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Understanding coherence between policy spheres: The interplay between EU energy and climate policies

Paper 5

Policy coherence by subterfuge?

Arenas and compromise-building in the EU energy efficiency policy

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Abstract

This paper looks at how policy-makers use various alternative decision arenas to avoid internal policy incoherence. Inconsistency between goals and measures in a policy indirectly results from conflicting interests pulling in different directions within a heterarchical institutional setting. To avoid deadlock, negotiators rely on consensus-building techniques such as watering down, issue redefinition, and the setting of targets without actions. These techniques facilitate moving away from the status quo, but they come at the expense coherence. This paper shows that alternative decision arenas may bypass conflict, thereby make the use of consensus-building techniques unnecessary, resulting in more coherence. Examples from the emerging field of energy efficiency policy substantiate this claim.

Keywords: energy policy, environmental policy, policy coherence, comitology, multilevel governance, decision arenas

1. The Problem of Coherence in Energy Efficiency Policy

Politics is messy. The more interests demand a say, the less coherent it becomes. How then are coherent political outputs achieved? And how is coherence achieved in European Union (EU) politics, in which decisions hinge on compromises between many actors with many contradictory interests and priorities? To seek an answer, this article explores the relation between interest diversity and policy coherence in the area of energy efficiency. Existing research suggests that policy coherence depends on compatible interests, hierarchical decision-making, or both. However, these factors are absent form recent EU legislation on energy efficiency. Instead, policymakers relied on "subterfuge" (Héritier 1999, p. 87): Using informal diplomacy and administrative procedures, they sidestepped the formal codecision-procedure and excluded certain interest positions. This contributed to more coherent results.

Energy efficiency policy is largely regulatory. It aims at the harmonization of product standards, and is therefore compatible with negative (market) integration, the dominant mode of European integration (Majone 1996, Gehring 1997). Nevertheless, the earliest of the very few advances only date back to the 1990s, lacked ambition, and quickly stagnated.[1] Only after the Kyoto Protocol had entered into force in 2005 did energy efficiency policy revive. Since then, it has grown into a cornerstone of the European climate strategy. While clearly being part of energy policy, energy efficiency also touches upon environmental regulation, the Single Market, and climate policy. This cross-cutting character invites the question how coherence may be ensured in conditions that are conventionally seen as unfavorable.

[1] See section 4.2.

Legislative politics in the EU is organized as heterarchy: its main site is the Council of Ministers, today consisting of 28 member-state representatives. Despite the increasing role of qualified majority voting, *de facto*, the Council still legislates through negotiation and very often by unanimity (Hayes-Renshaw et al. 2006). However, this is a difficult achievement, as the diversity among member-states increased with every enlargement (Lempp and Altenschmidt 2008). To resolve protracted negotiations, EU institutions learned to rely on compromise-building. I argue that compromise-building tends to achieve political agreement at the expense of policy coherence. However, a closer look at the reality of energy-efficiency decision-making reveals the existence of a countervailing "subterfuge" mechanism in the form of alternative decision-arenas. During the formulation of efficiency standards for domestic lighting and passenger cars, important decisions were taken outside the Council of Ministers. By process-tracing these cases, I show how the presence of alternative decision-arenas bypassed conflict. This obviated further compromise-building that should have resulted in greater policy-incoherence.

The article is organized as follows: The next section links to the wider theoretical debate on policy coherence, which so far has focused on hierarchy and interests as explanatory factors. Mechanisms of conflict-accommodation have received scant attention. I discuss these with an emphasis on compromise-building and the role of alternative decision-arenas. Section 3 briefly describes the empirical background and the methods of analysis. The roles of interest divergence, compromise-building and alternative decision-arenas are examined in the main section 4. I use the two most prominent energy efficiency regulations as examples. The last section recapitulates the findings and discusses their implications.

2. Diversity, Subterfuge and Policy Coherence

The following section has two parts. First, I will discuss the concept of policy coherence. The focus of this article is on a particular aspect, namely internal coherence. I then explain my argument in abstract terms: Given the diversity and heterarchy of the EU, veto players often rely on compromise-building to achieve policy change – at the expense of coherence. However, the presence of multiple decision arenas may also bridge conflict without undermining coherence.

2.1. Policy Coherence: Internal, Horizontal

The term "coherence" can be understood in a negative and in a positive sense. In negative terms, coherence simply means "absence of contradictions within and between individual policies" (den Hertog and Stroß 2013, p. 377). In the same way, the OECD (2001, p. 104) defines consistency as "ensuring that individual policies are not internally contradictory, and avoiding policies that conflict with reaching for a given policy objective". A positive understanding of coherence in addition demands "synergic and systematic support towards the achievement of common objectives within and across individual policies" (den Hertog and Stroß 2013, p. 377). The negative definition can be seen as a minimum requirement. If policies are already contradictory, they cannot be synergic. I speak of coherence in reference to this minimum requirement.

Two further distinctions are relevant to situate my study in the coherence debate. The first draws a line between *horizontal and vertical* coherence. In other words, it discerns coherence between policies on the same level of governance (either European or national) from coherence between policies at different levels. The second distinction separates *internal from external* coherence; it

discerns interactions within a single policy from interactions across policies and policy spheres (den Hertog and Stroß 2013, p. 377; Nilsson 2012, p. 398).

