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EU Actorness under political pressure at the UNFCCC COP15 climate change negotiations

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ABSTRACT

This paper analyses the extent of European Union (EU) actorness at the fifteenth United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) meeting in Copenhagen from 7 to 18 December 2009. The conceptual framework used to assess the extent of EU actorness at Copenhagen draws on Jupille and Caporaso and includes the criteria of (1) recognition, (2) authority, (3) cohesion and (4) autonomy. We argue that the extent of EU actorness at Copenhagen has been relatively limited, especially at the final negotiation stage of the heads of state and government compared to the preparatory negotiator and ministerial level of the negotiations.

INTRODUCTION

For over a decade the European Union has been characterised as a leader in international climate policy-making and as an important actor in international climate change negotiations (Zito 2005; Oberthür 2009; Groenleer and van Schaik 2007). The COP15 meeting in Copenhagen in December 2009 has overall brought about disappointing outcomes, especially from the perspective of the European Union. Contrary to EU objectives, no legally binding agreement was reached with ambitious targets to succeed the Kyoto Protocol after 2012 and the final Copenhagen Accord contained disappointingly few ambitious targets. This casts doubts on EU actorness and begs the question of what has happened to EU actorness in this field? Does this outcome coincide with a diminished EU actorness compared to earlier finding concerning the EU's role and actor capabilities¹ since the Kyoto negotiations (cf. Groenleer and van Schaik 2007)? In order to solve this puzzle, the main purpose of this paper thus constitutes an examination of the extent of EU actorness at the Copenhagen Climate Conference. Our implicit hypothesis is that the Union has indeed 'suffered' from a lack of actorness at Copenhagen. A subsidiary question guiding this paper is what broader factor(s) have conditioned the (potential) variation of EU actorness here?

There are additional rationales for analysing the degree of EU actorness – here broadly defined as 'the capacity to behave actively and deliberately in relation to other actors in the international system' (Sjöstedt 1977: 16). Firstly, the concept of actorness has prompted quite a bit of conceptual discussion (Jupille and Caporaso 1998; Ginsberg 1999; Bretherton and Vogler 2006), but remains empirically underexplored. While the actorness of the EU, a special type of regional organisation with a unique organisational structure, has been found as only partially existing in the (few) studies of the 1990s, at the same time the EU's foreign policy procedures and instruments as well as the EU's own claims for constituting an actor on the world scene have further progressed since. Against this background, it seems important to probe EU actorness more thoroughly for a more recent period, and also in more contested/challenging environments. Secondly, approaches like those on civilian and normative power Europe (NPE) are built on the assumption that the EU possesses sufficient actorness. The mostly disappointing empirical findings concerning the EU as a normative power (see below) raise the question of whether especially the NPE research agenda is not a somewhat premature (and perhaps also misguided) one, and whether it may not be wise to go one step back and talk about EU actorness, as the foundation for the 'what sort of power' debate. This could be seen as all the more necessary since initial studies, as the one by Jupille and Caporaso (1998), were rather skeptical concerning the degree of EU actorness.

Thirdly, apart from its societal significance, climate change does not only constitute an important aspect for an EU foreign policy expanding in ambition and scope, but has even been

¹ The terms 'actorness' and 'actor capability' (Sjöstedt 1977) are used interchangeably throughout this paper.

regarded a ‘saviour’ issue for the EU integration project more generally (Van Schaik and Van Hecke, 2008: 6). Therefore, the UNFCCC COP15 negotiations deserve (more) academic attention, also because the case is still under-researched. Finally, the case is (particularly) interesting to explore because the COP15 negotiations in Copenhagen marked the first time in the history of the UNFCCC COP negotiations that the heads of state and government took the final decisions at a COP meeting (IISD, 2009). This characteristic distinguishes the conditions of the COP15 negotiations from earlier COP negotiations, and is therefore hypothesised to have affected the variation of actorness across the case at hand (and in distinction to earlier talks).

‘The EU’ here denotes the legal entity which has been accepted as a party within the UNFCCC and which has been represented at the negotiations in Copenhagen by the Swedish EU Council Presidency and two EU negotiation teams, consisting of lead negotiators and issue leaders from both the EU member states and the European Commission, at the negotiator level, and by the Swedish EU Council Presidency and the EU troika² at the higher negotiation levels. We proceed as follows: first we review the relevant literature and specify the conceptual framework. Thereafter, we probe the four categories of actorness (recognition, authority, cohesion and autonomy) for the Copenhagen climate negotiations.

1. LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

Conceptual approaches to the EU’s international role

Mainstream IR theory struggles to adequately conceptualise the EU and its external relations as it tends to focus on statehood and rationality. Since the EU is neither a state nor does it have clearly defined interests enabling fully rational behaviour, the Union cannot be regarded as a fully-fledged player in international relations (Rosamond 2005, 465; also cf. Hveem 2000, 72). The EU has been termed a ‘heterodox unit of analysis’, referring to its unique but ambiguous dynamic (Hill and Smith 2005, 19). Losing this state-centric focus, which tends to exclude much of what is distinctive and significant about the EU, thus helps us appreciate the Union’s influence in international politics (Bretherton and Vogler 2006, 12; Allen and Smith 1990, 19). The view of the EU as *sui generis* offers an alternative approach on the evaluation of the international role of the Union. It considers the EU a separate category, and contains different perspectives of looking at the unique international potential of the EU. As Marsh and Mackenstein (2005, 56) note, for example, ‘the *sui generis* nature of the EU means that international organisations and fora vary in their willingness to recognise it as an actor in

² The EU troika in external climate policy consists of the current EU Council Presidency, the European Commission and the incoming EU Council Presidency (Van Schaik, 2010: 261).

its own right as opposed to its constituent Member States. This leads, in turn, to substantial variations in the rights of the EC in different international organizations'. While it is quite clear that the EU currently does not fit the standard idea of statehood, some (few) scholars are convinced that the *sui generis* character of the Union refers only to its present stage, which is to develop further towards a European federation (cf. Tiilikainen 2001, 234).

Increasing attention is devoted to the question of which type of 'power' the EU constitutes in its international relations. Since the early 1970s much discussion focused on the idea of 'civilian power Europe' (CPE), thus conceptualising the Community as a 'civilian' group of states with significant economic but low military power that is mainly interested in using 'civilian' means of exercising influence, in pacifying international tensions and in the juridification of international politics (Duchêne 1972). Although the concept has been widely criticised (e.g. Bull 1982; Zielonka 1998), it remained influential in the academic discourse (cf. Hill 1990; Orbie 2006), not least as a point of reference in the debate concerning the 'militarisation' of the EU. Some have argued that the more substantial development of the European Security and Defence Policy (ESDP) since the late 1990s has been compatible with the CPE idea, as a defence capacity transforms the EU from a civilian power 'by default' to a civilian power 'by design' (Stavridis 2001; Whitman 2002; Börzel and Risse 2007). However, the majority of scholars has held that the 'civilian power Europe' concept is (severely) contested by the advent of EU security/defence policy integration because of undue concept-stretching (e.g. Smith 2004), a weakening of the EU's distinct profile of having a civilian international identity (Zielonka 1998; Smith 2000; Moravcsik 2003; Treacher 2004), and due to adverse consequences for democratic control of security and defence policy, an essential element of the CPE idea (Wagner 2006; cf. Smith 2004).³

In the past few years attention has increasingly shifted to the (potential) 'normative power' of the EU, i.e. its ability to define what passes as normal in the world (Manners 2002). The normative power Europe (NPE) idea has spurred much scholarly debate and has also been subject to widespread criticism. Most importantly it has been noted that the concept lacks precision, particularly in terms of criteria and standards that can be applied for analysing the concept empirically (Sjursen 2006: 236), an aspect that has been partially addressed since then (Manners 2008; de Wekker and Niemann 2009). While the normative power research agenda is in the process of attaining a more systematic empirical focus (e.g. Tocci 2008a; Whitman 2010 forthcoming), and some (few) works have indeed arrived at positive findings on NPE (Manners 2002; Scheipers and Sicurelli 2007), most of the empirical studies to date have been rather sceptical in terms of the degree to which the EU constitutes a normative power. Studies have exposed the lack of (genuinely) normative intentions/commitment (Forsberg and Herd 2005; Warkotsch 2006; Falkner 2007; Noutcheva 2009), the contested legitimacy of the Union

³ It should be noted that those defending the CPE concept are usually those who adhere to a narrow understanding of CPE (mainly based on civilian ends), whereas those critical of the concept in the light of the ESDP's evolution usually take CPE to go beyond (civilian) ends but also to include (civilian) means and (democratic) control.

(Harpaz 2007; Haukkala 2007), the problematic nature of normative processes in terms of reflexivity and inclusiveness (Bicchi 2006; de Wekker and Niemann 2009), or the lack of (normative) impact (e.g. Fernandes 2008; Darbouche 2008; Portela 2008; Tocci 2008b).

In addition, there is the concept of ‘transformative power Europe’ (TPE) that has gained increasing attention over recent years, either explicitly by reference to the TPE label (e.g. Leonard 2005; Grabbe 2006), or somewhat more implicitly through an expanding literature on the Europeanisation of the Union’s partner countries (e.g. Lavenex and Uçarer 2004; Schimmelfennig and Sedelmeier 2005). Scholarship in this area conceptualises the EU’s (foreign) policy as primarily characterised by its transformative capacities and/or analyses the extent to which the EU succeeds in transforming the political, economic and legal structures or substantive policies of third countries. In empirical research TPE poses substantial methodological problems, not least in terms of distinguishing the impact of EU action from that of other (international or domestic) actors (e.g. Richter 2009). In addition, not surprisingly in view of the substantial overlap and similarity with the question of normative impact, authors have questioned the transformative capacities of the Union. It has been suggested, for example, that the EU pursues a non-differentiated ‘one-size-fits-all approach (Börzel 2009: 37-39), and that TPE may be severely constrained in the case of autocratic target/recipient countries (van Hüllen 2009; Börzel 2009) and perhaps even be limited to the enlargement context (cf. Grabbe 2006; Börzel 2009).

The doubts hanging over the concept of civilian power Europe, and the empirical (and methodological) challenges facing the notions of normative and transformative power Europe raise the question of whether it does not make sense to go one step back. The NPE and TPE approaches appear to be applicable (in a sensible way) rather in cases where EU actorness is largely undisputed, which is not the case for the Copenhagen climate negotiations. Both concepts build on actorness and seem to take EU actorness for granted. Yet, especially the above-mentioned studies contesting the legitimacy and impact of the EU foreign policy suggest that perhaps the second step was taken before the first, i.e. that talking about ‘what sort of power/actor’ initially requires more (systematic) analysis with regard to actorness itself. The need for going back to the concept is further strengthened by the fact that it remains empirically underexplored and that initial studies on actorness, as the one by Jupille and Caporaso (1998), were rather doubtful regarding the extent of EU actorness. At the same time the EU’s foreign policy procedures and instruments as well as the EU’s own claims for constituting an actor on the world scene have further progressed since. Against this background, it seems important to probe EU actorness more thoroughly for a more recent period.

