

Ever Challenged Union: Exploring Ways Out of the Crises

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A weakened pioneer: lessons learned from the EU's climate policy crisis

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Abstract:

The EU has been long considered a world-leader in climate policy, however in the past decade it became both less able to maintain one voice with regards to climate issues and incapable of using its leverage to exert influence on non-EU countries. One of the recent failures evidencing EU's weakened role has been caving in to international pressures and partially suspending the EU Emissions Trading System (EU ETS) for aviation. Engaging with emissions trading as a case, this paper analyses the EU strategies employed to firstly sustain its position in multilateral, climate-related regulation of aviation and secondly, it considers the lessons learned from the crisis situation. Furthermore, it is demonstrated that common positions between the Directorates General (DGs) must be safeguarded for the EU to promote its regulatory power and expanding its legitimacy. While drawing on interviews conducted in 2013 in Washington, DC with representatives of US aviation industry, eNGOs and Congressional staff as well as in 2014 in Brussels and London with European Commission officials, aviation industry representatives, eNGOs and policy think tanks, this paper contributes at both theoretical and methodological levels.

1 Introduction

In the previous years the European Union Emissions Trading System (EU ETS) has been one of the most researched cases of international climate leadership of the EU. Scholars have also widely contributed to understanding the implications of the mechanism globally while looking at what both theories and policy makers can learn from the system at drafting, negotiating and implementing stages of the scheme (Ellerman *et al.* 2008; Kruger *et al.* 2007; Wettestad 2005). Furthermore, the inclusion of aviation into the scheme has become an opportunity to look at the EU's climate / environmental leadership (Kopsch 2012; Domingos 2012; Motaal 2012). Drawing on literatures on the EU's climate endeavours, this paper is aspiring to address a visible gap in the literature: what are the lessons that the EU can learn itself from its failed attempt to include international aviation into its scheme. Secondly, it asks whether the EU will be able to further lead ambitious international action in terms of decreasing aviation's CO₂ emissions while the sector is presumed to grow. The paper is structured in the following manner: firstly the policy context of the EU ETS and aviation debate is provided. Next, a brief discussion on the EU's climate leadership is presented (part two) to introduce the details of the case analysed (part three). The fourth part of the paper provides "the lessons learned" for the EU's climate leadership and the fifth part concludes.

The empirical material for this paper was gathered during semi-structured interviews conducted between March and May 2013 in Washington, DC and in March and April 2014 in Brussels. In the US 20 people were interviewed in 18 interviews (two interviews were given by two persons simultaneously). Fifteen of them were face-to-face meetings that lasted between 40 and 90 minutes. Two more interviews were conducted over phone due to the interviewee's limited availability in Washington. Additionally one interview was conducted via Skype in June 2013. The interviewees come from various backgrounds: the US Congress, American aviation industry (airlines, manufacturers, airports), environmental NGOs, EU officials present in Washington, one consultancy firm and one think-tank that were involved in the discussion on the EU ETS and aviation. In Brussels 19 interviews were conducted during face-to-face meetings that lasted between 50 and 90 minutes. The interviewees included European Commission staff, staff of the Members of the European Parliament, staff of Parliamentary groups, environmental NGOs representatives and

aviation industry representatives (airlines, airports, plane manufacturers). All the interviews were transcribed and the verbatim transcripts were used in the analysis.

2 Policy context: EU ETS for aviation

From an environmental perspective, the rationale for including aviation within programs for action on climate change would appear clear. Aviation itself is responsible for approximately 2-2,5% total CO₂ emissions globally (Lee *et al.*, 2009) and 13% of all greenhouse gas emissions related to transportation (European Commission 2005). The trend is growing, according to estimates aviation emissions will grow by 230% to even 667% (Runge-Metzger 2011). In 2006 aviation emissions amounted to 630 Mtonnes CO₂ where 68% of the volume was produced by international aviation and 38% by domestic operations (Lee, Lim, & Owen, 2013). According to the data reported by the Annex I countries to the United Nations Framework Convention on Climate Change (UNFCCC) the European Union accounted for more than a half of the international aviation emissions (European Commission 2005, 5).

The EU decided to treat aviation as another sector to be included into its scheme in this way bypassing a need to create a separate system and avoiding larger international negotiations on the scheme's shape. The principle of the Aviation Directive is based on the assumption that an aircraft is a mobile source of CO₂ emissions¹. Although the EU believes that the best solution would concern a global agreement it still decided on unilateral inclusion as the EU ETS "may serve as a model for the use of emissions trading worldwide" (Official Journal of the European Union 2008). Further, it underlines that the EU and its member states should continue efforts to reach a global agreement.

