

Böckem, Alexandra

**Article — Digitized Version**

## The political economy of climate policy-making in the European Union

Intereconomics

*Suggested Citation:* Böckem, Alexandra (1998) : The political economy of climate policy-making in the European Union, Intereconomics, ISSN 0020-5346, Springer, Heidelberg, Vol. 33, Iss. 6, pp. 260-273

This Version is available at:

<https://hdl.handle.net/10419/40206>

**Standard-Nutzungsbedingungen:**

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

**Terms of use:**

*Documents in EconStor may be saved and copied for your personal and scholarly purposes.*

*You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.*

*If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.*

Alexandra Böckem\*

# The Political Economy of Climate Policy-making in the European Union

*The European Union's climate policy is characterized by uncoordinated measures taken at national level, and a preference for inefficient economic instruments. The vanguard role taken by the EU in international climate negotiations stands in contrast to the lack of action in meeting far-reaching emissions-reduction targets on a European level. The following article attempts to explain these shortcomings by using the instruments of the New Political Economy.*

Climate policy-making has become increasingly important over the last ten years against the background of the ominous consequences of global warming. As it is an international environmental problem, any solution presupposes cooperation of a higher order, such as at the level of the European Union. However, an examination of European climate policy shows that the recommendations of economic theory are not being heeded. Although Europe-wide measures to protect the climate would be more effective, the EU's policy is still largely a patchwork of national programmes. In addition there is a recognizable preference for inefficient instruments such as command-and-control regulations and subsidies rather than incentive-driven measures. A further deficiency is the discrepancy between the ambitious targets for reducing CO<sub>2</sub> and the sluggishness with which they are being implemented.

Using the instruments of the New Political Economy, the following paper examines

- the extent to which the EU's decision-making bodies (the Council, the European Parliament and the Commission) can influence climate policy decision-making and
- the positions of the three EU institutions on climate policy.

By synthesizing the analyses of influence and interests, it aims to find a possible explanation for the shortcomings in European climate policy just identified.

## The Development of EU Climate Policy-making

The EU institutions began to confront the problem of climate change in the mid-1980s. In November

1988<sup>1</sup> the EU Commission first notified the Council of Ministers of the scientific basis of the climate problem, and proposed possible, but as yet non-specific measures.<sup>1</sup> At the same time the Intergovernmental Panel on Climate Change (IPCC) was established, and hence international developments in climate protection were of influence. At their joint meeting on 29th October 1990 the EU's environment and energy ministers agreed to stabilize the EU's CO<sub>2</sub> emissions at their 1990 level by the year 2000. This declaration was not legally binding on the EU member states and was made conditional on comparable measures being taken by other industrial countries. It was not until the 13th of December 1991, over a year later, that the Council of environment and energy ministers requested that the Commission draw up concrete measures in order to emphasize the seriousness of this objective at the United Nations' "Earth Summit" in Rio de Janeiro. This paved the way for the EU to adopt a leading role in international climate negotiations.<sup>2</sup>

Once a common stabilization target had been accepted and the Council had made its formal request, it was now the Commission's task to work out strategies for putting the targets into practice.<sup>3</sup> To do this it set up an ad hoc committee of representatives from the ten Directorates General affected by climate policy. In the course of their work three main active parties emerged: DG XI (Environment), DG XVII (Energy) and DG XXI (Indirect Taxation). In June 1992,

<sup>1</sup> Cf. Commission of the European Communities: The Greenhouse Effect and the Community, COM (88) 656/final.

<sup>2</sup> Cf. A. Lenschow: Der umweltpolitische Entscheidungsprozeß in der Europäischen Union am Beispiel der Klimapolitik, in: H. G. Brauch (ed.): Klimapolitik, Heidelberg etc. 1996, p. 92.

<sup>3</sup> For a thorough account of this phase in the development of a climate protection programme and the problems arising, see: J. B. Skjaereth: The Climate Policy of the EC: Too Hot to Handle?, in: Journal of Common Market Studies, Vol. 32, pp. 27-32.

\* Hamburg Institute for Economic Research (HWWA), Hamburg, Germany.

immediately before the Rio conference, the Commission presented a package of strategic measures for a European climate policy which were intended to bring about the reduction of CO<sub>2</sub> emissions by 12% by the year 2000, based on the 1990 levels (corresponding with the original stabilization target).<sup>4</sup> It proposed the following four measures:<sup>5</sup>

□ A framework directive on energy efficiency (SAVE): this envisaged measures to create a proper regulatory environment for the more efficient use of existing energy sources. Its contribution to CO<sub>2</sub> reduction was to be 3%.

□ A decision to increase the market share of renewable energy sources (ALTENER): this covered funding measures to promote renewable energy sources and was supposed to bring about a 1% reduction in emissions.

□ A directive on a combined CO<sub>2</sub>/energy tax: 50% of this tax was to be raised on the energy content and 50% on the carbon content of the primary fuel used. The rate of taxation would be increased gradually to give businesses and householders sufficient time to adapt. The Commission hoped for a reduction in CO<sub>2</sub> emissions of between 3% and 5%, depending on what tax exemptions were granted.

□ A decision to set up a mechanism to monitor CO<sub>2</sub> and other greenhouse gas emissions in the EU. The aim of such a monitoring programme was to strengthen national climate policies which, together with the Europe-wide strategy, would contribute to meeting the stabilization target.

These measures provided the initial basis on which the EU and 156 other countries signed the UN Framework Convention on Climate Change in Rio, staking out conditions for international cooperation in climate protection that are binding under international law. Thereafter however, as resolutions needed to be passed, a clear discrepancy emerged between ambitious international reduction targets and their implementation at the EU level.

The combined CO<sub>2</sub>/energy tax was extremely controversial, not only up to the point of the Commission's final proposal, but also thereafter in the Council of Ministers. The greatest resistance came from the United Kingdom which invoked the principle of subsidiarity, and from the "cohesion countries" which feared too great a strain on their developing economies. Despite the conditionality clause – i.e. the introduction of the tax was to be conditional on the EU's trading partners taking comparable measures – and diverse concessions granted to energy-intensive industries, the unanimous agreement needed to pass a resolution was not reached. At the December 1994 EU summit, the Community-wide CO<sub>2</sub>/energy tax was finally rejected, and it was agreed that the member states should be left to introduce this tax themselves. In 1995 the Commission presented new recommendations for optional rates of taxation.<sup>6</sup>

Whereas the Commission's original proposals for the SAVE programme strove to establish a Europe-wide energy policy, the idea was watered down more and more in the course of negotiations, so that in the end only a framework directive was agreed.<sup>7</sup> This means that the EU sets general targets and that the member states must take their own measures to meet them. The extent of the action taken, as well as the actual measures put into practice, is hence left to the discretion of individual countries. The EU authorities also refrained from laying down the exact target values and timetables for implementation which had been part of the 1992 proposals. Taken as a whole, the dilution of the original SAVE programme makes it harder for the EU to regulate the member states, and there is now a wide margin of error when estimating the success in reducing emissions. The contribution that SAVE can make to climate protection thus depends on the extent and effectiveness of measures taken at national level.