Vertical, internal coherence is the implicit subject of Europeanization research, which examines the degree of "fit" between European and national approaches towards certain policy problems (eg. Börzel 2002, p. 196). Authors like Scharpf (1999, Chapter 3) and Joerges (2007, p. 318) examined how European competition policy and single market law affect the problem-solving capacity of national welfare states, thus examining vertical, external coherence. Studies on horizontal coherence so far tended to focus on the external aspect of policy coherence (eg. Nilsson et al. 2012). This study aims to fill the remaining gap by looking at internal, horizontal coherence, taking European energy efficiency policy as an example. By internal, horizontal coherence I mean the coherence between the goals and the several measures and provisions that together constitute an energy efficiency policy.

2.2. Achieving Policy Coherence: Compromise and Subterfuge

Having spelled out the concept of coherence, I now turn to the question why (internal, horizontal) policy coherence, in fact, is hard to come by. From a theoretical perspective, achieving policy coherence in the EU seems like a "mission impossible" (Carbone 2008, p. 327). This is because two important causal preconditions are missing: Hierarchical decision-making and consistent interests among veto players. Conflicting interests drag a policy in different, incoherent directions. In that case, only a central hierarchical decision-maker can enforce a coherent design against those interests. Conflict is ubiquitous in a Union with 28 member-states and their diverse administrative traditions, welfare levels, and political priorities, with the Council of Ministers and the European Commission segmented into departments with discrete competences, and with a myriad of private stakeholders. However, hierarchy exists only in the judicial and executive

branches of the Union. Many powers in the area of negative integration have been delegated to the Commission and the European Court of Justice. Legislation, by contrast, takes the form of negotiations among (formal) equals. It requires the qualified majority and often a de facto consensus of the member-states in the Council.[2] In the ordinary legislative procedure, also the European Parliament has the power to veto decisions.

The notion that the degrees of hierarchy and conflict causally affect policy coherence is uncontroversial (May 2006). Less is known about the mechanism behind this causal nexus, that is, *how* heterarchical decision-making and conflict produce incoherence. I argue that the mechanism connecting conflict and policy incoherence is compromise-building. Without a hierarchical center, veto-players must bridge their conflicts through compromise in order to avoid deadlock and to achieve policy-change. First, negotiators may adopt *goals without* specifying *actions*. In the extreme case, such an incomplete contract only states a general target, on which the actors can agree at a given time, but it leaves open the more severe problem of finding appropriate measures and instruments (Héritier 1999, p. 17). Second, negotiators may *redefine the issue.* They can either add unrelated issues to the policy core in order to compensate disadvantaged veto-players (issue linkage); or they can subtract issues from the policy that are hard to agree. This means reducing the scope of these provisions (derogation, opt-out) or watering down the policy's core provisions (minimum compromise) (Falkner 2011, p 247-248). Each form of compromise-building works at the expense of internal coherence. Adopting goals without actions implies incoherence between the policy aspirations and their implementation. It may also invite diverging national implementations. Derogation, opt-outs and minimum

[2] See already Weiler (1981) on this "dual character of supranationalism". The general observation is still valid more than three decades later (Scharpf 2009).

compromises directly contradict the policy goal, while additional issues may contradict each other or the policy's core provisions.

The presence of multiple, sometimes informal decision arenas is a "subterfuge" (Héritier 1999, p. 87) that may help to prevent deadlock without undermining policy coherence. When multilateral negotiations among governments in the Council of Ministers reach an impasse, the presence of formal and informal alternative arenas is another opportunity to advance policy change. Rather than accommodating diverging positions, changing the decision arena may simply avoid conflict altogether. In their seminal analysis, Baumgartner and Jones (1991) showed how alternative "institutional venues" provide opportunities for policy change in the United States. Also Adrienne Héritier (1999, p. 18) hypothesized that "the availability of several alternative decisional arenas opens up room for manoeuvring". Obinger, Leibfried and Castles (2005) used the term "bypass mechanism" to indicate how federal veto points were circumvented to advance welfare state reform. "Arena shifting" has also been identified as a strategy that was used in EU policy-making to avoid deadlock (Falkner 2011, p. 241-243), but the "multi-centric" character of the EU polity may facilitate policy change also in the absence of strategic intentions (Arp 1995). In that sense, it may be more appropriate to speak of an arena effect rather than of arena shifting.

Figure 1: The Causal Mechanism of Internal Coherence

[FIGURE 1 HERE]

The upward promotion of contested legislation to the more political summit arena as well as its downward demotion into the administrative underpinnings of the EU polity can avoid stalemate. Both arenas are potential bypasses around the Council of Ministers. The following theoretical reasoning suggests that the summit arena facilitates agreement: Compared to the ministerial

Council formations, the summit arena covers all policy areas. Therefore it allows negotiators to combine a larger set of issues into compromise packages (Scharpf 1997, p. 129). Summit meetings are often informal and more akin to diplomacy. Since summit negotiations take place between the heads of state and government, diffuse reciprocity (Keohane 1986) supersedes myopic quid-pro-quo orientations (Peters 1997, p. 31). Finally, summit meetings often involve only a few countries. These may use the summit arena to sideline opposition in the multilateral Council of Ministers.

