environmental NGOs (IEEP 2004). But when the SPD and Bündnis 90/The Greens, after intensive debate in Autumn 2002, inscribed the demand for pooling of installations in their coalition pact (cf. Bundesregierung 2002: 37), the German government was obliged to stick to its guns in Brussels.

To avoid a 'joint-decision trap' in the Council, the Commission first worked out a compromise bilaterally with the German government (Vis 2005). After the Commission had proposed several draft texts, it was agreed that firms could voluntarily pool their emission allowances but not their permits to emit CO₂. The appointed trustee would take over the reduction obligations, but those in charge of the installation in question would remain responsible for reporting and monitoring and be held liable for any non-fulfilment of emission obligations (Council of the European Union 2002: 19; European

Commission 2003, Article 28). This compromise was then presented to all other member-states in the Council, and on 10 December 2002 the Council of Ministers unanimously adopted it. The German government was thus able to save face, but as in the dispute over voluntary or compulsory participation the aims behind the German demand were not taken into account. Predictably, voluntary pooling has had no application because it has turned out to have little meaning in practice.

Thesis 12: The EU debate helped to set the agenda and course of the discussion in Germany

The EU emissions trading debate had an extremely powerful influence on agenda-setting and opinion formation in Germany. In comparison with other European countries such as the United Kingdom, Denmark or Norway, which soon after the international conference in Kyoto began to give thought to the issue and to the development of their own emissions trading systems, it was only at the end of 2000, with the publication of its 'Climate Protection Program', that the German government gave notice of its intention to create a 'National Emission Trading' working group (Bundesregierung 2000). In January 2001 the environment ministry set up an 'Emission Trading Workgroup to Combat the Greenhouse Effect', which over the following years was the most important national forum on emissions trading. During the first half of 2001, the workgroup's main focus of discussion was the various options for the creation of a national emissions trading system, but this soon changed quite radically and over the next few years it largely followed new developments in the EU-level discussion. An unofficial draft directive was being circulated in late May 2001, and at the latest by the time it was published in October 2001 discussions within the Emission Trading Workgroup were mainly intended to develop a common position on the directive and to reach agreement on the amendments and addenda that seemed necessary from a German point of view (AGE 2002: 4).

The influence of the EU level on agenda-setting and the early discussions in Germany could be seen mainly as a loss of sovereignty if German decision-makers were deprived of the possibility to take independent initiatives on emissions trading. But the fact that, before the adoption of the EU directive, the United Kingdom and Denmark had introduced their own emissions trading systems – which, however, proved to be incompatible with EU emissions trading – and that the discussion in Norway was already far advanced shows that Germany too could have taken independent initiatives for the discussion and introduction of emissions trading; it is therefore not possible to speak of a 'multilateralism trap'.

Thesis 13: The powers of the German *Bundestag* were eroded by the European policy-making process.

At national level, a potential democratic deficit resulting from the dominance of the Council and the Commission is ultimately expressed – as Börzel (2000) has pointed out – in the erosion of the powers of the *Bundestag*. With regard to EU emissions trading, the main role of negotiations was to fit an already adopted directive to national legislation, and to design its implementation through, for example, a national allocation plan (see Schüle/Hartmann 2005). However, the *Bundestag* played virtually no role at the time of the EU-level negotiations on the directive; it passed no resolution prior to adoption of the directive that would have expressed a democratically legitimated German position; only in the environmental committee was a motion presented by SPD and Green MPs (see Ausschuss für Umwelt, Naturschutz und Reaktorsicherheit 2002). And, although discussion of this motion outside the environmental committee caused major political waves and even involved government members from the Chancellor's office, it did not find expression in the German government's position at the EU Council of Ministers (Steffe 2005). Furthermore, members of the *Bundestag* did not take part in the German delegation at the negotiations or the stakeholder dialogues and hearings in Brussels, nor did they play a significant role in the Emission Trading Workgroup process of opinion formation in Germany. It is true that individual party members in the *Bundestag* took part in sessions of the Emission Trading Workgroup, and the foundation of the group itself can be traced back to a proposal by the Greens' spokesperson of the time on environmental policy, *Bundestag* deputy Reinhard Loske, in June 2000 (Loske 2000: 1 f.). It has also been reported that members of the European Commission contacted Loske in Autumn 2002, when a compromise had to be worked out on the German demand for the pooling of installations in emissions trading (Steffe 2005). All in all, however, it cannot be said that either the *Bundestag* or any of its members had a significant influence in the negotiations on the directive.