In the meantime, the EU decided to set a cap on emissions from international aviation taking as a baseline 2004-2006 period, which is different than the standard ETS baseline of 1990. This change was motivated by a rapid growth of the aviation sector in recent years. The Directive assumed that 85% of the allowances would be given for free in the first trading period and later the percentage would be lowered to 82% in the second period. When it comes to the reductions of emissions, the system works the same for aviation as for any other sector in the ETS – to satisfy the EU

¹ In the Directive the word „installations” was changed to activities in order to broaden the scope of the EU ETS.

requirements airlines should either implement technologies to decrease their overall CO₂ production or buy allowances from other sectors, Clean Development Mechanism projects or Joint Implementation (both under Kyoto Protocol). The third way would be to decrease the number of flights to and from the EU.

In case of non-compliance of the aircraft operators, the EU can fine them 100€ per missing allowance on top of the obligation to procure and surrender missing allowances. What is more, if the failure to submit allowances continues the country where carrier is registered “may request the Commission to decide on the imposition of an operating ban on the aircraft operator concerned” (Official Journal of the European Union, 2008).

The Directive provides also several exemptions, among them exclusion of operators who provide less than 243 flights per period for three consecutive four-month periods or their total annual emissions lower than 10 000 tonnes per year, and military flights². One more exemption is granted for countries that took “equivalent measures”, i.e. covered aviation with their domestic emission trading systems. If the EU ETS for aviation had not been suspended it would have included carriers from 62 countries (Motaal 2012, p.11).

The European Commission estimated if all these provisions are taken into account and the countries comply with the scheme it would bring savings as high as 183 million tonnes of CO₂ by 2020, which is a reduction of 46% when compared with business as usual (European Commission 2011).

One major concern over the design of the inclusion was raised from the very beginning: the fact that the EU decided to include not only the European carriers but also all the operators that depart or land in Europe. According to the non-EU states as well as non-EU airlines this step was illegal on several grounds. Firstly, the opponents argued that it interferes with sovereignty over airspace since the emissions taken into account are calculated for the whole duration of flight, including the part outside of the EU. Secondly, it was claimed that it infringes the principle of freedom to fly over the high seas and of exclusive jurisdiction of the country where aircraft is registered while over the high seas. Further challenges included infringements of the Chicago Convention on International Civil Aviation, Open Skies Agreements and the Kyoto

² The full list of excluded types of flights can be found in the annex to the Directive.

Protocol³. For the purposes of this analysis, the EU ETS for aviation is looked at only until the decision to stop the enforcement of the inclusion of aviation in the EU ETS with regards to flights to and from non-European countries announced 12th November 2012 (European Commission 2012).

3 EU's ambitions: sustaining leadership

Having explained the policy context of the presented material, the paper gives consideration now to the issue of the EU's leadership in climate policy. The EU has enjoyed a label of a green giant (Vig and Faure 2004) and a leader in environmental protection as early as in the 1990' (Sands 1991). It was also called "a key supporter, if not the *chief demandeur* of every major international environmental agreement" (Kelemen 2010, 337) and was largely seen as a representative norm entrepreneur (Ellickson 2001, Hechter and Opp 2001, Lightfoot and Burchell 2005) and a political entrepreneur (Tiberghien 2007) where there is a visible lack of a global framework (Scott and Rajamani 2012, 476) and when individual countries are focused on the economic dimension of climate change (Kythreotis 2012, 458).

In relation to the regulatory insufficiencies within the environmental realm, it is worth underlining that the international landscape of environmental regulation became even more deserted when the United States stepped down from its strong international position in environmental policy making (Harris 2007, 365). Although Kilian and Elgström (2010, 269) say that leadership is a "competitive business" today it seems that the EU does not have too many competitors in its efforts to become a global leader in environmental regulation. The United States for example perceived itself as a self-confident, powerful state and preferred to "insulate" from the consequences of complying with international climate treaties (Brunée 2009). The strong opposition to the EU ETS might be seen as a part of this strategy.

The EU has been carefully projecting itself as green avant-garde, of which two examples are mentioned below. Already in 1990 in the Dublin Declaration the environmental issues were viewed in a larger perspective:

"The Community's credibility and effectiveness at this wider level depends in large measure on the ability to adopt progressive

³ All the listed issues were brought to the Court of Justice of the European Union by several American airlines in Case C-366/10 The Air Transport Association of America, American Airlines, Inc., Continental Airlines, Inc., United Airlines, Inc., v The Secretary of State for Energy and Climate Change.

environmental measures for implementation and enforcement by its Member States. The internal and external dimensions of Community environment policy are therefore inextricably linked (...). The Community must use more effectively its position of moral, economic and political authority to advance international efforts to solve global problems and to promote sustainable development and respect for the global commons" (European Council 1990).

