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Avoiding a Legitimacy Crisis despite the Quarrels: the EU in the Emissions Trading System Negotiations

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Acknowledgement

Abstract

For a decade, the European Union (EU) has been struggling through different crises: it has difficulty recovering from the financial crisis; it seems unable to deal with the migration waves; and it has now to face Brexit. If it has been shown that the EU thrives in times of crisis, it is also true that the EU has never been faced with so many challenges at once and many scholars have concluded that the EU is currently facing a legitimacy crisis. This paper argues otherwise.

Indeed, it shows that legitimacy and legitimacy crisis are distorted concepts that have lost their operational power. Analysing the interviews of eleven stakeholders involved in the Emissions Trading System negotiations (ETS), the paper discusses the link between policy evaluation and legitimacy assessment. While many studies imply that discontent about a policy or an institution leads to legitimacy troubles, it shows that actually constituencies do not use the same norms to evaluate a policy or a polity, making the relationship between policy evaluation and polity's legitimacy more complex than expected.

In a second step, the paper shows that, if stakeholders disagree with some actions or behaviours of the EU, they do not contest the commonality that the EU builds, i.e. a negotiation arena: stakeholders might contest the unfairness or the results of the game but they do not contest the rules of the game. Because stakeholders agree with the organising principles, they do not withdraw their support to the EU even though they might not support its policies or institutional structure. Therefore, the EU is not facing a legitimacy crisis. It is at worse experiencing legitimation troubles.

Key Words

EU, Legitimacy, Legitimacy Crisis, ETS, Stakeholders.

Introduction

For a decade, the European Union (EU) has been struggling through different crises: it has difficulty recovering from the financial crisis; it seems unable to deal with migration waves; and it has now to face Brexit and its difficult negotiations process. If it has been shown that the EU sometimes thrives in times of crisis, it is also true that the EU has never been faced with so many challenges at once; and many scholars have concluded that the EU is currently facing a legitimacy crisis (e.g. Bickerton 2010, Longo and Murray 2015). As many concepts in social sciences, legitimacy and legitimacy crisis are often loosely defined and misapplied. This paper attempts to reclaim the operational power of these two concepts and to apply them to the negotiations of the Emissions Trading System (ETS) in order to determine what kind of legitimacy troubles the EU is currently facing.

There is a general understanding in the literature that when citizens express their discontent about the EU or its policies, the Union faces legitimacy problems, or even a legitimacy crisis (Meunier 2003, Longo and Murray 2015). Before getting to such conclusions, it is necessary to consider carefully the link between policy evaluation and legitimacy assessment. Since Scharpf's distinction between input and output legitimacy (Scharpf 1999), it has become very popular to apply these categories to particular policies or institutional features to assess the legitimacy of the whole political system. This paper, however, argues that discontentment regarding policies or institutional structures does not necessarily lead to the delegitimation of the polity.

Secondly, this paper shows that, despite the criticisms, the EU is not facing a legitimacy crisis in the studied constituency. Indeed, while the EU and the ETS are under harsh objections, the constituency does not express its will to withdraw support for the EU. The scope of this paper is limited since it focuses on one specific constituency, i.e. the ETS stakeholders, and its attribution of legitimacy to the EU. Nevertheless, this case study, despite its particularities, exemplifies well firstly how complex the relationship between policy evaluation and legitimacy assessment can be; and secondly, how legitimacy troubles can be branched into legitimacy deficit, legitimation troubles or legitimacy crisis according to the severity of the symptoms and the potential remedies.

The first section discusses the link between legitimacy and policy evaluation and clarifies important concepts such as legitimacy, legitimation and legitimacy crisis. The following section presents briefly the ETS and the criticisms it faces. Finally, the third section analyses interviews with eleven stakeholders in order to assess what kind of legitimacy troubles the EU is facing in that particular constituency.

Legitimacy, Legitimacy Crisis and Policy Evaluation: A Complex Relationship

Discussing the Link between Legitimacy and Policy Evaluation

It is not rare for scholars to link legitimacy and policy evaluation. This idea comes notably from Sharpf's distinction between input and output legitimacy that suggests that a polity's legitimacy depends notably on its capacity to involve the right people in the decision-making and to deliver appropriate outcomes (Scharpf 1999). This distinction has been reproduced to evaluate the legitimacy of national states (Holbig and Gilley 2010), international organisations (Dostie and Paquin 2014, Steffek 2015) or private organisations (Mena and Palazzo 2012). These studies focus on particular institutional features or policies to evaluate a political system's legitimacy without questioning further the soundness or scope of applicability of Scharpf's concepts.