A potential alternative for ‘actorness’ could be the concept of ‘presence’ (Allen and Smith 1990). Both concepts can account for the multidimensional nature of the EU’s international role. They perceive the EU as unique in terms of its character and identity, and consider the Union as part of a new multi-actor global system (Bretherton and Vogler 2006, 13; Hill 1993, 308). Both internal dynamics of the EU and the external environment, in which the EU is placed, are regarded influential.

Presence is a less tangible concept, as it focuses on the (perceived) ability of the EU to operate to influence the actions and expectations of other participants (Allen and Smith 1990, 21; Rosamond 2005, 465). Actorness takes presence a step further in that it implies a larger scope for EU action and emphasises the EU's possibility to function actively and deliberately in international politics (cf. Smith 2003, 24). We have opted for the concept of actorness (rather than presence) as our point of departure here because EU presence in international politics tends to be taken for granted by authors and was already found corroborated in the 'high politics' field of security in the 1980s (cf. Allen and Smith 1990: 30-33), while EU actorness is much more contested (Ginsberg 1999, 432; Hill 1993, 308; Jupille and Caporaso 1998), and thus merits empirical probing, especially against the background of increased EU foreign policy capabilities and ambitions.

The concept of actorness

The term 'actor capability' was first coined by Sjöstedt (1977), to account for the new presence of the European Community (EC) in the international arena and to envisage the extent to which the Community would constitute an actor in the future. His understanding of actorness recognised the patchy and uneven nature of the international capabilities of the EC, while also considering that the Community possessed some of the characteristics of the typical actors in the international system, but lacked others. Sjöstedt's criteria for actorness are delimitation from other actors, autonomy, and the possession of several state-like characteristics, such as having a community of interests, systems for controlling Community resources and for crisis-management as well a network of external agents and external channels of communication.

The concept of actorness has social constructivist roots. It recognises the significance of social processes that shape actors' identities and provide contexts in which action is constrained or enabled (Bretherton and Vogler 2006, 13). Ginsberg's interpretation of actor capability, for example, acknowledges the interplay between national actors, European actors, and Europeanised institutional norms and practices. This process interacts with the international context, after which it returns to the input side of the process: this is where perceptions of actorness can feed back to actual actorness. This means that not merely capacities and functions within the international system, but also perceptions, i.e. ideational forces, are relevant (Ginsberg 1999, 435; Hill 1993).

As identified by Sjöstedt, for instance, actorness still presumes a substantial degree of state-like properties. It has been suggested that if the EU wants to join the 'game', it will have to play, to some extent, according to the rules of this (state-dominated) game (Rosamond 2005, 466; Tiilikainen 2001, 223). At the same time increased actorness is often associated with increasing supranationalism in the policy process and less actorness with intergovernmentalism (Groenleer and Van Schaik 2007, 969). Hence, actorness, which offers a distinct category, to some extent departs from the standard tenets of traditional IR and European integration theory (cf. Ginsberg 1999, 447), but not completely,

making it a hybrid concept that should be well-suited to shed light on a hybrid context, such as the role of a multi-level (and significantly supranationalised) regional organisation within a more weakly institutionalised concert diplomacy.

Throughout the decades a considerable number of slightly differing approaches to actorness have been developed, each using their own criteria. Not all these frameworks are equally suitable here. While Sjöstedt's work is conceptually inspiring, his properties focus excessively on internal characteristics and are mainly appropriate for general application to the case of the EU and hard to apply to a specific case. Ginsberg (1999) focuses on decision-making structures in his framework, an approach that is too narrow for the case at hand. Bretherton and Vogler (2006) on the other hand take a broad approach, by focusing on opportunity, presence and capability. As these criteria are somewhat vague and (too) encompassing, the possibilities for operationalisation are limited.

Conceptual framework and indicators of actorness

For us actorness is about the EU's 'capacity to act' (Jupille and Caporaso 1998, 214), i.e. 'the ability to function actively and deliberately in relation to other actors in the international system' (Sjöstedt 1977, 16). We reject the understanding that actorness equals influence. Instead, we suggest that actorness *enables* influence, without entailing the latter. Our point of departure is the approach stipulated by Jupille and Caporaso (1998) who consider the EU a hybrid and ambiguous international entity, in a constant state of development. They acknowledge the different degrees of actorness over time, issue and negotiation partner, making their framework suitable for application to different cases. Their critique on previous contributions to the actorness debate is that these lack clear criteria for determining the status of the EU as an actor. Jupille and Caporaso, therefore, devise four criteria for ascertaining actorness, for which they also partly stipulate indicators. The criteria are not absolute, suggesting that actorness is a matter of degree. The four criteria are recognition, authority, cohesion and autonomy. A number of (additional) indicators, here complemented by relevant specifying questions, have been derived from them, creating practical tools for research.

Recognition: this criterion entails acceptance and interaction by and with the organisation, other members and third parties. One can distinguish between formal (*de jure*) and informal (*de facto*) recognition. As for the former, it needs to be asked whether the EU delegation has been formally recognised by the UNFCCC (participants) in terms of rights and privileges of membership, or in other words, whether the EU possesses formal membership of the UNFCCC. Also important is informal recognition. Three indicators are relevant here. First, it has to be inquired to what extent the EU is registered 'on the analytical radar' (Jupille and Caporaso 1998: 215) by other parties, in terms of its competence to negotiate and as an entity to reckon with in the negotiations. The second indicator concerns the question of whether other parties *perceive* the EU as a member of the UNFCCC. The

third (and more ambitious) indicator of informal recognition is the interaction of other parties (esp. non-EU parties to the UNFCCC, EU member states, the media and NGOs) with the EU during COP15 negotiations. This indicator goes beyond passive perceptions but concerns active recognition through interaction.

Authority: here it needs to be asked if the EU has legal competence to act on a given subject matter. The EU's authority can be viewed as the authority delegated by the Member States to EU institutions at/for the COP15 negotiations. In other words, legal authority or competence is conditionally granted by the Member States, the principals, to EU institutions, the agents, to act on their behalf.⁴ Authority can be further sub-divided into different aspects, such as (a) the design and clarity of the mandate, (b) the representation of parties during negotiations, and (c) voting rules (cf. Meunier and Nicolaïdis 1999, 481; Meunier 2000). Generally speaking a clear mandate, single EU representation and qualified majority voting have been associated with substantial authority (e.g. Meunier and Nicolaïdis 1999). Apart from formal authority in terms of legal competence, the Community may also have informal authority, for example through substantial expertise and experience on the part of the Commission.

Cohesion: Jupille and Caporaso distinguish between four dimensions of cohesion: (1) value cohesion: to what extent do the EU Member States share common basic goals for the COP15 meeting? (2) Tactical cohesion: can possible diverging goals be reconciled by tactical instruments, such as issue linkage and side payments? (3) Procedural cohesion: to what extent do established procedures exist within the EU representation as to how to process and overcome issues of conflict? (4) Output cohesion: does the EU as a whole succeed in formulating common policies and positions, regardless of substantive and procedural agreement, here especially with regard to the negotiations leading to the (final) Copenhagen Accord? And finally, it should be asked if the different forms of cohesion allow for ambitious EU positions, lowest common denominator EU positions, or just unilateral action (Jupille and Caporaso 1998, 218-220).

Autonomy: here Jupille and Caporaso (1998) we have distinguished between distinctiveness and independence. First, it needs to be inquired, whether the EU has a distinctive institutional apparatus for the COP15 negotiations, in relation to the other EU Member States and other third actors. Second, in terms of independence, it should be asked if there is discretionary goal formation, decision-making and implementation on the part of the EU. For independence to be present the distinct institutions 'should make a difference, compared to the baseline expectation of a decentralised state system working on the basis of power and interest' (Jupille and Caporaso 1998, 217). It seems that independence to some extent clashes with cohesion, since EU delegation that is completely distinct

⁴ Jupille and Caporaso (1998: 216). For other accounts describing the EU's role and authority to act externally in terms of a principal-agent framework (Pollack 1997; Dür and Elsig 2011 forthcoming).

and discretionary from its Member States cannot really go along with close cooperation and compatibility between the goals of the EU delegations and the Member States as implied by cohesion. It has thus been proposed (and here agreed) to replace the problematic aspect of ‘independence’ by ‘proactivity’ (Huigens and Niemann 2009: 30), the ability of the EU to make a difference and play a leaders’ role. Independence and proactivity are both about ‘making a difference’. However, proactivity emphasises in the first instance taking ‘initiative’ and then more ambitiously playing a ‘leadership’ role – rather than “discretionary goal formation and decision-making” and would thus be more compatible with cohesion. Independence is very demanding and may not even be desirable within the EU context.

A few (additional) difficulties in working with these criteria must be identified prior to the main analysis. One of the strongest criticisms on Jupille and Caporaso’s conceptualisation is that a negative result on one criterion may lead to a negative result on most others. This (also) implies that all criteria are closely interlinked, making it hard to firmly distinguish one from the other (Groenleer and van Schaik 2007, 972). This paper seeks to show, however, that despite the criteria’s interconnectedness, their assessments may vary. Finally, the criteria as phrased by Jupille and Caporaso can be seen as rather formalistic for this case. Therefore, it is possible that more nuanced versions of these indicators – such as informal forms of recognition and authority – apply in the case of the Copenhagen climate negotiations, as will be illustrated in the empirical sections.

2. THE UNFCCC COP15 MEETING NEGOTIATIONS

The Conference of the Parties (COP), the highest decision-making body of the UNFCCC in which all parties to the convention are represented, holds an annual meeting, the first of which took place in 1995. The EU has been very active at these meetings, having taken on a leadership role in the international climate regime since the withdrawal of the United States from the negotiations upon the implementation of the Kyoto Protocol (Zito 2005; Oberthür 2009). However, EU actorness within the international climate change regime cannot be taken for granted. The interests of 27 member states on a range of linked issues such as trade, energy, transport and finance have to be coordinated. Climate change remains an issue area of mixed competences between the EU and its 27 member states. The increasingly active engagement of especially the large and advanced developing countries (China, India, Brazil, South-Africa) in the international climate negotiations during the last few years poses an emerging external challenge, as does the increasing politicisation of climate change as an issue on the international agenda. The negotiations in Copenhagen were of a highly political nature. COP15 was the climax of two years of negotiations under the Bali Roadmap, which was adopted in December 2007 at COP13 to enhance international cooperation on climate change for the long-term (IISD, 2009).

Within the UNFCCC COP meetings the main EU spokesperson is the EU Council Presidency, held by an EU member state, which rotates every six months. Next to the EU, its member states are present as parties to the negotiations (Lacasta et al., 2002: 361). In the most important bilateral negotiations and smaller negotiating sessions the EU is represented by the EU troika. Since the Amsterdam Treaty, the EU troika has consisted of the current EU Council Presidency, the upcoming Presidency and the European Commission (Oberthür, 2009a: 13). During the Copenhagen negotiations Sweden held the EU Council Presidency and the upcoming Presidency was Spain.