This quote by and large shows the EU ambitions with regards to climate regulations and has been continued later creating building a self-conception of the EU "being both unified and a role model, or, in our analytical terms, as being both coherent and credible" (Kilian and Elgström 2010, 261). However, only later on, these words started to move from "rhetorical leadership to climate policies" (Oberthür & Roche Kelly 2008, p.39) Fifteen years after publishing the Dublin Declaration, EU's narrative on contagiousness of its leadership is quite similar, as expressed by the Environment Commissioner while launching the second European Climate Change Programme

"This is not just leadership for the sake of leadership, or because we think we can fight climate change on our own - we clearly can't. The EU's commitment and success has been an inspiration to our global partners. Without it, it is certain that the Kyoto Protocol would not have entered into force" (Dimas 2005).

At the same time, even if self-presenting itself as a leader, the EU did not manage to successfully lead the climate summit in Copenhagen, which has been widely assessed as a EU's climate leadership failure (Groen & Niemann 2013; Oberthür 2011).

The second strain of literature that this paper engages with concerns the common voice of the EU on external issues. This is important in the analysed context as the empirical material indicates that lack of single voice has affected the EU's bargaining power adversely. It is not entirely certain whether there is a direct positive correlation regarding EU's internal cohesiveness⁴ and effectiveness of its external actions (da Conceição-Heldt & Meunier 2014). Some would argue that there is such a link (Laatikainen & Smith 2006; Meunier 2005) while others would see the relation between cohesiveness and effectiveness of external policies as more complex (Falkner & Müller 2013). A recent study of nine international negotiations on environmental issues has indicated that the EU tends to be more cohesive while negotiating at a global level than at a regional level (Delreux 2014a). At the same time, given the

⁴ Understood here as "the degree to which decision making rules produce a single message spoken with a single voice" (Conceicao-Heldt & Meunier 2014, p.963).

varied preferences of the states, one shall not consider the cohesiveness in a dichotomous terms: heterogeneous or homogenous, but rather see a spectrum of these two (da Conceição-Heldt & Meunier 2014). It is also argued that “in global governance overall, the EU resembles more a cacophony of voices unable to develop or defend a common position over time” (da Conceição-Heldt & Meunier 2014, p.962). No matter how much acting in unity affects the effectiveness, it has been argued that EU's single voice in international environmental negotiations ‘can also invoke a negative reaction from negotiating partners. The EU acting as a bloc may cause irritation’ (van Schaik 2013, p.192). Especially, if one takes into consideration that “the EU is generally known as one of the strongest supporters of strict environmental policies at the multilateral level” (Delreux 2014b, p.66).

Having these premises in mind, one can proceed to unpacking the opposition to the EU leadership with regards to the inclusion of aviation into the scheme. The EU's approach to the problem was featuring leadership in a way that the EU would decide to step into the role of a *demandeur* in a context of policy gridlock at a global level. In this way, it can also be argued that the decision to include aviation has been an example of unilateralism (in the climate setting) understood as “enactment of environmental policies to address global problems while other countries remain inactive” (Urpelainen 2013, 26).

4 The case of opposition against the EU ETS

Once the policy context and the academic debates this paper is relevant for has been outlined, one can proceed to a brief presentation of the case of the EU failing to include aviation into the EU ETS. While detailed accounts of the process have been provided elsewhere (Pustelnik 2014; Preston *et al.* 2012; Bogojević 2012), this part provides background for the lessons learned discussed further.

Why can the situation regarding inclusion of international aviation be seen as a crisis for the EU climate policy? What were the steps that led the climate pioneer into caving in to the pressures against the inclusion?

The international opposition towards the scheme can be considered in three interrelated blocks considered in this section (see: Table 1).

Table 1 Reactions of the EC to the opposition

Type of opposition	Reaction of the EU
European airlines	- Accepting some of the cues and dismissing others
EU ETS Prohibition Bill	- diplomatic endeavours of the EU Representation in the US - liaising with the US eNGOs in order to “demystify” the inclusion of aviation - EU representatives testifying at the Congress hearings
Coalition of the unwilling	- no official statements concerning the coalition's actions - “behind the stage” activities

Chronologically first was the opposition stemming from within the EU, where airlines have been afraid of finding themselves in a competitive disadvantage situation against non-EU carriers if the inclusion affected the EU carriers only. Some EU airlines would also argue that inclusion could potentially lead to re-routing flights via nearby non-EU airports, for example in Switzerland or Turkey in order to decrease fees towards EU ETS allowances (Interview 25.03.2014, Lufthansa 2012). The European opposition would be however less vocal than the American one, as explained by one of the interviewees, possibly because of the fact that the European airlines did not want to aggressively oppose its long-term regulator, seeing that other stakeholders were already putting enough pressure on the Commission. What is more, the low-cost EU carriers were strong supporters of the inclusion, which they saw both as greening their image and possibly providing some competitive advantage against the legacy carriers.