As often when talking about legitimacy, there is a ditch between scholars studying legitimacy empirically and those working on normative theory. The later most of the time follow Scharpf and his democratic argumentation to justify the input-output distinction: in order to be legitimate, an authority must be democratic, i.e. representative and delivering democratic preferences. As Lord and Magnette show (2004), this statement is not as straightforward as it seems; the definition of representativeness and desirable outcomes varies according to the understanding of democracy – they make a distinction between indirect, parliamentary, technocratic and procedural legitimacy. This complexity, however, would represent different vectors through which the authority can affirm its legitimacy rather than an inherent contradiction that would damage its legitimacy (Lord and Magnette 2004, 198). This argument has been repeated several times (e.g. Scharpf 2009) and developed further (Schmidt 2013). Every single time, the logic behind the argument is quite straightforward: In order to be legitimate, a polity must be democratic and therefore its policies must have democratic inputs and outputs.

This premise is problematic for different reasons. First, legitimacy, in this case, is profoundly attached to a democratic understanding of legitimacy and the idea that legitimacy and democracy are so tightly linked is a normative discussion that is still open to debate (see for example Beckman 2017, Porgenbinshi and Ryan 2018 who discuss the practical difficulties to implement democratic principles). Additionally, legitimacy is understood as the "rightful exercise of power" (Lord and Magnette 2004, 184): this definition is deeply rooted in norms inspired from justice theory. As with democracy, it is difficult to argue that the practical standards of

legitimacy inferred from justice theory could be devoid of any cultural aspects and applied anywhere at any time. When claiming that democracy or justice are universally applicable standards, scholars tend to forget that these ideas, including the belief in their universal applicability, are culturally embedded and hardly replicable to any society. And, to be fair, normative theorists most of the time do not attempt to determine the situation as it is; they are looking for the ideal solution, an ideal-type to which reality can be compared. Finally, and most importantly, it is difficult to argue that democratic standards that can apply to a polity are also relevant for every single of its policies, institutional features, actions or behaviours. Despite the normative justification for the input-output distinction, it might not be as easy as expected to transpose it to empirical cases. In order to analyse concretely legitimacy, we might need standards that can be applied to any type of authority (public or private) and anywhere in the world (whatever the cultural norms).

Empirical scholars, on the other hand, use the distinction between input and output legitimacy to understand how an authority justifies itself or how citizens or the scholars themselves evaluate an authority's legitimacy. While Scharpf's distinction applies to a political system in his original work, some scholars study one particular policy or policy process to assess the polity's legitimacy (e.g. Meunier 2003, Zhu 2011) without discussing further the link between policy evaluation and polity's legitimacy. It seems that failed policies would lead unquestionably to legitimacy troubles or even to a crisis: "The [legitimacy] crisis is a series of related miscalculations, failed policies and inadequate solutions. The EU seems to have lost its way because it has strayed far from its core vision of peace and prosperity for all" (Longo and Murray 2015, 5). Most of these scholars fail to establish a distinction between specific and diffuse support. Indeed, the concept of legitimacy should be reserved for political regimes and not be applied to policies (Easton 1965, 298-299). Moreover, in this part of the literature, scholars tend to not study legitimacy as much as they study legitimation strategies. They intend to explain the attribution of legitimacy whether in a top-down (when the authority legitimizes itself to a constituency) or bottom-up fashion (when the constituency evaluates the authority's legitimacy). Additionally, when evaluating a particular policy or the support for a particular policy, they are actually not looking at legitimation processes because these strategies are related to specific support and not diffuse support.

According to Easton, legitimacy is indeed one component of diffuse support and not specific support. Studying the "output legitimacy" of one particular policy, for example, is an evaluation of a constituency's specific support. Legitimacy should also be distinguished from the other components of general support. Citizens can grant an authority their support for other reasons than legitimacy (e.g. collective identity, pragmatic considerations, or trust in a charismatic leader). This explains how illegitimate authorities can remain in power if they draw enough support from a collective identity or the deliverance of economic benefits. Legitimacy can be crucial when an authority cannot rely on these other sources of support. The EU needs to rely more on its legitimacy because it cannot get political support neither from a collective identity (Nicolaïdis 2013, p. 256), nor from the individual benefits it grants its citizens (Balks 2016), and the level of trust it inspires continuously fluctuates (Traynor 2013; Armingeon and Ceka 2014).

Scharpf's theory has been the basis for many empirical studies. Most of the time, however, scholars use his popular categories to analyse one particular policy or institutional feature as if it were sufficient to assess the legitimacy of the whole political system. While policy evaluation and legitimacy are undoubtedly linked, their relationship might be more complex than expected. Before going further in analysing this link, it is necessary to give operational definitions of legitimacy and legitimacy crisis.