In 2004 the system of 'issue leaders' and 'lead negotiators' was introduced (Oberthür and Roche Kelly, 2008: 38). On behalf of the EU Presidency lead negotiators from EU member states (other than the state which holds the Presidency) and from the Commission are appointed to take over the lead from the Presidency in the international negotiations in various negotiating groups at the negotiator level, in order to reduce the workload of the Presidency (Oberthür, 2009a: 14) and in cooperation with the issue leaders the lead negotiators prepare the common EU negotiation position for the international negotiations (Oberthür and Roche Kelly, 2008: 38). During the COP15 negotiations there were two lead negotiators, because negotiations were held on two separate tracks. The first negotiation track in Copenhagen concerned the negotiations in the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention (LCA) and the second negotiation track concerned the negotiations in the *Ad Hoc* Working Group on further commitments for Annex I parties under the Kyoto Protocol (KP).

The negotiations in Copenhagen took place at different levels. They began at the negotiator level where the EU negotiation teams on the LCA track and the KP track, consisting of lead negotiators and issue leaders, negotiated the text of the Copenhagen Accord with other parties. The second stage of the negotiations was the ministerial level, during which the environment ministers from the UNFCCC parties met. However, the ministers did not have a clear role at Copenhagen. Normally the environment ministers would take the final decisions at a COP meeting, but at Copenhagen the heads of state and government were invited to take the decisions. The final stage of the negotiations at Copenhagen was the head of state and government level, during which the leaders of the parties took the decisions regarding the final outcome. From 16 to 18 December, the heads of state and government were present at the high-level segment of the negotiations (UNFCCC official website, 2010). In Copenhagen much of the effort to conclude a final agreement was left to the heads of state and government because the negotiations at the lower level did not progress as well as they should have (IISD, 2009).

Subsequently the four criteria of actorness – recognition, authority, cohesion and autonomy – will be analysed.

3. RECOGNITION

This section addresses the question of the extent to which the EU was recognised as a party during the COP15 negotiations in Copenhagen. First, the *de jure* recognition of the EU will be discussed, followed by an examination of its *de facto* recognition.

***De jure* recognition**

To determine the degree to which the EU possessed *de jure* recognition at the COP15 negotiations it is necessary to assess whether the EU possessed formal membership of the UNFCCC. The European Community (EC) was recognised from the start as a party alongside the other Community Member States within the UNFCCC, where it has participated as a Regional Economic Integration Organisation (REIO). This construction of representation was established because both the European Community and its member states have competences on issues presented within the UNFCCC, leading to so-called mixed agreements (Lacasta *et al.*, 2002: 360; van Schaik, 2010: 260-261). As a REIO the EC can be a party to a convention even if not a single EU member state is a party to it (Vogler, 1999: 32; Bretherton and Vogler, 2006: 96). It is also possible that both the EU member states and the EC are parties to a convention, as in the case of the UNFCCC, to which all 27 EU member states are parties. In this case, the EU member states and the EC decide on their respective obligations together, because it is not possible for them to exercise their rights concurrently (Ibid; UNFCCC 1992, Art. 22.2). As a REIO the EC does not have separate voting rights in the UNFCCC. On issues of exclusive Community competence it exercises its right to vote with the number of votes equal to the number its Member States. The EC cannot exercise its right to vote if any of its Member States exercises this right, and vice versa (UNFCCC, 1992: Art. 18).

Upon the entry into force of the Treaty of Lisbon on 1 December 2009, with which the EU acquired legal personality, the EU replaced the EC as a party (Official Journal 2007: 38). The above rules now apply to the EU within the UNFCCC. On the list of participants of the UNFCCC COP15 meeting in Copenhagen it was the EU and no longer the EC that was mentioned as a party. These findings suggest that the EU possesses formal membership of the UNFCCC and thus *de jure* recognition at the COP15 negotiations in Copenhagen.

***De facto* recognition**

The recognition of the EU in the UNFCCC COP15 negotiations is not solely based on formal UNFCCC membership. Another important facet is *de facto* recognition, which is to say recognition of the EU in practice by other parties during the negotiations. Three indicators will be used here. The first indicator is “registration on the analytical radar” (Jupille and Caporaso, 1998: 215), which means that

the EU is recognised by other parties as an entity with the competence to negotiate and to be reckoned with in the negotiations. The second indicator concerns the question of whether other parties *perceive* the EU as a member of the UNFCCC. The third, and more ambitious, indicator is the interaction of other parties with the EU during COP15. This goes beyond passive perceptions but concerns active recognition through interaction. Subsequently, we will apply these indicators with regard to (a) *de facto* recognition at the preparatory negotiator and ministerial levels of the Copenhagen negotiations (by non-EU UNFCCC parties, EU Member States, NGOs, and the media), and (b) *de facto* recognition of the EU at the Copenhagen negotiations at the level of heads of state and government.

(a) De facto recognition at the preparatory negotiator and ministerial levels

Overall, the *de facto* recognition of the EU at the preparatory negotiator and ministerial levels of the COP15 negotiations seems to have been considerable. In the first place, the EU has certainly been “registered on the analytical radar” of third parties, EU Member States and the media. Non-EU UNFCCC parties recognised the EU in Copenhagen as an entity which had competence to negotiate and which had to be reckoned with at the preparatory stage of the negotiations. For third parties it was clear that the EU acted as a negotiating party at the preparatory negotiation level, representing the joint vision of the 27 EU member states. “[At the senior civil servant level] it was really clear that the others saw the EU as a player that needs to be taken into consideration. At this technical level there was clearly respect for the EU. You could feel that people perked up their ears when the EU was talking” (Interview with UK delegate by telephone, 10 May 2010). The fact that the Swedish environment minister, acting on behalf of the EU Council Presidency and the EU lead negotiators, was able to send out a clear EU message to the non-EU parties at the preparatory negotiation levels in Copenhagen on behalf of the 27 EU member states is said to have furthered the “awareness of, and attention to, the EU as an entity” on the part of third parties (Interview with participant-observer by telephone, 11 May 2010).⁵ The media also clearly seem to have had the EU on their “analytical radar”. 35 Dutch newspaper articles from the period 7 to 21 December 2009 about the Copenhagen negotiations have been analysed. In many of these articles the Swedish EU Council Presidency is mentioned as the leader of the EU in Copenhagen and in several articles Commission president José Manuel Barroso is quoted or the position of the Commission on issues within the negotiations prominently mentioned, clearly demonstrating the media’s recognition of the EU’s role (e.g. NRC Handelsblad, 11 December 2009; De Telegraaf, 11 December 2009; de Volkskrant; 12 and 17 December 2009; Algemeen Dagblad, 12 and 16 December 2009).

⁵ The content of this EU message was based on the EU negotiation mandate and concerns issues like mitigation and adaptation (e.g. the 20% emission reduction goal, keeping global warming below 2 degrees and the aim of a legally binding outcome). See Council 2009; Interview with participant-observer by telephone, 11 May 2010; Interview with UK delegate by telephone, 10 May 2010.

In terms of the question of whether others perceived the EU as a UNFCCC member, non-EU UNFCCC parties in Copenhagen certainly perceived the EU as a member of the UNFCCC, just as much as the *states* which are members of the UNFCCC. For example, a non-EU delegate who was present at the COP15 meeting insisted that the EU is “absolutely” a member of the UNFCCC (Interview with Japanese delegate by e-mail, 25 June 2010). The EU does not only seem to be perceived as just a member of the UNFCCC, but even as an important and leading member, because it has been a very active player within the UNFCCC negotiations in the past (Interview with CAN Europe representative, Brussels, 4 May 2010). Similarly EU Member States consider the EU not merely to be a member but perceive it as a central member and crucial actor in the negotiations. For example in the Member State delegations the two EU lead negotiators – on the Kyoto Protocol (KP) track and the Long-term Cooperative Action (LCA) track – have been viewed as the key faces of the EU at the negotiators level and Swedish environment minister Andreas Carlgren (from the Swedish EU Presidency) has been regarded as the key EU figure at the ministerial level of the negotiations in Copenhagen, rather than prominent ministers of large EU Member States (e.g. Interview with Dutch delegate, The Hague, 12 May 2010; Interview with Danish delegate, Brussels, 5 May 2010). In most media articles, the EU was also portrayed as an UNFCCC member. In addition, the significance of the EU UNFCCC membership and of its role played during the Copenhagen negotiations was underlined by the media, particularly with regard to the EU goal of a legally binding 20% CO₂-emissions reduction (or 30% if others make comparable efforts) by 2020 compared to 1990 level (NRC Handelsblad, 11 December 2009; De Telegraaf, 12 December 2009; Algemeen Dagblad, 12 and 16 December 2009).

Concerning the interaction of others with the EU, there can be no doubt that non-EU UNFCCC interacted with the EU at the preparatory negotiator and ministerial levels in Copenhagen. Non-EU countries actively and vibrantly negotiated with the Commission and the team of the Swedish EU Council Presidency at the preparatory negotiation levels of the COP15 meeting. This has not only been confirmed through interviews, but can also be substantiated by the webcasts from the preparatory plenary negotiation sessions in the first week of the conference (UNFCCC Webcast, 2009; Interview with Council Secretariat representative, Brussels, 3 May 2010; Interview with UK delegate by telephone, 10 May 2010; Interview with participant-observer by telephone, 11 May 2010; Interview with Dutch delegate, The Hague, 12 May 2010; Interview with Japanese delegate by e-mail, 25 June 2010). NGO’s likewise interacted with representatives from the Commission and the Swedish EU Presidency during the preparatory negotiations (Interview with CAN Europe representative, Brussels, 4 May 2010). As for EU Member States, it is entirely evident that they have interacted and cooperated with the EU (the Swedish EU Council Presidency and the EU representatives in the EU negotiation teams). During this interaction, which took place in Copenhagen both at internal EU meetings, like the daily EU coordination meetings, and during the plenary negotiating sessions, the EU member states fully recognised the EU as their representative in the negotiations (Interview with Dutch delegate, The

Hague, 12 May 2010; Interview with Swedish Council Presidency delegate by telephone, 3 May 2010). Moreover, it has been suggested that “there was overall good support of the Swedish Presidency by the EU member states and a full understanding of the challenge we were facing together” (Interview with Swedish Council Presidency delegate by telephone, 3 May 2010).

De facto recognition at head of state and government level

At the level of the heads of state and government the degree of politicisation has been much higher than at the preceding stages of the negotiations, which seems to have reduced the degree of the *de facto* EU recognition at this final level. EU

Member States seem to have recognised the EU to a lesser extent as their representative in the negotiations at this level. Fredrik Reinfeldt, the Swedish Prime Minister acting on behalf of the EU Council Presidency, tried to speak for the EU during this stages of the negotiations and succeeded in some instances, but most of the time he was “overruled” by the German, French and UK leaders Angela Merkel, Nicolas Sarkozy and Gordon Brown, according to both EU member state delegates and third party delegates who were present in Copenhagen (Interview with Dutch delegate, The Hague, 12 May 2010; Interview with participant-observer by telephone, 11 May 2010; Interview with Swedish delegate by telephone, 3 May 2010; Interview with UK delegate by telephone, 10 May 2010). During the last 48 hours of the Copenhagen conference, when the heads of state and government were present, the clear representation of the EU in the formal negotiations, which should have fallen to the Swedish Presidency, was “completely gone”. “Reinfeldt did go to microphones and made statements, but Gordon Brown, Angela Merkel and Nicolas Sarkozy were the three leaders who stepped forward, played a much more prominent role than Reinfeldt, and tried to call the shots for the EU” (Interview with Dutch delegate, The Hague, 12 May 2010).