The second strain of opposition would come from the US, where the aviation industry took a strong stance against the ETS. Already in 2008 the airlines would signal their disagreement with the EU plans. At the 2008 at Sustainable Aviation Network Europe Conference the Airlines for America, the main association for American airlines, representative Nancy Young would underline that the way the EU wants to include aviation breaches Articles 1,12,15 and 25 of the Chicago Convention. Young would say:

“The US presidential candidates, even if they believe emissions trading is a good policy, do not necessarily agree it is right for aviation and both are very committed to US sovereignty in its airspace. So the thought that the US will give up on this dispute is wrong. I think we will be in the courts over this sometime in the next two years.”
 (Greenair Online 2008)

This quote manifests the carrier's self-confidence and that a strategy was in their minds as early as 2008. Consequently, unsatisfied with the policy responses of the

European Commission to the proposition to exclude the third countries from complying with EU ETS for aviation the predecessor of A4A, Air Transport Association of America (ATAA), filed a case to the High Court of Justice of England and Wales on December 16th 2009⁵. The case was filed to a British court, as the UK was the administrator of the ETS for the American airlines challenging the legislation. The rationale behind the cause was related to three grounds: breach of principles of customary international law, the fact that international aviation should be negotiated and adopted under auspices of International Civil Aviation Organisation⁶ (ICAO) and finally ATAA, claimed that EU ETS in practice is a tax, therefore it interferes with the freedoms granted by the Chicago Convention on International Civil Aviation (Bogojević 2012). The British court asked the Court of Justice of the European Union (CJEU) to determine if the EU directive was valid⁷ and therefore the proceedings in the UK were stayed. On December 21st 2011 the European Court announced that the Directive in question did not infringe the principles of customary international law at issue or the Open Skies Agreement (CJEU 2011).

Concurrently to the court case, the aviation industry would lobby the US Congress that at the time was considering a bill that would forbid the US airlines participating in the EU ETS. The American policy makers flagged in 2010 at the ICAO level that the inclusion does not sit comfortably with their understanding what Europeans can or cannot regulate. The US had signalled its concern over the EU ETS by placing a reservation to the Resolution A37-17/2 – Consolidated Declaration of the Permanent Policies and Practices of ICAO Related to Protection of Environment – Climate Change stating “that States must engage in constructive negotiations in order for MBMs to be applied” (ICAO 2011). The US Delegation underlined also the importance of accepting the ICAO as the venue for these discussions to take place. This however was only a prelude for the whole anti-ETS front in Washington, DC (ICAO 2011). Not long afterwards, in June 2011 the EU

⁵The EU ETS as a whole was also challenged beforehand. There were over 40 cases brought to courts both by member states and private operators.

⁶ ICAO was established in 1944 by representatives of governments who gathered in Chicago to discuss the post-war aviation issues and is headquartered in Montreal, Canada. The ICAO's mission is “to serve as the global forum of States for international civil aviation. ICAO develops policies and Standards, undertakes compliance audits, performs studies and analyses, provides assistance and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.” (ICAO 2015)

⁷Case C-366/10 The Air Transport Association of America, American Airlines, Inc, Continental Airlines, Inc, United Airlines, Inc, v The Secretary of State for Energy and Climate Change.

ETS Prohibition Act was introduced in the US Senate and soon thereafter the US delegation has delivered a formal objection against the inclusion of American carriers to the EU ETS at a bilateral EU-US meeting. After a relatively quick legislative process (see: Table 2) the Bill has been signed by the President on November 27th 2012. Although the Bill did not automatically prohibit the participation and only authorized the Secretary of Transportation “prohibit an operator of a civil aircraft of the United States from participating in the emissions trading scheme unilaterally established by the European Union” (House of Representatives 2012).

