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## Legislating on car emissions: What drives standards in EU environmental policy?

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# TranState Working Papers

LEGISLATING ON CAR EMISSIONS  
WHAT DRIVES STANDARDS IN  
EU ENVIRONMENTAL POLICY?

HENNING DETERS

No. 142

Universität Bremen • University of Bremen  
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Staatlichkeit im Wandel • Transformations of the State  
Sonderforschungsbereich 597 • Collaborative Research Center 597



*Henning Deters*

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**Legislating on Car Emissions.  
What Drives Standards in EU Environmental Policy?**

**ABSTRACT**

The working paper examines the decision-making process of what has most likely been the most contentious European environmental policy-item in 2009: the regulation 443/2009 setting carbon dioxide emission performance standards for new passenger cars. In contrast to the empirical trend of rather stringent protection levels, where environmental front-runner countries, encouraged by the Commission and the European Parliament, are able to set the pace, the regulation in question was largely shaped by the most reluctant member state – Germany with its high-volume, premium car manufacturers. By process-tracing the legislative decision-making, the paper accounts for this lowest-common-denominator outcome. Commission and EP had “greener” preferences than the Council. Yet, both actors suffered from a lack of internal consistency, with national differences leading to strong in-fights between Commissioners and limiting the voting coherence of EP party-groups. The issue was therefore already highly politicized at the agenda-setting stage. This, and the fact that the dossier was handled in a fast-track procedure, curtailed Commission influence. In the Council negotiations, Germany was able to muster a potential blocking minority together with those, mostly east-European countries, where subsidiaries of German car companies are located. “Greener” member states were, however, not prepared to veto down the regulation although they criticized its lack of ambition.

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## **Legislating on Car Emissions. What Drives Standards in EU Environmental Policy?**

### **INTRODUCTION**

Despite the widely held notion of a “fundamental asymmetry” (Weiler 1981, Scharpf 1999:52) between negative and positive European integration or deregulation and regulation of the Common Market, market-correcting policies aiming at social, environmental and consumer protection have evolved considerably. Especially environmental policy today has grown into a “central policy ambit of the EU” (Knill 2008:11). Rated by the quantitative output of directives and regulations, this is obviously true (Lenschow/Sprungk 2010). Sheer numbers, however, tell little about the level of environmental protection achieved in each piece of legislation. According to the “standard allegation” (Knill 2008:11) against EU environmental legislation, its substance rarely exceeds the level of the “lowest common denominator”, because under qualified majority voting or even consensual decision-making, its adoption ultimately depends on the consent of the least ambitious member state(s) in the Council (cf. Golub 1996).<sup>1</sup> This mechanism, it is claimed, produces a regulatory chill effect. The fact that decisions are made at all, it is maintained, can often only be explained by strategies of “subterfuge” (Héritier 1999), such as issue-linkage, side-payments and incrementalism. But since the raft of EU legislation is made within the sectoral councils, i.e. below the summit level, there is little room for package deals across issue-areas with complementary asymmetries (Scharpf 1997: 129-130). Empirically, instances of environmental legislation made possible by issue linkage therefore are “rare” indeed (Wurzel 2002: 145).

Notwithstanding these sobering theoretical expectations, Simon Hix captures well the predominantly positive overall assessment of EU environmental policy when he maintains that

EU environmental regulations have almost universally been based on the high standards of the most environmentally advanced member states such as Denmark, Germany and the Netherlands, rather than on the lower standards of the UK, Ireland or southern Europe, even though the lower standards, in most cases, would have been sufficient to protect against negative externalities and provide a degree of information to consumers (Hix 2005: 254, cf. Heritier et al. 1994, Sbragia 2000, Weale et al. 2000, Lenschow/Sprungk 2010).

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<sup>1</sup> In a sense, *any* legislation is, *ex post*, a product of the lowest common denominator, since it contains only what the legislators can jointly accept. But what is meant here, is a policy that is located at or near the ideal point of the least ambitious government(s), rather than near the ideal points of the “greener” legislative actors.



These examples of high-level regulation are puzzling from an institutionalist perspective, which expects joint-decision-systems like the EU to be prone to deadlock and lowest-common-denominator solutions. Partial explanations refer to (1) the influence of supranational EU actors, who may at times resolve blockages and push for more ambitious legislation, (2) the distribution of veto-positions within intergovernmental bargaining constellations, which are a function of the leeway for autonomous domestic regulation granted by common market law and (3) the salience of distributional conflicts. In what follows, I will explicate these causal mechanisms in more detail, before they are matched to a case study on the legislation of carbon dioxide (CO<sub>2</sub>) emissions from passenger cars.

The aim of this paper is to explore the dynamics that push forward or impede a high level of protection in EU environmental legislation. The paper presents some findings drawn from the analysis of a single case of rather unambitious regulation – an “extreme case”, as it were, with regard to the level of protection, a “typical case” with regard to the theoretical conjecture of lowest-common-denominator bargaining, but an “outlier case” in view of the general impression of the de facto level of protection in the EU environmental policy field (cf. Gerring 2007: Chapter 5). The focus is on the empirics of the case, while the mechanisms outlined below are not meant as competing hypotheses but as analytic framework and guidelines for process-tracing. The empirical information has been gathered by analysing the official documentation provided by the EU institutions, pertinent news coverage, and eleven semi-structured expert interviews (each between 30 to 60 minutes in length) with decision-makers from the European Parliament and the European Commission, national delegates of several Permanent Representatives Committees, and members of environmental and automobile lobby-groups. Most interviews were conducted between December 11<sup>th</sup> and 15<sup>th</sup> in Brussels, two interviews were held by phone before and after this date. The sections of this paper that are based on interview material are referenced by interview number only, in order to protect the interviewees’ anonymity.

## **WHAT DRIVES REGULATION UP OR DOWN?**

### **Supranational activism**

The *European Commission* has been called the “engine of integration” (Nugent 1995, Pollack 2003). Its influence is particularly pronounced in the area of negative integration, where the Commission can make use of its executive powers invested in it as “guardian of the treaties”, often in concert with the Court of Justice of the European Union (ECJ) (Schmidt 2000). But most notably due to its right of initiative, the Commission is also a central actor in EU legislation and positive integration. The *European Parliament’s* (EP) powers have been successively expanded with each major treaty re-

vision (Rittberger 2003). In today's ordinary legislative procedure (formerly co-decision), the EP acts as a co-equal legislator with the Council, similar to a second chamber in national legislation. Because of its need to ensure public legitimation, it is said to regularly defend "diffuse" environmental and consumer interests (Pollack 1997, Bernauer/Caduff 2004).

### ***The Commission***

*Preferences:* According to the standard "scenario of supranational preferences" (Hörl/Warntjen/Wonka 2005), the Commission is a "competence-maximizer" with a vested "bureaucratic self-interest" in expanding its acting capabilities. Because its budgetary means are tightly circumscribed, instead of using fiscal instruments, the Commission engages in "social regulation" (Majone 1993), and tries to subject ever more issues to European regulations. On the integration/autonomy dimension, the Commission is therefore located at the supranational edge, with its constant antagonist, the Council, on the opposing end. However, while this scenario implies a preference of the Commission for *integration*, it says little about its preferred level of *regulation* (Hörl/Warntjen/Wonka 2005: 596). This question can hardly be answered a priori, as it is likely to depend on additional factors, such as the party-political or national affiliation of the responsible leading Commission officials or the decision which directorate-general (eg. DG ENT or DG ENV) is in charge of the dossier (Wonka 2008: 121-130). Still, some authors maintain that the Commission usually prefers a high level of regulation, because of a generic "bureaucratic" interest in technically superior legislation, and because providing effective solutions for environmental problems quite simply is the main job description of its DG ENV (Eichener 1997, Pollack 1997). What is more, Art. 191 (ex-Art. 174) of the EC-Treaty demands, that in drafting environmental legislation, the Commission "shall aim at a high level of protection". At the same time, the Commission has to ensure the functioning of the internal market, which can be distorted by divergent national environmental regulations (Héritier et al. 1994:18).

*Influence over legislation:* The Commission's influence over EU legislation is usually traced back to its formal and informal agenda setting power. While the informal agenda setting power refers to the Commission's ability to table its proposals at a time when the political climate is particularly receptive, using political "windows of opportunity", the formal agenda setting power refers to the fact that the decision-making procedures make it easier to adopt a Commission proposal unchanged than to amend it. This is not only true for the consultation procedure (which today is largely irrelevant in environmental legislation), but also for the cooperation procedure, whenever the EP and the Commission act in concert (Tsebelis/Garrett 2001). In the co-decision-procedure (post-Amsterdam), neither the Commission nor the EP enjoys agenda-setting power in the last stage of the procedure, i.e. in the conciliation committee.