Third parties no longer negotiated with the Swedish EU Presidency as the EU representative at this final stage of the negotiations, when the decisions had to be taken. Instead, they negotiated with the leaders of Germany, France and the UK. Due to the prominent role played by Brown, Merkel and Sarkozy in Copenhagen, and the fact that the Swedish Prime Minister did not claim the EU lead in the negotiations at this final stage, the Swedish Presidency representing the EU disappeared from third parties’ analytical radar and was largely marginalised (Interview with Japanese delegate by e-mail, 25 June 2010; Interview with Dutch delegate). Secrete audio recordings of a decisive round of informal negotiations between approximately 25 heads of state and government at the end of the Copenhagen summit on 18 December 2009 also confirm that Merkel, Sarkozy and Brown were taken seriously by the other major UNFCCC partners who were present at the summit and that *they* took the EU lead in the negotiations and made firm statements to steer the negotiations, rather than the Swedish EU Council Presidency (or the European Commission). The latter seem to have been neglected in the latter stages by third parties in favour of these three EU member states. Also Reinfeld and Barroso

were present during the informal mini-summit of 18 December, but they were not engaged by third parties in during those talks (Der Spiegel, 2/5/2010, 3/5/2010; Der Spiegel online International 5/5/2010; also cf. The Guardian 23/12/2010). It seems that the media also lost interest in the EU at this final stage of the negotiations. In random newspaper articles, which report about the last days of the conference, contributions to the negotiations of Sarkozy, Merkel and Brown were mentioned, while the EU Presidency hardly featured during the final bargain (e.g. The Times 16/12/2009; De Tijd 18/12/2009; Guardian Unlimited 19/12/2009).

While *de facto* recognition is very considerable at the preparatory negotiator and ministerial levels, informal recognition of the EU is significantly lower when push comes to shove at the highest negotiation level in Copenhagen, when the decisions have to be taken and matters are substantially (more) politicised.

4. AUTHORITY

This section assesses the extent to which the EU was able to exercise authority at the Copenhagen negotiations. First, the EU's formal authority is explored first, followed by an assessment of its informal authority.

Formal authority

The degree of authority of the EU at the COP15 negotiations, delegated by the Member State principals to the EU institutions will be assessed by (a) looking at the formal legal competences that the EU possesses at the Copenhagen negotiations, and (b) through the form and content of the EU negotiation mandate.

(a) Formal legal competences

Climate change is an area of shared competences between the EU and its member states (Van Schaik, 2010: 260; Oberthür, 2009b: 196). The UNFCCC is a mixed agreement to which both the EU and the 27 member states are parties.⁶ Article 300 TEC states that the Council can authorise the European Commission to negotiate on behalf of the EC (Delreux, 2006: 238).⁷ Concerning external climate

⁶ This formally means that EU Member States can still exercise their right to vote individually in the UNFCCC, in which case the EU cannot exercise its right to vote because in Art. 18.2 of the UNFCCC it is stated that "regional economic integration organizations [...] shall exercise their right to vote with the number of votes equal to the number of their member States that are Parties to the Convention [and] shall not exercise its right to vote if any of its member States exercises its right, and vice versa (UNFCCC, 1992).

⁷ Article 300 TEC has been replaced by article 188N in the Treaty of Lisbon, which entered into force on 1 December 2009. In Copenhagen the changes made by the Treaty of Lisbon had no effect yet.

policy the EU member states decided not to allow the Commission to negotiate, preferring to give the EU Council Presidency the power to represent and coordinate the EU position in the UNFCCC negotiations (Lacasta et al., 2002: 369). The EU Council Presidency is thus the main spokesperson for the EU at the UNFCCC. In bilateral negotiations and smaller negotiating sessions the EU troika – which consists of the Council Presidency, the European Commission and the upcoming Council Presidency – represents the EU (Van Schaik, 2010: 261; Oberthür, 2009a: 13). As for voting rules, the unanimity rule applies to issues of climate change in the Council framework and the mandate for the annual COP meeting in December also requires unanimous agreement in the Council of Environment Ministers.

(b) The EU negotiation mandate

The Swedish EU Council Presidency, the EU troika and the lead negotiators and issue leaders had the competence to act on behalf of the EU during the Copenhagen negotiations, but were obliged to operate within the constraints of the EU negotiation mandate. Hence, the delegation of authority to the EU representatives in the negotiations extends only as far as (the limits of) what the EU member states have agreed upon in the mandate. For the EU to display a high degree of actorness at the negotiations, the EU mandate must be flexible (quickly adaptable according to the changing circumstances of the negotiations) and it needs to contain concrete points on which offers can be made to other negotiating parties to secure their agreement and thus allow the EU influence on the outcome of the negotiations.

As for the flexibility of the mandate, EU negotiators are not permitted to deviate from the mandate before the 27 EU member states have unanimously approved of changes. “After a mandate has been fixed it is difficult to deviate from it because of the unanimity rule” (Interview with Council Secretariat representative, Brussels, 3 May 2010). This unanimity requirement substantially constrained the flexibility of the mandate at the COP15 meeting. And this adversely affected EU actorness at Copenhagen. At the end of November 2009, just before the start of the COP15 negotiations in Copenhagen, it became clear that the CO₂ emission reduction targets of the US and China were considerable less ambitious than those of the EU.⁸ The EU's strategy for the COP15 negotiations, laid down in the EU mandate, was to convince the other major parties to adopt the same ambitious goals as the EU. However, the sheer distance between the positions of the US and China and that of the EU made this an unrealistic aim. At that crucial point, the EU member states should have agreed to adjust the strategy in the EU mandate to ensure that the EU would be taken seriously by the US and China as a negotiating partner and preserve some influence over the outcome of the

⁸ The US target was to cut greenhouse gas emissions by 17% by 2020 from 2005 levels and the Chinese target was to reduce the amount of carbon dioxide emitted per unit of economic output by 40 to 45% by 2020 compared to 2005 levels, which would not even decrease the total amount of emissions in 2020 compared to 2005, while the EU aimed for a cut of greenhouse gas emissions by 20 to 30% by 2020 from 1990 levels (New York Times, 26 November 2009).

negotiating process. However, no unanimous agreement on the adjustment of the mandate could be reached. As a result, the US, China and others increasingly sidelined the EU during the negotiations as any compromise close to EU objectives was unrealistic. The lack of flexibility of the EU mandate at this crucial time thus reduced the scope of EU actorness during the negotiations in Copenhagen.

Another detrimental effect of unanimity is that, “given the frequent differences between the member states, you only get the lowest common denominator in the EU negotiation mandate” (Interview with UK delegate by telephone, 10 May 2010). For some issues on the negotiation agenda of COP15 no concrete common EU position could be formulated because the 27 EU member states were unable to reach sufficient agreement. “The EU negotiation mandate is often formulated in words that mask the underlying differences of opinion [between the EU member states]. This is why you don’t have a position in the EU mandate at some points at all” (Interview with Council Secretariat representative, Brussels, 3 May 2010). For example, the issue of climate finance to developing countries was fraught with difficulty for EU negotiators in Copenhagen because the EU member states had not reached proper agreement on this issue at the start of the COP15 meeting and therefore the EU mandate contained no concrete points on which offers to other parties could be made for a deal. This reduced the ability of the EU negotiators to act at the negotiations in Copenhagen and to influence the outcome of the negotiations (Interview by telephone, 10 May 2010). Only on 11 December, when negotiations at Copenhagen had already been underway for four days, could agreement be reached within the EU. Until then EU negotiators had nothing concrete to offer to third parties in the negotiations on climate finance, which hampered their ability to act. Similarly paralysed was the EU in its dealings with third parties at Copenhagen on the issue of ‘hot air’⁹ where Member States had remained divided (Interview with Council Secretariat representative, Brussels, 3 May 2010; Interview with UK delegate by telephone, 10 May 2010).

In sum, the flexibility of the mandate at the COP15 meeting and its content seem to have been insufficient for the EU to display a high degree of actorness at the negotiations. In a crucial phase, the EU did not manage to agree on deviations from its original mandate. In addition, the mandate often/sometimes lacked concrete points on which offers could be made to other parties to close deals. The underlying structural problem on both points has been the unanimity rule.

Informal authority

In cases of mixed legal competences between the EU and its member states, as was the case at the UNFCCC COP15 meeting in Copenhagen, formal EU authority is often limited. Nonetheless, informal EU authority may allow for an appreciable degree of EU actorness (Huigens and Niemann, 2009: 9;

⁹‘Hot air’ refers here to the question of whether the Eastern European countries, which have a surplus of CO₂-emission rights left under the Kyoto Protocol because of the collapse of their industries after 1990, should be allowed to carry over these rights into the second period of the Kyoto Protocol or not.

Groenleer and van Schaik, 2007). The degree of informal EU authority at the COP15 meeting in Copenhagen will be assessed by looking at the role of the Commission, the EU lead negotiators and issue leaders, as well as the Swedish EU Presidency.

The experience and expertise of the European Commission

It has been suggested that the Commission's authority in the international climate regime has increased over time. The reforms to the system of EU representation and coordination in the international climate regime effected during the Irish EU Presidency in 2004 devolved greater competences to those entities, such as the Commission, with the right expertise and capacity to effectively further EU goals in this area (Oberthür, 2009a: 13; Birkel, 2009: 64-66). The EU member states rely to a considerable extent on the expertise of the Commission. As has been pointed out its "knowledge of the EU's performance in reducing emissions and existing and proposed policies is essential for the EU's credibility on the international level. In the Council of Ministers, the European Commission is seen as an 'extra Member State' with expertise, viewpoints and positions on almost all issues on the table, based upon its permanent place in the troika and exclusive contacts with other state and non-state actors" (Groenleer and van Schaik 2007: 987).

More specifically, the Commission's increased authority and standing on climate change can be attributed to several factors: (a) the targeted investment of resources in this area, by means of an expansion of the Commission's DG Environment with a special unit on international climate policy; (b) the replacement of the previous EU Presidency by the Commission as a member of the EU climate troika (Birkel 2009: 63-64); (c) the increased role of the EU troika, and thereby the Commission, to represent the EU externally (Oberthür 2009a 14-15); (d) the introduction of issue leaders and lead negotiators, which have taken over the lead from the EU Presidency in international negotiations at the official/negotiator level. Issue leaders and lead negotiators have also taken over tasks of the Council Working Party on International Environmental Issues (WPIEI), like the preparation of official statements for the COP negotiations, and have overall gained significant responsibility in the formulation of the EU's external climate policy (Oberthür 2009: 14-16; Oberthür and Roche Kelly, 2008: 38; Birkel, 2009: 66). Commission officials have generally been chosen for a good share of these posts/functions.

Also with regard to the COP15 meeting, it was clear for Member State delegations that the preparatory level negotiations on the two tracks, that on the Kyoto (KP) and on the Long-term Cooperative Action under the Convention (LCA), required negotiators who possessed the requisite expertise on the complicated technical issues at stake. Given the growing informal authority of the Commission pointed out above, the Commission was generally well placed to take on one of the tracks (Interview with Dutch delegate, The Hague, 12 May 2010; Interview with EP delegate by telephone, 12 May 2010). Eventually, it was agreed that the Commission should take the lead in the negotiations

in the ad-hoc working group on the Kyoto Protocol at the COP15, as these negotiations concerned accepted EU policy which has been translated into legally binding EU legislation, about which the Commission has the most expertise. The Commission exercises oversight on the overall functioning of the measures that it has designed to allow the EU to fulfil the greenhouse gas reduction targets set out in the Kyoto Protocol, such as the EU's Emission Trading System (ETS). Artur Runge-Metzger from the Commission became the lead negotiator for the *ad-hoc* working group on the Kyoto Protocol.