Thesis 14: The quasi-veto powers of German industry cast doubt on the negotiating authority of the German government

In contrast to the rather narrow role of individual German *Länder* (cf. Duscha/Münster/Seebach 2005; Lafeld 2003: 173), German business played a major role in the national debate on EU emissions trading and, through its expressions of concern and its strong presence in the Emission Trading Workgroup, was intensively involved in the discussion in Germany. It adopted many positions – both in the Workgroup and at the level of individual companies and business associations – which in general were critical of the adoption of the policy instrument. The energy sector and emission-intensive companies, in particular, rejected the plan for compulsory EU emissions trading. In a letter of December 2001, they called on Chancellor Schröder to oppose the draft directive, on the grounds that an emissions trading system would be counterproductive in terms of

climate policy and impossible for the German economy to cope with (*Süddeutsche Zeitung*, 5 December 2001). In subsequent statements, they underlined the incompatibility with existing instruments and the competitive disadvantages that could be expected to follow for the German economy (Lafeld 2003: 183; BDI 2002: 2).

Although German business interests largely appear to be in outward unison, a survey conducted by the Wuppertal Institute in late 2001 showed that, at least at the beginning of the discussion (in Autumn 2001), the actual range of opinions was rather more heterogeneous. Thus, 30.6 per cent of corporate respondents saw emissions trading as an appropriate instrument for the achievement of climate targets (Santarius/Ott 2002: 15). Some companies unambiguously supported it: above all, Shell and BP, which had already introduced emissions trading systems within their own corporations (MWV 2001: 1), and a number of financial services companies for which EU emissions trading seemed attractive as a new area of business (Dresdner Bank et al. 2001; Lafeld 2003: 185). Nevertheless, the influence of critics and opponents of emissions trading prevailed. The resistance stemming from the chemical industry association (VCI) and especially the BASF corporation, which also had a major influence on the official position of The Federation of German Industries (BDI) and may be held responsible for its often divided attitude, crippled the discussion in Germany and meant that it was mainly voices of rejection which were heard in public from German business. The occasionally destructive demands of the German government within the EU Council of Ministers – for example, on the issues of voluntary participation and ‘pooling’ (see above) – may be clearly attributed to this influence, although the heads of the German environment ministry itself had a basically constructive attitude to the draft directive.

Thesis 15: The German process of discussion and opinion formation was steered by the ‘Emission Trading Workgroup’

The influence of business and industry on the German government and its critical stance at the negotiations in Brussels may certainly be regarded as important. But it may be objected that, in setting up the Emission Trading Workgroup, the government tried as early as possible to initiate learning processes in German corporations and to control both the influence of business and the formation of opinions within it. Modeled on the emissions trading workgroup set up in Britain in 1999, the Workgroup had the objective of working closely with relevant companies, stakeholders and government representatives to discuss and, where possible, to eliminate, opposition and differences of opinion over the shape of an emissions trading system, and thus to assist the German government in its EU-level negotiations of the emissions trading directive (Lafeld 2003: 188). It may be assumed, however, that the idea behind the AGE was not only to assist ‘capacity building’ in the government but also to influence opinion formation within industry. After several years of discussion on the reform of ecological taxation in Germany, especially between 1994 and 1998 (see Santarius 2000), it was hoped to prevent German industry from simply digging in to entrenched positions. In this respect,

the Workgroup may be seen as a forum in which the spokespersons of industry on emissions trading were supposed to debate the issue with critics, so that industry would no longer reject the policy instrument ‘with one voice’ and supporters of emissions trading would be able to get a proper word in. Things did indeed turn out like that in the initial phase of the Workgroup. On many issues the heterogeneity of the group permitted no consensus to be reached, and in the course of 2001 both the BDI and the Workgroup, representing German business interests, found it difficult to appear at the hearings in Brussels with a purely destructive position (Merziger 2005: 81). In the further course of the discussion, however, the views of the critics of emissions trading in the Workgroup became dominant and brought pressure to bear on the German government. By late 2001 the environment ministry was trying to wind up the Workgroup, but then, after the exclusion of the sternest critics under the name ‘Friends of the Chair’, it continued with the Workgroup with the aim of keeping it as a forum constructively accompanying the negotiations.

The Emission Trading Workgroup also promoted ‘capacity building’ on the part of environmental NGOs, which were able to exert influence over the policy-making process. Germanwatch, WWF Deutschland and BUND (the German branch of Friends of the Earth) represented environmental organizations within the Workgroup and took clear positions in support of the draft directive (Germanwatch 2001a; WWF 2002; Germanwatch 2001). Along with their collaboration in the Workgroup and their working out of common positions, the main contribution of the environmental associations to the policy-making process was an expert study commissioned by the WWF with financial support from the German environment ministry to develop and evaluate various options for the directive from a German point of view (Öko-Institut/ZEW 2002).

In the end, it is difficult to say whether the German government thereby lost authority in relation to non-state players. On the one hand, German business critics of emissions trading strongly influenced how the government conducted the negotiations in Brussels. On the other hand, the German government accepted a consensus in Brussels that could not satisfy the interests of those players.