### ***The European Parliament***

*Preferences:* A number of case studies attribute a special role in environmental legislation to the EP. The House, it is claimed, often exerts a “greening effect” on EU environmental policy. In the interinstitutional negotiations with the Council and the Commission, its amendments usually aim at a higher level of protection. Particularly in relation to the Council it could therefore be called a preference outlier and it has also been accordingly baptized the Union’s “environmental champion” (Burns 2005). Its apparently green preferences are explained by the EP’s self-perception as a defender of “diffuse interests” (Pollack 1997), by its need for popular legitimization and electoral support as the Union’s only directly elected institution (the environment being a salient issue among European voters (Lenschow/Sprungk 2010)), and by the regulatory zeal and strong procedural position of its environment committee (ENVI).<sup>2</sup> Similar to the general-directorates within the Commission, the EP committees are said to be biased towards their policy priorities; e.g. the ENVI will most likely prioritize environmental over industry concerns. Close contacts with the environmental lobby amplify this tendency (Judge 1992, Judge/Earnshaw 1994, Judge/Earnshaw/Cowen 1994, Eichener 1997, Pollack 1997, Sbragia 2000: 302, Wurzel 2002:164-165).

Every legislative initiative first has to pass the committee in charge, before it is voted on in the full plenary, where it requires an absolute majority of the MEPs present in the session.<sup>3</sup> The committee selects a rapporteur from its members, who drafts the first amendments to the initiative and is therefore vested with agenda setting powers vis-à-vis its committee. Typically, every political group present in the committee also selects a “shadow rapporteur” from its own ranks who closely scrutinizes the draft report. The rapporteur, usually a senior MEP with close contacts to the responsible DG and Council working group, has to take the views of the shadow rapporteurs into account in order to gather the necessary majority of votes in the committee. Nevertheless, within the committees in general, and arguably within ENVI in particular, common sectoral policy priorities very often dominate party-political cleavages. As one interviewee put it:

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<sup>2</sup> Its formally correct denomination is “Committee on Environment, Public Health and Food Safety”.

<sup>3</sup> If a dossier touches upon the responsibility of more than one committee, each relevant committee as a first step prepares an individual draft regarding the issues for which it claims prime responsibility. The second step differs according to the chosen procedure. In most cases, Rule 46 of the rules of procedure of the EP will be applied, where one committee is defined as the „committee responsible“ and the other(s) as „committee(s) asked for an opinion“. The former puts the suggestions of the latter to a vote and hence remains pivotal. Since the treaty revision of Nizza, alternatively the „procedure with associated committees“ (Rule 47) may be applied, where the amendments of the „associated committee“ are to be taken into account by the „committee responsible“ without putting them to a vote.

You will find in the environment committee of the European Parliament Greens in every political group. It is remarkable, but I know there are also some CDU MEPs, for example, from Germany, where I wonder if anybody back home in fact realizes what they are doing there [in the EP, HD], since, to some extent, they take positions for which they would be stoned to death at home (interview #3).

After the committee has adopted the report, it is very unlikely that individual amendments will be made in the full plenary, and even less likely that they will be successful without committee backing (Hix 2005: 93). While within the committee, the rapporteur is of central importance due to her inter-institutional contacts and her agenda-setting capacity, in the EP as a whole, it is the competent committee, which by and large is able to control the agenda and benefits from an information advantage vis-à-vis the individual members in the plenary. It is therefore no surprise should its position leave a marked imprint on the finally adopted amendments.

All in all, it is neither unlikely nor surprising that the EP may be a green preference outlier in many instances mainly due to its internal differentiation which, unlike in national parliaments, is not offset by strong party-cohesion. However, one should still bear in mind that, as with every parliament, the EP's position too is ultimately dependent on political majorities and its party-political composition. What is more, the high rate of absenteeism in the plenary makes it even more difficult to compile such a majority (Hix 2005: 96). As a result, there can be no automatism that would guarantee the adoption of a particular set of preferences in every single case (which, by the way, would also run counter to any notion of democratic preference-formation). This caveat is, in fact, confirmed by the case study on the regulation of CO<sub>2</sub>-emissions from passenger cars (see below).

*Influence over legislation:* The *ceteris-paribus*-assumption of green EP preferences gives rise to the question how these play out in EU policy-making. The answer depends on the general influence of the EP in EU politics. This has been discussed extensively with the help of spatial models (cf. Hörl/Warntjen/Wonka 2005 for an overview). From this perspective, the EP's influence in the interinstitutional negotiations with Council and Commission derives mainly from its power to veto proposals in the third reading of the ordinary legislative procedure (codecision) and from its “conditional”<sup>4</sup> agenda-setting power in the cooperation procedure (Tsebelis 1994). Since the Amsterdam treaty, by far the most environmental legislation is decided by codecision, where both the Council, by a qualified majority, and the EP, by an absolute majority of those MEPs attendant in the House, must vote in favour of a proposal for it to become law. In the

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<sup>4</sup> Any EP amendments in this procedure are conditional on their acceptance by the Commission.

third main procedure, consultation, the parliament had little real influence beyond a mere “power to delay” the adoption of a dossier and moral persuasion. It has, however, been replaced by cooperation and then codecision for many environmental issue-areas with the Single European Act and the Maastricht treaty and has become obsolete today. If the EP’s procedural power in today’s environmental politics therefore amounts more or less to a veto-right, its real influence over outcomes crucially depends on the location of the default-condition. I.e. if the EP wants to credibly threaten to use its veto over a proposal. It must be better off with no regulation in place than when the regulation under consideration gets adopted. Assuming that the EP’s preferences are greener than those of the pivotal government in the Council, the EP’s position will only improve by vetoing a regulation if this regulation would have a negative effect on the environment – an unlikely state of affairs. Vetoing a regulation that ameliorates the environment ever so slightly would therefore amount to the EP harming itself. The same logic applies for amendments. It would be irrational for the EP to propose amendments that in all likelihood will not be accepted by a Council majority and thus lead to the rejection of the entire package, since this outcome would make the EP even worse off than the adoption of an imperfect regulation (Weale et al. 2000: 128, Knill 2008: 123).

### **Interest Constellations in the Council**

From an intergovernmentalist perspective, EU legislation remains firmly in the hand of governments (Moravcsik 1993). The constellation of societal preferences, aggregated and represented by governments, therefore also determines the direction and ambition of European environmental policy. If a European policy proposal promises to make every government better off, i.e. is Pareto-efficient, its adoption in the Council should be straightforward even under the rule of unanimity (absent defection problems). However, if a policy proposal not only generates winners, but also losers, its unanimous or quasi-unanimous adoption is unlikely. The distributive implications of a policy affect its chances of getting adopted and shape its substance. Despite not explicitly aiming at redistribution, regulatory policies more often than not improve the positions of some actors relative to others (or, compared to the status quo, hurt some actors while leaving others unaffected).

The outcome of legislative bargaining is also determined by the alternatives to agreement to which the bargaining agents can resort. Negotiators will always compare the terms of a possible agreement to the option of non-agreement. The negotiator who is less dependent on an agreement because of her favourable alternatives effectively holds a veto. In a simplified two-person bargaining situation, she is therefore pivotal and can determine the terms of agreement. In EU legislation, these “outside-options” are affected by the overall juridical framework of the Common Market and vary systematically between two types of regulation: process standards and product standards (Ge-

hring 1997; Holzinger 2007; Rehbinder/Stewart 1985; Vogel 1995:250, 1997, 2003; Scharpf 1996, 1999).

Analytical accounts of intergovernmental bargaining constellations in environmental legislation usually distinguish “polluter states” and ecological “front-runner states”. The former prefer a low level of regulation for whatever reasons (implied costs for industry, low public salience etc. – see above), while the latter are in favour of more ambitious regulations. This divide, however, does not preclude the adoption of ambitious *product standards* for the following reasons. Firstly, both polluter states and front-runner states share a preference for common regulations, since divergent product standards impede the free movement of goods throughout the Common Market. They only differ with regard to the preferred level of environmental protection. The interest-constellation therefore is “cooperation friendly”. It resembles a “battle of the sexes” (cf. Zürn 1992). The shared preference for common standards stems from the fact that by Common Market law governments are allowed to maintain their individually preferred product standards as long as these are aiming at the protection of mandatory requirements (under which environmental protection can be subsumed), are proportionate, and do not constitute disguised barriers to trade (cf. Herdegen 2008: 267-275). It is this very legal situation which also endows the front-runner states with a favourable outside-option and therefore a privileged bargaining position. Since they can (almost) always resort to unilateral regulation, should they find that the common policy proposal lacks ambition, they are effectively in a veto position.