The many comitology committees form the administrative arena. Consisting of member state experts under the guidance of the European Commission, they are charged with the day-to-day implementation of existing EU law. The innocuous term "implementation" covers examples that are rather contested, such as airport security ("body scanners"), genetically modified organisms and the phase-out of incandescent lamps. When and why comitology takes over policy-making is defined in the relevant basic legislation. Strictly speaking, policymakers cannot decide on short notice to shift a decision to comitology. However, when committees are charged with a dossier, they are very effective in transforming conflict-laden interactions into joint problem-solving (Neyer 2004). One reason is that the more divisive issues have been settled at earlier stages of the decision-process (Gehring 1999; Elgström and Jönsson 2000, p. 693). Another reason points to attributes of the actors in charge. Comitology experts are part of the same epistemic community. Their negotiations are to a larger extent guided by shared norms of technical rationality than in the Council of Ministers, in which national positions are more important (Peters 1997, p. 29). The public salience of the administrative arena is extremely low. Few citizens are aware of comitology (Weale 2005, p. 338). Moreover, committee members typically belong to specialized domestic institutions operating at arm's length from the national government and the electoral

contest (Benz 2009, p. 142-143). Only in exceptional cases (such as gene crops) do comitology committees fail to attain a majority. Even single negative votes are infrequent (Sannerstedt 2005).

Figure 1 illustrates the theoretical argument. In a nutshell: Heterarchy and conflicting interests necessitate compromise-building in order for negotiations to achieve policy change rather than ending in deadlock. The trouble is that compromise-building functions at the expense of policy coherence. However, the presence of multiple decision arenas in the EU polity is an opportunity for subterfuge: to bypass deadlock without also inviting policy incoherence.

3. Methods and Data

For the most part, the empirical information in this analysis draws on two in-depth case-studies from the field of energy efficiency policy. These examine Regulation 433/2009 concerning the fuel-consumption of passenger cars, and Regulation 244/2009 on ecodesign requirements for non-directional household lamps.

These cases were selected for three reasons. First, energy efficiency is a cross-cutting issue *par excellence*. It involves a plethora of actors with diverse interests at multiple levels of governance. Contrary to what is theoretically expected, the case examples exhibit only moderate to little incoherence. It is this deviance that makes the policy-area interesting from a theoretical point of view. Both regulations were adopted in 2009, and both were characterized by intense conflicts. However, the provisions of both regulations are surprisingly coherent with their goals. In this regard, the examples are "deviant cases" (Gerring 2007, p. 105-107), since they are hard to square with the general hypothesis that conflict and heterarchy cause policy incoherence. I argue that the use of alternative decision venues explains this puzzle. Second, the cases offer rich information to examine the causal mechanism that links conflict, heterarchy and policy (in)coherence. I employ process tracing (Bennett and George 2005, Ch. 10) to shed light on the

causal chain (and its ruptures) between conflict/heterarchy and policy incoherence. Finally, the variation between both cases in their degree of coherence, though modest, allows some additional comparative analysis, according to the logic of a "most similar cases" design (Przeworski/Teune 1970, p. 32; Gerring 2007, p. 131).

The study draws on various data sources: First, written documentation produced by participating actors; this includes the documents and minutes published by the EU institutions, position papers from member-states and stakeholders. These documents were partly published and partly obtained from individual sources and are referenced where appropriate. Second, information was collected from newspapers and specialized news agencies (e.g. Agence Europe and ENDS). Finally, I conducted 18 semi-structured expert interviews with member state delegates, European Commission officials, members of the European Parliament, associations, and policy experts between 2009 and 2014 via telephone and on-site. The interviews took between twenty and ninety minutes; they were transcribed and are on file with the author. Anonymity was guaranteed to the interviewees to protect their privacy rights and to enable them to speak openly. This triangulation of various sources should guard against reproducing the inevitable bias of subjective recollections and official documentation.

4. Internal Coherence in EU Energy Efficiency Policy

To demonstrate how compromise-building and subterfuge affect internal policy coherence, the following empirical sections analyze the formulation of energy efficiency standards for domestic lighting and for passenger cars. Fuel and electricity consumption are directly related to rising CO_2 emissions. Road transport is the second largest source of greenhouse gases after power generation. Between 1996 and 2007, the average engine power of European cars had increased by 40 per cent (Jänicke 2010, p. 494). The fuel-efficiency regulation was meant to correct this

development. Its cornerstone is the first binding emission target for passenger cars. It was set at nominally 120 gram CO_2 per km and became fully effective for the entire European new car fleet in 2015. The lamps regulation set efficiency requirements with the effect of phasing out incandescent light-bulbs in several stages until 2012. The European Commission (2009a) estimates electricity savings from the switch to more efficient domestic lighting of close to 40 billion kWh, corresponding to 15 million tons of CO_2 equivalents per year by 2020.

4.1. From diversity to incoherence

I will now take a look at the interest constellations in energy efficiency policy. As argued in section 2, incoherent policy often results from compromise-building among incoherent interests. Conflicts in related fields such as environment are most of the time rooted in economic competition between national industries or in a misfit between domestic approaches to a policy problem and the envisaged EU policy. Misfit is more likely to occur in complex policies such as the regulation of production processes. However, with the notable exception of the energy efficiency directive (see Skovgaard in this issue), the new efficiency policies are product regulations rather than process regulations.

Accordingly, economic considerations rather than administrative traditions structured political conflict in both cases examined in this article. Industrial geography gave rise to major conflicts in particular to fuel-efficiency regulation. The car industry is a major economic factor in several member-states, as measured by occupation and output; but as table 1 demonstrates, its role is larger in some countries than in others. Germany, France, the United Kingdom (UK) and Italy were more strongly affected by the upcoming regulation than Denmark and the Netherlands, for example. The latter are also typical environmental front-runners and defended the most ambitious positions. More significant were the countries' different specializations in either small and

efficient or large and fuel-hungry vehicles: A uniform fuel consumption ceiling would have had an unequal impact. Specialization coincided with production location. German firms (and their suppliers in Austria and Eastern Europe) specialized in big cars, French and Italian firms in small cars. Other countries' automobile industries were located between these extremes. In other words, the conflict had a strong distributive component (Deters 2010 p. 26; ten Brink 2010, p. 193). The CEO of French PSA-Citroën framed this bargaining problem in social justice terms when he called it "unfair to allow richer citizens to pollute more than a middle-class person in a smaller car" (The Times, 8 February 2007).