Defining Legitimacy, Legitimation and Legitimacy Crisis

Since Weber's famous definition of a legitimate order as an order that "enjoys the prestige of being considered binding," (Weber 1978/1922, 31), legitimacy has been described as the acceptance of a particular social order by a particular community (Bäckstrand 2008, 513); an authority's appropriateness (March and Olsen 2009, 2), or as the double-sided coin of compliance and entitlement to control (Schmitter 2001, 2) to name but a few examples. These definitions nevertheless point more to the indicators from which legitimacy can be inferred than to an actual conceptualisation.

In this paper, legitimacy is not understood as an attribute that one possesses or not: it is a social relationship. It is not a popular belief (Weber 1978/1922) or a simple perception (Suchman 1995, 574). First, legitimacy is *relational*: "Legitimacy is and can only be the result of an interactive political process between rulers and subjects" (Gronau and Schmidtke 2016, 539). Second, legitimacy is inherently *social*. This means that legitimacy must emerge in a group setting; it is not an individual concept. Moreover, legitimacy can only emerge in a society, in a community that shares common understandings. The attribution or claim of legitimacy is norm-based and the norms must be shared by the actors, both those who govern and those who are governed (Schmitter 2001, p. 3). Legitimacy does not refer to the capacity to rule but the "right" to rule; this "right" to rule is socially sanctioned. Similarly, an authority is legitimate if its rules and principles are socially endorsed (Reus-Smit 2007, p. 159). As any social relationship, legitimacy is never fully or forever achieved and it is subject to adjustment (Denitch 1979, 110). It is therefore a chimaera to think that the criteria of legitimate power could be defined once and for all; legitimacy means different things in different socio-political contexts (Abulof 2013, 697). Third, legitimacy is a *social relation*; and as such, it constitutes a structure that may be either subjective or objective in the ontological sense:

> "Although emergently material social relations are generated by cultural constitutive rules, those relations independently affect the ways in which situated actors and act. In particular, the social relations generated by the constitutive rules may differentially benefit and empower certain actors, who thereby are motivated and enabled maintain or change the rules" (Porpora 1993, 213).

Legitimacy is therefore both an objective social relation emergent upon constitutive cultural rules and a subjective power relation between an authority and its constituency.

This ontological difference between objective and subjective or between non-discursive and discursive is important because the objective dimension implies that an authority can be legitimate whether people are aware of it or not. Porpora illustrates the distinction as such:

> "On the one hand, a marriage relation exists only if the people occupying the related spousal positions understand what marriage is and what it entails. It is a relation that in this sense is ontologically subjective or, more precisely, inter-subjective. In contrast, a relation of exploitation or dependency may obtain between people or the social positions they occupy without anyone noticing it" (Porpora 2013, 27).

Beetham's definition of legitimacy gives a useful point of departure to understand legitimacy as an objective relation: "A given power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs" (Beetham 2013, 11). The objective dimension of legitimacy is the relation between people's beliefs and material reality, the potential justification of reality on moral grounds (Stark 2010, 6):

> "When we seek to assess the legitimacy of a regime, a political system, or some other power relation, one thing we are doing is assessing how far it can be justified in terms of people's beliefs, how far it conforms to their values or standards, how far it satisfies the normative expectations they have of it. We are making an assessment of the degree of congruence, or lack of it, between a given system of power and the beliefs, values and expectations that provide its justification" (Beetham 2013,11).

This objective relation is the context in which actors operate and build a relationship that has "causal powers […] of constraint and enablement" (Archer 2016, 25). The subjective dimension of legitimacy determines which relationships are justified and which justifications thereof are acceptable. It gives ground for the justification of asymmetric power relationships (Beetham 2013, 25).

There is an objective *legitimacy deficit* when an authority's rules and actions are not in line with social norms; but the deficit is not problematic unless it becomes a salient topic in the public sphere. The discrepancy between social norms and an authority's actions and rules becomes a problem when it is politicized. After a particular event (a "trying moment" where the authority shows its divergence from social norms), the authority's legitimacy can be called into questions in the public sphere. There is then a struggle between those legitimising

and those delegitimising the authority. Legitimation and delegitimation strategies are deployed to defend or criticise the power relationship between the authority and its subjects. In that conflict, the main objective is to win the struggle for interpretation, i.e. to be able to define what is going on (qualification), and what is being put at stake (evaluation). The questioning of the order that is usually taken for granted opens the cultural rules – upon which the authority's legitimacy emerges – to doubt: the social norms and the "grammar" (see below) on which they are built are challenged.