The same is, however, not true, when it comes to process standards. Process standards are standards which do not concern the material characteristics of a product but the way in which and the (social, environmental etc.) circumstances under which it is produced. Member states are not allowed to exclude from their domestic markets foreign goods only because these have been produced under process standards that are less stringent than the domestic standards. If they set stricter domestic standards, the application must be limited to domestic producers (implying *Inländerdiskriminierung*, as, for example, with regard to the *Reinheitsgebot* for German beer), which potentially puts them at a competitive disadvantage. The constellation is similar, when a proposed legislation concerns an issue that has already been regulated in secondary law (Holzinger/Knill 2004). In this case, the pre-emption of secondary law in most cases prevents countries (or at least makes it very difficult for them) to go unilaterally beyond secondary law. By and large, however, it can be stated that it is easier to unilaterally go beyond an EU standard that has been based on Art. 175 EU (environmental policy) rather than on Art. 95 EU (approximation of laws), since in the latter case, a formal authorization from the Commission is required.

## **The formulation of CO<sub>2</sub>-standards for passenger cars**

The following case study analyzes the formulation of regulation 443/2009<sup>5</sup> (CO<sub>2</sub> regulation), which for the first time in the EU set binding limit values on carbon dioxide (CO<sub>2</sub>) emissions from passenger cars. CO<sub>2</sub> is the most important “greenhouse gas” and is emitted from the tailpipe of vehicles that burn fossil fuels (petrol and diesel). Other than airborne pollutants such as sulphur dioxide, nitrogen oxides, carbon monoxide or particulate matter, CO<sub>2</sub> emissions cannot be reduced by applying “end of the pipe” techniques, e.g. filters or catalytic converters, but their abatement requires modifications in the design of engines, tires or of the whole vehicle and/or driving behaviour to increase fuel economy. Since a vehicle’s weight is a crucial determinant of its fuel consumption, efforts to curb CO<sub>2</sub> emissions may necessitate quite sweeping changes in a manufacturer’s product line. The CO<sub>2</sub> regulation defined an emission limit of (nominally) 120 g CO<sub>2</sub> per kilometre driven (g CO<sub>2</sub>/km) for new passenger cars placed on the European market. This limit value is neither uniform, nor is it applied to each car individually. Instead, the 120 g are a target to be achieved by the whole of the new car fleet as an average. This average target is then broken down by a so called “limit value curve” that specifies the values for each single automobile as a function of the so called “utility parameter” which is based on vehicle mass. The limit value curve is tilted in such a way that heavy cars (corresponding to “higher utility”) are allowed to emit more CO<sub>2</sub>/km than light cars. The standard also does not address the single car, but is directed to the manufacturer. (This contrasts with the “Euro” exhaust emission standards to which each single car must conform in order to be type-approved.) Producers that fail to comply with the limits have to pay fines which are rather low for a slight overshoot but increase as the violation gets larger. The next subsections analyze the formulation and adoption of the CO<sub>2</sub> regulation with a view to understand how the policy preferences of the different actors relate to the final outcome, how they have been accommodated and which resources and constraints were crucial in shaping the result. For the sake of clarity, the process is subdivided into four main sections: origins and agenda setting, pre-drafting stage, proposal-drafting stage, and the actual legislation (a single reading codecision procedure).

### ***Origins of the regulation and agenda-setting***

*The Beginnings:* The EU has taken steps to mitigate its contribution to climate change since the early 1990s. In March 2007, the European Council committed itself to a 20% reduction in the emission of climate-gases relative to the 1990 base year until 2020<sup>6</sup>.

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<sup>5</sup> 443/2009 EC, OJ L 140, 23.04.2009.

<sup>6</sup> Presidency Conclusions of the European Council 8/9 March 2007, 7224/1/07.

Most abatement measures, such as the Emission Trading System (ETS) aim at the manufacturing and energy-producing industry. Despite being responsible for a quarter of the EU's greenhouse gas emissions, transportation's share in climate-change has been largely neglected as a subject of regulation both on the European and member state level. This only changed in April 2009, when, for the first time in the EU, binding CO<sub>2</sub>-emission targets for passenger cars were adopted. Japan, China, Taiwan, Canada, Australia, and the United States are the only countries outside the EU with similar (though partly voluntary) schemes in place. While some of these, such as the Corporate Average Fuel Economy Standards (CAFE), which the US introduced in 1975 in response to the oil price shock, mainly serve as instruments to curb dependencies on oil imports, others have been adopted more or less simultaneously with the EU standards and are primarily motivated by environmental concerns.<sup>7</sup> The non-EU-standards are less strict than the EU-standards (An/Sauer 2004). The EU regulation therefore does not principally call into question the notion of Europe as an environmental leader on the global scale, especially in the mitigation of climate change (Lindenthal 2009). However, as the following analysis shows, the European regulation is an outcome of rather tough bargaining, in which the more reluctant governments got their way, while the ambitions of the environmental front-runners were thwarted. This result can be explained, I argue, with reference to the high distributional conflicts involved, the lack of incentives for the least ambitious states to compromise, quasi-unanimous decision-making and a rather soft stance (partly due to strategic reasons) of the EP.

The idea to regulate CO<sub>2</sub>-emissions from passenger cars originally stems from an initiative of the Council (interview #10, Keay-Bright 2000: 17). Until the mid 1980s, car exhaust standards were formulated by the United Nations Economic Commission for Europe (UNECE) and transposed into EU law. The first directive on emissions of noxious gases for *all* types of passenger cars that the EU adopted independently of UNECE was the so called *consolidated directive* (later called "Euro I standard").<sup>8</sup> This directive stipulated in Art. 5 that "acting by a qualified majority on a proposal from the Commission, [...] the Council shall decide on measures designed to limit CO<sub>2</sub> emissions from motor vehicles." The Commission therefore invited policy proposals from the member states and from the Motor Vehicles Emissions Group (MVEG), an *ad hoc* expert task-

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<sup>7</sup> Technically, CO<sub>2</sub>-emission standards and fuel economy standards are equivalent, since CO<sub>2</sub> is the main combustion product of fuel. Fuel economy standards (usually measured in km travelled per litre of fuel consumed) can therefore easily be converted into emission values (usually measured in CO<sub>2</sub> emitted per km travelled). CO<sub>2</sub> emissions and fuel consumption are therefore used synonymously throughout the text if not otherwise indicated.

<sup>8</sup> 91/441/EC, OJ L 242.



force consisting of national officials and representatives of motor industry and environmental Euro-groups (Keay-Bright 2000: 17, on the MVEG cf. Arp 1995: 195-202).

*The voluntary approach:* A range of options emerged. CO<sub>2</sub> emissions limits were favoured by the Germans (albeit differentiated by vehicle size or mass), and the Dutch, while the French delegation was in favour of an average but uniform CO<sub>2</sub> standard for the entire car fleet of any single manufacturer. The UK delegation favoured a system of tradable permits similar to today's ETS, and Italy as well as Denmark preferred a car purchase tax based on fuel consumption. (The Danish had already implemented a similar tax.) Within the Commission, also DG ENV had a positive attitude towards fiscal measures and asked the MVEG to consider purchase taxes and annual circulation taxes based on CO<sub>2</sub> emissions.<sup>9</sup> However, the corresponding proposals by the MVEG subgroup were rejected, as some member states – in particular the UK and Luxembourg – called into question the MVEG's competence to discuss taxation issues. DG ENTR and DG Taxation & Customs Union were sceptical as well, heralding a rift within the Commission early on. What is more, tax harmonization would have been difficult to achieve because it necessitates unanimity in the Ecofin Council. As the Commission failed to establish consent internally as well as externally, the discussions on the issue stalled. Little happened besides the French and German ministers of the environment Ségolène Royal and Klaus Töpfer agreeing that a meaningful reduction target (however it would be achieved) should be set at 120 g CO<sub>2</sub>/km<sup>10</sup>. This target remained a focal point throughout the negotiations. It was in fact undermined by countless tailor-made derogation rules and allowances but remained symbolically intact until the adoption of the final regulation in 2009. One commission official described it as “our dead pledge” (Faustpfand) (interview #10). In the meantime, the deputy director-general of DG ENTR, taking up an offer from the European automobile manufacturer's association ACEA, suggested a voluntary approach to CO<sub>2</sub> emissions regulation (Keay-Bright 2000: 17-18, interview #10).

Initially, DG ENV was not supportive of this move, as it was still convinced of the superiority of fiscal instruments. But realizing that these had no realistic chance of winning the necessary support, the Danish Environment Commissioner Rit Bjerregaard accepted the proposal, which then came to be regarded as a victory for DG ENTR (Keay-Bright 2000:19). However, DG ENV did not give up on its own hobbyhorses, and instead integrated the voluntary approach into what by the end of 1995 became the “three pillar strategy”.<sup>11</sup> Arguing that “CO<sub>2</sub> emissions from road transport can only be

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<sup>9</sup> The latter would have had the advantage of achieving the desired steering effect at lower tax rates.