SAVE I ran until 1995 and was funded with ECU 35 million.<sup>8</sup> Although it was renewed, the budget for SAVE II was cut from the Commission's recommendation of ECU 150 million to just ECU 45 million.<sup>9</sup> Of

<sup>4</sup> Cf. European Commission: A Community strategy to limit carbon dioxide emissions and to improve energy efficiency, COM (92) 246/fin. Although the Commission recognized the significance of the transport sector as part of the climate problem, it did not propose any measures applying to it within the overall climate-policy package. Cf. A. Lenschow, *op. cit.*, pp. 97–99.

<sup>5</sup> Cf. M. Grubb: European Climate Change Policy in a Global Context, in: H. O. Bergesen et al. (eds.): *Green Globe Yearbook*, Oxford 1995, p. 44.

<sup>6</sup> Cf. European Commission: Amended proposal for a Council Directive introducing a tax on carbon dioxide emissions and energy, COM (95) 172 final.

<sup>7</sup> EC Council: Limitation of carbon dioxide emissions by improving energy efficiency (SAVE), Directive 93/76/EEC, in: *Official Journal L 237*, 22nd September 1993, p. 28.

<sup>8</sup> Cf. P. Palinkas, A. Maurer: Erneuerbare Energien als Teil der Energiestrategie der Europäischen Gemeinschaft: Entwicklung, Stand und Perspektiven, in: H.-G. Brauch (ed.): *Energiepolitik*, Berlin 1997, p. 217.

<sup>9</sup> Cf. U. Collier: The EU and the climate change policy: the struggle over competences, in: U. Collier, R. Löfstedt (eds.): *Cases in climate change policy: political reality in the European Union*, London 1996, p. 56.

considerably greater importance than SAVE however, is the funding of research into more efficient energy supply and energy reduction projects.<sup>10</sup> In addition, a directive on integrated resource planning is under discussion, which could also act as an incentive for energy savings. All in all, the EU's general energy policy includes numerous measures of great relevance to climate policy (e.g. the 1996 directive on energy efficiency in refrigerators).<sup>11</sup>

ALTENER also came into force as a framework programme from 1993 to 1997.<sup>12</sup> It sets the member states concrete targets for the proportion of renewable energy in their overall energy supply. The ALTENER programme was allocated a relatively meagre budget of only ECU 40 million. It is also likely to have little influence on CO<sub>2</sub> emissions, particularly since its effects will only become noticeable with a considerable time-lag. The success of promoting renewable energy sources will also be called into question by the deregulation of the energy market taking place at the same time, since environmental and climate policy issues are rarely given consideration in this process. In 1997 the Commission presented a proposal for ALTENER II, to run from 1998 to 2002, but with the question of its funding left undecided.<sup>13</sup> Meanwhile, research into renewable energy sources has been allocated a considerably higher volume of funding (ECU 270 million) through the 4th Framework Programme of Research and Technical Development (1994-98).<sup>14</sup>

To summarize the picture so far, the greater part of the EU's stabilization target will have to be achieved by measures taken at national level. The monitoring mechanism agreed by the Council of Ministers in June 1993 hence takes on the greatest significance.<sup>15</sup> Under it, each member state is obliged to report annually to the Commission on the measures taken in climate policy and their expected impact in reducing CO<sub>2</sub> levels. The Commission assesses this information and checks whether the national measures are sufficient to meet the stabilization target. National

climate policies must also fulfil the requirements of the ratified UN Framework Convention on Climate Change. The Commission follows the "bottom-up" approach, i.e. countries set their own national emissions targets and together these have to add up to the EU's stabilization target. This approach implies so-called "burden-sharing", whereby the cohesion countries can offset possible increases in their own emissions against reductions in those of the EU's more established industrial countries. The monitoring mechanism has been amended to make the inventories comparable and compatible with the UN Framework Convention's reporting format.<sup>16</sup>

This situation has remained unaltered right up to the present day: the greater part of the EU's climate policy still consists of uncoordinated measures taken at national level. Although some countries pursue very ambitious climate policies, emissions continue to rise in the cohesion countries in particular (see Table 1).

Whether the EU will meet its stabilization target has been looking doubtful so far. Nevertheless, on 3rd

**Table 1**  
**Changes in CO<sub>2</sub> Emissions in the EU, 1990-1996,**  
**and Division of the EU's 8% Emissions-**  
**Reduction Target among the Member States**

Member State	Changes in emissions, 1990-96	Emissions reduction target
Austria	0.0%	13.0%
Belgium	+8.8%	7.5%
Denmark	+41.0%	21.0%
Finland	+3.5%	0.0%
France	-1.6%	0.0%
Germany	-7.8%	21.0%
Greece	+11.4%	25% increase
Ireland	+3.7%	13% increase
Italy	+0.8%	6.5%
Luxembourg	0.0%	28.0%
Netherlands	+10.0%	6.0%
Portugal	+42.7%	27% increase
Spain	+12.5%	15% increase
Sweden	+11.1%	4.0%
United Kingdom	-1.0%	12.5%
<b>EU total</b>	<b>+0.9%</b>	<b>8.0%</b>

Sources: M. Jefferson: Carbon dioxide emissions 1990-1996, in: WEC Journal 7/96, p. 81; Financial Times, 18th June 1998, p. 1.

<sup>10</sup> ECU 48 million and ECU 145 million, respectively, were allotted for these purposes in the 4th Framework Programme of Research and Technical Development. Cf. P. Palinkas, A. Maurer, op. cit., pp. 215ff.

<sup>11</sup> Cf. European Commission: Directive 96/57/EC on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof, in: Official Journal L 236, pp. 36-42.

<sup>12</sup> Cf. EC Council: Promotion of renewable energy sources in the Community (ALTENER programme), Decision 93/500/EEC, in: Official Journal L 235, 18th September 1993, p. 41.

<sup>13</sup> Cf. European Commission: Proposal for a Council Decision concerning a multiannual programme for the promotion of renewable energy sources in the Community (Altener II), COM (97) 87/fin.

<sup>14</sup> Cf. P. Palinkas, M. Maurer, op. cit., pp. 215f.

<sup>15</sup> Cf. EC Council: Monitoring mechanism of Community CO<sub>2</sub> and other greenhouse gas emissions, Decision 93/389/EEC, in: Official Journal L 167, 9th July 1993, p. 31.

<sup>16</sup> Cf. European Commission: Proposal for a Council Decision amending Decision 93/389/EEC for a monitoring mechanism of Community CO<sub>2</sub> and other greenhouse gas emissions, COM (96) 369/fin.

March 1997 the Council of environment ministers agreed an EU-wide emissions reduction target of 15% by the year 2010, based on 1990 levels of CO<sub>2</sub>, CH<sub>4</sub> and N<sub>2</sub>O.<sup>17</sup> This was their negotiating position in advance of the Kyoto conference of countries which had signed the UN Framework Convention on Climate Change. In the end the EU committed itself to meeting its 8% reduction target (based on 1990 levels) by some time in the 2008–2012 period.<sup>18</sup> No decision was reached in Kyoto as to how this target was to be shared among the individual member states. The target values for member states shown in Table 1 were decided at a meeting of the Council of environment ministers in June 1998. The implementation of common climate policy measures at EU level will hence continue to be the subject of negotiations between and within the EU's institutions. At present the Commission is working on a new programme of measures.<sup>19</sup>

### The Union's Rules for Climate Policy-making

The EU's climate policy is a part of the European environmental policy which gains its legitimacy from Article 130r-t of the EC Treaty. A substantial portion of energy policy is also decided on the basis of these clauses.<sup>20</sup> Article 130s is of special interest for this paper as it sets out which of the decision-making procedures described in Article 189 should be applied when addressing matters of environmental policy. Each type of procedure involves its own characteristic interplay of the three EU legislative bodies – the Commission, the Council of Ministers and the European Parliament (EP). There are basically three procedures in use in the field of environmental policy making: consultation, cooperation and codecision.