Table 2: EU ETS Prohibition Act Timeline

Date	Event
27.07.2011	Subcommittee on Aviation hearing “The European Union’s Emissions Trading Scheme: A Violation of International Law”
07.12.2011	Bill introduced to the Senate (S.1956)
24.10.2011	Bill (H.R. 2594) Passed at the House of Representatives
16.12.2011	Clinton - LaHood Letter to the EC
06.06.2012	Hearing at the Senate (ALPA, EDF, A4A, EC, NBAA, Secretary of Transportation testifying)
22.09.2012	The Bill (S.1956) Passed at the Senate
13.11.2012	The Bill (S.1956) Passed at the House of Representatives
16.11.2012	The Bill (S.1956) presented to the President
27.11.2012	Signed by the President and became Public Law No: 112-200

The third block, overlapping with the American opposition, is identified as so called “coalition of the unwilling”, an informal group of around 26 countries (the number was varying over time) including, among the others, the US, China, Russia and India.

The coalition’s initiatives focussed on voicing concerns of non-EU countries with regards to the EU ETS for aviation. The countries met officially three times and the meetings resulted in declarations outlining their critical views on the issue. The strongest in terms of retaliations it was threatening with was the Moscow Declaration published after coalition’s meeting in February 2012. The tone of the document approved in Russia was more determined and its purpose was outlined “as a clear manifestation of their [the signatories] unanimous position that the EU and its Member States must cease application of the Directive 2008/101/EC to airlines/ aircraft operators registered in third States” (Russian Aviation 2012). In that period, the application of the directive was however limited to requiring the submission of the emissions data, but no actual trading for aviation had been launched. Above that, the coalition included a list of possible actions and measures that the coalition is considering against the EU: filing application for resolution of dispute to ICAO,

continue with national bills to prohibit airlines from participation or using existing regulations against the ETS, hold further meetings to discuss reciprocal measures, requiring additional data from EU carriers, assessing consistency of the EU ETS with the WTO Agreements, reviewing Bilateral Air Services Agreements, and discontinuing negotiations to improve operating rights for EU airlines (Russian Aviation 2012). While explaining the nature of possible retaliatory actions the Russian deputy minister of transport stated: "Every state will choose the most effective and reliable measures, which will help to cancel or postpone the implementation of the EU ETS" (Murray 2012). Even though there were only three official meetings of the coalition, it has been able to most poignantly sum up the essence of opposition and gave yet another evidence of the crucial role of nation states in climate change governance (Held *et al.* 2011).

It is not the ambition of this paper to adjudicate which of these has been the most effective in preventing the EU from applying the EU ETS to non-EU routes; the aim has been reached though. The EU ETS for the non-EU routes has been first suspended in November 2012 by so called "stop the clock" decision announced by the EU Climate Action Commissioner. As the official Commissioner's memo explains:

"In order create a positive atmosphere around these negotiations, I've just recommended in a telephone conference with the 27 Member States that the EU "stops the clock" when it comes to enforcement of the inclusion of aviation in the EU ETS to and from non-European countries until after the ICAO General Assembly next autumn." (European Commission 2012).

This decision has been then formally passed by the European Parliament and the Council in April 2013 (Official Journal of the European Union 2013). Further suspension, until the end of 2016 was decided in 2014 (Official Journal of the European Union 2014). At the same time, the Commission indicated that in the case there is no global market-based measure agreed upon at ICAO by the expiration of stop the clock the enforcement of the scheme will resume automatically.

5 Responses to the opposition: lessons learned

This penultimate section presents some the lessons that the EU can learn from the failed inclusion of aviation into the EU ETS. There are divided into three sections and concern internal workings of the Commission, EU acting as united block in the

international arena and thirdly these pertaining to the EU's opportunities in shaping international climate debate concerning aviation emissions.

5.1 Lesson one: producing a coherent strategy among DGs

The first important lesson to be learned by the EU concerns its internal proceedings within the EC. For the analysed case two DGs particularly present: DG MOVE and DG CLIMA that both were engaged in the discussion. DG CLIMA as a lead part of the Commission and DG MOVE's involvement was limited to the ICAO side of the issue. The issues related to environment are seen as horizontal (Jordan & Schout 2006) and therefore, the interaction between the DGs is larger here than if compared for example with education or waste management. There is however a division between various parts of the Commission and it is not a new phenomenon. It has been observed already in 2001 "step by step integration, which has characterised the [EU's] development, has tended to slice policies into sectoral strands, with different objectives and different tools; over time the capacity to ensure...coherence has diminished" (European Commission 2001). In the case analysed here, the interaction is situated at the axis between DG MOVE and DG CLIMA. The EU's Representation to ICAO is staffed with DG MOVE officers and ICAO in general is largely populated by staff related more to transport than environment ministries. While engaging in the discussion on DGs competencies, the institutional context is uncovered, which is crucial for studying governance (Klijn 1997).