<sup>10</sup> equalling 5 litres of petrol or 4.5 litres of diesel per kilometre

<sup>11</sup> COM 95 (689).

reduced by a package of measures”, the strategy combined a voluntary agreement on fuel-saving between industry and commission with “a future Community initiative on vehicle taxation” and a labelling scheme to allow consumers to make informed purchase decisions based on the car’s fuel economy. DG ENV had thereby formally not abandoned its favoured approach, but the previous negotiations must have shown nevertheless that the proposal had in fact arrived at a dead end. The strategy envisaged an overall target of 120g CO<sub>2</sub>/km for the average of the whole EU passenger car fleet by 2005, which corresponded to a 35% reduction from 1995 levels (standing at about 186 g CO<sub>2</sub>/km) as later demanded by the Council.<sup>12</sup> However, only 130g CO<sub>2</sub>/km should be achieved by actual technical adjustments for which industry had to bear the costs. The remaining 10g CO<sub>2</sub>/km were to be accomplished by the tax and labelling schemes. Although the tax scheme was quietly abandoned later on, the division between a technical and an additional target to be achieved by complimentary means remained crucial. While the EP was sceptical of the voluntary approach per se, the Council on June 25<sup>th</sup> 1996 unanimously adopted the strategy and mandated the Commission to take up formal negotiations with the motor industry, represented by ACEA (interview #10).<sup>13</sup> (Informal negotiations had been going on already before this date.)

I will not recount these negotiations here. Suffice it to say that because of the lacking common position on binding emission limits or strong fiscal incentives within the Council as well as within the Commission, the Commission had a rather weak bargaining position as it had no threat potential vis-à-vis industry. Since no shadow of hierarchy existed, progress dragged on slowly for almost two years, until at the end of 1997 the third conference of the parties to the United Nations Framework Convention on Climate Change (UNFCCC) in Kyoto and the change of ACEA’s presidency from Renault’s Schweitzer to BMW’s Pischetsrieder brought new momentum (interview #10). In March 1998, industry and commission agreed on a technically rather unambitious compromise reduction target of 140 g CO<sub>2</sub>/km for the average of all new passenger cars that the European motor industry sold in 2008. The 120 g-target that had been proposed in the three-pillar strategy was reflected in a long-term objective for 2012. In contrast to the 140 g target, the long-term objective was, however, couched in hortatory language and subject to a review in 2003. Additionally, the agreement fixed an intermediate goal of 165-170 g CO<sub>2</sub>/km for the same year.<sup>14</sup>

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<sup>12</sup> 8748/96

<sup>13</sup> Commission Recommendation of 5 February 1999 on the reduction of CO<sub>2</sub> emissions from passenger cars, OJ L. 40.

<sup>14</sup> Commission Recommendation of 5 February 1999 on the reduction of CO<sub>2</sub> emissions from passenger cars, OJ L. 40.

*Setting the new agenda:* Quite soon it became clear that the motor industry would not live up to its promise. However, Council and Commission had insisted on a provision in the voluntary agreement which stipulated that in this case the Commission should initiate binding legislation. Already in October 2000, the Commission sent dunning letters to industry. At the end of 2002 it became obvious that the reductions would even fall short of the intermediate goal, and the Commission now threatened to initiate legislation (ENDS October 2<sup>nd</sup> 08). But it was only with the new Commission Barroso that the issue was in fact activated again (interview #10). In October 2004, a number of environmental ministers asked the new Commission to come up with a proposal for binding legislation. It only did so, however, two years later, when Greek Environment Commissioner Stavros Dimas announced a fundamental rework of the 1995 strategy paper with the aim to draft a binding regulation with specific CO<sub>2</sub> limit values (ENDS October 2<sup>nd</sup> 08). This happened in the wake of the 12<sup>th</sup> conference of the parties to the UNFCCC in Nairobi (November 2006) and close to the G8 summit as well as to the European Council (both in March 2007). In both summit meetings, the issue of climate change was high on the agenda. Also Al Gore's climate-documentary "An Inconvenient Truth" received its premiere in European cinemas in September and October 2006 and created considerable attention with the mass media and the wider public. The timing for the initiative was hence well chosen (interview #3).

### ***The Pre-Drafting Stage***

*National Interests:* Since already before the drafting of the actual proposal open conflicts emerged between the EU governments, this section starts with an outline of the national preferences of the member states that were primarily affected by the CO<sub>2</sub> regulation. In this phase, the main issues concerned the questions whether legislation should be binding or voluntary, which limit value the Commission should propose, and whether this value should be uniform or differentiated. I also discuss briefly the domestic origins of the different policy preferences, which, I argue, are best understood as economical. Afterwards I go on to describe the debate within the Commission which in part already reflected these national divergences.

Firstly, the countries with a large automobile manufacturing sector may be distinguished from those where automobile production plays no major role in the local economy. While the latter are affected by climate change more or less to the same degree as the former, it is mainly the "auto-countries" that have to bear the adaptation costs that come with the CO<sub>2</sub> regulation. The "no-auto-countries" may be concerned by possibly rising consumer prices, but there is no concentrated industry interest that exerts lobbying pressure on the government. These countries are allowed to "free-ride" on the abatement efforts of the auto-countries.

Secondly, another cleavage divided the camp of the auto-countries from within. Put simply, the preferences of countries, where mainly small cars with low fuel-consumption and CO<sub>2</sub> emissions are produced, differed markedly from those, who produce more heavy and powerful cars with a high level of fuel consumption. (See table 1 for a list of the main car-producing countries and table 2 for their average CO<sub>2</sub> emissions.) Especially Germany with its Porsche, BMW, Daimler-Chrysler and Volkswagen was therefore very reluctant to accept a strict level of regulation, but also Sweden (Volvo, Saab) – otherwise known as an environmental front-runner – was sceptical already at the outset. On the other hand, France, Spain and Italy, home to Renault and PSA-Peugeot-Citroën, Ford Europe and Fiat were less sceptical. In fact, especially France was even very much in favour of a rather strict limit value. As can be seen from table 2, for these firms the proposed limit value of 120g CO<sub>2</sub>/km was not very far away from a simple business-as-usual scenario, anyway. It may be argued that they indeed expected that a strict value would strengthen their position vis-à-vis the strong German competitors. Of course, this allegation of a clandestine industrial policy agenda has in fact been advanced by German industry and government officials against the French. It should be noted that the two most important European automobile producers and highly influential political players – France and Germany – were thus situated at opposed camps. Another important car manufacturing country is the United Kingdom. Its position was somewhat opaque and should be located between the two camps. This can be explained by the fact that Rover specializes neither in small cars (as Fiat) nor is it very strong in the Premium segment (as BMW and Mercedes). In sum, the non-auto-countries pressed for a strict and binding regulation with little derogation, an ambitious reduction target, high penalties and a tight implementation deadline. The interest of the premium-car countries were directly opposed. In between were the small-car countries, which had to bear some adaptation costs, but less than the premium-car countries.

*Table 1: Major Car-Producing Countries in the EU*

<i>Share in EU-25 value added (%)</i>	<i>Share in national industrial valued added (%)</i>	<i>Share in EU-25 employment</i>	<i>Share in national industrial employment (%)</i>
Germany 50.9	Germany 9.5	Germany 43.6	Germany 7.4
France 15.5	Sweden 6.4	France 15.5	Sweden 6.8
United Kingdom 8.2	France 5.6	United Kingdom 9.4	Belgium 5.9
Spain 6.3	Hungary 5.3	Spain 7.1	France 4.8
Sweden 4.1	Belgium 5.2	Italy 5.8	Spain 3.4

*Note:* Major EU car producers – share in value added and employment, 2003.

*Source:* Eurostat 2006.

Table 2: *CO<sub>2</sub> Emissions and Vehicle Mass of New Cars by Major EU Producers in 2006*

<i>Country</i>	<i>Manufacturer</i>	<i>Mass average (kg)</i>	<i>CO<sub>2</sub> average (g/km)</i>
Germany	Porsche	1569	282
Sweden	Volvo	n.a.	195 (2005)
Germany	DaimlerChrysler	1472	184
Germany	BMW	1453	182
Germany	Volkswagen VW	1366	165
Spain	Ford	1319	162
France	Renault	1234	147
Italy	Fiat	1112	144
France	PSA Peugeot-Citroën	1201	142

*Note:* Main car producers, CO<sub>2</sub> emissions, mass, and origin.