Runge-Metzger has been praised by EU member state representatives in Copenhagen for his clear, clever and convincing negotiating style, based on both a large amount of knowledge on the subject and a large amount of negotiating experience (Interview with Dutch delegate, The Hague, 12 May 2010). A few Commission representatives with similar expertise were appointed to support Runge-Metzger, together with some EU member state representatives. In the EU negotiation team which negotiated in the ad-hoc working group on LCA, two of the seven permanent EU negotiators who supported the (Dutch) EU lead negotiator were from the Commission (Interview with Dutch delegate, The Hague, 12 May 2010; Interview with UK delegate by telephone, 10 May 2010). These findings indicate that the Commission possessed a high degree of authority at the preparatory negotiator level at the COP15 meeting.

During the final negotiations at the head of state and government level at the COP15 meeting the situation was very different. The EU troika ought to have spoken on behalf of the EU in bilateral and informal negotiating settings. Commission president Barroso was present at this final negotiation level to represent the EU, together with the Swedish Prime Minister Fredrik Reinfeldt. However, during informal negotiations between a select group of around 25 UNFCCC parties on 18 December 2009, Barroso was present, but he did *not* speak and/or assert himself on behalf of the EU (Der Spiegel 2/5/2010, 3/5/2010, Spiegel online International 5/5/2010). Instead, the leaders of Germany, France and the UK took over the negotiations with third parties, to the detriment of Barroso (and Reinfeldt) who became marginalised (Interview with third party delegate by telephone, 14 May 2010). At the substantially politicised stage of the negotiations, Commission expertise and experience were not in demand (cf. Niemann 2004), and the Commission's degree of informal authority clearly diminished.

*Acceptance of authority of the EU lead negotiators and issue leaders and the Swedish EU Council
Presidency by the EU member states*

The degree to which the EU member states accept, in practice, that they are represented by 'EU-actors' in Copenhagen, namely the EU Presidency and the EU lead negotiators and issue leaders, partly determines the degree of authority exercised by the EU beyond that deriving from law (Groenleer and van Schaik, 2007). This acceptance involves more than the recognition of the EU as an

actor and representative at the negotiations. Acceptance of the EU as an actor at the negotiations means that the EU member states do not work against the EU, for example by not taking over the task from the EU representatives of representing the EU at the negotiations.

The Swedish EU Council Presidency and the EU lead negotiators and issue leaders seem to have enjoyed decent support from the other EU member states at the preparatory negotiator level of the COP15 meeting, and the EU negotiation mandate was largely accepted and respected by the EU member states. However, during the negotiations at the level of the heads of state and government the authority of the EU representatives was clearly undermined. At this final level, the leaders of the three big EU member states, Germany, France and the UK took over the EU representation in the negotiations from the EU troika.

The system of lead negotiators and issue leaders in Copenhagen: The system of lead negotiators and issue leaders, in which both experienced EU member state negotiators and experienced Commission negotiators are represented, operated at the preparatory negotiator level of the COP15 meeting in Copenhagen to represent the EU. Overall, EU member state delegates seem to be happy with the system of issue leaders and lead negotiators and agree, by and large, that the system functioned well at the preparatory negotiator level of the COP15 meeting. They appear convinced that the 27 EU member states and the EU institutions need to operate in concert in the climate regime and that the best qualified people must be chosen to represent the EU at the negotiations in order to perform well. As one official noted: “long before Copenhagen member states and the Commission said to each other: “We need to have strong lead negotiators for the COP15 meeting because the EU is the leader of the international climate regime. Therefore, we simply chose the best people, regardless of their national or institutional affiliation” (Interview with Dutch delegate, The Hague, 12 May 2010).

The focus on a successful EU performance seems to have stimulated the acceptance of the authority of the issue leaders and lead negotiators at the preparatory level of the negotiations in Copenhagen. A Danish COP Presidency delegate states: “That is a novelty on climate change, that you have a chief negotiator who represents the Presidency and sits in its chair, but may have another nationality, in order to have a more consistent presentation. And I think that has worked well” (Interview with Danish COP Presidency delegate, Brussels, 5 May 2010). The system of lead negotiators and issue leaders seemed to incite a feeling of “we-ness” between the EU negotiators at the preparatory level of the negotiations in Copenhagen, which was absent at the highest level of the negotiations between the heads of state and government (Interview by telephone with participant-observer, 11 May 2010). Overall, both the lead negotiator on the ad-hoc working group on the KP and the lead negotiator on the ad-hoc working group on LCA had, by the end of the preparatory level of the negotiations, fulfilled the EU goals set beforehand, bearing out this assessment.

The Swedish EU Council Presidency in Copenhagen: During the preparatory stages of the negotiations, the role of the Swedish EU Council Presidency as the coordinator and manager of the EU organisation and as the main EU representative in the negotiations seems to have earned the respect and acceptance of other member states. The Swedish Presidency fulfilled these tasks with success. Not least, as a result of its efforts, a unified EU stance was put forward in the preparatory negotiations by the EU negotiators. The Swedish Presidency was valued by the EU member states for keeping overall control of the functioning of the EU at this preparatory level of the negotiations (Interview with Dutch delegate, The Hague, 12 May 2010).

However, during the final negotiations at the level of the heads of state and government the acceptance by the EU member states of the authority of the Swedish EU Council Presidency diminished. This was due to the fact that the Swedish EU Council Presidency was no longer able to sufficiently represent (and advance) the EU position, nor adequately administrate and coordinate EU tasks, nor effectively broker between the different EU stances at this stage of the negotiations. For example, one of the tasks of the Swedish Presidency team was to brief ministers on the results of the negotiations during the final stages of the meeting. However, losing their way in the hectic circumstances of the final negotiations at the end of the summit, this proved beyond them. Instead, the EU negotiation teams had to take care of the briefing for them (Interview with UK delegate by telephone, 10 May 2010). At this stage, the Swedish EU Council Presidency team could not prevent the EU from falling apart. During this hectic final stage of the negotiations, communication and intervention of the Swedish Presidency team seem to have been inadequate to keep the overall control of the EU. At this stage also the Presidency's knowledge of the content of the negotiations seems to have been insufficient.

In addition, the Swedish Presidency should have played a more active role in representing the EU in the final negotiations. Especially Prime Minister Reinfeldt sat on the fence and was overcareful during the final negotiations at the level of the heads of state and government. The Presidency should have engaged more actively in talks with third parties, such as China and the US, to influence the outcome of the negotiations. Instead, they listened to other parties and refrained from making suggestions or actively contributing to the negotiating process, e.g. by trying to bridge differences (Interview with Dutch delegate, The Hague, 12 May 2010).

At the final negotiation level the inadequate performance of the Swedish Presidency seems to have had an effect on the acceptance of its authority by the EU member states in practice. In the one hand, it has been emphasised that the "take-over" of authority by Germany, the UK, and France in the final stages of the negotiations partly/largely due to the weakness of the Swedish Presidency (Interview with UK delegate by telephone, 10 May 2010). On the other hand, the very loss/undermining of authority of the Swedish Presidency was accelerated and to some extent prompted by the interventions of the bigger EU Member States. Hence, there seem to have been a certain interplay/interdependency

here between the lack of (informal) authority of the Swedish Presidency and the authority assumed by the larger Member States, each impacting on, and reinforcing, each other.

5. COHESION

This chapter will examine the extent to which the EU met the criterion of cohesion at the COP15 meeting negotiations. Cohesion can be separated into four different types: value cohesion, tactical cohesion, procedural cohesion and output cohesion (Jupille and Caporaso, 1998), which will be examined in turn.

Value cohesion

To assess the degree of value cohesion in the EU at the COP15 meeting it is necessary to assess the extent to which the goals set out in the EU negotiation mandate before the start of the Copenhagen negotiations were shared by the 27 different EU member states. The latter managed to put on paper an EU negotiation mandate for the COP15 meeting negotiations in which the main basic goals of the EU for every issue of the negotiation agenda in Copenhagen were outlined (Council 2009). The primary goal for the COP15 meeting on which all EU member states and the European Commission agreed was that the EU had to take on a leadership role in Copenhagen and that an ambitious agreement had to be reached on how to proceed after 2012 when the first period of the Kyoto Protocol was to end (Interview with UK delegate by telephone, 10 May 2010; Interview with Dutch delegate, The Hague, 12 May 2010).¹⁰ The major drivers of this agreement within the EU seem to be the normative aspirations of the EU in its external climate policy – such as multilateralism, sustainable development and the precautionary principle – which unite the 27 EU member states (Van Schaik and Schunz, 2010). Thus it seems that there was a quite considerable agreement on the pursuit of an ambitious external climate policy which positively contributed to the degree of value cohesion of the EU at the COP15 meeting.

However, there remained several important issues on the Copenhagen agenda where no concrete points were included in the EU negotiation mandate, because the 27 EU member states could not reach agreement on them. Examples include the ‘hot air’ issue, land use, land use change and forestry (LULUCF), and the financial contribution for developing countries, which will be discussed more thoroughly below. Concerning these issues the text of the mandate was formulated in such a way that it masked differences of opinion, which meant that the mandate in essence contained no EU position on these issues at all (Interview with Council Secretary representative, Brussels, 3 May 2010;

¹⁰ See for example Leeuwarder Courant, 10 December 2009.

Interview with UK delegate by telephone, 10 May 2010). Hence, there were more deeply rooted underlying disagreements between the EU member states that prevented the EU from reaching a high degree of value cohesion.

To start with, there was underlying disagreement among the EU member states on the question of whether the EU should commit itself to a CO₂-emission reduction goal of 30% compared to 1990 levels by 2020 and under which conditions it should do so (Interview with Dutch delegate, The Hague, 12 May 2010; Algemeen Nederlands Persbureau, 9 December 2009). The mandate specifies that the EU should do so when “other developed countries commit themselves to comparable emission reductions and [...] developing countries contribute adequately according to their responsibilities and respective capabilities” (Council 2009: 5). The decision to set a conditional reduction goal of 30% had already been taken in 2007 (Council 2007: 12), but this goal nevertheless remained controversial among the EU member states, with Italy and Poland openly speaking out against the decision. Many other EU member states quietly supported their protest (Interview by telephone with UK delegate, 10 May 2010). With almost every European Council meeting, the issue was again put on the table. Poland and Italy pushed for the deletion of the 30% conditional reduction goal while the UK and France, on the other hand, sought to defend it (Interview with Dutch delegate, The Hague, 12 May 2010; NRC Handelsblad, 11 December 2009). The mandate failed to specify exact conditions to be fulfilled in order for the EU to commit to a 30% CO₂ reduction. In the absence of prior agreement between the EU member states, this question was left to the negotiations.