While the fuel-efficiency regulation divided manufacturers, the phase-out of incandescent lamps divided organized interests (including manufacturers) from diffuse interests (namely individual consumers). The regulation chiefly affected lamp manufacturers and consumers. But since lamps are more standardized than cars, there was no comparable re-distributive conflict among European producers. To the contrary, European lamp companies shared an interest in shifting demand away from the technologically trivial low-margin incandescent bulb and towards more profitable products such as compact fluorescent lamps (ELC, CELMA 2008; Waide 2010, p. 23, European Commission 2009b, p. 62). Quality provisions contained in the regulation moreover protected European companies from the worst cut-price imports – at a time when existing anti-dumping tariffs on Asian compact fluorescent lamps were about to expire (European Commission 2009b, p. 20).[3] Consumer and environmental organizations in turn supported the measure because efficient lamps meant smaller electricity bills and lower climate impacts (ECOS 2008, 3).

[3] See also China's critical comment on the European notification of the lamps regulation under the Technical Barriers to Trade (TBT) agreement G/TBT/N/EEC/237, 27 February 2009. On the antidumping tariffs see Luo 2010, pp. 142, 147.

Table 1: Largest European Car Producing countries in 2006, Several Measures.

[TABLE 1 HERE]

Individual consumers, however, were not part of this coalition of "bootleggers and baptists" (Yandle 1989). Many remained attached to the incandescent bulb for sometimes purely nostalgic reasons. In some member-states, this resulted in a surprising politicization of the phase-out. Public unease was most vocal in Austria, the UK, Germany, and the Netherlands (interviews 20 March 2012, 13 April 2012). Reportedly, more than 60 per cent of Austrian citizens found the measure "less than sensible" or "not sensible at all" (APA 26 August 2009). In the Netherlands and in Austria, politicians of leading parties called for a reversal of the phase-out (APA 28 March 2009, ANP 15 February 2010). From tabloid to highbrow, commentary in Germany and the UK was very critical as well (eg. Bittner 2009; Derbyshire 2009).

The two headline measures of the EU's new energy efficiency policy were accompanied by intense conflict between industry factions or between industry and consumer-citizens. Conflict, as argued above, translates into policy incoherence if compromise-building rather than alternative decision arenas are used as the main instrument to bridge conflicting positions. The remainder of this contribution examines the role of each mechanism.

4.2. Compromise-building

This section demonstrates how compromise-building facilitated agreement at the expense of some internal coherence. Since conflict among decision-makers was more intense about the fuel-efficiency regulation than about the incandescent lamps phase-out, negotiators in the first case relied more on compromise-building. The fuel saving regulation therefore turned out less coherent than the lamps regulation. To build compromise, negotiators (at first) adopted targets

without specifying actions, and they redefined the policy issue in various ways, including the linking together of issues and the watering down of core provisions.

It is questionable whether there would be a binding European measure on fuel-efficiency today had policymakers not agreed on a *target without actions*, dating back to the early 1990s. In the context of the negotiations on the EU's early vehicle emission norms, then German environment minister Töpfer proposed a measure on CO_2 emissions. Differences, both within the Council and within the Commission (under Prodi) about the stringency and the policy approach led policymakers to abandon the idea. However, the resulting "consolidated directive" on exhaust emissions (91/441/EEC) stipulated in article 5 that member states in the future "shall decide on measures designed to limit CO_2 emissions from motor vehicles". The Council propped up this incomplete contract with a formal pledge to set a possible future efficiency target at 5 liters petrol consumed per 100 kilometer, corresponding to 120 gram of CO_2 emissions per kilometer (cf. European Commission 1995). Absent agreement, the implementation of a binding measure was put on the back-burner in favor of a voluntary industry agreement that soon proved ineffective. The new Commission under Barroso and a differently composed Council, including a red-green coalition in Germany, was a window of opportunity (interviews 16 November 2009, 15 December 2009). Environment ministers asked the Commission to initiate legislation. The new proposal was based on the 120-gram target. Now substantiated by binding measures, the target also survived in the regulation that was adopted in 2009.

The lamps regulation as well is a result of incomplete contracting. It is based on the 2005 ecodesign directive (2005/32/EC). The directive is an incomplete contract among member-states: an "empty box" (Tanasescu 2009, p. 155). Member states decided not to include any substantive measures but they set out a methodology and procedures for their formulation. They delegated

this task to the Commission, which draws on the expertise of private consultancies and various private stakeholders. To become law, the draft of each ecodesign measure needs the support of a qualified majority of technical member-state experts in the so-called ecodesign committee, a committee operating until lately under the so-called "regulatory procedure with scrutiny". The directive does not include substantive measures, but since the incomplete contract includes an elaborate implementing structure, it cannot strictly be called a *target without actions*.

The ecodesign structure is akin to the "new approach" for standardization that helped to revive the single market project in the late 1980s by delegating the task of technical harmonization to private bodies (Pelkmans 1987). In the same way, the ecodesign framework led to a remarkable speeding up of product regulation for energy efficiency after early attempts had stalled in the 1990s.[4] At the time of writing, seven years after the basic legislation in August 2005 entered into force, already 27 regulations had been adopted under the ecodesign framework. Table 2 moreover shows that more than a third had been decided already in 2009.