In this debate, the authority can win the struggle for interpretation. It then responds to the demand for justification in a satisfactory way and the constituency can adapt its expectations regarding the authority's future rules and actions. If it loses the struggle, the authority can regain legitimacy by adapting its justifications or its institutions to social norms. In that case, only *legitimation* is affected. The authority responds to the constituency's demands to provide acceptable justifications or to change its rules or actions to fit social norms. If an authority is trapped into this cycle, it faces a chronic legitimation crisis (Beetham 2013, 16). It continuously has to adapt to social demands without ever providing satisfactory justifications or actions. An authority enters a *legitimacy crisis* when an event triggers the constituency to withdraw its support. The authority cannot rely on any other source of support (identity, pragmatism or trust) and its failing legitimacy leads to a systemic crisis. The authority can institutionally change to regain the constituency's support – discursive means alone do not suffice anymore – or it is at risk of collapsing (Reus-Smit 2007, 161).

Analysing Legitimacy through Legitimation

The conceptual definitions presented above need a complementary analytical framework to become empirically applicable. The difficulty with legitimacy is that it is not directly observable: it can only be inferred. According to Barker, "'legitimacy' does not exist as a feasible subject of empirical or historical enquiry, in the same sense that God does not exist as a possible subject for social scientific study" (Barker 2001, 26). Legitimacy can, however, be inferred from legitimation processes. "Legitimation strategies are goal-oriented activities employed to establish and maintain a reliable basis of diffuse support for a political regime by its social constituencies" (Gronau and Schmidtke 2016, 540). They allow the problematisation of legitimacy: if legitimacy is the potentiality of justification on moral grounds, legitimation is the actual justification. Legitimacy comes into effect through legitimation processes. If there is not a certain politicisation of an issue, if an authority's legitimacy is not publically discussed, then legitimacy has little causal significance. An authority that wishes to gain legitimacy should make sure its rules and actions are in line with social norms. Nevertheless, rules and actions that fit social norms might not be enough; the authority is still dependent upon dynamics of legitimation. Indeed, to gain legitimacy, an authority should be justifiable on moral grounds *and* recognized as justified by its constituency. Legitimation strategies, by opposition to other justifications, are the basis for diffuse support since, as mentioned above, legitimacy is one component of diffuse support.

Legitimation strategies affect both the *content* and the *format* of justifications of the polity. Firstly, legitimation strategies aim at generating or signalling conformity of the polity with established social norms (Gronau and Schmidtke 2016, 541). Different social norms can be mobilised: economic performances (Tong 2011, 150), democratic principles (Føllesdal 2006), nationalism (Holbig and Gilley 2010, 401-402), etc. Diverging – and sometimes contradictory – norms can be mobilised to justify a same polity; and these norms, inevitably rooted in culture, vary from one polity to another. Often, when evaluating a polity's legitimacy, scholars and citizens examine whether it complies with one or several deemed relevant social norms. Legitimation strategies, however, also influence the format of justifications. In the same way that social norms are contingent on the society in which they emerge, the format of justifications varies across cultures and the examined polities. Not every society builds the collective, the "we", according to the same principles. When working with legitimacy, the collective should not be taken for granted since the way the commonality is constructed influences what format of justifications is regarded as appropriate (Thévenot and Boltanski 2006).

Lamont and Thévenot (2000) analytically distinguish three grammars of commonality – i.e. three founding and organising principles of the "we" – and demonstrate that a given concept of common good is shaped by the way it is constructed. The grammars of commonality in the plural are defined as "construction(s) that ha(ve) been

historically and culturally worked out to alleviate structural tension among human beings living together" (Thévenot 2014, 9). The three grammars offer different ways to pacify the conflicts and compose with differences. The communitarian grammar of justification highlights the commonality between individuals and justifies the common good by referring to "universal" values. These establish unanimity among different individuals and the participation in the community depends upon one's respect of these common values, whether they took part in the definition of these or not. The liberal choice grammar relies on the individual choice among different options and leads to a deliberative process geared toward argumentation and the pursuit of compromise. "The grammar of liberal choice remains relatively open and tends to de-escalate conflict into bargaining about the freedom to choose from the available options" (Gajdoš and Rapošová 2018, 169). Finally, the grammar of commonplace relies on the personal affinities to common places. The aim is not to produce unanimity; there is plenty of place for differences. The commonplace is to be hospitable to a plurality of affinities (Lamont and Thévenot 2000).

These three grammars determine the way commonality is built; and therefore what can be demanded from both the authority and its constituency. These grammars imply concrete image of the community and provide orientation regarding what kind of concerns is relevant for the public discussion. They reconstruct the tacit knowledge helping actors embedded in different political cultures navigate towards what "format" is convenient for voicing concerns in a given setting. Lamont and Thévenot (2000) distinguish, for example, between homogenous communities that pursue a common good (France) and liberal communities that negotiate between private interests to achieve an acceptable outcome (the US). These different types of commonalities entail different kinds of acceptable justification, different types of legitimacy. The socio-cultural norms from which legitimacy emerges enable and constrain the type of commonality that can be justified. Therefore, the EU's legitimacy can be challenged in two ways. Its opponents can delegitimize the EU's by showing that it violates social norms. In that case, the EU can enter the debate and defend its position. Another delegitimation strategy would be to point to the fact that the EU uses an inappropriate format of justification. For instance, if the idea of defending universal values at the European level is ill-fitted to a negotiation framework, the EU will not be able to regain legitimacy by arguing about the universality of its objectives; it will have to adapt to the new definition of commonality.