"Consultation" is the oldest of the decision-making procedures in the EU and was used for all environmental policy decisions before the Single European Act (SEA) came into force.<sup>21</sup> In the period between the SEA and the Treaty of Maastricht coming

into force, the consultation procedure was used for every environmental policy resolution which did not affect the establishment and functioning of the common market and hence did not come under the harmonization clause in Article 100a. Since Maastricht the consultation procedure and the unanimity requirement have been the exception in overall environmental policy-making, and only need to be applied in the areas listed in Article 130s(2). These are primarily regulations concerning tax, regional planning, the management of soil and water resources, and questions of energy supply. Yet the exceptions are of fundamental importance for climate policy, as they apply to very many of the measures for reducing CO<sub>2</sub> emissions. Even after Maastricht, decisions about a CO<sub>2</sub>/energy tax and about programmes such as SAVE and ALTENER have hence continued to require a unanimous decision.<sup>22</sup> However, there is an "exception to the exceptions", i.e. those decisions which come under the harmonization clause, and require a qualified majority in the codecision procedure in accordance with Article 100a. An example of this are the measures for increasing the energy efficiency of tradable goods such as refrigerators and washing machines. Nonetheless, the unanimity ruling together with the consultation procedure is the predominant decision-making process for European climate policy.

The cooperation procedure was introduced in 1987 with the SEA and from then until the Maastricht Treaty came into force it was used for all environmental policy decisions which came under the harmonization clause. From Maastricht onwards this process of cooperation with the European Parliament has become the rule for environmental legislation (Article 130s(1)). It has hence always been used when the Commission has presented a proposal for a resolution which did not come under the exceptions listed in Article 130s(2) and which did not affect the establishment and functioning of the common market. However, that only amounts to a handful of

<sup>17</sup> Cf. EU Council: Community strategy on climate change – Council conclusions, CONS/ENV/97/1 REV 1.

<sup>18</sup> Although this target is lower than what the EU had itself originally proposed, it applies to six greenhouse gases, whereas the 15% target had applied to just three.

<sup>19</sup> Cf. European Commission: Climate change – towards an EU post-Kyoto strategy, COM (98) 353.

<sup>20</sup> The EC Treaty does not contain any specific mandate for a European energy policy, so all decisions affecting this area have to be made on the basis of either the harmonization clause in Article 100a, Article 130s or the overall powers in Article 235.

<sup>21</sup> Prior to the Single European Act, there was no express legitimation for a common European policy on the environment. Whatever environmental policy measures were taken had to be based on the provisions governing the establishment of the common market, or on the overall powers in Article 235 of the EC Treaty. Cf. K. Holzinger: Politik des kleinsten gemeinsamen Nenners? Umweltpolitische Entscheidungsprozesse in der EG am Beispiel der Einführung des Katalysatorautos, Berlin 1994, pp. 67–70.

<sup>22</sup> However, measures to limit emissions in the energy sector "should not be taken on the basis of para. 2 as a matter of course, but only if their impact on energy policy in a particular member state would be so substantial that certain primary fuels could either no longer be used at all or only to a much reduced extent; ..." (unofficial translation from: C. O. Lenz: Kommentar zu dem Vertrag zur Gründung der Europäischen Gemeinschaften, 1st ed., Cologne 1994, p. 970).

resolutions in the climate policy field, since most measures concern energy policy or tradable goods. An example of a climate policy resolution which was passed in accordance with Article 130s(1) using the cooperation procedure is the decision of the Council to ratify the UN Framework Convention on Climate Change.<sup>23</sup> On the whole, however, it must be emphasized that the cooperation procedure has been used very rarely in climate policy-making, contrary to the intention of the Maastricht Treaty. The decision of the Treaty of Amsterdam to replace the cooperation procedure in environmental policy-making with the codecision procedure is hence of little significance for climate policy.

The codecision procedure was introduced by the Maastricht Treaty in November 1993 and is thus the newest decision-making procedure in European environmental policy. Its area of application is limited under the terms of Article 130s(3) to the resolution of general programmes of action in which priority targets are laid down. Since the Treaty of Amsterdam the codecision procedure has also been used for decisions in areas covered by Article 130s(1), which however – as mentioned above – is of little significance for climate policy-making. In addition it is used in accordance with Article 100a for all measures taken to align legal and administrative regulations relating to the Single Market. Climate policy is affected in as far as requirements such as the labelling of energy-saving goods come under the harmonization clause.

The three different decision-making procedures establish the extent to which the Commission, the European Parliament and the Council are involved in passing the EU's climate policy resolutions, i.e. what influence the respective institutions can exert on legislation in a specific policy sphere. The next question to address is whether the distribution of powers and associated influence has turned out as intended. This will be examined below with the aid of game theory.

### A Game-theoretic Approach

To investigate the influence of EU institutions on

policy outcomes in Europe, an approach will be used below which combines the spatial theory of voting with non-cooperative game theory.<sup>24</sup> In this model, the various decision-making procedures will be presented in a multi-stage, extensive form game. The number of alternatives will constitute a continuous interval along a unidimensional axis. In other words, choices will only be taken in one policy issue, e.g. the level of climate policy regulation (x). The players will all be assumed to have single-peaked, symmetrical preferences. That means that each one will have a single ideal point which it prefers to any other alternative. Hence there is also just one single point of indifference towards the status quo (i.e. the situation which will arise if none of the alternatives put forward can attain the required majority). Depending on the value of the status quo, it will be possible to meet certain kinds of majority requirement in Council. If the status quo forms part of the Council's "Pareto set" (all alternatives that represent Pareto optima), it will not be possible to alter it on a unanimous basis. In this situation, the Council's members will not be agreed on the direction of change in climate policy (more regulation, or less). None of the players wishes to see its decision overturned. Thus, if a player has a choice between proposing an equilibrium policy itself and causing another player to do so, it will choose the first of these strategies. All players are assumed to act rationally and to have complete and perfect information. Similarly, it is assumed that their preferences remain constant during the course of a decision-making game.

The three types of decision-making procedure will each be translated into a multi-stage game below. Using the method of backward induction,<sup>25</sup> the equilibrium outcomes will be derived. These show which alternative will emerge (as which player's proposal) in each of the decision-making procedures, depending on the status quo and the players' preferences. The closer the policy chosen lies to a particular player's best-preferred alternative, the more strongly that player will be said to have exerted its influence on EU law-making.<sup>26</sup> Thus, determining

<sup>23</sup> Cf. EU Council: Conclusion of the United Nations Framework Convention on Climate Change, Decision 94/96/EC, in: Official Journal L 33, 7th February 1995, p. 11

<sup>24</sup> For a similar approach, cf. B. Steunenberg: Decision Making under Different Institutional Arrangements: Legislation by the European Community, in: *Journal of Institutional and Theoretical Economics*, Vol. 150, pp. 642-669; P. Moser: A Theory of the Conditional Influence of the European Parliament in the Cooperation Procedure, NEMEU Working Paper, No. 96-1.