Source: European Commission Memo/07/597, for Sweden: European Parliament IP/A/ENVI/FWC/ST/2006-44.

The main point of contention between the car-producing countries of course concerned the level of the emission value. However, the issue was not so much which particular value should be prescribed, but rather whether there should be a uniform value at all (interview #9). The small-car countries initially were in favour of a uniform emission limit. For example, PSA Peugeot-Citroën's CEO Christian Streiff declared that "one gram of CO<sub>2</sub> must be the same for everybody. It would be unfair to allow richer citizens to pollute more than a middle-class person in a smaller car" (The Times, February 8<sup>th</sup> 07). The French government defended this position as well. Not surprisingly, the premium-car countries were furious. In a statement directed at the Commission, German Chancellor Angela Merkel declared, she would "prevent a flat-rate reduction" and support a differentiated emission limit "with might and main" (AP, January 30<sup>th</sup> 07, translation HD). In their quest for a differentiated burden-sharing, the large-car countries won rather fast, but the question of how this arrangement should be designed, i.e. who would be responsible for how much reduction, remained a matter of contention throughout the whole negotiations and was one of the most difficult items on the agenda.

To be sure, every auto-country, besides belonging to the "small cars-camp" or "premium-camp", had its own idiosyncratic preferences as well. For example, while the British mainly produced cars with moderate fuel consumption, a number of luxury brands with very high CO<sub>2</sub> emissions like Lotus, Rolls Royce and Bentley exist as well. The British were therefore eager to ensure derogations for these "niche" products. Another example is Sweden. Most Volvos and Saabs are at least as heavy and fuel-thirsty as the average German car, but the Swedes were introducing engines that could run on fuel mixtures containing ethanol (flex-fuel) which is produced from agricultural instead of fossil sources and therefore has a smaller CO<sub>2</sub> footprint. Similar to the British car-

makers, Sweden thus wanted a special allowance for cars that run on flex-fuel (interview #9). In sum, the national preferences were determined to a very large extent by politico-economic and industrial-technical conditions. This assessment is nicely reflected in the remark of an official who observed that “with most of the environmental dossiers that I have seen, if one wants to understand the voting behaviour of the member states in the Council, one has to take a look at Europe’s industrial geography” (interview #9).

*The Discussions in the Commission:* While drafting the revised strategy, the Commission was well aware that the dossier generated considerable contestation between the governments. But instead of presenting a united front, the Commission got itself entangled in the conflict. This resulted in a long-lasting turf-war between DG ENV, headed by the Greek conservative Commissioner Dimas and DG ENTR, headed by the German social democratic Commissioner and Vice-President Günter Verheugen. Both DGs claimed responsibility for the dossier, but while Dimas wanted to seize the opportunity presented by the strategy revision to finally arrive at a binding regulation, Verheugen at least initially was opposed to a binding approach (AFP January 22<sup>nd</sup> 07, Reuters July 23<sup>rd</sup> 07). With his fundamental opposition, Verheugen was quite isolated within the Commission as well as in relation to the Council. What is more, although the Commission President said he did not want to “impose” his position, he was in favour of a binding approach as well (Reuters, January 22<sup>nd</sup> 07). Therefore, when by the end of January 2007 the deadline had been repeatedly postponed, the industry Commissioner accepted that the revised strategy should contain a binding element and the debate henceforth centred on the appropriate emission target. In this regard, Dimas wanted to retain the original target of 120 g CO<sub>2</sub>/km, which Verheugen considered much too strict. Taking up arguments of the car manufacturer associations, he claimed that the responsibility to reduce CO<sub>2</sub> emissions should not exclusively be assumed by the motor industry but that amongst others the manufacturers of tires, fuel refineries as well as the motorists should share in the burden. He therefore echoed demands of the car producers for an “integrated approach” that would take these actors on board and provide a rebate on the limit value for “complementary measures” such as gear shift indicators, consumption displays, low resistance tires and biofuels (EurActiv January 22<sup>nd</sup> 07).<sup>15</sup> This in fact amounted to a reduction of the average limit value from 120 to 130 g CO<sub>2</sub>/km. The missing 10 g CO<sub>2</sub>/km should be taken up by these complementary measures, which had

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<sup>15</sup> Additional suggestions by DG ENTR included encouraging the member states to promote fiscal incentives and an inclusion of the transport sector into the emission trading system. These options found little support, however, and they were not even seriously debated.

to be introduced mandatory (interview #1).<sup>16</sup> In other words, in exchange for the mandatory introduction of complementary measures, the car manufacturers got a lower emission limit. Although Dimas wanted the motor industry to achieve the 120g target on its own, he accepted the integrated approach as a compromise. The final decision on the contents of the revised strategy was made at a Commission meeting at 7<sup>th</sup> February 2007 (AFP July 6<sup>th</sup> 07, PV(2007) 1775). The strategy called for a binding emission limit of 120 + 10 g CO<sub>2</sub>/km to be achieved by 2012. A proposal should be tabled “if possible in 2007 and at the latest by mid 2008” (COM (2007)19: 3).

The resulting compromise of a reduced target of 130 g CO<sub>2</sub>/km on the one hand and a nonetheless binding legislation on the other can be regarded as located more or less halfway between the positions of Dimas and Verheugen. This corresponds to a “median Commissioner” model. According to this model, the Commission constitutes a collegiate body, but no preference homogeneity is assumed. Since every Commissioner may request a vote on any issue, and since the college of Commissioners decides by simple majority, it is rather the median Commissioner who is pivotal and determines the Commission's collective preference position. In contrast to the assumption of preference homogeneity (Tsebelis/Garrett 2000), at least two Commissioners held divergent positions. These can be interpreted either among intergovernmentalist lines by national origin (Crombez 1997), with Verheugen defending the German interests and Dimas the Greek position, or in accordance with a sectoral policy/regulatory capture model according to which the Commissioners defend their portfolio interest (Laver/Shepsle 1996) or the preferences of their respective clientele (Majone 1993).

The Commission did not formulate a definite position with regard to the burden-sharing issue, i.e. the questions of whether the limit value should be uniform or gradual, and if it would be gradual how the reductions should be allotted to the cars and/or manufacturers. Verheugen declared however that “we intend to modulate the objectives depending on the types and classes of vehicles, and we will guarantee production sites to guarantee jobs in Europe” (Agence Europe 08.02.07). Also DG ENV was aware that a uniform value would in all likelihood be politically infeasible (interview #9). The phrasing of the strategy remained woolly in this regard. It simply declared that the reduction target will be “equitable to the diversity of the European automobile manufacturers and avoid any unjustified distortion of competition” (COM (2007)19: 8). One official remarked that this wording was “code-speak for saying: One must not hurt any

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<sup>16</sup> It is true of course that nominally the target of 120 g CO<sub>2</sub>/km remained intact and the motor industry argued accordingly that it did not matter *how*, but only *that* the target would be achieved, be it by car-related or complementary measures. Nevertheless, the alternative would have been to stick to a 120 g CO<sub>2</sub>/km reduction by car-related measures and encourage further reductions by complementary means.

manufacturer too much. The burden-sharing must be about equitable. It wasn't said this way, but it was totally clear that this was the meaning" (interview #9).

### ***The Proposal-Drafting Stage***

*Ongoing turf-battles in the Commission:* At the same time as the Commission adopted the revised strategy, it also tabled a communication on "a Competitive Automotive Regulatory Framework for the 21st Century" (CARS 21) which inter alia included conclusions on CO<sub>2</sub> emissions which were literally identical to the respective paragraphs in the revised strategy (COM (2007) 22). However, for CARS 21 Commissioner Verheugen was in charge. The fact that in the pre-drafting stage both DGs prepared their own communication indicates how intensely the question of authority was – and remained – disputed within the College of Commissioners. Even in the proposal-drafting stage, President Barroso was unable or not willing to end the turf-battle between the two DGs. He "avoided at that time to take a decision" (interview #9). In an unprecedented move, for which no formal provision exists in the Commission's rules of procedure, both DGs were formally involved in preparing the draft, coordinated by the Secretariat-General. "This was an altogether new invention which didn't exist previously and no longer afterwards. It conveys how much the question of authority remained in dispute and how little will there was to solve the question from above" (interview #9). However, "conceptually and politically, DG Environment was the driving force" behind the proposal, but "formally both directorates-general were teamed up" (interview #9).