Table 2: Number of Implementing Regulations Adopted by the Commission in the Field of Energy Conservation

[TABLE 2 HERE]

Both regarding fuel-efficiency and the basic act of the lamps regulation, the incomplete contract facilitated policy-change. But while the ecodesign directive set up a coherent framework for the timely implementation of set goals, the early attempts to regulate fuel consumption lacked a framework that would "fill in" the contract. In the latter case, policymakers simply failed to

[4] These amounted to just three efficiency standards. The SAVE directive moreover required member states to establish domestic energy efficiency "programs", but it neither determined their contents nor provided quantitative targets. A EU-wide labelling system, adopted in 1992, which informed consumers about the energy consumption of household appliances, was not revised for more than a decade, despite technological progress (Oberthuer 2010, p. 43).

arrive at a binding regulation and resorted to a goal without actions. By contrast, the ecodesign directive that led to the phase-out of incandescent lamps was planned as a framework decision from the outset.

Compromise-building in the lamps regulation took the form of a slight *watering down* of the efficiency requirement and a *linkage* of the two core issues, namely the efficiency requirement and the pace of the phase-out. The informal Commission proposal (European Commission 2008a) included three options. According to the strictest requirements, only the most efficient compact fluorescent lamps would remain on the market. The lenient requirement allowed most halogen lamps, and the intermediate requirement only the most efficient halogen lamps. In particular the Southern and Eastern European member states did not want to go beyond the lenient option (European Commission 2009b, Annex VII).[5] This conservative minority would have been able to block any stricter proposal, and the final text accordingly settled on the minimum compromise. But since the regulation still provided for the complete phase-out of incandescent lamps, the incoherence between the original intention and the adopted measures can be regarded as slight. Moreover, the regulation provided for a rather quick schedule. The final text was closer to the faster of the two options originally put forward by the Commission. On the timing issue, the more impatient countries, most notably Ireland, where domestic plans had to be put on hold, were able to set the pace (interviews 20 March 2012, and 13 April 2012; Irish Independent 27 January 2009). It seems that both core-issues were combined into one compromise package.

By comparison, the fuel-efficiency negotiations contain a lot more examples of compromise-building at the expense of coherence. The re-distributive conflicts did not stop after the revival of the legislative project in late 2006. So intense were these conflicts that they even divided the

[5] Aside from the cited minutes of the consultation forum, most delegations explained their positions in detailed technical documents, which I could obtain from my interviewees.

Commission. At the end of a prolonged turf-war, DG Environment eventually secured the formal responsibility for the dossier. This was understood when Enterprise Commissioner Verheugen did not attend the presentation of the draft regulation in December 2007 (interview 15 December 2009; Wirtschaftswoche 19 December 2007). However, DG Environment conceded the introduction of a so-called "integrative approach" into the proposal. According to this idea, manufacturers received a rebate on the 120-gram target for efficiency-improving technologies unrelated to the actual fuel consumption of the car engine. Improvements such as efficient air conditioning would count up to 10g towards the target (ten Brink 2010, p. 200). Thus, the Commission DGs achieved agreement on the proposal by a *redefinition* of what the savings target meant and included. On a critical reading, this led to a *watering down* of the level of ambition, inconsistent with the original aim.

Various *loopholes and derogations* were moreover built into the proposal. These often seemed geared towards particular manufacturers, and they calmed opposition from individual member-states. Examples include derogations for "niche products" – essentially British roadsters – or the recognition of "eco innovations" as counting towards the savings target, the latter being of great interest for German car-makers. These compromises introduced incoherence to the extent that they undermined the original 120-gram savings target. For example, the eco innovations provision does promote efficient technologies not accounted for in the engine test cycle, but since eco innovations count for up to 7g towards the target, they render the overall level of ambition less strict rather than stricter (ten Brink 2010, p. 197).

Another particularly creative example of compromise-building concerned the question how the 120-gram target for the entire new car fleet would be translated into obligations for individual manufacturers. This example is interesting, because it did not in itself challenge coherence. The

mere formulation of an overall fleet target had deliberately not touched the question of individual manufacturer obligations. This became the most contested topic. Given the diversity of European car-makers, uniform obligations were neither politically viable nor normatively attractive (interview 15 December 2009; ten Brink 2010, pp. 192-193). Differences between manufacturers and vehicle types had to be taken into account. The solution was an ingenious burden-sharing arrangement that specified individual obligations according to vehicle mass.[6] The redefinition of the fuel-saving proposal as involving both a target and a separate distributive component was absolutely necessary to achieve consensus without further watering down the target to a level acceptable to the most reluctant member-state (Deters 2010, p. 26). At the same time, it was mostly neutral with regard to the regulation's coherence. However, the choice of mass instead of footprint as distributive parameter introduced a certain perverse incentive for manufacturers to have many heavy and therefore inefficient cars in their car fleet (interviews 13, 14 and 15 December 2009).