One of the Commission's officers engaged with ICAO would believe that there has always been a dynamic relationship between DG MOVE and DG CLIMA (and their predecessors): they would be fighting between the interests of various actors. The interviewee would portray the situation as follows: there would be "trade fascist" who want to protect the industry and the "environmental communists" who want to protect the environment.

"It was very clear on the MOVE side, the aviation authorities wanted this resolved and would have done anything just to sort of clear the desk. And CLIMA has set the bar a lot higher because they were worried about this general impact on the rest of the EU ETS." (Interview 16.06.2014)

The same interviewee would also strongly emphasise that DG CLIMA feared massive non-compliance for other sectors learning from successful lobbying of the airlines and the whole EU ETS would be at stake (Interview 16.06.2014). There is an obvious

divergence of interests here and quite high stake on the DG CLIMA side. What is more the same mechanism appeared at the level of the Member State:

“What I think did happen, in conversations with European Member States, I think, all of the sudden, the Members States were getting two lots of input – the transport ministries were coming back and saying “We need to think seriously about what we want to fight in this battle” and the environment ministries through CLIMA were coming back and saying “There are big principles at stake here” and I think that internal confusion was part of the reason why Europe got in such a mess.” (Interview 16.06.2014).

Furthermore, the EU ETS has always been a flagship initiative for DG CLIMA and was strongly endorsed by the Commission in general. Even though EU-related aviation issues are under discretion of DG MOVE, it relatively quickly became obvious that Secretariat General of the European Commission and the President of the Commission would endorse DG CLIMA, not DG MOVE to tackle the issue of emissions coming from that sector. Aviation was thought to increase the volume of emissions allowances traded and increase in scope the whole scheme. As a corollary of the Climate Action lead, two EC interviewees would believe that DG CLIMA was listened to more in the Commission and the College of Commissioners.

These tensions reported in the work within the Commission became also visible at the ICAO level. In Montreal, DG Climate Action has only an advisory position to DG Mobility and Transport that is the lead service there. A high-ranking interviewee representing the Commission would claim that due to the EU ETS issue the EU was losing credit and influence in other files and the issue “was bringing the bad vibes” and “perhaps it wasn't pain in the ass but a bit it was”. They would continue saying: “Sometimes within the aviation community one would say, it's a climate people file, but our problem [DG MOVE], and it is us who go to trenches and die”. The Commission's office in Montreal would feel forced to work on the issue on one side and pushed to be very ambitious by DG CLIMA on the other side. As argued by Baumgartner, the decision concerning, which DG is going to tackle a given policy process is crucial as the entities that are to be regulated cannot simply file for altering to a directorate they would prefer. As long as the issue is new, the allocation can be “quite malleable or unclear” (2007, p.484) but in the case of EU ETS it seems that DG CLIMA felt its primate though DG MOVE could argue that it is more of a transport issue. This obviously would be welcome by the industry.

When one looks at introducing the aviation into the EU ETS it could be considered a tactical mistake from the Commission's side: DG MOVE was more able to understand the ICAO dynamics and the general climate there better, however they were not the lead service for the EU ETS. Conversely DG CLIMA led the file but was too slow when reacting to developments happening in Montreal. The stiff position of DG CLIMA that did not want to allow the concessions that DG MOVE would deem necessary to ease the resistance that had been building up at the ICAO level and at the level of individual non-EU countries.

It is not however only the account coming from the Commission that would admit that there were various internal problems with regards to the coordination of the work on the EU ETS at an international level. Also the European airlines were able to observe issues arising within the Commission. A representative of a EU airline would argue that the services chosen to deal with the aviation inclusion were inadequate:

It's very unfortunate what's the Commission has done in many aspects and since I have seen it was DG CLIMA who started to deal with the EU ETS for aviation and they have had no clue about how aviation works, the regulatory framework of international aviation. (Interview 25.03.2014)

The industry regards DG CLIMA as less competent than DG MOVE when it comes to any aviation regulation issues, but what is more, the industry would see that cooperation was very much missing while working on the Directive and its implementation. The lack of joint action was even interpreted as an unwillingness of DG MOVE to assist DG CLIMA.