*Reactions from the member states:* The Council's reactions to the revised strategy were mixed. Germany had taken over the presidency on February 20<sup>th</sup> 2007, when the Environment Council met for the first time to discuss the issue. The choice for a legislative approach was no longer contested, but the discussion focused on the emission target. Belgium, Austria, the Netherlands, Italy and Denmark pushed for a stricter limit value and declared that the proposal could only be a first step. The Dutch state secretary Peter van Geel explicitly suggested to abandon the integrated approach and to require a full reduction to 120 g CO<sub>2</sub>/km by more economical engines alone (6449/07 ADD1, 6599/07, AP February 20<sup>th</sup> 07). These countries however did not constitute a blocking minority (13 votes were missing) and the Council therefore could formally endorse the target of 130 g CO<sub>2</sub>/km within the framework of the integrated approach at the subsequent Environment Council meeting on June 28<sup>th</sup> (11483/07, Reuters July 28<sup>th</sup> 07). The Council did so without resorting to a vote.

With regard to the burden-sharing issue, German environment minister Sigmar Gabriel admitted that this was "a hard nut to crack" because of the "enormous conflict (...) between the German, French and Italian producers" (Reuters July 28<sup>th</sup> 07, translation HD). The majority of the Council rejected a German approach to declare that the emission limit should be graded according to different production-segments (BMU



2007). Any attempt to get closer to an agreement on this issue failed, and the official conclusions of the Council meeting therefore only reproduced the indefinite wording in the Commission strategy that “any unjustified distortion of competition” should be avoided (11483/07).

The CO<sub>2</sub> regulation was no official item on the agenda of the next Council meeting of October 30<sup>th</sup>, the last session before the Commission was due to present its proposal. The negotiations moved on nevertheless, but only within the camp of the car-producing countries, outside the Council framework. France and Italy were still arguing for a flat-rate reduction. In a letter to Barroso, French President Nicolas Sarkozy in November 8<sup>th</sup>, insisted that “there is no legitimate reason to give the buyer of a heavy vehicle a right to more pollution than any other buyer”. Two weeks later, Merkel countered the French demands in her own letter to the Commission president. In doing so, she could count on an ally within the Commission. Already on August 11<sup>th</sup>, in an unusual move to politicize a Commission-internal controversy Verheugen had given a highly visible interview to the German tabloid “Bild am Sonntag” in which he warned against one-sidedly burdening the producers of big cars. In December, shortly, before the proposal was due, Sarkozy gave in and accepted a differentiated emission target, but demanded that the limit value curve should have a slope of at most 20%, thus requiring larger reductions for heavy cars.<sup>17</sup> He was seconded by Italy’s Prime Minister Romano Prodi, who in a communication to the Commission declared that he would at the utmost accept a slope of 30%. A steeper limit value curve in his opinion would amount to a “significant distortion of competition“, and “an illegitimate hardship for the producers of small cars”. Merkel on the other hand demanded a slope of at least 80%, which in her view meant “already a reduction duty far above average for larger cars” (interviews #1, #2, #3, #9, Financial Times November 11<sup>th</sup> 07, citations from Wirtschaftswoche December 19<sup>th</sup> 07, translation HD).

*A first answer from the EP:* In parallel to these unilateral negotiations outside of the Council framework, the EP prepared an own-initiative resolution on the revised strategy. The resolution does not confirm the EP’s reputation as an environmental champion. The first draft, co-sponsored by the ENVI and ITRE committees, did in fact call for a stricter limit value of 120g CO<sub>2</sub>/km to be achieved by 2012 (A6-0343/2007).

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<sup>17</sup> The percentages indicate the relation of vehicle mass to the required emission reduction. A hundred percent curve was defined as the result of shifting in parallel the current regression line downwards, to the point where the 130g *average* would be achieved. This would require the same *amount* of reduction for vehicles of all weights and consequently imply a differentiated individual reduction *target* for light and heavy vehicles that conserves the current mass/emission ratio. A zero percent curve was defined as a horizontal line that would require different *amounts* of reduction for light and heavy vehicles by implying a uniform individual reduction *target*.

These strict amendments were, however, discarded by the liberal rapporteur of the ENVI Chris Davies, with express support by the conservative ENVI member and shadow rapporteur Martin Callanan shortly before the report was proposed to the plenary, and, as it seems, without further consultation with ITRE (see the protocol to the debate CRE 22/10/2007-16).

The final report, which was adopted on 24<sup>th</sup> October 07 by a conservative majority of EVP, ALDE and UEN and against the votes of the Greens and PSE (C 263 E/300f) not only endorsed the integrated approach (but with a somewhat stricter target of 125 g CO<sub>2</sub>/km), but contained a number of further weakenings. Especially worth mentioning are a “niche derogation” for cars that are produced in a number of less than 30.000 items per year, and in particular a longer lead time until 2012 instead of 2015, which was an important concern of the motor industry lobby. However, the EP did propose additional long-term targets of 95 g CO<sub>2</sub>/km for 2020 and 70 g CO<sub>2</sub>/km for 2025, respectively (P6\_TA(2007)0469). These decisions can be partly interpreted as a result of party-political preferences, since the weakening amendments were sponsored by conservative and liberal MEPs and in the debate some of them declared that they were motivated by concerns about the competitiveness of the motor industry (see the protocol to the debate CRE 22/10/2007-16).

*Finalizing the proposal:* The Commission received the EP’s own-initiative report by the end of October, and by the end of July, it received the Council resolution. It also observed the further unilateral negotiations about the limit value curve between France, Italy, and Germany from where it also had been lobbied intensively. On this issue Commissioner Dimas preferred a flat slope somewhere around 20%. As before, Commissioner Verheugen sided with the large-car camp and demanded a slope near 80%. Another issue, which evolved only in the last weeks before the proposal was to be finalized, regarded the level of fines for car manufacturers who overshoot the emission target. Dimas wanted a fine of 95 € per each car and each gram of CO<sub>2</sub> emitted in excess of the limit value, while Verheugen was only prepared to accept a much lower penalty of 20 € (Wirtschaftswoche December 19<sup>th</sup> 07).

In sum, the Commission was still divided on the very issues that were also contested intergovernmentally. Decision-making was all the more difficult because the question of which service was responsible still remained unsettled. The decision on a proposal was therefore repeatedly postponed, but since Commission President Barroso had publicly assured that the draft regulation would be submitted by the end of the year 2007, negotiations could not go on forever. It was only in the last meeting of the College of commissioners before the end of the year, on December 19<sup>th</sup>, that a final decision was reached. To meet the deadline, the last amendments had to be included into the draft by empowering Commissioner Dimas to finalize the proposal according to article 13 of the

Commission's rules of procedure, instead of adopting them as A-points in the next regular session. The turf-battle was, however, neither settled amicably, nor was there any formal and explicit arrangement. Rather, when the proposal was to be presented at the traditional noon press conference jointly by the Commissioners for Environment and Enterprises, Verheugen simply did not show up (EUObserver 20<sup>th</sup> December 07). This was generally perceived as an implicit decision on the competence-issue. "From that time on, it was the file of Dimas" (Interview #9).

Also substantively, the proposal remained contested. Seven of the 27 commissioners had filed written objections, among them the two conservative vice-presidents and Commissioners for Transport and for Justice, Barrot and Frattini (AFP December 19<sup>th</sup> 07). The slope of the limit value curve was to be set at 60% which was closer to the German position (80%) than to the demands of the French (20%) and Italians (30%). Additional concessions to the German position included the option to set up an "emission pool" by a group of manufacturers or by independent manufacturers to allocate the emissions reductions over different types of vehicles. This provision allowed for additional flexibility and was particularly welcomed by premium-manufacturers such as Porsche.<sup>18</sup> Another provision to relieve industry was the so-called "eco-innovations". These were rebates on the emission limits to be granted for fuel-saving innovations which could not be measured by the emission test-cycle. The details of this provision had still to be worked out. A provision on "niche derogations" granted for manufacturer with a production below 10.000 vehicles per year can be traced back to British lobbying and was also demanded – albeit more leniently – by the EP (see above). The solution found on fines reflected a compromise between Dimas and Verheugen. Accordingly, fines should be phased in so that the premium would be 20 € per gram in 2012, 35 € in 2013, 60 € in 2014, and reach 95 € in 2015. Finally, the longer lead-time, demanded by the EP and (especially the German) car industry was rejected. The emission limit should therefore enter into force in 2012.

### ***Legislation***

*The intergovernmental negotiations:* Especially the Germans were very unhappy with the Commission proposal. They were still speaking about a "trade war" of the French and Italians against the German motor industry (AFP 19<sup>th</sup> December 07, EUObserver 20<sup>th</sup> December 07). Top-level talks went on, but this time the Italians were excluded. In early February 2008, Merkel and Sarkozy for the first time met bilaterally to discuss the proposal and agreed to negotiate the issue further within a Franco-German high-level

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<sup>18</sup> In fact, Porsches made efforts between March 2007 and August 2008 to takeover VW. As a result, Porsche would have been able to offset the high emissions of its premium vehicles by the lower emissions of VW cars such as the Polo (see EurActiv July 24<sup>th</sup> 2008).

working group until the next Council meeting. However, no substantive progress was made until then (AFP March 3<sup>rd</sup> 08).