Secondly, the EU negotiation mandate lays out no concrete position on land use, land use change and forestry (LULUCF) (Council 2009: 13-14). LULUCF is the agreement that covers forestry for the developed countries that have pledged to reduce their emissions under the Kyoto Protocol (International Herald Tribune, 19 December 2009). Because a few EU member states, namely Finland, Austria and Sweden, have a large timber industry and wanted to protect this industry in their own country, the Environment Council of Ministers was unable to adopt a specific position on accounting rules for forestry in developed countries (Interview with CAN Europe representative, Brussels, 4 May 2010; Greenpeace, 2009; New York Times, 19 December 2009).

Thirdly, the EU member states disagreed as to what should be done with the unused Assigned Amount Units (AAU's), also known as ‘hot air’, in the second period of the Kyoto Protocol after 2012. The unused AAU's are one of the ‘environmental loopholes’ in the Kyoto Protocol. Because of the collapse of their heavy industries in the 1990's precipitated by the fall of communism the CO₂-emissions of the Eastern European EU member states had fallen significantly. As a result, these member states retained surplus AAU's. The question debated in the EU was whether the Eastern European member states should be allowed to carry over these units into the second period of the Kyoto Protocol. As no agreement could be reached on this issue, the mandate stated only that “the EU will further consider options in view of discussions with other Parties” (Council 2009: 15). During the summit a group of seven Eastern European countries were fighting for the AAUs to be retained,

releasing a statement that any deal "should keep the door open for allowing the full transfer of the surplus represented by the AAUs to the post-2012 framework" (Guardian Unlimited, 16 December 2009). 'Progressive' EU member states like the UK, the Netherlands, Denmark and Sweden were against such a transfer of unused AAU's to a second period of the Kyoto Protocol after 2012.

Fourthly, at the start of the Copenhagen conference the EU member states had not yet agreed on a quantified financial contribution payable to developing countries for adaptation and mitigation measures. Because of the financial crisis, many EU member states, most notably the Eastern European member states, were reluctant to donate (Guardian Unlimited, 11 December 2009). On the other hand, progressive member states like the Netherlands, the UK, Germany, France, Denmark and Sweden were ready to put concrete amount of money on the table (Interview with Dutch delegate, The Hague, 12 May 2010). The mandate stated that "the EU is prepared to take on its fair share, in the framework of a global and comprehensive Copenhagen agreement which entails appropriate and adequate contributions by Parties" (Council 2009: 19), but no concrete amounts of money were mentioned. An agreement on finance for developing countries was closed only at the very last moment, when the COP15 negotiations had already started (NRC Handelsblad, 11 December 2009).

The above findings are indicative of a significant number of issues in the EU mandate before the Copenhagen negotiations on which no concrete agreement was reached within the EU. Many EU member states appeared unwilling to sacrifice their own interests in order to agree concrete ambitious EU proposals for the Copenhagen negotiations. Overall, the degree of value cohesion evidenced in the EU mandate for the COP15 meeting between the 27 EU member states is low. It seems that only a few EU member states, such as France, the UK and perhaps the Netherlands and Denmark, firmly supported a progressive EU position until the very end of the negotiations. Italy and Poland openly blocked progress inside the EU on the formulation of a common EU negotiation position before and during the COP15 meeting, mainly on the issues of finance and CO₂ emissions reduction. Many other countries shared their stance, though not openly, such as Estonia, Latvia, Lithuania, Romania, Bulgaria and also Austria (Interview by telephone with UK delegate, 10 May 2010; NRC Handelsblad, 11 December 2009). As a result of the low value cohesion, EU negotiators were not able to advance deals with other parties on those issues where the mandate lacked concrete points to negotiate with, diminishing the ability of the EU to act at the negotiations, given that the COP15 meeting was intended as a forum where concrete proposals were to be formulated.

Tactical cohesion

Tactical cohesion encompasses the convergence of diverging goals by means of different tactics and strategies in order to reach agreement. This often entails package deals, issue linkage or side payments (Jupille and Caporaso, 1998: 219). One instance on which issue linkage was used during the Copenhagen summit concerns the unused AAU's. Poland and other Eastern European member states

were prepared to give up their unused AAU's only in return for reciprocal concessions. The eventual solution, accepted by all parties, was that these states were permitted to spend the money of their unused AAU's on new clean energy projects in their own countries (Interview with Dutch delegate, The Hague, 12 May 2010). Similarly, rather than definitively abandoning the conditional 30% CO₂ reduction goal when some of the 27 EU member states, mainly Italy and Poland, resisted, it seems that ways of "effort-sharing" among the EU member states were found in the Council of Ministers, which should be understood as internal mediation between differences of interest on sub-items, to keep up the 30% conditional reduction goal as an overarching EU goal (Van Schaik and Schunz, 210: 14; forthcoming; Interview with Dutch delegate, The Hague, 12 May 2010). These findings indicate that a certain degree of tactical cohesion was achieved.

Procedural cohesion

Procedural cohesion "implies some consensus on the rules and procedures used to process issues where conflict exists" (Jupille and Caporaso, 1998: 219). For procedural cohesion the means for solving issues of conflict should be standard procedures and rules which are followed constantly and invariably, rather than improvised tactics and strategies. We will first analyse procedural cohesion at the level of lead negotiators and issue leaders, followed by an assessment of the daily EU coordination meetings at Copenhagen.

The system of issue leaders and lead negotiators

This sub-section mainly deals with the extent to which the EU system of lead negotiators and issue leaders created a feeling of "we-ness" and unity among the EU member state representatives at the COP15 meeting. If such a feeling was indeed encouraged, this would suggest that some degree of informal cohesion emerged. Such informal cohesion would be expected to cement procedural cohesion at the preparatory negotiator level of the COP15.

With the introduction of the system of lead negotiators and issue leaders, teams consisting of people from different EU member states and the Commission were formed. Compared to the situation before the system was put in place – when EU negotiators solely stemmed from the Presidency – there seems to be more of a 'we-feeling' (Interview with Council Secretariat representative, Brussels, 3 May 2010). Before and during the Copenhagen conference, there seems to have been an atmosphere of teamwork and unity in the EU negotiation teams. Together, the delegates decided on the ideal division of work to achieve the best EU performance at the negotiator level and respected each other (Interview with Dutch delegate, The Hague, 12 May 2010; Interview with UK delegate by telephone, 10 May 2010). These findings corroborate those by Kathrin Birkel who conducted a series of interviews (before the Copenhagen summit) with EU member state and Commission representatives who

negotiated on behalf of the EU at international climate negotiations. Overall, these interviews indicate that the introduction of the system of lead negotiators and issue leaders ‘had an equalising as well as unifying effect. Somebody negotiates on behalf of and for the benefit of *the EU*; this is what counts and not their institutional affiliation (Birkel, 2009: 69). However, the smaller EU member states are often not represented in the EU negotiation teams. This was also the case at the COP15 meeting. Consequently, they tend to feel somewhat sidelined. As a result, overall the amount of informal cohesion is only moderate and thus contributed only to a limited extent to the degree of procedural cohesion at the preparatory negotiator level.

The existence of and respect for procedures at the COP15 meeting

During the COP15 daily EU coordination meetings took place at all negotiation levels, during which the EU negotiation mandate could be adjusted collectively by the 27 EU member states as necessary. During these meetings, the EU member states sought to overcome differences of opinion by formulating solutions by consensus, enabling the EU to speak with one voice at the negotiations and thereby to increase its degree of actorness. According to a Swedish EU Presidency official, the daily EU coordination meetings were “important for the Presidency to get continuous support by the member states [and] definitely increased the notion of a union” (Interview by telephone with Swedish EU Council Presidency delegate, 3 May 2010).

However, these daily coordination meetings were not that fruitful. Owing to a lack of value cohesion, the member states could only agree to slightly adjust the negotiation mandate on a limited number of occasions, being unable to agree upon significant alterations, which hampered the ability of the EU negotiators to act and interact with the other major players. This was certainly also noticeable at the level of heads of state and government. The latter had agreed to sit together every day of the final negotiations in order to coordinate their behaviour. Overall, they seem to have respected the EU negotiation mandate, which indicates that there was some degree of procedural cohesion even at this highest level. However, these procedures could not compensate for the low degree of value cohesion within the EU. They did not allow to keep ranks closed inside the EU, and could not prevent the EU from openly falling apart at the final stage of negotiation (Interview with Council Secretariat representative, Brussels, 3 May 2010; Interview with Dutch delegate, The Hague, 12 May 2010; NRC Handelsblad, 11 December 2009).

In addition, the internal EU communication and coordination at this final negotiation level, which was the main responsibility of the Presidency, was not well organised and carried out. This reduced the ability of the EU to act as a coherent unit. For example, the Swedish Presidency team was not able to brief the negotiation results anymore at the final negotiation stage (Interview with UK delegate by telephone, 10 May 2010; Interview with Dutch delegate, The Hague, 12 May 2010). Also, without coordination beforehand the EU member state leaders sent different opinions to the public

about the final accord after that it had been closed (Interview with Dutch delegate, The Hague, 12 May 2010). These findings seem to indicate that the degree of procedural cohesion was relatively low at the final negotiation level at Copenhagen.

Output cohesion

Output cohesion is the agreement among the involved parties on the output regardless of the substantive and procedural agreement (Jupille and Caporaso, 1998: 220). The extent of EU output cohesion will be assessed with regard to the final stages of negotiations, when the Copenhagen Accord was closed. We argue that the disagreement among the EU member states on a considerable number of the goals included in the EU mandate at the start of the COP15 meeting had not disappeared by the time that the Copenhagen Accord. This implies that the EU's degree of output cohesion was relatively low.

A first example of this ongoing disagreement at the end of the negotiations is that shortly after the adoption of the Accord, France, the UK, the Swedish Presidency and the Commission made clear that they were disappointed about the non-legally binding outcome of the negotiations, while Italy, Poland and other Eastern European member states indicated that they were quite happy with this less ambitious outcome (Barroso, 2009; Interview with Dutch delegate, The Hague, 12 May 2010; Interview with EP delegate by telephone, 12 May 2010).

Second, there was the ongoing intra-EU disagreement at the end of the negotiations concerning the CO₂ reduction target. No concrete targets for 2020 were included in the Accord. Reduction targets had to be sent to the UNFCCC secretariat by the Annex-I parties by 31 January 2010 and implemented according to the Accord (UNFCCC, 2009). The EU sent the CO₂ reduction goal of "20% to 30%" by 2020 compared to 1990 levels to the UNFCCC secretariat (UNFCCC 2010: 5). Thus, the EU refused to specify whether it would aim for a 20% or a 30% reduction. In order that all EU member states could agree, it did not make clear which exact target it would implement (Interview with Dutch delegate, The Hague, 12 May 2010).

Third, the disagreement within the EU on concrete means to reduce emissions from deforestation was still not resolved by the end of the negotiations, because the EU member states Finland, Austria and Sweden continued to protect their national timber industries. In May 2010 these internal problems were still present (Interview with Dutch delegate, The Hague, 12 May 2010). Moreover,

The fourth and final example of the low degree of EU cohesion at the end of the COP15 negotiations involves the issue of climate finance. The Copenhagen Accord states that USD 30 billion is required from developed countries as fast-start finance for the period 2010-2012, and USD 100 billion each year by 2020 by developed countries for adaptation and mitigation in developing countries (UNFCCC 2010: 6-7). By the end of the negotiations the EU had not yet proposed how much it would

contribute to the long term finance of USD 100 billion from 2020 onwards owing to persisting disagreement on the question of how this burden should be shared between individual member states and whether payments had to be recorded (CAN Europe, 2009).