This paper focuses on discursive legitimation and delegitimation strategies but it is worth mentioning that they can also be non-discursive, communicative, attitudinal or behavioural (Gronau and Schmidtke 2016, 541-542). Since legitimacy is constructed in a social environment, legitimation strategies can only be consequential – not necessarily successful – if they are deployed in the public sphere (whether it comprises all citizens or a sub-group of citizens). This paper examines the debate among one particular kinds of citizens: the stakeholders. While stakeholders might not represent citizens as much as they represent interests, they are an interesting constituency to analyse since they have the information and interest to evaluate both the ETS and the EU. Moreover, the EU often resorts to the involvement of stakeholders as a justification of its legitimacy; it is therefore crucial to understand if, in return, stakeholders legitimise the EU.

The EU ETS: An Assailed Policy from All Parties

The EU's Emissions Trading System has become the cornerstone of European climate policy but it is also the instrument that gave the EU a leading position in global environmental politics in the early 2000s. Indeed, after the United States failed to ratify the Kyoto Protocol, the EU established itself as a prominent and avant-garde actor on the international scene by creating, quite unexpectedly, the first international emissions trading system. Despite the initial reluctance of European representatives and civil society, the European Commission proposed to establish a trading system after the proposal for a tax carbon was overturned (Aykut 2014, 42-43). Fifteen year after its establishment (the founding directive was signed in 2003 and the first phase of the ETS started in 2005), the ETS has become the main policy for emissions reduction within Europe and a model for other States and regions across the globe (e.g. Mexico, Canada, China).

The idea behind the ETS is quite simple: A cap is set to determine the total emissions the EU's operators (i.e. companies) are entitled to produce. Operators then receive or buy allowances that fix their individual allocation of emissions. The total cap decreases annually to spur operators to adjust to increasing targets for emissions reduction. The choice of a market-based instrument rests on the theoretical argument that it would encourage the development of new pollution abatement technology or behaviour more efficiently than command and control style regulation (Skjærseth and Wettestad 2008, p.13); it would be the most cost-effective option. The two main objectives of the EU ETS are to limit emissions and to encourage the development of an environment friendly economy (European Commission 2016).

Despite its international stature, the design and results of the EU ETS are widely criticized by stakeholders of all persuasions. According to green actors, the Commission – even DG CLIMA – is more sympathetic to the industry's augments. Since the EU is primarily a common market, the Commission would tend to privilege the creation of profit over climate protection. Moreover, industrial lobbies have more resources and they can therefore make their voice better heard than green NGOs or green representatives (Interview 3). Finally, the technicality of the issue is not a favourable point for NGOs: it is almost impossible to mobilise citizens on complicated issues such as the ETS and they have thus little support to put pressure on European representatives (Interview 4). Industrial stakeholders, however, have also the feeling that they are not heard by the Commission. According to them, the Commission functionaries does not understand how the ETS affect them and is blinded by its environmental ambitions. Since it is more popular to defend green policies than economic actors, the Commission would follow the green NGOs regardless of the consequences for industry (Interview 6). Despite the pubic consultations and the meetings with both the Commission and members of the European Parliament, some industrial stakeholders believe that the game is flawed from the beginning because they are seen as the "bad guys" whatever they say (Interview 1). Interestingly, the Commission – and in particular DG CLIMA – is attacked from every sides on the same arguments: the representation is not balanced; the Commission has a biased opinion and will favour the stakeholders that prove it right; since the citizens do not support either side, the Commission choses the option that better suits its own views regardless of the consequences for the stakeholders from either side of the debate (Interview 1, 3, 5, 6 and 11).

Stakeholders also harshly criticize the efficiency of the policy: on one hand, analysts cannot agree on the fact that the ETS does indeed cause a reduction in CO_2 emissions (Carbon Trade Watch et al. 2013); and on the other hand, the costs might not be as little as firstly expected since both energy intensive industry and consumers have to pay the (high) price of the ETS implementation (Interview 11). Moreover, there is no agreement on what the ideal price of carbon should be. Indeed, the higher the price the stronger the incentive to reduce the emissions; but on the other hand, a high price also hits energy intensive industry harder and encourages these companies to delocalise outside of Europe. Moreover, there is no proof so far that a high price does indeed foster investment in green technology: rather than modernising their infrastructure, some companies find it cheaper to leave Europe; and therefore the global level of emissions remains the same while European consumers import (another factor of emissions) these products (Interview 5). Finally, the ETS has been an instrument that facilitated fraud at a global scale and despite its best efforts, the Commission has not yet found a mechanism that would prevent some actors to make illegal profit of the ETS (Carbon Trade Watch et al. 2013).