These examples show that incoherence is the flipside of policy-making in a negotiation system, in which decision-makers must rely on compromise-building. Target-setting without actions, redefinition of the issue, and some watering down facilitated compromise about fuel-efficiency, but it did not completely resolve the conflict. Negotiations on the lamps regulation as well relied on linkage and on some watering down, but not with regard to the pace of the phase-out, which remained expedient. Consistency with the main goal, phasing out incandescent lamps, was maintained. In the case of the lamps regulation, the ecodesign framework served as incomplete contract. It divided the tasks of target-setting and implementation. By delegating implementation to the administrative realm, it immensely sped up decision-making. As the following section

[6] The choice of vehicle mass as parameter was defended by its practicability, but it was no coincidence that mass was more favorable for inefficient, heavy cars than a parameter based on footprint (ten Brink 2010, p. 190).

explains, this arrangement moreover prevented a certain dimension of the conflict about the lamps phase-out from being articulated.

4.3. Establishing Coherence by Subterfuge: The Arena Effect

I have argued so far that compromise-building caused some incoherence in two examples of recent EU energy efficiency policy. Manifest conflict and thus resort to compromise-building was more widespread in the fuel saving regulation. It was also less coherent than the lamps regulation. I will now show that in both cases alternative policy arenas served as opportunity to overcome contestation by subterfuge – without further compromising policy coherence. In the lamps regulation, the administrative arena prevented conflict from being expressed and from being fed into the decision. The summit arena in the fuel-efficiency policy sidelined conflict after it had already erupted and brought decision-making to a halt.

The burden sharing-arrangement that divided the effort between car manufacturers was a double-edged sword. On the one hand, redefining the issue as two separate problems, namely as target setting and effort sharing, established a ground for compromise and maintained the overall level of ambition. On the other hand, the distributive component became so salient that negotiations in the Council of Ministers stalled. Expressed in the slope of the so-called "limit value curve", the distributive implications had become exactly quantifiable. The curve plotted vehicle mass against reduction obligations. A slope of one hundred percent represented the status quo; it was defined as the statistical association between CO_2 emissions and vehicle mass found in 2006. Two camps were opposed: The small-car countries demanded a slope of twenty percent, whereas the large car coalition demanded eighty percent. This already came after a first round of maximum demands for equal manufacturer targets (zero percent) by the small-car countries and equal reduction efforts (hundred percent) by the large-car camp (Wirtschaftswoche 19 December 2007).

Bargaining remained focused on this problem, which turned out to be the crucial "tough nut to crack", as the German environment minister remarked (Reuters 28 July 2007), before the regulation could be adopted.

After months of alternating offers and counteroffers, the "nut" was still far from being "cracked". German officials began to accuse the French and Italians of waging a "trade war" against them (AFP, 19 December 2007). The Environment Council in October 2007 did not even put the regulation on its agenda; another attempt at the Environment Council in March 2008 yielded no result (ENDS 25 June 2008). At this point, negotiators could have either shelved the proposal or introduced further incoherence. With the widening gap between measures and goals, the policy would have lost all credibility.

In the meantime, the summit level had become the main arena. A first bilateral meeting between Angela Merkel and Nicolas Sarkozy was scheduled in February 2008, now without an Italian delegation. It was agreed to refer the issue to a Franco-German "high level working group", but to no avail. The break-through was only reached during a summit meeting of Sarkozy and Merkel in Straubing, Bavaria, in early June 2008. This time, experts and other government officials did not participate in all of the discussions between the two state leaders (interviews 11 and 15 December 2009). The compromise position drew the limit value curve at sixty percent, somewhat closer to the German ideal point and in agreement with the Commission proposal.[7] In October, the French presidency put the Straubing compromise on the following Council agenda as an official presidency proposal, where it was supported by a qualified majority and adopted with minor amendments. Much to the chagrin of Italy, watching from the sidelines, the Council more

[7] See Joint Statement by M. Nicholas Sarkozy, President of the Republic and Mrs. Angela Merkel, Chancellor of the Federal Republic of Germany on Vehicle Emissions at the Ninth Franco-German Council of Ministers, Straubing (Bavaria), 9 June 2008, http://www.ourclimate.eu/UserFiles/Joint%20Statement%20on%20cars.pdf

or less accepted the draft as it stood, fearing that any change would unravel the artfully crafted compromise (interviews 11 and 15 December 2009; Walsh 2008 p. 6).

The gridlock in the Environment Council was resolved only during bilateral negotiations in the summit arena. It is difficult to pin down the exact mechanism that enabled progress during the bilateral talks. Various interviewees suggested a quid-pro-quo package deal that included parallel negotiations over the soil framework directive proposal (COM/2006/0232), which was not salient for France but which Germany was keen to prevent. Accordingly, Germany agreed to the fuel efficiency regulation in return for a French veto over the soil directive(Deters 2017). But reciprocal exchange might have been more diffuse. Bilateralism also meant that the more radical actors were sidelined. Italy had demanded an even lower slope than France and was notably unhappy about Sarkozy's concessions to the German demands; its environment minister called the bilateral accord "unacceptable because it weakens environmental norms as a way to help industry in those two countries" (Walsh 2008, p. 6) Since France held the Council presidency at the time, it was moreover eager to conclude the dossier before the end of the term (ten Brink 2010, p. 197). It is instructive to compare in the following the effect of the summit bypass with the role that the administrative decision-arena played during the adoption of the lamps regulation. While the former circumvented manifest conflict, the latter prevented a potential conflict from being articulated. It averted public contestation from arising in the first place. This latter form of subterfuge was involuntary but effective. When the backlash against the incandescent lamps erupted, it was not only too late to change course; policy-makers were taken also by surprise.