<sup>25</sup> For a comprehensive description of the model and the determination of the subgame perfect Nash equilibrium of the games discussed here, see: A. Böckem: Die Bedeutung der EU-Institutionen in der Klimapolitik – eine Public-Choice-Analyse, HWWA Discussion Paper No. 66.

<sup>26</sup> When the approach discussed here is presented formally, an institution's influence on ultimate decision-making can be measured as the distance between the equilibrium outcome reached by the game and the ideal point of the player representing that particular institution. Cf. B. Steunenberg, op. cit., p. 645.

which player proposed the alternative that is ultimately chosen can only act as a rough indicator of the distribution of power within the legislative process. The main point is how closely the final outcome of the decision-making procedure approximates to a player's own preference. How much use a player makes of the powers vested in it at various stages of the game is similarly unimportant when assessing the amount of influence ultimately wielded. Given that, in a multi-stage game with complete and perfect information, any player is able to anticipate what moves will be made in subsequent stages, merely granting a player a right of veto is enough to enhance its powers of influence, without the player's actually needing to exercise the veto.

### The Consultation Game

As in all EU decision-making procedures, the starting-point in the consultation procedure is a proposal by the Commission, which has the exclusive right to initiate legislation.<sup>27</sup> The proposal is then presented to the Council of Ministers,<sup>28</sup> and it is the Council which reaches the final decision following consultation with the European Parliament and the Economic and Social Committee. Article 130s(2) requires this decision to be reached unanimously. The unanimity requirement does not stem from the consultation procedure as such, but it does operate when the procedure is applied to environmental policy. Article 189a only requires unanimity if the Council of Ministers wishes to amend a Commission proposal. The Commission has the right to amend or withdraw its own proposal at any stage during the decision-making procedure.<sup>29</sup>

The consultation procedure can be schematically represented as a three-stage game involving two players, the Council and the Commission (the Parliament only plays a consultative role and thus does not influence the outcome of the game):<sup>30</sup>

**Stage 1:** The Commission decides whether it wishes to, or prefers not to, put forward a legislative proposal.

**Stage 2:** The Council decides whether it will accept the Commission's proposal or amend it in a draft of its own. The Council must reach a unanimous decision to do either of these things. If it fails to attain unanimity, the game ends and the status quo is maintained.

**Stage 3:** If the Council has opted for an amended version of the original proposal, the Commission may then decide whether or not it wishes to accept this.

The third stage in the structure of the game is designed to reflect the fact that the Commission is entitled to withdraw its proposal at any time while it is being considered by the Council, which is strategically equivalent to a right of veto: the Council cannot make any changes against the Commission's will. During Stage 2, the Council will take any proposal lying outside the Pareto set and amend it to an alternative which both the Commission and the Council member with the most "rejectionist" approach towards the originally proposed policy change are just prepared to accept. Any proposal lying within the Pareto set will be accepted by the Council provided that all members' positions are improved relative to the *status quo*. The Commission will not put forward a proposal at Stage 1 unless the outcome of the game is an alternative it prefers to the *status quo*.<sup>31</sup> If it would like to see a policy change in the opposite direction to the Council's ideas or if the status quo is in the Pareto set, the Commission will not put forward a proposal. If, on the other hand, the Commission does decide to make a proposal, this will either be an alternative that the Council will not want to amend (because it corresponds to its ideal point) or one which it cannot amend (because it is in the Pareto set, or would run the risk of the Commission withdrawing the proposal). So the ultimate outcome is that any proposal the Commission decides to put forward will be adopted.<sup>32</sup> In many cases, the Commission is able to assert a policy line which does not agree with the preferences in the Council. On the other hand, the Commission is bound by the close restraints imposed on its proposals by the requirement to attain the

<sup>29</sup> This right of withdrawal is implied by the terms of Art. 189a (2). Cf. H. von der Groeben et al.: *Kommentar zum EU-/E.G.-Vertrag*, 5th ed., Baden-Baden 1997, p. 1070.

<sup>30</sup> Cf. B. Steunenbergh, *op. cit.*, p. 648.

<sup>31</sup> As there are no legal means available to force the Commission to put forward a proposal against its will, it will be assumed here that legislative initiatives will only ever be taken when this is in the Commission's interests.

<sup>32</sup> This outcome is also based on the assumption (a plausible one, it should be said) that none of the players will want its proposal to be overturned.

<sup>27</sup> However, both the Council and the European Parliament do have the right to require the Commission to draw up a proposal (Arts. 138b & 152). Although the Commission is not obliged to fulfil the requirement, the prevailing behavioural code is such that it will do so in most cases.

<sup>28</sup> In the EU's system, each legislative proposal is decided upon by the Council made up of the ministers responsible for the area concerned. In climate policy, these are normally the environment ministers, but energy and finance ministers may also be involved.

Council's unanimous approval. If the Commission would like to change policy to a significantly greater extent than the Council of Ministers, it needs to design its proposal in such a way that the Council member least in favour of change will still grant his/her approval. Hence it depends on the actual preferences of the parties involved whether the greater potential power in this consultation procedure will lie with the Council, as the body taking the final decision, or with the Commission, as the agenda-setter.

### The Cooperation Game

In the next procedural form (cooperation), a proposal is given two readings, allowing the Council and the Parliament (EP) to adopt their decisions successively. In the first reading, the Council establishes a common position following a proposal by the Commission and consultation with the EP. If the Council's common position matches the Commission's proposal, a qualified majority is sufficient,<sup>33</sup> but if it involves changes the decision must be unanimous. In the next step, the EP decides whether it accepts the Council's common position. The EP may accept this by a simple majority of the members present, or it may reject it or propose amendments if an absolute majority can be obtained.<sup>34</sup> If the EP accepts the common position or fails to respond within a three-month period, the Council may finally adopt it by qualified majority. If, on the other hand, the EP rejects it, the Council undertakes a second reading of its common position, which can only be adopted on a unanimous basis. If the EP makes amendments to the common position, it is returned to the Commission for further review. If the Commission supports the Council's common position, the latter can adopt the proposal by qualified majority, but if it fails to approve the EP's proposed amendments, a unanimous vote in Council is required. Whenever the Commission presents a revised proposal, possibly taking amendments put forward by the EP into account, this can be adopted by a qualified majority in Council, or else the latter can opt to return to its own original common position, on a unanimous vote. If the necessary majorities are not obtained within three months (four if an extension is obtained), the decision-making process comes to an end and the proposal is counted as rejected. As in the case of the consultation procedure, the Commission is entitled to withdraw or amend its proposal while the cooperation procedure is in motion. However, it loses that right once the European Parliament has accepted the Council's common position.<sup>35</sup>

Compared with the consultation procedural pattern, the cooperation procedure appears considerably more complicated. Yet it can still be modelled as a four-stage game, taking in all three EU institutions as players.

*Stage 1:* The Commission decides whether it wishes to, or prefers not to, put forward a legislative proposal.

*Stage 2:* The Council decides whether it will accept the Commission's proposal by qualified majority, or amend it in a draft of its own by unanimous decision. If the required majority or unanimity is not obtained, the game ends and the status quo is maintained.

*Stage 3:* Depending on the strategies chosen in the first two stages, two cases may arise:

Case 1 – The "Commission alternative": The Council has accepted the Commission's proposal at Stage 2. Now it is up to the EP to decide whether to adopt the Council's common position or to exercise its veto.