In addition, there are identifiable occasions during the actual negotiations in Copenhagen where the EU mandate was rejected by individual EU member states. Because sensitive political issues were at stake at the COP15 meeting, EU member states who, driven by national interests, could not agree with the EU position on a certain agenda item, tried to alter this EU position during the course of the negotiations (Interview by telephone with EP delegate, 12 May 2010). Sweden's effort to alter the EU position on forestry during the negotiations to protect its own national forestry industry provides an example of one such occasion (Greenpeace, 2009).

Overall, these findings indicate that the existing tactical and procedural cohesion could not overcome the insufficient value cohesion. As a result, also the EU's degree of output cohesion was rather modest. This diminished the ability of the EU to act during the negotiations, as will be shown further below.

AUTONOMY

This section examines the extent of EU autonomy at the Copenhagen negotiations. It should be noted that the EU does not negotiate independently from its member states. Article 22.2 of the UNFCCC states that it is not possible for the member states and the EU as an REIO to exercise their rights concurrently. The member states and the Commission, under the leadership of the Swedish EU Presidency (and the selected issue leaders and lead negotiators) negotiated on the basis of the EU negotiation mandate (Oberthür, 2009a: 15). The first section seeks to establish whether and to what degree the EU's system of representation and coordination at the COP15 can be seen as distinct from its member states. Second, we will analyse the freedom to act enjoyed by EU representatives at Copenhagen. Finally, we evaluate the extent to which the EU could be described as pro-active at the COP15 meeting.

The distinctiveness of the EU's system of representation and coordination

To assess the degree of distinctiveness of the EU's system of representation and coordination at the COP15 meeting two indicators will be used: first, the extent to which EU representatives saw themselves as primarily European actors rather than as representatives of their respective member states will be assessed (cf. Groenleer and van Schaik, 2007); second, degree of the distinctiveness between the EU's institutional apparatus and that of the EU member states at COP15.

National representatives and/or European actors?

To determine the extent to which the EU's system of representation and coordination at the UNFCCC negotiations in Copenhagen can be seen as distinct from its member states, it is illuminating to investigate whether delegates representing the EU at COP15 as part of the Swedish Presidency or EU negotiation teams on the KP and the LCA negotiation track, regarded themselves primarily as European actors or rather as national representatives.

Overall, the findings from interviews held with EU member state delegates who acted on behalf of the EU at the COP15 meeting in Copenhagen tentatively indicate that these representatives went beyond national the national perspective and to quite some extent considered themselves as European actors. A representative of the Swedish EU Presidency at the COP15 meeting stated for example: "I foremost saw my role as facilitating and advancing EU work during the Presidency and indeed also during COP15; national interests become secondary in this [Presidency] role where impartiality, solidarity and getting the best deal for the EU matter" (Interview by telephone with Swedish EU Council Presidency delegate, 3 May 2010). A delegate from the United Kingdom who took part in one of the EU negotiation teams at the COP15 also considered herself more an EU representative than a UK representative at Copenhagen. In the interview, she used formulations like: "we as EU negotiation team said ...", or "I think that we, the EU, wanted it so badly that" (Interview with UK delegate by telephone, 10 May 2010). The same was true for a Dutch delegate, who used similar formulations such as: "how can we, the EU team, divide tasks ..." and "did we, the EU, play our role well" (Interview with Dutch delegate, The Hague, 12 May 2010). Such formulations were likewise used by other interviewed EU member state delegates who acted on behalf of the EU at Copenhagen. These findings indicate that there seems to have been an 'EU we-feeling' among the delegates who acted as EU negotiators at Copenhagen and thus a relatively high degree of distinctiveness of the EU's system of representation and coordination at the negotiations.

However, despite this, it should nonetheless be noted that EU member state delegates at the negotiations tried to defend national interests on some occasions in Copenhagen, especially when politically sensitive issues for their country were discussed. A few concrete occasions have been identified: on the issue of emission reductions on forestry, it seems that Sweden sought to change the EU position during the COP15 negotiations to protect its own large forestry industry (Greenpeace, 2009). Similarly, French officials tried to formulate a common position with Africa without consultation (Interview with Council Secretariat representative, Brussels, 3 May 2010; Interview with CAN Europe representative, Brussels, 4 May 2010). At one point during the formal negotiations the French environment minister even took over the EU lead in the negotiations from the Swedish EU Presidency to send a message to the African countries (Interview by telephone with participant-observer, 11 May 2010).

In such cases feelings of solidarity accompanying the position of EU representative did not seem to be strong enough to prevent the EU member state representatives from following national interests. Thus, overall our findings are rather mixed concerning the extent to which EU member state delegates who represented the EU at the COP15 saw themselves (and acted) as distinct European actors.

The distinctiveness of the EU's institutional apparatus

The Swedish Presidency and the Commission took part in the COP15 meeting on behalf of the EU largely with their own distinctive institutional apparatus, separately from the EU member states and other UNFCCC parties. At the COP 15 the Swedish delegation was not split up into a Swedish Presidency delegation and a normal Swedish EU member state delegation. However, the Swedish Presidency had its own distinct institutional apparatus, which differed from the institutional apparatus of the EU member states. The Swedish national institutional apparatus was adjusted to make it suitable for fulfilling the tasks of the EU Council Presidency. For example, the Swedish Presidency had its own 'Communications Secretariat', which fulfilled the primary task of coordinating communications activities during the Presidency term (Swedish EU Presidency, official website, 2009). Yet, in the plenary sessions of the Copenhagen negotiations the EU representatives all sat behind the nameplate of Sweden; the EU did not have its own nameplate (Government Offices of Sweden, 2010a). This suggests a slight limitation of the distinctiveness of the institutional apparatus of the Presidency from that of the EU member states.

The Commission delegation also had a distinct institutional apparatus: it had its own expert teams and its own media service which conducted press conferences and produced releases, speeches and statements at the COP15 meeting specifically on behalf of the Commission (European Commission, 2010b). In Copenhagen they also had their own separate room where they could work, though they lacked a nameplate in the plenary negotiations, having to sit behind the nameplate of the Swedish delegation representing the EU Presidency (Interview with UK delegate by email, 15 July 2010).

Negotiators from the EU member states who were part of the EU negotiation teams at the preparatory level on the KP track and the LCA track had their own room where they could work. This means that these EU negotiators did not have to sit in a room with their member state delegations, but could sit together with their colleagues from the EU negotiation team. In the plenary sessions, the EU negotiators did not have to sit behind the nameplate of their own member state either. They sat behind the nameplate of Sweden (holding the EU Presidency). These findings indicate that the institutional apparatus of the EU in Copenhagen was to a large extent distinct from the institutional apparatus of the EU member states.

The freedom of action of EU negotiators

At the COP15 meeting, the EU negotiation mandate was accompanied by instructions for the EU negotiators formulated in the form of headlines. They should be seen as a loosely formulated “strategic guide”. These instructions did not specify in detail how the goals of the mandate were to be accomplished, but gave the EU negotiators in principal some leeway to accomplish these goals with their own preferred behaviour during the negotiations (Interview with Dutch delegate, The Hague, 12 May 2010). These instructions or headlines can to some extent be compared to what is called ‘discretion’ in principal-agent terms, i.e. “a grant of authority that specifies the principal’s goals but not the specific actions the agent must take to accomplish those objectives” (Hawkins et al., 2006: 6). In that sense, the EU representatives had some freedom to negotiate. These instructions in the form of headlines are a change from the past when the instructions used to be much more detailed and strict and the EU representatives had less freedom to act on their own at the negotiations (Interview with Dutch delegate, The Hague, 12 May 2010).

The amount of freedom or leeway that the EU agents could have possibly enjoyed in pursuit of the goals of the mandate does not seem to have increased the degree of autonomy/discretion at the negotiations in practice. This can be attributed to one factor/rationale in particular: in view of the controversies concerning issues – such as ‘hot air’, land use, land use change and forestry (LULUCF), and the financial contribution for developing countries – that were left rather unspecified in the mandate (cf. sub-section on value cohesion), the scope for (independent) EU action on these issues was rather limited. These issues were politically salient and EU negotiators could not afford to go ahead independently, without more specific agreement of the EU Member governments. This clearly diminished the ability of the EU to act at Copenhagen.

We now go beyond the notion of discretion and turn to the more specific principal-agent definition of ‘autonomy’. While discretion grants the leeway to accomplish principal-determined goals in the way seen fit by the agent, autonomy is the range of action available to the agent, including the ability to set policy goals (Hawkins *et al.* 2006: 8). According to Jupille and Caporaso (1998: 218) autonomy exists when decision-making latitude is wide.

The preparation of the EU negotiating goals in the mandate took a lot of time and effort. Council expert groups on issues such as adaptation, reporting and finance prepared positions for the negotiations. These positions were discussed in the Council Working Party on International Environmental Issues and the Working Party on the Environment and later in the different Council of Ministers, and especially the Environment Council, where the official mandate for the UNFCCC COP meetings was fixed by unanimity (Oberthür, 2009a: 11). Adjust the mandate at Copenhagen was no small feat. Representatives from the 27 EU member states came together every day during EU coordination meetings at the COP15 meeting in order to discuss potential modifications of the mandate. At these meetings only a few small adjustments to the mandate were realised, which did not

provide the EU negotiators with much flexibility to negotiate (Interview with Dutch delegate, The Hague, 12 May 2010). The fact that alterations could only be made by unanimity made it very difficult for the mandate for the COP15 negotiations to be adjusted, because at the COP15 negotiations highly politicised issues were at stake on which it was very difficult for the 27 EU member states to reach agreement.¹¹ Hence, due to the unanimity rule decision-making latitude was rather narrow, which substantially constrained the range of action available to the agent, including the ability to adjust policy goals.

The most important case in which the lack of adjustability of the mandate frustrated the ability of the EU to act at Copenhagen was the failure of the 27 EU member states to agree on the adoption of an alternative negotiation strategy in the EU mandate, a plan B, when it became clear that the EU's main negotiation strategy for the COP15 negotiations would not work. This main strategy was based on very ambitious goals. The idea was that the EU would set a good example and convince other parties to follow its lead. A few weeks before the start of the Copenhagen summit, when other major parties like the US and China had specified their stakes, it became clear that the EU's position was far more ambitious and would not be reconcilable with the positions of the other parties. It was simply unrealistic for the EU to convince other parties to adopt a similar highly ambitious position, in view of their partner's domestic constraints and lack of political will. At that moment, the EU member states should have decided to adjust the strategy specified in the EU mandate to enable the EU to play a leadership role at the negotiations (Interview with Dutch delegate, The Hague, 12 May 2010; Interview with EP delegate by telephone, 12 May 2010). However, this did not happen because of substantial differences between the EU member states on the issue, which did not allow agreement on a less ambitious general negotiating position. As a consequence, the EU placed itself outside the game in Copenhagen by staying rigidly focused on its overambitious negotiation strategy, which diminished the ability of the EU to act at the negotiations even further.

Pro-activity?