The origin of the lamps regulation lies in the ecodesign directive (2005/32/EC). Article 16(2) inter alia defines an indicative list of "priority products". These products are to be regulated already before the adoption of a formal work-plan. Domestic lamps are part of this list. The

relevant preparatory studies were launched in the first half of 2006. In March 2007, the lamps regulation for the first time became a subject of political attention, when German environment minister Gabriel put the issue on the agenda of the European Spring Council. Germany at the time held the Council presidency. When Australia and other countries outside the EU began to phase out incandescent bulbs, Gabriel wanted to ensure that the EU, as a self-proclaimed "climate leader", would not be left behind (Bittner 2009, p. 8). The European Council formally invited the Commission to "rapidly submit proposals to enable increased energy efficiency requirements […] on incandescent lamps" (Council of the European Union 2007, p. 20).

The Commission responded to the initiative from the summit arena by accelerating the process that was already going on behind the scenes (Vito 2009, p. 17). In July and November 2007, stakeholders, officials from the Commission's Energy Directorate-General, the preparatory study consortium and experts from the Netherlands, Germany and Belgium discussed interim results (Vito 2009, p. 20). The discussions were technical and did not yet include policy options. Policy proposals were first presented at the meeting of a stakeholder assembly ("consultation forum") on March 2008. At this point, most member-states participated. The informal proposal included various options, all of which would "lead to a total phase out of traditional incandescent bulbs" (European Commission 2008a, p. 5). Quite in contrast to the public criticism mounting in the aftermath of the decision, just a tiny minority wanted to keep incandescent lamps on the market. Among member-states, only the pace of the phase-out and the stringency of the efficiency threshold were debated, not the phase-out as such. Based on the discussions in the consultation forum, the Commission prepared a formal draft, which the regulatory committee discussed in an informal session in November 2008 in order to deliberate in the absence of stakeholder groups. Member state experts introduced only minor amendments when the committee unanimously adopted the proposal in December 2008 (European Commission 2008b, 2008c).

Figure 2: Press Coverage of the Incandescent Lamps Phase-Out

[FIGURE 2 HERE]

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The similarity of positions among member-state delegates reflects an absence of opposition from organized interests, but it is hard to square with the outrage that the phase-out provoked among citizens in various member-states. The answer to this conundrum lies in the fact that public attention waxed and waned with the salience of the decision arena. Figure 2 shows the evolution of newspaper reporting on the topic in four states, in which the issue became particularly salient. After the agenda was set on the highest political level (in the first semester of 2007), the actual drafting and decision-making took place in the administrative realm (between the second semester of 2007 and the year 2008). Media interests immediately declined. Just a slight increase is registered after the vote in the regulatory committee (second half of 2008). Only when the regulation went into effect and incandescent bulbs disappeared from the shelves did attention suddenly spike (throughout 2009).

The time-span in which the bulb was in the limelight of the European Council was too brief to draw sustained attention. Once in the administrative arena, the initiative fell into oblivion. Discontent emerged too late. Eighty per cent of German citizen, for example, were unaware of the pending measure before it was adopted (Osram 2011). A German EU-diplomat remarked “I cannot recall a single media request about the issue during our presidency. In those wild six months, this was just one of the many lights that flashed quickly before smoldering on beneath the leaves” (cf. Bittner 2009, p. 8).

The use of the administrative arena for the decision to phase out incandescent lamps veiled an important dimension of the conflict. In the face of earlier domestic discontent, member-states such as the UK, Germany, the Netherlands and Austria, in which the issue became extremely salient, would most likely have changed their position. Conflict could have divided the committee or threatened a more defensive position of the European Parliament during the scrutiny period. In this alternative scenario, further compromise-building efforts would have become necessary – resulting in additional policy incoherence. In the fuel-efficiency policy as well, the availability of alternative decision arenas obviated further compromise-building; but since the bilateral summit negotiations on the fuel-saving regulation only dealt with conflict that had already become manifest, the result was less coherent.

4.4. Discussion

The two main theoretical factors that are seen as undermining policy coherence are present in energy efficiency policy. Decision-making took place in a heterarchical setting and incoherent positions pulled in different directions. Under these preconditions, policy incoherence resulted from the need to rely on compromise-building: While the overall fuel-efficiency target was maintained, the various derogations call into question its effectiveness. The target moreover was not watered down directly, but through more covert ways it was in fact diluted. Earlier attempts to tackle the problem of CO_2 emissions from passenger cars had relied on adopting targets without actions. They amounted to little more than a statement of intent. Yet in the end, these methods facilitated agreement, if only at the expense of some policy coherence. Compromise-building, however, only got negotiations so far. When re-distributive conflict caused the decision to stall, separate bilateral negotiations on the summit level generated the momentum that made the adoption of the regulation possible.

There was less need for compromise-building in the lamps regulation, and indeed the pace of the incandescent lamps phase-out even surpassed the original proposal. This is puzzling against the backdrop of conflict. The characteristics of the decision-making arena can explain this outcome. Societal contestation did not translate into conflict among governments. The shared technical outlook among the committee members left no room for political considerations. They regarded the regulation as being in everyone's interest and there was no reason to call this perspective into question, because citizens seemed completely uninterested. But it was only the obscurity of the committee and the apparent technicality of the subject-matter that kept the issue below the public radar. With a long delay, the media finally picked up on the matter and invited an unexpected degree of public dissent.

5. Conclusion

How is internal policy-coherence maintained in a diverse and chiefly non-hierarchical political system like the EU? It is not only a matter of hierarchy and conflict. I have discussed two examples from the emerging field of energy efficiency. In both cases, decisions were achieved through negotiations, that is, in a non-hierarchical fashion, and both cases were characterized by a high degree of conflict. In order to accommodate their different interests, policymakers relied on compromise-building. I have demonstrated that it is compromise-building, rather than non-hierarchical decision-making and conflicting interests per se, that is responsible for policy incoherence.