Case 2 – The "Council alternative": The Council has put forward a proposal of its own. In this case, the Commission needs to decide whether it wishes to exercise its veto.

*Stage 4:* This stage is only played if the EP rejects the Council's common position reached in Case 1 above. The Council is entitled to override the Parliament's veto if it obtains a unanimous vote.

On a quick comparison with the cooperation procedure described in the previous section, it will be apparent that many of the decision-making routes allowed for by the system are not included in the game, because these routes will not be played if we assume the players behave rationally and have constant preferences. One example of this is that the Parliament will not propose any amendments to the Council's common position, because it would require the support either of the Commission or the Council for this to succeed. If parliamentary amendment proposals have the Commission's support, the reviewed proposal can subsequently be adopted in

<sup>33</sup> Because different member states are weighted with different numbers of votes in the Council of Ministers, a qualified majority consists of a specific number of single votes. The current requirement is for 62 votes out of a possible total of 87; in the Community of the Twelve up to 1994, it was 54 out of 76.

<sup>34</sup> In contrast to the simple majority of the members present at the time, the absolute majority requires that at least half of all MEPs must vote in favour (currently 314 votes out of the Parliament's membership of 626). Given the poor attendance record of MEPs, this requirement is tantamount to a two-thirds majority.

<sup>35</sup> Cf. H. von der Groeben et al., op. cit., pp. 1070-72.



Council by a qualified majority vote. However, that is the same procedure as in the first two stages of the cooperation game already discussed, where it was found that if any such alternative proposal were in the Commission's interest it would have proposed it itself at the outset. The same considerations would apply if the Council were to unanimously adopt amendments proposed by the Parliament against the proposals put forward by the Commission, for it would in fact already be at Stage 2 of the game, and if the pattern of preferences among its members were such that it was capable of unanimously adopting changes to the Commission proposal, it would have done so when formulating its own common position. Of course, these comments only apply as long as our assumption holds that the players' preferences and the status quo will remain unchanged for the duration of the game.<sup>36</sup> If, on the other hand, there is any shift in the Council members' preferences after they have established their common position, the possibility does arise that the Parliament might propose amendments that gained the Commission's support and were eventually adopted by the Council. Tseblis' theory of the European Parliament's role as a "conditional agenda-setter" needs to be seen against this background of changing preferences over time: Tseblis points out that it can play this role because it is easier for the Council to accept than to reject its proposed amendments.<sup>37</sup>

In this procedural structure, then, the EP's influence is restricted to its ability to block undesired proposals by exercising a veto. Given that the Council is entitled to override the veto in Stage 4 if the status quo is not in its Pareto set, this is only a conditional right of veto. Thus the EP will only make use of its veto rights at Stage 3 if the Commission proposal can command a qualified majority but not a unanimous vote in the Council of Ministers. The Parliament's right of veto is effectively irrelevant if the Council has voted unanimously to amend the Commission's proposal at Stage 2, as the Council could simply override it. In this case, the Commission's own right of veto, as discussed in the "consultation game", would take effect.

As in the consultation game, the Council can decide at Stage 2 whether it wishes to accept, reject or amend the Commission's proposal. If it wishes to amend it, the same unanimity requirement applies as in the consultation game (see above). If, on the other hand, it wishes to accept the proposal, it can now do this when just a qualified majority of the members would be better off than by keeping the *status quo*.

Again as in the consultation game, the Commission decides at Stage 1 whether it wishes to launch a legislative initiative in the first place. It will refrain from doing so if it cannot propose an alternative that will gain the necessary majorities at the various stages of the game. If such alternatives do exist, it is still the Commission that acts as the agenda-setter, and it will choose an alternative that cannot be amended at subsequent stages. If the EP would like to see a more substantial change in policy than the most reluctant member of the Council, the Commission now has a broader range available to it than it had in the consultation game to assert its preferred alternative. However, this must still be within the bounds set by the EP's right of veto and the need to obtain a qualified majority in Council or within those set by the unanimity requirement.

The cooperation procedure does not grant the Parliament as much influence as it would appear at first sight. For one thing, it is not in a position to change the Council's common position and, for another, its right of veto is a conditional one that only attains its full force when the Council's members are in disagreement as to the direction of any desired policy change. As in the consultation procedure, the Commission has a great deal of influence as the agenda-setter, and it is able to force the Council to accept a policy other than its own preferred one.<sup>38</sup>

### The Codecision Game

The codecision procedure adds yet another, third reading to the decision-making process. The first reading proceeds as in the cooperation procedure. The EP then decides whether it wishes to accept, amend or reject the common position. If it rejects it, the Council may refer the matter to a Conciliation Committee, where its position can again be explained to MEPs. If, following this, the Parliament still rejects the common position, the proposal is deemed to have failed. If it proposes amendments, these are passed on to the Commission, which decides whether or not it wishes to support them. This form of procedure differs from the cooperation procedure in that the Commission is not entitled to make any amendments of its own to the common position at the second

<sup>36</sup> Cf. P. Moser, *op. cit.*, p. 9.

<sup>37</sup> Cf. G. Tseblis: The Power of the European Parliament as a Conditional Agenda-Setter, in: *American Political Science Review*, Vol. 88, pp. 128-142.

<sup>38</sup> Cf. B. Streunenberg, *op. cit.*, p. 654.

reading. EP amendments that have been supported by the Commission can be adopted by a qualified majority in Council, whereas any amendments not given such support require a unanimous vote in Council. If the Council is unable to reach a decision, the Conciliation Committee is mobilized. The Committee consists of all members of the Council of Ministers plus an equal number of Members of the European Parliament: the Council members can decide by qualified majority, while the MEPs require only a simple majority. If the Conciliation Committee manages to reach agreement, the resulting proposal can be adopted by a qualified majority of the Council and an absolute majority in the EP. The proposal will still fail if the required majority is not obtained in either one of these bodies. If the Conciliation Committee is unable to establish a common position, the procedure moves on to the third reading. The Council is now entitled to adopt its common position, with or without incorporating any of the EP's amendments, by qualified majority. The EP itself then has the right to reject the Council's resolution if an absolute majority can be obtained – this would mark the end of the road for that particular proposal. It would also be considered finally rejected at any other stage of the decision-making process whenever a stipulated majority requirement is not attained. Article 189a stipulates implicitly that the Commission is not entitled to amend or withdraw any proposal that has been jointly agreed upon in the Conciliation Committee, i.e. that the Commission cedes these rights once the second reading commences.<sup>39</sup>

Like the cooperation game, the codecision game can be presented as a four-stage game involving three players:

*Stage 1:* The Commission decides whether it wishes to, or prefers not to, put forward a legislative proposal.

*Stage 2:* The Council establishes its common position. This may correspond to the Commission proposal, in which case a qualified majority is sufficient, or it may be the Council's own proposal, which needs to be adopted unanimously. If the required majority or unanimity is not obtained, the status quo is maintained.

*Stage 3:* The Conciliation Committee meets to discuss the common standpoint. The Committee can agree to a new proposal if a qualified majority of the Council and a simple majority of the MEPs is obtained. If either of these majorities cannot be obtained, the next stage of the game is played.

*Stage 4:* If no agreement is reached in the Conciliation Committee, the European Parliament decides whether or not it wishes to accept the common position.