To assess the extent of EU pro-activity at the COP15 meeting, first the degree to which the EU representatives took the initiative at the negotiations is examined. As a second step, the extent to which the EU played a leadership role at the negotiations is evaluated. Playing a leadership role should be seen as a more ambitious sub-criterion of pro-activity because here an entity, to some extent, affects the development of the negotiations. The subsequent analysis suggests that while the EU instigated initiatives before the start of the Copenhagen negotiations by which it tried to lead by example, it was unable to play a leadership role during the negotiations. The EU could not steer the negotiations in the direction that it wanted nor induce others to follow it.

¹¹ See the previous section on cohesion.

It could be argued that before the start of the COP15 the EU generally tried to display ‘directional leadership’ (Gupta and Grubb, 2000: xiv). The EU realised domestic innovation in policies and technology in the area of climate change, for example by developing its own Emission Trading System and encouraged others to copy it (European Commission, 2010a). The ambitious EU strategy for the COP15 – that was guided by normative aspirations to tackle climate change (Van Schaik and Schunz 2010 forthcoming: 14) – indicates that the EU has tried to lead by example also at the negotiations. The EU was the first party to bring concrete proposals to the table for the negotiations in Copenhagen. In March 2007 the EU presented a concrete emission reduction target for 2020 (20% CO₂-emission reduction by 2020 compared to 1990 levels, scaling it up to a 30% reduction should others make comparable efforts) (Council 2007). After having presented this EU proposal, other major parties such as Australia, Japan, Russia and the United States moved closer to the ambitious position of the EU. The EU had built up political momentum before the conference and had set the ambition level for the negotiations (Interview with Council Secretariat representative, Brussels, 3 May 2010; Interview by telephone with Swedish EU Council Presidency delegate, 3 May 2010).

However, neither the Swedish EU Presidency nor the EU troika seem to have taken initiatives at the final level of the negotiations. It seems that Presidency representatives at the higher levels of the negotiations in Copenhagen, namely Environment Minister Carlgren and Prime Minister Reinfeldt, sat on the fence and were overcareful. “Carlgren was very ambitious, but other ambitious colleagues [from the EU member states] had to convince him to take the initiative more often and to intervene more actively in the negotiations, for example in the talks between the US and China. And Reinfeldt, he was really careful as a player in the negotiations, probably too careful” (Interview with Dutch delegate, The Hague, 12 May 2010). Carlgren’s and Reinfeldt’s lack of initiative reduced the ability of the EU to act at the negotiations. It was not the EU representatives who took the initiative at this final level of the negotiations in Copenhagen, but a few individual EU member state leaders.

The second and more ambitious criterion of pro-activity, namely playing a leadership role at the negotiations has clearly not been fulfilled. At the negotiations in Copenhagen no party followed the ambitious EU proposal. The norm-driven negotiation strategy of the EU was too ambitious to be reconcilable with the interest-driven strategy of the US and the BASIC countries. The latter were not convinced by the normative arguments of the EU, but were more interested in protecting their diverse self-interests (Van Schaik and Schunz, 2010: 20). When it became clear that the EU’s strategy would fail to secure an ambitious outcome among all UNFCCC parties in Copenhagen, the EU member states were not pro-active enough to adjust their strategy, and EU actors/negotiators did not have independent scope for shifting the EU’s mandate. This resulted in the marginalisation of the EU during the bargaining process, thus further depriving it from playing a leadership role at the negotiations. The US and the BASIC countries mainly concluded the Copenhagen Accord together, without the EU (Van Schaik and Schunz, 2010; Curtin, 2010). As has been reported ‘the Swedish leader hinted that the Europeans had been caught badly off guard. Mr. Reinfeldt said he had gotten his first signals that a

deal had been struck while still engrossed in meetings. "We had very tough negotiations two and a half hours after I read on my mobile telephone that we were already done" he said' (International Herald Tribune, 21/12/2009). Moreover, it has suggested that German chancellor, the French president Sarkozy and the Spanish Prime Minister had to wait until head of state and government leaders Wen (China), Singh (India), Lula (Brazil) and Zuma (South Africa) had finished their conversation before being allowed to contribute at the final negotiations, thus further corroborating that the EU was sidelined (*NRC Handelsblad*, 21/12/2009).

CONCLUSIONS

Overall, our findings indicate that the degree of EU actorness at the UNFCCC COP15 in Copenhagen was relatively low. In terms of *recognition*, it is clear that the EU enjoyed de jure recognition in Copenhagen, possessing formal membership of the UNFCCC. However, the de facto recognition of the EU at the COP15 meeting is less clear cut. At the preparatory negotiator and ministerial level the EU was clearly registered on the analytical radar of third parties and EU Member States, who recognised the EU as a member of the UNFCCC and interacted with the EU at these levels. Substantial de facto recognition of the EU can be seen in the media during the preparatory negotiations. The media seems to have registered the significance of the EU in their analyses and recognised the EU as a member of the UNFCCC that has formulated ambitious goals in an effort to take the lead in the Copenhagen negotiations. It seems that because the EU, in the eyes of others, stood out from the other UNFCCC members by having taken on a leadership role in the UNFCCC over time, the degree of its de facto recognition as a member was relatively high at the preparatory negotiation levels in Copenhagen. Nonetheless the findings indicate that the degree of de facto EU recognition at the level of heads of state and government were in actuality relatively low. Most importantly in that respect, at the final negotiation stage in Copenhagen, third parties directed their attention to the leaders of France, Germany and the UK at the expense of the leaders of the Swedish EU Presidency and the Commission, which had not been the case at the preparatory negotiation levels.

As for *authority*, the findings of this research indicate that the overall degree of formal EU authority at the COP15 meeting seems to have been limited. Member States and the Community share formal legal competences in the issue-area of climate change, as a result of which decisions taken, for instance on the negotiation mandate, have to be agreed by unanimity. To enable the EU to display a high degree of actorness at the negotiations, the EU mandate had to be flexible. At Copenhagen, the flexibility of the mandate was severely constrained due to the unanimity rule. Our findings also suggest that the degree of informal EU authority at the COP15 meeting seems to have been relatively high at the preparatory negotiator and ministerial level. Here, the Commission could make use of its substantial experience and expertise in the issue-area of climate change, the authority of the EU lead

negotiators and issue leaders was well-accepted, and the role and work of the Swedish EU Presidency at the negotiations was respected and appreciated. At the level of heads of state and government, however, the EU's informal authority considerably waned. The Commission did not add experience and expertise to the negotiating process (largely because Commission President Barroso had been sidelined at that stage), and the Swedish Presidency was no longer able to effectively organise, mediate and advance of the EU's stance in the negotiations. At that stage, the three big EU member states seem to have "reclaimed" authority, which provides support for the suggestion that such "repossession" of decisionmaking authority by national governments may be precipitated by the perceived or actual underperformance of the EU representative to whom the decisionmaking authority has been delegated (cf. Nasra 2009: 15).

In terms of *cohesion*, there has been little indication of any substantial degree of EU cohesion at the COP15 meeting. Whilst the shared goal of an ambitious external climate policy contributed to some extent to the EU's value cohesion, there have been more deeply rooted underlying disagreements between the EU member states, grounded in conflicting national interests, which prevented the EU from reaching a high degree of value cohesion. No concrete agreement could be reached in the negotiating mandate on issues, such as the CO₂-emission reduction goal, climate finance, 'hot air', as well as land use, land use change and forestry (LULUCF). As a result, EU negotiators were not able to advance deals with other parties on these issues, which clearly impaired the ability of the EU to act at the negotiations. Even though there is some evidence of a certain degree of tactical cohesion (through issue linkages) at the COP15, this could not make up for the lack of value cohesion between the EU member states. Also the degree of procedural cohesion that existed, especially through the daily EU coordination meetings, could not compensate for the lacking value cohesion. Consequently, overall output cohesion was also low. Because of the lack of cohesion, the member states only managed to slightly adjust the EU negotiation mandate on some occasions, which hampered the ability of the EU negotiators to interact with the other major players. Especially at the final highly politicised negotiation stage among the heads of state and government, at which flexibility was necessary for the EU to actively take part in decision-making, the lack of cohesion hampered the EU's ability to act. The low output cohesion can be further confirmed through the persisting disagreements during (and beyond) the Copenhagen negotiations on issue like the CO₂ reduction target, forestry and climate finance.

As for *autonomy*, three aspects have been analysed. First, findings concerning the question of extent to which the EU's system of coordination and representation at the COP15 can be seen as distinct from its member states seem to be mixed. The degree to which the EU representatives in Copenhagen can be considered as European as opposed to national representatives seems to be relatively limited. A certain 'EU we-feeling' among the EU member state delegates who acted as EU negotiators in Copenhagen seems to have occurred, but EU member state delegates followed national interests when politically sensitive issues for their country were discussed. Conversely, the

distinctiveness of the EU's institutional apparatus at the COP15 from that of the EU member states appears to be rather high. Second, the EU representatives' freedom of action (including the ability to set policy goals) at the COP15 meeting has been considerably constricted. The EU negotiation mandate has been rather inflexible, largely because of the unanimity requirement. This has diminished the ability of the EU to act at the negotiations. For example, since the EU could not manage to substantially amend its ambitious negotiating line, the EU became increasingly marginalised in the negotiations. Although several aspects of the mandate were left purposely unspecified/vague, this did not really increase the amount of leeway that the EU agents enjoyed because the issues in question, such as 'hot air' were politically salient and EU negotiators could not afford to go ahead independently, without more specific agreement of the EU Member governments. Third, the overall level of pro-activity exhibited by the EU at the COP15 seems to have been relatively limited. The EU managed to take initiatives before the start of the Copenhagen negotiations, through which it hoped to lead by example. However, at the final level of the Copenhagen negotiations the EU failed to take important initiatives and clearly was not able to play a leadership role. On the contrary, as mentioned the EU was increasingly sidelined.

In view of the above analysis, it appears two sub-criteria have been particularly responsible for the lack of overall actorness in this case: formal authority (unanimity) and the low value cohesion. Due to these two factors the important categories of output cohesion and proactivity were also adversely affected and the EU's capacity to act was severely compromised.

Our findings differ from earlier ones of Groenleer and van Schaik (2007), who argued that the EU showed a relatively high degree of actorness at the negotiations in the UNFCCC regarding the implementation of the Kyoto Protocol. Especially at the final negotiation stage of the heads of state and government in Copenhagen the degree of EU actorness seems to have been low, compared to the preparatory negotiator and ministerial level of the negotiations. This suggests that the degree of politicisation, which differs across the different levels of negotiation, constitutes an important factor conditioning the extent of EU actorness. When push comes to shove and issues become more salient at the level of heads of state and government and at decision-critical junctures EU actorness seems to diminish adversely. The erosion of the EU's actorness in the final phase of negotiation casts doubt on the resilience of EU actorness more generally at the UNFCCC COP15.

The entry into force of the Treaty of Lisbon in December 2009, which did not affect the EU during the Copenhagen negotiations yet, will result in changes in the EU's external climate policy system. For example, the treaty opens the possibility to confer more powers on the EU on issues which relate to the EU's common foreign and security policy. Future empirical research should analyse the extent to which the provisions of the Lisbon Treaty have impacted on the EU's actorness in external climate change policy-making.

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