However, policy incoherence was partly mitigated by "subterfuge" (Héritier 1999, p. 87): Member-states' use of decision-arenas beyond the multilateral Council of Ministers prevented deadlock and served as an alternative to compromise-building. The administrative character of the phase-out decision that was taken in the ecodesign committee prevented political conflict

from arising in the first place. By contrast, the change of decision arenas from the Council of Ministers to the informal summit level reduced the degree of conflict that had already built up in the fuel-saving case. France and Germany sidelined other veto-players and confronted them with a fait accompli that proved difficult to amend.

Two cases, even if carefully selected, merely point toward the role of subterfuge for policy-coherence and for European decision-making in general. Process-tracing in these specific cases served to shed light on the mechanisms behind the problem of coherence and helped generate an answer to the question how policy-coherence was maintained in a non-hierarchical decision over a contentious issue. To which extent and under which conditions this explanation can be generalized calls for more research. If it is true that "governance through the systematic departure from formal rules" (Kleine 2013, p. 305) is common practice, there is reason for some concern: While a compromise at the expense of coherence can be frustrating from a technical standpoint, it may still be normatively appealing because of its potential to recognize the views of all those affected by a decision (Reh 2012, p. 429). By contrast, coherence by subterfuge relies on non-political and bilateral arenas to avoid political opposition; it runs counter to the democratic principle of giving equal consideration to all affected.

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Appendix

Figure 2 plots the percentage of maximum results for the search terms‘(glühbirnenverbot or glühlampenverbot) and (europäische union or eu)’, ‘gloeilamp and (ban* or verbod*) and (europese unie or eu)’ and ‘(lightbulb* or light bulb*) and (european union or eu) and (ban or phase out)’ with a regional search restriction on national sources against the seven semesters between 1 January 2007 and 30 June 2010. Factiva archives agency reports as well as newspaper articles. Duplicates were removed.

Figures and tables

Figure 1 below:

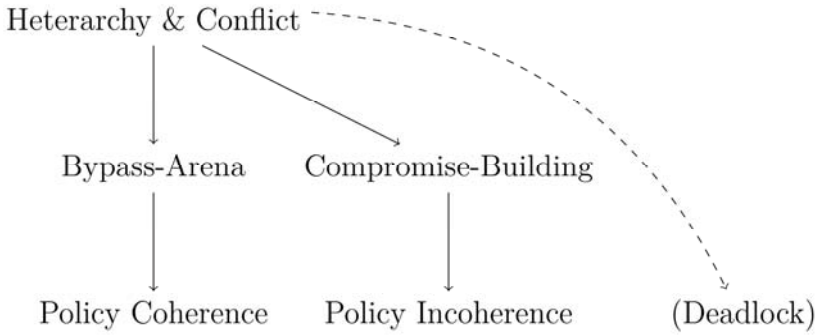
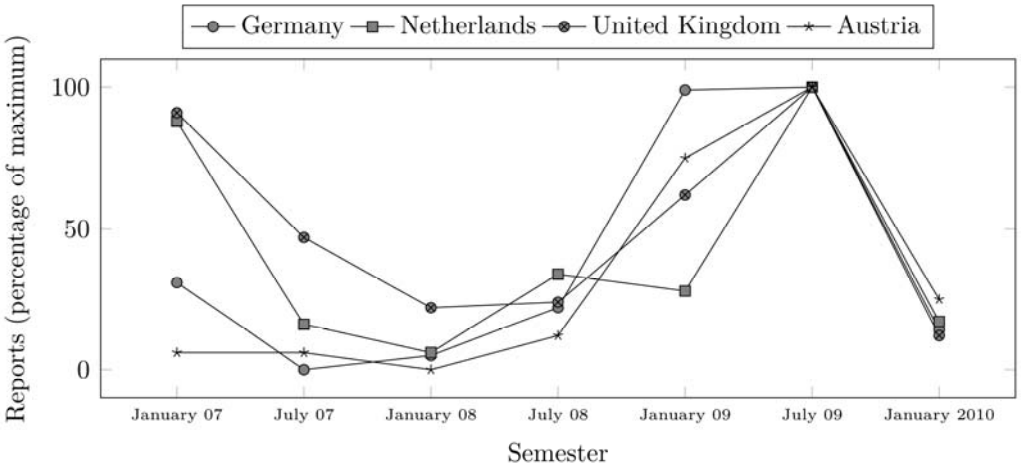


Figure 2 below:



Source: Own elaboration based on Factiva. See Appendix for details

Table 1 below:

Percentage of sector GDP EU-25	*Percentage of national GDP*	*Percentage of sector occupation EU-25*	*Percentage of national industrial occupation*
Germany: 50.9	Germany: 9.5	Germany: 43.6	Germany: 7.4
France: 15.5	Sweden: 6.4	France: 15.5	Sweden: 6.8
United Kingdom: 8.2	France: 5.6	United Kingdom: 9.4	Belgium: 5.9
Spain: 6.3	Hungary: 5.3	Spain: 7.1	France: 4.8
Sweden: 4.1	Belgium: 5.2	Italy: 5.8	Spain: 3.4

Source: Eurostat 2006

Table 2 below:

Year	Adopted	In force
2008	1	1
2009	9	10
2010	1	11
2011	2	13
2012	5	18
2013	5	25
2014	2	27

Source: Own elaboration based on Eur-Lex.