4 Conclusions: Multi-level policy making between power politics, soft incentives and democratic decision-making

The emissions trading debate as presented in this paper has demonstrated the interactions between adoption of a policy instrument on climate change and the sovereignty of European national states. It has also demonstrated the extent to which a concept of emissions trading entails a shift of powers to higher political levels and an eventual democratic deficit, as well as the effect of its introduction on the interdependence of players at different political levels.

If we look back at the whole process, especially at the introduction of the European emissions trading system, we can see the extent to which ‘governance within the dynamic multi-level system’ entails both that the powers of national governments are distributed to different political levels and that the different levels are linked in a special way into a common decision-making process. In the case of emissions trading, it is interesting how governance is diffused at several territorial levels, so that it is possible to speak of a shift towards multi-level governance. On the other hand, it is becoming clear that this shift goes together with a qualitative change in the forms of governance.

Multi-level interdependence in the introduction of emissions trading confirms the loss of classical forms of control based on ‘nation-state coercion’, and demonstrates that political decision-making processes must increasingly rest upon the principle of majority agreement among the key international, supranational, national and sub-national players as well as important non-state interest groups. In particular, the active participation of non-state players at all political levels and the guiding role of the Commission within the process – its purely legal mandate is much more limited than the political influence it had in the introduction of the EU emissions trading directive – point to the rise of indirect steering instruments and ‘soft’ decision-making processes. As the concept of governance suggests, the introduction of the emissions trading system revealed a series of non-authoritarian forms of political steering and new forms of cooperation; for example, the large number of stakeholder forums and hearings, the important influence exerted by policy advisers and experts through specialist studies, or the influence of ‘policy entrepreneurs’ on formal and informal structures of joint-decision making.

However, these forms of steering and cooperation only partly manifested themselves as ‘bottom-up’ processes. Above all, the major policy influence of the Commission in negotiations on the EU emissions trading directive, and to a lesser extent the role of

international institutions in setting the agenda for and negotiating the Kyoto Protocol, are more indicative of a supranational ‘top-down’ process. In light of the rather narrow influence of non-state players at international and EU levels, it is therefore not really possible to speak of participatory negotiating *solutions*. On the contrary, the dominant policy players – especially the European Commission – were even able to make use of participatory processes to strengthen their own position. We have already described how the development of the EU emissions trading directive was due in no small measure to a few particular persons. Our analysis shows a policy arena where participating players have a highly varied ability to impose their will – which, in the case of the EU emissions trading directive, was heavily weighted on the side of the European Commission. The crucial importance of networking and of the behavior patterns of individual players is apparent here, since the development of the EU emissions trading directive may be regarded as a process that occurred through individuals embedded in formal social networks, who interacted with one another in these networks (Granovetter 1985) and were thus able to use their cognitive advantage to assert their own interests.

This is true first of all with regard to the policy-making process: the speed at which the Commission drove the negotiation of the European emissions trading system, as well as the inequality of negotiating capacities that continually simplified the process of decision-making, raises the question of whether the adoption of the instrument could be given sufficient democratic legitimacy. But it is also true with regard to the claims of emissions trading as an alternative to other environmental policies. For emissions trading – which most interest groups in civil society and (probably) a majority of the population rejected at a time when it was scarcely possible any more to amend its introduction – prevailed against other climate policy instruments (ecotaxes, efficiency standards, etc.) without ever being exposed to a for and against choice in open political debate. We may therefore assume that the ‘ping-pong game’ of the various players in the multi-level network gave discursive power a boost which first spread to emissions trading at international level and then ‘trickled down’ to lower policy-making levels. In other words, certain players were able to make effective use of the multi-level system and of ‘spillovers’ between different political levels, and thus to secure the introduction of the emissions trading instrument at policy levels where this might otherwise not have been attainable.

It must be said, however, that the introduction of emissions trading against the opposition of a number of affected industries has made it easier to implement sustainable development targets: that is, greenhouse gas reductions with which a huge majority of state and non-state players are in agreement. Thus, although the process was marked by top-down elite negotiations, we may think of it – as far as social power relations are concerned – as a clash between business and politics that considerably increased the room for maneuver of many rather powerless interests against a few powerful (industrial) interests. This also applies to the choice of the instrument itself, since now only a small minority of (non-environmental) NGOs, media, scientists or other non-business interest groups criticize the instrument as ethically reproachable or

politically inadequate. In fact, the EU emissions trading directive provides a framework in which the specific shape of the trading has to be discussed at national level. It may be that this framework, together with an openness to cooperative and participatory processes at the level of implementation, takes account of the fact that sustainability is an ever ongoing process that constantly has to offset various power relations and to create scope for less influential interest groups.

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