Possible coalitions emerged at the Environment Council in March 2008, the first session after the Commission had tabled the draft regulation. The main issues were the limit value curve and the “excess emission premium” (fines). Regarding the first, the small-car countries again pleaded for a slope between 20% and 30%. This camp consisted of France, Spain and Italy, but also of Romania, since Romania’s Dacia factories belonged to the French Renault. The large-car countries insisted on a slope of 80%. These were Germany, Sweden, Austria and the Czech Republic. Germany and Sweden were concerned because of their own heavy-weight car-fleet. In Austria, factories of the German BWM are located as well as Magna, one of the country’s largest enterprises. Magna is not only components supplier, but also a car manufacturer. As such, Magna specializes in the production of large and heavy sports-cars and Sports Utility Vehicles (SUVs) for brands such as BMW, Mercedes-Benz, Chrysler, and Saab.<sup>19</sup> The Czech Republic is home to Škoda, which is owned by the German VW. Similarly, in Hungary Audi is the largest car-manufacturer, which in turn is part of the VW group. Hungary thus unsurprisingly expressed a preference for a slope of 65% to 80%. A British proposal to introduce an obligation for each manufacturer to reduce by 25% its current emissions was not considered. Other countries expressed no particular preference regarding the slope and supported more or less explicitly the Commission proposal of 60% (7184/08, European Report March 5<sup>th</sup> 08). In sum, there was at that time only a blocking minority that could reject a slope above 20%, while the large-car camp did not yet have enough votes to reject a slope below 80%. A qualified majority that could force through either alternative has not formed either.

With regard to the excess emission premium, the same pattern more or less re-emerged. However, Italy defected from the small-cars camp, arguing that it would be more disadvantaged by strict fines than others. The Italian delegation complained that small-car producers would face the same fines as premium-car producers, despite the former being more sensitive to price increases. Producers like Fiat could not shift the additional costs to the consumers as easily as BWM or Mercedes, because firstly, the fines would constitute a relatively larger share of the whole price of a cheaper car than of a costly vehicle; and secondly the price elasticity of demand in the small-car segment was larger so that already a small price increase would scare off potential small-car buyers with their comparatively narrow budget.

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<sup>19</sup> For example, Magna designed and produced the Sports Utility Vehicle X3 for BMW which, depending on the model specifics, weighs 1.73 t or more and emits at least 215 g CO<sub>2</sub>/km.

Little progress was achieved at the next Council meeting on June 5<sup>th</sup>. The Slovenian presidency however managed to get the long-term target of 95 g CO<sub>2</sub>/km until 2020 endorsed that was proposed by the EP, even though this was made contingent on a later review by the Commission (ENDS June 25<sup>th</sup> 08). German Environment Minister Sigmar Gabriel demanded a longer lead time until 2015 instead of 2012 and a provision by which car makers could count certain “eco-innovations” such as a fuel-saving air conditioning as part of their reduced emissions. In this respects Gabriel received support from Enterprise Commissioner Verheugen. If these points were conceded, the Germans would be ready to accept an emission value curve with a slope of 60% as suggested by the Commission (BMU 2008). Most delegations in the Council were prepared to accept a longer lead-time if the package would be adopted soon. Yet, other issues, most importantly the slope, and the excess emission premium prevented an agreement.

*Going bilateral:* The breakthrough was only achieved in a further round of bilateral talks between Merkel, Sarkozy and their respective environment and economics ministers in June 2008. In Straubing, the Merkel and Sarkozy published a common declaration<sup>20</sup> in which they agreed to the following points: Firstly, for the emission limit there should be a “substantial phasing-in”, i.e. until 2015 only a fraction of the car fleet is required to comply with the limit value. Secondly, for “eco-innovations” which are not part of the emission test cycle, a credit up to 8 gram CO<sub>2</sub> should be granted, effectively lowering the emission target to 138g CO<sub>2</sub>/km. Thirdly, the fines should be set at a level clearly below 95 € per gram and car. And lastly, the slope of the emissions value curve was to be set at 60% as in the Commission proposal. In effect, Sarkozy had accepted almost all demands of the German delegation. Only the slope was set below the 80% originally favoured by Merkel. But then again, the compromise was closer to the German position than to the 30% Sarkozy had initially called for. The arguably more stubborn German bargaining could be due to the fact that France at that time was about to take up the Council presidency on July 1<sup>st</sup>, soon after the Franco-German talks. Sarkozy was eager to close the file during its term in office (interview #9). Since the talks were held at the highest level, a package-deal stands to reason. Another high-ranking issue for the French, which at that time caused significant trouble between France and Germany, was Sarkozy’s project of a Union for the Mediterranean (EUObserver February 25<sup>th</sup> 08). However, the existence of such a package deal has been denied by negotiators and there exists no empirical evidence (interview #5).

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<sup>20</sup> Joint Statement by M. Nicolas Sarkozy, President of the Republic, and Mrs Angela Merkel, Chancellor of the Federal Republic of Germany, on Vehicle Emissions at the Ninth Franco-German Council of Ministers, Straubing (Bavaria), Moday, 9 June 2008. [http://www.elysee.fr/download/?mode=press&filename=09.06\\_emissions\\_from\\_cars\\_version\\_anglaise.pdf](http://www.elysee.fr/download/?mode=press&filename=09.06_emissions_from_cars_version_anglaise.pdf)

*Setting the stage for the trilog:* After the compromise at Straubing was struck, the French Council presidency hastened to forge a council majority before the EP would present its position (AFP June 23<sup>rd</sup> 08). Because the election period was about to end, the legislation had to be finished in first reading, making extensive use of direct “trilog” talks between delegates of EP and Council. In the EP, a clear opposition between ITRE and ENVI emerged, this time, however, with the “right” committee defending the “right” position. Both committees were formally in charge, since the Conference of Committee Chairs had decided to apply the procedure of reinforced cooperation,<sup>21</sup> with ENVI as the “responsible committee” providing the rapporteur and ITRE as “associated committee”.

In sum, the first draft report of ENVI’s rapporteur Guido Sacconi (Italian socialist) in May 2008 tried to upgrade the level of protection (PE406.014v01-00). But ITRE in early September, proposed to accept the Franco-German compromise. In particular, ITRE proposed to grant car makers an extra three years until they must fully comply and decided that the fines should set at 40 € per gram, i.e. at less than half the level proposed by the Commission (95 €). ITRE also voted in favour of eco-innovations and a scheme of so called “super credits” by which very fuel-efficient cars would be counted 1.5 or even 3 times (EurActiv September 2<sup>nd</sup> 08, PE404.748v01-00). When in September 25<sup>th</sup>, ENVI voted on the amendments proposed by ITRE, its chairman Sacconi suggested that his committee should accept the amendments. This about-turn in comparison to his report from May must be seen in the context of the developments that had meanwhile taken place in the Council. There was little hope, that after the Straubing compromise, his earlier draft would have survived the trilog talks. Against all expectations, the ENVI members did, however, not follow Sacconi’s suggestions and in effect threw out all of ITRE’s amendments apart from the eco-innovations scheme. This meant that, by-and-large, ENVI endorsed the Commission proposal in its original form and rejected the watering down introduced by the Straubing compromise. In addition, the committee embraced the long-term emission target, which was introduced by the Council in June (EurActiv September 26<sup>th</sup> 08, EUObserver September 26<sup>th</sup> 08). Sacconi received the mandate to enter into trilog negotiations with the Council delegates. The legislation thereby drew to a close.

*Final discussions in the Council:* The last Council meeting took place on October 20<sup>th</sup>. The French Council Presidency presented the Franco-German Compromise as an official draft to be discussed. Since the large stumbling blocks had already been removed during the bilateral talks in Straubing, the other governments were unlikely to propose sweeping changes. The United Kingdom and Italy accepted the compromise

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<sup>21</sup> See footnote 2.

after they were granted specific concessions, namely niche derogations and a change in the excess emission premium system by which a small overstepping would result in much lower fines until 2018. Sweden had already signalled its willingness to accept the draft after it had obtained credits for flex-fuel cars (Guardian October 10<sup>th</sup> 08, Thomson Financial August 15<sup>th</sup> 08, EurActiv October 22<sup>nd</sup> 08). The Netherlands, Sweden, Finland, Denmark and the United Kingdom successfully pressed for the introduction of the long-term target that had also been endorsed by the EP environment committee. Couched in somewhat woolly language, this was the only tightening of the regulation that had been introduced by the Council. By the end of October, the Council mandated its President to enter into trilog negotiations with the EP delegates (Thomson Financial October 31<sup>st</sup> 08).