Once again, if the game is compared with the preceding description of the codecision procedure, it will be clear that a complex decision-making process can be reduced to a relatively straightforward game structure. If the EP proposes any amendments of its own, the game assumes that the Conciliation Committee is automatically mobilized, since the other two possible outcomes have already been covered by the first two stages of the game. The two possibilities of the common standpoint being rejected or accepted at the third reading are redundant vis-à-vis the options in the second reading, so these alternatives are not considered again until Stage 4.<sup>40</sup> Another theoretical possibility that can be disregarded for the purposes of the game is that the Council might adopt the Parliament's alternative proposal by qualified majority at the third reading, since it would have been possible to agree upon this alternative during the Conciliation Committee session if it had been in the Council's interest.

The Parliament's absolute right of veto at Stage 4 means that, contrary to the cooperation procedure, it is no longer possible to adopt any proposals that would serve the EP's interests less well than the status quo. Moreover, the introduction of a conciliation procedure at Stage 3 allows the EP to introduce amendments of its own. However, the Conciliation Committee will only be in a position to adopt alternatives that would be preferable to the status quo and to the Council's original common position not only in the eyes of the EP but also for a qualified Council majority.

The conciliation system also grants increased influence to the Council, which is now able to amend Commission proposals with just a qualified majority, though at the same time it needs to gear its changes to the EP's preferences. On the other hand, the Council now loses the ability to pass legislation, on a unanimous vote, if this has been rejected by the EP. At Stage 2 of the game, the Council's options are equivalent to those available in the cooperation game. However, in contrast to the other two types of

<sup>39</sup> Cf. H. von der Groeben et al., op. cit., pp. 1070-72.

<sup>40</sup> The outcome of the game would be identical if the parliament were to be granted a right of veto between the second and third readings.

procedure, the Council's powers when proposing amendments are restrained by the EP's absolute right of veto.

In its role as agenda-setter, at Stage 1 the Commission will act as before in proposing an alternative that it will be impossible to depart from in subsequent stages. Under the codecision procedure, though, the corridor available to it in seeking to assert its best-preferred alternative is narrower than before. It must now endeavour to put forward a proposal that will obtain a qualified majority in Council, that will not be rejected by the EP, and that cannot be amended, either by the Conciliation Committee or by unanimous decision of the Council. As in the preceding games, the Commission will refrain from submitting any proposal that will not be able to jump these hurdles.

As the foregoing discussion demonstrates, the codecision procedure only enhances the EP's influence to an insubstantial degree. When proposing its own amendments, it still needs to rely on the support of the Council of Ministers, but at least it has now obtained an absolute right of veto. The Commission has lost a certain amount of influence because the creation of the Conciliation Committee means its proposals are now more susceptible to amendment. The Council, meanwhile, has gained certain powers (via the conciliation procedure) while losing others (due to the EP's absolute right of veto).

### Findings of the Game-theoretic Power Analysis

The principal finding from the analysis above is that the EU legislative process is dominated by the Council and the Commission, whereas the European Parliament has little capacity to influence the process. This restricted influence – most apparent in the consultation procedure, and barely alleviated in the other two procedural forms – is largely a function of the EP's limited opportunity to propose legislative amendments. Its role in the interplay with the other EU bodies effectively consists only of a right of veto, which in turn only has absolute validity in the codecision procedure. The strength of the Commission's influence lies in its agenda-setting role: it alone has the right to initiate legislation and can act as an agenda-setter. Contrary to widespread opinion, even the Council of Ministers only has a limited opportunity to assert its own preferences. To retain any say in the choice of alternatives taken, beyond merely threatening to reject a Commission proposal, the Council must be unanimous in either of the first two procedural forms. In the codecision procedure, the Council also attains a means of asserting a proposal better suited

to its own preferences by entering into negotiations with the EP.

It soon becomes clear that a large number of combinations of preferences will eventually result in no legislative initiative's being taken at all, and the status quo's being retained. One reason for these deadlocks are the strict majority requirements in the EU Council. Moreover, both Council and the Commission must prefer a policy change in the same direction, otherwise a proposal will not be made in the first place. The third obstacle is the EP's right of veto, which will block an initiative if the Parliament prefers a policy change opposite to that preferred by the Council or the Commission.

It ought to be emphasized here, however, that the findings of a game-theoretic analysis ultimately depend on what initial assumptions are made. In particular, the theoretical expectation that any proposal put forward by the Commission will never be amended by the Council or Parliament, so whatever legislation comes through will be the Commission's version, is not borne out empirically.<sup>41</sup> The reason for this gap between theory and practice is the assumption that all players have complete and perfect information. If, at the time it puts forward a proposal, the Commission is not fully aware of the Council members' preferences (incomplete information), uncertainty will creep in and it will no longer be able to anticipate the moves that could be made at later stages of the game. So proposals may, after all, be made that are amended later on.<sup>42</sup> The theoretical approach used here is also restrained in reality because it ignores the possibility of members of the Council of Ministers engaging in "log-rolling", or that of preferences' changing over time. The theory's explanatory power would also be enhanced if it could take more account of interest groups.

### The EU Institutions' Interests in Climate Policy

Before seeking to explain European policy on climate change in terms of the distribution of power among EU institutions, it is first necessary to investi-

<sup>41</sup> An enquiry conducted by the Commission showed that the Conciliation Committee had been brought into operation in almost half of all the legislative acts passed using the codecision procedure. Cf. European Commission: Intergovernmental Conference 1996. Commission report to the Reflection Group, Office for Official Publications of the EC, Luxembourg 1995, p. 28.

<sup>42</sup> For an analysis of the codecision procedure with incomplete information at the opening stage of the game, cf. B. Streunenberg: Redesigning institutions: the codecision procedure in the European Union, NEMEU Working Paper No. 97-2.

gate the various interests of the three decision-making bodies. This being a public-choice analysis, all parties will be assumed to behave rationally, and to want to maximize their own individual utilities. In other words, we need to ask what postures the EP, Commission and Council will adopt if motivated solely by the pursuit of their own objectives.

As the New Political Economy invariably works on the basis of individual actions, we first need to justify why the Parliament can be expected to have certain interests "as a whole". In contrast to the EU member states' own national parliaments, the European Parliament does not have the task of supporting and monitoring a government.<sup>43</sup> On the other hand, the EP itself is insufficiently exposed to monitoring by Europe's voters.<sup>44</sup> Thus it has a considerable amount of scope available to pursue discretionary objectives. For the Members of the European Parliament, the maximization of their utility function is directly tied up with their own position within the EU decision-making process. Regardless of their particular political convictions, therefore, MEPs certainly have a common interest in strengthening their Parliament's legislative powers. The best way of gaining greater powers is to be united in formulating and pursuing particular policies. Apart from wanting to boost the EP's position relative to the other institutions, another objective that will maximize the MEPs' utility function is the overall expansion of the policy areas dealt with at a Community level. The EP therefore advocates greater political centralization within the EU as another means of increasing its own powers.