The ETS is therefore a great case study to understand the link between policy evaluation and legitimacy. It is attacked both on its inputs and outputs, making it at best a debated policy and at worse an expensive counter-productive instrument. The following section will also show that the stakeholders do not only criticise the policy but also the negotiation process that led to these reforms. Despite these objections, the stakeholders have all reiterated their support for the EU and DG CLIMA. Analysing discourses in official documents and interviews with eleven stakeholders, the following section shows that the EU's legitimacy does not suffer despite the general discontent among stakeholders. If they are unhappy with the policy and with the EU, they do not question the EU's existence or the justification of its power.

The interviewed stakeholders are quite representative of the civil society parties present in the negotiations: they include lobbies of energy consuming companies, energy producers' representatives, environmental and non-environmental NGOs, and economic and environmental think tanks. In this case, it was not possible to study legitimacy's evaluation among citizens because they know little about the ETS and their evaluation of the EU

does not rest on one single policy. In order to shed light on the link between policy evaluation and EU's legitimacy, it is necessary to interview people that have a good knowledge of both the policy and the EU functioning.

Complaining, Delegitimising but not Withdrawing their Support : The Stakeholders in the ETS Negotiations.

Different norms for different objects.

Policy and polity evaluation are undoubtedly conjugated; however, quibbles over the former do not necessarily lead to the delegitimation of the latter. The link between policy evaluation and polity legitimation is more complex than theories would predict even though both are present in the discourse: Every stakeholder expressed an opinion about both the ETS and the EU. In their discourses, the interviewees restrained from voicing their viewpoint about the EU and they, at first, mainly discussed their position and arguments in the ETS negotiations. Once they were asked to assess the EU's role in the negotiations, and only then, they started developing a mix discourse with both policy and polity evaluation. As experts, stakeholders have managed to build a very compartmentalised discourse and they do make a conscious difference between what concerns the ETS or European climate policies and what relates to the EU as a whole. As most EU experts, they had troubles defining the EU: they make a distinction between the institutions and the European project as an ideal to be achieved (e.g. Interview 1, 6 and 10). Assessing the ETS is relatively easy for these professionals that have developed extensive knowledge on the matter – and often refuse to comment on other policies – but they are not as assertive when it comes to talking about the EU because they acknowledge that it is a protean object and that they might not have the expertise to give a ruling on the issue (Interview 10).

Nevertheless, when asked about it, stakeholders managed to form an opinion about the EU itself; and while they link arguments about the ETS to the (de)legitimation of the EU, there is no linear relationship between the former and the latter: for most interviewees, criticisms towards the ETS or the decision-making process did not lead to the delegitimation of the EU. Contrarily to what theories might predict neither the lack of representativeness nor the questionable effectiveness of European policies lead automatically to the disparagement of the EU. They acknowledge the fact that the EU, as any political authority, must sometimes draw policies that are less than ideal and that any policy change will lead to controversy. This industry representative, for instance, deplores that stakeholders' involvement does not necessarily lead to a better or fairer outcome:

> "DG CLIMA has the task to involve all stakeholders and they did so. They involved us. However, the influence of stakeholders sometimes was limited. Because what we discover is that the outcome of a policy debate very often is rather close to what the Commission has initially proposed already […] For us, it's not always a good outcome" (Interview 5).

Similarly, some stakeholders, if they recognise the Commission's effort to involve them, feel that it lacks some expertise on the matter and that, often, it does little to take their voice into account (Interview 9). Finally, stakeholders also feel that the EU is more lenient towards one side or another and therefore, the involvement of stakeholders does not automatically lead to more representativeness (Interview 2 and 6). Despite these criticisms against the biased representativeness or outcomes, these stakeholders do not believe that this should lead to the query of the EU as a whole. As shown below, they believe these shortcomings are part of any negotiations process at any governance level.