*A weak Parliament during trilog:* The trilog talks continued throughout November. Overall, the EP was unable to assert itself against the Council. In a first round of negotiations on November 18<sup>th</sup>, Sacconi accepted the super credit and eco innovations schemes. The more delicate issues concerning fines and phasing-in remained unresolved (ENDS December 1<sup>st</sup> 08). The EP, on December 1<sup>st</sup>, conceded also these points in exchange for the long-term target to be fixed already at the current date instead of postponing the decision to 2013 as suggested by the Council (ENDS December 1<sup>st</sup> 08, Global Insight November 26<sup>th</sup> 08, AP December 1<sup>st</sup> 08). Sacconi declared that the result was not ideal, but presented the only realistic option (ANSA December 2<sup>nd</sup> 08). The EP ratified the settlement in December 17<sup>th</sup> with a conservative majority of PPE-DE, PSE, ALDE and UEN and against the votes of most Green MEPs. There were 556 votes cast in favour of the settlement, 100 against and 61 abstentions. The Commission formally endorsed the draft and the Council unanimously adopted the regulation on April 6<sup>th</sup> 2009 (8536/09).

## **CONCLUSION**

The following section summarizes the results of the case study. The main finding with regard to the level of protection is that the regulation in many ways constitutes a lowest common denominator-solution and suffers from many of the deficiencies generally associated with joint-decision-making. However, the normative evaluation of the result is contingent on the decision for a specific baseline (1). The evidence for the hypothesis of supranational green activism is mixed. Some differentiation is in order regarding the internal preference formation within EP and Commission. What is more, both actors had little influence on the key issues, albeit for different reasons (2). The distributive implications of the regulation were highly salient, which complicated the bargaining. A differentiated standard helped to defuse the conflict somewhat, yet the terms of the burden-sharing arrangement still remained contested. However, this strategy at least helped to isolate the distributional conflict from the negotiation of the other issues (3). Al-

though the CO<sub>2</sub> regulation rather fits the product standard-category than the process standard-category, unilateral action did not seem viable. The environmentally ambitious governments were therefore in a disadvantaged bargaining position vis-à-vis the industry-friendly member states. This constellation was aggravated by the fact that, despite the formal qualified majority rule, intergovernmental negotiations took place under an informal consensus-norm, which means that every single government practically held a veto (4).

(1) The regulation as finally adopted was not only watered down in many respects relative to the original proposal as envisioned by DG ENV, but it was also much closer to the ideal positions of the car producer countries than to the greener ideal position of the no-car countries. Also within the former camp, specifically Germany with its heavy and fuel-consuming car fleet was very assertive. What is more, while a large amount of the dilutions followed the demands of the least ambitious government, in this case Germany, the regulation was also weakened by many other, rather idiosyncratic demands – a classical pathology of joint decision-making. Despite this seemingly rather grim picture, the normative evaluation of the result is less straightforward than it may seem. Certainly, the result is less ambitious than preferred by the more environmentally friendly member states, such as the Netherlands, and it has clearly been watered down by the “polluter” coalition led by Germany. But then again, the regulation also is innovative insofar as Germany in all likelihood would never have adopted CO<sub>2</sub>-abating measures for passenger cars just by itself, absent external pressure from the European level.

(2) The case-study shows that the Commission and partly also the EP were more environmentally minded than the Council collectively and certainly more than the car-producing countries or even the least ambitious Council member. Hence, at first sight, the hypotheses of authors such as Pollack (1997), Eichener (1997) or Burns (2005) seem to be confirmed. However, at least two aspects of this picture must be corrected. Firstly, Commission and EP had little influence on the final outcome. The influence of the Commission in the fast-track procedure seems very limited. In the triilogue negotiations between EP and Council, the Commission’s role is reduced to that of a rather passive consensus-facilitator. It neither holds veto- nor agenda setting-powers. The agenda-setting power was rather in the hands of the Presidency and the final deal was hence struck between EP and Council. In the triilogue negotiations between EP and Council, the default outcome was favourable to the latter, since unilateral action by more ambitious member states was ruled out. It is true that neither EP nor Council favoured non-agreement to a common position, but arguably a failure to resolve the issue would have been less disappointing at least for the industry-friendly Council-coalition, led by the



Germans. Thus, also EP influence was limited, even though the EP succeeded in defending the long-term target.

Secondly, positions within the EP as well as the Commission were hardly homogeneous. The Commission was in fact divided by a turf-battle between DG ENV and DG ENTR which can be interpreted along national and/or sectoral lines. The positions within the EP diverged between the leading ENVI committee and the cooperating ITRE committee, that is, along sectoral lines. What is more, even within ENVI, MEPs held different positions, depending both on their national origin and party-affiliations (with the two large blocks more or less voting together). Indeed, the fact that ENVI finally provided no notable amendments to the Commission proposal was not because it explicitly supported the proposal, but simply because the Italian socialist rapporteur Sacconi and the relevant shadow rapporteurs failed to secure the necessary majorities for as well as against a tightening of the proposal (interviews #3, #6). However, whether during the dialogue negotiations, Sacconi did (interview #12) or did not (interview #3) feel obliged by the voting results of the leading ENVI committee and whether or not he in fact rather defended the less ambitious positions of ITRE, which he earlier also had recommended ENVI to support, is an open question.

(3) The slope of the limit value curve was a distributional conflict which was hard to resolve. By aiming at a differentiated emission reduction target from the outset, the distributional conflict was “outsourced”, preventing the negotiations on other issues from running into deadlock. Nevertheless, a compromise on the whole package could only be reached after the distributional bargaining was finished (interview #9). The outcome (60% slope) was more favourable to the German than to the French coalition. This result does not come as a surprise. The Germans could wait. While they did not exactly prefer non-agreement to a common regulation, a breakdown of the negotiations would have been less costly for them than for the French – not least because the French were expected to finish the dossier during their presidency. Additional time-pressure was due to the fact that the election period of the EP was about to end. But also the motor industry as a whole wanted legal certainty once it became clear that a regulation could no longer be stopped (interviews #9, #12). The German and French resolved the issue bilaterally – with strong disapproval from the other governments, especially the Italians. This way, the problem of reaching agreement was reduced in relation to a scenario where the negotiations had taken place among all governments in the Council (cf. Genschel/Plümper 1997). The others were confronted with a *fait accompli* that they could only either accept or reject, but not change. As soon as the French and the Germans struck their deal at Straubing, the blockage was resolved and the regulation could be adopted rather quickly. To be sure, also with the introduction of the catalytic converter, distributional issues were to be resolved (see below). They were, however, less pressing

than within the CO<sub>2</sub> dossier because the catalytic converter was an add-on device with which new (and old) cars could be retrofitted,<sup>22</sup> while the CO<sub>2</sub> regulations concerned larger design-issues.

(4) During the whole negotiations, the dominant mode of co-ordination was bargaining. There was no vote cast, only “deals” struck (interview #2), despite the formal decision-making rule being a qualified majority. Yet it was not only the big players who held an informal veto-right, but also the minor car-producing countries. This explains why the CO<sub>2</sub> regulation was full of derogations and special provisions.

It was the presidency’s policy – and that generally is the policy in the Council – that, whenever it can be avoided to make trouble, you do it. That is, if somebody only demands something loudly and insistently enough, then he gets it, as long as it doesn’t hurt anybody else. Thus, you work, if you can, according to the consensus principle. I have rarely seen that a vote has actually been forced and that a minority, also if it is not a blocking minority, is run over. That is avoided, because one knows exactly that in the next round of negotiations one faces the same persons again and one doesn’t want to lose this goodwill (interview #9).

Despite the fact that the CO<sub>2</sub> regulation was based on article 174, which in principle allows the national introduction of stricter regulations, no member state considered introducing more stringent regulations on its own in case the regulation would be diluted to much. A national going-it-alone was widely considered impossible. Concerns that one member-state might be ready to regulate unilaterally played no role whatsoever in the negotiations (various interviews). This was likely due to the fact that the regulation of noxious substances from cars, as well as car type-approval have been harmonized on the European level for a long time, and a going-it-alone in a related area was perceived to violate the principle of pre-emption (interview #1).<sup>23</sup> Only after the regulation had been put into place did some member states (such as France) begin to adjust, to different extents, their car tax schemes in line with what was suggested by the Commission’s renewed Community strategy to reduce CO<sub>2</sub> from light vehicles. This seems to be the only leeway by which member states felt they could provide further incentives for the production of fuel-saving cars.

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<sup>22</sup> More precisely, the catalytic converter required a special carburettor in most cars, but this was not a large adaptation.

<sup>23</sup> On the principle of pre-emption, see Furrer 1994.

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