Its wish to see European policy-making areas extended means that the EP advocates a stricter, more EU-wide environmental policy than the other two institutions. It will thus tend to favour a high degree of regulation in climate policy, with CO<sub>2</sub> limitation targets designed to be far-reaching and with considerable bite. When it comes to implementing these objectives, the EP can be expected to push hardest for measures that can be passed using the cooperation or codecision procedures. So policy instruments that relate to the harmonization clause in

Article 100a of the EU Treaty (which are subject to the codecision procedure) will receive the EP's approval. One indication of the EP's tendency to be relatively "green" in formulating policy is the high esteem in which the Committee on the Environment, Public Health and Consumer Protection is held and the significance of its role within the Parliament itself. However, environmental matters are also considered in the EP's plenary sessions and overall policy postures.<sup>45</sup> However, not least of the reasons why the EP takes an environment-friendly line is that, because its democratic powers are so limited, it is less exposed to lobbying by interest groups. It is fair to assume that it would change some of its attitudes to climate policy if the EU's "democratic deficit" were reduced and lobbying were to increase accordingly.

The EU commissioners do not have the restraint of having to seek re-election, but they do need to seek renomination by their particular national governments. That allows them a certain amount of scope to pursue their own objectives, but they do need to have an eye to the national interests of the governments that have posted them to Brussels.<sup>46</sup> Each individual Commissioner can be assumed to have an interest in expanding Community-level powers in his/her own particular policy field. This is best achieved by spurring on the whole process of European integration, i.e. the transfer of currently national powers to the EU level. In particular, Commissioners are keen to see as many of their legislative initiatives as possible actually adopted, which means that they favour the use of majority voting in the EU Council. The Commission's powers of implementation also allow it to expand its members' overall power and influence. Given that it is responsible for supervising the implementation of Community law in the member states, this body will have an in-built preference for EU-wide policies rather than national solutions.

The theory of bureaucracy is limited in its suitability for examining the role of the Commission's civil servants, as they do not hold a monopoly on information vis-à-vis those who require their services.<sup>47</sup> Because the Commission has to rely on

<sup>43</sup> Nevertheless, since the Treaty of Maastricht it has had the power to refuse the appointment of EU Commissioners, and has been granted extended rights of codetermination for the EU budget. Both of these changes can be regarded as an enhancement of the Parliament's monitoring function.

<sup>44</sup> The causes of the low level of interest in EU politics shown by the electorate are high information costs and the low utility of casting a vote. Cf. R. Vaubel: The public choice analysis of European integration: A survey, in: *European Journal of Political Economy*, Vol. 10, pp. 228-230.

<sup>45</sup> For an enquiry into the European Parliament's position on environmental policy, cf. H. A. Arp: *The European Parliament in European Community Environmental Policy*, EUI Working Paper EPU No. 92/13.

<sup>46</sup> This is true in spite of the Commissioners' supposed independence laid down in Article 157 (2).

<sup>47</sup> Cf. J. A. Faiña Medin, P. Puy Fraga: A Framework for a Public Choice Analysis of the European Community, in: *Economia delle scelte pubbliche*, Vol. 6, p. 150.

information supplied by national bureaucracies and interest associations, this provides greater opportunities for politically influential groups when the Commission is working out its proposals. Similarly, the Commission as a whole has less scope for maximizing its budgets than national bureaucracies do, which means that if one policy-making area manages to increase its budget this may well be at another's expense. Given that bureaucrats are normally assumed to shy away from conflicts, they are likely to be sparing in any tendencies to boost the staff and budget of any particular directorate general.

As far as climate policy is concerned, one may conclude from these remarks that the Commission will push for Community-level measures to tackle the problem. Because several directorates general are involved in drawing up initiatives in this field, the idea of expanding the measures taken on a pan-European basis is relatively well-liked. However, the Commission is divided on what instruments to choose, as different directorates general would be responsible for different types of measure.<sup>48</sup> As a result, the Commission has a tendency to be indeterminate in the choice of instruments, and to propose either a lot of them or hybrid instruments. Given the Commission's prime interest in seeing its proposals passed into law, it will endeavour to base as many climate-policy decisions as possible on Article 100a, so that they can be adopted on a majority vote. In contrast to the European Parliament, the Commission is subject to a good deal of lobbying by interest groups, so the climate-policy proposals it formulates show signs of compromise towards particularly influential bodies.

The members of the Council of Ministers are all national politicians striving to maximize their utility within the restraint of their desire to be re-elected. That means they are bound by the interests of their own country, which they will seek to assert at the EU level. The optimum strategy for the ministers consists in securing their own re-election by doing favours to influential interest groups, while minimizing any loss of votes by spreading the costs of their policies as broadly as possible. Thus they will try to exploit their position within the EU to maximize the approval they are granted by domestic voters. For example, agreements reached in the European arena can be used as a pretext for taking unpopular measures at home.<sup>49</sup> Despite the conflicts with their national

interests, the members of the Council also have an interest in closer integration, as this allows them to form a cartel among European politicians, to increase their power and influence in international negotiations.

As regards their attitude to climate policy, their heterogeneous national interests resulting from the interaction of domestic actors mean that there are major differences among the Council's members. That reflects substantial differences in domestic interests from country to country around the EU. Those representing the governments of high-income countries can expect to win more votes by supporting a stronger policy line on climate change, as the general public in their countries is usually more environmentally aware. So they tend to support extensive CO<sub>2</sub> reduction targets to demonstrate their position. They tend to prefer measures that will favour specific groups (e.g. awarding subsidies), with the costs spread widely.<sup>50</sup> In addition, they insist that rules and regulations relating to climate policy should be harmonized, to avoid their countries being placed at a competitive disadvantage relative to others with less strict requirements. As far as voters in the "cohesion countries" are concerned, economic development remains the top priority, which means their representatives will be at pains to stave off any costs resulting from climate protection that might lose them votes at home. Owing to the structure of industry in these countries and the lesser part played by the service sector, the interest groups representing polluting or energy-consuming industries are substantially stronger than environmental lobbyists. Nevertheless, even the representatives from these countries will still see an advantage in pressing for strict reduction targets and the implementation of these targets in the EU's high-income member states. That will place them in a strong position in international negotiations on climate protection without their needing to bear the costs themselves.

### **The Significance of the Distribution of Power for EU Climate Policy**

Any decision on a CO<sub>2</sub>/energy tax needs to be reached by a unanimous vote, via the consultation

<sup>48</sup> For example, the DG for Taxation is closely involved with issues surrounding any CO<sub>2</sub>/energy tax, whereas the DG for Energy is responsible for compiling and implementing programmes such as SAVE and ALTENER.

<sup>49</sup> According to Vaubel, an agreement reached by EU finance ministers to harmonize value-added tax rates at 15% was used as an excuse for a VAT increase in Germany that would otherwise have proved politically unenforceable. Cf. R. Vaubel: Die politische Ökonomie der wirtschaftspolitischen Zentralisierung in der Europäischen Gemeinschaft, in: Jahrbuch für Neue Politische Ökonomie, Vol. 11, pp. 45 f.