Secondly, discontent about the ETS does not necessarily lead to delegitimation of the EU because stakeholders use different social norms to evaluate the policy and the polity. In the case of the ETS, the standards of evaluation are quite similar among stakeholders but their division comes from the fact that they cannot agree on the policy's objective. Indeed, if many of them believed that effectiveness should be the determining standards

of evaluation they could not determine what exactly the ETS was supposed to achieve. While some see it as an emissions reduction mechanism (Interview 7-9), others see as a market that enables economic growth (Interview 3 and 5). Some stakeholders, on the other hand, see it as a constraint on free market and therefore an instrument that should be as limited as possible (Interview 1 and 11). Another common standard was the necessity to defend "realistic" or "scientific" targets. This argument, often used to point out the limit in the adversary's discourse, was mentioned by all the interviewees even though they defended very different viewpoints. At the end, there is only one important opposition between the stakeholders: those who believe that climate protection should predominate over market's interests and those who defend the opposite. None of the interviewees denied the importance to limit polluting emissions but some of them believe that it should not be achieved at the expense of industry or consumers (Interview 11). These two norms (climate protection and economic growth) are put into opposition in the discourse even though it has been shown that they might be best achieved when pursued concomitantly (Interview 10). The Commission itself promotes has difficulty reconciling both objectives (Interview 8).

When evaluating the EU as a whole, stakeholders mainly criticise its lack of neutrality or "scientific expertise". They make a clear difference between the Council of Ministers, the European Parliament and the Commission and in this case, their evaluation of the EU as whole often rested on their assessment of DG CLIMA or the Commission's behaviour. According to most stakeholders, the Commission should not be partial to any side of the negotiations and its role should be limited to gathering information in order to achieve the best compromise possible. Stakeholders do not refer to effectiveness, transparency, the representativeness of the decision-making process but rather they evaluate the EU according to its neutrality towards the outcome of the negotiations. Some stakeholders believe that the EU will always favour NGOs (Interview 11) while other argue that it is a space "under corporate capture" (Interview 3). In addition to this ideological neutrality, the Commission should also be the institution to reconcile the Council and Parliament. In the ETS negotiations in particular, stakeholders felt that the EU failed to unify the stakeholders around a fair compromise because it took into account other political interests that should not have been part of the discussion:

> "We all [NGOs], I think, shared the perception that the Commission really stepped out of its role a lot, in the discussion. Normally, it should be an honest broker in the trilogue negotiations. […] At least that's a bit our understanding of what the Commission should do: they have to try to find a compromise, they have to broker between the two positions of the Council and the Parliament and they were very far apart on basically a lot of issues, almost all issues of the position. But there was more and more – and I think this came a bit not necessarily from DG CLIMA but rather from Juncker, maybe – a priority to not single out any member state or to avoid a rift in the increasing split between Western and Eastern Europe" (Interview 2).

Every stakeholder expressed disagreement with the ETS and its most recent reforms. They were unhappy with both the consultation process and the resulting outcome. However, they do not use the same norms to judge the policy and the EU. The ETS shortcomings are not used to point out the EU's limitations: stakeholders make a clear distinction between what standards the policy should meet and what normative principles should guide the Commission's actions. They delegitimise the EU when they point out that it does not behave according to the appropriate social norms, i.e. it is not neutral. This delegitimation does nevertheless not lead to a withdrawal of support and therefore to a legitimacy crisis.

A common ground: the rules of the game

All the interviewed stakeholders, without exception, had criticisms to address to the EU. It cannot, however, be concluded that the EU is facing a legitimacy crisis in the stakeholders constituency. Indeed, stakeholders might not agree on the norms that should guide the ETS or dispute the Commission's behaviour but they all agree on one thing: the rules of the game. They acknowledge the fact the stakeholders are very diverse, have conflicting interests and defend contradictory norms. The best way to reconcile these diverging positions is through negotiations, whatever the outcome: "It might be a good sign, if nobody is happy about it" (Interview 2).

The Commission, and by extension the EU, is seen as the arena of negotiations, the actor that brings everybody around a same table. The Commission "is the executive of the European Union and promotes its general interest" according to its website (EU Commission 2018); and in order to do so, it organises consultations and

negotiations with the stakeholders. This might seem quite ordinary but this assumption builds the "liberal choice grammar" on which the EU builds its commonality and what is deemed acceptable or not around the table. For example, stakeholders with the highest ambitions that demand the EU to impose stricter emissions reduction targets (as it is the case for Interviewee 3) are considered "unrealistic" by the other stakeholders – even those who agree with the necessity to implement stricter target (e.g. Interview 7). In this case, it is not the content of the argument that is questioned but rather the fact that it does not fit the organising principle: targets can only be stricter if stakeholders compromise on it; no institution can force them to accept it because it would go against the established common rules. In the same way, "scientific" and "factual" arguments do not have any primacy over ideological, political or economic arguments: they are all cards that stakeholders can play in the negotiations with more or less impact on the final compromise.