"I have seen it three or four times when DG CLIMA did something, a new version of stop the clock, a new version of whatever and I happened to be with people from DG MOVE the very moment and they were taken as much by surprise as I was (...) Of course, as I said, they were not really allied with the other parts of the Commission, DG MOVE wouldn't help them. 'You started all this, now you have to deal with it'." (Interview 25.03.2014)

Commission officials would provide a more subtle view on this, believing that DG MOVE was in the front line of the negotiations as they are responsible for the air transport relations with the third countries. Additionally they would claim:

"Also at ICAO it made life more difficult but with our colleagues in DG Climate, I work very closely with them and it's true of course, we look at this from a different perspective. They obviously have... their priority is climate action and for us is the development of air transport" (Interview 28.04.2014)

It is difficult to assess to what extent the issue would have been addressed differently under the DG MOVE lead or co-lead, however, while looking at the EU ETS from the MLG perspective, this ambivalent relation between the DGs negatively affected the bargaining power of the EU and its leadership at the ICAO level. The “bad vibes” mentioned by one of the interviewees would affect the EU interests well beyond the environmental issues and could have undermined the long-lasting alliances at ICAO. Furthermore, the EU was not able to fully employ its ICAO position and knowledge of the Montreal environment, as there were discrepancies between the two Directorates. The efforts to make the EU a visible and strong actor were confronted with diverging visions of how the file should be led and to what degree the EU should be pushing for ambitious goals globally and discretion for regional solutions. What is more, the divergence in approach to the inclusion between DG CLIMA and DG MOVE split the voice, since DG MOVE felt it was obliged to deal with a problem that has been produced by someone else. This has been further aggravated by rather limited involvement of European Union External Action (the EU's diplomatic service) that was considered by the interviewees to have been of some importance only in the US and confirmed also elsewhere (Staniland 2012).

5.2 Lesson two: importance of maintaining one voice in the discussion

As argued by Delreux “what matters is not the diversity and multiplicity of negotiators, but the fact that they all send a similar message to the negotiation partners” (2014a, p.1030). This has definitely not been the case for the Aviation Directive. The divisions began at the point where risks related to potential retaliatory actions that the non-EU countries were threatening the EU with started to create risks for the Member States. This became especially important when the Chinese started to threaten with suspending Airbus aircraft orders. As reported in the media, the first cancellations⁸ happened in June 2011 and represented orders worth around 3,8 billion dollars (Clark 2011, Wilson 2011). Later during the year, China was to call off more orders and as a consequence Airbus would have lost up to 12 billion dollars worth of purchases (Hepher, Leung & Holmes 2012). This was an issue that was also visible for the Commission that on one side was negotiating with the non-EU countries and on

⁸There is no official documents that explicitly mention cancellations. Although in the letter from Airbus CEO and others to the prime ministers of France, Germany, the UK and Spain, the authors mention “suspension of orders” (Airbus 2012) rather than cancellations, in the media and in the interviews, the phrase used would be “cancellation”.

another was exposed to lobbying from the EU Member States, mostly the UK and France, which are main powerhouses of the company. As explained by an EC interviewee:

“Then, you have Member States who may have interests and it is also clear that... it was or it is still the Member States who have to implement it so this is their role in the whole thing and of course single Member States were afraid of being singled out by measures by China.” (Interview 26.03.2014)

A Brussels-based interviewee representing an aviation organisation would see the role of Airbus's involvement as even more powerful and would attribute Britain, France and Germany being in favour of suspending the EU ETS for aviation to the company's lobbying:

“Of course Airbus was very into the stop the clock exemption, from the start. They pushed for it because it's famous for these orders from China (...) They were afraid of possible trade war from third countries (...). Obviously they were the big big ones to say to the European Parliament and to the Commission “be careful” because the weight of this aircraft manufacturing industry is huge in Europe. You don't want to put this kind of environmental regulation in the way. I think this is what happened. I know that at the Council those were the ones that pushed. This time again it was France, Germany, the UK, who said “We want stop the clock extension” (Interview 17.04.2014).

The role of Member States, especially those where Airbus has its vital interests, visibly affected the debate. Historically, they have been known for having shown little interest in giving up their authority with regards to aviation regulation, both from security and prestige-related reasons (Delreux 2011). Although the state's interests usually emanate through the European Council (Janning 2005), in the analysed case the suspension of the scheme happened through the EC decision, which indicates that in a situation of threat the business-as-usual decision-making may undergo changes that reflect either urgency or the need to “save face” of the European Commission.

The lack of a cohesive message that would be coming from the whole EU made it easier for the non-EU countries as well as the aviation industry to exploit the structure, in which some Member States would be more exposed to risks related to retaliatory measures than others. This contributes to the aforementioned discussions concerning the unity of the EU and indicates that a common voice on external issues needs to be maintained not only during the decision-making stage but also later, when policies are being implemented.