<sup>50</sup> In this respect, market-oriented instruments such as taxes or permits do not fit the bill for them.

procedure. That means the tax will only be introduced if all members of the Council of Ministers find this preferable to the status quo in which no fiscal measures are taken for the sake of protecting the climate. This was not the case when the issue came before Council, as the United Kingdom has expressed its opposition in the past to any EU-wide tax, whether ecologically beneficial or not.<sup>51</sup> Spain, Portugal and Greece also voiced their objections to this specific tax. So the lie of the land was such that the Commission was unable to exploit its agenda-setting powers, being unable to put forward any proposal for a CO<sub>2</sub>/energy tax that would have found unanimous acceptance by the Council. The game-theoretic model of the consultation procedure predicts that the Commission will refrain from submitting a proposal in such circumstances, so the status quo will stay intact. One possible explanation as to why the Commission did in fact make its proposal for a CO<sub>2</sub>/energy tax is that it may not have been fully informed of the Council members' preferences. It is also conceivable that the Commission had false expectations of possible changes in the Council members' preferences during the decision-making period of almost two years. And a third explanation might be that the Commission overestimated the potential offered by the pronounced tendency of the Council to indulge in log-rolling. At any event, there is clear evidence that the Commission went to some lengths to design a proposal that it felt might have gained the Council's unanimous acceptance. For example, the inefficient proposal (from a climate perspective) to divide the basis for tax assessment into separate carbon and energy components was a concession to Germany's wish to protect its domestic electricity generating industry against competition from France, where the proportion of nuclear power stations is much higher.<sup>52</sup>

The decisions to implement the SAVE I and ALTENER I programmes were taken unanimously in a consultation procedure before the Treaty of Maastricht was drawn up.<sup>53</sup> That meant they had to be designed in such a way that they would still be in the interests of the Council member with the lowest preference for a programme-driven approach to climate protection. Compared to taxation instruments,

all political actors in the Council of Ministers have a relatively strong preference for the type of measures (including subsidies) contained in these programmes.<sup>54</sup> That created a narrow corridor within which unanimous agreement was possible, yet as far as the Commission was concerned, given its pronounced interest in programme-oriented instruments, this allowed it little opportunity to contribute more of its own ideas to the decision-making process. Thus climate-protection measures such as SAVE and ALTENER are classic examples of "lowest-common-denominator politics", as Holzinger has termed the outcome of environmental decision-making at the EU level.<sup>55</sup>

As required by the Single European Act, the monitoring mechanism also had to be determined unanimously by the consultation procedure. In this case, in contrast to the other measures just discussed, the range of possibilities that would have still attracted the Council's approval was relatively broad. This is substantially due to the fact that the monitoring mechanism does not prescribe any climate-protection measures that would be compulsory in all member states, and leaves it to national governments to decide the nature and scope of the measures taken. This "bottom-up" approach allows the cohesion countries to do some free-riding on climate protection. Under these circumstances, the Commission was able to push through a proposal that was a much closer approximation to its best-preferred option than in the other two cases. Above all, the monitoring mechanism gives the Commission the right to evaluate the policies pursued domestically by member states, thus fulfilling its desire to expand its monitoring powers. The monitoring mechanism is the only set of measures initiated in the climate-protection field that shows clear evidence of the Commission's influence on the decision-making process.

As mentioned earlier when discussing the development of the EU's climate policy, various decisions that are highly relevant to this policy field have also

<sup>51</sup> Cf. J. B. Skjaereth, *op. cit.*, p. 28.

<sup>52</sup> Cf. M. Grubb, *op. cit.*, p. 42.

<sup>53</sup> Whether or not the follow-up programmes also have to be passed unanimously will depend on how their impact on member states' energy markets is assessed.

<sup>54</sup> A preference for command-and-control regulations and subsidies rather than market-based instruments is generally in evidence in environmental fields. One example of a public-choice explanation of the phenomenon can be found in: F. Schneider, J. Volkert: No Chance for Incentive-oriented Environmental Policies in Representative Democracies? A Public Choice Approach, University of Linz, Austria: Working Paper No. 9711.

<sup>55</sup> Cf. K. Holzinger, *op. cit.* The fact that this is a minimum solution is well brought out by the UK government's observation "... that it sees no need for any further legislative measures as a result of the SAVE directive". Cf. U. Collier, *op. cit.*, p. 56.

been taken outside the legislative package directly concerned with climate protection. These include the programmes to promote research into renewable energy sources and the more efficient supply of energy, both of which had to be decided by qualified majority in a consultation procedure, as determined by Article 130i(4). As the representatives of cohesion countries also have an interest in research programmes of this type, which they regard as a form of indirect development aid, the Commission had a relatively broad corridor available to it as it sought to assert its ideas. Thus, it is much better able to articulate its preference for increased climate protection in this field of research promotion than in establishing programmes such as SAVE and ALTENER. This is one reason why the amount of funding made available for projects in this field under the 4th Framework Programme of Research and Technical Development has been much greater than the money available via SAVE and ALTENER.

Measures forming part of overall energy policy are also significant in terms of climate protection. If such measures affect the harmonization of legislation in the Single Market, they have to be decided upon by qualified majority in a codecision procedure (before Maastricht, the cooperation procedure was stipulated). The status quo is still at a relatively low level as far as any common European energy policy is concerned, so this coupled with the qualified-majority ruling opens up a certain range of alternatives from which the Commission can select its best preference. Given that the European Parliament is also able to get involved in the legislative process to a limited extent in the codecision procedure, and that it shares with the Commission a pronounced interest in centralizing the EU's energy policy, the chances of measures being adopted in this area that will significantly contribute towards climate policy are better than they are in the environmental field as such. Thus it has already proved possible to enforce decisions that help protect our climate, such as the requirement to label the energy consumption of refrigerators and the stipulation of energy-efficiency standards for them.<sup>56</sup>

### Conclusions

As will be clear from the previous section, policy on protection against climate change tends to be dominated in the EU by the Council of Ministers. This is because both the Commission and the European

Parliament would prefer to see much stricter regulation of climate issues than most members of the Council, and the process normally boils down to the proposals eventually adopted being at the low level that the decisive Council member (depending which majority rules apply), is just prepared to accept. The EP effectively has no influence in this area, since threatening to exercise its veto against decisions that do not go far enough for its taste is not a credible option. If it carried out its threat, the status quo would be retained, so its position would ultimately be still less favourable than if it accepted a minimum solution. The Commission, too, is only able to assert its preferences within the constraints set by those of the Council, so its more progressive approach to climate policy cannot be put into effect. The ultimate deciding factor is what kind of majority is required in the Council.

Since virtually all measures directly motivated by policy on climate change require unanimous Council decisions, it has not been possible to push such measures through on an adequate basis, if at all. The discrepancy between ambitious reduction targets and their inadequate implementation is thus best explained by the interests of the cohesion countries on this issue. Meanwhile, in other policy areas which in some cases are also highly relevant to climate protection, measures have indeed been implemented when the qualified-majority criterion has applied. Measures of this type therefore offer greater potential to achieve something in protecting our climate than do those passed on the basis of Article 130s. This phenomenon is unlikely to change as long as the decision-making procedures used do not allow the European Parliament to have greater influence and stick to the unanimity requirement in the EU Council.

The conclusion to be drawn is that neither the cooperation procedure introduced into environmental policy by the Treaty of Maastricht nor the greater use of the codecision procedure laid down in the Treaty of Amsterdam will have any substantial influence on climate policy in the EU. As long as the exceptional cases provided for in Article 130s (2) remain in place, thus requiring any efficient climate policy instruments to obtain unanimous approval by the EU Council while the Parliament is shut out of the process, climate policy is set to continue being "lowest-common-denominator politics". Useful institutional reforms in this field therefore ought to begin by altering the majority requirements in Council, combined with granting the EP rights of codecision reaching beyond a simple right of veto.

<sup>56</sup> Cf. U. Collier, *op. cit.*, p. 57.