The negotiation process is far from perfect and stakeholders regret the inequality between them, the Commission's partiality or the little time they get to express their opinion. However, they also argue that negotiating is the best organising principles despite its numerous shortcomings. The EU, and in particular the Commission, cannot build its legitimacy towards stakeholders on being one institution that would represent and defend "European" or "universal" values. This justification is often used when talking about environmental policies: limiting climate change is of common interest and therefore an authority should be entitled to implement the necessary policies for the benefit of all. This communitarian grammar of justification, however, does not satisfy the stakeholders involved in the ETS negotiations. In the case where the Commission would make decisions unilaterally, some stakeholders believe that, the ETS would prioritise political or economic interests (Interview 4) at the expense of environment protection; and others think that the Commission would set unrealistic targets without considering the impact on industries (Interview 6). Stakeholders were also not satisfied when asked about the hypothetical implementation of an independent authority (a sort of central bank) that would manage the ETS to ensure the promotion of climate protection. Besides a few exceptions (e.g. Interview 10), most stakeholders rejected the idea that a European institution (or an institution created by the EU) could ever be neutral or fair enough to truly defend a common good (Interview 11); some other stakeholders deemed the idea "unrealistic" and " crazy" (Interview 5). Only one interviewee responded positively to the communitarian justification: according to them, the EU should be an authority that promote climate protection rather than economic interests and, even though they do not believe the EU could avoid corporate influence, they wish it would assume a more assertive role with or without stakeholders' consent. They also admitted, nevertheless, that this is more an ideal scenario than the path the EU has chosen so far (Interview 3). Therefore, even for the most ambitious stakeholders, it seems that the EU currently is best justified by building an arena of negotiations despite the controversial results.

The negotiations also give an opportunity for the stakeholders to legitimise themselves: their role is to be in constant communication with European decision-makers. Building a "liberal choice" commonality and organising negotiations is thus a very safe way for the EU to establish its legitimacy: stakeholders might be unhappy with the ETS but they keep legitimising the EU because it serves them too; if the ETS was scrapped or if another institution were in charge of the ETS, they would need another way to justify their work. Even the most radical stakeholders that wish for the scrapping of the ETS and refuse to participate in the negotiations admit that the EU, despite all its shortcomings, might be the best institution to tackle environmental protection in Europe (Interview 3).

Evaluating the EU's legitimacy is a real challenge because stakeholders cannot agree neither on the definition of the EU nor on the objectives it should pursue. However, in the case of the ETS negotiations, it is quite clear that the EU is not suffering a legitimacy crisis: stakeholders are unhappy but they keep reasserting their support for the EU. The EU is at most facing legitimation troubles since different stakeholders ask for different justifications. All the stakeholders recognise that the ETS and the EU are far from perfect and they will keep fighting for better policies and a fairer Union but none of them, even the most radical ones, demanded for a new form of organisation. For them, the EU should be the neutral referee in the unfair game of negotiations and they might ask for more neutrality or a more balanced game but they are not asking for a new referee or another game.

Conclusion

Political science literature suggests that there is a link between policy evaluation and polity's legitimacy. This relation is defended by normative theorists who argue that the EU – and therefore its institutions and policies – should be hold to democratic standards despite the difficulty to translate those into practical norms and actions, and by empirical scholars that tend to conflate specific and diffuse support. In the past decade, the analysis of EU's policies has been a popular instrument to evaluate its (lack of) legitimacy. This paper shows that there is no linear relationship between policy evaluation and polity legitimacy: criticisms and complains do not necessarily translate into the withdrawal of public support.

After redefining legitimacy and its neighbouring concepts, the paper firstly shows that stakeholders use different norms to evaluate a policy and a polity. While they plead for more effectiveness and defend contradictory objectives in the ETS negotiations, they assess the EU according to its perceived neutrality in the negotiations. Secondly, all the stakeholders agree on the way commonality is built in the EU, i.e. according to a "liberal choice grammar". The fiercest disagreement can occur; the negotiation strategies might diverge; the interests can conflict but the stakeholders remain around the table because they believe it is the best way to proceed. Despite their objections to the Commission's behaviour in the negotiations, they argue that this is the European game and that we should all play it. There is a strong belief that the EU exists in order to build a compromise between opponents rather than to defend universal values or a common identity. Even the stakeholders that have left the ETS negotiations reaffirm their support to the EU despite the unfairness of the game.

In the ETS negotiations, the EU is not totally legitimate since it does not meet the normative standards that the constituency holds for it; but neither is it facing a legitimacy crisis because the constituency keeps expressing its support for the EU and the Commission in particular. The EU might therefore be dealing with legitimation troubles. Further research should explore this hypothesis to understand exactly what kind of problems it faces and how it could overcome them.

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Corporate Europe Observatory (CEO), Brussels, September 26, 2018.

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European Roundtable of Industrialists (ERT), Brussels, September 24, 2018.

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Norsk Hydro, Oslo, October 19, 2018.

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Bio-note

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