5.3 Lesson three: unilateral action

One could argue that the ICAO's deadlock and a general feeling that an action should be taken against growing aviation emissions creates "opportunity structures" (after Kitschelt, 1986), which is "the exogenous context of events and ideas that enables or constrains EU action" (Groen et al. 2012, p.311). In the analysed case, the opportunities on the EU sides seemed by and large promising. The EU had a functioning ETS architecture, relatively well-established position at ICAO as well as recognized leading position in international climate policy. What is more, provided that several countries, and most prominently China, have been establishing their pilot schemes for carbon trading, aviation could have been included in their mechanisms, if discussed previously. Although there has been a provision to exempt airlines from countries with equivalent carbon trading measures, the EU ETS has been considered as a threat to sovereignty and hence the political will to comply with the EU carbon scheme.

The case suggests thus that an attempt to unilaterally deal with a climate-related issue, especially if a highly international and highly politicized sector is concerned, cannot yield positive results. Although the attempt to include aviation was relatively minor step in terms of climate regulation, it has been argued that in a broader context unilateral approach may actually lead to increase of CO₂ emitted due to so called green paradox (Ritter & Schopf 2014). For aviation this was likely if aircraft operators decided to re-route flights in order to lower the number of EU allowances they have to surrender.

The analysed case has also highlighted the diverging approach to the aviation emissions regulation in the EU and the US. This can translate into further stalemates on other climate-related issues at the UN level. As argued by Schunz, an agreement between the most important industrialized players on the two sides of the Atlantic remains indispensable for the conclusion of a global climate agreement" (2009, p.77). Having this in mind and given the US's reluctance to accept unilateral measures of any international actor, the EU Instead of well-rehearsed by the EU "leading by example" in a highly international and multilaterally regulated sector the EU should focus on multilateral venues and boost its efforts there.

While "a directional leader demonstrates through domestic implementation that a goal is achievable and attempts to shape how negotiators perceive the issues under consideration and think about solutions" (Gupta & Ringius 2001, p.282), in the

EU ETS case the EU decided to implement the inclusion of aviation internally and externally at the same time. Also the literature would deem the inclusion of aviation into the EU ETS as an example of directional leadership (Lindenthal 2014). This step however was not normatively appealing to the international partners who did for whom the inclusion rather than creating an opportunity, introduced straightforward obligations to the non-EU airlines. Furthermore, the EU has not offered any incentive structure for the partaking entities, which to some extent could have made the EU ETS more. Also, the potential CO₂ reductions were not entirely clear to the industry that would see emissions trading as a potential only if first the industry was given time to invest in lighter aircraft frames and fuel efficiency measures (Interview 25.04.2013).

In the analysed case, the crisis of EU ETS for aviation has been also aggravated by the pressure to negotiate multilaterally. The “we need to go back to ICAO” argument has been reverberating among all countries opposing the inclusion. The aviation sector is regulated by overlapping regimes (global and bi-lateral) has also made the EU's push for inclusion more difficult and has demonstrated a strong multilateral orientation of the aviation regulatory regimes.

6 Conclusions

Even though the analysed case can be identified as a failure and a crisis situation for the EU climate policy, it can be considered also as having a deeper meaning. It has hugely impacted the discourse concerning aviation emissions abatement. By showing the international partners how the emissions policy for aviation could be, the EU provided a relevant emissions trading experiment that even if failed internationally, made a change in thinking about what can be possible and in this way affected wider governance of the industry. In this way, the failure provides important insights into the process.

Still, the EU has gone out of the EU ETS and aviation crisis to some extent weaker than it has been before and came to realization that unilateral regulation will not always be seen as the ultimate solution for stalemate or less than desired levels of international involvement in tackling CO₂ emissions. It has undermined the EU's credibility as far as implementation of its climate policies is concerned and experiences related to the EU ETS should be taken into consideration with regards to short-term planning (i.e. what is the future of the EU ETS for aviation), mid-term strategic planning with regards to cooperation with international organizations and non-EU

countries as well as long-term vision of the EU's leading position in climate policy.

Even though the EU has had a mixed record in attempting to regulate aviation (Staniland 2012), a sector, which is highly mobile, it is still looking towards similarly challenging areas. The lessons that this paper is looking at are crucial if one concerns that the EU might be considering including shipping sector to the EU ETS (European Commission 2015), which can be viewed as featuring characteristics similar to aviation. If this was to happen, the EU may need to be more concerned about international partners opinions and their willingness to cooperate. Furthermore, the case indicates that the disagreement with unilateral measures regarding climate derive from economic, political and legal dimensions of the issue and thus have to be tackled taking these three into account. It is germane to the policy area in question to remember that ignoring these may hinder EU's ambition to accelerate global endeavours in tackling CO₂ emissions and exacerbate tensions related to green leadership.

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